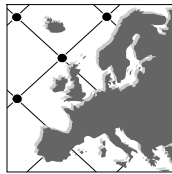MANNHEIMER
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The Constitutional Choice of Rules

An Application of the Absolute and Relative Power Concepts to European Legislation

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Arbeitspapiere

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Contents

Abstract

European legislation is an often studied topic of research into decision rules, since it provides for a large number of different rules and the interaction of different voting bodies. However, research on European Integration concentrates on the choice rather within than of rules. Relative voting power analyses stress the distributional consequences of different voting weights within the Council of Ministers, while spatial models emphasize the inter-institutional interaction among the Commission, the Council of Ministers and - sometimes - the European Parliament. They both fail to give a satisfactory account for the constitutional choice of different procedural settings. Whereas relative voting power analysis disregards the important distinction between strong and weak decision rules, spatial models are not able to explain the unequalness of rules.

In this paper, we clarify the differences between both approaches by providing an analytical tool to measure absolute and relative power. We introduce our inclusiveness concept which outlines the notion of absolute power. Moreover, we argue that the combination of both aspects, absolute and relative power, gives an insight into the choice of rules. To generalize our findings we present the concept of entities and inter-Institutional sets of winning coalitions which are the cornerstones of the game-theoretical measurement of absolute and relative power in political systems. We then present two appropriate indices measuring both aspects of power. Finally we apply both indices to the variety of European legislative settings with regard to different policy domains.

European Decision Rules in Change

European (EU) legislation is an often studied topic of research into decision rules. Why decision rules in this context should stimulate such academic interest can be put down to the complex nature of and frequent changes to EU legislative procedures. Various decision rules find their application within the bounds of interaction between the Commission, as the supranational agenda setter, and the Council of Ministers (CM), as the voting body of the Member States (for an overview, see König 1996: 556). There are even more rules to be considered in those cases where the European Parliament (EP), comprising of political groups made up of various national party elements, is also involved in EU legislation. The cooperation and assent procedure were introduced in 1987 and the codecision procedure was established in 1993, the names of which refer to parliamentary rights in European legislation.

Since the mid-1980s, treaty reforms such as the Single European Act in 1987, the Maastricht Treaty in 1993 and the accession of Portugal and Spain (1986) and of Austria, Finland and Sweden (1995) have brought about continued modification to EU decision rules. At the moment, more than ten applicant countries are awaiting further enlargement of the Union; and the current Intergovernmental Conference is preparing the way for a new round of institutional reform in EU legislation. The fact that such a varied set of procedures can be found within the bounds of EU legislation, and that these should be the subject of frequent reform, begs the question as to what guides Member States in their choice of decision rules.

Two basic approaches are used to analyze institutional change of EU decision rules: the intergovernmental power index and the spatial model approach. The intergovernmental power index approach concentrates on the impact of accessions by analyzing the distribution of voting weights in the CM. The spatial model approach focuses on the strategic interaction between the Commission, the CM and - in some cases - the EP. The latter stresses the policy consequences of complex multi-chamber systems, while CM voting power studies outline the notion of unequal actors. Although both approaches refer to the choice within rules, calculating their impact on either actor or policy outcomes, they both fail to give a

satisfactory account for Member States' constitutional choice of EU procedural settings.

Intergovernmental CM power index analyses suggest that Member States' voting weights solely express the institutional situation in the expanding community (Brams 1975, Brams/Affuso 1985, Hosli 1993, Johnston 1995a, Widgrén 1994, Lane et al. 1995). CM power index studies often apply a variety of indices to measure the impact of unequal settings on Member States' relative decisiveness. Yet, an important shortcoming of voting power analysis is that it only measures the relationships between Member States, paying no attention to the distinction between strong and weak decision rules, nor, to the inter-institutional interaction among different voting bodies. Since majority rules as well as unanimity rule apply to EU legislation, the intergovernmental approach on relative decisiveness does not take into account the important institutional question as to why Member States should facilitate the passing of EU legislation in some policy areas and not in others.

The spatial model approach calls the utility of CM power index analysis fundamentally into question because it ignores the strategic interaction between the CM, the Commission and the EP in the passage of EU legislation (Garrett/Tsebelis 1996: 272). Except for Article 148,2b, all EU legislative procedures require a Commission proposal that must be adopted by the Member States with unanimity, simple or qualified majority. Under the terms of cooperation procedure (Article 189c) the EP is a conditional agenda setter (Tsebelis 1994: 131), whilst under codecision procedure (Article 189b) the EP has blocking power (König 1995: 19), thereby altering the strategic setting. Spatial models illustrate the policy implications of strong and weak decision rules by referring to EU inter-institutional win sets (Tsebelis 1994, Steunenberg 1994, Schneider 1995). Although this approach helps to understand the policy consequences of strategic interaction among EU actors, spatial models are not able to explain the Member States' choice of different procedures for specific areas of EU legislation.

