Explaining negotiations in the conciliation committee

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Abstract

The conciliation committee is the ultimate bicameral dispute settlement mechanism of the ordinary legislative procedure of the European Union. Who gets what, and why, in this committee? We argue that its institutional set-up is biased in favour of the Council of Ministers. Employing Wordfish algorithm, we show that the joint text is more similar to the Council common position, than to the parliamentary reading, in almost seventy percent of the dossiers that reached conciliation up to February 2012. The European Parliament is more successful after the Treaty of Amsterdam, if the Council decides by qualified majority voting, if the rapporteur comes from a large party, if the European Commission is supportive, and if national administrations are more involved in implementation than the Commission is.

In the codecision procedure, now the ordinary legislative procedure of the European Union (EU), the European Parliament and the Council of Ministers employ a conference committee, called the conciliation committee, to settle ultimately the differences that may arise during the adoption of legislation. Who wins in these negotiations, the Council or the Parliament? Are they on an equal footing? What are the factors that determine bargaining success within the committee?

Conference committees are frequently employed in bicameral legislatures to solve outstanding disagreements after a bill has been shuffled back and forth between the two chambers. How these committees operate eventually determines the balance of power between the chambers. As Tsebelis and Money (1997: 118) observe, 'the composition of the conference committee, its decision-making rule, and the set of bicameral restrictions are critically important to the results of bicameral bargaining'.

In most formal models of EU codecision making, the success of a chamber is determined by an arbitrary assumption about the first mover or a random recognition rule (Crombez, 1997, 2001; Steunenberg, 1994, 1997; Tsebelis and Garrett, 2000). These models are primarily interested in identifying an equilibrium that can be used for inter-procedural comparisons. For Napel and Widgrén (2006) instead, the institutional set-up is biased in favour of the Council because its pivotal member is likely to have a higher disagreement value that the respective member in the Parliament. However, the most systematic empirical research on this issue has found that, at least as far as the 1999-2002 period is concerned, these negotiations favour the Parliament (König et al., 2007). Moreover, the Strasbourg assembly is more likely to win over the Council when it is more proximate to the status quo, it is cohesive[1] and it has the support from the European Commission.

In this work, we will confirm some of these results and take issue with others. We will argue that the conciliation committee is a conference committee by half, in the sense that it is a meeting between a full upper chamber, on the one side, and a delegation of a lower chamber. This, in combination with a unit rule to take decisions,[2] is likely to bias outcomes

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[1] Low cohesiveness in the Council is also beneficial for the Parliament. On the other hand, the brief case study of Tsebelis and Money (1997: 176-9, 204) leans toward greater influence of the Council. Hagemann and Høyland (2010) offer evidence of greater influence of the Council in codecision in the earlier stages of the procedure. They argue that 'the Council has conditional agenda-setting power due to a change in the majority thresholds for adopting legislation from the first to the second reading in the Parliament' (811).

[2] Agreements are approved under closed rule by concurrent majorities in the two chambers (Tsebelis and Money, 1997: 176-9).

in favour of the Council. We offer evidence in support of this proposition by examining almost all the dossiers that reached conciliation from the entry into force of the Maastricht Treaty to February 2012 and estimating, through Slapin and Proksch's (2009, 2008) Wordfish algorithm, the similarity between the committee's joint texts and the documents produced by the two chambers. This evidence suggests that, in almost seventy percent of times, the final agreement is more similar to the position of the Council. As expected, the Parliament has been more successful after the reform of the Treaty of Amsterdam and in dossiers where the Council decides by qualified majority voting. The Parliament benefits also if the rapporteur comes from a large party because a veto threat is more easily executable. In line with Konig et al. (2007), the support from the Commission is crucial to parliamentary success, but negotiations are also affected by differences among conferees in the availability of ex-ante and ex-post mechanisms employed to oversee execution across implementation paths. Weaker or no support is found for other factors.

Getting to conciliation

The codecision procedure was introduced with the Treaty of Maastricht in 1993 and later amended by the Treaty of Amsterdam in 1999. With the entry into force of the Treaty of Lisbon in December 2009, it was renamed the ordinary legislative procedure. From only fifteen in 1993, the number of policy areas that are regulated through this procedure has now increased to eighty. The Treaty of Lisbon for instance extended its coverage to several subfields, the most important of which relate to justice and home affairs. Accordingly, the number of bills increased dramatically: from 153 acts adopted in the 1993-9 legislative term to 454 in the 2004-9 term (European Parliament, 2009: 8).

According to Article 294 of the Treaty on the Functioning of the European Union, after the first reading by the Parliament of a proposal by the Commission, the Council may either adopt the measure in the wording approved by the Parliament or adopt its own common position if it disagrees with its fellow chamber. Within three months, the Parliament can reject or amend the Council's text by absolute majority.[3] After further three months, if the Council does not approve the parliamentary amendments, the presidents of the Council and of the Parliament convene a meeting of the conciliation committee to resolve the remaining

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[3] If the Parliament fails to act, the proposal is deemed to have been adopted in the wording of the Council first reading. The Parliament can also approve this document by simple majority. No act is adopted in case of rejection.

differences between the two institutions. In other words, conciliation is necessary when either a qualified majority of or, for amendments rejected by the Commission, the whole Council has failed to approve the amendments inserted by the Parliament after reading its common position.

The conciliation committee is composed of members of the Council and Parliament in equal number. Since the size of the two delegations equals the number of member states, the Council delegation is essentially *the Council*, where the chief negotiations are normally the deputy permanent representatives chaired by the minister holding the presidency (Rasmussen, 2005, 2008; Tsebelis and Money, 1997). For the Parliament, its rules of procedure prescribe the composition of its delegation to reflect the whole assembly by political groups. Once the conference of presidents determines the number of members per group, such members are then appointed by the groups themselves. The delegation must include the chair and the rapporteur of the committee responsible for the case at hand as well as three permanent members chosen from among the vice-presidents.

The objective of conciliation is to produce, within six weeks, a joint text supported by a qualified majority of Council delegates and an absolute majority of parliamentary delegates. The Commission takes part to the conciliation negotiations without a right to vote. If agreement is found on a joint text, this document is then voted upon within six weeks, under closed rule and by qualified and simple majority in the Council and Parliament respectively. Unless government changes have incurred in the meanwhile, the Council vote is perfunctory because the composition of this institution and of its conciliation delegation coincides. For the Parliament instead, the combination of closed rule with simple majority provides the conciliation delegation with a significant agenda setting power vis-à-vis the plenary.

This procedure has changed over time. Before the Treaty of Amsterdam, the Council could not conclude the procedure and adopt a final act after the first parliamentary reading, nor could the Parliament do so at its second reading. The definitive adoption was a Council prerogative. More important for our purposes, if negotiations within the conciliation committee failed, the Council could make a final take-it-or-leave-it offer to the Parliament, which had to muster an absolute majority to halt irrefutably the proposed measure. This last procedural step strengthened, at least in principle, the negotiating hand of the Council (Garrett and Tsebelis, 1996; Garrett, 1995), but the adoption of a rule of procedure, stating

that the parliamentary leadership would table a motion to reject in such circumstance, has presumably limited the Council's potential gains (Hix, 2002; Kasack, 2004).

A second, less noted, procedural change was the modification of the voting rule in the Council. The Treaty of Maastricht, for instance, specified that measures in the fields of culture as well as the multiannual framework programme in research and technological development were to be adopted following the codecision procedure, but the Council will have to act unanimously. The Council's bargaining hand was presumably stronger in these cases as it could credibly threaten rejection if just a single minister was not happy with the proposal at hand. Qualified majority voting was extended to the framework programme by the Treaty of Amsterdam and to cultural policy by the Treaty of Lisbon.

