

**Inertia and Patterns of Decision-Making in the
Council of the European Union**

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Abstract

This paper provides theoretical insights into possible ‘inertia’ in Council decision-making and investigates reasons why the Council of the European Union, in practice, was not overwhelmed by an excessive workload after the 2004 Eastern enlargement. It argues that it may be rational for actors to mutually relax their positions on some of the less important topics to themselves for the sake of preserving efficiency of decision-making in the Council. Based on a formal model of the situation as well as on quantitative empirical evidence, the paper finds the transfer of part of the decision-making from the ministerial level to the bureaucratic or expert level of COREPER and working groups to be the most plausible explanation of question. In our view, the Council was able to adapt its modes of taking decisions and avoid what theoretically might have been expected to increase inertia in Council decision-making.

1. Introduction

The capacity of the European Union (EU) to take decisions was expected to be strongly affected by the 2004 enlargement by ten new member states (the “Eastern enlargement“). General understanding implied that the dramatic increase in the number of member states, amplified by their structurally different political and socio-economic systems, combined with considerable cultural differences, might essentially bring about gridlock to EU decision-making processes. The institution expected to be hit strongest by these effects, due to its notable intergovernmental character, was the Council of the EU.

Several years after the 2004 enlargement, this paper inquires into why in practice, no true signs of gridlock can be discerned and, apparently, the overall decision-making process in the EU seems to be proceeding without major challenges. In particular, we aim to explore the mechanisms developed within the Council of the EU, or institutional innovations, that prevented the council in practice from being stuck. Our primary focus is the ability of the Council to take decisions in efficient and effective ways, in spite of the drastic increase in EU membership.

In order to investigate this issue, we conceptualize decision-making in the Council after the Eastern enlargement as a situation of common-pool resource extraction. With the help of a simple model based on this conceptualization, we are able to explain interesting dynamics of EU negotiations and to grasp the complexity of Council decision-making showing why in the end, despite forces that should have increased inertia in this institution, the Council ‘survived’ the effects of the Eastern enlargement. The argument we put forward is that -- in order to preserve the ministerial level of the Council as an efficient decision-making body -- member states’ representatives are very likely to have increasingly delegated part of the agenda previously dealt with on the ministerial meetings to the level of the Committee of Permanent Representatives (Coreper) and the Council working groups (WGs). Further we argue that this behavioral change must have been induced by newly established (although perhaps implicit) internal rules of conduct. This institutional adaptation is the most likely reason why the Council essentially still works smoothly, even based on the current membership of twenty-seven states.

Our paper is structured as follows. The next section discusses the puzzle underlying our

paper, i.e. the question why the EU political system and specifically decision-making in the Council has not come into a situation of gridlock as a result of the 2004 enlargement. Section three formalizes the discussion to some extent and demonstrates patterns that may have led to institutional adaptation within the Council after the 2004 enlargement. Section four elaborates on this approach and presents two-by-two game structures capturing interaction within the Council in easily discernible ways. Finally, section five subjects the argument to a quantitative empirical test. The last section summarizes the main findings of our paper and concludes.

2. Explaining Potential Gridlock in the Council: Theoretical Approaches

Clearly, the 2004 Eastern enlargement, if not resulting in gridlock, might have been expected to make reaching agreement among member states more tedious. Reasons for this assumption are the fact that with more actors, more priorities have to be accommodated, and consequently, in general terms, the more difficult it is to reach a common position on any specific issue. The logic of a popular conceptualization of political competition -- the spatial model of politics -- demonstrates these patterns in clear ways: the Eastern enlargement has brought a higher diversity of EU member states' interests and accordingly, can be expected to render EU decision-making more complicated in practice.

Firstly, in the EU political system, more member states effectively implies more veto players (Tsebelis, 2002). A substantial share of decision-making is still adopted by unanimity in the Council; this holds notably for some of the politically most contentious domains, such as taxation, and most aspects within the area of common foreign and security policy. Equally significantly, even where qualified majority voting (QMV) applies, the tendency within the Council is to seek as much consensus as possible. Indeed, only about 19 percent of the legislative acts are contested by one or more ministers (Plechanovová, forthcoming). Put simply, the Eastern enlargement has brought many more occasions on which one or a few member states could find the emerging common position unacceptable and veto, or at least substantially complicate, its adoption.

Secondly, as has been demonstrated also by Tsebelis (2002: 30; 2008; Tsebelis and Yataganas, 2002), this core of 'unbeatable' positions is very likely to expand even under the

QMV rule. This change is not necessarily dramatic, it depends on the relative positions of the actors, but in practice, one may certainly expect the expansion of the core to be significant. What Tsebelis calls the political 'core' -- "the set of points that cannot be defeated through the application of the decision-making rule" (Tsebelis and Yataganas, 2002: 295; also see Tsebelis, 2002) -- is certain to have substantially expanded with the enlargement.

Related to this issue -- although there is little consensus among academics focused on EU decision-making as to what the key dimensions in Council politics actually are -- it is clear that the Eastern enlargement has increased the mean distance among actors in the EU political space. Some authors find Council politics to be largely determined by the traditional left-right ideological positioning of the member states' governments (Mattila, 2004; Hagemann 2005), or by non-economic components of the left-right dimension (e.g. Marks et al. 2002). Others argue that the best predictor of actors' positions in the Council is their geographic location (Mattila and Lane, 2001; Thompson et al., 2004; Zimmer et al., 2005; Elgström et al. 2001). Yet others contend that contestation in the Council is less determined by a single general determinant, but will vary depending on the particular policy issues at stake (e.g. Hayes-Renshaw et al., 2006). On the basis of the collection of a substantial amount of data, Plechanovová (forthcoming) claims that in the analysis of Council decision-making post-2004, no specific substantial dimension can be discerned and that the concept of core-periphery more adequately describes patterns of contestation in the Council. Various statistical techniques have been employed, both frequentist and Bayesian ones (Hagemann, 2007; Plechanovová, forthcoming), as well as various data types (see König, Luetgert and Dannwolf 2006) to assess the respective claims empirically. Whichever turns out to be the closest to the empirical reality, most findings make us expect that Eastern enlargement is likely to substantially challenge the Council's decision-making efficiency as on all the dimensions, the new member states can be expected to occupy positions at a distance from those of the older EU members.

