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978-0-521-86189-2 - The European Union Decides

Edited by Robert Thomson, Frans N. Stokman, Christopher H. Achen and Thomas König

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I

*Explaining legislative decision-making
in the European Union*

ROBERT THOMSON AND MADELEINE O. HOSLI

I.1 INTRODUCTION

This book examines how legislation is made in the European Union (EU). Taking decisions in the European Union requires overcoming controversy and disagreement. European decision-makers' ability to resolve controversy has been tested by three developments. First, the number of member states increased from six to 25, with the prospect of further enlargement in the near future. Second, changes to the formal decision-making procedures increased the institutional power of the European Parliament. Third, the European Union expanded its involvement in policy areas from its focus on the internal market and freedom of movement across borders to include economic and monetary union, environmental policy, competition, and social policy among others.

There are numerous recent and high-profile examples of the challenges European decision-makers face in reaching political agreements amid controversy. One such example concerned the question of whether Germany should be given an official warning under the Stability Pact for its excessive budget deficit. Germany was not allowed to vote on the proposal to give such a warning, since the warning was directed against itself. Nonetheless, with the help of the Italian Presidency, it managed to turn unanimous support for the proposed warning into a vote against the proposal. The European Commission opposed this decision, and successfully overturned it in the European Court of Justice. This outcome, and the way it was achieved, challenged the view that important decisions

We thank Christopher H. Achen, Randall Calvert, Adrienne Héritier, Jan-Erik Lane, Thomas König, Frans Stokman, and the members of the Decision-making in the European Union (DEU) research group for helpful comments on an earlier version of this chapter.

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need the support of all member states, even when this is not formally required.

Even more severe political problems arose in connection with the ratification of the European constitutional treaty and the 2007–2013 budget negotiations. The French and Dutch referenda on the constitutional treaty revealed a large gap between European decision-makers and public opinion in at least some of the member states. Whatever may have motivated the no-voters, the rejection of the constitutional treaty was widely interpreted as a sign that large parts of the population viewed EU decision-making as too complex, that they opposed increasing European involvement in national affairs, and that EU enlargement was undesirable. The impact of the referenda was also felt during the negotiations on the 2007–13 budget. The controversies centred around the British rebate system and the large net payments of some member states, in particular those of the largest net contributors, the Netherlands and Sweden. The British Prime Minister Blair refused to discuss any change to the British rebate, which had been negotiated by Prime Minister Thatcher in 1984, without a fundamental revision of the European agricultural support system. In response, the French President Chirac refused to reopen negotiations on agriculture because of an earlier agreement on the agricultural system, which limited those expenditures until 2013. To complicate matters further, the Dutch Prime Minister Balkenende demanded a sizeable reduction in the net payments of the Netherlands. It is generally believed that the no-vote in the Dutch referendum contributed to the firm position taken by the Dutch negotiators. In the final stage of the negotiations, the representatives of the new member states offered to lower the budget for structural funds as a way out of this impasse. However, even this did not enable the old member states to bridge their differences and agreement failed due to negative votes of the UK, the Netherlands, Spain, Sweden and Finland.

Although such high-profile controversies and grand declarations by government leaders after European summit meetings are noticed most widely, these are only part of politics in the EU. The enactment of general visions for Europe in seemingly everyday policy decisions is just as important, because it is these decisions that affect citizens' lives. The large body of EU legislation is important because it affects just about every area of political, economic, social and cultural life in Europe. Legislation adopted at the European level often requires or induces related policy decisions by national and regional governments. EU legislation contains provisions on a wide range of everyday policy questions,

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from how many hours can be worked a week and when governments may subsidise businesses within their territories, to the maximum length of buses and the contents and labelling of food products.

An important part of European integration has taken place incrementally, by the enactment of a huge number of seemingly small decisions of the sort studied in this book. The importance of such decisions is often not appreciated, even by close observers. The former British Prime Minister, Margaret Thatcher, for example, said she did not realise the full implications of the Single European Act (SEA) of 1986, which were felt through the subsequent large collection of small decisions with the aim of strengthening the internal market.¹ A description of the EU's decision-making system given by Jean-Claude Juncker, Luxembourg's Prime Minister, also points to the importance of apparently small decisions: 'We decide on something, leave it lying around and wait and see what happens . . . If no one kicks up a fuss, because most people don't understand what has been decided, we continue step by step until there is no turning back.' Understanding the political system of the EU therefore requires analysis of the politics of everyday legislative decision-making, of the sort presented in this book.

