

2 Maastricht and the Democratic Deficit

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This chapter compares the power of the different institutional actors of the EU (Council Commission and European Parliament) under the cooperation and codecision procedures. A series of spatial models enables the reader to evaluate the influence of each one of these three actors in the legislative process. The conclusions are that: 1. The Commission's power to set the agenda is unambiguously reduced by codecision. 2. The relationship between Council and Parliament becomes more ambiguous, since the ability of the EP to affect institutional decisions increases (through the veto power introduced by the codecision procedure), but its ability to influence policy decisions (through conditional agenda setting introduced by the cooperation procedure) is reduced. The chapter makes the prediction that the role of the European Court of Justice in adjudicating disputes between the Council and the EP will be reduced, because each one of these actors has now the power to block European decisionmaking independently, and so, resolve the disputes politically.

In this chapter I compare the powers of the different European institutions (the Council, the Commission, and the Parliament) under two different legislative procedures: the cooperation procedure initiated with the Single European Act and the codecision procedure established by the Maastricht Treaty. The general impression is that the veto power accorded the Parliament by the Maastricht Treaty was an important step towards empowering the EP, thereby reducing potentially the 'democratic deficit' of European institutions. I offer two accounts of this line of thought, the first scholarly, the second journalistic. With respect to scholarly work, the authoritative study on the European Parliament, (Corbett, Jacobs, and Shackleton, 1995) after expressing a series of questions and reservations, summarizes: 'The codecision procedure is an important, but limited, step forward in Parliament's legislative powers' (p. 194). With respect to journalistic accounts, the Economist of January 22, 1994, under the title 'Europe's Feeble Parliament,' argues that it is 'an ineffectual body... powerless to initiate legislation or vote governments out of office.' 'More recently,' the Economist argues, 'the parliament won the right to amend laws on the single market, which gave it a bit more clout.'

bit more clout.’ The article concludes that after Maastricht, the powers of the parliament may increase because in the future ‘it will both approve future commissions and their presidents, and have veto on legislation.’ The ‘key’ to this development is ‘the right of veto that comes with codecision.’

The general tenor of European commentators is that there is a linear progress in the powers of the European Parliament, and that the codecision procedure established by Maastricht has raised the EP at its highest level yet. I will take exception to these assessments. I argue that article 189b of the Maastricht Treaty is ambiguous in many respects. While it increases the EP’s institutional powers by enabling it to veto legislation on its own, it decreases the EP’s policymaking power, by withdrawing its conditional agenda setting power (see below).

The decrease in policymaking power is significant, although its actual magnitude will depend on the interpretation of the treaty. Because of these ambiguities, the application of the codecision procedure has already been and is likely to continue to be surrounded by institutional confrontations, as the two institutions involved try to establish the most favorable interpretation to each of them. Finally, I argue that the European Court of Justice (ECJ) is likely to be kept out of these confrontations, because each one of the two players (the Council and the EP) has the institutional means to protect itself without judicial intervention.

This chapter is organized in three parts. The first part, explains the differences between cooperation and codecision procedures, as well as the legal basis (the different areas) over which each one of them applies. The second part presents a series of simple models designed to capture the institutional details of the two procedures (the differences between a proposal by the EP or by the Council; the likely outcomes of a conference committee). The third part draws conclusions from the theoretical analyses as well as from the practices of European lawmaking. The basic argument is that the Commission has lost power by the introduction of codecision, and the balance between EP and Council has been affected in favor of the EP on institutional issues but against it on policy matters. Finally, the ambiguities of the Maastricht Treaty are likely to involve the Council and the EP in a long term institutional struggle.

2.1 COOPERATION, CODECISION, AND THE AREAS OF THEIR APPLICABILITY

There are a series of measures adopted with Maastricht that increase the powers of the Parliament. For example, after Maastricht the Parliament can reject the candidate for President of the Commission. Whereas before 1992 it could only vote down the Commission as a whole. Both measures are far short of the standard Parliamentary prerogative to be able to vote individual Commissioners (ministers) out of office. In addition, the Parliament has been given the right to request the Commission to introduce legislation in areas it (the EP) thinks necessary (such a provision already existed for the Council). This new power simply confers official recognition on the existing situation, because despite the lack of a formal right to initiate legislation, the EP had a very good relationship with the Commission (which alone has the formal right to initiate legislative proposals). For example, legislation banning the import of baby seal skins was introduced in Europe at the request of the EP. All the measures described above have as an effect the unambiguous increase of Parliamentary powers. However, they are limited in number and in scope.

The most significant change in Parliamentary powers was introduced by the so-called codecision procedure (the official name in the Maastricht Treaty is 'The procedure laid down in Article 189B of the Treaty'). The codecision procedure replaced the cooperation procedure — the latter introduced by the Single European Act of 1987 — for legislative decisionmaking in most areas of European Union jurisdiction. In particular, after Maastricht, decisions related to the single European market (that is, movement of persons, services, and capital, as well as decisions on harmonization and mutual recognition of national legislation) will be made by the codecision procedure instead of the cooperation procedure. The codecision procedure will also be used in new jurisdictions of the European Union including, education, culture, public health, and consumer protection. Finally, it will be introduced in place of the consultation procedure in the adoption of framework programs for technological development, general programs setting policy directives concerning the environment and so forth. An extensive account of the areas of applicability of different decision rules is provided in Table 2.1.

In the remainder of this article, I will focus on the powers of the Parliament under the cooperation and the codecision procedures. I do so for two reasons. First, because of the large number of issues that are decided by codecision instead of cooperation (not only the areas affected by direct replacement of one procedure by the other, but most of the new

Table 2.1 Alterations in decision making procedures of the European Union under the Maastricht Treaty

Subject Area		EEC*** (Article #)	Maastricht (Article #)
Movement of Persons, Services and Capital	Workers' Freedom of Movement		Cooperation (49)
	Right of Establishment: Implementation		Cooperation (54.2)
	Provisions for Public Policy, Public Security and Health	After Transition Period	Cooperation (56.2)
	Self Employment	Qualification and Recognition of Diplomas Access (provisions for the Self Employed)	Cooperation (57.1)
Transport		Cooperation (57.2)	Co-decision (57.2)
Common Rules	Competition	Aids Granted by State	Commission/Council: qual. majority (94)
	Approximation of Laws		Cooperation (100)
Social Policy	Social Fund		Consultation (127)
	Vocational Training Policy		Cooperation (128)
	Education-Incentive Measures		XXX
Economic Policy	Implementation and Monitoring		Commission/Council: qual. majority (103.3)
	Internal Market Harmonization		Cooperation (100A)
	Internal Market Recognition		Cooperation (100B)
	Conjunctural Guidelines		Commission/Council: unanimity (103.2)
Monetary Policy	European Central Bank Duties		Monetary policy governed by the Monetary Committee (105-109)
	Harmonization of Coin Denomination		Co-decision (105.6)
	ESCB Statutes		Co-decision (106.5) or Consultation (106.6) (depending on ESCB charter)
	Agreement w/non-Community Countries		Consultation (109.1)
	Transitional Provisions	Duties of EMI	Consultation (109f.7)
Culture		XXX	Co-decision (128.5) (Unanimity in Council)
Public Health		XXX	Co-decision (129.4)
Consumer Protection		XXX	Co-decision (129a.2)
Trans-European Networks	Guidelines	XXX	Co-decision (129d)
	Implementation	XXX	Cooperation (129d)
Industry		XXX	Consultation (130.3)
Research and Technological Development	Framework Programme		Consultation (130q.1)
	Individual Legislation		Cooperation (130p.2)
	Initial Action for EU Objectives		Consultation (130s)
	General Action Programmes for Setting Policy Objectives		Cooperation (130s.1)
	Fiscal Policy, Land Use, Water and Energy		Consultation (130s)
Development Cooperation		XXX	Consultation (130s.2) (Unanimity in Council) Cooperation (130w.1)

XXX = Subject not covered by treaty

*** = as amended by the Single European Act (SEA)

areas under European jurisdiction which presumably in the absence of codecision would have been decided by cooperation). Second, because while analyses of recent developments in the European Union have well

understood the areas of increase in Parliamentary powers, they have failed to appreciate the negative implications of this development for Parliamentary involvement in policymaking.

