

Legislative Procedures in the European Union: An Empirical Analysis

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The article analyses the role of the Commission, the Parliament, and the Council in the two main legislative procedures in the European Union: co-operation and co-decision (I). We use the legislative history of some 5,000 parliamentary amendments. These procedures have been the subject of a great deal of theoretical debate. According to conventional wisdom the co-decision procedure increases the powers of the European Parliament. Revisionist approaches, however, suggest that the conditional agenda-setting powers accorded to the Parliament by the co-operation procedure are more important than the veto powers ascribed by co-decision.

Our analysis demonstrates not only that both claims are correct, but also why. On the aggregate there is a higher success rate of parliamentary amendments under co-decision (I) than under co-operation, just as the data published by the EP indicate. However, controlling for one of the conditions of conditional agenda setting (agreement by the Commission under co-operation), conditional agenda setting empowers the EP more than veto powers. Finally, control of Commission behaviour in *both* procedures indicates no difference in acceptance rates between co-operation and co-decision.

Our analysis explains why all three points above are true. The answer hinges on the activity of the Commission, which was more hostile to parliamentary amendments during the 1989–94 period (more amendments were rejected during this period than during any other period under both co-operation and co-decision). In addition, the power of the Commission has declined under co-decision (because it *can be* and *is* more frequently overruled by the other two players, whether its opinion is positive or negative).

Over the last fifteen years the European Union (EU) has completed the unification of its internal market, expanded to include five additional countries, and is in the process of achieving monetary union. Over the same period it has undergone three major constitutional revisions relating to its legislative processes: the Single European Act in 1987, which introduced the co-operation procedure; the Treaty of Maastricht in 1992, which introduced the co-decision (I) procedure; and the Treaty of Amsterdam in 1997 which significantly altered this procedure (co-decision II). During this period the European Parliament (EP) evolved from an almost insignificant and purely consultative assembly to a potentially powerful player in the legislative process with significant independent powers and resources.

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The outcomes of the EU legislative process vary depending on who holds the primary decision-making power. In other words, one would expect quite different results if the Commission dominated the legislative process than if power resided firmly in the hands of national governments (represented in the Council of Ministers). A third possibility would be for the EP to control the legislative process. Two out of these three claims have already been made. According to intergovernmentalist approaches¹ member states' governments control the process of integration, while according to neofunctionalists it is the European elite as expressed mainly by the Commission that promote integration.² Although nobody has yet claimed that the EP is the dominant force of integration, students of European integration debate its role with increasing vigour. In addition, most of the debates preceding constitutional revisions of the EU revolved to some extent around the issue of the 'democratic deficit' which itself is linked to the role of the EP.³

The different theoretical perspectives have their ardent proponents vigorously debating which perspective best explains EU integration as well as legislative outcomes. Rather than leading to a consensus built upon common ground the tendency has been one of continued theoretical disagreement. We believe that a major reason the theoretical debate goes unresolved is the inadequacy of empirical data. Past empirical works rely on case studies⁴ or the aggregate data presented by the EP itself.⁵ However, attempts to understand the legislative role of the EP based on both a broad and detailed analysis of EP amendment success have been notably absent.⁶

In this study, we examine the role played by the three major institutions in

¹ Andrew Moravcsik, 'Negotiating the Single European Act: National Interests and Conventional State Craft in the European Community', *International Organization*, 45 (1991), 19–56; Andrew Moravcsik, 'Preferences and Power in the European Community', *Journal of Common Market Studies*, 31 (1993), 473–524.

² George Ross, *Jacques Delors and European Integration* (New York: Oxford University Press, 1995).

³ Juliet Lodge, 'The European Parliament and the Authority–Democracy Crisis', *Annals AAPSS*, 531 (1994), 69–83; Michael Baun, *An Imperfect Union* (Boulder, Colo.: Westview Press, 1996).

⁴ David Earnshaw and David Judge, 'The European Parliament and the Sweeteners Directive: From Footnote to Inter-institutional Conflict', *Journal of Common Market Studies*, 31 (1993), 103–16; David Judge and David Earnshaw, 'Weak European Parliament Influence? A Study of the Environment Committee of the European Parliament', *Government and Opposition*, no. 2 (1994), 262–76; Claudia Hubschmid and Peter Moser, 'The Cooperation Procedure in the EU: Why Was the European Parliament Influential in the Decision about Car Emissions Standards?' *Journal of Common Market Studies*, 35 (1997), 225–41.

⁵ Martin Westlake, *A Modern Guide to the European Parliament* (London: Pinter Publishers, 1994); Richard Corbett, Francis Jacobs and Michael Shackelton, *The European Parliament*, 3rd edn (London: Cattermill Press, 1995); F. Hayes-Renshaw and H. Wallace, *The Council of Ministers* (London: Macmillan, 1997).

⁶ For exceptions, see George Tsebelis and Anastassios Kalandrakis, 'European Parliament and Environmental Legislation: The Case of Chemicals', *European Journal of Political Research*, 36 (1999), 119–54; and Amie Kreppel, 'The European Parliament's Influence over EU Policy Outcomes', *Journal of Common Market Studies*, 37 (1999), 521–38.

the two new legislative procedures introduced by the Single European Act (co-operation) and the Treaty of Maastricht (co-decision I). We analysed 231 legislative proposals (152 adopted under the co-operation procedure from 1988 to 1996, and seventy-nine adopted under co-decision from 1994 to 1997) involving approximately 5,000 EP amendments. We tracked each amendment as it progressed through the different stages of the legislative process. We consider these amendments as a form of bargaining between the EP (which introduces them in both the co-operation and the co-decision procedures) and the Council (which ultimately accepts or rejects them). We take the degree to which the Council accepted the EP's amendments as an indication of the ability of the EP to affect European legislation under both the co-operation and the co-decision procedures. Additionally, we examine the role of the Commission as an intermediary actor in the bargaining process.

Our analysis shows that the EP has – overall – more amendments accepted under co-decision than under co-operation. This result replicates the aggregate statistics published so far, which do not address the role of the Commission. However, our findings indicate that *any difference appearing in the acceptance rate of EP amendments between the two procedures is due to the influence and the behaviour of the Commission*. When the Commission accepts an EP amendment, it is adopted with exactly the same probability under both co-operation and co-decision. The differences in the aggregate statistics emerges for two reasons. First, the influence of the Commission is significantly higher under co-operation than under co-decision. Secondly, for historical reasons discussed in the paper, the Commission was more hostile to EP amendments during the late 1980s and early 1990s, the main period of co-operation procedure use.

There is one significant theoretical objection to the use of empirical data in order to assess the importance of different institutions in EU law-making. Under complete information (if all actors knew each other's preferences and payoffs) there would be no parliamentary amendments because if such amendments were to be accepted by other actors they would have been incorporated in the initial Commission proposal and if they were not acceptable the EP would not offer them. In fact, a series of complete information models of EU legislative processes conclude that in equilibrium there are no successful EP amendments.⁷ The very existence of amendments can be explained either as an indication of incomplete information, or of the existence of other games besides the legislative one. Let us explain. The EP can offer an amendment either because it believes that it will be accepted, or because it wants to make the point to the

⁷ C. Crombez, 'Legislative Procedures in the European Community', *British Journal of Political Science*, 26 (1996), 199–228; Bernard Steunenberg, 'Decision-Making under Different Institutional Arrangements: Legislation by the European Community', *Journal of Institutional and Theoretical Economics*, 150 (1994), 642–69; Peter Moser, 'The European Parliament as Conditional Agenda Setter: What are the Conditions? A Critique of Tsebelis (1994)', *American Political Science Review*, 90 (1996), 834–8.

European public that it supports certain issues regardless of the outcome. In the first case the Parliament and/or other actors operate under incomplete information, that is, they do not know the other actors' preferences or payoffs; in the second, the information is accurate, but the action can be explained by the existence of another game played by the EP at the same time as law-making.⁸ Similar explanations can be offered for the behaviour of the Council: it may oppose amendments either because it thinks that the Parliament will concede, or for other reasons.

In view of these arguments, counting success of amendments may not mean very much about the influence of different actors: amendments may not appear at all because they were immediately incorporated and offered by the Commission in the initial proposal, or because the Parliament understood that it made no sense to offer them. Even when they appear, they may indicate lack of information as opposed to influence, or even if information is complete, they may indicate the existence of an electoral arena and the importance of public opinion. The fact that almost all the studies of the EU that use empirical evidence to assess the importance of different institutions calculate the success rate of parliamentary amendments is not evidence that the practice is justified.

