Legislative Politics in the European Union

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ABSTRACT

This paper compares legislative dynamics under all procedures in which the Council of Ministers votes by qualified majority (QMV). We make five major points. First, the EU governments have sought to reduce the democratic deficit by increasing the powers of the European Parliament since 1987, whereas they have lessened the legislative influence of the Commission. Under the Amsterdam treaty’s version of the codecision procedure, the Parliament is a co-equal legislator with the Council, whereas the Commission’s influence is likely to be more informal than formal. Second, as long as the Parliament acts as a pro-integration entrepreneur, policy outcomes under consultation, cooperation and the new codecision will be more integrationist than the QMV-pivot in the Council prefers. Third, the pace of European integration may slow down if MEPs become more responsive to the demands of their constituents. Fourth, the EU is evolving into a bicameral legislature with a heavy status quo bias. Not only does the Council use QMV but absolute majority voting requirements and high levels of absenteeism create a de facto supermajority threshold for Parliamentary decisions. Finally, if the differences between the Council and the Parliament concern regulation issues on a traditional left–right axis, the Commission is more likely to be the ally of the Council than the Parliament.

KEY WORDS

- democratic deficit
- European Parliament
- European Union
- legislative institutions
- spatial models
1 Introduction

This paper analyzes the evolution of the European Union’s (EU) legislative regime since the ratification of the Single European Act (SEA) in 1987. We compare legislative dynamics under the four procedures in which votes in the Council of Ministers are subject to a qualified majority (QMV) formula – the most distinctive institutional feature of the post-SEA EU. These procedures are:

- ‘consultation’ between the Council and the EU’s executive branch, the Commission (with advice from the European Parliament); it was introduced in the 1957 Rome Treaty but was essentially blocked by the ‘Luxembourg compromise’ until the mid 1980s;
- ‘cooperation’ (introduced in the SEA), in which the directly-elected European Parliament was given a substantive legislative role for the first time;
- ‘codetermination I’ (introduced in the Treaty on European Union signed at Maastricht in 1992), in which a Conciliation Committee was introduced to resolve disagreements between the Council and Parliament; and,
- ‘codetermination II’ (from the 1997 Amsterdam treaty) which modified arrangements following the convocation of Conciliation Committees.

Our analysis discusses several scenarios about how the EU might operate as a polity. These are based on different preference configurations among the Council, Commission and Parliament.

- The ‘supranational’ scenario represents how most observers believe the EU has operated from the mid-1980s to today. Here we assume that policy conflicts reflect different views about the appropriate level of integration among EU institutions, and both the Commission and Parliament are more ‘pro-integration’ than the Council members are.
- The ‘national delegates’ scenario assumes that members of the European Parliament (MEPs) – in addition to ministers in the Council – are subject to significant domestic political constraints that reduce their latitude to act as pro-Europe policy entrepreneurs. This scenario may become increasingly realistic over time as European citizens become more aware of the powers wielded by the Parliament.
- The ‘strong parties’ scenario assumes that coalitions in the Council and Parliament are organized on partisan, rather than national, lines. Party groupings are prominent in the Parliament today, but these would necessarily be considerably loosened under the national delegates scenario. Over time, however, one would expect that even if citizens hold their
MEPs accountable, powerful efficiency incentives would arise for both the Council and the Parliament to become organized into party groupings.

- The ‘regulation’ scenario assumes that conflicts among EU institutions do not solely reflect different preferences for the extent of integration, but also varying preferences about the regulatory environment at the European level that may be arrayed on a traditional left–right dimension.

We analyze these scenarios heuristically on the basis of our previous work that uses non-cooperative game theory applied to spatial models of political competition (Garrett, 1992, 1995; Garrett and Tsebelis, 1996; Tsebelis, 1994, 1995; Tsebelis and Garrett, 1997). We offer numerous insights that refine or contradict the ‘received wisdom’ about how the EU operates as a legislative body, or that simply are not made in existing studies. The results can be interpreted in terms both of the types of legislative outcomes we expect to obtain and of the influence of different actors under different combinations of preference scenarios and legislative procedures.

We make two sets of propositions concerning the transition from the Luxembourg compromise to the post-SEA world (i.e. the supranational scenario). The first concerns the extent to which new legislation under the various QMV-based procedures has promoted European integration. As long as the differences among institutional actors are about the degree of integration, the most pro-integrationist results should be expected from cooperation or consultation, the least integrationist from codecision I, with codecision II occupying an intermediate position. The second set of propositions concerns the relative influence of the EU’s three legislative institutions. We argue that the Commission’s role as a legislator has declined consistently from consultation, to cooperation, to codecision I, to codecision II. The relationships between the Council and Parliament are more complex, and significantly affected by whether MEPs act as national delegates or supranational entrepreneurs. The EP is a more representative institution than the Council because its voting weights are allocated in closer proportion to national population.² It is also more democratic because most decisions are taken by simple (or absolute) majority and because MEPs are directly elected whereas members of the Council are also ministers in national governments.

Under the national delegates scenario, the median MEP is likely to be less integrationist than the pivotal government in the Council under QMV. This will have different effects depending upon whether the status quo was generated under the Luxembourg compromise or under the supranational scenario. In the former case, new legislation will be considerably more integrationist under consultation and cooperation (because of the influence of the
Commission) than under both versions of codecision. Where the status quo is already integrationist because it was passed under consultation or cooperation when the Parliament was not subject to electoral constraint (i.e. supranationalism), new legislation to roll back the extent of integration would not be possible without agreement of the EP.

In the strong parties scenario policy making dynamics would then resemble other bicameral legislatures, with more partisan policy under unified government and with more gridlock under divided government. In the EU, however, the threshold for unified government is extremely high – around 70 percent of the votes in both the EP (as we explain) and the Council (which decides by QMV). Since this is not likely, one would expect strong parties in the EU to be quite effective in bringing legislative outcomes into the Pareto set of the Council and Parliament, but once inside this set the new legislative status quo would be very stable.

The regulation scenario anticipates that the Council and Parliament will have different preferences that will vary over time in a predictable manner – when one of them is dominated by the right, the other is controlled by the left, and vice versa. This scenario again produces high levels of stability once policy has been brought inside the Pareto set of the Council and Parliament.

