

THE POWER OF VOICE

**An Informational Model of the Legislative
Powers of the European Parliament**

by

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ABSTRACT

There are three main powers in any decision-making situation: agenda-setting, voting, and voice. One of these – ‘the power of voice’ – is the great unknown. To analyse this power, this dissertation develops a general model of law-making using two basic premises: (1) a distinction between policies and outcomes, and (2) the costs of transmission of policy-relevant information. The model divides the law-making game in two sub-games: a lobbying sub-game, where an indefinite number of lobbyists provide legislative bodies with information; and a legislative sub-game, where legislative bodies bargain with that information under a given decision rule. The general model is then applied to the three main EC legislative procedures (consultation, assent and co-decision), which produces a series of propositions about how the power of voice operates, relative to the power of veto. These propositions are then tested, using data on nearly two thousand legislative procedures from the 1989-1999 period and the results of an issue-based survey of political consultants. Two case studies then illustrate the workings of the powers of voice and veto, respectively. Finally, the conclusions focus on the nature of the power of voice, the informational rationale of its delegation, and the implications for the accountability of the EU.

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CHAPTER ONE

The power of voice: the European Parliament and the general phenomenon

There are three main powers when it comes to decision-making: agenda-setting, voting and voice. We can find many studies of agenda-setting power, and even more studies of voting power. Yet, there is no real study of the power of voice. The power of voice consists in a legal claim to a hearing, or the right to be heard inside a committee where a decision is being taken. The European Parliament enjoys such a power under most of EC legislation, with the treaties requiring that the EP be consulted before a final decision is taken between the commission and the council. This dissertation will revolve around two main questions related to the power of voice. First, what is the power of voice, how does it work and how important is it vis-à-vis other powers such as agenda-setting and voting power? Second, why did sovereign member state governments decide to confer such power upon the EP? Of course, since the power of voice cannot be analysed separately from the other legislative powers (agenda-setting and voting power), the study of the EP's power of voice requires a study of the whole EC legislative system.

The rest of this introduction will be divided in three sections: the first section will present the EP's power of voice, and why its study is interesting both intrinsically and for political science in general. In the second section, I will introduce my main theoretical contribution, which coincides with the main thesis of this dissertation. Finally, I will present an overview of the study, where I will introduce the main methodological and empirical contributions of the dissertation.

1.1. THE POWER OF VOICE: THE EP AND THE GENERAL PHENOMENON

For a dissertation-length study of the EP's power of voice to be fully justified, the questions it raises should ideally have three desirable properties. First, the questions should be practically relevant, i.e. it is necessary to justify the practical importance of EC legislation

in general, and the EP's role within the EC legislative system in particular. Secondly, the questions should have non obvious answers. Finally, the questions should be applicable beyond the main case analysed. In the next paragraphs, I will show that the EP's power of voice has all those three desirable properties.

European Union legislation has a great impact on many people's welfare inside and outside the EU borders. EU legislation nowadays represents 80% of economic and social legislation.¹ This proportion contrasts with a rather limited budget, representing a mere 1.27% of the Union's GDP. It is precisely these budgetary constraints that have led the Commission to use regulatory policy-making as an alternative way to increase its influence, contributing to the 'rise of the regulatory state'.² What this explains is also that EU regulatory issues are more socially relevant than budgetary ones, as compared to other political systems such as that of the U.S. The social relevance of EU legislation has grown as a result of several rulings by the European Court of Justice, which have proclaimed two key principles of EU law, namely direct effect and supremacy. The direct effect of EU law means that it is not necessary that a law is transposed into national legislation for it to create rights and obligations upon citizens, as long as its provisions are clear and unconditional. This in fact means that EU law is the 'law of the land'.³ The supremacy of EU legislation over national law brings EU law a step further. It means that in case of conflict with national law, the former prevails. This in fact means that EU law is the 'higher law of the land'.⁴ Although these two principles prove at times controversial, they are broadly accepted and their acceptance increases throughout time. But EC legislation is not only very common, directly applicable and supreme. The number of areas that fall under EC jurisdiction are continuously increasing. Member states have decided to transfer more and more areas of competence to the EC level. Of these, the latest has been migration policy, which the Amsterdam treaty transferred to the European Community jurisdiction, away from the intergovernmental co-operation in matters of justice and home affairs.

¹ Simon Hix, *The Political System of the European Union*, Hampshire and London: Macmillan, 1999, p. 211.

² Giandomenico Majone, 'Cross-national Sources of Regulatory Policy-making in Europe and the United States', *Journal of Public Policy*, Vol. 11(1), 1991, pp. 79-106, p.96; Giandomenico Majone, 'The Rise of the Regulatory State in Europe', *West European Politics*, vol. 17, no. 3, 1994, pp. 78-102.

³ Joseph H. H. Weiler, 'The Transformation of Europe', *Yale Law Journal*, vol. 100, 1991, pp. 2403-83, p. 2413.

⁴ Hix, *The Political System of the EU*, p. 109.

Rome treaty	1958	Introduced consultation
Isoglucose ruling	1980	Clarified consultation
Single European Act	1987	Introduced assent and co-operation
Maastricht treaty	1993	Introduced co-decision and extended assent
Amsterdam treaty	1999	Simplified and extended co-decision

Table 1.1. Landmark changes in the EP's legislative powers

Although when the EC was created the legislative power of the EP was rather limited, the subsequent decades saw a systematic increase in the scope and magnitude of that power. The scope of EP influence in legislation increased because of the general increase in EC legislation, but also because successive treaty changes brought under the EP's sphere of influence areas that were formerly reserved for sovereign member states. As far as parliament's legislative arsenal is concerned, judicial interpretation of the treaties and successive treaty changes clarified existing powers and created new ones (see table 1.1). At present, the EP enjoys a power of veto over half of the legislative proposals initiated by the commission. And it also enjoys a power to be consulted over a large majority of legislative proposals. And the legislative powers of the parliament are increasing. Today, parliament's legislative influence cannot be neglected but by the most unconscious observer. Whether you are a politician, a lobbyist or a rank-and-file citizen, you have an interest in the legislative powers of the EP.

European interests have much to gain or to lose from understanding the EC law-making process. As Van Schendelen put it, 'A public or private organization, wishing to exert influence with some chance of success, needs to know precisely where, how and to whom it must make its approach'.⁵ And the importance of European interests cannot be neglected, when one looks at the number of interest groups and professional lobbyists' offices in Brussels. If there were among 400 and 500 of these until the mid 1980s,⁶ in 2001 there were more than 2000 listed in the *European Public Affairs Directory*.⁷ But the relevance of the study of legislative powers does not end with the EP. Parliaments are

⁵ Van Schendelen, M.P.C.M., 'The Council Decides: Does the Council Decide?', *Journal of Common Market Studies*, vol. 34, no. 4: December 1996, p. 543.

⁶ Andrew Butt Phillip, *Pressure Groups in the European Community*, London: University Association for Contemporary European Studies, 1985.

⁷ Landmarks, *European Public Affairs Directory 2002*, Brussels: Landmarks, 2001.

central actors in the law-making process everywhere, so understanding the powers of parliaments is essential not only in order to understand EC law-making but also in order to understand law-making in general. As Wolpe and Levine put it, ‘astute practitioners will know when an administration is able to have its greatest effect on legislative outcomes and when Congress is determined to follow its own lead. They will frame their strategies with these fluctuations in mind.’⁸ The legislative procedure which is applicable is a major factor explaining such fluctuations, as it will be shown throughout the thesis.

Understanding the powers of the EP is also important for politicians. If you are an MEP, understanding the powers of the EP correctly helps you maximise the influence of the EP over legislation in its dealings with the commission and the council. But a good knowledge of the EP’s powers can also give you a competitive edge when selecting positions such as committee assignments inside the EP and help you maximise your legislative power. If you are a European commissioner or a head of government in the council, you also have an interest in understanding the powers of the EP if you are to maximise the benefit you obtain from legislation. But the benefits extend beyond everyday law-making. From the point of view of the commission or the council, it would be useful to know how they benefit or suffer the EP’s legislative powers. Understanding how these powers work and affect them is particularly interesting at the time of treaty revisions. Shall the commission support the extension of the EP’s powers? And what about the council? In fact, why should the council vest any power on a body that it does not control? This thesis also helps explain this kind of questions. Understanding the powers of the EP is not only important to politicians serving in the EP, the council or the commission, but also to politicians deciding how to orient their careers. EU politics is no longer restricted to a small number of euro-politicians and, as EU politics has become more and more a new tier of domestic politics, working at EU-level features in the career options of an increasing number of politicians. There is a growing number who ask themselves questions of the type: should I become an MEP or a local minister? In conclusion, politicians have a lot to gain or lose from understanding the legislative powers of the EP.

But one does not have to be a politician or a lobbyist to care about the legislative powers of the EP. Ordinary citizens should also care. For instance, when deciding whether to vote or remain home at European elections. The powers of the EP pretty much determine

⁸ Bruce C. Wolpe and Bertram J. Levine, *Lobbying Congress: How the System Works*, Washington: Congressional Quarterly, 1996, p. x.

the value of their vote at election time. Interests not undertaking any lobbying may still want to know to what extent the outcome of legislation will be affected by a change in the composition of the EP, in order to know the best way to react. But, again, the implications go beyond day-to-day decisions. Parliaments occupy a prominent position in any democratic system of government. They are essential to create the checks and balances which are considered necessary for a healthy democracy. But the degree to which a parliament constitutes a balance depends on the powers conferred upon it. How to increase the legislative influence of a parliament? What institutional changes are likely to have a greater impact in the long run? There is a wide debate on the democratic deficit of the EU. Some defend that the solution is to increase the powers of the European Parliament. But how to increase those powers? What will be the effects of alternative treaty changes in legislative procedures? Is there a democratic deficit at all? If so, how can it be solved? This thesis can provide some insights into these questions.

Two puzzling questions

This dissertation aims to answer one main question, namely how can the right to issue a non-binding opinion confer any power to affect legislation upon the EP? In answering this question, a new question arises, namely why would the council confer such a legislative power upon a parliament that is not accountable to the former? The thesis provides an informed hypothesis for this question. Both the main question on the power of voice and the secondary question on the reasons for delegation do not have obvious answers. On the contrary, they are rather paradoxical. In fact, as I will show in the following chapters, different authors have answered these questions in different ways, but none in the way I answer them in this thesis.

Traditionally, students of legislative institutions have focused their analyses on voting power and perhaps also introduced agenda-setting power, but they have dismissed voice as mere noise in the legislative process. Most dismiss the right to be consulted as a mere power of delay, without giving the matter further consideration. George Tsebelis and Jeanette Money even dedicate a few case studies to formally analyse how the power of delay affects the bargaining between the chambers of a bicameral legislature, through the impatience of legislators.⁹ But they still fail to capture the essence of the power of voice as

⁹ See George Tsebelis and Jeannette Money, *Bicameralism*, Cambridge: Cambridge University Press, 1997,

it will be presented throughout this dissertation, which is not that of a power of delay. A usual conclusion is that the right to be consulted cannot be properly considered a legislative power, and that an assembly cannot be considered a proper parliament unless it has the power to approve legislation.¹⁰ As a consequence, the consultation procedure has been traditionally neglected in the literature on EC legislative procedures. Despite consultation has always been the most common legislative procedure in the EC, both theoretical and empirical analyses have rather preferred to focus their attention on the co-operation and co-decision procedures.¹¹

But consultation is probably more essential to the idea of Parliament than the power of veto. For Ronald Butt, Parliament arose from the need of rulers to consult with their more influential subjects. Like their Anglo-Saxon predecessors, the early Norman kings recognised that they had a practical obligation to consult their 'natural' counsellors. But it took its time for the this practical obligation to become a constitutionally enshrined right. As said, the obligation to consult their 'natural' counsellors was a practical not a constitutional obligation for the early Norman kings. 'I commit myself and the people of the whole Kingdom of England to your counsel and to the counsel of those who ought to advise me', wrote Henry I to Archbishop Anselm. The Norman kings consulted their whole baronage in the Great Council on important occasions. Magna Carta established more clearly than before that the community of the realm -then represented only by the barons- must be consulted. Magna Carta, effectively a treaty between the king and his barons, could be considered an early antecedent of the treaties of Paris and Rome. For it established, if not the right, at least the unremitting claim of the community of the realm to be consulted on matters of high policy. Thereafter, the political history of medieval England was largely a struggle between the barons, basing themselves on Magna Carta, to bring the kings into

especially p. 8 and chapter 7.

¹⁰ E.g. Martin Westlake, *A Modern Guide to the European Parliament*, London and New York: Pinter, 1994, p. 134.

¹¹ E.g. George Tsebelis, 'The Power of the European Parliament as a Conditional Agenda-Setter', *American Political Science Review*, Vol. 88, No. 1, 1994, pp. 128-42; Feter Moser, 'The European Parliament as a Conditional Agenda-Setter: What Are the Conditions? A Critique of Tsebelis (1994)', *American Political Science Review*, Vol. 90, No. 4, 1996, pp. 834-38; George Tsebelis, 'Maastricht and the Democratic Deficit', *Aussenwirtschaft*, Vol. 52, No's 1 and 2, 1997, pp. 29-56; David Earnshaw and David Judge, 'The Life and Times of the European Union's Co-operation Procedure', *Journal of Common Market Studies*, Vol. 35, No. 4 (Dec.), 1997, pp. 543-564; David Earnshaw and David Judge, 'Early Days: the European Parliament, Co-decision and the European Union Legislative Process Post-Maastricht', *Journal of European Public Policy*, Vol. 2, No. 4, 1995, pp. 624-649; George Tsebelis, Christian B. Jensen, Anastassios Kalandrakis, Amie Kreppel, 'Legislative Procedures in the European Union: an Empirical Analysis', *British Journal of Political Science*, Vol.31, No.4 (Oct.), 2001, pp.573-600.

consultation with them and pursue policies of which they approved. Such kings took account of the views of the great men in the nation and thereby strengthened their own power. By falling foul of the baronage, Henry III provoked his magnates to force him into regular 'Parliaments' with the barons. Consultation before taxation was not merely in the interest of the taxpayers: it was also of practical importance to the king, who needed to know how much he could expect to raise.¹² Thus, the study of the right to be consulted can help us not only understand what is perhaps the most essential of powers of parliaments, but also why sovereigns from the early Norman kings to present European heads of state and government have decided to create parliaments.

