

Decision Making in the European Union: Connecting Preferences with Behaviour

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Oslo, December 16th 2013

Vibeke Wøien Hansen

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Introduction and summary

*Vibeke Wøien Hansen**

European Union (EU) legislation daily affects millions of citizens in Europe. Legislation is the main outcome of the European integration project and member state implementation of EU laws is the easiest tangible measure of the project's success. Hence, research on how the decisions come about and how they are implemented across Europe is important for a variety of reasons. One of the main reasons for investigating EU decision making is to assess the democratic quality of the law making. Governments ought to be accountable to their citizens also when operating at the European level. Decision making should be as transparent as possible and involve the accountable actors across the institutions. EU democracy or the lack thereof has been a highly debated issue for the last two decades (Føllesdal and Hix, 2006; Moravcsik, 2002; Majone, 2000). This thesis contributes to the democratic deficit debate in several ways by showing that preferences matter throughout the decision-making process. First, when preferences matter the most, decisions are reached formally and are thoroughly debated in the Council of the European Union and the European Parliament (hereafter the Council and the EP). Second, preferences are not fully erased by bargaining and can also hamper the implementation process. Third, the legislative output is representative of the initial preferences of the national governments. These findings all contribute to the positive aspect of the democratic legitimacy debate.

The main motivation for this thesis is to connect preferences with observable behaviour at all stages of the EU policy-making process. The following are the most important stages in any policy-making process: 1) bargaining within a legislative body, 2) bargaining between legislative bodies, 3) formal decisions, and 4) implementation of adopted policies. Including implementation in the definition of a policy-making process ensures an exhaustive understand-

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ing of the process. In this thesis, the implications of preferences for all these stages of EU decision making are investigated. The theoretical framework for this investigation is rational choice theory which assumes that actors behave in a utility-maximising way (Downs, 1957; Riker, 1962; Olson, 1982; Tsebelis and Garrett, 1996; Shepsle and Bonchek, 1997; Krehbiel, 1998; Tsebelis, 1999)

Although the research topic is the European Union (EU), the effect of preferences on decision-making behaviour can be applicable to any policy-making body. The thesis finds a link between preferences and choice of action in later stages of decision making. First, greater distance between the pivotal actors across the Council and the EP increase the probability of more than one round of co-decision bargaining. Second, government preferences do have an effect on actual voting behaviour in the Council. A negative preference is more likely to be associated with a negative vote. Third, a negative vote has an effect on the implementation process. A negative vote is more likely to be associated with poor implementation of EU directives by the member states.

Showing that decision-making stages are connected by utility-maximising behaviour is the first contribution that this thesis makes to the existing literature on EU decision making. Another contribution is its combining of a variety of different data sources. Preference-based data (Thomson and Stokman, 2003; Thomson, Stokman, Achen and König, 2006; Thomson, Arregui, Leuffen, Costello, Cross, Hertz and Jensen, 2012) are combined with voting records (Hagemann, 2007, 2008; Hagemann and Høyland, 2008) and implementation records (König and Luetgert, 2009; Luetgert and Dannwolf, 2009; Zhelyazkova and Torenlvied, 2009). These different data sources have previously been explored in isolation or have been employed to investigate preference-based explanations for delayed implementation (Thomson, Arregui and Torenlvied, 2007; Zhelyazkova and Torenlvied, 2009). In this thesis the three data sources are combined to paint a broader, interconnected picture of EU decision making.

The overarching research questions that bind together the four papers that constitute the thesis are the following:

1. *(To what extent) can preferences explain behaviour in EU decision making?*
2. *(To what extent) can preferences account for variation in EU decision-making processes?*

In the first paper (co-authored with Bjørn Høyland) the relationship between preferences and voting behaviour is investigated. The second paper explores the relationship between preferences and member state behaviour in the implementation process. Both papers utilise all the variation in behaviour at the member state level. The third and fourth papers switch focus from the member state level to the proposal level. The third paper investigates whether preferences can explain some of the variation in the duration of law making or more specifically whether voting behaviour and divergent preferences have consequences for the time needed to reach agreement. The fourth paper examines whether the preferences of the pivotal actors across the institutions can account for the variation in agreement stage in the co-decision procedure. Drawing upon veto models with incomplete information, greater distance between the ideal positions of the pivotal actors is assumed to be negatively associated with early agreement between the institutions. Altogether, these four papers connect preferences with behaviour of the involved actors in all the aforementioned stages of EU decision making. The findings show that preferences have a robust effect on behaviour throughout the decision-making process:

1. Preferences can account for voting behaviour: a negative preference increases the probability of voting “no” when the formal decision is taken.
2. Preferences in the bargaining have an effect on member state behaviour in the implementation process.
3. Preferences have an effect on bargaining time.
4. Preferences have an effect on the probability of first reading non-agreement.

All these findings will be presented in detail later in this introduction. Figure 1, however, summarises how the different papers are connected. The arrows indicate that the probability of observing the event in the connected box increases. A negative preference is assumed to increase the probability of a negative vote which again is assumed to increase the probability of poor implementation. If the decision makers have divergent preferences, bargaining is assumed to a) take more time and b) require more rounds (when the co-decision procedure applies).

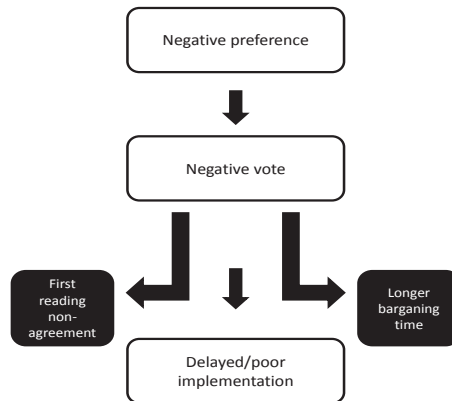


Figure 1: The impact of preferences on behaviour

The initial motivation for the thesis was to link Council voting behaviour to all stages of the decision-making process. Although decision making in the Council is often characterised as consensual (Lewis, 2000; Mattila and Lane, 2001; Lewis, 2003; Heisenberg, 2005; Hayes-Renshaw and Wallace, 2006), the published voting records show that one or more governments take dissent on more than 30 percent of all binding legislative proposals (Hagemann and De Clerck-Sachsse, 2007).¹ While the voting data has been thoroughly investigated in terms of coalition partners, actor alignments and dimensions of conflict (Mattila and Lane, 2001; Mattila, 2004; Hagemann and De Clerck-Sachsse, 2007; Hagemann and Høyland, 2008; Mattila, 2009), there is a lack of large N-studies that explore the impact of voting behaviour in a broader setting of EU decision making. The different components in this thesis seek to paint a full picture of the implications of Council voting for EU decision making. However, in order to investigate the effect of voting behaviour, it is also necessary to assess the effect of preferences. Voting is a product of preferences and bargaining. A vote choice can be a proxy for the voter's preference but is not necessarily so (see for instance Hagemann (2006)). Hence, treating an ob-

¹This estimate includes opposition shown by formal statements.

served vote as an indication of the voter's preference is a testable assumption. This assumption is tested in the first paper of the thesis and the analysis shows that preferences and voting are interlinked. Hence, in the remaining three papers several indicators of preferences (including preferences revealed by voting) are tested in order to fully evaluate the effect of preferences on observable behaviour in the EU decision-making process. Note that this thesis does not attempt to investigate why some member states vote against a proposal and others do not beyond the assumption that preferences matter. While there is evidence for national economic and social interests determining member state vote choice in the Council (Bailer, Mattila and Schneider, 2010), the analyses in this thesis do not explicitly examine structural reasons for observed voting behaviour.

THEORETICAL FRAMEWORK AND MAIN HYPOTHESES

The main assumption for this thesis' theoretical framework is instrumental rationality. The actors in the EU decision-making process are acting in accordance with their preferences and beliefs. In the rational choice literature the cause-and-effect relationships between actions and outcomes are seen as certain, risky or uncertain (Shepsle and Bonchek, 1997). In the setting of the European Union where the group size has continuously increased, from initially six member states in 1957 (EEC) to 28 member states in 2013, the cause-and-effect relationship can mostly be said to be risky or uncertain. Acting upon a preference for a final outcome, and in accordance with a belief about the best way to pursue this outcome, does not guarantee that the outcome will be reached. However, when maximising own utility, given the uncertainty with regard to the other actors' behaviour, actor *i* can be better off by acting in line with that actor's preferences than by choosing not to do so. Moreover, acting rationally requires ranking the different outcomes and then choosing the action that is likely to maximize the highest ranked outcome (Riker and Ordershook, 1968). In this thesis, it is assumed that EU decision makers are rational actors with Euclidean preferences. That means that the actors prefer policy outcomes close to their own ideal positions over policy outcomes farther away.

Rational choice-based literature on decision making in the EU generally assumes that gov-

ernments have preferences over policies, and act with the aim of moving policies closer to their most preferred policy outcome (ideal-point) or to prevent policies that are farther away from their ideal-point than the current policy (the status quo) from being adopted. Figure 2 shows the underlying logic of the theoretical framework. In this simple spatial representation of one actor's (*i*) position vis-a-vis the old and new policy, the ideal position of actor *i* is located closer to the old policy than to the new policy. Actor *i* will thus seek to prevent the new policy from being adopted as *i* prefers the old policy (the status quo) over the new proposal.



Figure 2: Scenario where actor *i* prefers the old policy (SQ) over the new policy

Rational choice theory is the foundation for a variety of studies in the EU literature. Game theory-based literature on decision making in the EU has traditionally aimed to establish the benefits of being agenda setters and veto players, and the location of the decision outcome, to determine the power relations between the institutions under the different legislative proce-

dures (Steunenberg, 1994; Tsebelis and Garrett, 1996; Crombez, 1996; Moser, 1996; Scully, 1997; Tsebelis and Garrett, 2000). Game theory can also be used to model situations of legislative gridlock (Crombez and Hix, 2013), bargaining power (Schneider, Finke and Bailer, 2010), democratic implications of the decision-making process (Crombez, 2003), and the relationship between the principal and the agent at the different levels of EU decision making (Hug, 2003a).

Large N-studies on EU decision making have utilised rational choice theory in different ways. Actor alignment in the Council (e.g. Mattila, 2004; Zimmer, Schneider and Dobbins, 2005; Mattila, 2009; Thomson, 2009a) is a product of preferences and voting behaviour. Some governments manage to secure a policy outcome closer to their own interests than others (e.g. Bailer, 2004; Arregui and Thomson, 2009; Cross, 2013). A high degree of heterogeneity in preferences increases the probability of failed implementation (König and Luetgert, 2009). Preferences far away from the policy outcome increase the probability of implementation infringements detected and enforced by the Commission (Thomson, Arregui and Torenvlied, 2007).

The general theoretical approach in this thesis builds upon this literature. It is assumed that preferences are connected with observable behaviour, and that variation in preferences has an effect on the various stages of the decision-making process. The actors are assumed to behave in a rational manner in all stages of decision making. The main theoretical contribution is thus to follow this logic throughout the decision-making process beginning with the bargaining stage and ending with the implementation stage. The theoretical assumptions are illustrated in a simplified manner in Figure 3. The figure is drawn as a game tree to illustrate that actor *i* has different choices in a decision-making process. The bold paths are the paths that can be directly derived by backward induction. In the rational choice theory framework, actor *i*'s preference determines voting behaviour, which again determines implementation behaviour. Hence, observing poor implementation at the end of the decision-making process should indicate that such behaviour stems from a negative position on the adopted policy. Note, however, that Figure 3 illustrates a simplified theoretical argument. Several other variables may distort any direct relationship between the bargaining phase and the implementation phase. Hence, the statistical analyses control for other explanations that can account for (non)compliance. For instance, the level of discretion attached to a directive or the perceived effectiveness of the different national

governments can also contribute to explaining the observed implementation pattern across the EU member states.

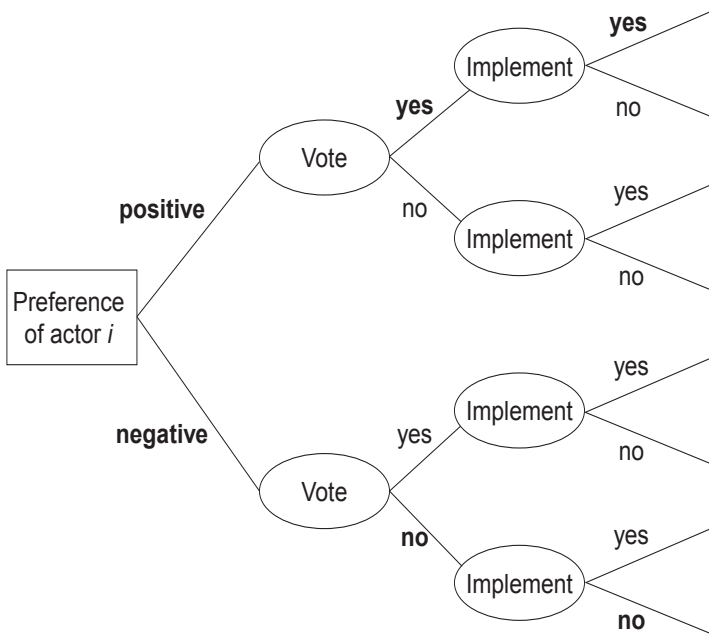


Figure 3: Illustration of theoretical approach

The first and second papers of the thesis investigate these two paths. The first paper investigates whether there is a connection between preferences and voting in the Council. The main expectation of the analysis in this paper is the following:

- *H1: Preferences that are far away from a policy outcome increase the probability of dissent at the voting stage.*

The second paper investigates whether preferences and votes affect member state implementation behaviour. In this paper there are two expectations that relate explicitly to the general theoretical framework:

- *H2: Preferences that are far away from a policy outcome increase the probability of poor implementation of this particular policy.*
- *H3: Dissent taken at the voting stage increases the probability of poor implementation of this particular policy.*

The third and fourth paper look at the decision-making process prior to the implementation stage and ask whether the preferences of the EU decision makers can account for some of the variation in the different processes. The third paper investigates whether the duration of decision making is affected by the preferences held by the actors involved. The main expectation of this particular analysis is that preference-based indicators of disagreement (including negative votes and inter-institutional ideological distance) prolong the time it takes to reach a formal decision:

- *H4: Preference-based disagreement increases the duration of EU decision-making.*

The fourth paper examines whether the preferences of the pivotal actors have an impact on observed decision-making behaviour across the institutions. More specifically, the analysis in the fourth paper seeks to explain why some agreements, under the co-decision procedure, are reached early and others are reached at later stages. The main expectation here is that greater distance between the pivotal actors across the institutions is negatively related to first-reading agreement in the EU:

- *H5: Preference-based disagreement reduces the probability of first-reading agreement across institutions.*

These two papers also control for explanations for observing paths (in Figure 3) that diverge from a strict instrumental rationality assumption in the different stages of a decision-making process. For instance, on non-salient and noncontroversial legislation the incentives for acting upon preferences are reduced and the above expectations no longer hold to the same extent. The analyses thus control for the salience attached to the proposal and whether the proposal content spurred extensive inter-institutional discussion. The latter is measured by whether the EP amended the proposal or not. Proposals without EP amendments can be regarded as standard legislation of an uncontroversial character. In these cases the EP has deliberately chosen not

to utilise its agenda-setting powers (in the sense of initiating amendments to the proposal in question) (Tsebelis, 1994).

Alternative theoretical explanations

The theoretical framework employed in this thesis is just one of many theoretical frameworks that can shed light on the dynamics of EU decision making. Alternative theoretical explanations may equally well account for the observed phenomena as the explanations provided for in the four papers in this thesis. Furthermore, competing explanations are not necessarily mutually exclusive. Consensus norm explanations of Council law making can coexist with a rational choice explanation of member state voting behaviour. The first type of explanation focuses on socialisation and learning processes (Heisenberg, 2005; Lewis, 2000, 2003). New member states are immediately introduced to the norms governing “the culture of consensus” in the Council. The frequent meetings and negotiations lead to high levels of trust among the members which again lead to higher reputation costs. This facilitates a diffuse form of reciprocity where the different actors do not expect their needs to be immediately met. However, any culture of consensus does not directly imply that member states vote against their preferences. It just indicates that the result of bargaining is a compromise that most of the actors have few difficulties in adopting to (Thomson et al., 2006; Häge, 2013).

Similarly, path dependence in EU decision making does not mean that EU decision makers cannot pursue their goals and preferences in a rational manner. While path dependence certainly can restrict the possible choices of each actor, it does not imply that the actors cannot choose the best action available for promoting their own interests. The concept of path dependence is crucial to the theoretical tradition of historical institutionalism (March and Olsen, 1989). Timing and sequence shape specific historical patterns that are difficult to reverse (Pierson, 2000). In the EU context, the products of path dependence have created gaps in member state control. These gaps are, in the long run, likely to be at odds with the initial preferences of most of the member states. Such gaps can result from various factors. The restricted time horizons of EU decision makers, the autonomous actions of supranational actors (i.e. the Commission and the

European Court of Justice), unintended consequences, and shifts in the preference configuration within the Council are all factors that are likely to reduce member-state control of the integration process (Pierson, 1996). Historical institutionalism is often portrayed in sharp contrast to the theoretical tradition of intergovernmentalism. According to this tradition, member state interests are at the forefront of the integration process (Moravcsik, 1993). Although intergovernmentalist accounts are embedded in the framework of rational choice, this does not mean that rational choice institutionalism cannot live side by side with historical institutionalism. The former tradition also includes studies that focus on the significance of historical processes (e.g. North, 1990).

However, the emphasis of this thesis on preference-driven behaviour can clearly be criticised by proponents of historical institutionalism. Some of the factors that potentially make preferences less important in the decision-making process are controlled for in the subsequent analyses. For instance, in the analysis of member state implementation of EU directives (Paper 2), the behaviour and interests of the Commission are accounted for. Any shifts in preference configuration within the Council are also controlled for by including a variable of ideological distance. This variable accounts for the (ideological) effect of government changes in the different member states. But any relationship between voting behaviour and implementation behaviour can clearly be affected by shifts in national governments. Directives should usually be implemented within two years of adoption. The government that implements a policy is thus not necessarily the same government that adopted it. When the preferences of the new and old governments are significantly different from each other, the link between voting behaviour and implementation behaviour diminishes. In cases where voting behaviour is a product of national issues that are independent of government composition, this link will prevail. Despite the uncertainty created by possible government changes, the effect of voting behaviour on implementation behaviour can be thoroughly explored in a large N-framework.

Constraints can clearly also make it harder to act upon preferences. We can then talk about bounded rationality instead of rationality in a strict sense. The concept of bounded rationality stems from the observation that rational actors are significantly affected by constraints raised by limited information and complex environments (Simon, 1955). The final paper in this thesis

directly investigates the issue of bounded rationality in inter-institutional bargaining. Here, insights derived from veto models with incomplete information are applied to the setting of EU decision-making under the co-decision procedure. While this thesis employs a simplified theoretical framework that only provides one understanding of decision-making dynamics, the research design is constructed to tackle some of the criticisms raised by competing (however, not necessarily incompatible) theoretical accounts.

DATA AND METHODS

All four papers in this thesis apply some sort of statistical model to answer the research questions raised in the different papers. The desire to account for the variation in EU decision-making processes over a longer time frame (1999-2009) is the main argument for choosing a quantitative framework for the thesis. However, this choice contains some problematic issues that need to be addressed. First and foremost there are several selection biases in data on EU decision making. First, only adopted legislation is reported in the voting records. Second, the member states are the ones that report whether or not a legislative act is implemented on time. Third, the Commission selects which of the poorly implemented acts (infringements) demand further legal action. After presenting the main data sources, these and other data problems are further discussed.²

All four papers in the thesis employ data on Council voting. This type of data first became available to the public in the 1990s and before that decade no minutes from Council meetings were recorded (Mattila and Lane, 2001). In 1993 the Council and the Commission specified a “code of conduct” which stated that EU citizens were granted “the widest possible access to documents” (Stasavage, 2004). In practice, this meant that access to documents would only be permitted if the Council members agreed to release the requested documents. *The Guardian* made big headlines when their journalist John Carvel was denied access to a number of Council documents. The newspaper took the case to European Court of First Instance and since the judgment (which was in favour of the newspaper) the Council has gradually become more

²see Figure 4 for an overview of the data sources that are used in the different papers.

transparent. In 2001, Regulation (EC) No. 1049/2001 was adopted. This regulation set out the principles for how legislative records from the Commission, the Council, and the European Parliament (EP) should be released to the public. The result of this regulation is several online databases. One of these is of the Council voting records which are published in the Council minutes and in the monthly summaries of Council acts.³ These data sources contain legislative records from 1999 and onwards. In this thesis, both data sources are used to construct the voting variables. Data on the years before the 2004 Eastern European enlargement are taken from Hagemann and Høyland (2008). This data also stems from the Council minutes.

The second data source which is employed in all four papers is the European Commission database PreLex.⁴ PreLex keeps track of the interactions between the EU institutions on both legislative and non-legislative proposals over time. This data source is consulted to generate variables such as ministerial involvement and additional information on voting rules and the various stages of EU decision making. Data on preferences, in terms of issue-specific positions on a set of controversial proposals, are taken from the “Decision Making in the European Union” (DEU) data set. The DEU data consists of member states’ policy positions on 331 controversial issues raised in 125 legislative proposals initiated by the Commission. The information was collected through 349 expert interviews (Thomson et al., 2006, 2012). In the interviews, the Commission, the EP and the member states were assigned positions. The positions on each issue were estimated along a standardised policy scale with values between 0 and 100. The numerical differences between the actors reflect the political distance between them (Thomson and Stokman, 2003). Also, the reference point (similar to the status quo), the decision outcome of each issue, and the level of salience that each actor attached to each issue were defined along this continuum. The DEU data are employed in the first, second and fourth paper of the thesis.

The data on implementation stem from the EU database EUR-Lex and the annual reports on national implementation of EU law.⁵ EUR-Lex keeps track on all EU laws and the implementation of these. The data on implementation after the 2004 enlargement is coded specifically

³see <http://www.consilium.europa.eu/documents/legislative-transparency/>

⁴see <http://ec.europa.eu/prelex/>

⁵see <http://eur-lex.europa.eu/en/index.htm>

for this thesis. For the proposals adopted before the enlargement the thesis utilises a data set employed in a study by Zhelyazkova and Torenvlied (2009) which is also based on the aforementioned sources. The third and fourth paper employ data from the European Union Policy Making (EUPOL) data set (Häge, 2011a).

Data on issue-specific ideological preference profiles of political parties are taken from the EULIS data set (König and Luig, 2012) and combined with cabinet information from the Parl-Gov data set (Döring and Manow, 2011) in order to measure preference distance within the Council and across the Council and the EP. This type of data is employed in the third and fourth papers of the thesis.

Data limitations

The data sources employed in this thesis cannot fully present a correct picture of EU decision making. This is a common drawback of a large N-study and can only be remedied by additional case studies (see Luetgert and Dannwolf (2009) for an example of this valuable approach). Even so, large N-studies facilitate an opportunity to exploit the variation in EU decision making and to make fairly certain conclusions about why decision-making processes differ from each other. With that said, all the findings in the thesis have to be interpreted in light of the main data limitations (King, Keohane and Verba, 1994). There are limitations and selection biases in all the employed data sources. Although researchers try to tackle these in the best possible ways, these issues cannot be entirely solved in a large-N study such as this thesis.

Approximately 89 percent of the available legislative data are adopted legislation (Häge, 2011a). Proposed legislation fails to be adopted in about 11 percent of the reported cases in PreLex. These proposals are withdrawn by the Commission. The withdrawn proposals are usually not reported in the Council minutes and are thus not a part of the voting records. The same can be said of votes on proposals that did not manage to attract the required support. If enough governments oppose, legislation will neither be adopted nor will there be any record of the vote. As the *Guardian* example shows, the Council may also choose not to publish particular legislative records. In fact, Council officials stress that only the voting records published from 2006

and onwards can be regarded as complete.⁶ There is thus a selection bias in this data source. Such a bias leads to flawed conclusions when data sets are incomplete (Hug, 2003b). When the recording of voting decisions is partial, the recorded votes may provide a biased sample of the whole population of votes (Hug, 2010). Council researchers are well aware of this bias but have yet to address the magnitude of this problem. The first paper in this thesis concludes by proposing that the selection bias can be accounted for through a simplified selection model (Little and Rubin, 2002; Zhang and Wang, 2012). While it cannot be claimed that such an approach is capable of fully accounting for the selection bias in the recorded Council votes, it may represent a step towards a richer account of voting in the Council.

There is also selection bias in quantitative data on the implementation of EU directives. It is the member states that notify the Commission when they have made the necessary measures to comply with a directive.⁷ The member states are supposed to comply with a directive within a given deadline. However, in several cases the deadline has not been met. The number of measures necessary to implement a directive vary with the existing national legislation in each member state. Hence, researchers usually use the date of the first notified measure to code whether a directive was implemented on time (König and Luetgert, 2009).⁸ This does not mean that a directive has been correctly implemented. Such a variable (transposition delay) can only indicate whether a member state took some steps to implement a directive before the deadline, whether it took some steps to implement a directive after the deadline, or whether it has yet to notify the Commission of any measures. Due to the extent of incompletely implemented directives, the Commission does not have the capacity to enforce all the infringements that the member states commit in the implementation process (Falkner, Treib, Hartlapp and Leiber, 2005). This is another source of selection bias in the implementation data. The Commission needs to

⁶This information stems from the informal interview I conducted with two Council officials, Jakob Thomsen and Carla Santos Moore, in Brussels in November 2012. Both were then working in Unit 2A-Document Access and Legislative Transparency. They also mentioned that a new and improved database was planned for release in 2014.

⁷I visited EUR-Lex (a part of the Publications Office of the European Union) in November 2012 for an informal interview on their data generation process. EUR-Lex contains information on the implementation notifications made by the member states. EUR-Lex officials told me that this database could be biased in at least two different ways: 1) The member states can forget to notify the Commission and 2) The Commission can forget to report the national measures taken to the EUR-Lex system. Such incidences delay and bias the database content.

⁸However, several researchers use more fine-grained measures of transposition (e.g. König and Luetgert, 2009; Steunenbergh and Toshkov, 2009; Thomson, 2010; König and Mäder, 2013; Zhelyazkova, 2013).

prioritise from among various infringements when initiating infringement proceedings. Hence, studies on both sources of implementation failure, transposition delay and infringements, are needed to address the effect of preferences on implementation behaviour. This thesis hence employs both data sources in the quantitative analyses.

A fourth type of selection bias issues are found in the positional data set (DEU). First, only somewhat controversial proposals are part of this data set. Due to the chosen research questions, controversy was the main selection criteria for the data collection. In hindsight, some pre-2004 proposals were shown to be less controversial than at first assessment (Thomson et al., 2012). Even so, studies employing this data source may overstate the extent of disagreement within the Council. Any exaggeration of the overall disagreement level is, however, a necessary by-product of this research project, as empirical tests of spatial models of decision making rely on variation in actors' positions. On uncontroversial legislation, the variation in positions is likely to be limited. Second, the interviews were conducted after the proposals were negotiated. The preferences attributed to the different actors may hence deviate somewhat from their actual preferences. Third, the selection of issues within a proposal may not be the only important factors that came up in the bargaining. The DEU data was cross-checked by König, Lindberg, Lechner and Pohlmeier (2007) who compared the DEU data with their own interview based positional data. Although different experts were interviewed by the two teams of researchers, the cross-examination revealed a high match between the point estimates of the location of the status quo, the decision outcome, and the positions of the different actors in the two data sets. This cross-check thus mitigates the criticism of the reliability and validity of the DEU data to some extent.

In general, the implications of the various selection biases for the findings presented in this thesis are likely to be of a conservative nature although this cannot be known with certainty. The detected relationships might be assumed to be even stronger if selection bias was accounted for. First, there are no theoretical reasons for expecting that the identified relationship between preference-based positions and votes would change if data on failed legislation existed. Second, improved measures of implementation could result in a stronger relationship between preferences and (non)compliance. The latter argument is supported by the studies conducted by

Thomson (2010), König and Mäder (2013), and Zhelyazkova (2013) which all introduce more fine-grained measures of compliance.

Choice of statistical models

Several different statistical modelling techniques are used in this thesis. The choice of modelling technique is based on the specific research question and the available data. In the first paper, the chosen statistical model is a hierarchical probit model that accounts for the uncertainty related to imputation of missing positions and easily accommodates the hierarchical structure of the data by employing Bayesian simulation (Gelman and Hill, 2007; Jackman, 2009). The analyses in the second and third paper both investigate the duration of one stage in the (broader) decision-making process. The second paper looks at whether or not member states comply with a directive within the transposition deadline. The third paper investigates whether the duration of the bargaining phase varies with the level of disagreement at the proposal level. In both papers, the dependent variable is the time it takes before the applicable event occurs (implementation and adoption, respectively). Hence, an event history modelling technique (often referred to as survival analysis) is applied to model the processes of change. Event history analysis allows for studying the probability that an event happens on any given day provided that it has not happened before (Box-Steffensmeier and Jones, 2004; Cleves, Gould, Gutierrez and Marchenko, 2008).

The paper on implementation (Paper 2) also employs logistic regression to model the likelihood of infringements. The same method is used in the fourth paper to model the likelihood of first reading decisions. The choice of logistic regression in these two papers is in line with the previous literature (Thomson, Arregui and Torenvlied, 2007; Rasmussen, 2011; Reh, Héritier, Bressanelli and Koop, 2013). This facilitates a direct comparison with the previous findings in the literature.

INSTITUTIONAL REFORM AND EVOLVEMENT OF THE EU IN THE TIME FRAME OF THE THESIS

This thesis considers mainly legislation adopted between 1999 and 2009. There are several reasons for this time frame. First, the Council voting records are only available from 1999 and onwards. Second, the reform of the co-decision procedure, which is instrumental to the research design of the fourth paper, was introduced in 1999. Third, the utilised data sets all span over this time frame. During these ten years the EU has been subject to three different treaties; the Treaty of Amsterdam (entered into force 1 May 1999), the Treaty of Nice (entered into force 1 February 2003), and the Treaty of Lisbon (entered into force 1 December 2009). The reforms introduced by the Treaties of Amsterdam and Nice have had explicit implications for the research design of this thesis. The Amsterdam Treaty paved the way for increased usage of the co-decision procedure (where the Council and the EP are coequal legislators). The Nice Treaty ensured a smoother transition with regard to the accession of ten more member states. The thesis is thus designed to exploit and to account for these reforms.

While legislation was initially adopted through the consultation procedure where the EP only had the power to delay a Council decision in the first and only reading of the legislative process, reforms introduced by the Single European Act (1987), the Maastricht Treaty (1993), and the Amsterdam Treaty (1999) incrementally made EU legislative politics bicameral (Hix and Høyland, 2011, 52-53). The revision of the co-decision procedure by the Amsterdam Treaty, in particular, formalised the power of the EP and made the two institutions coequal legislators (Hix, 2002). In addition to extending the scope of this procedure, the Amsterdam reform had two important consequences: (1) If there is agreement between the institutions, legislation can be adopted already in the first reading, and (2) if no agreement can be reached in the conciliation committee, no legislation will be adopted. Hence, the Council could no longer give the EP a “take it or leave it” proposal following a breakdown of the conciliation committee, the last stage of the procedure. The first implication makes it possible to apply the insights generated by veto bargaining models with incomplete information to EU decision making. Such models exploit the features of sequential bargaining with the possibility to extend over more than one round of

bargaining (Cameron and McCarty, 2004). While co-decision proposals can be agreed upon in the first round, decision-making also frequently extends to further rounds.

