

# The Division of Labour in Legislative Decision-Making of the Council of the European Union

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Little systematic empirical research exists about legislative decision-making in the Council of the European Union. This study contributes to closing this gap in the literature by examining which groups of actors within the Council decide on what type of issues. The Council structure is made up of a hierarchy consisting of working parties at the bottom, committees of senior officials in the middle and the ministers at the top. Based on a novel data set of legislative decisions made by the Council, the study examines the relative importance of these different Council levels. Two important findings emerge from the analysis: first, ministers are more involved in legislative decision-making than often assumed in the literature; second, the involvement of higher Council levels increases with features of dossiers that are related to political conflict. Although the results reduce worries about a lack of political accountability of Council decision-making, they cannot dispel these concerns completely.

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The Council of the European Union<sup>1</sup> is widely considered to be the most powerful institution in EU policy-making.<sup>2</sup> It is still the sole legislator in many EU policy fields and only shares this prerogative with the European Parliament (EP) in those remaining. Given this pre-eminent role of the Council in EU policy-making, surprisingly little is known about its internal workings. There are contributions by Council insiders and close observers that give idealised accounts of ‘how the Council works’ based on personal impressions and interviews of practitioners.<sup>3</sup> However, more representative depictions of the Council’s legislative work are still rare. Existing quantitative studies on Council decision-making have focused on identifying the conflict dimensions underlying negotiations,<sup>4</sup> on determining the factors influencing the speed with which decisions are taken in the Council,<sup>5</sup> and on explaining the influence of different actors on decision-making outcomes.<sup>6</sup> There are also some quantitative studies giving descriptive accounts of the direct

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involvement of ministers in Council decision-making.<sup>7</sup> However, none of these works explores possible relationships between the decision-making level in the Council and the characteristics of the dossier through a statistical analysis. This is the main contribution of the current study. Drawing on an original data set of a large number of legislative proposals, the analysis examines the determinants of the division of labour between bureaucrats and ministers in the Council. It asks the question of what kind of proposals are discussed and decided by what type of actors.

In reality, as opposed to the treaty provisions, the Council is not only horizontally separated into several configurations according to policy area, but also vertically divided into hierarchical levels with different types of decision-making bodies on each of those levels. The ministerial meetings at the top of the hierarchy are prepared by mid-level committees of senior diplomats and civil servants.<sup>8</sup> These committees in turn oversee the work of about 140 subordinate working parties made up of bureaucrats from permanent representations and national ministries.<sup>9</sup> Formally, only ministers have the right to take legislative decisions, but agreement is often *de facto* reached at lower levels of the hierarchy and simply rubber-stamped by ministers. The current study investigates the conditions under which ministers become personally involved in discussions of a dossier and have the final say on it. Special attention is given to characteristics of the dossier itself: the formal aspects of the decision-making process, the institutional rules implied by a certain treaty base, as well as features related to the content of the legal instrument. Being of an exploratory nature, the goal of this study is to detect robust empirical regularities linking these factors with different Council levels.

From a scientific point of view, the study makes a contribution by generating more representative insights about how the Council functions. This is of particular importance for further theory development. The identification of empirical regularities either leads to the discovery of new puzzles or the corroboration of previously held beliefs. Both results are valuable for the formulation of theories of Council decision-making.

From a normative point of view, the results of the study help to base the debate about the legitimacy of EU law-making on more reliable empirical information. In the Council, representation and accountability is only assured indirectly through national elections of Member State governments.<sup>10</sup> While the decisions of ministers are often closely scrutinised by national parliaments and domestic media, the secretive nature of committee and working group meetings ensures that the attending officials are insulated from political and public pressures. Indeed, it might even be questioned whether ministers themselves have the resources to monitor the behaviour of their subordinates in Council committees effectively. This leaves room for moral hazard on the side of bureaucrats. While the direct involvement of ministers in Council

decision-making does not fully guarantee democratic accountability, it surely improves on it by reducing the capacity for autonomous action on the lower levels of the Council hierarchy. Therefore, knowledge about how many and what kinds of decisions are made on the different Council levels should shed some light on the extent to which bureaucratic autonomy might constitute a problem for the legitimacy of Council decision-making.

The remainder of this paper is structured as follows. A brief description of the legislative process in the EU, the role of the Council and its internal organisation is given in the following section. Then the data set and its collection are described. The results of the bivariate and multivariate analyses are presented and interpreted in the third section. In the last section, the main results of the study are summarised and their implications for scientific research and normative debate are discussed.

#### THE COUNCIL IN THE EU LEGISLATIVE PROCESS

This study is concerned with legislative decision-making in areas currently governed by the rules set out in the Treaty Establishing the European Community, that is, in the first pillar of the EU.<sup>11</sup> In these policy fields, the Commission has the exclusive right to initiate legislation. Depending on the legislative procedure applicable, the EP plays either no role, can give advice, or has to agree on legislation to be passed. In contrast, the Council always has to agree to a proposal before it can become law.

Currently, most legislation of substantial importance and interest is adopted by either the consultation or the co-decision procedure.<sup>12</sup> In both cases, the Commission submits its proposal simultaneously to the EP and the Council. Under consultation, the EP can only give non-binding advice to the Council. The whole procedure consists of one reading in which it is ultimately up to the Council to make the final decision. In contrast, the institutional rights of the EP are much stronger under co-decision. This procedure consists of up to three readings by both institutions and the EP's approval is needed to adopt any piece of legislation. The first reading looks similar to the consultation procedure: the EP proposes amendments which are either incorporated into the decision of the Council or not. If the Council agrees to all the changes proposed by the EP, it can directly adopt the amended proposal as a legislative act in its first reading. If not, however, the Council decides on a so-called 'common position', which is then transmitted back to the EP for a second reading. When no agreement can be reached in the second reading stage, a conciliation committee, made up of an equal number of representatives of both institutions, is convened which has six weeks in which to negotiate a joint text. The proposal is deemed to have failed if no agreement can be reached by the committee.

In most cases, a joint text is produced which is subsequently adopted by both institutions in their third readings.