The second non-obvious question arises once we recognise the EP's right of voice as a legislative power. Why would European heads of state and government confer such a power upon the EP? The question is especially paradoxical if we consider that the EP is an independent institution, which is not accountable either to member state governments or other institutions. The easiest answer to this question is that heads of state and government conferred such a right upon the EP because it would have no practical relevance for EC legislation. In other words, the right of voice is no legislative power, so the paradox disappears. But this explanation loses its validity if we show, as will be done in the next chapters, that the right of voice represents a significant power for the EP. In these circumstances, a second possible explanation for the delegation of this power upon the EP is that heads of state and government did not perfectly foresee the real implications of the delegation of this right upon the EP. Judicial interpretation of the treaties upholding the EP's power would in this case have been unforeseen by heads of state and government at the moment they signed the Rome treaty. This explanation would fall within the historical institutionalist theories of European integration, whereby heads of state and government would be systematically cheated by parliament in successive treaty negotiations.¹³ But the argument that the council has been made believe that the right of voice was practically irrelevant is more difficult to accept if we recall from above that the power to be consulted was nothing new, but probably the most traditional of parliamentary powers. Finally, other theories of delegation pose a completely different explanation to the progressive accretion

¹² Ronald Butt, *The Power of Parliament*, London: Constable and Company Limited, 1967, pp. 31-34.

¹³ See Simon Hix, 'Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam?' *British Journal of Political Science*, 32, 2002, pp. 259-80; Anders Rasmussen, 'Institutional Games Rational Actors Play – The empowering of the European Parliament', *European Integration online Papers (EIoP)*, Vol. 4, No. 1, 2000; <http://eiop.or.at/eiop/texte/2000-001a.htm>.

of power by supranational institutions in the EU. They are based on rational, and therefore not systematically mistaken, calculations by heads of state and government.¹⁴ So the delegation question, on which this dissertation will shed some light, promises also to be controversial.

The power of voice: the general phenomenon

The scope of this thesis goes beyond the EP and even beyond the study of legislative powers in separation-of-powers legislative systems. The study of the legislative powers of the European parliament is not only relevant because of the substantive importance of the European Parliament and EU legislation, but also because most of the questions I posed in the opening of this chapter are applicable to other legislative bodies in the world, past and present, from the Great Council of the Baronage to the present Spanish Council of State, from university senates to the Catholic Church's Synod of Bishops. But the case is that although the powers of voice and voting are usual powers of chambers in pluricameral systems, they can also be found *inside* committees in general, such as university senates, shareholders' assemblies, neighbours' communities, NGOs, etc. For instance, it is not uncommon that someone be invited to take part in the deliberations of a given committee with voice but without a right to vote. Or to have a right to vote in a general assembly without the right to be heard. Or to have both powers. In this light, the scope of applicability of this thesis expands enormously, and the European Parliament becomes the glass through which to see virtually all of politics.

The EP constitutes a natural laboratory for the testing of generalisable theories about legislative powers. At a given point in time, different legislative procedures apply to different policy areas, each granting a different combination of powers upon the EP. And, due to the frequent changes in the treaties, different procedures have also applied to the same policy area at different points in time, acting as natural experiments.¹⁵ As a desirable consequence, there is plenty of variation in the independent variable (institutions) whose effects are to be analysed in the thesis. This dissertation analyses how three different

¹⁴ See Mark A. Pollack, 'Delegation, Agency and Agenda Setting in the European Community', *International Organization*, vol. 51, no. 1, 1997, pp. 99-134; and Giandomenico Majone, 'Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance', *European Union Politics*, Vol. 2, Issue 1 (February), 2001, pp. 103-121.

¹⁵ Roger M. Scully, 'Policy Influence and Participation in the European Parliament', *Legislative Studies*

legislative procedures (consultation, assent and co-decision) affect the outcome of legislation. In each of those three procedures the EP has a different combination of powers. Under consultation, the EP has a right to be heard. Under assent, the EP has a power to veto legislation. Finally, under co-decision, the EP has both a right to be heard and a power of veto. Institutions are by definition stable, so it is not easy to find a political system with such a degree of variation in such a short period of time. Such variation in the independent variable creates interesting possibilities for comparative statics, which make the EC legislative system an exceptional testing field for institutional theories of law-making.

1.2.WHY HAVE POLITICAL SCIENTISTS NEGLECTED THE POWER OF VOICE?

At the risk of advancing too much of the conclusions at this point of the dissertation, in this section I will present its main thesis. The section will tackle the notion of legislative powers and the informational nature of legislative politics, before dealing with the main thesis of the dissertation, namely the costly nature of legislative politics. All in all, this section will provide a preliminary explanation for the literature's lack of attention to the EP's power of voice.

The notion of legislative power

Before undertaking any study, it is imperative to delimit as precisely as possible the object of study, in this case legislative powers. Because there are many possible (and valid) definitions for legislative power, it is essential to make the definition explicit from the start. The ideal definition depends, of course, on the scientific interests of the author. However, it is a desirable characteristic for a definition to be widely accepted and used within the literature. This facilitates comparisons across studies and the development of a cumulative body of research.¹⁶ In order to achieve this, it is usually helpful to inspire oneself in the works that have passed the test of time and become considered as classics. Thomas Hobbes defined the power of a man as 'his present means, to obtain some future apparent Good.'¹⁷ This definition can be adapted to apply to legislative power, simply by adding the adjective

Quarterly, XXII, 2, May 1997, pp. 233-52: 234.

¹⁶ See Frank R. Baumgartner and Beth L. Leech, *Basic Interests: The Importance of Groups in Politics and in Political Science*, Princeton: Princeton University Press, 1998.

¹⁷ Thomas Hobbes, *Leviathan*, edited by Richard Tuck, Rev. student ed., Cambridge: Cambridge University

'legislative' in the right place of the definition.

Definition 1.1: *The legislative powers of an actor are his present legislative means to obtain some future apparent Good.*

Note that in the definition the adjective 'legislative' applies to 'means' not to 'Good'. Otherwise, the definition would be too broad, including any types of means, such as money, for instance. I also think my definition is more in line with Hobbes, where power is equated to 'means' and not to 'Good'. A different issue is how to measure power, since it may be desirable to use the apparent Good as a measure of it. But, in any case, legislative power or powers are legislative means. In addition to this, other three points of this definition must be taken into account. First, this definition of legislative powers, like Hobbes', is, in Riker's terminology, ego-oriented as opposed to other-oriented. In other words, power is defined as the means 'to increase ego's utility' not as the means 'to decrease alter's utility'.¹⁸ This is not to say that we are not dealing with social power.¹⁹ We must not forget that we are dealing with power arising from constitutional arrangements and that what these arrangements regulate is social interactions. These arrangements work by imposing constraints on other people's behaviour. Legislative procedures regulate relations between actors, which would be unnecessary if there were no conflict between those actors. So legislative powers reduce other actors' freedom thereby generating conflict. The study of legislative powers is the study of conflict.²⁰ Max Weber defined power as 'the probability that one actor within a social relation will be in a position to carry out his own will despite resistance'.²¹ This definition is perfectly consistent with the one I have adopted. As I have argued above, the resistance that can be overcome by constitutional arrangements is the resistance of other human beings.

Secondly, defining legislative powers as means allows to abstract from the question whether legislators are the ultimate people in control of those means or else they are mere

Press, 1996, p. 62.

¹⁸ For these notions see William H. Riker, 'Some Ambiguities in the Notion of Power', *The American Political Science Review*, Vol. 58, No. 2. June 1964, pp. 341-349, p. 344.

¹⁹ Keith Dowding, *Rational Choice and Political Power*, Aldershot: Edward Elgar, 1991, pp. 47-56.

²⁰ See Keith Krehbiel, *Pivotal politics: a theory of U.S. lawmaking*, Chicago and London: The University of Chicago Press, 1998, p. xiii; Keith Krehbiel, *Information and Legislative Organization*, Ann Arbor: The University of Michigan Press, 1991, p.1.

²¹ Max Weber, *The Theory of Social and Economic Organization*, trans. A.M. Henderson and Talcott Parsons,

delegates of other organisations such as political parties. As Huber points out, ‘the common explanation for parliamentary impotence has nothing to do with institutional arrangements. Party leaders in cabinets use the institutional structure of political parties to dominate the elected members of the legislature.’²² But the party dominance argument is a fallacy, for three main reasons. In the first place, rule 2 of the EP’s rules of procedure expressly forbids the binding mandate: ‘Members of the European Parliament shall exercise their mandate independently. They shall not be bound by any instructions and shall not receive a binding mandate.’²³ Secondly, often the so-called party dominance of MEPs is based on the party control of reselection of MEPs as candidates for next parliamentary elections, as well as the appointment of MEPs to higher political offices.²⁴ This, in turn, rather than proving parliamentary impotence, proves that MEP’s control valuable means, which they voluntarily exchange for party electoral and political assistance. Finally, even if it were the case that once elected MEPs could not act independently from political parties, this would in no sense represent an indication of parliamentary impotence in its interactions with other EU institutions. Rather it would mean that EP’s powers would be controlled by parties instead of MEPs. In any case, discussions about party dominance should not lead us to ignore the study of strategic bargaining processes in legislatures.²⁵ That is why I will abstract from cabinet- or party-dominance issues and focus on the bargaining process between the legislative bodies of the EC system.

Finally, the third issue concerns the distinction between individual and collective power. It is the individuals who control a given legislative body, not the legislative body itself, that can enjoy any future apparent good and therefore have power. Let us assume that the EP is controlled by MEPs. It takes a majority of MEPs to present amendments in first reading to a commission’s proposal and it also takes a majority of MEPs to finally approve a piece of legislation under the co-decision procedure. A majority of MEPs *collectively* have power. But the latter does not imply that MEPs *individually* have power.²⁶ This poses a problem when trying to translate the results of research that assumes that the EP is a

New York: Oxford University Press, 1947, p. 52.

²² John Huber, *Rationalizing Parliament*, New York: Cambridge University Press, 1996, p. 10.

²³ European Parliament, *Rules of Procedure*, 14th edition, Luxembourg: Office for Official Publications of the European Communities, June 1999.

²⁴ See Simon Hix and Christopher Lord, *Political Parties in the European Union*, London: Macmillan and New York: St. Martin's Press, 1997.

²⁵ Huber, *Rationalizing Parliament*, p. 10.

²⁶ I am thankful to Keith Dowding for bringing this to my attention.

unitary actor into the power of individual MEPs. However, the problem is not so serious when we look at the real workings of the European Parliament. As I will show in chapter four, the EP organises internally in such a way as to distribute its power among individual MEPs, therefore converting collective into individual power. Once it has been made clear what will be meant by legislative power throughout the dissertation, we can move to the first of the issues that may have led political scientists to misunderstand and underestimate the EP's power of voice.

Information and legislative power

Information is in the title of this dissertation and plays a central role in this thesis. The rational choice literature has emphasised three factors in determining political outcomes, namely preferences, institutions and information.²⁷ Preferences are the motivations that lead the actions of the players of the game. Institutions are the humanly designed rules of the game that constrain the actors' moves. Information can be about preferences or about available courses of action. The first type of information helps predict the other player's strategies whereas the second type of information opens up the possibilities of the game. Most rational choice models assume complete information, which is to say that actors' preferences are common knowledge. I will also assume complete information in my theory, leaving for the appendix an analysis showing that this simplifying assumption is to have a limited impact on the model's results. As far as information about nature is concerned, there are more differences. Again, most models assume perfect information, which is to say that players know at any point in the game where they are in the decision tree and therefore all the available moves at their disposal. But there are certain models of law-making that do not assume perfect information. These models represented a great leap forward but, as I will argue next, fail to capture the main role of information in the law-making process.

The model I develop in the following chapters diverges from other informational models in two main respects. The first difference concerns the way information is modelled. Existing models assume that players are uncertain about how policies relate to outcomes. This uncertainty is modelled as a disturbance that is added to the foreseen legislative outcome.²⁸ The models explain how information about the value of this

²⁷ See, for example, Helen V. Milner, *Interests, Institutions and Information: Domestic Politics and International Relations*, Princeton, NJ: Princeton University Press, 1997.

²⁸ See, for example, David Austen-Smith and William Riker, 'Asymmetric Information and the Coherence of

disturbance is transmitted from some actors to others. Whereas the literature has contrasted information to uncertainty I will contrast it to ignorance. While in the existing literature the informational role of the legislative process was reducing uncertainty about how known policies will relate to political outcomes, in this dissertation it means discovery of new policy alternatives. Indeed, often legislators do not know all the possible policy options. The kind of information that they seek in order to better attain their political objectives is not the ideal level of a policy along a continuous set of alternatives in order to obtain the desired outcome without overshooting. Rather, most of the time, legislators seek innovative solutions in the face of a political problem. Existing rational-choice models of law-making fails to capture the role of this kind of information about nature. But, nevertheless, this way to understand information in political processes is not new. It has been widely present under the name of novel policy alternatives brought to politicians by policy entrepreneurs.²⁹ An the idea of policy entrepreneurship is also present in the rational choice theory, in authors such as Riker. In fact he argues that policy entrepreneurship is in the essence of politics. But despite the idea of policy entrepreneurship being widely present in the less formalised literature, it had never been brought to the realm of formal models of law-making. Instead, the role of information in formal models of law-making concentrated on uncertainty about how policies would relate to outcomes.

Modelling politics as innovation is more in line with EC politics than modelling it as target shooting. While the logic of uncertainty perhaps may fit better the idea of unidimensional politics, the logic of discovery of novel policy alternatives is more adapted to explain complex multidimensional lawmaking. Indeed, Gilligan and Krehbiel's model has usually been applied to unidimensional models.³⁰ These models may be sufficient to deal with issues such as the budget, where policy usually consists in finding the optimal level of spending or taxes along a continuous line. The budget is probably the most

Legislation, *American Political Science Review*, 81, 1987, pp. 897-918; Thomas Gilligan and Keith Krehbiel, 'Collective Decision-Making and Standing Committees: An Informational Rationale for Restrictive Amendment Procedures', *Journal of Law, Economics and Organization*, 3, 1987, pp. 287-335; Thomas Gilligan and Keith Krehbiel, 'Collective Choice without Procedural Commitment', in Peter Ordershook (ed.), *Models of Strategic Choice in Politics*, Ann Arbor: University of Michigan Press, 1989; David Austen-Smith, 'Interested Experts and Policy Advice: Multiple Referrals under Open Rule', *Games and Economic Behaviour* 5, 1993, pp. 3-43; David Epstein, 'An Informational Rationale for Committee Gatekeeping Power', *Public Choice* 91, 1997, pp. 271-99; David Epstein, 'Partisan and Bipartisan Signaling in Congress', *Journal of Law, Economics and Organization* 14, 1998, pp. 183-204.

²⁹ See John W. Kingdon, *Agendas, Alternatives and Public Policies*, 2nd ed., New York: Longman, 1995.

