

# The Efficiency of Legislative Decision-Making in the Council of the EU before and after Lisbon

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## Abstract

One of the explicit goals of the Lisbon Treaty was to enhance the ‘efficiency and democratic legitimacy of the Union’. To increase the Union’s efficiency, the treaty extended the scope of application of the qualified majority voting rule in the Council. To boost the Union’s democratic legitimacy, it also widened the scope of application of the co-decision procedure, which grants the European Parliament formal powers that are on par with those of the Council. Relying on a quasi-experimental research design and a new dataset covering all legislative decision-making processes in the period between 2005 and 2011, this study focuses on the effects of those formal rule changes on the efficiency of Council decision-making. The analysis corroborates earlier regression-based research on pooled samples that indicate that the empowerment of the EP prolongs decision-making. In fact, the co-decision procedure more than doubles the duration of Council decision-making in those areas where it was introduced by the Lisbon Treaty. However, the analysis also demonstrates that, due to the ‘limited diversity’ of real world cases, it is practically impossible to identify the causal effect of changes in the voting rule. This problem has likely affected previous research as well, but has been masked by the method of analysis employed.

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## **The goals of the Lisbon Treaty**

As explicitly stated in its preamble, the changes introduced by the Lisbon Treaty to the EU's constitutional framework aimed at 'enhancing the efficiency and democratic legitimacy of the Union'. Some of the major formal rule changes in this respect concerned the extension of the possibility of qualified majority voting in the Council, and the empowerment of the European Parliament (EP) by widening the scope of applicability of the co-decision procedure. The move in the Council's decision-making rule from unanimity to qualified majority voting is often justified by the need to increase the efficiency of decision-making, and the empowerment of the EP by a concomitant requirement to bolster the democratic legitimacy of the Union's legislative decisions after individual member states have lost their veto power.

As a result of several treaty changes since the first amendment by the Single European Act in 1987, decision-making rules have been changed in more and more policy areas from a rather intergovernmental framework in which member states decide by unanimity and Parliament has only an advisory role, to a bicameral system in which member states can make a decision by qualified majority and the EP has powers equal to those of the Council in the legislative process. The Lisbon Treaty was supposed to complete this process by extending qualified majority voting and the co-decision procedure to the last policy areas that had not been covered by these rules before, most notably the Common Agriculture and Fisheries Policies (CAP and CFP) and Police and Judicial Cooperation in Criminal Matters.<sup>2</sup> Although the CAP and CFP were one of the first EU policy areas in which qualified majority voting was possible in the Council, the EP had only a consultative role to play up to that point in time. The powers of the EP were similarly limited in the area of Police Cooperation and Judicial Cooperation in Criminal Matters; but in addition, the unanimity rule had also applied in the Council.

This study takes a first step towards evaluating the consequences of the Lisbon Treaty with regard to its normative goals of enhancing the efficiency and democratic legitimacy of the Union. As these goals are rather broad and lack clear definitions, any such endeavour is necessarily partial. The focus here is on the consequences of the changes in the voting rule and legislative procedure for the efficiency of decision-making in the Council. Following earlier studies on EU decision-making efficiency (e.g. Golub, 1999; Schulz and König, 2000), the term is operationally defined as the time that has passed between the introduction

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<sup>2</sup> The Lisbon Treaty also renamed the co-decision procedure to 'ordinary legislative procedure'. Since the study covers both periods before and after the Lisbon Treaty came into force, I use the term 'co-decision procedure' throughout this paper for the sake of clarity.

of the proposal and the adoption of a decision. However, as the focus is on Council decision-making, the relevant adoption decision is not the decision on the final act, but the first decision taken in the Council, which can but does not have to coincide with the adoption of the final act. To examine the effects of the rule changes empirically, the study relies on a quasi-experimental research design (Campbell and Stanley, 1969). Specifically, the study compares changes in decision-making duration of cases whose treaty base was affected by a Lisbon Treaty rule change with changes in decision-making duration of cases whose treaty base was not affected by a rule change. Thus, the research design allows for both contemporaneous and longitudinal comparisons, ruling out a host of alternative explanations.<sup>3</sup> The ability to control for third variables by design is further enhanced by analysing homogenous sub-samples of cases from the most affected policy areas, i.e. Justice and Home Affairs (JHA) and Agriculture and Fisheries (A&F). The quantitative analysis covers all legislative decision-making processes initiated between 1 January 2005 and 31 December 2011.

The next section reviews the existing literature on the theoretically expected and empirically observed effects of formal rules on the efficiency of collective decision-making in the European Union. Subsequently, the research design, sample selection and data collection of the study is described and justified in detail. Following the discussion of the methodological approach, the results of the analysis are presented. Finally, the study concludes with a summary of the results, a brief discussion of the normative implications of its findings, and suggestions for promising avenues for future research.

### **Formal rules and decision-making efficiency**

The efficiency of EU decision-making has received considerable scholarly attention. Most studies focus on explaining the time it takes for legislative proposals to be adopted as law (Golub, 1999, 2007; Golub and Steunenberg, 2007; Hertz and Leuffen, 2011; König, 2007; Schulz and König, 2000). Despite rather different samples, statistical models, and operationalizations of explanatory variables, these studies have produced a set of consistent findings regarding the effects of institutional rules and procedures. In short, existing studies agree that the possibility of qualified majority voting in the Council expedites decision-making, while the involvement of the European Parliament under the co-decision procedure

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<sup>3</sup> Most of the designs used in this study resemble what Campbell and Stanley (1969: 47-50) call the non-equivalent control group design.

slows it down.<sup>4</sup> These findings are often interpreted as being consistent with the spatial theory of voting or coalition theory (Golub, 2007; Schulz and König, 2000). However, neither of those modelling approaches makes explicit predictions about the duration of decision-making. The spatial theory of voting makes predictions about policy stability, in which policy change either occurs instantly or not at all. Decision-making takes place under complete information, which means that everybody knows everybody else's preferences, the location of the status quo, the range of possible decision-making outcomes, and the sequence of moves of the game. In this basic form, the spatial model does not allow for frictions or delays. If a policy alternative exists that is preferable to the status quo for the required majority of actors and for all veto players, this alternative will be adopted instantly; if no such alternative exists, the status quo will prevail and the proposal fail, again instantly.

Coalition theory makes predictions about how large the proportion of winning majority coalitions is based on all logically possible combinations of actors and given a certain voting threshold. However, coalition theory does not provide an indication of how long it will take to form any such coalition. Just because a large number of theoretically possible winning coalitions exists does not mean that any particular one of them will be formed quickly. A simple transaction-cost perspective seems to be more promising as a possible explanation (Häge, 2013; Hertz and Leuffen, 2011). The more inclusive the formal decision-making rules, the more actors need to be satisfied for a proposal to be adopted as law. In a world of boundedly rational actors with incomplete information, sounding out the positions of all actors, forming winning coalitions, and formulating successful compromise proposals in the Council takes more time if the approval of more actors is needed. At the same time, a lower threat of being side-lined and outvoted under higher majority thresholds also reduces pressure on member states to compromise and show flexibility in their positions (Häge, 2012). Thus, the mere option of qualified majority voting should make Council negotiations less protracted. Finally, having an additional veto player like the European Parliament involved adds just a completely new layer of complexity to the negotiation process.