The issue of Eastern European enlargement in 2004 (ten new member states) and 2007 (two new member states) is accounted for when the data sets utilised include proposals adopted after this increase in group size. Papers 2 and 4 add a dummy variable for *Enlargement* in the statistical analyses.

The dynamics of EU decision making are complex. Hence, each paper of this thesis seeks to provide the reader with the necessary background information to understand the logic of the different arguments and the reasons for the choices made with regard to the research designs.

CONTENT OF THESIS

This thesis consists of four independent papers. The individual papers are, however, related to each other and some overlap in content is inevitable, especially with regard to the theoretical sections and descriptions of methods and data sources. All papers have been presented at conferences and/or workshops. Paper 1 has been accepted for publication in *European Union Politics* (EUP) and is forthcoming in 2014. Paper 4 has a “revise and resubmit” from the same journal.⁹ The remaining two papers are both submitted to journals.

Figure 4 summarises the research design, data sources and main findings of the four papers in the thesis.

Paper summaries

Issue-specific policy positions and voting in the Council (co-authored with Bjørn Høyland

This paper links the bargaining stage with the voting stage and addresses the Janus-face of politics in the Council. There is bargaining with identifiable winners and losers, yet the vot-

⁹I received the “revise and resubmit” decision from EUP on December 13th, 2013. Hence, I have not had the chance to implement the valuable suggestions of the four reviewers before submitting this thesis.

Paper	Research question	Data	Statistical model	Dependent variable	Main finding
1) Issue-specific policy positions and voting in the Council (with Bjørn Høyland)	1	Council voting data, DEU data set (Thomson, 2006, Thomson et al., 2012), PreLex	Hierarchical probit model (MCMC)	Member state vote choice	Governments are guided by their issue-specific preferences when voting in the Council
2) Linking the bargaining stage with the implementation stage: A preference-based explanation for non-compliance	1	Council voting data, transposition records (EUR-Lex), Zhelyazkova and Torenvlied, 2009), infringement data, DEU data set (Thomson, 2006, Thomson et al., 2012), PreLex	Logistic regression and Cox proportional hazard regression (event history analysis)	Member state implementation behaviour: 1) Infringements 2) Transposition delay	Preference-based explanations for non-compliance perform better when accounting for infringements than transposition delay
3) Exploring preference-based determinants of the duration of EU decision making	2	EUPOL data set (Häge 2011), Council voting data, EULIS data set (König and Luig, 2012), PreLex	Cox proportional hazard regression (event history analysis)	Proposal level: Bargaining time	Dissent in Council voting and inter-institutional preference divergence slow down EU decision making
4) Incomplete information and bargaining in the EU: An explanation of first-reading non-agreements	2	DEU data set (Thomson, 2006, Thomson et al., 2012), EUPOL data set (Häge, 2007, Häge, 2011), Council voting data, EULIS data set (König and Luig, 2012), PreLex	Logistic regression	Proposal and issue level: First-reading agreement	First-reading agreements are less likely to occur (1) the greater the distance between the ideal points of the pivotal actors and (2) the greater the salience attached to the proposal

Figure 4: Summary of papers in the thesis

ing records show high levels of agreement. These phenomena have almost exclusively been studied in isolation even though standard theoretical models of voting typically assume that actors' behaviour is guided by their positions relative to the new proposal and the status quo. By combining positional data and voting data, this paper evaluates the extent to which voting is driven by salience-weighted issue-specific positions. The results show that governments' voting behaviour is guided by their issue-specific positions. Positions and voting behaviour are interconnected. However, the relationship between preference-based positions and votes is stronger when values for the missing positions in the positional data are imputed on an issue-by-issue basis. This finding illustrates the importance of cautious treatment of missing data in EU decision making. Missing positions are thus also similarly imputed when this type of data is employed in the other papers of this thesis.

*Linking the bargaining stage with the implementation stage: A preference-based explanation
for non-compliance*

This paper relates the bargaining and voting stage to the implementation stage in EU decision making. To what extent can non-compliance be accounted for by the preferences of the Council members at the bargaining stage? Preferences that are not in line with the adopted policy can provide actors with an incentive to deviate when implementing this policy. The question is whether such an incentive to deviate has an actual effect on the implementing behaviour of the member states. This paper investigates the relationship between preference-based indicators and non-compliance in the EU by employing two different operationalisations of implementation performance as the dependent variable in the analyses. The analysed data set consists of 41 directives adopted before and after the 2004 enlargement. The main finding is that a preference-based explanation for non-compliance is supported when the dependent variable is measured as non-compliance (infringements) detected and enforced by the Commission. The odds of infringements increase when member states have preferences far away from the policy outcome or are outvoted in the decision making, and when there is greater variation in the distribution of preferences within the Council. On the other hand, a preference-based explanation is not

supported when transposition delay is employed as the dependent variable. In this type of analysis, conflict in the bargaining actually speeds up transposition. Such a finding is in line with the monitoring and managing explanation where the Commission acts as problem-solver to ease member state implementation.

Exploring preference-based determinants of the duration of EU decision making

This paper investigates how controversy and conflict in the negotiations affect decision-making efficiency in the EU. The quantitative analysis conducted on 670 co-decision proposals adopted between 1999-2009 shows that preference divergence has a robust effect on the duration of EU decision making. Proposals where one or more member states objected at the voting stage have longer bargaining stages than consensual proposals. Greater distance between the ideal points of the pivotal actors in the Council and the European Parliament increases the time it takes to adopt legislation. Highly salient proposals and proposals that receive actual ministerial attention also take longer to decide than less salient proposals and proposals that can be agreed upon at lower levels. The need to strike an agreeable compromise on controversial proposals thus has a significant time cost. Controversy and conflict slows down EU decision making.

Incomplete information and bargaining in the EU: An explanation of first-reading non-agreements

This paper links preference divergence to the probability of first-reading agreement under the ordinary legislative procedure (co-decision). The theoretical framework is based on veto bargaining models. Standard models of veto bargaining show that if all actors are completely informed about the preferences of the other actors, vetoes should not be observed. Following this logic, under the assumption of complete information, bargaining in the European Union (EU) should never reach the second reading of the co-decision procedure. Even so, non-agreement at the first-reading stage occurs frequently in EU decision making. How can this be explained? Drawing upon game theory on bargaining under incomplete information, two specific predictions

with regard to the occurrence of first-reading non-agreements can be generated. First-reading agreements are less likely to occur (1) the greater the distance between the ideal point of the Council and the ideal point of the European Parliament (EP) and (2) the greater the salience attached to the proposal. This paper finds robust support for both hypotheses in two different empirical tests. The first test is based on positional data while the second test is based on proposal-specific data. While previous EU studies have shown an increase in the number of first-reading agreements, these studies have not attempted to explain why not all proposals are agreed upon at the first-reading stage. This analysis thus contributes to the existing literature by providing a theory-driven micro-level explanation of first-reading non-agreements. Furthermore, the findings also relate to the positive side of the democratic legitimacy debate by showing that particularly important and controversial legislation is decided transparently with the involvement of accountable actors.

THESIS CONTRIBUTION

This section seeks to outline the general contribution of the thesis. Ideally, a research project should satisfy two criteria: 1) “a research project should pose a question that is “important” in the real world” and 2) “a research question should make a specific contribution to an identifiable scholarly literature by increasing our collective ability to construct verified scientific explanations of some aspect of the world” (King, Keohane and Verba, 1994, 15). The following explains how this research project has endeavoured to meet these two criteria.

Relevance of the argument

To put it simply, the findings in this thesis show that preferences have an effect on observed behaviour, the EU decision makers act in accordance with their preferences. In sum, the different quantitative analyses show that: 1) preferences have an effect on voting behaviour, 2) preferences have an effect on implementation behaviour, 3) negative preferences (as revealed in voting) increase bargaining duration and 4) larger preference divergence between the pivotal

actors increases the probability of more than one round of inter-institutional decision making.

The main argument has, in particular, three different side effects that can be considered to be substantially important. First, the findings, in general, contribute to the positive side of the democratic legitimacy debate. For the millions of citizens whose lives are affected by the EU on a daily basis, it is reassuring to know that 1) the decision makers are relatively transparent in their motivation, they act in line with their initial preferences, 2) the decision makers seek to promote the interests of their home constituency also at the European arena, bargaining is tougher when there is large variation in preferences, and 3) controversial and highly salient dossiers are negotiated transparently with the involvement of accountable actors. Second, this thesis does not (nor does it attempt to) rule out that behaviour is guided by strategic considerations. However, it is shown that preferences can contribute to explaining observable behaviour. This supports the relevance of rational choice theory when seeking to explain EU decision making or decision making in general. Third, the research design and findings may also be applicable to other international decision-making bodies such as the United Nations Security Council, the World Trade Organization and the World Bank, as well as decision-making bodies at the national level. This enhances the importance and relevance of the main argument.

Contribution to the literature

This thesis makes several contributions to the existing literature. King, Keohane and Verba (1994) list some possible ways to proceed when a researcher wants to locate a research project within the framework of existing social science literature. The different components in this thesis are based upon several of these listed possibilities. The research design is embedded in four explicit motivations in particular:

1. *“Attempt to resolve or provide further evidence of one side in the literature—perhaps demonstrate that the controversy was unfounded from the start”.*
2. *“Design research to illuminate or evaluate unquestioned assumptions in the literature”.*
3. *“Argue that an important topic has been overlooked in the literature and then proceed to*

contribute a systematic study to the area”.

4. *“Show that theories or evidence designed for some purpose in one literature could be applied in another literature to solve an existing but apparently unrelated problem” (King, Keohane and Verba, 1994, 16-17).*

The initial motivation of the thesis was to make a systematic study of the effects of Council voting behaviour on the EU decision-making process. The argument here was that this type of voting data could be utilised in other ways than those paths already investigated in the literature. This motivation is evident in all the four papers and is in line with motivation 3 above. Paper 1 also rests upon motivation 1 and 2. Heisenberg (2005) portrays the consensual decision mode of the Council as if it were at odds with rational choice explanations. Paper 1 illustrates that this is not the case and contributes to solving this “controversy” in the literature. The analysis in this paper also shows that the two different data sources on conflict within the Council (positional data and voting records) are mutually compatible. Previously, these data sources have been assumed to be similar. The empirical analysis shows that both sources grasp parts of the same underlying topic. Studies that utilise one of these data sources can thus safely be compared to studies using the other. Furthermore, Paper 4 applies theory designed for veto bargaining in order to explain first-reading non-agreement across the Council and the EP (under co-decision). While veto bargaining theories have been extensively applied in the EU setting, previous studies have not (1) applied these to explain this particular problem nor (2) directly tested expectations generated by the assumption of incomplete information. This type of contribution is similar to motivation 4.

Another main contribution to the literature is the rigorous data generation process and subsequent robust data analyses. The papers in this thesis combine different data sources, generate variables from different databases, update previously investigated variables, and test other operationalisations of key indicators. The analyses have also strived to report the uncertainty of the findings and to treat missing values adequately. The different research design choices are thoroughly elaborated and explained in order to secure possible replicability of and future extensions to the analyses.

Suggestions for further research

The research presented in this thesis signposts several paths for future research. First, the selection bias in Council voting data can be further explored in the framework of a simplified selection model (Little and Rubin, 2002; Zhang and Wang, 2012). Second, more and newer data can be added to the different analyses to investigate whether the main findings also hold for larger data samples. For instance, the new and improved Council voting database to be released in 2014 can enhance the robustness of analyses utilising this data source.¹⁰ Third, the analyses can be replicated with refined measurement of substantial indicators. This is particularly interesting for the implementation analysis. For instance, it is possible to investigate the issue level rather than the proposal level (see König and Mäder (2013)). Fourth, incomplete information models can be more extensively applied to the EU setting. The effect of learning on the assumption of incomplete information, either throughout bargaining rounds or due to repeated interaction, can be investigated more thoroughly in both large and small N-studies. Finally, this research design or extensions to it can be applied to other decision-making bodies at the national or international level.

¹⁰My Brussels interviews with the Council secretariat are the source of this information.

Issue-specific policy positions and voting in the Councilⁱ

Bjørn Høylandⁱⁱ and Vibeke Wøien Hansenⁱⁱⁱ

ABSTRACT

Politics in the Council is Janus-faced. There is bargaining with identifiable winners and losers, yet the voting records show high levels of agreement. These two sides have almost exclusively been studied in isolation even though standard theoretical models of voting typically assume that actors' behaviour is guided by their positions relative to the proposal and the status quo. By combining positional data and voting data, we evaluate to what extent voting is driven by salience-weighted issue-specific positions. Our results show that governments' voting behaviour are guided by their issue-specific positions. The relationship between preference-based positions and votes is stronger when we impute values for the missing positions in the positional data. This illustrates the importance of cautious treatment of missing data in EU decision-making.

Keywords: Council, European Union, Missing data, Preferences, Voting

ⁱThis paper is accepted for publication in *European Union Politics* and is forthcoming in 2014. Earlier versions of the paper were presented at the 2010 Democracy conference at the University of Oslo, at the 2010 ECPR EU standing group conference in Porto and at the 2013 EUSA biannual conference in Baltimore. We thank the participants, in particular Fabio Franchino, Scott Gates, Simon Hug, Monika Mühlböck, Daniel Naurin and several anonymous reviewers for their useful comments. Parts of Høyland's research on this project were funded by the Norwegian Research Council under grant 4454/V10, *Conceptualization and Measurement of Democracy*. While carrying out this research Høyland has been associated with the ESOP centre at the Department of Economics, University of Oslo. ESOP is supported by the Research Council of Norway. Wøien Hansen's research was funded by the Research Programme on Democracy at the University of Oslo.

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Voting in the Council is often described as consensual (Lewis, 2000; Heisenberg, 2005; Hayes-Renshaw and Wallace, 2006). Voting records were first released in the 1990s and these records revealed high levels of unanimous votes even in policy areas where a qualified majority of the weighted votes would have sufficed (Mattila and Lane, 2001). The low level of public contestation led Heisenberg (2005) to argue that the Council is “the institution of ‘consensus’ in the European Union”, a result of more than 40 years of negotiations among the same partners. New Council members are immediately introduced to the norms governing this culture of consensus. Because of the high frequency of meetings and negotiations, the trust among partners is high and reputation matters a lot. This allows for a diffuse form of reciprocity where the different actors do not expect their needs to be immediately accommodated (Lewis, 2000, 2003). Instead, the actors engage in repeated interactions that facilitate a stable norm of consensus.

Bargaining in the Council is, on the other hand, characterised by diverging interests and continuous disagreements (Thomson et al., 2006; Thomson, 2011). There are winners and losers in EU decision making. Analyses employing positional data show that some governments manage to secure a policy outcome closer to their own preferences than others (Bailer, 2004; Arregui and Thomson, 2009; Golub, 2012; Cross, 2013).

Hence, accounts of decision making in the Council may at first sight seem contradictory. Studies that rely on positional data emphasise bargaining (e.g. Thomson et al., 2006), while studies that rely on voting records emphasise the consensual nature of Council decision making (e.g. Heisenberg, 2005). The description of politics in the Council is thus dependent on which part of the decision-making process we wish to investigate as well as the available data sources. However, the different strands of the literature are compatible with each other. To account for both the bargaining stage and the voting stage, we combine voting data and positional data in order to test to what extent governments act in a utility maximizing manner when voting in the Council. Although the Council has a preference for deciding by unanimity, opposing votes are tabled. Governmental preferences on EU policies also differ from each other as revealed by positional data based on expert interviews (Thomson et al., 2006). Linking the bargaining stage with the voting stage can thus tell us whether the governments that are on the losing side of the bargain follow up by voting against the proposal. If such a relationship between preference-

based positions and voting behaviour is established, this puts into question the notion that the Council is "the institution of 'consensus' in the European Union" (Heisenberg, 2005; Lewis, 2000). Instead, such a relationship would support the notion that we need to treat consensus as a variable rather than a constant in our analysis of Council decision making (Schneider, 2008).

Our contribution to the literature is twofold. First, we evaluate to what extent governments base their voting decisions on a comparison between the old policy and the new policy, in line with the logic of a simple spatial model. In order to do this, we combine the positional data with voting data. The results show that there is a relationship between preference-based positions and voting behaviour. A government that prefers the old policy over the new policy is more likely to vote against the new policy than a government that prefers the new policy over the old. Second, we show that different treatments of missing data in the positional data set have an effect on the main results. This relationship is stronger when we account for the missing values in the positional data set. Appropriate treatment of missing data is important for this type of analysis.

Our paper is organised as follows. The next section relates our paper to the existing large-N literature on Council decision making. There is a substantial literature on this matter. The common denominator in most of this literature is the assumption that Council members are rational actors (Mattila, 2004; Zimmer, Schneider and Dobbins, 2005; Mattila, 2009; Thomson, 2009a).

The second section presents a simple theoretical account of voting in the Council. The purpose of this section is to explain why we may see such a high level of consensus if ministers simply vote in line with their issue-specific positions. We note that only successful legislation is recorded in the Council minutes concerning the (final) adoption of legal acts.¹ Cases where opposition actually has blocked the legislation at earlier stages in the decision making are not a part of our data set. Official voting records of adopted legislation thus under-report the actual aggregate level of disagreement in the Council.

The third section specifies the statistical model and the data we rely on for our investigation of Council voting. We combine positional data (Thomson et al., 2006) with voting records from the official minutes (Hagemann and Høyland, 2008), and employ a hierarchical probit model of

¹see <http://consilium.europa.eu/documents/legislative-transparency/council-minutes>.

voting in the statistical analysis. The fourth section presents our results. The main result is that governments vote in line with their issue-specific positions. This finding is stronger when we impute the missing values in the positional data set. In the concluding section, we discuss the implications of our findings for research on legislative politics in the EU.

RESEARCH ON COUNCIL DECISION MAKING

Research on voting in the Council has made substantive progress over the last decade. This is partly due to increased data availability. While earlier research had to rely on insiders' accounts and more indirect measures, the push towards transparency in EU affairs following the Amsterdam treaty has dramatically increased the accessibility of data on Council decision making (which can be illustrated by the difference in the amount of data reported in Hayes-Renshaw and Wallace (1997) and Hayes-Renshaw and Wallace (2006)).

There are two strands of studies in the quantitative literature on Council decision making that focus on the relationship between the Council members, i.e. the representatives of the member state governments. The first strand uses voting data, while the second uses positional data. Both strands seek to determine the spatial distances between the different Council members and to map which members have similar interests in the Council policy space. Both strands also share the same underlying theoretical assumption; Council members act in line with instrumental rationality and thus are assumed to behave in accordance with their preferences and beliefs. Actor alignment in the Council is a product of preferences and voting behaviour (e.g. Mattila, 2004; Zimmer, Schneider and Dobbins, 2005; Mattila, 2009; Thomson, 2009a). Bargaining success is more likely if an actor has less extreme preferences on issues that are salient to the actor (e.g. Golub, 2012; Cross, 2013).

Both strands employ splits in preferences or votes to uncover which policy dimensions are visible in Council decision making. A left-right dimension, a pro-anti integration dimension, a small versus big countries dimension, a north-south dimension, and an old versus new member states dimension are the most commonly detected dimensions (Mattila, 2004; Heisenberg, 2005; Zimmer, Schneider and Dobbins, 2005; Hayes-Renshaw and Wallace, 2006; Hagemann,

2007; Hagemann and Høyland, 2008; Mattila, 2009; Thomson, 2009*a*). Even so, there are disagreements between the two different strands on the strength of the findings and whether the identified structural dimensions are stable over time. Thomson, Boerefijn and Stokman (2004) emphasise the lack of structure in the positions of the actors. In their analysis of EU15, they only find weak evidence of a north-south dimension and a dimension where the EP and the Commission prefer more policy changes than the member states. Based on the same positional data source, Zimmer, Schneider and Dobbins (2005) find stronger evidence for a north-south dimension than Thomson, Boerefijn and Stokman (2004). Zimmer, Schneider and Dobbins (2005) relabel this dimension as re-distributive, a conflict between the net-contributors and the net-beneficiaries of the EU budget. The left-right dimension is, however, only weakly supported by this study. The two studies differ in the choice of statistical model and somewhat in their treatment of missing data. Thomson, Boerefijn and Stokman (2004) use multidimensional scaling while Zimmer, Schneider and Dobbins (2005) employ correspondence analysis. Both studies use some sort of mean-replacement of missing values but Zimmer, Schneider and Dobbins (2005) also delete issues with more than four missing positions.

Studies based on voting records (Mattila, 2004; Hagemann and Høyland, 2008) find more support for the left-right dimension and the pro-anti integration dimension than studies based on positional data. The importance of the ideological left-right alignment in the Council is illustrated by the fact that new governments seem to prefer different coalition partners to their predecessors (Hagemann and Høyland, 2008). After the eastern enlargement in 2004, a new-old alignment has been detected in both preferences and voting behaviour (Thomson, 2009*a*; Mattila, 2009). Although this type of dimension is identified in both strands of the literature, the differences between the new and old member states are not strongly supported by the available data.

The existing literature thus exploits the observable disagreements in Council decision making. However, these studies do not test whether the sources of disagreement in the two different data sources are interlinked. Similarities in the findings suggest that they are. However, a government may choose to vote yes despite preferring the status quo to the new policy. There are several possible explanations for such voting behaviour. Knowing that it will be outvoted, a

government may simply accept its loss quietly and hope that the loss will be compensated in future negotiations. König and Junge (2009) show that compensations in the sense of logrolling are a plausible explanation for the observed consensus in the Council. Governments can trade off utility across proposals that belong to the same policy area or proposals that are negotiated during the same time period. Choosing to be on the winning side of a vote may also be a government strategy in order to avoid unwanted attention from the media or the opposition at home.

Furthermore, the Commission preselects the proposals that the current configuration of Council members is most likely to adopt. Proposals that are likely to be contested by a majority of the Council members or by a majority of the members of the European Parliament (EP) are less likely to be initiated by the Commission. However, it does not have perfect information with regard to the distribution of preferences in the Council and the EP. The Commission thus has to withdraw proposals that fail to find sufficient support in the Council and the EP (Kreppel, 1999; Kreppel and Tsebelis, 1999). The Commission may of course also withdraw proposals due to other reasons than disagreement in the Council and the EP. The percentage of withdrawals is around 8 percent for the time span between 1976 and 2007 (Häge, 2011a). It is not unlikely that member states' voting behaviour on adopted legislation is different from their behaviour on non-adopted legislation. In fact, legislation only reaches the final stage if most of the conflict has already been solved (Mühlböck, 2011). Only final voting on adopted legislation is fully recorded in the minutes and the monthly summaries for the time frame considered in this paper.² Data on implicit voting at earlier stages in the process (at the working group level or the ministerial level) is not usually publicly available (Hayes-Renshaw and Wallace, 2006, 286). At the ministerial level, the Council presidency keeps track of the Council members' positions' and tries to strike a compromise. If a compromise is not reached, the proposal is referred back to the working group level and the informal voting result will not be recorded in the minutes (Mühlböck, 2011). Hence, our findings cannot say anything about the overall level of disagreement in the Council. However, the data may tell us whether the Council members are utility-maximizing agents that act in line with their positions on adopted legislation.

²The Council secretariat notes that the public votes database from 2006 and onwards is considered to have complete data on both final voting and voting on the common position under co-decision.

Our study departs from the previous ones in four explicit ways. First, we investigate explicitly whether there is a relationship between preference-based positions and voting behaviour. Second, we test whether the importance that a Council member attaches to the different issues of a proposal strengthens the relationship between (issue-specific) positions and votes. Third, we address whether different treatments of missing values in the positional data have an effect on the relationship between positions and votes. Fourth, by including negative statements in the no vote category we have more variation in our dependent variable (Council member *vote choice*) than König and Junge (2008, 2009) have when they compare predicted voting behaviour with observed voting behaviour. Coding negative statements as negative votes is not an uncommon choice in the Council voting literature (see Hagemann and De Clerck-Sachsse (2007) and Hagemann and Høyland (2008)). Issuing a negative statement is also a type of behaviour that signals a government's opposition towards the adopted policy. As a robustness check, we run the models without statements as a part of the dependent variable. The results are robust across all models.

A SIMPLE THEORY OF VOTING IN THE COUNCIL

The underlying premise of the rational choice based literature on decision making in the Council is that governments have preferences over policies, and act with the aim of moving policies closer to their most preferred policy-outcome (ideal-point) or to prevent policies that are further away from their ideal-point than the current policy (the status quo) from being adopted. Non-cooperative game theoretic models of decision making in the EU have established the benefits of being agenda setters and veto players and the location of the decision outcome vis-a-vis the different actors under the different legislative procedures (Steunenberg, 1994; Tsebelis and Garrett, 1996; Crombez, 1996; Moser, 1996; Scully, 1997; Tsebelis and Garrett, 2000). Our theoretical approach builds upon this literature. However, rather than determining where on a dimension between the status quo and the Commission proposal a decision outcome is located under a given legislative procedure, we elaborate on when government i is more likely than not to record its opposition when voting on a legislative proposal.

If we assume that governments are sincere in their voting behaviour, and their utility-function is a symmetric loss-function around their ideal-point, we would then expect government i to support a new proposal if the utility of the new proposal is higher than the utility of the status quo.³ Assuming that the new proposal lies to the right (left) of government i and the status quo to the left (right), government i will only support the new proposal if the distance between its ideal-point and the new proposal is smaller than the distance between its ideal point and the status quo. In other words, the midpoint between the new proposal and the status quo must be to the left (right) of the ideal point of government i . Assume that the Council has X governments and the voting rule requires that \bar{x} members need to support a proposal in order for it to be adopted. Only policies with midpoints located below the ideal point of government \underline{x} or above the ideal point of government \bar{x} can be adopted, any policy whose midpoint lies between \underline{x} and \bar{x} will not be supported by the necessary majority of governments see Figure 1.

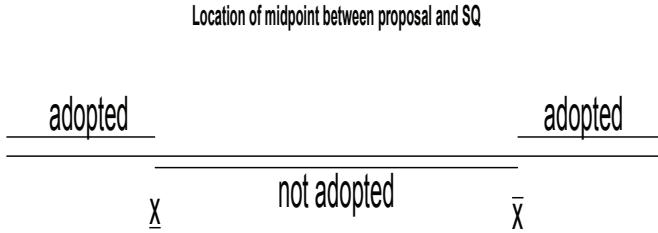


Figure 1: Cut-point figure. Any proposal whose midpoint is between \underline{x} and \bar{x} will not be adopted. For policy-moves to the right (left) the midpoint between the status quo and the proposal has to be to the left (right) of \underline{x} (\bar{x}).

Furthermore, we will not observe any successful vote on proposals whose midpoint is located inside the interval between government \underline{x} and \bar{x} . If any such policy is proposed, it will not be adopted. If proposals are multidimensional, governments can trade gains on one dimension (issue) against loss on another. Governments may attach different salience to each dimension

³The assumption that voting behaviour is sincere can be discussed. Since we lack data on disagreement in the early stages of bargaining, the direct link between preferences and votes is not clear cut. However, to simplify the model we assume that voting behaviour is sincere.

(issue). Government i may hence compare the (salience-weighted) utility of a new proposal with the (salience-weighted) utility of the status quo, and cast a vote for the alternative that it prefers the most.

If positions and the salience that governments attach to the different dimensions are known, proposals that lack sufficient support will not be adopted, and any opposition recorded in the final minutes will not be able to prevent the adoption of a proposal. This may lead us to question why governments bother to record their opposition. By so doing, their only achievement is to demonstrate that they failed to prevent a proposal that they initially were against, from being adopted. However, as voting in this case is inconsequential, there are no strong theoretical reasons to expect governments opposed to the new proposal to refrain from opposing either. Furthermore, if there is some uncertainty regarding the positions of other governments and/or the salience these governments attach to their positions, voting in line with their own preferences can never be worse, and may sometimes be better, than always supporting the majority position. One reason for such behaviour may be to signal their position to outside actors, e.g. the European Parliament or the Commission, or to domestic constituencies and political opponents. Uncertainty about the voting decisions of other ministers may lead indifferent governments to prefer the status quo to the new proposal. They may thus realise that there is actually a chance of blocking the legislation, and thereby risk a potential loss by not voting against it.

Hence, member states vote in line with their (salience-weighted) issue-specific positions as they can never be worse off and will sometimes be better off by voting in such a manner:

H_1 Governments vote in line with their (salience-weighted) positions.

In the statistical analysis we thus expect to see that a positive utility of a proposal correlates with a positive vote while a negative utility of a proposal correlates with a negative vote. In other words, negative utility of a proposal should decrease the probability of voting in favour of this particular proposal.

METHOD AND DATA

We combine positional data with corresponding voting data from the minutes of meetings in the Council in order to investigate whether issue-specific utility guides voting behaviour. We adopt a simple approach to exploring this relationship and do not control for other variables that may affect voting behaviour and thus remedy the effect of issue-specific utility. Including other independent variables in our model may distort the simplicity of our argument and can open up a range of additional selection issues. For example, controlling for the presidency would distort the effect of issue-specific positions if such positions also influenced which proposals the presidency put on the agenda. Also, whether an issue is decided as an A or B item may also be a function of the issue-specific positions of the governments. By keeping the statistical model as simple as possible, it is also applicable to similar contexts beyond the EU. Omitting EU-specific variables ensures that our findings also can be relevant for other consensual decision-making settings, for instance the World Trade Organization, the United Nations Security Council and the World Bank.

The first data set, “Decision Making in the European Union” (DEU), consists of member states’ policy positions on 174 controversial issues raised in 70 legislative proposals initiated by the Commission (Thomson et al., 2006). The information was collected through interviews with 125 experts. The legislative proposals were subjected to either the consultation procedure or the co-decision procedure. The proposals were introduced either during or before December 2000, and were on the agenda in 1999 or 2000. The Commission, the European Parliament and the 15 member states were assigned positions. The positions on each issue were estimated along a standardised policy scale with values between 0 and 100. The numerical differences between the actors reflect the political distance between them (Thomson and Stokman, 2003). The reference point (similar to the concept of status quo), the decision outcome of each issue, and the level of salience that each actor attached to each issue were also defined along this continuum. With regard to salience, a score of 0 indicates that the issue was of no importance while a score of 100 indicates that the issue could hardly be more important. If governments vary in the salience they attach to the different issues, failure to take this into account may

bias the results (Aksoy, 2012; Golub, 2012; Cross, 2013). Warntjen (2012) compares salience measures provided by text analysis and media coverage with expert interviews and argues that the latter may provide a more fine-grained and less ambiguous measure of salience.

The second data set contains the formal voting decisions and formal statements recorded in the Council minutes. The voting data are coded as binary decisions, and under qualified majority voting (QMV) both abstentions, negative votes and formal statements are coded as no votes in line with Hagemann and Høyland (2008). In practice, abstentions have the same effect as no votes under QMV. Statements are included in the no votes group because these statements often consist of direct disagreement or serious concerns with regard to a proposal, and may be used to signal that the representative has stressed her position on a piece of legislation but was reluctant to take a more drastic step and prevent consensus (Hagemann and De Clerck-Sachsse, 2007; Hagemann, 2008). Formal statements are made following the adoption of a proposal and are included in the Council minutes or posted on the Council website. In the data set negative votes are coded as 0 and yes votes as 1.

	dissent final	dissent all	with statements final	with statements all
Austria	2	2	2	2
Belgium	3	3	3	3
Denmark	1	1	2	2
Finland	0	0	2	2
France	1	1	2	2
Germany	2	2	2	2
Greece	1	1	3	3
Ireland	0	0	0	0
Italy	0	0	3	3
Luxembourg	2	3	2	3
Netherlands	3	4	4	5
Portugal	2	2	5	5
Spain	3	4	4	5
Sweden	0	0	1	1
UK	3	3	3	3
Total	23	26	38	41

Table 1: Negative votes and negative votes and statements for the 46 proposals in the Council minutes with and without any additional non-final votes.