³⁰ See, for example, Gilligan and Krehbiel, 'An Informational Rationale for Restrictive Amendment Procedures'; David Epstein and Sharyn O'Halloran, *Delegating Powers: A Transaction Cost Politics*

important issue in American politics, but the same is certainly not the case for EU politics. As it was said before, the EU budget only represents 1.27 percent of the Union's GDP, whereas the role of legislation is more important. Furthermore, EC legislation is usually multidimensional, often involving extremely complicated regulation issues. It is for this reason that my model is probably better suited than its rivals to explain the reality of EC law-making. While in the existing literature only risk averse legislators could obtain informational gains, risk aversion is not a necessary requirement for such gains to be produced in my model. And my model perhaps transmits a rather more positive image of politics, being it the game of creative entrepreneurs rather than that of fearful legislators. But this is not to say that my model is better in all respects than the previous ones. Rather, it emphasises a different aspect of reality. Both aspects of information (hedging and discovery) are present in all cases of law-making, although in different proportions. So it is up to the political scientist make a decision over which one better represents the reality to be explained.

The second respect in which this model diverges from existing models is that it explains why some legislative bodies have more information than others within a given political system. In other words, it makes information asymmetries endogenous. Other authors model the transmission of information among the different legislative bodies of a given political system, but their models do not explain the origin of initial differences in the information endowments of different legislative bodies. For instance, David Epstein and Sharyn O'Halloran model the transfer of information from a congressional committee and an executive agency to the floor. But their model does not explain how committees and executive agencies obtain their private information. It is an assumption of their model that the agency has better information than the committee, but the source of this information asymmetry is not explained within the model. The authors limit themselves to hypothesise that 'agency advantage might arise from greater numbers of staff and more time to analyse the technical issues at hand.'³¹ But this is beyond the scope of their theory. Conversely, in the model which will be developed in the following chapters, information asymmetries are not given by assumption, but determined within the model as a function of other variables such as institutions and preferences. In summary, information becomes an endogenous intermediate variable, helping explain legislative outcomes but at the same time being

Approach to Policy Making under Separate Powers, Cambridge: Cambridge University Press, 1999.

³¹ Epstein and O'Halloran, *Delegating Powers*, pp. 55-57.

explained by institutions and preferences.

Legislative politics as hard work

But the fact that there are information asymmetries is not enough to explain why the power of voice matters. As it is in the interest of decision-makers to have as much information as possible, in principle, no formal power would be necessary for a parliament with an innovative policy solution to be heard by decision-makers. Following this line of reasoning, the EP's power of voice, a formal power to be consulted, would be useless in the face of the possibility of informal contacts with information-insatiable legislators. But this, of course, is not the case, as I will show in the following chapters. Although legislators are in principle information-insatiable, this is not the case when we introduce into the analysis the costs of absorbing policy-relevant information. After we account for these, we observe that legislators have a certain degree of 'rational ignorance', since the costs of absorbing additional information may exceed the expected benefits. Legislators take decisions without knowing all the possible options at their reach, much the same as a consumer buys an insurance policy without knowing all available options, even though there would always be a salesman willing to provide a potential buyer with that information. The literature's neglect of information absorption costs is the main reason behind its misunderstanding of the power of voice.

Legislative politics is, and this is the main thesis of this dissertation, a costly process of information transmission. Law-making is not a smooth, frictionless process. The literature has taken into account actors and their preferences as well as institutions, which are the humanly designed rules of the game that constrain actor's moves. However, it has neglected another important constraint, namely the limitations of the human brain to absorb information. In a sense, neglecting the costs of information absorption is as if, when analysing the game of football, one takes into account the players' preferences and the humanly designed rules of the game, but forgets some important natural or 'divinely designed' rules of the game, such as the laws of gravity or the friction of air on the ball. These 'divinely designed' rules of the game also structure the equilibrium outcome of the legislative game.

Conflict in legislative politics can arise not only from divergences about ideal legislative outcomes but also from the frictions of the process of law-making itself. As Richard Hall reminds us, legislative outcomes depend not only on actors' policy

preferences, but also on their willingness to devote time and effort to the issues at stake.³² Let us assume for a moment that there are two legislators A and B, and that B has a certain degree of rational ignorance about different legislative alternatives. Well, in this case, player A's legislative power may consist in her ability to force player B to absorb certain information against his will, with the costs associated to that process. The new information, in turn, may affect player B's legislative behaviour and the legislative outcome. The new legislative outcome itself may be better for both players. The point is that conflict arose from the legislative process itself and not from differences about preferred legislative outcomes. In this light, legislative power is not incompatible with the achievement of a better law from the point of view of all actors involved.

EC legislation seems to conform to this view of legislative politics as a positive-sum game. Although legislative power always involves overcoming resistance, the source of this resistance does not always have to be differences in political preferences among the legislative bodies. It is possible that power relations which involve going against other legislative bodies will, produce legislative outcomes which are beneficial from all the legislative bodies involved. This seems to be consistent with what has been pointed out about the nature of environmental policy-making:

Coalition-building among the European institutions at all stages of the decision-making process bids up the final outcomes and, in the jargon of European integration, 'upgrades the common interest'. Indeed, where institutions compete to advance innovative and radical solutions to environmental problems, the results can be dramatic. There is clearly scope for European institutions to empower themselves by playing these inter-institutional games, and in so doing to form alliances and isolate opposition.³³

Once the main thesis of the dissertation has been presented, let us now move to a description of how it will be developed throughout the next chapters.

³² Richard L. Hall, *Participation in Congress*, New Haven and London: Yale University Press, 1996.

³³ Albert Weale et al., *Environmental Governance in Europe: An Ever Closer Ecological Union*, Oxford: Oxford University Press, 2000, p. 123.

1.3. OVERVIEW OF THE STUDY

The theory I develop here is a positive theory. Based on a set of assumptions, it logically develops a number of propositions which are subsequently tested against data with a chance of being refuted, i.e., they are falsifiable. The theory is a combination of deductive and inductive method. The deductive method is applied mostly in the first part of the thesis. Deductive means that predictions are logically derived from basic premises, among which the most important is the rationality of actors. The inductive method is mostly present in the second part of the thesis, which tests the propositions derived from the first part of the thesis. As Amie Kreppel points out, 'current discussions of EP power tend to be either highly abstracted and theoretical or narrowly focused on a few specific cases.'³⁴ The second part of the thesis draws evidence from the real world from which it induces generalisations about the behaviour of certain variables, and compares these generalisations with the propositions developed in the first part of the thesis. This combination of deduction and induction that characterises positive theories is an interactive process. Empirical evidence affects and even originates the construction of the theory or, in other words, 'one must have knowledge to produce knowledge'.³⁵ But at the same time the theory points at the sort of empirical evidence that we should pay attention to.³⁶ In this dissertation, neither induction is confined to the empirical chapters nor is deduction exclusive to the theoretical ones. In particular, induction is present in the theoretical part of the thesis in the form of results induced from computer simulations of legislative procedures, which enter the theory as substantiated assumptions. But theory also plays a role in the empirical chapters.

The empirical contribution of this dissertation is three-fold. First, my testing uses a great deal of triangulation, testing the theory at the initial level of assumptions, the middle level of lobbyists' strategies and the final level of legislative power. Sometimes, and certainly when dealing with legislative power, it is not easy to test the predictions of the model. Those predictions sometimes can be tested only partially. Whenever possible, I will try to test the theory not only at the power level, but also at the lobbyists' strategy level. By doing so I not only increase the power of my tests, but I also find evidence whether the

³⁴ Amie Kreppel, 'What affects the European Parliament's legislative influence?', *Journal of Common Market Studies*, Vol.37, No.3, Sep 1999, pp.521-538, p. 521.

³⁵ Richard L. Hall, 'Empiricism and Progress in Positive Theories of Legislative Institutions', in Kenneth A. Shepsle and Barry R. Weingast (eds.), *Positive Theories of Congressional Institutions*, Ann Arbor: The Michigan University Press, 1995, p. 275.

³⁶ Michael Laver and Kenneth Shepsle, *Making and Breaking Governments: Cabinets and Legislatures in*

trajectory that lead to the outcome is the one predicted by the theory. Furthermore, at try to bring the empirical testing even to the very initial level of the theory: the assumptions. For some authors, it does not matter whether the assumptions of a model are realistic as long as it makes the right predictions.³⁷ However, whenever possible, I will try to test the verisimilitude of the assumptions I make. In other words, I care about Fiorina's 'appropriateness test' or what Panning has called 'mapping'.³⁸ Hedging against risk has much to do with this. The more assumptions correspond to the essential features of the real phenomenon, the more likely it is that the predictions of the model will be right. If assumptions do not approximate the essential features of reality in the front end, there is a great risk that when the author realises the predictions are wrong too much effort has already been buried in an invalid model. That is why whenever possible I will to justify the verisimilitude of the model's assumptions. Secondly, my thesis uses innovative methods to be able to obtain a number of sensible proxies for variables that in themselves may be very difficult or even impossible to measure. In relation to formal models, Richard Hall points out that 'imperfect data ... may or may not be isomorphic to the abstract mathematical result.'³⁹ And it is the case that it is not always easy to find in the real word phenomena that resemble with reasonable accuracy the mathematical concepts used in formal models. For instance, how can legislative power, as defined in terms of welfare, be empirically measured? At the level of the intermediate variable finding adequate proxies is not easier. How to measure the number of alternatives that an institution knows? At the level of the independent variable the matter is similar. How does one measure the dimensionality of an issue? This dissertation provides innovative answers to these questions, sometimes inspired by other disciplines such as environmental or financial economics. All added together, the development of suitable proxies is an important contribution of this thesis. Finally, the testing uses an remarkable amount of empirical data, all of which has been personally collected by the author.

The core of the thesis is organised in two parts. The first part (chapters two and three) develops a theory of law-making and applies it to the EC case. The second part

Parliamentary Democracies, Cambridge: Cambridge University Press, 1996, p. 288.

³⁷ See Karl R. Popper, *The Logic of Scientific Discovery*, London: Routledge, 1992; and Milton Friedman, *Essays in Positive Economics*, Chicago: University of Chicago Press, 1953.

³⁸ Morris Fiorina, 'Formal Models in Political Science', *American Journal of Political Science* 19, 1975, pp. 133-59; William H. Panning, 'Formal Models of Legislative Processes', *Legislative Studies Quarterly*, Vol. 8, No. 3 (Aug.), 1983, pp. 427-55.

³⁹ Hall, 'Empiricism and Progress in Positive Theories of Legislative Institutions', p. 288.

(chapters four to six) contains the tests of the theory at the levels of the dependent variable, and of the intermediate variable, and presents two case studies. These are followed by the conclusions and two appendices. Chapter two develops a general model of law-making in a pluricameral or separation-of-powers legislative system, along the lines advances in the preceding sections. The main actors are legislative bodies and lobbyists that provide the former with information. The model is grounded on two main premises: (1) distinction between policies and outcomes (2) costs of transmission of policy-relevant information. The model divides the legislative game into two subgames: the lobbying subgame, in which lobbyists strategically provide some legislative bodies with information, and the legislative proper subgame, where the legislative bodies bargain under a given decision rule with the information they have obtained from lobbyists in the previous subgame. The chapter shows how, in order to solve the legislative game, it is necessary to analyse the legislative proper subgame first, applying backwards induction. The chapter also introduces some of the instruments, such as general equilibrium analysis, necessary to obtain a solution when the model is applied to a given legislative system.

Chapter three goes on to apply the theory to the EC legislative system. The chapter develops a spatial model of EC lawmaking, based on computer simulations of EC legislative procedures. The model includes the three legislative bodies of the EC (commission, parliament and council) as unitary actors, as well as an indefinite number of lobbyists that provide the legislative bodies with policy-relevant information. The chapter goes on to adapt the general model in chapter two to the particularities of each of the three main legislative procedures of the EC (consultation, assent and co-decision). The model is particularly enlightening as far as the right to be consulted is concerned, which is present not only in the consultation procedure but also in the co-decision procedure. So far, no formal model had attributed any power to the EP under the consultation procedure and non-formal analyses of consultation focused almost exclusively on the power of delay. Conversely, my model predicts power for the EP under consultation and identifies the main institutional source of that power: the legal prerogative of the EP to a (free of charge) hearing by the commission to transmit policy-relevant information. The conclusions include estimates of the effect of the legislative procedure on the legislative success of the EP that will be tested in the second part of the thesis. Finally, the chapter also draws some conclusions about the role of information in the EC legislative game.

Chapter four critically analyses existing ways of empirically measuring legislative

power, and introduces a new method based on the economic valuation of power: the hedonic pricing method. This method, which has been used to value environmental goods, uses information from the market for rapporteurships in the committees of the EP to obtain a price for the legislative power associated to different institutional arrangements, using unpublished statistical data on nearly two thousand legislative procedures from the period 1989-1999. The data were collected during a four-month period of study in the European Parliament as a Robert Schuman scholar.

Chapter five tests predictions on the intermediate variable: transmission of policy-relevant information. It uses data on political consultants' expenditure on the representation of interests in the making of different EC laws. The data are the result of a survey of political consultants designed by the author and implemented in the spring and summer of 2000. The literature featured a limited number of surveys into the same topic. Those surveys had two major shortcomings: they were based on hypothetical questions and their design did not allow to separate the influence different divisions of legislative powers on lobbying tactics. My survey, conversely, is based on questions about the actual strategies followed by EU political consultants that involve costly actions. In addition, one advantage of this survey is that it has been specifically developed for the *testing* of my theory. And by testing it is meant testing, with a chance for the theory to be refuted, not simply rubber stamping by means of a pre-biased survey. The survey is issue-based, asking consultants to identify the two latest legislative procedures they have dealt with. For each of these two issues, consultants were asked to comment on the time and effort they have spent in lobbying each EC institution. The utilisation of issues as the units of analysis allows to separate the influence that the legislative procedure applied has on lobbyists' targets.

Chapter six presents two case studies to illustrate the workings of the two main powers of the European Parliament: the power of voice and the veto. These cases are the ban on beef hormones, in order to analyse the power of voice, and the structural fund reform for the period 2000-06, to analyse the power of veto. The cases are presented analytically, within the theoretical framework constructed in the first part of the thesis. The case studies are particularly interesting to determine whether the mechanism by which the predictions materialise is the one the model proposes.⁴⁰ They are also useful to illustrate some important findings of the previous chapters.

⁴⁰ Tsebelis and Money, *Bicameralism*, p. 126.

The concluding chapter summarises the main thesis of the dissertation and reviews how it has been developed throughout the preceding chapters. Next, the chapter summarises the main results of the dissertation as far as the power of voice is concerned, namely what it is, how it works and what results it produces. This is followed by some normative conclusions on the power of voice and the democratic deficit. The chapter concludes by assessing the contribution of the dissertation and proposing an agenda for future research.

The conclusion is followed by two appendices, both related to the assumptions of the thesis. The first appendix develops a simple model in order to quantify the impact of the complete information assumption in models of EC lawmaking. The second appendix presents the results of the simulations of EC legislative procedures, from which results are induced which enter the models in chapter three as reasoned assumptions.

This dissertation covers a wide area of political science and its methods. By the end of this dissertation, the reader may expect to know much more about the EC legislative procedures. But, most importantly, by the end of this dissertation, the reader may expect to have obtained a deep understanding of the power of voice, how it works and the results it produces, as well as a hint on the motivations that may have led sovereigns to confer such a power upon consultative assemblies.