In this paper we close this gap by presenting a model of Member States' constitutional choice. As a first step we will try to clarify the distinction between both approaches with the introduction of our inclusiveness concept which

generalizes the argument on policy consequences. Whereas decisiveness expresses an actor's relative ability to be decisive on any legislative proposal, weak or strong decision rules change an actor's absolute chances of being incorporated in any collective decision. Since majority rules jeopardize the potential inclusion of an actor's policy preferences, the crucial question is whether a Member State accepts the possibility of being in a minority position in future EU legislation. Secondly, we argue that the combination of both relative decisiveness and absolute inclusiveness gives an insight into Member States' choice of EU institutional rules. Inclusiveness refers to the amount of expected EU legislative profits steering the restrictions on collective decision making. Relative decisiveness is understood as reflecting the actors' chances of determining the legislative outcome. As a result, Member States then provide themselves with shares of resources to increase the likelihood of a distribution of legislative gains they have agreed upon. Both measures are related to the Member States' expectations of EU legislative gains, determining their constitutional choice of unanimity, qualified majority, simple majority, or single veto players for specific policy areas.

Our two measures take into account the EU inter-institutional coalition problem between the Commission, the CM members and the EP. The problem of inter-institutional coalition building is defined on procedural settings, namely the standard, the cooperation, and the codecision procedures. In the bicameral standard procedure linking the Commission and the CM, we can distinguish between policy areas with expected low gains and those promising higher profits by asymmetric distribution. Compared to standard bicameralism, the blocking minority rule of Article 148,2b, the only unicameral procedure without a Commission proposal, redistributes the shares between large and small Member States. The semi-tricameral cooperation procedure raises the chances of parliamentary actors being included in coalition building enormously, whilst at the same time providing them with few resources to influence the legislative outcome. The same holds true for the codecision procedure when the Member States have higher resource capacities.

Our findings on EU legislation are based on two concepts, relative and absolute power that can be applied equally well to other political phenomena

(König/Bräuninger 1996). Due to its complexity and continuous change, EU legislation is a single, but striking example for the application of both concepts. For a more general readership we present our concept of acting entities and the inter-institutional set of winning coalitions. In the first section, we discuss the distinction between individual, corporate and collective actors and the identification of the sets of winning coalitions that are the cornerstones of the game theoretical power analysis. Thereafter, we introduce the indices on relative power and absolute power which show the two faces of power: First, the power to be included in a collective decision is referred to as the absolute power of an actor, since it measures the probability of participating in a winning coalition; second, the power to be decisive is relative power, referring to the extent to which an actor can transform a losing into a winning coalition in relation to all other actors. Finally, we apply both measures on the current EU legislative sets of winning coalitions.

Acting Entities and Inter-Institutional Sets of Winning Coalitions

The concept of legislative winning coalitions makes up the foundations of the game-theoretical measurement of legislative entities' absolute and relative power. Both measures presuppose the identification of relevant actors and their procedural interaction, whereas spatial models try to identify the set of likely policy outcomes depending on actors' preferences and procedural interaction. In the past, however, parsimonious approaches to winning coalitions trivialized procedural settings by ignoring the inter-institutional interaction, assuming a unitary (parliamentary) actor, or disregarding unequal settings. Besides putting an end to such parsimony, we intend to improve the reliability of our model by explaining in some detail our concept of EU actors and EU procedural interaction. Before discussing procedural interaction we therefore start with the distinction between different types of legislative actors.

In game-theoretical analyses, actors are simply defined as entities making choices in a specific context (Ordeshook 1986: 2). This definition first presumes the identification of the acting entities and then considers the qualification of goal specificity, independence and consistence for their actions (Osborne/Rubinstein 1994: 4). In the field of power index analysis, however, the primary task of actually

identifying the relevant legislative entities is a well-known problem (Brams 1975: 175, 177). "Paradoxes" like the paradox of quarreling members, of new members and of size (Brams 1975: 176, 180) or the paradox of redistribution (Fischer/Schotter 1978: 49) illustrate some of the crucial effects on relative decisiveness when either the set of entities, or the entities themselves, are modified (Harsanyi 1977: 133). In international relation theory the unitary actor assumption on state behavior is another example for the identification problem of acting entities (Achen 1995).