The remainder of this article develops these arguments. Section 2 outlines the legislative rules laid out in the SEA, the Maastricht Treaty on European Union (TEU) and the Amsterdam treaty. Section 3 presents the baseline – supranational – model with respect to the consultation and the cooperation procedures using the supranational scenario and then analyzes the two iterations of codecision. Section 4 discusses the implications of a move towards a national delegates scenario in which MEPs are more accountable to their national constituencies. Section 5 explores how legislative dynamics might change if the EU were to evolve into a bicameral legislative government for Europe with strong parties in both chambers. Section 6 discusses the regulation scenario in which the differences between the actors are assumed to be along a left–right dimension. We conclude in section 7 with a discussion of the limitations in existing work on European integration that our analysis highlights.

2 QMV-based legislative procedures

The Luxembourg compromise effectively governed the legislative process in the EU from at least 1966 until the ratification of the SEA in 1987 (but, see Golub, 1999). Any member of the Council could block the passage of new legislation in any area it considered of national interest. Effective
decision-making power thus rested with the member government that had least desire to change the status quo. All of this changed with the passage of the SEA. Some policy areas – typically associated with contentious issues of ‘high politics’ – remained subject to unanimous Council approval. But much of the EU’s day-to-day legislative agenda was ‘un-blocked’ by the member governments’ commitments both to reaffirm the application of QMV to the issues originally intended in the Rome Treaty and to bring additional policy areas under QMV.

The scope of QMV-based legislation was expanded further at Maastricht, and still further at Amsterdam. For all intents and purposes, the EU today operates in a way that is closer to the majoritarian practices of democratic countries than to the unit-veto rules that obtain in most international organizations. Unlike the typical nation-state pattern, however, legislative rules in the EU vary greatly across policy areas. The right to draft initial proposals always lies solely with the Commission, but it cannot keep issues off the agenda if requests for bills are made by the Council or (since Maastricht) the Parliament. More importantly from an analytic standpoint, the fact that the Commission makes the first proposal does not mean that it can always affect the content of legislation that is ultimately passed.

‘Consultation’ is the simplest and oldest procedure, applying today to issue areas such as the free movement of capital, competition policy and industrial subsidies. Commission proposals become law if they are accepted by a qualified majority of Council members. A unanimous Council, however, can amend Commission proposals (this is also the case with all other QMV-based procedures). The Parliament plays no substantive role (but it does have an advisory one) in consultation.

The ‘cooperation’ procedure was introduced in the SEA to govern internal market reform. Today, cooperation (Article 189c, TEU) applies to areas such as social policy, implementation of regional funds, research and technological development, and a number of environmental issues – though its scope was reduced at both Maastricht and Amsterdam in favor of more use of co-decision. The most important institutional innovation of cooperation was to give the Parliament a significant legislative role. The Parliament may amend Commission proposals. If the Commission accepts these amendments they are presented to the Council, which can either accept them under QMV or amend them unanimously. The Parliament can also reject proposals that can only be overridden by an agreement between the Commission and a unanimous Council.

The codecision procedure (‘co-decision I’) was added to the EU’s legislative arsenal at Maastricht (Article 189b, TEU). In addition to replacing cooperation for internal market matters, this procedure was also applied to
new areas of EU jurisdiction in the treaty such as education, culture, public health and consumer protection. There are two major institutional differences between the initial form of the codecision procedure and cooperation. First, the Council could not reject EP amendments accepted by the Commission, but had to request a Conciliation Committee (comprising all members of the Council and numerically equal representation from the Parliament) to discuss such amendments. Second, if the Committee could not agree to a joint text, the Council could then reaffirm its prior common position, possibly with amendments proposed by the EP. This Council proposal became law unless an absolute majority of MEPs vetoed it.

The codecision procedure was modified in the Amsterdam Treaty (‘codecision II’, Article 189b as amended at Amsterdam). Additional policy areas were brought under its aegis, including equal treatment of the sexes, administration of the European Social Fund, health and safety, some aspects of environmental policy and fraud. From an institutional perspective, however, the most important development of the Amsterdam reforms is that the Conciliation Committee is now the last stage of the legislative game. If the representatives of the Council and Parliament cannot agree to a joint text, the proposed legislation lapses (Amsterdam Treaty, Article 189b(6)). That is, the member governments decided to remove the last two stages of codecision I – the Council’s final proposal to the Parliament, and Parliament’s decision whether to revert to the status quo.

What do we know about the effects of these QMV-based legislative procedures? Almost everyone agrees that the move to QMV has helped create a large corpus of new pro-integration legislation. There are, however, two elements of the conventional wisdom that we challenge. The first concerns the move from consultation to cooperation. For many analysts, the legislative roles given to the Parliament under cooperation were of no real consequence to policy outcomes (Crombez, 1996; Moser, 1996; Steunenberg, 1994). In contrast, we argue that the Parliament’s role as a ‘conditional agenda setter’ under cooperation (Tsebelis, 1994) has been of considerable legislative effect.

The second element of the conventional wisdom holds that the power of the Parliament was significantly increased by the first version of codecision agreed to at Maastricht (Jacobs et al., 1995; Crombez, 1997a; Scully, 1997). This view concentrates on Parliament’s ability unconditionally to veto proposals after the Conciliation Committee, which is considered to make it a far more influential legislator than under cooperation. Our analysis is different. Several of the EP’s powers certainly were increased at Maastricht. For example, it was empowered to vote the Commission out of office. The treaty’s effects on the Parliament’s legislative powers, however, were more complicated and ambiguous than the conventional wisdom assumes.
The transition from cooperation to codecision entailed the Parliament’s exchanging its conditional agenda-setting power for unconditional veto power. The impact of the exchange of conditional agenda setting (cooperation) for unconditional veto (codecision I) varies with the relationship between the Parliament’s preferences and those of members of the Commission and the Council. Under the supranational scenario (and so long as the members of the Council have different preferences themselves) the swap of the conditional agenda setting under cooperation for the unconditional veto of codecision I was a bad deal for the Parliament – and for the pro-integration agenda.\(^3\)

Our second major claim is that the reforms made to codecision at Amsterdam finally made the Parliament a co-equal legislator with the Council, now unambiguously more powerful than it was under cooperation. The reason is that the Council can no longer overrule the EP (not even unanimously, as in cooperation) and no longer can it present take-it-or-leave-it proposals to the Parliament (as was effectively the case in the codecision I endgame). Rather, Council and Parliament must bargain on equal footing over the final legislative outcome, with no a priori bargaining advantage inhering to either institution.