One objection to the choice of including negative statements in the negative votes category is

that this type of disagreement may already be captured by the position-based variable. However, since issuing a statement is a distinct type of behaviour that departs from complete endorsement of the adopted proposal, we argue that acting upon a preference-based position can be done in the form of voting no, abstaining, or making a negative statement. Furthermore, interview data reveals that the increased usage of formal statements is a way of showing disagreement without creating gridlock (Hagemann and De Clerck-Sachsse, 2007). To make sure that our findings are not a result of this particular choice of coding scheme, we run our models both with and without negative statements. Table 1 shows the frequencies of negative votes across the member states. Columns 3 and 4 include negative statements while columns 2 and 4 also include any additional negative votes retrieved from, if applicable, the non-final voting stage under the first reading of the co-decision procedure.⁴ All four variations of our dependent variable are tested in the statistical analysis.

Dissent in published Council votes is rare. On the 46 pieces of legislation, that we were able to identify in the Council minutes that matched exactly with the DEU data set, there were only 38 dissents in total (numbers from column 3 which includes negative statements). The number of negative votes on any particular legislation ranged from 0 to 5. From these votes, Portugal opposed 5 times while Ireland always voted in favour of the proposal. The choice of including negative statements increases the mean of dissents from 0.5 to 0.8 (columns 1 and 3) or from 0.57 to 0.89 if we take all negative votes into account (columns 2 and 4).

In the positional data set, the locations of the reference points (the policy that will prevail if no agreement can be reached) and the decision outcomes (the new policies) are used to determine member state loss and gain with respect to their position on each issue. The reference point bears a close resemblance to the status quo concept, although differs from the normal usage in the sense that for some proposals, a no agreement situation will lead to a breakdown of the existing arrangement (status quo) rather than the continuation of this arrangement (Thomson et al., 2006). 46 out of 70 policy proposals are listed in the Council minutes as concerning the final adoption of legal acts. These 46 proposals had 118 issues. Information in the Coun-

⁴The non-final voting stage (the adoption of the common position in the Council) of the co-decision procedure is only applicable to the co-decision proposals that were adopted at later stages than the first reading. The votes on the common positions are retrieved from the Monthly summaries of Council acts, see <http://www.consilium.europa.eu/documents/legislative-transparency/>.

cil minutes on the adoption of legal acts is missing for the remaining 56 issues nested in 24 policy proposals. Some information on these 24 proposals can be retrieved from the monthly summaries of Council acts (i.e. adoption date, voting rule, and whether the proposals were adopted with or without EP amendments in any second reading under co-decision). However, for reasons of data consistency we only employ the proposals listed in the Council minutes in our analysis.

	missing positions	missing saliency
Austria	16	7
Belgium	8	0
Denmark	8	3
Finland	10	3
France	3	1
Germany	3	0
Greece	11	5
Ireland	8	1
Italy	5	1
Luxembourg	20	11
Netherlands	7	1
Portugal	7	1
Spain	4	0
Sweden	8	0
UK	4	1
Total	122	35

Table 2: Missing data on 118 issues in the DEU data: Positions and salience.

With regard to the extent of missing values in the DEU data (Thomson et al., 2006), Table 2 provides an overview of missing information on issue-specific positions and issue-specific salience estimates for the 46 proposals in our data set. Of the 118 issues, the positions of Luxembourg and Austria are missing on 20 and 16 issues, respectively. The interviewers also did not obtain the salience measure on 11 issues in the case of Luxembourg and 7 issues in the case of Austria. These two member states are thus the ones with most missing values in the DEU data set. In total 122 out of 1770 issue positions are missing, or about 6.9 percent. While this level of missingness is not exceptionally large by political science standards, it is not ignorable. Researchers relying on this data set therefore need to make some decisions on how to address this issue before proceeding with the analysis. Some of the chosen approaches are

summarised in Table 3. Note, that the different choices of the previous studies are contextual. Some studies need complete positional data to investigate their research question, while others do not.

The most common approach when working with the DEU data set, taken for example by Selck and Steunenberg (2004) and Zimmer, Schneider and Dobbins (2005), is to delete issues if there are missing values on more than four member state positions. The remaining missing values are then replaced by either the position of the Commission or the mean score between the reference point and the Commission's position. The underlying assumption here is that member states that were not assigned a position during the expert interviews were neutral actors on these issues. While a mean/fixed value replacement approach is not uncommon when dealing with missing data, it has been criticised by statisticians (Little, 1992) and political methodologists (Honaker and King, 2010) alike. The key criticism with this approach is that it ignores the uncertainty by treating unknown data as if it is known.

The other alternatives to handling missing data are list-wise deletion or some multiple imputation technique. König, Finke and Daimer (2005) advocate the use of multiple imputation as being far better than list-wise deletion when handling missing positions, and subsequently test different ways of imputing missing actor positions. This study employs collected information on the positions of the actors involved in EU constitution building (DOSEI project) and includes several data sources including the DEU data set. The analysis identifies a selection bias. Actors strategically hide their positions when they expect to receive more concessions. This finding indicates that missing values are more extreme than the observed values. Actors without positions hide their positions for strategic purposes (König, Finke and Daimer, 2005). It is therefore debatable whether missing positions are extreme or neutral.

Arregui and Thomson (2009) show that large member states have fewer missing positions than small member states in the DEU data set. They argue that this is due to the small member states being indifferent to more issues than large member states, as they are affected by fewer issues. Furthermore, some missing positions can be explained by the lack of relevance of a particular issue for the actors in question (Thomson, 2011). While there are good reasons for considering missing positions as neutral positions, we can never be sure that actors with missing

study	missing treatment
Selck and Steunenberg (2004)	missing replaced with Commission position list-wise deletion ≥ 5 missing positions
Zimmer, Schneider and Dobbins (2005)	missing replaced by mean score between reference point and Commission position list-wise deletion ≥ 5 missing positions
König, Finke and Daimer (2005)	3 different measures: 1) multiple imputation (Amelia) 2) measure of indifference 3) conditional averaging algorithm
König and Junge (2008, 2009)	multiple imputation (Amelia)
Thomson (2011)	mean average of all positions

Table 3: Treatment of missing values in positional data across studies.

positions are in fact indifferent to these issues. Missing positions in the DEU data can also be due to the policy experts not remembering the actual positions of certain actors (Thomson et al., 2006). Hence, multiple imputation, which takes the uncertainty of missing data into account, may be a better alternative than replacing missing values with the mean or some other fixed value (i.e. the position of the Commission). However, Thomson (2011, 42) argues that multiple imputation is inappropriate due to the large variation in actors' positions across issues, and resorts to mean-replacement or list-wise deletion in his study. This criticism would hold if we impute one actor's missing positions on the basis of this actor's positions on other issues. Our approach to missing data is similar to that of König, Finke and Daimer (2005) in that, unlike mean-replacement, it takes the associated uncertainty into account. However, it differs with regards to how it is implemented. The standard multiple imputation approach uses the variables in the data set. In the case of König, Finke and Daimer (2005), it is augmented by additional information from extant data. The method fills in estimated values for missing data in multiple data sets prior to the analysis stage and assumes that the data are distributed multivariate normal. If the data are categorical, they are recoded into appropriate categories (for a critique and an alternative approach, see Cranmer and Gill, 2013). It then runs an analysis on each individual data set and reports the average effect and standard error. In contrast, the Bayesian approach treats missing data as parameters to be estimated alongside the other parameters in the model. The only assumption we make is that missing positions and salience data are uniformly distributed

between 0 and 1.⁵ Following this, for each iteration of the Monte Carlo Markov chain, the values of all parameters are updated conditional on the existing data, and the parameter estimate of the missing data and on other parameters of the model (for an introduction to missing data imputation in the Bayesian framework, see Gelman and Hill, 2007, 529 - 543).

Only if data are missing completely at random (MCAR) is it safe to use list-wise deletion. Missing completely at random means that 'none of the data collected or missing are relevant for explaining the chance of missingness' (Congdon, 2005, 380). In most cases, that is a fairly strong assumption. List-wise deletion, the default in most statistical software, implies that all rows with missing data are deleted from the data set. The best indication that this approach is taken is a varying number of cases across different model specifications.⁶ One can also critique the other popular method of replacing missing data with the mean or some other typical value. This approach is motivated by the interest of preserving all the cells in the data set. Proponents of this approach argue that it is conservative as it should increase the likelihood of finding insignificant results. However, by replacing the missing value with a single value, which is unlikely to be correct, the level of uncertainty regarding the actual value is underestimated. Biased results may thus follow. In the frequentist framework, multiple imputation (i.e. as implemented by the Amelia missing data program) is an appropriate approach (Honaker and King, 2010; King, Honaker, Joseph and Scheve, 2001; König, Finke and Daimer, 2005), given that data are missing at random (MAR), meaning that missing values on one variable can be predicted from the values on the other variables. In the Bayesian approach, missing values are predicted from the values on the other variables and the prior distributions on an iteration by iteration basis. If some of the predictors have missing values, it is sufficient to assume a prior distribution for the predictor in order to impute values.

The requirement is that the MAR assumption holds. However, if missing data are not ignorable and are not missing at random (NMAR), it is necessary to model the process that generates missingness in order for data to become MAR. The key is to model the process that governs

⁵We rescale positions and salience estimates by dividing by 100, see the Statistical models section. Hence, we assume that the missing values are also distributed between 0 and 1. The original distribution of the measures is between 0 and 100 as mentioned before.

⁶In our positional data set that can be matched with the Council minutes, list-wise deletion reduces the number of rows in the data set from 118 to 56. Only 0.47 of the original data set remains for analysis after the list-wise deletion.

whether data are observed or missing. There are two main approaches, either by using auxiliary variables to model the missing-generating process, or by relying on a simplified selection model (Little and Rubin, 2002). It may, however, be difficult to justify the model for missingness, or collect the auxiliary variables needed to model it properly. Consequently, we do not attempt to model the latter process (NMAR) in this paper. Instead we investigate whether the choice of missing data treatment has an effect on the main results. We thus compare models where issues with more than four missing member state positions are deleted and the remaining missing positions are assigned a neutral position with models employing the Bayesian imputation of missing values. The underlying assumption of the latter framework is that data are missing at random (MAR), i.e. random after controlling for the co-variate. By estimating the value multiple times, a random element ensures that the values vary across the data set, thereby ensuring that imputed observations have more uncertainty than the observed observations. We use the Bayesian approach assuming that missing data are drawn from a known distribution or explicitly modelled. Missing values on the dependent variable are imputed iteratively on the basis of the predictors in the model, while missing data in the predictors must be modeled explicitly. The latter is commonly achieved by simply assuming a prior distribution of the predictor. The main advantage of the Bayesian approach for our problem is the flexibility it allows in the modeling of missing data. Furthermore, it is also easier to handle multiple, and a varying number of, issues per vote in this framework. Next we elaborate on our choice of statistical model and our treatment of missing values in the positional data.

Statistical models

We model *vote choice* as an absolute loss function of the salience-weighted issue-specific utility of the outcome compared to the reference point (rp):

$$y_{(i,k)}^* = \beta_1 + \beta_2 * utility_{(i,k)}$$

where β is distributed multivariate normal, with prior mean 0 and precision .001.

$$utility_{(i,k)} = ||(salience_{(i,j)} * (position_{(i,j)} - rp_j))|| - ||(salience_{(i,j)} * (position_{(i,j)} - outcome_j))||$$

We run two series of models:

1. The baseline model replaces missing positions with the mean score between the Commission and the reference point if less than five positions are missing, list-wise deletion otherwise. No imputation of missing reference points.
2. The full imputation model imputes missing positions and missing reference points.

Both types of models are run with and without salience-weights and with and without formal statements as a part of our dependent variable (*vote choice*). The relationship that we are interested in testing is the one between salience-weighted issue-positions and voting behaviour. As there may be multiple contested issues on a given piece of legislation, but only the opportunity to support or oppose the legislation as a whole, we use the mean of the salience-weighted change in utility across the issues mentioned on each piece of legislation. The change in utility is calculated by subtracting the absolute difference between the position of government i and the new policy from the absolute difference between the position of government i and the reference point.⁷ This difference is then multiplied by the salience government i attached to the issue. For each piece of legislation, we calculate the mean of these salience-weighted differences. Both the positions, including the reference point and the new policy, and the salience estimates are divided by 100, thereby making the values range from 0 to 1.

Failure to properly account for the missingness in the positional data may seriously bias the results.⁸ We contrast the standard approach to modeling missing values in the DEU data (Selck and Steunenberg, 2004; Zimmer, Schneider and Dobbins, 2005), i.e. a combination of

⁷It is possible to employ other measures of issue level utility (i.e. a city block measure or weighted Euclidean distances) than the measures employed here. These measures are more complex than the chosen mean approach. Given the limited number of proposals in our data set, we will leave the exploration of other utility measures to further research.

⁸When employing the conservative measure (without formal statements as part of the no category) of our dependent variable *vote choice*, three proposals have missing positions and/or salience estimates for one or more member state(s) that engaged in negative voting behaviour on these particular proposals. These cases (CNS/1998/347, COD/1999/244, and CNS/1996/115) illustrate why it is feasible to model missing values explicitly.

list-wise deletion and mean-replacement, with a multiple imputation approach. Issues where the reference point is missing are usually deleted in the previous studies. The reason for doing this is that one cannot assume that the reference point location of one proposal is determined by that of other proposals (König and Junge, 2008, 2009). However, it is possible to impute the reference point on basis of the possible distribution of positions (0-100) within an issue. The full imputation model implements such an approach while the baseline model deletes issues where the reference point is missing. Several objections to the imputation of missing reference points can be raised. Missing reference points may, for instance, be due to the fact that existing national policies vary across member states. Hence, it is difficult to determine what the actual reference point will be if the legislation fails. This uncertainty is, however, partly accounted for by the multiple imputation framework. Achen (2006) shows that the reference point is less influential than the procedural modelling tradition implies that it is. The reference point plays only a minor role in the negotiations if the decision outcome is far away from the reference point. The location of the decision outcome can thus be said to be more important when determining the utility loss of a government than the location of the reference point. Hence, we will argue that imputing reference points are acceptable as long as we have the location of the decision outcome on each issue. Note that our baseline model does not impute any missing reference points and thus serves as a robustness check. All models are estimated using the Markov Chain Monte Carlo (MCMC) simulation. We ran 150 000 iterations, discarding the first 50 000. Standard convergence statistics indicate that all models had converged on the target distribution.

RESULTS

The results need to be interpreted in light of the case selection. Only controversial proposals are included in the DEU data sample (Thomson et al., 2006). The case selection could potentially bias the results. However, since the variation in preference distribution is likely to be greater when bargaining on a controversial proposal and such a proposal cannot be adopted without the support of most (or all) of the governments, this bias is likely to be a conservative one. An analysis using less controversial proposals may find a stronger relationship between positions and

votes. Accordingly, the negotiations on uncontroversial proposals may result in fewer policy losers and thus more policy winners than the negotiations on controversial proposals.

Tables 4 and 5 present the results. The main finding is that issue-specific positions can account for the variation in voting patterns that we observe in the Council. We find support for the main hypothesis advanced in this paper [H_1]. The effect of utility on voting is positive and robust across all models regardless of missing treatment, coding scheme of the dependent variable, and salience-weighting of the positions. In Tables 4 and 5, the effect of utility is distinguishable from zero in all models. The 95 percent credibility interval does accordingly not overlap zero.

The effect of issue-specific positions is substantively larger in the models that impute all missing values than in the baseline models. This suggests that standard approaches to studying decision making in the Council may not capture the full effect of preference-based positions, in particular if the problem of missing data is ignored. When the baseline approach to modeling missing data is employed, only 68 percent of the data set remains after deleting issues with missing reference points and/or more than four missing member state positions. Hence, the full imputation approach ensures more data while at the same time taking the uncertainty of the distribution of missing values into account. This results in a stronger relationship between positions and votes.

	Baseline		Full imputation	
	Constant	Positions	Constant	Positions
Final round votes	1.811 (0.098)	0.624 (0.207)	1.791 (0.096)	0.894 (0.278)
All round votes	1.748 (0.093)	0.606 (0.2)	1.731 (0.091)	0.918 (0.269)
Final round votes and statements	1.748 (0.094)	0.606 (0.202)	1.543 (0.08)	0.568 (0.223)
All rounds votes and statements	1.512 (0.079)	0.389 (0.167)	1.503 (0.079)	0.601 (0.221)
Number of proposals	44	(80 issues)	46	(118 issues)

Table 4: Baseline and full imputation models: Effect of positions on voting

We will now discuss the estimates in more detail before moving on to the substantive ef-

	Baseline		Full imputation	
	Constant	Positions	Constant	Positions
Final round votes	1.826 (0.098)	1.067 (0.326)	1.823 (0.1)	1.879 (0.476)
All round votes	1.762 (0.094)	1.017 (0.317)	1.761 (0.095)	1.902 (0.46)
Final round votes and statements	1.764 (0.094)	1.014 (0.316)	1.552 (0.08)	1.268 (0.389)
All rounds votes and statements	1.521 (0.079)	0.687 (0.27)	1.51 (0.079)	1.324 (0.385)
Number of proposals	44	(80 issues)	46	(118 issues)

Table 5: Baseline and full imputation models: Effect of salience-weighted positions on voting

fects. Tables 4 and 5 compare the results from four different model specifications with (salience-weighted) issue-specific positions as a predictor for voting decisions under two alternative approaches to treatment of missing data; the baseline model (a combination of list-wise deletion and mean/fixed value replacement) and a full imputation model. The effect of positions is positive across all models. However, the effect is stronger in the full imputation models where missing values are imputed on an iteration by iteration basis (which preserves the uncertainty) than in the baseline models where observations with missing data are either excluded or replaced with the mean value between the reference point and the Commission (governments with missing positions are hence assigned a neutral position). This shows that disregarding missing positions may bias results (cf. König, Finke and Daimer, 2005). In this case, the choice of non-imputation may underestimate the existence of preference-based voting in the Council. The effect of positions on voting is almost consistently stronger when full imputation is applied. The only exception is when the positions are not salience-weighted and the no vote category of the dependent variable includes final votes and statements (see the third row in Table 4). When this coding scheme is applied, the choice of missing treatment is almost inconsequential.

While the choice of missing treatment has a substantial effect on the results, the different coding schemes for the dependent variable *vote choice* matter less. For the baseline models, the effect of utility is almost the same across all model specifications except when all possible opposition is included in the no category of the dependent variable (all votes, including first round of co-decision and statements). In the full imputation models, the effect of utility on

voting is somewhat greater when negative statements are not included in the no vote category of the dependent variable. Even so, the effect is still stronger in the full imputation models than in the baseline models (apart from the exception already mentioned above). Compared to the baseline model, the effect doubles when positions are salience-weighted and all possible variation is included the dependent variable (see the last row in Table 5). In the full imputation models, the finding that the effect of positions on voting is stronger when statements are not included in the dependent variable is interesting. A plausible explanation for this finding may be that while government *i* votes down a proposal as a whole, it may issue a negative statement directed toward a specific issue within a proposal. If the latter is the case, government *i*'s mean position on all issues within a proposal can be positive, while the vote choice under this particular coding scheme will be negative if it is issuing a negative statement on a particular issue in a multi-issue proposal. Our results indicate that such a scenario occurs but that it does not happen often enough to significantly affect the results.

There is a substantial difference between the baseline models and the full imputation models when we calculate the predicted probabilities to vote against or in favour of a proposal under a given scenario. In the model where we only consider final round votes, a government that gains 75 points on the original 0-100 scale (.75 on our scale) by the new proposal will have a predicted probability of voting in favour of .99 in the baseline model and .994 in the imputed model. However, if the government stands to lose 75 points (.75 on our scale) the predicted probability of voting in favour only drops to .91 in the baseline model, while it drops to .854 in the imputed model. The effects and the differences in effects are even larger when salience is taken into account. Again, considering only final round votes (not statements) the predicted probability of voting in favour if the new proposal offered an improvement of 75 points (.75 on our scale) is .996 in the baseline model and .999 in the imputed model. By contrast, if the new proposal makes a government 75 points worse off (.75 on our scale) the baseline model has a predicted probability of .847 of voting in favour, while the imputed model has a predicted probability of only .66. This shows that the failure to account for the generation of missing positional data may lead to erroneous conclusions regarding the effect of issue positions on voting behaviour. In this case, it seems like mean replacement actually under-estimates the

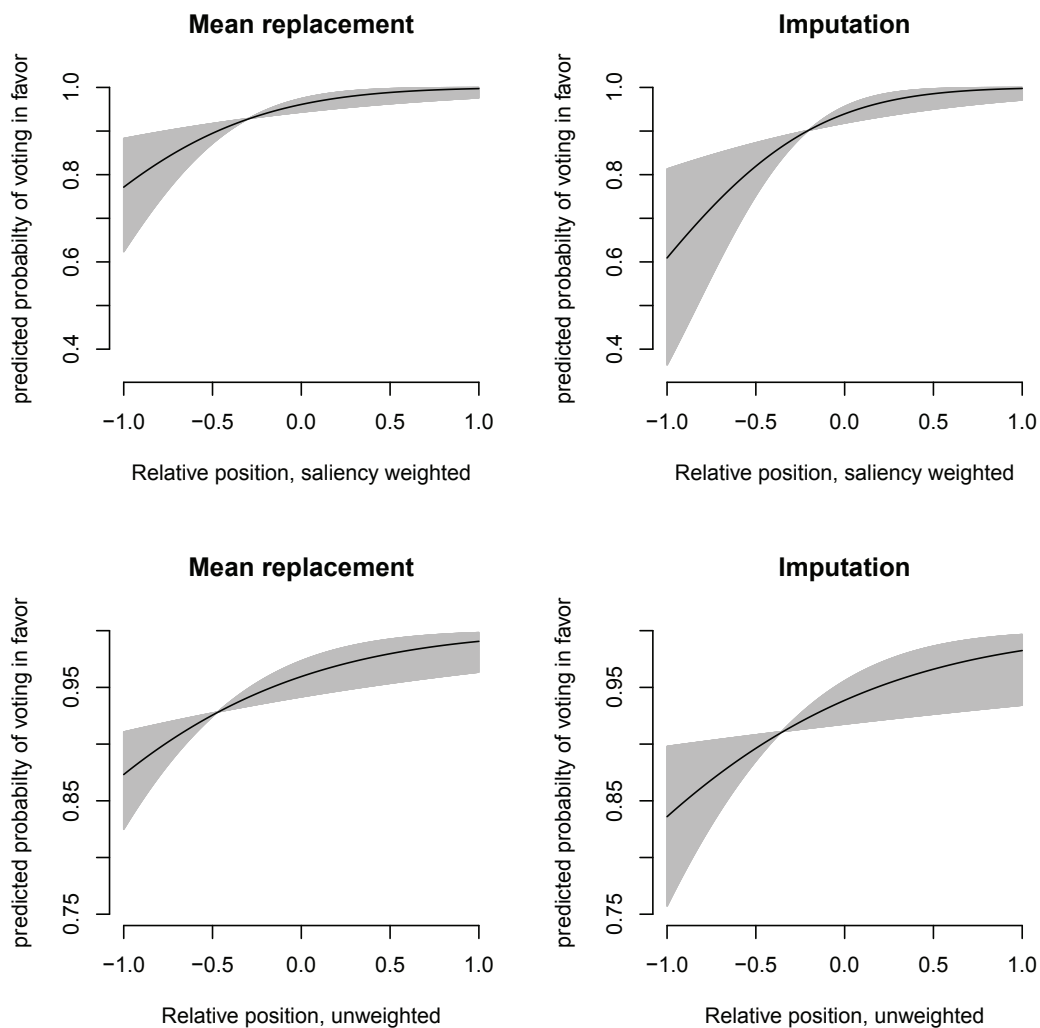


Figure 2: The figure compares the predicted effect of relative position under mean replacement (left) and imputation (right) for salience weighted (upper) and unweighted (lower) policy positions. The calculations are based on the models where the dependent variable is final stage voting (not statements).

effect of positions on behaviour.

Figure 2 plots the effect of relative position on the probability of supporting the proposal. The left side of the figure shows these effects when the baseline model applies. The right side of the figure shows these effects when positions are imputed on an iteration by iteration basis. The upper row shows results for salience-weighted positions, while the lower row shows the results in the case where the positions are not weighted by salience. There are three key insights. First, relative positions matter for observed voting in the Council. Second, the effect is stronger when the models include salience. Third, the estimated effects are larger when missing data are imputed. Nevertheless, a key feature of the figure is also the high predicted probability of voting in favour of the proposal, regardless of the relative position, which serves as a reminder that we only observe disagreement on adopted legislation. It is clear that the governments, regardless of their issue-specific policy positions, have a higher probability of voting yes than no. However, as already alluded to, our data set does not include any votes on proposals where the Council fails to find a qualified majority. In other words, the models are only able to provide estimated probabilities that are conditional on the legislation actually being adopted. Our research design thus limits the scope of research to the link between stated preferences and actual observed voting. In order to understand the full effect of positions on voting, we would need verifiable information about the location of any alternative proposals that are considered during the legislative process.

CONCLUSION

We have investigated whether members of the Council vote in line with their salience-weighted issue positions. Our results show that rational utility-maximizing behaviour can account for the voting behaviour of the governments. In other words, preferences and voting behaviour are connected to each other. Hence, rational choice explanations of Council decision making are just as valid as consensus explanations. Although the outcome of bargaining tends to be consensual, such an observation does not equal that governments vote against their preferences. This is an interesting finding in itself which also may be applicable to other consensual decision-

making bodies like the World Trade Organization, the United Nations Security Council and the World Bank.

Preference-related voting behaviour may also be said to increase the democratic legitimacy of EU decision making. It shows that bargaining does not fully erase the preferences of the governments, and that governments seek to pursue the interests of their domestic constituencies throughout the decision-making process. Showing that preferences are associated with the voting stage is the first contribution that our analysis makes to the existing literature. The similarities in the findings between studies that employ voting data and studies that employ preference-based data are thus validated by our analysis. The second contribution is that different treatments of missing data have an effect on the main findings. The relationship between preferences and votes is stronger when missing values in the positional data are imputed in an iterated fashion. Furthermore, our findings also indicate that the salience attached to the proposal by the individual governments matters for their voting behaviour. The relationship between preferences and voting behaviour is stronger when we control for salience.

Recorded Council votes are neither in any meaningful sense a random sample nor do they represent the universe of all decisions taken in the Council within the time-frame of the study. Instead, they represent a biased selection, as only votes on legislation that are adopted enter into the data set. This means that the observed consensus culture in the Council may be a product of this selection bias. When opposition is successful, legislation will not be adopted. The high level of consensus in the Council may also be a combination of the following: 1) mainly uncontroversial legislation is adopted and 2) governments put forward a show of unity rather than voting sincerely. A model that incorporates the selection bias may capture whether this is actually the case.

While observers of voting in the Council are surely aware of the selection bias in the reported votes, no one has explicitly modeled voting in the Council in a selection model framework. We believe that future research can benefit from incorporating selection aspects explicitly into the analysis. This can be done by modeling the processes that determine whether data are observed or missing (NMAR). Incorporating a simplified selection model into the statistical analyses is an example of how this approach can be implemented (Little and Rubin, 2002). Such an

approach requires that we have information on votes that were not taken because of the majority requirement, or if taken, failed to meet this requirement. It would also be useful to supplement voting data with indicators of dissent that are less prone to the same selection bias, for example data on implementation of EU legislation (König and Luetgert, 2009; Luetgert and Dannwolf, 2009; Zhelyazkova and Torenvlied, 2009).

Selection bias is not confined to Council voting; it may also affect research on roll call voting in the EP (Carrubba, Gabel, Murrah, Clough, Montgomery and Schambach, 2006; Carrubba, Gabel and Hug, 2008, 2009). Selection models could be incorporated into a general framework in order to investigate the extent of the potential selection bias in EP roll call votes.

Linking the bargaining stage with the implementation stage: A preference-based explanation for non-complianceⁱ

Vibeke Wøien Hansenⁱⁱ

ABSTRACT

To what extent can non-compliance be accounted for by the preferences of the Council members at the bargaining stage? Preferences that are not in line with the adopted policy can provide actors with an incentive to deviate when implementing this policy. The question is whether such an incentive to deviate has an actual effect on the implementing behaviour of the member states. This paper investigates the relationship between preference-based indicators and non-compliance in the EU by employing two different operationalisations of implementation performance as the dependent variable in the analyses. The main finding is that a preference-based explanation for non-compliance is supported when the dependent variable is measured as non-compliance (infringements) detected and enforced by the Commission. The odds of infringements increase when member states have preferences far away from the policy outcome or are outvoted in the decision making, and when there is greater variation in the distribution of preferences within the Council. On the other hand, a preference-based explanation is not supported when transposition delay is employed as the dependent variable. In this type of analysis, conflict in the bargaining actually speeds up transposition. Such a finding is in line with the monitoring and managing explanation where the Commission acts as a problem-solver to ease member state implementation.

Keywords: Commission, Council, Decision Making, Implementation, Non-compliance, Preferences

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Member states of the European Union are obliged to incorporate all binding EU laws (directives) into their national legislation. This process is called transposition and each transposition process has a specified deadline which the member states are supposed to comply with. Even so, the timeliness and quality of this process vary from state to state and directive to directive. Scholars have tried to explain the variation in the implementation process to shed light on the reasons for non-compliance with EU directives (e.g. Mbaye, 2001; Mastenbroek, 2003; Linos, 2007; Kaeding, 2008; Toshkov, 2010). This is important since compliance with EU directives is a necessary condition for the success of the European project. The most common and most robust explanations for non-compliance are related to national institutional constraints and the goodness of fit between the directive and the status quo in the existing domestic legislation (Angelova, Dannwolf and König, 2012). Such explanations are based on the national level. However, less attention has been paid to EU-level explanations for non-compliance (see König and Luetgert, 2009; Luetgert and Dannwolf, 2009; Thomson, 2010; Zhelyazkova, 2013). There are several types of EU-level explanations for non-compliance. One type is based on rational choice theory and posits that member states are rational actors who will try to minimise any utility loss in the bargaining by deviating from the adopted policy in the implementation process (Thomson, Arregui and Torenvlied, 2007). A second type focuses on the behaviour of the Commission and how this institution strives to minimise the level of non-compliance by upping its monitoring and problem-solving apparatus on controversial directives. Such Commission behaviour results in a smoother transposition process (Zhelyazkova and Torenvlied, 2009).

This paper builds upon the previous literature that addresses rational choice explanations for non-compliance in the EU. The main rationale is to connect preferences in the bargaining with behaviour in the implementation process. The paper contributes to the existing studies in three ways: 1) by having data on implementation both before and after the 2004 enlargement, 2) member state policy positions are weighted by the salience they attach to their respective positions, and 3) disagreement at the voting stage is also accounted for in the analyses as member states may be more likely to refuse to implement appropriately and on time if they were outvoted at the voting stage in the decision-making process.