What is the difference between cooperation and codecision? While the description of these procedures in both the treaties and the scholarly literature is (necessarily) lengthy and cumbersome, one can simplify the description without losing the essence of the strategic properties as follows:

Cooperation Procedure. Legislation produced by the Commission is introduced to the Parliament first, and from there goes to the Council of Ministers and back, for two successive readings by each actor. In each reading, the text examined is the one sent by the other actor (Parliament and Council) as modified by the Commission. In the second reading, the Parliament has three options: 1) It can accept the Council's common proposal; 2) It can reject it by an absolute majority of its members (in which case the veto requires a majority of the Commission and unanimity from the Council to be overruled); 3) It can propose (by an absolute majority of its members) amendments which, if accepted by the Commission, can become law with the support of a qualified majority of the Council (62 of 87 votes), or can be modified by unanimity in the Council.

Codecision Procedure. This procedure essentially adds some new stages to the cooperation procedure after the second reading of legislation by Parliament. If in its second reading the Council disagrees with any of the Parliamentary amendments, the text is referred to a conciliation committee, composed of equal members of Council and Parliamentary representatives. If the committee comes to an agreement it has to be approved by a simple majority in Parliament and a qualified majority in the Council in order to become law. If there is no agreement, the initiative reverts to the Council, which can reintroduce its previous position, 'possibly with EP amendments,' by qualified majority or unanimity (depending on the subject matter; see Table 2.1). Unless an absolute majority of the members of Parliament disagrees, the law is adopted.

A comparison of the two procedures indicates *five* major differences. First, Parliament has an absolute veto power in the codecision procedure, but needs an alliance with the Commission or at least one member of the Council in order to have its veto sustained in the cooperation procedure. Second, at the end of the codecision procedure it is the Council that makes a 'take it or leave it' proposal to Parliament, while in the cooperation procedure these roles were essentially reversed. Third, in the codecision procedure disagreement even over a single Parliamentary

amendment triggers the conciliation procedure, while in the cooperation procedure the Council could modify only those Parliamentary amendments accepted by the Commission which had unanimous Council agreement (leaving the others intact). Fourth, according to the codecision procedure, in certain areas (including culture, and framework programs in R and D) decisions by the Council in the joint committee as well as in the final stage can only be made by unanimity. Fifth, in the conciliation stage of the codecision procedure the Commission is present, but its agreement is not necessary: if the EP and the Council come to an agreement the position of the Commission is irrelevant.. What is the bottom line of these differences in the provisions of the two legislative procedures?

In order to understand the differences in outcomes that each produces, I will present a series of models of the last steps of each of the two procedures, and then compare the outcomes. Given that rational actors use backwards induction in their decisionmaking, any subgame perfect equilibrium solution of the whole procedure would prescribe equilibrium behavior in each subgame. Therefore, every equilibrium behavior in the last subgame should be incorporated in a general solution of the game, and actors would take steps to frustrate any outcome that would be less beneficial to them than the equilibrium of the last subgame.

2.2 THREE DIFFERENT ENDGAMES

The last stage of the cooperation procedure is clear: The EP proposes a series of amendments, the Commission incorporates all, some, or none of them into the final report it submits to the Council. The Council accepts the Commission's proposal by qualified majority, or modifies it by unanimity. By contrast, the codecision procedure has two different possible endings: 1) The conciliation committee comes to an agreement; this agreement is introduced to both the Council and the EP; it is adopted if it receives a qualified majority in the Council, and a simple majority in the EP; it fails otherwise; 2) The conciliation committee fails to reach an agreement; in this case the Council can make a proposal to the EP; this proposal is considered accepted unless an absolute majority of the EP votes against it, in which case it fails. The content of the proposal is the position 'to which it agreed before the conciliation procedure was initiated, possibly with amendments proposed by the EP' (article 189b (6) of the Maastricht Treaty). In this section I will show in simplified ways

what outcomes each one of these three procedures supports, and then compare these outcomes.

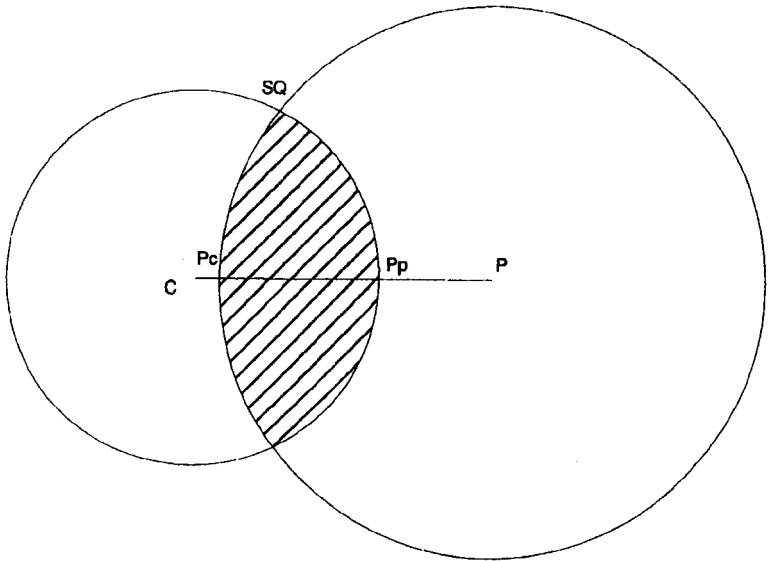


Figure 2.1 Location of winning proposal when the agenda is controlled by Parliament (P_p) or by the Council (P_c)

Figure 2.1 gives a graphic representation of the essence of my argument. Consider the status quo (previous existing legislation at the European level or, in the absence of it, a series of national legislations, or the measures adopted by the Council in the first round of the cooperation procedure). Consider also the ideal points of the Parliament and the Council. Obviously, I am presenting a simplified version here, because I am not taking into account the Commission's preferences (which are incorporated in the cooperation procedure), and I ignore that each one of these collective actors is composed of many individuals with different preferences. However, these complications do not materially affect my argument. Any new legislation must be supported by both the Council (by a qualified majority or unanimity) and the Parliament (or more precisely, it must not to be opposed by an absolute majority of it). If we assume that each one of these two collective actors prefers points that are closer to his own ideal point over the status quo, then feasible outcomes are inside the shaded area of the figure. Out of all these possible compromises, the agenda setter (the actor who makes the final proposal) will

select the one that is preferable to him, and will present the other actor with a 'take it or leave it' proposition. This proposal would be P_P if the Parliament controlled the agenda, and P_C if the agenda were controlled by the Council. Note that these differences are real, except in the very limited set of cases where the status quo lies between the ideal points of the Council and the Parliament in which case no compromise is possible. If one considers a more complicated situation with multiple members of the Council and Parliament located in a multidimensional instead of the simplified two dimensional space version presented here the powers of the agenda setter generally increase. Under certain conditions, it is possible for the agenda setter to select not only the outcome but also one particular coalition that will support the most advantageous outcome.

In order to make the argument clearer, and address a framework frequently used in the analysis of EU institutions, consider a magnification of the difference between the two procedures represented by the comparison between Presidential and Parliamentary systems. In Presidential systems, the legislative (Parliament) makes proposals to the Executive (President) who can accept or veto them. In Parliamentary systems the roles are reversed: it is the executive (Government) that makes proposals to the legislative (Parliament). What is the better position to be in? It is always the President who requests line item vetoes in Presidential systems and it is always the Parliament that complains about its decline in Parliamentary systems. In both cases complaints have to do with the lack of agenda control. This example indicates that the appropriate framework for understanding the interaction between Parliament and Council is not that of a Parliamentary system like the ones prevailing in European countries, but that of a Presidential system, like the US.