Besides studies investigating the duration of the entire legislative decision-making process, more recent work has also looked at the duration of separate sub-stages of the process in different institutions. Rasmussen and Toshkov (2011) investigates the length of time it takes for the EP to adopt its first reading position. The results indicate that the EP takes longer to adopt its position under procedures that provide it with more formal powers in

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<sup>4</sup> See König (2008) for a systematic review of earlier studies and a critical discussion of their methodological choices (see also Golub, 2008).

the decision-making process. Focusing exclusively on legislation processed through the co-decision procedure, Toshkov and Rasmussen (2012) show that it takes more time for the EP to adopt its first reading position when it engages in informal trilogue negotiations with the other institutions to reach an early agreement in first reading than when the proposal is adopted at a later stage of the procedure. Häge (2011a) examines the time it takes for the Council to reach its first decision. Under consultation, this decision always corresponds to the formal or informal adoption of the legislative act. Under co-decision, it can also refer to the adoption of the Council's common position if the procedure continues into its second or even third reading stage. The findings show that the Council requires more time to adopt its first decision under procedures that provide the EP with more formal powers, although Häge (2011a) is careful not to assign causal significance to this primarily descriptive relationship. In light of Rasmussen and Toshkov's results (Rasmussen and Toshkov, 2011; Toshkov and Rasmussen, 2012), it is noteworthy that the difference in Council decision-making duration between the co-decision and consultation procedure existed already long before the growth in first reading agreements started around the turn of the millennium, and that the Council is not required to wait for the reception of the EP's first reading position before adopting its own position informally in the form of a 'general approach'. In short, the durations of internal Council and EP decision-making processes during the first reading are not logically linked. Thus, the longer duration of decision-making in the Council under the co-decision procedure is unlikely to be the simple result of delays in decision-making in the EP or of the increasing occurrence of informal negotiations between the institutions during the first reading stage.

These studies of the duration of the first reading stage in the EP and Council also provide us with further insights about the precise causes of the longer duration of decision-making under co-decision. In contrast to earlier work that focused on the duration of the entire process from proposal introduction to the adoption as law, the first reading studies are able to demonstrate that the longer duration of decision-making under the co-decision procedure is not just a rather mechanistic and therefore trivial consequence of the larger number of readings under this procedure, but a result of the need to resolve higher levels of political controversy, be it within or across institutions. In order to control for the differences in the number of readings between legislative procedures 'by design', this study follows earlier research in focusing on the Council's first formal or informal decision in the process. The goal of the study is to examine the efficiency of Council decision-making, and the Council's first recorded decision corresponds to the latest point in the process at which the

agreement between its members could have possibly been struck.<sup>5</sup> The later stages of the co-decision procedure are governed by tight time limits and are mainly concerned with reaching an inter-institutional agreement between the Council and the EP. Therefore, this part of the process bears little relevance for studying the efficiency of Council decision-making. Given the strict timelimits of

A way in which the current study differs from both existing research on the efficiency of the entire decision-making process and of its sub-components is its research design and method of analysis. The frequent changes in institutional rules and procedures governing legislative decision-making in the EU over the last quarter of a century provide researchers with an exceptional opportunity for rigorously studying the causal effects of institutions. However, existing research on the efficiency of EU decision-making has not taken advantage of the possibility to make controlled comparisons in quasi-experimental research designs. Virtually all previous studies conduct regression-based analyses on samples pooling observations across lengthy time periods and different policy areas. To rule out alternative explanations, these studies rely on a battery of often imperfectly measured control variables rather than careful temporal and cross-sectional comparisons of relevant sub-samples of the data.<sup>6</sup> As is being increasingly recognized in the research methods literature (e.g. Achen, 2002; Clarke, 2005; King and Zeng, 2007), such regression-based approaches are often unable to provide us with valid causal inferences.

### **Research design, sample selection, and data collection**

The analysis is based on a dataset of legislative decision-making processes that started between 1 January 2005 and 31 December 2011. The sample coverage allows us to make comparisons over time between cases based on treaty bases whose legislative procedure or voting rule changed as a result of the entry into force of the Lisbon Treaty on 1 December 2009, and to make contemporaneous comparisons with cases based on treaty bases that did not experience a rule change as result of the entry into force of the Lisbon Treaty. The

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<sup>5</sup> The possibility of early agreements with the EP under the co-decision procedure complicates matters. In such cases, the Council's first recorded decision is often a result not only of internal negotiations, which have been concluded earlier, but also of the inter-institutional compromise subsequently reached with Parliament. The empirical analysis below accounts for this possibility by comparing cases whose treaty bases were affected by a procedure change from consultation to co-decision with cases whose treaty bases prescribed the co-decision procedure both before and after the Lisbon Treaty entered into force.

<sup>6</sup> A partial exception is the study by Rasmussen and Toshkov (2011), whose main regression-based analysis on pooled data is supplemented with a before-and-after comparison of the duration of decision-making of cases decided on the basis of treaty bases that were subject to a change in legislative procedure. However, the analysis is confined to only two treaty bases and does not include a contemporaneous comparison with a control group of proposals whose treaty base did not experience a change in procedure.

analysis is conducted on the full sample of cases as well as on sub-samples of JHA and A&F cases, respectively. These two policy areas are the ones most affected by the institutional reforms introduced by the Lisbon Treaty. In A&F, matters falling under the CAP/CFP were decided through the consultation procedure before the Lisbon Treaty came into force, while matters relating to Public Health, Food Safety and Animal Welfare were decided through the co-decision procedure. Qualified majority voting in the Council was possible in both A&F policy sub-areas already before the Lisbon Treaty came into force. The Lisbon Treaty only changed the applicable procedure for CAP/CFP matters from consultation to co-decision. In JHA, matters relating to Asylum, Visa, Migration, and Judicial Cooperation in Civil Matters used to be decided through the co-decision procedure and by qualified majority rule in the Council before the Lisbon Treaty entered into force.<sup>7</sup> However, matters relating to Judicial Cooperation in Criminal Matters and Police Cooperation used to be decided through the consultation procedure and unanimity was required for decisions in the Council under the Nice Treaty regime. The Lisbon Treaty extended the application of the co-decision procedure and introduced the possibility of adopting decisions by qualified majority into this JHA sub-area.

As the description indicates, both A&F and JHA include measures based on treaty bases with institutional rules that did and did not change as a result of Lisbon Treaty amendments. Thus, the sub-sample analyses allow for additional control by keeping constant all unobserved developments over time specific to the policy area in question. The chosen starting point for the study period coincides with the last changes in the formal decision-making rules before the Lisbon Treaty came into force.<sup>8</sup> Thus, this restriction of the time period ensures that each case introduced in the pre-Lisbon era is governed by a constant set of rules that does not change half-way through the decision-making process. Also, to ensure a clear delineation between pre- and post-Lisbon cases, all pre-Lisbon Treaty cases with proposals not adopted before the entry into force of the Lisbon Treaty on 1 December 2009 are treated as right-censored as from that point in time.

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<sup>7</sup> Measures relating to family law are an exception. They had and still have to be adopted by unanimity in the Council with consultation of the EP. Unfortunately, these measures are too few in numbers to form a separate comparison group in the JHA sub-sample analysis and are therefore excluded.

<sup>8</sup> These changes concerned rules for the adoption of JHA measures with respect to external and internal border controls, illegal immigration, and refugees; see Official Journal (2004) Council Decision (2004/927/EC) of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, OJ L 396, 31 December 2004, p.45, Luxembourg.

The dataset was constructed through a combination of information from several sources. The core of the data stems from the European Union Policy-Making (EUPOL) dataset (Häge, 2011a), which contains information extracted from the Commission's PreLex database in a data matrix format ready for further processing in a statistical software package.<sup>9</sup> Most relevant for the current study, EUPOL includes the date of the introduction of the proposal by the Commission or, in the case of a member state initiative, the date of the transmission of the initiative to the Council. These dates establish the starting date of the Council decision-making process. EUPOL also includes the dates on which the Council met to discuss the dossier together with an indication of the purpose of those meeting. When the Council met to adopt an informal agreement in the form of a general approach or political agreement, then the date of this informal agreement was taken as the relevant end date of the Council decision-making process; otherwise the date on which the Council formally adopted the law or the common position was used.