The paper proceeds as follows. Section 1 presents a brief literature review, while the theory-

driven hypotheses are presented in section 2. The research design is addressed in section 3. The employed data set consists of 23 directives adopted before- and 18 directives adopted after the 2004 enlargement. The data on preference-based positions are taken from the “Decision Making in the European Union” project (DEU) (Thomson et al., 2006; Thomson, 2011; Thomson et al., 2012). The data on implementation before enlargement are taken from Thomson, Arregui and Torenvlied (2007) and Zhelyazkova and Torenvlied (2009) while data on implementation after enlargement were constructed on the basis of the EU database EUR-Lex and the Annual Report on Monitoring the Application of EU Law. The results from the Cox proportional hazards- and logit regressions are examined in section 4. The results show that preference-based indicators can account for the implementing behaviour of member states to some extent. Negative preferences (i.e. greater incentives to deviate and opposition in voting) increase the odds of infringements. However, conflict in the bargaining at the directive level speeds up the transposition process. This indicates that the Commission specifically tries to ease implementation on controversial directives by acting as a problem-solver. Section 5 makes conclusions and discusses the implications of these findings for the EU compliance literature in general.

CONFLICT AND COMPLIANCE IN THE EU

Although most research on the implementation of EU directives focuses on factors at the domestic level, several studies have contributed extensively to this research field by investigating how EU-level factors can lead to non-compliance. These studies differ in their operationalisation of the dependent variable, in the data material employed, in operationalisation of EU-level variables, and in their chosen statistical analysis. While some studies explore the variation in the transposition pattern of the member states (e.g. Mastenbroek, 2003; Linos, 2007; Thomson, Arregui and Torenvlied, 2007; Kaeding, 2008; König and Luetgert, 2009; Luetgert and Dannwolf, 2009; Zhelyazkova and Torenvlied, 2009), others investigate the determinants of member state infringements (Mbaye, 2001; Falkner, Hartlapp, Leiber and Treib, 2004; Perkins and Neumayer, 2007; Thomson, Arregui and Torenvlied, 2007). Furthermore, more recent research focuses on transposition of provisions within directives (Thomson, 2010; Zhelyazkova, 2013) and whether

transposition is conducted in a conformable, partial, or non-conformable manner (König and Mäder, 2013).

With regard to the leverage of preference-based explanations for non-compliance, the different studies that test such explanations paint a mixed picture. In general, two types of preference-based indicators are employed in the literature. The first type is at the member state level and the other is at the directive level. When investigating the first type of preference-based indicators, several studies support the notion that negative preferences in the bargaining process lead to non-compliance in the implementation process (Thomson, Arregui and Torenvlied, 2007; Thomson, 2010; König and Mäder, 2013; Zhelyazkova, 2013).

Thomson, Arregui and Torenvlied (2007) find that member states with greater preference-based incentives to deviate are more likely to have infringement proceedings initiated against them. The member states' incentives to deviate are here measured by the difference between their initial positions and the decision outcome as estimated by the "Decision Making in the European Union (DEU)" project data (Thomson et al., 2006). Also Thomson (2010) finds that opposing preferences can lead to non-compliance. Instead of looking at each directive as a whole, Thomson (2010) investigates specific provisions within directives to avoid overestimation of implementation problems. When there is no explicit support for a provision from the Commission, he shows that states with incentives to deviate (as revealed in working group documents from the decision-making stage) are three times more likely to exhibit prolonged non-compliance than states without incentives to deviate. But this effect is reduced to zero when a provision is endorsed by the Commission. Zhelyazkova (2013) also focuses on provisions within directives and finds that member states are less likely to comply with a provision if their representatives in the Council working groups had openly objected to this provision in the negotiations. Furthermore, preference-specific variables are found to have different effects on different levels of transposition outcomes (König and Mäder, 2013). By employing a competing risk analysis, König and Mäder (2013) show that the effect of incentives to deviate on transposition varies from level to level. While the risk of delay for conformable transposition significantly increases when a member state has an incentive to deviate, the opposite holds for non-conformable transposition. Hence, member states that disagree strongly with the outcome

of a directive, may still report transposition activities within or close to the prescribed deadline which on closer inspection are not in full conformity with the requirements of the directive. On the other hand, other studies find no support for the expectation that member state disagreement at the decision-making stage is associated with non-compliance at the implementation stage (Falkner et al., 2004; Linos, 2007; Thomson, 2009b).

Research on the second type of preference-based indicators, conflict at the directive level, also finds somewhat mixed results. While Zhelyazkova and Torenvlied (2009) and König and Luig (2012) show that preference heterogeneity speeds up transposition of directives, König and Luetgert (2009) and Luetgert and Dannwolf (2009) find that conflict in the Council is related to delayed transposition.¹ Zhelyazkova and Torenvlied (2009) also use the DEU data on policy positions to estimate their indicators of conflict, heterogeneity and polarisation, which are highly correlated and hence employed separately in the analyses. They find that conflict, over time, is negatively correlated with transposition delay. Both conflict indicators increase the hazard of transposition of the directives several weeks after the transposition deadline has expired. Hence according to this study, conflict in the Council, in line with management and enforcement theories, leads to shorter delays in the transposition of EU directives. The Commission prioritises solving disagreements at an early stage in the implementation process.

In contrast, König and Luetgert (2009) find that conflict in the Council reduces the likelihood of transposition notification. This finding is also confirmed by Luetgert and Dannwolf (2009) who show that (high) conflict during negotiations at the European level significantly prolongs the transposition process. Both these studies use data from the Manifesto research group to construct an indicator of conflict (size of EU core) based on the maximum ideological distance between the member states.

The effect of preference-related variables can, however, be remedied by the level of discretion that is granted to the member states when implementing directives. For instance, member states with larger incentives to deviate are less likely to have infringement proceedings initiated against them if the directives contain high levels of discretion (Thomson, Arregui and Torenvlied, 2007). Even so, directives with high levels of discretion take more time to im-

¹In the case of König and Mäder (2013) this finding holds for conformable and partial transposition. They find no significant effect of heterogeneity on the risk of non-conformable transposition.

plement than those with less discretion (Thomson, Arregui and Torenvlied, 2007; Steunenberg and Toshkov, 2009; Zhelyazkova and Torenvlied, 2009; König and Luig, 2012).² Directives with both high discretion and high conflict are also, over time, associated with transposition delay (Zhelyazkova and Torenvlied, 2009). Furthermore, provisions that grant discretion to the member states, are more likely to be associated with successful transposition than constraining provisions (Zhelyazkova, 2013). There is also evidence that conflict in the Council, under unanimity rule, increases the level of discretion delegated to the member states (Thomson and Torenvlied, 2011). Hence, when investigating implementation in the EU it is important to account for the relationship between conflict and discretion and whether any such relationship has a combined effect on member state compliance.

To further investigate the relationship between preference-based indicators and compliance in the EU, this study explicitly examines how the voting stage affects the implementation stage. While Falkner et al. (2004) and Linos (2007) also utilise some voting data in their studies of EU compliance, both studies concentrate on the field of employment and social policy. Falkner et al. (2004) conduct an in-depth analysis of the implementation of six directives. Linos (2007) analyses transposition delay on the basis of 53 directives which had implementation deadlines between 1985 and 2000. This paper builds upon the previous studies but departs from these in three different ways: 1) Directives from a variety of policy areas are investigated, 2) the data include the 2004 and 2007 enlargement, and 3) the negative category of the voting variable includes negative statements and any non-final opposition manifested during the co-decision procedure in addition to negative votes taken at the final decision-making stage. Voting records were first publicly released in the early 2000s, leaving earlier voting data scarce and partially incomplete (Hayes-Renshaw and Wallace, 2006). This means that the Council voting data are more reliable for the time frame investigated in this paper than for the time frame considered in Linos (2007). Also, by including the directives adopted after the enlargement in the analysis, this study has a larger number of observations than Thomson, Arregui and Torenvlied (2007), Zhelyazkova and Torenvlied (2009), and König and Mäder (2013). The analysis in this paper

²For König and Mäder (2013) the finding that high discretion delays transposition only holds for conformable transposition. This effect, however, diminishes over time. They find no significant effect of discretion on the other types of transposition outcomes.

can thus enhance the robustness of the previous findings.

THEORY AND HYPOTHESES

The main theoretical assumption in this paper is instrumental rationality. The actors in the EU decision-making process are acting in accordance with their preferences and beliefs (Shepsle and Bonchek, 1997). Rational choice-based literature on decision making in the Council generally assumes that governments have preferences over policies, and act with the aim of moving policies closer to their most preferred policy-outcome (ideal-point) or to prevent policies that are farther away from their ideal-point than the current policy (the status quo) from being adopted. In this paper, it is assumed that the actors also follow their preferences when implementing the adopted policies. Hence, discrepancies between member state preferences and the actual outcomes in the decision making can hinder the implementation process. Principal-agent theory stresses that implementers are faced with an incentive to deviate from agreed policy and can choose to steer the implementation of the policy in the direction of their own preferences instead of the preferences of the decision makers (Shepsle, 1992).

The discrepancy between the preferences of the implementation agents and the preferences of the legislators can thus lead to non-compliance (McCubbins, Noll and Weingast, 1987). Although, the member states in the Council are both decision makers and implementers, the same incentive to deviate in the implementation process also applies to the multilevel system of the EU. Hence, conflict in the Council during the negotiations can lead to an incentive to deviate when implementing the negotiated decisions (Thomson, Arregui and Torenvlied, 2007).

The distance between the policy position of a member state and the actual decision outcome may be an indicator of the member states' incentive to deviate. The greater the distance between the adopted policy and the position of the member state, the greater the incentive to deviate in the implementation process. Hence, legislators who voiced their opposition in (successful) decision making and/or during the bargaining process may turn this opposition into non-compliance.

Acting upon an incentive to deviate is labelled as "opposition through the back door" by Falkner et al. (2004). In this paper, the link between voting behaviour and implementation be-

haviour is also explored in order to test whether “opposition through the front door” transposes into “opposition through the backdoor” as well. The main theoretical argument is illustrated in Figure 1.

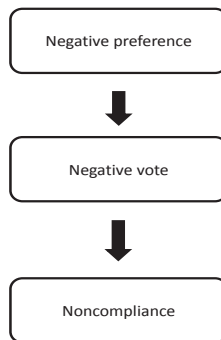


Figure 1: Preference-based approach

Two explicit expectations of the empirical analysis can be raised on the basis of the main theoretical argument.

- *H1: Member states with preferences that are far away from the policy outcome are more likely to show non-compliance.*
- *H2: Member states that voted against the policy in the decision making are more likely to show non-compliance.*

These two hypotheses are on the member state level but preferences are also expected to have an effect on the directive level. The greater the distance between the preferences of the Council members in relation to a particular directive, the greater the conflict in the Council. Greater controversy is likely to be associated with a compromise that sacrifices the interests of

some member states (König and Luetgert, 2009). Thus, conflict in the Council is expected to translate into more non-compliance in the implementation process.

- *H3: The greater the heterogeneity in the decision making, the greater the likelihood of non-compliance.*

However, preferences are not formed in isolation from other factors. As conflict in the bargaining can lead to ambiguous decisions, it is important to investigate the effect of preferences on non-compliance in tandem with the effects of discretion, the role of the Commission, and the bureaucratic efficiency of the member states (Tallberg, 2002; Carrubba, 2005; Thomson, Arregui and Torenvlied, 2007; Zhelyazkova and Torenvlied, 2009; Thomson, 2010). Such variables can have an effect on the relationship between preferences and non-compliance. The statistical analysis thus explores various interaction effects.

RESEARCH DESIGN AND DATA TREATMENT

The data set employed in this paper consists of 23 directives adopted before the 2004 enlargement and 18 directives adopted after the acquisition of new member states. The information on the 18 directives adopted after the enlargement is merged with the data set employed in Thomson, Arregui and Torenvlied (2007) and Zhelyazkova and Torenvlied (2009). The 41 directives belong to different policy areas: the internal market (13 directives), economic- and financial affairs (6 directives), transport (7 directives), agriculture (4 directives), justice- and home affairs (2 directives), employment (1 directive), health (1 directive), environment (6 directives) and energy (1 directive). While the member state positions, the location of the Commission's position and the decision outcome were obtained from the DEU data, the information on delays in transposition was obtained from the EU databases EUR-Lex and CELEX. The proposals in the first data source were introduced between 1996 and 2008 and were subject to either the consultation procedure or the co-decision procedure. In addition, all proposals had to contain at least one controversial issue (Thomson et al., 2006, 2012).

The descriptive statistics of the dependent- and independent variables are shown in Table 1.

	N	Mean	S.d.	Minimum	Maximum
<i>Dependent variables</i>					
Transposition delay (in weeks)	800	43.31	90.96	0	424
Infringement/Formal notice	800	0.57	0.50	0	1
<i>Independent variables</i>					
Directive level					
Heterogeneity	800	80.27	20.15	25	100
Commission disagreement	800	22.09	17.37	0	70
Discretion	800	16.45	10.04	0	50
Member state level					
Member state distance from Commission	800	24.05	20.60	0	90
Incentive to deviate	800	31.90	21.08	0	90
Capacity	800	1.43	0.56	-0.27	2.34
Enlargement	800	0.57	0.50	0	1
Both levels					
Vote	800	0.64	0.61	0	2

Table 1: Descriptive statistics

The first dependent variable, *Transposition delay*, is measured as the length of delay in weeks from the deadline until the date of the first reported transposition measure by each member state. A more fine-grained measure of transposition is to account for more than the first notification by each member state on each directive (see König and Luetgert (2009); Steunenberg and Toshkov (2009); Thomson (2010); König and Mäder (2013); Zhelyazkova (2013) for such approaches). However, as there is a trade off between maximising observations and a more detailed transposition measure, the former is prioritised over the latter in this paper. The second dependent variable, *Infringement*, is the same as *Formal notice*, and takes the value 1 if a member state has received a letter of formal notice from the Commission on a particular piece of legislation. A letter of formal notice is the first of three formal stages in the EU infringement procedure (Article 226) which can be followed by a reasoned opinion (legal elaboration by the Commission) and finally court referral.

15 member states transposing 23 directives give 345 potential cases which is reduced to 343 cases because of two directives not being applicable to Denmark and France, respectively (Zhelyazkova and Torenvlied, 2009). After the 2004 enlargement, 27 member states transposing 18 directives give 486 cases. The number of cases is reduced to 457 since one directive was not applicable to Cyprus and Malta, a second directive had a deadline after the censoring period

of 1 November 2012 for seven member states, and ten directives were on the agenda before Bulgaria and Romania entered the EU in 2007. In total, 344 cases were transposed before the deadline and 62 cases were censored at the end of the study (February 2007 and November 2012, respectively). This means that when the study ended 62 of 800 cases were yet to be implemented.

Three of the independent variables are based on the DEU data set (Thomson et al., 2006, 2012). The positions in this data source are retrieved on the basis of interviews with policy experts. The actors and policy alternatives as well as the reference point (similar to the status quo concept) and the decision outcome are located on a policy scale ranging from 0 to 100 on all issues within each proposal. Furthermore, the position-based variables are salience-weighted in line with more recent research that employs the DEU data set (Aksoy, 2012; Golub, 2012; Cross, 2013). Salience is also measured on a scale ranging from 0 to 100, where 0 indicates that the issue was not important at all for the member state in question and 100 indicates that the issue could hardly be more important. If the member states vary in the importance they attach to the different issues, failure to account for this variance may bias the results. Hence, all issue positions were multiplied by the respective salience estimates and then divided by 100 to avoid such a bias.

There is some missingness in this sub-sample of the DEU data set. 66 of 111 issues have complete positional data. On the 45 issues with missing values, the total number of missing values for the different member states ranges between 2 and 16. Failure to account for the missingness in the data set may seriously impede the results, so an appropriate imputation technique should be applied (Little, 1992; Honaker and King, 2010). Furthermore, the chosen imputation method should take the uncertainty of the missing data into account. The missing values are thus imputed on an issue by issue basis by utilising the iterative imputation method called multiple imputation using chained equations (MICE). This method generates a sequence of univariate imputation methods with fully conditional specification (FCS) of prediction equations (see van Buuren, Boshuizen and Knook (1999)).³ MICE is chosen because it allows for imputing values within the observed ranges of the data (which is 0 to 100 in this case). The univariate

³FCS stipulates the multivariate imputation model on a variable by variable basis by a set of conditional densities (van Buuren and Groothuis-Oudshoorn, 2011).

method applied is predictive mean matching (PMM) which chooses values from the posterior predictive distribution and then selects the predicted value closest to the observed ones. Hence, the other observed positional values on one issue are used to predict the missing values on that particular issue. Since the positions are used as raw data for the positional variables and not as independent variables on their own, the mean estimate across the five imputed data sets is taken to secure one imputed value for each missing value. These imputed values thus replace the missing values in this sub-sample of the DEU data set.

Evidence of measurement error is found in analyses employing the DEU data set (Slapin, 2014). However, it is shown that the position of the Council is measured with less uncertainty than the positions of the Commission and the European Parliament (the latter two are point estimates). Since this analysis focuses on the Council members and employ averages (across issues within a proposal) rather than point estimates, measurement errors are not controlled for.

The positional variables are measured as follows. *Heterogeneity* is based on the maximum distance of member state positions across issues in each proposal. The variable measures the alienation between member states on a given piece of legislation. *Commission disagreement* measures the average distance between the Commission and the policy outcome across issues in a proposal. The *Incentive to deviate* measure is based on the average distance between each member state and the policy outcome. Also here the mean position across issues is used to calculate the absolute distance within a proposal with more than one issue. All the positional variables except for *Heterogeneity* are measured in line with Zhelyazkova and Torenvlied (2009) and Thomson, Arregui and Torenvlied (2007).⁴

Vote is a categorical variable based on the Council voting records and takes the value 0 if a proposal was adopted with consensus at the final voting stage. This category will be the reference in the statistical analysis. The dummy variable takes the value 1 if one or more member states opposed the proposal. This category captures opposition at the directive level. The value 3 identifies opposition at the member state level and thus whether any particular member state opposed the proposal. Negative votes, abstentions and negative statements are coded as opposition in line with Hagemann and Høyland (2008). Any additional dissent at any

⁴Other measures of *Heterogeneity* including the Shapley-Shubik weighted measure employed in Zhelyazkova and Torenvlied (2009) have been tested. The results are similar to those presented here.

non-final voting stage (first reading) during the co-decision procedure is also included in the opposition categories. While there is only a direct relationship between voting behaviour and implementation behaviour at the member state level, opposition at the directive level indicates that preferences had to be particularly compromised in the bargaining. Hence, the analysis includes a separate vote category to control for these incidences. *Enlargement* takes the value 1 if the proposal was adopted after the enlargement and 0 otherwise.

In order to measure the discretionary leeway the member states have during the implementation process, Franchino (2007)'s delegation ratio is applied.⁵ This ratio, which can be calculated from the legislative text available in EUR-Lex, is the number of major provisions in a piece of legislation that grants discretionary authority to the member states divided by the total number of major provisions in the piece. This results in a value between 0 and 1, which is then multiplied by 100 to obtain a similar scale to the other continuous variables. Discretionary powers are usually easily tracked in the legislative text since such powers allow the member states to choose how/whether to implement a particular provision. This measure is also employed by Thomson, Arregui and Torenvlied (2007); Zhelyazkova and Torenvlied (2009); Thomson (2010) and König and Mäder (2013).

To avoid intra-coding bias, the *Discretion* variable was recoded for all proposals in the data sample to account for the post-enlargement period. The pre-enlargement observations were afterwards cross-checked against the discretion ratio variable from the pre-enlargement data set employed by Thomson, Arregui and Torenvlied (2007) and Zhelyazkova and Torenvlied (2009) to make sure that the variable was coded in a similar manner.

The *Formal notice* variable is based on the infringement proceedings initiated by the Commission which were identified by reviewing the Annual Report on Monitoring the Application of EU Law for the years between 1999 and 2012. The variable takes the value 1 if a member state received a letter of formal notice and 0 otherwise. This variable is also employed as a time-varying variable where the variable changes values over time. The time-varying co-variate (TVC) takes the value 1 when a member state transposes a directive after receiving a reminder from the Commission.

⁵Franchino (2007)'s measurement of discretion is an adaptation of the procedure developed by Epstein and O'Halloran (1999). For a different measure of this variable see Steunenbergh and Toshkov (2009).

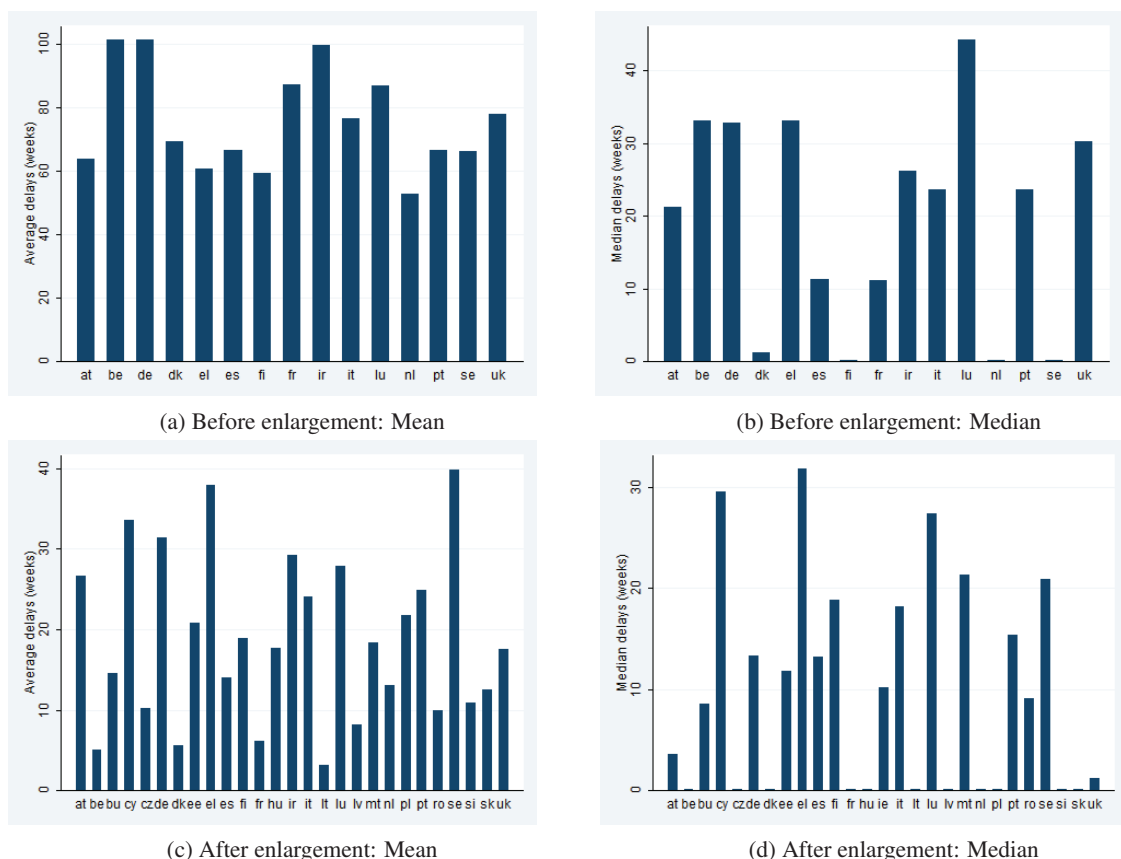


Figure 2: Average/median delays of the member states

Capacity measures government effectiveness and is taken from the World Bank Governance Indicators (WGI) project (Kaufmann, Kraay and Mastruzzi, 2010). The variable has been employed in previous transposition studies (e.g. Thomson, Arregui and Torenvlied (2007); Steunenbergh and Toshkov (2009); König and Mäder (2013); Zhelyazkova (2013)) and tracks government quality over the years 1996-2011.

Figure 2 shows the variation in the average and median transposition delays between the member states. On average, the transposition processes were longer before enlargement in this data sample. After enlargement, all member states, on average, implemented the various pieces of legislation within less than one year after the prescribed deadline. Note that the main reason for Sweden (SE) topping the delay statistics with a mean of 40 weeks after enlargement (see

Figure 2c)) is this member state's 4.5 year delay in the implementation of the controversial Data Retention Directive (COD/2005/182). However, when looking at the median (see Figures 2b) and 2d)) rather than the mean, this distribution changes somewhat and Greece replaces Sweden as the member state with the longest delays after enlargement.

Statistical models

The object of study is the relationship between the aforementioned hypotheses and member state compliance with EU directives as measured by two different dependent variables: (1) the timeliness of transposition and (2) enforced non-compliance (whether the Commission has detected any non-compliance and decided to initiate an infringement proceeding against the non-complying member state(s)). The appropriate method of choice for investigating the first dependent variable, *Transposition delay*, is a survival modelling technique which allows us to study the likelihood of a directive being transposed in any given week provided that such an event (the transposition) has not happened before. In line with Zhelyazkova and Torenvlied (2009), the choice of method is a Cox proportional hazards regression model. One favourable feature of the Cox model is that the baseline hazard is given no particular parametrisation and thus can be left unestimated. The model makes no assumption about the shape of the hazard (the risk that an event occurs in the next week given it has not occurred before) over time (Cleves et al., 2008). In the Cox regression model, the hazard rate of the j th subject is:

$$h(t|x_j) = h_0(t)exp(x_j\beta_x)$$

The Cox model can also easily accommodate ties and include censored cases where transposition did not happen before the study ended. Another feature of the Cox model is that it assumes that the effects are proportional across the different values of the co-variables. This means that the effects of the co-variables (the independent variables) are constant over time. The proportionality assumption can be tested by employing the Grambsch and Therneau test for proportionality. This test reveals that the assumption holds for all variables except *Formal notice*. This variable is also the basis for a time-varying co-variate (TVC) and is hence interacted with

(ln) time to take into account how the effects of this variable may change over time (Golub, 2007).⁶ The DFBETA test for any potential outliers reveals three observations that have a disproportionate influence on the estimated parameters (Cleves et al., 2008). These observations are thus removed from the data set.

The second dependent variable, *Infringement* (y), is investigated by employing logistic regression due to the binary nature of this variable. The statistical analyses with this variable as the dependent variable thus model the likelihood of infringements. Since the inverse logistic function is curved, the expected difference in y corresponding to a fixed difference in x is not a constant (Gelman and Hill, 2007). The probability that *Infringement* equals 1 is modelled as:

$$Pr(Infringement_i = 1) = \text{logit}^{-1}(\beta x_i)$$

Here the assumption is that the outcomes y_i are independent given these probabilities (Gelman and Hill, 2007).

RESULTS

The results are presented in Table 2. Models 1-3 show the estimated effects when transposition time is the dependent variable. Models 4-6 are estimated with infringement as the dependent variable. The output is exponentiated coefficients which means hazard ratios for the former set of models and odds ratios for the latter set. Hazard- and odds ratios above 1 indicate a positive effect while ratios below 1 indicate a negative effect. Note that a positive effect in Models 1-3 means that the hazard of transposition increases while a positive effect in Models 4-6 is synonymous with greater odds of infringements. Non-compliance is thus indicated by negative effects in Models 1-3 and positive effects in Models 4-6. See the appendix for robustness tests (random effects) and more controls.⁷ Since the data are multilevel, the non-independence of

⁶When the proportionality test is repeated after incorporating *Formal notice* as a TVC, non-proportionality at the five percent level of significance is no longer present except for the variable *capacity*. The non-proportionality of this particular variable, however, is not significant at the one percent level. As the global test shows that the proportionality criteria cannot be rejected for the full model (p value=0.33), this variable is not interacted with (ln) time. A model with such an interaction does not give any better test results.

⁷The models in Table 3 in the appendix control for random effects. The main results are robust in these specifications as well. The shared frailty in the Cox models is included to control for unobserved random effects

observations is controlled for by specifying robust standard errors (clustering) at the member state (Models 1-2 and 4-5) and directive levels (Models 3 and 6).

The main lesson to learn from the table is that the dynamics that determine infringements do not necessarily equal delayed transposition. While preference-based indicators can contribute to explaining infringement proceedings, the results find no support for the notion that preference discrepancy is associated with longer transposition processes. However, the greater the incentive to deviate, the greater the odds of infringements. Similarly, if a member state votes against a policy, this increases the odds of infringement. The different dynamics of transposition processes and infringement proceedings will be discussed after the presentation of the results.

While Models 4-6 support the preference-based approach to explaining non-compliance, the results of the transposition analysis (Models 1-3) are more in line with the monitoring- and management approach and show the same tendency as the analyses in Thomson, Arregui and Torenvlied (2007) and Zhelyazkova and Torenvlied (2009). Note that Models 1 and 4 are estimated without the categorical *Vote* variable to illustrate that the effects of the other variables do not change much when yet another preference-based variable is added to the analysis. The three different preference-based variables, *Heterogeneity*, *Incentive to deviate* and *Vote*, measure the same underlying aspect to some degree but are not mutually reinforcing. Incentives to deviate and negative votes can exist under both high and low heterogeneity. Similarly, an incentive to deviate does not necessarily result in a negative vote.

Heterogeneity in member state preferences speeds up the transposition process (Models 1 and 2). In Model 1, a one unit increase in heterogeneity increases the hazard of transposition by a factor of 1.01 (95 percent confidence interval: 1.005-1.014). Similarly, dissent (estimates from Model 2) at the directive level increases the hazard of transposition by a factor of 1.406 (1.15-1.71) and dissent at the member state level increases the hazard of transposition by a factor of 1.549 (1.14-2.11). These findings suggest that the Commission interprets conflict in the decision making as a signal that non-compliance is likely to occur if the problems are not

at the directive- and member state levels. If the likelihood test for the variance component theta (θ) shows that this variance is significantly different from zero, member states' transposition times are affected by unobserved directive-specific or member-state specific features (Cleves et al., 2008). The random intercept in the logit models shows the variance and standard error at level 2 (directive or member state level) (Rabe-Hesketh and Skondal, 2008).

Table 2: Determinants of implementation: Models 1-3 = hazard of transposition, models 4-6 odds of infringement

	(1)	(2)	(3)	(4)	(5)	(6)
	$_t$	$_t$	$_t$	FN	FN	FN
Heterogeneity	1.010*** (4.51)	1.006*** (3.13)	1.004 (1.34)	1.015*** (3.60)	1.013*** (2.96)	1.013 (1.27)
Incentive to deviate	0.999 (-0.79)	1.001 (0.88)	1.002 (0.88)	1.023*** (4.57)	1.024*** (4.79)	1.025*** (3.22)
Vote: Consensus		ref.cat. (.)	ref.cat. (.)		ref.cat. (.)	ref.cat. (.)
Vote: Dissent at directive level		1.406*** (4.17)	1.182 (1.31)		1.212 (1.42)	1.213 (0.63)
Vote: Dissent at member state level		1.549*** (3.54)	1.332** (1.98)		2.841*** (3.20)	2.847** (2.54)
Discretion	0.984*** (-5.46)	0.983*** (-5.51)	0.986* (-1.80)	0.998 (-0.30)	0.998 (-0.34)	0.998 (-0.09)
Heterogeneity*discretion	1.000*** (2.59)	1.000 (1.09)	1.000 (0.48)	0.999* (-1.71)	0.999** (-2.11)	0.999 (-0.72)
Capacity	1.000 (-0.00)	1.008 (0.10)	0.981 (-0.31)	0.850 (-0.67)	0.834 (-0.74)	0.849 (-1.55)
Capacity*incentive to deviate			1.004 (1.48)			1.013* (1.76)
Commission disagreement	1.006*** (3.35)	1.001 (0.81)	1.001 (0.50)	0.986*** (-4.69)	0.982*** (-5.40)	0.981* (-1.94)
Enlargement	1.562*** (5.14)	1.427*** (3.74)	1.467*** (3.25)	1.784** (2.46)	1.684** (2.14)	1.692* (1.69)
Formal notice			0.529*** (-5.46)			
Formal notice*ln($_t$), TVC			1.822*** (8.27)			
Observations	797	797	797	797	797	797
Log likelihood	-4379.8	-4372.9	-4216.9	-499.1	-494.2	-492.6

Dependent variable in models 1-3: $_t$ = time to transposition, models 4-6: FN = formal notice

Exponentiated coefficients (hazard- and odds ratios); t statistics in parentheses

Models 1-2, 4-5; robust standard errors at member state level, models 3,6; robust standard errors at directive level

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

solved and monitored in the transposition process.

