

# **The Effect of Co-decision on Council decision-making: Informalization, politicization, and power**

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## **Abstract**

Little is known about the effects of the inter-institutional linkages created through the establishment of the co-decision procedure on decision-making in the Council of the European Union. After a review of the existing literature and theories on this topic, we examine to what extent the co-decision procedure leads to more involvement of ministers in Council decision-making and to a more powerful position of the Presidency in the internal negotiation process of the Council. The results show that the initially positive effect of co-decision on the politicization of Council decision-making has been offset in recent years by a growing lack of transparency in inter-institutional proceedings caused by the use of informal trialogue negotiations to conclude the procedure early. However, our study also suggests that the country holding the Presidency does not occupy a more privileged position in the Council's internal cooperation network as a result of these developments. Thus, with respect to the Council, informal inter-institutional negotiation practices seem to decrease the transparency of the decision-making process and the accountability of the actors involved, but they may not have as adverse effects on who gets what in terms of policy as previously thought.

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## **Introduction**

The introduction of the co-decision procedure has changed the inter-institutional balance of power between the European Parliament and the Council of the EU (e.g. Tsebelis and Garrett 2000). By empowering the only directly elected institution at the EU level, these developments have important consequences for the democratic legitimacy of the political system of the EU. Changes in the inter-institutional balance are also likely to generate transformations in intra-institutional decision-making (Naurin and Rasmussen 2011). While several studies have pointed to such effects in the European Parliament, the impact of the co-decision procedure on decision-making in the Council has received little scholarly attention so far.

Two theoretical claims have been made concerning the impact of co-decision on decision-making in the Council. According to one proposition, the empowerment of the European Parliament has increased the level of politicization in the Council (Häge 2011b). The involvement of the EP in legislative decision-making generates more public and political scrutiny, both at the European and at the national level, which in turn increases the likelihood of ministerial involvement in Council decision-making. The second proposition suggests that the increasing use of informal triologue negotiations to reach early agreements under the co-decision procedure leads to a re-distribution of power within the institutions to the advantage of so-called 'relais actors' (Farrell and Héritier 2004). Relais actors are the actors that represent their institution in inter-institutional negotiations. They benefit from an informational advantage vis-à-vis actors that do not take part in these negotiations. In the case of the Council, triologue negotiations are conducted by the rotating Presidency at working party or Coreper level.

Thus, the existing literature leads us to diverging expectations about the intra-institutional consequences of the co-decision procedure for Council decision-making. On the one hand, the politicization hypothesis suggests that the co-decision procedure leads to more ministerial involvement in Council decision-making, increasing the transparency of the process and the political accountability of decision-makers. On the other hand, the relais actor hypothesis suggests that, as a result of an increasing reliance on informal triologue negotiations, power has shifted in the Council's organizational structure both vertically and horizontally (Farrell and Héritier 2004, Häge 2011b). Informal triologue negotiations are exclusively conducted at working party and Coreper level in the Council. Thus, on the vertical dimension, we would expect less ministerial involvement and more decisions being

reached exclusively at lower levels of the Council hierarchy as a result of an increase in the use of these informal practices. On the horizontal dimension, we would expect a power shift from the other member states to the Presidency, who acts as a relais actor by controlling the flow of information between triologue negotiations and working party or Coreper meetings. If the relais hypothesis is correct, the informalization of the co-decision procedure may have offset any politicization effect in terms of ministerial involvement that was initially present as a result of the increased transparency of the formal procedure and in addition created a more biased power distribution amongst actors in the Council.

In this article, we assess the value of both the politicisation and the relais actor hypothesis empirically with data about the ministerial involvement in legislative decision-making and the network capital of member states in the Council during the period 2003 to 2009. In the next section, we elaborate on the theories underlying the politicization and the relais actor hypothesis, respectively. In the subsequent section, we introduce the research designs and data sets used as part of the empirical study. Following the research design discussion, we present the findings of our analyses.

### **Intra-institutional effects of inter-institutional rule changes**

#### *Politicization hypothesis*

Based on different samples and partially different operationalizations of the dependent variable, one recurrent and robust finding of existing studies of ministerial involvement in Council decision-making (Häge 2007a; b; 2011b; 2012) is that dossiers decided under the co-decision procedure are more likely to lead to the direct involvement of ministers in the decision-making process than dossiers decided under the consultation procedure. The direct involvement of ministers is a major indicator for politicization, which refers more generally to an increased level of public and political attention devoted to issues discussed in the Council. To shed light on this finding, Häge (2011b) elaborates on a possible theoretical mechanism underlying the empirical relationship between the formal procedure and ministerial involvement.<sup>1</sup> According to this theoretical model, bureaucrats in Council working parties and committees are primarily motivated by blame avoidance rather than the pursuit of independent policy interests. Given the structure of the Council decision-making process, it is up to the bureaucrats to decide whether to involve ministers or adopt a decision

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<sup>1</sup> As such, the model focuses on just one of a number of possible causal mechanisms through which ministers may become personally involved in Council decision-making. The model is agnostic about other possible causes of ministerial involvement, like the salience or controversy of the dossier.

themselves.<sup>2</sup> The hierarchical structure of national administrations ensures that any policy or negotiation cost that the minister incurs and that she becomes aware of also negatively affects the responsible bureaucrat. If the bureaucrat knew his minister's most preferred policy position for certain, he would never opt to involve the minister in the decision-making process but always faithfully implement her most preferred policy position. In this way, the minister does not incur unnecessary negotiation costs while still realizing her policy preferences; and since the bureaucrat's decision is in line with the goals of the minister, the minister has no reason to punish the bureaucrat if she becomes aware of the decision after the fact. However, if the bureaucrat is uncertain about the minister's preferred policy position, not referring the proposal to the minister runs the risk of agreeing to something that the minister is not happy with. If the bureaucrat accidentally selects the 'wrong' policy and the minister's attention is subsequently drawn to his decision, the minister's discontent will translate into negative consequences for the bureaucrat.

