

Review Article

Jonathan Sullivan and Tim Veen: The EU Council: Shedding Light on an Opaque Institution

Robert Thomson, Frans N. Stokman, Christopher H. Achen and Thomas König (eds), *The European Union Decides*, Cambridge, Cambridge University Press, 2006, hardback, \$123, ISBN 978-0-5218-6189-2; paperback, \$43.99, ISBN 0-5218-6189-6.

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The Council of Ministers has the final say on the adoption of EU legislation affecting the lives of 400 million EU citizens. Yet for such an important institution comparatively little is known about how its decisions are reached. Decision-making processes are opaque: Council members deliberate behind closed doors, no press conferences are held and no meeting transcripts are released. For citizens and scholars alike, the Council's decision-making process is 'a secretive and specialized affair'.¹

However, this situation is changing. EU scholars focusing on the Council have produced an impressive and varied literature, delivering foundational insights into the workings of the Council. In the article we assess the contribution of two approaches, applied theoretical models and voting studies. Acknowledging the strengths and weaknesses of both approaches, we argue that two recent trends may potentially alter the state of the field. First, the Council, bowing to internal and external pressure to increase transparency if not accountability, has begun to increase the scope and scale of the documents that it makes publicly available. Second, EU scholars have started to import varied and increasingly sophisticated data-generation tools from across political science and beyond. For these reasons König, Luetgert and Dannwolf conclude that 'research on legislative decision-making in the European Union has entered the stage of quantitative analysis,' with newly available data sources combined with appropriate tools potentially enabling

¹ Robert Thomson, 'Appendix II: Comparison of Expert Judgements with Each Other and with Information from Council Documentation', in Robert Thomson, Frans N. Stokman, Christopher H. Achen and Thomas König (eds), *The European Union Decides*, Cambridge, Cambridge University Press, 2006, p. 329.

'rich and systematic data analyses'.² The aim of this article is to take stock of these developments and to speculate on the next phase of research on the Council.

COUNCIL DECISION-MAKING STUDIES

Before a Commission draft becomes EU legislation, it has to be adopted by the Council. Under the main EU legal procedures to adopt legislation, i.e. the cooperation, consultation and co-decision procedures, the Commission prepares a legislative proposal and submits it to both Council and European Parliament. The type of the legislative procedure then determines the timing and level of support required for a decision on the proposal.³ As with other areas of political science, research employing quantitative methods has become more prominent in attempts to explain decision-making outcomes in the Council. Approaches such as formal modelling, though increasingly visible, are still relatively specialized and lack overlap with the broader research community of EU scholars. The following sections therefore provide a non-technical review of the state of the field in voting and formal models of decision-making in the Council.

Applied Theoretical Models

Over the last 15 years, EU scholars have developed and applied a considerable range of theoretical models to decision-making outcomes in the Council of Ministers.⁴ The majority of EU decision-making models are based on rational choice assumptions of human behaviour with solution concepts derived from game theory. All models assume that decision outcomes are the result of interactions between goal-oriented actors operating within

² Thomas König, Brooke Luetgert and Tanja Dannwolf, 'Quantifying European Legislative Research: Using CELEX and PreLex in EU Legislative Studies', *European Union Politics*, 7: 4 (2006), p. 554.

³ I.e. after the first reading (consultation), second reading (cooperation or co-decision) or after conciliation committee and a third reading (cooperation) and by unanimity or qualified majority voting.

⁴ Bruce Bueno de Mesquita and Frans N. Stokman (eds), *European Community Decision Making*, New Haven, CT, Yale University Press, 1994; Thomson et al., *The European Union Decides*. For a critical review, see Björn Hörl, Andreas Warntjen and Arndt Wonka, 'Built on Quicksand? A Decade of Procedural Spatial Models on EU Legislative Decision-Making', *Journal of European Public Policy*, 12: 3 (2005), pp. 592–606.

institutional constraints, but a broad distinction can be made on the basis of the emphasis given to the formal procedural aspects of EU decision-making (e.g. voting weights, decision rules, etc.), or the informal bargaining that takes place prior to the adoption of legislative proposals. This distinction gives rise to procedural and bargaining models.