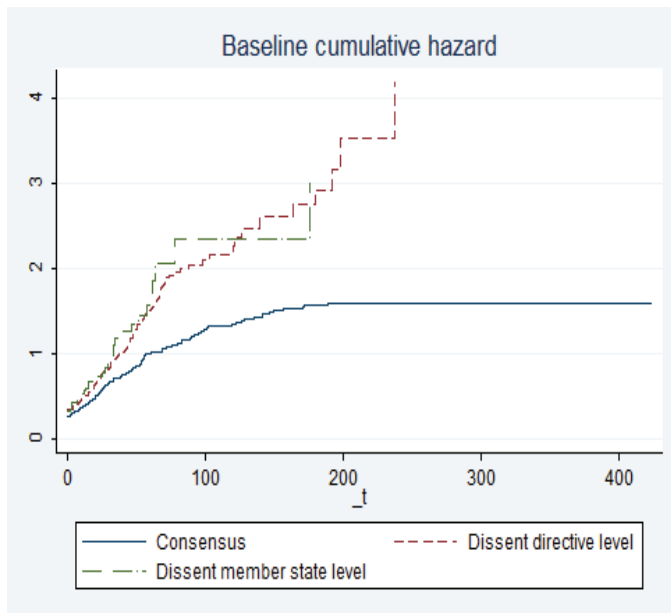
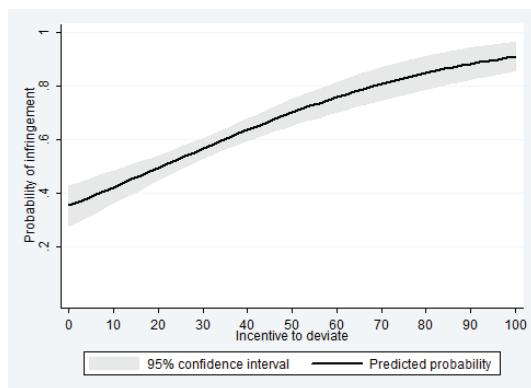


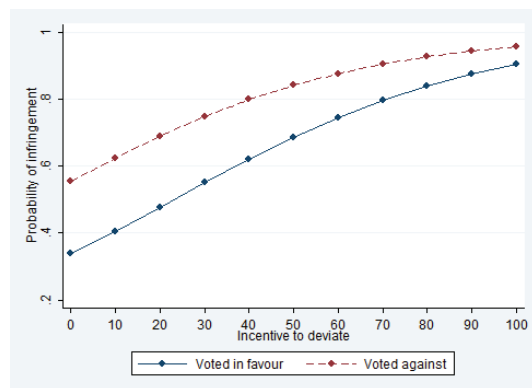
Figure 3: Baseline cumulative hazard: Categories of voting

The Commission thus makes an effort to ease the transposition of such directives. In the transposition models, *Incentive to deviate* has no effect on the hazard of transposition. Figure 3 shows how the baseline cumulative hazard of transposition varies with the different voting categories. Clearly, the baseline hazard increases if there was dissent at the voting stage.

In contrast, the results of the infringement models support preference-based explanations for non-compliance. In fact, all three hypotheses are confirmed by this analysis. In Model 5, one unit change in *Incentive to deviate* increases the odds of infringement by a factor of 1.024 (95 percent confidence interval: 1.016-1.033). Furthermore, if a member state voted against the proposal, this increases the odds of infringement by a factor of 2.841 (1.44-5.62). These findings support $[H_1]$ and $[H_2]$. In terms of conditional marginal effects, a negative vote increases the probability of infringement by .21 when holding the other variables at their mean. $[H_3]$ is also supported by the analysis. One unit change in *Heterogeneity* increases the odds of infringement by a factor of 1.013 (1.004-1.022). This shows that not all incentives to deviate are removed by problem-solving in the transposition process. The effects of *Incentive to deviate* and *Vote*



(a) Confidence interval



(b) Predicted probability by voting

Figure 4: Predicted probabilities: Incentive to deviate

are plotted in Figure 4 on the basis of predicted values. Here, it can clearly be seen that the probability of infringements increases with the incentive to deviate (Figure 4a). The greater the incentive, the greater the probability of infringements. As shown in 4b, this effect varies by voting behaviour, where a negative vote is associated with a higher probability of infringements even when the incentives to deviate are particularly strong.

With regard to the effect of *Discretion*, the transposition analysis finds that higher discretion is associated with longer delays in transposition. This finding is the same as Thomson, Arregui and Torenvlied (2007). However, discretion alone has no effect in the infringement analyses but the interaction effect of *Heterogeneity*discretion* is negative and significant at the five percent level (Model 5). This means that high levels of discretion in a policy and high heterogeneity in the decision making (on this particular policy outcome) reduce the odds of infringement. Also, Thomson, Arregui and Torenvlied (2007) show that discretion and conflict in combination lead to less non-compliance. This indicates the importance including discretion in EU level analyses of non-compliance.

Secondary findings

Enlargement has a positive effect on the hazard of transposition (Models 1-3). In Model 1, holding the other variables constant, directives adopted after the 2004 enlargement increase the

hazard of transposition by a factor of 1.562 (95 percent confidence interval: 1.31-1.87). This means that the hazard of transposition is 56.2 percent higher after enlargement than before. This is in line with Steunenberg and Toshkov (2009) who find that new member states do not perform systematically worse than the old member states. In fact, they often implement the directives faster than the older members. Even so, the odds of infringements are 1.784 (1.26-2.52) higher after enlargement than before enlargement (Model 4).

While member states have shorter transposition processes after enlargement, the Commission at the same time initiates more infringement proceedings. The explanation for this may be that the Commission has upped both its management skills and enforcement skills in order to secure compliance in the enlarged EU (Tallberg, 2002). By both managing compliance problems in an ongoing transposition process and enforcing non-compliance afterwards, the Commission can remedy any compliance problems induced by the increase in group size. There is also evidence of the Commission explicitly ensuring the compliance of the new member states (which are attributed lower bureaucratic capacity than the old member states).⁸

This finding is illustrated by the interaction effect of *Capacity*incentive to deviate* which is plotted in Figure 5. For all levels of *Incentive to deviate*, member states with low bureaucratic capacity are more likely to have infringements initiated against them, holding other variables to their mean. The difference between the three levels of *Capacity* diminishes as the *Incentive to deviate* increases.⁹

The effect of Commission enforcement behaviour in the transposition analysis is also significant. While letters of formal notice unsurprisingly have a negative effect on the hazard of transposition, member states speed up the transposition after receiving a letter from the Commission (see the effect of the time-varying co-variate in Model 3). This shows that although receiving a letter of formal notice indicates transposition problems, enforcement by the Commission has a positive effect on member state compliance. Further support for the active and

⁸Zhelyazkova and Torenlvied (2009) include country dummies instead of bureaucratic capacity in their analysis. They find no effect of these dummies. Capacity is a more fine-grained measure of member state differences but this variable has no significant effect on transposition either.

⁹The member states listed with lowest capacity in the WGI data are Bulgaria and Romania. In this data source, medium-capacity member states are for instance the Czech Republic, Portugal, Malta and Slovenia while Denmark, Sweden, Finland, Luxembourg, Austria and the Netherlands are high-capacity states.

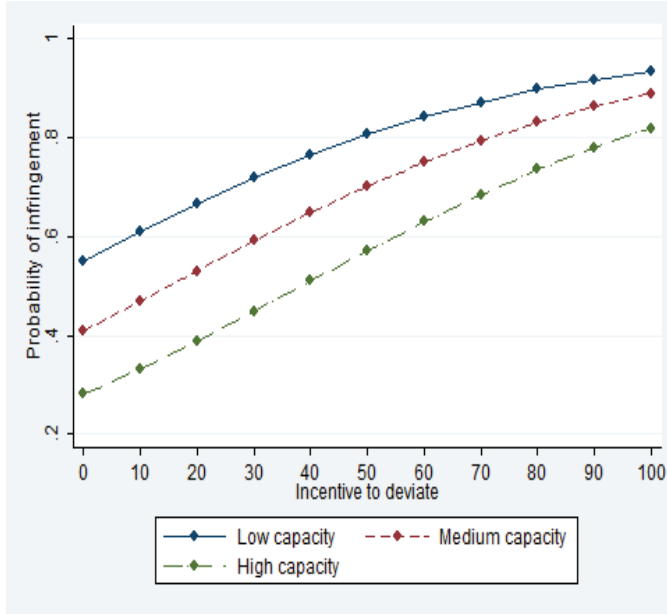


Figure 5: Interaction effect: Capacity and incentive to deviate

strategic role that the Commission plays can be found in the effect that the *Commission disagreement* variable has on non-compliance. While there is no robust effect of this variable in the transposition analysis, the infringement analysis indicates that Commission disagreement with the policy outcome reduces the odds of infringement. This means that the Commission seems less eager to enforce compliance on policies which are at odds with its own preferences (see Steunenberg (2010) for a game-theoretic account of the strategic role of the Commission).

DISCUSSION

The success of the European Union legislation is dependent on the correct implementation of the policies by the member states. Non-compliance by the member states may be a product of preference discrepancy as the negotiated policy outcome can stand in contrast to the positions of the implementing actors. This analysis has shown that preference-based explanations can account for some of the variation shown in the infringement proceedings initiated by the Commission. Larger incentives to deviate and greater heterogeneity between the decision makers are

associated with enforced non-compliance. Furthermore, member states that show opposition at the voting stage are more likely to commit detected infringements. However, preference-based explanations cannot account for transposition deficit in terms of transposition delay. This picture needs to be discussed in more detail. There are two latent biases in the data. First, the member states choose when and how to notify the Commission of their transposition activities. Second, the Commission chooses which infringements are serious enough to enforce. These biases can shed light on the findings of this paper.

One possible explanation for the mixed picture is supported by the study conducted by König and Mäder (2013) who find that the risk of non-conformable transposition increases when a member state disagrees with the policy outcome. Hence, member states may notify the Commission of transposition activities within the specified deadline but at the same time show non-compliance by not implementing the policy correctly. By closer inspection of the activities, the Commission then detects that the member state has not implemented the directive in line with the prescribed propositions. The next step for the Commission would then be to choose whether to enforce compliance in that particular case. Several infringements are not enforced by the Commission and the Commission also acknowledges that it prioritises among various infringements (Falkner et al., 2005; Steunenberg, 2010). Based on the sample analysed in this paper, the Commission is more likely to enforce compliance when the member state had preferences that deviated from the adopted legislation. Hence, the two data biases combined may explain the results presented in this analysis. In order to ascertain whether this explanation truly holds, the relationship between non-conformable transposition and infringements should be statistically explored. This is a task for future research, but logically this relationship should be a positive one. Compliance may thus be a strategic game where both the role of the implementing agent and the enforcing agent need to be sufficiently accounted for. Only by modelling the behaviour of both actors is it possible to produce robust conclusions on implementation in the EU. Carrubba, Gabel and Hankla (2008) find evidence which indicates that the final enforcer of compliance, the European Court of Justice (ECJ), has strategically adjusted its rulings to avoid non-compliance. Furthermore, the Commission is also prone to initiate infringement proceedings only when it receives the necessary support from the ECJ and the other member states

(Steunenberg, 2010). Future studies may thus benefit from including all stages of the infringement proceedings in their empirical analysis in order to paint a fuller picture of the strategic considerations made by the member states, the Commission and the ECJ in the implementation phase of EU decision making.

Table 3: Determinants of implementation: Random effects at directive level (model 1 and 3) and random effects at member state level (model 2 and 4)

	(1) _t	(2) _t	(3) FN	(4) FN
Heterogeneity	1.004 (0.97)	1.004 (1.57)	1.064*** (5.56)	1.014*** (2.97)
Incentive to deviate	0.999 (-0.20)	1.002 (0.84)	1.010* (1.90)	1.026*** (5.71)
Vote: Consensus	ref.cat. (.)	ref.cat. (.)	ref.cat. (.)	ref.cat. (.)
Vote: Dissent at directive level	1.290 (1.53)	1.182* (1.73)	1.231 (0.83)	1.224 (1.02)
Vote: Dissent at member state level	1.433* (1.74)	1.332* (1.83)	2.206** (1.96)	3.082*** (3.12)
Discretion	0.982** (-2.56)	0.986*** (-3.60)	1.030* (1.89)	0.998 (-0.25)
Heterogeneity*discretion	1.000 (0.17)	1.000 (0.74)	0.999 (-0.55)	0.999* (-1.89)
Capacity	0.995 (-0.07)	0.981 (-0.26)	0.786 (-1.45)	0.883 (-0.56)
Capacity*incentive to deviate	1.003 (0.98)	1.004 (1.29)	1.014* (1.79)	1.012* (1.75)
Commission disagreement	1.004 (0.81)	1.001 (0.53)	0.980*** (-3.05)	0.980*** (-3.49)
Enlargement	1.558*** (2.91)	1.467*** (4.19)	1.905** (2.38)	1.807*** (2.96)
Formal notice	0.485*** (-6.57)	0.529*** (-6.15)		
Formal notice*ln(_t), TVC	1.741*** (12.63)	1.822*** (14.42)		
Shared frailty directive level θ	0.127***			
Shared frailty member state level θ		0.000		
Random intercept directive level (variance) S.E.			4.604 (1.356)	
Random intercept member state level (variance) S.E.				0.212 (0.127)
Observations	797	797	797	797
Log likelihood	-4205.8	-4216.9	-438.8	-488.9

Exponentiated coefficients (hazard- and odds ratios); t statistics in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 4: Determinants of implementation: Models 1-2 only one preference-based variable (*Vote*) included, models 3-4 further literature controls

	(1) _t	(2) FN	(3) _t	(4) FN
Vote: Consensus	ref.cat. (.)	ref.cat. (.)	ref.cat. (.)	ref.cat. (.)
Vote: Dissent at directive level	1.559*** (4.90)	1.089 (0.50)	1.425*** (3.47)	1.144 (0.68)
Vote: Dissent at member state level	1.713*** (3.55)	2.682*** (2.89)	1.572*** (2.86)	2.795*** (2.91)
Heterogeneity			1.005* (1.89)	1.011** (2.10)
Incentive to deviate			1.000 (0.11)	1.026*** (5.20)
Discretion	0.982*** (-4.57)	0.993 (-0.88)	0.982*** (-4.53)	0.998 (-0.22)
Heterogeneity*discretion	1.000 (0.39)	1.000 (-0.93)	1.000 (0.99)	0.999 (-1.30)
Commission disagreement	1.000 (-0.16)	0.985*** (-2.83)	1.002 (0.54)	0.975*** (-4.23)
Heterogeneity*Commission disagreement	1.000 (-1.35)	0.999*** (-4.87)	1.000 (-0.35)	0.999** (-2.40)
Capacity	1.009 (0.13)	0.827 (-1.27)	1.010 (0.14)	0.808 (-1.40)
Member state distance from Commission	1.002 (1.04)	0.998 (-0.48)	1.001 (0.66)	0.988*** (-2.70)
Enlargement	1.459*** (4.18)	2.298*** (4.66)	1.427*** (3.78)	1.811*** (3.17)
Observations	797	797	797	797
Log likelihood	-4374.5	-501.2	-4372.7	-486.5

Dependent variable in models 1 and 3: _t = time to transposition, models 2 and 4: FN = formal notice
Exponentiated coefficients (hazard- and odds ratios); *t* statistics in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Exploring preference-based determinants of the duration of EU decision makingⁱ

Vibeke Wøien Hansenⁱⁱ

ABSTRACT

This paper investigates how controversy and conflict in the negotiations affect decision-making efficiency in the EU. The quantitative analysis conducted on 670 co-decision proposals adopted between 1999-2009 shows that preference divergence has a robust effect on the duration of EU decision making. Proposals where one or more member states objected at the voting stage have longer bargaining stages than consensual proposals. Larger distance between the ideal points of the pivotal actors in the Council and the European Parliament increases the time it takes to adopt legislation. Highly salient proposals and proposals that receive actual ministerial attention also take longer to decide than less salient proposals and proposals that can be agreed upon at lower levels. The need to strike an agreeable compromise on controversial proposals thus has a significant time cost. Controversy and conflict can safely be said to slow down EU decision making.

Keywords: Council, Decision Making, Duration, European Parliament, Preferences, Voting

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The European Union (EU) has over the last two decades shaped policies with re-distributional consequences (Hix, 2005; Crombez and Hix, 2013). This again, has created clearer winners and losers in EU decision making. Despite this, voting in the Council of the European Union is assumed to be a consensual affair and the implications of negative votes are given little attention in the literature. A majority of the legislative proposals are unanimously adopted, even in policy areas where a qualified majority of the weighted votes would have been enough to pass the legislation (Mattila and Lane, 2001). The governments are said to act in sync with a norm of consensus (Heisenberg, 2005; Lewis, 2000). Still, some governments choose to object legislation at the voting stage. A negative vote is a clear signal of not benefitting enough from the legislation (Hagemann, 2006). Negative votes are thus an indicator of controversy and conflict in the Council. Another indicator of controversy is the distance between the ideal points of the pivotal actors within the Council and the European Parliament (EP). Greater distance indicates inter-institutional conflict in the decision-making process. These two indicators of preference divergence reduce the possible sets of agreements that can be made on a particular piece of legislation, making it harder to adopt legislation at the EU level which results in prolonged legislative bargaining. This paper investigates if this is actually the case. Do controversy and conflict slow down EU decision making?

The duration of EU decision making has been a field of interest in the EU legislative literature since the late 1990s. Previous studies investigate how voting rules, legislative procedures, and group size affect the duration of EU decision making over time (Golub, 1999; Schulz and König, 2000; König, 2007; Golub, 2007; Hertz and Leuffen, 2011; Rasmussen and Toshkov, 2011). The main justification for these studies is to investigate empirically whether theoretical claims of legislative gridlock due to more actors (both institutions and member states) can be sustained (Scharpf, 1988; Wessels, 1991; Nugent, 1994; Scharpf, 1997). Also, the legislative agenda has expanded over the years as new actors and new policy areas have entered the EU. This may create more controversies, between and within the member states, which again may increase the chance of legislative gridlock. Although some measures of preference heterogeneity have been investigated in the large N-literature on the duration of EU decision making (Golub, 1999; König, 2007; Hertz and Leuffen, 2011), the implications of negative votes and

the ideological distance between the pivotal actors across the EU institutions are yet to be explored in this branch of legislative studies. While a voting indicator measures latent conflict within the Council, an ideological distance indicator is a direct measure of the conflict level across the two legislative institutions. The underlying premise for both indicators is the notion that conflict needs to be solved in order to get the necessary actors on board. The legislation can then be adopted. For the purpose of this analysis, controversial legislation is assumed to have longer bargaining stages than less controversial legislation. This assumption is thoroughly tested in the empirical analysis.

Using a data set based on information retrieved from PreLex, the monthly summaries of Council acts, and the Council voting records, this paper studies 670 decision-making processes between 1999 and 2009 in order to uncover how conflict and controversy across institutions affect decision-making speed in the EU. Conflict and controversy are first and foremost operationalised as ideological distance and negative voting behaviour but the analysis also controls for the salience attached to a proposal and the decision level (committee or ministers) within the Council. This makes it possible to paint a fuller picture of the dynamics of the duration of EU decision making. The analysis shows that dissent at the Council voting stage and greater left-right distance between the pivotal actors increase the duration of the co-decision procedure. Bargaining on salient proposals also takes more time than bargaining on less important proposals. Furthermore, proposals where the ministers need to get involved have substantially longer durations than proposals that can be settled on working group or COREPER levels. These findings also hold when controlling for various indicators that have previously been investigated in the literature. Bargaining is thus tougher on salient and controversial proposals and this leads to longer decision-making processes.

The remaining parts of the paper are structured as follows. Section 1 addresses the main reforms in EU legislative politics and presents a short literature review. The theoretical framework and the expectations to the quantitative analysis are outlined in section 2. Section 3 describes the data generating process, the main variables, and the method employed in this article. The results from the quantitative analysis conducted by employing a Cox proportional hazard model are presented and discussed in section 4. The last section concludes and summarises the impli-

cations of this study for the debate on the determinants of the duration of decision making in the EU.

LEGISLATIVE POLITICS AND DECISION-MAKING EFFICIENCY IN THE EU

Previous studies of the duration of EU decision making are concerned with how institutional reforms have affected legislative efficiency in the EU. Three types of reforms and their effects on duration are of specific interest in the literature: (1) reform of legislative procedures, (2) reform of voting rules, and (3) increase in group size due to enlargements. The main findings with regard to these reforms are here addressed against a backdrop of the main features of EU decision making.

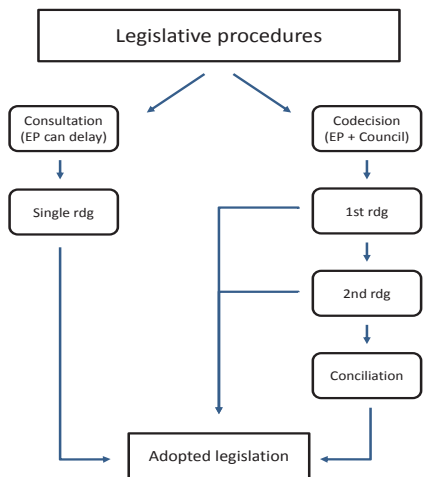


Figure 1: EU legislative politics

Legislative politics in the EU have become bicameral through the changes introduced by the Single European Act (1987), the Maastricht Treaty (1993), and the Amsterdam treaty (1999). These three treaties have incrementally increased the powers of the European Parliament (EP) vis-a-vis the Council (Hix and Høyland, 2011, 52-53). Legislation was initially adopted through

the consultation procedure where the EP just had the power to delay a Council decision in the first and only reading of the legislative process (see Figure 1). As such power is not as strong as agenda setting power or formal veto power, the introduction of the cooperation procedure by the Single European Act (SEA) in 1987 increased the EP's abilities to affect EU legislation. When this procedure applied (approximately one third of all legislation), the EP was granted a second reading and could initiate amendments to the proposal that were easier for the Council to accept (due to the voting rules) than to reject (Tsebelis, 1994). The Maastricht Treaty replaced the cooperation procedure with the co-decision procedure in most areas of internal market legislation. This procedure added a new step to the legislative process: If the EP and the Council could not reach an agreement, a conciliation committee consisting of both parts would negotiate a compromise. Afterwards, this compromise would have to be adopted by both the Council and the EP.

The Amsterdam Treaty in 1999 revised the co-decision procedure and extended its applicability. The reform of the procedure has two important implications: (1) If there is agreement between the institutions, legislation can be settled already in the first reading, and (2) If no agreement can be reached in the conciliation committee, no legislation will be adopted. Hence, the Council could no longer give the EP a "take it or leave it" proposal following a breakdown of the conciliation committee. The revision of the co-decision procedure formalised the power of the EP and made the two institutions coequal legislators when this procedure applies to EU legislation (Hix, 2002). The effects of these procedural changes on the duration of EU decision making have been thoroughly discussed in the literature. Parliament involvement (as in the co-decision procedure) prolongs the duration of EU decision making (Golub, 1999; Schulz and König, 2000; König, 2007; Golub, 2007; Hertz and Leuffen, 2011). Although the simplification of the co-decision procedure makes it possible to reach agreement sooner, it is shown that the EP uses more time to reach its position under first readings subject to co-decision than first readings subject to consultation, where the first reading is the only possible reading of this procedure (Rasmussen and Toshkov, 2011). This might be due to the strategic behaviour of the EP. The EP prioritises to use time on proposals where it has a formal role in the decision making rather than spending time on proposals assigned to the consultation procedure where it only has

the power to delay an adoption.

In the 5th legislature (1999-2004) in the EP, co-decision applied to almost half of the legislation adopted. The rest was mainly adopted under the consultation procedure. More than 200 pieces of legislation were adopted each year (Kardasheva, 2009; Häge, 2011a). In 2008 (during the 6th legislature in the EP), the number of co-decision proposals surpassed the number of consultation proposals for the first time (Häge, 2011a). The 2009 Lisbon Treaty established the co-decision procedure as the ordinary legislative procedure and extended its use to nearly all policy areas.

However, EU legislation does not only vary by procedure. Legislation is also a product of the assigned and used voting rule. The original EC Treaty formally opened up for qualified majority voting (QMV) in the European Union Council of Ministers, meaning that approximately five-sevenths of the total weighted votes were required to form the necessary majority. But when Charles de Gaulle advocated the importance of French (agricultural) “vital interests” not being eroded by a majority vote and boycotted the discussions of institutional change in Brussels, a new norm was born in the Council of Ministers in January 1966. This norm was the so called “Luxembourg compromise” which stated that if a proposal was subjected to QMV, the Commission would postpone a decision if any member state felt that its vital interests were under threat. This meant that, in practice, unanimity was the chosen voting rule in the Council. The Single European Act (SEA) reimplemented the formal voting rules in 1987. Scholars have argued that the reintroduction of QMV substantially increased EU decision-making efficiency (Wessels, 1991; Majone, 1993; Nugent, 1994). A study of directive proposals initiated during 1974-1995 shows, however, that this is not necessarily the case (Golub, 1999). During 1974-1979, directive proposals officially subjected to QMV required on average 74 percent less time in the Council before adoption than proposals officially decided under the unanimity procedure. Also, proposals decided under QMV after the introduction of the SEA do not differ in decision making speed compared to QMV proposals before the SEA (Golub, 1999). Later studies confirm that QMV speeds up EU decision making (Schulz and König, 2000; König, 2007; Golub, 2007; Golub and Steunenberg, 2007; Hertz and Leuffen, 2011).

In a further investigation of the interplay between QMV and the role of the parliament,

Golub and Steunenberg (2007) find that the time drag from co-decision (where the EP and the Council are coequal legislators) out-weighted the effects of the QMV for the first 11 months during 1994-1999. This means that even though QMV speeds up decision making, proposals adopted under co-decision where QMV usually applies are not adopted faster than proposals adopted under the consultation procedure (where the EP does not have a formal role). Unanimity is now only required under certain policy areas such as foreign policy which is assigned to the consultation procedure (Hayes-Renshaw and Wallace, 2006).¹ Even so, the Council often decides by unanimity regardless of whether it is required.

With regard to the third type of reform, EU enlargement, Hertz and Leuffen (2011) show that an increase in group size consistently slows down EU decision making. This finding holds for EC-10, EC-12, EU-15 and the early days of eastern enlargement (EU-25). The reforms of procedures, voting rules, and group size may all be said to increase the importance of preference heterogeneity as a determinant of decision-making speed. The increased use of the co-decision procedure can facilitate that coalitions within the Council lose out to the EP. The increased use of QMV results in a larger chance of being outvoted. The increase in group size can translate into larger ideological distance between the member states. Hence, preference heterogeneity is a variable of interest in the literature and the different studies assume that an increase in heterogeneity prolongs decision-making time. A crude measure for member state preferences is to include a dummy variable for anti-EU governments. Golub (1999) does this by modelling the effect of Margaret Thatcher on EU decision-making speed. He finds that EU decision making took somewhat longer time after she became prime minister in the UK. However, this study does not investigate whether the effect of Thatcher varies by policy sector. A more specific measure of preferences can be based on national party manifestos. Here, manifesto data are merged with data on the party composition of the corresponding governments to compute member state preferences for specific EU policy sectors. When relying on this measure, König (2007) finds that the larger the distances between the member states on the pro-anti EU integration dimension, the longer time to political agreement. This effect is strongest for core policy areas like trade, agriculture, and the internal market.

¹See the Appendix in Hix (2005) for detailed information on which issues in the different policy areas that apply to the unanimity rule.

Type of policy area and type of policy instrument can be more indirect measures of the distribution of preferences (Schulz and König, 2000). The benefits of being a member of the EU should be greatest in core areas like the internal market, agriculture, competition, and trade. This again, indicates that member state preferences may be more homogeneous in issue areas that are part of the functional core of the EU. In contrast, directive proposals may be associated with larger preference heterogeneity as directives are the only type of policy instrument that needs to be implemented by the member states and incorporated into national law. The other two types of binding legislation, decisions and regulations, are more specific adjustments of existing EU law. Schulz and König (2000) show that these indirect measures of preferences have an effect on the duration of EU decision making. While core policy areas have shorter decision-making processes than policy areas that do not constitute the functional core of the EU, directives have longer decision-making processes than decisions and regulations.

The analysis in this paper draws upon the above-mentioned research and the theoretical foundations laid down in Schulz and König (2000) and König (2007). However, several new measures of preference heterogeneity are added to the research design of the previous studies on the duration of EU decision making. The first is a latent measure of government preferences; whether any government voted against the proposal. The second is a measure of the distance between the pivotal actors, in the Council and the EP, on the left-right dimension for the different policy sectors and years in the data sample. This is a direct measure of left-right dispersion across the two institutions. The third, whether the ministers are involved in the decision making, is an indirect measure of conflict at the bargaining stage. The key question is whether these measures can, in a robust manner, improve our understanding of the process of inter-institutional decision making. Hertz and Leuffen (2011) indicate that left-right dispersion within the Council is not a strong indicator of conflict within this institution although the importance of this dimension is empirically supported (Hix, Noury and Roland, 2006; Hagemann, 2008). Hertz and Leuffen (2011) thus recommend future research to disaggregate this variable into policy areas. The analysis in this paper follows up on this suggestion and extends the research design to account for inter-institutional conflict on the left-right dimension. As previous studies have investigated both consultation and co-decision proposals, the emphasis has been on

preference divergence within the Council. This emphasis is unfounded in an analysis conducted on co-decision proposals only where the EP and the Council are coequal legislators. Hence, this paper operationalises left-right dispersion as the distance between the ideal points of the pivotal actors within these two institutions.

THEORY AND HYPOTHESES

The common idea of spatial analysis is that the size of the win-set, the area of possible agreements where the interests of the actors overlap, is an indicator of the potential for policy change (Steunenberg, 1994; Tsebelis and Garrett, 1996). The distances between the actors' positions and the location of the new policy determine the probability of policy change (Tsebelis and Garrett, 2000).

Assume that the Council decides in a one-dimensional space, each government has single-peaked preferences, and that the Council has seven governments in total. If the voting rule is qualified majority (approximately five of seven governments), gridlock will occur when the existing policy (status quo) is located between the three most moderate governments (Schulz and König, 2000). If this happens, the policy cannot be changed and a win-set cannot be established without a change in preferences of the pivotal actors (Krehbiel, 1998). If such a preference change occurs, gridlock can still be sustained if the second chamber can veto this piece of legislation and has a distribution of preferences that differs from the distribution in the first chamber. Hence, we have two sets of pivotal actors that both have to accept the proposed legislation in order for legislation to be adopted. If these sets increase in size, a preference change may occur as the pivotal actors inside each set are not necessarily the same as the pivotal actors before enlargement. This again, may result in a larger win-set and a larger probability of being outvoted.