In essence, work based on the logic of the spatial model suggests that "the enormous injection of economic, political, legal and cultural diversity" (Zielonka, 2007: 188; also see Delhey, 2007) brought about by the enlargement is highly likely to increase pressure on the Council, as well as on the EU political process more generally. Based on this approach, König argues that because there is no evidence of position-convergence among the actors, the Eastern

enlargement is likely to generate a substantial slowdown in the EU legislative process (2007; see also König and Junge, 2009; for an earlier analysis, see König and Bräuninger 2002). König's results are largely supported by the findings presented by Golub (2007; but see Golub and Steunenbergh, 2007, for different results). Based on a similar logic, an element of Mattila's earlier study explores how actors' positions on different policy dimensions determine their willingness to contest decisions in the Council (2004).

Closely related to the issue of preference divergence is the question whether the efficiency and speed of decision-making can be negatively influenced by the simple fact of an increase in the number of actors. Analytical explorations show that as a matter of fact, a higher number of actors by itself does not necessarily generate negative pressures on the decision-making processes, as with an increasing number of actors, the number of potential winning coalitions increases as well. Due to this, as argued by Golub (2007), an increased number of actors in the Council may actually speed up the legislative process up. Using the same logic, Koremenos et al. (2004: 784-85) predict that in context of international institutions, increasing the number of members of an international organization "[expands] the possibilities for tradeoffs among the members" and thus enhances cooperation. However, these insights only hold as long as one disregards the fact that "bargaining over side-payments and package deals increases the duration of the decision-making process" (Schulz and König, 2002: 656). In other words, the situation changes once the transaction costs inherent in conduct of lengthy negotiations on trade-offs and package deals are considered. In this vein, Golub admits that his argument about the positive impact of the number of actors on decision-making holds only under the condition that the newcomers' preferences do not diverge from those of the old members (Golub, 2007: 169). Further, as showed analytically by Hosli and Machover (2004), under both QMV and unanimity rules, assuming Independent Coalition Culture (where there are no restrictions in terms of assumed preference orderings of the members forming a coalition), the share of winning coalitions in the total decreases with enlarged membership (with the effect being stronger under the unanimity requirement as compared to QMV).

Overall, even though based on different approaches, the studies reviewed above theoretically, but largely also empirically, support the intuitive argument that an increased number of actors, and notably an increased diversity of their preferences, are likely to threaten the efficiency and timeliness of Council decision-making. First steps in this direction have

already been made by König and Junge (2009); the present paper offers other, and a partially extended, response to solve this puzzle.

In addressing the issue we make use of insights from several fields of research. Firstly, the analyses of the role committees, notably the Committee of Permanent Representative (Coreper) and the various working groups (WGs), play in Council decision-making are recalled. Recent works explore e.g. the impact Coreper may have on Council decision-making (Bostock, 2002; Häge, 2008), the conditions under which this impact is strongest (Häge, 2007) and whether the 2004 Eastern enlargement impacted on the modes of operation of Coreper (Lempp, 2007).

Secondly, we make use of the research focusing on actor identity and interest construction, pointing to the fact that comparatively higher levels of contact among actors in Brussels lead to changes in their role-perceptions. Importantly, these socialization effects apply not only to the case of officials working, for example, for the European Commission (Hooghe, 1999), but also to national officials based in Brussels (Lewis, 1998; Egeberg, 1999; Egeberg et al., 2003; Checkel, 2003). Resulting from this avenue of research is the interesting observation that the Council by no means constitutes a purely intergovernmental body, where all actors would pursue fixed, nationally defined interests, but is influenced also by effects that clearly transcend national allegiances (Lewis, 2003a, 2005; Heisenberg, 2005).

Thirdly, our analysis draws extensively on insights generated during the last decades by Elinor Ostrom and her collaborators on self-governance mechanisms and the use of common-pool resources (e.g. Ostrom, 1990, 2005; Ostrom et al., 1994).

3. A Formal Exploration of Council Workload and Patterns of Decision-Making

A Council that operates in efficient and effective ways is essential to EU policy-making and to the ability of member states to put their interests onto the EU agenda. In fact, in the current era, a considerable share of political decisions -- whether national or European -- involves the EU level in one way or another (e.g. Hix, 2005: 3-4). It is clear, then, that even though actors obviously, during negotiations in the Council, aim to get decisions as close to their nationally defined ideal points, the 'keep-the-Council-working' imperative, explicitly or

implicitly, is also present in their calculations. In fact, this perspective has clearly been discerned for national staff of the Council preparatory bodies (see Egeberg, 1999; Egeberg et al., 2003; Hayes-Renshaw and Wallace, 1997: 82; 2006, Lewis, 2003b, 2005). On the one hand, it will be in all actors' interest to keep the Council operational, but on the other hand, beyond doubt, the Eastern enlargement implies a higher danger of national interests not being accounted for. How are these antagonistic trends reconciled in practice?