These are the theoretical objections to the use of our data, and here is our answer. It is true that some amendments do not appear because they are completely successful (and they are incorporated by the Commission in its initial report), or completely unsuccessful (and as such not offered by the Parliament). Consequently, our data do not cover cases of agreement of all EU institutions. We base our inferences only on cases of manifest disagreement (which amendments indicate). Our claim is that once such disagreements exist they are resolved one way or another mainly because of the influence that different actors exercise in the law-making process, not because of the existence of public opinion games. In fact, it can be argued that public opinion plays no significant role in European policy making. All the institutional literature speaks about the opaqueness of EU institutions, and public opinion literature makes the point of the indifference of the European public expressed by low levels of participation in European elections and the fact that European elections are referendums for or against the national government instead of competitions for a European programme.

Our contention is not that other games besides law making play no role at all. In fact, two of us have identified cases where the European Parliament makes amendments that are not germane and have no probability of being accepted, so that the content of these amendments will be included in subsequent legislation.⁹ We called this activity by the EP 'indirect agenda setting' because

⁸ See George Tsebelis, *Nested Games* (Berkeley: University of California Press, 1990), for a discussion of cases of suboptimal choices in one game because of the existence of another simultaneous game.

⁹ Tsebelis and Kalandrakis, 'European Parliament and Environmental Legislation: The Case of Chemicals'.

it appears as an amendment rejection in the first bill and is not recorded in the second (it is included in the Commission proposal and does not appear as an amendment). We argue that electoral games, subsequent bills and other factors are not as important in determining the content of legislation as the preferences and influence of each actor in the legislative game itself. As a result, we treat all these factors as random noise in our analysis. Consequently, parliamentary amendments and the final text of EU legislation are the best existing empirical evidence to assess the influence of each actor in cases where the lack of information prevents actors from coming to an initial agreement.¹⁰

Four sections comprise the article. In the first, we review the literature, with special emphasis on the disagreements and the issues where confusion is likely. In the second, we describe the dataset we use. In the third section, we present the results of our analysis. Finally, in the fourth we present our conclusions and discuss the problems with current understandings of European institutions revealed by our study, which emphasize the need for further theoretical and empirical analyses.

THE LITERATURE ON EUROPEAN INSTITUTIONS

Many observers of the legislative role of the EP in the EU have taken the view that the EP was not a major player under the co-operation procedure.¹¹ We believe that this view revolves around two related misunderstandings. First, many of these scholars seem to equate legislative influence with the ability to veto new legislation.¹² Secondly, there is a widespread neglect of the importance of formal agenda-setting power as a legislative tool. Because the co-operation procedure granted the EP conditional agenda-setting power but only very limited practical veto power¹³ many observers missed the significance of the co-operation procedure.

¹⁰ In the literature on American institutions, a similar approach has been adopted to assess the impact of the House and Senate on the final version of a bill (see Richard F. Fenno Jr, *The Power of the Purse: Appropriations Politics in Congress* (Boston, Mass.: Little Brown, 1966); John A. Ferejohn, *Pork Barrel Politics: Rivers and Harbors Legislation 1947–68* (Stanford, Calif.: Stanford University Press, 1974); David J. Vogler, *The Third House: Conference Committees in the United States Congress* (Evanston, Ill.: Northwestern University Press, 1971); Gerald S. Strom and Barry S. Runquist, 'A Revised Theory of Winning in House–Senate Conferences', *American Political Science Review*, 71 (1974), 448–53), as well as on committees in the House (Barry R. Weingast, 'Fighting Fire with Fire: Amending Activity and Institutional Change in the Postreform Congress' in Roger H. Davidson, ed., *In the Postreform Congress* (New York: St Martin's Press, 1992), pp. 142–68; Steven Smith, *Call to Order: Floor Politics in the House and the Senate* (Washington, DC: Brookings Institution, 1989)).

¹¹ Desmond Dinan, 'The European Community, 1978–1993', *Annals of the American Academy of Political and Social Science*, no. 531 (1994), 10–24; Christopher Bright, *The EU: Understanding the Brussels Process* (Colorado Springs: Wiley, 1995); Baun, *An Imperfect Union*; Michael Welsh, *Europe United?* (New York: St Martin's Press, 1996).

¹² See especially Westlake, *A Modern Guide to the European Parliament*; Bright, *The EU: Understanding the Brussels Process*; Welsh, *Europe United?*

¹³ Corbett, Jacobs and Shackelton, *The European Parliament*, 3rd edn; Welsh, *Europe United?*

While some scholars judged implementation of the co-operation procedure to be a significant event for the EP,¹⁴ there was little agreement on just how beneficial this institution was. The most systematic claims were put forward by Tsebelis,¹⁵ who argued that because EP amendments (if accepted by the Commission) require unanimity to be modified or rejected by the Council, but qualified majority to be accepted, the Parliament and the Commission had significant leverage inside the European institutional setting. Tsebelis called this power ‘Conditional Agenda Setting’ and investigated the conditions under which it occurs. According to his 1994 article, the EP’s agenda powers depend on four factors: (1) *existence of an absolute majority in the EP*; (2) *acceptance by the Commission*; (3) *position of the status quo*; and (4) *dimensionality of the underlying issue space*. In a later article he added an additional condition (implied in the previous work): (5) *the lack of a unanimous position of the Council*.¹⁶

Those who believed that the introduction of the co-operation procedure turned the EP into a true legislative actor pointed to the fact that between 1987 and 1993 ‘over 50% of Parliament’s amendments were accepted by the Commission and carried by the Council’.¹⁷ Although most were quick to point out that aggregate numbers alone could not accurately describe the true legislative influence of the EP, they noted that ‘no national Parliament has a comparable success rate in bending the executive to its will’.¹⁸

Debate over the influence and power of the EP increased after the Treaty of Maastricht added the co-decision procedure to the EU’s legislative arsenal.¹⁹ This procedure adds a third round of bargaining between the EP and the Council to the provisions of the co-operation procedure. If the Council does not accept the EP’s amendments, a Conciliation Committee is convened to try to reach a mutually acceptable compromise between the Council and EP. If this committee fails to reach compromise the initiative reverts to the Council which can make a ‘take it or leave it’ offer to the Parliament. In this last stage of co-decision, there is no requirement for agreement by the Commission.

There is unanimous agreement that overall the Treaty of Maastricht increased

¹⁴ Daniel Guguèn, *A Practical Guide to the EEC Labyrinth* (Rennes: Editions Apogée, 1992); Guy Peters, ‘Bureaucratic Politics and the Institutions of the European Community’, in Alberta Sbragia, ed., *Euro-Politics: Institutions and Policy Making in the New European Community* (Washington, DC: The Brookings Institute, 1992); George Tsebelis, ‘The Power of the European Parliament as Conditional Agenda-Setter’, *American Political Science Review*, 88 (1994), 128–42; Westlake, *A Modern Guide to the European Parliament*; Corbett, Jacobs and Shackelton, *The European Parliament*, 3rd edn.

¹⁵ Tsebelis, ‘The Power of the European Parliament as Conditional Agenda-Setter’.

¹⁶ Because, as he argues, ‘whenever unanimity in the Council exists, the EP or the Commission do not have conditional agenda setting powers’ (George Tsebelis, ‘Maastricht and the “Democratic Deficit”’, *Aussenwirtschaft*, 52 (1997), 29–56, p. 38.

¹⁷ Earnshaw and Judge, ‘The European Parliament and the Sweeteners Directive’, pp. 101–2.

¹⁸ Commission of the European Union, Press Release, 15 December 1994 (ISEC/23/94).

¹⁹ The Treaty of Amsterdam in 1997 modified co-decision I, and initiated co-decision II. Our paper considers only the first version of co-decision.

the powers of the EP. For example, the EP gained unconditional veto power for the first time under co-decision. In addition, agreement by the EP is sought for the appointment of the President of the Commission. However, the direction of change is not completely clear with respect to legislation on policy as opposed to institutional reforms.

A substantial majority of scholars believe that the co-decision procedure enhances the legislative powers of the European Parliament.²⁰ In contrast, Tsebelis and Garrett independently²¹ and jointly²² have argued that the conditional agenda-setting power provided by the co-operation procedure is more important for parliamentary influence on policy making than the absolute veto power provided to the Parliament by the co-decision procedure. The argument is that among the many possible compromises between the Parliament and the Council in co-operation, the Parliament selects the one closest to its ideal point, while in co-decision selection is delegated to the Council.

Some scholars²³ responded to the Tsebelis and Garrett argument by referring to the data collected by the European Parliament itself, which states that the rejection rate for parliamentary amendments is higher under co-operation than under co-decision. Indeed, Table 1 and its attached text shows the figures and analysis presented by the Parliament on its internet website.