EUPOL also includes various indicators for the applicable legislative procedure, but unfortunately, information on the decision-making rule in the Council is largely missing and needs to be derived from the treaty articles on which the dossier is based. For this purpose, PreLex information was merged with information from EurLex and a manually coded dataset indicating the institutional rules associated with different treaty articles.<sup>10</sup> The bibliographic records of legislative proposals in EurLex indicate the treaty base of proposals in a more standardized format than PreLex. They also provide information about the applicable legislative procedure and various policy area descriptors. The former was used to cross-validate the legislative procedure variable derived from PreLex, and the latter helped in categorizing each proposal into a single policy area. The dataset of institutional rules was coded based on a detailed reading of the consolidated versions of the treaties before and after the Lisbon Treaty came into force, and of the Lisbon Treaty itself.<sup>11</sup> For each treaty article

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<sup>9</sup> The PreLex database monitors the progress of all Commission proposals through the inter-institutional decision-making process, see <http://ec.europa.eu/prelex/apcnet.cfm?CL=en> (accessed 18 May 2012). The current study relies on the third version of the EUPOL dataset covering the period up to mid-January 2012. The dataset is available at [www.frankhaege.eu](http://www.frankhaege.eu) (accessed 18 May 2012).

<sup>10</sup> EurLex is a database on EU law maintained by the Publications Office of the EU, see <http://eur-lex.europa.eu/en/index.htm>. The extraction of the bibliographical information for proposals from this source was automated through computer scripts written in Python.

<sup>11</sup> Official Journal (2006) Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community. OJ C321, 29 December 2006, p.1, Luxembourg; Official Journal (2007) Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. OJ C306, 17 December 2007, p.1, Luxembourg; and Official Journal (2010) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. OJ C83, 30 March 2010, p.1, Luxembourg.



before and after the Lisbon Treaty came into force, the relevant legislative procedure and Council decision-making rule was identified.

Furthermore, for each treaty base, the relevant article before the Lisbon Treaty came into force was linked with the equivalent article after the Lisbon Treaty came into force. Linking treaty articles in this way is a crucial prerequisite for making valid temporal comparisons across treaty regimes. In addition, it is also useful for clearly delineating the sample of proposals of interest for the study. For the first time, the Lisbon Treaty amendments introduced an explicit distinction between legislative and non-legislative decisions. By linking treaty articles pre- and post-Lisbon, it is possible to ‘extrapolate’ this distinction backwards in time. The distinction between legislative and non-legislative decisions is of particular importance when comparing the effect of different legislative procedures. In the past, most non-legislative dossiers were adopted through the consultation procedure, but hardly any through the co-decision procedure. In order to avoid confounding effects of the procedure with effects of the status of the act, this procedure allows the identification and exclusion of decision-making processes that refer in fact to non-legislative acts.

Finally, the main source of information for the policy area variable came from the Council’s public register of documents. By searching for the agenda of the meeting of the Council working party that the proposal formed a part of, the title of the working party could be extracted.<sup>12</sup> The title of the working party was then used to identify the Council formation to which it belonged, as recorded in the ‘List of Council preparatory bodies’.<sup>13</sup> While PreLex includes information on the Council formation that dealt with the dossier, this information is only meaningful in the minority of cases in which the dossier formed a B-item on the agenda of the ministerial meeting. Being a B-item implies that the proposal was actually discussed by ministers. Dossiers that do not require the direct involvement of ministers are adopted as A-items without discussion, and the adoption as an A-item can happen at ministerial meetings of any Council formation, regardless of whether the dossier falls within the remit of that formation or not. Thus, the information from working party agendas allows coding the policy area of a proposal in those cases where ministers never discussed the dossier.

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<sup>12</sup> The Council’s public register of documents provides access to the Council’s internal documents, see <http://www.consilium.europa.eu/documents?lang=en>. The extraction of this information from the register was again automated through Python scripts.

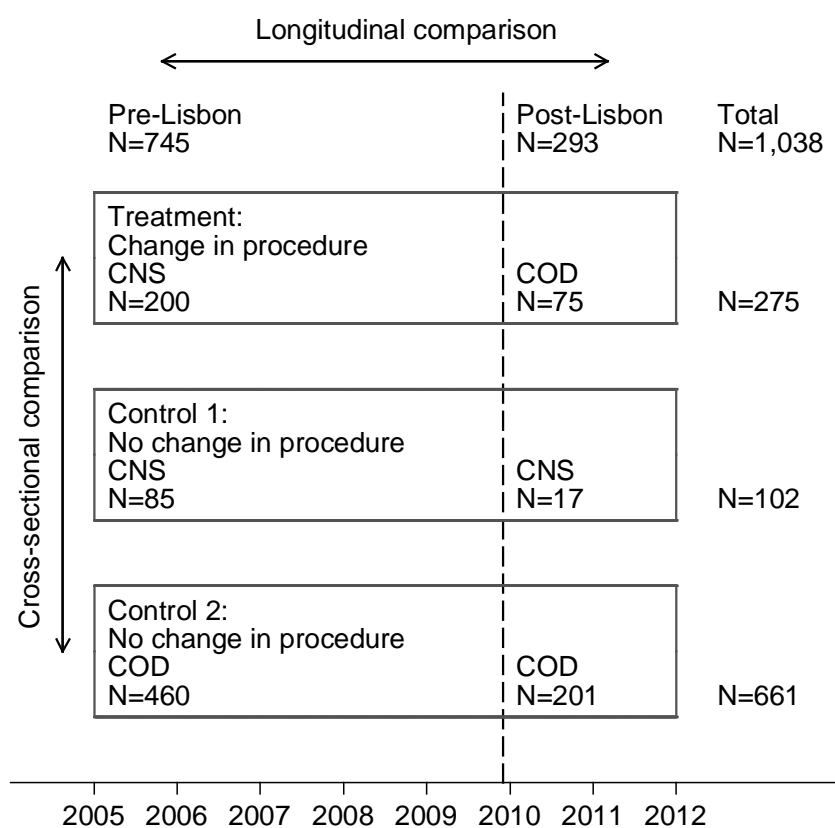
<sup>13</sup> For example, see Council (2011) List of Council Preparatory Bodies. 5688/1/11, 1 February 2011, Brussels.

## **Decision-making efficiency in the Council before and after Lisbon**

This section is divided into two parts. The first part of the analysis is concerned with the effect of the legislative procedure on Council decision-making efficiency, and the second part is concerned with the effect of the voting rule. Each part consists of a full sample and one or more policy area sub-sample analyses. For each analysis, the comparisons to be made are first described in detail before the results of the statistical analysis are presented. In order to reduce the need for making questionable assumptions about the data generation process, the analysis relies on simple non-parametric methods for survival analysis.

### *The effect of changes in the legislative procedure*

To assess the effect of changes in the legislative procedure, the full sample is first divided into a 'treatment' and two 'comparison' or 'control' groups. The research design and the number of observations in each group are illustrated in Figure 1. The treatment group consists of cases with treaty bases whose legislative procedure was changed from consultation to co-decision by the Lisbon Treaty. The first control group consists of cases with treaty bases that prescribed the consultation procedure to be the applicable legislative procedure both before and after the Lisbon Treaty entered into force. This is the most natural comparison group to assess the effect of the change in procedure. However, the number of files with a treaty base specifying consultation as the appropriate procedure both before and after the Lisbon Treaty came into force is relatively small. The number of files relying on such a treaty base is especially small in the post-Lisbon era, making inferences based solely on this control group somewhat brittle. Also, a comparison only with this control group does not allow us to determine whether a change in the duration of cases with treaty bases affected by a procedure change is in fact due to the change in procedure rather than a general change in the duration of decision-making under the co-decision procedure. Thus, cases with treaty bases that specify co-decision as the applicable procedure both before and after the Lisbon Treaty form the second control group.