In order to explore effects of the Council workload, as influenced by the size of EU membership, a more formal representation may be helpful. In the sequence, we define the Council workload (ω , omega) as depending on the number of actors, the distance of their ideal points to the median position of member state ideal points, the number of dimensions (issues), and the saliency actors attribute to these issues. Formally,

$$\omega = \sum_{i=1}^n \sum_{j=1}^k \|x_{ij}^* - x_{MEDj}^*\| \times \sigma_{ij} \quad (1)$$

where x_{ij}^* and x_{MEDj}^* refer to the ideal point of actor i and the median of actor ideal points, respectively, on policy dimension j . Greek sigma σ_{ij} denotes the saliency of dimension j for actor i .¹

Clearly, according to equation 1, the higher the Council workload (which is a result of the Eastern enlargement), the more demanding in terms of time it is to reach agreement in the Council. For individual ministers, spending time on Council negotiations implies not having this time available to deal with national political concerns, to spend time with their families, or to play golf... Because the time available for Council negotiations is limited it makes sense to also define the concept of Council capacity (denoted by kappa, κ). Council capacity, intuitively, refers to the fact that the total amount of time, energy, and political capital ministers can invest into Council negotiations is fixed (e.g. by the overall time they can spend in Brussels) and consequently, that the ability of the Council to run lengthy negotiations and to produce decisions, is also limited.

In order to capture this problem in a way that permits analytical discussion, we propose

¹ An overview of symbols used is provided in table A1 in the appendix to this paper.

to conceptualize the situation as one of a common-pool resource extraction, as defined and extensively elaborated upon by Elinor Ostrom and her collaborators (Ostrom, 1990 and 2005; Ostrom, Gardner, and Walker, 1994). A common-pool resource (CPR) is “a natural or man-made resource from which it is difficult to exclude or limit users once the resource is provided by nature or produced by humans“ (Ostrom, 2005: 79; also see Ostrom, 1990: 30). In environmental studies, the CPRs include systems such as rivers providing drinking water, forests, or fishing grounds. The key characteristic of a CPR is that it is very costly to exclude potential consumers from its use -- a feature that CPRs share with public goods. At the same time, CPRs are specific in the sense that use of the resource by one actor lowers its availability to others, which is a typical feature of private goods (Ostrom, 2005: 80). This combination of features creates a vicious circle: all actors have incentives to extract the resource to the extent possible, but this leads to congestion, overuse, and eventually, destruction of the resource. Simultaneously, no actor has incentives to limit her extraction of the resource alone, and the CPR is depleted. This is the “tragedy of the commons“ as described early on by Garrett Hardin (1968).

The logic discussed here also applies to Council decision-making and the negotiations connected to it. The Council capacity -- here conceptualized as a common-pool resource -- is fixed at some level. While the Council workload certainly increases with EU enlargement, capacity remains constant over time (there is no reason why it should change). As long as the workload is lower than the capacity, the Council functions well, i.e. it is able to arrive at decisions in a timely way. Once, however, the workload exceeds capacity, the Council is unable to handle all of its agenda, delays occur, and the threat of a gridlock materializes. Each individual member state seeks to promote its preferences on the key policy dimensions of Council negotiations, and to put onto the agenda its own specific priorities (often formally submitted on the basis of proposals tabled by the European Commission). Because the interests of member states often contradict each other -- and Eastern enlargement may certainly have increased potential clashes of priorities -- there is a need to offer side-payments, to devise package deals and to conduct lengthy negotiations. By this, the Council capacity to produce decisions -- the common-pool resource in our conceptualization -- is extracted. Because no actor has incentives to limit its extraction unilaterally, the Council faces a situation that is structurally equivalent to the one of CPR extraction, i.e. a situation that threatens to lead

to gridlock.

What are the implications of this? How can it be explained that in practice, there does not (yet) seem to be a gridlock in Council decision-making, even though -- on different theoretical grounds -- it could clearly be expected that we should observe one in practice? In our perspective, the only potential explanation to this puzzle lies in the fact that actors adjust their behaviour to the new situation, in an effort to explicitly avoid gridlock; in other words, inertia in Council decision-making may not have occurred in practice because member states adapted their behavior in the Council to the new EU-25/27 situation.

The dynamics captured by equation 1 imply that if member states wish to preserve Council capacity -- in spite of increasing workload -- they have to react by a) lowering the number of issues discussed in the ministerial meetings, or b) by adopting more compromise-oriented positions during the negotiations. Because obviously, the number of actors involved is fixed, reducing workload effectively means reducing the number of topics ministers themselves have to decide on, or inducing them to be more willing to compromise in the negotiations.

Although the latter strategy certainly should not be rule out a priori, we focus the analysis solely on the former which appears quite more plausible for the practice of Council decision-making. In fact, there is no decision-making body whose capacities are infinite, and mechanisms are usually devised to select points that are to be decided by this institution directly and to be delegated to lower levels of decision-making (on delegation in the EU, see Pollack, 2003). Put simply, we argue that the most likely explanation for the fact that no gridlock occurred in the Council of the EU after the Eastern enlargement is that a share of the issues previously dealt with on the ministerial level has been delegated 'downwards'. For each individual point on the agenda, the member state representatives decide whether to deal with it on the level of the ministerial meeting (the so-called B-points) or whether it can be solved by experts and bureaucrats in the working groups and Coreper (the so-called A-points). If the issue does enter the agenda as a B-point and is discussed by the ministers, each member state implicitly decides to what extent to press its own position and to what extent to accept compromise proposals. The actors play a game where for each delegate the available strategies are *to press* their position (insist on discussion by ministers and strongly oppose compromise proposals during the negotiations) or *to not press* (leave the matter for bureaucrats to deal

with, or be ready to compromise in the ministerial negotiations). In our view, accordingly, the best explanation of the puzzle discussed in this paper is that the member state representatives must have relaxed their pressure on some issues, i.e. they must be playing *press* relatively less often than they would, had there been no increase in workload caused by Eastern enlargement. In effect, then, we hypothesize relatively more delegation to Coreper and the WGs.