According to Jacobs,²⁴ the reasons that the Parliament gains power under co-decision are twofold: first, it does not require approval by the Commission in the final stage and, second, a unanimous Council cannot overrule it. These arguments echo the arguments made by other scholars (see above) but do not directly address the conditional agenda-setting argument. According to Tsebelis, conditions for the existence of agenda setting by the Parliament are (among other things) agreement by the Commission and absence of unanimity in the Council.²⁵ Consequently, what Jacobs argues is that conditional agenda setting is not exercised very frequently because of lack of agreement between EP and Commission or because of unanimity in the Council. In other words, his

²⁰ Welsh, *Europe United?* Clive Archer and Fiona Butler, *The European Union: Structure and Process*, 2nd edn (New York: St Martin's Press, 1996); Westlake, *A Modern Guide to the European Parliament*; Corbett, Jacobs and Shackelton, *The European Parliament*, 3rd edn; Neill Nugent, *The Government and Politics of the European Union*, 3rd edn (Durham, NC: Duke University Press, 1994); Dinan, 'The European Community, 1978–1993'; Roger M. Scully, 'The European Parliament and the Co-decision Procedure: A Reassessment', *Journal of Legislative Studies*, 3 (1997), 58–73.

²¹ Geoffrey Garrett, 'From the Luxembourg Compromise to Co-decision: Decision Making in the European Union', *Electoral Studies*, 14 (1995), 289–308; Tsebelis, 'Maastricht and the "Democratic Deficit" '.

²² George Tsebelis and Geoffrey Garrett, 'Agenda Setting, Vetoes and the European Union's Co-decision Procedure', *Journal of Legislative Studies*, 3 (1997), 74–92; Geoffrey Garrett and George Tsebelis, 'An Institutional Critique of Intergovernmentalism', *International Organization*, 50 (1996), 269–99.

²³ Francis Jacobs, 'Legislative Co-decision: A Real Step Forward?' (paper presented at the Fifth Biennial ECSA Conference, Seattle, 1997); Corbett, Jacobs and Shackelton, *The European Parliament*, 3rd edn.

²⁴ Jacobs, 'Legislative Co-decision: A Real Step Forward?'

²⁵ Tsebelis and Kalandrakis, 'European Parliament and Environmental Legislation'.

is an argument about the *frequency* of conditional agenda setting, *not its significance*.

Roger Scully presented different arguments in favour of co-decision.²⁶ Apart from the theoretical part of his argument,²⁷ he contended that several empirical indicators (attendance rates in the EP, statements by MEPs, etc.) suggest an increase in the power of the Parliament. Tsebelis and Garrett responded to Scully's argument by compiling data from the application of both co-operation and co-decision procedures *for the same length of time*, and pointing out that the rejection statistics are essentially identical.²⁸ They make the argument that in co-operation only policy amendments are accepted (since institutional amendments will find a unanimous opposition in the Council), while in co-decision institutional amendments *may* be accepted. Tsebelis and Garrett conclude that these numbers corroborate their analysis. We re-evaluate these arguments in the empirical part of this article.

TABLE 1 *Acceptance Rate of EP Amendments under Co-operation and Co-decision*

	400 Co-operation 1 July 1987–July 1997	82 Co-decision 1 November 1993–July 1997
1st reading	Commission 54% (+ 0.6% in part) Council 41% (+ 0.4% in part)	Commission 52.5% (+ 3.9% in part) Council 42.7% (+ 3.7% in part)
2nd reading	Commission 43% (+ 4% in part) Council 21% (+ 3% in part)	Commission 61% (+ 1.9% in part) Council 46.9% (+ 12.5% compromise text)

Note: A comparison of the proportions of amendments accepted between the co-decision procedures and the co-operation procedures may also illustrate the degree of influence exerted by Parliament. The proportions for the second (and third) readings under the co-decision procedure are much higher by comparison with the first readings, whereas they are substantially lower in the case of the co-operation procedures, as regards acceptance both by the Commission and the Council. As the table shows, under the co-decision procedure this proportion doubles in the case of the Council (from 21 to 46.9 per cent) and increases by more than a third in that of the Commission (from 43 to 61 per cent). These data do not specify the overall acceptance rate. If we assume that second-round amendments are approximately 33 per cent of first-round amendments, these numbers provide approximately an acceptance rate of at least 0.37 for co-operation, and 0.46 for co-decision (these calculations assume that all second-round amendments are new). The baseline result is that the difference is 9 percentage points in the acceptance rate in favour of co-decision.

Source: EP Conciliation Committee Progress Report 1996–97, Annex II, Part B (<http://www.europarl.eu.int>)

²⁶ Scully, 'The European Parliament and the Co-decision Procedure'.

²⁷ Which has been addressed in Tsebelis and Garrett, 'Agenda Setting, Vetoes and the European Union's Co-decision Procedure'.

²⁸ Tsebelis and Garrett, 'Agenda Setting, Vetoes and the European Union's Co-decision Procedure'.

Taken as a whole, the literature offers no clear picture of the changing role of the Parliament in the legislative process of the European Union. While there is a general agreement that the addition of both the co-operation and co-decision procedures represented increases in the potential influence of the EP, the extent of that influence remains a matter of controversy. Despite aggregate statistics on the number of EP amendments adopted by the other EU institutions, little has been said about the importance of these amendments, or their broader significance.²⁹ Differences between the two procedures have been identified, but no clear conclusion exists as to which provides more power to the EP and why, or under what conditions.

Strange as it may seem, the existing data are even more inadequate than the theories. The data we reported above from the Parliament's web page are nearly everything that is available! The latest version of these cumulative acceptance rates under co-operation and co-decision are reprinted in successive editions of EU textbooks without attention paid to the fact that they are cumulated over a decade. As a result, they can exhibit little change, and therefore offer little new information. Our article responds to this desperate need for systematic data collection, and uses these data to address the questions generated by the literature. First, we discuss the data collection procedures, and then we analyse the data.

DATA COLLECTION AND TREATMENT

The dataset is constructed by tracking 4,904 EP amendments through the co-operation and co-decision procedures (2,866 amendments under co-operation and 2,038 under co-decision). Each amendment generates a profile, indicating the action taken during each of the successive stages of the legislative process (EP first reading, Commission Revision, Council common position, etc.).

At each stage a judgement is made as to the degree to which the amendment had been adopted, in the case of Commission and Council versions, or the status of the amendment in the EP's second reading. We measured degree of adoption with a five-point scale ranging from 'Not Adopted' to 'Adopted'. The status of an amendment in the EP's second reading is judged to be new, reintroduced or reintroduced with modifications. Additionally, many amendments that were submitted in the first round were not pursued in the second round. We classified these amendments as 'No Further Action'. After each amendment had been assessed for degree of adoption and status in the second round, numerical codes are assigned for each round. The coding procedure results in five-digit profiles, which we used to test the hypotheses discussed in the third section.

For each examined piece of legislation under both co-operation and co-decision procedures, a spreadsheet was created in which each row refers to a different amendment with amendments reintroduced in the second round being placed in the same row as their first round counterpart. Each column represents

²⁹ A recent partial exception to this is Kreppel, 'The European Parliament's Influence over EU Policy Outcomes'.

a stage in the legislative procedure. We assessed the degree of adoption by comparing the Commission and Council versions to the most recent EP amendment in that row. The degree of adoption refers only to the comparison between one stage in the process and the most recent EP reading. Reading the numerical degree of adoption codes for each column for a given row generates four numbers: a Commission and Council response to the first round amendment in that row and a Commission and Council response to the second round amendment in that row.

Amendments were coded as 'Adopted' if 100 per cent of the substantive meaning of the EP amendment was included in the version being assessed. If more than half but less than all of the amendment was included, the amendment was said to be 'Largely Adopted'. If less than half of the EP changes were accepted, then the amendment was coded as 'Partially Adopted'. If the response to the amendment was to make changes to the text which were both substantively relevant to the EP amendment but could not be said to be moving in the direction of either the amended or the original version, then the amendment was assessed as 'Modified'. Amendments that were not accepted at all were classified as 'Not Adopted' (see Table 2).

TABLE 2 *Key to Degree of Adoption Coding*

Substantive meaning	Summary	Numerical code
Amendment adopted verbatim	Adopted	1
More than half adopted	Largely Adopted	2
Less than half adopted	Partially Adopted	3
Change relevant but not in direction of either version	Modified	4
Amendment rejected entirely	Not Adopted	5

The 43rd amendment to 89/391/EEC (SYN 123) provides a typical example of the 'Modified' category. The original proposal read

Article 5 (3)(g): when several undertakings share a workplace, the employers shall coordinate their measures for the prevention of *occupational risks*, and shall inform *one another and their workers and or workers'* representatives of these risks.³⁰

The EP deleted the italicized text above and added the italicized text below.

No. 43 Article 5 (3 g): when several undertakings share a workplace, the employers shall *cooperate in the application of provisions concerning safety, health protection and hygiene*, shall coordinate their measures for the prevention of *accidents and health hazards* and shall inform their workers and workers' representatives of these risks *in good time*.³¹

³⁰ Commission of the European Union, 'European Parliament First Reading SYN 123', *Official Journal of the European Communities (Series C)*, No. 326 (1988), p. 102.

