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The distribution of power among EU institutions: who wins under codecision and why?

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ABSTRACT The codecision procedure was designed to change the distribution of power among the European Union (EU) institutions. In theory, the codecision procedure, at least the amended version introduced by the Amsterdam Treaty that came into effect in 1999, weakened the Commission and placed the Parliament on an equal footing with the Council. We assess how the codecision procedure works in practice using data on the preferences of legislative actors on a large number of proposals negotiated between 1999 and 2009. We also test theoretical propositions derived from Schelling regarding the effects of policy agreement within each chamber on the relative bargaining success of the Council and EP. Our findings suggest that, in comparison to the consultation procedure, codecision has strengthened the EP and weakened the Commission. However, the Council holds certain bargaining advantages over the EP, and as a result the EP has not achieved parity with the Council under codecision.

KEY WORDS Codecision; Council of Ministers; European Parliament; legislative bargaining.

INTRODUCTION

The codecision procedure was introduced under the Maastricht Treaty (1992) to enhance the powers of the European Parliament (EP). Empowering the EP was a priority because the introduction of qualified majority voting in the Council meant that national parliaments had less control over European Union- (EU) level decisions, thereby creating a legitimacy problem (Rittberger 2005). Strengthening the EP would ensure that, in theory at least, citizens maintained a direct channel through which they could influence and control EU decisions. Political analysts have scrutinized the EU's legislative procedures in great detail (e.g., Crombez 1996; Steunenberg 2002; Tsebelis and Garrett 2000). The consensus is that while the initial Maastricht Treaty version of the codecision procedure may have been biased in favour of the Council, the revised version introduced by the Amsterdam Treaty in 1999 placed the EP on an equal footing with the Council. It gave both the EP and Council powers to amend proposals and required that both sides approve the proposed law before it is adopted.

While acknowledging the importance of these procedural changes, political scientists recognize that power depends not only on formal procedures, but also on the situational constraints in which political actors operate. In line with this idea, we assess how the codecision procedure has altered the distribution of power among the EU institutions in practice. We address two questions: the first descriptive, the second explanatory. First, what is the distribution of power among the Commission, EP and Council in practice under codecision, and how does this compare to the consultation procedure? Part of the answer to this question is that although the codecision procedure offers the EP parity with the Council, in practice it is in a weaker position. Our second, explanatory, question is designed to account for this finding: what factors explain variation in the relative bargaining success of the Council and EP?

POWER AND BARGAINING SUCCESS

A classic definition of power that gives an appropriate point of departure for this analysis is that it is the potential a person or group has 'to realize their own will in a social action even against the resistance of others' (Weber 2007[1914]: 247). This definition implies that power is about affecting 'social' or 'collective' actions, in this context the content of legislative acts. Weber's definition also recognizes the distinction between power and luck, a distinction that was later famously emphasized by Barry (1980: 184). The phrase 'even against the resistance of others' implies that analyses of power must also take into account the will of other relevant actors. In this study, we consider the policy positions of all main institutional actors in the EU's legislative process on a range of controversial issues. This classical definition of power is appropriate given our focus on the distribution of power during the decision-making stage of the legislative process, between the introduction of the legislative proposal and the adoption (or rejection) of the proposal. If we were to focus on the formative, agenda-setting stage prior to the introduction of proposals or the compliance stage after laws are adopted, other definitions of power may be more appropriate. Furthermore, we focus on overt controversy, which is 'relevant in the sense that, *if* it is actualized, it provides the test by which one can measure relative power, where parties conflict over an issue' (Lukes 1986: 2).

