

# **Politicizing Council decision-making: The effect of EP empowerment**

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*Research on the intra-institutional consequences of differences in the EU's inter-institutional rule configurations is rare. This study investigates the effect of the empowerment of the European Parliament (EP) on the active involvement of ministers in Council decision-making. The empowerment of the EP is likely to increase the incentives for bureaucrats in the Council's preparatory bodies to refer decisions on legislative dossiers to ministers. The empirical analysis examines this claim with data on about 6000 legislative decision-making processes that were concluded between 1980 and the end of 2007. The analysis demonstrates a strong and robust association between the type of legislative procedure and different decision-making levels in the Council: a more powerful EP makes Council decision-making more politicized.*

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## **The EP and Council in EU law-making**

Over the last three decades, the European Parliament (EP) has gained substantial law-making powers. The EP's original role was to be a purely consultative body in the legislative decision-making process of the European Union (EU), giving advice to the Commission and the Council of Ministers. While the Commission was, and still is, responsible for drafting legislative proposals, the Council, as the institution representing member states' interests, used to be the only institution whose agreement was required to pass EU law. From its humble beginnings as an advisory body, the Parliament has developed into a fully-fledged legislative institution with prerogatives that in many respects equal those of the Council (see e.g. Rittberger 2005).

Not surprisingly, the rather extraordinary transformation of the EP has caught widespread attention amongst scholars of EU politics. Corresponding to the elevation of the Parliament's role in the legislative decision-making process, research on its internal workings and its external influence has flourished in recent years (e.g. Kreppel 2002a; Hix *et al.* 2007). However, little research exists that examines the consequences of the empowerment of the EP on decision-making within the other major institutions involved in EU law-making. This study investigates whether and to what extent the increase in Parliament's legislative powers led to a politicization of Council decision-making. In the Council of the EU, only ministers from member state governments have the legal authority to adopt legislative decisions. However, ministers are often not directly involved in the substantive negotiations on a dossier but just rubber-stamp the agreement reached by bureaucrats in preparatory committees of the Council. Thus, the majority of legislative proposals adopted by the Council are never brought to the attention of ministers (van Schendelen 1996; Hayes-Renshaw & Wallace 2006; Häge 2008b). In this paper, I argue that the empowerment of the EP politicizes Council decision-making. As a consequence, a more powerful EP makes it more likely that ministers rather than bureaucrats decide about legislative proposals in the Council.

The degree to which ministers are actively involved in Council decision-making has obvious implications for the legitimacy of the decisions adopted by this institution. Proponents of the current constitutional structure of the EU argue that Council decisions are no less legitimate than decisions by the European Parliament, given that member state governments are accountable to their national parliaments, and national parliaments represent the domestic populations

(Moravcsik 2002). However, this accountability link is stretched and becomes brittle when Council decisions are made by national officials rather than ministers themselves. The work in Council working parties and committees usually takes place outside the limelight and national officials do not answer directly to their domestic parliaments. If the empowerment of the EP politicizes decision-making within the Council, then granting the EP legislative powers increases the EU's legitimacy not only directly by empowering the only institution that represents European citizens, but also indirectly by strengthening the accountability link between government representatives in the Council and their national parliaments and electorates.

This paper examines the consequences of granting legislative powers to the EP for the involvement of ministers in Council decision-making. The next section describes the EP's empowerment in the light of the theoretical and empirical literature on that topic. From this literature review, I derive a ranking of the power of the EP under different legislative procedures. Such a ranking is required for specifying the expected effects of different procedures on Council politicization. In the subsequent section, I discuss existing research that sheds some light on the relationship between EP empowerment and Council politicization. The section shows that previous work is limited in terms of its empirical scope and does not provide a precise theoretical mechanism linking EP power to the involvement of ministers in the Council. The following section examines several candidate models for explaining this connection and argues that none of them can provide a satisfactory answer to the research question. Based on this discussion, a simple model of bureaucratic decision-making in the Council is developed. Somewhat simplified, the theoretical argument states that the introduction of new issues and extreme positions and the increase in the level of public and political awareness that accompanies the empowerment of the EP discourages national officials from making Council decisions themselves. Being primarily motivated by blame-avoidance rather than policy-motives, national officials are more likely to refer decisions to ministers when the chances of bureaucrats making and ministers discovering 'wrong' decisions increase. This simple model yields a clear hypothesis about the effect of EP empowerment on the level of politicization of Council decision-making.

Following the outline of the theory, I describe the sample, data and methods employed in the empirical analysis. The analysis is based on a sample of approximately 6000 legislative decision-making cases. The sample covers the period between 1980 and 2007 and includes legislative acts adopted according to the consultation, cooperation and codecision procedure. The

main explanatory variable in this study is the type of legislative procedure and the response variable indicates the level at which the Council decided about the proposal. After the research methods section, I present the results of the statistical analyses. The empirical analysis uses bi- and multivariate statistical techniques to examine the association between EP empowerment and Council politicization. The findings show a clear, substantively and statistically significant relationship between the type of legislative procedure and different Council decision-making levels. Thus, the results of the data analysis are in line with the expectations derived from the theoretical model. In the last section, I summarize the study and its findings and discuss possible normative conclusions.

### **The EP's powers under different legislative procedures**

This section describes the three main legislative procedures used to adopt EU legislation and discusses its power implications for the EP in light of the relevant literature<sup>1</sup>. Before the Single European Act amended the Treaty of Rome in 1987, European laws were mostly adopted through the consultation procedure. According to this procedure, legislation is proposed by the Commission and decided upon by the Council. The Parliament has only a consultative function. The Council cannot adopt legislation before the Parliament has delivered its opinion, but the Council is under no obligation to take any of the Parliament's amendments into account. The Single European Act introduced the cooperation procedure. The cooperation procedure added another reading to the consultation procedure. In the first reading stage, the Council adopts a common position by qualified majority and sends it to Parliament for consideration. The EP has the opportunity to make amendments to the Council's common position, adopt or reject it. If the EP accepts the common position, the Council can adopt the proposal by the consent of a qualified majority of its members. If the EP rejects the common position, or if the EP makes amendments that are subsequently adopted by the Commission, the Council needs unanimous consent among its members to overrule the Parliament's suggestions.

In 1993, the Treaty of Maastricht added yet another procedure to the repertoire. This first version of the codecision procedure (Codecision I) consisted of three readings with a conciliation stage between the second and third one. If the Council cannot accept all amendments made by the EP in second reading, a conciliation committee has to be convened. This committee consists of equally sized delegations from the Parliament and the Council. The committee's task is to find a

compromise solution, a so-called 'joint text'. According to the Maastricht version of codecision, if the conciliation committee did not agree on a joint text, the Council could re-introduce its common position in third reading. The Parliament could not amend the Council's common position, but only accept or reject it. The Treaty of Amsterdam in 1999 revised the last two stages of the codecision procedure and extended its scope of applicability to most matters previously covered by the cooperation procedure. According to the revised procedure (Codecision II), the act fails if the conciliation committee cannot agree on a compromise. The Council is not allowed to re-introduce its common position. If the conciliation committee agrees on a joint text, the full plenary of the Parliament and the Council still have to approve it in the third reading.

The implications of these formal rule changes for the EP's influence in policy-making have received considerable attention from the scholarly community. Despite theoretical reasons (Varela 2009) and recent empirical evidence (Kardasheva 2009) that suggest that the EP is not completely powerless under the consultation procedure, a consensus exists in the literature that the consultation procedure provides the Parliament with the least influence relative to the other procedures. The cooperation procedure is generally seen as having granted the EP important new powers to influence legislation (Steunenberg 1994; Tsebelis 1994; Garrett 1995; Crombez 1996). Disagreement exists only about what exactly these powers are. Most scholars acknowledge that the EP gained conditional veto power (Steunenberg 1994; Crombez 1996). However, Garrett and Tsebelis (Tsebelis 1994; Garrett 1995; Garrett & Tsebelis 1996) argue that the Parliament also gained conditional agenda-setting power. These differences in the assessment of the EP's role under the cooperation procedure become particularly significant when judging the extent to which the introduction of the codecision procedure increased the power of the EP. Steunenberg (1994) and Crombez (1997) argue, albeit for different reasons, that the introduction of Codecision I increased the power of the EP, while Garrett and Tsebelis (1996) argue that the EP was better off under the cooperation procedure. According to Steunenberg (1994), the EP gained moderately in power because the new third reading stage turned its conditional veto power into an absolute veto power. Crombez (1997) goes even further in arguing that Codecision I equipped the EP not only with absolute veto power, but also with agenda-setting power. Thus, Crombez (1997: 115) concludes that under Codecision I the EP has become a "genuine co-legislator" next to the Council. In contrast, Garrett and Tsebelis (1996: 290) evaluate the new procedure very differently. They agree with Steunenberg (1994) that the EP gained absolute veto power, but they

also stress that it lost the more important agenda-setting power it enjoyed under the cooperation procedure. General agreement exists again that Codecision II grants the EP powers similar to those of the Council (Garrett *et al.* 2001). The fact that the proposal fails if the conciliation committee does not reach an agreement forces the Council to engage in genuine negotiations with the Parliament.<sup>2</sup> In summary, the discussion of the theoretical literature indicates two possible power rankings of the procedures granted to the EP:

*Crombez/Steunenberg: Consultation < Cooperation < Codecision I / Codecision II*

*Garrett/Tsebelis: Consultation < Codecision I < Cooperation < Codecision II*

Unfortunately, existing empirical studies (Shackleton 2000; König & Pöter 2001; Tsebelis *et al.* 2001; Kreppel 2002b; Kasack 2004) of these diverging views do not provide conclusive tests. Thus, rather than settling on one of the two power rankings for the EP empowerment variable, the empirical analysis below allows for the possibility that either of the two reflects reality more accurately. In the process, the results of the analysis shed some additional light on this largely historical debate about the relative empowerment of the EP under the cooperation and codecision procedure.