³¹ Commission of the European Union, 'European Parliament First Reading SYN 123', p. 102.

The Council's response was to delete the entire passage.³² In this situation, it cannot be said that the Council's intent was to take a position closer to either of the other two institutions with regard to this amendment. The coder therefore assessed the Council response to this amendment to be in the 'Modified' category.

We based our assessment of the degree of adoption on subjective judgements. Reasonable people will naturally disagree about fine distinctions of meaning and the substantive significance of changes in wording. Furthermore, the amendments often refer to highly technical subjects that no coder could reasonably be expected to understand completely. For these reasons two coders checked the coding and any disagreements went to a tiebreaker. In this context, the simplicity of the scale is actually an advantage. By requiring only broad judgements the scale reduces disagreements among coders to a minimum while preserving useful distinctions between the responses to the EP amendments.

The EP, subject to certain restrictions, may introduce amendments in either of the two rounds. The type of amendment is assessed in the column corresponding to the EP second reading. Second round amendments can either be new, reintroduced or reintroduced with modifications. If the EP did not pursue the amendment in the second round, it was coded as 'No Further Action'. The assessments were made and a number assigned to each second round amendment (see Table 3).

TABLE 3 *Key to EP II Amendment Type Summaries*

Amendment type	Numerical code
No further action	1
Reintroduced	2
Reintroduced with modifications	3
New amendment	4

After we coded each amendment for degree of adoption in the various stages of the legislative process and the second-round status, we built five digit profiles. The digits refer to the numerical scores for each column after the EP's first-reading column. So the profiles have the following meaning from left to right: Commission First Revision, Council Common Position, Second-Round Amendment Type, Commission Second Revision, and Council Final Directive.³³

We believe that our measurement of degree of adoption is superior to the EP and Council reports of acceptance rates for three reasons. First, both the EP, in

³² Commission of the European Union, 'Final Decision: SYN 123', Official Journal of the European Communities (Series L), n 183 (1989), p. 1.

³³ See the example in the Appendix to this article on the web at www.journals.cup.org.

their session documents and summary memoranda, and the Council, in their 'reasons' annex at the end of their common position, merely distinguish between 'adopted' and 'not adopted'. This type of dichotomous distinction glosses over real differences in policy. Accounting for these variations allows us to examine the give and take between the institutions in depth using the frequency of the five digit profiles. Furthermore, accounting for these variations in the degree of adoption allows for a more accurate comparison of the cumulative rejection rates of directives.

Additionally, basing our method on comprehensive analysis of all the versions allows for more accurate assessments. For example, with regard to SYN 94/0065 discussed above, the Council declares firmly and the EP implies that amendment 10 was accepted.³⁴ However, this assessment ignores the original Commission proposal. In this amendment, the EP added text establishing an advisory role for the European Investment Bank. The Common Position version of recital 10 was a rewording of the original text and did not include any mention at all of the EIB let alone the new role for that institution as the EP wished. The Council and EP judgement that amendment 10 was accepted does not accurately reflect the actions taken by the three institutions. In contrast our method presents an accurate picture of the actions taken by the Commission, the EP and the Council.

Finally, transparency was one major concern of the data collection. The fact that the EP does not always clearly identify which amendments were accepted and which were rejected makes it impossible to check their reports against the actual text of the legislation as it progresses through the legislative procedure.³⁵ Our methods are transparent enough to be subjected to scholarly replication and criticism and are consistently applied to the entire dataset.

DATA ANALYSIS

We divide this section into four parts. First, we present some summary statistics of our dataset to generate some preliminary intuitions about the legislative process in the EU. Next, we use the cumulative rejection rates generated by the dataset. This section replicates the data offered by the European Parliament itself. In the third part, we shift to the analysis of monthly data that enable us to introduce control variables like time of adoption, and legislature that adopted the amendments. Finally, we focus on the behaviour of the Commission, which is revealed to be the key player generating all the observed differences.

³⁴ Commission of the European Union, 'Common Position SYN 94/0065', *Official Journal of the European Communities (Series C)*, No. 130 (1995), p. 8.

³⁵ The Council's reports in the 'reasons' annexes are more useful. But they were not made public until relatively recently, making verification of older legislation impossible.

Summary Statistics

In the first round the ‘essentially accepted amendments’ (amendments that receive 1, 2 or 3 under our coding) in the first round were 0.40 under co-operation and 0.39 under co-decision. In the second round, the same percentages were 0.32 and 0.59. Focusing on rejected amendments (five in our coding), the rates are 0.50 (co-operation) and 0.44 (co-decision) in the first round, and 0.68 and 0.37 respectively in the second. These numbers bracket (as they should) the numbers presented by the EP.³⁶ One can think of 1, 2 and 3 in our coding as the clear-cut cases of acceptance, and the 5 as the clear-cut cases of rejection, 4 require some substantive judgment, so our data do not deviate from what the EP presents. In addition, all the indicators point out the slight advantage of the co-decision procedure for the Parliament in the first round (slightly more acceptances and less rejections in our data), and a significant advantage (double the percentage of acceptances and half the number of rejections in our data) in the second round.

The EP data cannot tell us in their current form the overall number of acceptances or rejections. In order to get to these numbers one would need to know how many times the Parliament reintroduces rejected or partially accepted amendments in the second round, and how many times it introduces new amendments (because the Council modified significantly the text in its common position). From our dataset we can compute these numbers: the rate of overall rejection under the co-operation procedure is 0.52, while under the co-decision procedure it is 0.43. We see a difference of 9 percentage points in favour of the parliament in co-decision. Moving from ‘rejection’ to ‘non-acceptance’ alters the picture a bit, but preserves the basic conclusion: non-acceptance is 0.61 under co-operation and 0.58 under co-decision. So, the aggregate numbers confirm the conventional wisdom that parliamentary amendments are more frequently accepted under co-decision than under co-operation.

In the remainder of this article we will use the rejection rates calculated from our data for one important reason (besides transparency). Our data can be used to produce a series of additional variables: the overall rate of acceptance, time series of all variables, and variable controls with our data to further scrutinize the aggregate patterns discovered so far. One note on terminology: the word ‘rejection’ will correspond to the number 5 (rejected) in our coding, and the word ‘acceptance’ to the coding 1, 2 or 3 (accepted as is, accepted more than 50 per cent, accepted less than 50 per cent). We will use the terms ‘non-rejection’ to include 4 with the ‘accepted’ categories, and ‘non-acceptance’ to refer to the combination of coding 4 and 5.

Let us now go to some more detail on the pattern of institutional interaction by which these amendments are accepted or rejected. To do that, we have to examine the modal profiles in our dataset. There were 3,924 possible profiles, of which only 345 occur in our data. Table 4 presents the ten most frequent

³⁶ The only exception is ‘accepted in the second round’ of the co-operation procedure amendments where our count gives 32 per cent, while the EP’s shows 24 per cent.

TABLE 4 *The Ten Most Frequent Amendment Profiles*

COM1	COUN1	EP2	COM2	COUN2	TOTAL
5	0 or 5	1	0	5	1,316
1	0 or 1	1	0	1	485
1	0 or 5	1	0	5	221
2	0 or 2	1	0	2	216
5	0 or 4	1	0	4	167
1	0 or 2	1	0	2	162
3	0 or 3	1	0	3	157
N/A	N/A	4	5	5	156
N/A	N/A	4	1	1	145
5	5	2	5	5	122

profiles (they are the only ones that occur more than 100 times out of our nearly 5,000 profiles). It is interesting to note that among these only the tenth in frequency corresponds to amendments introduced in both the first and second round. The seven most frequent profiles refer to amendments introduced in the first round and dropped subsequently, and the next two to amendments introduced in the second round for the first time. Consequently, amendments are not usually subjected to multiple readings. The reasons will become clear in the next paragraph.

