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ABSTRACT The European Union (EU) has tried to bridge decisionmaking by qualified majority and unanimity over the years by expanding qualified majorities (consensus) or by making unanimities easier to achieve. I call this decisionmaking procedure q-'unanimity' and trace its history from the Luxembourg Compromise to the Lisbon Treaty, and to more recent agreements. I analyze the most recent and explicit mechanism of this bridging (article 31(2) of the Lisbon Treaty) and identify one specific means by which the transformation of qualified majorities to unanimities is achieved: the reduction of precision of the decision, so that different behaviors can be covered by it. I provide empirical evidence of such a mechanism by analyzing legislative decisions. Finally, I argue that this bridging is a ubiquitous feature of EU institutions, used in treaties as well as in legislative decisionmaking.

KEY WORDS Council; decisionmaking; European Union; q-'unanimity'; qualified majority; unanimity.

In the 21st century the European Union (EU) has consistently occupied the front pages of newspapers around the world because of ongoing negotiations. First it was the institutional impasse generated after the Nice Treaty (2001) and the subsequent treaty negotiations that lasted almost ten years until the adoption of the Treaty of Lisbon. Then it was (and still is) the financial crisis that could have led to a Greek exit and/or the demolition of the euro. Now there are new negotiations between Merkel and Hollande for the creation of a long-term financial pact. Yet there have been some important decision-making procedures taking place under the radar, which may lead to an EU with greater decisiveness.

In this paper I focus on one particular article of the Lisbon Treaty that applies to the Common Foreign Policy and Security area, where decisions are made by unanimity. This makes decisionmaking very rigid since every country is required to agree. However, article 31(1) of the treaty identifies some areas where decisions could be made by qualified majority (the exact requirements to be discussed below). For these areas, article 31(2) specifies:

> If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative

> will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.

The goal of the above paragraph is to transform a qualified majority decision into a unanimous one. The High Representative (of the Union for Foreign Affairs and Security Policy) is for all intents and purposes the equivalent of a Foreign Minister for the EU and is thus often referred to in the press. According to article 31(2), she uses the qualified majority decision as the basis for discussion with the disagreeing member(s) of the Council, and investigates the possible modifications that would make the decision 'acceptable to it (them)'. If she succeeds, the (slightly modified) decision is not opposed by any member of the Council and becomes a valid (unanimous) decision. So this process bridges the difference between a qualified majority and a unanimity decision. This is why I will use the name q-'unanimity' to refer to it. I will show that this process is used in more areas than just foreign policy decisionmaking.

In this paper I will examine this procedure closely. What outcomes is such a procedure likely to produce? How can a qualified majority decision be transformed into a unanimous one? If such a transformation is feasible, how frequently does it occur? In the first part of the paper I examine the literature on 'consensus' generated in EU decisionmaking, because this literature argues that even when a decision requires a qualified majority, EU actors work hard to make it unanimous. In the second part, I will study how such unanimity can be achieved on the basis of article 31(2) of the Lisbon Treaty (even though this article is not supposed to be relevant in other areas of decisionmaking). In the third section, I will trace the history of this procedure inside the EU and show that similar procedures have been applicable in many different areas for over 50 years. In the fourth part I will construct a dataset to investigate empirically the cases where qualified majorities are transformed into unanimities in EU decisionmaking. In the final part I argue that q-'unanimity' has many variations and is a ubiquitous procedure in EU decisionmaking, including in treaty negotiations.

1. CONSENSUS LITERATURE: TRANSFORMING A QUALIFIED MAJORITY DECISION INTO A UNANIMOUS ONE

A large volume of scholarly papers have identified a 'preference for unanimity' (Aspinwall 2007; Hagemann 2008; Hagemann and De Clerck-Sachsse 2007; Hayes-Renshaw *et al.* 2006; Heisenberg 2005; Mattila 2004, 2008; Mattila and Lane 2001) according to which unanimous decisions are much more frequent than formal models would predict, and in the case of explicit voting typically only one member state is dissenting. The literature speaks of a 'culture of compromise', or 'culture of consensus' (Cini 1996; Hayes-Renshaw and Wallace 1997; Heisenberg 2005; Lewis 1998a, 1998b, 2000; Van Schendelen

1996; Westlake 1995), arguing that informal norms, consensus, thick trust and reciprocity in the Council are more important than the rational choice models suggest. Aus (2008) has called this persistent finding the 'rationalist puzzle'.

How is this 'consensus' possible? Lewis (1998a, 1998b, 2000) has studied decisionmaking in the Council and Coreper (the Committee of Permanent Representatives) exhaustively, and argues that the information gathering and interactions between member states in the Council have the effect of creating a 'common frame of reference' with which to understand the issues. 'From the perspective of interpreting consensus in the Council, it is important to recognize the common understandings that facilitate negotiations, such as the historical importance of the European project, the necessity of having either Germany or France supporting an initiative and the lack of an exit option or the threat of force' (Heisenberg 2005: 69). On the basis of interviews with Coreper participants, Lewis (2000) found five main features of the decision-making style: diffuse reciprocity, thick trust, mutual responsiveness, a consensus reflex and a culture of compromise. Heisenberg (2005: 69) claims that '[i]ndeed, the lack of acculturation to the norms of consensus may be the largest problem of the current enlargement of the EU by 10 new members'.