Table 1 illustrates the frequency with which the conciliation committee has been used. During the fourth and fifth parliamentary term, this dispute settlement mechanism has been employed once every five Commission's proposals. Even allowing for learning and adaptation, this indicates significant inter-institutional conflict. The Treaty of Amsterdam, that made early agreements possible, did not seem to ease up tensions, at least in the first five years. On the other hand, there has been a significant drop in the employment of the committee over the last two legislative terms. The lower incidence is a product of the extension of the ordinary legislative procedure to the majority of EU policy areas, thus inflating the denominator. It also indicates the development of new mechanisms of inter-institutional cooperation, such as the informal trialogues that take place during the first reading between selected representatives of the Council, Parliament and Commission. Early agreements are more likely when negotiators are more certain about each other's positions and are pressed for time. They are less likely when a new measure is under negotiation, the Council and Parliament are more divided and when the rapporteur, if from a large party, is less representative of the whole assembly (Rasmussen, 2011). Although they may have speeded up decision making, early agreements have not entirely replaced the next stages of the procedure. Importantly, they ultimately take place in the shadow of the conciliation committee. In sum, conciliation appears to becoming now a proper mechanism to settle disputes, which is used only occasionally. The most divisive and salient dossiers are likely to reach this last stage, and how it operates may well structure backwardly the incentives earlier on in the procedure.

< TABLE 1 APPROX HERE >

Conciliation bargaining

Disagreement value

Under which conditions should we expect actors to be more or less accommodating when they sit at the negotiating table of the conciliation committee? In case of symmetry between two bargainers, the Nash cooperative solution is driven by the best alternative to a negotiated agreement (Dixit and Skeath, 1999: 523–9). The same is true in a non-cooperative setting of alternating offers, such as the Rubinstein model (1982), if negotiators attach different values to disagreement. The value to carry on bargaining increases in one's disagreement value and decreases in the opponent's disagreement value (McCarty and Meirowitz, 2007: 285–6). The utility that actors attach to the status quo drives the solutions of spatial models of codecision bargaining as well (Crombez, 1997, 2001; Garrett and Tsebelis, 1996; Garrett, 1995; Steunenberg, 1994, 1997; Tsebelis and Garrett, 2000). More specifically, Napel and Widgrén (2006) model the negotiations within the conciliation committee and predict the Council to be significantly more influential than the Parliament. The source of this power resides on the fact that, under symmetric preference distributions, the Council pivotal member under qualified majority voting is likely to attach a higher value to the status quo (i.e. be more conservative) than the median voter in the Parliament.

Unfortunately, corroborating evidence is hard to come by. Extending and replicating the work of Thomson et al. (2006), Thomson (2011) finds that a model based on a Nash bargaining solution which assumes the disagreement outcome to be equally and highly undesirable for *all* bargaining actors has greater explanatory power than a similar model with a reference point (or status quo). In other words, including an estimate of the utility associated with failure *worsens* the predictive power of a model of EU decision-making. Closer to our interest, results appear contradictory. On the one hand, Costello and Thomson (2011) confirm that being closer to the status quo does not enhance the chances of success of the Parliament in codecision. On the other hand, König et al. (2007) find that proximity to the status quo allow a chamber to exert greater influence in conciliation negotiations. We have reasons to doubt this latter result however. These scholars have employed a variable that takes the value of 1 if the Parliament is located closer to the status quo, -1 if it is located closer to the Council, and zero if no information was available. Accordingly, zero means that the two institutions attach the same value to the status quo. Missing data have therefore been treated as highly informative. The impossibility to locate the status quo - the

majority of observations in this study - has been considered as univocally indicating that Council and Parliament attach the same value to the disagreement outcome. We are not sure whether this is the best method to treat missing information, especially given the availability of maximum likelihood or multiple imputation approaches (Allison, 2001).

How can we explain these results? For Achen (2006: 102), the (negative) utility associated with the reference point underestimates the cost of disagreement. Besides measurement, there are analytical and observational reasons as well. Since legislative bargaining has significant opportunity costs, a resource-constrained and risk-averse proposer has an incentive to initiate only bills on which she is reasonably certain that the majority of legislators values more than the status quo. In an information rich environment, this estimation should not be too difficult. We therefore tend to observe mostly proposals where the cost of disagreement is high across the board and, therefore, it cannot explain outcomes. Certainly, withdrawals and rejections indicate that misjudgement occurs, but failed proposals are excluded from these analyses because there is no document on which estimating bargaining success. A failure is observed. This exclusion reduces further the explanatory power of the status quo as these are clear cut cases where disagreement is valued more than agreement. With all these caveats in mind, we will nevertheless include in the inferential analysis a proxy of the disagreement value.

Institutions

Let us consider other factors. We have argued that, *in case of symmetry*, both cooperative and non-cooperative bargaining solutions are driven by the disagreement value. But there is no symmetry within the conciliation committee. On the one hand, we have a fully represented collective actor, the Council, where each member can submit amendments. The agreed text is then subject to a perfunctory confirmation vote by the same actors involved in the committee negotiation. As Rasmussen (2008: 88) reminds us, the Council delegation *is* the Council. On the other hand, we have a delegation of a collective actor, the Parliament, where delegates can propose, individually, amendments during the negotiation and, collectively, a joint text to their whole chamber under closed rule.

The two conciliation delegations are hence in a structurally quite dissimilar situation. This difference is likely to affect negotiation *within* each institution and, consequently, *across* institutions. *Inside* the Council, negotiation is a case of (super)majority-rule bargaining under open rule. *Inside* the Parliament, that is, between the parliamentary delegation and

the whole assembly, negotiation is a case of majority-rule bargaining under closed rule.[4] These differences are best analysed employing Baron and Ferejohn's (1989) extension of the Rubinstein model. This extended model indicates that members of the parliamentary delegation should enjoy significantly more proposal power vis-à-vis their colleagues in whole assembly *than members of the Council delegation vis-à-vis their own colleagues*. Council delegates are hampered by both open rule and supermajority.[5] This difference between the two delegations is common knowledge and structural; and its consequence for *inter*-institutional negotiations can be interpreted through the counterintuitive lenses of Schelling's (1960) conjecture. Since members of the Council delegation are significantly more constrained, they are likely to demand a more accommodating stance from the more powerful parliamentary delegation. Counter intuitively, the power that these delegates enjoy in conciliation vis-à-vis their colleagues in the plenary is a source of structural weakness in the conciliation negotiations. *Outcomes of these negotiations should therefore be biased in favour of the Council*.[6]

This advantage could vary from case to case as well. Where the Treaty prescribes unanimity in the Council, each member's proposal power *within* this institution is even more inhibited, further strengthening the Council vis-à-vis the parliamentary delegation (McCarty and Meirowitz, 2007: 294; Tsebelis, 2002). Now it is the least accommodating Council member that will make demands on the parliamentary delegation. Baron and Ferejohn's model also indicates that, in majority bargaining under closed rule, proposal power increases in the size of the assembly because more legislators can be played off one another. But, as we have argued, this increased power should further weaken the parliamentary delegation in the conciliation negotiations.

Lastly, considering Garrett and Tsebelis' (1996) argument, we also control for the Amsterdam Treaty reform in the inferential analysis.

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[4] Indeed, inside the delegation, individual members operate under majority and open rule but, ultimately, they *collectively* enjoy majority and closed rule vis-à-vis the assembly.