The most frequent profile by far is one in which the parliamentary amendment gets rejected by the Council in the first round without the Parliament reintroducing it in the second round. There are 1,316 such amendments that 'die' immediately. The Commission rejects them outright, and although sometimes the Council's first response is not recorded (corresponding to the 0 in the second column of the table), the fifth column indicates that they were ultimately rejected. The fact that the Parliament does not reintroduce these amendments in the second round means that they either understand they have no chance, or that they cannot produce the required votes in support of the amendment.³⁷

The second most frequent profile (485 occurrences) refers to amendments immediately accepted by both the Commission and the Council (although information about Council action in the first round is sometimes missing). The third profile (221 occurrences) indicates acceptance by the Commission and rejection by the Council. The fourth profile (216 occurrences) refers to amendments largely accepted by the Commission and the Council. The fifth profile (167 cases) represents amendments rejected by the Commission, but modified by the Council. The Council is willing to modify the wording in the relevant paragraphs (presumably indicating a friendlier predisposition towards the EP than the outright rejection adopted by the Commission). The next two

³⁷ In the second round an absolute majority of MEPs is required which, given the absenteeism in the EP, is equivalent to a strong qualified majority vote.

profiles refer to amendments largely or partially adopted (162 and 157 cases respectively). The eighth and ninth profiles in frequency (156 and 145 respectively) represent amendments introduced in the second round for the first time. The higher frequency reflects the fate of amendments rejected by both the Commission and the Council, while the lower frequency represents the amendments accepted by both actors. The last frequency (122 cases) represents highly conflictual amendments: both the Commission and the Council in both rounds rejected them, while the EP reintroduced them exactly as they were when it had the chance. Together these profiles account for over 60 per cent of the amendments in our dataset.

In conclusion, these aggregate statistics indicate that there is a sizeable difference between acceptance rates of parliamentary amendments in favour of co-decision, and that the second round of both procedures essentially generates this difference (Table 1). So far, we have a complete confirmation of the inferences made by the literature on the basis of the data published by the EP. In addition, the most frequent course of events is an amendment introduced once (either in the first round or in the second). Amendments debated in both rounds are a very distant second (in fact, the first such profile is the tenth in frequency, representing only 2 per cent of the overall number of amendments). Among the amendments debated in one round, by far the most frequent ones are the ones debated in the first round alone. Let us now move to an analysis of the data across time.

Cumulative Rejection Rates over Time

In this section we present the cumulative rejection rates. Our enterprise parallels the publication of rejection data by the EP itself. The EP regularly publishes such data and they also appear periodically in successive editions of books on the EU.³⁸ The primary difference is that we can calculate overall rates of rejection because we differentiate between different kinds of amendments (the ones introduced exclusively in the first round, the ones introduced exclusively in the second, and the ones introduced in both).

Figure 1 presents the cumulative rejection rate of amendments over time. Co-operation procedure data are represented by crosses, while co-decision data by circles. What we observe is that the cumulative rejection rates of co-operation start low and constantly rise (although at diminishing rates). Conversely, co-decision data indicate that rejection rates start at high levels, and fall over time. We expected the flattening of both curves because the data are cumulative.³⁹

³⁸ See Corbett, Jacobs and Shackelton, *The European Parliament*, 3rd edn; Dinan, 'The European Community, 1978–1993'; Desmond Dinan, *Ever Closer Union?* (London: Macmillan, 1999), etc.

³⁹ It is easy to alter the initial observations, which represent some months of data, but once the observations represent the average of several years of legislative activity further modifications become difficult.



Fig. 1. Cumulative overall rejection rates of EP amendments under co-operation and co-decision procedures in real time

Over time, the EP has taken snapshots of this process, and presented the cumulative data, which have become the undisputed basis for political inferences about the significance of different procedures and the role of EU institutions in legislative decision making. The most recent observation from our data would correspond to a comparison between the last x and the last o in Figure 1. We have already reported that these two points provide a difference of nine percentage points in favour of co-decision.

Figure 2 presents the rejection rates per procedure as a function of the length of time that the procedure has been applied. The figure demonstrates that while the two procedures started very differently (co-decision with many rejections and co-operation with few) they reached similar rates of rejection two years (more precisely twenty months) into their application.⁴⁰ The middle of part of both procedures is quite flat and the differences are minor (the last point in co-decision has 0.43 rejection rate, while the corresponding point in co-operation reads 0.44). Considering non-acceptances instead of rejections, the

⁴⁰ This is the point made by Tsebelis and Garrett, 'Agenda Setting, Vetoes and the European Union's Co-decision Procedure', when they compare the acceptance rates of the two procedures *controlling for time* by measuring from the beginning of the application of each procedure. Our results here mirror their findings that two years after the relative introduction of the procedures acceptance rates were similar.

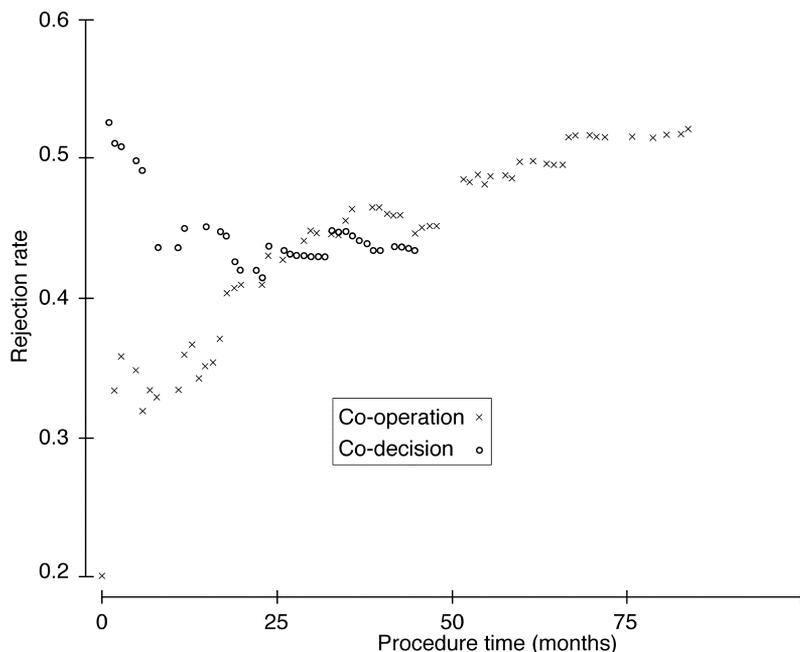


Fig. 2. Cumulative overall rejection rates of EP amendments under co-operation and co-decision procedures in overlapping time

numbers are reversed in favour of co-operation: 0.55 non-acceptance in co-operation, 0.58 in co-decision, but again the differences are minor.

From Figure 2 we observe that the time paths of rejection rates are very different. While the one from co-decision indicates a learning process (disagreements are reduced over time and proposed amendments are accepted more as time goes by), the opposite is true of co-operation: the rejection rate starts from low levels and increases over time. In other words, Figure 2 indicates that a comparison between the two procedures at the same time 'stage' of their application as done by Tsebelis and Garrett is not theoretically justified.⁴¹

Figure 3 compares the rejection rate of amendments controlling for acceptance by the Commission under co-operation, but not under co-decision. This is because acceptance by the Commission is a condition for conditional agenda setting but not for veto powers. Consequently, Figure 3 represents a crude⁴² comparison between conditional agenda setting (the co-operation

⁴¹ Tsebelis and Garrett, 'Agenda Setting, Vetoes and the European Union's Co-decision Procedure'.

⁴² This would be an exact comparison between the two procedures if the opinion of the Commission was constant over time or reflected only substantive disagreement and not other features of amendments that may influence their acceptance probability. Examples of the latter include amendments that reflect uninformed or poorly legislated provisions towards which the expert Commission opinion will more frequently – and successfully – be negative.

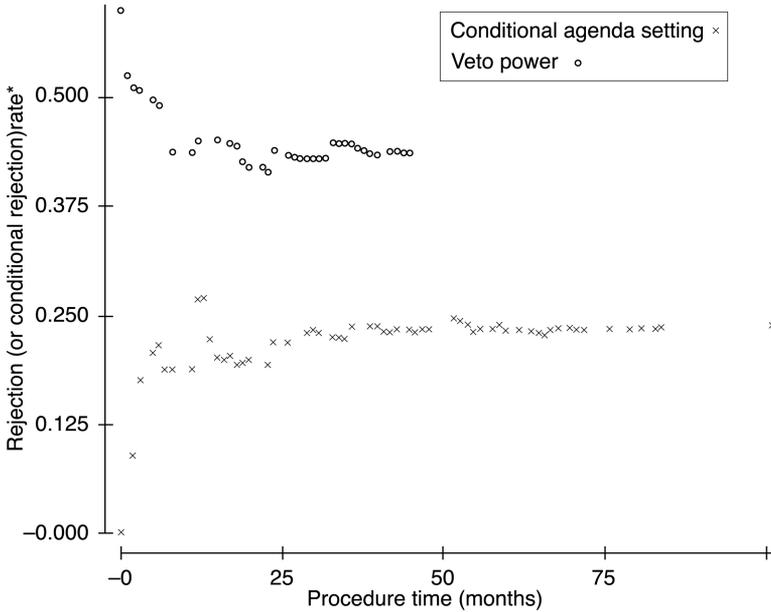


Fig. 3. Cumulative rejection rates under conditional agenda-setting and veto power
 Note: Rejection of EP amendments under co-operation is conditional upon non-rejection by the Commission.

procedure) and veto power (the co-decision procedure). As the figure demonstrates, there is a very substantial difference in favour of conditional agenda setting. The EP is considerably more influential when it exercises conditional agenda setting (that is, when it has the Commission on its side under co-operation). The difference is of the order of 20 percentage points. Closer inspection of Figure 3 suggests another conclusion. The acceptance rate curve under conditional agenda setting is much flatter than under co-decision. This observation indicates that what we identified as differences between the two procedures may be due primarily to the behaviour of the Commission.