Although the decisions studied in this book might appear small in comparison to grand landmark decisions, they have nonetheless had considerable impact upon citizens and businesses in Europe. One of the proposals selected in this study is the directive on the manufacture, presentation and sale of tobacco products.² The decision outcome on this directive was seen as a victory for defenders of public health interests. The directive introduced strong health warnings on tobacco products, and outlawed the use of product descriptions suggesting that the effects of certain brands are less devastating to health than others. Another example concerns the decision on a Community action programme in the field of education that reserved €1,850 million over seven years to promote cooperation, mobility and the development of a European dimension in all sectors of education.³ In the first part of this programme, almost 500,000 students undertook a period of study in

¹ Margaret Thatcher's views on the Single European Act and the following quote from Jean-Claude Juncker were cited in *The Economist*, 14 September 2002.

² Directive 2001/37/EC of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the member states concerning the manufacture, presentation and sale of tobacco products.

³ Decision 2000/253/EC of 24 January 2000 establishing the second phase of the Community action programme in the field of education.

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another European university, and 10,000 schools took part in European partnerships.

The present study examines the processes through which such decisions are taken. It provides insights into the processes through which actors' divergent preferences on policy outcomes are transformed into legally binding decisions contained in EU legislation. Identifying these processes requires that the investigation is informed by appropriate theories of decision-making, and that these theories are confronted with empirical evidence in a way that allows inferences to be drawn. This volume presents a range of theories of relevance to legislative choice and bargaining in many contexts, and assesses their applicability to the EU. We do so by applying our explanatory models to a large data set constructed specifically for the purposes of this study. Most of these models have not until now been tested in the context of EU decision-making, or have been applied only to very limited data sets in small pilot studies. None of the models have been tested on as large a data set as the one collected for this project. Rarely has such a range of models been tested against each other in a contest to identify their relative performance using empirical data.

The research presented in this book makes three main contributions. First, it provides answers to questions that lie at the core of understanding how the EU works in practice. How are decisions taken in the EU? How important are the formal decision-making procedures in defining decision outcomes in the EU? How important is the bargaining that takes place among the actors involved in decision-making? How can the ways in which actors interact be typified best? These questions are addressed in detail using a combination of theoretically rigorous approaches and attention to empirical detail.

Second, this book provides a unique basis for the study of decision-making in the enlarged EU by analysing decision-making in the period 1999–2001, with an EU of 15 member states. Insights gained from these patterns of decision-making will without doubt be relevant to analyses of the workings of the enlarged EU with 25 member states.

Third, it is an example of how to examine decision-making in a political system using advanced theoretical tools and an appropriate research design. In this respect, this study is also of interest to readers whose main interests are political systems other than the EU, either sub-national or national systems, or other international organisations. The present study is currently one of the most comprehensive tests of competing explanatory models of decision-making, both in terms

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of the range of theoretical approaches considered and the evidence examined.

In the following sections, we discuss the rationale behind the approach adopted and provide a synopsis of the stage of EU decision-making addressed in this book. The next section of this chapter identifies rational choice institutionalism as the most suitable theoretical approach for this study. This approach has the advantage that it can be applied to specific instances of decision-making, such as the ones we investigate in this book. Further, as discussed in Section 1.3, when specified in the form of testable explanatory models, this approach provides powerful tools to analyse processes of decision-making. In Section 1.4 we sketch the actors, collective bodies and procedures involved in the stage of legislative decision-making we focus on. Finally, in Section 1.5 we describe the range of models and specific approaches taken in this book, ranging from those focusing primarily on formal procedures to models emphasising the informal bargaining that takes place before decisions are taken. Given that the authors of each of the chapters provide a comprehensive overview of the literature relevant to their explanatory models, we do not provide a detailed literature review in this introductory chapter.

1.2 AN INSTITUTIONALIST APPROACH TO EXPLAINING DECISION-MAKING IN THE EUROPEAN UNION

Given our focus on explaining specific decision outcomes in the EU, the rational choice institutionalist approach is the most suitable one to use. Many other theoretical approaches have been applied to the study of the EU, but these provide relatively few insights into specific decision outcomes. Rational choice institutionalism is part of the new institutionalism, which encompasses a range of different approaches, including those that emphasise historical and sociological approaches (Hall and Taylor 1996; Peters 1999; Lane and Ersson 2000; Aspinwall and Schneider 2000; Lowndes 2002). Traditional institutionalism, from which new institutionalism developed, was an approach to study the rules, procedures and formal organisation of government, often using analytical tools from the disciplines of law or history. By comparison, new institutionalism encompasses a range of different approaches, including those that focus on the choices made by rational actors. One strand of institutionalism, for instance, argues that political institutions influence actors' behaviour by shaping their norms, values, interests, identities and beliefs (March and Olsen 1984; 1989).