CHAPTER TWO

An informational theory of law-making in a separation-of-powers legislative system

This chapter develops a general theory of law-making in a separation-of-powers legislative system. The aim of the theory is to explain how different institutional arrangements affect the legislative power of the different legislative bodies of a separated legislative system. Separation of powers is a very general term that applies to several types of legislatures. What defines a separation-of-powers legislative system is that the outcome of legislation depends on more than one legislative body. Examples of separation-of-powers systems are bicameral legislatures, such as the British parliament, but separated systems can also consist of legislative bodies other than proper chambers. For example, a presidency with prerogatives in the law-making process can constitute a legislative body in a separation-of-powers legislative system. The US presidency is elected independently from the House and the Senate, and has distinct legislative powers, such as the presidential veto. Theories are of general applicability whereas models are more adapted to explain a particular case or set of cases. In this sense, the theory presented in this chapter is of general applicability, whereas in the next chapter it will be applied to the EC tricameral legislature and its legislative procedures, the main subject of this thesis.

Theories are simplifications that help people orient themselves in a world full of complexity. Theories are built on assumptions and it is those assumptions that determine whether the theory succeeds in explaining the complex phenomena it is intended to explain. For authors such as Milton Friedman, whether assumptions are realistic is not important as long as theories make the right predictions. However, it is common-sense that, the more realistic assumptions are, the greater chances are that the theory makes the right predictions. Unfortunately, there is usually a trade-off between the verisimilitude of assumptions and the simplicity of the theory. And it is up to the

theorist to decide how much verisimilitude she is willing and able to sacrifice in exchange of more realistic assumptions. But the decision is usually not one-dimensional, namely to choose the optimal point along a line with complete verisimilitude on one extreme and complete simplicity on the other. The theorist usually has to choose a combination on verisimilitude against simplicity along many different dimensions at the same time. The idea is that the theorist can only handle an overall amount of complexity so she decides to concentrate the simplifying assumptions on aspects that are not so likely to affect the outcome of their theories as far as the main focus of her theory is concerned. In this light,

Models that have a different explanatory logic, and even produce different predictions, may not be rivals as such if it is recognized that as models they do not take a truth-value: that is, they are not to be considered as true or false. Rather they are useful in highlighting an aspect or complexion of a complex reality. Different models may highlight different aspects of the structures which ultimately suggest action to the leading players.¹

Choosing where to make realistic and simplifying assumptions is probably the most important decision when building a theory.

In accordance with most of the rational choice literature, this theory conveys a somewhat cynical view of legislative politics. It portrays legislators as ego-centric actors who want to promote their favoured policies and even charge lobbyists for access to their attention. However, these assumptions are designed to make the thesis more understandable and by no means intended to represent a disrespect for legislators. To the contrary, this theory represents an improvement with respect to other rational choice theories in that at no point does it need to assume actors to behave unlawfully (e.g. by selling votes).

The rest of this chapter will be organised in four sections. The first section will review current models of EC law-making and find a place for my informational theory in the literature. The second section will introduce the basic assumptions of the theory. The third section will deal with the equilibrium of the game. Finally, the conclusion will

¹ Keith Dowding, 'Interpreting Formal Coalition Theory', in Keith Dowding and Desmond King (eds.), *Preferences, institutions, and rational choice*, Oxford: Clarendon Press; New York: Oxford University Press, 1995, p. 57.

summarise the main features of the theory, which will be applied to the main EC legislative procedures in the next chapter.

2.1. PREFERENCES, INSTITUTIONS AND INFORMATION

The literature has singled out three main variables of political games that determine actors' behaviour and therefore political outcomes, namely preferences, institutions and information.² *Preferences* are the motivations that lead the actions of the players of the game. *Institutions* are the humanly designed rules of the game that constrain the actors' moves. Actors involved in law-making are assumed not to act in a vacuum. They play within a particular institutional setting, certain rules of the game which I assume stable. The basic idea is 'structure induced equilibrium' or how institutions affect outcomes.³ By institutions or rules of the game I understand only formal institutions, such as EU treaties (as interpreted by the European Court of Justice). Conversely, informal institutions are not an independent variable in my theory, but mere equilibrium strategies induced by formal institutions. For instance, a change in the EP's rules of procedure is not considered a change in the rules of the game, but a strategy induced by institutions such as the treaties. Because I also use in this model institutions meaning legislative chambers or organisations, I will tend to use the term procedure to mean the rules of the game. True, the rules of the game are not only constraints to but also the result of political interaction.⁴ The difference, however, lies in transaction costs. To change the EC treaty requires an intergovernmental conference (IGC), unanimity in the European Council, ratification by national parliaments as well as approval in referenda in some member states. In fact, the Treaties can be considered stable precisely because they are so difficult to amend. And, in any case, to assume institutions fixed is useful to obtain the payoffs of the institutional design game. It is an exercise of comparative statics. As Ronald Coase puts it: 'Without some knowledge of what would be achieved with alternative institutional arrangements, it is impossible to choose sensibly among them'.⁵ Finally, *information* is the actor's knowledge about the preferences of the other actors and about the existence and consequences of different available courses of action.

² See, for example, Milner, *Interests, Institutions and Information*.

³ Kenneth A. Shepsle and Barry R. Weingast, 'Structure Induced Equilibrium and Legislative Choice', *Public Choice* 37, 1981, pp. 503-19.

⁴ Kenneth A. Shepsle, 'Institutional Equilibrium and Equilibrium Institutions' in Herbert Weisberg (ed.), *Political Science: The Science of Politics*, New York: Agathon, 1986.

⁵ Ronald Coase, *The Firm, the Market and the Law*, Chicago: Chicago University Press, 1998, p. 30

Consistently with what has been argued above, theorists choose on which of those three aspects to concentrate, and this is the main reason behind differences in the predictions of different models. Therefore, in order to locate a new theory such as the one developed in this chapter within the body of existing literature, it is necessary to locate it according to those three dimensions: preferences, procedure and information. Whereas existing theories of lawmaking do not differ much in the role they confer upon information, some clear differences do emerge as far as the roles of preferences and institutions are concerned. Thus, before moving on to the main contribution of the theory, which lies on the prominent role it confers upon information, it is convenient first to place this theory along the latter two dimensions, namely preferences and institutions.

		INSTITUTIONS	
		<i>Parametric</i>	<i>Strategic</i>
PREFERENCES	<i>Causal (Token)</i>	I Moravcsik 1991	III Tsebelis 1994 Steunenberg 1994 Crombez 1994, 1996 Moser 1996 Garrett and Tsebelis 1996 Scully 1997b
	<i>Structural (Type)</i>	II Nurmi and Meskanen 1996 Bindseil and Hantke 1997 Berg and Lane 1997 Laruelle and Widgrén 1997 Turnovec 1997	IV Steunenberg et al. 1999 THE PRESENT THESIS

Table 2.1. Formal models of the interinstitutional balance of legislative power in the EC Source: adapted from Dowding, pp. 49-55.

Keith Dowding provides a typology of formal models of bargaining according to their treatment of preferences and institutions, which in table 2.1 is adapted to existing models of EC law-making.⁶ As far as preferences are concerned, causal or token models (boxes I and III) assume that the preferences of the actors and the location of the status quo are known. And they show the conditions that affect the interinstitutional balance of

legislative power in a given case. Among these conditions the legislative procedure is just one among others that include prominently the configuration of preferences, both across and within the institutions. The empirical testing of these models requires a great amount of data. As Dowding points out,

It requires such detailed knowledge of the actors in order to produce a model which provides accurate predictions that everything the model could teach us must already be known. [...] Rather, the insights of more generalized game-theoretical models can be applied to particular cases in order to denote the structural constraints under which the negotiators operate.⁷

The great amount of data necessary makes this type of models suitable almost exclusively to explain individual policy issues or what has been called policy analysis.⁸ Exceptions of large scale empirical analyses taking preferences into account are Tsebelis et al. and Amie Kreppel.⁹ Conversely, structural or type models (boxes II and IV) assume that the preferences of the actors are not known and try to single out the influence of the legislative procedure on the institutional balance of power in the EC. They focus on constitutional modalities (legislative procedures) and they abstract from other factors such as preferences which are neither fixed nor known at the time constitutional decisions are taken. In order to abstract from preferences, these models assume that the latter are uniformly distributed. The result is a probability or an average of power. These models produce clear predictions and require much less information than those in boxes I and III. Although these models are particularly relevant to constitutional analysis, they also have applications in policy analysis.¹⁰ As Dowding points out,

It does not follow that we cannot learn about the progress of negotiations within such bargains by use of the models which conform to Box 2 and 4 explanations. The lessons to be learned from these types of explanations are (1) the nature of the resources available and (2) the conditions under which actual bargains take place. They teach us about the structural

⁶ See Dowding, 'Interpreting Formal Coalition Theory', pp. 49-55.

⁷ Dowding, 'Interpreting Formal Coalition Theory', p. 57.

⁸ Jan-Erik Lane and Sven Berg, 'Relevance of Voting Power', *Journal of Theoretical Politics* 11(3), 1999, p. 309-20, p. 310.

⁹ George Tsebelis, Christian B. Jensen, Anastassios Kalandrakis and Amie Kreppel, 'Legislative procedures in the European Union: an empirical analysis', *British Journal of Political Science*, Vol.31, No.4, Oct 2001, pp.573-600; Kreppel, 'What affects the EP's legislative influence?'

¹⁰ Lane and Berg, 'Relevance of Voting Power', p. 309.

constraints and opportunities with which actual bargains are struck, for, as we saw with the Shapsley-Shubik power index, structural conditions constitute resources for the actors.¹¹

As far as institutions are concerned, parametric models (boxes I and II) focus on voting power. They are based on co-operative game theory and they analyse the EC legislative game without regard to the sequence of moves of the game. They consider different legislative procedures simply as different coalition requirements of a voting body. In addition, these models understand power as pivotality. Conversely, strategic models (boxes III and IV) take into account the strategic nature of the EC legislative game. They afford great importance not only to the size of the coalitions necessary for the passing of legislation, but also to the sequence of moves in the legislative game. In addition to the power of veto, these models analyse with what player agenda-setting power lies. These are spatial models that assume an issue space where ideal points of the actors and the status quo are located and measure utility as the distance between the outcome and an actor's ideal point. Concerning which option is better, Garrett and Tsebelis have criticised voting power analyses for neglecting strategic agenda-setting and have shown the serious consequences of this failure.¹² Supporters of voting power such as Holler and Widgrén agree with the fact that voting power analyses do not consider agenda setting power but argue in defence of voting power analyses that the power of the agenda-setter is exaggerated under the common assumption of complete and symmetric information.¹³ Appendix one is entirely devoted to quantifying the impact of the complete information assumption on models of EC law-making.

The theory I develop in this thesis is located in box IV, together with Steunenberget al.'s 'Strategic Power in the EU'.¹⁴ Models in this box combine the advantages of strategic models with those of parametric ones. On the one hand, strategic models including agenda-setting are more complete than models based exclusively on voting power. On the other hand, structural or type models are more practical than token

¹¹ Dowding, 'Interpreting Formal Coalition Theory', pp. 53-54.

¹² Geoffrey Garrett and George Tsebelis, 'Why resist the temptation to apply power indices to the European Union?', *Journal of Theoretical Politics*, Vol. 11, No. 3 (July), 1999, pp. 291- 308; Geoffrey Garrett and George Tsebelis, 'More reasons to resist the temptation of power indices to the European Union', *Journal of Theoretical Politics*, Vol. 11, No. 3 (July), 1999, pp. 331-38; Geoffrey Garrett and George Tsebelis, 'Even more reasons to resist the temptation of power indices to the EU', *Journal of Theoretical Politics*, Vol. 13, No. 1 (Jan.), 2001, pp. 99-105.

¹³ Manfred Holler and Mika Widgrén, 'Why Power Indices for Assessing European Union Decision-Making?', *Journal of Theoretical Politics*, 11(3), 1999, pp. 321-30, p. 328.

models, because the former produce simple clear predictions and do not require knowledge about preferences which is always difficult to obtain and for elected institutions such as a parliament, also difficult to predict. The fact they are difficult to measure makes it difficult to introduce them in any theory that is expected to pass the test of evidence. The fact preferences are difficult to predict, makes it difficult to apply the model to predict choices about outcomes that will depend on future preferences. Although preferences are a key factor determining political outcomes, in this thesis I make an assumption about their distribution which will allow the models to be predictive even in cases where preferences are not known. This choice seems also to be adequate if one considers that the main objective of the thesis is constitutional analysis. Nevertheless, it should also be noted that I defend the relevance of power indices to policy analysis, as the legislative procedure is one of the factors that often influence actual outcomes in legislatures.

So far, we have located the theory inside the existing body of literature according to its treatment of the first two variables: preferences and procedure. It is necessary to move on now to consider the role of information in this theory. As it will become apparent in the following sections, it is precisely in the role of information where this theory departs from all previous theories of law-making.

2.2. THE BASIC ASSUMPTIONS

The basic assumptions of my theory of law-making can be organised, for greater clarity of the exposition, into four groups: the outcome space and policy alternatives, the players and their motivations, the sequence of moves and the transmission of information.

The outcome space and policy alternatives

My model is based on the distinction between policies and outcomes, which is common in informational models of law-making.¹⁵ Policies are the laws enacted by the legislature, with all the provisions they contain. Outcomes are the effects of those provisions on the real world. For instance, if policy consists in the regulation of the

¹⁴ Bernard Steunenberg, D. Schmidtchen and C. Koboldt, 'Strategic power in the European Union: evaluating the distribution of power in policy games', *Journal of Theoretical Politics*, Vol.11, No.3 (July) 1999, pp.339- 366.

lateral resistance of cars, the outcome would be the reduction in the numbers of injured drivers as a result of lateral impacts, the increase in car prices, etc. The outcome space is assumed to be n-dimensional and continuous. In the previous models the outcome space had been assumed to be one-dimensional.¹⁶ Furthermore, Steunenberg et al.'s outcome space is not continuous but consists of just eight points.¹⁷ For the sake of simplicity, for each dimension the outcome is assumed to vary between 0 and 1. For each political outcome there is at least one policy alternative leading to that outcome. At the same time, each policy alternative leads to one and only one political outcome. There is an infinite number of discrete alternatives. An average of two proposals does not necessarily lead to the average of two policy outcomes. So, knowing how to achieve two points A and B in the outcome space does not imply knowing how to achieve any outcome within the segment AB. An alternative may consist of a set of clauses, departing from the status quo or departing from another proposal. That an alternative containing a combination of clauses and its corresponding outcome are known does not mean that that alternatives containing subsets of those clauses and their corresponding outcomes are also known.¹⁸ In other words, proposals are to be considered as a whole package. Consequently, alternatives are the basic (indivisible) units of information of my model.