The initial decision-making process within the Council is similar regardless of the procedural rule that applies. The Council structure is basically made up of three hierarchical levels.<sup>13</sup> When the Council receives a proposal by the Commission, the dossier is first scrutinised by the relevant working party at the lowest level of the hierarchy. If the national officials and experts making up these groups can reach full agreement, the file is channelled through one of the committees of the middle layer onto the agenda of one of the meetings of ministers. In this case, no further discussion of the dossier by either committee members or ministers takes place. Such non-discussed items appear as I-items on committee agendas and are listed as A-items on the agendas of meetings of ministers. As a general rule, the non-discussed items are adopted en bloc at the beginning of meetings.

When the working party cannot reach complete agreement, the dossier is referred to one of the senior committees where it appears on the agenda as a II-item for discussion. For matters related to the Common Agriculture Policy (CAP), the senior committee is the Special Committee on Agriculture (SCA).<sup>14</sup> All other issues are discussed by the two versions of the Committee of Permanent Representatives (Coreper). Coreper I is responsible for sectoral and technical issue areas, while Coreper II deals with issues in more horizontal and politically sensitive policy fields.<sup>15</sup> Coreper II is made up of the permanent representatives themselves and Coreper I consists of their deputies. If the responsible committee reaches full agreement, the dossier is put on the agenda of a forthcoming ministerial meeting as an A-item for formal adoption. In many cases, this means that the decision is enacted by ministers that hold a portfolio that is completely unrelated to the substance of the act in question; for example, asylum legislation could be adopted by agriculture ministers. If the committee cannot reach agreement, the dossier appears as a B-point on the agenda of one of the meetings of the ministers responsible for the policy area and it is up to them to resolve the outstanding issues.

Of course, this is a highly simplified description of the decision-making process within the Council. Proposals can move between different levels of the hierarchy several times until the final decision is reached. The final decision of the Council's first reading corresponds either to a *de facto* adoption of the proposal as a legal act or to the formulation of a common position. The first outcome results when the file is decided according to the consultation procedure or, under the co-decision procedure, when full agreement could already be reached with the EP at first reading. Otherwise the final Council decision constitutes only an intermediate step towards the adoption of the final policy instrument by forming the base for further negotiations with the Parliament in later stages of the co-decision procedure. In principle, the

process within the Council is the same for second and third reading decisions. But in practice it seems that ministers rely mainly on lower-level bodies, particularly Coreper, to manage the negotiations with the EP on co-decision dossiers after the Council's first reading.<sup>16</sup> This means that co-decision files are usually not discussed further by ministers after agreement on a common position has been attained. For reasons of comparability, this study focuses exclusively on first reading decisions of the Council, be they adoptions of legal acts or merely common positions.

#### SAMPLE AND DATA COLLECTION

The study draws on a data set comprising 180 legislative acts, that is, 'decisions',<sup>17</sup> regulations, and directives,<sup>18</sup> which came into force in 2003. It could be called a 'backward looking' sample, starting off with a certain piece of legislation and tracing its development back in time. Such a sample has advantages and disadvantages. On the one hand, it might not be representative for the population of legislative decisions made by the Council since it does not consider proposals that were rejected by the Council or withdrawn by the Commission. On the other hand, the alternative strategy of selecting proposals based on the time period in which they were introduced suffers at least partly from the same problem. Unless the Commission officially withdraws the proposal, there is no way to ascertain whether a dossier has been rejected or is still considered for negotiations in the Council at a later point in time. Thus, there is no way of identifying the Council decision-making level and these cases have to be excluded from such a sample as well. In addition, the backward looking sample has the advantage that it keeps the personal characteristics of the decision-makers relatively constant. Thus, the preferences of the actors involved should be relatively stable across the short time period examined here.

Three selection criteria were employed to select the cases: first, on practical grounds, only acts that were enacted during 2003 were considered. Information that has to be derived from Council documents is more comprehensively available in recent years and collecting data for a longer period of time was not feasible, given limited resources. Of course, the results of the analysis are in principle bound to this time period, but there are also no obvious reasons to expect that circumstances specific to this year might unduly influence the results. A second criterion was the legislative procedure. Only pieces of legislation which were decided according to either the consultation or co-decision procedure were selected. The assent procedure is rarely used for Community legislation and the cooperation procedure has become almost irrelevant. Finally, all proposals based on 'Treaty of the European Union' articles were excluded for reasons of comparability. The sample is thus restricted to first pillar Community legislation.<sup>19</sup>

Much of the information was collected through consultation of the Commission's PreLex database on the internet,<sup>20</sup> which monitors the decision-making process between EU institutions. PreLex follows all legislative proposals from their adoption by the Commission to their final enactment as law. Among other things, it indicates the treaty base, the type of legal instrument, the legislative procedure, the institutional actors involved, what they decide and when they decide it. Important for the purpose of this paper, it identifies when and how often a proposal was dealt with by which group of ministers. This includes not only Council sessions in which formal decisions were taken, but also sessions in which a dossier was only discussed or a political agreement was reached in view of formally finalising the text and adopting it at a later ministerial meeting. Furthermore, PreLex indicates whether the proposal formed an A- or B-point on the Council's agenda.

Data derived from PreLex was complemented with information from several other sources. For the proposals that were not discussed on the ministerial level, the actual level of decision-making among the preparatory bodies was identified by reference to documents in the Council's public register.<sup>21</sup> In most cases, I/A-item or A-item notes gave information on whether the proposal was de facto decided upon in a working party or on the higher level of the SCA, Coreper I or Coreper II. If such notes were not available or their content ambiguous then the agendas of committee meetings were inspected. In cases where the final decision was made by a working party, an extensive document search was performed in the register to determine whether the dossier had been subject to an earlier discussion at the committee level. In this way, two variables for the involvement of different levels in Council decision-making could be derived. The first measure indicates on which level the final decision was made on a piece of legislation before it was formally adopted, and the second signifies the highest level in the Council on which the dossier was discussed during the course of negotiations. These two measures form the dependent variables of the analysis. Information about the decision-rule applicable in the Council and whether the Council regarded an act to be of a legislative or non-legislative nature was collected from issues of the monthly published 'Summary of Council Acts'.<sup>22</sup>