Procedural models conceive institutions as constraining behavioural opportunities by determining the identity of players, the strategies available to them, the sequence of play and the aggregation rules whereby players' choices are translated into decision outcomes. This class of model is rooted in non-cooperative game theory and spatial voting theory and stresses both the sequential features of the legislative process and the decision-making powers that actors can utilize to effect advantageous outcomes. Actors are differentially empowered in accordance with their voting power or with a first-mover advantage. The structure of a particular procedural model applied to the Council of Ministers depends on the type of legislative procedure under investigation, for example consultation or co-decision.⁵ By contrast, bargaining models privilege behind-the-scenes informal negotiations rather than institutional arrangements, though formal decision-making rules channel actors' interests and partially define actors' evaluations of other stakeholders' capabilities and inform attempts to build coalitions around their own preferred policy positions. In other words, 'procedures don't determine behaviour but set the boundaries within which the action takes place.'⁶ Bargaining models primarily employ cooperative game theory and do not specify the exact sequence by which decision outcomes are reached. Instead, the bargaining process is conceived as a black box into which actor preferences, the importance they attach to the relevant issues and their capabilities are entered.

In the recent work of Thomson, Stokman, Achen and König,⁷ a wide range of procedural and bargaining models are subjected to empirical tests that reveal a substantial deficit between model predictions and observed outcomes; even the best-performing models fail to predict very accurately. However, bargaining models do consistently and decisively outperform their procedural counterparts and those bargaining models that conceive of actor

⁵ Bernard Steunenberg, 'Decision-Making Under Different Institutional Arrangements: Legislation by the European Community', *Journal of Institutional and Theoretical Economics*, 150 (1994), pp. 642–69; George Tsebelis and Geoffrey Garrett, 'Agenda Setting, Vetoes and the European Union's Co-Decision Procedure', *Journal of Legislative Studies*, 3: 3 (1997), pp. 74–92; Christophe Crombez, 'Institutional Reform and Co-Decision in the European Union', *Constitutional Political Economy*, 11 (2000), pp. 41–57.

⁶ Frans N. Stokman and Robert Thomson, 'Winners and Losers of EU Decision Making', *European Union Politics*, 5: 1 (2004), p. 19.

⁷ Thomson et al., *The European Union Decides*.

interaction during the negotiation process in more cooperative terms are the best performers overall.⁸ These results can be interpreted as supporting the conclusions of studies employing more empirical approaches, i.e. that unanimity is ‘a strong norm in the EU’, where the highly iterative nature of day-to-day decision-making, combined with a lack of stable patterns of coalition formation, ‘strongly facilitate the universally inclusive, compromise mode of decision-making’.⁹

Thus, whilst bargaining models can correctly diagnose consensual decision-making as the *modus operandi* in the Council of Ministers, as well as providing a theoretical explanation for such behaviour, their low predictive accuracy remains a problem.¹⁰ We speculate that the potential source of this problem lies in the input data that is used to test the models. Most model evaluations rely on data generated by elite interviews, an expedient choice given the precision of data requirements¹¹ but one that suffers from scaling problems and post-dictive bias.¹² Given high costs in terms of time and financial resources, the majority of data-collection efforts are restricted to a small number of legislative proposals compared to the absolute size of EU legislative output.¹³ Existing data may not, therefore, accurately reflect the EU’s day-to-day decision-making process, which in turn may hinder the satisfactory evaluation of applied models.

Council Voting Studies

The decision whether to adopt a proposal under qualified majority voting (QMV) or unanimity depends on the legislative procedure involved. If a proposal reaches the voting stage, roll-call records – indicating whether a Council member voted for or against the proposal, or abstained from the

⁸ Christopher H. Achen, ‘Evaluating Political Decision-Making Models’, in Thomson et al., *The European Union Decides*, pp. 264–99.

⁹ Gerald Schneider, Bernard Steunenberg and Mika Widgrén, ‘Evidence with Insight: What Models Contribute to EU Research’, in Thomson et al., *The European Union Decides*, pp. 299–316, especially pp. 302–8.

¹⁰ Hörl et al., ‘Built on Quicksand?’.

¹¹ Depending on the class and exact specifications of any one model, required data may include estimates on the location and intensity of actor preferences, the spatial location of the status quo and the decision outcome and the dimensionality of the issue space.