A shift to unanimity voting in the Council, increases the width of the gridlock interval and decreases the possible win-set (see Figure 2). Now, government 1 and 7 are pivotal. The win-set may get even smaller if the set of actors increases. Hence, unanimity can have the opposite effect on group size as qualified majority rule. Controversy and dissent may also be obstacles

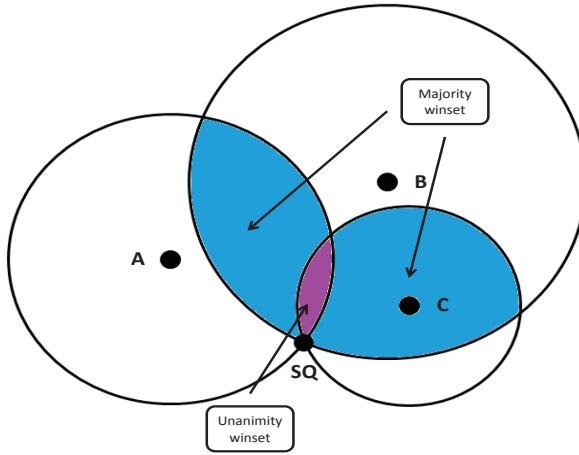


Figure 2: Size of win-set under different voting rules

to decision-making efficiency and thus indicators of smaller win-sets. Dissent during voting can indicate smaller win-sets in the bargaining. Greater distance between the pivotal actors across the institutions reduces the size of the win-set. Furthermore, if the committee level in the Council cannot agree on a proposal and has to send it up to the ministerial level, this may also indicate a smaller win-set. Smaller win-sets should in this sense be negatively associated with decision-making efficiency. The smaller the win-set, the higher the likelihood of gridlock and delay in adoption. Figure 3 shows how the policy outcome under co-decision is dependent on the distribution of preferences in the Council and the EP. Here, the policy outcome (the adopted bill) is denoted as B , the Council pivot position is denoted as C and the median position of the EP is denoted as EP . Figure 3a) and b) are possible decision-making scenarios under co-decision. Bargaining is clearly tougher on 3b) where the policy adopted is a compromise between the two institutions. This compromise is not optimal for any of the pivotal actors but clearly better for the Council (EP) than the ideal position of the EP (Council). It can thus be assumed that such compromises take more time to agree upon than proposals with more uniform preference distributions. Solving decision-making conflict is associated with increasing time costs.

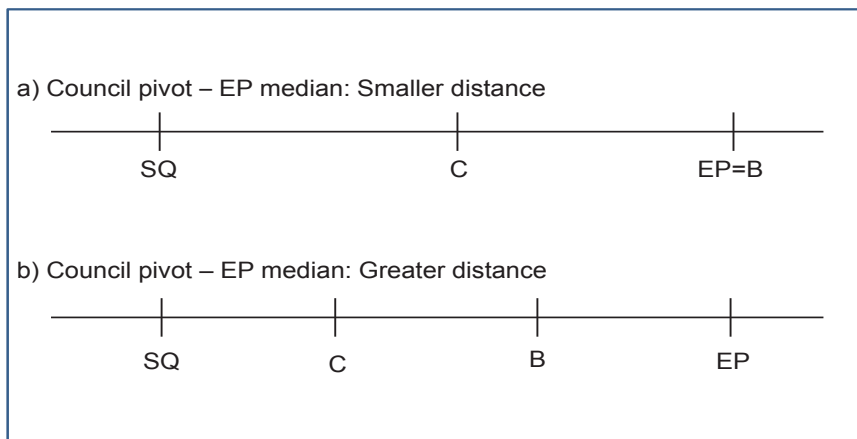


Figure 3: Policy outcome dependent on preference distribution in Council and the EP

Drawing upon these theoretical ideas, three preference-based expectations of the empirical analysis can be derived. First, the previous literature has not investigated whether dissent in Council voting has an effect on decision-making speed. Dissent is both an indicator of the Council taking actual advantage of the QMV rule and an indicator of conflicting preferences during the bargaining. As the Council tends to adopt legislation by consensus, actual opposition shown in voting is somewhat rare (Mattila and Lane, 2001; Hagemann, 2006). This implies that a lot of decisions subject to QMV are in fact unanimous votes. Hagemann (2006) advocates that when a member state objects it is because the member state government strongly opposes the proposal. Hence, dissent may be a latent indicator of conflict in the decision-making process and a smaller set of possible agreements. As it is likely that it takes more time to come up with a solution that satisfies the voting threshold on proposals with conflict than proposals without conflict, the expectation to the analysis is that consensual proposals are adopted more quickly than proposals with dissent under qualified majority voting.

- *H1: The duration of EU decision making increases if a proposal is adopted with dissent at the Council voting stage.*

Second, the constellation of policy preferences across the legislative institutions may also affect legislative efficiency. The more the distribution of preferences in the Council differs from the preferences within the EP, the larger the gridlock interval which again may increase the duration of the decision-making process. Greater inter-institutional preference heterogeneity can make it harder to adopt a political compromise. It is especially the distance between the pivotal actors under the given voting rules that determines the size of the gridlock interval (Crombez and Hix, 2013). This suggests the following hypothesis.

- *H2: The duration of EU decision making increases, the greater the distance between the pivotal actors across the Council and the EP.*

Third, since ministerial involvement implies that agreement has not been reached in the working groups or by COREPER, this can indicate controversy which again results in smaller win-sets. If the bureaucrats at the committee level are informed of their ministers' preferences and mimic these in the committees, preference divergence among ministers should have a negative effect on the probability that agreement is reached at this level. The preference divergence then has to be solved at the ministerial level. After that, the proposal can be adopted or referred back to the working group level for further consideration. This can result in longer bargaining stages than proposals which agreement is reached at the committee level. Note, that the bureaucrats choose to involve the ministerial level to avoid further gridlock at the working group level. Hence, the choice to involve the ministerial level may imply shorter bargaining than what would have been the case if the proposal had remained at lower levels. Even so, less controversial proposals that can be settled at the working group level would not face the same risk of gridlock and should thus be associated with shorter bargaining stages than more controversial proposals. The assumption is that bureaucrats chose to involve the ministers when they are not able to solve the conflict themselves (Häge, 2007). The ministers need to solve the conflict in order for the proposal to be adopted. A competing assumption would be that ministerial involvement is associated with importance and urgency. The outcome would then be swiftly passed legislation. With regard to ministerial involvement, the expectation to the analysis is as follows.

- *H3: The duration of EU decision making increases if a proposal is subject to ministerial involvement.*

Fourth, bargaining is assumed to be tougher on salient proposals (Cameron, 2000). Hence, bargaining on salient legislation should be more exposed to conflict which again leads to longer decision-making processes. The analysis thus also includes a variable measuring the level of salience attributed to a specific proposal.

- *H4: The duration of EU decision making increases if a proposal is highly salient.*

Note that an explanation for the high degree of consensual decision making in the Council is that the different actors strive to be a part of winning coalitions (Häge, 2013). If there is great preference divergence and this results in two coalitions of similar size, the adopted policy will be a compromise acceptable for both coalitions. An extension to this argument is that negative votes may be a product of isolated opposition. However, such an argument is likely to have more leverage for decision making under the consultation procedure than for decision making under the co-decision procedure. Under co-decision, coalitions within the EP also have to be part of any compromise. Also, negative votes may be an indicator of conflict in the Council during the bargaining stage in the sense that while there is only evidence of isolated opposition at the voting stage previous stages may have involved greater levels of opposition. Such a scenario is more likely for salient legislation where bargaining is tougher. It is thus important to include a *Salience* variable in the empirical analysis.

In addition to the above mentioned, the analysis controls for type of policy instrument, the 2004 enlargement, and whether the EP amended the proposal. Possible differences between policy areas are also controlled for as some may have larger preference homogeneity than others (Schulz and König, 2000; König, 2007). The next section describes the data and methods employed to test these preference-based expectations of the duration of EU decision making.

DATA AND METHODS

The data employed in this analysis originate from the European Union Policy-Making (EUPOL) data set (Häge, 2011a), the European Legislation and Ideological positions in policy Spaces (EULIS) data set (König and Luig, 2012), and a data set consisting of voting in the Council

(Hagemann and Høyland, 2008). Supplementing information on voting results and the applicable voting rules stems from the public Council voting records and the monthly summaries of Council acts.² Data on issue-specific ideological preference profiles of political parties is taken from the EULIS data set (König and Luig, 2012) and is combined with cabinet information from the ParlGov data set (Döring and Manow, 2011) in order to measure preference distance within the Council. The EUPOL data set contains the complete records of the European Commission's PreLex database. PreLex keeps track of the interactions between the EU institutions on both legislative and non-legislative proposals over time. The EUPOL data set thus contains 2600 variables to describe the detailed history of 29 366 inter-institutional decision-making processes between 1975 and 2009 (Häge, 2011a).³ Since the analytical interest of this paper is the determinants of the time needed to adopt EU policies, the best suited method is to employ a survival model where time to adoption is the dependent variable. A survival model allows us to study the probability that a legislative proposal is adopted on any given day provided that it has not been adopted before (Cleves et al., 2008). The dependent variable was created on the basis of the time span (in days) between the date when the Commission initiated the proposal and the date of adoption by the Council and the EP. PreLex tracks all relevant dates with regard to the decision-making processes and the date of Commission initiation usually overlaps with the dates when the Council and the EP receive the proposal. This variable covers the entire inter-institutional decision-making process of the co-decision procedure. While the first reading stage under co-decision is the decision-making stage where most of the negotiations within the Council and the EP take place, later stages are more about finding an inter-institutional compromise (Bostock, 2002; Häge, 2007). It is thus important to track the whole procedure in order to investigate the dynamics of inter-institutional decision making.

The Council voting data are coded as binary decisions, and both abstentions and negative votes are coded as no-votes.⁴ In practice, abstentions have the same effect as no-votes under

²See <http://www.consilium.europa.eu/documents/legislative-transparency/>.

³The data collection is automated by computer scripts that extract the information available in PreLex. EUPOL does not consist of readily coded variables so additional data manipulation in a statistics programme is required. Hence, several steps were needed to construct the predictors needed to test the outlined expectations. For a detailed description of how to construct useful variables see Häge (2011a). The data of this paper, except from the data on Council voting and the data on policy distances and salience, has been constructed based on a similar logic.

⁴It would also be preferable to include a variable based on EP roll-call votes. However, since the EP explicitly votes on approximately 30 percent of all legislation, such a variable would have reduced the data set accordingly

qualified majority voting (QMV) (see Hagemann and De Clerck-Sachsse (2007, 7) and König and Junge (2009, 531)). Since the proposal identification numbers differ between the Council minutes and the EUPOL data set, the two data sources have been merged based on the proposal title and the date of adoption provided by the monthly summaries of Council acts. The Council voting records were first released to the public in 1999. The time frame of this analysis is thus from 1999 to 2009. The merge process resulted in 695 co-decision observations. 20 of these proposals were adopted under unanimity rule. As the purpose of this analysis is to investigate how voting results and ideological distance between the pivotal actors affect decision-making time, these proposals were discarded from the analysis. QMV is a condition for possible variation on the voting variable. With only 3 percent unanimity voting in the data sample, the choice to include a voting rule variable would not benefit the empirical analysis. In order to investigate the effect of voting rule on decision making the data sample should include both consultation dossiers and co-decision dossiers. Such an analysis would however not be suited to single out inter-institutional decision making since the EP just has the power to delay legislation when the consultation procedure applies. See the previous studies for a thorough investigation of the relationship between assigned voting rule and the duration of EU decision making (Golub, 1999; Schulz and König, 2000; König, 2007; Hertz and Leuffen, 2011). There are also some missing values in the EUPOL data. Some of these were replaced by values obtained from a manual PreLex search. This process resulted in a total of 670 complete observations. The time interval overlaps with the 5th and 6th legislature in the EP. The data thus include the Eastern enlargement in 2004 and the addition of Romania and Bulgaria in 2007. Table 1 shows the descriptive statistics for all the variables in the analysis.

The theory-specific variables are created as follows. The *Dissent* predictor is coded 1 if one or more governments opposed the proposal in the voting records, and 0 if the proposal was adopted with consensus under the QMV voting rule. The *Left-right distance between the Council pivot and the EP median* variable tracks the ideological distance between the pivotal actors within the Council and the EP. This variable is based on the EULIS data set which combines issue-specific Comparative Manifesto Project (CMP) data with the legislative agenda in the EU

(Hix, Noury and Roland, 2007) and opened up further selection issues (Carrubba et al., 2006).

	N	Mean	S.d.	Min	Max
<i>Dependent variable</i>					
Days to adoption	670	615	371	55	3290
<i>Independent variables</i>					
Proposal level					
Dissent	670	0.26	0.44	0	1
Left-right distance EP median-Council pivot	670	0.60	0.19	0.28	1.11
Salience	670	16.58	12.81	1	104
Ministerial involvement	670	0.35	0.48	0	1
Enlargement	670	0.64	0.48	0	1
Legal instrument	670	2.33	0.74	1	3
EP amendment	670	0.81	0.39	0	1
Justice and home affairs	670	0.06	0.23	0	1
Agriculture and fisheries	670	0.16	0.36	0	1
Internal market	670	0.38	0.49	0	1
Economic and financial affairs	670	0.08	0.27	0	1

Table 1: Descriptive statistics: Data from EUPOL/EULIS/Council Monthly summaries/Council voting records/EUR-Lex

(König and Luig, 2012). Political parties are relatively constant in their ideological positions on each issue but the relative importance of each issue on the EU legislative agenda is not fixed. Hence, weighting issues by its yearly prominence on the legislative agenda for the different EU policy sectors secure more time and area variation. The yearly issue-specific party positions are then aggregated to a left/right and national/supranational dimension. Including a policy-specific distance variable in the analysis is in line with Hertz and Leuffen (2011) who suggest that future research could benefit from disaggregating Council left-right dispersion into policy areas. The analysis in this paper takes this suggestion a bit further by accounting for inter-institutional left-right divergence instead of intra-institutional left-right divergence.

The policy-specific *Left-right distance between the Council pivot and the EP median* variable is operationalised as follows. Mean government positions are created with help from the ParlGov data set (Döring and Manow, 2011). This data source provides cabinet information for the different member states. The upper and lower (5/7th and 2/7th percentile) Council pivots are then identified for each of the policy sectors, on the left-right dimension, with regard to the applicable years in the data set. EP median positions are generated from the distribution of MEPs and their national parties and European political groups in EP5 and EP6 (Hix, Noury and Roland, 2006; Hix and Noury, 2009). The EP median is identified by the same procedure as the

one applied in Crombez and Hix (2013). Each MEP is given the same position as its national party. After merging the EULIS data with the EP5 and EP6 background data (Hix, Noury and Roland, 2006; Hix and Noury, 2009), the median within each political group is calculated. Finally, the EP median is identified as the median political group on the left-right dimension for the different years and sectors in the EULIS data. The *Distance between EP median-Council pivot* variable is then created as the absolute distance between these actors within the two institutions. Since it is logical to assume that the Council pivot is the upper or lower (5/7th or 2/7th) actor that generates the largest distance to the EP median, the variable is further operationalised as the greatest absolute distance between the actors.

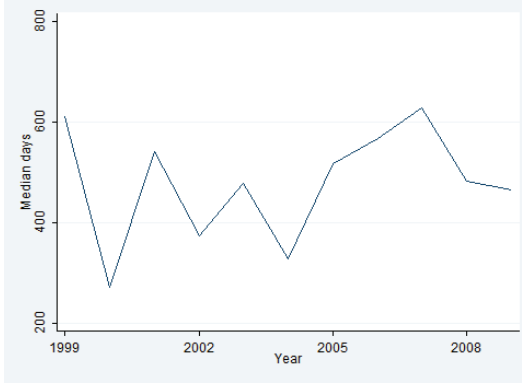
The *Salience* of a proposal is operationalised as the number of recitals in the original Commission proposal. Information on recitals is obtained from the EU database EUR-Lex. Recitals are listed reasons for adopting the particular dossier. The salience of a proposal is assumed to be positively correlated with the number of reasons provided for its adoption (Häge, 2007; Häge and Naurin, 2013). *Ministerial involvement* is based on agenda information related to the Council meetings. If a proposal is listed as a B-item on the Council agenda this indicates that the proposal could not be settled at the working group level or by COREPER. It thus needs ministerial discussion before it can be adopted. A-item listing on the Council agenda means, on the other hand, that the proposal can be adopted without discussion at the ministerial level. When this variable was created on the basis of the EUPOL raw data, some proposals lacked information on agenda type. In this case, all proposals that were subject to informal agreement by the Council were coded as B-items and proposals that did not need informal agreement as A-items. As Häge (2011b) argues, there is no need for ministers to endorse a proposal informally as an A-item before adopting it formally as an A-item (again), at a later stage. Häge (2011b) also shows that this notion is supported by the available data on both agenda points and informal agreements. In the analysis, *Ministerial involvement* is coded as 1 if the ministers were involved *at any time* in the legislative process and 0 otherwise. Legislation may shuffle back and forth between the Council level and the working group level. Hence, it is important to account for ministerial involvement throughout the entire legislative process. If a proposal was ever listed as a B-item on the Council agenda it is coded as ministerial involvement. This particular choice

of coding ensures that false A-items do not affect the analysis. In line with Häge (2011b, 43), initial B-items that become A-items and A-items that become B-items at a later stage are both considered as ministerial involvement in the analysis. Council informants cite “false” labelling as the explanation for the low level of B-items on the Council agenda at the adoption stage (Hagemann and De Clerck-Sachsse, 2007). A-items are often more controversial than B-items at the adoption stage but are still labelled as A-items in order to avoid extensive discussions in the meetings. This analysis thus controls for the existence of false labelling by accounting for all stages of the process and not just the adoption stage in the Council. A majority of the B-items in the data set were A-items when the proposals were adopted but were B-items earlier in the process (see Häge (2011b, 43-44) for a further discussion of coding issues with regard to A- and B-items).

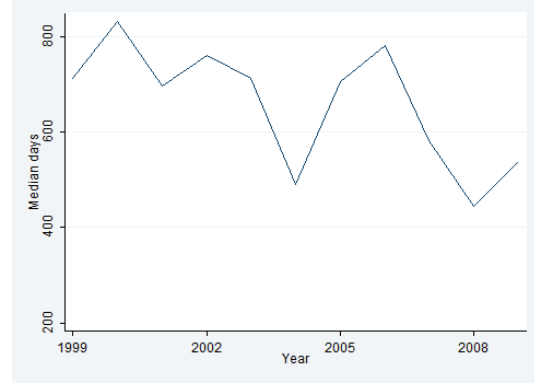
The control variables are coded as follows. The *Legal instrument* predictor is a dummy variable of proposal type where decisions form the reference category. *Enlargement* captures the effect of the Eastern enlargement and is coded 1 if a proposal was adopted after the 2004 enlargement and 0 otherwise. The *EP amendment* predictor is coded 1 if the EP made an amendment to the proposal and 0 otherwise. Policy differences are also controlled for through dummy variables for some of the most important policy areas.

Figure 4 shows how the median duration varies with the type of legal instrument over the years in the applied data sample. Decisions and regulations (Figure 4a)) have smaller median durations than directives (Figure 4b)). This tendency is also clear in the previous literature on the duration of EU decision making (Schulz and König, 2000; Hertz and Leuffen, 2011).

The choice of survival model for this analysis is a Cox proportional hazard model. This model is chosen because, in contrast to other survival models, it does not assume a specific parametric form for the distribution of time (the baseline hazard) until an event (an adoption) occurs (Cleves et al., 2008). The baseline distribution takes, in effect, the role of the constant term in other regression models. If the specified baseline distribution is appropriate for the data, the estimates are more precise. If the baseline distribution is not appropriate, the estimates will be biased. The advantage of the Cox model is thus that the regression coefficients β s can be estimated (by maximising the partial likelihood function) without any assumptions about the



(c) Decisions and regulations



(d) Directives

Figure 4: Median duration time

shape of the baseline hazard ($h_0(t)$) (Cleves et al., 2008). This may result in less precise estimates than a correctly specified baseline distribution but eliminates the risk of biased estimates caused by a non-appropriate baseline distribution. In the Cox regression model, the hazard rate of the j th subject is:

$$h(t|x_j) = h_0(t)exp(x_j\beta_x)$$

Test diagnostics show that this model specification is suitable for the data sample. The Grambsch and Therneau test for proportional hazards finds no substantial evidence for violation of the proportional hazard assumption with regard to the full model in the analysis. The log hazard ratio function can thus be treated as constant over time (Cleves et al., 2008). This again indicates that the predictors are multiplicatively related to the hazard. If this was not the case, a log-logistic model which assume a non-monotonic baseline hazard (where the hazard of adoption first increases and then decreases after a while) could have been a better alternative (Schulz and König, 2000; König, 2007, 2008). Another good solution would be to interact the non-proportional effects with a function of survival time (Box-Steffensmeier, Reiter and Zorn, 2003; Golub, 2007; Golub and Steunenberg, 2007). The latter is more than a quick statistical fix and complicates the interpretation of the results (Licht, 2011).⁵ With regard to the issue of

⁵*Salience* violates the proportionality criteria. But this violation is not fixed when the variable is interacted with $\ln(\text{time})$. The models are thus presented without this interaction term. See Table 4 in the appendix for a log-logistic regression model. Here, the effects of salience on duration are similar to the ones presented in the results section. This robustness test thus strengthens the results of the Cox models in Table 2.

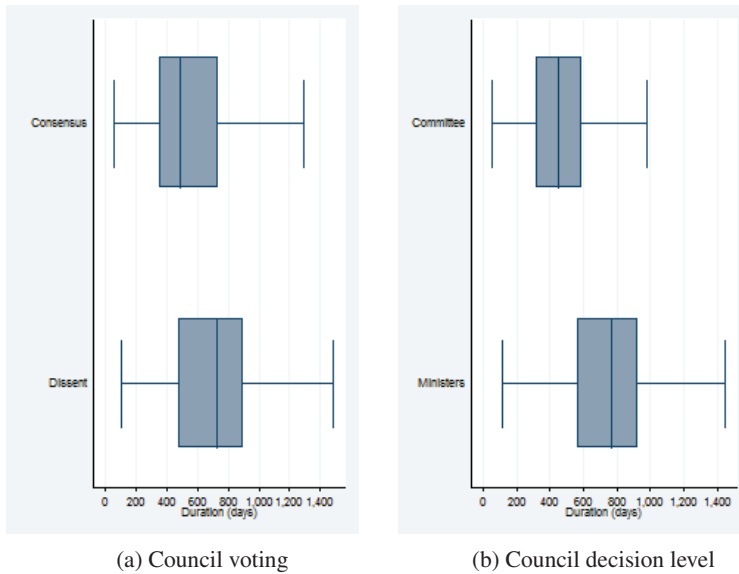


Figure 5: Median duration by *Dissent* and *Ministerial involvement*

censoring, the choice of including voting data in the analysis as well as the choice of time frame (ending in 2009) mean that almost all proposals in the data sample are adopted. Two proposals were, however, rejected at the end of the procedure. These proposals are thus right-censored on the date of rejection. Hence, there are 668 failures (adopted events in the data set).

Figure 5 shows the variation (without extreme outliers) in decision-making time with regard to two of the substantial variables, *Dissent* and *Ministerial involvement*, in the analysis. The band near the middle of the boxes is the median duration (in days). The left boarder of the box shows the 25th percentile and the right boarder shows the 75th percentile. 5a) shows that median duration for proposals with dissent are longer than median duration for consensual proposals. Similarly, 5b) illustrates that median duration varies with decision level in the Council. Committee decisions tend to have shorter decision-making processes than decisions that involve the ministerial level. Note that this difference is substantial as the boxes almost not overlap each other. While ministerial involvement technically implies one or more extra meetings to be scheduled, the technicality of one extra meeting before adoption should not result in 300 days longer median duration than proposals decided in the committees. Ministerial involvement can thus safely be assumed to indicate controversy in the decision making.

RESULTS

Table 2 shows the results for the semi-parametric hazard model. Five different variations of the model are estimated.⁶ The output is exponentiated coefficients (hazard ratios) where a hazard ratio below 1 indicates a negative effect on adoption time (the hazard of adoption decreases) while a hazard ratio above 1 indicates a positive effect on adoption time (the hazard increases). The main finding is that the previously not investigated preference-based indicators of conflict and controversy have robust effects on the duration of EU decision making. Proposals adopted with dissent at the Council voting stage have longer durations than proposals adopted with consensus. Greater distance between the Council pivot and the EP median prolongs the time it takes to adopt legislation. Proposals with ministerial involvement have longer durations than proposals that can be fully settled at lower levels. Duration is longer for salient proposals than for less salient proposals. These findings also hold after the inclusion of control variables which effects are already thoroughly discussed in the literature. $[H_1]$, $[H_2]$, $[H_3]$, and $[H_4]$ are thus confirmed by this analysis. Conflict and controversy, as measured by dissent at the Council voting stage, left-right distance between the pivotal actors within the Council and the EP, ministerial involvement, and salience, prolong EU decision making.

Before discussing the effects of the preference-based variables in more detail, a summary of the results for the control variables will be provided. This summary is based on Models 4 and 5 in Table 2. See Golub (1999); Schulz and König (2000); König (2007); Golub (2007); Hertz and Leuffen (2011), and Rasmussen and Toshkov (2011) for more subtle ways of showing the effects of these variables. The results of this analysis confirm the findings of the previous studies. First, an increase in group size significantly decreases decision-making speed when controlling for the other variables in this analysis. Proposals adopted after the 2004 enlargement take more time to agree upon than proposals adopted before the welcoming of more member states. The hazard of adoption after enlargement is 0.689 (95 percent confidence interval: 0.569-0.834) times the hazard of adoption before enlargement (estimate from Model 5). Second,

⁶Models including shared frailty (at the instrument level) have been tested (see Table 3 in the appendix). The models reported here show the best overall fit to the data.

Table 2: Determinants of duration

	(1)	(2)	(3)	(4)	(5)
	$_t$	$_t$	$_t$	$_t$	$_t$
Dissent	0.772*** (-2.77)	0.753*** (-3.04)	0.751*** (-3.04)	0.722*** (-3.41)	0.714*** (-3.55)
Left-right distance between Council pivot and EP median	0.659* (-1.85)	0.622** (-2.11)	0.515*** (-2.72)	0.529*** (-2.60)	0.592** (-2.15)
Ministerial involvement	0.447*** (-8.94)	0.428*** (-9.42)	0.427*** (-9.10)	0.697 (-0.86)	0.806 (-0.51)
Salience	0.996 (-1.38)	0.994* (-1.71)	0.993** (-2.03)	0.991** (-2.48)	0.991** (-2.40)
EP amendment				1.384*** (2.65)	1.715*** (4.50)
Ministerial involvement*EP amendment				0.569 (-1.31)	0.485* (-1.68)
Enlargement	0.677*** (-4.19)	0.613*** (-5.14)	0.633*** (-4.54)	0.641*** (-4.43)	0.689*** (-3.82)
Decisions		ref.cat. (.)	ref.cat. (.)	ref.cat. (.)	
Regulations		0.787** (-1.99)	0.777** (-2.08)	0.780** (-2.05)	
Directives		0.455*** (-6.86)	0.420*** (-7.37)	0.447*** (-6.73)	
Justice and home affairs			0.903 (-0.56)	0.871 (-0.76)	1.000 (-0.00)
Agriculture and fisheries			1.018 (0.15)	1.092 (0.72)	1.141 (1.07)
Internal market			1.386*** (3.57)	1.371*** (3.45)	1.203** (2.04)
Economic and financial affairs			1.062 (0.39)	1.119 (0.73)	1.098 (0.61)
Observations	669	669	669	669	669
Log likelihood	-3618.5	-3587.7	-3580.4	-3576.6	-3604.9

Dependent variable $_t$ = time to adoption. One outlier removed from the analyses after DFBETA and LMAX tests
Exponentiated coefficients (hazard ratios); t statistics in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

directives have, also as expected, longer durations than decisions and regulations. In Model 4, the hazard of adopting a directive is 0.447 (0.353-0.565) times the hazard of adopting a decision. The hazard of adoption is reduced by 55.3 percent when negotiating a directive. This indicates, as advocated by Schulz and König (2000), that directives are associated with larger preference divergence than decisions and regulations since directive proposals need to be incorporated into national law. Third, there is some evidence of variation in duration between the different policy areas. This variation can be explained by whether or not the policy area is a part of the functional core in the EU (Schulz and König, 2000; König, 2007). Internal market proposals have shorter durations than other proposals. This is in line with an assumption of more homogeneous preferences in core policy areas of the EU like issues related to the internal market. More homogeneous preferences decrease duration (Schulz and König, 2000).

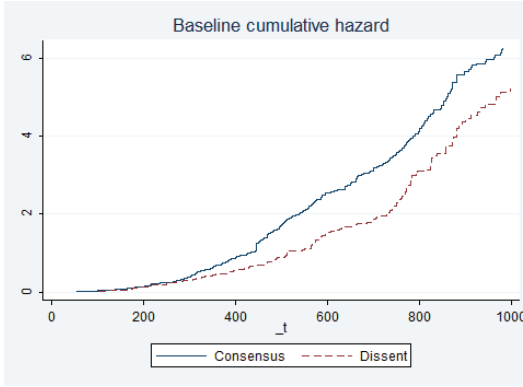
The analysis also controls for whether the EP chooses to amend a proposal. Interestingly, such behaviour of the EP decreases the time needed to reach political agreement. In Model 4, if the EP amends a proposal, the hazard of adoption increases by 38.4 percent. This finding is likely to be a product of the choice to explicitly investigate co-decision proposals where 1) the EP has more decision-making powers and 2) the incentives to delay adoption by issuing amendments are less. On consultation proposals, where the EP only has the power to delay legislation, amendments can be a utilised tool to delay the decision making. Furthermore, EP amendments are frequently observed in co-decision bargaining. In this data sample, the EP amends 81 percent of the included legislation. To further investigate the effect of EP amendments, an interaction term between *EP amendment* and *Ministerial involvement* are included in Models 4 and 5. In Model 5 (where the *Legal instrument* variable is omitted from the analysis), the hazard of adoption decreases with 0.485 if the ministers are involved and the EP has issued amendments to the proposal. This shows that the effect of *EP amendment* on the duration of EU decision making can be dependent on the effects of other decision-making variables.

After confirming the findings of the previous studies, the preference-based effects can be further explored. The effects of the new conflict-related variables are robust across all models with the exception of *Salience* in Model 1. The following discussion is based on Model 3 in Table 2. Preferences shown by a negative vote at the voting stage significantly increase dura-

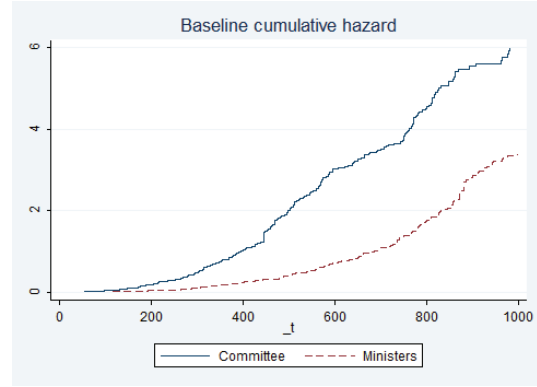
tion. The hazard of adopting a proposal with dissent at the Council voting stage is 0.751 (95 percent confidence interval: 0.625-0.904) times the hazard of adopting a consensual proposal. The hazard of adoption is thus reduced by 24.9 percent when there is dissent in Council voting. Hence, dissent in the Council has a negative effect on the duration of the decision-making process. Also, greater left-right distance between the pivotal actors across the legislative institutions increases the time needed to facilitate agreement under the co-decision procedure. The hazard of adoption decreases with a factor of 0.515 (0.319-0.831) when the distance between the Council pivot and EP median increases with one unit on the left-right dimension. Greater inter-institutional left-right dispersion is thus associated with longer decision-making processes in the EU.