### **The politicization of decision-making in the Council**

The discussion in the previous section shows that the empowerment of the EP and its consequences on EU policy outcomes has received considerable attention in the academic literature. However, few studies examine the politicization of Council decision-making<sup>3</sup>, not to speak of the EP's effect on this phenomenon under different legislative procedures. The article by Farrel and Héritier (2004) on the intra-institutional consequences of inter-institutional rule changes is relevant from a theoretical point of view. Farrel and Héritier (2004: 1208) argue that “exogenous changes in macro-institutional rules, which result in a move from formal and sequential to informal simultaneous interaction between collective actors, will lead to changes in individual actors' respective influence over outcomes within organizations”. Specifically, informal simultaneous interactions are supposed to advantage individuals that control information flows between the collective actors. With respect to the EU, the reliance on informal negotiations between the institutions to come to an early agreement under the codecision procedure is a case in point. Since the Treaty of Amsterdam introduced the possibility of adopting legislation at first reading, these informal trilogues between representatives of the Council, the Commission and the

Parliament have become ever more widespread. The hypothesized consequence is an increase in the influence and power of those individuals that are directly involved in the negotiations at the expense of the other members of their institution who are not involved. On the Council side, the Presidency, usually at working party or the Committee of Permanent Representatives (Coreper) level, leads the negotiations. Thus, within the Council, the expected effects consists of a horizontal shift of power from the other member states to the member state holding the Presidency as well as a vertical shift of power from the ministerial level to the committee level.

The latter expectation indicates that the use of trilogues under Codecision II might actually decrease the politicization of Council decision-making. This expectation is contrary to the hypothesis that a more powerful EP leads to a higher level of politicization and points to an important condition of the theoretical mechanism outlined below. The EP's empowerment is only expected to lead to more politicized Council decision-making as long as the EP actually behaves like a Parliament. Transparency in proceedings is a characteristic element of democratic legislatures and it is an important element through which the EP draws attention from outside actors. Negotiations in informal trilogues cannot be readily accessed and scrutinized by third actors, which is essential for the hypothesized effect of EP powers on the politicization of Council decision-making. Thus, to the extent that these informal negotiations become the norm under Codecision II, the effect of EP empowerment on the politicization of Council decision-making might be weakened.

Turning to research on Council committees and working parties, most existing studies have not considered the reasons for the division of labour across different levels of the Council. Beyers and Dierickx (1997, 1998) and Naurin (2008, 2009) study the communication and cooperation networks within committees. Egeberg (1999; Egeberg *et al.* 2003), Trondal (2001, 2002), and Beyers (1998; Beyers & Trondal 2003; 2005) examine the extent to which committee members have developed supranational role conceptions. Finally, Lewis (1998, 2003, 2005) examines the interaction styles in the Committee of Permanent Representatives. While valuable in their own right, these studies shed little light on the question of why some Council decisions are made at the committee level and others by ministers themselves.

In contrast, Fouilleux *et al.* (2005) and Häge (2007a, b) have studied the reasons for the distribution of decisions across different levels of the Council.<sup>4</sup> Fouilleux *et al.* (2005) challenge the perception that bureaucrats deal with the 'technical' issues while ministers handle the

'political' problems. They argue that no clear-cut distinction exists between technical and political issues. Whether or not an issue is considered to be of a political nature is often a result of social construction rather than the objective characteristics of a dossier. In contrast, the results of Häge's (2007a) quantitative analysis indicate that a large amount of the variation in ministerial involvement across proposals can indeed be traced back to basic characteristics of the proposal under consideration. Still, the findings of this study are also partly in line with those of Fouilleux *et al.* (2005) in that objective characteristics of the dossier do not completely determine the level of decision-making in the Council; context factors and the outcomes of social interactions affect the decision to involve ministers as well. Häge (2007a, b) also studies the effect of EP involvement on the Council decision-making level. Based on different samples and measures of EP power, both studies find a strong positive effect on ministerial involvement. However, the findings are based on samples covering relatively limited time periods and compare the consultation procedure only with the Amsterdam version of the codecision procedure. Thus, the generalizability of the results is questionable. This study improves on earlier research by considerably extending the timeframe during which the relationship between legislative procedure and decision-making level in the Council is considered. At least equally important, this study proposes a clearly defined theoretical link between EP involvement and Council decision-making level. But before presenting the theoretical model, the next section first discusses why existing theoretical frameworks cannot provide satisfactory answers to the research question considered here.

### **Crucial aspects of Council decision-making**

Existing models of EU policy-making (Steunenberg 1994; Crombez 1996, 1997; Tsebelis & Garrett 2000) and Council decision-making (Steunenberg 2003, 2004; König & Proksch 2006b, a) are geared towards explaining policy outcomes. These models usually treat member states as unitary actors and therefore do not distinguish explicitly between different hierarchical levels within the Council.<sup>5</sup> To be useful for the purposes of this study, a model of Council decision-making should be able to explain why some Council decisions are made by bureaucrats and others by ministers. This requirement implies that the model needs to take into account the hierarchical organizational structure of the Council and how legislative proposals are processed through this structure. At the bottom of the hierarchy, numerous working parties composed of



experts from national ministries first discuss the details of a dossier. Coreper and other senior committees then constitute the middle layer of the hierarchy. Finally, the ministers in their different sectoral configurations form the top of the hierarchy. If any of the bodies on the lower levels of the hierarchy reach complete agreement on a dossier, it is not further discussed at higher levels. Negotiations start at the bottom of the hierarchy and work their way up.<sup>6</sup> Obviously, models that do not in some way incorporate this hierarchical structure cannot give us any insights about the division of labour between different Council levels.

Standard delegation models are also of limited use for explaining the politicization of Council decision-making. Bendor *et al.* (2001) distinguish between two general types of models. Both types of models assume preference divergence between the principal and the agent. Furthermore, they both assume that the agent knows more about the practical consequences of different policy options than the principal. The first type of model, the delegation-of-authority game assumes that the principal moves first and decides about whether to delegate decision-making to the agent, possibly with restrictions attached, or to make the decision herself. As a general result of these models, the discretion granted to the agent is a function of preference convergence and the principal's uncertainty about the practical consequences of different policies. The more the principal can trust the agent and the higher her uncertainty about the effects of different policies, the more leeway the agent will be allowed to have. However, a major problem of this type of model is that it does not correspond well with the actual sequence of choices made in Council decision-making. The minister does not decide at the beginning of the negotiation process about whether to make the decision herself or to delegate decision-making authority to the agent. Often, the minister will not even be aware that the Commission has introduced a proposal. The default process works the other way round: bureaucrats start discussing the dossier and it is up to them to decide whether or not to involve ministers. Given the importance of the sequence of moves for game theoretical predictions, this lack of correspondence cannot be overlooked.

The second type of delegation models, signalling games, does not shed light on the phenomenon either. In contrast to delegation-of-authority models, signalling games allow the agent to move first and make a policy recommendation to the principal. The principal moves second and considers the agent's advice when making the policy decision. The most important result of this type of model is that more information can be communicated between the two

players the closer the agent's and the minister's preferences are (Bendor *et al.* 2001: 251). While the sequence of moves of these models resembles the process of Council decision-making more closely, these models neglect another crucial feature. In the Council, the bureaucrat has the option to decide about policy himself. Therefore, if he has preferences that diverge from those of the minister, the best way to see his most preferred outcome realized is to make the decision himself. In such a situation, the bureaucrat has never an incentive to refer the decision to his minister, who might ignore the bureaucrat's advice because she does not trust him.

The sequence of moves of a theoretical model should at least roughly correspond to the actual sequence of decisions in a typical Council decision-making process. In the Council, bureaucrats decide about putting a dossier on the ministers' agenda, so the first mover in the theoretical model should be the bureaucrat.<sup>7</sup> Also, the theoretical model should reflect that bureaucrats have a choice: they do not need to make a recommendation to ministers; they can make the decision themselves. Furthermore, the fundamental assumption of delegation theory that the preferences of the principal and those of the agent diverge is rather questionable in the context of hierarchically structured organizations like national ministries. Hierarchical organizations provide the principal with enough opportunities and mechanisms to control and sanction the behaviour of the agent on an ongoing basis. These control and sanctioning mechanisms form an effective incentive scheme that should make sure that the agent's preferences are closely aligned with those of the principal. In this respect, hierarchical organization could even be seen as a solution to the principal-agent problem. If the preferences of the principal and the agent are aligned, then the agent will always try to select the policy that is in the best interest of his principal. But if bureaucrats in the Council have preferences similar to those of their ministers, why do they sometimes prefer to refer a decision on a proposal to ministers while at other times to make the decision themselves? The following model is specifically designed to give an answer to this question.