Let us now develop these arguments and then move on to the questions raised by the specter of moving from supranationalism to the national delegates, strong parties and regulation axis scenarios.

### 3 Supranational scenario

#### The setup

We begin our analysis using a one-dimensional spatial model in which the preferences of a seven-member Council, the Commission and the Parliament are arrayed on a continuum of more and less European integration (see Figure 1). The seven-member Council (with equal voting weights) is the simplest way to present the EU’s QMV formula, which closely approximates five-sevenths of the member-weighted votes. Our analysis is derived from more complex models in multiple dimensions, which often generate conclusions that are different from the one-dimensional case.\(^4\) Here we report the results that are unaffected by the dimensionality of the policy space.

In the supranational scenario, we assume that the Commission (strictly speaking, the median member of the College of Commissioners) is more integrationist than any member of the Council and just as pro-integration as (the median member of) the Parliament. This set of assumptions requires some discussion.
First, Crombez (1997b) has recently argued against this position by contending that the preferences of Commissioners are constrained by the member governments who choose them. He is right to point out that the existing literature does not explain why the Commission adopts the positions it does. His model, however, focuses on appointments alone and concludes that Commissioners are pure national delegates. What is needed is a rational explanation for the integrationist behavior of Commissioners, not the identification of non-integrationist equilibria generated by different models of Commission selection.

We think that a series of filters and self-selection mechanisms enables the Commission to take pro-integrationist positions. National delegates of real political power will likely prefer to stay in their country of origin. Moreover, appointments to different positions within the Commission are merit-based. A government may thus prefer to send to Brussels an important and independent personality who will likely exercise significant influence in the Commission rather than a less significant national delegate who may be marginalized. This is not to deny, of course, that Commissioners may share broad political orientations with the governments that select them (as our discussion of the regulation scenario discusses).

Second, considering the Parliament to be highly pro-integrationist also seems strange from an institutional standpoint. The Parliament is a directly elected democratic body and citizens of the EU tend to be less supportive of integration than their governments are. However, citizen interest – and voter turnout – in European Parliament elections tend to be very low. Indeed, these elections only seem to become politically visible when citizens view them essentially as mid-term referendums on (typically protest votes against) the national government of the day (Van der Erik and Franklin, 1996). Of course, this may change as citizens become better informed about the powers of the Parliament and hence about the importance of their electoral choices (though this was clearly not the case in the 1999 EP elections). We discuss this possibility in Section 5. In addition, we also consider in Section 7 the possibility...
that the Parliament’s preferences are significantly different from those of the Commission – with respect to regulatory reform at the European level.

Third, the supranational scenario assumes the status quo was generated under the Luxembourg compromise system of national vetoes and hence is located at the ideal point of the least integrationist government in the Council. All the other relevant actors – the other members of the Council, the Commission and (the median voter on the floor of) the Parliament – prefer to increase the level of integration in the EU. This captures well the political dynamics of the EU in the post-1987 period, during which the primary legislative objective has been to ‘harmonize’ Union-wide laws.

Moreover, all of our scenarios rely on an additional set of assumptions. First, we always assume that the Council members have different policy preferences. In contrast, Jacobs et. al. (1995) have argued that the Council often acts like a unified body. One might think the identical positions scenario is just a special case captured by our general representation, although this is not the case. The reason is that the ability of a unanimous Council to overrule other actors is a frequent feature of EU decision making. Clearly, identity of preferences equates to unanimity voting.

Second, we assume complete information for the final steps of the EU’s different legislative procedures (i.e. all actors know each other’s preferences and the location of the status quo). We do not extend this assumption to the entire structure of the procedures because this would lead to erroneous empirical conclusions. Most importantly, the decision-making game would never (or almost never) reach the final stages under complete information. All actors would accept the initial proposal and the game would end, but in practice many deliberations reach the final stage of a given procedure. We believe the complete information assumption to be reasonable at the end of the game because by this time the relevant actors have exchanged considerable information.

Finally, we analyze the passage of specific pieces of legislation as one-shot games. Introducing the possibility of indefinite iteration would complicate matters considerably – involving non-cooperative bargaining between the agenda setter and the actor that must accept or reject the agenda setter’s proposal. This complication is unwarranted, however, because it is rare for any legislative initiative to end in a stalemate with no decision reached. When this does happen, there is no evidence of re-introductions of similar bills at a later stage (Koenig and Schulz, 1997).

Using this analytic framework, it is the last two stages of each legislative process that are pivotal: Which actor makes the final proposal? To whom? Under what voting rules? Critics (Moser, 1996; Crombez, 1996, 1997a) have argued that answering such questions is not enough. Our response is that we
calculate subgame perfect equilibria for the final subgames of the various legislative games. The overall subgame perfect equilibrium strategies for all stages of the games must include these moves. In other words, no rational actor would choose to end the game earlier unless they would receive at least as much as our calculations suggest they would in the final play (in present discounted value).

Consultation and cooperation

Under the supranational scenario, the Commission wants to make the most pro-integrationist proposal that will be supported by a qualified majority in the Council (see Figure 1). This coalition is clearly 34567. Government 3 is the pivotal player in the Council. The Commission will make the proposal that is closest to its ideal point that government 3 prefers to anything the Council can do unanimously. Under the preference configuration in Figure 1, the Commission would thus make a proposal just to the left of the ideal point of government 5 and government 3 would support this proposal.