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Given that the explanations of decision-making proposed in this book are grounded in the rational choice approach, they share some common elements. They are similar in the sense that in all explanations used, decision outcomes are assumed to be the result of interactions among goal-orientated actors operating within institutional constraints. The goals that actors pursue in this context include the realisation of decision outcomes as close as possible to their own preferences. This does not, however, imply that preferences are always stable or that actors are always fully aware of the consequences of their actions. Unintended consequences and uncertainty about the probability of possible outcomes belong to the basic features of any decision-making process.

Despite their adherence to the basic assumptions of rational choice institutionalism, the explanations proposed and tested in this book are diverse. The models differ from each other in their propositions about the processes through which actors' policy preferences are transformed into collectively binding outcomes embodied in EU legislation. These differences in propositions lead to differences in their predictions of decision outcomes. By comparing these predictions with the actual outcomes, the explanations can be tested against each other in terms of the accuracy of their predictions. The more accurate the predictions of a model, the more the propositions of the model are assumed to be applicable in the context of European Union legislation. Some explanations (the so-called procedural models) emphasise the importance of the formal institutions in which decision-making takes place. Formal institutions are those, such as the rules that govern the decision-making procedures, which are enforceable by third parties. Among the procedural models, there are differences in interpretation of the same institutional constraints. For instance, there are different ways of interpreting the treaty articles that describe the EU co-decision procedure. Consequently, different procedural models will be tested against each other. Other explanations (the so-called bargaining models) focus on the informal bargaining during the negotiations preceding the formal adoption of legislative acts. Again, there are fundamentally different ways of conceptualising the process of political bargaining. Some models emphasise the search for an overall compromise, while others emphasise logrolling between different controversial issues or power strategies. A third group of explanations (the so-called mixed models) combine propositions about formal procedures with propositions about the bargaining process. The main research questions are the following: which of the competing models gives the most accurate predictions of decision outcomes

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contained in EU legislation? Under what conditions are the models' predictions more or less accurate?

In several other approaches to the analysis of the EU, the focus is rarely on how decisions are taken on specific controversial issues. Theories of European integration often aim to explain the development of European regional integration, or the institutional structure of the EU. Competing theories of the process of European integration place different emphases on the role of actors and institutions. Among the early theories of integration, neo-functionalism (Haas 1958) highlighted the role played by non-state actors and supranational institutions in the drive toward what seemed to be ever closer union. Spillover effects—functional and technical, political and geographic—were thought to determine the process of European integration. However, neo-functionalism has relatively little to say about the actual process of decision-making within the EU at any given point in time. Similarly, more recent theories of European integration that incorporate some of the tenets of neo-functionalism, such as the transactions-based theory of integration (Stone Sweet and Sandholtz 1998), aim to discover the general determinants of the demand for integration in specific policy domains, rather than explain the details of decision outcomes.

One of the major alternatives to neo-functionalist thought, intergovernmentalism, is also more relevant to examining the general course of European integration than how day-to-day decisions are taken. Intergovernmentalism places most emphasis on nation state actors' interests in defining the speed of European integration. This approach has been helpful in explaining the variable pace of European integration in the 1960s and early 1970s. Intergovernmentalism's antecedents lie in realist (e.g. Morgenthau 1948) and neo-realist thought. Mearsheimer's neo-realist interpretation of international institutions holds that the policies they deliver are essentially the result of nation states exerting influence within and through them (Mearsheimer 1994). Regarding the development of the EU, intergovernmentalists have argued that integration is not the deterministic process suggested by neo-functionalists. Rather, member states are viewed as important agents in this process and have often been 'obstinate' rather than 'obsolete' in the process of European integration (Hoffmann 1966; Haas 1975). Liberal intergovernmentalism, which links a theory of domestic preference formation with the subsequent process of intergovernmental bargaining (e.g. Moravcsik 1998), also appears to be more concerned with the large milestones in the process of European integration, rather than with day-to-day decision-making.

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In short, studies of European integration informed by theories of international relations or of regional integration provide valuable insights into the course of European integration and the relative weight of governmental and supranational actors in the EU. However, they are not geared towards analysing the processes through which political controversies among actors are resolved in the legislative arena. For this, we must look elsewhere.

Rational choice institutionalism offers more promise in this regard, since there are many examples of studies that have used this approach to successfully formulate insights into the workings of political systems (Ward 2002). For example, the rational choice approach has been used to examine the effects of the committee system in the US Congress (Shepsle and Weingast 1987) and the more informal institutional norms of subject area specialisation (Krehbiel 1991). Comparative political studies in this tradition have investigated the effects of various institutions, including bicameralism (Tsebelis and Money 1997), the division of policy areas into ministerial portfolios and processes of coalition formation (Laver and Shepsle 1996), and the effect of multiple veto players in political systems with several stages at which actions can be blocked (e.g. Hammond and Miller 1987; Tsebelis 2002). Literature in this broad tradition provides a framework for understanding the nature of institutions and their effects, and in particular their interaction with actors' preferences to produce decision outcomes.