[5] Permanent representatives, the *de facto* negotiators, are even more constrained because they cannot promise and deliver compromises without the consent of their ministers (Tsebelis and Money, 1997: 204).

[6] Tsebelis and Money (1997: 176-9) note also how its unit rule to take decisions as well as the limited restrictions imposed by the parent chambers (negotiations cover the entire bill, and it is possible to find innovative solutions and to trade across issues) offer the committee the capacity to reach many different compromises. This can clearly be detrimental to the assembly. However, greater emphasis has been put on germaneness over the years. The two delegations bargain over a four column working document listing the second reading of the Parliament and the common position of the Council as well as the Council's opinion on the Parliament position and the updated comments of the parliamentary delegation.

Uncertainty, veto threats and reputation

Unanimity in the Council and a larger assembly are two additional structural features that could work against the Parliament. But what are the instruments at its disposal to redress this structural weakness? What can the Parliament do to strengthen its position in the conciliation negotiations?[7]

Given its structural disadvantage, we may wonder what motivates the Parliament to move to conciliation. One factor could work in its favour: incomplete information. Consider a proposer facing, with a given probability, two types of receivers (moderate and extremist) with low and high disagreement values respectively. Her take-it-or-leave-it offer is more accommodating if the probability of dealing with an extreme receiver is high and her utility difference between an aggressive and an accommodating offer is small (McCarty and Meirowitz, 2007: 295). This simple set up indicates that actors benefit from manipulating beliefs about an actor's type (i.e. reputation). A moderate receiver is better off if the

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[7] We will not consider two factors: representativeness of the parliamentary delegation and cohesiveness of the chambers. As Tsebelis and Money (1997: 110-8) remind us, representativeness matters and, for codecision cases in general, Costello and Thomson (2011) find that a representative rapporteur is beneficial to the Parliament. Empirically, unrepresentativeness does not appear to be an issue. Rasmussen (2008) show that the delegation tends to reflect the composition of the whole assembly by political groups. Anyway, it is the direction of the preference bias that should matter. The delegation could be more accommodating towards the Council than the whole assembly; or, it could be more recalcitrant. While an accommodating delegation may be detrimental to the assembly by agreeing on a joint document that is farther from the assembly position; it is unclear why a recalcitrant delegation should produce the same outcome. Actually, a chamber may have an incentive to create a recalcitrant committee as it could be a more effective intercameral negotiator (Gailmard and Hammond, 2011). Unfortunately, it is very hard to determine the nature of the delegation because it ultimately depends on (a speculation on) the location of the status quo. Assume that we know the location of the median voter in the delegation and in the assembly. To determine whether the delegation is accommodating or recalcitrant we need to know the position of the (unanimity or qmv)-pivot in the Council. But to determine this, we ultimately need to know, or speculate on, the position of the status quo.
Related to representation are König et al.'s (2007) findings that higher parliamentary cohesiveness diminishes Council's and increases Parliament's success rates, and that lower Council cohesiveness increases parliamentary success. König et al. argue that 'the winset of less cohesive non-unitary institutional actors is larger. Because more cohesive non-unitary institutional actors accept fewer alternatives that beat the status quo, the bargaining outcome is expected to shift towards them' (289-90). However, the relation between cohesiveness and the size of the winset of the status quo is highly conjectural and changes direction with different decision rules. Consider cohesion as the inverse of the radius r of a Y-centred yolk of a majority-voting collective player. The Y-centred wincircle, with radius $d + 2r$ (where d is the distance between Y and the status quo), defines an upper bound - there are no points of the winset of the status quo located outside it. By definition a decrease in cohesiveness increases the wincircle, but 'it is not always the case that an increased wincircle will entail an increase in the size of the winset of the status quo' (Tsebelis, 2002: 48). Tsebelis provides an example of an *increase* in winset as the wincircle shrinks (i.e. as cohesiveness increases). Albeit anecdotal, the rejection by the Parliament of the joint text on biotechnological inventions seems to originate from a diminished cohesiveness (and smaller winset) after the European elections (Rittberger, 2000: 563). For collective actors deciding by qualified majority, the so-called *q-circle* determines the radius and centre of the wincircle. Lower cohesion (i.e. larger yolk) is actually more likely to *reduce* the size of the wincircle and winset, although one can find counterexamples (Tsebelis, 2002: 53).

proposer beliefs that she is an extreme type. These incentives are best analysed through signalling models. Although none has been developed with the conciliation committee in mind, several are on offer. In an influential model on veto threats, Matthews (1989) shows that the most informative equilibrium consists of an accommodating receiver signalling his true type and other receivers issuing a veto threat to whom the proposer offers concessions. Importantly, there is no guarantee for this equilibrium to exist. In a dynamic model of reputation building and bargaining over multiple bills, McCarty (1997) shows how a receiver has an incentive to reject a first-period proposal to build a reputation as an extreme type in order to obtain a better outcome from a second-period proposal. Given these incentives, the proposer may be more accommodating in the first period to avoid rejection on reputational grounds. This dynamics holds if receiver and proposer are sufficiently divergent.

In conciliation, there is no predetermined receiver or proposer and uncertainty may work either way. However, since the Council is fully represented, uncertainty about the type of Council the parliamentary delegation is dealing with is plausibly lower than the uncertainty about the type of full assembly the Council delegation is facing.[8] Potential benefits for the Parliament may lie here because there is more room to manipulate the beliefs about its position. The conciliation process can be plausibly described as a situation whereby the Council (proposer) makes a take-it-or-leave-it offer to the full Parliament (receiver), conditional to the support from a parliamentary delegation under open rule.

Since dossiers get to the conciliation stage *because* the positions of the Council and the Parliament differ significantly, the latter or even an accommodating parliamentary delegation would always have an incentive to issue a veto threat, at the risk of producing an uninformative babbling equilibrium (Matthews, 1989). Nevertheless, under which conditions is a threat of parliamentary veto likely to lead to concessions from the Council? Said differently, when can the parliamentary delegation extract concessions from the Council by credibly promising that the deal will be honoured by the assembly?

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[8] Benedetto (2005) argues that bargaining inside the Parliament is more transparent than bargaining inside the Council and this should work in favour of the latter institution. This is the case *prior* to getting to conciliation. During these negotiations however, the whole Council and the parliamentary delegation are in full view, whereas the whole assembly is not.

Unfortunately, formal models do not offer much.[9] We pay particular attention to the leading players involved in the conciliation negotiations - the president of the Council and the rapporteur of the Parliament - because they are widely recognized as being influential relay actors (e.g. Farrell and Héritier, 2004; Rasmussen, 2005). Rapporteurs from large parties or in a position of leadership in the Parliament may be more successful in extracting concessions because they have more resources to sanction defection in the assembly and, if necessary, to make good on veto threats. Instead, the potential gains and the efficacy of threats by rapporteurs from parties represented in the Council may be instead undermined primarily because their allegiance is also with the national parties in government. If the president of the Council comes from new member states, it is also plausible to suggest that she would be more easily subject to belief manipulation as she is still learning the ropes of negotiation. She may also be facing higher reputational costs of a failed negotiation (Hosli et al., 2011). This could work in favour of the parliamentary assembly. Finally, McCarty's (1997) model suggests the Council to be more accommodating at the beginning of the parliamentary term as there may be non-trivial reputational incentives operating within the assembly at large.