¹² Bruce Bueno de Mesquita, ‘Decision-Making Models, Rigor and New Puzzles’, *European Union Politics*, 5: 1 (2004), pp. 125–38; Schneider et al., ‘Evidence with Insight’.

¹³ Bueno de Mesquita and Stokman, *European Community Decision Making*; Thomson et al. *The European Union Decides*.

vote – are then issued in the official Council Minutes. The major finding of studies based on the analysis of voting records is that the majority of decisions are made unanimously, even under those legislative procedures where there is legal provision for explicit voting under QMV. Hayes-Renshaw, van Aken and Wallace report that, between 1994 and 2004, 75 per cent to 80 per cent of decisions technically subject to QMV were not contested at the voting stage.¹⁴

Not surprisingly given this strong finding, one question that has preoccupied scholars is why recourse to voting is so infrequent, or, alternatively, why unanimity is the most frequent method of decision-making in the Council. Heisenberg's explanation emphasizes the 'culture of consensus' among member states resulting from decades of frequent negotiations between the same partners and the fast acculturation of new members to a common understanding of the historical importance of the EU project.¹⁵ She also notes that members of the Council are frequently insulated from domestic constituencies, a particular bone of contention for proponents of greater accountability for this institution, and therefore have the freedom to negotiate the substance of an issue without the pressure of spinning it to an electorate.

Mattila and Lane, by contrast, stress the strategic expedience of issue linkages. Indeed they see vote-trading, or logrolling, as the fundamental factor driving a bargaining process where actors decide on several issues simultaneously and exchange their votes based on the different levels of importance attached to the multiple issues under consideration.¹⁶ Logrolling works because, given the diversity of member state interests, any one legislative proposal is unlikely to be equally salient across the whole range of actors, who may then be willing to trade support on proposals of lesser importance in exchange for future reciprocal support on issues more salient to them.¹⁷ Mattila and Lane argue that the iterative nature of negotiations, and the absence of both a government–opposition structure and a coalition that forms a stable majority on most proposals over time, significantly reduce the

¹⁴ Fiona Hayes-Renshaw, Wim van Aken and Helen Wallace, 'When and Why the EU Council of Ministers Votes Explicitly', *Journal of Common Market Studies*, 44: 1 (2006), p. 163.

¹⁵ Dorothee Heisenberg, 'The Institution of "Consensus" in the European Union: Formal Versus Informal Decision-Making in the Council', *European Journal of Political Research*, 44: 1 (2005), pp. 65–90.

¹⁶ Mikko Mattila and Jan-Eric Lane, 'Why Unanimity in the Council? A Roll Call Analysis of Council Voting', *European Union Politics*, 2: 1 (2001), pp. 31–52.

¹⁷ The potential effects of the EU's eastern enlargement and the increasing 'diversity' of interests is an open question; see Helen Wallace, *Adapting to Enlargement of the European Union: Institutional Practice Since May 2004*, European Commission, Brussels, 2007.

obstacles to vote-trading in the Council.¹⁸ In spite of ample research on the extent to which members vote on issues or in terms of underlying dimensions (e.g. integration–independence, left–right, net-contributor–net-benefactor),¹⁹ studies based on roll-call data demonstrate weak evidence of stable coalition behaviour. In 47 per cent of cases, according to Hayes-Renshaw et al., abstaining or voting against a proposal is limited to a single member state,²⁰ an action that may be interpreted as an indication of powerfully held alternative preferences,²¹ future non-compliance, or simply for the consumption of Eurosceptics at home.²²

Insightful as voting studies in the Council are, they are nevertheless unable to explain exactly how decision outcomes were reached through the exchange process, since they look solely at the final voting stage, when any potential vote trades have already been decided upon. While the voting-study narrative of intense behind-the-scenes bargaining below the ministerial level, with representatives hammering out consensus positions so that decisions taken in the Council are usually a formality, is in line with reports from the field, it is a conclusion that is based on data that are silent on the bargaining process itself. The use of Council roll-call votes is effectively subject to a censoring bias, since only those legislative proposals that have not been withdrawn at an earlier stage of the institutional process are voted on.