4. Decision-making within the Common Pool Resource: A Two-by-Two Game Exploration

The dynamics underlying the situation as described above can further be represented by a game of two actors, one standing for *an individual member state represented by its minister or a small group of states* (subscript *i*) and the other standing for *all other member states as a collectivity, represented by their ministers* (subscript *-i*). Each game represents a decision on one proposal. Each of the ministers chooses between the two strategies (S) indicated above: press her position (p), and do not press it (n). The issue is discussed by the ministerial meeting if at least one of the ministers chooses ‘press’, otherwise it is dealt with by Coreper.

We denote an *actor’s basic payoff* with π_i ($\pi_{i,-i}$). These are the payoffs the actors would receive if either both pressed their positions or neither of them did (either $S_i = S_{-i} = n$ or $S_i = S_{-i} = p$) and if no further costs were imposed on these actors. These payoffs can obviously be different for each actor within one game, depending on specific interest constellations and power relations among the actors.

In addition: 1) If the resulting policy moves closer to actor’s ideal point, her payoff increases by delta (δ). This situation occurs if one actor presses his or her position while the other does not (e.g. $S_i = p \neq S_{-i} = n$). For ease of illustration, we assume that the increase for one actor equals the decrease for the other (a zero-sum situation). Accordingly, the payoff of the actor who unilaterally does not press decreases (because the resulting policy is further from her ideal point). 2) If both actors choose to press their positions ($S_i = S_{-i} = p$), the issue goes to the ministerial meeting, the negotiations are more difficult and lengthy, and each of the ministers pays the additional transaction costs of bargaining, beta ($\beta; \beta > 0$). 3) If both

ministers choose not to press their positions ($S_i = S_{-i} = n$) and thus leave the issue for Coreper, these ministers pay the costs of monitoring, denoted by the Greek mu ($\mu; \mu > 0$), because they do not have direct control over the results of negotiations. Throughout the paper, we assume that after Eastern enlargement, the costs of bargaining β rise, while the costs of monitoring μ remain constant (*ceteris paribus*). 4) In the case that an issue is discussed by the ministerial meeting despite one of the actors not considering it salient (see further below), additional costs of *annoyment* (denoted by α) are paid by the disinterested actor. In this situation, some of the ministers have to attend a session of which the agenda is not of any particular interest to them -- a waste of their valuable time.

Whether the costs of monitoring μ and the costs of annoyance α are paid and whether the benefits of the resulting policy being closer to one's ideal point δ are obtained, depends on the saliency σ of the issue for an actor. For instance, if the dimension discussed is of zero salience for an actor, her payoff is not decreased when the resulting policy moves farther from her ideal point. In many situations, quite intuitively, it is this parameter σ which determines the relative value of the individual outcomes for the actors, and thus the result of the game. The numeric values in the respective payoff matrices represent *preference orderings of the individual actors separately; the values are not directly comparable between the two actors*.

An overview of the meanings of all symbols used is provided in table A1 in the appendix to this paper. The general payoff-matrix, capturing the intuitive reasoning behind the entire model, is given in the following table 1.

[Table 1 about here]

Now consider the payoff-matrices for a situation where an issue is salient *to both actors* ($\sigma_i = \sigma_{-i} = 1$) as captured by tables 2a (the general expression derived directly from table 1) and 2b (individual actors' preference orderings).

[Tables 2a-2e about here]

As long as the costs of bargaining are lower than those of monitoring for a particular issue (table 2b), all actors press their positions, which leads them to their collective optimum (p;p). However, once the costs of bargaining exceed -- for any specific issue -- those of monitoring (due to the simple fact that the ministers already spend too much time and energy on Brussels negotiations), the originally optimal result (p;p) becomes suboptimal and it is better if the issue is delegated to experts and bureaucrats of Coreper and the WGs (see table 2c). Because of the prisoner's dilemma-like (PD) payoff structure of this situation, however, no actor has incentives to relax the pressure unilaterally, and the suboptimal outcome (p;p) is a highly stable single Nash equilibrium.

In the long run, Council decision-making will be increasingly difficult and -- because Council capacity is limited -- the decision-making mechanisms may get stuck under the excessive workload. Accordingly, the common-pool resource of Council capacity is depleted, and the gridlock occurs. Unless mechanisms are devised to restrict actors' use of the CPR, this major EU decision-making body will face serious problems.

An even more consequential model is where an issue discussed is salient *for only one of our idealized actors* (for a single state or for a small group of states, e.g. three out of 27), which is a situation that can be reasonably expected to be equally common in Council negotiations as the previous one where the issue was of equal saliency for both actors. Consider -- without a loss of generality -- a situation where $\sigma_i = 1$ and $\sigma_{-i} = 0$. In this game, if at least one of the actors insists that the issue be dealt with by the ministerial level instead of Coreper, the additional costs of annoyance are paid by the actor for whom the issue is not salient. As tables 2d and 2e show, this is actually precisely what happens, because for actor *i* who considers the issue salient, *to press* is the dominant strategy, whatever strategy is played by the opponent, *-i*. Actor *i* receives the highest payoff available, whereas *-i* is forced to pay the otherwise unnecessary costs of annoyance, diverting it from its optimum (n;n) to a suboptimal outcome of (p;n). In this representation, the individual actor (*i*) was able to pass all the costs of his or her unilateral pressure to the other twenty-six member states (*-i*).

In the longer turn, again, the outcome of this situation leads to overuse of the common-pool resource of Council decision-making capacity. The situation of asymmetric saliency is in fact even more unfortunate than the previously discussed PD-like situation, because here the

problems result only from *specific interests of every single member state* - all others are dragged into the problem rather unnecessarily. Significantly, this problem cannot be solved by increasing the iterations with which the game is played (see in table 2e that actor i has no incentive to change its strategy even if the game is repeated).