## RESEARCH FINDINGS

In Table 1, the legislative acts in the sample are classified according to de facto decision-making level<sup>23</sup> and the Council level involved in negotiations. The last row shows that 35 per cent of the dossiers were decided by the ministers themselves, about 22 per cent by Coreper and the SCA, and almost 43 per cent by one of the working parties. The role of ministers is even more pronounced when looking at the proportions of dossiers discussed by them at some stage of

TABLE I  
COUNCIL DISCUSSION LEVEL BY COUNCIL DECISION LEVEL

Council discussion level	Council decision level			Total discussions
	Ministers	Committee	Working party	
<b>Ministers</b>	63 (100.0)	17 (42.5)	7 (9.1)	87 (48.3)
<b>Committee</b>		23 (57.5)	15 (19.5)	38 (21.1)
<b>Working party</b>			55 (71.4)	55 (30.6)
<b>Total decisions</b>	63	40	77	180
(% across rows)	(100.0)	(100.0)	(100.0)	(100.0)
(% across columns)	(35.0)	(22.2)	(42.8)	(100.0)

Sources: PreLex, Public Register of Council Documents.

the decision-making process leading up to a Council decision. This indicator shows that the ministers are directly involved in negotiations in about 48 per cent of the proposals. About 21 per cent are discussed by one of the committees and 'only' about 31 per cent are exclusively dealt with by a working party level. In either case, these estimates are far removed from the often cited figures of Hayes-Renshaw and Wallace,<sup>24</sup> who attribute about 10 to 15 per cent of all decisions to the ministers, another 15 to 20 to the committees and about 70 per cent to the working groups.<sup>25</sup>

The ministers seem to be much more involved in Council legislative decision-making than conventional wisdom suggests. However, whether these figures can satisfy critics who claim a lack of legitimacy of Council and EU policy-making in general is a different question. Even if we take it for granted that the ministers are actively involved in about half of all Council decisions, the other half is still exclusively dealt with by bodies made up of diplomats and national officials. Then again, a common argument of practitioners is that working groups deal only with the nitty-gritty, technical details of a proposal, while the committees handle the politically more sensitive issues.<sup>26</sup> According to these accounts, the ministers' job is to hammer out agreement on 'really' political matters, for which no solution could be found at the committee level. Whereas any distinction between inherently 'technical' and 'political' issues seems untenable, it seems plausible that the Council level reached is a consequence of the degree of political conflict. Political conflict in the Council refers to the extent and intensity of disagreement among participants in Council negotiations, namely the Member States and the Commission. Issues on which little disagreement exists can be expected to be decided at lower levels, while issues on which positions are far apart and strongly valued should be dealt with by ministers in person. In this sense, the internal organisation of the Council would function as a filtering system.

To investigate this thesis further, the next two subsections explore whether features of a dossier that are, from the outset, likely to generate conflict among participants in Council negotiations are related to the involvement of different Council levels. First, bivariate graphical examinations are carried out exploring the participation of different Council levels for different subgroups of the sample. This is followed by a multivariate model probing the factors that account for whether or not the ministers themselves discussed or even made the final decision on a dossier.

### *Bivariate Analysis*

This subsection compares the involvement of different council levels across different categories of Council acts. Six factors are examined that can plausibly be assumed to be associated with the degree of conflict that a dossier generates. Two relate to formal characteristics of the decision-making process as derived from the treaty base of a proposal: the legislative procedure governing the interaction between Council and EP, and the voting threshold in the Council that is required to pass an act. The other four are rough indicators of features of the content of a dossier that are likely to influence the degree of dissent: the type of legal instrument (that is 'decision', regulation, or directive); whether the act constitutes a new EU law or only amends an existing one (which will be called the 'status' of the legislative act); whether the Council considers the act to be of a legislative or non-legislative nature (which will be called the 'nature' of the legal act); and, finally, whether the act concerns the conclusion of an international agreement or other legislation. The data sources for these variables were discussed in the previous section. Their operationalisations are given in Table 2, together with the expectations regarding their relationships to the Council decision-making level. In the following, the rationale behind these hypotheses will be discussed. Subsequently, the results of the bivariate analysis for each of these factors are presented.

Figure 1 depicts six graphs, each of them devoted to one of the factors just described. The proportions of acts discussed on different Council levels for different values of the attribute of interest are given in the left part of each graph. The interpretation of the right part is similar, except that it illustrates the percentage of final decisions made instead of the discussion level reached. Considering the influence of formal decision-making rules, one could expect that it is harder to come to an agreement the more actors have to give their consent to pass legislation. Obviously, more intense negotiations, and more higher-level involvement of actors with the authority to make concessions, would then be needed on dossiers which have to be decided by unanimity than on dossiers for which a qualified majority of Member States is sufficient.

That the veto power of the European Parliament should also have an impact on decision-making within the Council is not so clear. However,



TABLE 2  
VARIABLES AND HYPOTHESES

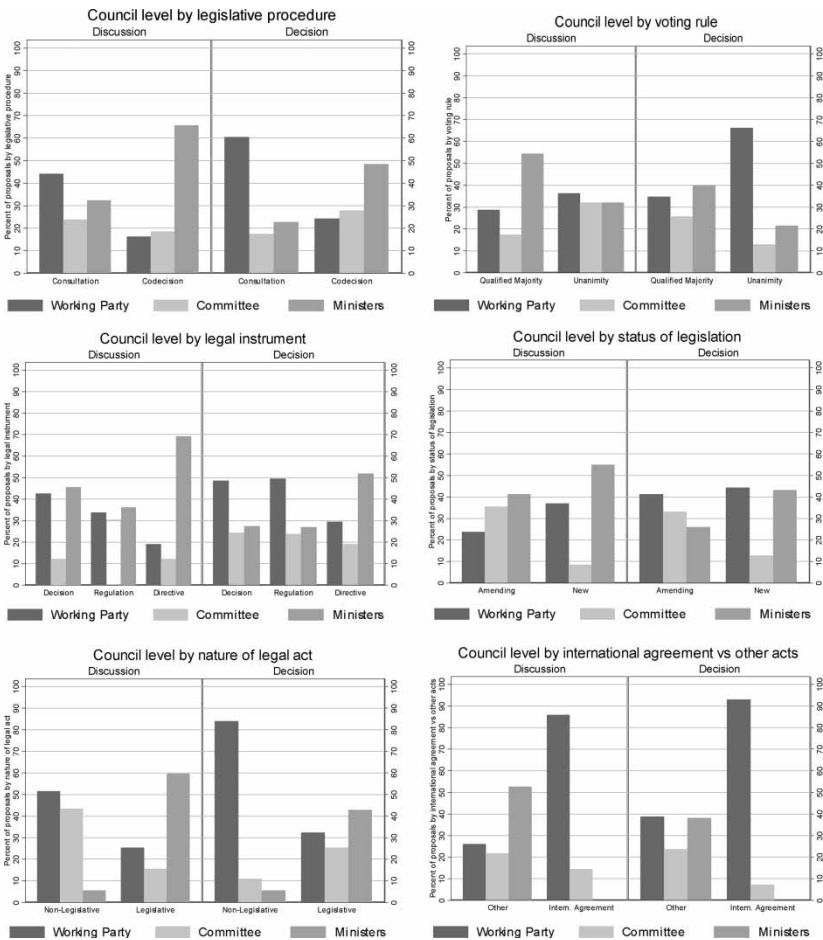
Variable	Description	Hypothesis
Legislative procedure	1 = Co-decision 0 = Consultation	+
Voting rule	1 = Unanimity 0 = Qualified majority	+
Legal instrument	1 = Directive 0 = Regulation or decision	+
Status of legislation	1 = New EU policy 0 = Amending existing EU policy?	+
Nature of legal act	1 = Legislative act 0 = Non-legislative act	+
International agreement	1 = Not an international agreement 0 = International agreement	+