Figure 4 controls for acceptance by the Commission in both procedures. The two procedures flatten very soon around practically the same values (0.23 in co-operation, 0.21 or 0.22 in co-decision). Thus, the two procedures produce identical results once we control for time and the behaviour of the Commission. But perhaps the most interesting feature of Figure 4 is that the curves that trace the two procedures flatten out, indicating equilibrium (i.e. no change over time).

Given that the rejection has rates assuming non-rejection by the Commission are the same (as Figure 4 indicates), it is logical to conclude that the apparent differences in rejection rates between the two procedures are due to either one or both of the following factors: (1) There is an over-time difference in the frequency of Commission rejection of EP amendments. (2) There is an over time difference in rejection rates conditional upon rejection by the Commission.

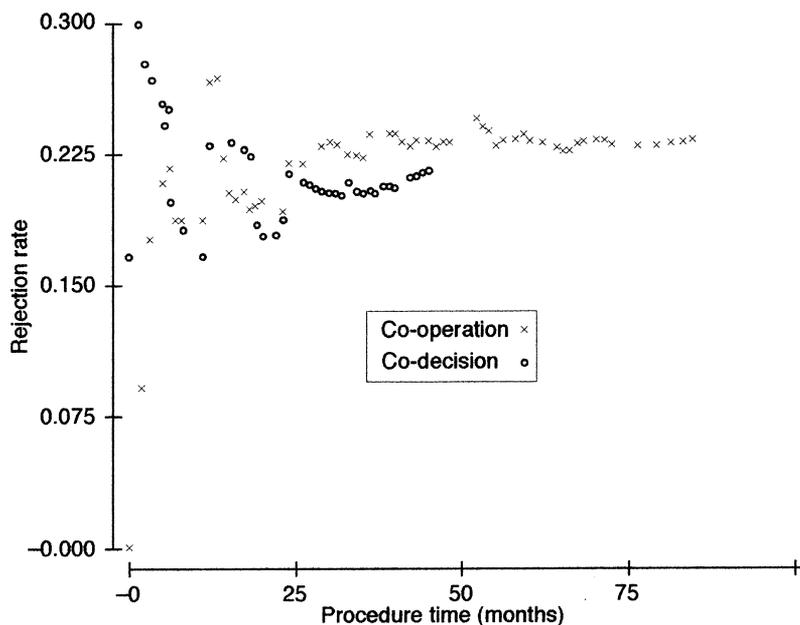


Fig. 4. Cumulative rejection rate of EP amendments conditional upon non-rejection by the Commission under co-operation and co-decision

The next section investigates these conjectures using more sensitive 'spot time' data instead of the aggregate data.

Rejection Rates and Their Covariates

Figure 5 presents the monthly rejection rate of amendments in co-operation (x) and co-decision I procedures (o). The reader can verify that the flat cumulative graphics that we saw in the previous figures were masking a high degree of variation. In fact, both procedures present periods of very high and very low rejection rates. In addition, however, the overall rate of rejections increases over time initially, and declines subsequently. This is why we will assume a parabolic time trend when we try to approximate the data. We focus on the examination of statistical significance of these patterns as well as the introduction of control variables.

We present a series of regressions with procedure and time as independent variables in Table 5. The dependent variables are: Council rejection rates (REJ), Council rejection rates conditional upon rejection by the Commission (REJ/REJC), frequency of rejection by the Commission (REJC) and Council rejection conditional upon non-rejection by the Commission (two columns entitled REJ/NREJC).

Ordinary least squares (OLS) models produce unbiased but inefficient

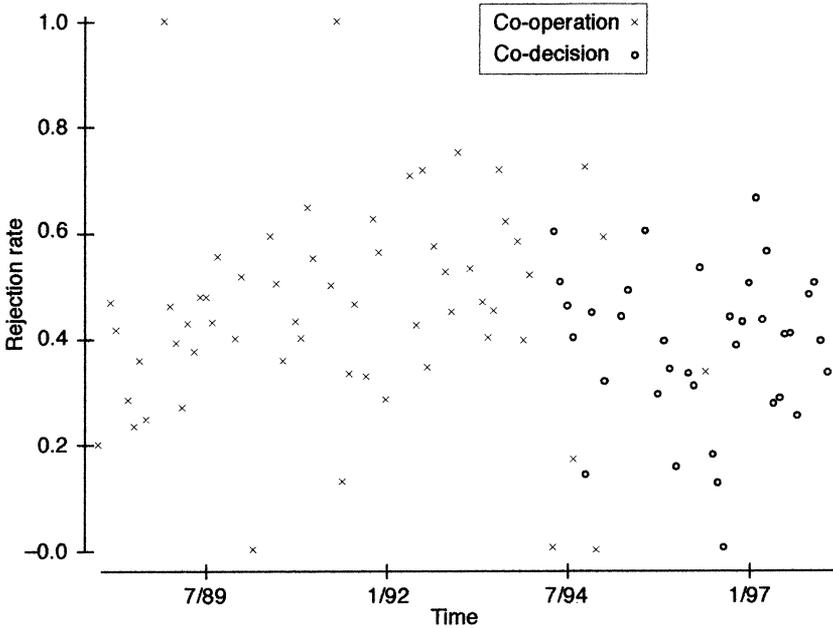


Fig. 5. Monthly overall rejection rate of EP amendments under co-operation and co-decision procedures

coefficients, because the number of amendments per month varies and data points generated by a high number of observations should have lower variance (heteroscedasticity problem). Statistical theory prescribes correction of heteroscedasticity by weighting observations inversely to the number of amendments that generated each point. As a result we produce the generalized least squares (GLS) models to correct for heteroscedasticity and improve the estimates.

The first model of Table 5 presents the overall rate of rejection. We control for a parabolic time trend and find that the time trend is significant, and the coefficient for the co-operation procedure (SYN) is positive and significant. The interpretation of this result is straightforward: there was an overall pattern of an increasing rate of rejection of EP amendments during the early 1990s. In addition to that trend, the rejection rate of amendments under co-operation is higher by 14 percentage points over co-decision (controlling for the time trend). This finding confirms the conventional wisdom that the overall success rate of the EP under co-decision is significantly higher than under co-operation.

The model of rejection conditional upon Commission rejection (REJ/REJC) presents a more clear time trend. Figure 6 indicates that during the early 1990s a rejection by the Commission increased significantly the failure of an amendment. Again, the rejection rate under co-operation (conditional upon Commission rejection) is significantly higher than co-decision.

The same pattern appears in the next model: it presents the frequency of

TABLE 5 *Rejections and Conditional Rejections as a Function of Time and Procedure*

	REJ	REJ/REJC	REJC	REJ/NREJC	REJ/NREJC
Constant	0.1241 (1.49)	0.4671 (4.68)	0.1194 (1.13)	0.1771 (2.18)	0.3039 (2.39)
SYN	0.1462 (3.09)	0.1273 (2.22)	0.1240 (2.08)	0.0536 (1.07)	0.0319 (0.540)
Time	0.0063 (3.32)	0.00605 (2.56)	0.0059 (2.45)	-0.0003 (-0.169)	-0.0032 (1.23)
(time) ²	-0.00003 (-2.40)	-0.00003 (-1.96)	-0.00003 (-1.78)	0.00001 (0.442)	0.00002 (1.32)
ep1					-0.0751 (-0.809)
ep2					0.0197 (0.315)
R ²	22.6%	17.9%	12.5%	1.4%	4.3%
R ² (adjust.)	20.0%	14.9%	9.6%	-2.0%	-1.3%
Number of cases	91	87	93	90	90

Note: GLS estimates; *t*-ratios in parentheses.

rejection by the Commission (rejection in both rounds if the amendment is presented in both rounds). Again, the rejection rate is significantly higher under co-operation and exhibits the same parabolic pattern.

In conclusion, we can say that the overall patterns exhibited in the rejection rates (parabolic over time and higher under co-operation) are due to similar patterns observed in the behaviour and the importance of the Commission. The two most significant patterns are higher rejection rates in the early 1990s and a higher conditional rejection rate when the Commission rejects. This leaves us with a question: is the behaviour of the Commission the only factor that accounts for all the observed differences of the data?