It is assumed that the relationship between an alternative and its consequences can be proved to be veracious.¹⁹ A proposal may contain a scientific study from a prestigious institution involving clinical tests to demonstrate the pernicious effects for human health of a certain product. It may contain a study to show the economic impact on a local economy of a proposed trade agreement. It may contain opinion polls to show that it is in the electoral interest of the legislator to approve that particular proposal. It can challenge the reader to witness a given tests, such as when the US hush-kit industry challenged the European Commission on the pages of *European Voice* to witness a noise test of a hush-kitted Boeing 727 against an Airbus 300 at the Paris air show.²⁰

¹⁵ See Austen-Smith and Riker, 'Asymmetric Information and the Coherence of Legislation'; Krehbiel, *Information and Legislative Organization*.

¹⁶ Christophe Crombez, 'Information, Lobbying and the Legislative Process in the European Union', *European Union Politics*, Vol. 3(1), pp. 7-32.

¹⁷ Steunenberg et al., 'Strategic power in the EU'.

¹⁸ Cf. Geoffrey Garrett and George Tsebelis, 'More on the Co-Decision Endgame', *Journal of Legislative Studies*, Vol. 3, No. 4, Winter 1997, pp. 139-43.

¹⁹ Cf. Crombez, 'Information, Lobbying and the Legislative Process in the EU', p. 11.

²⁰ The advert can be found at <http://www.european-voice.com/advertise/graphics/Hushkit1.gif>

The players and their motivations

There are three types of players in my model: a determinate number of legislative bodies, an infinite number of lobbyists and a dummy player. Legislative bodies are the basic units with law-making rights, which are assumed to be unitary actors. This simplifying assumption, which has not been exempt from criticism,²¹ seems consistent with Brian Barry's view that 'the judgement about power must ... be made about social groups' since 'no individual can conceivably have the confidence that his power will be such as to change an outcome'.²² The election of the institutions as the units of analysis seems also to be appropriate given that the focus of my theory is on the interinstitutional balance of legislative power in the EC. This is an example of how both models which assume that parties are single actors and those which see them as single actors may be useful in different contexts, depending upon the problematic addressed.²³ The institutions' preferences are assumed to be independent, which is in line with the prohibition of the binding mandate which generally applies to separation-of-powers systems. In order to be able to make predictions in the absence of detailed knowledge about the configuration of preferences for a particular issue, I assume that both legislative bodies' preferences and the status quo are uniformly distributed throughout the outcome space. Finally, I also assume that institutions' preferences are common knowledge among the institutions. This is a simplifying assumption which, although common in the rational choice literature, has not been immune to criticism.²⁴ Appendix is devoted to analysing how important (unimportant) the practical effects of this assumption may be for the predictions of the model.

Lobbyists are the second type of actors.²⁵ Unlike legislators, lobbyists have no law-making rights.²⁶ However, as we will see later, they can influence the outcome of

²¹ See Kenneth A. Shepsle, 'Congress is a "they" not an "it" - legislative intent as oxymoron', *International Review of Law and Economics*, Vol. 12, No. 2 (June), 1992, pp. 239-256.

²² Brian Barry, 'Is it Better to be Powerful than Lucky, part I and II', *Political Studies* Vol. 28, No's. 2 and 3, 1980, pp.183-194 and 338-52, p. 351.

²³ Dowding, 'Interpreting Formal Coalition Theory', p. 55.

²⁴ See, for instance, Roger Scully, 'The European Parliament and the Co-Decision Procedure: A Reassessment', *Journal of Legislative Studies*, Vol. 3, No. 3, Autumn 1997, pp. 58-73, p. 67; Holler and Widgrén, 'Why Power Indices for Assessing EU Decision-Making?', pp. 321-22.

²⁵ Lester Milbrath points out that 'the words "lobbyist" and "lobbying" have meanings so varied that use of them almost inevitably leads to misunderstanding' (*The Washington Lobbyists*, Chicago: Rand McNally, 1963, p. 7) and for this reason Robert Salisbury recommends not to use the term lobbyist at all ('Interest Groups: Toward a New Understanding', in Allan J. Ciglar and Burdett A. Loomis (eds.), *Interest Group Politics*, Washington, D.C.: Congressional Quarterly, 1983). However I refuse to give the term up, because I think it captures the essence of what I mean by lobbyist, which will be explained below.

²⁶ See David Austen-Smith, 'Information and Influence: Lobbying for Agendas and Votes', *American Journal of Political Science*, Vol. 37, No. 3, August 1993, pp. 799-833, p. 800.

legislation through strategic transmission of policy-relevant information to legislators.²⁷ Each lobbyist knows a policy alternative, her pet proposal, which leads to the lobbyist's ideal political outcome. For the sake of simplicity, lobbyists are assumed to know the distribution preferences of the other lobbyists and of the legislative bodies, but not the actual configuration of preferences for particular issues. A lobbyist knows that her pet proposal leads to her ideal political outcome but not where this is located in the outcome space. Finally, it should be noted that the distinction between legislator and lobbyist is not organic but functional. Entrepreneurs are found in many locations: the key entrepreneur might be a cabinet member, a senator, a lobbyist, an academic, a career bureaucrat.²⁸ This means that the same actor may act as a lobbyist, when she performs lobbying activities, and as a legislator, when she performs legislative activities.²⁹ The number of potential lobbyists is assumed to be infinite and their ideal outcomes randomly distributed throughout the outcome space. The lobbying industry is assumed to have no barriers to entry or exit, the number of active lobbyists being endogenous to the model, unlike in Austen-Smith's fully worked-out model of lobbying, which assumes the existence of one and only one lobbyist.³⁰ My model may resemble the real world better, as Austen-Smith recognises that 'in the real world, there are many interest groups'.³¹ The fact that it is assumed that there is an infinite number of potential lobbyists with preferences distributed randomly throughout the whole outcome space, and that all of them have equal access to the political process makes my model conform to the pure pluralist view of interest representation.³²

Finally, the model also includes a dummy player, following Steunenberg et al.³³ The dummy player is neither law-making rights nor any information. As a consequence, she does not have any means to change the outcome of legislation. The dummy player serves as a reference in order to account for the effect of *luck*. Any improvement in the welfare of the dummy player as a result of the legislative game is considered pure luck. This is deducted from the other players' *success* in order to calculate their *power* (power

²⁷ Austen-Smith, 'Information and Influence', p. 800.

²⁸ Kingdon, *Agendas, Alternatives and Public Policies*, pp. 179-80.

²⁹ See Justin Greenwood, *Representing Interests in the European Union*, London: Macmillan, 1997.

³⁰ See Austen-Smith, 'Information and Influence', p. 800.

³¹ Austen-Smith, 'Information and Influence', p. 825.

³² See Hix, *The Political System of the EU*, pp. 188-189; Seymour Martin Lipset, *Political Man*, London: Heinemann, 1959; Arthur F. Bentley, *The Process of Government*, Chicago: University of Chicago Press, 1967; David B. Truman, *The Governmental Process: Political Interests and Public Opinion*, New York: Knopf Press, 1951.

³³ Steunenberg et al., 'Strategic power in the European Union'.

= success - luck). The preferences of the dummy player are also assumed to be randomly distributed.

Each player, whether a legislative body, a lobbyist or the dummy player, is assumed to be motivated by desire to achieve a given political outcome. Each player is assumed to have an ideal point in the outcome space and its utility is defined as the negative of the distance between the policy outcome and the actor's ideal point. As Michael Laver and Kenneth Shepsle point out, the assumption of policy-driven politicians might appear somewhat controversial, given at least one popular image of politicians as 'power-hungry egomaniacs concerned with nothing beyond their own personal well-being, and prepared to say and do almost anything in order to advance this.' But even if this were the case, they argue, policy would still be reasonably expected to be a driving force of politicians, so long as it is important to voters, activists and other electorally relevant groups. Office seeking politicians will be impelled by the forces of electoral competition to pursue the policies voters favour.³⁴ The view that policy is important for politics is shared in this theory, although with the minor caveat that, given the distinction between policies and outcomes assumed in this thesis, what players seek is not technically policies but political outcomes.

The sequence of moves

Law-making is a game of strategic information transmission. The law-making game can be divided in two subgames: the lobbying subgame and the legislative subgame. In the lobbying subgame, lobbyists strategically transmit information to legislators.³⁵ The sequence of moves is as follows: first, chance (or nature, indistinctively) determines a random selection order for lobbyists. In the order given by chance, each legislator decides whether to transmit her pet proposal to a legislative body and, if so, to which legislative body until no legislator wants to transmit her alternative. The alternatives that each institution receives from lobbyists become that institution's own private information, which are an input for the next subgame. In the legislative subgame, each institution decides strategically whether to and if so what of its private information to transmit to other institutions along the channels that the legislative procedures put at their disposal. Finally, the institutions preferences, their private information and the

³⁴ Laver and Shepsle, *Making and Breaking Governments*, pp. 8-9.

³⁵ See Austen-Smith, 'Information and Influence', p. 799.

decision rule, determine the policy outcome. Figure 2.1 depicts the flow of information in the law-making process as modelled here:

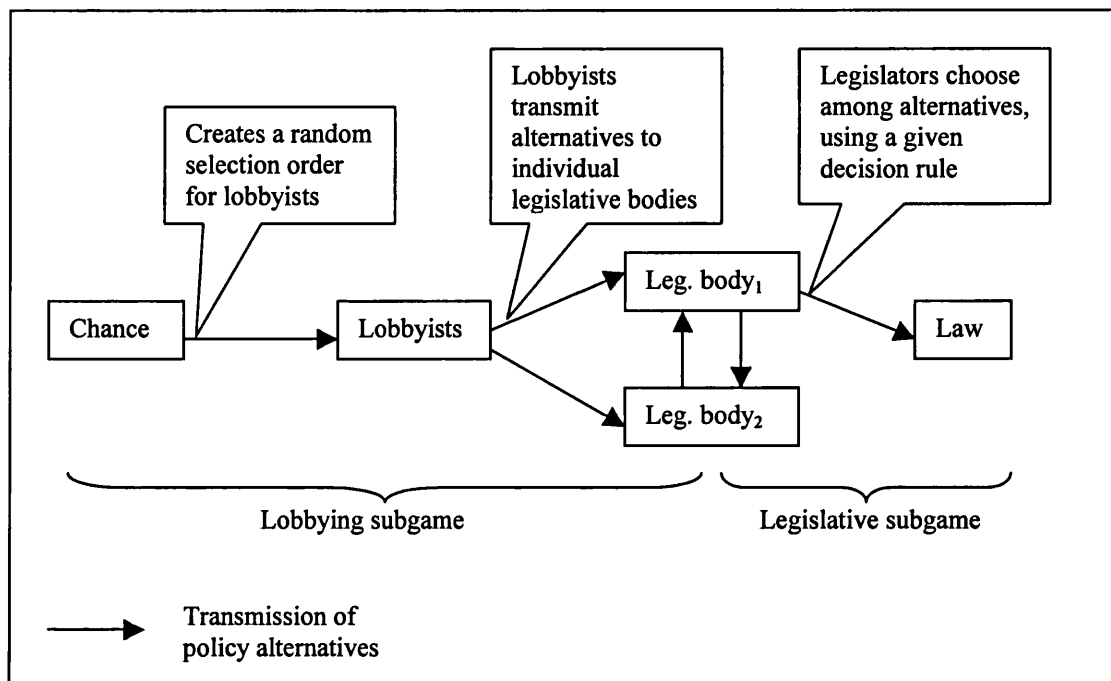


Figure 2.1. The law-making game: case of a bicameral legislature

Information transmission

A basic assumption of this theory is that it is costly for a player to absorb a proposal from another player. These transaction costs are, in Richard Hall's words, 'the time and effort required to communicate with other actors ... to credibly convey policy-relevant information'.³⁶ In order to assimilate a proposal, a legislative body has to read or listen to it, analyse how it relates to a policy outcome and how that policy outcome relates to the legislative body's preferences. In the case of multilingual legislatures such as the EC's, these costs are even more apparent. One just has to think of the costs of translation for a German legislator to understand a proposal from a Greek lobbyist. Marginal costs of absorbing policy-relevant information by the legislator are assumed to be increasing, possibly because, in John Kingdon's words, 'the ability of human beings to process information is more limited [...] we are unable to canvass many alternatives, keep them simultaneously in our heads, and compare them systematically'.³⁷ Of course, not all legislative bodies need have the same ability to absorb alternatives, which will

³⁶ Hall, *Participation in Congress*, p. 87.

³⁷ Kingdon, *Agendas, Alternatives and Public Policies*, p. 78.

affect their costs of absorbing alternatives. Differences may arise, for example, from differences in the administrative allowances of different legislative bodies.

The function of absorption of policy alternatives by a legislative chamber can be modelled as a Cobb-Douglas production function of the form $y = x_1^a \cdot x_2^{1-a}$ with two factors of production: x_1 and x_2 , the latter being fixed in the short run at a level k , and with a such that $0 < a < 1$.³⁸ In applied terms, the fixed factor, x_2 , is any administrative endowment that cannot be changed, at least in the short run, by the legislative body that receives it. The unit price for factors x_1 and x_2 is assumed to be fixed at level w_1 and w_2 . So the product $w_2 \cdot k$ would be equivalent to any fixed money allowance received by the legislative body and earmarked for administrative expenditure. On the other hand, x_1 would be the variable factor of production. This would be mostly the labour of members of the legislative body. Since there is nothing that obliges members to work and much less how hard they must work in the legislative area, the amount of time and effort they dedicate to absorb policy proposals from policy entrepreneurs can be considered as a variable factor of production.

The cost-minimising problem then is

$$\begin{aligned} \min w_1 \cdot x_1 + w_2 \cdot k \\ \text{such that } y = x_1^a \cdot k^{1-a} \end{aligned}$$

Solving the constraint for x_1 as a function of y and k gives

$$x_1 = (y \cdot k^{a-1})^{1/a}$$

Thus,

$$c(w_1, w_2, y, k) = w_1 \cdot (y \cdot k^{a-1})^{1/a} + w_2 \cdot k$$

where c represents the costs of transmitting information and $(w_2 \cdot k)$ is the fixed expenditure allowance of the legislative body.

The marginal transmission cost or the marginal cost of absorbing information (MTC) is:

$$MTC = \partial c / \partial y = 1 / a \cdot w_1 \cdot k^{(a-1)/a} \cdot y^{1/a-1}$$

which has the following properties:

For $y = 0$, $MTC = 0$ (Property 2.1)

$\partial MTC / \partial y > 0$ (Property 2.2)

$\partial MTC / \partial k < 0$ (Property 2.3)

These properties will be used later on, when making predictions on the equilibrium amount of lobbying towards the different legislative bodies of a separation-of-powers system.