Although the actual distribution of power may differ from that laid down in treaties and constitutions, the formal procedural rules of decision-making affect actors' power to some extent and provide the starting point for our analysis. In the EU, the two most relevant procedures are labelled consultation and codecision (the ordinary legislative procedure since the Lisbon Treaty came into force). Under the consultation procedure the Commission and Council are the key players, while the EP can only offer a non-binding opinion. The Commission makes a proposal to the Council, which can amend by unanimity or accept by qualified majority or unanimity, depending on the policy area. If the required majority exists in the Council in favour of changing the *status quo*, then the Commission may be in a position to influence which alternative to the *status*

quo is chosen (Tsebelis and Garrett 2000). The formalities of the consultation procedure imply that the Council and Commission are most powerful. Scholars disagree on whether the EP has any power at all in the consultation procedure: some choose to ignore the EP when modelling the consultation procedure (e.g., Crombez 1996), while others argue that the EP has some power owing to its ability to delay decision-making (Kardasheva 2009).

The codecision procedure differs fundamentally from consultation with respect to the balance of power it prescribes among the three institutions. The Commission is generally believed to be in a weaker position because its proposal can be amended by either the EP or the Council, and ultimately the EP and the Council may decide on an outcome without the agreement of the Commission. There is some debate as to whether the Commission has any power at all; some authors assume it has none (e.g., Crombez 1996; Tsebelis and Garrett 2000), while others argue the Commission can influence outcomes in its informal role as mediator between the EP and the Council (Rasmussen 2003, 2011). The EP is in a much stronger position under codecision than consultation, as its support is required to adopt any legislation. Under the Amsterdam Treaty version of the procedure, with which we are concerned here, the EP and Council are formally equal since they both must agree on the content of the proposal and neither has a formally defined first-mover advantage in the procedure (Tsebelis and Garrett 2000). Protracted disagreements between the EP and Council are resolved in conciliation committees composed of representatives of each chamber. In practice, many proposals are decided on at an earlier stage, often after informal negotiations between the two institutions.

Although the EP and Council are formally equal according to the codecision procedure, this does not necessarily imply that they have equal power in the Weberian sense of being able to realize their policy preferences in the contents of legislative acts. The congruence between actors' stated policy preferences and decision outcomes is often referred to as their 'bargaining success'. Differences between the EP and Council's bargaining success may result from imbalances in the distribution of power that emerge during bargaining. Bargaining between two players is shaped by each player's expectation of what their opponent will accept (Schelling 1960: 21). Negotiators are likely to claim that their position is final (i.e., threaten to reject any offer that is not in line with their stated position), but this threat is not credible if the negotiator stands to lose more than she would gain by rejecting an offer. For this reason, the location of the *status quo* (which following the conventional use of this term in the literature is the outcome that would occur in the event of no agreement) is generally assumed to be an important factor in shaping bargaining success. If both players are on the same side of the *status quo* (e.g., both want to increase spending on a particular project, but by different amounts), the player further from the *status quo* is in a weak bargaining position because she has more to lose if the negotiations break down. According to this logic we expect the side that is closest to the *status quo* to get exactly the outcome they want (Napel and Widgrén 2006: 135). If the two players are on opposing sides of the *status quo*, then we expect there to be no

agreement. Again, this means that the player who is closer to the *status quo* does better. We therefore test the following hypothesis:

H1: Under codecision, the legislative institution (EP or Council) that is closest to the *status quo* has more bargaining success.

Napel and Widgrén (2006) argue that the Council is more often closer to the *status quo* than is the EP owing to the voting rules in each institution. The Council decides by qualified majority voting, while the EP decides by simply majority in its first reading. Consequently, the pivotal actor in the Council (the member state whose support is required if the Council is to agree to a change from the *status quo*) is likely to be more conservative than the pivotal actor in the EP, the median MEP. In addition, research shows that the positions taken by the EP are often further from the *status quo* than are member states' positions (Thomson 2011: 64). Thus, if Hypothesis 1 is true, this is likely to benefit the Council on average.

A second potential source of bargaining strength can be derived from Schelling's (1960: 22) conjecture that negotiators benefit from perceived constraints imposed on them from outside (see also Putnam 1988). In the context of codecision, external constraints on negotiators from the EP and Council come from their parent chambers that must ratify any deal. Our main theoretical argument is that there is a positive relationship between the level of agreement within a chamber and its bargaining success. If a chamber is united in favour of one position, its negotiators can credibly claim that they cannot accept another offer. By contrast, if there is division within a chamber, there is likely to be a greater range of alternatives that would be acceptable.[1] Kreppel's (2002) research on the conditions under which the EP's amendments are approved also concludes that approval rates are higher when the EP is more united. This leads to our second hypothesis:

H2: Under codecision, internal division in a legislative institution (EP or Council) reduces its bargaining success.