There is no agreement on the impact of these factors in the literature. Costello and Thomson (2011: 341) also expect large party rapporteurs to be more successful because they 'can credibly claim to be more in touch with the views of the majority of MEPs'. König et al. (2007) argue for the opposite. A smaller party rapporteur would extract more concessions as she would hold more extreme views.[10] Both works fail to find party allegiance to have an impact.

Contrary to the argument suggested above, Costello and Thomson (2011) extend Schelling's conjecture to the leadership role of the rapporteur. They argue that 'rapporteurs who are political leaders will find it difficult to convince their counterparts [i.e. the Council] that they are unable to compromise' (342). They provide evidence showing that

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[9] Ingberman and Yao (1991) analyse the consequences of a receiver successfully issuing a commitment threat of the sort: "I'll veto any bill that is not in the set C" (362), but this model is silent on the circumstances in which the receiver has the incentive and ability to make such a threat (Cameron, 2000: 197).

[10] Both are predominantly preference-based arguments, although Costello and Thomson touch upon the issue of informative signals. König et al. (2007: 291) state that 'sending agents with extreme positions is advantageous for the (median) institutional actor' (but, operationally, they consider rapporteurs from the liberal party as extremists). On the issue of representativeness see note 6.

the Parliament has less success in codecision when the rapporteur holds a leadership position. We leave the corroboration of these propositions to the empirical analysis.

Implementation

We conclude considering how expectations about the implementation of a measure may affect the resolve of the Council and the Parliament. This factor is ignored by the literature on legislative bargaining, but re-election minded politicians are ultimately concerned about the outcomes of their decisions: how the implementation of a measure delivers benefits to their constituency. We will consider two issues.

First, another significant finding of König et al. (2007) is the importance of the opinion of the Commission in determining the relative success of the Parliament and Council in conciliation. The Commission may be able to exercise influence under favourable circumstances, when it enjoys some informational advantages or manages to assemble support from non–legislative actors (König et al., 2007; Moravcsik, 1999; Pollack, 2003; Rasmussen, 2003). But perhaps, aside from informal influence, the views of the Commission matter simply because its *formal* role in implementation matters. The Commission is directly in charge of implementation when legislative provisions confer upon it the power to take policy decisions. Even when no provisions foresee its involvement, this supranational bureaucracy is entrusted with the power to initiate proceedings against possible infringements by national administrations.

This leads us to our second issue. The relative involvement in policy execution of the Commission and national administrations vary across measures, and the ex-ante and ex-post mechanisms[11] for overseeing implementation that are available to ministers and parliamentarians vary systematically as well (Franchino, 2007: 240-4). Where the Commission is the main implementer, each minister must rely on the collective will of the Council to exercise control over the supranational executive, for instance via the comitology procedures. For national execution, ministers, as head of their departments, are instead *individually* in charge of overseeing implementation and they have at their disposal a wider array of ex-post control mechanisms. Parliamentarians are in the opposite position. They have at their disposal a greater array of ex-post mechanisms when a measure is mostly implemented by the single Commission rather than the several national authorities.

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[11] Legislative design is an ex-ante control mechanism over implementation, while interpellations and inquiries are examples of ex-post control mechanisms (e.g. Epstein and O'Halloran, 1999).

Unsurprisingly, compared to ministers, parliamentarians prefer greater involvement of the latter at the expense of the former (Franchino, 2007: 285-6). When national authorities are the primary implementers, we should expect parliamentarians to be less accommodating than ministers at the legislative stage because oversight via legislative design is more important to them. In these circumstances, we should expect instead ministers to be more accommodating because ex-post oversight is individual rather than collective.

Text-based measures of legislative bargaining success

There are essentially two methods to measure success in legislative bargaining. The first one is based on interviewing key participants in the decision-making process. With the help of expert interviews, scholars identify the key cleavages underlying the adoption of a bill and estimate, for instance, the positions of the actors involved, the saliency they attach to each controversy as well as the location of the status quo. Reliability may be a problem because it is hard to replicate the process; hence multiple experts and documentary evidence are used for validation. This approach has been the basis for important contributions in the study of EU legislative politics (e.g. Costello and Thomson, 2011; König et al., 2007; Thomson et al., 2006; Thomson, 2011). There is a limit however on how far back in time you can go and still produce valid estimates, both because memory fades and the availability of experts diminishes. For instance, Thomson et al. (2006) quite reasonably select only proposals pending in either 1999 or 2000.

The second approach is based on comparing documents and producing measures of similarity. For instance, Tsebelis et al. (2001) use the documents of the Commission, Council and Parliament to produce an ordinal measure of the extent to which parliamentary amendments are adopted by the other institutions. This technique allows scholars to go quite far back in time, while the measurement process can be more easily replicated. However, even though several coders are employed, reliability may still be an issue.

Since we want to analyse the full history of conciliation negotiations, we will employ the second approach. To minimize reliability problems and facilitate replication, we use Slapin and Proksch's (2009, 2008) computer-based Wordfish scaling algorithm. Wordfish estimates positions based on word frequencies in text documents on a single dimension. Frequencies are assumed to be generated by a Poisson process, hence the stochastic component of the model is

$$Y_{ij} \sim Poisson(y_{ij}|\lambda_{ij}),$$

whereas the systematic component is

$$\lambda_{ij} = exp\big(\alpha_i + \psi_j + \beta_j\omega_i\big).$$

where y_{ij} is the count of word j in document i, α and ψ are document and word fixed effects respectively, β is an estimate of a word specific weight capturing the importance of word j in discriminating between positions, and ω is the estimate of document i's position. The systematic component is estimated through an expectation maximization algorithm. This procedure has several qualities, which are well explained by Slapin and Proksch (2008); it has also some problematic features though. It constrains positions on a single dimension, estimated by the parameter ω. The fact that there tends to be a privileged dimension of conflict in bicameral bargaining brings some solace (Tsebelis and Money, 1997: 90), although more than one dimension may persist in these negotiations (König et al., 2007).

Our estimates are based on three official documents: the second reading of the Parliament, the Council common position and the joint text. In Appendix A, we explain in detail how the original documents have been treated to produce the data on which the Wordfish procedure is run. In Appendix B, we examine the validity of these estimates comparing them with those produced using five documents (adding, therefore, the Commission proposal and the first reading of the Parliament), hand-coding and expert interviews.

Dataset and variables

As illustrated in Table 1, 184 codecision dossiers have reached the conciliation stage since the entry into force of the Maastricht Treaty to February 2012. On three occasions, the committee failed to produce a joint text. Because we cannot produce a measure of bargaining success, these dossiers drop out from our dataset. The documents of the dossiers on trans-European transport networks (COD/1994/0098) and on the Socrates financial framework (COD/1997/0103) differ only with regard to maps or figures. They are not amenable to our textual analysis and they drop out as well. In sum, the final dataset comprises 179 dossiers, which include, from Council common position to joint text, 537

documents.[12] The policy areas most frequently covered are environment, internal market and transport.

We take the perspective of the Parliament and we measure its bargaining success in a given dossier *d* as follows

$$EP\ success_d = \begin{cases} 1\ if\ |\omega_{EP2} - \omega_{JT}| < |\omega_{CP} - \omega_{JT}| \\ 0\ if\ |\omega_{EP2} - \omega_{JT}| > |\omega_{CP} - \omega_{JT}| \end{cases}$$

EP success takes the value of 1 if the absolute difference between the ω estimates for the second parliamentary reading and the joint text is smaller than the difference between the estimates for the Council common position and the joint text.[13]

We consider the following explanatory factors. As far as institutional features are concerned, parliamentary bargaining success should be negatively affected in dossiers where the Treaty prescribes unanimity for Council's decisions. We include a variable *Unanimity* which takes the value of one in these circumstances. To account for the Amsterdam Treaty reform, which may have strengthened the Parliament, we include *Codecision II* that takes the value of one if committee negotiations have taken place after 1 May 1999. Lastly, to account for Baron and Ferejohn's (1989) implication that a larger membership should work against the Parliament, we include the variable *MEPs*, measuring the size of the assembly at the time of the adoption of the joint text by the committee.