An unfortunate development in the study of the EU was the bifurcation of this literature on consensus from the literature modeling the EU institutions (Crombez 1996; Moser 1996; Steunenberg 1994; Tsebelis 1994, 1996; Tsebelis and Garrett 2001). In the beginning it was perceived that one literature was theoretical and the other empirical. Yet other researchers have found empirical evidence corroborating institutional models (Steunenberg and Selck 2006; Sullivan and Selck 2007). Schneider (2008) summarizes this scholarship; Pollack (2005) provides a broader overview. Importantly, Junge (2011), using the appropriate statistical methodology of a 'quantal response model', finds that the key arguments of the formal models (the importance of who controls the agenda, what amendments will be made given the positions of the different actors, and what will be the final outcome) are corroborated by the data of EU decisionmaking.

But the bifurcation in the arguments caused serious divisions, leading to methodological objections. Heisenberg (2008: 261) has argued that 'the small number of decision-makers, and the idiosyncratic nature of decisionmaking in the Council lends itself better to qualitative empirical studying' and that 'the quantification of preferences adds more measurement error than it contributes to new understandings of the dynamics of decisionmaking' (*ibid.*: 262). In another article, Heisenberg (2008: 272) argues that qualitative research can 'ask and answer policy-relevant questions, once freed from the responsibility of establishing consistent trends governing the behaviour of the ministers in the Council'.

The bifurcation between theoretical and empirical literature compounded by the methodological division of the field (qualitative and quantitative studies) is an unfortunate development. It is nonsensical to argue that institutional models do not provide any relevant answers when it took ten years for the EU to actually

adopt the Lisbon Treaty which modifies the decisionmaking majority in the Council from 70+ per cent down to 65 per cent (Finke *et al.* 2012); when in the process EU governments violated the expressed will of at least two different peoples by ignoring their referendum decisions; and when governments with completely different ideologies (from Left to Right) in Germany and Italy and Spain (to mention but a few) supported the same institutional solutions regardless of their ideology. Why would they strive so hard and for so long if the institutions made no difference given consensus?

On the other hand, it would be misplaced to ignore all the literature on consensus just because EU officials took ten years to redesign the EU institutions. The mistake is not in one or the other literature, but in their confrontational juxtaposition. It is true that institutions matter (otherwise EU élites would not spend so much time and effort designing them) and it is also true that European élites try hard to achieve consensus. The fact that both are true indicates that we should find an explanation. And the fact that different datasets may lead to different conclusions could mean that we should find jointly acceptable datasets that persuade one side that statistical analysis is necessary, and the other that in-depth analysis is also required. This is the most interesting puzzle generated by the scholarship on the EU, and this is the goal of this paper. To this question I now turn.

2. Q-'UNANIMITY': TRANSFORMING A QUALIFIED MAJORITY DECISION INTO A UNANIMOUS ONE

For expositional purposes I will consider a Council composed of seven members deciding by a qualified majority of five, which represents a qualified majority of 71 per cent (instead of the real 27 deciding by a qualified majority of 65 per cent of the countries' votes, weighted by population). In Figure 1 I represent the seven-member Council in a two-dimensional space (points 1–7). I will assume that the members of the Council have circular indifference curves, that is, that every member prefers outcomes closer to its own ideal point over outcomes further away. If the High Representative (HR) can find a point that will be accepted by a 5/7 qualified majority over the status quo, and cannot be further modified by such a majority, she will propose this point, and move on from there in order to achieve the unanimous support. Let us follow the strategic calculations of HR. In what follows, I will assume that the status quo is far away,[1] and focus on the remaining constraints.

Article 31(2) describes a two-step procedure. First, HR identifies a point that has the support of a qualified majority and then discusses with dissenting members in order to get their support. So in the first step she puts a q-majority together, and in the second she expands the support to unanimity. Obviously, if HR could find a point with unanimous support, she would propose it, and article 31(2) would not be activated. Let us follow the strategic calculations of this two-step procedure as prescribed by article 31(2).

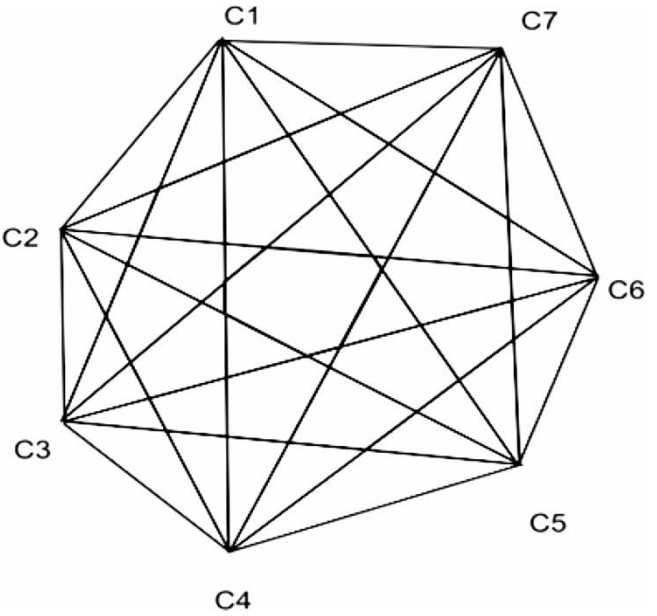

Figure 1 Core of Council with 5/7 and 6/7 majorities

2a. Put together a q-majority

The first question that HR has to address is whether there is a point that can achieve qualified majority support, and cannot be further modified by a qualified majority. The technical term for such points is the 'q-majority core'. The q-majority core is the set of points that cannot be defeated by a different q-majority. So if the proposal is located inside the q-majority core, it will not be possible to upset it. Let us locate such points in Figure 1.