To avoid identification problems we begin our analysis by distinguishing between three types of legislative entities: individuals (natural persons), corporate actors (organizations with delegates as their agents), and collective actors (voting bodies). Like a natural person, a corporate actor is often considered to be a unitary entity having well-behaved preferences over outcomes and acting on purpose. Hence, there is no difference between individual and corporate actors if we ignore the controlling problem of delegates. In contrast to individual and corporate actors, collective actors are aggregates of individuals and/or corporate actors. The aggregation problem of individual and/or corporate actors is the topic of social choice theory, showing the unitary actor assumption on collective actors to rarely hold true in cases of two or more dimensions (McKelvey 1979, Koehler 1990).

In EU legislation all three types of actors are relevant. Commission, CM and EP are voting bodies aggregating different sets of legislative entities. The Commission prepares proposals on which most of EU legislative decisions are based. In principle, the Commission is a college of twenty Commissioners each responsible for his or her General Directorate (Donnelly/Ritchie 1994: 31). Each Commissioner is provided with his or her own portfolio, carries the main leadership responsibility, and is independent of the Commission President in determining how to act on EU legislative decisions. We therefore conceptualize the Commission as a unitary actor in EU legislation with the responsible Commissioner as its agent (see also Spence 1994: 92, Westlake 1994: 9).

In the CM, the governments of the Member States are represented by delegates mediating between their own governments and those of other delegates (Johnston 1994: 27). National governments instruct their delegates, who then cast their votes

homogeneously in the CM (Sabsoub 1991: 40). Since we ignore the controlling problem of delegation, we conceptualize the national delegate as an entity voting for its Member State. Regarding the Member States' votes we can distinguish between equal and unequal settings. In the case of a qualified majority rule, voting weights differ between large and smaller Member States, thus providing for unequal settings. Against this, equal settings are provided for by the simple majority criterion and unanimity. Member States' votes are then aggregated in the CM, a collective actor facing other voting bodies in the course of EU legislative decision making.

Although the EP is seldom involved in EU legislative decision making, the disaggregation of the EP's entities causes further conceptual difficulties. Apart from different combinations of formal institutional settings, parliamentary systems differ in terms of specific peculiarities characteristic of a particular legislature (Luce/Rogow 1956: 84). A specific characteristic of the EP is the affiliation of parliamentary representatives to both political groups and national groups. The fact that the vote of EP representatives on national group affiliation is merely a repetition of the intergovernmental coalition problem in the CM, means that it is the political group affiliation that points out the unique contribution of parliamentary participation in EU legislation. We model political groups therefore as EP entities with votes weighted according to their party representatives on the grounds that party cleavage is observed to dominate over national cleavage in the formation of majority coalitions (Jacobs et al. 1992: 56, Attina 1990: 557). Since no political group has an absolute majority at its disposal, political group votes are, by necessity, aggregated in the EP when it participates in EU legislation.

Apart from the concept of legislative entities, the procedural settings of EU legislation also define inter-institutional sets of winning coalitions, consisting of all entities necessary to adopt a proposal (Von Neumann/Morgenstern 1944). However, identifying EU legislative sets of winning coalitions is made rather complicated for two reasons: Firstly, the CM's and the EP's decision rules vary to quite an extent, and secondly, the role of the Commission is rather speculative. According to Article 155, the Commission holds the exclusive right to initiate legislation and the right to modify a proposal at any point of procedure (Article

189a,2), thereby making the Commission the agenda setter. Moreover, the Commission also has the right to withdraw, if the proposal's object is felt to emasculated by amendments (Usher 1994: 148). The Commission cannot, therefore, be excluded from the set of all relevant legislative entities (for a counterargument, see Garrett/Tsebelis 1996: 13). Although we use constitutional provisions for defining the inter-institutional linkage we often have to make further decisions on the role of voting bodies.

The varying decision rules in the CM and the EP reveal different levels of EU legislation which taken together, can be conceptualized as a legislative game. We can distinguish between three levels: the basic game, the subgame, and the compound game. The basic game level refers to the prime entities such as individuals or national party delegations which have to form the political groups in the EP. On the subgame level, the internal coalition problem between either the Member States in the CM or the parliamentary political groups in the EP has to be solved. To be more specific, except for constitutional unanimity, the CM subgame offers two majority criteria, since amendments always require unanimity among Member States. Under the cooperation and codecision procedures, the EP may take action or no action. Preventing endorsement by no action slightly decreases the majority criterion, since the EP has always been a voting body consisting of an equal number of representatives. Finally, the compound game requires inter-institutional consent between the Commission, the CM and - in some cases - the EP.