We expect internal division in the EP to have a greater effect than internal division in the Council for two reasons. The first reason concerns the different levels of transparency in the EP and Council. Decision-making in the EP is transparent: representatives from the Council and Commission are present at committee meetings; plenary debates are held in public; and committee and plenary votes are recorded (Corbett *et al.* 2011: 153). Thus, if the EP is internally divided, the Council will know this and can be expected to exploit it in negotiations. In contrast, Council meetings (at the various levels) typically take place in private. This lack of transparency may limit the ability of the EP to exploit division in the Council. The second reason why division in the EP may matter more than division in the Council concerns the voting rules under codecision. In order for the EP to amend the Council's common position at the second reading, an absolute majority is required. This threshold can be quite restrictive, given the high level of absenteeism in the EP. If none of the

amendments tabled in the EP second reading receives the support of an absolute majority of Members of the European Parliament (MEPs), then the Council common position is deemed approved (Rules of Procedure of the European Parliament, 2009: Rule 72). This places negotiators on behalf of a divided EP at a disadvantage, as there is a possibility that the EP will not be able to sustain its position through the second reading.

We argued that a unified chamber places an external constraint on negotiators that strengthens their bargaining position. However, it is possible that under certain circumstances a divided chamber can also provide such a constraint. We encountered this argument on a number of occasions in interviews with key informants with respect to division in the Council, although never with respect to division in the EP. For example, the financial services directive (COD/2005/245) raised considerable controversy in the Council and was resolved as an early agreement. Our key informants reported that when meeting representatives of the EP, the Council negotiators highlighted the difficulty of reaching agreement in the Council. The Council negotiators emphasized that if the EP were to break up this agreement in the Council by imposing its own opinions, this could easily destroy the progress that had been achieved. In general, however, we expect that division in the parent chamber increases the likelihood that a negotiator will concede ground to the opposing side.

DATA

Our analyses are based on information from the DEUII dataset, a detailed description of which is given in Thomson *et al.* (2006) and Thomson *et al.* (2012). The information consists of key informants' estimates of the stated policy preferences of the Commission, each member state and the EP on 274 specific controversial issues that were raised by 112 legislative proposals. We only include issues on which the decision outcome is known and the EP took a position. The legislative proposals selected include a broad range of policy areas in legislative decision-making before and after the 2004 and 2007 enlargements (mainly the years 1999–2000 and 2004–2009).

Each of the 274 controversial issues in our analysis is reconstructed as a 0–100 policy scale, as illustrated in Figure 1, which refers to an issue from the proposal on waste (COD/2005/281). This proposal was introduced by the Commission because existing regulations on standards for waste management and waste reduction had given rise to some uncertainties. Four main points of controversy arose in relation to this proposal, one of which related to the classification of waste incinerators as either 'recovery operations' or 'disposal operations'. This distinction is important because waste recovery operations are permitted to handle imported waste and also go towards meeting recovery targets set by other EU legislation. At one extreme in this controversy, represented as position 0 on the scale, is the 'green' position that incineration should not be classed as recovery under any circumstances. At the opposite end of the scale is the 'brown' position that most incinerators could be

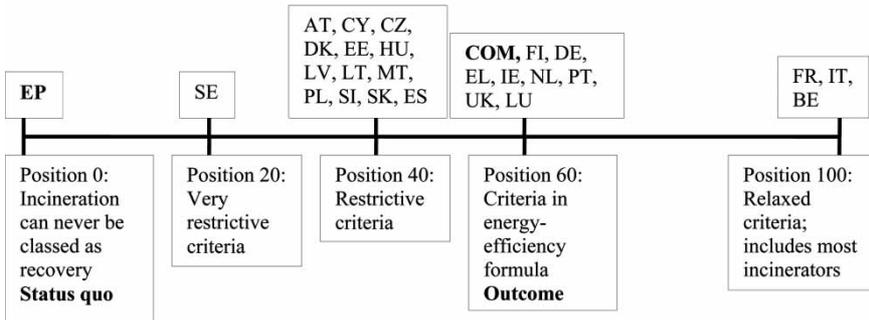What criteria are used to determine when incineration can be classed as a recovery operation?