Let us draw lines that connect two members of the Council, leaving two members on one side, and keeping the other five members on the other side. Lines such as C2C6 (leaving points C1 and C7 to its north) fulfill this condition. If the proposal that HR makes is to the north of line C2C6, the group of countries 2,3,4,5,6 can modify it and bring it at least to a point of C2C6. Therefore, the only points that could not be modified by a qualified majority of 2,3,4,5,6 are to the south of line C2C6. A similar argument can be made with respect to C3C7: only points south-east of this line can be candidates for a q-majority core. Iterating this argument for lines C4C1, C5C2, C6C3, C7C4 and C1C5, we can locate the q-majority core in the area defined by all these lines (the lightly shaded area).

Among all the points in the q-majority core, HR can select one and propose it in the Council, knowing that if accepted it will not be modified. HR will select the one closest to her own ideal point, unless she knows that another point is more agreeable to the Council (for example if another member of the

Council informs her that there is an agreement on some other point inside the q-majority core). In all cases, however, the outcome would be inside the q-majority core, that is, centrally located within the preferences of the members of the Council. Figure 1 also demonstrates the 6/7 majority core for the reader to verify that the argument of central location does not depend on the exact qualified majority requirement.[2]

2b. Extend the q-majority to q-'unanimity'

What the first step of the procedure has done is to create a focal point for the discussions in the Council. According to article 31(2) this becomes the subject of discussion not of the whole Council, but of negotiations between HR and dissidents inside the Council. What exactly do they object to with respect to this point, and how can it be modified to eliminate their objections? So article 31(2) establishes this point of potential agreement of a qualified majority as a focal point around which all discussions will take place.

Obviously (from the point of view of the q-majority supporting this point) all modifications have to be minimal, therefore the discussions will take the form of a 'tatonnement process'[3] around this focal point. Discussions of other alternatives that could have received a higher majority in the previous stage are no longer germane to discussions with HR. Actually, she does not have the authority to engage in such extraneous negotiations. Figure 2 presents a case in which the point selected by HR (assume that HR is located at point C5 or C6 and nobody else makes a different winning proposal) will now be modified and replaced by another point 'in the area' of F.

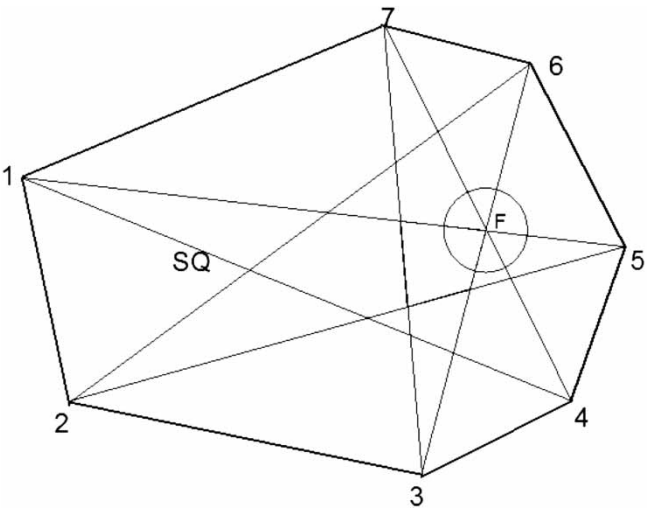

Figure 2 Proposal if agenda setter is 5 or 6; outcome in the area of F

Another way in which HR can extend the q-majority is by eliminating objections through reducing the specificity of a decision, making it cover a subset of what was the initial goal. This is an idea similar to that presented in the law and economics literature (Ehrlich and Posner 1974) as well as in international law (Koremenos 2011), according to which the precision of a legal text is a variable depending on the number of contractors and their heterogeneity. For example, the objecting member may disagree with the fact that a specific policy will be implemented immediately, as opposed to in the distant future, or under a series of conditions one of which is problematic in his point of view, or it will be addressed by a series of measures some of which may be objectionable, etc. In this case, removing these particular constraints may be agreeable to this member. Reducing the specificity of a decision so that whole areas are not covered, or so that the means by which the goal is achieved become more flexible so that implementation from the q-majority may be different from the implementation form of the disagreeing member may eliminate the threatened veto. To use a common expression, HR moves the agreement towards the least common denominator. In this case, the circle around point F in Figure 2 would mean the variance of the interpretation as opposed to the set of all possible outcomes. As we will see in the empirical section of this paper, increasing the variance of a decided policy – or as we will say, reducing the restrictions imposed by a set of rules – is a means used very often in order to transform a q-majority decision into a unanimous one.