Moving on to veto threats and reputation, we have argued that rapporteurs from large parties or in a position of leadership within the Parliament may service better their assembly. *Large party rapporteur* takes the value of one if the rapporteur is from either the European People's Party or the Party of European Socialists, while, as in Costello and Thomson (2011: 348), *Leader rapporteur* takes the value of one if the rapporteur held a leadership position. Rapporteurs from national parties that are represented in the Council may instead be less effective in extracting concessions. *Government rapporteur* takes the

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[12] PreLex and EurLex were the primary sources but, for dossiers prior to the V legislative term, we had to collect documents from either the Official Journal or the public registers of the Parliament and the Council.

[13] *EP success* can be alternatively operationalized as $|\omega_{CP} - \omega_{JT}| - |\omega_{EP2} - \omega_{JT}|$, taking increasing positive values with greater success. This estimate requires a level of inter-policy comparability that is unlikely to be satisfied. Moreover, take two values of ω_{JT}, closer to, but equidistant from ω_{EP2}, and assume that the first one falls outside the $[\omega_{CP}, \omega_{EP2}]$ range (this has occurred in our data, ω should not be interpreted as distributed along a Euclidean policy dimension). Because $|\omega_{CP} - \omega_{JT}|$ is larger, this measure produces a higher degree of EP success in the first case even though the two ω_{JT} are equidistant from ω_{EP2}.

value of one if the rapporteur belongs to a national party that is in government at the time of adoption of the joint text. Beliefs about parliamentary types may be more easily manipulated when a Council president comes from a new member state. *President state seniority* is the natural logarithm of the number of completed years the country of the president has been an EU member at the time of adoption of the joint text. It should be negatively associated with parliamentary success.

The reputational incentives discussed by McCarty (1997) are measured by the number of completed months between the beginning of the parliamentary term and the adoption of the joint text (*Term length*). The variable should be negatively associated with success if these incentives are more powerful at the beginning of term.

As far as implementation is concerned, the influence of the Commission in codecision is measured by the share of parliamentary amendments that are rejected by this institution (*Commission rejection*). Lastly, because national administrations are relatively more involved in implementation than the Commission in case of directives, we use the indicator *Directive*, taking the value of one for this type of instrument, to measure the relative involvement of the two sets of implementers. If oversight via legislative design is more important to parliamentarians than ministers in these circumstances, we should expect this variable to be positively associated with parliamentary success.

We conclude with two last factors. Notwithstanding our earlier discussion on the disagreement value, we include a variable, *New act*, which takes the value of one if the measure is not amending prior legislation. A negotiating failure in these circumstances would leave the Parliament empty-handed as there would be no EU law regulating the issue at hand. National governments would lose the benefits of EU-wide harmonization but their national regulatory capacity would be unaltered. We should expect the Council to benefit if indeed the disagreement value of ministers is higher than that of parliamentarians. Lastly, some measures are part of the same legislative package and are likely to share common features. We decided to control for this aspect with a variable, *Package*, that takes the value of one if dossiers either specifically mentions that are part of a package or have the same date of adoption of the joint text and same responsible parliamentary committee. Deals within the Council across measures of the same package could make this institution less amenable to compromise. Table 2 provides a summary of these variables with some descriptive statistics.

< TABLE 2 APPROX HERE >

Parliamentary success in conciliation committee negotiations

Overall, conciliation negotiations are biased against the Parliament. The estimate of the joint text is closer to the position of the Parliament in only 54 of the 179 dossiers. In each legislative term, the joint text has been on average more similar to the common position than to the second parliamentary reading. The best performance for the Parliament was during the fifth term where 33 out of the 86 dossiers reaching conciliation produced joint texts that were more similar to its reading. In Table 3, we show the results of binomial tests with an epiphenomenal conciliation committee as null hypothesis (i.e. where the probability of parliamentary success is 0.5) for the full dataset and the subset of amending acts. We run the tests also for each legislative term with more than twenty observations.

The probability that the expected frequency of success (k) in case of an epiphenomenal committee exceeds the observed frequency of success is above 98 percent in most cases. In other words, the Parliament significantly underperforms in these negotiations. The Council does better even in case of amending legislation, when its pivotal member may not be more conservative than the median voter in Parliament (cf. Napel and Widgrén, 2006). Only in the fifth term *and* in case of amending laws, the committee did not produce a biased outcome.

< TABLE 3 APPROX HERE >

In the earlier days, the joint text differed from the Parliament second reading and from the Council common position more than the extent to which these latter two documents differed from each other.[14] The frequency of these cases has diminished over time however. They were the majority of observations in the third and fourth legislative term, but they have not exceeded thirty percent ever since. This could indicate that, over time, the two chambers are relying on conciliation as a more proper dispute settlement mechanism.

What determines parliamentary success? Table 4 lists the results of the estimation of binomial models with a probit link function.[15] Institutions matter. The probability of parliamentary success decreases by between 24.9 and 26.7 percentage points when the Council decides by unanimity. This decision rule confers a veto power to the Council

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[14] In other words, for any given dossier, $|\omega_{JT} - \omega_{EP2}| > |\omega_{EP2} - \omega_{CP}|$ and $|\omega_{JT} - \omega_{CP}| < |\omega_{EP2} - \omega_{CP}|$.
[15] We employ a probit link because *EP success* reflects an underlying interval variable. Hence, its cumulative distribution is normal.

member that is the least accommodating towards the demands of the Parliament. This weakness clearly emerges from the data. Additionally, the probability of success has increased by between 14.9 and 18 percentage points after the reform of the codecision procedure introduced by the Treaty of Amsterdam. Despite evidence to the contrary (Hix, 2002; Kasack, 2004), it seems that these changes have actually strengthened the Parliament's hand. This is in line with Garrett and Tsebelis' (1996) analysis of parliamentary powers under the first version of codecision. The size of the parliamentary assembly appears instead irrelevant.

< TABLE 4 APPROX HERE >

The results from the belief-manipulation expectations are weaker. We do not find evidence that rapporteurs in a position of leadership can extract more concessions from the Council. Costello and Thomson's (2011) opposite expectation is also disconfirmed. Moreover, the Parliament is not worse off if the rapporteur is from a party represented in the Council. If instead she comes from a large party, the probability of parliamentary success increases by between 13.1 and 14.9 percentage points. Costello and Thomson (2011) put more emphasis on representation to explain this outcome. We have argued that large party rapporteurs can extract more concessions because they have greater capacity to make good on veto threats.

Moving on, there is weak evidence that Council presidents coming from newer member states are more accommodating toward the Parliament, perhaps because their beliefs are more easily manipulable or they attach a higher reputational cost to failure. In 1998, Greece had been a member of the EU for seventeen years, while Austria had just joined three years earlier. If a Greek rather than an Austrian minister presided over the Council in the second semester of that year, the likelihood of parliamentary success would have lowered by 13.2 percentage points.