Figure 1 A controversial issue from the proposal on waste
 Note: AT: Austria; BE: Belgium; CY: Cyprus; CZ: Czech Republic; DK: Denmark; EE: Estonia; FI: Finland; FR: France; DE: Germany; EL: Greece; HU: Hungary; IE: Ireland; IT: Italy; LV: Latvia; LT: Lithuania; LU: Luxembourg; MT: Malta; NL: The Netherlands; PL: Poland; PT: Portugal; SI: Slovenia; SK: Slovakia; ES: Spain; SE: Sweden; UK: United Kingdom; COM: Commission; EP: European Parliament.

classed as recovery operations. Three other alternatives were put forward, and key informants placed these at positions 20, 40 and 60 to reflect the political distances between them. The main political difference was between the EP that favoured the continuation of the *status quo*, which meant that no incineration is classed as waste (position 0), and member states and the Commission that wished to classify incineration as recovery at least if certain conditions were met. The outcome is clearly more in line with the positions of the member states and Commission than with the position of the EP. Key informants also estimated the levels of importance that each actor attached to each of the controversial issues. They also estimated each actor's issue salience on a scale of 0 to 100.

The evidence from the waste controversy provides mixed support for the hypotheses. Although the EP supported the *status quo* while the member states wanted change, contrary to the first hypothesis the outcome was not closer to the EP's position than member states' positions in the Council. The evidence is somewhat more in line with the second hypothesis, since the EP was more divided than average. There was a vote in the responsible EP committee (the result was 37 votes to 6), while half of the reports we examine were adopted unanimously. Furthermore, the specific amendment in the EP first reading establishing the position that incineration cannot be classified as a recovery operation (Amendment 83) was passed by a relatively narrow margin, with 384 in favour, 299 against and two abstentions. This internal division may have been a factor in the EP's low level of bargaining success. The Council was also divided, as shown by the different positions taken by the member states, although somewhat less divided than average in the cases we examine.

THE POWER DISTRIBUTION UNDER CONSULTATION AND CODECISION

The analyses in this section model decision outcomes on each controversial issue as a weighted average of the policy positions of the Commission, EP and Council members. The weights used are the products of the levels of importance each actor attaches to the issue in question and the power each actor can bring to bear on the decision outcome. This weighted-average formula, sometimes referred to as the compromise model, has been discussed extensively elsewhere (see Achen 2006a). Despite its computational simplicity, this formula has been linked to important theories, notably the Nash Bargaining Solution (Nash 1950). In a head-to-head contest with apparently more sophisticated models, this formula outperformed all others in a test of its predictive accuracy (Thomson *et al.* 2006). For the present analyses, this formula neatly encapsulates our Weberian view of power, in which decision outcomes are defined by the extent to which actors choose to exercise their power in the face of resistance from other actors.

The following analyses apply a large number of alternative assumptions regarding the distribution of power among the three institutions in alternative specifications of the compromise model. We then compare the predictions of decision outcomes made by these different specifications with the actual decision outcomes. We infer that the assumed distribution of power that makes the most accurate predictions best reflects the actual distribution of power. Given our focus on the inter-institutional distribution of power, we simplify the calculations by assuming the distribution of power within the Council reflects voting power as measured by the Banzhaf voting power index (Banzhaf 1965).[2] The power weight for the Council as a whole on a given issue is calculated as the combined weights of the member states taking a position on that issue. We then assign weights to the EP and the Commission as a proportion of the Council weight. For instance, if the EP is assigned a power weight of 10 and the Commission a weight of 20, this means that the EP and Commission are given respectively 10 per cent and 20 per cent of the combined power weights of the member states taking a position on a given issue.