EU legislative sets of winning coalitions require consent among all relevant voting bodies depending on the solution of their coalition problem at the subgame level. The set of winning coalitions of the standard procedure requires the consent of the Commission and of the CM referring to unanimity, simple or qualified majority subgames of Member States. As the cooperation procedure includes the EP in EU legislation, an additional legislative set of winning coalitions is introduced: the first set encompasses the Commission and the unanimous Member States, the second consists of the Commission, more than 62 CM votes and at least half of the parliamentary votes. The latter set of winning coalitions is also feasible under codecision procedure, but here the additional set combines the unanimous

Member States with at least the absolute majority of parliamentary votes. Hence, under codecision procedure the EP holds the position of the Commission under cooperation procedure. In this respect both combinations of two sets of winning coalitions install a semi-tricameral system, since either the EP or the Commission can be excluded from EU legislation.

These legislative sets of winning coalitions represent the cornerstone of our relative and absolute power analysis of EU legislative entities. With regard to the fact that the Member States establish different legislative sets of winning coalitions for EU policy areas, we investigate the reasons for Member States making the choices for specific institutional settings as they do. We take into account the findings of spatial models on the importance of actors' policy preferences by means of our inclusiveness index for measuring absolute power. In addition, we apply the relative decisiveness concept to the inter-institutional sets of winning coalitions in EU legislation. In the following section we argue that Member States take into account the effects on both their absolute and relative power when they introduce or change the procedural settings for EU policy areas.

Absolute and Relative Power in European Legislation

The bicameral setting of the standard procedure between the Commission and the CM and the semi-tricameral participation of the EP under cooperation and of the Commission under codecision procedure suggest that Member States try to reach different goals by Treaty reforms, such as reducing EU transaction costs or decreasing the so-called democratic deficit (see Wessels 1991, Ludlow 1991, Moravcsik 1993, Kielmansegg 1996). In the past, the Commission was given legislative agenda setting- and safeguarding-functions and the EP was partially included in EU legislation. However, since the Member States are the signatories of the EU constitution, their expected gains are the driving force behind the material integration of policy domains and the constitutional choice of different procedures. Thus by focusing solely on the impact on qualified CM majority rule, many intergovernmental analyses are unable to explain the reasons for institutional delegation.

This shortcoming is best illustrated by some of the partly striking, then again partly insufficient conclusions drawn by such analyses. The most prominent result was the discovery of the "dummy player-position" of Luxembourg having no relative power during the first EU Treaty era under qualified majority rule (Brams 1976: 184). Second to this, CM power index analysis recently claimed to have "uncovered" the unfavorable British attitude towards the blocking minority rule as the increase from 23 to 26 minimum votes reduces the British power share (Johnston 1995a, 1995b). Others argue that, due to the accession of new members, the relative power differences between unanimity and majority decision rules become less and less pronounced (Lane et al. 1995: 223). Such striking results of CM power index analyses as these prompt the question of whether the relative power among the Member States is sufficiently able to explain the intergovernmental choice of EU decision rules (Garret et al. 1995: 563).

Indices on relative power are calculated using the concept of simple games with two properties: first, simple games differentiate between winning and losing coalitions; and, second, they satisfy monotonicity assuming the continuance of a winning coalition in cases of additional members (Shapley 1962: 59). In the case of simple games, indices of relative power are single valued solution concepts on pivotal entities. Being pivotal is a relative resource referring to the entities' probability of realizing their preference in the collective outcome. With this in mind, the simple demand made of constitutional politics is to provide for either equal or unequal legislative entities.

We argue that the solution depends on the expected gains from potential EU legislation rather than the representative size of the Member States' population, which may only serve as a parameter. Accordingly, the unification of Germany had no effect on the distribution of voting weights. Rather, the signatories' central motive was the expected gains from future cooperation based on their expected profits minus their expected costs of potential EU legislation. Signatories decrease the threshold when all expect higher gains from future majority legislation. If Member States expect to be affected similarly by future legislation in EU policy areas, equal settings will provide for a symmetrical distribution of expected gains.

In contrast, unequal settings can balance an expected asymmetric distribution of EU legislative gains among the Member States.