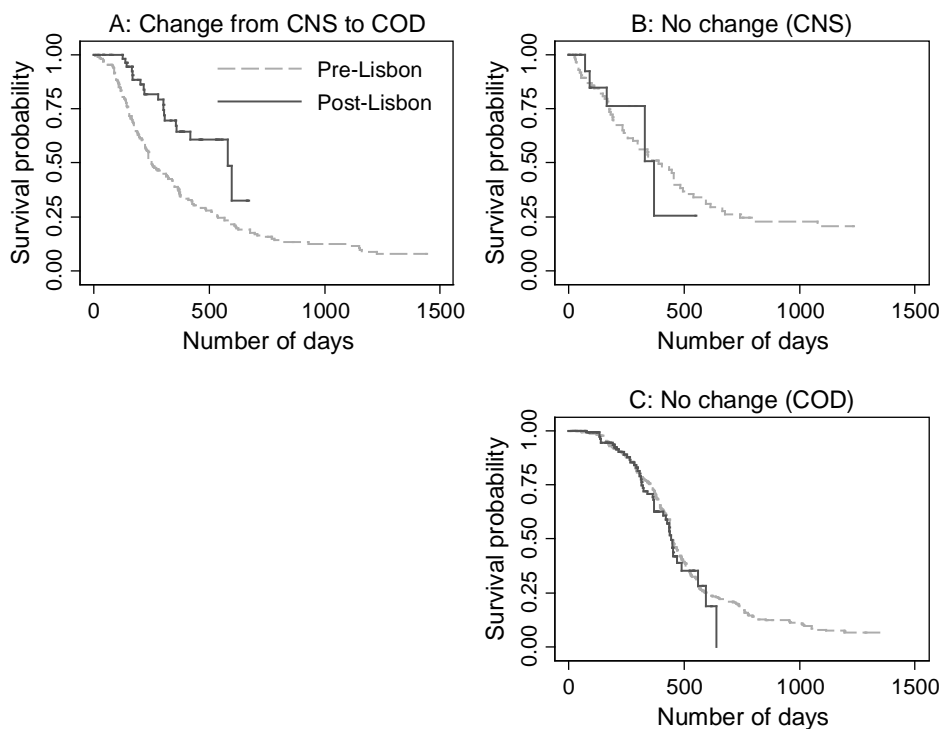


**Figure 1 Treatment and control groups for assessing the effect of the legislative procedure (full sample)**

*Note:* CNS = consultation procedure, COD = co-decision procedure; N = number of observations.

Figure 2 shows the effect of the legislative procedure on Council decision-making graphically. Panel A in Figure 2 compares the Kaplan-Meier survival functions of cases with treaty bases that changed from the consultation procedure pre-Lisbon to the co-decision procedure post-Lisbon. The graph clearly shows that the survival probability (i.e. the probability of the proposal not being adopted up the specified point in time) of the cases is generally much higher after the change to the co-decision procedure. Indeed, the estimated median survival time is more than twice as large after the Lisbon Treaty entered into force (581 days) than before the Lisbon Treaty entered into force (251 days). Accordingly, a nonparametric log-rank test rejects the null hypothesis of the equality of survivor functions with  $p < 0.01$ . In contrast, no such over-time changes in the survival probabilities are visible in the two control groups plotted in Panel B (consultation procedure) and Panel C (co-decision procedure). The estimated median survival time for dossiers with treaty bases constantly governed by the consultation procedure is 389 days before Lisbon and 370 days

after Lisbon, and the estimated median survival time for dossiers with treaty bases constantly governed by the co-decision procedure is 439 days before Lisbon and 444 days after Lisbon. For both control groups, the null hypotheses that the pre- and post-Lisbon survival functions are the same cannot be rejected ( $p = 0.74$  for the consultation procedure control group, and  $p = 0.53$  for the co-decision procedure control group). Thus, the analysis of the full sample provides clear evidence for a positive effect of the co-decision procedure on the duration of Council decision-making.

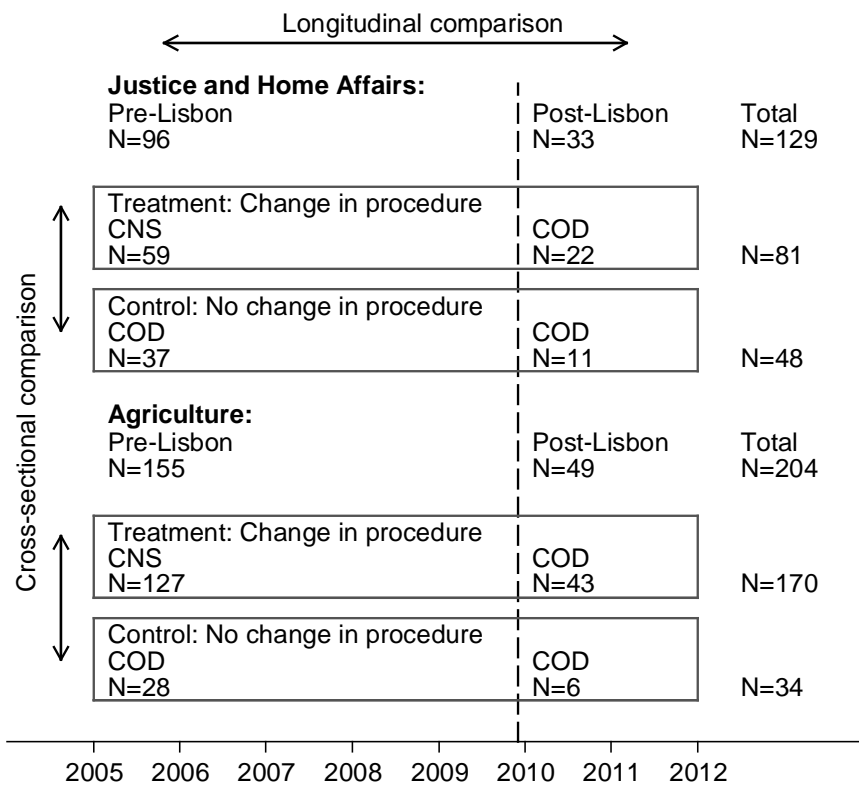


**Figure 2 Comparison of survival functions pre- and post-Lisbon (full sample)**

*Notes:* The plots show Kaplan-Meier survival functions based on the duration of decision-making from the introduction of the proposal to the adoption of the first Council decision in the legislative decision-making process. Panel A: Treatment group of cases with treaty bases that changed the legislative procedure after the Lisbon Treaty entered into force. Panel B: Control group 1 of cases with treaty bases that prescribed the consultation procedure before and after the Lisbon Treaty entered into force. Panel C: Control group 2 of cases with treaty bases that prescribed the co-decision procedure before and after the Lisbon Treaty entered into force. CNS = consultation procedure, COD = co-decision procedure.

To further investigate the drivers of this effect, the sub-sample analyses have a closer look at the two policy areas most affected by the extension of the scope of applicability of the co-decision procedure. Taken together, JHA and A&F account for 251 of the 275 cases (92 per cent) with treaty bases subject to a procedure change by the Lisbon Treaty. Of those 251 cases, about one third (81 cases) relate to JHA, and about two thirds (170 cases) to A&F. Unfortunately, in those policy areas, very few (in JHA) or no cases at all (in A&F) were

based on a treaty base that specified consultation as the applicable legislative procedure both before and after the entry into force of the Lisbon Treaty. Thus, in the sub-sample analyses, the only control group is the one consisting of cases in which the co-decision procedure applied already before the Lisbon Treaty entered into force and did not change over time. As Figure 3 indicates, even for these control groups, the over-time comparisons are somewhat problematic as relatively few cases exist in the post-Lisbon era.