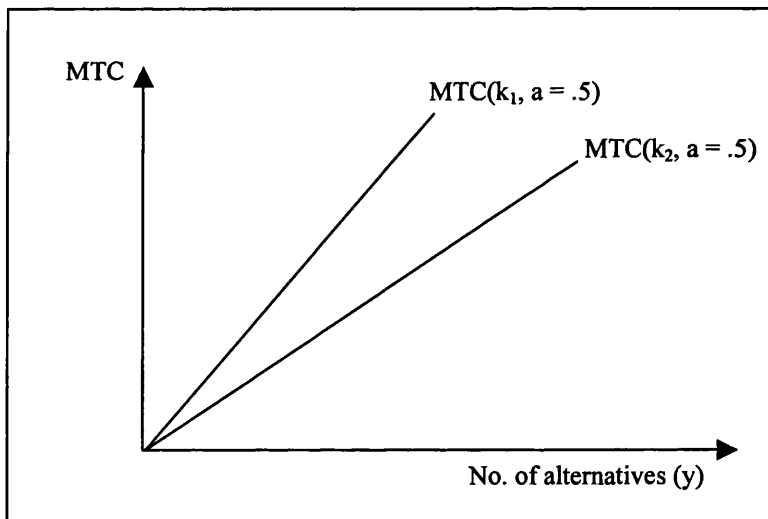


Figure 2.2. The marginal cost of access function

Figure 2.2 depicts two marginal transmission cost (MTC) functions, corresponding to two different administrative allowances.³⁹ Both curves start from the origin, consistently with property 2.1. This means that when legislators do not receive any proposal, the cost of absorbing a proposal approaches zero. They both slope upwards, consistently with property 2.2. This is realistic because, as the legislator dedicates more effort to absorbing legislative proposals from lobbyists, alternative uses of their time such as leisure, become more valuable. Finally, the curve corresponding to a greater fixed

³⁸ This function, which is extensively used in economics, fits our analysis because of some of its properties, which are summarised below, and recalled in this and the next chapter.

administrative allowance ($w_2 \cdot k_2 > w_1 \cdot k_1$) is always lower than the other, consistently with property 2.3. This is so because greater the administrative allowance of legislators (staff and other resources) facilitate the work of legislators, allowing them to concentrate on their core tasks. Staff can, for instance, translate lobbyist's proposals into a language legislators can more easily understand, they can check the accuracy of the data, prepare summary briefings, etc.

Having described the main features of the law-making game, it is now possible to move on to the next section, which will analyse its equilibrium.

2.3. THE EQUILIBRIUM

As we have seen in the last section when analysing the sequence of moves, the law-making game can be divided in two subgames: the lobbying subgame and the legislative subgame. In order to solve this sequential game, we must start by analysing the second subgame, applying backwards induction. The law-making game is solved in three steps: first, the legislative subgame is solved, from which we obtain a relationship between information and legislative outcomes. Secondly, we use the latter relationship to obtain an equilibrium for the lobbying subgame. Finally, we return to the legislative game and find the legislative outcomes associated with the equilibrium endowments of information calculated in the previous step.

Step 1: The legislative subgame

The legislative subgame is the game in which legislators bargain among themselves, under a given decision rule, a given configuration of preferences and given their private endowments of information. At this point we still do not know the endowments of information of each legislator, and therefore we cannot yet produce an equilibrium outcome for the game. However, we can predict the equilibrium strategies of legislators and legislative outcomes for different combinations of information endowments. At this point, we are interested in knowing how an additional alternative in the hands of a given legislative body affects the utility of that legislative body and the utility of the lobbyist that transmits it.

³⁹ In the example, for clarity of the exposition, both functions are straight lines (the value of a is .5). Any other value for a would affect the convexity of the curves, but would not alter the analysis that follows.

Each legislative body has an interest in listening to interest groups in order to increase its pool of policy alternatives and so increase its bargaining power. In order to increase the number of their options, legislative bodies count on scarce administrative resources, so they have to rely extensively on outside sources, such as firms or interest groups. This is the case in the EC, as in many other legislative systems. As Majone points out, only a minority of EU proposals are spontaneous initiatives of the commission. Initiatives originate in such diverse sources as the EP, the ESC, regional governments and various private and public interest groups.⁴⁰ So much so that the commission has been called a “promiscuous bureaucracy”.⁴¹ I call the benefit that an institution receives from receiving an additional proposal the *marginal information benefit to the legislator* (MIBL).

Lobbyists also have an incentive to supply legislators with policy options, because by doing so they are able to influence legislation that affects them. Lobbyists are policy entrepreneurs. They bring issues to prominence, propose policy alternatives and, when the political climate is favourable, a ‘policy window’ opens through which lobbyists get their proposals into the policy process.⁴² When a policy window opens, policy entrepreneurs obtain a disproportionate amount of influence on the particular issue at hand. In my model, by creating a policy window, a lobbyist gets the agenda-setter to adopt her pet proposal. The new proposal will be closer to the agenda setter’s ideal outcome and therefore more difficult to get amended by successive policy entrepreneurs. The lobbyist’s alternative may become the final proposal and, even if amended by subsequent lobbyists, the final proposal is likely to be closer to the first lobbyist’s ideal outcome. However, the expected utility gain from lobbying is likely to be minimal, because policy windows open infrequently.⁴³ I call the benefit that the last lobbyist obtains from lobbying the *marginal returns to lobbying* (MRL).

⁴⁰ Majone, ‘The Rise of the Regulatory State in Europe’.

⁴¹ Sonia Mazey and Jeremy Richardson, ‘Promiscuous Policymaking: the European Policy Style?’, in Carolyn Rhodes and Sonia Mazey (eds.), *The State of the European Union, Vol. 3. Building a European Polity?*, Boulder: Lynne Rienner and Longman, pp. 337-60.

⁴² Kingdon, *Agendas, Alternatives and Public Policies*.

⁴³ Kingdon, *Agendas, Alternatives and Public Policies*, p. 166.

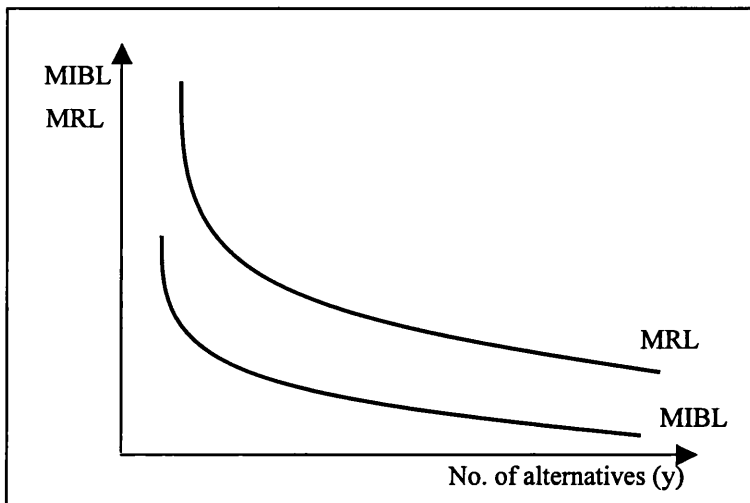


Figure 2.3. The benefits of information transmission

For each legislative body, both the marginal information benefit to the legislator (MIBL) and the marginal returns to lobbying (MRL) can be depicted as function of the number of alternatives, for a given legislative procedure and a given dimensionality of the issue space. Figure 2.3 shows two examples of such curves. The figure shows that both the marginal information benefit to the legislator and the marginal returns to lobbying are decreasing. The reason is that as the number of lobbyists increases, the more the proposal will resemble the agenda-setter's ideal policy, reducing the likelihood that an additional alternative has a great impact on the final outcome. These curves will be useful in the next step, when calculating the equilibrium amount of lobbying towards each legislative body.

Step 2: the lobbying subgame

In the lobbying subgame, utility-maximising lobbyists decide whether to lobby and, if so, what legislative body to lobby. The equilibrium of the lobbying subgame is reached when no additional lobbyist has an incentive to lobby (to transmit her proposal to a legislative body). The lobbying to a given legislative body can be modelled in terms of supply and demand of access to that legislative body. The *supply of access* curve would be given by the difference between the marginal transmission cost and the marginal information benefit to the legislator ($MTC - MIBL$). The *demand for access* curve would be given by the marginal returns to lobbying (MRL). The equilibrium would be reached when supply meets demand, through the price mechanism:

$$MTC^* - MIBL^* = MRL^* = P^* \quad (\text{Eq. 2.1})$$

This equilibrium determines not only the *equilibrium amount of lobbying* (y^*), but also the *equilibrium price of access* (P^*), which is the share of the information transmission unit costs borne by lobbyists.

An alternative to thinking of the equilibrium in terms of supply and demand is to think in terms of aggregate marginal costs and benefits. From equation 2.1 it follows that in the equilibrium the marginal transmission costs equal the marginal aggregate benefit of information transmission (marginal returns to lobbying plus marginal information benefit to the legislator):

$$MTC^* = MRL^* + MIBL^* \quad (\text{Eq. 2.2})$$

Although thinking in terms of supply and demand of access may be more intuitive, working in terms of marginal costs and benefits also presents some advantages, which will be apparent in the analysis that will follow, based on isocost and isobenefit curves.

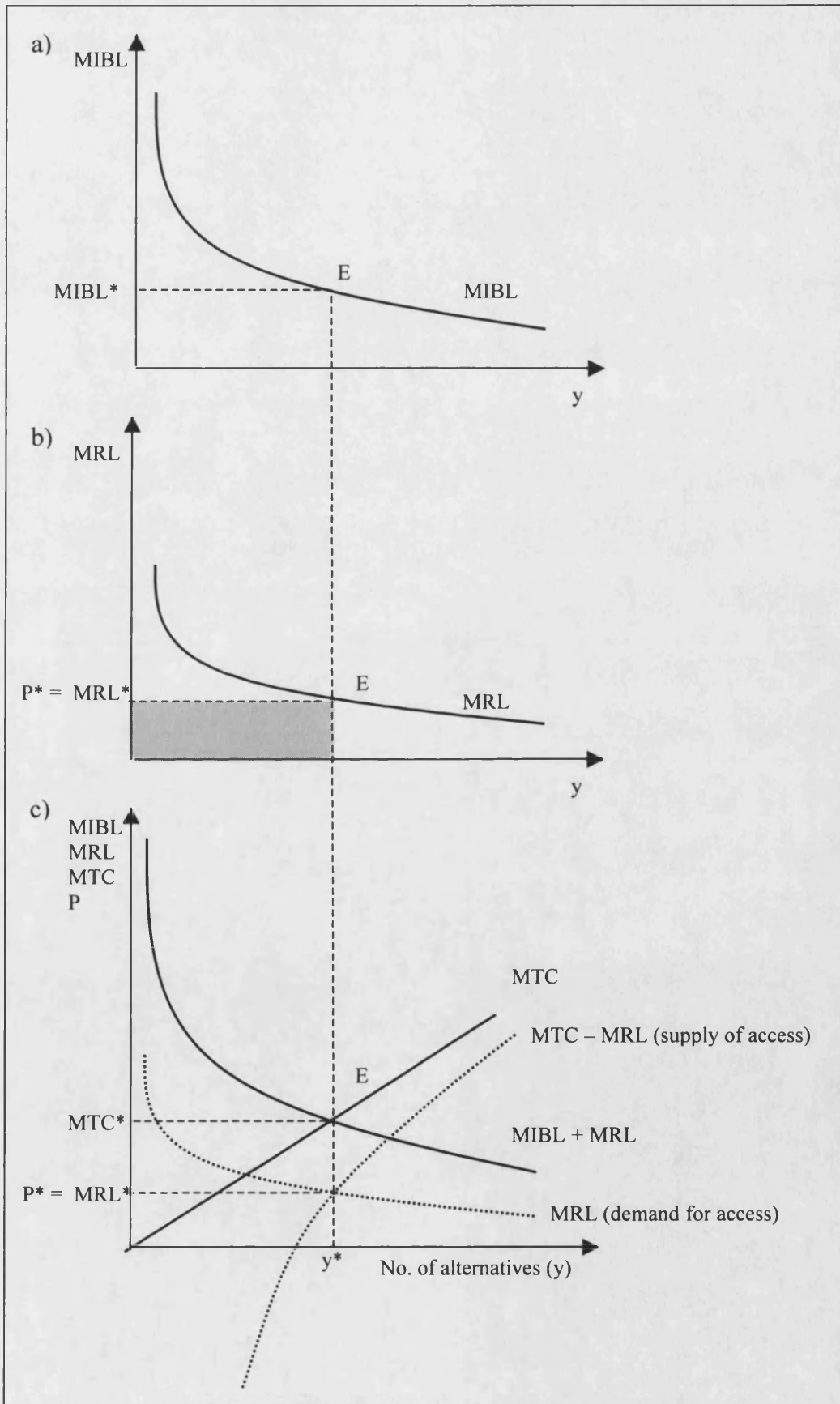


Figure 2.4. Equilibrium transmission of information to a given institution

Figure 2.4 depicts the equilibrium transmission of information to a given legislative body. The figure is composed of three subfigures. Figure 2.4a depicts the marginal information benefit to the legislator, with its downward slope. Figure 2.4b represents the marginal returns to lobbying, also decreasing. Finally, figure 2.4c represents the vertical addition of the marginal information benefit to the legislator and the marginal returns to lobbying, together with the marginal transmission cost curve. The equilibrium is reached at point E in figure 2.4c, where the marginal transmission costs equal the aggregate marginal benefits from information transmission (MIBL + MRL). Point E determines the equilibrium marginal transmission cost (MTC*) and the an equilibrium number of alternatives transmitted (y^*). By transposing this equilibrium amount of information (y^*) upwards to figures 2.4a and 2.4b we obtain the equilibrium marginal information benefit to the legislator (MIBL*) and the equilibrium marginal returns to lobbying (MRL*), which brings us forward to the question of lobbyists share of the information transmission costs.

The dotted curves in figure 2.4c correspond to the same equilibrium analysis in terms of supply and demand for access curves. The intersection of the supply and demand curves determines not only the number of lobbyists active in equilibrium or *equilibrium amount of lobbying* (y^*), but also the *equilibrium price of access* (P^*), which is the share of the information transmission costs borne by lobbyists. The equilibrium price of access (P^*), which equals the equilibrium marginal returns to lobbying, is such as to compensate the legislator for the difference between the cost of absorbing the marginal alternative and the marginal information benefit to the legislator. The product of the equilibrium price of access (P^*) and the equilibrium amount of lobbying (y^*) yields the *equilibrium expenditure on lobbying* ($P^* \cdot y^*$), represented by the shaded area in figure 2.4b. We knew that the information transmission costs are the costs associated to the absorption of a policy alternative by a legislative body. Now we know that that in equilibrium the legislative body covers only part of those costs, the other part being covered by lobbyists. This can be thought of as the legislator bearing all the costs, with lobbyists compensating the former for a certain proportion of those costs, namely the price of access. But the question remains what is the currency that lobbyists use to compensate legislators to the extent of the price of access.