Thomson and Hosli (2006) and Thomson (2011: ch. 8) previously applied this modelling approach. The present analysis differs in the way in which we calculate the predictive accuracy of the predictions made by the different model specifications. We measure model fit at the proposal level rather than the issue level, as these previous studies did, to take account of the fact that some proposals have more issues than others. The following analysis calculates the Euclidean distance (in the multi-issue space) from the prediction to the outcome, and divides this by the number of issues within the proposal. This is similar to the approach used by Achen (2006b: 282) to test the predictive accuracy of a diverse range of models. Our main findings with respect to the distribution of power are similar to those of Thomson and Hosli (2006) and Thomson (2011: ch. 8).
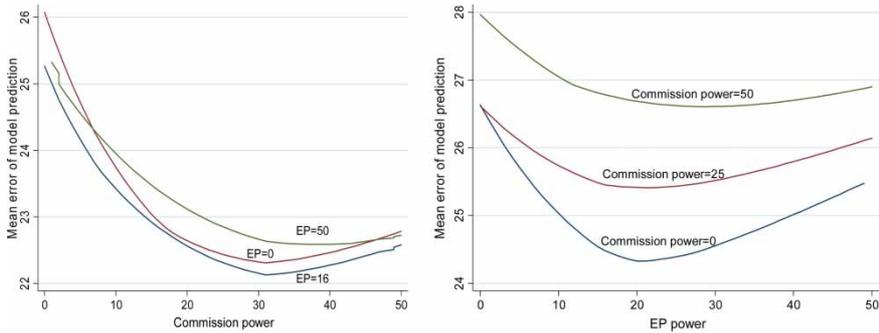
Figure 2 Model errors for various combinations of Commission and EP's relative power under consultation (left) and codecision (right)
Note: The lines depict the error of the model while varying the power of the Commission and EP from 0 to 50 per cent of the Council's power.

The following analyses deal separately with the proposals subject to consultation and codecision. We calculated the mean model error across the 52 consultation proposals for different distributions of power among the institutions. The lowest mean model error occurs when the Commission is assigned a power weight of 31 per cent of the Council and the EP a power weight of 16 per cent of the Council. This is illustrated in the left of Figure 2, which plots the average model error for different combinations of EP and Commission power. Three different values of EP power are shown in the three lines (0, 16 per cent of Council and 50 per cent of Council). The model error is lowest when the EP is assigned a weight of 16 per cent of the Council's total power. Furthermore, regardless of the power assigned to the EP, increasing the power of the Commission leads to significant reductions in model error until a minimum model error is reached when the Commission is assigned a power weight of around 31 per cent of the Council. Further increases in the Commission's power lead to increases in model error. In a subsequent test, we re-ran the analysis excluding issues on which the EP and Commission took the same position. For these cases, the best-fitting model is one that attributes considerably more power to the Commission than the EP (21 per cent and 6 per cent of the Council power respectively). This suggests that while the Commission has certainly a noticeable impact on decision outcomes under consultation, the influence of the EP may in fact be very modest.

For the 60 codecision proposals, the model that gives the Commission zero power and the EP a power weight of 20 per cent of the Council produces the lowest mean error (Figure 2). Again, three different lines are plotted in the right of Figure 2; this time each line is associated with a particular value for Commission power and shows the mean model error for various values of EP power. The bottom line indicates that when the Commission and EP power are both at zero, the mean model error is relatively high. Increasing the

power of the EP decreases the model error at first, until the EP power reaches 20 per cent of the Council. Further increases in EP power result in increases in model error. Any increase in Commission power increases model error. Excluding issues on which the EP and Commission agreed does not noticeably alter the results.