This simple example shows how the revival of QMV-based legislating promoted European integration. Recalcitrant governments such as 1 and 2 could be outvoted. The example also demonstrates the importance of agenda-setting power – the ability to make proposals that are more difficult to amend than to accept. The pivotal player in the Council cannot ensure that outcomes are at its ideal point. Rather, the Commission has the ability under consultation to choose among the policies that government 3 prefers to the status quo.5

The primary institutional difference between consultation and cooperation is that the Parliament may amend Commission proposals. If these are accepted by the Commission, the newly amended proposal returns to the Council which then faces the same decision as under consultation – accept the proposal QMV, amend under unanimity, or reject. The Parliament can also reject proposals that are accepted by a qualified majority in the Council’s first reading of a bill. Only a unanimous Council can override this rejection. This power of the Parliament, however, is not very significant so long as it is more pro-integration than any member of the Council is. We discuss the operation of cooperation under different scenarios in subsequent sections.

The situation depicted in Figure 1 reflects the simplest case concerning cooperation. Assuming that the Parliament and the Commission are equally pro-integration, the outcome of cooperation will be the same as under consultation. This would also hold if the Parliament’s ideal point were anywhere to the right of government 5. If it were between 5 and the Commission, any Parliament amendment would be acceptable to the Commission. If the
Parliament were more integrationist than the Commission, the Parliament could not successfully alter the Commission’s proposal.

Under complete information, we would expect that the Commission’s initial proposal would be at government 5, that a qualified majority in the Council would support this, and that the Parliament would make no amendments. In practice, however, Parliamentary amendments under cooperation are widespread (over 4500 from 1987 to 1993). The question then becomes, why does the Commission accept them? Tsebelis and Kalandrakis (1999) provide an answer to this question: by introducing amendments along a different dimension the EP can make the Commission better off if it adopts the amendments. Corroborating these arguments is the fact that the Commission subsequently accepts two-thirds of parliamentary amendments, and about half are accepted by the Council (Tsebelis and Garrett, 1997: 87).

These data suggest three things. First, assuming complete information throughout the cooperation procedure is inappropriate – under complete information there would have been no amendments. Second, by the time Parliament makes its amendments, all actors are better informed. Parliament tends to make amendments that the Commission will accept, and the new proposal tends to be accepted under QMV in the Council. Finally, the Parliament’s conditional agenda-setting power is far from trivial. The Commission apparently often overlooks pro-integration items when writing initial proposals. When the Parliament proposes these in amendments, it can often significantly change the content of legislation. We should also note, of course, that some of Parliament’s amendments are unacceptable to the Council or Commission. This could reflect mistakes in Parliament as to the preferences of the other institutions, position taking or efforts to influence future pieces of legislation (which Tsebelis and Kalandrakis (1999) have called ‘indirect agenda setting’).

**Codecision before and after Amsterdam**

How did codecision I affect legislative dynamics? How were these altered by the reformed codecision II? We provide straightforward answers to these questions. First, codecision I failed to make the Parliament a co-equal legislator with the Council – in many instances Parliament was likely to be more influential under cooperation. Second, the Amsterdam reforms were sufficient to bring about the objective of Council–Parliament equality in the legislative realm.

There are four significant institutional differences between cooperation and codecision:
Parliament has unconditional veto power in (both iterations of) the co-decision procedure, but it needs an alliance with the Commission or one member of the Council in order to have its veto sustained under cooperation.

Only a unanimous Council can modify those amendments made by the Parliament and accepted by the Commission under cooperation. Any amendment that the Council does not support by QMV triggers the Conciliation Committee.

Under co-decision I, if the Conciliation Committee failed to agree to a joint text, the Council was able to make a ‘take-it-or-leave-it’ proposal to Parliament. In contrast, this agenda-setting power lay with the Commission and Parliament (in alliance) under cooperation.

The Commission’s support is necessary for a proposal to become law under cooperation. Under co-decision, however, the Commission’s formal support is not necessary for a proposal that garners the appropriate majorities in the Council and Parliament.

We will address each of these institutional innovations in turn. The first two entail a comparison of agenda-setting and veto power under cooperation and co-decision. We then move to the Amsterdam reforms to show why the Parliament is a co-equal legislator under co-decision II. Finally, we highlight the decline of the Commission’s agenda setting power from consultation to co-decision II.

**Agenda-setting versus veto power**

Before engaging the intricacies of the co-decision procedure we wish to establish the dominance of agenda-setting over veto power in legislative environments. Comparing national regimes, there is a clear institutional difference between parliamentary and presidential systems. In presidentialism, the legislature is essentially given the power to make proposals that the president (the executive branch) can either veto or accept. These roles are reversed in parliamentary systems, where the cabinet government (now the executive) makes proposals to the legislature that it can accept or veto. Presidents often want to gain more control over legislatures through line item vetoes. Legislatures in parliamentary regimes complain that they operate in executive dictatorships. Why do they think that agenda-setting power is important?

The effects of agenda setting can be illustrated using a one-dimensional spatial model, but the advantages of being the agenda setter only increase in higher dimensions (Tsebelis, 1997). Figure 2 presents a simple illustration with two unitary actors, the executive (E) and the legislature (L). Both must agree for a new proposal to become law. The content of winning proposals,
however, depends on which actor is the agenda setter (and on the location of the status quo).

Consider two different scenarios. In the parliamentary model, E makes a proposal to L that it can either veto or accept. If the policy status quo is at Q, the executive branch can propose its ideal point, $P_e$, and this will be accepted by the legislature. But if L were the agenda setter (i.e. the regime were presidential), it could successfully propose $P_l^1$ – closer to its ideal point than $P_e$. The same logic holds for a status quo to the right of L ($Q'$); the parliamentary outcome would be $P_{e'}$, whereas $P_{l'}$ would be the presidential outcome. Indeed, the only situation in which there is no advantage to being the agenda setter is when the policy status quo is located on the E–L contract curve (e.g. $Q''$). Such a policy status quo is invulnerable because there is no policy change that would gain the support of both E and L. It should be noted, however, that the probability of an outcome already lying on the contract curve is of measure zero in issues spaces of higher dimensionality.
Agenda setting under consultation, cooperation and codecision I

In terms of the preceding model, the EU operates as a 'parliamentary' regime under consultation procedure (the Commission acts as the executive branch and the Council is the legislature). This is the situation that seems to inform many neofunctionalist and journalistic accounts of decision making in Europe – in which the Commission is deemed the EU’s 'government'. But things are quite different when the Parliament can amend the Council’s common position. We have already noted the frequency and influence of Parliament’s amendments under cooperation. The trend continued under codecision I. Between 1993 and 1995, for example, Parliament proposed over 1000 codecision amendments. Around three-quarters of these amendments were accepted by the Commission; and more than half were subsequently accepted QMV by the Council.