Thus, according to the model, the bureaucrat will refer a proposal to his minister if the certain cost of a referral (i.e. the negotiation costs incurred by the minister) outweighs the likely losses he would receive if he selected a policy that was not in line with the minister's preferences and if that policy choice was subsequently discovered by the minister. Keeping the level of negotiation costs constant, the likelihood that the bureaucrat will refer a proposal to his minister thus increases with the uncertainty about the minister's most preferred policy and with the probability that the minister learns about a potential error of the bureaucrat in the selection of policy. Both the uncertainty about minister's preferences and the probability that an incorrect decision by the bureaucrat will be drawn to the minister's attention is likely to be influenced by the empowerment of the EP. The EP is known to introduce additional policy dimensions to the negotiation space (Rittberger 2000; Tsebelis 1996) and frequently occupies rather extreme positions (Kaeding and Selck 2005; Thomson 2011; Thomson *et al.* 2004). In addition, the need for Council actors to strategically anticipate possible moves of the Parliament at later stages in the process makes the co-decision procedure considerably more complex than the consultation procedure. Such complexity makes it harder for bureaucrats to identify the likely policy positions of their ministers. A powerful Parliament is also likely to be taken more seriously by the media and by interest groups at European and national level.

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<sup>2</sup> All Council decisions have to be formally adopted by ministers, but dossiers for which an agreement has been reached at working party or Coreper level are adopted 'en bloc' without discussion at the beginning of ministerial meetings, often by ministers with portfolios unrelated to the topic of the dossier. The hierarchical filtering system of the Council is also mirrored in the organisation of domestic ministries. Given the limited time available to ministers, they have to rely to a large extent on the judgement of subordinate officials to sort out issues that 'require' the personal attention of ministers from those issues that do not.

The increase in media coverage and the growth in inter-personal relationships between lobbyists and Parliamentarians lead to a multiplication of communication channels through which the minister can learn about the bureaucrat's policy choice. In short, the empowerment of the EP is likely to increase both the probability that the bureaucrat will pick the policy option that is not in line with the preferences of his minister, and the probability that his policy choice will subsequently be discovered by the minister. For a given level of negotiation costs, these relationships imply that the involvement of an empowered Parliament under the co-decision procedure is expected to increase the probability of ministerial involvement in the Council.

*Politicization hypothesis:* The probability of ministerial involvement in Council decision-making is higher under the co-decision procedure than under the consultation procedure.

At this stage, it needs to be stressed that this expectation only holds if EP involvement affects both the complexity of negotiations and the number of communication channels through which information about the policy-making process can be transmitted to ministers. If either of these factors is absent, the relationship between EP empowerment and Council politicization breaks down. In other words, these factors are scope conditions of the theory. While the growing tendency to decide about European law in informal triologue meetings is unlikely to reduce the complexity of negotiations to a great extent, the accompanying lack of openness and transparency in proceedings is likely to reduce the number of communication channels through which the minister can indirectly learn about the bureaucrat's behaviour. Häge (2011b) concluded with the caveat that the increasing reliance on these informal practices might weaken the effect of EP empowerment on Council politicization. In the empirical part of the article below, we examine whether this has indeed occurred.

#### *Relais actor hypothesis*

Farrell and Héritier (2004) argue that changes in inter-institutional rules and procedures often have unintended intra-institutional consequences (see also Naurin and Rasmussen 2011). Drawing on organizational theory they point in particular to the strategic position of 'relais actors', i.e. those actors that coordinate the inter-institutional relations within one institution. In the co-decision procedure these actors are in particular the rapporteurs in the European Parliament and the Presidency in the Council. Their role as primary responsible inter-institutional negotiators potentially gives them important informational advantages

concerning the preferences and positions of the other side. This advantage can potentially be used to promote the particular interests of the relais actors at the cost of the other parties within the respective institutions. The informalization of the co-decision procedure therefore potentially leads to an unintended distortion of the distribution of power.

However, Farrell and Héritier (2004) also argue that the Council is likely to be better able than the European Parliament to counter this effect by intra-institutional reform. While the EP has been internally divided on how to respond to the new situation and therefore unable to initiate reforms, the intra-institutional response in the Council was likely to be more consensual. One reason for that is that the Presidency rotates every six months, which avoids creating permanent winners and losers among the member states. According to Farrell and Héritier (2004) the Council therefore managed to arrange for new procedures for information sharing between the member states with the purpose of moderating the informational advantage of the relais actors.