The expectation of unfavorable distributions of legislative benefits raises the question of how to balance potential EU legislative gains. Voting weights, minority blocking rules, veto player positions or multi-cameralism with different subgames are all methods of establishing unequal settings for legislative entities. Despite their procedural variety, all these methods may differentiate between the entities' relative ability of being decisive on any EU legislative proposal. Relative power index analysis is widely used, but an application on EU inter-institutional sets of winning coalitions makes severe demands on the method of measurement. Compared to unicameral analysis, the normalization over all entities must appropriately reflect the conditions for the different levels, the basic games, the subgames and the inter-institutional compound game (König/Bräuninger 1996: 337). Taking this into consideration, the most applicable concepts for the analysis of the relative power of entities in inter-institutional sets of winning coalitions are arguably the normalized Banzhaf and the axiomatic Shapley-Shubik index (Nurmi 1987: 186).

Although both indices have certain theoretical parallels, they differ with respect to their conceptions of critical defections. An entity's relative contribution to transforming a winning into a losing coalition determines the relative Banzhaf power (Banzhaf 1965). Since the Banzhaf index takes into account several critical positions in one single winning coalition, the additivity of critical positions has to be called into question, in particular for inter-institutional sets of winning coalition (Dubey/Shapley 1979: 103). To tackle this, the normalized index refers to an entity's probability of being critical in relation to the amount of all critical defections and, as a result, highly vulnerable minimal winning coalitions become more important for the power calculation than those that are only made vulnerable by a few members. Consequently, different membership sizes of subgames may already distort the inter-institutional relationship of Banzhaf decisiveness (Shelley 1986: 260). The Shapley-Shubik index refers to all possible voting sequences and checks how often each entity is able to transform a losing into a winning coalition (Shapley/Shubik 1954). Assuming v to be a simple game on a set of actors N

differentiating between winning coalitions ($v(S)=1$) and losing coalitions ($v(S)=0$), the Shapley-Shubik index ϕ of actor i in the game v is defined as

$$\phi_i(v) = \sum_{S \subseteq N} \frac{(s-1)!(n-s)!}{s!} \big[v(S) - v(S \setminus \{i\}) \big],$$

with n and s being the cardinalities of N and S.

An entity's decisiveness is defined as the probability of being pivotal, i.e. decisive in one of all equal probable voting sequences. Based on this concept, the individual Shapley-Shubik shares ϕ may be summed up for each subgame and compared on the level of the compound game.

We regard the relative power as being a major aspect of the signatories' constitutional choice. Similary, we consider the signatories' choice of the strength of a decision-making rule as being the second major aspect of EU institutional integration because it influences the likely policy outcomes that will ensue (Garrett/Tsebelis 1996: 279). Weak decision rules, like simple majority, increase the likelihood of policy outcomes offering the exclusion of entities from the EU legislative set of winning coalitions, whereas the strongest decision rule of unanimity guarantees the inclusion of all actors, resulting in a strong status quo bias of single favorable winning coalitions. Here, the Member States' choice of the lowest common denominator is based on the expected low amount of EU legislative gains, resulting from an expectation of either low profits or high costs of potential EU legislation. Member States only expose themselves to the danger of exclusion if they expect higher profits from potential EU legislation, whereas a Member State prefers unanimity in cases of expected low legislative gains.

Compared to the probability of being decisive based on all critical defections, the strength of a decision rule refers to the entities' chances of being included in any potential collective decision. Since the Member States bargain on potential legislation, we assume Yes- and No-votes to have the same probability and, therefore, all feasible coalitions to be equiprobable. In a simple game the probability of an entity's inclusion varies between 0.5 and 1.0. Strong decision rules guarantee the inclusion of its preferences in the collective decision, whereas a dummy player's probability of being included is still 0.5. Assuming v to be a simple game, we thus define the inclusiveness index ω of actor i in the game v as

$$\omega_i(v) = \frac{\sum\limits_{S \subseteq N, i \in S} v(S)}{\sum\limits_{S \subseteq N} v(S)} \ ,$$

i.e. the entity's number of participations in winning coalitions in relation to the number of all feasible winning coalitions (Bräuninger 1996: 42). However, neither the distribution nor the amount aspects of expected legislative gains explain the degree of equality or inequality between entities. We argue that institutional settings are instruments that can be used to obtain similar legislative gains for Member States. Regarding the amount of expected legislative gains, majority rules and unanimity are instruments used in the case of equal settings, whereas the degree of inequality varies by voting weights or single veto player positions. Thus, only the combination of both aspects offers a satisfactory account for the Member States' choice of institutional decision rules.