3. HISTORY OF UNANIMOUS DECISIONS[4]

The requirement for unanimous decisions is common in international treaties because it does not infringe upon the national sovereignty of members. The unanimity rule transforms all countries participating in an international organization into 'veto players' (Tsebelis 2002), that is, into actors whose agreement is necessary for a change of the status quo. If a country disagrees with a potential decision, it can simply block it. Obviously, this rule generates serious obstacles in the process of decisionmaking. Changes requiring unanimous support are very difficult to achieve. This is the reason the EU has selected qualified majority decision-making in many jurisdictions – the number of which has increased over time. Yet in foreign policy the default decisionmaking process is by unanimity, and article 31(2) is designed to transcend the differences between q-majority and unanimity decisionmaking by using this two-step procedure, where the first step is by qualified majority, generating a focal point for eliminating objections and achieving unanimity. It is interesting to note that this conflict between the two procedures goes back some 45 years in the history of the EU. Indeed, qualified majority decisionmaking can be traced back to the Treaty of Rome (1958), and unanimous decisionmaking to the Luxembourg Compromise (1966). The procedure has evolved through the Single European Act (1987) all the way to its current iteration in the Lisbon Treaty (2009).

The first time that provisions like article 31(2) were introduced was in the Luxemburg Compromise (1966), which stated:

> Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavor, within a reasonable time, to reach solutions that can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community, in accordance with Article 2 of the Treaty. (Bulletin of the European Community, March 1966, 3-66 (Bull. EEC 3/66): 5–11)

This was a footnote in the decision of the Council. Subsequently similar provisions were introduced in the actual decision of the Council in what was called the Ioannina Compromise (29 March 1994). Neither of these statements specified jurisdictions, that is, they were applicable to any subject covered by the legislative procedures. For both these statements the qualified majority required by the treaties was the departing point, and they were trying to expand this majority to make the decision more acceptable to more countries.

On the other hand, in Amsterdam (1977), for decisions on foreign policy (which are taken by unanimity according to the treaties), reduction of this decisionmaking rule to qualified majority (just like article 31(2)) was introduced for the first time.

The conclusion from this brief historical overview is that while q-'unanimity' efforts in the EU can be identified as goals as much as half a century ago, the specific procedures emerged only in the Lisbon Treaty. These efforts were designed to reduce the scope of qualified majority decisionmaking initially (Luxemburg, Ioannina), but to expand it with the treaties on foreign policy and related issues (Amsterdam, Lisbon). As a result, jurisdictions are not specified in the first two, but are explicitly mentioned in the second two (the treaties), and the threshold of significance rose (from 'very important' to 'vital').

We can think of this 45-year-old process as building a bridge between qualified majorities and, unanimity. Two of the texts start with qualified majority as the default solution and, because this potentially infringes on the rights of individual governments, they try to expand the majority to unanimity when it is not demanded by the existing treaties; the other two (the treaties) start with unanimity, and because it is so difficult to achieve, try to turn it into a sort of enlarged qualified majority.

4. REDUCING SPECIFICITY TO INCREASE SUPPORT

In the first part of this paper I argued that one of the ways to increase support and move from qualified majority to unanimity is to reduce the specificity of decisions, so that different policies or behaviors can be considered as 'supporting' a broad consensus as opposed to 'violating' or 'undermining' a specific agreement. The normal way of testing this proposition would be to examine foreign policy decisions since the Lisbon Treaty, and view successive drafts of

foreign policy decisions in terms of their specificity. Unfortunately such data do not yet exist, and more importantly, the internal debates are not likely to become public for a long time. I must use a different strategy.

Given the fact that q-'unanimity' has such a long history, and may have been used on many occasions not just in foreign policy (as Amsterdam and Lisbon specify) but in other areas too (as Luxembourg and Ioannina suggest), I will use data from the legislative history of the EU where information is abundant. In particular, I will consider cases where amendments were proposed under qualified majority while modification required unanimity. In other words, I will examine procedures where the same mechanism I described in the first part of this paper had to be applied in practice.

Such a procedure was the standard for adoption of consultation bills in the late 1980s and early 1990s. Indeed, consultation proposals by the Commission could be accepted by the Council by qualified majority, but required unanimity to be modified. Consequently, any amendment that modifies the Commission proposal has to be a unanimous decision, therefore the countries that disagreed with the particular wording of a bill had to take steps to expand a qualified majority to unanimity inside the Council. The only potential difference between the consultation procedure examples that we will use and the future debates on foreign policy (if and when they become available) is that the Commission proposal is not known to have qualified majority support. What we know about it is that the Commission expects it to have such support (otherwise they would not propose it). But how well informed is the Commission?

In comparative perspective, the EU is one of the best examples of the transmission of legislative information. Indeed, the Council is composed of the same people (the ministers of the corresponding jurisdiction: Labor Ministers for labor legislation, Finance Ministers for financial issues, etc.), the Commission has a parallel composition (Commission work organized around substantive policy areas) and its legislative proposals require the collection of information across countries (as well as the European Parliament [EP]). Given all of these conditions, I will consider the Commission's expectation for a qualified majority a good enough approximation for the existence of such a majority.

The selection of bills that were approved by the co-operation procedure is based on two independently collected datasets. The first dataset is produced by Mattila and Lane (2001), and the second is in the book *Decision-Making in the European Union* (DEU; Thomson and Stokman 2003). I use their intersection that produces seven bills, three of which were voted by the consultation procedure. I examine all the amendments to these bills. I compare the initial and the final forms of the bill, and compare all the provisions to see whether the adopted bill is less specific in some provisions compared to the Commission proposal.

The reduction of specificity can take place by replacing words like 'shall' or 'always' with 'may' or 'most of the time', by replacing high standards with lower ones, etc. However, I could not present an exhaustive list of such modifications. I will therefore present the generic form of an amendment, and see whether each one of its possible parts has been weakened in the final version.

