



Torsten Jörg Selck (Autor)

The Impact of Procedure: Analyzing European Union Legislative Decision-Making

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Germany

Telefon: +49 (0)551 54724-0, E-Mail: info@cuvillier.de, Website: <https://cuvillier.de>

1 Introduction

1.1 *Aim of the Study*

In July 2001, the European Commission issued a *White Paper on European Governance*. The main objective of the paper was to identify areas of European Union (EU) regulatory activity which, in the eyes of the Commission, had to be reformed in order to make the legislative process more transparent and more effective. A special point of consideration was the task of refocusing the political actors on the so-called *community method*, which is the way by which the EU negotiates and decides upon its legislative measures (European Commission, 2001a). The fifteen heads of state and government of the Member States of the EU had earlier agreed upon signing the *Treaty of Nice* (2001), which amends the existing treaties that form the *primary legislation* of the EU and which lays down detailed rules for policymaking.

There were three major objectives which the Nice Treaty was supposed to fulfill. These were (1) a change in the size and structure of the European Commission, (2) a re-weighting of the votes in the Council of the European Union, and (3) a change of the voting threshold in the Council which would facilitate faster and more flexible policymaking. Of all the issues that had to be discussed during the summit at which the new Treaty was negotiated, the part dealing with a change of the methods of legislative deliberation proved to be the most troublesome because many government leaders feared that reform would result in an effective loss of power for their own country (*The Economist*, 2000a). The reason for the vigorous discussions amongst the European Union leaders during the Nice Summit had to do with the fact that the structure of the legislative process is perceived to have a major impact on resulting legislation.¹ Political leaders understand that changes in the structure of legislative decision-making can affect the outcomes of policymaking.

The focus of attention in this book is to examine the effects of the existing procedural rules of the European Union on the laws that are negotiated. A major point of concern is to shed light on the question of how legislative arrangements in the EU structure the policy process and how they affect the content of new legislation in the Union. Unlike many other political organizations, the institutional evolution of the European Union is far from over. In the spring of 2002, a grand convention to draft a constitution for Europe opened in Brussels. The main objective concerning procedural rules was to simplify them in order to make them more transparent for Europe's citizens and to restructure the legislative powers of

¹ For a classic example of reasoning about the impact of rules on outcomes in a legislative setting, see Madison et al. (1987) [1788].

the institutional actors of the Union to take account of an increased number of players after EU enlargement and accession of ten to twelve countries of Central and Eastern Europe.

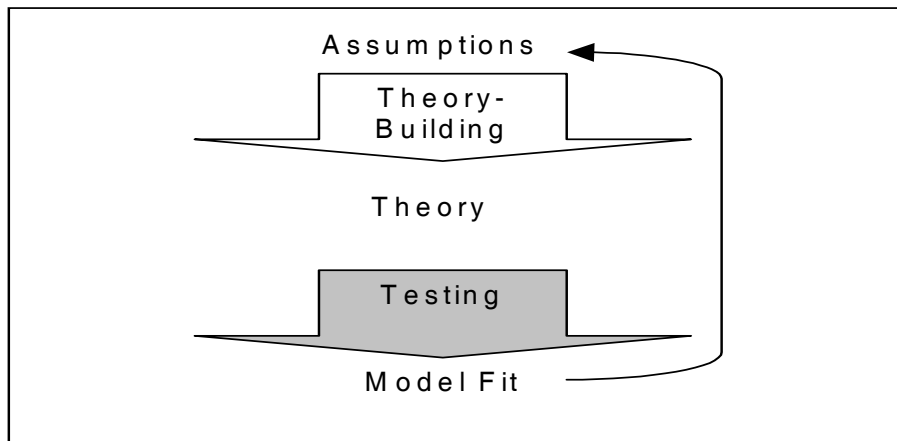
The analysis in this book is about institutions, about their design and about their workings. The focus of attention is the European Union legislative realm. An underlying idea is that if we want to redesign existing institutions by rebalancing decision-making power (Hug, 2003a) or to accommodate new members (Steunenberg, 2001), we have to know how the current arrangements work. To be able to assess the differences between the institutional arrangements of the European Union, I will work with the help of formal game-theoretic models and with quantitative data that is gained from elite interviews supported by content analyses of EU documents. The formal models which I will use were specifically designed to capture the complexities of European decision-making. The data-gathering method used for this study was previously employed for the EU context by Bueno de Mesquita and Stokman (1994). They worked with a more limited number of cases and applied the data for a different class of models. I will also integrate computer simulation into the analysis to be able to compare different model specifications with each other.² The theory which I use in this book is based on the rational-choice approach to politics. In the context of the European Union, this analytical tool has previously been used by Moravcsik (1991, 1997, 1998) and Schneider and Cederman (1994) to model European intergovernmental negotiations. Regarding legislative politics in the Union, a large number of models exist which have been advanced by authors such as Scharpf (1988, 1997), Bueno de Mesquita (1994), Stokman and Van Oosten (1994), Crombez (1996, 1997, 2000), Steunenberg (1994, 1997, 2001), and Tsebelis (1994, 1996, 1997, 2002).