Amendments are a fact of life under cooperation and codecision I (and codecision II, we presume), but their effects differ under the various legislative procedures. When legislation is governed by cooperation, Parliament can use amendments to give it significant agenda-setting powers. But under codecision I, we believe that the existence of Parliament amendments allowed the Council to exercise effective agenda-setting authority for the first time under QMV.

Consider the cooperation procedure first and assume that the Parliament has made 10 amendments to the Council’s common position (and that the Commission has accepted them). These amendments then return to the Council, which must decide whether to accept them by QMV. There are $2^{10} (=1024)$ possible sets of amendments that the Council could support (of the form 00000000001, 00000000010, etc. where the ones represent included amendments). Only one of these could be passed by QMV – 1111111111; the remaining 1023 require Council unanimity. In cases where the Commission accepts its amendments, the Parliament has considerable agenda-setting power under the cooperation procedure.

Now consider the same scenario under codecision I, but taking into account this procedure’s institutional differences from cooperation. Assume for the moment, by backwards induction, that the Conciliation Committee did not agree to a joint text because one of the actors – we argue, the Council – knew it could do better by moving to the final stages of the procedure. There has been considerable disagreement about what the clause of the Maastricht Treaty (Article 189b[6]) that governs the codecision I endgame meant. Recall that if the Conciliation Committee broke down, the Council made a proposal that became law unless an absolute majority of the Parliament voted against it.
What proposal could the Council make? The Maastricht Treaty’s wording was that the Council could introduce the common position ‘to which it agreed before the conciliation procedure was initiated, possibly with amendments proposed by the European Parliament’. This provision could be interpreted in numerous ways. The most restrictive interpretation is that the Council either could select the previously adopted common position or it could add some of the EP amendments – but without any modifications to the particular amendments (Moser, 1996). Elsewhere, we have used a looser interpretation: the Council could modify or combine amendments as it saw fit (Garrett, 1995; Garrett and Tsebelis, 1996; Tsebelis and Garrett, 1996). Since the Council could exclude any particular EP amendment, it could certainly adopt a more pro-EP position and include this amendment in a modified form. In any event, the Council’s position would avoid an EP veto by absolute majority. This interpretation turns the Council into an unconstrained agenda setter under codecision I because it could essentially propose to the Parliament any variation of its common position that it wanted.

But even if one uses the more restrictive reading of 189b(6) from Maastricht, the Council’s latitude in the proposal made to the Parliament would still have been considerable. Under codecision I, the Council could choose freely – always voting by QMV – among the $2^{10}$ possible modifications of the common position the one it most preferred to propose to the Parliament. It is in this sense that agenda-setting power was taken from the Parliament and given to the Council by codecision I.

The implications of this change in the location of agenda-setting power are clear. Applying the supranational scenario to Figure 2 – in which the status quo (Q) is less integrationist than the QMV pivot in the Council (E) and the Parliament (L) is more pro-integration – the EU acts as a ‘presidential’ regime under cooperation. The legislative outcome would be $P_1$ rather than $P_e$. But the situation is reversed under codecision I: the EU was more ‘parliamentary’ because the Council could successfully propose $P_e$ to the Parliament after the Conciliation Committee broke down. If the governments that signed the Treaty on European Union intended to make the Parliament a co-equal legislator at Maastricht, the procedure they created failed to achieve this objective.

**Agenda setting under codecision II**

The reforms of the codecision procedure undertaken at Amsterdam entailed one crucial institutional change. With the recent ratification of the treaty, the Conciliation Committee has become (for all intents and purposes) the final step in codecision II. As a result, agenda setting now resides with this Conciliation Committee, or (alternatively) with both the Council and the Parliament. It seems that the EP understood the limitations of codecision I from the
beginning. It tried to eliminate the final stage from the beginning by passing Rule 78. This rule required the President of the Parliament to ask the Commission and the Council to withdraw the bill should an agreement not be reached in the Conciliation Committee, and then placed the Council text for a rejection vote (Hix, 1999b).

Decision making in the Committee resembles an unstructured non-cooperative bargaining game in which the agreement of the representatives from both the Council and the Parliament is necessary for a new law to be passed, and representatives are able to make as many amendments and counter-proposals as they wish. One could analyze this Conciliation Committee bargaining game in two ways. The representatives of the two chambers could be considered as unitary actors, or we could think of them as independent actors whose preferences are aggregated using QMV (for Council members) and simple majority (for the Parliament’s representatives) decision rules. Which is more appropriate depends on the internal organization of the representatives from the Council and Parliament in the Conciliation Committee. If (as we think likely) commitments made within each of these small delegations are likely to be credible, there is little to be gained from moving to the far more complex environment in which bargaining is simultaneously taking place among the Council and Parliament representatives and between the two groups (Tsebelis and Money, 1997).

In terms of the simple representation in Figure 2, legislation approved by the Conciliation Committee under codecision II will be somewhere on the interval E–L. If the status quo is Q (i.e. under the supranational scenario), the legislative outcome must be at least as good for the Parliament (L) as under codecision I (where legislation would be passed at P_e). Moreover, Parliament may do better under codecision II than cooperation because it can now veto Council proposals unconditionally, whereas under cooperation it needed the support of either the Commission or one member of the Council.

In the supranational scenario, the Parliament’s position is therefore stronger under codecision II than it was under codecision I because the Council is no longer the effective agenda setter in the endgame. In institutional terms, the Council and the Parliament are now co-equal legislators and the EU’s legislative regime is truly bicameral. Legislative outcomes, as a result, will tend to be more integrationist under the reformed codecision than under its initial design at Maastricht – so long as the supranational scenario is appropriate.

Making more precise predictions about legislation passed under codecision II is a hazardous enterprise. The simplest way to think about bargaining in the Conciliation Committee under codecision II would be to use Nash’s cooperative approach – predicting an outcome half way between P_e (P_e') and
P_1 (P'_1), that is P_e1 (P'_e1) in Figure 2. The same result would be obtained using non-cooperative game theory either if both actors were infinitely patient (Rubinstein, 1982) or if they were equally patient and a random draw determines which actor makes the initial proposal (Baron and Ferejohn, 1989).