Here is how I proceed. Each amendment will be considered as a proposition of the form:

> Under certain conditions . . . The EU will have certain goals . . . and in order to achieve these goals it will use the following means . . .; this decision is applicable effective a certain date.

This is a comprehensive generic form and presents the advantage that it can readily identify reduction of specificity. Indeed, specificity is reduced if:

- the list of conditions increases (since the rule will be applied less often);
- the number of goals is reduced (since the rule becomes less ambitious: if the bill is presented in positive mode, adding goals increases specificity; if it is worded in a negative way (specifying the exceptions), then adding exceptions decreases specificity);
- the number of means is reduced (the bill becomes less effective);
- the time of implementation is moved to the future.

The reader can verify that what is required for such assessments is a detailed knowledge of the legislation, through the whole production process. A simple assessment of the final form of the bill (whether it is by experts or by word counting programs) cannot help in identifying the level of specificity. To demonstrate this outcome I use examples from the bills I analyzed, present the whole list of significant amendments with reduced specificity in the online appendix,[5] and provide the summary information per bill in tables. The three bills at the intersection of the two datasets that were adopted through the consultation procedure were: (1) CNS98-092 (Protection of animals: Laying hens in systems of rearing); (2) CNS98-109 (Agenda 2000: Beef and veal, reform of the common organization of the market); and (3) CNS98-110 (Council regulation on the common organization of the milk and the milk product).

Each of these bills had a series of amendments, some of which were controversial and some not. The EU sources provide information with respect to the significance of each amendment. I provide examples of provisions where specificity was reduced in order to achieve unanimous support from each bill. I then move to quantitative analysis.

The example I provide is amendment #30 from Bill CNS98-110 (on milk and milk products). It modifies article 18(3) of the bill.

3. The maximum area payment per hectare which may be granted, including area payments pursuant to Article 15 of Regulation (EC) No. . . [beef], shall not exceed:
- *ECU 210 for the calendar year 2000,*
- *ECU 280 for the calendar year 2001,*
- *ECU 350 for the calendar year 2002 and the subsequent calendar years.*
4. For the purposes of this Article, 'permanent pasture' shall mean non-rotational land used for grass production (sown or natural) on a permanent basis (five years or longer).

FINAL ACT (Article 19(3)):

3. The maximum area payment per hectare which may be granted, including area payments pursuant to Article 17 of Regulation (EC) No 1254/1999, shall not exceed *EUR 350 for the calendar year 2005 and the subsequent calendar years.*

(Article 19(4) deleted)

In this amendment, the final draft eliminates whole parts of the text, and postpones its application. Let me now move to the aggregate results (shown in greater detail in Table 1) of each of the three bills.

1. Bill CNS98-092: Out of 100 amendments, 60 were significant and controversial. Of those, 26 (43.33 per cent) saw their level of specificity reduced in order to move from the Commission proposal stage (which we have assumed presupposes qualified majority) to the final bill stage (which requires unanimity). In terms of the 'broadly defined' concept of specificity reduction, which also includes the cases where its restriction was partly relieved, 35 (58 per cent) were modified.
2. Bill CNS98-109: Out of 80 amendments, 48 were significant, and 17 of those (35.42 per cent) were modified by reducing the specificity of the provisions.
3. Bill CNS98-110: Out of the 37 amendments, 17 were significant, and nine of those (52.94 per cent) had their precision reduced while ten (59 per cent) saw their precision reduced in terms of broadly defined concept.

Analytic presentation of results of these bills is given in appendices A1–A3. The interested reader can trace the examples of specificity reduction in the text with their classification in the online appendices.[6] The appendices indicate that the most frequent intervention was to make the conditions more vague, and the less frequent one to postpone applications of measures. I do not have any explanation for these choices, and given the small number of bills and amendments, these numbers may not be significant.

Table 1 Amendments in restrictions among three consultation bills

	Restriction Relieved?				
	Back to Original Proposal	*Restriction Relieved*	*Partly Restriction Relieved*	*Restriction Not Relieved*	*Total*
CNS98-092	4	26	6	24	60
	6.67%	43.33%	10.00%	40.00%	100.00%
CNS98-109	17	17	0	14	48
	35.42%	35.42%	0.00%	29.17%	100.00%
CNS98-110	4	9	1	3	17
	23.53%	52.94%	5.88%	17.65%	100.00%

In conclusion, the reduction of scope or precision is used quite frequently (over 40 per cent of amendments) as a means to achieve unanimity in the Council. What we have not yet established is that it is used to expand qualified majorities into unanimities. That is, would the frequency of reducing precision be the same if there were no need to modify a qualified majority to unanimity? Fortunately, legislative action presents variation along this dimension, and can help us address the question.

While the consultation procedure requires a unanimous decision in order to modify the Commission proposal, the co-decision procedure does not rely upon the modification of support. Depending on the subject matter, decisions are taken either by qualified majority or by unanimity, regardless of whether they agree, modify or reject the Commission proposal. Consequently, a comparison of bills under consultation and co-decision would help us see whether the reduction of precision is a means of transforming qualified majority decisions into unanimous ones.

Table 2 presents the analysis of the four bills adopted by co-decision procedure. Of these four bills, three were decided by qualified majority rule, and one by unanimity. Again, amendments are divided into significant and non-significant, and the table includes only the significant ones.