For the current study, I will focus on models which share similar characteristics in explaining the EU legislative process in that they specifically highlight the *procedural aspects* of European Union policymaking. I refer to these models as *procedural models* or *spatial voting models* (Hix, 1999: 56-98, 2004). Tsebelis (2002) uses the term *veto player theory*. Although the procedural models which have been put forward to explain EU legislative decision-making are quite similar in attaching high importance to the structure of the legislative process, they claim to come to different conclusions about EU decision-making (Hix, 1999: 88-94). In this book, the procedural model approach will be empirically tested. After presenting the approach, the models will be compared with each other, and

² The use of computer simulation to evaluate formal models of decision-making has been pioneered by Axelrod (1984) in his account on the iterated prisoner's dilemma. Schelling (1978) is often credited for laying the basis for the approach. Morton (1999) argues for integrating formal modeling, statistical modeling, and computer simulation techniques in political science to improve insight in political processes.

subsequently tested by evaluating their predictions in the light of the actual outcomes of European Union legislative decision-making. Hopefully, at a later stage, the results of this study will feed back into the research process. Figure 1.1 maps out the nature of the research process that will be followed by this book. For this project, I will focus on testing existing theory to evaluate the model fit.

Figure 1.1. Nature of the Research Process



Theorizing about EU policy-making can take on many different forms. Hix (1999) provides an overview on how legislative decision-making and power-sharing works in the European Union. The procedural models that are analyzed in Hix's book rely as one of their primary explanatory elements on the structure of the legislative process. The models try to answer the question how the outcome of legislative decision-making in the EU can be explained as a result of (1) the structure of the legislative process and (2) the preferences of the main stakeholders. These are the *European Commission*, the *European Parliament*, and the *Council of the European Union*, which represents the interests of the EU Member States. To explain legislative politics in the Union by focusing on the structure of the legislative process, a number of procedural models and model refinements and criticisms have been advanced. These include studies by Steunenberg (1994, 1997), Tsebelis (1994, 1996, 1997, 2002), Schneider (1995), Crombez (1996, 1997, 2000, 2003), Laruelle (2002), Moser (1997), Scully (1997a, 1997b), Steunenberg and Dimitrova (1999), and Tsebelis and Garrett (1996, 1997a, 1997b, 1999, 2000, 2001). The main similarity of these voting models lies in their theoretical approach to politics. In the European Union, there are different legislative procedures that relate to different policy sectors. Thus, we can find different models or model specifications which are specifically designed to explain law-making under certain EU procedures. The major difference between the theoretical