The existing applications of rational choice approaches to EU decision-making have also been fruitful. Researchers in this tradition have studied the consequences of legislative procedures and the relative impact of EU institutions on the outcomes of legislative decision-making (Tsebelis 1994; 1996; Moser 1996; Tsebelis and Garrett 2000; Crombez, Steunenberg and Corbett 2000). These studies are discussed in more detail in Chapter 3 of this book. Another study, to which we owe a great deal for the inspiration behind the present book, developed and applied several models of the bargaining process in the Council of Ministers (Bueno de Mesquita and Stokman 1994). The present study adopts a similar research design as Bueno de Mesquita and Stokman's 1994 book. However, we have expanded the range of explanations and institutional actors considered. We include models developed in research strategies associated with theories of coalition formation, domestic politics and legislative procedures. Moreover, the present book covers a larger number of legislative issues and proposals. This enables a more refined empirical test of alternative

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explanations, and an investigation of the conditions under which they are applicable.

Although this book aims to explain the process of decision-making in the EU, the relevance of the theoretical approach it employs reaches far beyond this subject area. The competing explanations offered in this book are all informed by and contribute to one of the major preoccupations of modern political science: the interplay between institutions and preferences in determining policy outcomes. Plott's 'fundamental equation of politics' (Plott 1991) posits that it is the interaction of preferences and institutions that determines policy outcomes. Preferences are understood to be measurable and reflect what individual actors want, whereas institutions provide the rules and practices conditioning actors' behaviour and through which collective choices are made. Accordingly, if preferences change, outcomes may change, even if institutions remain constant. Conversely, if institutions change, outcomes can change, even if preferences remain constant (Hinich and Munger 1997: 17). It has long been known, however, that in the absence of stabilising institutions, decision outcomes are inherently unstable when actors must agree on more than one issue (Plott 1967; McKelvey 1976; Schofield 1978). The empirical observation that such voting cycles are rare spurred the search for institutional mechanisms that prevent them. Shepsle's 'structure-induced equilibrium' is a prominent example of such a mechanism (Shepsle 1979; see also Riker 1980). The models of legislative decision-making presented in this book contain a range of other possible mechanisms. The next section describes the main features of our modelling approach.

1.3 A MODEL GUIDED APPROACH

Our models contain clear specifications of what each of us believes are the essential features of EU decision-making. The authors formulated their models before they saw the data. Moreover, all of the models are applied to study the same decisions. This enables us to compare their relative performance. Given a particular configuration of actors, their preferences and interests, the models generate predictions of decision outcomes. This allows us to test at least some of the implications of the models. An accompanying special issue of *European Union Politics* (Stokman and Thomson 2004) contains analyses of the data set that focus more on the micro-level predictions made by some of the models,

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for example predictions of the shifts in actors' positions during the course of decision-making. The focus on comparing model predictions with actual outcomes in real decision situations means that this book mainly considers the computational solutions to the models, rather than their more abstract analytical solutions (Morton 1999: 50). Testing the accuracy of the models' predictions over a sufficiently large number of cases enables us to make inferences on the veracity of the propositions they contain.

The use of formal models is an important methodological means to identifying the processes through which legislation is passed in the EU. This approach has been selected to achieve this aim because of its distinct advantages in terms of theory formulation and testing (e.g. Nicholson 1989; Morton 1999: chapter 2; Van den Doel and Van Velthoven 1993). When researchers set forth their ideas about EU decision-making as models, they must be explicit about the propositions they make regarding the decision-making processes at work, as well as the assumptions contained in their models. Assumptions in verbally formulated theories are often implicit rather than absent. Modelling allows the implications of the propositions to be drawn out through deductive reasoning. The number of alternative explanations we examine in this study makes the modelling approach all the more indispensable; comparing alternative models of the processes at work would be practically impossible if these were formulated verbally.

The deductive model-guided approach contrasts with more descriptive studies that have been carried out in recent years on decision-making in the EU, but has undoubtedly benefited from these studies. Our understanding of decision-making in the EU has been enriched considerably by descriptive studies, including those of Nugent (1989), Westlake (1994; 1995), Wallace and Wallace (1996), Richardson (1996), Peterson and Bomberg (1999) and Dinan (1999). While descriptive accounts are unlikely to set out with the aim of contributing to the development of formal theory, they are essential to making progress in this area. Without them, formal modellers would know little about what features of decision-making to include and emphasise in their models. Moreover, when the models prove to be deficient, descriptive studies offer ideas on how to adjust the models to reduce their level of abstraction and home in on the key elements of the complex reality.

Nevertheless, we believe that the specification of models before applying them to empirical data is essential to the search for generalisations in political science, even if such generalisations only hold when particular