The last two columns of Table 5 investigate this question. The dependent variable is now the rejection rate conditional upon *non-rejection* by the Commission. The first model uses the same time trend and procedure independent variables, and the last one introduces the legislature that introduced these amendments (dummy variables) as additional possible explanatory variables. It is interesting to see that only the Commission's behaviour and influence appear to affect rejection rates. Once one controls for these two factors, the data look like random noise (no significance of coefficients, and negative adjusted R^2). In other words, *all the action is in the behaviour and the influence of the Commission*.

In what follows we investigate this finding further. Let us call p the rejection rate of amendments when the Commission rejects it and q the rejection rate of

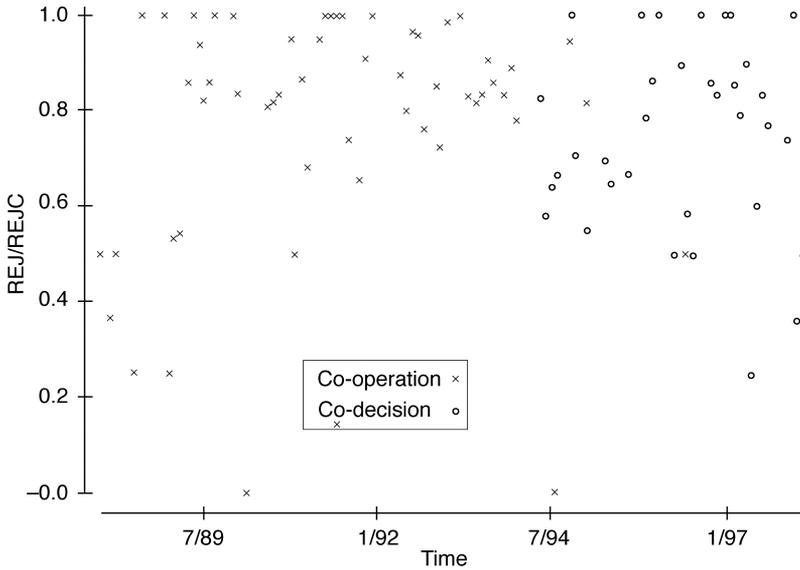


Fig. 6. Monthly rejection rate of EP amendments under co-operation and co-decision conditional upon rejection by the Commission

amendments when the Commission accepts it. If we call REJ the rate of rejection and REJC the rate of rejection by the Commission, by definition

$$REJ = p \cdot REJC + q \cdot (1 - REJC) \tag{1}$$

By rearranging terms,

$$REJ = q + (p - q) \cdot REJC. \tag{2}$$

The model of Table 6 estimates the parameters of Equation 2, i.e. q and $(p - q)$, for the two different legislative procedures. Again, for the reasons explained above we use the GLS estimate. This simple model that accounts only for institutional differences and the behaviour of the Commission fits our data very well (adjusted R^2 of 60.2 per cent). Note that the coefficient of the dummy for the Co-operation procedure (SYN) is an estimate of the difference in acceptance rates in cases Commission accepts – i.e. difference in q – between Co-operation and Co-decision. In accordance with our conclusion from the last models of Table 5 this quantity is not statistically significant indicating *no difference between the two procedures when Commission accepts EP amendments*.⁴³

Table 7 translates the estimators from Table 6 into a readily interpretable format: the role of the Commission is significantly higher under co-operation than under co-decision. Indeed, under co-operation, once the Commission rejects an amendment the probability that it will be rejected is 0.88; while if the

⁴³ This estimate is negative, indicating a slight advantage to co-operation over co-decision for the EP.

TABLE 6 *Rejections as a Function of Rejections by the Commission*

	REJ
Constant	0.2708 (6.46)
SYN	- 0.0938 (- 1.71)
REJC	0.3987 (4.11)
SYN*REJC	0.3193 (2.66)
R ²	61.5%
R ² (adjusted)	60.2%
Number of cases	93

Note: GLS estimates; *t*-ratios in parentheses.

Commission accepts, the probability that it will be accepted is 0.83 (= 1 - 0.17). Under co-decision, when the Commission rejects the probability of rejection is 0.67, while when the Commission accepts, the probability of acceptance is 0.73 (= 1 - 0.27). In other words, the Commission's behaviour predicts the overall fate of an amendment 85 per cent of the time under co-operation and 70 per cent of the time under co-decision.

We conclude this section with additional evidence to the effect that the success rate of the Commission per procedure does not remain constant over time. This is manifest both in Figure 6 and in the parabolic fit for the Time variables in the first three models of Table 5. Substantively, these indicate that *under the co-operation procedure, the influence of the Commission increases over time, while under co-decision it decreases*. The reader can also verify this statement by observing Figure 7. This figure presents the absolute value of the residuals of a GLS regression of overall rejections as a function of rejections by the Commission. The size of the residuals is larger at the two ends of the

TABLE 7 *Percentage of Rejections as a Function of Commission Rejections (p) and Non-rejections as a Function of Commission Non-rejections (1 - q) per Procedure*

	Rejections as % of Commission rejections	Non-rejections as % of Commission non-rejections
Co-operation	0.88	0.83
Co-decision	0.67	0.73

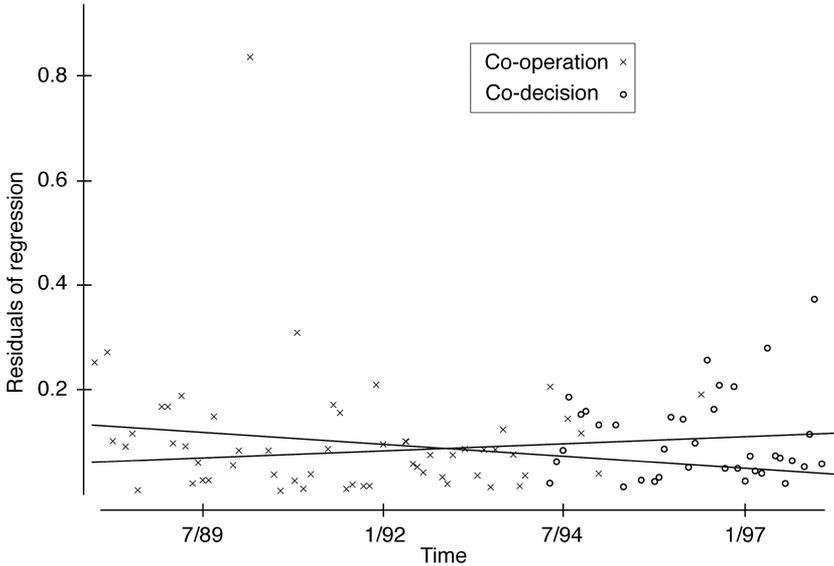


Fig. 7. Residuals (absolute value) of regression of overall rejection of EP amendments on Commission rejection

figure, indicating that the behaviour of the Commission explains less during these periods.

In sum, all the variance in the rejection rates (over time and by procedure) can be explained on the basis of three factors, all having to do with the Commission. First, the Commission is more influential under co-operation than under co-decision. Secondly, within each procedure the influence is highest towards the middle of the period our data cover (early 1990s). Finally, the Commission rejects more EP amendments during the same period.

CONCLUSIONS AND DISCUSSION

It has been argued that one of the major differences between presidential and parliamentary systems is the issue of legislative agenda control.⁴⁴ In presidential systems, parliament makes proposals to the executive (president) who can accept them or veto them. In parliamentary systems, the executive (government) makes proposals to parliament. In both cases, the actor who controls the agenda has a significant advantage over the actor who faces a proposal. This conclusion contradicts the belief that in presidential systems, political power lies with the president, and in parliamentary ones it is the parliament that makes the decisions.

⁴⁴ George Tsebelis, 'Conditional Agenda-Setting and Decisionmaking Inside the European Parliament', *Journal of Legislative Studies*, 1 (1995), 65-93.

However, this conclusion jibes with the requests of American presidents to get a line item veto, and with the complaints of European parliaments that they do not have enough power.

European Union legislative procedures included the following paradox: all the participants had experience from their national (parliamentary) systems, yet the first procedure adopted (co-operation) offered conditional agenda-setting power to the parliament. This was a gift that the EP did not appreciate and as a result, it kept focusing on an unconditional veto power as its major institutional request. When this request was granted in Maastricht, all the parliamentary as well as academic reports focused on the higher number of accepted amendments, and concluded that co-decision I had increased EP power compared to co-operation. All these analyses were based on the data collected and published by the European Parliament itself.

In order to test this view, we collected a much more detailed and accurate dataset, which enabled us to separate different effects. In particular, we were able to separate the conditional agenda-setting power of the EP by controlling for the behaviour of the Commission. We were able to compare the influence of the Commission under each one of the procedures. Finally, we were able to observe the acceptance or rejection of parliamentary amendments by the Commission over time, and we came to a much more accurate conclusion about the relations between the three institutional actors in the EU.