**Figure 3 Treatment and control groups for assessing the effect of the legislative procedure (Justice and Home Affairs and Agriculture and Fisheries sub-samples)**

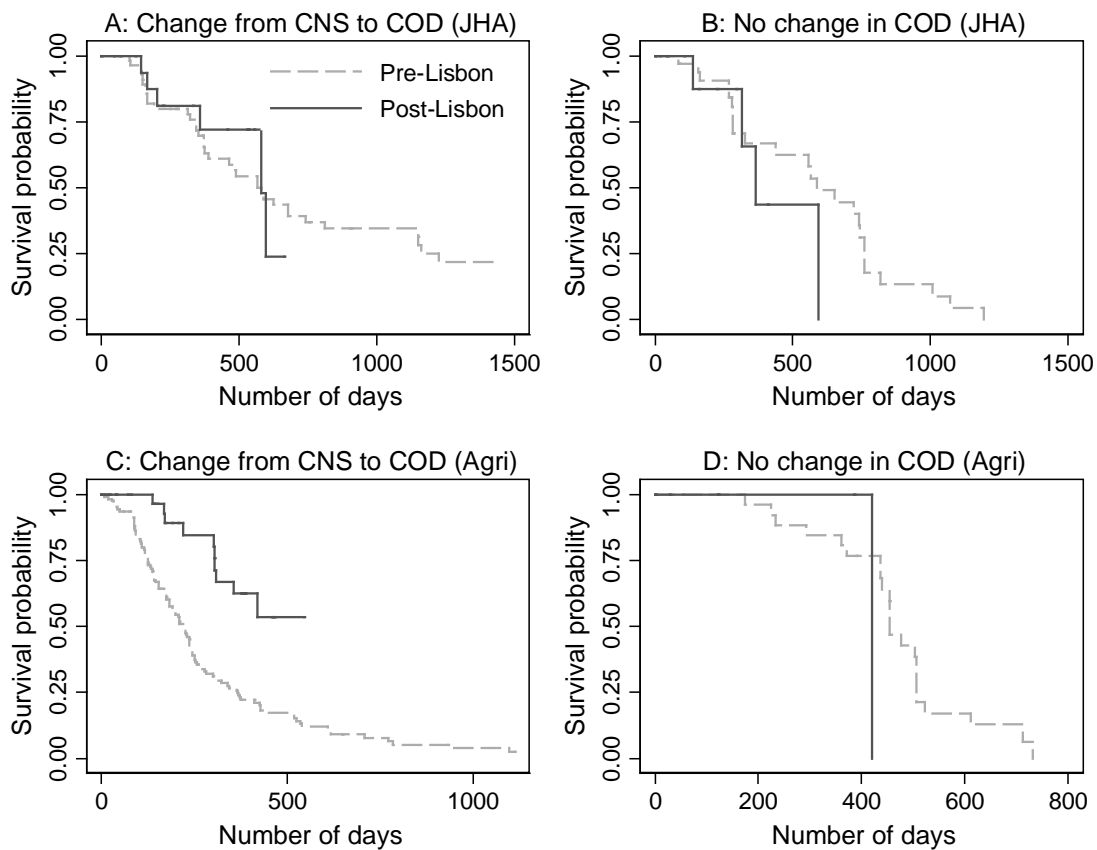
*Note:* CNS = consultation procedure, COD = co-decision procedure; N = number of observations.

Figure 4 presents the survival functions for the different groups. Interestingly, both visual inspection of Panel A and the log-rank test indicate that the survival functions for the JHA treatment group did not change over time ( $p = 0.79$ ). Indeed, the estimated median duration is 580 days before the Lisbon Treaty came into force and 581 after the Lisbon Treaty came into force. In contrast, the estimated median duration for the control group, which consist of cases with treaty bases consistently governed by the co-decision procedure throughout the entire

study period, is 589 days pre-Lisbon and 365 days post-Lisbon. These figures suggest that decision-making under co-decision in JHA might in general have become more efficient over time, and thus explain the absence of an observable effect of the introduction of the co-decision procedure. However, the number of cases in the control group, especially post-Lisbon, is too small to draw any firm conclusions. In fact, the post-Lisbon survival function is based on only four uncensored observations. Accordingly, the difference between the two survival functions plotted in Panel B of the figure is not statistically significant ( $p = 0.34$ ). The survival functions in Panel C suggest that the delaying effect of the co-decision procedure identified in the aggregate analysis is to a large extent driven by the delay experienced in A&F. The median duration increases from 223 days under the consultation procedure pre-Lisbon to more than 544 days under the co-decision procedure post-Lisbon.<sup>14</sup> The large temporal change in the survival function is also confirmed by the log-rank test, which suggests a clear rejection of the null hypothesis of no difference ( $p < 0.01$ ). Unfortunately, there is only one uncensored post-Lisbon observation in the A&F control group for which the co-decision procedure already applied before the Lisbon Treaty came into force (Panel D). Thus, we cannot make any firm conclusions about the extent and direction of temporal change in this control group.

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<sup>14</sup> The precise median duration cannot be estimated for the post-Lisbon group, as its survival probability never falls below 0.5 due to a large number of right-censored observations. The figure of 544 days corresponds to the lowest estimated survival probability of 0.54.



**Figure 4 Comparison of survival functions pre- and post-Lisbon (Justice and Home Affairs and Agriculture and Fisheries sub-samples)**

*Notes:* The plots show Kaplan-Meier survival functions based on the duration of decision-making from the introduction of the proposal to the adoption of the first Council decision in the legislative decision-making process. Panel A: Treatment group of Justice and Home Affairs cases with treaty bases that changed the legislative procedure after the Lisbon Treaty entered into force. Panel B: Control group of Justice and Home Affairs cases with treaty bases that prescribed the co-decision procedure before and after the Lisbon Treaty entered into force. Panel C: Treatment group of Agriculture and Fisheries cases with treaty bases that changed the legislative procedure after the Lisbon Treaty entered into force. Panel B: Control group of Agriculture and Fisheries cases with treaty bases that prescribed the co-decision procedure before and after the Lisbon Treaty entered into force. CNS = consultation procedure, COD = co-decision procedure.

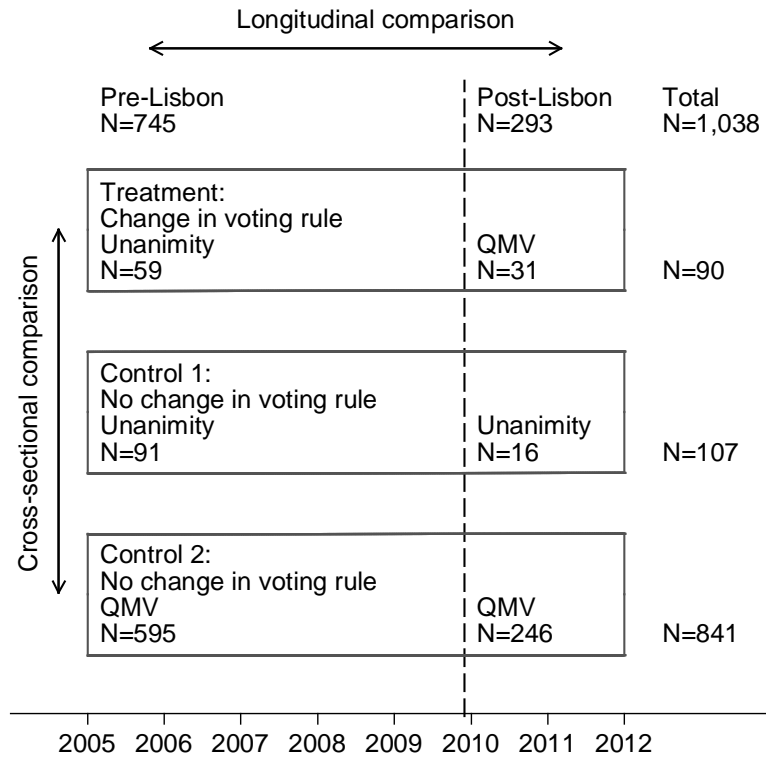
To sum up, the analysis so far indicates that the introduction of the co-decision procedure by the Lisbon Treaty prolonged Council decision-making considerably. This aggregate result is mostly due to a very strong increase in the duration of decision-making in the area of Agriculture. In contrast, decision-making in Justice and Home Affairs took about the same length of time as it took already under the consultation procedure before the Lisbon Treaty came into force. The extension of the applicability of the co-decision procedure to this area does not seem to further delay decision-making. One possible explanation for the longer duration in Justice and Home Affairs under the consultation procedure pre-Lisbon but the lack of a further increase post-Lisbon could be the simultaneous change in the Council's

decision-making rule. In the large majority of JHA cases the switch from the consultation procedure to the co-decision procedure was accompanied by a switch from the unanimity to the qualified majority voting rule. Given that the change in procedure is expected to prolong decision-making and the change in voting rule is expected to shorten it, the two effects might have cancelled each other out. This possibility is further considered in the next section that investigates the effect of the voting rule change on Council decision-making efficiency.