This 'split-the-difference' prediction about codecision II can only be sustained, however, if one believes that neither of the legislative 'chambers' in the EU – the Council and Parliament – possesses any bargaining advantages over the other. In our single dimension model if the status quo is not located between the Parliament and the Council, one of the two institutions will be located closer to the status quo than the other. This institution may be able effectively to present the other with a 'take-it-or-leave-it' offer. But if there are any such positional advantages, they will lessen as the dimensionality of the policy space increases and any institutional advantages will come to play a more significant role.

As the codecision procedure is now written, there is no clear institutional advantage for one chamber over the other. But, for example, if one were to think that generating an absolute majority in the Parliament is harder than forming a qualified majority in the Council, this would give a bargaining advantage to Parliament's delegation in the Conciliation Committee. Conversely, if getting an agreement in the Council is more difficult, the Council could turn this difficulty into a bargaining advantage (for alternative analyses, see Crombez, 2000 and Steunenberg and Dimitrova, 1999).

The changing role of the commission as a legislator

We have devoted considerable attention to the changing balance of legislative influence between the Council and the Parliament in the EU since 1987 because the fate of the Parliament is central to many arguments about the democratic deficit. But attention to the Council–Parliament relationship should not obscure the other clear consequence of the move from consultation to codecision II. The formal agenda-setting powers of the Commission have been systematically degraded in the past decade. Under codecision (I and II), the Commission plays a significantly smaller role in determining the final content of legislation than under consultation or cooperation. Crombez (2000), based on the fact that the Commission does not have a vote in the conciliation committee, goes so far as to claim that the Commission plays no legislative role at all under codecision II. This is an overstatement. Under complete information, for example, the Commission can still identify proposals that represent an improvement over the status quo for both the required majorities in the EP and the Council, and which the two actors cannot modify at
all. Nonetheless, such details should not obscure the fact that the Commission’s legislative role has declined appreciably since the mid-1980s.

This change in the role of the Commission as a legislator has significant implications for neofunctionalist approaches to European integration. The power of the Commission as a legislator has been eroded in each one of the revisions of the Rome treaty. In the EU’s founding treaty, the Commission alone had agenda-setting power (in the consultation procedure). The Commission had to share its agenda-setting role with the Parliament under cooperation. Codecision I effectively shifted agenda setting to the Council; the Council and the Parliament share agenda setting under codecision II. Moreover, the lessening of the Commission’s legislative influence will only be exacerbated in the future if, as seems likely, more issue areas will be brought under the reformed codecision.

Of course, neofunctionalist arguments about the Commission’s influence do not depend solely on legislative agenda setting. They also emphasize the Commission’s autonomy in the implementation of EU legislation, as well as the ability of the Commission to shape the preferences of other actors (such as the governments in the Council) in virtue of their expertise and information advantages. Elsewhere, we explore the interrelationships between legislation and implementation – and the impact of changes in legislative procedures on the Commission’s overall influence on European integration (Tsebelis and Garrett, 1999). For present purposes, however, we only wish to point out the secular decline in the Commission’s legislative influence since the passage of the SEA.

The remaining influence of the Commission over legislation is thus likely to rely more on informal channels – asymmetries of information, persuasion, deal-brokering – than on the formal roles written into the various procedures. But it should also be pointed out that even these informal powers may well be damaged permanently by the resignation of the Santer Commission under the threat of Parliamentary removal.

4 The national delegates scenario

The preceding two sections have been based on the supranational scenario that we consider to be a reasonable characterization of much EU legislative politics in the past decade. Let us now speculate about potential changes in the underlying structure of EU politics and their effects on the legislative process.

Moving to the national delegates scenario entails two modifications from supranationalism. These concern the policy status quo and the preferences of
the Parliament relative to those of the Council. Our analysis thus far has assumed that the policy status quo was less integrationist than the ideal point of the QMV-pivot in the Council (reflecting the logic of the Luxembourg compromise). In cases where new areas are brought under the QMV-based procedures (as was the case at both Maastricht and Amsterdam) this assumption will remain appropriate. But in areas where an issue is shifted from one QMV-based procedure to another (such as the shift of internal market matters from cooperation to codecision), it may be more appropriate to assume that the policy status quo is already considerably more integrationist (i.e. generated since 1987).

If the post-1987 legislative status quo lies on the contract curve between the ideal points of the pivotal government in the Council and those of the Commission (under consultation), the Commission and the Parliament (under cooperation), and the Parliament (under codecision), it will be stable – so long as the preferences of the relevant actors remain similar. This would hold true even for policy areas in which the legislative decision rules have been changed (for example from cooperation to codecision) because under all the QMV-based procedures outcomes are generated between the ideal points of the relevant institutional actors.⁸

Policy stability, however, is only guaranteed so long as the relative positions of institutional actors remain the same. Perhaps the most likely change to this constellation in the coming years is that the preferences of MEPs will become less integrationist relative to those of Council members. The supranational assumption about the Parliament depends on the freedom of MEPs to act independently of the constituencies that elect them – in virtue of the general public's disinterest in politics at the European level. Today, this is still an entirely reasonable assumption – as the June 1999 elections show. But as citizens come to understand the power of the Parliament, they may well take EP elections more seriously. If and when this happens, Parliament's median voter would likely become less integrationist. European citizens on average are much less integrationist than their MEPs; they are also less integrationist than their own national governments. As a result, one might reasonably expect that the preferences of the median MEP under a national delegates model might be less integrationist than most of the governments in the Council.

Our definition of the national delegates scenario is thus a situation in which the median MEP is less integrationist than the QMV pivot in the Council. The legislative effects of this scenario, however, depend upon the policy status quo. For new issue areas brought under QMV-based procedures in the future, the status quo will be that under the Luxembourg compromise (i.e. less integrationist than both the median MEP and the QMV-pivot). In this
case, the extent of integration would clearly decrease the greater the Parliament's legislative role.