This is an analysis of the cooperation and the codecision procedures if the conciliation procedure has failed. How about the conciliation process itself? If the two players have to adopt a solution by concurrent majorities (or in our simplified case by unanimity of both actors), then any outcome inside the line $P_C P_P$ can be the final outcome of the committee deliberations. This proposal will 'in principle' be acceptable by the parent chambers, the Council and the EP since the composition of the conference committee is politically identical with that of the parent chambers.¹

Note that if the status quo is in the neighborhood of the line $P_C P_P$ there is very little room for compromise in fact, if the status quo is on the line itself, there is no room at all, regardless of the kind of the decisionmaking system in place. Lack of a compromise solution is fatal in the codecision procedure; in the cooperation procedure, the EP can be overruled by a majority of the Commission and a unanimous Council.

This is an admittedly oversimplified picture, because it does not take the intricacies of the different procedures into account, because it considers only a policy space of few dimensions (1 or 2), and because the institutional actors are considered single players. In the remainder of this section I will demonstrate that despite these simplifications, the intuitions generated by Figure 2.1 are correct: in all the decisionmaking procedures adopted by the EU (in our case the cooperation and codecision procedures) the actor that makes the initial proposal has an advantage over the actor who makes the final decision, and this advantage varies with a series of factors having to do with the dimensionality of the underlying space (generally, increasing the dimensions increases the power of the agenda setter), the position of the actors relevant to the status quo (status quo in-between reduces the possible compromises), and the institutional details of the procedures.

Cooperation procedure

As I have demonstrated elsewhere (Tsebelis 1994, 1995a),² the rules differ significantly from the simplified picture of Figure 2.1. In the second round of the cooperation procedure an absolute majority of EP members can make a proposal that if accepted by the Commission is easier for the Council to accept (qualified majority is required for this) than to modify (which requires unanimity). Consequently, if the EP offers a proposal that makes the Commission and a qualified majority of the Council better off than anything that the Council can do unanimously, it will get adopted by the Council. Note that such a proposal does not always exist, but when it exists out of all the feasible outcomes the EP selects the point that is closer to it (exactly like in the simplified Figure 2.1).

In Tsebelis (1994) I called this power of the EP *conditional agenda setting*, and demonstrated that it exists if a series of conditions are in place. These conditions are the following: 1) Existence of an absolute majority in the EP. Given the MEPs attendance rates this condition is equivalent to a two thirds qualified majority. 2) Approval by the Commission. Since it is the Commission's proposal that gets the qualified majority approval vote in the Council, the Commission has to go along for a successful EP amendment. The frequency of such an alliance is three-quarters of the time (three out of four EP amendments are accepted by the Commission). 3) Location of the status quo. In Tsebelis (1994) I demonstrated that unlike unconditional agenda setting power which increases as status quo's position diverges from the positions of the Council, conditional agenda setting power decreases most of the time.³ 4)

Lack of a unanimous position of the Council. Whenever unanimity in the Council exists, the EP or the Commission do not have conditional agenda setting powers.

Conditional agenda setting has enabled the EP to make thousands of amendments since the Single European Act. Out of every four Parliamentary Amendments, proposed under the cooperation procedure, three are accepted by the Commission and two are incorporated in the final legislation. Reporting on the cooperation procedure the Commission stated: 'Since the Single European Act came into force on July 1 1987, over 50 per cent of Parliament's amendments have been accepted by the Commission and carried by the Council. No national parliament has a comparable success rate in bending the executive to its will' (Commission Press release 15 December 1994; quoted in Earnshaw and Judge (1996: 96).

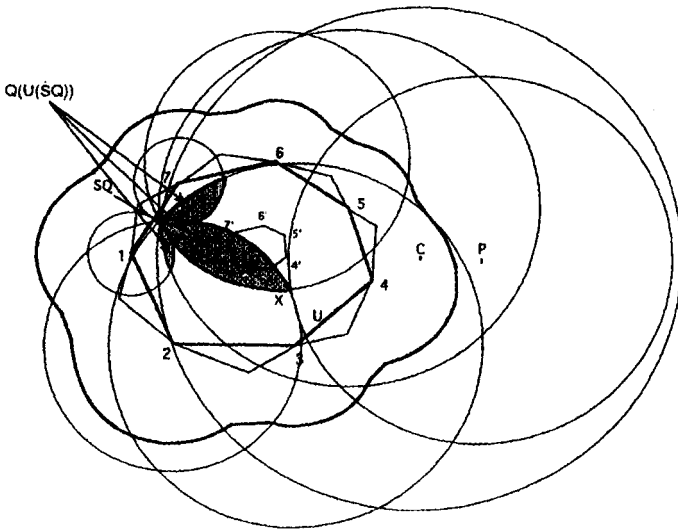


Figure 2.2 Winning proposal (X) when status quo is in the Pareto surface

Figure 2.2 shows the calculations of the EP in a two dimensional space, when the status quo is in the Pareto set of the Council (in which case the Council cannot alter it unanimously). The EP makes the proposal X which is preferred over the status quo by five out of the seven members of the Council.

However, this figure also simplifies in a significant way. It assumes that the EP is a unified player, which for a parliament representing fifteen nationalities and twelve ideologies is a heroic simplification indeed. A more realistic approximation (Tsebelis 1995a) has demonstrated that the result of Figure 2.2 does not change significantly if one replaces the false unified player assumption with the more realistic 'cooperative decisionmaking' assumption. Since I will be using this assumption frequently in the remainder of this paper, I should discuss at this point more extensively.

Cooperative decisionmaking means that agreements among players are enforceable. Enforceability of agreements is an important restriction, but it is approximated when players care about their reputations (because they are involved in frequent interactions with each other). In the European Parliament's case, enforceable agreements can be carried out either in small groups (committees) or because of the existence of parties (to the extent that they are disciplined).

Tsebelis (1995a), based on previous results by Banks (1985), Ferejohn et al. (1984), McKelevey (1986) and Schwartz (1990), has demonstrated that a collective player under the cooperative decisionmaking assumption will make a proposal that is located in an area around the (single point) proposal of a unified player. The argument goes as follows: Under cooperative decisionmaking institutional structures do not matter (provided a pairwise comparison of different alternatives is permitted). The reason is that actors will undertake all necessary actions to honor their commitments (since they are binding). Consequently, a process that permits pairwise comparisons of different alternatives and selects among them is sufficient to investigate cooperative decisionmaking. In such a context, one possible (set) solution is the 'uncovered set' (roughly speaking the set of outcomes that cannot be defeated both directly and indirectly (in one step) by any alternative). Banks (1985) found a subset of the uncovered set, and Schwartz (1990) assumed that contracts between legislators are enforceable (cooperative decision making) but legislators are free to recontract; that is, if they find a proposal that a majority coalition prefers, they can write an enforceable contract to support it. Schwartz also assumed that any two proposals can be directly compared. He calculated the smallest set within which this cooperative recontracting process is likely to produce outcomes. He called this set TEQ (tournament equilibrium) and he proved that it is a subset of the Banks set and uncovered set. This is one part of the argument.

McKelevey (1986), on the other hand, based on results by Ferejohn et al. (1984), calculated that the uncovered set of a committee was located

within a hypersphere with its center the center of the yolk of the committee and a radius four times the radius of the yolk.⁴ Tsebelis (1995a) made the argument that when a committee makes a proposal to the parent floor (or the EP makes a proposal to the Commission and the Council) the choice set is restricted, and consequently, instead of calculating the uncovered set of the committee (or the Parliament) one should calculate the 'induced uncovered set' on the set of permissible outcomes. Tsebelis (1995a) calculated the center and the radius of such an induced uncovered set. He found that it is located in the neighborhood of the point that a unified actor located at the center of the yolk of the collective actor would make his proposal. Figure 2.3 provides a graphic visualization of the argument.