Reputational incentives clearly do not seem to operate within the assembly at the beginning of a term as McCarty's (1997) model suggests. Actually, there is weak evidence to the contrary. A Parliament facing elections in six months is 7.9 percentage points *more* likely to win in conciliation than a Parliament six months into its term. A weak learning process may be at place here.

Implementation instead matters. If the Commission decides to reject all of the second reading amendments of the Parliament, rather than only half of them, the chances that the Parliament would win in conciliation diminishes by 14.4 percentage points. This is in line

with the finding of König et al. (2007), although we tend to prefer a causal explanation based on the formal role entrusted upon the Commission in implementation rather than on informal bargaining resources. Certainly, the two causal stories are not mutually exclusive and may be related.

Results also indicate that the probability of parliamentary success increases by 19.5 percentage points in case of directives. When national administrations are more involved in implementation than the Commission is, parliamentarians are less accommodating because legislative design is the primary control mechanism at their disposal. On the other hand, ministers are more accommodating because they can rely on a wide array of ex-post control mechanisms. In other words, parliamentarians value legislative design as control mechanism much more than ministers do.

Finally, the probability of parliamentary success diminishes by 12.5 percentage points when next acts are negotiated. In these circumstances, a more accommodating Parliament may indeed indicate that its members care more than ministers about adopting the measure. In other words, a negotiating failure is more costly to parliamentarians.

Conclusion

From the standpoint of the Parliament, this study offers solace and annoyance. Solace because the Amsterdam Treaty reform appears to have delivered the benefits the Parliament expected and because the phasing-out of unanimity from Council proceedings has strengthened the hand of the assembly in conciliation negotiations. Annoyance because the set-up of the conciliation committee remains structurally biased against the Parliament. The Council does better even when amending measures are under negotiation, that is, when its pivotal minister may not enjoy a higher payoff than the median parliamentarian in case of failure (cf. Napel and Widgrén, 2006). Perhaps counterintuitively, it is the strength of the parliamentary delegation vis-à-vis the full assembly that is the source of the latter's weakness vis-à-vis the Council. Likewise, it is the weakness of each minister vis-à-vis her colleagues that is the source of strength for the whole Council.

Despite this structural weakness, getting to conciliation is not a foregone conclusion. The Parliament has managed to negotiate a joint text that is closer to its second reading in 30.2 percent of dossiers that have reached conciliation. This proportion increases to 37.6 percent in the current setting (i.e., post-Amsterdam Treaty procedure and majority voting in the

Council). What else explain parliamentary success? We have some support for theories that put emphasis on belief manipulation. A veto threat by a rapporteur belonging to a large party is more executable and may induce the Council to be more accommodating.

Evidence about the importance of implementation is more robust however. Of whom the Commission takes side matters because, we contend, its role in implementation is far from trivial. Politicians cannot ignore the effective delivery of a measure's benefits. Additionally, when national administrations are more involved in implementation than the Commission, parliamentarians are less accommodating than ministers because they value more legislative design as mechanism to control policy execution.

The Parliament could also take advantage of other weapons, such as explicitly setting credible restrictions over the set of acceptable solutions (Tsebelis and Money, 1997: 176). Indeed, the self-imposed rules of representativeness of its delegation, which Rasmussen (2008) finds to be operating well, could actually be counterproductive if interpreted through the lenses of intercameral bargaining (Gailmard and Hammond, 2011). We have noted the difficulties in determining the nature of the parliamentary delegation, but a future area of research could be to understand if the Council's negotiating stance influences the selection of parliamentary delegates.

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Table 1. The incidence of conciliation

EP legislative term	Codecision proposals	Conciliation negotiations	Incidence (%)
IV (1994-9)	270	67	24.8
V (1999-2004)	482	86	17.8
VI (2004-9)	541	24	4.4
VII (2009-)	270	7	2.6
Total	1563	184	11.8

Source: OEIL database, accessed on 29 February 2012.

Note: Three conciliation negotiations failed to produce a joint text, one in the IV Parliament, one in each the VI and VII Parliament. The Parliament has rejected four joint texts.

Table 2. Descriptive statistics

Variable	Description	Mean	Standard dev.	Min	Max
	Dependent variable				
EP success	$= 1$ if $\left|\omega_{EP2} - \omega_{JT}\right| < \left|\omega_{CP} - \omega_{JT}\right|$, 0 otherwise	0.30	0.46	0	1
	Institutions				
Unanimity	$= 1$ if Council unanimity is required, 0 otherwise	0.08	0.27	0	1
Codecision II	$= 1$ if Amsterdam Treaty procedure, 0 otherwise	0.65	0.48	0	1
MEPs	Number of MEPs/100	6.39	0.55	5.18	7.85
	Veto threats and reputation				
Leader rapporteur	$= 1$ if rapporteur in leadership position, 0 otherwise	0.26	0.44	0	1
Large party rapporteur	$= 1$ if rapporteur from EPP or PSE, 0 otherwise	0.66	0.47	0	1
Government rapporteur	$= 1$ if rapporteur from party in government, 0 otherwise	0.40	0.49	0	1
Presidency state seniority	ln(no. of membership years of president country)	3.11	0.80	1.10	3.93
Term length	No. of months into parliamentary term/100	0.81	0.42	0.08	1.47
	Implementation				
Commission rejection	Share of EP amendments rejected by Commission	0.46	0.31	0.00	1.00

Directive	= 1 if directive, 0 otherwise	0.64	0.48	0	1
	Other factors				
New act	= 1 if new act, 0 otherwise	0.56	0.50	0	1
Package	= 1 if part of package, 0 otherwise	0.27	0.45	0	1

Table 3: Frequency of parliamentary success

	All acts	EP legislative term			Amending acts	EP legislative term	
		IV	V	VI		IV	V
EP success	54	13	33	6	30	6	20
N	179	59	86	23	79	21	42
z-statistic	-5.31	-4.30	-2.16	-2.29	-2.14	-1.96	-0.31
Pr (k>= *EP success*)	1.000	1.000	0.989	0.995	0.988	0.987	0.678

Note: One-sided binomial probability tests; k is the expected frequency in case of H0=.5

Table 4. Determinants of parliamentary success

	Model 1	Model 2	Model 3
Institutions			
Unanimity	-1.043*	-1.222**	-1.200**
	(0.541)	(0.560)	(0.546)
Codecision II	0.471*	0.606**	0.634**
	(0.251)	(0.259)	(0.266)
MEPs	-0.153	-0.175	-0.195
	(0.217)	(0.231)	(0.234)
Veto threats and reputation			
Leader rapporteur		0.190	0.257
		(0.242)	(0.256)
Large party rapporteur		0.497**	0.476**
		(0.225)	(0.236)
Government rapporteur		0.0417	-0.0483
		(0.215)	(0.240)
President state seniority		-0.198	-0.269*
		(0.140)	(0.151)
Term length		0.456	0.582*
		(0.281)	(0.300)
Implementation			
Commission rejection			-1.015**
			(0.396)
Directive			0.706***
			(0.251)
Other factors			
New act	-0.364*	-0.362*	-0.433*
	(0.208)	(0.216)	(0.246)
Package	-0.237	-0.318	-0.328
	(0.244)	(0.262)	(0.282)
Constant	0.460	0.362	0.596
	(1.334)	(1.547)	(1.646)
N	179	179	179
Log-pseudolikelihood	-102.8	-98.49	-90.74
Wald chi2	11.79	21.16	38.01

Robust standard errors in parentheses. *** $p<0.01$, ** $p<0.05$, * $p<0.1$
Dependent variable: *EP success*.