### **A model of bureaucratic decision-making in the Council**

The theoretical mechanism linking EP empowerment to the politicization of Council decision-making consists of two components. The first component is a model of bureaucratic decision-making in the Council and the second component entails two hypotheses about how EP empowerment is supposed to affect the main parameters of this model. The bureaucratic

decision-making model aims to give a rough representation of the reasoning process of national officials working in Council committees. Because this study is interested in the extent of ministerial involvement, the difference between the working party and committee level of the Council is not taken into account. The study focuses on the decision of a ‘typical’ member of Coreper about whether or not to refer a decision on a dossier to his or her minister.<sup>8</sup> In the following discussion, the Coreper member is generically referred to as ‘the bureaucrat’. As outlined above, the model diverts from the delegation literature in that it assumes that bureaucrats are not independent policy seekers, but are primarily motivated by blame avoidance. In more positive terms, they just want to do ‘a good job’.<sup>9</sup> Thus, the preferences of bureaucrats and their ministers are assumed to be rather closely aligned and therefore the risk of moral hazard on behalf of bureaucrats does not play a significant role in explaining the involvement of ministers. In technical terms, preference alignment can be represented by specifying the bureaucrat’s utility as a direct function of the minister’s utility. More precisely, the utility functions for the two actors take the following forms:

$$U_{\text{Minister}} = -|P-M|-c$$

$$U_{\text{Bureaucrat}} = -d(|P-M|-c)$$

where  $P \in \{A = 0, B = 1\}$  stands for the policy adopted by the Council and  $M \in \{A = 0, B = 1\}$  for the policy most preferred by the minister. For simplicity, only two possible policy options  $A$  and  $B$  with values 0 and 1, respectively, are considered. The costs for the minister of negotiating herself are captured by  $c$ , which stands for a positive, real number. The binary variable  $d \in \{0, 1\}$  indicates whether or not the minister is aware of the policy outcome  $P$ . The utility functions take their maxima at zero. Thus, the minister is most happy when she realizes her preferred policy without the need to become personally involved. Then both the term  $|P-M|$  and the cost variable  $c$  are zero. This outcome is also one of the outcomes most favoured by the bureaucrat. However, any other outcome of which the minister is not aware of yields the same payoff for the bureaucrat. In all these situations,  $d$  is zero. The bureaucrat is not intrinsically motivated to achieve the result most favoured by his minister. The bureaucrat has only an incentive to actively pursue the minister’s goals as long as a chance exists that the minister learns about the policy outcome ( $\text{Prob}[d = 1] > 0$ ). If the bureaucrat can rule out this possibility, he is indifferent between different policy options. In this sense, the bureaucrat is politically neutral. Figure 1 describes the sequence of interaction between the bureaucrat and the minister.

In the first stage of the model, the bureaucrat decides about referring the proposal to his minister or selecting a policy himself. If the bureaucrat refers the proposal, the minister simply chooses the policy she prefers (so  $|P-M| = 0$ ) but incurs a positive cost ( $c > 0$ ) for spending some of her valuable time on the proposal. If the bureaucrat chooses to decide about the policy himself, he faces two problems that in combination make a clear-cut policy decision difficult. Firstly, the bureaucrat is not certain about the policy option preferred by his minister. The bureaucrat believes that the minister prefers policy  $A$  with probability  $a \in [0, 1]$  and policy  $B$  with probability  $1-a$ . Furthermore, the bureaucrat is uncertain about whether the minister will become aware of the adopted policy or not. With probability  $p \in [0, 1]$ , the minister will be informed about the adopted policy, and with probability  $1-p$ , she will remain unaware of the policy. The minister's payoff in the different scenarios just depends on which policy is selected by the bureaucrat. The minister is not involved in negotiations, so the cost term  $c$  is always zero. If the bureaucrat selects the option favoured by the minister, the minister receives her maximum payoff of zero. If the bureaucrat selects the option not favoured by the minister, the minister receives a negative payoff of  $-1$ .

From the point of view of the bureaucrat, the choice of the policy option is inconsequential as long as the minister does not learn about it. The bureaucrat receives his maximum payoff of zero whenever the minister remains unaware of the bureaucrat's policy choice, whatever that choice may be. In contrast, the payoffs of the bureaucrat exactly mirror the payoffs of the minister when the latter scrutinizes the former's decision. Any disagreement about the policy option chosen by the bureaucrat will be directly reflected in the bureaucrat's payoff. If the bureaucrat chooses the minister's preferred policy option, he will receive a payoff of zero. If he chooses the option not favoured by the minister, he will receive a payoff of  $-1$ . This relationship between the bureaucrat's and the minister's payoffs represents the idea that the bureaucrat is sensitive towards the minister's evaluation of his job but that the minister's evaluation depends on what the minister can actually learn about the bureaucrat's behaviour.

--- Figure 1 about here ---

The game can be solved via backward induction. When the bureaucrat refers the proposal to the minister, nature reveals which policy the minister prefers and the minister simply selects this

policy. The minister incurs only decision-making costs resulting from the need to deal with the proposal herself. These decision-making costs occur regardless of which policy option the minister selects and are directly transferred to the bureaucrat. Thus, the bureaucrat's payoff for referring the proposal is  $-c$ .<sup>10</sup> The payoff for deciding about the proposal himself is somewhat more difficult to identify. Given the choice for a certain policy option, the bureaucrat's payoff depends on the probability  $p$  that the minister becomes aware of the selected policy and on the probability  $a$  that the selected policy corresponds to her preferred outcome. In general, the bureaucrat's payoff from selecting policy  $A$  is  $p(1-a)(-1)$  and the payoff from selecting policy  $B$  is  $pa(-1)$ . Comparing these two payoffs, the bureaucrat will choose policy  $A$  over  $B$  if  $p(1-a)(-1) > pa(-1)$ , which reduces to  $a > 1-a$ . In words, the bureaucrat will choose policy  $A$  if the probability that the minister prefers policy  $A$  is larger than the probability that the minister prefers policy  $B$ . Solving for  $a$ , we can see that this will be the case when  $a > 0.5$ .

If  $a > 0.5$ , then the bureaucrat's choice between referring the proposal to the minister and deciding about the proposal himself becomes one between referring and selecting policy  $A$ . Formally, the bureaucrat will refer the proposal if  $-c > p(1-a)(-1)$ , which reduces to  $c < p(1-a)$ . If  $a < 0.5$ , then the bureaucrat's choice becomes one between referring and selecting policy  $B$ . In this case, the bureaucrat refers the proposal if  $-c > pa(-1)$ , which reduces to  $c < pa$ . In both cases, the bureaucrat faces a trade-off between the certain costs  $c$  of a referral and the losses he is likely to receive in the event that he inadvertently does not select the minister's preferred policy and his policy choice is discovered by the minister.<sup>11</sup> For a given level of negotiation costs, the bureaucrat is more likely to refer the proposal to the minister the larger the probability that he accidentally selects the policy option not favoured by the minister and the larger the probability that the minister subsequently learns about his policy choice. Looking at it from a different angle, the bureaucrat will decide to select policy himself either if he is relatively sure about which policy is favoured by his superior or if the chances that his policy choice will be discovered by the minister are rather small. According to the model, this is the main trade-off faced by bureaucrats in Council committees. At each point in the negotiation process, committee members have to ask themselves whether they are willing to agree to a certain negotiation offer or not. If they can be sure that the offer is in line with their minister's preferences, the decision is an easy one. However, if they are highly uncertain about their minister's views and thus likely to agree to

something the minister might not like, they will only take that risk if they can be pretty certain that the minister's attention will not be drawn to this issue at a later point in time.

The bureaucrat's uncertainty about the minister's preferred policy choice and the bureaucrat's belief about the probability that the minister will learn the bureaucrat's policy choice are both influenced by the powers of the EP in legislative decision-making.<sup>12</sup> First, the bureaucrat's uncertainty about the minister's views increases as a direct consequence of the Parliament's actions. The Parliament is likely to raise new issues and thereby add further dimensions to the negotiation space (Tsebelis 1996; Rittberger 2000). Also, empirical research shows that the EP often represents extreme positions compared to the member states (Thomson *et al.* 2004; Kaeding & Selck 2005; Costello 2008). Together with the strategic considerations added by taking the EP's current and future behaviour during the procedure seriously, the decision-making situation under the cooperation and codecision procedure is considerably more complex than under the consultation procedure. In the face of such complexity, the bureaucrat will find it more difficult to predict the reaction of his minister (i.e.,  $a$  will be closer to 0.5).