Empirical studies have been few so far, but those conducted give no support for any significant power redistribution in the Council as an effect of co-decision and early agreements. Thomson (2008) and Warntjen (2008) both study the bargaining success of Presidencies under different legislative procedures. They both use the first DEU data set, including data on member states' initial position in a large number of issues based on expert interviews, which subsequently is compared to the decision outcome (see Thomson *et al.* 2006). Neither of the two studies, using different methodologies, finds any significant differences between legislative procedures.

One caveat with Thomson (2008) and Warntjen (2008) is that the issues in the data were processed during 1999-2000, when early agreements were still relatively few. Thomson (2011), however, uses an extended data set which includes proposals up until 2007 to analyse bargaining success. His analysis shows that member states that are positioned closer to the Presidency have a higher chance of succeeding, although decreasingly so after enlargement. However, in contrast to the relais actor theory, the presidency effect is considerably stronger when the legislative procedure is consultation with unanimity voting in the Council, than under the co-decision procedure. When the legislative procedure is consultation with qualified majority voting the Presidency effect is of similar magnitude to that under the co-decision procedure (Thomson 2011).

Reh and colleagues (2010) study the early agreement files from the period 1999 to 2009. They test specifically the relais actor hypothesis in the Council by looking at the extent to which the Presidency's preferred issues are pushed into early agreements, where the

Presidency according to the theory may have better opportunity to influence the outcome. No such effect is found, however, also when controlling for the size and experience of the Presidency.

In sum, the empirical evidence for the effects of the relais actor theory in the Council is weak, although there are only a few studies so far. Farrell and Héritier's (2004) prediction that the Council would find ways to counter the disturbing effect may have been realized. Still, the theory is theoretically plausible and more studies are needed to determine its applicability in the Council. We contribute to that by focusing on network capital, as explained in the next section, which is one indication of increased power of relais actors.

*Relais actor hypothesis:* The power of countries holding the Presidency is higher in Council bodies processing dossiers under the co-decision procedure than in Council bodies working under other procedures such as the consultation procedure or in the field of the Common Foreign and Security Policy.

## **Research design**

### *Data on ministerial involvement 2003-2009*

To examine the co-decision effect on politicization and the possibility that early agreements have led to a counter-acting vertical power shift in the Council's organizational structure, we rely on a new dataset of the involvement of ministers in legislative decision-making of the Council. The dataset includes information on all legislative decision-making processes initiated during the period in which the Nice Treaty rules applied, that is between 1 February 2003 and 1 December 2009. The dataset tracks these proposals until 31 December 2011, which minimizes the number of proposals still pending and thus the number of right-censored observations that need to be excluded from the sample. The main source for the data is the European Union Policy-Making (EUPOL, v03) dataset (Häge 2011a), which provides the legislative process information contained in the European Commission's PreLex database in a machine-readable format ready for further data processing and analysis. The data derived from EUPOL was subsequently merged with information extracted from EUR-Lex, the Council's public register of documents, and data manually coded from different versions of the treaties providing the constitutional framework for the EU. EUR-Lex, the database on EU law maintained by the Publications Office of the EU, provides the full-texts of Commission proposals, which made it possible to identify the number of recitals as a proxy for the number of issues addressed by the proposal. EUR-Lex' bibliographic information also presents

information on the treaty base in a more standardized format than PreLex. Information on the treaty base is important for linking individual proposals with legal information derived from the treaties. The Lisbon Treaty introduced an explicit distinction between legislative and non-legislative acts. By linking current Lisbon Treaty articles to their possibly amended predecessors under the Nice Treaty, it was possible to extrapolate this distinction between legislative and non-legislative acts backwards in time. In addition, it became feasible to unambiguously identify those proposals for which the applicable legislative procedure changed as a result of the entering into force of the Lisbon Treaty in December 2009.

The distinction between legislative and non-legislative acts is of particular importance when assessing the effects of the legislative procedure. Most non-legislative acts are adopted through the consultation procedure, while hardly any are adopted through the co-decision procedure. If we are interested in the effects of legislative procedures and want to compare like with like, we need to distinguish between legislative and non-legislative acts adopted through the consultation procedure; and only compare legislative acts adopted through the consultation procedure with legislative acts adopted through the co-decision procedure. In a similar vein, it is useful to be able to identify those proposals for which the legislative procedure changed from consultation to co-decision when the Lisbon Treaty came into force. As it is unclear how to appropriately categorize the legislative procedure of those cases, they are excluded from the sample. Finally, working party agendas in the Council's public register of documents were used to identify the title of the working party dealing with the dossier. Each working party belongs to a particular Council formation. Thus, knowing the title of the working party made it possible to identify the responsible Council formation in cases where the ministers never dealt with the dossier themselves.

The dependent variable of the analysis indicates whether ministers were at any point during the Council decision-making process personally involved in discussions on the dossier. This variable was derived from the Council meeting agenda information in EUPOL. The variable takes a value of 1 whenever a dossier formed a B-point on the agenda of at least one ministerial meeting dealing with the dossier, and 0 otherwise. The main explanatory variable of interest is the legislative procedure. This variable is operationalized in two ways. First, a simple dummy variable indicates whether or not the proposal was adopted through the co-decision rather than the consultation procedure. Second, a categorical variable taking four values indicates whether the dossier was adopted through (1) the consultation procedure, (2) an early agreement without informal triologue negotiations in the first reading stage of the co-decision procedure, (3) an early agreement based on informal triologue negotiations in the



first reading stage of the co-decision procedure, or (4) late agreement negotiations in the second or third reading stage of the co-decision procedure. Whether or not an early agreement during the first reading stage is based on informal trilogue negotiations is inferred from the adoption of amendments by the EP. The categorical legislative procedure variable allows us to distinguish the effect of the informal practices that have developed under co-decision in recent years from the effect of the more formal procedure. The variable also allows us to distinguish trivial first reading agreements that did not raise any controversy from those that required negotiations between the two legislative institutions.