Appendix A From official documents to Wordfish-usable data

The official documents of the two institutions and of the conciliation committee need to be standardized and processed in order to become usable data for Wordfish. We deleted unnecessary parts, for example references to the author (Council, Parliament or conciliation committee), the competent directorate-general or subunit of the Commission and the number of pages. Abbreviations referring to units of measurement, mathematical or chemical formula, irrelevant footnotes, such as those referring to international conventions or EU legislation, and acronyms of international organizations or institutions were removed with the use of *Notepad++*, a text editing program. The same program was used to delete non-English words referring to national institutions.[16]

We then extensively reviewed the documents and corrected the mistyped and misspelt words,[17] employing also the spelling and grammar check of *Microsoft Word*. Extensive review was necessary because *Microsoft Word* tool detects mistyped, rather than misspelt, words. For example, a word '*form*' that should be '*from*' is not detected because it is correctly written, even though it has a different meaning. Moreover, the tool is unable to detect words which contain numbers (e.g. '*col1ect*' instead '*collect*').

The documents were then converted into txt files and run through *JFreq*[18], a program that removes numbers and stopwords (e.g. '*and*', '*then*', '*but*') as well as other recurrent words in legislative texts ('*article*', '*annex*', '*paragraph*', '*whereas*', '*OJ*')[19] and stems the remaining ones according to the English dictionary. *JFreq* creates a term-document matrix in comma-separated value format that can be uploaded by Wordfish[20].

The txt and csv files of all these documents are available from the replication data webpage of *European Union Politics* as well as from Fabio Franchino's personal webpage at www.sociol.unimi.it/docenti/franchino/. The folder is named disaggregated_data_3docs.

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[16] This is because we employed *JFreq* stemming process which relies on the English dictionary. We kept however Latin and foreign words that are commonly used in the English lexicon, such as *inter alia*, *mutatis mutandis* and *leitmotiv*.

[17] Because we had to scan older documents, which were unavailable in electronic format, and employ an optical character recognition software, several words were indeed mistyped or misspelt.

[18] We employed JFreq's 0.2.1 version.

[19] Stopwords and recurrent words are uninformative because they do not discriminate across documents. Moreover, they make the estimation procedure more inefficient. The list of stopwords is published on the CLiPS webpage at http://www.clips.ua.ac.be/pages/stop-words. CLiPS is a research center on Computational Linguistics and Psycholinguistics associated with the Linguistics department of the faculty of Arts of the University of Antwerp. The file listing stopwords and recurrent words is uploaded it into *JFreq*.

20 We used Wordfish Version 1.3, released on 22 January 2009.

Appendix B Validation

We have compared our estimates with those derived from three alternative procedures: Wordfish estimation employing five official documents, hand-coding and expert surveys. In this appendix, we report the results of this validation exercise.

Comparison with EP success estimates based on five documents

According to Slapin and Proksch (2008), the stability of the word parameters improves if the estimation is performed using more and longer documents. We do not have a problem of length in our case, but we should consider the possibility in including five documents in the estimation procedure, namely adding the Commission proposal and the first reading of the Parliament.[21] Note that this is not how the conciliation committee operates. The first two documents are ignored. Despite some freedom of manoeuvre (Tsebelis and Money, 1997: 176-9), negotiations tend to be germane, with the two delegations bargaining over a four-column working document listing the second reading of the Parliament and the common position of the Council, along with the updated positions of the two delegations.

We have produced the ω estimates of the second reading of the Parliament, the common position of the Council and the joint text using five documents,[22] and computed the variable *EP success* as explained in the article. This variable is positively and significantly correlated with the *EP success* measure based on three documents, but the correlation is not substantively large (Spearman's correlation coefficient rho is 0.338, $p < 0.001$).

Conciliation negotiations are biased against the Parliament according to this measure as well. The estimate of the joint text is closer to the position of the Parliament in only 74 of the 179 dossiers. In Table 1A, we show the results of binomial tests with an epiphenomenal conciliation committee as null hypothesis. The probability that the expected frequency of success, in case of an epiphenomenal committee, exceeds the observed frequency is above 99 percent in the full sample and the fourth legislative term. There are some important differences as well tough. The probability of parliamentary success is not significantly less than 0.5 in the fifth and sixth terms. The five-text estimation procedure picks up then a strengthening of the Parliament over time (not because of *Codecision II*

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[21] Using documents from different dossiers is meaningless because it implies imposing a single dimension upon different policy areas.

[22] The txt and csv files are also available from the replication data webpage of *European Union Politics* and from Fabio Franchino's personal webpage. The folder is named disaggregated_data_5docs.

though, as its effect is insignificant) or, perhaps, finds it harder to distinguish between the last three documents as legislators become more selective in relying on conciliation.

Table 1A. Frequency of parliamentary success (ω estimates based on five documents)

| | | EP legislative term | | |
		IV	V	VI
EP success	74	18	41	10
N	179	59	86	23
z-statistic	-2.32	-2.99	-0.43	-0.63
Pr (k>= *EP success*)	0.992	0.999	0.705	0.798

Note: One-sided binomial probability tests; *k* is the expected frequency in case of H0=0.5

What else can explain these differences? And, more importantly, which measure is more valid? If changes have occurred during a procedure, the first two documents may be so different from the last three that it would be meaningless to impose a single dimension upon all five texts. Several variables we examined[23] do not explain this difference. Two seem relevant however. First, as the share of parliamentary amendments rejected by the Commission decreases, the two measures diverge. This could indicate greater parliamentary intervention and, thus, difference across the five legal texts. Imposing a single dimension could therefore be problematic. Second, the two measures diverge when the Council decides by unanimity. The five-document estimate displays a split-the-difference outcome (six parliamentary wins out for fourteen cases), while the three-document estimate displays a poor parliamentary performance (only one parliamentary win). Certainly, selecting a measure on the basis of whether it corroborates our expectation is questionable, but a measure indicating equal power between Parliament and Council when the latter decides by unanimity raise doubts. Below we discuss how hand-coding estimates also correlate more with Wordfish estimates based on three rather than five documents. On balance, the former procedure seems to produce more valid measures.

Comparison with hand-coded estimates

Because Wordfish has never been used to extract policy positions from legislative documents, we have compared its estimates with those derived from hand-coding. We

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[23] Such as a change in procedure, rapporteur, Commission or commissioner responsible as well as the number of months passed between the parliamentary first reading and the Council common position.

randomly selected twenty legislative dossiers[24] and compared the joint text with the second parliamentary reading and the Council common position.

We coded more than five hundred modifications, roughly following the methodology employed by Tsebelis et al. (2001). First, we determined whether the wording of the joint text provisions could be easily associated with the wording of the relevant provisions in either the reading of the Parliament or the Council common position. If the joint text adopted verbatim either version of the text, this amendment was labelled *EP2 adopted* or *CP adopted*. If the joint text modified either the Parliament's or Council's version without altering its substantive meaning, we labelled this amendment *EP2 partially adopted* or *CP partially adopted*.

Where we could not determine easily whether the provision in the joint text was more similar to either one of the other two documents' versions, we used three coding categories: a) *Partially changed* for circumstances where the joint text provision modified by less than 40 percent of the wording of *both* the parliamentary and Council variant, b) *Largely changed* if the joint text provision modified by more than 40 percent such wording, and c) *New/deleted* when a new provision was introduced or both the Council's and the Parliament's variants were deleted. This classification scheme is illustrated in Table 2A.