NEW APPROACHES TO EU COUNCIL STUDIES; EVOLVING METHODS AND DATA

Formal and voting models have delivered important insights and theoretically driven explanations for decision-making in the Council. Rather than indicating deficiencies in the two approaches, we suggest that some of the weaknesses noted above are the result of difficulties that researchers have faced in generating appropriate data; a situation that may be improved by the

¹⁸ Ibid.

¹⁹ Mikko Mattila, 'Contested Decisions: Empirical Analysis of Voting in the European Union Council of Ministers', *European Journal of Political Research*, 43: 1 (2004), pp. 29–50; Robert Thomson, Jovanka Boerefijn and Frans N. Stokman, 'Actor Alignments in European Union Decision Making', *European Journal of Political Research*, 43: 2 (2004), pp. 237–61; Christina Zimmer, Gerald Schneider and Michael Dobbins, 'The Contested Council: Conflict Dimensions of an Intergovernmental EU Institution', *Political Studies*, 53: 2 (2005), pp. 403–22.

²⁰ Hayes-Renshaw et al., 'When and Why the EU Council of Ministers Votes Explicitly', p. 169.

²¹ Heisenberg, 'The Institution of "Consensus" in the European Union', pp. 73–7.

²² Mattila and Lane, 'Why Unanimity in the Council?', pp. 38–9.

increasing availability of primary documents and the application of text analytical methods.

Primary Documents: The EU's Legislative Sources

Until recently, discussion of text-analytical techniques applied to analysis of Council decision-making was largely irrelevant as a result of the scarcity of source materials. However, there are now two main ways of accessing information pertaining to the legislative process, through the Council's Public Register and the Eur-Lex database.²³

The most useful document available through the register is the Council Minutes, which provide comprehensive information on the passage of a legislative proposal.²⁴ Though the Council Minutes are summaries of decisions rather than more revealing transcripts of the discussions, which are currently still held behind closed doors, this documentation at least reveals the timing and content of decisions and includes statements by the individual member states and the Commission, potentially indicating deviation from consensus positions voiced in the formal statements by the Council itself. Further information is available in the form of monthly summaries of Council acts, which include the legislative acts adopted, the voting rule and the results of the voting, in addition to formal statements by member states. Minutes have been made available online covering legislative decisions from 1999 to the present date.

Eur-Lex is a legislative database covering inter-institutional procedures and as such contains information on the inputs and outputs of the Council as part of a time line for Commission proposals.²⁵ König et al. conclude that

²³ At <http://eur-lex.europa.eu/de/index.htm>.

²⁴ Including the type of procedure, the date of introduction, the date of adoption, A and B points (i.e. those adopted at the Council meeting without debate following agreement at the COREPER level, or adopted with continued debate), the policy area, the involvement of preparatory bodies and the Commission, the title of the proposal, details about the policy content, the inter-institutional reference number, the sectoral Council, the stage of the legislative process when the vote was taken, the stage of the legislative process when the proposal was adopted, the identity of the member holding the presidency, and finally each member state's decision to support, abstain, oppose and/or make a formal statement.

²⁵ Texts cover the legal basis, the responsible directorate-general, dates of transmission and adoption by all institutions, dates of all readings, request and decision of consulted committees, links to documents passed by different institutions (Commission documents, Official Journal, press releases etc.), decisions by institutional actors at each stage and identification of A and B points.

the database 'enables [researchers] to follow the major stages of the decision making process between the Commission and the other institutions', and allows researchers to track 'changes in the application of particular procedures or voting rules in specific sectors and identify general trends in the quantity and type of legislative decisions over time'.²⁶ Such results are of relevance to theoretical questions posed by practitioners of various approaches, such as delimiting the influence of the European Parliament and uncovering factors influencing decision outcomes such as the effect of specific procedural rules, institutional involvement in different policy sectors and instances of difficult or controversial proposals.

Data-Generation Techniques

The availability of primary documents increases the need for appropriate data-generation techniques. While content analysis approaches have delivered valid and reliable quantitative data for numerous applications across political science, application, and even discussion, has been largely absent in research on Council decision-making. Consideration of text-analytical methods as a source of information on Council proceedings is now a timely exercise.