Figure 1: Characterization of Voting Procedures

		Relative Power Distribution	
		Equal	Unequal
Absolute Power of Actor i	High	Unanimity (Veto Rights for All Actors)	Veto Right for Actor *i*
	Low	Unweighted Majority Voting	Weighted Majority Voting

Figure 1 combines the instruments measured by relative power ϕ and absolute power ω of Member States. For the explanation of specific constitutional choices, we take into account the two aspects of Member States' expectations of potential EU legislation, namely the expectation of the amount and the distribution of potential EU legislative gains. As mentioned above, the expected amount of legislative gains determines the choice of the strength of decision rules, but the expected distribution results in equal or unequal settings. The Member States' expectations of a low amount by symmetric distribution of EU legislative gains favors the setting of unanimity, whereas a higher amount by symmetric distribution results in unweighted majority voting. Member states may also agree on single

veto player positions when they expect a low amount but an asymmetric distribution of EU legislative gains. Finally, weighted votes may be introduced in the case of a high expected amount by asymmetric distribution.

Although our scheme pays sufficient attention to the Member States' expectations of potential EU legislation, the question of the participation of supranational entities such as the Commission and the EP still remains. Introducing the factor of interaction between the CM, the Commission and the EP, spatial models assume extreme policy positions of supranational entities when they determine the different procedural win sets. Under this assumption, the participation of the Commission and the EP decreases the potential for policy change in EU legislation, prompting the question as to why Member States should accept the restriction of their own legislative capacity. Leaving aside the assumption of extreme policy positions of supranational entities, we argue that the Commission and the EP may increase the expected profits of the Member States by promising to reduce transaction costs and the criticism of democratic deficit. Since different procedures exist for EU legislation, the application of relative and absolute power provides an insight into the Member States' expectations of different policy areas.

Member States' Expectations of Policy Area Legislation

The consequences of different provisions for the Commission, the Member States and the political groups in the EP are listed in Table 1. For the reasons discussed we measure relative power by means of the Shapley-Shubik index ϕ and absolute power by means of our index ω defined above. In the rows of Table 1 we list the entities grouped along EU chambers. The columns refer to four procedures and three different rules which may be applied to the standard procedure. Each of the six procedural settings has distinct effects on the entities' relative and absolute power.

Under standard procedure, we find equal and unequal settings with varying thresholds. Decisiveness ϕ does not differentiate between the Member States either in the case of unanimity or simple majority, but their absolute power ω reveals the highest difference. The single favorable winning coalition of unanimity guarantees the inclusion of all Member States' policy preferences indicated by their

maximal inclusiveness of 1.0. In the case of simple majority, however, the danger of being excluded is very high and the entities' absolute power ω approaches the dummy player's inclusion probability of 0.5. Under qualified majority in standard, Article 148,2b, cooperation and codecision procedure the inclusion probability ω of the four large Member States is 86% and 85% respectively, whilest Luxembourg's inclusiveness ω varies between 57% and 61%. The relative power of large Member States is also higher here than in cases of equal settings. Qualified majority thus stresses the differences between the Member States with regard to relative and absolute power.

Concerning the inter-institutional interaction in the standard procedure, the EP is a dummy player and can be excluded from building any feasible winning coalition. Hence, its policy preference are included only by luck. The feature of the bicameral setting is illustrated by the Commission's absolute ω and relative power ϕ. Under standard procedure the Commission's policy preference must be included in any legislative proposal, but its ability of being decisive varies widely. The Commission is an equal counterpart to all Member States in cases of simple majority voting, but its relative power ϕ decreases from majority voting to unanimity. Hence, if the Member States take a unanimous decision, the Commission has the lowest share of relative power. Qualified majority discriminates between the Member States, and the additional provision for a minority rule (Article 148,2b) - the only unicameral procedure - not only favors the smaller Member States' relative power ϕ but also increases their absolute power ω. Except for the unicameral procedure of Article 148,2b, the Commission's policy preferences are included in all EU legislation.

Compared to qualified majority under standard procedure, the cooperation and codecision procedures have little effect on Member States' absolute power ω. Only their relative power ϕ is modified as a result of the participation of the EP in these procedures. However, the parliamentary entities' probability of being included in potential EU legislation increases enormously. Introducing the EP as a third collective actor is thus an instrument geared towards involving the socio-economic cleavage in EU legislation without increasing the Member States' probability of having their preferences disregarded. Comparing the cooperation and the

codecision procedure, the latter strengthens the decisive role of the CM in particular.