The ‘lobbying chips’ with which lobbyists pay the price of access are of two main types: first, money payments, which, although not very common, are possible. For

instance, *The Sunday Express* reported businessmen being charged £100 for meetings with Labour MPs. According to the article, a Labour party official replied to the allegations: “The money is just to cover costs”.⁴⁴ It is indeed. Those costs are the costs of absorbing information I have described above. The second type of lobbying chips are payments in kind, which are the most common. Lobbyists can compensate legislators for the costs of absorbing information in a number of ways. They can do this by improving the presentation of their proposals, which has a cost. Or they can simply buy the legislators’ time by inviting them to play golf while discussing a proposal or by inviting them to conferences in attractive venues where particular proposals will be discussed. This second possibility is not much different from what happens with TV advertising. The information that a non-misleading TV advertisement conveys has a positive value to the viewer. But sometimes the costs of absorbing that information are greater than the benefits of being able to make a better informed decision. There may be many advertisers competing for the viewers’ attention, which is scarce. That is why advertisers are forced to give potential customers, besides the information contained in the advert, the films surrounding it. These films have a cost to the advertisers and compensate viewer for part of the cost of their attention. In their bid for access to the legislators, lobbyists will do the legislators’ job to the point of even drafting the amendments themselves. This happens often, with all types of lobbyists, private and public. One good example of a proposal drafted by a lobbyist, in this case a national government, is the original draft of the large combustion directive. Weale writes: ‘The relevant official in DG XI [Environment], who was German, was simply given the recently agreed German large combustion ordinance and told to translate it into Euro-speak.’⁴⁵ There also exist examples of lobbyists from the private sector drafting amendments for legislators. In one of my interviews, when asked if he received visits from lobbyists, a party group official reported having received an amendment from a lobbyist, which later passed parliament untouched. Common to both cases is the fact of lobbyists drafting proposals, which is to a certain extent doing legislators job, which has a cost and is equivalent to a payment in kind.

Figure 2.4 represents the equilibrium transmission of information to a given legislative body, but this is just a partial equilibrium. In a separation-of-powers system

⁴⁴ ‘£100 to chat with an MP’, *Sunday Express* 25 June 2000, p. 38.

⁴⁵ Albert Weale, Environmental rules and rule-making in the European Union, *Journal of European Public Policy*, Vol. 3, No. 4, 1996, pp. 594-611, p. 603.

with several legislative bodies, the fact that the transmission of information to a given legislative body is in equilibrium does not mean that lobbyists do not have an incentive to change their behaviour. There may be a deficit or a surplus of alternatives in another legislative body, creating incentives for lobbyists to change their behaviour. The issue is further complicated by the fact that changes in the alternatives one institution receives may shift both the marginal returns to lobbying (MRL) and the marginal information benefit to the legislator (MIBL) curves of the other institutions. Therefore, it is impossible to arrive at a simultaneous equilibrium in the transmission of information to different legislative bodies by analysing the different markets separately. Instead, it is necessary to use the techniques of what is known as general equilibrium analysis.

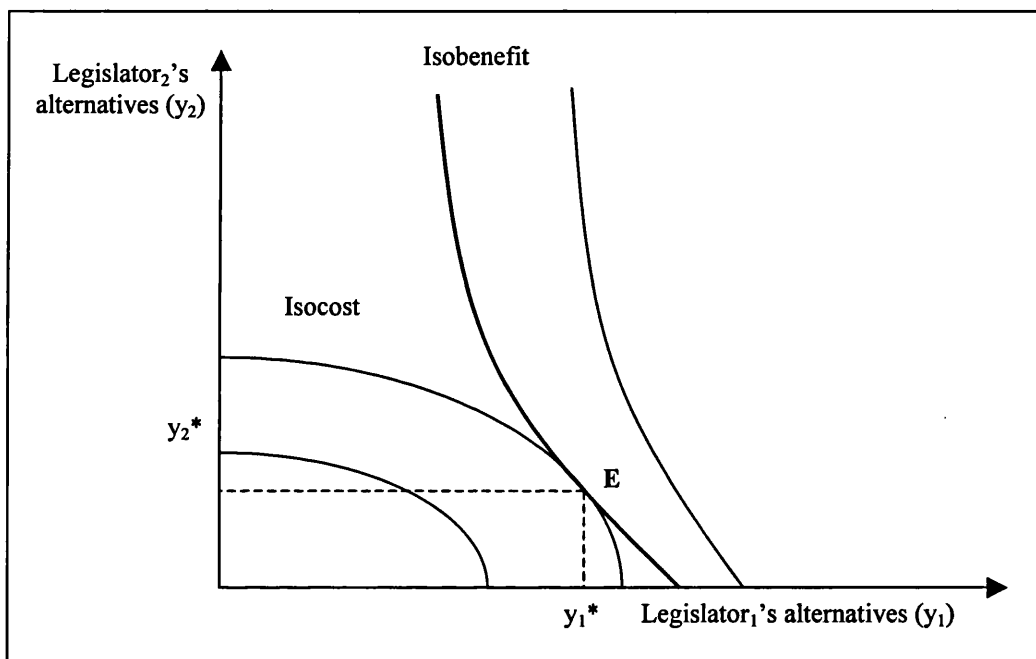


Figure 2.5. General equilibrium of the lobbying sub-game

Figure 2.5 shows a general equilibrium analysis of the market for access to a bicameral legislature. The curves closer to the origin are *isocost curves*, i.e., curves along which the total information transmission costs (TC) are constant. At any point along an isocost curve, the slope of the curve represents the relative marginal cost of absorbing information for both legislative bodies ($- MTC_2 / MTC_1$). The isocost curves are concave from the origin, which accounts for the fact that there are increasing costs of absorbing information for an individual legislative body. These isocost curves have a negative slope, because marginal transmission costs are always positive. In the example in figure 2.5 these isocost curves are not symmetric with respect to the origin, but lean towards the horizontal axis. This accounts for the fact that, in this example, legislator₁

has a greater endowment of fixed administrative resources, which reduces its marginal costs of access for any given level of absorption of alternatives. The convex curves are *isobenefit curves*, which contain points where the total benefits from information transmission (to lobbyists and legislators) are constant. The slope of the isobenefit curves indicates the relative marginal aggregate information benefit from lobbying either legislative body ($-(MIBL_1 + MRL_1) / (MIBL_2 + MRL_2)$). The shape of the isobenefit curves is given by the legislative procedure that regulates the interaction among the different legislative bodies in order to make a law. In this example the shape of the isobenefit curves indicates that the marginal information benefit from lobbying legislator₁ ($MIBL_1 + MRL_1$) is always greater than that of lobbying legislator₂ ($MIBL_2 + MRL_2$). The reduction in the absolute value of their slope also indicates that both marginal information benefits get closer as the amount of lobbying received by the latter decreases. Finally, the equilibrium in the market is reached at a point like E, where the slopes of the isocost and isobenefit curves are equal.

Point E represents a pair of information endowments of the legislators (y_1^* , y_2^*), which is the equilibrium transmission of information. At point E, the relative marginal cost of information transmission to either legislative body equals the relative marginal benefit of information transmission. Such a point minimises the total costs of absorbing information, for a given total information benefit. At the same time, such a point maximises the total benefits information transmission for a given total cost of absorbing information. The equilibrium in point E is the result of some kind of ‘venue shopping’, in Baumgartner and Jones’s words. These authors explain this venue shopping by arguing that lobbyists try to access the legislature through the legislative bodies that have more favourable preferences to their proposals.⁴⁶ My model also gives an explanation for lobbyists’ so-called ‘venue shopping’ which is not based on differences in the preferences of different legislative bodies. In the model presented in this chapter venue shopping occurs because of increasing costs of access to an individual institution and not because lobbyists look for institutions or venues for lobbying with favourable preferences. Recall the assumption that lobbyists only know the distribution preferences of the institutions, not its particular configuration for a

⁴⁶ Frank R. Baumgartner and Bryan D. Jones, 'Agenda Dynamics and Policy Subsystems', *Journal of Politics* 53, 1991, pp. 1044-74; Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics*, Chicago: University of Chicago Press, 1993.

given issue. Once we know the equilibrium information endowments of the different legislative bodies, it is possible to move on to the third and last step.

Step 3: Back to the legislative subgame

Once the value of the intermediate variable is known, it is very easy to calculate the equilibrium value the explained variable (expected legislative success of each legislative body), since the other explanatory variables (preferences, procedure and fixed administrative resources) are known from the start.

2.4. CONCLUSIONS

In this chapter I have presented a general model of lawmaking in a separation of powers legislative system. The main assumption is that there are costs of transmission of policy relevant information, which causes legislators' lack of knowledge of the whole range of alternatives available. The model goes beyond recognising the importance of information asymmetries for the legislative power of the different legislative bodies of a separation-of-powers legislative system. The model presents an institutional explanation of the such asymmetries. Figure 2.6 shows the role information plays in the model as an intermediate variable.

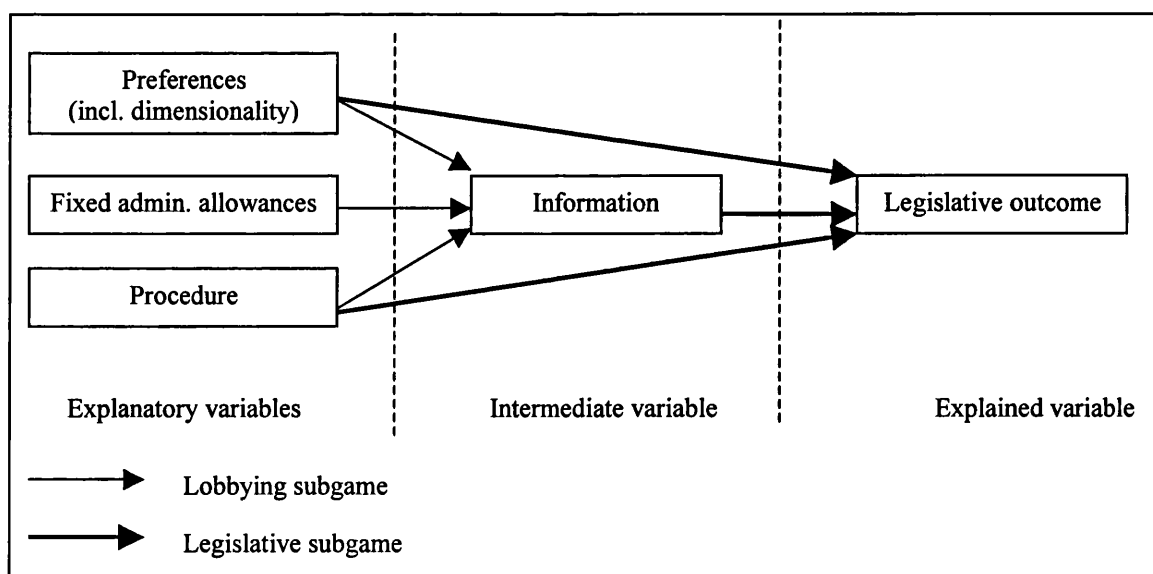


Figure 2.6. An informational model of law-making

I have sought the model's assumptions to be as realistic as possible. Although the real test of the model concerns its predictions and will be undertaken in chapters four and

five, in this chapter I have often tried to substantiate with empirical evidence the verisimilitude of the model's assumptions. This chapter has presented a cynical model of legislative politics which does not deny the fact that money is power also in legislative politics. However, unlike other models, this model does not need to resort to bribes in order to explain the relevance of money for lobbyists.⁴⁷ Similarly, the model explains the rationale for the financial autonomy of legislative bodies.

The model in this chapter is of general applicability, and perhaps because it is so general it needs to be adapted to a particular case to show its full potential. In the next chapter it will be applied to the EC legislative system, with special emphasis on the legislative powers of the European Parliament, not only because of the substantial interest of the latter but also, as I have argued in the introduction to this thesis, because it constitutes a natural laboratory for the study of the powers of parliaments.

⁴⁷ Cf. Torsten Persson and Guido Tabellini, *Political Economics: Explaining Economic Policy*, Cambridge, MA and London: The MIT Press, 2000, p. 171-175.

CHAPTER THREE

Voice and veto: the legislative powers of the European Parliament

In this chapter I apply the model of law-making developed in the previous chapter to three different institutional arrangements, namely the three most common legislative procedures in the EC: consultation, assent and co-decision. The aim is to analyse the institutional powers of the EP: how they work and what their relative importance is for the EP. As we have seen in the first chapter, the study of the legislative powers of the EP is important not only because of the intrinsic importance of the EP and EC legislation, but also because the European Parliament constitutes an excellent laboratory to test theories on the institutional foundations of legislative power. This chapter represents the practical application to the EC case of the general model of law-making in a separation-of-powers system in chapter two, but the analysis is translatable to other legislative systems, as long as it is possible to identify who has the powers of agenda-setting, voice and veto.

The rest of this chapter will be divided in three parts. First, the general features of the EC pluricameral legislature will be presented. Secondly, I will apply the model of the previous chapter to the three main legislative procedures (consultation, assent and co-decision). Finally, I will present the conclusions on 1) the role of information in EC law-making, 2) the EP's power of voice, how it works and its importance relative to other powers, 3) the testable predictions on the influence of the legislative procedure on the powers of the EP and on the activity of lobbyists to be tested in the empirical part and 4) the reasons that may have led European governments to confer the power of voice upon the EP.

3.1. THE EC TRICAMERAL LEGISLATURE

The European Community legislative system relies mainly on three distinct legislative bodies: the commission, the parliament and the council. These legislative bodies can be considered as the three chambers of a tricameral legislature. It is not difficult to assimilate the parliament and the council to traditional legislative chambers. According to Simon Hix, the parliament and the council form 'a classic two-chamber legislature: in which the Council represents the "states" and the European Parliament (EP) the "citizens"'.¹ The parliament consists of 626 members, a number which with enlargement can easily exceed 700. MEP's are elected in Europe-wide elections in their different constituencies, national in some countries and subnational in others. The parliament usually decides by simple majority, but for some decisions an absolute majority of members is required. The second legislative body, the council, is integrated by one representative of each member government. The council usually decides by qualified majority, but in many areas it decides by unanimity.² From 1995 it has 15 members but with eastern enlargement it can surpass 30 members and become more and more like a traditional legislative chamber. Since both the parliament and the council are elected at different times, following different procedures, their preferences rarely coincide.

The European commission, also known as the college of commissioners, is the third chamber of the EC legislative system. The college of commissioners usually decides by simple majority and since 1995 it counts 20 commissioners. Enlargement of the EU could raise this number up to 30 or more. The commission has the two necessary requirements to qualify as a legislative body, namely legislative powers and autonomy. As far as legislative powers are concerned, the commission is always present in the EC legislative process, as we will see in the next sections. The commission also enjoys a substantial degree of autonomy, which is necessary to be considered a distinct legislative body. Although the commission is appointed jointly by the council and the parliament, the commission can be considered a different chamber and not a committee of the former two for two main reasons.³ Firstly, unlike the council, 'the Members of the Commission shall, in the general interest of the Community, be completely

¹ Hix, *The Political System of the EU*, p. 56.