While the prisoner's dilemma problem can in principle be solved by increasing the number of iterations of the game (Axelrod, 1975) it is clear that at least in the situation of unequal saliency the threat of common-pool resource overuse cannot be mitigated without creation of effective institutional constraints on actors' behaviour. In other words, as the above semi-formalized discussion explores the actors have strong incentives to behave in ways leading to a gridlock, and the fact that we do not observe one supports our hypothesis that an institutional change (perhaps implicit) must have taken place, through which additional costs -- fines, denoted by the Greek phi (ϕ) -- are imposed on actors who are found to press all their points strongly despite the fact that this brings unnecessary costs to all the other actors. Tables 3a and 3b reveal that if the costs are high enough, in particular where $\phi > \delta - \mu$ (without any impact on the final outcome of the game, we also assume $\phi > \beta$), the actors' dominant strategies are to do not press; the Nash equilibrium solution of the game (n;n) is also the collective optimum.

[Tables 3a and 3b here]

As showed by Elinor Ostrom, the institutions regulating use of the CPR can indeed be very effective, even where on the first sight actors' interests lead to the "tragedy of the commons". According to Ostrom, there are certain specific conditions under which robust institutions governing the use of CPRs can emerge and persist (Ostrom, 1990: 88-89). These are (with some simplification): a) high uncertainty about the future states of the world; b) stability of populations, i.e. the fact that actors feel they share their past and future with the others; c) existence of extensive norms stipulating appropriate behaviour; and d) relative equality of actors' capabilities. Without a doubt, the Council fulfills all these conditions to a remarkable extent and in fact, follows the basic design principles suggested by Ostrom to a high extent as well (cf. 1990: 90).

Based on both the argumentation provided by Ostrom, and on our simplified model, we hypothesize that the Council should be able to provide and indeed in effect must have

provided mechanisms securing that actors do not unilaterally overuse its limited capacity. In particular, we hypothesize that an informal, although maybe explicit, mechanism is created that generates pressure on the member states to delegate some of the least salient agenda items that has been previously dealt with on the ministerial level downwards to Coreper and the WGs. In our understanding of the situation, this is the most natural institutional innovation the Council can undergo in order to preserve its efficiency.

A good illustration of such a move of decision-making downwards to Coreper is in fact provided by Lewis (2000) who shows how a highly ‘political’ and sensitive topic of the 1994 Local Elections Directive was kept away from discussion at the ministerial level and -- de facto as well as formally -- decided upon by Coreper. If this ‘additional delegation’ is possible with highly political issues, as Lewis (2000) demonstrate it is, moving a small portion of ‘second-order’ decision-making from ministers to Coreper should certainly not present a major challenge to their interest in the ‘sense of duty to their own countries’.

Importantly, this non-formalized procedure of moving decision-making downwards is a case of innovation that does not lead to greater leverage of the EU bureaucratic level. The responsibility for reaching consensus is delegated from ministers to their administrations, not to European institutions. Contrary to Tsebelis (2008; see also Tsebelis and Yatağan, 2002) we do not think that an increased number of actors necessarily leads to increased power of the European Commission. According to our model, states devise an institutional innovation that keeps the power with themselves.

Comparing our model with the one provided by König and Junge (2009), it is clear that the two models are complementary, not contradictory. In their study, König and Junge argue that the decision-making mechanisms in the Council are not blocked because the member states are able, through extensive log-rolling activity, to overcome gridlock, i.e. basically to devise trade-offs (within issue areas in the ministerial meeting or among issue areas in Coreper). While this certainly is a plausible scenario, it can not address the challenge stemming from the fact that all log-rolling actions take time. If we agree that the Eastern enlargement makes arriving at decisions more difficult and time-consuming on average for each particular problem, then clearly, it *must be* the case that fewer issues are dealt with in the ministerial meetings.

Interestingly, besides this simple ‘delegating-the-decisions-down’ mechanism presented

above there seems to exist yet another form of lowering Council workload -- and thus alleviating the pressure on it. In this form, decision-making is formally kept on the ministerial level, but *de facto* it moves downwards to Coreper and the WGs. In this case of the so-called *false B-points*, all member state representatives agree on the issue in principle, but are aware of the fact that other solutions would be difficult to reach, and thus are ready to adopt the solution found within preparatory bodies. However, for one or more ministers it would be politically dangerous in the domestic arena not to be seen to oppose the particular solution, and thus his or her space for manoeuvre in the Council could be dramatically reduced (Putnam, 1988). To avoid this problem, the issue is formally ‘discussed’ on the ministerial level, the particular minister interested in the issue is given an opportunity to voice his or her objections (these can be recorded in domestic politics), and the whole process is not blocked or substantially retarded. This mechanism, described in other contexts by scholars (e.g. Hayes-Renshaw and Wallace, 1997: 80; Lewis, 2003a: 1009-1010) as well as practitioners² can be understood as a particularly sophisticated form of workload reduction: while symbolic opposition by the minister to a particular solution to the problem at hand increases his or her domestic win-set, the decision-making process is in fact not blocked or retarded.

5. Empirical Insights into Attempts to Avoid Council Gridlock

In order to investigate whether the hypothesized effects as described above have materialized in practice, we resort here to a simple quantitative empirical analysis. The dataset we base our analysis on is derived from PreLex, a database monitoring decision-making processes among EU institutions (see König, Luetgert and Dannwolf, 2006 for a more detailed overview). The dataset contains *all* relevant information that can be derived from PreLex on Council decisions on *all proposals* transmitted by the Commission to the Council (and sometimes to the EP) between January 2000 and December 2007. This accounts for 3807 cases with approximately 450 to 500 acts per year.³

In terms of crude data, the dataset contains first and foremost information on interactions

² Authors’ interview with a member of the Council Secretariat, June 2009).