As long as the minister does not learn the bureaucrat's policy choice, this uncertainty about the minister's preference is not consequential. However, a more powerful EP is also likely to be taken more seriously by interest groups and the media on both the European and national level. The media is more likely to cover and monitor the EP's actions and interest groups are more likely to communicate with European parliamentarians and their staff. The increased interest by lobbyists and the media multiplies the number of communication channels through which information about the eventual policy choice of bureaucrats can be transmitted to the minister. Thus, the minister is more likely to hear about the bureaucrat's policy choice (i.e.,  $p$  increases) when the proposal in question was adopted according to the cooperation or codecision procedure rather than the consultation procedure. In short, the involvement of a powerful EP in legislative decision-making increases the uncertainty about the preferences of the minister and the likelihood that ministers will become aware of the bureaucrat's policy choice. Both of these factors in turn increase the probability that the bureaucrat refers a proposal to the minister. Having outlined the linkages between the legislative powers of the EP and the different parameters determining the bureaucrat's referral decision, the following empirically testable hypothesis can be stated:

*Hypothesis: Ministers in the Council are more likely to personally decide on a proposal the more powers the EP has been granted in the legislative decision-making process.*

Corresponding to the earlier discussion of the effects of different procedures, I expect to observe the lowest degree of ministerial involvement under the consultation procedure and the highest under the Amsterdam version of the codecision procedure. The cooperation procedure and the first version of the codecision procedure are also expected to lead to a higher involvement of ministers than the consultation procedure. However, as discussed in the previous section, the divergent views in the literature on the powers of the EP under Cooperation and Codecision I do not allow for the derivation of more specific predictions. In the next section, I examine the extent to which these expectations are reflected in the data.

### **Sample selection, data collection and measurement**

The data used for this analysis was extracted from the European Commission's Prelex database. Prelex monitors the inter-institutional decision-making process and is accessible online.<sup>13</sup> The database provides information on Commission documents submitted to the other EU institutions since the mid 1970s. For legislative proposals, the database tracks their progress through the inter-institutional decision-making process, providing a considerable amount of information on major events related to the dossier. To extract the information from the database's webpages, a computer script in the programming language Python was developed. First, the script searches for all Commission documents that were submitted in a certain year and downloads the respective webpages. In a second step, the relevant information in the webpages is identified through search functions and then copied and stored in a database table, which forms the basis for the statistical analysis.

The data analysis focuses on decision-making processes that started after 1974 and ended between the beginning of 1980 and the end of 2007. The analysis is also restricted to proposals for decisions, regulations and directives that were introduced by the Commission and discussed under the consultation, cooperation, or codecision procedure. The focus on decisions, regulations, and directives excludes several types of non-legislative acts. To keep the sample somewhat homogenous, legislative proposals introduced by a member state or by the European Central Bank are not considered. In cases where direct information on the legislative procedure was missing, information on the occurrence of different types of EP meetings was used to code the

procedure variable.<sup>14</sup> In addition, proposals were excluded if evidence suggested that the legislative procedure had changed during the decision-making process due to changes in the EU treaties. In such cases, the relevant procedure could not be identified unambiguously. Finally, 166 pending proposals were excluded because the decision-making process had not been concluded yet. This selection procedure resulted in a sample of 6,079 decision-making processes.

Figure 2 shows the distribution of different types of procedures over time. Before 1987, all decision-making processes followed the consultation procedure. As the Single European Act came into force in 1987, the cooperation procedure was added. The Maastricht Treaty introduced the codecision procedure in 1993. In 1999, the Treaty of Amsterdam revised the codecision procedure and widened its scope of applicability, almost completely replacing the cooperation procedure.

**--- Figure 2 about here ---**

The politicization of Council decision-making is measured by a binary variable indicating whether or not ministers personally decided on the dossier. The analysis focuses on first reading decisions of the Council. In the case of the consultation procedure, this decision coincides with the final adoption of the act. In the case of the cooperation and codecision procedure, the first reading decision refers to the adoption of the Council's common position. In both procedures, the first reading is the stage at which member states negotiate a collective Council position. The second and third reading decisions of the Council under the cooperation and codecision procedure deal mainly with finding an inter-institutional compromise with the EP.<sup>15</sup> Thus, the focus on the first reading decision of the Council maximizes the comparability of the cases across procedures. The meeting in which the ministers formally adopt the proposal or the common position is often preceded by a meeting in which the ministers reach an informal agreement on the dossier.<sup>16</sup> If ministers discussed the proposal in one of these meetings, the politicization variable is coded as 1. If ministers did not discuss the proposal in either meeting, the variable is coded as 0.<sup>17</sup>

If ministers have to discuss a proposal, it is indicated on the ministers' meeting agenda as a B-item. If ministers just endorse the decision made by one of the working parties or Coreper without deliberation, then the proposal is indicated as an A-item on the agenda. In many cases,



Prelex includes information on what type of item a proposal formed on the ministers' agenda. However, such information is often missing for meetings in which the Council reached an informal agreement on the proposal. For such cases, assuming that the proposal formed a B-item on the agenda seems reasonable. If an agreement is reached at lower levels of the Council, no need exists for ministers to endorse this agreement informally as an A-item before adopting the act officially, again as an A-item, in a subsequent meeting. The assumption that informal agreements are usually B-items on ministers' agenda is also supported by the available data. The overwhelming majority of meetings at which ministers reached an informal agreement and for which information on the type of agenda-item is given indeed indicates that the respective proposals formed B-items on the agenda.<sup>18</sup> Thus, if Prelex specified that ministers reached an informal agreement but lacked information on the type of agenda-item, the proposal was coded as a B-item. Conversely, if information on the agenda-item was missing for meetings in which the ministers formally adopted a Council decision, I assumed that the decision was adopted without discussion as an A-item. Again, the large majority of formal adoption cases on which information about the type of agenda-item was available showed that ministers usually made the formal adoption decision through the A-item procedure.<sup>19</sup> Finally, adoptions through the written procedure, replacements or withdrawals of the proposal by the Commission before any ministerial meeting had taken place were also coded as a lack of ministerial involvement.<sup>20</sup>

Figure 3 shows the percentage of legislative acts discussed directly by ministers between 1980 and 2007. An interesting observation is the large variation in the degree of ministerial involvement, ranging between 6 percent in 1980 and 66 percent in 1990. The lack of a clear-cut trend in the degree of ministerial involvement also comes as a surprise. This finding stands in contrast to recent work arguing that EU policy-making is increasingly politicized (e.g. Hooghe & Marks 2009). At least with respect to Council decision-making, such a development is not visible. If the data show any systematic development at all, ministerial involvement was highest during the drive for the completion of the internal market in the early 1990s and steadily levelled off ever since. This means that recent years have seen a move towards less rather than more politicization in the Council.

--- Figure 3 about here ---

This paper is not primarily concerned with describing changes in ministerial involvement over time. Nor does it aim at a full and complete explanation of these historical changes. The primary aim is to examine the causal effect of one particular factor, the legislative powers of the EP, on ministerial involvement in Council decision-making. In the next section, I investigate this relationship.

### **The effect of EP empowerment on the politicization of Council decision-making**

The figures in the previous section indicate that the politicization of Council decision-making actually decreased over time while more and more powers and competences were transferred to the Parliament. At first sight, this development contradicts the theoretical expectations. However, these figures are based on aggregate data. Figure 3 demonstrates the existence of a decreasing trend in the overall level of politicization over time, but it does not show whether differences in politicization exist between different legislative procedures. Figure 4 is more useful for an initial evaluation of the theoretical expectations. According to these predictions, ministers should be more involved in Council decision-making under the codecision and cooperation procedure than under the consultation procedure. We can examine this hypothesis by comparing the proportions of politicized Council decisions across different legislative procedures. The upper part of the figure plots the difference in the percentage of politicized Council decisions between the cooperation and the consultation procedure. As expected, the differences in the percentages are mostly positive. Except for the years 1990 and 1992, the percentage of politicized Council decisions was always considerably higher under the cooperation procedure than under the consultation procedure.<sup>21</sup> An even more distinct pattern is visible in the lower part of Figure 4, which compares the politicization under Codecision I and II to the politicization under the consultation procedure. Here, the differences in the percentages are positive in every single year, indicating a consistently higher proportion of politicized Council decisions under codecision than under consultation. While Figure 3 indicates a clear negative trend in the overall level of Council politicization, Figure 4 also shows that Council politicization varies across legislative procedures and that this variation persisted over time. Thus, the bivariate analysis is consistent with the hypothesis that a more powerful EP increases the level of politicization of Council decision-making. The multivariate analysis below further explores the robustness of these bivariate relationships.