Table 1 *Table 1*: Relative Power (ϕ) and Absolute Power (ω) of EU Legislative Actors (August 1995)

	Votes	Standard Procedure						Article 148,2b		Cooperation		Codecision	
		Unanimity		Simple Majority		Qualified Majority							
		ϕ	ω	ϕ	ω	ϕ	ω	ϕ	ω	ϕ	ω	ϕ	ω
Commission	1	0.0625	1.0000	0.5000	1.0000	0.3103	1.0000	0	0.5000	0.2841	1.0000	0.2216	0.9996
CM France	10	0.0625	1.0000	0.0333	0.5500	0.0810	0.8627	0.1114	0.8490	0.0674	0.8627	0.0709	0.8627
Germany	10	0.0625	1.0000	0.0333	0.5500	0.0810	0.8627	0.1114	0.8490	0.0674	0.8627	0.0709	0.8627
Italy	10	0.0625	1.0000	0.0333	0.5500	0.0810	0.8627	0.1114	0.8490	0.0674	0.8627	0.0709	0.8627
United Kingdom	10	0.0625	1.0000	0.0333	0.5500	0.0810	0.8627	0.1114	0.8490	0.0674	0.8627	0.0709	0.8627
Spain	8	0.0625	1.0000	0.0333	0.5500	0.0662	0.8003	0.0920	0.7939	0.0552	0.8004	0.0587	0.8004
Belgium	5	0.0625	1.0000	0.0333	0.5500	0.0377	0.6909	0.0563	0.7098	0.0312	0.6910	0.0347	0.6910
Greece	5	0.0625	1.0000	0.0333	0.5500	0.0377	0.6909	0.0563	0.7098	0.0312	0.6910	0.0347	0.6910
Netherlands	5	0.0625	1.0000	0.0333	0.5500	0.0377	0.6909	0.0563	0.7098	0.0312	0.6910	0.0347	0.6910
Portugal	5	0.0625	1.0000	0.0333	0.5500	0.0377	0.6909	0.0563	0.7098	0.0312	0.6910	0.0347	0.6910
Austria	4	0.0625	1.0000	0.0333	0.5500	0.0310	0.6556	0.0476	0.6798	0.0258	0.6557	0.0293	0.6557
Sweden	4	0.0625	1.0000	0.0333	0.5500	0.0310	0.6556	0.0476	0.6798	0.0258	0.6557	0.0293	0.6557
Denmark	3	0.0625	1.0000	0.0333	0.5500	0.0242	0.6167	0.0389	0.6486	0.0204	0.6169	0.0239	0.6169
Ireland	3	0.0625	1.0000	0.0333	0.5500	0.0242	0.6167	0.0389	0.6486	0.0204	0.6169	0.0239	0.6169
Finland	3	0.0625	1.0000	0.0333	0.5500	0.0242	0.6167	0.0389	0.6486	0.0204	0.6169	0.0239	0.6169
Luxembourg	2	0.0625	1.0000	0.0333	0.5500	0.0141	0.5736	0.0251	0.6069	0.0120	0.5737	0.0155	0.5737
Sum of CM	87	0.9375	-	0.5000	-	0.6897	-	1.0000	-	0.5744	-	0.6269	-
EP Socialists	221	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0551	0.8450	0.0596	0.8453
European People's Party	172	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0327	0.6529	0.0362	0.6530
United Left	31	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0070	0.5552	0.0073	0.5552
Liberal Dem. and Reformists	52	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0126	0.6017	0.0132	0.6018
Democratic Alliance	56	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0140	0.6137	0.0146	0.6137
Radical Alliance	19	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0040	0.5338	0.0042	0.5338
Greens	25	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0056	0.5469	0.0058	0.5470
Europe of Nations	19	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0040	0.5338	0.0042	0.5338
FPÖ (NI)	5	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0010	0.5100	0.0010	0.5100
Vlaams Blok (NI)	2	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0003	0.5033	0.0003	0.5033
Front National Belgium (NI)	1	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0002	0.5017	0.0002	0.5017
Front National France (NI)	11	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0024	0.5212	0.0025	0.5212
Democratic Unionist (NI)	1	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0002	0.5017	0.0002	0.5017
Alleanza Nazionale. (NI)	11	0	0.5000	0	0.5000	0	0.5000	0	0.5000	0.0024	0.5212	0.0025	0.5212
Sum of EP	626	0	-	0	-	0	-	0	-	0.1415	-	0.1515	-

NI – Non-attached members

Finally, our combination of relative power ϕ and absolute power ω gives a satisfactory account for the Member States' choice of institutional settings when they expect legislative gains from potential EU legislation. Although the participation of supranational entities, such as the Commission or the EP, may promise higher gains, the Member States' expectation of potential EU legislative costs prohibits the material integration of further policy areas. Material integration is thus a function of the expected effects of institutional settings.