EXPLAINING VARIATION IN THE EP AND COUNCIL'S BARGAINING SUCCESS UNDER CODECISION

The previous section showed the Council to be considerably more powerful than the EP under codecision. This may be owing to bargaining advantages that the Council holds in negotiations with the EP. To determine if this is the case, we now examine variation in the relative bargaining success of the two institutions, and test the hypotheses developed previously. We first develop a measure of relative bargaining success and measures related to the explanatory variables referred to in the hypotheses.

Measurement of key variables

The relative bargaining success of the EP and Council on any given issue can be measured by comparing the position of each institution with the decision outcome. The dataset we use does not include a collective position for the Council. It is therefore necessary to estimate the position of the Council based on the positions of the member states. We do this by calculating the weighted average of member states' positions on each issue, where the weights are voting power (according to the Banzhaf [1965] index) and salience. The EP's position is the position with which it entered negotiations with the Council. Oftentimes this is its first-reading position, but in the case of early agreements it is the position of the EP's negotiators at the outset of negotiations with the Council. Bargaining success is measured in terms of the relative distance of the EP and Council from the outcome – that is, the distance between the Council position and the outcome, minus the distance between the EP position and the outcome. Hence, if the Council is further from the outcome than the EP, the variable '*Relative distance to outcome*' will take on a positive value (indicating EP success). If the Council is closer to the outcome than the EP, the variable will have a negative value (indicating Council success). In the issue depicted in Figure 1, the weighted average of member states' positions is 60.59, the EP's position is 0 and the outcome is 60. The Council position is only 0.59 points from the outcome, while the EP position is 60 points from the outcome. The variable '*Relative distance to outcome*' therefore has a value of −59.41 (i.e., 0.59−60) for this issue. Across the 165 issues included in our analysis, this variable ranges from −100 (i.e., the Council is 100 points closer to the outcome than the EP) to +100 (i.e., the EP is 100 points closer to the outcome than the Council). The mean is −12.16, indicating that the Council is on average 12 points closer to the outcome than the EP.

The first hypothesis refers to the relative proximity of the EP and Council to the *status quo*. We measure this using the dummy variables '*EP closer to* status quo' and '*Council closer to the* status quo'. For some issues, no *status quo* position exists; these cases form the reference category.

The second hypothesis concerns the internal cohesion of the EP and Council. We measure EP cohesion by examining the voting records in the committee responsible for drafting the report that forms the basis for the EP's first reading opinion. EP committees tend to be broadly representative of the Parliament as a whole in terms of party group affiliation (Corbett *et al.* 2011: 146) and the final committee vote on a report is always recorded. The votes are very often unanimous: of the codecision proposals examined here, the responsible EP committee adopted its first reading report unanimously 50 per cent of the time. The occurrence of a committee vote indicates that a proposal is divisive, or at least potentially divisive, in the EP. We employ a simple dichotomous measure, '*EP committee division*', which indicates for each proposal whether the responsible EP committee was unanimous (0) or divided (1). In a robustness test, we developed and applied another measure of EP division, which classified the EP as divided on an issue if there was a plenary vote on a relevant amendment that was supported by less than 75 per cent of participating MEPs.[3] The results are substantively similar with this alternative measure.

Turning to division in the Council, we calculate the variable '*Council division*' as the weighted average distance between each pair of member states, where the weights are power and salience (as used previously). According to this measure, the Council is most divided when powerful member states that attach high levels of salience to an issue are far apart.[4] Returning again to the example illustrated in Figure 1, the weighted average distance between member states positions is 25.78 for this issue. This compares with a mean value of 33 across all codecision issues.

We also include a number of control variables. Despite the previous finding that the Commission has no power under codecision, it does fulfil an arbitration role in negotiations between the EP and Council. It may be that the bargaining position of the EP or the Council is strengthened if they are supported by the Commission. The variable '*Relative distance to Commission*' measures the distance between the Council and the Commission, minus the distance between the EP and the Commission. Controls are also included for the types of disagreements that the issues involve. Three categories of controversies are identified: disagreements over the level of harmonization; disagreements over the level of regulation (e.g., stringent regulations versus free-market solutions); and disagreements over the level of financial subsidies. Previous research shows that actor alignments differ depending on the nature of the controversy; it may also affect the relative influence of different actors (Thomson 2011: ch. 4). We include dichotomous variables for these three categories of issues. The categories are neither mutually exclusive nor exhaustive: as some issues were placed in more than one category, and some issues (a total of 56 out of 165) could not be placed in any of these categories.