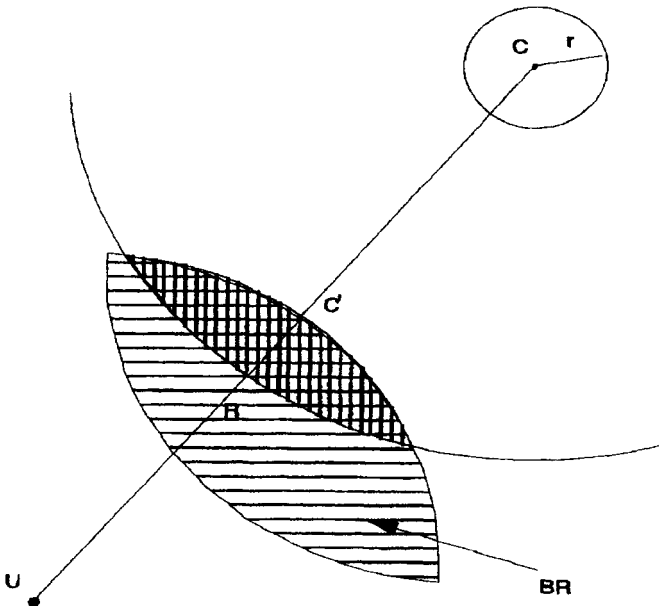


Figure 2.3 Location of the winning proposal by individual and collective actor 'approximately' the same

The upshot of this argument is that even when one takes the serious complications of the cooperation procedure into account, if there is an area which makes a majority in the Commission and a qualified majority of the Council better off than any solution that the Council can adopt by

unanimity, and if the EP can identify this area (complete information), it will make a proposal in this area located as close as possible to the center of its (the Parliament's) yolk. In fact, the Parliament does not make a single proposal: instead, it makes a series of amendments some of which are accepted by the Commission and some are not. And it is this Commission proposal that is voted in the Council.

Let us consider for the moment that the Council can simply accept (by qualified majority) or reject (by unanimity) each one of the Parliamentary amendments included in the Commission proposal. Under this assumption, a Commission proposal incorporating seven amendments is the equivalent of a set of 2^7 proposals of the form 0101001, where 0 stand for amendments rejected and 1 for amendments accepted (in the above example, the Council accepted amendments 2, 4, and 7). Out of all these proposals, there is one and only one that requires qualified majority to be adopted: 1111111. All others require a unanimous vote in the Council. This is the property that I called conditional agenda setting (Tsebelis 1994) and which empowers the Parliament, because if it makes an astute selection of amendments, and if the amendments are included in the Commission proposal it is easier for the Council to accept than to modify them.

In reality, the Council can not only accept or reject but also modify the Commission proposal by the same unanimous vote required to reject. However, the main point to be retained from this analysis is that the reason that the EP and the Commission have conditional agenda setting power is because there is an asymmetry between the Commission's proposal and any other outcome. The proposal itself is easier for the Council to accept (qualified majority) than any other outcome (unanimity).

Codecision procedure

There are two different (and as I show below) related ways that the codecision procedure may end. The first is through a conciliation committee report which is then introduced for final approval to the Council (qualified majority) and the Parliament (simple majority). The second occurs after the failure of the conciliation committee to reach a compromise, when the Council can reinstate its previous common position, 'possibly with amendments proposed by the EP.' The Council's position is considered adopted unless the EP rejects it by an absolute majority. Let us start with the analysis of this 'failed conciliation' procedure first.

- a) 'Failed conciliation.' In this procedure the roles that the Council and the Parliament had in the cooperation procedure are reversed. Here

the Council makes a take it or leave it proposal to the Parliament. However, there may be restrictions. Some analysts (Moser 1996) have argued for a restrictive interpretation of article 189b(6). According to this interpretation, 'possibly with the amendments' means that the Council can select either the previously adopted common position, or can add some of the EP amendments, without any further modifications. In this case, going back to our example from the previous section, the Council has the option of selecting one out of 128 ($=2^7$) proposals by qualified majority. A wide interpretation is offered by Garrett and Tsebelis (1996) and Tsebelis and Garrett (1997), who believe that the Council is not restricted at this point to adopt the Parliamentary amendments *as they are* (i.e. without modifications) but can also adopt some of them with modifications. According to this wider interpretation, the Council can select among an infinity of possible solutions. However, what both approaches have in common, and what cannot be disputed is that the EP loses the agenda setting role confined to it by the cooperation procedure, because the Council selects among a set of proposals that are all considered equal (whether they are 128 ($=2^7$) or infinite). The essence of the cooperation procedure, that the proposal submitted to the Council had to have a preferential treatment, is eliminated in the codecision procedure. Agenda setting (whether the choice is from an extended or a restricted set) reverts to the Council.

A graphic representation of this argument is offered by Figure 2.2. The complete proposal presented by the EP and the Commission to the Council is X (it includes all the amendments). There are other proposals that the Council could adopt which exclude one amendment or another. All these amendments are located between the status quo and X in the figure. Under Garrett and Tsebelis' (1996) interpretation the Council can select only X by qualified majority, while under codecision it can select by qualified majority any one of these intermediate solutions, including the status quo itself.

Let us now turn to the Parliament and examine its motivations and strategies. In a single shot game (one in which reputational considerations do not play a role) its decision is simple: it has to select by absolute majority whether it prefers the status quo to the Council proposal. In the first case, it will reject the proposal by the absolute majority of its members; in the second, it will do nothing. I will discuss the probabilities that the Parliament will reject a Council proposal, the reasons for such a rejection and the conditions for it in the final section of the paper.

- b) 'Successful conciliation.' In this case, agenda setting powers are transferred to the conciliation committee, which will make a proposal to both parent chambers. Because the parent chambers (Council and EP) the conciliation committee have identical political compositions and decisionmaking rules, the proposal will (most likely) be adopted. What will a conciliation committee decide?

In the following analysis I replicate the reasoning developed by Tsebelis and Money (chapter 3). They make use of the fact that the conciliation committee is composed of a small number of participants (compared to the EP) and because of the role of political parties and governments, it is a body whose commitments can be considered as enforceable. They then replicate the arguments in McKelvey (1986) and calculate the uncovered set of a committee which decides by concurrent majorities of both chambers.⁵

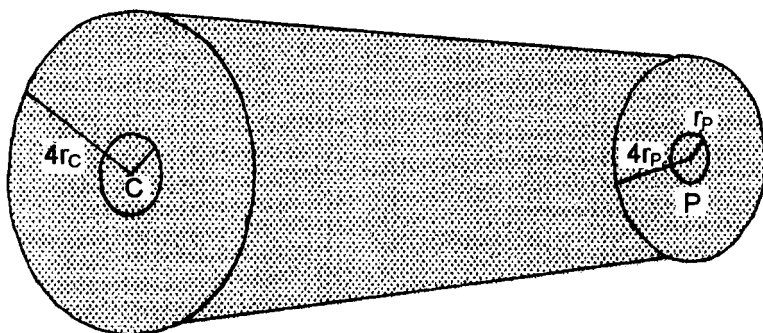


Figure 2.4 Area within which is located the uncovered set of the conciliation committee

Tsebelis and Money find that the uncovered set of such a committee is included in the shaded area of Figure 2.4, which is composed of two hyperspheres and the area between them. They make their calculations by finding the area of points that can be defeated by the points on the line connecting the yolks of the Council and the Parliament both directly and indirectly. The points that do not belong in this area belong in the uncovered set, and therefore the shaded area includes also the Banks set and TEQ (see above).

Some intuition of their analysis can be provided by taking a point that is far from the line connecting the centers of the two yolks. This point is

being defeated by some points on the line, and if it is sufficiently far away, one can find a point that defeats the original point and is defeated by some point on the line connecting the two yolks. In this case, the original point can be defeated both directly and indirectly by a point in the line connecting the two yolks, so it cannot belong to the uncovered set.