As we have seen in Figure 3, conditional agenda setting gave more power to the EP compared to unconditional – i.e. regardless of Commission behaviour – veto power. As we saw in Table 7, the Commission lost influence significantly when the EU moved from co-operation to co-decision. Finally, as we saw in Figures 5 and 6, the Commission was much more opposed to EP amendments during the period when the single market was the major legislative goal than before or after this period. The higher acceptance rate of parliamentary amendments under co-decision I than under co-operation was the aggregate of all three of these effects. In fact, if one controls for all three effects there is a slight, non-statistically significant advantage of co-operation over co-decision for the Parliament (see fn. 43).

The positive conclusion of our findings is that *all differences in rejection rates are attributable to differences in the influence and the behaviour of the Commission*. This is a novel finding, never reported in the literature.⁴⁵ We present not only a positive corroboration of this finding (estimates of p and q in Table 5 indicate significant differences between co-operation and co-decision), but also a negative one: differences in rejection rates between the two procedures disappear when one conditions on non-rejection by the Commission. This finding persists despite the introduction of possible control variables.

Why would the Commission behave differently and reject more EP

⁴⁵ Although Garrett and Tsebelis, 'An Institutional Critique of Intergovernmentalism,' and Tsebelis and Garrett, 'Agenda Setting, Vetoes and the European Union's Co-decision Procedure' have argued that the influence of the Commission declines under co-decision.

amendments (leading to their ultimate defeat) during the third elected parliament (1989–94)? Given that this is a novel finding, there is no argument explaining it in the literature. Furthermore, the stylized fact (very frequently presented in the literature) that the Commission, the EP and the Council are mainly fighting along a dimension of European integration, results in the frequent assertion that there is a coalition between the EP and the Commission (the integrationist actors) against the Council. This set of assumptions would not lead us to expect an increase in conflict between the Commission and the EP.

However, an alternative argument presented in the literature is consistent with our findings. A series of authors have argued that the conflict between the Council and the EP can be reported on the left–right axis instead of the axis of integration.⁴⁶ According to their argument, the differences between Council and Parliament are not differences in desired levels of *integration per se*, but in levels of *regulation*. These two axes are of course correlated, since more regulation necessarily leads to more integration (but not vice versa).

Our finding is consistent with this literature: the period 1989–94 is the period of legislation on the Single Market, that is, the introduction of a number of pieces of legislation that laid the basis for economic integration with effects throughout the Union. If the EP during this period introduces amendments increasing the level of regulation, it is plausible that the Commission rejects an increasing number of them. Given the high influence of the Commission under co-operation (which represents the predominant legislative procedure during that period) the rejection rate of EP amendments reaches its maximum levels.

Controlling for acceptance by the Commission under both co-operation and co-decision, we can test the expectation generated by the work of Tsebelis and Garrett⁴⁷ that integration proceeds at higher pace under co-operation than under co-decision. Their model presents a coalition between the EP and the Commission, and a non-unanimous Council. Our data indicate that there is no difference in the acceptance rates of EP amendments once the Commission is on the side of the EP (last four models of Table 5). However, this test does not control for the absence of unanimity in the Council. Given that institutional amendments may be included in the co-decision data but not in the co-operation data, controlling for absence of unanimity in the Council is going to push the data in the direction predicted by Tsebelis and Garrett, but we do not know whether such a result will have statistical significance.

⁴⁶ Lisbet Hooghe and Gary Marks, 'The Making of a Polity: The Struggle over European Integration', in H. Kitschelt, P. Lange, G. Marks and J. Stephans, eds, *The Politics and Political Economy of Advanced Industrial Societies* (Cambridge: Cambridge University Press, 1998), pp. 70–97; Simon Hix, 'Dimensions and Alignments in European Union Politics: Cognitive Constraints and Partisan Responses', *European Journal of Political Research*, 35 (1999), 69–106; Simon Hix, *The Political System of the European Union* (London: Macmillan, 1999); Amie Kreppel and George Tsebelis, 'Coalition Building Inside the European Parliament', *Comparative Political Studies*, 32, no. 8 (1999), 33–67.

⁴⁷ Tsebelis and Garrett, 'Agenda Setting, Vetoes and the European Union's Co-decision Procedure'.

There are several feasible extensions of this work. The first is to analyse the actual bargaining between European institutions instead of the aggregate rate of rejections. Such an approach would require us to focus on the amendments introduced in both rounds, and examine whether the Parliament insists on the same wording or adopts a more conciliatory position, whether the other actors are more likely to accept amendments if the Parliament is intransigent or conciliatory. In other words, one would have to follow the shuttling of legislation from one actor to the other and study their conditional responses as strategies in a bargaining game.⁴⁸

Finally, one would want to investigate the effects of a series of other variables like policy area of legislation, size of bills, density of amendments, political affiliation of *rapporteurs* of a bill on the policy influence of the EP. However, for such an analysis one would have to shift from amendments to pieces of legislation.

⁴⁸ George Tsebelis and Jannette Money, *Bicameralism* (New York: Cambridge University Press, 1997).

APPENDIX: EXAMPLE OF CODIFICATION AND DATA PROFILES

The 46th amendment to directive 89/391/EEC (SYN 123) has the profile 23333. Amendment 46 to SYN 123 consisted of a completely new entry inserted in the first round. The EP amendment was to add,

No. 46 Article 6(1a)(new) Such designation shall be made following agreement with the workers' representatives at the plant. The designated workers shall be freed from all normal work to carry out this task or given sufficient time in which to fulfil their duties without hindrance. The workers involved must be neither financially nor socially penalized as a result. This shall also apply to their career within the undertaking.⁴⁹

The Commission's response to the amendment was to insert

Article 6(2) In order to carry out this task, the designated workers shall be freed from all other work or be given sufficient time in which to fulfil their duties without hindrance. The workers involved must be neither financially nor socially penalized as a result. This shall also apply to their career within the undertaking.⁵⁰

The reference to a prior agreement with the workers' representatives is missing from the Commission response. The Commission adopted more than half of the EP addition but not all of it; therefore the response is coded as a 'Largely Adopted'.

The Council's response in its common position was somewhat less favourable to the EP than was the Commission's:

Article 7(2) Designated workers may not be placed at any disadvantage because of their activities related to the protection and prevention of occupational risks. Designated workers shall be allowed adequate time and the necessary means to enable them to fulfil their obligations arising from this Directive.⁵¹

The Council's version does not include the broad-ranging references to freedom from other work and also the prohibition of social and financial penalties. This constitutes adoption of roughly half of the EP additions in the opinion of the coder. So as to err on the side of conservatism, the Council response was coded as 'Partially Adopted'.

The EP's response in the second round was to reintroduce the amendment with modifications. The text of the twenty-ninth amendment of the second round is as follows:

No. 29 Article 7 (2) The designated workers shall be freed from other work in order to carry out this task or given sufficient time in which to fulfil their duties. Neither hindrances nor difficulties may result for the workers involved. The workers involved must be neither financially nor socially penalized as a result. This shall also apply as a matter of course to their career within the undertaking. Such designation shall be made following agreement with workers' representatives at the plant.⁵²

The Commission partially adopted the EP's modified amendment by adopting the following text in its second-round revisions:

Article 7(2) Designated workers may not be placed at any disadvantage whatsoever, also as regards their career in the enterprise, because of their activities related to protection and/or the prevention

⁴⁹ Commission of the European Union, 'European Parliament First Reading SYN 123', *Official Journal of the European Communities (Series C)*, No. 326 (1988), p. 102.

⁵⁰ Commission of the European Union, 'Revised Proposal SYN 123', *Official Journal of the European Communities (Series C)*, No. 30 (1989), p. 19.

⁵¹ Commission of the European Communities, 'European Parliament's Second Reading SYN 123', *Official Journal of the European Communities (Series C)*, No. 158 (1989).

⁵² Commission of the European Communities, 'European Parliament's Second Reading SYN 123'.

of occupational risks. Designated workers shall be allowed adequate time and the necessary means to enable them to fulfil their obligations arising from this Directive.

The Council too partially adopted the EP's modified amendment. However, the final decision's text was somewhat different from the Commission's. The following is the final version of the passage:

Article 7(2) Designated workers may not be placed at any disadvantage because of their activities related to the protection and prevention of occupational risks. Designated workers shall be allowed adequate time to enable them to fulfil their obligations arising from this Directive.⁵³

To summarize, the EP introduced an amendment in the first round, which was partially adopted by both Commission and Council. The EP responded by altering its amendment somewhat and reintroducing it in the second round. The Commission and Council then partially adopted that modified amendment. This complicated give and take between the institutions is completely lost in the dichotomous reports from the EP and the Council.

⁵³ Commission of the European Communities, 'Final Decision SYN 123', *Official Journal of the European Communities (Series L)*, No. 183 (1989) p. 1.