Things would be different, however, where the policy status quo was generated under QMV-based procedures with a supranational Parliament. Legislation first passed under consultation and still governed by this procedure would be stable. The status quo would be invulnerable under cooperation because if the Parliament has incentives to make amendments that are less integrationist than those preferred by the Commission, the Commission would not agree to any of them. In this case, however, the Parliament's amendments would still become law if they were supported unanimously in the Council. If legislation was passed under codecision I but then reassessed under codecision II, the QMV-pivot in the Council could block less integrationist proposals made by the Parliament. This could apply, for example, to internal market legislation passed between 1993 and the ratification of the Amsterdam treaty in 1999.

Legislative rollback by a Parliament of national delegates would be possible, however, where the status quo was generated under either consultation or cooperation – but is now subject to codecision II. This scenario is likely to be particularly important in the future as more and more legislation comes to be governed by the post-Amsterdam version of codecision.

Thus, there is a potential tradeoff in empowering the European Parliament, that most of its supporters have not seen. The goal of increasing the power of the Parliament has been to reduce the democratic deficit in Europe. With the ratification of the Amsterdam treaty, this was achieved in the legislative arena by making the EU bicameral. But one consequence of empowering the Parliament is likely to be European citizens taking MEP elections more seriously. In turn, this may lead Parliament to use its new powers in ways that slow down or roll back the pace of European integration. Increased democracy has long been thought of as a central part of the European integration project. But ironically, reducing the democratic deficit may in fact retard integration in the future.

5 The strong parties scenario

This section discusses the potential for the evolution of strong party organizations in the EU and the effects of this on legislative dynamics. Several analyses of the EU have focused on the role of the supranational party system generated inside the EP (Hix, 1999a; Hix and Lord, 1997; Hooghe and Marks, 1999; Kreppel, 1998; Raunio, 1997). In our national delegates scenario, both the Council and the Parliament are responsive to the interests of their
constituents ‘back home’, but in different ways. The Council is indirectly elected and citizens are unlikely to vote their representatives out of office purely on the basis of their EU activities. In contrast, MEPs are directly elected and hence should be more responsive to their constituents. In this important sense, the Parliament under national delegates would be a more democratic institution than the Council. But indirect election of the Council has clearly been essential to making European integration possible. Direct representation of national governments in the Council is the quid pro quo required for sovereign states to accept the pooling of their sovereignty at the supranational level.

If the EU is to move further in the direction of federation in the coming years, one likely institutional feature of this transition would be the building of strong party organizations, both within the Council and the Parliament, and between the two chambers. There are powerful incentives for legislative entrepreneurs to promote party organizations within individual chambers (Cox and McCubbins, 1993). But similar arguments could also be made about coordination across chambers in bicameral legislatures.

This section speculates about the legislative consequences of a move towards strong parties in the Council and the Parliament. Our basic intuition is that the strengthening of parties would both make it easier to pass new legislation within the Pareto set of the Council and the Parliament, and to render such legislation less vulnerable to challenge over time. We do not concentrate on the different rules for selecting members of both chambers because strong parties would tend to take and enforce the same positions across delegations in both the EP and the Council. Rather, we focus on the differences in the institutional rules that govern behavior within the chambers, and the effects of party organization on the relationship between these rules and legislative outputs.

The Council is an institution with a built in status quo bias. Decisions require at least a qualified majority. The strengthening of parties would not break up such an impasse unless a new party organization (or coalition of parties) could control over 70 percent of Council votes. Such supermajorities are rare in the history of parliamentary politics.

A similar supermajoritarian picture emerges with respect to the European Parliament if we consider two factors. First, in the second round of all legislative procedures, an absolute majority of MEPs is required for the passage of legislation. Second, the absentee rate among Parliamentarians is high. Tsebelis (forthcoming) has argued that the combination of these two factors creates a ‘qualified majority equivalent’ because the 50 percent of the votes necessary has to be found among the (say, 70 percent of) MEPs present on the floor.
Combining two supermajoritarian institutions and asking their agreement for new legislation creates a formidable bias in favor of the status quo. Indeed, only existing policies outside the Pareto set both of the Parliament and of the Council could be modified regardless of the procedure used. The situation is likely to become more rigid than the USA where filibuster rules require a three-fifths majority in the Senate for cloture (with simple majorities being used in the House).9

6 The regulation scenario

Up until now, we have based our analyses of EU legislative dynamics on the assumption that the primary policy differences among the different European institutions concerned the extent of integration each desires. This is the dominant assumption in the literature, but in this section we want to analyze a different scenario that reflects another set of common policy conflicts in the EU.

On the basis of voting records in the Parliament between 1989 and 1994, Kreppel and Tsebelis (1999) show that traditional left–right divisions characterized many issues, and that the Socialist group was very influential in the passage of bills. They conjecture that the differences between the EP and the Council may often have occurred not on an integration axis so much as on an axis of regulation, with the left in the Parliament pushing for more common regulations across Europe.

Kreppel and Tsebelis’s approach is consistent with the view that European Parliament elections are second-order national elections (Marsh, 1998; Reif, 1997). Classical partisan differences in MEP behavior may arise not only because the people of Europe do not understand what is going on in the European Union; partisanship may also be important because citizens consider European elections in the national framework. European elections usually occur between national elections, when the popularity of the party/coalition in government is typically relatively low. Consequently, the opposition at the national level may gain in EP elections in the same way as the president’s party loses seats in mid-term elections in the USA.

From the late 1980s to the mid-1990s, most EU member governments were center–right (with a clear move to the left in recent years). This allowed left parties to take advantage of mid-term slumps in national governments’ popularity to perform very well in European Parliament elections. Thus, in this period when the EU was taking on the core of the internal market agenda – transferring regulatory competencies from the national to supranational levels – the right dominated the Council, whereas the left was more powerful in the Parliament.
Analyzing the legislative process on the assumption of partisan politics with clear differences between the Council and the Parliament requires a number of changes to the scenarios previously discussed. First, the move from supranationalism to national delegates to strong parties essentially concerned changes within the Parliament. The regulation scenario, in contrast, gives primacy to the Council – or more precisely to national electoral politics within member states. For example, the shift in recent years of the center of political gravity from the right to the left in most EU countries would have no impact on any of our previous scenarios, but we would have predicted (as transpired) a shift to the right in the 1999 EP elections.