Analysis of relative bargaining success

The following analysis attempts to test the hypotheses regarding bargaining success and to identify the extent to which these variables fully account for the observed differences in the relative power of the EP and the Council over decision outcomes. The analysis uses issues as the units of analysis and applies a multilevel random intercept model to take account of the dependencies between the issues within each proposal. The results are presented in Table 1. The coefficient for the variable '*EP closer to* status quo' is not significant, implying that the EP does not benefit when it is closer to the *status quo* than the Council. In contrast, the coefficient for the variable '*Council closer to the* status quo' is negative and significant. The value of this coefficient indicates that when the Council is closer to the *status quo* than the EP, the bargaining success of the EP decreases by roughly 15 points relative to the Council.[5] Thus, there is mixed support for the first hypothesis: the Council benefits from proximity to the *status quo*, but the EP does not. Rather, the EP appears to do best on issues where there is no *status quo* position. These are typically issues on which no EU legislation exists at the time of the discussion.

In line with the second hypothesis, division in the EP has a negative and significant impact on the EP's relative bargaining success. When there is division in the EP its bargaining success decreases by 14 points relative to the Council (p=0.04). This effect is also negative using an alternative measure of EP division based on plenary votes, although the level of statistical significance is lower (p=0.09). In contrast, the coefficient for the variable '*Council division*' is in the expected direction, but does not approach statistical significance.

Table 1 Analysis of relative bargaining success of EP and Council under codecision

	b	s.e.	p
EP closer to *status quo*	−5.29	9.76	0.59
Council closer to *status quo*	−15.54	8.18	0.06
EP committee division	−14.19	6.98	0.04
Council division	0.08	0.21	0.71
Relative distance to Commission	0.19	0.07	0.00
Regulation issue	17.12	7.15	0.02
Financial subsidy issue	−18.08	16.48	0.27
Harmonization issue	−0.49	7.22	0.95
Constant	−4.53	10.31	0.66
Wald chi-square	21.55		0.00
Number of observations	165		

Note: Multilevel mixed-effects linear regression, where the levels are issues and proposals. There are 165 issues nested within 60 proposals. Dependent variable is '*Relative distance to outcome*'.

The control variables show that other factors also play a part in the relative success of the EP and Council. The relative distance to the Commission has a strong effect. The variables relating to policy type indicate that the relative success of the EP is higher for regulation issues and lower for issues relating to financial subsidies. This is in line with the argument that the EP will be more successful on issues that impose costs on industrial actors (i.e. regulatory policies) than on issues that imposes costs on member states (i.e., distributive policies) (Burns 2005: 492; see also Shackleton 2000).

It is also important to ask, do these factors fully account for the fact that the Council does better than the EP on average? This question can be answered by examining the expected value of the dependent variable at different values of the independent variables. Recall that the mean value of the dependent variable is −12.16, indicating that the Council is on average over 12 points closer to the outcome than the EP (Table 2). However, when neither side has a *status quo* advantage, the EP is not divided and the level of division in the Council is at its average value, then the expected value of the dependent variable is 2.58 – indicating a marginal victory for the EP.[6] In other words, when the bargaining advantages that the Council enjoys owing to division in the EP and proximity to the *status quo* are removed, there is a much more level playing field.

CONCLUSION

One of the main findings from the above analyses is that while the Commission and EP have substantial power to shape legislative outcomes, the Council dominates the legislative process regardless of the procedure that applies. The best-fitting power scores give the Commission about 30 per cent of the Council's power in the consultation procedure and the EP 20 per cent of the Council's power in the codecision procedure. This gives each of the supranational institutions a similar level of power to two or three large member states. While this is substantial, it is not realistic to place either the EP or the Commission on a par with the Council as a whole in terms of its power. The power of the supranational institutions is lower than the formal procedural rules suggest. The codecision procedure, for instance, can reasonably be read as giving equal power to the Council and the EP (e.g., Tsebelis and Garrett 2000). So there is certainly a difference between our findings and at least some commonly held views regarding the distribution of power among the institutions.