Note that the final outcome of the deliberations of the conciliation committee is less constrained than any of the previous outcomes (generated by the EP proposing to the Council, or the Council proposing to the EP). As long as both dislike the status quo, a wide range of compromises is in principle possible. If the Parliament persuades the Council that it wants an outcome close to the center of its yolk, the outcome *can* be selected (provided it is preferred to the status quo by the Council). Similarly, if the Council persuades the Parliament that it will not budge from a point close to its own set of ideal points, if there are still gains for the Parliament (improvement over the status quo), that the solution *can* be the outcome of the codecision procedure. In the absence of additional information, we cannot narrow our expectations any further.

However, there *is* further information. The successful and the failed conciliation committees are part of the same procedure, and one can be turned into the other by strategic actors if it serves their purposes. For example, if the anticipated outcome of a failure of the conciliation committee is more beneficial to the Council, the Council can adopt an intransigent position and lead the negotiations to failure. Conversely, if this is anticipated, the Parliament may spare the Council the effort, make more concessions, and end the legislating process earlier. Obviously, these statements, presuppose complete information (that the actors know what the outcome will be, and therefore they can go there directly without going through the motions). This is rarely the case, so complete unfolding of the procedure may be necessary in cases of strong disagreements and incomplete information. On the other hand, when uncertainty is low and disagreements sparse, the codecision may end in the early stages.

2.3 IMPLICATIONS FOR DECISIONMAKING IN THE EU

We started our analysis by identifying the differences between cooperation and codecision and asking what the impact of each on outcomes is. Then we produced a series of models that illuminated the strategic interaction of the actors under different procedural rules. Now it is time to put the threads together, in order to come to an overall evaluation.

I argue that of the five differences I identified in section 1, the first (absolute veto) strengthens the hand of the EP versus the other actors; the second (removal of conditional agenda setting powers) strengthens the Council vis a vis the EP; the third (triggering of the conciliation procedure) makes the use of conciliation committee and application of the measures ensuing its failure more likely (again increasing the powers of the Council); the fourth (unanimity requirement of the Council) makes agreement in certain areas more; the fifth (consent in the Conciliation Committee without approval by the Commission) reduces the powers of the Commission vis a vis the other two actors. I will discuss each one of the cases separately and present a few concluding remarks, so that a reader disagreeing with me over the significance of each one of these points can arrive at a different synthesis than the one I propose.

The first difference (the absolute veto power) unambiguously strengthens the hand of the Parliament in negotiations with the Council. The Parliament under the codecision procedure does not need allies to see its veto sustained, while in the cooperation procedure the veto was conditional (upon the support of allies). This is the change introduced by the codecision procedure that has been analyzed exhaustively, and this is the basis of the belief that the powers of the Parliament have increased.

It is interesting to note, however, that in the whole history of the cooperation procedure the Parliamentary veto was exercised only four times and sustained three (Corbett et al 1995) either because the Commission did not want to continue the process or because there was no unanimity in the Council. These events cannot lead to the conclusion that conditional and unconditional vetoes are the same, because the Parliament may have avoided vetoing cases for fear that it would have been overruled. However, the history of vetoes does suggest that the conditions for a sustained veto laid down by the cooperation procedure were easy to meet.

The second difference takes conditional agenda setting powers away from the Commission and EP and puts them into the hands of the Council. In order to make this point clearer, consider Figure 2.2 again. Consider that the Council in the first round of the procedure adopted the position SQ. SQ is inside the Pareto set of the Council, which means that it cannot be modified by unanimity. Under the rules of the cooperation procedure the EP can make the proposal X which (if accepted by the Commission) will be the *only* proposal available to the Council (other than SQ). Under the circumstances, a qualified majority of the Council will accept X. However, in the codecision procedure X does not receive any preferential treatment. The Council can select any of a number of alter-

natives all by qualified majority. The number of these alternatives is unclear: if the Council has to accept EP amendments as they are, the number of alternatives is 2^n , where n is the number of EP amendments accepted by the Commission. If the Council can modify these amendments, then the number is infinite.

The third difference (use of the conciliation committee even if there is one only disagreement) increases the probability that an agreement will not be reached on the basis of the provisions of the cooperation procedure, but will require the new steps added by the codecision procedure. Consequently, this provision is likely to increase the number of laws considered by the joint committee, which subsequently become candidates for an ultimate decision by the Council subject to non-disagreement by the Parliament.

The fourth difference reduces the role of the Parliament even further, because it forces it to seek agreement with the *least favorable member of the Council* instead of disregarding it and trying to come to cloture with the qualified majority. It is interesting to note that measures that are considered under this particular provision are many and important.

The fifth and final difference reduces the influence of the Commission over the Parliament and the Council. While in the cooperation procedure acceptance by the Commission was one of the necessary conditions for success of parliamentary amendments, with the codecision procedure the Council and the EP can come to an agreement without the Commission.

There are several conclusions that can be drawn on the basis of this analysis. The clearest is that the Commission has seen its powers reduced by the introduction of the codecision procedure (point five above). With respect to the balance of power between the other two actors, the EP has gained an unconditional veto power in European legislation, while it has given up its conditional agenda setting power. Which is the more important? I will argue that a final evaluation depends on whether the conditions for EP agenda setting are met. My argument is that agenda setting is more important than the veto, but does not obtain all the time. If the conditions for agenda setting are not met, then, obviously, the veto becomes more important.

Going back to section 2.2, we identified four conditions for the existence of such agenda setting powers. The first was absolute majority in the EP. While this is by no means a trivial requirement, it is not different than the conditions laid out in the codecision procedure. An absolute majority is also required for veto.

The second was agreement by the Commission. If the Commission does not incorporate EP amendments in its proposal, these amendments

require unanimity to be adopted. However, the Commission incorporates these amendments in one form or another about 75 per cent of the time.⁶

The third had to do with the position of the status quo. Most of analyses of European decisionmaking assume the following positions of different actors along one dimension of integration: the status quo is located in the least integrationist position, different governments are in favor of modest integration (more than the status quo), and the Commission and the EP are in favor of greater integration. Under this configuration, the conditional agenda setting powers of the pro-integration actors (EP and Commission) are very valuable indeed, because these two actors can in general make proposals that are prointegration than the ideal point of the pivotal member. Indeed, a condition for the power of the agenda setter is that the actor that makes the final decision (in this case the Council) is located between the agenda setter and the status quo. Garrett and Tsebelis (1996) make the argument that if the members of the Council become less integrationist than the status quo (either because the status quo moved too much in favor of integration or because a member of the Council changed his mind), then the EP's veto powers will enable it to prevent any change from the status quo. Of course, a similar effect would be possible with a coalition of the Parliament and the Commission under the cooperation procedure. Consequently the position of the status quo is crucial in order to assess the relative impact of conditional agenda setting versus veto powers.

The final condition was the absence of unanimity in the Council. An important factor for assessing whether the legislative powers of the EP have increased or decreased is whether the Council members are likely to have identical positions in some particular class of cases. If this is the case, the powers of the conditional agenda setter are moot, because the outcome of the cooperation procedure will be at the ideal point of the members of the Council. In this case, an unconditional veto power of the EP enables it to tip the scale in its favor (remember that the model of the conference committee demonstrated that any outcome in the intersection of the winset of the two actors and uncovered set of the conference committee is possible when they both have veto powers).

The above discussion indicates that there is a constellation of conditions making conditional agenda setting power moot (a winning proposal does not exist). I believe that it is highly unlikely that such a constellation systematically obtains in policymaking. However, in the future it is possible that the status quo will be located between some members of the Council and the EP. In this case, agenda setting will be moot, but the

EP's veto will become a significant legislative weapon for the preservation of the status quo.