*Note:* A positive hypothesis means that the variable is expected to increase the likelihood that a dossier with such a characteristic is discussed and decided at higher levels of the Council hierarchy.

there are reasons to expect such an influence. Firstly, Member States might anticipate that the Council decision is merely an intermediate step in determining the policy content of the act that will eventually be adopted. Forming only the initial basis for negotiations with the Parliament, deviations from the Council's decision will probably be needed in order to reach an inter-institutional compromise. Knowing this, particularly Member States with preferences very different from those of the EP should be more reluctant to make concessions in Council negotiations. In this way, they can limit their overall losses resulting from concessions to be made to the EP in later stages of the procedure. Secondly, the Council as a whole, in the form of its presidency, might be more interested in 'getting everyone on board', even if the treaty allows for qualified-majority voting, to show a 'common front' in negotiations with the EP. In either case, the result should be more protracted negotiations within the Council.

Figure 1A clearly corroborates the expectation about the influence of the legislative procedure on the involvement of different Council levels. Almost 66 per cent of all co-decision dossiers were discussed and 48 per cent decided by ministers. This contrasts with 32 per cent discussed and 23 per cent decided in the case of consultation. As illustrated in Figure 1B, the expectation regarding the effect of the voting rule is not supported by the data. On the contrary, ministers deal far less with unanimity (32 per cent discussed/21 per cent decided) than with qualified-majority dossiers (54 per cent discussed/40 per cent decided). This is a rather counter-intuitive finding. However, before turning to any substantial explanations, it is worth

FIGURE 1  
 COUNCIL DISCUSSION AND DECISION LEVEL BY EXPLANATORY VARIABLES  
 1A: LEGISLATIVE PROCEDURE, 1B: VOTING RULE, 1C: LEGAL INSTRUMENT,  
 1D: STATUS OF LEGISLATION, 1E: NATURE OF LEGAL ACT,  
 1F: INTERNATIONAL AGREEMENT



Source: PreLex, Public Register of Council Documents.

considering the possibility that the finding is mainly an artefact of the bivariate method of data exploration used here. Dossiers under the co-decision procedure are highly associated with higher discussion and decision-levels in the Council, but at the same time, qualified-majority voting applies to all of them. Thus, the comparatively high proportion of ministerial involvement in

qualified-majority legislation as shown in Figure 1B could be due to the fact that almost two thirds of these acts were also co-decision dossiers.

Figure 2 accounts for such confounding relationships among independent variables by excluding cases that exhibit a value on a third variable that perfectly ‘determines’ the value on the independent variable of interest. For example, Figure 2A illustrates the effect of legislative procedure when international agreements and unanimity dossiers are excluded. These dossiers are always decided according to the consultation procedure. In a rough way, the graphs in Figure 2 control for such collinearities. In the case of Figure 2A, the difference in Council level involvement between the consultation and co-decision procedure becomes less pronounced but is still substantial; only the importance of working parties in decision-making decreases somewhat. Thus, the basic conclusion with regard to the impact of legislative procedure remains the same.

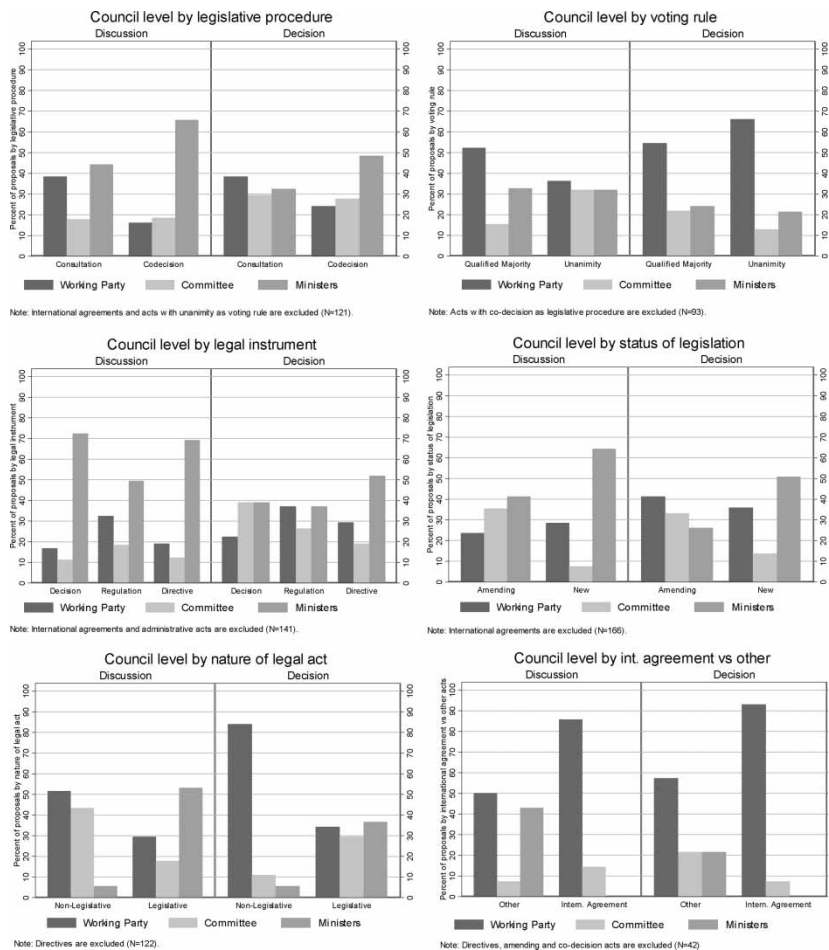
The graph examining the effect of the voting rule in Figure 2B is restricted to consultation legislation only, hence controlling for the influence of legislative procedure. Considering only this restricted sample, the difference in ministerial involvement between the qualified majority and the unanimity requirement virtually disappears. Furthermore, the percentage of qualified majority acts exclusively dealt with by working parties is considerably larger than in the full sample. Overall, the voting rule does not seem to have an effect on the level of Council involvement.