Content analysis is a flexible method of data generation employed throughout the social sciences,²⁷ increasing in visibility with the development and successful application of computer-assisted content analysis techniques. While acknowledging Benoit and Laver's warning that 'it would be silly to claim that text analysis is a panacea for all research problems',²⁸ it would be equally foolish to dismiss an approach that has delivered reliable data at low cost for a range of diverse ends. In the case of Council decision-making, deriving information on actor positions from political texts would be very useful. One such fully automated technique, wordscores,²⁹ produces estimates of actor positions based on the comparison of relative word frequencies in 'reference texts' that are agreed to indicate positions on a given policy dimension and in 'virgin texts' about which nothing is known beforehand. The technique is not language specific, it handles large quantities of text and

²⁶ König et al., 'Quantifying European Legislative Research', pp. 554–7.

²⁷ Klaus Krippendorff, *Content Analysis: An Introduction to its Methodology*, Thousand Oaks, CA, Sage Publications, 2000.

²⁸ Ken Benoit and Michael Laver, 'Automated Content Analysis of Political Texts Using Wordscores', *APSA Comparative Politics*, 17: 1 (2006), p. 6.

²⁹ Michael Laver, Ken Benoit and John Garry, 'Extracting Policy Positions from Political Texts Using Words as Data', *American Political Science Review*, 97: 2 (2003), pp. 311–31.

has various published applications.³⁰ Wordscores is not without its problems,³¹ but its application to the analysis of political texts at the domestic level is worth exploring, given the importance of two-level dynamics on legislative behaviour suggested by formal and voting studies.³²

Alternative approaches to quantitative content analysis include parsing techniques that employ software to break sentences down into their semantic units.³³ This approach yields more information on the interaction of actors and issues than the wordscoring approach although applications are at an early stage. Nonetheless van Atteveldt et al. were able to determine the degree of political conflict and issue positions from newspaper articles during Dutch parliamentary elections in 2006.³⁴ A further application in this tradition, latent semantic analysis, uses a kind of factor analysis to measure the semantic similarity of words and text passages, approximating human performance in such tasks.³⁵

³⁰ For example identifying the policy positions of more than 200 actors taking part in the Laeken Convention on four policy dimensions (Ken Benoit, Michael Laver, Christine Arnold, Paul Pennings, and Madeleine O. Hosli, 'Measuring National Delegate Positions at the Convention on the Future of Europe Using Computerized Word Scoring', *European Union Politics*, 6: 3 (2005), pp. 291–313); MP positions based on Irish parliamentary speeches (Michael Laver and Ken Benoit, 'Locating TDs in Policy Spaces Using Computer Word-Scoring', *Irish Political Studies*, 17: 1 (2002), pp. 59–72); and UK party positions based on election manifestos (Laver et al., 'Extracting Policy Positions from Political Texts Using Words as Data').

³¹ Will Lowe, 'Understanding Wordscores', *Political Analysis*, 16: 4 (2008), available online; Jonathan Slapin and Sven-Oliver Proksch, 'A Scaling Model for Estimating Time Series Policy Positions from Texts', *American Journal of Political Science*, 52: 3 (2008), pp. 705–22.

³² Stephanie Bailer and Gerald Schneider, 'Nash versus Schelling? The Importance of Constraints in Legislative Bargaining', in Thomson et al., *The European Union Decides*, pp. 153–77; Gerald Schneider and Konstantin Baltz, 'Domesticated Eurocrats: Bureaucratic Discretion in the Legislative Pre-Negotiations of the European Union', *Acta Politica*, 40: 1 (2005), pp. 1–27.

³³ Doug Bond, Joe Bond, Churl Oh, J. Craig Jenkins and Charles Lewis Taylor, 'Integrated Data for Events Analysis (Idea): An Event Typology for Automated Events Data Development', *Journal of Peace Research*, 40 (2003), pp. 733–45; Philip Schrodt and Deborah Gerner, 'Analyzing International Event Data: A Handbook of Computer-Based Techniques', manuscript, University of Kansas, 2001.

³⁴ Wouter van Atteveldt, Jan Kleinnijenhuis, Nel Ruigrok and Stefan Schlobach, 'Good News or Bad News? Conducting Sentiment Analysis on Dutch Text to Distinguish Between Positive and Negative Relations', *Journal of Information Technology & Politics*, 5: 1 (2008), available online.