In terms of unanimity in the Council it is very difficult to imagine a policy issue on which the members of the Council would be unanimous. The opposite is the case with respect to institutional issues. Members of the Council are likely to have *identical* positions in their desire to increase their power. Such institutional issues are usually decided outside the cooperation or codecision procedures, either by interinstitutional conferences or by the ECJ. However, one can imagine gray areas, like the delegation of implementation policies to some combination of institutions, where unanimity in the Council is likely to obtain. Such institutional conflicts are likely to be the land of high profile cases on the basis of which commentators make their judgments about how the EU works. If all the members of the Council have identical positions, there is no conditional agenda setting power, in which case, the EP's sole weapon is the veto power attributed by codecision.

The EP has made use of this veto quite effectively. It has argued that codecision provides it with the legal basis for a different position within the EU institutional framework. It voted a resolution claiming that under co-decision 'full responsibility for legislative acts ... lies with Council and Parliament' (OJ C20, 24/1/94: 117). De Giovanni, the author of the above report analysed: 'The Council used to have a power of delegation to the Commission for the execution of acts it had adopted, but it is quite clear that in the case of acts of codecision exclusive power of delegation lapses because the Council no longer has sole responsibility for the act and it is therefore also clear that this power belongs to the Council and the European parliament jointly' (quoted in Earnshaw and Judge 1995: 634).

At this point, some information about the application of the codecision procedure will enable us to understand the points made above better. Here are some statistics for background to a more substantive discussion of two particular bills: Out of the 32 bills completed under the codecision procedure by the middle of 1995, 30 were adopted, and two were rejected. From the 30 adopted bills only 12 required convening a conciliation committee (one was adopted despite a previous declaration of intended rejection by the Parliament). Of the two rejected bills, one occurred after the failure by the committee to arrive at a compromise (the Council confirmed it prior position without including any parliamentary amendments and the parliament rejected the position), and the other was after the compromise position was rejected by Parliament (Miller (1995)).

I will discuss the two aborted bills, because they are more informative for two reasons: First, there is more information because all the provisions of the cooperation procedure was used in each one of them. Second, there is more information because each of them reveals ambiguities in the codecision procedure that will have to be resolved in the future.

The bill protecting biotechnological inventions was aborted after approval by the conciliation committee. What is interesting in this bill is that it provides information about the scope of decisionmaking inside the conciliation committee. In the second reading the Parliament accepted three amendments, although the committee had approved 15 amendments (the Parliament was not able to vote on the other proposed amendments because of intervening elections and a tight schedule). The Council accepted two of the three amendments without difficulty. However, the crucial problem for the Parliamentary delegation was to introduce the amendments that had not been voted on by Parliament. After a series of prolonged negotiations in conference committee, the Parliamentary delegation was able to achieve satisfactory compromises on the three amendments adopted by the Parliament, as well as the inclusion of three more amendments of those not voted on by the Parliament. The committee bill was accompanied by a series of interpretative declarations, but by the time it reached the floor of the Parliament the political climate had changed and Parliament rejected the bill with 240 against and 188 in favor. The failure of this directive has raised questions in the Council about the 'contractual capacity' of the Parliamentary delegation.

The bill on liberalization of voice telephony included disagreements on policy as well as on institutional issues. In its second reading the EP adopted 14 amendments. The Commission adopted four of them — all policy related — and rejected all the institutional ones having to do with comitology as irrelevant (an interinstitutional agreement is pending, so the Commission did not want to adopt any transitory solutions). The conciliation committee met several times, without reaching an agreement on the thorny institutional questions. Here is how an EP document describes the remainder of the procedure: 'On 20 June the Council decided to confirm its common position without accepting a *single Parliament amendment*. It did not deem it appropriate to include the technical points on which virtual agreement had been reached in the Conciliation Committee. In adopting its decision, the Council entered into the minutes of its meeting a *declaration on comitology* which repeats word for word the declaration made by the Council's delegation on 26 April 1994 and which is therefore also entirely unacceptable to Parliament.' (EP Session Documents 15 July 1994: 5). The Council's decision was taken by quali-

fied majority (Portugal voted against, and Spain abstained). The Commission immediately objected arguing that since it had accepted four amendments, their rejection should be unanimous. The Council pointed at article 189b(6) which specifies that the decision of the Council requires qualified majority. The Commission entered a statement in the Council's minutes 'reserving the right to analyse the consequences of the Council's action and, if necessary, to initiate proceedings before the Court of Justice' (quoted in Earnshaw and Judge (1996: 123). However, the matter became moot after the EP rejected the bill by an overwhelming majority (373 to 45 with 12 abstentions; 284 votes were required for rejection).

One more point of information before entering the conclusions. In his excellent report on conference committees, Gary Miller (of the Conciliations Secretariat of the European Parliament), notes that the Council delegation behaves with intransigence in the conciliation committee.

'The attitude of the Council often seems to be that its common position represents the starting point of the whole procedure and the reference point for any compromise. Since its quality as a legal text is taken to be self-evident, given the time and energy the Council has invested in arriving at a compromise, Council members behave as if they are the ones who have to be convinced and as if they have no need to persuade the Parliament that its amendments are not acceptable. Thus, if the Council has accepted any of the amendments, this is presented as a great concession on its part. Parliament can in other words 'take it or leave it', there is no point in discussing the other amendments and if Parliament is so foolhardy as to persevere with them, it will up to Parliament to carry the responsibility for the failure of the procedure and ultimately to reject the act outright. The members of the Council thus permit themselves the luxury of leaving the search for a compromise to others (their Presidency and the Members of the European Parliament MEPs). The compromise must be sufficiently attractive to persuade them to change their minds.' (Miller 1995)

This terse account of codecision results highlights a series of points made in my analysis.

- 1) The conciliation committee has a wide range of compromises available to it. As the account of biotechnological patents indicates, the committee was able to discuss and include amendments not voted by Parliament (and therefore not discussed by the Commission) in its report. If this practice gets repeated in the future, the conciliation committee may become a significant decisionmaking body in the EU. However, the actual jurisdiction of this committee has not been fully

determined yet. Examined in comparative perspective, the conciliation committee is a very unusual decisionmaking institution. Other conference committees in bicameral legislatures decide by the majority of both delegations (Tsebelis and Money, chapter 9). It is only the US conference committee that decides by the 'unit rule,' that is, by concurrent majorities of both delegations. The conciliation committee adopts an even more complicated procedure which stems from the majorities required in the parent chambers. Tsebelis and Money argue that the unit rule increases the power of the committee, since the range of compromises possible within it is wider than in a majority rule deciding committee.

- 2) Institutional issues generate more confrontations than policy issues. With institutional issues, veto power is more significant, whereas with policy issues, conditional agenda setting empowers the EP more. The account of liberalization of voice telephony indicates that the Council is more likely to have identical positions, and, therefore, be oblivious to EP demands on institutional questions than on questions of policy. Amendments were divided in policy and institutional, and the Council accepted the first and showed intransigence with respect to the second. This attitude prompted the EP veto on institutional questions. Unless such institutional questions are separated from policy ones, institutional confrontations will continue.
- 3) The conciliation committee has an unusual feature, one empowering the Council. Examination of the Conciliation committee in comparative perspective demonstrates that it alone (with the French joint committee) among conference committees does not control the agenda in the final stage of legislation. In France the government can step in the last stage of the process and ask the National Assembly to decide, either on the committee text or on the government's its own project. In the EU the Council takes over the legislative initiative in case of failure of the conciliation committee. This procedure strengthens the hand of the Council in the negotiations. According to the models presented in this paper, the Council's intransigence can be explained not by some 'attitude' or by the fact that high or low level bureaucrats participate in the conciliation committee instead of Ministers, but by the default solution: if the conciliation committee fails, it will be the Council's turn to make a 'take it or leave it' offer to the Parliament. As a result, there is no reason to be conciliatory in committee.
- 4) The question of whether the Council can modify EP amendments in its final proposal remains open. As I said in the first and second parts

of this paper, if the Council can modify the EP amendments in the last stage, its agenda setting powers increase. Out of all pieces of legislation that have been considered only one tested article 189b(6) (the failed conciliation committee). However, in this case the Council decided not to include the EP amendments agreed upon in committee in its final proposal. Had it incorporated some of them with modifications, and had the EP failed to reject the proposal, a precedent would have been created. As it stands, this is another case for confrontation of the two institutional actors.