I compare the probability of a significant amendment that reduces restrictions in order to be adopted as a function of the procedure used. Consultation transforms qualified majority to unanimity, while co-decision keeps the decision-making rule constant (either qualified majority or unanimity). The comparison is based on the 248 amendments[7] included in all seven bills. The method of analysis is logit with robust standard errors. According to this analysis the probability for an amendment to relax restrictions in consultation is 52 per cent (with 95 per cent confidence interval, 44–60 per cent), and in co-decision 40 per cent (with 95 per cent confidence interval, 33–46 per cent).[8]

Table 2 Amendments in restrictions among four co-decision bills

	Restriction Relieved?				
	Back to Original Proposal	*Restriction Relieved*	*Partly Restriction Relieved*	*Restriction Not Relieved*	*Total*
COD98-134	3	17	0	9	29
	10.34%	58.62%	0.00%	31.03%	100.00%
COD98-191	3	9	0	22	34
	8.82%	26.47%	0.00%	64.71%	100.00%
COD98-195	3	25	6	37	71
	4.23%	35.21%	8.45%	52.11%	100.00%
COD96-085	1	9	3	11	24
	4.17%	37.50%	12.50%	45.83%	100.00%

On the other hand, the effect of consultation procedure (in contrast to co-decision procedure) on 'broadly defined' restriction-relieved amendments is the following: the probability for an amendment to relax restrictions in consultation is 59 per cent (with 95 per cent confidence interval, 51–67 per cent), and 46 per cent in co-decision (with 95 per cent confidence interval, 39–53 per cent).[9]

The conclusion of this empirical analysis is that decreasing precision is a very frequent means of achieving support for legislation and bridging qualified majorities with unanimities. This procedure is used in around 40 per cent or 45 per cent of amendments regardless of procedure, but in consultation when we move from qualified majority to unanimity (the q-'unanimity', as we call it in this paper) the corresponding frequencies are 52 per cent or 59 per cent.

An important theoretical point is that because the starting point of the procedure is a qualified majority decision, if such a qualified majority exists (that is, if a proposal is located inside the q-majority core or the uncovered set), it makes no sense to try to replace it. Consequently, the formal identity of the agenda setter becomes secondary, if not immaterial. In the empirical analyses we studied in this section, it did not matter whether the agenda setter was the Commission (as the formal procedure requires) or some other agent (say a government) that informs the Commission that there is a q-majority on a particular subject. Similarly, for the applications of article 31(2) of the Lisbon Treaty, it does not matter whether the High Representative herself formulates the initial proposal or takes it from another country. A proposal can be the basis of discussion as long as it has a qualified majority of votes supporting it, regardless of its origin.

One last point can be addressed by our dataset. It has been frequently observed in the literature that the significant change in the role of the EP in legislative involvement was the transition from the consultation procedure (when the opinion of the EP was required but could be ignored) to the co-operation procedure, when the EP amendments had to be discussed and incorporated into the legislation or amended and the EP gained 'conditional agenda setting' powers (Tsebelis 1994). There are a series of EP amendments that were completely ignored by the Council. These are marked in the dataset as 'back to the original' and they are significantly higher in consultation procedure than in co-decision. I used logistic regression to calculate the probability that an EP amendment will be completely ignored and found that this probability is 20 per cent (with 95 per cent confidence interval 14–26 per cent) for consultation, and 6 per cent (with 95 per cent confidence interval, 3–10 per cent) in co-decision.[10]

5. UBIQUITOUSNESS OF Q-'UNANIMITY'?

We have seen that article 31(2) of the Lisbon Treaty has a long history, and it is likely that one of its predecessors (Luxembourg or Ioannina) has been applied even in cases of legislation, as the literature on consensus indicates. But how

frequent is the use of q-'unanimity' procedures? The answer is 'very frequent'. To demonstrate this, I will refer to another two distinct cases inside the Treaty of Lisbon that are constructing the bridge between qualified majority and unanimity, and I will then discuss the adoption of two different treaties (the Lisbon Treaty and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union [2011]).

TWO MORE BRIDGES IN LISBON[11]

As well as article 31(2), the Lisbon Treaty includes two more provisions intended to build bridges between the two decisionmaking requirements (qualified majority and unanimity). The first is in article 48 of the Treaty on the Functioning of the European Union (TFEU) which covers all issues of Title V (which is entitled 'Area of Security, Freedom and Justice'). Paragraph 7 of the above article reads:

> Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defense.

Finally, attachments to the Lisbon Treaty, in particular 'Declaration on Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union', include a transitory mechanism replicating the logic of the Ioannina Compromise. Now let us move to the signature of different treaties themselves, including Lisbon.

The Lisbon Treaty

In the book *Reforming the European Union: Realizing the Impossible*, Finke *et al.* (2012) trace the procedure that generated the Lisbon Treaty, from the Laeken Declaration to the final approval by the Czech Constitutional Court. What they find is that the adoption of the Lisbon Treaty itself was a case of what I call in this paper q-'unanimity'.