Second, all our earlier analyses were premised on the existence of a constant coalition between Parliament and Commission. Since the Council appoints it, we might expect that the Commission is more likely to side with the Council on many matters. Alternatively, one might contend that the technocrats in the Commission would tend to be quite conservative on most regulatory matters, and hence that they would be more likely to side with the Council when it was dominated by right-wing governments (as opposed to integration issues, where the Council and Commission are always likely to differ considerably). In the period up to the mid-1990s, it is not possible to distinguish between these two interpretations, but this will change in the coming years given the changed partisan composition of the Council and Parliament in 1999 and beyond.

Third, in cases where the Commission’s preferences are closer to the Council’s than the Parliament’s, the conditional agenda-setting powers of the EP under cooperation are eliminated. This is because a coalition between Commission and Parliament is a necessary condition for conditional agenda setting. But this would have little effect on codecision because of the Commission’s greatly diminished role under both versions of the procedures.

In sum, this section has speculated about an organization of the European political space that is more ‘mature’ in some senses than that envisaged previously. Instead of primarily concerning the scope of European integration, the regulation scenario analyzes how an integrated Europe should be governed. It also entertains a political dynamic in which differences in electoral cycles tend to generate partisan-balancing behavior by citizens. This scenario may already generate leverage over certain policy dynamics in the recent past (including regulation of the internal market), but it might become increasingly apposite in the future.
7 Conclusion

This paper provides a comprehensive overview of EU legislative dynamics, with respect both to all the QMV-based procedures and to a range of plausible scenarios for the future path of European integration. We have made five basic points, all of which can be best illustrated with respect to the legislative regime settled on at Amsterdam. First, the collective will of the EU governments in the past decade has manifestly been geared to democratizing decision making by empowering the Parliament. The Amsterdam revisions of the codecision procedure make the Parliament a coequal legislator with the Council and relegate the Commission to a more traditional bureaucratic role in policy making.

Second, so long as the Parliament is a pro-integrationist entrepreneur that is essentially unconstrained by the will of European citizens, the codecision II regime will ensure that new legislation will advance the integration agenda more than is desired by the pivotal government in the Council under QMV. This was not the case with the initial Maastricht version of codecision because agenda-setting power reverted to the Council in the legislative endgame. Making the Conciliation Committee the final stage of codecision eliminated this Council bargaining advantage.

Third, if and when MEPs become more responsive to the demands of their constituents with respect to European integration, the power of the Parliament may under some circumstances result in legislative rollback of the integrationist agenda. Despite common assumptions to the contrary, reducing the democratic deficit may actually slow down the pace of European integration.

Fourth, the EU is evolving into a bicameral legislature with the bias in favor of the status quo that it entails. This tendency is strengthened by the fact that the Council decides not by simple majority but by QMV. In addition, a similar de facto qualified majority threshold exists for Parliamentary decisions because of absolute majority voting requirements and the high level of absenteeism inside the EP. As is the case in the USA, this configuration will not permit policy changes that are not supported by an overwhelming majority of the actors involved.

Finally, if the differences between Council and EP are on issues of regulation, that is, along the traditional left–right axis, the Commission is more likely to be the ally of the Council and not of the Parliament. In addition, the differences between the two actors may be structural rather than accidental. A right-(left-) wing Council (generated by national elections) will tend to appoint a right-(left-) wing Commission, but in turn this will tend to result in swings to the left (right) in the next round of Parliament elections.
Notes

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1 The Council is a body in which cabinet ministers from member governments deliberate collectively on EU policy. QMV is a voting rule in which the votes of member governments are weighted and in which roughly five-sevenths of these weighted votes are required for passage. In the current 15-member EU, these weights are – France, Germany, Italy and the United Kingdom: 10; Spain: 8; Belgium, Greece, the Netherlands and Portugal: 5; Sweden and Austria: 4; Denmark, Finland and Ireland: 3; Luxembourg: 2. From the total of 87, 62 votes constitute a qualified majority.

2 The current allocations of the 626 members of the Parliament are – Germany: 99; France, Italy and the UK: 87; Spain: 64; the Netherlands: 31; Belgium, Greece and Portugal: 25; Sweden: 22; Austria: 21; Denmark and Finland: 16; Ireland: 15; and Luxembourg: 6.

3 This does not take into account issues where the Council is unanimous and consequently the agenda-setting power of the Parliament and the Commission does not exist. Issues of constitutional division of power (such as who monitors implementation of legislation) would fall in this category.

4 For analyses in multiple dimensions, see Tsebelis (1994, 1995, 1997). One-dimensional models of the EU often report no agenda-setting role for the Parliament. But higher dimensionality models reveal that such agenda-setting power is significant (Tsebelis and Kalandrakis, 1999).

5 The situation would obviously be different if the status quo were between the ideal points of government 3 and the Commission. Here, there would be no proposal the Commission would want to make that government 3 would support – the status quo would be invulnerable. Following the rapid pace of legislating in the past decade, this may now characterize some policy areas subject to consultation.

6 Strictly speaking, any joint text produced by the Conciliation Committee must be passed in both parent chambers – QMV in the Council and by absolute majority in the Parliament. Since all Council members are represented in the Conciliation Committee and since the Parliament’s delegation can be expected to mirror the sentiments of all its members, one should expect this final ratification to be unproblematic. There is only one instance where a joint text has not been passed into law: the conciliation committee report on legal protection of biotechnological inventions was rejected by Parliament (Tsebelis, 1997: 37).

7 Technically speaking, the Commission can make a proposal that is located in the winset of the status quo and in the ‘core’ of the qualified majority of the Council and the absolute majority of the EP. Such a proposal will pass without amendments: it will be accepted (because it belongs in the winset) and cannot be modified (because it belongs to the core). The core does not always exist, but the required high thresholds for decisions in the Council and effectively
in the EP make the existence of the core more likely. For a discussion of the issue, see Tsebelis and Garrett (1999).

This is only strictly true in a one-dimensional policy space. In multiple dimensions, stability will be defined more broadly in terms of the core and the uncovered set (Tsebelis, 1997).

Majorities of two-thirds are required to override presidential vetoes in the USA, but this is still lower than the five-sevenths QMV requirement in the Council.

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