2.4 CONCLUSIONS

In all the models considered I demonstrated that there is a significant likelihood of compromise between the three European institutions as long as the status quo is not located between the Council and the parliament. In that case, the mutual vetoes accorded by the codecision procedure will assure that no change takes place. In all other cases, a compromise is possible as long as the sole grounds for decision are the policy issues at hand and decisionmaking occurs in single shots. In these circumstances, the conditional agenda setting powers accorded by the cooperation procedure are generally more important than the veto powers accorded by codecision. If however institutional issues prevail, and if each institution tries to use policy issues in a long term influence game, Parliamentary veto becomes more important and some kind of institutional immobilism or gridlock may ensue.

It is possible to imagine a scenario where the Council will want to create the precedent allowing it to modify EP amendments in the last stage of the codecision procedure, and for that purpose it may be intransigent in the conciliation committee, and then make a proposal including modified EP amendments. It is also possible that the EP will want to make the point clear that failure to reach a compromise in the conciliation committee will mean failure to have a bill adopted, and so will veto all legislation where the proposal does not emanate from the conciliation committee.

What is interesting is that such institutional battles will not reach the ECJ, because they will be shaped in policy terms, and because each of the two actors can defend himself. It makes no sense for the EP to ask the ECJ's opinion about whether the Council can modify its amendments in the last stage when it can deliver the message itself by rejecting the leg-

isolation. Similarly, it makes no sense for the Council to complain about the EP delegation introducing non germane amendments in the conciliation committee, when it can reject them.

Consequently, if institutional questions are separated from policymaking, the conditional agenda setting power of the EP promotes better its policy goals. If, however, institutional questions are included in legislation the EP's best bet is to use its veto power often, thereby paralyzing the EU decisionmaking.

A significant improvement in the situation would be for the EP and the Council to share agenda setting and veto powers. Elimination of article 189b(6) altogether would lead to the following situation: Either the conciliation committee comes to an agreement which, if adopted by the parent chambers, becomes law or it does not come to an agreement, in which case the status quo prevails. This is hardly a novel institutional arrangement, since all bicameral legislatures which use conference committees include such provisions. However it has the advantage that the two chambers share duties and responsibilities, and one of them does not present the other with 'faits accomplis' leading to confrontations.

Notes

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- 1. There has been one exception to this: the conciliation committee report on legal protection of biotechnological inventions was rejected by Parliament.
- 2. For additional discussions see Moser 1996 and Tsebelis 1996.
- 3. It decreases if the policy space has more than two dimensions. If it has one or two dimensions, there is a 'curvilinear property', that is, the agenda setting power is maximum at some intermediate position of the status quo.
- 4. The yolk is the smallest hypersphere intersecting all the median hyperplanes of a committee. Median hyperplanes are hyperplanes with the following property: at least half of the points of the committee are on one side of them or belong to them, and at least half of the points

of the committee are on the other side of them or belong to them. For more extensive discussions the reader is referred to the original articles.

5. In fact, they calculate the uncovered set of a bicameral legislature where each chamber decides by majority rule. The only difference with our case is that the Council delegation decides by qualified majority, but that does not change my results here, because the solutions preferred by a qualified majority are a subset of the solutions preferred by a simple majority.
6. In fact, an implicit assumption throughout this paper is that the probability of a coalition between the Commission and the EP is much higher than a coalition between the EP and the Council (the cooperation procedure statistics indicate that the first occurs 75 per cent of the time, while the second only one per cent; see Tsebelis 1996). For the few cases where there is a coalition between the EP and the Council (against the Commission) removing the unanimity requirement for modification of the Commission's proposal favors the EP, because the Council can accept the EP proposal (not included in the Commission report) by qualified majority.

References

- Banks, J.S. (1985), 'Sophisticated Voting Outcomes and the Covering Relation,' *Social Choice and Welfare*, 1, 295-306.
- Corbett, R., F. Jacobs, and M. Shackleton (1995), *The European Parliament*, (3rd edition) London: Longman.
- Earnshaw, D. and D. Judge (1995), 'Early Days: the European Parliament, Co-decision and the European Union Legislative Process Post-Maastricht,' *Journal of European Public Policy*, 2, 624-649.
- Earnshaw, D. and D. Judge (1996), 'From Co-operation to Co-decision: The European Parliament's Path to Legislative Power,' in J.J Richardson (ed.), *European Union: Power and Policy-Making*, London, Routledge, 96-126.
- Economist (1994), 'Europe's Feeble Parliament', January 22.
- Ferejohn, J. A., R. D. McKelvey and E. W. Packell (1984), 'Limiting Distributions for Continuous State Markov Voting Models,' *Social Choice and Welfare*, 1, 45-67.
- Garrett, G. and G. Tsebelis (1996), 'An Institutional Critique of Inter-governmentalism,' *International Organization*, 50, 269-299.

- McKelvey, R. D. (1986), 'Covering, Dominance and Institution Free Properties of Social Choice,' *American Journal of Political Science*, 30, 283-314.
- Miller, G. (1995), 'Post-Maastricht Legislative Procedures: Is the Council 'Institutionally Challenged?'' Paper presented in the 4th Biennial International Conference of ECSA, Charleston, South Carolina, 11-14 May.
- Moser, P. (1996), 'The European Parliament as a Conditional Agenda Setter: What are the Conditions? A Critique of Tsebelis,' *American Political Science Review*, 90, 834-838.
- Schwartz, T. (1990), 'Cyclic Tournaments and Cooperative Majority Voting: A Solution,' *Social Choice and Welfare*, 7, 19-29.
- Tsebelis, G. (1994), 'The Power of the European Parliament as a Conditional Agenda-Setter,' *American Political Science Review*, 88, 128-142.
- Tsebelis, G. (1995a), 'Conditional Agenda-Setting and Decision-Making Inside the European Parliament,' *The Journal of Legislative Studies*, 1, 65-93.
- Tsebelis, G. (1995b), 'Will Maastricht Reduce the 'Democratic Deficit'?', APSA- Comparative Politics Newsletter.
- Tsebelis, G. (1996), 'More on the European Parliament as Conditional Agenda Setter: Response to Moser,' *American Political Science Review*, 90, 839-841.
- Tsebelis, G. and G. Garrett (1997), 'Agenda Setting Power, Power Indices and Decision Making in the European Union,' *International Review of Law and Economics*, 16, 345-361.
- Tsebelis, G. and J. Money (1997), *Bicameralism*, New York: Cambridge University Press.

Comment

The Benefits of the Conciliation Procedure for the European Parliament

Peter Moser

George Tsebelis addresses the question whether the codecision procedure is an improvement or a disadvantage for the European Parliament (EP). This is an important issue, because the EP pushes for a wider use of this decision procedure in the Intergovernmental Conference. The paper is an outstanding example of the application of rational choice theory to analyze the effects of subtle institutional changes caused by the replacement of the cooperation procedure by the codecision procedure in the European Union. Tsebelis presents five major results:

1. Since the European Parliament (EP) is granted an absolute veto power in the codecision procedure, this strengthens the position of the EP. As Tsebelis points out, this is of particular importance in decisions about institutional choices in which the positions between the Council and the EP are often in direct conflict.
2. Tsebelis argues that the position of the Council is strengthened because it can make a 'take it or leave it' proposal to the EP in the last stage. Therefore, he expects the EP to lose influence in policy issues.
3. Tsebelis conjectures that the Conciliation Committee will need to convene frequently because a disagreement over a single issue requires the meeting of this Committee.
4. Since decisions by the Council require unanimity in certain areas, agreement is more difficult to reach and the influence of the EP is limited.
5. Finally, the influence of the Commission is reduced in the codecision procedure compared to the cooperation procedure because the Council and the EP can come to an agreement without the consent of the Commission. Note that the Council can accept amendments by the EP by qualified majority rule in the codecisions procedure even if the Commission does not support these amendments.