Part of the difference between our conclusions and some other views on the distribution of power among the EU's institutions is owing to our focus on power as the ability to affect decision outcomes in the face of opposition from other actors. Observers who attribute greater prominence to the supranational institutions may be informed by an awareness of the importance of the Commission and EP in other respects. For instance, the Commission's preparatory policy work, often including extensive consultations with interest groups and member states, undoubtedly affects the contents of adopted legislation. The Commission, in addition to the Council Presidency, is also adept at

forging political compromises among other actors. Although these are important tasks, they are distinct from power as defined here. Similarly, the EP perhaps has more prominence than power relative to the Council. Not only is the EP highly visible in the process, parliamentarians often raise issues that did not occur in the oftentimes technical discussions that take place among member states' representatives in Council working groups. Such EP actions undoubtedly also affect the contents of adopted legislation. Observers who claim we underestimate the power of the EP usually cite anecdotes in the form of prominent cases in which the EP secured important concessions (e.g., on the sharing of airline passenger information). We recognize the importance of these individual successes for the EP and policy outcomes, but our analyses focus on a broader selection of cases. The outcomes of this broader set of cases imply that when the Council members and EP take different positions on a controversy, the EP has less power than the Council.

We also investigated whether the differences in the power of the EP and Council could be explained in terms of bargaining advantages. Although our evidence refers to proposals adopted at all stages of the codecision procedure, our findings are broadly in line with previous research that focused specifically on conciliation committee negotiations (König et al 2007). The results show that the relative bargaining success of the two institutions is influenced by relative proximity to the *status quo* and by internal division in EP. In line with the first hypothesis, the Council has a bargaining advantage when it is closer to the *status quo* than is the EP, as is very often the case. So the Council's conservatism or the EP's radicalism partly explains the fact that the Council has more power, as defined here. In line with the second hypothesis, divisions within the EP weakened the EP's power. However, divisions within the Council do not weaken the Council. The presence of an effect of internal divisions in the EP and absence of such an effect in the Council reflects Schelling's insights regarding the importance of expectations about the room for manoeuvre available to each collective actor (Schelling 1960). When the EP is internally divided, this is public information since committee meetings and votes are public. Therefore, member states are aware that there is a range of possible outcomes that may find support in the Parliament. By contrast, Council deliberations are held in private, despite the Council's lip service to the principle of transparency and informal information flows between the Council and EP, or individual governments and MEPs. Structurally, the Council has an information advantage over the EP. This contributes to conditions in which the EP is in a structurally weaker position than the Council despite the formal parity between the institutions in what is now the ordinary legislative procedure.

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NOTES

1 Tsebelis (2002: 45–50) makes a similar point using a spatial model for a collective legislative body. His analysis indicates that when a chamber is internally divided, there is typically a greater range of alternatives to the *status quo* on which agreement can be found (p.50). However, this is not always the case: he also points out that there are situations in which greater internal cohesion increases the number of policy alternatives that the collective actor prefers to the *status quo.*
2 This assumption does not have significant consequences for our results. We also tested models where all member states were assigned equal power weights; the results for the inter-institutional distribution of power were very similar.
3 Where amendments were adopted by a show of hands, we classified the EP as not divided.
4 An alternative measure of Council division was tested, which simply took the standard deviation of member states' positions, which gave substantively the same results.
5 Note that this is the effect compared to the reference category – i.e., issues on which there is no *status quo* position.
6 This is calculated by running a model which includes only the four key variables from model 1 (i.e., '*EP closer to* status quo', '*Council closer to* status quo', '*EP committee division*' and '*Council division*'), and estimating the value of the dependent variable when the values of these independent variables are fixed at the specified levels.

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