--- Figure 4 about here ---

The statistical analysis employs logistic regression to estimate the effect of different procedures on the probability of ministers being directly involved in Council decision-making. It also examines this relationship while controlling for time- and policy-specific factors. Table 1 presents the models and the results of the analysis. Model 1 includes only two binary variables for the cooperation and codecision procedure, respectively, with the consultation procedure acting as the comparison category. No other substantive explanatory variables are included in the model. This approach is in line with the focus of the paper on the simple causal relationship between EP empowerment and Council politicization. The goal of this paper is not to arrive at a complete explanation of Council politicization, but to establish whether a substantive causal link exists between different degrees of legislative powers of the EP and the involvement of ministers in Council decision-making. As long as no third variable is causally related to both the legislative procedure variables and to the politicization variable, the models will yield valid estimates of the relationship between EP empowerment and Council politicization. Furthermore, if a third variable is positively related to Council politicization but negatively to EP empowerment, the hypothesized effect of EP empowerment is less likely to show up in the statistical analysis, thereby biasing the analysis against finding the expected relationship. An observed positive relationship between EP empowerment and Council politicization is only spurious when a third factor has a positive causal effect on both EP empowerment and Council politicization.<sup>22</sup>

Some of the main contenders for influential third variables are the voting rule in the Council, issue salience, and preference divergence amongst Council members. Indeed, issue salience and preference divergence are likely to have a positive effect on Council politicization (Häge 2007a). However, it is less obvious that these variables should also be positively related to EP empowerment. On the contrary, many areas in which the consultation procedure applies, like agriculture, taxation, cooperation in criminal matters, and the liberalization of services, are at least as likely to include highly salient and conflictual proposals as the policy areas to which the cooperation or codecision procedure applies. In contrast, different decision rules in the Council are clearly associated with different types of legislative procedures. While the connection is not perfect, the codecision and cooperation procedure tend to go together with the possibility of

qualified majority voting in the Council. However, government representatives in the Council should find it easier to reach an agreement under the qualified majority rule than under the unanimity rule. Therefore, the need to involve ministers should be lower rather than higher under cooperation and codecision. If this expectation is correct, the exclusion of the voting rule variable biases the analysis against finding a positive relationship between EP empowerment and Council politicization. In summary, no strong theoretical reasons exist to expect that any of these variables might be the ‘true’ cause of an observed positive relationship between EP empowerment and Council politicization. As Clarke (2005) has shown, the inclusion of control variables is not an innocent procedure that necessarily improves statistical estimation results. On the contrary, including control variables is just as likely to increase the bias in estimation results as it is likely to reduce it.<sup>23</sup> Given the lack of interest, clear theoretical justification, and the uncertain consequences on the model estimates, the analysis avoids the inclusion of control variables as far as possible.

Unfortunately, the sample on which the analysis is based does not consist of independent observations. Dependencies amongst observations might exist across time and space that are due to unknown or unmeasured third variables. To account for this possibility, Model 2 includes 27 binary variables indicating the year in which the decision-making process ended.<sup>24</sup> As some of the procedures were only in use during certain periods of time, the inclusion of year variables is important to account for third variable effects on politicization that occurred only during those years. For example, possible effects on Council politicization of enlargement are captured by these control variables. Based on the information given in Prelex on a proposal’s ‘field of activity’, 21 binary variables distinguishing different policy fields were also created.<sup>25</sup> The policy field variables take care of all possible effects that are caused by factors that are constant within a certain policy field. If certain policy areas were generally more salient or controversial than others and if policy areas were related to different legislative procedures, then the policy variables would account for this problem. Unfortunately, information on the policy field was missing for 283 cases, so the sample is somewhat smaller when the policy field variables are included in the analysis. Finally, Model 4 includes controls for both the year in which the decision-making process ended and for the policy field. This model specification accounts for all factors that either affect all cases equally during a certain year or that are constant over time within a certain policy area (see e.g. Kittel & Winner 2005: 272). Since the estimated effects for

the control variables are not of substantive interest, they are not reported in Table 1. To ease interpretation, the entries in the table present the odds ratios rather than the regression coefficients.

**-- Table 1 about here --**

All the results reported in Table 1 are statistically significant at the 1 percent level. Thus, we can almost be certain that the null hypothesis of no relationship between the explanatory and the response variable is incorrect in these instances. Thus, in the following, the interpretation of the regression results focuses on the estimated effect sizes and the substantive significance of the different explanatory variables.<sup>26</sup> In general, all the estimation results reported in Table 1 are broadly consistent with the theoretical argument that the empowerment of the EP leads to a politicization of Council decision-making. The results indicate that the odds of ministers deciding on the dossier are at least twice (Model 2) as large under the cooperation procedure as under the consultation procedure. Similarly, the odds of ministers becoming involved under Codecision I are at least 3.5 times (Model 2) and under Codecision II at least 1.3 times (Model 1) as large as the odds under the consultation procedure.

The estimation results without control variables (Model 1) are somewhat puzzling as they indicate that the politicization of Council decision-making was considerably lower under Codecision II than under Codecision I. However, if the analysis controls for general time trends as in Model 2, the effect sizes of the different codecision procedures are more similar. Still, the results show some signs of the effect of EP empowerment decreasing after the entry into force of the Amsterdam Treaty. Interestingly, the inclusion of policy field control variables in Model 3 accentuates the estimated effects of all legislative procedure variables.<sup>27</sup> After accounting for idiosyncrasies of individual policy fields, the effects of EP empowerment are more pronounced. Again, without time controls, the effect of Codecision II is lower than the effect of the cooperation procedure in Model 3. However, the order of the effect sizes reverses as soon as control variables for time-specific effects are again introduced in Model 4. The estimation results for the full specification of Model 4 indicate that, compared to the consultation procedure, the odds of ministers becoming involved in Council decision-making are 2.5 times higher under the cooperation procedure, 4.2 times higher under Codecision I and 3.8 times higher under

Codecision II. As the different model specifications show, the exact numerical sizes of the estimated effects vary somewhat. However, all of them are of substantial size, and when time effects are controlled for, the order of the magnitude of the different effects is also roughly in line with the theoretical expectations.<sup>28</sup>

In order to further investigate the influence of different time periods and to check the robustness of the findings, I conduct a number of sub-sample analyses. I divide the sample into three different Treaty regime periods. The first period ranges from July 1987 to October 1993 and covers the period governed by the Treaty rules as amended by the Single European Act. Only the consultation and cooperation procedure were in use during this period. The second period ranges from the entry into force of the Maastricht Treaty in November 1993 to the entry into force of the Amsterdam Treaty in April 1999. This period is exceptional in that three legislative procedures were in use during that time<sup>29</sup>. The last period covers the post-Amsterdam Treaty time from May 1999 to the end of the study period in December 2007. The Amsterdam Treaty almost completely replaced the cooperation procedure through the second version of the codecision procedure. Therefore, the third sub-sample analysis focuses on a comparison of the effects of the consultation procedure and Codecision II. The estimation results given in Table 2 are again consistent with the theoretical argument.<sup>30</sup> In the Single European Act period (Model 1a), the cooperation procedure is associated with more involvement of ministers than the consultation procedure. The effect of the cooperation procedure is even larger after 1993 (Model 1b), almost matching the effect of the newly introduced codecision procedure. After the changes brought about by the Treaty of Amsterdam (Model 1c), the effect of Codecision II is somewhat smaller than the effect of Codecision I, but still of substantial size.

**--- Table 2 about here ---**

To further illustrate the effect size of EP empowerment, Figure 5 presents the predicted probabilities of ministerial involvement for different legislative procedures. The predicted probabilities are based on Model 4, which takes advantage of the full data set but controls for year- and policy area-specific effects. Taking the 95% confidence interval as a standard, the predicted probabilities for Codecision I, Codecision II, and the cooperation procedure are statistically indistinguishable, although the mean of the predicted probabilities for the cooperation

procedure is considerably lower than the corresponding means for Codecision I and II. The figure shows clear differences in the predicted probabilities between these procedures, in which the EP has some formal powers, and the consultation procedure, in which the EP only has an advisory status. In fact, the predicted probability of ministerial involvement under the codecision procedures is about twice as large as the predicted probability under the consultation procedure. Besides demonstrating the substantive effects of EP empowerment, the figure also indicates that Crombez' and Steunenberg's view of the EP's powers under different procedures is more in line with the findings than Garrett's and Tsebelis' account.

--- Figure 5 about here ---

In summary, the analysis demonstrates a strong and robust relationship between the type of legislative procedure and the decision-making level in the Council. Stronger powers of the EP are associated with more involvement of ministers in Council decision-making. In this respect, the empirical findings are clearly in line with the theoretical expectations. In the next section, I summarize the results and discuss possible normative conclusions.

## **Conclusions**

A considerable body of research exists on the working of the EP and its influence on policy outcomes under different legislative procedures. However, few studies consider the effect of differences in inter-institutional procedures on intra-institutional decision-making processes. This paper sheds some light on the consequences of the EP's empowerment on the politicization of decision-making within the Council. Often, working parties and committees composed of officials representing their national governments exclusively deal with a proposal; ministers only rubber-stamp their decisions. The paper argues that the empowerment of the EP under the cooperation and codecision procedure results in more direct involvement of ministers in Council decision-making.