³ See Table 5 below for more details.

between ministers on the one hand, and expert bureaucrats on the other (Coreper and WGs). This is accounted for by two core variables, one indicating how many times an individual proposal was put on the Council agenda as a so-called A-point, the other indicating how many times it was categorized as a B-point. The number of A- and B-points aggregated by months provides the amount of points for the acts that have been initiated in the respective months, not the amount of points completed in given months by the Council or Coreper (in fact, these latter data are not available). Given the nature of our question, this does not make any difference, but it should be stressed that the data we have are not suitable, for example, to investigate activity of decision-making bodies in specific individual months; they only reflect more lasting trends.

Besides these 'core' variables, the dataset contains basic identification of each proposal and information on the date of its transmission from the Commission, and of the final decision by the Council. The crude data enter the analysis mostly after aggregation by *months, quarters, or years* to avoid disturbances caused by seasonal effects and to provide for easier interpretation of the results.

The dataset suffers from the general problem of missing data. In this case, the primary reason is the fact that some of the most recent acts have not been decided upon yet and thus the information on them is not available at all. In this respect, not including the data for 2008, 2009, and 2010 already available, but ending the analysis by December 2007, is a must. Had these excessively incomplete data been included, a strong systematic bias would have emerged. Luckily, for reasons presented below, the problem of missing data does not affect results of the main analysis, aimed at testing the core hypothesis about transmission of decision-making from ministerial meetings to Coreper.⁴

The indicator we use to assess the hypothesis is the ratio of the total amount of A-points over the total amount of B-points for acts initiated in each individual month, quarter, or year. This indicator reveals whether -- over a longer time phase -- any move of decision-making activity between the two levels can be traced empirically.

If our hypothesis was incorrect, in terms of the indicator at hand, we would expect a move from the bureaucratic level of working groups and Coreper -- where actors were expected to find it more difficult to reach a consensual position -- upwards to the ministerial level, i.e. we

⁴ These results are presented below.

would expect a relative increase in the amount of B-points. In this simple approach, bureaucrats on their own are unable to derive a decision because of the increased variety of member state interests. Accordingly, they are forced to pass the points upwards for a genuine discussion by the ministers: more points enter the Council agenda as B-points and the value of the indicator of A-points over B-points would be decreasing over long period. This is the simple approach, an intuitive one if one disregards the fact that member states need the Council and the ministerial meetings to be fully operational, and that ministers' capacities are limited.

If we do take this into account, however, and adopt the hypothesis presented in this text that member states are forced to develop institutional mechanisms to avoid gridlock, we derive a different expectation. Because ministers' time and general capacities are limited, we expect the amount of B-points to remain stable or even to decrease, since on average, negotiations over individual issues are longer. The additional workload caused by the increased number of actors and higher diversity of interests after the 2004 Eastern enlargement, in this case, has to be absorbed by the bureaucratic levels of Coreper and WGs and hence, according to this reasoning, we expect the relative amount of A-points to increase. In terms of our measure, then, we would expect the ratio of A-points over B-points to increase over time.

The empirical evidence of a total of 3807 proposals, in a time phase of a total of 96 months, provides some fairly strong support for the hypothesis. The data will be shown in the form of plots, with the months and quarters of transmission of the proposals by the European Commission shown on the horizontal axis, and the share of A-points over B-points these acts implied on the vertical axis. The data presented in figure 1 (as monthly aggregates) and in figure 2 (as quarterly data) show a rising trend in the number of A-points compared to B-points over time, although the variance of these aggregates also appears to somewhat increase over time. To allow for easier interpretation, lines are fitted through the data on the basis of the ordinary least squares (OLS) method. Strictly speaking, the analysis is purely descriptive (we are making no inferences beyond the dataset), so the coefficients reported in Table 4 only provide supplementary information.⁵

⁵ Nonetheless, the coefficients, although with relatively small beta-values, are positive and the analysis based on the monthly data shows a significant results at the level of $\alpha < 0.05$.

[Figure 1 about here]

[Figure 2: about here]

[Table 4 about here]

The yearly aggregation presented in figure 3 provides further support for the hypothesis as it shows a sign of a step between 2003 and 2004, implying intuitively that the institutional adjustment was not linear, rather that the enlargement forced the change.

[Figure 3: about here]

It can be argued that the disproportionate amount of missing data towards the end of the time phase we explore might influence the results in the sense that with complete data, the amount of B-points would increase and hence, that the observed effect might be less salient in practice. The intuitive reasoning behind this potential objection is that the longer-lasting issues -- the acts still under discussion, not covered fully by the dataset -- are relatively more likely to also involve the ministerial level. Although seemingly sensible, the objection is not substantiated by empirical evidence: in fact, for acts lasting longer than approximately 600 days, the amount of A-points and B-points rises with the same pace. The overall ratio of A-points over B-points in any given month is therefore not distorted by these cases. Accordingly, for the analysis this paper focuses on, the missing data do not really constitute a problem.

Overall, empirical evidence indeed supports our hypothesis that a move has taken place between the ministerial and the bureaucratic level. The data suggest -- in accordance with our hypothesis and contrary to the purely intuitive view -- that a relatively higher share of the agenda has been moved downwards to the bureaucratic level.