Turning now to the effect of the type of legal instrument used, laws in the form of directives rather than regulations or ‘decisions’ are often considered to inhibit a higher potential for conflict.<sup>27</sup> It is usually argued that decisions and regulations deal with rather technical or administrative matters, while directives are the main instruments for harmonising the legal systems of Europe. Directives can entail framework decisions that change the outlook of a whole policy field and imply considerable adaptation costs for at least some Member States. As a result, Member State governments are likely to be more concerned about directives than about other policy instruments. This, in turn, should lead to higher-level involvement in Council negotiations. The same argument regarding issue salience can be made with respect to the distinction employed by the Council between legislative and non-legislative acts. Dossiers considered to be of a non-legislative nature will usually not touch any vital interests of Member States. Thus, the involvement of higher levels of the Council should be minimal in these cases.

As Figures 1C and 1D indicate, both the expectation about the type of legal instrument and the nature of the act are supported. As can be seen in Figure 1C, ministers discussed 69 per cent of all directives. This figure contrasts with 46 per cent for decisions and 36 per cent for regulations. Similarly, the final decision on a directive was taken on the ministerial level in about

FIGURE 2  
COUNCIL DISCUSSION AND DECISION LEVEL BY EXPLANATORY VARIABLES  
(ADJUSTED)

2A: LEGISLATIVE PROCEDURE, 2B: VOTING RULE, 2C: LEGAL INSTRUMENT,  
2D: STATUS OF LEGISLATION, 2E: NATURE OF LEGAL ACT, 2F: INTERNATIONAL  
AGREEMENT



Source: PreLex, Public Register of Council Documents.

52 per cent of all cases, while only approximately 27 per cent of regulations and decisions were decided on the political level. The basic conclusion does not change significantly when controlling for confounding variables. Figure 2C is based on a sample that excludes international agreements and

administrative acts, which both come either in the form of regulations or 'decisions' but not directives. Although the difference between directives and other types of acts diminishes, directives are still more strongly related to the involvement of higher Council levels. The only exception is the proportion of 'decisions' discussed by ministers, which is slightly higher than that for directives. In terms of decision-making level, however, 'decisions' are still more often agreed at the administrative level than are directives.

Turning now to the distinction between legislative and non-legislative acts, Figure 1D clearly shows that the latter are almost exclusively dealt with by the working party and committee level of the Council. This pattern also does not change when directives, which are always of a legislative nature, are excluded from the analysis (see Figure 2D). A similarly clear-cut picture emerges when one compares acts concluding international agreements versus other legislation. The adoption of international agreements should be a pure formality, given that the Council defines the mandate for the Commission, and monitors and advises it during negotiations through a specialised committee.<sup>28</sup> As can be inferred from Figure 1E, international agreements were discussed by Coreper in only 14 per cent of the cases, and none of them reached the level of ministers. About 86 per cent of all international agreements are only dealt with on the working party level. The proportion of decisions taken at this level lies, at 93 per cent, even higher.

Finally, Figure 1F examines whether the status of the legislative act influences the involvement of different Council levels. Here, 'status' simply indicates whether the act amends earlier legislation or concerns a policy issue that is not yet regulated by EU law. It should be more difficult to carve out a new law on the European level than to change the substance of an existing one. Firstly, the reason for amending a piece of legislation might be a simple need to update technical details to bring them into accordance with technological or economic developments that have occurred over time. Secondly, and more substantially, the existence of legislation might imply a certain degree of agreement among member states about the desirability of EU legislation in a certain field. If EU policy-making is perceived as legitimate in a certain field, the question for actors is not whether or to what extent a policy area should be regulated by the EU, but rather what the most efficient and effective means are to accomplish the goals of EU legislation. This should make negotiations less conflictual and thus result in less need for higher-level involvement in Council decision-making.<sup>29</sup>

As can be seen in Figure 1F, the data clearly supports this prediction. In the case of new legislation, 52 per cent is discussed and 41 per cent decided by ministers. In contrast, only 35 per cent of amending acts are discussed and 22 per cent decided at the highest Council level. Furthermore, as Figure 2F shows, the effect of 'newness' is even more pronounced when international

agreements, which by definition never amend any existing legislation, are excluded from the analysis.

Overall, the bivariate analysis supports the idea that more conflictual issues are dealt with at higher Council levels. However, the examination also indicated some problems with the bivariate setup of the analysis, particularly the confounding influence of third variables. So far, the study has controlled for what could be labelled 'structural contingencies' among explanatory variables. The problem here was mainly one of empty cells in the cross-tabulation of independent variables: the variable of interest could not take on certain values in the presence of a specific value of another explanatory variable. The next part of the analysis goes one step further and also controls for less obvious interrelations among the explanatory variables through a multivariate analysis.

### *Multivariate Analysis*

The multivariate logistic regression analysis examines the relative involvement of administrative and political levels in Council decision-making. The two dependent variables used in the previous analysis are dichotomised for this purpose. The first indicates whether or not a dossier was discussed by ministers and the second one whether or not the final decision was made by ministers.