The paper presents a theoretical model of the 'typical' Council bureaucrat's referral decision and showed that the bureaucrat is more likely to refer a decision to his superior if he is uncertain about the minister's policy preferences and if the bureaucrat believes the minister might learn about his policy choice after the fact. The involvement of the EP affects both of these

parameters. Often the EP introduces new issues or promotes extreme positions. In such situations, the bureaucrat will find it harder to anticipate his minister's views. Also, the involvement of the EP is likely to draw more public and political attention to a dossier, thus increasing the chance that the minister learns about the bureaucrat's policy choice if the bureaucrat decided against a referral to the minister. If the bureaucrat erroneously has not selected the policy preferred by his superior and if the minister learns about the bureaucrat's policy choice, she has ample means at her disposal to censor the bureaucrat. Of course, the bureaucrat would like to avoid such consequences and is therefore more likely to refer the proposal to the minister. In line with the degree of EP power under different legislative procedures, the cooperation procedure and the different versions of the codecision procedure are expected to be associated with a higher degree of politicization than the consultation procedure.

The empirical analysis relied on a sample of about 6000 decision-making cases recorded in the European Commission's online database Prelex. The sample included all decision-making processes that concerned the adoption of a regulation, decision, or directive, and which were discussed according to the consultation, cooperation, or codecision procedure. Interestingly, the descriptive analysis indicates a negative trend in Council politicization starting in the early 1990s. Thus, Council politicization decreased steadily ever since the heydays of the drive to complete the internal market. Still, the descriptive analysis also shows that differences in politicization across legislative procedures persisted over the entire study period. Ministers decided a considerably larger percentage of cooperation and codecision files than consultation files. The statistical analysis confirmed this finding by demonstrating the existence of a strong relationship between the type of legislative procedure and the Council decision-making level. In comparison to the consultation procedure, EP involvement under the cooperation and codecision procedure increases the probability of ministerial involvement by about 20 to 30 percentage points. While the negative trend in Council politicization is interesting and warrants further attention, this comparison shows that the EP effect on Council politicization is real and not negligible. Council decision-making would have become even more de-politicized without EP empowerment. Therefore, if institutional designers desire a more politicized Council, then enlarging the scope of the codecision procedure is one possible option. One caveat is in order here though. If the theoretical mechanism presented earlier is correct, then the EP powers alone do not increase Council politicization, but the combination of its powers with its open and transparent



proceedings. If the Parliament continues to widen the practice of informal trilogue negotiations with the other institutional actors to speed up legislative decision-making, the positive effect of EP empowerment on Council politicization might weaken. In fact, the reduced effect under the codecision procedure after the Amsterdam Treaty might already indicate such a development. As so often, efficiency might only be gained at the cost of transparency and accountability.

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## **Notes**

<sup>1</sup> For more detailed descriptions of these procedures, see, for example, Hix (2005: 99-102) and Nugent (2006: 398-414). Articles 252 and 251 of the Treaty establishing the European Community contain the authoritative accounts for the cooperation procedure and the current version of the codecision procedure (see pp. 155-157 in 'Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community', Official Journal of the European Union, C321, 29 December 2006).

<sup>2</sup> Other authors have argued that the change in the codecision procedure just formalized an already existing informal practice (Hix 2002; Farrell & Héritier 2007).

<sup>3</sup> The politicization of Council decision-making refers to an increase in public and interest group attention for issues discussed in the Council, which among other things results in a larger proportion of proposals being discussed by ministers rather than bureaucrats.

<sup>4</sup> For descriptive studies of the involvement of ministers in Council decision-making, see van Schendelen (1996), van den Bos (1991), and Hayes-Renshaw and Wallace (2006). This literature is reviewed in Häge (2008a).

<sup>5</sup> The article of Steunenberg (2003) is exceptional in that respect as it examines the role of Coreper in policy coordination among different sectoral formations of the Council. However, this model is also geared towards

explaining policy outcomes and does not make any predictions about the level at which a Council decision will be made.

<sup>6</sup> See Häge (2008a) for a more detailed description of the general process and several in-depth case studies.

<sup>7</sup> In principle, the minister can of course always demand to negotiate herself. Unfortunately, no reliable data exists on whether or how often this actually occurs. Next to interest and time, such a demand requires an awareness of a certain issue being discussed in the Council. In highly complex decision-making environments, bureaucrats control and regulate to a large extent the flow of information to their superior. Thus, it seems very unlikely that ministers decide about their personal involvement on a regular basis themselves.

<sup>8</sup> In practice, the typical bureaucrat could be the representative of the Presidency country or the representative of the country that is pivotal for reaching a collective agreement, depending on where the power to decide about referrals to ministers resides.

<sup>9</sup> The assumption of bureaucrats being primarily motivated by blame avoidance seems useful for theorizing the distribution of Council decisions across different hierarchical levels. For other research questions, other motives and aspects of the 'typical' bureaucrat's personality might be more relevant. For example, a bureaucrat's level of socialization into supranational norms might be more relevant for explaining the bureaucrat's behaviour in negotiations with her or his peers inside the committee.

<sup>10</sup> The assumption that costs are exactly the same for the minister and the bureaucrat is only made for technical convenience. As long as the bureaucrat's costs increase with increases in the minister's costs, the precise functional form of that relationship does not qualitatively affect the model predictions.

<sup>11</sup> I ignore the case when the bureaucrat is indifferent, that is when  $a = 0.5$ .

<sup>12</sup> EP empowerment is just one of a myriad of factors that can impact the bureaucrat's referral decision. For example, the need to give far-reaching concessions in Council negotiations surely increases the uncertainty about the minister's reaction as well. In this case, policy *A* could be the status quo and policy *B* the compromise solution that is only achievable through the concession. In such a situation, it is likely that the bureaucrat is highly uncertain about whether the minister will prefer the compromise solution or the existing policy. The paper does not argue that the EP effect is the most important or even the sole causal factor, only that it is one of the substantively important factors influencing Council politicization.

<sup>13</sup> See <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>

<sup>14</sup> Cases that involved an "EP opinion single reading" were coded as consultation files and proposals that involved an "EP opinion first reading" as cooperation or codecision files. Drawing the distinction between cooperation and codecision files required individually inspecting each proposal. Cases that do not indicate the type of legislative procedure and do not record any EP meetings were excluded as being irrelevant.

<sup>15</sup> The exception occurs when the Parliament and the Council reach an early agreement under the codecision procedure. Then the first reading decision reflects not only an internal compromise but also the agreement between the Parliament and the Council. The Amsterdam Treaty introduced the possibility of first reading agreements in 1999.

<sup>16</sup> In Prelex, the events referring to informal agreements are indicated as ‘Council agreement’ and ‘Political agreement common position’, respectively.

<sup>17</sup> The exact way in which ministerial involvement is measured is quite consequential at least for the description of Council politicization. The figures presented here are considerably higher than those presented in other work (van Schendelen 1996; Hayes-Renshaw & Wallace 2006; Hagemann 2008). The higher politicization figures are a result of different samples and different units of analysis. In this study, the sample is restricted to legislative decisions and the unit of analysis is the entire decision-making process rather than an individual Council decision. To illustrate the implications of different units of analysis, consider the following example: The Council makes up to four formal decisions as part of the codecision procedure. If at all, ministers are only directly involved during the first reading stage, so either the informal agreement or the official adoption of the common position might occur through a B-item. Empirical research shows that ministers are hardly involved in the rest of the procedure that deals with finding an inter-institutional compromise with the EP (Häge 2007a: 304). If each Council decision is counted as an individual case, the data will indicate at most one B-item case, which is outweighed by up to three or four A-item cases. In contrast, a focus on the entire process results in a single B-item case. For a detailed discussion and critique of alternative measurement procedures and the potential effects of different samples, see Häge (2008b).

<sup>18</sup> Ministers adopted 86 percent of the informal agreements on final acts and 91 percent of the informal agreements on common positions as B-items.

<sup>19</sup> Ministers took more than 82 percent of the formal adoption decisions as A-items. In general, Prelex included information on the type of agenda-item for most formal adoptions. Thus, in contrast to informal agreements, the need for imputing values was very low in the case of formal adoptions.

<sup>20</sup> In total, 1,053 out of 6,349 cases were (re-)coded based on these rules.

<sup>21</sup> The negative differences in the years 1999 and 2005 are based on extremely few cooperation procedure cases (five and one, respectively).

<sup>22</sup> See Agresti and Finlay (2009: 301-314) for a discussion of different types of multivariate relationships.

<sup>23</sup> As Achen (2005: 337) puts it: “if what you are doing is misspecified already, then adding or excluding other variables has no tendency to make things consistently better or worse”. For other critiques of the control variable approach, see Lieberman (1985), Achen (2002), and Ray (2005).

<sup>24</sup> The year 1980 was arbitrarily chosen as the baseline category. I also experimented with binary variables for half-year presidency periods. The regression results are not affected by the choice of the length of time period.

<sup>25</sup> The policy fields are ‘Agriculture’, ‘Budget’, ‘External Relations’, ‘Development Policy’, ‘Environment’, ‘Internal Market’, ‘Energy’, ‘Justice and Home Affairs’, ‘Economic and Monetary Policy’, ‘Fisheries’, ‘Transport and Telecommunications’, ‘General Affairs’, ‘Research’, ‘Regional Policy’, ‘Taxation’, ‘Education and Culture’, ‘Health’, ‘Consumer Policy’, ‘Customs Union’, ‘Commercial Policy’, ‘Social Policy’. If proposals were related to several policy fields, they were classified as being part of a ‘multiple policy fields’ category. This category forms the baseline category in the regression analysis.