#### *The effect of changes in the voting rule*

Besides the extension of the legislative procedure to new policy areas, the extension of qualified majority voting in the Council was the second major institutional change introduced by the Lisbon Treaty in the context of legislative decision-making. Figure 5 shows the research design employed to investigate the effect of this change on decision-making duration. In comparison to the change in legislative procedure, much fewer cases were affected by a change in the voting rule. Most affected cases (i.e. 71 out of 90, or 79 per cent) belonged to the JHA area, which will thus be examined in a separate sub-sample analysis further below.



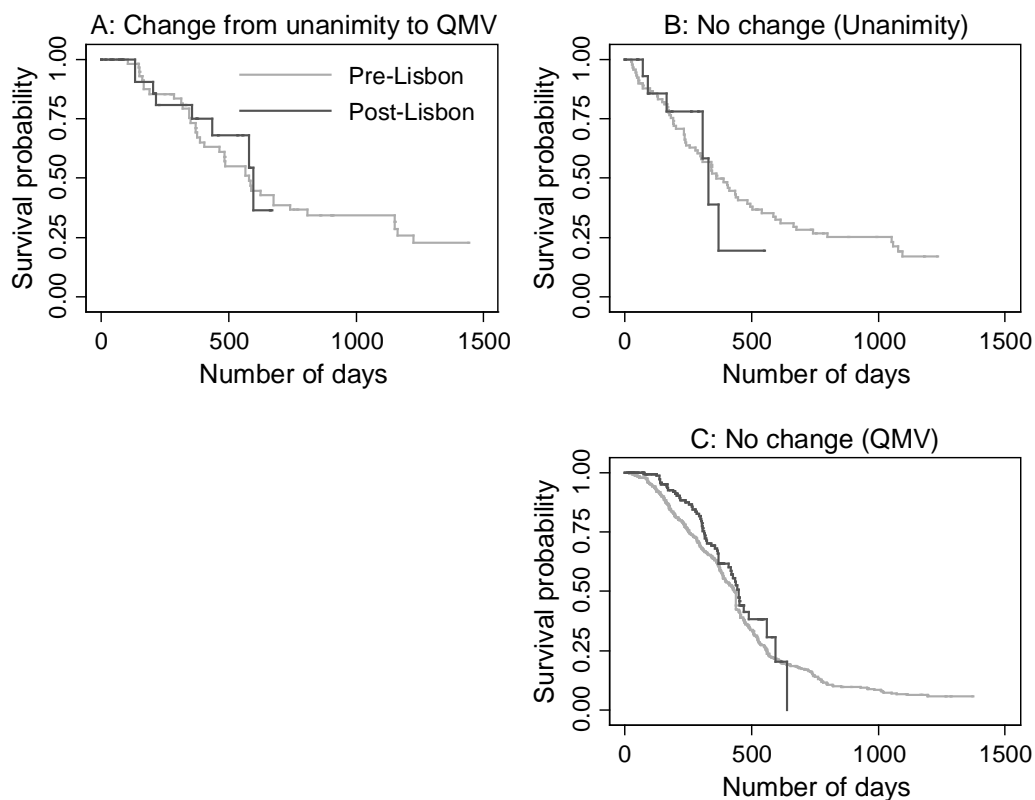


**Figure 5 Treatment and control groups for assessing the effect of the voting rule (full sample)**

Note: QMV = qualified majority voting; N = number of observations.

The results of the full sample analysis are presented in Figure 6. Panel A of the figure suggests that the change in the voting rule from unanimity to qualified majority voting has not prolonged the duration of Council decision-making for cases whose legal basis was affected by that change. The median duration is even estimated to be somewhat larger post-Lisbon (596 days) than pre-Lisbon (580 days), but the log-rank test indicates that the null-hypothesis of no difference cannot be rejected ( $p = 0.79$ ). Neither of the control groups indicates any robust change in duration after the Lisbon Treaty came into force either. The median duration of decision-making cases governed by a treaty base that required unanimous agreement in the Council both before and after the Lisbon Treaty entered into force decreased from 362 to 330 days. However, the null hypotheses of no difference between the survival functions cannot be refuted ( $p = 0.95$ ). In cases with treaty bases where the qualified majority rule applied before and after the Lisbon Treaty entered into force, the median duration increased somewhat from 433 to 449. The log-rank test of a difference between the survival functions approaches conventional levels of statistical significance ( $p = 0.09$ ). Yet, the

statistical significance is more a product of the comparatively large number of observations in this control group than of an effect size of substantial size. The estimated median duration is 16 days longer, which corresponds to a very moderate 3.7 per cent increase.

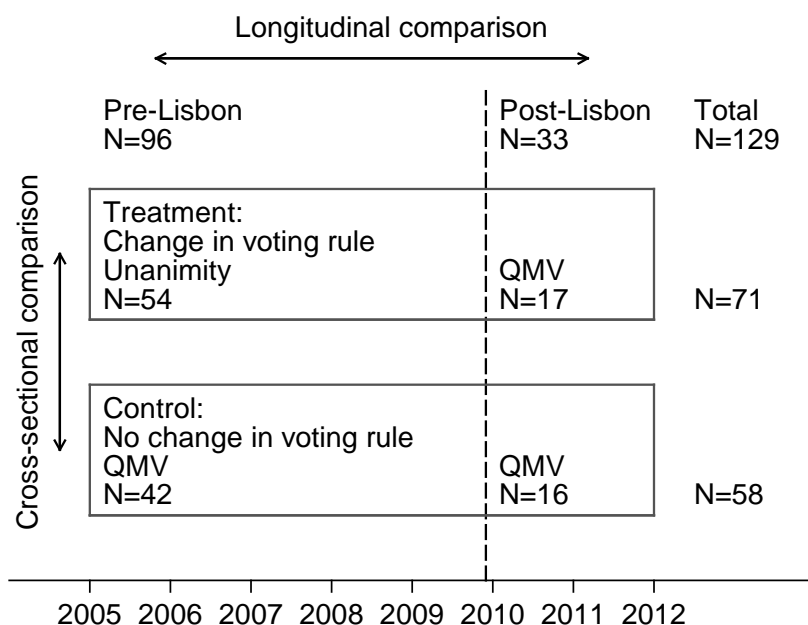


**Figure 6 Comparison of survival functions pre- and post-Lisbon (full sample)**

*Notes:* The plots show Kaplan-Meier survival functions based on the duration of decision-making from the introduction of the proposal to the adoption of the first Council decision in the legislative decision-making process. Panel A: Treatment group of cases with treaty bases that changed the voting rule after the Lisbon Treaty entered into force. Panel B: Control group 1 of cases with treaty bases that prescribed the unanimity rule before and after the Lisbon Treaty entered into force. Panel C: Control group 2 of cases with treaty bases that prescribed the qualified majority rule before and after the Lisbon Treaty entered into force. QMV = qualified majority voting.