The results of the analysis are given in Table 3. Note that all international agreements were excluded from the estimation sample since none of them was dealt with on the ministerial level (see Figure 1E). Thus, a first conclusion of the analysis is that the ratification of international agreements is not a concern for ministers. The two independent variables were regressed against three sets of explanatory factors. The first model includes all remaining variables discussed in the previous subsection. Because of the high collinearity between legislative procedure and voting rule, the second model excludes the former while the third excludes the latter variable.

Not surprisingly, the coefficients for both variables are insignificant in the first model. The second model also does not show a significant effect of the voting rule. The third model, which excludes the voting rule variable, seems to be the most sensible one. As the bivariate analysis suggested, the negative effect of the unanimity rule can probably be traced back to the exclusive use of the consultation procedure in combination with this voting rule. In addition, all model-fit statistics in Table 3 indicate that the fit of model 3 is at least as good as or better than the fit of the other two models. In model 3, the coefficient of the co-decision variable not only shows the expected positive sign and a substantial effect but also a statistically significant relationship.

In general, the size of the coefficients of the other independent variables and their significance levels remain remarkably stable across different

TABLE 3  
LOGISTIC REGRESSION RESULTS

Dependent variable	Discussion by ministers			Decision by ministers		
	(A1)	(A2)	(A3)	(B1)	(B2)	(B3)
Independent variables	Change in odds (%)			Change in odds (%)		
<i>Voting rule</i>						
Unanimity = 1	-0.10	-0.55		-0.41	-0.70	
QMV = 0	(0.19)	(1.26)		(0.71)	(1.53)	
<i>Legislative procedure</i>						
Co-decision = 1	0.64		0.69*	0.41		0.61*
Consultation = 0	(1.43)		(1.89)	(0.90)		(1.65)
<i>Legal instrument</i>						
Directive = 1	0.73*	0.87**	0.72*	0.85**	0.93**	0.80**
Other = 0	(1.83)	(2.25)	(1.82)	(2.13)	(2.41)	(2.05)
<i>Status of legislation</i>						
New = 1	0.89**	0.92**	0.89**	1.18***	1.20***	1.15***
Amending = 0	(2.42)	(2.52)	(2.41)	(3.10)	(3.16)	(3.05)
<i>Nature of legal act</i>						
Legislative = 1	2.04**	2.03**	2.07***	1.13	1.15	1.25
Administrative = 0	(2.52)	(2.52)	(2.61)	(1.37)	(1.39)	(1.55)
Constant	-2.72***	-2.34***	-2.80***	-2.59***	-2.35***	-2.87***
	(3.23)	(2.93)	(3.70)	(3.05)	(2.92)	(3.77)
Likelihood ratio $\chi^2$	39.28***	37.23***	39.25***	29.56***	28.74***	29.04***
McFadden pseudo $R^2$	0.17	0.16	0.17	0.13	0.13	0.13
Adjusted count $R^2$	0.33	0.32	0.35	0.27	0.17	0.27
BIC	-627.46	-630.52	-632.54	-627.08	-631.38	-631.68

Notes: N = 166; \*significant at 10%, \*\*significant at 5%, \*\*\*significant at 1%; entries are regression coefficients (except columns 5 and 9, these numbers represent percentage changes in odds); absolute value of z statistics in parentheses; test of significance of coefficients is a two-sided Wald test; 'Adjusted count  $R^2$ ' refers to the proportion of correct predictions beyond the number that would be correctly guessed by simply choosing the largest marginal, and 'BIC' is the Bayesian Information Criterion (see Long and Freese, *Regression Models for Categorical Outcomes Using Stata* (College Station: Stata Press, 2001) pp. 85–6).

specifications. All of them have the expected positive sign. The percentage changes in odds given for model 3 also indicate that the size of their effect is not negligible. For example, the odds of directives being discussed by ministers are 105 per cent higher than for other legal instruments. In other words, the odds are more than double those for directives, all other things being equal. All coefficients are also statistically significant. The only exception is the effect of the nature of the legal act in the decision-level models (B1 to B3). However, given the exploratory nature of the research, the relative arbitrariness of significance levels,<sup>30</sup> and the substantial size of the effect, it would be premature to discard the nature of the legal act as unrelated to whether or not ministers make the final decision on a piece of legislation.

In general, the set of variables give a reasonable account of the conditions under which a dossier is deliberated by ministers. Proposals decided through the co-decision procedure, original acts, directives, and acts considered to be of a legislative nature are more likely to be discussed on the ministers' table than legislation that has to be enacted through the consultation procedure, regulations or 'decisions', acts amending earlier laws, and acts dealing with non-legislative issues. These relations also hold for the model with decision level as the independent variable. In general, the analysis broadly supports the notion of the Council structure acting as a filtering system, processing less controversial issues on the level of working parties and committees, while reserving the more politically salient decisions to the level of ministers.

## CONCLUSION

This paper set out to examine what kind of dossiers are discussed and decided upon at which levels of the Council hierarchy. It was argued that reliable information on this topic was rare and that such knowledge will advance our quest for explaining decision-making in the Council as well as putting the debate about the legitimacy of Council policy-making on firmer empirical ground. The paper proceeded to outline the role of the Council in the EU law-making process and to describe its internal processing of legislative dossiers. Within the Council hierarchy, three distinct levels of bodies involved in decision-making were identified: working parties at the bottom, the Special Committee on Agriculture and the two formations of Coreper in the middle, and the different configurations of ministerial meetings at the top. After introducing a new data set on Council decision and discussion levels, the analysis and its results were presented.

The description of the distribution of decisions across Council levels showed that ministers are far more involved in Council decision-making than previously assumed. Then the effect of several characteristics of proposals were examined that are likely to incite political conflict. In both the



bivariate and multivariate analysis, the results indicated that directives, acts considered as being of a legislative nature, and acts that present new legislation in a certain policy field are more likely to be dealt with on the political level than regulations and 'decisions', non-legislative acts, and measures amending existing legislation. Furthermore, acts decided in co-decision with the EP were also more likely to have the ministerial level participating in negotiations than acts decided under the consultation procedure. However, whether decisions had to be made by unanimity or qualified majority voting seemed to have no impact on the involvement of different Council levels.