In addition to the central analysis of this paper, the collected data provide us with insights into the issue of relative involvement of ministers and bureaucrats in Council decision-making, i.e. "Who decides in the Council of the European Union" (Häge, 2008). A look at the data presented in table 5 reveals that on average, ministers get approximately 160 points per year to discuss, whereas Coreper deals with approximately 430 points. These figures do not reveal the actual relationship between the agenda of Coreper compared to the one of ministers, as some issues are put more than once onto the agenda of either body, because they are being

discussed more than once. Eliminating the effect of repetitiveness from the overview allows us to estimate the portion of acts that are managed purely on the bureaucratic level, without direct involvement of ministers: out of all the total of 3807 cases, 716 have at least once entered the Council as a B-point, i.e. at least 19 percent of decided proposals have been dealt with by ministers. This figure would be probably higher if the dataset was complete, since the pending cases are very likely to involve some B-points as well. Conversely, the data also show that as much as 2668 (i.e. 70 per cent) of all cases in the period analyzed have been already decided *without* involvement of ministers (i.e. as pure A-points). We know for certain, then, that the share of proposals adopted without discussion or decision by ministers lies somewhere between 70 and 81 percent with the true value very likely lying close to the lower boundary of 70 per cent.

[Table 5 about here]

This figure falls between the earlier often-quoted estimate by Hayes-Renshaw and Wallace (1997: 78) -- who expect the share of issues decided without ministers to lie between 80 and 85 percent -- and that by Häge (2008) who estimates that it actually is as much as 48 percent of all Community agenda that *is discussed* by ministers, and 35 percent that *is actually decided* by them. According to our data, the ministers are directly involved in the decision on just below 30 percent of proposals. Apparently, to resolve the startling dissonance between the different estimates will require further research, perhaps one systematically combining qualitative and quantitative methods of inquiry.

6. Conclusions

This paper is based on the following puzzle: how is it possible that – in spite of different theoretical approaches predicting increased inertia in Council decision-making after the 2004 enlargement – these effects can hardly be discerned in practice? The answer we offer to this puzzle -- with respect to the Council exclusively -- is fairly simple and from some point of view rather intuitive: member states representatives are likely to have adopted a quiet and

implicit institutional innovation whereby some of the less salient agenda is being moved from the ministerial level down to Coreper and to working groups, in order to allow ministers to focus their attention and limited time-capacities to only the primary and highly political issues.

Crucially, this tacit institutional adaptation does not delegate more power to the supranational bodies, it keeps the decision-making with the member states. Thus -- contrary to claims presented by others -- we argue that an increased number of actors does not necessarily lead to increased power of Brussels over nation states: further bureaucratization of European politics occurs, but it is the national bureaucracies that benefit from the change, not the European ones.

The pressure generated by the 2004 enlargement on the Council's capacities should not be underestimated now, several years afterwards, only because patterns of decision-making in the Council do not appear to have changed. They are in fact very likely to have changed, although perhaps in ways not easily traceable.

The question -- one remaining for further research -- is whether the change in practice of decision-making identified in this paper is a unique case of adjustment under specific conditions and in a rather specific institution (the Council), or whether it actually signals a broader change in the nature of European politics.