³⁵ Thomas Landauer, Peter Foltz and Darrell Laham, 'Introduction to Latent Semantic Analysis', *Discourse Processes*, 25: 2 (1998), pp. 259–84.

NEW STUDIES ON THE COUNCIL

The convergent trends of newly available sources of primary data and the adaptation of appropriate data-generation techniques is already starting to pay dividends in the research literature on the Council. For instance, Hagemann addresses concerns about the reliance of voting studies on final roll-call records by collecting information on the determinants for voting behaviour from various stages of the decision-making process.³⁶ Using Council documents recently made available online through the Public Register, Hagemann compares the ideal point estimations produced by NOMINATE and Bayesian Markov Chain Monte Carlo (MCMC) models. Not only does the model produce estimates of ideal points (with the advantage of reporting standard errors), it also does so for specific issues and can incorporate 'more complex behavioural assumptions such as the number and nature of underlying dimensions, apparent party coalitions, determinants of legislator preferences and the evolution of the legislative agenda'.³⁷ Moreover, we support Hagemann's injunction that EU scholars should 'make more use of the data that are already available from the Council'.³⁸

Another innovative approach to generating data on actor preferences appears in Franchino's study on delegation,³⁹ in which estimates of the preferences of Council members and the Commission are reconstructed from measures of national government positions collected as part of the Comparative Manifesto Project (CMP).⁴⁰ If, as Franchino argues, the CMP codes can be reconstructed to provide reliable estimates of member state preferences, then the CMP datasets represent an underemployed resource for Council studies. Yet another innovative approach pioneered by Golub⁴¹

³⁶ Sara Hagemann, 'Applying Ideal Point Estimation Methods to the Council of Ministers', *European Union Politics*, 8: 2 (2007), pp. 279–96.

³⁷ *Ibid.*, p. 285.

³⁸ *Ibid.*, p. 292.

³⁹ Fabio Franchino, *The Powers of the Union*, Cambridge, Cambridge University Press, 2007; For discussion, see Ellen Mastenbroek and Tim Veen, 'Last Words on Delegation? Examining the Powers of the Union', *European Union Politics*, 9: 2 (2008), pp. 295–311.

⁴⁰ Ian Budge, Hans-Dieter Klingemann, Andrea Volkens, Judith Bara and Michael McDonald, *Mapping Policy Preferences II: Estimates for Parties, Electors, and Governments in Central and Eastern Europe, European Union and OECD 1990–2003*, Oxford, Oxford University Press, 2006.

⁴¹ Jonathan Golub, 'In the Shadow of the Vote? Decision Making in the European Community', *International Organization*, 53: 4 (1999), pp. 733–64.

and Schulz and König⁴² yields considerable supplementary information on Council decision-making, employing the event history approach to analyse the extent to which institutional rules increase or decrease the speed of Council negotiations. And though methodological questions remain,⁴³ the approach has demonstrated some facility in evaluating decision-making models. For instance, Golub shows that spatial models and coalition theory perform comparatively well and that formal voting rules do matter in the Council.⁴⁴

CONCLUSION

Attempting to explain how decisions are reached in the Council has generated an impressive literature. Summarizing the strengths and weaknesses of the major quantitative approaches, voting studies and applied formal models, we suggest that valuable insights have been gained into the opaque decision-making processes of the Council, but much work remains to be done. One area where improvements may be possible is in the generation of appropriate data; an issue that has not previously garnered much attention, presumably because the scarcity of materials released by the Council did not demand it. However, the innovative application of new data-generation techniques in combination with the increasing abundance of documentary materials made available online demonstrate the timeliness of considering this issue.

⁴² Heiner Schulz and Thomas König, 'Institutional Reform and Decision-Making Efficiency in the European Union', *American Journal of Political Science*, 44: 4 (2000), pp. 653–66.

⁴³ Jonathan Golub, 'The Study of Decision-Making Speed in the European Union: Methods, Data and Theory', *European Union Politics*, 9: 1 (2008), pp. 167–79; Thomas König, 'Analysing the Process of EU Legislative Decision-Making: To Make a Long Story Short . . .', *European Union Politics*, 9: 1 (2008), pp. 145–65.

⁴⁴ Jonathan Golub, 'Survival Analysis and European Union Decision-Making', *European Union Politics*, 8: 1 (2007), pp. 155–79.