<sup>26</sup> The Pseudo- $R^2$  statistics for some of the models presented here could be considered to be unusually low. However, it should be noted that the Pseudo- $R^2$  statistic does not have the ‘percent of variance explained’ interpretation of  $R^2$  in

ordinary least squares regression. In fact, the statistic is based on changes in the log-likelihood, which do not lend themselves to any intuitive interpretation, unless the resulting values are 0 or 1 (Hoetker 2007: 339-340). Thus, the statistic does not yield useful information for evaluating the theoretical expectations of this study; the statistic is only reported for conventional reasons and to be fully transparent about the study results. For gauging the effect sizes of the independent variables, the odds ratios in the regression tables and the changes in the predicted probabilities as presented in Figure 5 provide the appropriate information.

<sup>27</sup> The fact that the z-statistics of all procedure variables increase or stay the same indicates that the introduction of policy dummies does not inflate their standard errors, which would be an indication of excessive multicollinearity.

<sup>28</sup> Especially with the Crombez/Steunenberg power ranking, which indicates a power increase from Cooperation to Codecision I and little change from Codecision I to Codecision II.

<sup>29</sup> The cooperation procedure continues to apply in a few, very limited policy areas after 1999. However, the extremely low extent of usage makes this procedure practically irrelevant for comparative purposes in the post-Amsterdam period.

<sup>30</sup> Regression results based on models including time controls are almost identical to those reported in Table 2. Estimates based on models with policy control variables indicate even stronger effects for the legislative procedure variables. To save space, I report only the results based on models without time and policy field variables.

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TABLE 1

## LOGISTIC REGRESSION ANALYSIS OF MINISTERIAL INVOLVEMENT, 1980-2007

<b>Explanatory variables</b>	<b>Model 1</b> Odds ratio (z-statistic)	<b>Model 2</b> Odds ratio (z-statistic)	<b>Model 3</b> Odds ratio (z-statistic)	<b>Model 4</b> Odds ratio (z-statistic)
Cooperation	2.98 (11.41)*	2.00 (6.71)*	3.60 (11.71)*	2.47 (7.65)*
Codecision I	4.08 (8.69)*	3.55 (7.27)*	5.20 (9.58)*	4.15 (7.66)*
Codecision II	1.33 (3.12)*	3.26 (9.17)*	1.97 (6.11)*	3.75 (8.79)*
27 year dummies	No	Yes	No	Yes
21 policy dummies	No	No	Yes	Yes
Observations	6031	6031	5748	5748
Pseudo $R^2$	0.03	0.10	0.06	0.13

*Notes:* \* significant at 1% level; the dependent variable is ministerial involvement with 1 indicating that ministers made the Council decision and 0 that they just rubber-stamped a decision reached by a preparatory body.

TABLE 2

## ANALYSIS OF MINISTERIAL INVOLVEMENT, TREATY REGIME SUB-SAMPLES

<b>Explanatory variables</b>	<b>Model 1a</b> Odds ratio (z-statistic)	<b>Model 1b</b> Odds ratio (z-statistic)	<b>Model 1c</b> Odds ratio (z-statistic)
Cooperation	1.61 (4.01)*	3.35 (6.25)*	
Codecision I		3.61 (7.41)*	
Codecision II			2.81 (8.74)*
Observations	1834	1207	1506
Pseudo $R^2$	0.01	0.05	0.04
Treaty regime	Single European Act	Maastricht Treaty	Post-Amsterdam Treaty

*Notes:* \* significant at 1%; the dependent variable is ministerial involvement with 1 indicating that ministers made the Council decision themselves and 0 that they just rubber-stamped a decision reached by a preparatory body.

FIGURE 1

SEQUENCE OF INTERACTIONS BETWEEN BUREAUCRAT AND MINISTER

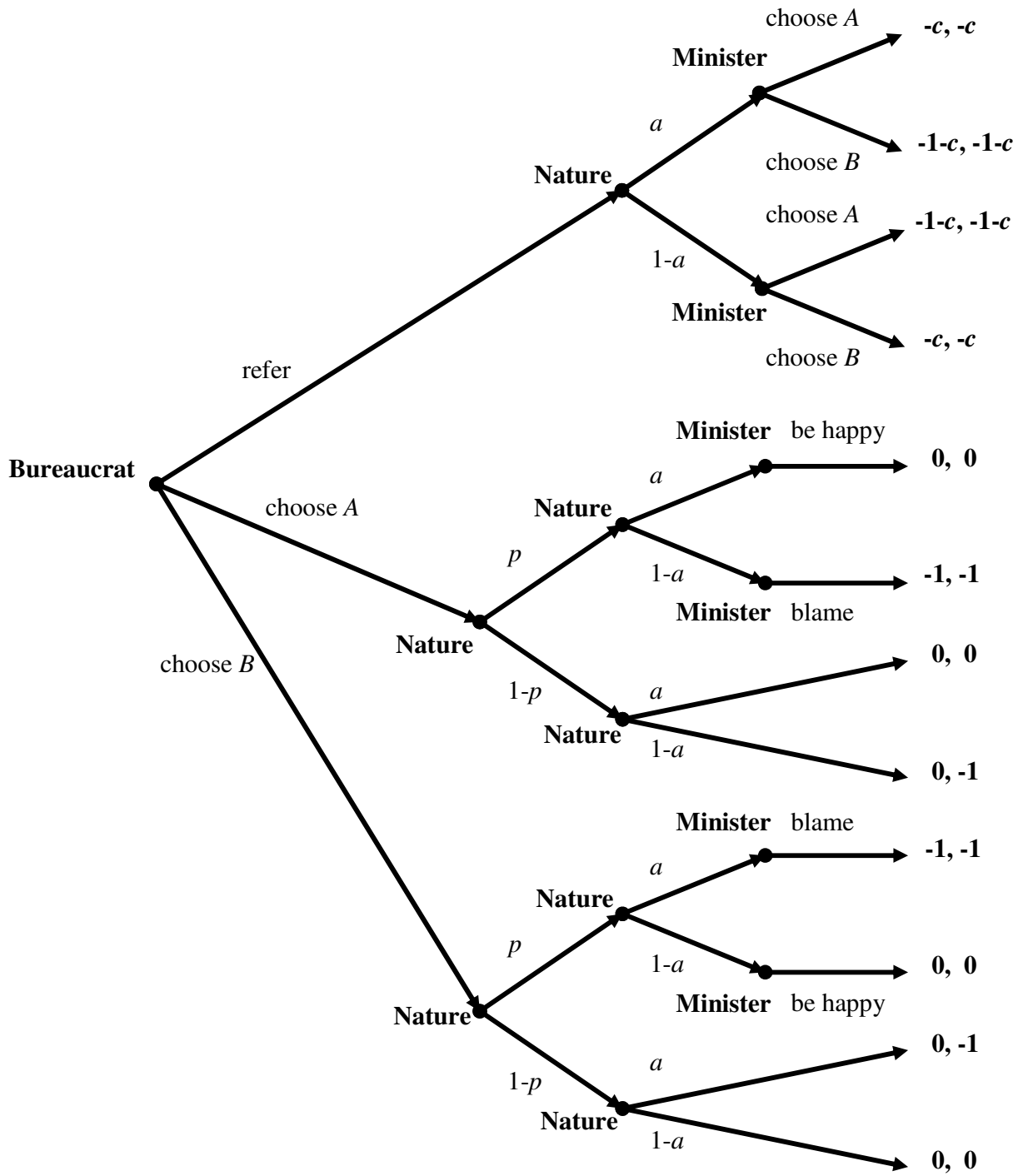
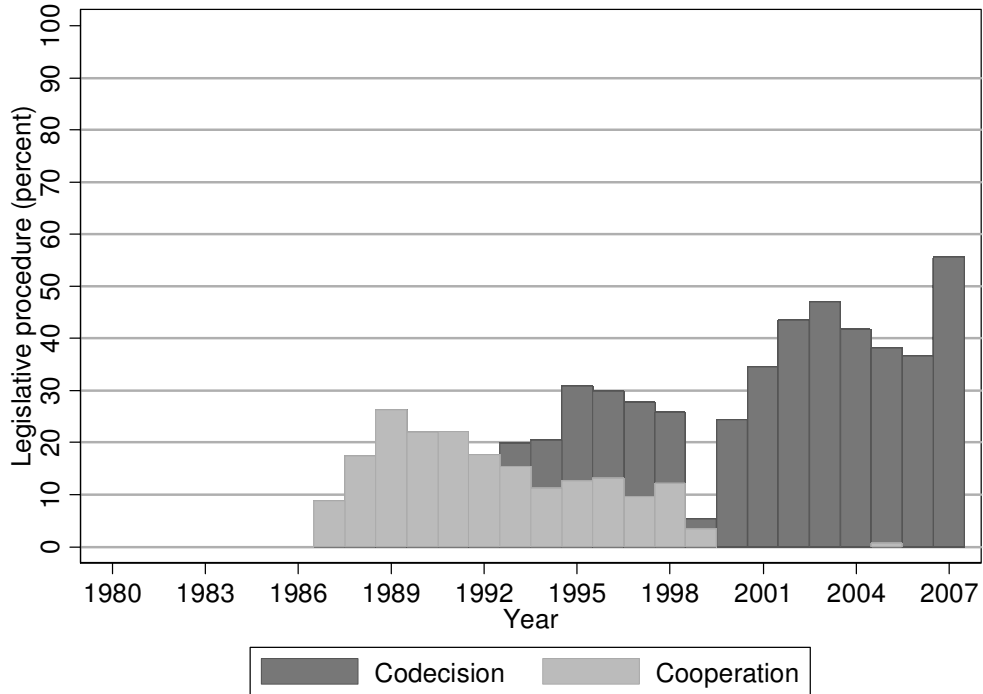