The hazard of adopting a proposal with *Ministerial involvement* is 0.427 (0.356-0.513) times the hazard of adopting a proposal without such involvement. *Ministerial involvement* thus reduces the hazard of adoption by 57.3 percent when compared to a proposal settled on lower levels. This shows that proposals with ministerial involvement take more time to agree upon than proposals decided in the committees. The tendency shown in the descriptive box-plot of median duration is thus confirmed by the statistical analysis presented. Ministerial involvement has a substantial and delaying effect on the duration of co-decision proposals. This indicates that ministers get involved when conflictual policies are negotiated. Bargaining is also longer for highly salient legislation. The hazard of adoption decreases with a factor of 0.993 (0.986-0.999) when *Salience* increases with one unit on the 1-104 scale. Note, that these four indicators of conflict and controversy only correlate in a moderate manner. Hence, while all four variables measure some concept with regard to decision-making conflict they are not identical to each other. Together they paint a fuller picture of how preferences affect the duration of co-decision bargaining.

The baseline effects of two of the substantial variables, *Dissent* and *Ministerial involvement* are drawn in Figure 6 (estimates from Model 1). 6a) shows how the baseline cumulative hazard varies with Council voting. Proposals with dissent at the voting stage has a lower baseline hazard than consensual proposals. 6b) illustrates the baseline difference between ministerial decisions and committee decisions. The baseline hazard for ministerial involvement is clearly lower



(a) Council voting



(b) Council decision level

Figure 6: Baseline cumulative hazard

than the baseline hazard for proposals decided without such involvement. Altogether, both plots show that conflict and controversy increase decision-making time under the co-decision procedure.

CONCLUSION

This paper contributes to the discussion on the determinants of the duration of EU decision making by especially investigating the effect of preferences. The findings show that preference-based variables that are previously not investigated in the large N-literature on the duration of EU decision making have a robust and substantial effect on the decision-making process. Preference divergence, as measured by left-right dispersion across the legislative institutions, dissent at the Council voting stage, and ministerial involvement, slow down the law-making in the EU. Furthermore, the level of salience, which also can be an indicator of bargaining controversy, affects decision-making time. Highly salient legislation is associated with longer bargaining. These effects also hold when controlling for variables like legal instrument, policy area and the 2004 enlargement. The findings with regard to the control variables are also robust and confirm the results of the previous studies. This means that the new indicators of conflict and controversy in the Council can contribute significantly to the debate on the determinants of the duration of EU decision making.

Hertz and Leuffen (2011) recommend that future research on EU legislative efficiency should focus more strongly on the issue of preferences. This is the motivation for the analysis presented in this paper. However, the research design is also taken one step further by accounting for the effect of inter-institutional conflict on the duration of EU decision making. The quantitative analysis conducted on 670 co-decision proposals adopted between 1999-2009 shows specifically that preference divergence within the Council and across the Council and the EP have a robust and delaying effect on the duration of EU decision making.

The results presented in this paper indicate that proposals with greater inter-institutional preference divergence are more prone to legislative gridlock in the sense of longer decision-making stages. This finding is supported by the analysis presented by Crombez and Hix (2013) which shows that an increase in the gridlock interval (calculated from the left-right positions of the pivotal and extreme member states and the median members of the EP and the Commission), decreases EU legislative activity. This means that greater gridlock intervals reduce the number of laws produced in the EU. Hence, a task left for future research would be to investigate a possible tendency of watered down content in the legislation adopted to address whether the qualitative content of EU legislation also can be a product of legislative gridlock (Hix, 2008). The analysis presented in this analysis has shown that non-salient legislation is associated with shorter decision-making stages than salient legislation. Non-salient legislation may be an indicator of watered down proposals. Future research could hence look closer at how the qualitative content of a dossier affects the duration of EU decision making.

Table 3: Cox model with shared frailty at the instrument level: Determinants of duration

	(1)	(2)	(3)
	$_t$	$_t$	$_t$
Dissent	0.752*** (-3.05)	0.750*** (-3.05)	0.720*** (-3.44)
Left-right distance between Council pivot and EP median	0.622** (-2.11)	0.515*** (-2.72)	0.531*** (-2.59)
Salience	0.994* (-1.70)	0.993** (-2.02)	0.991** (-2.48)
Ministerial involvement	0.429*** (-9.40)	0.428*** (-9.08)	0.703 (-0.84)
EP amendment			1.399*** (2.73)
Ministerial involvement*EP amendment			0.564 (-1.33)
Enlargement	0.614*** (-5.14)	0.632*** (-4.55)	0.641*** (-4.43)
Justice and home affairs		0.910 (-0.52)	0.876 (-0.73)
Agriculture and fisheries		1.020 (0.17)	1.097 (0.75)
Internal market		1.379*** (3.51)	1.362*** (3.38)
Economic and financial affairs		1.058 (0.37)	1.118 (0.73)
Shared frailty instrument level θ	0.0953***	0.115***	0.0985***
Observations	669	669	669
Log likelihood	-3593.7	-3586.8	-3582.7

Dependent variable $_t$ = time to adoption. One outlier removed from the analyses after DFBETA and LMAX tests
Exponentiated coefficients (hazard ratios); t statistics in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 4: Log-logistic model (AFT model): Determinants of duration

	(1)	(2)	(3)	(4)	(5)
	$_t$	$_t$	$_t$	$_t$	$_t$
Dissent	1.171*** (3.67)	1.164*** (3.64)	1.164*** (3.66)	1.163*** (3.60)	1.179*** (3.78)
Left-right distance between Council pivot and EP median	1.188* (1.69)	1.123 (1.19)	1.232* (1.90)	1.234* (1.91)	1.323** (2.45)
Salience	1.004*** (2.79)	1.004** (2.55)	1.004*** (2.83)	1.004*** (2.79)	1.005*** (3.33)
Ministerial involvement	1.675*** (12.17)	1.663*** (12.43)	1.647*** (11.86)	1.493** (2.13)	1.426* (1.85)
EP amendment				0.988 (-0.22)	0.909* (-1.68)
Ministerial involvement*EP amendment				1.109 (0.54)	1.187 (0.87)
Enlargement	1.271*** (5.63)	1.269*** (5.79)	1.235*** (4.95)	1.237*** (4.96)	1.258*** (5.19)
Decisions		ref.cat. (.)	ref.cat. (.)	ref.cat. (.)	
Regulations		1.120** (2.14)	1.125** (2.24)	1.124** (2.23)	
Directives		1.363*** (6.13)	1.388*** (6.43)	1.386*** (6.29)	
Justice and home affairs			1.078 (0.92)	1.077 (0.91)	0.972 (-0.34)
Agriculture and fisheries			1.043 (0.80)	1.042 (0.78)	1.027 (0.47)
Internal market			0.892*** (-2.75)	0.893*** (-2.73)	0.904** (-2.36)
Economic and financial affairs			0.946 (-0.80)	0.947 (-0.77)	0.926 (-1.06)
γ	0.275***	0.265***	0.263***	0.263***	0.273***
Observations	669	669	669	669	669
Log likelihood	-484.0	-460.7	-455.2	-455.1	-479.2

Dependent variable $_t$ = time to adoption. One outlier removed from the analyses after DFBETA and LMAX tests
Exponentiated coefficients (time ratios >1 = increase in time); t statistics in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Incomplete information and bargaining in the EU: An explanation of first-reading non-agreementsⁱ

Vibeke Wøien Hansenⁱⁱ

ABSTRACT

According to the logic of standard veto bargaining models with complete information, bargaining in the European Union (EU) should never reach the second reading of the ordinary legislative procedure (co-decision). Even so, non-agreement at the first reading occurs frequently in EU decision making. How can this be explained? Drawing upon game theory on bargaining with incomplete information, two specific predictions with regard to the occurrence of first-reading non-agreements can be generated. First-reading agreements are less likely to occur (1) the greater the distance between the ideal point of the Council and the ideal point of the European Parliament (EP), and (2) the greater the salience attached to the proposal. This paper combines positional and proposal-specific data and finds robust support for both hypotheses in two different empirical tests.

Keywords: Bargaining, Council, Decision Making, EP, Incomplete information, Preferences, Salience

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The basic game-theoretic model of veto bargaining infers that when all actors are completely informed about the preferences of the other players, vetoes should not occur. This is because the agenda setter can choose to propose the policy closest to its own ideal point that will also be approved by the veto player (Cameron and McCarty, 2004). According to this logic, bargaining with the possibility of extending to more than one round would always be completed in the first round. The necessary assumption here is complete information. Studies on European Union (EU) decision making usually assume that actors have complete information with regard to the other actors' positions in the bargaining (Tsebelis, 1994; Steunenberg, 1994; Crombez, 1996; Moser, 1996; Scully, 1997; Tsebelis and Garrett, 2000; Crombez and Hix, 2013).

This assumption makes it easier to model the bargaining process, but nevertheless, some empirics are contrary to it. According to the basic veto bargaining models, when the main decision makers in the EU (the Council of Ministers and the European Parliament (EP)) have complete information with regard to each other's preferences on co-decision legislation, we should never observe legislation that is adopted at later stages than the first reading. This because a "no agreement" under the first reading is costly and can be prevented by striking a deal that suits the configuration of preferences within the Council and the EP. However, legislation is frequently adopted at later stages than the first reading. In the 5th and 6th European Parliaments (1999-2009) 53 percent of the co-decision proposals were completed at the first reading (Toshkov and Rasmussen, 2012).

Hence, the assumption of complete information can be relaxed in the EU context. While the Council presidency keeps track of the various Council members' preferences on a particular piece of legislation, the presidency is not necessarily informed of the exact preference distribution in the EP. The same holds for the party group leaders within the European Parliament (EP). They may have control over the preference configuration within their own group but are likely to be less informed on the preference configuration within the Council and within other party groups inside the EP. While the EP negotiates in public, Council debates are traditionally conducted in a less transparent manner (Stasavage, 2004). This means that the Council may know more about the EP than the EP knows about the Council. If preferences were completely known inside and across institutions, we would only observe first-reading agreements as

bargaining costs increase with the number of decision-making rounds. Nevertheless, empirics show that agreement is reached at all stages in the co-decision procedure. Tsebelis and Garrett (2000) argue that complete information only exists in the final rounds of EU decision making. By then the actors have had the opportunity to learn about each other in previous rounds of bargaining.

This paper thus relaxes the assumption of complete information in EU bargaining in order to explain incidences where first-reading agreement cannot be reached across the institutions. Drawing upon veto bargaining theory with incomplete information (Cameron and McCarty, 2004), two specific predictions regarding the occurrence of first-reading non-agreement can be generated. First-reading agreements are less likely to occur (1) the greater the distance between the Council pivot and the median position of the European Parliament (EP) and (2) the greater the salience attached to the proposal. Both expectations are tested by two different tests in this paper. The first test utilises positional data on 183 issues nested in 64 proposals adopted before and after the 2004 enlargement (Thomson et al., 2006, 2012). The second test merges various data sources at the proposal level in order to investigate whether the expectations also hold for a larger data sample which includes other operationalisations of the substantial predictors and important control variables (Häge, 2007, 2011a; König and Luig, 2012). Both tests find robust evidence for the empirical predictions generated from veto bargaining models with incomplete information.

First-reading agreements are negatively associated with high salience and large differences in preferences between the EP median and the Council pivot. Hence, while other studies on early agreement in the EU emphasise the democratic drawbacks of this type of decision making (e.g. Farrell and Heritier, 2003; Häge and Kaeding, 2007; Reh et al., 2013), this analysis contributes to the positive aspect of the debate as highly salient and controversial cases are associated with more transparent decision-making modes.

The remainder of the paper is structured as follows. The next section presents a brief literature review on early agreement and co-decision bargaining in the EU. The theoretical framework based on veto bargaining under incomplete information is outlined in section 3. This framework is based on Cameron and McCarty (2004). The data and method employed are addressed in sec-

tion 4. The analysis utilises data from both the issue level and the proposal level and thus draws upon a variety of data sources (Thomson et al., 2012; Häge, 2011a; König and Luig, 2012). The results from the logistic regression analyses are presented in section 5. Both tests provide robust support for the theoretical framework. The last section draws conclusions and discusses the impact of the identified micro-level factors on bargaining and legislative agreement across the EU institutions.

CO-DECISION BARGAINING AND EARLY AGREEMENTS IN THE EU

The co-decision procedure was introduced under the terms of the Maastricht Treaty (1992). One of the main reasons for establishing this procedure was to empower the EP and hence to increase the democratic legitimacy of the EU (Crombez, 1997). The reform of the co-decision procedure by the Amsterdam Treaty in 1999 not only made the EP and the Council of Ministers (hereafter the Council) coequal legislators, it also paved the way for early agreements in the first reading of the procedure (Farrell and Heritier, 2003). About one-third of all dossiers decided under this legislative procedure in the fifth term of the EP (1999-2004) were so-called fast track legislation completed at the first reading (Rasmussen, 2011). The growing number of first-reading agreements has spurred discussion on possible negative consequences on democracy (Farrell and Heritier, 2003, 2004; Shackleton and Raunio, 2003). First-reading agreement means that the Council and the EP have reached an informal compromise before the legislation reaches the plenary stage in the EP at the first reading stage. This informal process is called “trialogues” since representatives from the three legislative institutions, the Commission, the EP and the Council, are involved. Bargaining in trialogues has been criticised for lack of transparency and for shutting minority interests out from the negotiating table (Farrell and Heritier, 2003; Häge and Naurin, 2013).

Despite this type of criticism, empirical studies investigating factors that determine early agreements paint a mixed picture of the democratic consequences of fast-track legislation. On the positive side for democratic legitimacy, early agreements are less likely to take place the greater the distance between a rapporteur from a large party group and the EP median (Ras-

mussen, 2011). Furthermore, the Council presidency cannot exploit informal negotiations in trialogues in order to secure policy gains (Häge and Naurin, 2013; Reh et al., 2013). Policies reached early on are no closer to the positions held by the main informal actors, the Council presidency and the EP rapporteur's party group, than policies reached at later stages (Rasmussen and Reh, 2013). There is also evidence for the EP, under co-decision, having more influence on early agreements than on agreements reached in the conciliation committee at the end of the procedure (Häge and Kaeding, 2007). The logic behind this empirically supported theoretical argument is that the Council prefers to conclude early over agreement in the conciliation committee, in which costs are greater for the Council than for the EP (due to the former's limited time and resources).

Although the above findings do mitigate the criticism of fast-track legislation to some extent, several studies also find negative consequences of early agreements on democracy. For instance, when the legislative workload and the number of negotiators increase, decisions are more likely to be taken at an early stage (Reh et al., 2013). While the efficiency gains of concluding early are indisputable, the legislative transparency and minority legitimacy suffer. The democratic accountability is also reduced due to the ministers being less involved in bargaining on fast-track legislation than in bargaining at later stages of the co-decision procedure (Häge and Naurin, 2013). Instead, Council bureaucrats negotiate early agreements on behalf of the ministers.

This paper endeavours to contribute to this debate by particularly investigating the effects of preference divergence and salience on early agreements. While preference divergence and salience have been investigated thoroughly for other research questions related to EU bargaining and decision making (e.g. Thomson et al., 2006; Häge, 2007; Schneider, Finke and Bailer, 2010; Thomson, 2011; Aksoy, 2012; Cross, 2013), the effects of these variables can be further explored in the setting of early agreements.¹ In terms of democratic accountability, it would be preferable if highly salient and controversial cases were to be decided in a more transparent way than informal bargaining in trialogues. Previous studies on fast-track legislation provide some evidence that greater preference divergence reduces the probability of early agreements. Rasmussen (2011) finds that greater distance between the EP rapporteur (who is in charge of

¹Rasmussen and Reh (2013) also use salience-weighted positional data in their analysis but their dependent variable is legislative bargaining success and not early agreement.

drafting the proposal content inside the EP) and the EP median on the left-right dimension is negatively associated with early agreements. This finding is contingent on the rapporteur stemming from one of the large party groups within the EP. Reh et al. (2013) show that greater policy distance between the national political parties of the rapporteur and the presiding minister of the responsible Council formation at the time of political agreement reduces the probability of trialogue bargaining. This effect is small and only significant at the ten percent level. Reh et al. (2013) also investigate how salience in terms of media coverage affects the probability of early agreements. While the expected effect is negative, this study shows that early agreements are equally likely to involve salient proposals as agreements at later stages of the co-decision procedure.²

The analysis in this paper builds upon this research and seeks to explicitly investigate preference divergence and salience as key indicators for explaining first-reading non-agreement. The choice to single out these indicators is based on veto bargaining models with incomplete information (Cameron and McCarty, 2004). If the actors have complete information, it follows that all legislative dossiers should be decided as early agreements. This is still not the case in the EU although there has been a notable increase in fast-track legislation. Testing the directly applicable predictions from veto bargaining theory is the first contribution that this paper makes to the existing literature. The second contribution to the literature is refined measurement of the key indicators. Both indicators are tested in two different ways, and each indicator thus has two different operationalisations. In the first test each member state's issue position, the EP position, and the salience the actors assign to their issue positions are measured on a 0-100 scale by policy experts (Thomson et al., 2006, 2012). In the second test, salience is measured as the number of recitals listed as reasons for adopting the relevant legislative act (Häge, 2007; Häge and Naurin, 2013). While Rasmussen (2011) and Reh et al. (2013) identify the EP rapporteur and the EP median or the EP rapporteur and the presiding minister as the key negotiators, this analysis singles out the EP median and the Council pivot under qualified majority voting (QMV) as the key negotiators (Crombez and Hix, 2013). This choice is based on the voting

²A competing expectation of salience (especially when measured by media coverage) would be a positive relationship with early agreement. The more media attention, the more demand for urgent action. However, Reh et al. (2013) find no evidence for such a mechanism.

rules in the respective institutions. The EP needs a simple majority to pass acts in the first reading while the Council usually needs a qualified majority. Furthermore, by employing data on EU actor preferences which vary by year and policy area (see (König and Luig, 2012)), the preference distance variable included in this analysis has more variation than the ones included in Rasmussen (2011) and Reh et al. (2013) (which use NOMINATE scores (Hix, Noury and Roland, 2006) and expert survey data (Benoit and Laver, 2006), respectively). The research design presented after the theoretical framework is thus carefully designed to test the empirical implications of veto bargaining models with incomplete information.

THEORETICAL FRAMEWORK

This theory section seeks to explain why, under the assumption of incomplete information, some co-decision proposals are adopted in the first reading and others are not. The theoretical foundations are based upon standard models of veto bargaining which generally assume that the actors have Euclidean preferences (Cameron and McCarty, 2004). That is, they prefer the policies closest to their own ideal point to policies farther away. For simplicity, the ideal points of the different actors as well as the location of the existing policy (the status quo), and the new policy are presented in a one-dimensional space.

The standard models show that if all actors are completely informed about the preferences of the other actors, vetoes should not occur. This proposition holds regardless of whether the setting is one-shot veto bargaining or sequential veto bargaining. In the complete information veto game, the agenda setter is completely informed of the veto player's preferences and thus knows which bills will be successful. The agenda setter can propose its most preferred bill from the set of bills that the veto player will find acceptable (Cameron and McCarty, 2004). Consider Figure 1. Given the ideal point of the agenda setter (A) and the veto player (V), V will veto any bill located to the left of the agenda setter and A will not propose any bill located to the right of the veto player. A successful bill thus has to be located within the interval between the agenda setter and the veto player.

Similarly in the EU setting, if all actors have complete information with regard to the pref-

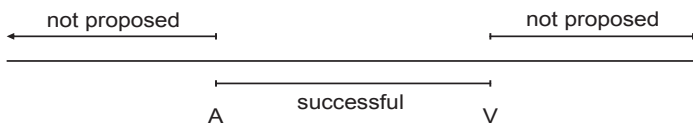


Figure 1: Veto game with complete information: Any successful bill will be located within the interval between the agenda setter (A) and the veto player (V)

erences of the other actors, first-reading non-agreement under co-decision should not occur. Under the assumption of complete information, the EP should present the Council with amendments to the Commission proposal that it knows that the Council will accept. But first-reading non-agreements do occur. In line with veto bargaining models, relaxing the assumption of complete information is necessary to explain the incidences of non-agreement. If the EP has incomplete information, non-agreement may occur due to the EP overestimating its ability to extract concessions from the Council.

The theoretical assumption of incomplete information in EU bargaining can be defended empirically. While the EP negotiates in public, Council negotiations are traditionally undertaken behind closed doors (Stasavage, 2004).³ Hence the Council has much more information about the preference configuration within the EP than the EP has about the preferences of the different Council members. Incomplete information games require two conditions to be in place (see Fearon (1995)). The first one is uncertainty. At least one of the main actors needs to have doubts with regard to the type of the other actor. The secrecy of Council negotiations ensures

³In July 2006 the Council started to open more of its debates to the public. These open sessions are available as web-cast transmissions at the Consilium webpage.

that the EP cannot be certain of the positions of the pivotal actors within the Council. The Council therefore has private information. The second condition is incentives to present its own type wrongly in order to extract concessions from the other main actor. If the preference distribution within the Council is significantly different from the preference distribution within the EP, the Council can clearly benefit from signalling a more extreme position in order to obtain a policy closer to its own ideal point. In such situations, the Council will prefer not to reveal its (true) private information to the EP.

In the following, which is based on veto models with (in)complete information (Cameron and McCarty, 2004), the Council and the EP are presented as unitary actors. The ideal point of the Council is assumed to be the position of the pivotal government in the Council under co-decision. Since the Council usually decides by qualified majority voting (QMV) under co-decision, the government that is pivotal for a rightward (leftward) move is located to the left (right) of the government with the median vote. In practice, the government with the 5/7th vote is pivotal for a policy move to the left and the government with the 2/7th vote is pivotal for a policy move to the right if the status quo is located as illustrated in Figure 2. The EP votes by simple majority in the first reading under co-decision. Hence, given the assumption of unidimensionality, the pivotal member of the EP (MEP) is the median member of this institution (Crombez and Hix, 2013).⁴ After the Commission has initiated a legislative proposal, the EP can present amendments to the proposal that the Council can choose to accept. According to the logic set out in Figure 1, the EP thus serves as the agenda setter and the Council as the veto player in first reading co-decision bargaining.

Figure 2 shows EU bargaining with complete and incomplete information. Here, the policy outcome (the adopted bill) is denoted as B and the Council position is either denoted as M or E depending on whether the pivot is moderate (M) or extreme (E). Figures 2a) and b) are possible scenarios when the EP is completely informed about the preference configuration within the Council. If the EP knows that the Council pivot is moderate (Figure 2a)), the EP will propose amendments to the Commission proposal that reflect its own ideal position. Since the Council

⁴Crombez and Hix (2013) argue that since the EU uses strict germaneness rules (amendments should be on-topic only), decision making on one dimension can be studied as if it were the only relevant dimension.

a) Complete information: Council = moderate (M)



b) Complete information: Council = extreme (E)



c) Incomplete information: Council either moderate (M) or extreme (E)



Figure 2: Bargaining game with complete and incomplete information: Council pivot either moderate (M) or extreme (E)

pivot prefers such a policy outcome over the status quo, the adopted bill will be identical to the EP position. However, the EP will be worse off if the Council pivot is extreme (Figure 2b)). An extreme pivot will not accept EP's ideal position and the adopted bill will be located between the position of the Council pivot and the EP position. Note, that the bill adopted in Figure 2b) is closer to the moderate Council pivot's position than the bill adopted in Figure 2a) when the EP knows that the Council pivot is a moderate type. This provides the Council with an incentive not to reveal its true type in the early stages of inter-institutional bargaining.

Under incomplete information, the EP cannot determine with certainty what type of Council the Council really is. To simplify, the EP does not know whether the Council pivot has an extreme or moderate position. The set of bills an extreme Council pivot prefers is only a subset of the bills that a moderate Council pivot prefers. Figure 2c) illustrates this argument. Bill B_m , which is the outcome of bargaining when the Council pivot is moderate, is clearly preferable to the EP than bill B_e which is the outcome of bargaining when the Council pivot is extreme. However, the EP may falsely believe that the Council pivot is moderate and propose B_m which the extreme Council pivot will then refuse to accept.

The veto bargaining models with incomplete information generate several predictions of when vetoes are more likely to occur. Two of these predictions can be directly used to explaining why first-reading non-agreements under co-decision do happen. The first of these two predictions is that vetoes are more likely to occur the larger the difference between the ideal points of the pivotal actors (Cameron and McCarty, 2004). In the EU setting, this prediction can be transferred to first-reading non-agreement under co-decision. Figure 2 can easily illustrate why this is the case (for the mathematical proof see Cameron and McCarty (2004)). If the distance between the EP pivot and the Council pivot increases, the Council pivot is more likely to be extreme than to be moderate (vis-a-vis the EP). Under the condition of incomplete information the EP cannot know with certainty whether the Council is moderate or extreme. Still, the EP can benefit the most from proposing a bill close to its ideal position. Recognising that later rounds of decision making are costly to the Council (Häge and Kaeding, 2007), the EP knows that there is a probability that the Council will accept its proposal. The probability of the Council accepting the EP proposal is reduced when the distance between the two policy makers increases. Hence, larger preference heterogeneity can be assumed to reduce the probability of first-reading agreements in the EU.

The second prediction that can be borrowed from veto bargaining models with incomplete information is the result that the importance the actors assign to the bill matters for the probability of vetoes occurring or not. Given disagreement between the pivotal actors, more salient bills are more likely to be vetoed than less important ones and more likely to be re-passed if vetoed (Cameron, 2000). This is due to the agenda setter's incentive to put forward more risky proposals if the agenda setter cares highly about the policy content. Bargaining is assumed to be tougher for important bills. The second prediction is generated from sequential veto bargaining models while the first prediction holds for both one-shot games and sequential bargaining (Cameron and McCarty, 2004).

In the EU setting, the two predictions from the veto bargaining models can be transformed into a theoretical framework that seeks to explain the frequent occurrence of first-reading non-agreement under the co-decision procedure:

H_1 First-reading agreement is less likely to occur the greater the distance between the ideal

points of the Council pivot and the EP median.

H_2 First-reading agreement is less likely to occur the greater the importance attached to the legislative proposal.

The statistical analysis in this paper tests whether these two predictions can contribute to explaining why some proposals can be agreed upon at the first-reading stage of the co-decision procedure while others cannot. Figure 3 shows how the theoretical framework relates to the research design.

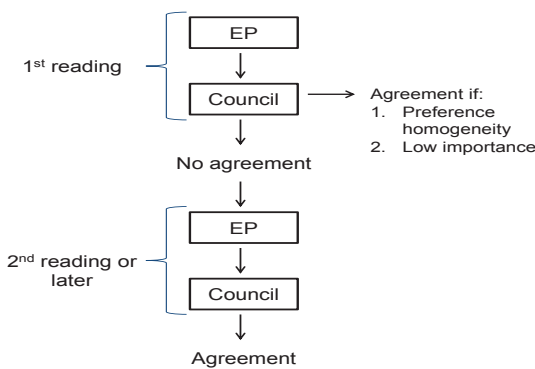


Figure 3: Co-decision bargaining under incomplete information

DATA AND METHOD

The analysis in this paper runs two different tests of the hypothesised relationships between the key independent variables and the dependent variable *First-reading agreement*. The first test is based on positional data taken from the “Decision Making in the European Union (DEUI/II)” project (Thomson et al., 2006, 2012). In this data set, the issue-specific positions of the different member states, the Commission, and the European Parliament are measured by policy experts on a 0-100 scale reflecting the policy distances between the different actors. The reference point (similar to the concept of status quo), the policy outcome, and the salience that

the actors attach to the issues are also identified with this scale. The above data were collected through 349 semi-structured interviews with key informants. Altogether the data set contains 331 controversial issues nested in 125 legislative proposals that were introduced between 1996 and 2008 (Thomson et al., 2012). For the purpose of this paper, only co-decision proposals are relevant. This reduces the data set to 183 issues raised by 64 legislative proposals.

The second test utilises the European Union Policy-Making (EUPOL) data set and the subsample and extension to the EUPOL data employed in Häge (2007).⁵ The EUPOL data set covers all information contained in the European Commission PreLex database for the years between 1975 and 2009 (Häge, 2011a). The second test also employs data taken from the European Legislation and Ideological positions in policy Spaces (EULIS) data set (see König and Luig (2012)) and the monthly summaries of Council acts.

The dependent variable, *First-reading agreement*, is used in both tests and is taken from the EUPOL data set. This binary variable is coded 0 if agreement was reached at later stages than the first reading and coded 1 if only one reading was needed to adopt the relevant legislation. While Rasmussen (2011) also codes first-reading agreement as early agreement, Reh et al. (2013) measure early agreements as first and early second-reading agreements that include an informal compromise between the EP and the Council. While the latter measurement is very efficient in the sense that it removes uncontroversial first-reading agreements from the early agreements category, it is not suitable for the theoretical framework employed in this paper which focuses on why not all proposals are adopted at the first-reading stage. However, redoing the analysis with early second-reading agreements (where the EP has accepted the Council's common position without amendments) as part of the early agreement category yields similar results to those presented in this paper. To control for noncontroversial first-reading agreements, the second test includes a variable that measures whether the EP made any amendments to the proposal in question.

The independent variable employed in the first test is a combination of the two key variables *Salience* and *Distance between EP median-Council pivot*. Each position is weighted by the

⁵The data sample in Häge (2007) consists of 439 legislative proposals on internal EU policies (not international agreements). Due to the research question only the co-decision proposals of this sample are applicable to the analysis in this paper.

salience the actor attached to the issue. In practice, all issue positions were multiplied by the respective salience estimates and then divided by 100. This ensures that the results are not driven by extreme positions which are not prioritised by the actors that hold them (Aksoy, 2012; Cross, 2013). The Council pivot is identified by taking the 5/7th percentile of the salience-weighted positional distribution vis-a-vis the reference point. This is the pivotal actor when the Council decides by QMV which it usually does under co-decision. If the reference point is 0, the Council pivot is located to the left hand side of the scale. If the reference point is 100, the Council pivot is located to the right hand side of the scale. After this the absolute salience-weighted distance between the Council pivot and the EP position is calculated.

There are some missing positions in the DEUI/II data set. Failure to account for this may seriously bias the results (Little, 1992; Honaker and King, 2010). In the DEU sub-sample employed in this paper, 39 of 75 pre-enlargement and 42 of 108 post-enlargement issues have complete positional information. Even though the level of missingness is not very high, the analysis employs the iterative imputation method *Multiple imputation using chained equations* (MICE) for robustness purposes (see van Buuren, Boshuizen and Knook (1999) for a detailed account of MICE). Here, the missing values are imputed on an issue-by-issue basis where predictive mean matching (PMM) selects the predicted values closest to the observed ones. The other observed positional values on one issue are thus used to predict the missing values on that particular issue. The analysis is run with both MICE and list-wise deletion of missing values.⁶ Descriptive statistics for both the imputed and unimputed data sets are presented in Table 1.