As control variables, we include the number of recitals in the original Commission proposal, the type of Council formation dealing with the dossier, and the particular Presidency period during which the proposal was initiated. Although imperfectly, the number of recitals is related to the number of issues addressed by the proposal, and thus captures the scope of the proposal.<sup>3</sup> As such, it serves as a proxy for the aggregate salience of a dossier and its conflict potential. Measuring the recitals in the original Commission proposal also ensures that this variable is exogenous to the subsequent legislative decision-making process. Given the automated coding from unambiguous text features of the proposal, the measure is perfectly reliable; it also shows a high degree of face validity.<sup>4</sup> The original variable is extremely right-skewed. Thus, we use the logarithm of the number of recitals in the analysis. The categorical Council formation variable controls for any unobserved features of decision-making that are unique to any of the nine sectoral configurations of the Council. Finally, the categorical Presidency period variable accounts for any unobserved features related to the particular half-year term in which the dossier was introduced.

#### *Data on network capital 2003, 2006 and 2009*

By network capital we mean the set of potential cooperation partners that an actor has access to for gaining and spreading information and building coalitions during the negotiation process. Being able to control the informal flow of information is important for exercising influence in any multilateral negotiations (Muthoo 2000). In the Council coalition-building has become more important as the number of member states has increased through successive

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<sup>3</sup> The fact that the Joint Practical Guide of the European institutions for drafting legislation (European Communities 2003) explicitly points out that it is not necessary to provide a reason for each and every individual provision indicates that it is realistic to expect that the number of recitals is at least correlated with the number of major provisions contained in the proposal. Warntjen (2012) provides empirical support for this expectation.

<sup>4</sup> For example, two of the proposals with the largest number of recitals in the sample refer to the Regulation for a Single Common Market Organization in Agriculture (146 recitals; COM/2006/0822) and the REACH regulation of chemicals (104 recitals: COM/2006/0269).

enlargements, and qualified majority voting has become more frequent as the decision-making rule.

Information on the network relations among member state representatives was obtained through surveys of officials from the Brussels representations of all member states. Three surveys were conducted, in 2003, 2006 and 2009, which therefore gives data from both before and after the enlargements in 2004 and 2007. The time period also covers the increasing informalization of the co-decision procedure during the last decade.

All representatives in eleven selected committees and working groups in the Council were approached for the interviews. Both high-level committees, including the ambassadors in Coreper, and lower-level working groups were included, involving a broad range of policy areas, such as economic policy, internal market, agriculture, foreign and security policy, environment, and justice and home affairs.<sup>5</sup> The interviewees were first contacted with a letter, which explained broadly the purpose of the project and the types of questions addressed, and were subsequently interviewed over telephone. The response rate was high in all three rounds: 81 percent in 2003, 84 percent in 2006 and 86 percent in 2009. In total, 618 member state representatives were interviewed: 130 in 2003, 231 in 2006 and 257 in 2009.

In all three surveys, the following question was asked: *Which member states do you most often cooperate with within your working group, in order to develop a common position?* The question posed focuses respondents' attention on direct contacts with people from other member states within their working groups. The respondents were only asked to mention the member states they cooperate with most often, not to give points or rank them in any way. Respondents were free to list other member states with which they cooperated. This way of posing the question conforms to the standards of so-called "name generators" commonly used within social network analysis (Wasserman and Faust 1997). Usually the respondents mentioned two to five member states (average 2.6 in 2003, 4.8 in 2006, 3.8 in 2009).

The network capital of a member state is calculated as the average number of times this member state is mentioned as a cooperation partner by the other member states'

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<sup>5</sup> The higher level working groups included are: Coreper II and Coreper I (the ambassadors and the vice-ambassadors of the member states' permanent representations in Brussels), the Economic Policy Committee, the Special Committee on Agriculture, the Political and Security Committee and the Article 36 Committee (the latter dealing with judicial cooperation in the field of criminal matters, police cooperation, organised crime and terrorism). When a Coreper II or Coreper I ambassador was not available, their assistants were interviewed (who in EU-jargon are called the Antici- and Mertens-delegates, respectively). The lower level working groups are: the Politico-Military Working Party, the Working Party on Agricultural Questions, the Working Party on the Environment, the Working Party on Tax Questions and the Working Party on Competition and Growth.

representatives. The more often a member state is mentioned the higher its network capital. This conception of network capital corresponds to the in-degree centrality measure in social network theory. We find this a straightforward and intuitively reasonable operationalization of network power: The more potential partners an actor has access to the better its opportunities for controlling the flow of information, resources and coalition-building within the network (Hafner-Burton *et al.* 2009; Scott 2000). Naurin and Lindahl (2010) includes a more developed discussion of how this measure relates to other social network centrality measures.<sup>6</sup> The possible values of the network capital variable range from one to zero, where one means that all respondents have mentioned this member state as a cooperation partner, while zero indicates that no one mentioned this member state as a cooperation partner.