The book describes how Giscard controlled the agenda of the Constitutional Convention and was able to modify the decisionmaking rules of the Nice Treaty, and how the EU leaders modified these slightly to come to an agreement that was signed by all the heads of state of the EU members. They modified this text only slightly in order to achieve unanimous support (eliminating the objections of different countries). This process lasted almost a decade and the protagonists changed over time as governments were replaced. They point out that these replacements sometimes (e.g. Germany, Italy, Spain) involved political opposites from Right to Left or vice versa. Actually, the subtitle of the book brings to mind the widespread agreement among journalists as well as academics

who were expecting that the process of integration was over, particularly after the 'no' referendums in France and the Netherlands. In their historical account they point out the two elements I have described in the q-'unanimity' procedure: the qualified majority decision and the slight modification of the text in order to eliminate objections. Here is how they describe the process in their conclusion:

> In fact, political leaders went ahead as if the ratification quorum was not unanimity, as formally foreseen in the treaties, but a qualified majority. In addition, they treated the Convention proposal as if it was the reference point instead of the legal status quo codified in the Treaty of Nice. Thus, every time the process was brought to a halt by individual political leaders (e.g., from Poland and Spain during the intergovernmental conference) or voters (e.g., from the Netherlands, France, and Ireland) the obstruction was not sufficient to break the qualified majority of political leaders who had decided that reform needed to go ahead. Instead, these leaders drafted country-specific concessions, exerted pressure to revoke any nonmandatory referendums, or delayed reform until preferences and attention shifted... (Finke *et al.* 2012: 191)

'The New Fiscal Compact Treaty' (abbreviation of the Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union, 2012)

This is a very recent document that was produced in a short period of time, but has the unusual feature that six successive drafts became public, and so presents an unusual level of transparency. After a meeting of the leaders of Germany and France, the agreement was transformed into a draft (in December 2011) and the final version was signed by 25 countries (the UK and the Czech Republic did not sign) on 30 January 2012.

The urgency of addressing the financial conditions in the EU – the possibility of Greek bankruptcy as well as the dangers of uncontrolled developments in the rest of Southern Europe (what were named the PIIGS countries from the abbreviation of Portugal, Italy, Ireland, Greece and Spain) – created the political conditions for the agreement between Germany and France to be respectfully received by the rest of the EU countries. However, the two agenda-setting governments were representing right-wing coalitions in the respective countries, and were highly sensitive to the pursuit of deficit reduction measures and much less to economic development as a means of addressing the situation.

As the negotiation process proceeded, some leaders complained about the speed of agreement, while others defended the procedures. Ahead of the European Union summit in Brussels on 30 January 2012, Polish Prime Minister Donald Tusk said: 'The fact that Chancellor Merkel and President Sarkozy have taken the reins is obvious. But this should not become a permanent political monopoly. We can't leave Europe to two capitals' (referring to the two countries' leaders). 'We shouldn't criticise the activism of Paris and Berlin – but we should

be more present and not leave all the initiative to them', Tusk said (Rettman 2012). Similarly, Czech Prime Minister Petr Nečas (who did not sign the Fiscal Compact) declared that he would not commit to signing the compact before he could be confident that he would be able to fulfill this commitment: 'Until decisions are made on how this compact will be ratified and also how it will be put into effect, meaning the moment the euro is adopted, I cannot sign it. The government is agreed on this'. He continued: 'This is simply not the way to carry out such negotiations, and under my leadership the Czech Republic will not allow itself to be manoeuvred into making such fundamental decisions under such strange conditions, at a meeting of a circle of a few European leaders, on the basis of a document whose final form I saw for the first time five minutes before. Even if we were the only ones in the whole of the EU to do so, we would still respect all democratic procedures and would rationally consider all the steps we take'.[12]

On the other hand, French President Nicolas Sarkozy (who lost the subsequent election in France) defended the treaty in the following way:

> In politics, democracy, quick decision is impossible because there is a parliament, because there is opposition that fights with the majority, because there is the media, because there is the requirement of immediate results. So Europe must accept the leadership, because only the leadership can make quick decisions. But leadership is the opposite of the rule that has enabled Europe to be built. Europe was built by saying to 27 countries, small medium and large: 'You have the same powers'. It can no longer work. You cannot have a system where 26 countries have to wait for the agreement of a 27th. It cannot work. Who can exercise leadership? Major countries: France, Germany, England ... (Saint-Martin 2012)

How did the 27 countries come to this agreement? Valentin Kreilinger (2012: 3), in an article published in *Policy Brief*, compares the different drafts and finds that '[t]he level of autonomy for the Contracting Parties in the core part of the document, the "Fiscal Compact" (Title III), was the main issue during the negotiations'. With respect to this main issue, the overall evolution was towards less specificity. For example, with respect to the most important provision that limits the annual structural deficit to 0.5 per cent of GDP, while the first and second drafts were mandating 'provisions of a constitutional or equivalent nature' (first and second drafts), later drafts required 'provisions of binding force and permanent character, *preferably* constitutional' (article 3.2). The reason that constitutional measures were not required in the final draft is because Ireland and Denmark would be obliged to hold referendums for constitutional amendments. Similarly, in article 7 of the treaty, provisions are made about members who are in breach of the 'deficit or *debt* criterion in the framework of an excessive deficit procedure'. This was the wording of the first and second draft, but in the third and subsequent drafts, and most importantly in the final document, the word 'debt' was removed at the insistence of Italy. While there are many articles or provisions that have been removed

upon the insistence of particular governments, Kreilinger (2012: 4) finds that '[t]he overall picture of Title III shows that at times some provisions were watered down while others were tightened'.