FIGURE 2

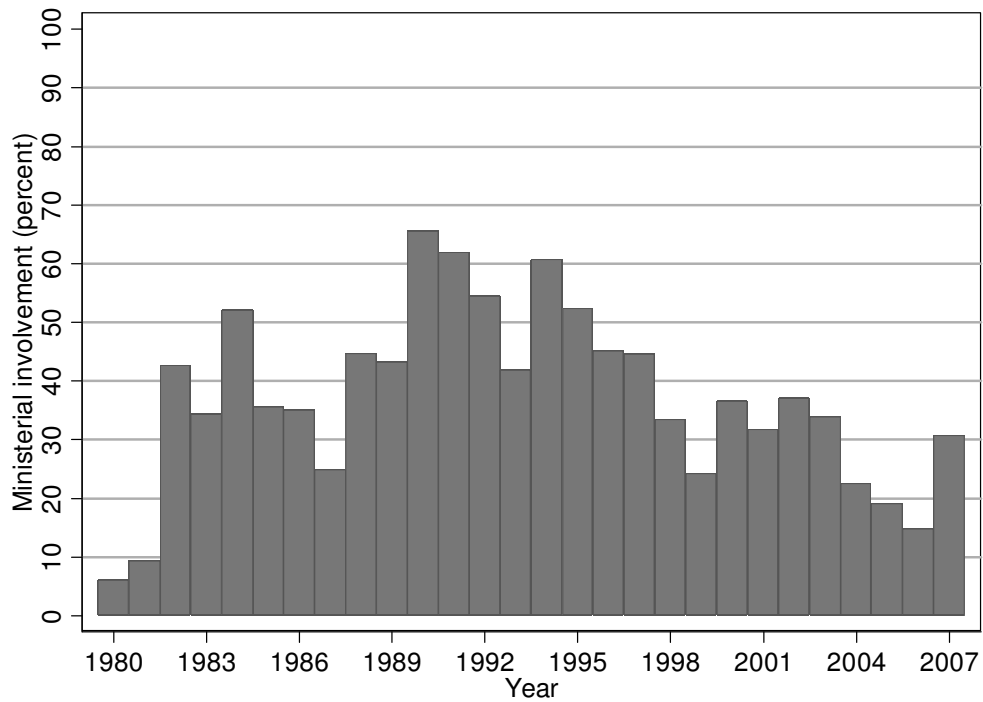
PROPORTIONS OF DIFFERENT TYPES OF LEGISLATIVE PROCEDURES, 1980-2007



*Notes:* The bars indicate the percentage of proposals decided under a certain legislative procedure. The dark shaded bars refer to Codecision I files if they were concluded before the entry into force of the Amsterdam Treaty and to Codecision II files afterwards. Note that the bars for different types of procedures are stacked on top of each other. For example, the 1996 bar reaches 30 percent. This figure means that the percentage of cooperation files and the percentage of codecision files added up to 30 percent in total for that year. The gap in the year 1999 is due to the large number of files that changed procedure during the decision-making process. Such files are not considered in the analysis.

FIGURE 3

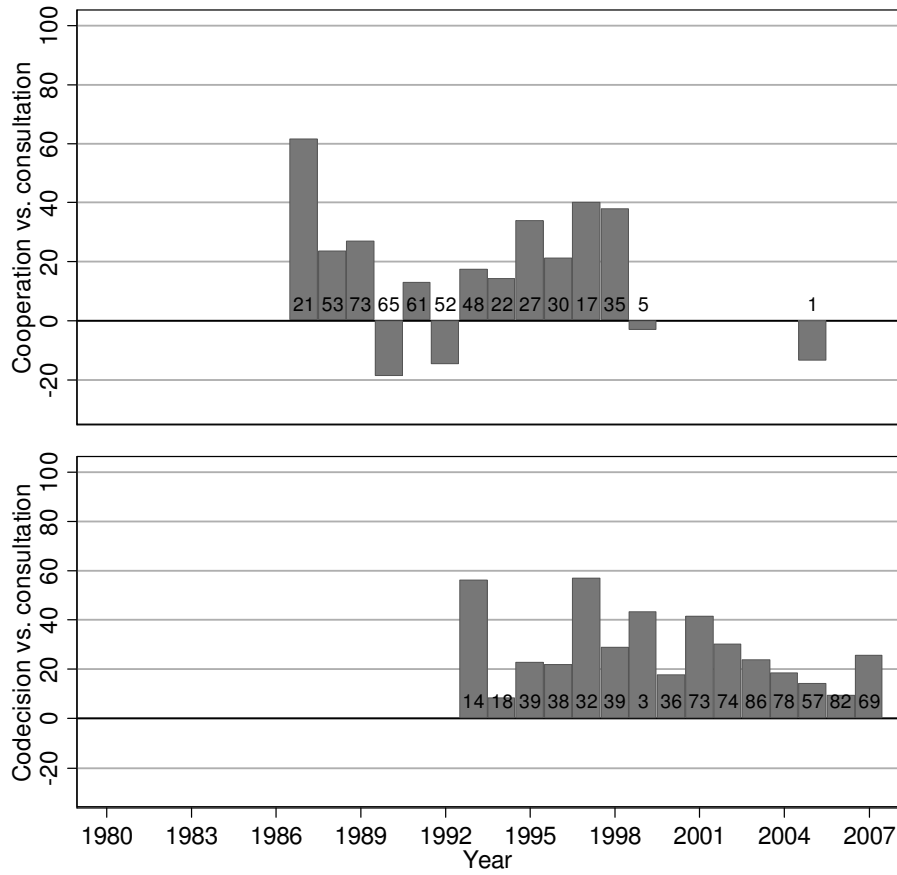
PROPORTION OF COUNCIL DECISIONS MADE BY MINISTERS, 1980-2007



*Notes:* The bars indicate the percentage of decision-making cases in which ministers were directly involved in making the first reading decision of the Council. The variable indicating ministerial involvement includes imputed values; see the main text for further details.

FIGURE 4

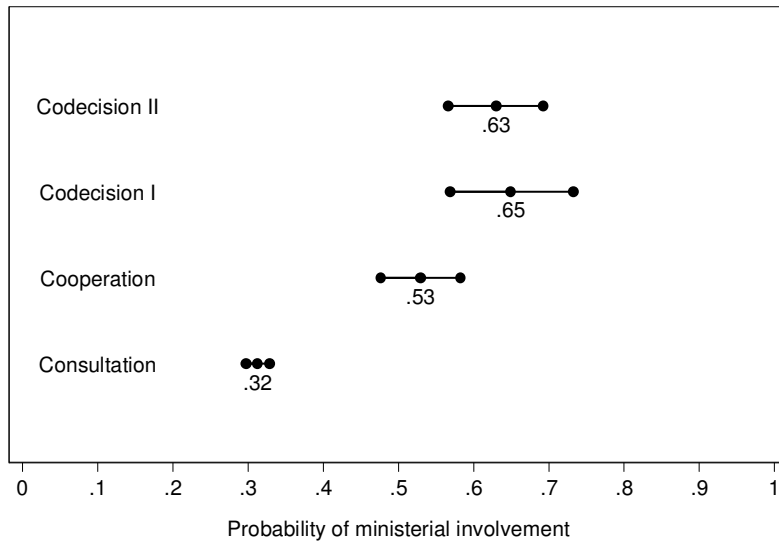
DIFFERENCES IN POLITICIZATION ACROSS LEGISLATIVE PROCEDURES, 1980-2007



Notes: Bars indicate the difference between procedures in the percentage of politicized Council decisions in a certain year. The top part of the figure compares the percentage of politicized Council decisions under the cooperation procedure to the percentage under the consultation procedure. For example, the first bar in the top panel of the figure indicates that the proportion of cooperation cases that were politicized was about 60 percentage points higher than the proportion of consultation cases that were politicized. The bottom part compares the percentage of politicized decisions under Codecision I and II to the percentage under the consultation procedure. The numbers at the lower end of the bars indicate the number of observations on which the percentages for the cooperation and codecision procedure are based.

FIGURE 5

PREDICTED PROBABILITIES FOR MINISTERIAL INVOLVEMENT



*Notes:* The figure indicates the means and 95% confidence intervals for the predicted probabilities simulated through the Clarify software developed by King et al. (2000).