I agree with four of these results (1, 3, 4 and 5). However, I take a different view with respect to result number 2. It is undisputed that the codecision procedure does *not* give equal power to the Council and the EP. Rather, the Council has a strong bargaining position in the Conciliation Committee because of the right to make a 'take it or leave it' offer to the EP in the last stage, as Tsebelis points out correctly. It is also undisputed that the EP's importance is increased by having unconditional veto power. A case of point is the referred bill on the liberalization of voice telephony which was rejected by the EP in the last stage. According to Miller (1995), the Commission has reintroduced the bill in the meantime and incorporated all the changes that the EP had requested. In the least, this suggests that the EP can also use its veto right to influence policy choices. What I dispute, however, is Tsebelis' claim that the fact that the Council can make the last offer reduces the influence of the EP *compared to the cooperation procedure*. Rather, I argue that this procedure change does not need to reduce the impact of the EP but may even be *beneficial*. The disagreement with Tsebelis' conclusion results from a different interpretation of Art 189b(6).

Let me present my argument in two different ways. First, consider a slightly modified version of Tsebelis' example in section 2. Assume that the EP proposes in the second stage seven amendments (a_1, a_2, \dots, a_7) to the common position (CP). In contrast to Tsebelis, suppose that the Commission supports only a_1, a_4 and a_7 , while it rejects the other amendments. Hence, the Commission supports the policy $CP_{1001001}$, the common position including amendments 1, 4, and 7. In both procedures, the Council has to make the following decisions in the second reading:

1. approve a_1 by qualified majority
2. approve a_2 by unanimity
3. approve a_3 by unanimity
4. approve a_4 by qualified majority
5. approve a_5 by unanimity
6. approve a_6 by unanimity
7. approve a_7 by qualified majority.

Suppose that the Council approves those amendments supported by the Commission by a qualified majority and in addition unanimously agrees to amendments 2 and 3. Hence, the policy is now $CP_{1111001}$. In the cooperation procedure, decision making ends here and $CP_{1111001}$ is the final outcome.

In the codecision procedure, the Conciliation Committee needs to convene because not all amendments of the EP have been approved by the Council. The EP will try to include amendments 5 and 6, and eventually even other changes, as in the case of the bill protecting biotechnological interventions. If there is no agreement, the Council can make its final offer. According to a literal interpretation of Art. 189b(6), it can choose among four alternatives in our example: Either it proposes $CP_{1111001}$ ('the common position to which it agreed before the conciliation procedure'), or it includes 'amendments proposed by the European Parliament'; $CP_{1111101}$, $CP_{1111011}$, $CP_{1111111}$.

According to this example, we should evaluate Tsebelis' claim on page 29 that 'what cannot be disputed is that the EP loses the agenda setting role confined to it by the cooperation procedure, because the Council selects among a set of proposals that are all considered equal'. Of course, one might debate the extent of the agenda setting role of the EP in the cooperation procedure and I have stated these conditions elsewhere (see Moser 1996, 1997 and the response by Tsebelis 1996). Tsebelis' statement that the choice set of the Council is larger in the codecision procedure than in the cooperation procedure is correct. In the example above, the Council can choose among four alternatives¹. But notice that one alternative corresponds to the outcome of the cooperation procedure and all other alternative are an *improvement* for the EP because additional amendments are incorporated. Hence, the outcome of the codecision procedure is at least as good as the equilibrium outcome of the cooperation procedure, and eventually better. And it is even likely that the outcome will be better for the EP, because in the last reading, the Council can approve by qualified majority those amendments which were not supported by the Commission and which were not unanimously preferred in the second reading (a_5 and a_6). Although the agenda setting is being reverted to the Council, the agenda right is constrained in such a way that the Council can only approve additional amendments proposed by the EP. Naturally, this is beneficial for the EP.

The question remains whether my result also holds in the case of continuous choices. Let us consider Figure 2.5, a one dimensional representation of Tsebelis' Figure 2.2. The numbers represent the ideal policy of the seven Council members with a qualified majority requirement of five out of seven. P depicts the ideal policy of the EP and SQ stands for the status quo. Given the location of SQ in Figure 2.5, Council member 2 is decisive in qualified majority decisions and X is the policy to which member 2 is indifferent to SQ . Under cooperation, the

EP (or the Commission) proposes X which the Council approves by qualified majority.

The outcome under the codecision procedures depends on the interpretation of Art. 189b(6). If it is interpreted literally, the Council can only propose the common position (possibly with amendments suggested by the EP). In this case, the EP (or the Commission) will again propose X which becomes the common position since it is preferred by a qualified majority to SQ and cannot be changed unanimously. In the last stage, the Council would like to make an offer to the left of X but it cannot change X against the will of the EP. With this interpretation (also used by Crombez (1998) in this volume), the same outcome results as in cooperation. The codecision procedure is beneficial for the EP and for a qualified majority in the Council if the Commission's ideal policy were at Y , for example. In the cooperation procedure, the outcome would be Y , while in codecision, the Commission is forced to choose its proposal at the ideal point of member 2, otherwise the EP and a qualified majority can change the policy in the Conciliation Committee.

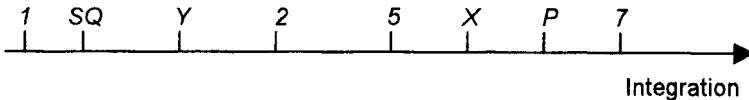


Figure 2.5 Policy choice in the co-decision procedure

If Art. 189b(6) is interpreted in the way Tsebelis does, the Council is free to make any offer in the last stage as long as a qualified majority in the Council favors a different policy to the common position. Since X is outside the interval of the ideal points of the two decisive Council members 2 and 5, a qualified majority prefers a policy to the left of X - and is able to select such a policy. Therefore, the EP (or the Commission) is forced to propose the ideal point of member 5. Notice that the necessary condition for this effect is that the ideal point of member 5 is closer to SQ than the ideal policy of the EP. Only if this condition is met and Art. 189b(6) is interpreted in this way, can the outcome be worse for the EP in codecision compared to cooperation. And I am sure that the EP will use all its (veto) power to avoid such an interpretation of 189b(6).

To some extent, empirical evidence can decide among these conflicting views. Of course, there is only limited experience with these procedure. In a first empirical study of the codecision procedure including the first

33 cases, Miller (1995) finds no case which would point out that the EP achieved less than under cooperation. In contrast, the example of the bill on engine power of two- or three-wheel motor vehicles indicates that the EP reached more under codecision than it could have achieved under cooperation. The EP failed to obtain the necessary majority to reject the common position but could still adopt amendments to the common position which were incorporated in the Conciliation Committee.

To sum up, in contrast to Tsebelis' claim, the codecision procedure is likely to be an improvement for the EP not only because of the veto power but also due to the conciliation procedure. However, Tsebelis is right in pointing out that these two decision makers are not equally influential and that the abolition of the third reading would be a step toward becoming two equally empowered chambers.

Notes

1. In general it is 2^n , with n being the number of unaccepted amendments by the EP.

References

- Miller, G. (1995), 'Post-Maastricht Legislative Procedures: Is the Council 'Institutionally Challenged'?', Manuscript, presented at the 4th Biennial International Conference of ECSA in Charleston, South Carolina, 11.-14. May.
- Moser, P. (1996), 'The European Parliament as a Conditional Agenda Setter: What are the Conditions? A Critique of Tsebelis,' *American Political Science Review*, 90, 834-838.
- Moser, P. (1997), 'A Theory of the Conditional Influence of the European Parliament in the Cooperation Procedure,' *Public Choice*, 91, 333-350.
- Tsebelis, G. (1996), 'More on the European Parliament as Con-ditional Agenda Setter: Response to Moser,' *American Political Science Review*, 90, 839-841.