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[24] These are: COD/2005/0191; COD/2004/0175; COD/2003/0168; COD/2001/0257; COD/1998/0336; COD/1998/0289; COD/1998/0195; COD/1997/0370; COD/1997/0176; COD/1997/0067; COD/1996/0085; COD/1997/0146; COD/1995/0209; COD/1995/0080; COD/1994/0222; COD/1994/0135; COD/1993/0471; COD/1992/0426

Table 2A. Classification scheme for hand-coding modifications

Can the joint text provision be easily associated with the relevant provision in either the reading of the Parliament or the Council common position?	
Yes	
Substantive meaning	Labels
EP2 Amendment is adopted verbatim	*EP2 adopted*
CP Amendment is adopted verbatim	*CP adopted*
EP2 Amendment is partially adopted	*EP2 partially adopted*
CP Amendment is partially adopted	*CP partially adopted*
No	
Less than 40% of the words of *both* texts modified	*Partially changed*
More than 40% of the words of *both* texts modified	*Largely changed*
New text or both Council's and EP's versions removed	*New/deleted*

This classification scheme errs on the side of caution. Given the complexity of some legal texts, determining whether the changed provisions are more similar to the Council's or the Parliament's variant is not an easy task. Take the following example. Article 6(1) of the draft decision on AIDS prevention (COD/1994/0222) was subject to several modifications throughout legislative procedure. The text of the Council common position was:

> **Article 6(1)** In the course of implementing this programme, cooperation with non-member countries and with international organizations *competent in the field of public health,* in particular the United Nations, the World Health Organization and the Council of Europe.

The Parliament in the second reading deleted the italicized text above and added the bold text below:

> **Article 6(1)** In the course of implementing this programme, cooperation with non-member countries and with international organizations *in particular* the United Nations, the World Health Organization, the Council of Europe, **and non-governmental organizations competent in the field of public health or particularly involved in the fight against AIDS and the prevention thereof.**

Finally, the joint text deleted the italicized text of the parliamentary reading, restated the Council text (underlined below) and added the bold text:

> **Article 6(1)** In the course of implementing this programme, cooperation with non-member countries and with international organizations <u>competent in the field of public health,</u> **especially** the United Nations and in particular the World Health Organization, the Council of Europe and non-

governmental organizations, competent in the field of public health or particularly involved in the

fight against AIDS **and other communicable diseases** and the prevention thereof.

In this situation, we could not determine whether the conciliation committee took a position closer to either of the other two institutions. We therefore coded this subunit as '*Partially changed*'. We have been therefore rather conservative in deciding whether a text was closer to the position of one chamber in order to ensure an acceptable degree of intercoder reliability. We also replicated the coding several times in order to reduce subjective judgment and to make the procedure the most transparent and replicable as possible.

For each dossier, we then produced three values: h_{EP2} is the sum of the number of modifications that have been coded *EP2 adopted* or *EP2 partially adopted*, h_{CP} is the sum of the modifications coded *CP adopted* or *CP partially adopted*, h_U is the sum of the remaining modifications. For each dossier *d*, bargaining success has been determined as follows:

$$Bargaining\ success_d \ = \begin{cases} CoM\ if\ \max(h_{CP}, h_{EP2}, h_U) = h_{CP} \\ EP\ if\ \max(h_{CP}, h_{EP2}, h_U) = h_{EP2} \\ undetermined\ if\ \max(h_{CP}, h_{EP2}, h_U) = h_U \end{cases}$$

Success is assigned to the institution that has managed to insert in the final document a relative majority of amendments that are identical or highly similar to its version of the text. Success cannot be determined if a relative majority of changes cannot be easily associated with the version of either the parliamentary reading or the common position.

Table 3A illustrates the results of this exercise. Wordfish estimates coincide with the hand-coding estimates in nine out of the eleven dossiers where we can easily determine the winning institution through the hand-coding procedure. Wordfish estimates based on five documents perform instead more poorly. Only six dossiers display the same outcome as the one produced through hand-coding.

Hand-coding and Wordfish based on three documents produce therefore similar estimates. Certainly, there is a group of dossiers where hand-coding is difficult but, in these circumstances, it is better to rely on the more reliable and easily replicable Wordfish procedure.

Table 3A. Validity analysis of hand- and Wordfish-coding of bargaining success for twenty randomly selected dossiers

	Number of modifications							Bargaining success	
	EP adopted	EP partially adopted	CP adopted	CP partially adopted	Partially changed	Largely changed	New/ deleted	Hand-coding	Wordfish[1]
COD/2005/0239	5	18	28	1	5	3	9	*CoM*	*CoM*[2]
COD/2005/0191	5	6	68	3	11	7	7	*CoM*	*CoM*
COD/2004/0175	11	3	2	1	11	9	3	*undetermined*	*EP*[2]
COD/2003/0168	0	1	14	1	4	6	3	*CoM*	*CoM*
COD/2001/0257	7	4	3	0	9	1	1	*EP*	*EP*[2]
COD/1998/0336	0	1	8	1	5	5	4	*undetermined*	*EP*
COD/1998/0289	3	1	9	1	1	4	4	*CoM*	*CoM*[2]
COD/1998/0195	2	1	7	2	4	5	6	*undetermined*	*CoM*[2]
COD/1997/0370	1	2	2	0	2	4	1	*undetermined*	*CoM*[2]
COD/1997/0176	5	2	0	0	2	0	0	*EP*	*EP*[2]
COD/1997/0146	0	7	12	0	5	0	2	*CoM*	*CoM*
COD/1996/0067	6	15	25	1	22	14	16	*undetermined*	*EP*
COD/1997/0085	3	2	4	0	6	0	1	*undetermined*	*CoM*
COD/1995/0209	0	0	5	0	2	0	0	*CoM*	*EP*
COD/1995/0080	2	0	2	1	4	0	0	*undetermined*	*EP*
COD/1994/0222	5	2	8	0	8	1	3	*undetermined*	*CoM*
COD/1994/0135	1	6	15	0	4	1	0	*CoM*	*CoM*
COD/1993/0471	1	0	6	1	1	0	0	*CoM*	*CoM*
COD/1992/0426	4	0	1	0	1	2	0	*undetermined*	*CoM*
COD/1992/0415	2	2	2	1	0	0	0	*EP*	*CoM*[2]

[1] EP if *EP success* = 1, CoM otherwise. [2] Wordfish estimate employing five documents differs from the three-document estimate.

Comparison with expert-interview estimates

Finally, we compare our estimates with those derived from expert surveys conducted by König et al. (2007). This study is based on 54 dossiers that reached conciliation between 1999 and 2002. These dossiers comprise 74 issues on which there was disagreement between the two chambers. If we consider issues only, König et al. (2007) finds that the Parliament has succeeded in 56 percent of cases, while the Council in only 27 percent.[25] If we consider only the 38 dossiers having one conflicting issue, the Parliament succeeds 23 times. Our Wordfish estimates for these dossiers indicate instead that the Parliament is successful in only 13 cases. As one reviewer noted, this discrepancy may be due to the shifting of the unit of analysis from the whole text, in case of Wordfish, or from amendments, in case of hand-coding, to contentious issues. The Wordfish procedure may be inherently more similar to the text-based comparison of amendments than to an issue-based analysis, as one contentious issue may be reflected across several amendments and much text.

König et al. (2007) have cross-validated their estimates with the data available from the DEU project (Thomson et al., 2006), but the two datasets overlap only on seven issues.

We have pointed out in the article the advantages of employing Wordfish in our analysis but, clearly, the differences from the expert-survey approach are glaring and should be subject to further research.

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[25] The two institutions have tied in the remaining cases.

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