Naurin and Lindahl (2010) show that network capital is unevenly distributed among the member states, with the UK, France and Germany positioned in the top of the index in all three years. The fact that these actors are the most sought after cooperation partners indicates a close connection between network capital and power. Furthermore, Arregui and Thomson use the same network data from 2003 and 2006 in their analysis of bargaining success in the Council. Their analysis shows a positive effect of member states' network capital on their bargaining success (Arregui and Thomson 2009:669). This means that network capital is both a power resource, which can be used to increase the actors' legislative influence through information manipulation and coalition-building, and an indication of the distribution of power in the Council. As the latter it should be a suitable measure for analysing the relais actor hypothesis.

Nevertheless, one potential drawback with this measure should also be mentioned and that is the long-term character of network relations. Network ties are built on trust, which is a factor that is likely to remain relatively stable over time. The rotating Presidency, on the other hand, shifts every six months. Thus, even though the member state holding the Presidency may become momentarily more important, and in particular so under co-decision, the existing network relations may be too rigid to change in any significant way. That would mean a limitation for both the relais actor theory and for the test of that theory performed here. If network capital is rigid and unlikely to change in the short term it will imply a tough test as and indicator of increased power of the rotating Presidency. On the other hand, if Presidencies cannot make use of their privileged position to increase their network capital,

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<sup>6</sup> The network capital index used in Naurin and Lindahl (2010) also adds a weighting based on the order in which the countries are mentioned. In practice, however, the ordering turned out to give little extra information, and we therefore use the simpler measure here.

and thereby their coalition-building capacity, then their ability to influence the outcome will be more limited.

## **Analyses and results**

### *Politicization*

To assess the effect of the legislative procedure on ministerial involvement in Council decision-making, we conducted a number of logistic regression analyses with different model specifications. Table 1 presents the results of these analyses. Model 1 presents the results of a bivariate analysis including only a dummy variable indicating whether the co-decision or the consultation procedure applied to the dossier in question as explanatory variable. In contrast to earlier research (Häge 2007a; 2007b; 2011b), we do not find the expected positive effect of co-decision on Council politicization. While the odds ratio is larger than one, the result is far above any conventional level of significance. This somewhat surprising finding is the combined result of two factors, one methodological and one substantive. First, the sample selection for the current study took advantage of the novel possibility brought about by the Lisbon Treaty to clearly distinguish between legislative and non-legislative files. Almost all non-legislative files have been decided through the consultation procedure before the Lisbon Treaty came into force, and almost all non-legislative files have seen no ministerial involvement. Without making this distinction, earlier research probably overstated the effect of co-decision on ministerial involvement. However, the improved sample delineation provides just one part of the explanation. The other part is that the effect of the co-decision procedure on Council politicization is not stable over time. The dark line in Figure 1 shows how the difference in ministerial involvement between the co-decision and the consultation procedure changed over time. Up to and including the year 2005, the percentage of dossiers with ministerial involvement was clearly higher under the co-decision than under the consultation procedure.<sup>7</sup> However, in subsequent years, this difference between the formal procedures vanished. In fact, at least for the year 2007, the difference was clearly negative.

*Table 1 about here*

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<sup>7</sup> In fact, a sub-sample logistic regression analysis including observations up to and including the year 2006 reproduces the strong positive effect of co-decision found in previous research, which was conducted on data samples covering exclusively (Häge 2007a; 2007b) or being strongly dominated by earlier time periods (Häge 2011b).

Figure 1 also indicates the reason for this reduction in the co-decision procedure effect. The light line in the figure represents the percentage of co-decision files adopted through informal trialogue negotiations in first reading. This percentage increased strongly from 37 per cent in the year 2003 to about 72 per cent in the year 2008.<sup>8</sup> Thus, the decrease in the effect of co-decision strongly corresponds with an increase in the percentage of early agreements through trialogues under this procedure. The visual impression of a strong co-variation is also supported by high negative correlation coefficient between the two time-series of -0.51. To further investigate their differential effects on ministerial involvement in the Council, the remaining models in Table 1 include separate dummy variables for non-controversial early agreements, as indicated by the absence of any EP amendments, controversial early agreements, as indicated by the EP submission of at least one amendment, and late agreements, as indicated by the conclusion of the procedure in second or third reading, instead of the general co-decision procedure variable. Model 2 only includes those procedure indicator variables, Model 3 adds the proposal scope variable, and Models 4 to 6 add indicator variables for different Council formations and Presidency periods.

*Figure 1 about here*

The results for Model 2 indicate that controversial early agreements under the co-decision procedure are no different to consultation proposals in terms of ministerial involvement, but that late agreements increase the probability of ministerial involvement compared to the consultation procedure. The finding that controversial dossiers that are not processed through first reading trialogues are associated with a higher likelihood of ministerial involvement than dossiers processed through the consultation procedure is also robust to the inclusion of the policy scope variable (Model 3), and the separate and combined addition of the Council formation and Presidency period dummy variables (Models 4-6). In addition, if we control for policy area, the analysis does not only indicate that dossiers negotiated through first reading trialogues have a probability of ministerial involvement that is no different than dossiers decided through the consultation procedure, but that these informal practices even reduce the probability that ministers get personally involved in Council discussions.