The full sample analysis indicates no effect of a change in the voting rule from unanimity to qualified majority on Council decision-making duration. The next step of the analysis investigates whether this finding also holds up in a more homogenous sample of cases. The sub-sample analysis focuses on cases in the JHA area, which is by far the largest policy area sub-group within the treatment group. Figure 7 illustrates the research design for this analysis. Unfortunately, the downside of the focus on JHA dossiers is the loss of one of the control groups, as extremely few JHA treaty bases requiring unanimous decisions in the Council during the Nice treaty regime maintained this requirement after the Lisbon Treaty

came into force.<sup>15</sup> Furthermore, the sample size of the other control group, which consists of cases with treaty bases that prescribed qualified majority voting already before the Lisbon Treaty came into force, is drastically reduced as well.

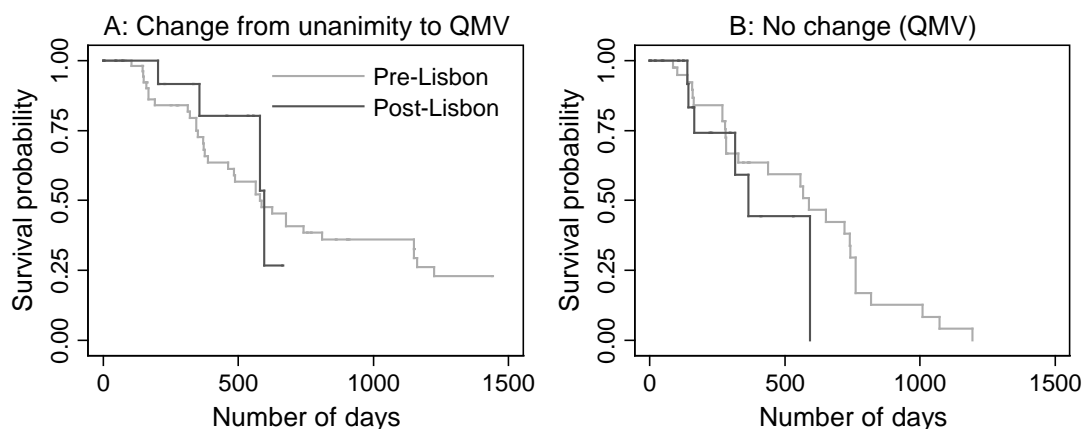


**Figure 7 Treatment and control groups for assessing the effect of the voting rule (Justice and Home Affairs sub-sample)**

Note: QMV = qualified majority voting; N = number of observations.

The JHA sub-sample analysis presented in Figure 8 confirms the overall findings from the full-sample analysis of no significant change over time. Similar to the full sample analysis, the treatment group of JHA cases based on a treaty base that was subject to a change in the voting rule (Panel A) shows a slight increase in the median duration of Council decision-making after the Lisbon Treaty entered into force (from 580 to 596 days). In contrast to the full sample analysis, the control group of JHA cases based on treaty bases to which the qualified majority rule always applied (Panel B) shows a considerable decrease (from 589 to 365 days). Nevertheless, the null-hypothesis of no differences between the survival functions cannot be rejected for either of the groups ( $p = 0.63$  for the treatment and  $p = 0.34$  for the control group).

<sup>15</sup> In fact, there are only two treaty bases in which unanimity still applies: Measures relating to the operational cooperation between law enforcement services of member states (Article 87(3) TFEU); and civil law measures concerning family law with cross-border implications (Article 82(3) TFEU). Only six cases in the dataset are based on these treaty bases or their Nice treaty equivalents.

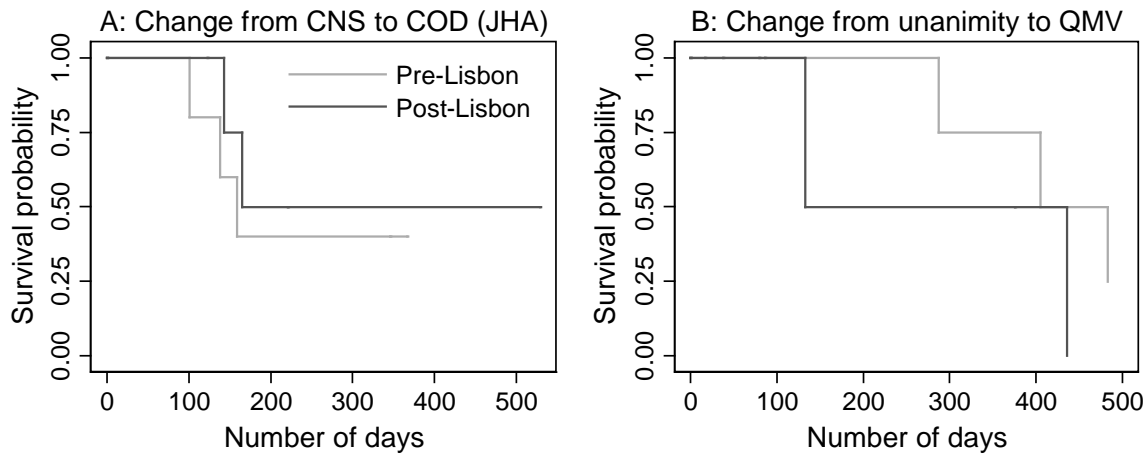


**Figure 8 Comparison of survival functions pre- and post-Lisbon (Justice and Home Affairs sub-sample)**

*Notes:* The plots show Kaplan-Meier survival functions based on the duration of decision-making from the introduction of the proposal to the adoption of the first Council decision in the legislative decision-making process. Panel A: Treatment group of Justice and Home Affairs cases with treaty bases that changed the voting rule after the Lisbon Treaty entered into force. Panel B: Control group of Justice and Home Affairs cases with treaty bases that prescribed the qualified majority rule before and after the Lisbon Treaty entered into force. QMV = qualified majority voting.

Both the full-sample and JHS sub-sample analysis indicate that the change in voting rule under the Lisbon Treaty did not have any effect on the duration of Council decision-making. This result contradicts much previous research and is also puzzling from a theoretical point of view. Thus, the finding warrants some closer inspection. As mentioned earlier, the main problem of the simple bivariate analyses conducted so far is that the change in voting rule occurred most of the time simultaneously with a change in the legislative procedure, especially in the JHA area. The analysis of the effect of the legislative procedure on decision-making duration in the A&F sub-sample, in which the decision-making rule did not change, provided strong evidence for a considerable delay in the adoption of the Council's decision. However, neither the JHA sub-sample analysis of the effect of the legislative procedure nor the full sample analysis of the effect of the voting rule, where the sample is dominated by JHA cases, showed the expected effects. A possible explanation for these no-effect findings might be that they are the result of two counter-acting forces cancelling each other out: the change from the consultation to the co-decision procedure prolongs decision-making, while the change from unanimity to the qualified majority voting rule shortens it. Due to the lack of a sufficiently large number of cases with treaty bases for which the voting rule changed but the legislative procedure stayed constant, the available data do simply not allow us to conclusively distinguish between the cancelling-out explanation and a genuine lack of effect.

Nevertheless, at least a few cases exhibit the crucial rule combinations that are needed to distinguish between these alternative explanations for the no-change finding. While these cases are far too few in number to draw any reliable inferences, they can still provide us with some clues about the potential validity of the two explanations.



**Figure 9 Comparison of survival functions pre- and post-Lisbon (Justice and Home Affairs sub-sample and full sample)**

*Notes:* The plots show Kaplan-Meier survival functions based on the duration of decision-making from the introduction of the proposal to the adoption of the first Council decision in the legislative decision-making process. Panel A: Treatment group of Justice and Home Affairs cases with treaty bases that changed the legislative procedure but not the voting rule (qualified majority) after the Lisbon Treaty entered into force. Panel B: Treatment group of cases with treaty bases that changed the voting rule but not the legislative procedure (co-decision) after the Lisbon Treaty entered into force. CNS = consultation procedure, COD = co-decision procedure; QMV = qualified majority voting.