Regarding the legitimacy of Council decision-making, optimists might find it reassuring that ministers are much more involved in law-making than is often claimed. Nevertheless, the result showing that ministers do discuss and decide a larger share of Council acts than expected might not satisfy the critics of Council decision-making. After all, on average at least half of the acts adopted by the Council are still *de facto* decided by national officials and diplomats. The result that more controversial dossiers are more likely to be dealt with on the political level accounts for some of the variation around that average, but it does not change the fact that a considerable part of Council decisions are made without the direct involvement of those that have the formal mandate to do so. If one considers a close linkage between national parliaments and decision-makers in the Council as a crucial element to guarantee the legitimacy of Council decision-making, the results of the analysis are not reassuring. The study shows that oversight by ministers through direct participation in Council negotiations occurs only in about half of the cases considered. To some extent ministers might be able to compensate for the lack of direct participation in Council negotiations through more indirect control mechanisms, such as giving more detailed instructions to bureaucrats about the positions to be represented in Council negotiations. But in terms of direct oversight by ministers, the current study points to a potentially large degree of bureaucratic leeway in Council decision-making.

The analysis gives novel insights into the division of labour with regard to legislative decision-making of the Council. Several significant relationships between the decision and discussion level of the Council and the characteristics of dossiers were discovered that are relevant for the appraisal of existing theories and the development of future theories of Council decision-making. Some of the relationships replicate earlier findings in empirical studies that pursued a similar type of question. Thus, the legislative procedure and the type of instrument were also found to be influential in studies of EU decision-making efficiency.<sup>31</sup> The significant positive relationship of directives, legislative proposals, proposals for new policies on the European level, as well as the almost perfect negative correlation of international agreements with the discussion and decision-making level in the Council

points to political salience as a potentially important factor that is often neglected in existing theories of Council decision-making.

The significant effect of the legislative procedure confirms theories that attribute considerable influence to the EP under the co-decision procedure. Some possible explanations were sketched in the text, but the precise mechanism through which the EP influences negotiation dynamics within the Council already in the first reading needs further elaboration in future research. In contrast to the studies on decision-making efficiency, no effect of the voting rule on the level at which a decision is made in the Council was found. The irrelevance of the voting rule as a determinant of the decision-making level in the Council sheds doubts on theories which, like many spatial models of EU decision-making, treat this rule as a major factor influencing the relative influence of Council members on decision-making outcomes.<sup>32</sup> In contrast, the results support the view that a 'culture of consensus' governs interactions in the Council.<sup>33</sup> According to this approach, the intense and continuous interaction of government representatives in the Council has resulted in a cooperative negotiation style that is characterised by a reflex to seek consensus among all Member States. Exactly how such a culture develops and is being sustained is an intriguing question that also calls for more theoretical work.

In general, the previous analysis and discussion should have made clear that Council decision-making consists of more than periodic meetings of ministers from Member States. The Council machinery is highly complex and the bulk of its legislative work is performed by diplomats and national officials from Member States. Hundreds of them meet daily in the Council building in Brussels to shape the future of the EU and the life of its citizens. What they decide, why and how, and with what consequences deserves more scientific, if not public, attention.

#### NOTES

1. The Council of the European Union is also known as the Council of Ministers. In the remainder of this text, it is referred to simply as 'the Council'.
2. For example, see F. Hayes-Renshaw, 'The Council of Ministers', in J. Peterson and M. Shackleton (eds.), *The Institutions of the European Union* (Oxford: Oxford University Press, 2002), pp. 9, 47–70; P. Sherrington, *The Council of Ministers. Political Authority in the European Union* (London: Pinter, 2000), pp. 1–2; M. Westlake and D. Galloway (eds.), *The Council of the European Union*, (London: John Harper, 3rd edn., 2004), p. 3.
3. For example, F. Hayes-Renshaw and H. Wallace, *The Council of Ministers* (Basingstoke: Palgrave Macmillan, 2006); Sherrington, *The Council of Ministers*; Westlake and Galloway, *The Council of the European Union*.
4. O. Elgström, B. Bjurulf, J. Johansson and A. Sannerstedt, 'Coalitions in European Union Negotiations', *Scandinavian Political Studies*, 24/2 (2001), pp. 111–28; M. Kaeding and T.J. Selck, 'Mapping out Political Europe: Coalition Patterns in EU Decision-Making', *International Political Science Review*, 26/3 (2005), pp. 271–90; F. Hayes-Renshaw, W. Van Aken and H. Wallace, 'When and Why the EU Council of Ministers Votes Explicitly',