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Figure 1

Relative position of Coreper to ministers over time

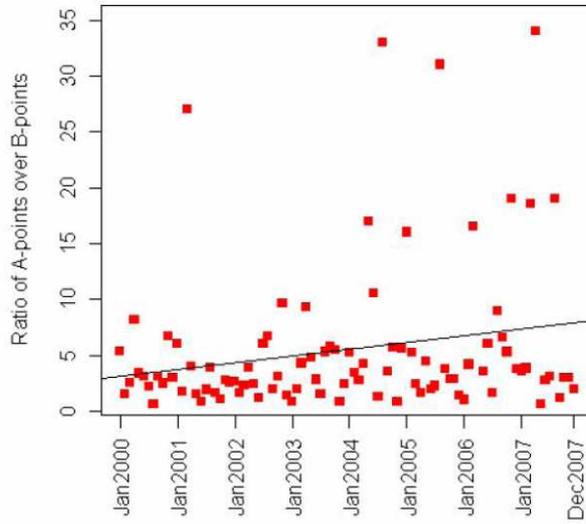


Figure 2

Relative position of Coreper to ministers over time

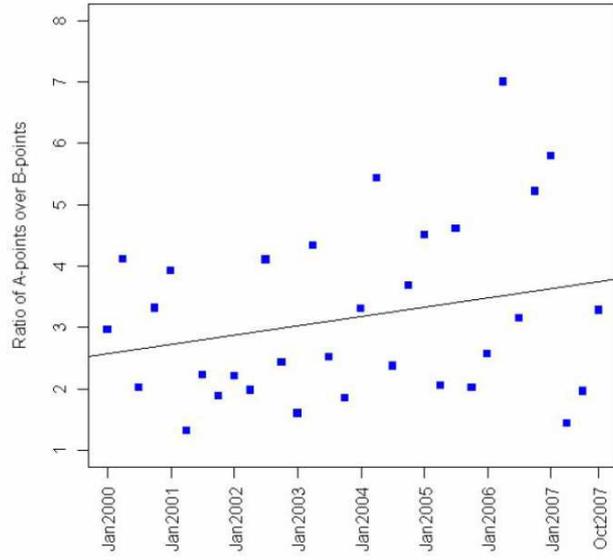


Figure 3

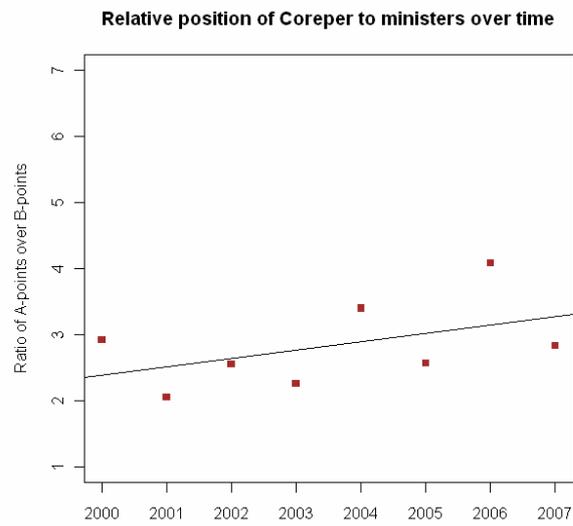


Table 1: General payoff matrix

		Actor -i	
		Press	not press
Actor i	press	$\pi_i - \beta - (1 - \sigma_i)\alpha; \pi_{-i} - \beta - (1 - \sigma_{-i})\alpha$	$\pi_i + \sigma_i\delta - (1 - \sigma_i)\alpha; \pi_{-i} - \sigma_{-i}\delta - (1 - \sigma_{-i})\alpha$
	not press	$\pi_i - \sigma_i\delta - (1 - \sigma_i)\alpha; \pi_{-i} + \sigma_{-i}\delta - (1 - \sigma_{-i})\alpha$	$\pi_i - \sigma_i\mu; \pi_{-i} - \sigma_{-i}\mu$

Table 2a: Salient issue for both actors; pre-enlargement; general

		Actor -i	
		Press	not press
Actor i	press	$\pi_i - \beta - 0\alpha; \pi_{-i} - \beta - 0\alpha$	$\pi_i + 1\delta - 0\alpha; \pi_{-i} - 1\delta - 0\alpha$
	not press	$\pi_i - 1\delta - 0\alpha; \pi_{-i} + 1\delta - 0\alpha$	$\pi_i - 1\mu; \pi_{-i} - 1\mu$

Table 2b: Salient issue for both actors; pre-enlargement; with preference orderings

		Actor -i	
		Press	not press
Actor i	Press	3;3	4;1
	not press	1;4	2;2

Table 2c: Salient issue for both actors; after the enlargement; preference orderings

		Actor -i	
		Press	not press
Actor i	Press	2;2	4;1
	not press	1;4	3;3

Table 2d: Salient issue for one actor only; post-enlargement; general

		Actor -i	
		Press	not press
Actor i	press	$\pi_i - \beta - 0\alpha; \pi_{-i} - \beta - 1\alpha$	$\pi_i + 1\delta - 0\alpha; \pi_{-i} - 0\delta - 1\alpha$
	not press	$\pi_i - 1\delta - 0\alpha; \pi_{-i} + 0\delta - 1\alpha$	$\pi_i - 1\mu; \pi_{-i} - 0\mu$

Table 2e: Salient issue for one actor only; post-enlargement; with preference orderings

		Actor -i	
		Press	not press
Actor i	Press	2;1	4;2
	not press	1;2	3;3

Table 3a: Salient issue for one actor; with punishment mechanism; general

		Actor -i	
		Press	not press
Actor i	press	$\pi_i - \beta - 0\alpha; \pi_{-i} - \beta - 1\alpha$	$\pi_i + 1\delta - 0\alpha - \phi; \pi_{-i} - 0\delta - 1\alpha$
	not press	$\pi_i - 1\delta - 0\alpha; \pi_{-i} + 0\delta - 1\alpha - \phi$	$\pi_i - 1\mu; \pi_{-i} - 0\mu$

Table 3b: Issue salient for one actor; with punishment mechanism; preference orderings

		Actor -i	
		Press	not press
Actor i	Press	2;2	3;3
	not press	1;1	4;4

Table 4: 'OLS Regression' coefficients

Aggregation	N	estimate b	p-value
Monthly	96	.051	.041*
Quarterly	32	.038	.165

Table 5: Involvement of ministers in decision-making

	2000	2001	2002	2003	2004	2005	2006	2007	Overall
Proposals	507	453	439	482	518	442	489	477	$\sum x_i = 3807$
A-points	484	435	410	459	475	371	448	376	$\sum x_i = 3458$
B-points	166	212	161	204	140	145	110	133	$\sum x_i = 1271$
Pure A-points so far	346	307	309	322	394	288	373	329	$\sum x_i = 2668$
At least once on agenda as B-points so far	118	105	90	97	77	88	65	76	$\sum x_i = 716$
Share of pure A-points	0.68	0.68	0.70	0.67	0.76	0.65	0.76	0.69	$\bar{x} = 0.70$
Share of acts at least once B-points	0.23	0.23	0.21	0.20	0.15	0.20	0.13	0.16	$\bar{x} = 0.19$
Range of true share of points decided without ministers	0.68- 0.77	0.68- 0.77	0.70- 0.79	0.67- 0.80	0.76- 0.85	0.65- 0.80	0.76- 0.87	0.69- 0.84	$\bar{x} =$ (0.70;0.81)

Appendix

Table A1: Overview of Symbols Used

Symbol	Meaning	Application
α	annoyment, the costs of	paid by the minister for which $\sigma = 0$ if the issue is discussed by ministers; the height depends on saliency of the issue for each actors
β	bargaining, the costs of	paid by actors if both choose the strategy press $S_i = S_{-i} = p$ and the issue thus has to be bargained on the ministerial meeting
δ	additional increase (or decrease) in payoff resulting from the policy adopted being closer (or further) to actor's ideal point	occurs only if an actor presses its position unilaterally; the height depends on saliency of the issue for each actor
κ	capacity of the Council	ability to produce sufficient amount of decisions in a timely way
μ	monitoring, costs of	if the issue is dealt with by Coreper only, ministers lose direct control over negotiations and thus pay the costs of monitoring (or delegation); the height depends on saliency of the issue for each actor
σ	saliency of an issue for the minister	parameter determining to what extent the additional costs of annoyance and monitoring are paid and the additional benefits from a move closer to actors' ideal points are obtained
ϕ	fine, a mechanism of	applied to actors who unilaterally press their issue; this is the result of the institutional innovation
ω	workload of the Council	increases sharply with increase in number of actors and the distances among their ideal points