A first indicator for the importance of procedural settings is their selective application to EU policy areas. EU decision rules not only vary in the degree of inclusiveness and decisiveness. Moreover, the provisions for EU legislation have been changed quite differently and discriminate even within policy areas. Table 2 lists the proportion of procedural settings for all EU policy areas introduced by the original Treaty in 1958, the Single European Act in 1987 and the Maastricht Treaty in 1993. Besides the areas of association, institutional and final provisions, agricultural and trade policies are excepted from constitutional modifications. The latter are dominated by the provision of qualified majority rules under standard procedure. According to our two aspects of constitutional choice, Member States always expected an asymmetric distribution of high amounts of EU legislative gains that are increased by the Commission's role in reducing transaction costs. For agricultural and trade policies - both characterized by the highest amount of (adopted) EU proposals (König 1996: 125) - Member States have abstained from reducing of the democratic deficit by excluding the EP.

In comparison, many modifications have been made in the areas of free movement, traffic, common rules and social policy which encompass the participation of the EP. The introduction of the cooperation procedure has also contributed to the reduction of the proportion of qualified and unanimous provisions. We observe a similar pattern for the introduction of the codecision procedure. Except for environmental policies, the codecision procedure has replaced the former provision for the cooperation procedure. Again, the recent introduction of industry policy does not promise high EU legislative gains which paves the way for weaker decision rules, whereas other areas introduced by the Maastricht Treaty provide for qualified majorities. In sum, different procedures and different decision rules regulate most EU policy areas. Our findings show a tendency towards qualified majority rules either by modifications to the standard procedure or by the introduction of the cooperation and codecision

procedures. Despite this overall tendency, the Member States increased the proportion of unanimous decision rules in some policy areas, namely in the areas of the common rules and economic and social cohesion.

Table 2: Proportion of Procedural Settings by Treaty Eras

EU Policy Areas	EEC Treaty (1958-1987)			Single European Act (1987-1993)				Maastricht Treaty (1993-)				
	U	Q	S	U	Q	S	CO	U	Q	S	CO	CD
Principles/Citizenship	60	40		43	43		14	67	22			11
Free Movement of Goods	22	78		12	88			12	88			
Agriculture	17	83		17	83			17	83			
Free Movement of Ps., Serv., Cap.	47	53		33	39		28	33	43			24
Transport	67	33		50	50			50	17		33	
Common Rules	43	57		30	50		20	31	54			15
Economic Policy	20	80		20	80			17	58		25	
Trade		100			100				100			
Social Policy	40	40	20	33	33	17	17	25			50	25
Culture												100
Public Health												100
Consumer Protection												100
Transeuropean Networks											50	50
Industry								100				
Economic and Social Cohesion				25	50		25	40	20		40	
Research and Technical Develop.				50			50	25	25		25	25
Environment				100				33			33	33
Development										100		
Association	100			100				100				
Institutional Provisions	100			100				100				
Financial Provisions	50	50		45	55			33	67			
Final Provisions	80	20		80	20			80	20			
Sum per Era (100%)	51	48	1	45	45	1	9	38	38		12	11

U–Unanimity, Q–Qualified Majority, S–Simple Majority under Standard Procedure; CO-Cooperation Procedure; CD-Codecision Procedure
Source: Compilation of own data, see König (1997: 24).

Looking beyond the scope of the analysis here, the Maastricht Treaty has brought about a new pattern of EU institutional integration. This new form of integration describes the move to selective expectations of potential legislative costs. It can be observed in the recent trend of including provisions for „opt-out" clauses as often favored by either the United Kingdom or Denmark. The tendency towards this new pattern of selective EU integration has been reinforced in the provisions laid down for Monetary Union, as illustrated by the current debate on the economic criteria for membership. However, such flexibility goes against the principle of the acquis communautaire which requires the adoption of European laws in all Member State. Hence, flexibility would favor the picking and choosing of proposals thereby undermining the Union's single market.

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