- Journal of Common Market Studies*, 44/1 (2006), pp. 161–94; M. Mattila and J.-E. Lane, ‘Why Unanimity in the Council? A Roll Call Analysis of Council Voting’, *European Union Politics*, 2/1 (2001), pp. 31–52; M. Mattila, ‘Contested Decisions: Empirical Analysis of Voting in the European Union Council of Ministers’, *European Journal of Political Research*, 43 (2004), pp. 29–50; R. Thomson, J. Boerefijn and F. Stokman, ‘Actor Alignments in European Union Decision Making’, *European Journal of Political Research*, 43/2 (2004), pp. 237–61; C. Zimmer, G. Schneider and M. Dobbins, ‘The Contested Council: Conflict Dimensions of an Intergovernmental EU Institution’, *Political Studies*, 53/2 (2005), pp. 403–22. Also related are the studies of the communication networks of Council working groups by J. Beyers and G. Dierickx, ‘Nationality and European Negotiations: The Working Groups of the Council of Ministers’, *European Journal of International Relations*, 3/4 (1997), pp. 435–71; J. Beyers and G. Dierickx, ‘The Working Groups of the Council of the European Union: Supranational or Intergovernmental Negotiations?’, *Journal of Common Market Studies*, 36/3 (1998), pp. 289–317.
5. J. Golub, ‘In the Shadow of the Vote? Decision Making in the European Community’, *International Organization*, 53/4 (1999), pp. 733–64; H. Schulz and T. König, ‘Institutional Reform and Decision-Making Efficiency in the European Union’, *American Journal of Political Science*, 44/4 (2000), pp. 653–66.
  6. See the contributions in the special issue ‘Winners and Losers of EU Decision Making’ of *European Union Politics*, 5/1 (2004) and in R. Thomson, F. Stokman, C.H. Achen and T. König (eds.), *The European Union Decides* (Cambridge: Cambridge University Press, 2006).
  7. R. Gomez and J. Peterson, ‘The EU’s Impossibly Busy Foreign Ministers: “No One Is in Control”’, *European Foreign Affairs Review*, 6/1 (2001), pp. 53–74; F. M. Häge, ‘Who Decides in the Council of the European Union’, unpublished manuscript, Leiden University (2007); Hayes-Renshaw and Wallace, *The Council of Ministers*; M.P.M.C. van Schendelen, ‘“The Council Decides”: Does the Council Decide?’, *Journal of Common Market Studies*, 34/4 (1996), pp. 531–48.
  8. The terms (national) officials and bureaucrats are used interchangeably in this study. Unless indicated otherwise, diplomats and other personnel from the Member States’ permanent representations are also subsumed under these terms.
  9. For a list of Council committees see Council, ‘List of Council Preparatory Bodies’, 24 April 2006, 8605/06.
  10. A. Moravcsik, ‘In Defence of the “Democratic Deficit”: Reassessing Legitimacy in the European Union’, *Journal of Common Market Studies*, 40/4 (2002), pp. 603–24.
  11. Apart from foreign and security policy (pillar II) and some justice and home affairs issues (pillar III), all policy areas falling in EU competence are covered by this pillar.
  12. See N. Nugent, *The Government and Politics of the European Union* (Durham, NC: Duke University Press, 5th edn. 2003), pp. 337–53 and S. Hix, *The Political System of the European Union* (Basingstoke: Palgrave Macmillan, 2005) for more detailed descriptions of these procedures.
  13. There are certain exceptions to this rule, one of the most important being the four-level organisation in most areas dealt with by the Justice and Home Affairs Council. See H.G. Nilsson, ‘The Justice and Home Affairs Council’, in M. Westlake and D. Galloway (eds.), *The Council of the European Union* (London: John Harper, 2004), pp. 131–7.
  14. The SCA differs from the two Coreper formations in that it does not divide its agenda into Roman-I and -II items. All decisions regarding CAP are, at least formally, discussed by the SCA. See P. Cully, ‘The Agriculture and Fisheries Council’, in M. Westlake and D. Galloway (eds.), *The Council of the European Union* (London: John Harper, 2004), p. 152.
  15. More precisely, Coreper II prepares the ministerial meetings of the General Affairs and External Relations, the Justice and Home Affairs, as well as the Economic and Financial Affairs Council. Coreper I handles dossiers for the remaining Council configurations (Westlake and Galloway, *The Council of the European Union*, p. 204).
  16. D. Bostock, ‘Coreper Revisited’, *Journal of Common Market Studies*, 40/2 (2002), pp. 215–34.

17. To distinguish 'decisions' as a type of legal instrument from the more general meaning of the term, the word is set between inverted commas.
18. Among regulations and 'decisions', the Council distinguishes between administrative and legislative acts. According to its Rules of Procedure (Art. 9, 1), the Council decides itself when it acts in a legislative capacity, see K. Lenaerts and P. van Nuffel, *Constitutional Law of the European Union* (London: Sweet & Maxwell, 2nd edn., 2005), p. 417, n.172. Also, the treaties do not provide a clear definition of what constitutes a legislative act, see Westlake and Gallo-way, *The Council of the European Union*, p. 11. Since the distinction seems rather arbitrary in many cases, it is not adopted here. Unless otherwise stated, the term 'legislation' will refer to all types of regulations and decisions and, of course, to directives.
19. That is, to proposals based on articles of the 'Treaty establishing the European Community', in the remainder of this paper simply referred to as 'the treaty'.
20. The URL is <http://europa.eu.int/prelex/apcnet.cfm?CL=en> (accessed 18 February 2006).
21. The URL is <http://ue.eu.int/showPage.asp?id=254&lang=en&mode=g> (accessed 18 February 2006).
22. The URL is <http://ue.eu.int/showPage.asp?id=254&lang=en&mode=g> (accessed 18 February 2006).
23. Note that the finalisation of the text of an act by the Working Party of Legal/Linguistic Experts was not counted as a discussion or decision of the dossier on the working party level.
24. F. Hayes-Renshaw and H. Wallace, *The Council of Ministers* (Houndmills/London: Macmillan Press, 1997), pp. 40, 78.
25. The high involvement of ministers found might be partly due to the focus on legislative decisions. The figures in earlier studies considered all kinds of decisions, including non-binding recommendations, opinions, and declarations.
26. See E. Fouilleux, J. de Maillard and A. Smith, 'Technical or Political? The Working Groups of the EU Council of Ministers', *Journal of European Public Policy*, 12/4 (2005), pp. 609–23.
27. Golub, 'In the Shadow of the Vote?'; Schulz and König, 'Institutional Reform and Decision-Making Efficiency in the European Union'.
28. The so-called Article 133 Committee, see for example A. Niemann, 'Between Communicative Action and Strategic Action: The Article 113 Committee and the Negotiations on the WTO Basic Telecommunications Services Agreement', *Journal of European Public Policy*, 11/3 (2004), pp. 379–407.
29. As an anonymous reviewer pointed out, an alternative hypothesis would state that changing existing EU policy is at least as difficult as creating new policy on the European level due to vested interests, path dependencies, and the possibly diverging views of new Member States that were not members at the time the original policy was adopted. Empirically, a negative or no relationship of the status of the legislative act with the decision-making level would support such a view.
30. The variable is almost significant at the 10 per cent level in model B3 und would be if a one-sided instead of a two-sided test was used.
31. Golub, 'In the Shadow of the Vote?'; Schulz and König, 'Institutional Reform and Decision-Making Efficiency in the European Union'.
32. For a discussion, see Mattila and Lane, 'Why Unanimity in the Council?'
33. J. Lewis, 'Informal Integration and the Supranational Construction of the Council', *Journal of European Public Policy*, 10/6 (2003), pp. 996–1019; D. Heisenberg, 'The Institution of "Consensus" in the European Union: Formal Versus Informal Decision-Making in the Council', *European Journal of Political Research*, 44 (2005), pp. 65–90.