This account (although incomplete) indicates that q-'unanimity' procedures were applied in the adoption of the treaty, and Sarkozy's statements indicate that the procedure is likely to be replicated should more treaties be deemed necessary in the future. The significant difference from his assessments is that the agenda setters are not necessarily the big countries (one can imagine an environmental treaty after an environmental disaster to be orchestrated by the Netherlands). Also, one should not imagine that agreement between different countries would be as easy as the Merkel–Sarkozy agreement, particularly if parties of both the Right and the Left are represented in the corresponding governments.

6. CONCLUSION

The EU is building a bridge between q-majority and unanimity. Like any bridge, it is being built from both sides: expanding q-majority (striving to achieve a more difficult result) and reducing unanimity (making decisions easier). In this respect it is no different than the struggles of other political entities with decisionmaking rules. To mention only two – one at the national and one at the supranational level – the American Senate struggles with the filibuster rule, and the question is how potential majority decisions can become filibuster proof (how we can move from 50 to 60 per cent majorities); and the United Nations tries to find ways to bypass the five vetoes of the major countries in the Security Council.

The argument in this paper is that one important method of building this bridge is to eliminate the areas of disagreement through increasing imprecision, so that different actors can increase their discretion of implementation. I demonstrated how this transition from qualified majority to unanimity works, and produced a dataset that enabled me to investigate empirically and corroborate my claims. Finally I demonstrated that this decisionmaking process is likely to have been used in the past, and will continue to be used in the future for any level of decisionmaking, from treaties to legislation to foreign policy decisionmaking. The historical length and breadth of the enterprise is impressive, and demonstrates the persistence of EU élites in transcending the differences between qualified majority and unanimity decisionmaking. This was one of the points demonstrated in the paper.

A second point was the identification of one of the mechanisms for this transition. Indeed, there are three different ways to achieve an agreement when the actors involved have different positions. The first is to *compromise*, that is, to find some intermediate position. A large part of the literature identifies mechanisms (converging to the preference of the [multidimensional] median voter, the Nash bargaining solution, etc.) or institutions (sequential games, agenda setting, etc.) to find possible compromises. The second is to *compensate*, that

is, to create trade-offs between different bills, or different articles of the same bill; essentially trade favors or reciprocation. This is probably what Lewis (2000) had in mind with diffuse reciprocity (one of his five main features of the EU's decisionmaking style). More precisely, König and Junge (2009), in a very innovative article, were able to identify such a mechanism and point out (as much as possible) cross-bill trading. This paper identified and presented empirical evidence corroborating a third mechanism for creation of consensus: the *elimination* of points of disagreement. We saw cases both in legislation and in treaty creation where provisions became less precise in order to eliminate the specific areas of disagreement. We saw that the frequency of this method was quite high in legislative procedures. Will it be the same in foreign policy? In justice? In defense? Probably not, but we should investigate to see how frequently it is used in these cases.

Finally, a third point made in this paper is at the methodological level. Instead of using expert opinions to locate countries, bills and outcomes, which leaves the researchers open to the criticism that their data include so much noise that the conclusions are not interesting (Heisenberg 2008), and instead of using thick description where generalizations are lacking, this paper takes a close-up of the data, so that all the details are there to be studied, and then uses statistical techniques to generalize about decisionmaking. In this way, it bridges the methodological divide between qualitative and quantitative studies.

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NOTES

1 And as a result all relevant points will be preferred by the actors over it (that the winset of the status quo is large).

2 But there is something else that depends on the exact qualified majority requirement *and* the number of dimensions of the underlying policy space: the very existence of the q-majority core. Greenberg (1979: Theorem 2) has proven that if the number of dimensions of the policy space increases, there may or may not be a q-majority core. Actually, in order to be sure that there is a q-majority core, the condition is $q > n/(n + 1)$ where n is the number of dimensions of the policy space. But even in this case, we can use the concept of 'uncovered set' defined by Miller (1980) and located

in the center of the decisionmaking body by McKelvey (1986), and come to exactly the same conclusions of a proposal centrally located inside the Council.

3 The best English translation is 'trial and error' but it literally refers to a process of searching around a specific area (such as when we know where an object is and we try to get it without looking). I have used this argument in Tsebelis (2012).

4 An extended version of this section can be found at http://sitemaker.umich.edu/tsebelis/files/qmajorityunanimityejpp.new.long.doc

5 See the Appendix in the web version, available at http://sitemaker.umich.edu/tsebelis/files/qmajorityunanimityejpp.new.long.doc

6 *Ibid*.

7 Actually there were 283 amendments, but some of them were completely ignored. We will analyze these separately.

8 Analytic results can be found in Table 3 and Figure 3 in the web version, available at http://sitemaker.umich.edu/tsebelis/files/qmajorityunanimityejpp.new.long.doc

9 Analytic results can be found in Table 4 and Figure 4 in the web version, available at http://sitemaker.umich.edu/tsebelis/files/qmajorityunanimityejpp.new.long.doc

10 Analytic results can be found in Table 5 and Figure 5 in the web version, available at http://sitemaker.umich.edu/tsebelis/files/qmajorityunanimityejpp.new.long.doc

11 I thank an anonymous referee of the journal for pointing out these two provisions.

12 Press Releases, 6 February 2012. Retrieved from http://www.vlada.cz/en/media-centrum/tiskove-zpravy/the-main-arguments-of-prime-minister-petr-necas-regarding-why-the-czech-republic-has-not-committed-to-ratification-of-the-fiscal-compact-92710/

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