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<sup>8</sup> The figure shows a further increase to 86 per cent in 2009, but a disproportionately large number of proposals introduced during that year was still pending, likely leading to an overstatement of the percentage for this year.

Regarding the control variables, the individual coefficient estimates and the overall model fit statistic pseudo- $R^2$  indicate that the proposal scope variable and the Council formation variables have a substantive association with ministerial involvement, while the role of Presidency periods is rather negligible. Since there are also theoretical reasons to expect that the scope of the proposal and the type of Council formation handling the dossier needs to be controlled for to gain unbiased coefficient estimates for the legislative procedure variables, we focus on Model 4 for the interpretation of substantive effect sizes. The exponentiated coefficient estimate in Model 4 indicates that the odds of ministers being involved in Council discussions when there was an early agreement under the co-decision procedure is about forty per cent of the odds of ministers being involved under the consultation procedure. In contrast, the odds of ministerial involvement when a co-decision dossier is not subject to an informal dialogue procedure in first reading are about 3 times larger than the odds under the consultation procedure. These figures demonstrate that the effects of the type of procedure is not only statistically, but also substantively significant.

#### *Network capital*

The relais actor hypothesis states that Presidencies have a more central role in co-decision than in other procedures, due to the practice of reaching early agreements. We assess this claim by analysing whether Presidencies have a higher network capital in committees and working groups that regularly deal with co-decision files. The most important committee in the Council when it comes to dealing with co-decision files is the deputy-ambassadors committee, Coreper I. Our data on network relations also contain one lower-level working group that routinely has dealt with co-decision legislation during the whole time period, namely the working group on the environment. In the analysis we compare the network capital of the Presidencies in these two groups with the other groups in the sample.

We look at both member states that were (Greece in 2003, Austria in 2006, Czech Republic in 2009), or most recently had been (Denmark in 2002, UK in 2005, France in 2008) Presidencies during the time of the survey. The latter were included to see whether there was any prolonged Presidency effect. The interviews were conducted in the period February to May in all three rounds, and it is possible that the network relations from the previous fall were still in the minds of the respondents.

Figure 2 shows the results. Contrary to the relais actors hypothesis the mean difference between the Presidencies' network capital under co-decision and their network capital under other procedures is negative in five out of six cases. Only the UK Presidency in 2005 had a

higher network capital in the co-decision committees Coreper I and Environment compared to the other committees and working groups. None of the differences are statistically significant, however, as indicated by the confidence intervals crossing the zero-line. We also ran the analyses with only Coreper I as the main co-decision committee, with a similar result. Rather strikingly both Greece in 2003 and Austria in 2006 had zero network capital in Coreper I, i.e. not one respondent from the other member states mentioned them as cooperation partners, during their time as Presidencies.

*Figure 2 about here*

We also did some additional tests in search of evidence of a relais actor effect. This included comparing the rank order of the presidency countries in the co-decision committees during years when they held the presidency and years in which they did not hold the presidency. No differences pointing towards enhanced network capital in the co-decision committees during the years of holding presidencies were found. Furthermore, we also tested if Presidencies get to cooperate more with the most powerful states - UK, Germany and France - in co-decision committees, or if these most powerful states themselves, as potential relais actors, had more network capital under co-decision. None of these tests indicated that the network capital of these actors varied systematically depending on the procedure.

In sum, and in contrast to the relais actor theory, we find no evidence that holding the Presidency under co-decision brings more network capital compared to other procedures. Based on this study alone it would be difficult to refute the relais actor hypothesis. But since a number of studies using different methodologies and data seem to point in the same direction (Reh *et al.* 2010; Thomson 2008; 2011; Warntjen 2008), and taking into account the initial prediction by Farrell and Héritier (2004) that the Council would be less vulnerable to power distortions than the EP, it seems unlikely that co-decision has led to any significant shifts in power to the advantage of the Presidency.

## **Conclusions**

In this article, we examined the effects of the co-decision procedure on decision-making in the Council. First, relying on data on legislative proposals initiated during the Nice Treaty period between February 2003 and November 2009, we investigated whether ministers are more involved in Council negotiations under the co-decision procedure than under the consultation procedure. In contrast to earlier research on the topic, we find that the co-

decision procedure as such has no positive effect on the politicization of Council decision-making anymore. Further analysis indicates that this finding is a direct result of the increasing reliance on informal negotiations to conclude the co-decision procedure early. When early and later agreements under the co-decision procedure are distinguished in the analysis, cases adopted through trilogue negotiations in the first reading stage of the co-decision procedure show a similar or lower probability of ministerial involvement than cases adopted under the consultation procedure, while cases adopted later under the co-decision procedure show a higher probability than cases adopted under the consultation procedure. This finding also holds after controlling for the scope of the proposal, which acts as a proxy for the proposals aggregate salience and conflict potential.<sup>9</sup> As anticipated by Häge (2011b), the lack of transparency and openness in trilogue negotiations seems to sever the causal mechanism linking EP empowerment and Council politicization. This mechanism assumes that EP empowerment through the co-decision procedure opens up additional communication channels through which ministers can learn about their bureaucrats' behaviour and policy choices in the Council. However, when inter-institutional negotiations are based on ambiguous mandates and conducted behind closed doors by a restricted set of privileged actors, as they are in the case of informal first reading trilogues, then these additional communication channels are unlikely to be established.<sup>10</sup> Those actors that are privy to the relevant information often do not have an incentive to communicate that information to outside actors, and those that have an incentive to report it, like MEPs not directly involved in the negotiations, lobbyists or the media, do not have access to it.