Figure 9 presents the results of the types of group comparisons we would like to make in order to distinguish rigorously between the effect of the voting rule and the effect of the legislative procedure. Panel A provides a plot of the survival functions for cases in the JHA area whose treaty base experienced a change from the consultation to the co-decision procedure, but who were already governed by the qualified majority voting rule before the Lisbon Treaty entered into force. Similar in design to the Agriculture sub-sample analysis shown in Panel C of Figure 4, this comparison of the effect of the legislative procedure pre- and post-Lisbon controls for changes in the voting rule by keeping it constant. Panel B looks at all cases with treaty bases for which the co-decision procedure had already applied before the Lisbon Treaty entered into force, and only the voting rule changed from unanimity to co-decision. Therefore, this comparison holds the legislative procedure constant while examining the effect of the voting rule on the duration of Council decision-making.

The simple descriptive results of both comparisons are roughly in line with theoretical expectations and thus with the cancelling-out hypothesis. Keeping the voting rule constant, Panel A shows that the decision-making process in the area of JHA tends to be longer under the co-decision procedure than under the consultation procedure, even though the difference is rather small; and Panel B shows that keeping the legislative procedure constant, the decision-making process is shorter under qualified majority voting than under unanimity. However, Panel A is based on only 5 pre- and 5 post-Lisbon cases and Panel B on only 4 pre- and 6 post-Lisbon cases. The small samples of cases based on treaty bases exhibiting the required constellation of rules hamper our ability to make robust inferences about these institutional effects; the results merely suggest that we should not reject the original voting rule hypothesis lightly. The most prudent conclusion from this analysis is that the empirical data do not provide us with sufficient information to make such a judgement.

## **Conclusion**

The Lisbon Treaty explicitly aimed at ‘completing’ the process begun in earlier treaty reforms to enhance the efficiency and democratic legitimacy of the European Union. In this respect, two institutional changes introduced by the Lisbon Treaty are of particular importance: the extension of the co-decision procedure granting the European Parliament formal powers equal to those of the Council, and the widening of the scope of qualified majority voting in the Council. This study focuses on an evaluation of the effect of these reforms on the decision-making efficiency in the Council. To evaluate the consequences of the Lisbon rule changes on Council decision-making duration, the study relies on a quasi-experimental research design. In this design, the Lisbon Treaty rule changes act as the ‘treatment’, whose effects can be gauged by comparing changes in the duration of decision-making over time in the group of cases whose treaty bases were subject to a rule change (i.e. the ‘treatment group’), with changes over time in the group of cases whose treaty bases were not subject to a rule change (i.e. the ‘control group’). This design-based approach stands in contrast to existing research on EU decision-making efficiency, which relies heavily on the use of statistical regression methods on samples pooled over extensive periods of time and across a wide variety of policy areas to establish the causal effects of institutional rules. By focusing the analysis specifically on the types of comparisons relevant for establishing causal relationships, the research design-based approach produces more valid inferences. These inferences either take the form of better justified confirmations or disconfirmations of causal

hypotheses, or, just as importantly, acknowledgements of the impossibility to make such judgements based on the limited evidence available.

This study produced both types of results. Based on theoretical reasoning in the existing literature, a change from the consultation procedure to the co-decision procedure is expected to prolong Council decision-making, while a change from the unanimity to the qualified majority voting rule in the Council is expected to shorten it. The analysis indicates that the empowerment of the EP has led to a considerably longer decision-making duration, but the introduction of qualified majority voting in former unanimity areas has not reduced it. Little reason exists to doubt the first finding, as the effect size is large and holds up in a subsample of cases in which the voting rule did not change at the same time as the legislative procedure did. In contrast, the second finding of no effect of the change in the decision-making rule is somewhat more suspect. Most treaty bases that changed the voting rule as result of the Lisbon Treaty are in the area of Justice and Home Affairs. Unfortunately, the large majority of these treaty bases changed from the consultation to the co-decision procedure at the same time. Thus, the alternative explanation for the finding, that the prolonging effects of the co-decision procedure neutralize the expediting effects of qualified majority voting, cannot be ruled out.

Note that this indeterminate result is not due to some shortcoming in the data collection, sample selection, or method of analysis, but due to what Ragin (1987) calls the ‘limited diversity’ of the population of real world cases. There are simply not enough cases with treaty bases that changed the voting rule but not the legislative procedure to make any sound inferences about the independent effect of the voting rule. In regression-based analyses of observational data, the findings are just as much a result of the model assumptions as they are of the actual data. Rather than raising an alarm flag, empty or weakly populated corners in the parameter space of a model will simply be inter- or extrapolated in line with the model’s assumptions, so regression analyses will always produce ‘results’, even if they are hardly supported by actual data (King and Zeng, 2007).<sup>16</sup> The introduction of qualified majority voting and the co-decision procedure is historically highly correlated. In fact, the change from the consultation to the co-decision procedure in the area of Agriculture and Fisheries, for which qualified majority voting was possible already before the Lisbon Treaty entered into force, is the first instance in which the effect of the co-decision procedure can be isolated

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<sup>16</sup> In fact, a Cox proportional hazard regression analysis of the full sample of this study, pooling cases over the entire time period and all policy areas, indicates not only a large and statistically significant positive effect of the co-decision procedure, but also a large and statistically significant negative effect of qualified majority voting on the duration of decision-making in the Council.

from the effect of the voting rule on a large scale. It is comforting that existing results on the delaying effect on decision-making duration of the empowerment of the EP hold up in a quasi-experimental study applied to this setting, but as long as the effect of the voting rule cannot be isolated in a similar manner, a layer of doubt will remain cast over the voting rule results of previous research, and it might be more prudent to reserve judgement in this respect.

In short, the main conclusions of the study are that the co-decision procedure prolongs Council decision-making considerably, but that the effect of the voting rule remains uncertain. The effect of the introduction of the co-decision procedure is quite large, more than doubling the median duration of decision-making in the Council in cases drawn from the full sample, from about 250 days before the Lisbon Treaty entered into force to about 580 days afterwards. Similarly, the median decision-making duration in the Agriculture and Fisheries sub-sample increased from about 220 to about 550 days. It is also worth recalling that these figures refer to the time it takes for the Council to reach its first decision under the co-decision procedure, not to the adoption of the final act. Thus, the increase in duration is not a mechanical consequence of the co-decision procedure adding two more reading stages to the process. Rather, the delay is directly caused by the need to negotiate a compromise with Parliament, and possible also by a more protracted negotiation process in the Council itself. Member states might bargain harder to reach a more favourable starting position in the anticipated negotiations with the EP, or the increased political and public scrutiny as a result of the involvement of Parliament might put more pressure on member state representatives to defend their positions (Häge, 2011b). The precise causal mechanisms through which EP empowerment has this delaying effect on Council decision-making is a promising topic for further study.

The analysis makes clear that the apparent gain in legitimacy through the empowerment of the EP as the only institution with directly elected representatives does come at considerable cost in terms of efficiency. Such a trade-off is often acknowledged in abstract terms, but the size of the cost is hardly ever specified. A doubling of the length of the decision-making process as a result of the introduction of the co-decision procedure is quite substantial. The length of the decision-making process is of course not of value in itself, but especially in a policy area like Agriculture and Fisheries, where farmers and fishers rely on timely policy decisions to plan their seasonal production processes and are so heavily dependent on EU subsidies and regulations, delays in decision-making can have real consequences on the livelihoods of millions of European citizens. In order to better assess



whether this prolonged decision-making process is possibly justified by better policy output, either in the form of policies that are more effective or more representative of the EU electorate as a whole, future research should complement this analysis by examining the possible change in policy content resulting from the empowerment of the European Parliament.

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