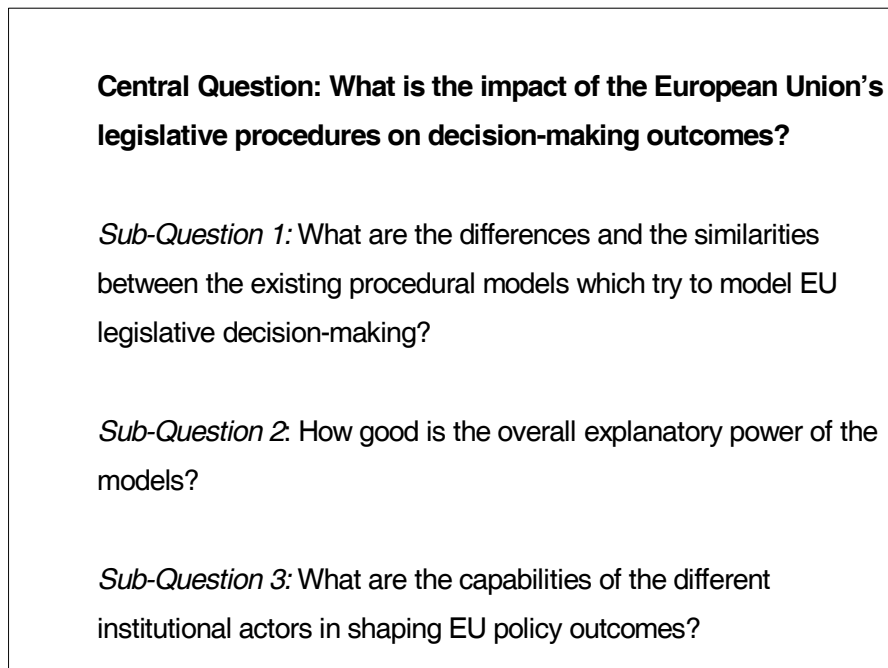
accounts is how they depict the way in which the legislative procedures work exactly.

Note that there are other possibilities to model the European Union legislative process than by using voting models. One of these possibilities is to employ *bargaining models*. We might argue that, in order to analyze EU decision-making, the most important feature is not the structure of the legal process, but rather the possibility of actors to link certain issues and trade their votes with one another. A similar argument has been advanced by Stokman and Van Oosten (1994: 105-27). Yet another approach would be to maintain that EU decisions are being made on an issue-by-issue basis and that the most important element is whether an actor can successfully threaten or challenge other actors to comply with its wishes. This claim has been made by Bueno de Mesquita (1994: 71-104). The next section will outline the research questions which this book tries to answer.

1.2 Research Questions

The preceding paragraph served to show the overall aim of this study. In trying to answer the question of the validity of the EU voting models, I will tackle questions which are related to the special features of the EU legal process and the capabilities of the different actors in shaping the legislative outcome in the Union. The following research questions, highlighted in Figure 1.2, will be addressed in this study.

Figure 1.2. Research Questions



The *Central Question* of this book is the overarching one insofar as it is concerned with evaluating the explanatory power of the whole theoretical approach. To answer this question, the predictive power of the procedural models will be compared with the power of a much simpler model. This part of the analysis will provide information on how good the models are in general.

Sub-Question 1 is concerned with comparing the different procedural models and with the hypothesized power of the institutional actors in shaping the legislative bargain. Is it the European Commission that gets its way vis-à-vis the Council (Westlake, 1994)? What is the power of the European Parliament in the legislative process (Steunenberg, 1994; Tsebelis, 1994; Crombez, 1996; Moser, 1996; Rittberger, 2004)? How can we assess the relative power of the Member States in policy process?³ Does the Presidency of the Council have a dominant position in setting the legislative agenda (Wessels, 1991; Westlake, 1994b; Hix, 1999: 66; Steunenberg and Dimitrova, 1999; Kirchner, 1992; Kollman, 2003; Tallberg, 2003)? These questions will be answered by comparing the assumptions of the models and the predictions which they make.

Sub-Question 2 deals with evaluating the predictive power of the existing procedural models. For comparative purposes, a null model will be

³ This question has been addressed by Widgrén (1994, 2002), Hosli (1996), König and Bräuninger (1998), Widgrén and Laruelle (1998), and Berg and Lane (2001).