The second analysis investigated to what extent the increasing reliance on informal trilogue negotiations under co-decision has resulted in an enhanced position of the Presidency in Council cooperation networks. According to the relais actor hypothesis proposed by Farrell and Héritier (2004), actors that directly participate in those informal inter-institutional negotiations have an informational advantage over other actors from their

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<sup>9</sup> Even if this variable is not accepted as a valid control the alternative interpretation of these findings, that both early agreements through informal negotiations and ministerial involvement are caused by the controversy of the dossier, is unlikely to be correct. As Figure 1 illustrates, a clear positive co-decision effect on ministerial involvement exists in the early part of the study period, which only decreased when the proportion of early agreements increased. The alternative interpretation only holds if the average level of controversy in legislative decision-making decreased over time in a manner similar to the decrease in the proportion of cases with ministerial involvement. Little reason exists to expect that such a decrease in the general level of controversy has taken place.

<sup>10</sup> Thus, the empirical findings do not necessarily invalidate the causal link posited by the theory underlying the politicization hypothesis; they highlight the fact that the theory's scope conditions regarding the transparency and openness of the decision-making process are not met anymore in an era where most co-decision files are concluded through informal negotiations.



institution that are excluded, and they might use this advantage to pursue their own particular policy interests. Based on survey data on cooperation ties in various working parties and senior committees of the Council in 2003, 2006, and 2009, we examined whether countries holding the Presidency have had a higher network capital in Council bodies dealing primarily with co-decision files than in Council bodies dealing with other types of issues, such as consultation files and matters concerning the Common Foreign and Security Policy. We found no evidence that co-decision has an effect on the network capital of the potential relais actor in the Council. Due to the relative stability of network relations over time this test of the relais actor theory is a tough one. We would be cautious in drawing general conclusions from this study alone. However, the findings fit a pattern from previous tests of the theory using different types of data. None of these studies are able to confirm a relais actor effect. In sum, the analysis of politicization in the Council indicates a vertical power shift from ministers to bureaucrats as a result of informal trilogue negotiations, but the analysis of network capital does not find the expected horizontal power shift from other member states to the Presidency country.

These findings have clear implications for the normative evaluation of early agreements under the co-decision procedure. The main benefit of early agreements is a gain in decision-making efficiency. At the same time, early agreements are likely to reduce the transparency and accountability of EU legislative politics. Furthermore, they might lead to unwarranted power shifts within institutions to actors pursuing their particularistic interests. Our first finding speaks directly to the issue of transparency and accountability. The closed nature of informal trialogue negotiations does not only lead to an opaque inter-institutional decision-making process, but also to a reduction in the involvement of ministers in Council decision-making. This lack of ministerial involvement is problematic, as ministers are the only politically accountable decision-makers and legitimate representatives of their member state in that institution. While our first finding corroborates fears about the negative consequences of early agreements for the transparency and accountability of EU legislative politics, the second finding is more benign. Our analysis does not provide support for the suggestion that informal trialogue negotiations produce a power distribution biased towards relais actors that control the flow of information between institutions. While the EP's relais actors (i.e. rapporteurs and shadow rapporteurs) seem to occupy central positions in legislative negotiations within that institution (Jensen and Winzen 2012), the introduction of co-decision does not seem to have strengthened the position of the Presidency in the Council. With

respect to the Council, informal dialogues seem to decrease transparency and accountability, but they do not seem to have any dramatic effects on who gets what in terms of policy.

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Table 1 Logistic regression of ministerial involvement, Nice Treaty period 2003-2009

	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>	<i>Model 4</i>	<i>Model 5</i>	<i>Model 6</i>
Co-decision procedure (yes/no)	1.203 (1.29)					
Early co-decision agreement - no EP amendments (yes/no)		0.038*** (-4.52)	0.046*** (-4.18)	0.064*** (-3.47)	0.049*** (-4.06)	0.055*** (-3.55)
Early co-decision agreement - EP amendments (yes/no)		0.911 (-0.56)	0.692* (-1.99)	0.405*** (-3.32)	0.702 (-1.85)	0.396** (-3.27)
Late co-decision agreement (yes/no)		7.427*** (8.36)	6.115*** (6.39)	3.106** (2.84)	6.678*** (6.49)	3.331** (2.96)
Scope of proposal (log number of recitals)			2.824*** (8.31)	2.823*** (7.44)	2.748*** (7.86)	2.778*** (7.07)
Council formations (8 dummy variables)	No	No	No	Yes	No	Yes
Presidency periods (13 dummy variables)	No	No	No	No	Yes	Yes
Observations	892	892	835	815	835	815
Pseudo $R^2$	0.01	0.16	0.24	0.38	0.27	0.40
Likelihood ratio $\chi^2$	-591.0	-498.7	-419.2	-337.3	-406.6	-327.8
Prob. > $\chi^2$	0.196	0.000	0.000	0.000	0.000	0.000

Notes: The dependent variable is ministerial involvement, indicating whether ministers ever discussed the dossier during the Council decision-making process. Cell entries are exponentiated coefficients with  $t$  statistics in parentheses. Two-tailed tests of significance: \*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