	N	Mean	S.d.	Min	Max
<i>Dependent variable</i>					
First-reading agreement	183	0.31	0.46	0	1
<i>Independent variables</i>					
Issue level: List-wise deletion					
Salience-weighted positional difference EP median-Council pivot	174	41.3	31.2	0	100
Issue level: MICE imputation					
Salience-weighted positional difference EP median-Council pivot	183	40.3	32.1	0	100

Table 1: Descriptive statistics: Co-decision proposals from DEUI/II

⁶With regard to the application of MICE in this analysis, a standard number of five imputed data sets are created and the first imputation is drawn after an initial burn-in-period of 200 iterations.

The second test is conducted on 247 co-decision proposals introduced between 2000 and 2003 (Häge, 2007). The independent variables in this test are coded as follows. The *Distance between EP median-Council pivot* is based on the EULIS data set which combines issue-specific Comparative Manifesto Project (CMP) data with the EU legislative agenda. While political parties are relatively constant in their ideological positions on each issue, the relative importance of each issue on the EU legislative agenda is not fixed. By weighting issues by their yearly prominence on the legislative agenda for the different EU policy sectors, more time and area variation is secured. The issue-specific party positions are then aggregated to a left/right and national/supranational dimension (König and Luig, 2012).

On the basis of this information, the upper and lower (5/7th and 2/7th percentile) Council pivots are identified for each of the policy sectors, on both policy dimensions, with regard to the applicable years in the data set. The Council pivot is calculated from the year and sector-specific distribution of mean government positions within the Council. Data on the composition of national governments is taken from the ParlGov data set (Döring and Manow, 2011). The EP median is identified by the same procedure as Crombez and Hix (2013). Each member of the EP (MEP) is assigned the same position as its national party. To combine MEP party information with the EULIS data set, background data from the data set used in Hix, Noury and Roland (2006) is utilised. After merging the data, the median within each political group is calculated. Finally, the EP median is identified as the median political group on each dimension for the different sectors and years in the EULIS data. The *Distance between EP median-Council pivot* variable is then created as the absolute distance between these actors within the two institutions. Since it is logical to assume that the Council pivot is the upper or lower (5/7th or 2/7th) actor that generates the largest distance to the EP median, the variable is further operationalised as the largest absolute distance between the actors.⁷

The *Saliency* of a dossier is measured as the number of recitals in the original Commission proposal. Recitals are listed reasons for adopting the particular piece of legislation and the importance of a piece is assumed to be positively correlated with the number of reasons provided

⁷Since the *Distance between EP median-Council pivot* variable has more variation when measured on the pro-anti integration dimension, the logit models presented in the results section include this version of the distance variable. See the appendix for the results when this variable is generated on the basis of the left-right dimension. The results are similar although less robust.

for its adoption (Häge, 2007; Häge and Naurin, 2013).⁸

The variables *More than one policy area*, *Any EP amendment*, *First-reading Council consensus*, *Ministers involved up to first Council decision* and dummy variables for the largest policy areas are included as controls in the second test of the hypothesised relationships. These variables take the value 1 if the proposal is subjected to the labelled characteristic and 0 otherwise. All the control variables except for *First-reading Council consensus* are taken from the EUPOL data set (Häge, 2007, 2011a).

	N	Mean	S.d.	Min	Max
<i>Dependent variable</i>					
First-reading agreement	247	0.34	0.47	0	1
<i>Independent variables</i>					
Proposal level					
Distance between EP median-Council pivot	247	0.99	0.34	0.35	1.91
Saliency	247	15.64	9.24	1	62
More than one policy area	247	0.68	0.47	0	1
Any EP amendment	247	0.90	0.30	0	1
First-reading Council consensus	247	0.83	0.37	0	1
Ministers involved up to first Council decision	247	0.71	0.45	0	1
Internal market, Consumers and Tourism	247	0.20	0.40	0	1
Transport-Telecommunications	247	0.27	0.44	0	1
Environment	247	0.15	0.35	0	1
Economic and Financial Affairs	247	0.12	0.32	0	1

Table 2: Descriptive statistics: Data from EUPOL/EULIS/Council monthly summaries

First-reading Council consensus is based on voting information from the monthly summaries of Council acts.⁹ The variable is coded as 1 if the proposal was decided by consensus and as 0 if one or more member states voted against or abstained. While information concerning voting on final acts is enough for first-reading agreements, records from the first-reading (non-final) voting stage are needed for acts adopted at later stages. The latter information is more scarce for the time frame in this paper, so this variable contains some measurement bias. Even so, it may be useful to control for Council consensus since this indicator can measure controversy variation from proposal to proposal and not only between year and sector as cap-

⁸Reh et al. (2013) use recitals to measure the complexity of a proposal but find no significant effect of this variable on early agreement in their analysis.

⁹The monthly summaries: <http://www.consilium.europa.eu/documents/legislative-transparency/>.

tured by the *Distance between EP median-Council pivot* variable.¹⁰ The latter argument rests on the assumption that negative Council votes are synonymous with controversy in the sense that preferences had to be particularly compromised in the bargaining.

The descriptive statistics of the variables included in the second test are shown in Table 2.¹¹

Both tests employ a logistic regression model due to the binary nature of the dependent variable *First-reading agreement*. Test diagnostics confirm that the logit models are appropriately specified and fitted to the data. Since the inverse-logistic function is curved, the expected difference in y corresponding to a fixed difference in x is not a constant (Gelman and Hill, 2007). The probability that *First-reading agreement* equals 1 is modelled as:

$$Pr(Y_i = 1) = \text{logit}^{-1}(\beta x_i)$$

Here the assumption is that the outcomes y_i are independent given these probabilities (Gelman and Hill, 2007).

¹⁰It would also be preferable to include a variable based on EP roll-call votes. However, since the EP explicitly votes on approximately 30 percent of all legislation, such a variable would have reduced the data sample accordingly (Hix, Noury and Roland, 2007).

¹¹Note, that there is no evidence of severe multicollinearity between the independent variables. *Salience* and *Ministers involved up to first Council decision* show the highest bivariate correlation (.46) and thus only correlate moderately.

RESULTS

The results for the first test are presented in Table 3 and the results for the second test are presented in Table 4. The results are shown as odds ratios where odds ratios greater than 1 indicate a positive effect on the dependent variable and odds ratios less than 1 indicate a negative effect. Both tests confirm the two theoretical expectations: the greater the salience of a dossier and the greater the distance between the EP median and the Council pivot, the lower the odds of first-reading agreement. These findings also hold when relevant controls are added to the second test. Observations that have disproportionately high influence on the results (i.e. observations with high Cook's Distance values) are removed in both tests.

Table 3: Effect of salience-weighted positional difference between EP median and Council pivot on first-reading agreement

	(1) 1st reading Listwise deletion	(2) 1st reading	(3) 1st reading MICE	(4) 1st reading
Salience-weighted positional distance between EP and Council	0.988** (-1.97)	0.988** (-1.97)	0.989** (-1.99)	0.989** (-2.20)
Constant	0.683 (-1.43)	0.683 (-1.00)	0.642* (-1.75)	0.642 (-1.22)
Observations (issues)	162	162	173	173
Proposals	62	62	64	64
Log likelihood	-98.07	-98.07	-103.7	-103.7

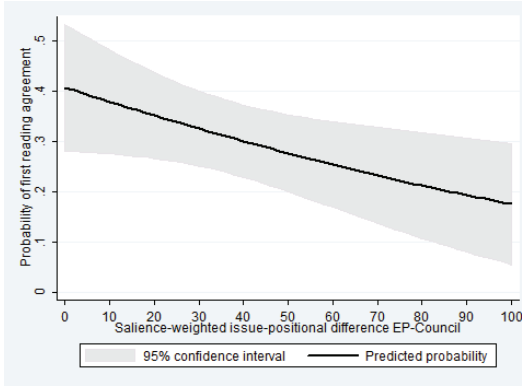
Exponentiated coefficients (odds ratios); *t* statistics in parentheses

Model 2 and 4 clustered at proposal level

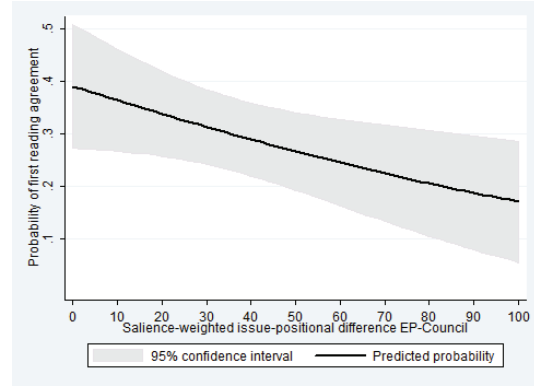
Extreme outliers are removed from the analysis

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

With regard to the first test, four different models are estimated (see Table 3). Models 1-2 delete issues with missing values while Models 3-4 impute missing issue positions. Since the issues are nested within proposals, Models 2 and 4 are clustered at the proposal level. The results are similar across the four models. Consider Models 1-2, a one unit (on the 0-100 scale) increase in the salience-weighted positional distance between the EP median and the Council pivot reduces the odds of first-reading agreement by 1.2 percent $((1-0.988)100)$. This effect is significant at the 5 percent level and is plotted on the basis of predicted values in Figure 4. Figure



(a) List-wise deletion of missing issues



(b) Imputation of missing issues

Figure 4: Predicted probabilities: Salience-weighted positional distance EP median-Council pivot

4a) shows the result when list-wise deletion is used while 4b) shows the result when missing positions are imputed. Both figures show a clear negative tendency; the predicted probability of first-reading agreement decreases as the salience-weighted positional distance between the EP median and the Council pivot increases.

The second test includes relevant controls and assesses the effects of the two key indicators by separate measures instead of one combined measure. The results shown in Table 4 confirm the finding from the first test. The greater the distance between the EP median and the Council pivot and the greater the salience of a proposal, the lower the odds of first-reading agreement across the institutions. Recall that the variable *Any EP amendment* controls for uncontroversial first-reading agreements (the ones where the EP did not make any amendments to the Commission proposal). The results also hold when this variable is included (Models 2-4).

Consider Model 4 in Table 4, a one unit increase in the distance between the EP median and the Council pivot reduces the odds of first-reading agreement by a factor of 0.155. The latter finding is based on the EP median-Council pivot distance being measured on the pro-anti integration dimension. See Table 6 in the appendix for similar but slightly less robust results when the distance is measured on the left-right dimension.¹²

¹²Table 7 in the appendix shows the results when both distance variables are included. In these models, the variable that measures ideological distance on the left-right dimension does not have any significant effect on the dependent variable. The models are nevertheless included for reference as the two distance variables are only moderately correlated.

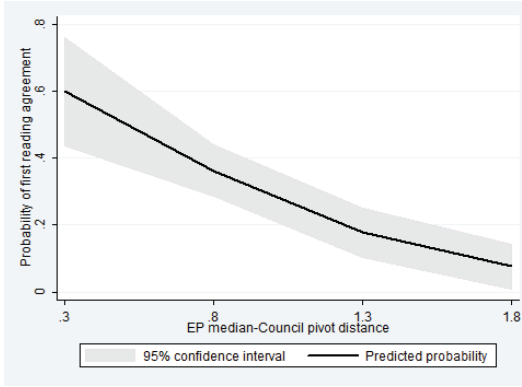
Table 4: Determinants of first-reading agreement

	(1)	(2)	(3)	(4)
	1st reading	1st reading	1st reading	1st reading
Distance between EP median and Council pivot	0.157*** (-3.84)	0.143*** (-3.91)	0.145*** (-3.83)	0.155*** (-3.48)
Saliency	0.903*** (-4.47)	0.921*** (-3.42)	0.944** (-2.29)	0.946** (-2.17)
More than one policy area		0.786 (-0.76)	0.757 (-0.86)	0.723 (-0.98)
Any EP amendment		0.279** (-2.53)	0.474 (-1.38)	0.470 (-1.39)
First reading Council consensus		0.721 (-0.79)	0.725 (-0.77)	0.760 (-0.65)
Ministers involved up to first Council decision			0.356*** (-2.67)	0.319** (-2.55)
Internal Market, Consumers and Tourism				1.363 (0.66)
Transport-Telecommunications				1.436 (0.80)
Environment				1.383 (0.63)
Economic and Financial Affairs				0.936 (-0.11)
Constant	12.10*** (4.07)	47.38*** (4.62)	42.36*** (4.44)	33.75*** (3.92)
Observations	244	244	244	244
Log likelihood	-134.8	-130.8	-127.2	-126.7

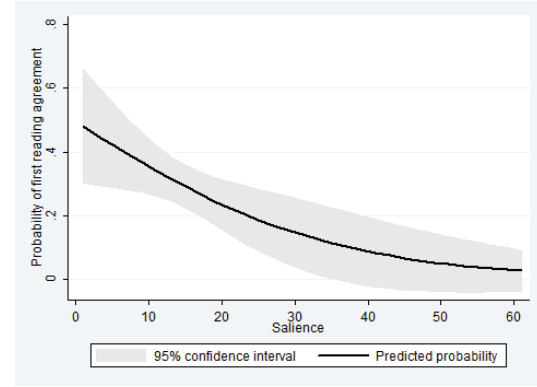
Exponentiated coefficients (odds ratios); *t* statistics in parentheses

Three extreme outliers are removed from the analysis

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$



(a) EP median-Council pivot distance



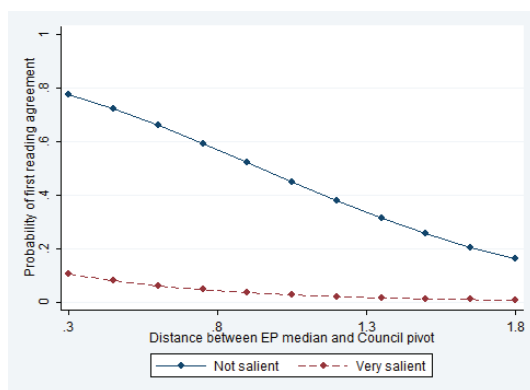
(b) Saliency

Figure 5: Predicted probabilities: EP median-Council pivot distance and saliency

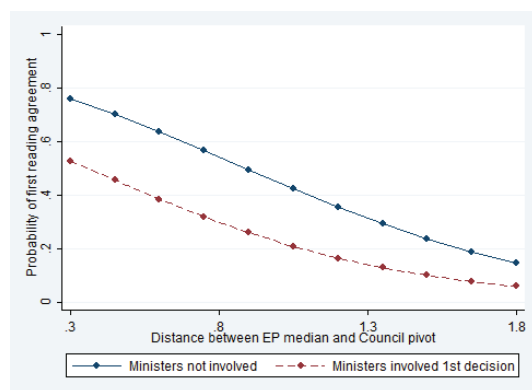
Furthermore, a one unit increase in saliency (meaning in the number of reasons provided for its adoption by the initial Commission proposal) reduces the odds of first-reading agreement by 5.4 percent when controlling for the other variables. In other words, the odds of first-reading agreement are reduced by a factor of 0.946.

Figure 5 plots the substantial effects on the basis of the predicted values from Model 3 in Table 4 (the other variables are fixed at the mean). Figure 5a) illustrates that preference divergence between the pivotal actors in the two institutions is negatively associated with first-reading agreement. The negative relationship with the dependent variable is stronger for high levels of preference divergence. Similarly, Figure 5b) shows that salient dossiers are negatively related to first-reading agreement. As the level of saliency reaches its maximum value, the probability of early agreement drops.

The substantial effects from Model 3 (Table 4) are further explored in Figure 6. Although theoretically expected, there is no robust interaction between *Saliency* and *Distance between EP median and Council pivot* (see Table 5 in the appendix). Still, Figure 6a) shows that the effect of preference divergence does vary with saliency when low and high levels of saliency are considered. Non-salient legislation with low preference divergence is predicted to be more than 0.6 more likely to be adopted at the first reading than highly salient legislation with low preference divergence. However, levels of saliency matter less when the preference divergence



(a) By salience



(b) By ministers decided first decision

Figure 6: Predicted probabilities: Distance EP median-Council pivot by salience and ministerial involvement

between the pivotal actors increases. 6b) illustrates that the effect of preference divergence also varies to some extent by ministerial involvement. If ministers are not involved in the decision making and the preference divergence is low, the probability of first-reading agreement is higher than when ministers are involved and the preference divergence is low. The difference in predicted probability is reduced when the distance between the EP median and the Council pivot increases. Even so, this analysis confirms the negative relationship between ministerial involvement and first-reading agreements identified by Häge and Naurin (2013).

In Model 4 (Table 4), the odds of first-reading agreement are reduced by a factor of 0.319 when ministers are involved. Häge and Naurin (2013) find that first-reading agreements have a negative effect on the likelihood of ministerial involvement, and argue that this reduces the democratic legitimacy of these agreements. While this claim is supported by the analysis in this paper, robust evidence is also found for the notion that final decisions on highly salient and controversial proposals are not taken in the first reading. On this type of proposals, ministers are more likely to be involved. Altogether this shows that salient and controversial cases are decided in a more transparent manner and are not dependent on the outcome of first-reading informal trialogue bargaining.

CONCLUSION

Standard models of veto bargaining show that if the actors in EU bargaining have complete information with regard to the positions of the other actors, agreement at later stages than the first reading should not be observed. Although the number of first reading agreements under the ordinary legislative procedure (co-decision) has steadily increased since the introduction of the Amsterdam Treaty, agreement across the EP and the Council is frequently reached at later stages than the first reading. The assumption of complete information can thus be relaxed in the EU setting.

Veto bargaining models with incomplete information infer two propositions that can be applicable to bargaining scenarios with the possibility of more than one round: 1) The greater the distance between the ideal points of the pivotal actors and 2) the greater the salience, the greater the probability of more than one round of bargaining.

The analysis in this paper confirms both expectations and shows that preference divergence and salience are negatively associated with first-reading agreements in the EU. When legislative proposals are highly salient and the distance between the EP median and the Council pivot is large, agreement is significantly less likely to be reached at the first-reading stage. These findings are robust across two different empirical tests. The first test employs positional data at the issue level and the second test utilises proposal-specific data and introduces relevant controls.

While previous research on the determinants of early agreements in the EU has mainly emphasised the negative consequences for democratic legitimacy, this analysis contributes to the positive side of the debate by showing that highly salient and controversial cases are more likely to be resolved in a formal and transparent manner with the involvement of accountable actors. Less salient and less controversial acts are, however, associated with informal dialogue bargaining at the first-reading stage. This analysis is based on proposals adopted in the fifth term of the EP (1999-2004) and on a small sample of proposals adopted both before and after the 2004 enlargement. The task of conducting a similar test of the theoretical expectations on a larger sample of proposals is left for future research. Despite the data limitations of this

analysis, applying veto bargaining models with incomplete information to the EU bargaining setting under the co-decision procedure is shown to be a more than useful application. The theoretical framework and research design can also be further tested empirically on sequential veto bargaining in other international and national institutions (Cameron, 2000; Cameron and McCarty, 2004).

Table 5: Determinants of first-reading agreement: Not any robust interaction between salience and EP-Council distance on the pro-anti integration dimension

	(1)	(2)	(3)	(4)
	1st reading	1st reading	1st reading	1st reading
Distance between EP median and Council pivot	0.106*** (-3.96)	0.109*** (-3.94)	0.113*** (-3.86)	0.120*** (-3.55)
Salience	0.893*** (-4.46)	0.912*** (-3.50)	0.934** (-2.47)	0.935** (-2.36)
Salience*distance EP-Council	0.874* (-1.71)	0.900 (-1.35)	0.903 (-1.30)	0.899 (-1.32)
More than one policy area		0.831 (-0.58)	0.800 (-0.68)	0.771 (-0.78)
Any EP amendment		0.307** (-2.35)	0.518 (-1.22)	0.516 (-1.22)
First reading Council consensus		0.714 (-0.81)	0.717 (-0.79)	0.752 (-0.67)
Ministers involved up to first Council decision			0.362*** (-2.64)	0.329** (-2.49)
Internal Market, Consumers and Tourism				1.416 (0.74)
Transport-Telecommunications				1.505 (0.89)
Environment				1.366 (0.60)
Economic and Financial Affairs				1.014 (0.02)
Constant	0.358*** (-5.47)	1.601 (0.74)	2.112 (1.14)	1.760 (0.76)
Observations	244	244	244	244
Log likelihood	-133.2	-129.8	-126.3	-125.7

Exponentiated coefficients (odds ratios); *t* statistics in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 6: Determinants of first-reading agreement: Models with left-right EP-Council distance instead of pro-anti integration EP-Council distance

	(1)	(2)	(3)	(4)
	1st reading	1st reading	1st reading	1st reading
Left-right distance	0.297*	0.312	0.263*	0.191**
EP median-Council pivot	(-1.72)	(-1.61)	(-1.80)	(-2.07)
Salience	0.915*** (-4.26)	0.930*** (-3.25)	0.954** (-2.01)	0.952** (-2.04)
More than one policy area		0.718 (-1.07)	0.684 (-1.20)	0.656 (-1.30)
Any EP amendment		0.339** (-2.20)	0.600 (-0.96)	0.560 (-1.08)
First reading Council consensus		0.735 (-0.76)	0.765 (-0.65)	0.813 (-0.49)
Ministers involved up to first Council decision			0.332*** (-2.92)	0.350** (-2.40)
Internal Market, Consumers and Tourism				2.529** (1.97)
Transport-Telecommunications				1.318 (0.62)
Environment				1.264 (0.46)
Economic and Financial Affairs				0.929 (-0.13)
Constant	3.689** (2.43)	11.95*** (3.27)	11.72*** (3.20)	10.82*** (2.95)
Observations	244	244	244	244
Log likelihood	-141.3	-137.9	-133.6	-131.0

Exponentiated coefficients (odds ratios); *t* statistics in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 7: Determinants of first-reading agreement: Models with both pro-anti integration and left-right EP-Council distance

	(1)	(2)	(3)	(4)
	1st reading	1st reading	1st reading	1st reading
Pro-anti integration distance	0.161***	0.142***	0.151***	0.166***
EP median-Council pivot	(-3.47)	(-3.60)	(-3.44)	(-2.85)
Left-right distance	0.907	1.045	0.847	0.828
EP median-Council pivot	(-0.13)	(0.06)	(-0.21)	(-0.20)
Salience	0.903***	0.921***	0.944**	0.946**
	(-4.45)	(-3.42)	(-2.26)	(-2.17)
More than one policy area		0.788	0.753	0.720
		(-0.75)	(-0.87)	(-0.99)
Any EP amendment		0.279**	0.479	0.474
		(-2.53)	(-1.36)	(-1.37)
First reading Council consensus		0.719	0.733	0.767
		(-0.79)	(-0.74)	(-0.62)
Ministers involved up to first Council decision			0.353***	0.322**
			(-2.67)	(-2.51)
Internal Market, Consumers and Tourism				1.414
				(0.69)
Transport-Telecommunications				1.412
				(0.75)
Environment				1.363
				(0.59)
Economic and Financial Affairs				0.949
				(-0.09)
Constant	12.49***	46.83***	44.28***	34.68***
	(3.82)	(4.47)	(4.36)	(3.90)
Observations	244	244	244	244
Log likelihood	-134.8	-130.8	-127.2	-126.6

Exponentiated coefficients (odds ratios); *t* statistics in parentheses

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Concluding remarks

The papers of this thesis have shown that preferences have a robust effect on observed voting behaviour and implementation behaviour in the EU. Preferences also affect the dynamics of EU decision making in terms of how long it takes to reach agreement and in which reading the final decision is taken. Figure 1 summarises the main findings of the thesis in light of the previous findings in the literature with regard to the effect of preferences for the different topics analysed. This summary also illustrates the explicit contributions made by the thesis to the existing literature. The analyses presented have strived: 1) to improve and extend the tested measures, 2) to appropriately account for missing data and 3) to consistently control for the salience attached to a proposal. Hence, although the framework of the thesis is grounded in the invaluable research conducted on the four different topics, the different analyses have also endeavoured to contribute to the cumulative improvement of the research field.

On topic 1 (see Figure 1), Paper 1 shows that governments vote in line with their salience-weighted positions and that this relationship is stronger when missing positions are imputed iteratively. While the main finding is compatible with the previous research, it also nuances the so called “culture of consensus” as evidence of such a culture does not mean that the majority of Council members vote against their positions. The “culture of consensus” should hence be treated as a variable rather than a constant in Council decision making (Schneider, 2008).

With regard to topic 2, Paper 2 builds upon previous compliance research by adding a voting variable to an extended quantitative analysis of directives from all the main EU policy areas before and after the 2004 enlargement. This paper shows that voting behaviour is connected with implementation behaviour. This finding indicates that preferences (revealed by voting) have consequences for the implementation stage. In terms of practical implications, the Commission may thus benefit from keeping an extra eye on dissenting member states to reduce possible infringements.

Paper 3 is embedded in topic 3 and accounts for the duration of EU decision making. This analysis adds indicators not previously investigated in this particular setting to the analysis of legislative efficiency in the EU. Specifically, it is shown that greater inter-institutional distance

Topic	Findings of the literature	Findings of the thesis
1) Council voting and Council dimensional space	<p>1) Council decision making is guided by a "culture of consensus"</p> <p>2) Although positional data and voting data have been studied separately, the identified political space is quite similar across previous studies</p>	<p>1) Governments are guided by their salience-weighted issue-specific positions when voting in the Council. Positional data and voting data are thus compatible</p> <p>2) This relationship is stronger when missing positions are imputed on an issue-by-issue basis</p>
2) Compliance of EU directives	<p>1) Policies on which there were preference divergence at the decision-making stage are likely to be prioritised by the Commission to ease member state transposition</p> <p>2) Dissent in Council bargaining has no substantial effect on (non)-compliance</p> <p>3) Positional incentives to deviate increase the odds of infringements</p>	<p>1) Preference-based explanations for non-compliance perform better when accounting for infringements than transposition delay</p> <p>2) Dissent in Council bargaining increases the odds of infringements</p> <p>3) Salience-weighted positional incentives to deviate increase the odds of infringements</p>
3) Duration of EU decision making	<p>1) Margaret Thatcher (proxy for anti-EU government) delayed EU decision making</p> <p>2) Left-right distance in the Council is not a strong indicator of the duration of EU decision-making</p> <p>3) Regulations and decisions take shorter time to decide than directives (where preferences are assumed to matter more) and policy areas with more homogenous preference distributions have shorter durations than other policy areas</p>	<p>1) Dissent in Council voting slows down EU decision making</p> <p>2) Greater left-right distance between the ideal points of the pivotal actors slows down inter-institutional decision making</p> <p>3) Salient proposals and proposals with ministerial involvement take longer to decide than less salient proposals and proposals decided in committees</p>
4) Early agreements under the co-decision procedure	<p>1) Greater distance between the EP rapporteur and the EP plenary or presiding minister, reduces the likelihood of first-reading agreement</p> <p>2) Salient proposals are just as likely as non-salient proposals to be associated with early agreement</p>	<p>First-reading agreements are less likely to occur:</p> <p>(1) the greater the distance between the ideal points of the Council pivot and the EP median and</p> <p>(2) the greater the salience attached to the proposal</p>

Figure 1: Findings of the literature vs. findings of the thesis

between the pivotal actors within the Council and the EP and dissent in Council voting increase the time it takes to reach agreement across the institutions. While previous studies on this topic first and foremost have focused on the Council, this paper attempts to account for inter-institutional decision making. The findings indicate that EU law making is more prone to gridlock if there is greater variation in left-right positions of the pivotal actors.

In paper 4, the implications of bargaining models with incomplete information are applied in order to explain early agreements under the co-decision procedure. The findings of the two empirical tests conducted support the theoretical framework: First-reading agreements are less likely to occur (1) the greater the distance between the pivotal actors in the Council and the EP and (2) the greater the salience attached to a proposal. These findings are substantially important as they indicate that salient and controversial proposals are negotiated more transparently than less salient and less controversial proposals.

While the main findings have been thoroughly elaborated by the previous parts of the thesis, this part discusses the more overarching issues related to the research presented. The thesis relates specifically to three grand issues of the EU decision making literature: 1) *theories of decision making*, 2) *transparency of decisions* and 3) *selection biases in decision-making data*. The following will elaborate on how these issues are connected to each other and the thesis as such.

With regard to *theories of EU decision making*, the framework of the thesis is embedded in rational choice institutionalism. The theoretical set up presented is generally based on previous decision-making studies and then adjusted to fit the research questions presented in the different papers. But there is one exception as the last paper of the thesis draws upon decision-making models with incomplete information where the agenda setter (the EP in the setting of the first reading of the co-decision procedure) cannot know with certainty what type the veto player (the Council) really is. Researchers are surely aware of the presence of incomplete information in EU decision making. Tsebelis and Garrett (2000) argue that complete information only exists in the final rounds of decision making. Then the actors have learnt about each other from previous interactions. While the issue of incomplete information is well acknowledged, few studies have attempted to specifically model the uncertainty. Paper 4 of this thesis shows that

predictions generated from veto bargaining models with incomplete information can contribute to explain first-reading non-agreement in the EU. Future studies may thus benefit from investigating the theoretical and empirical implications of incomplete information and the effect of these implications on EU decision making.

On the other side, the increasing number of first-reading agreements can serve as an argument against this path of possible future research. While first-reading decisions accounted for only about 25-30 percent of all legislation made under the co-decision procedure in 2000 and 2001, 90 percent of all co-decision proposals were adopted at first reading in 2010 and 2011 (Hix and Høyland, 2013). This trend indicates professionalisation of EU decision making where some types of actors interact more frequently than others. These actors also meet in informal arenas and deals are made behind closed doors. This trend can strongly be linked to the *transparency debate* in domestic and international bargaining (Stasavage, 2004). Although increased transparency may also have negative consequences for bargaining outcomes as representatives may care more about their own public reputation than the policy outcome, transparent decision-making undoubtedly makes the representatives more accountable to their constituencies, plenaries and/or governments. Hence, while the early 1990s and early 2000 paved way for more legislative transparency in EU decision making, the 2010s have produced less transparency in the sense of an increasing number of first-reading agreements. This tendency makes it harder for both researchers and the public to assess “who gets what, when and how” in the EU legislative process and spurs a need for improved data (Hix and Høyland, 2013). A lack of open debate on a legislative proposal does not enhance the democratic legitimacy of the EU. There is also little public debate on the implementation of EU directives. The lack of public debate on EU issues does not only stem from the institutional set up of the union. The weak electoral connection between citizens and legislators creates few incentives for national debate on EU issues (Hix, 2008). The lack of national debate may then also be a contributing factor to less transparent decision modes at the European level.

The transparency debate is thus complex and can present a trade-off between accountability and policy outcomes. While transparency produces accountability, it can also produce a smaller set of possible policy outcomes as the negotiators can be less willing to compromise when their

constituents are able “to watch them” (Stasavage, 2004). Limited transparency also produces *selection biases in EU decision-making data*. For instance, if all Council and EP negotiations were open to the public, researchers would have access to data on “failed” legislation. Versions of proposals that do not receive the sufficient support in order to pass are not officially recorded. This may lead to a biased estimate of the actual level of disagreement as final votes only are taken on a proposal when the proposal has gained the required support (Hug, 2010). The introduction to the thesis elaborated on selection biases in the data sets utilised. Despite these selection biases, the thesis finds a link between preferences and behaviour in EU decision making. Although we cannot know with certainty the magnitude of selection bias and its effect on the findings presented in this thesis, the findings can support the notion that member states act in accordance with their structural interests (Bailer, Mattila and Schneider, 2010). While this thesis has not attempted to examine why some member states vote against a proposal and others do not beyond the assumption that preferences matter, the empirical support of the broader argument that “preferences determines voting behaviour which again determines implementation behaviour” can plausibly rest on preferences being a proxy for structural interests of the different member states. The task of investigating structural interests and their impact on the broader decision-making process in the EU is, however, left for future research.

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