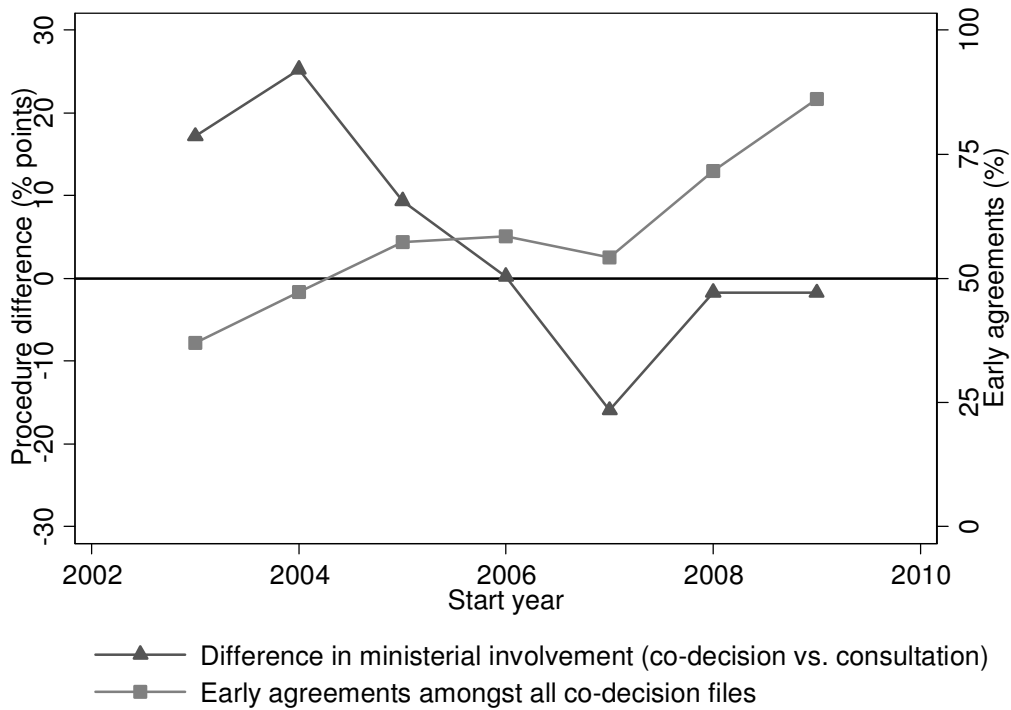


Figure 1 Negative co-variation over time between difference in ministerial involvement across legislative procedures and the percentage of early agreements

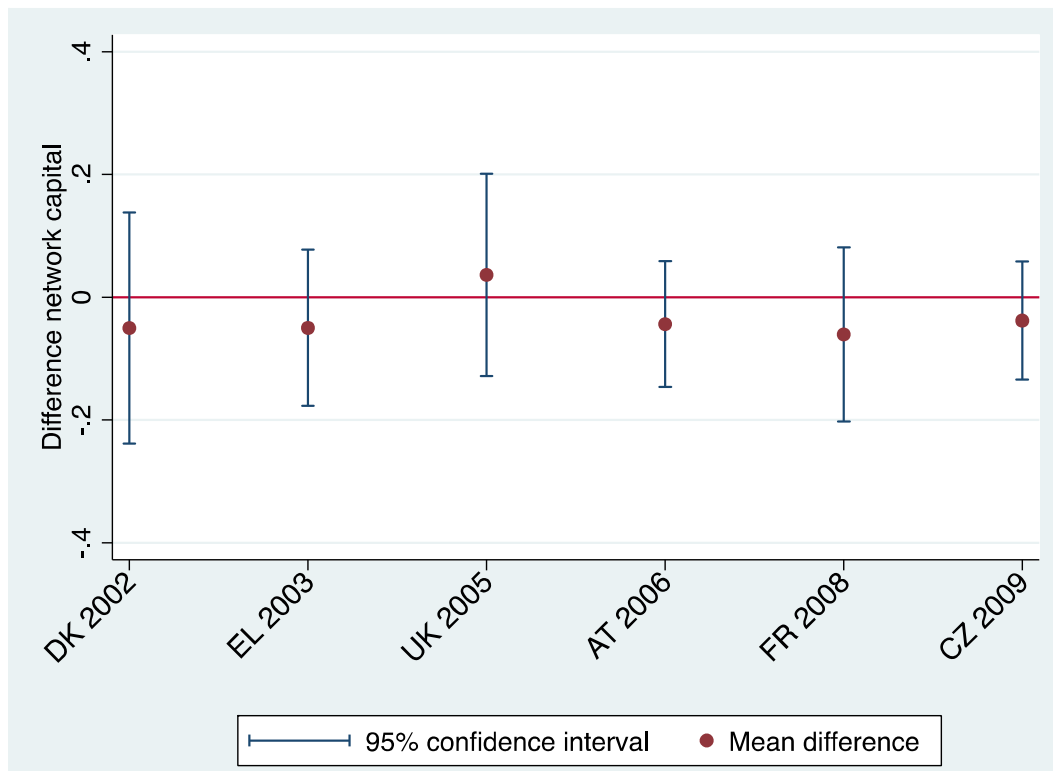


Figure 2 Mean difference in network capital between co-decision committees and other committees and working groups.