² See M. Mattila and Jan-Erik Lane, 'Why unanimity in the council? A roll call analysis of council voting', *European Union Politics*, Vol.2, No.1, Feb 2001, pp.31-52.

³ Cf. Christophe Crombez, 'Policy making and commission appointment in the European Union', *Aussenwirtschaft*, Vol.52, No.1-111, Jun 1997, pp.63-86.

independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body', such as the council or the parliament.⁴ In other words, any ties that bind the commissioners are legally void. Secondly, the commission also enjoys a high level of political independence once it is appointed because, whereas in the EP a simple majority suffices to appoint the commission, it takes 'a two-thirds majority of the votes cast, representing a majority of the Members of the European Parliament' to remove the college of commissioners once it is appointed.⁵

The EC legislative system can be considered a hybrid between a British-style parliamentary system and an American-style presidential system. On the one hand, the commission is appointed by the council and the parliament, and is accountable to the latter, which reminds us of a parliamentary government. Yet, on the other hand, the treaty requirement of commission independence and the difficult requirements for a motion of censure, which reminds us of the impeachment procedure, make the EC system look more like an American presidential system. In this light, the commission would not be a government from a EP and council majority, but more like an independent executive, like the US presidency. But the fact that the EC legislative system does not conform exactly to any previous model does not mean that general theories need not apply to it, as long as it constitutes a political system with a clearly defined division of powers.⁶ It is for the division of powers among the parliament, the council and the commission, as well as their independence, that I will consider them in this dissertation as the three legislative bodies of a separation-of-powers legislative system.

It is necessary to control for the effect of differences in fixed administrative resources in order to separate the effect of procedural powers on the legislative success of the different legislative bodies in the EC legislative system. More fixed administrative resources mean lower costs of absorption of information for a legislative body and therefore a lower price of access to that legislative body. As a consequence, lobbyists transmit more alternatives to that legislative body, which the latter uses to its advantage in the legislative process. A good proxy for the fixed administrative resources of the commission and the EP are their administrative appropriations, which have to be

⁴ Article 213.2 EC (ex article 157).

⁵ Article 201 EC (ex article 144).

⁶ Hix, *The Political System of the EU*.

approved by the council and can therefore be considered fixed from the commission and the EP's point of view. Administrative appropriations are directly managed by the institutions and are essentially used to pay the salaries, allowances and pensions of people working for the institutions, as well as rent, acquisitions of premises and miscellaneous administrative expenditure.⁷ It is not difficult to see the relationship between administrative appropriations and the institutions' a priori ability to analyse policy alternatives. In 2000 the commission's available administrative appropriations were roughly three times greater than those of the parliament (€3069 millions against €980 million).⁸

However, these apparent differences in the fixed administrative resources of the institutions should not be taken at face value. This would not be appropriate mainly for one reason: administrative appropriations are not earmarked exclusively for the purposes of covering the costs of the absorption of policy-relevant information in the legislative field. The commission, for instance, not only works in the making of legislation but also in its implementation, or in its function of guardian of the treaties. As Anne Stevens points out, 'Legislation is one of the major activities of the European Union, being the principal task of both the Council of Ministers and the European Parliament, and a key task for the Commission, which generates legislative proposals for the other two institutions to consider.'⁹ Of the commission's time, 7.8% is dedicated to its legislative function, 27.8% to non-legislative functions and 64.4% to support functions.¹⁰ Besides, assuming equal fixed administrative resources for the three legislative bodies presents the additional advantage of making the conclusions of this chapter less EC-specific and more generalisable to other legislatures and allowing to concentrate the analysis on the effect of procedural provisions in the treaties.

3.2. MODELLING THE CONSULTATION, ASSENT AND CO-DECISION PROCEDURES

As said in chapter one, the EC legislative system is particularly interesting because different legislative procedures apply to different issue areas. There are three main

⁷ European Court of Auditors, 'Annual Report concerning the financial year 2000', *Official Journal of the European Communities*, 15.12.2001, paragraph 7.1, p. 309.

⁸ European Court of Auditors, 'Annual Report 2000', table 7.1, p. 310.

⁹ Anne Stevens with Handley Stevens, *Brussels Bureaucrats?: The Administration of the European Union*, Hampshire and New York: Palgrave, p. 141.

¹⁰ Calculated from data in Stevens, *Brussels Bureaucrats?*, p. 138.

legislative procedures in the EC: consultation, assent and co-decision. A fourth legislative procedure, the co-operation procedure, which has been the subject of extended analysis in the literature, will not be analysed in this dissertation.¹¹ The *consultation* procedure is the oldest of the legislative procedures of the EC. It was introduced with the creation of the EEC by the Rome treaty of 1957. The procedure is not contained in a single article of the treaties. Instead, a number of articles oblige the council to consult the European Parliament on commission proposals before their adoption. This power was consolidated by the Isoglucose ruling of the Court of Justice in 1980, which annulled a piece of Community legislation adopted by the council on the grounds that parliament had not yet given its opinion. The Court made clear that the council cannot adopt Community legislation before receiving parliament's opinion, where this is required under the treaties.¹² After the coming into force of the Amsterdam Treaty in mid 1999, the procedure applied to 59 EC treaty articles (30.57%) and 7 EU treaty articles (24.13%).¹³

The *assent* procedure was introduced by the Single European Act, and its scope was expanded by the Maastricht and Amsterdam treaty reforms. The procedure is not contained in a single article. Instead, several articles establish that parliament must give its approval before council can adopt a measure. The procedure applies to association agreements, the accession of new member states, sanctions in the event of a serious breach of EU principles by a member state, special tasks to be entrusted to the European Central Bank, amendments to the protocol of the European System of Central Banks, structural funds, the uniform procedure for European elections and international agreements of certain relevance.¹⁴ The procedure is of minor importance in quantitative

¹¹ See George Tsebelis, 'The Power of the European Parliament as a Conditional Agenda-Setter', *American Political Science Review*, Vol. 88, No. 1, 1994, pp. 128-42; Peter Moser, 'The European Parliament as a Conditional Agenda-Setter: What Are the Conditions? A Critique of Tsebelis (1994)', *American Political Science Review*, 90, 4, 1996, pp. 834-38; Claudia Hubschmid and Peter Moser, 'The co-operation procedure in the EU: why was the European Parliament influential in the decision on car emission standards?', *Journal of Common Market Studies*, Vol.35, No.2 (June), 1997, pp.225-242; David Earnshaw and David Judge, 'The Life and Times of the European Union's Co-operation Procedure', *Journal of Common Market Studies*, Vol.35, No.4 (Dec.), 1997, pp.543-564; Tsebelis et al., 'Legislative procedures in the EU'; Kreppel, 'What affects the EP's legislative influence?'

¹² Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament, 4th ed.*, London: John Harper, 2000, p. 191.

¹³ Andreas Maurer, 'Democratic Governance in the European Union - The institutional terrain after Amsterdam', in J. Monar and W. Wessels (eds.), *The Treaty of Amsterdam: Challenges and Opportunities for the European Union*, London: Continuum, 2001.

¹⁴ Corbett et al., *The European Parliament*, pp. 203-04.

terms. All in all, the procedure applies to 11 EC treaty articles (5.69%) and 2 EU treaty articles (6.89%).¹⁵

Finally, the *co-decision* procedure was introduced at Maastricht, the Amsterdam treaty reformed it and increased its scope. It is contained in article 251 EC, formerly article 189b EC. The co-decision procedure starts like the consultation procedure, with the difference that the final act has to be approved by both the EP and the council. The procedure is expected to become the legislative procedure by default in the EC. Since the coming into force of the Amsterdam Treaty, the co-decision applies to 38 EC treaty articles (19.67%).¹⁶

	1998	1999	2000	2001
Consultation	208	156	112	132
Assent	8	11	9	23
Co-decision	39	40	72	87
Co-operation	24	19	1	0
Total	279	226	194	242

Table 3.1. Number of legislative procedures 1998-2001, by date of end of procedure

Source: elaborated from data in OEIL.

Table 3.1 shows the frequency of the different legislative procedures by date of end of procedure. The data were obtained from the European Parliament's Legislative Observatory (OEIL). The table shows that consultation, in spite of its progressive loss of weight, remains the most common procedure, accounting for more than half of the total. The assent procedure, conversely, seems to have increased its weight in the period 1998-2001, by the end of which it accounted for nearly ten per cent of all procedures. The co-decision procedure increased its weight all throughout the period, accounting for more than one third of the legislative procedures ended in 2001. Finally, the scope of the co-operation procedure, which was key for the creation of the Single Market Programme during the late 80s and early 90s, was reduced in Amsterdam to just a few EMU provisions. The table shows that its frequency declined sharply in the late 90s so that in 2001 the procedure was virtually non-existent. For the sake of simplicity and social applicability this thesis will not analyse the co-operation procedure but focus instead on the consultation, assent and co-decision procedures.

¹⁵ Maurer, 'Democratic Governance in the EU'.

¹⁶ Andreas Maurer, 'Democratic Governance in the EU'.

	<i>Commission</i>	<i>EP</i>	<i>Council</i>
Consultation	Agenda-setting	Voice	Veto
Assent	Agenda-setting	Veto	Veto
Co-decision	Agenda-setting	Voice & veto	Veto

Table 3.2. Legislative procedures and separation of powers in the EC

Table 3.2 shows the different divisions of powers under the three main legislative procedures of the EC. The assent procedure is the least complicated of all three, since it only features two types of powers: agenda-setting and veto. The consultation and co-decision procedures are a bit more complex, since they introduce a new power, voice (a legal claim to a hearing), which will be analysed in the following sections. As it can be appreciated from the table, the commission is the agenda-setter under all three procedures, and the council enjoys a power of veto also under all three. The difference between the three procedures, therefore, relies on different allocations of powers to the European Parliament. Under consultation, it enjoys the power of voice; under assent, the power of veto and, under co-decision, both voice and veto. The fact that differences in those legislative procedures consist basically in differences in the powers of the EP makes the study of the latter equivalent to the study of the EC law-making procedures in general.

We saw in the previous chapter that the law-making game consists of two subgames: the lobbying subgame and the legislative subgame. Solving the game requires backwards induction and can be divided in three steps: (1) From the analysis of the legislative subgame, we obtain functions for the benefits (both to lobbyists and to legislators) of information transmission. (2) With both the benefit functions obtained from step 1 and the cost functions given by assumption we solve the lobbying subgame, which yields the equilibrium information endowments of the different legislative bodies. (3) With the resulting equilibrium information endowments, we move back to the legislative subgame and calculate the equilibrium outcome of the game. I will follow these steps when applying the model in the previous chapter to each of the three most important legislative procedures in the EC.

As far as the legislative subgame is concerned, I model the three legislative procedures as variations on Romer and Rosenthal's agenda setter, take-it-or-leave-it

model given by different combinations of agenda-setting, voice and veto powers.¹⁷ Since the above-mentioned benefit functions are rather complicated to obtain analytically, I make use of computer simulations. For each legislative procedure, dimensionality and combination of information endowments, I simulate the legislative subgame with random ideal points and status quo. I calculate the average utility gain for the commission, the EP, the council and the dummy player. I also compute the expected marginal information benefit to the legislative bodies and the marginal returns to lobbying each institution. With the latter values I draw the benefit functions and summarise as 'results' the properties of these functions that I will have to use later on. Based on these simulation results and the properties of the cost function I assumed in the previous chapter, I derive some propositions on the equilibrium transmission of information to the different legislative bodies. These propositions are not based on concrete cost and benefit functions but on general properties of these functions, so they do not yield exact solutions of the lobbying subgame but some general properties of its equilibrium. These propositions are used later to derive other propositions on the equilibrium of the whole game.

3.2.1. The power of voice: the consultation procedure

As said, although the consultation procedure is not contained in a single article of the treaties, a number of articles oblige the council to consult the European Parliament on commission proposals before their adoption. This power was consolidated by the Isoglucose ruling of the Court of Justice in 1980, which annulled a piece of Community legislation adopted by the council on the grounds that parliament had not yet given its opinion. The court made clear that the council cannot adopt community legislation before receiving parliament's opinion, where this is required under the treaties.¹⁸ How much power the European Parliament has under consultation, how this power works and why the council has conferred this power upon the EP are questions which do not have obvious answers and hence their scientific interest.

For some authors, the right to be consulted cannot be properly considered a legislative power. For example, Mazey and Richardson write that, prior to the Single European Act, which introduced new legislative procedures, 'the EP had no legislative

¹⁷ Thomas Romer and Howard Rosenthal, 'Political Resource Allocation, Controlled Agendas, and the Status Quo', *Public Choice*, 33, 1978, pp. 27-43.

¹⁸ Corbett et al., *The European Parliament*, p. 191.

powers; although MEPs were consulted over legislative proposals, the Council of Ministers was under no obligation to take their views into account.’¹⁹ Under EC law, the EP is not formally considered a legislator under the consultation procedure but it is so under the co-decision procedure, where in addition to the right to be consulted the EP has a right of veto. So far the literature on the consultation procedure has focused on the power of delay. Westlake argues that describing consultation as a legislative power of the EP is misleading. He writes that ‘if consultation enables Parliament to influence legislation this can only be done obliquely through delay’.²⁰ This is based on rule 69 of the EP’s Rules of Procedure, which allows the EP not to issue its opinion formally until the commission takes a position on parliament’s amendments.²¹ Authors argue that this is used by the EP to pressurise the commission to accept amendments under the threat of delay. The general conclusion in the literature is that the Isoglucose ruling gave parliament a de facto delaying power, which was stronger when there was pressure for a rapid decision.²²

Formal models have also neglected without exception the power of the EP under the consultation procedure, whether altogether or on the grounds that under consultation the EP enjoys only a power of delay, and their models are unable to incorporate time. Bernard Steunenberg concludes that ‘The European Parliament, on the other hand, does not affect the equilibrium outcome at all, since, according to this procedure, it only needs to be consulted.’²³ Christophe Crombez argues that: ‘Since its opinion is not binding, the Parliament has very little power. It can delay legislation by not issuing an opinion, and block other legislation if its opinion is ignored. Since I do not consider impatience and I focus on a single policy issue, I disregard the role of the Parliament in this procedure.’²⁴ In another article, he writes: ‘Parliament is powerless under the consultation procedure’.²⁵ Finally, Roger Scully concludes that ‘consultation gave the

¹⁹ Sonia Mazey and Jeremy Richardson, ‘Introduction: Transference of Power, Decision Rules, and Rules of the Game’, in Sonia Mazey and Jeremy Richardson (eds.), *Lobbying in the European Community*, Oxford: Oxford University Press, 1993, pp. 3-26, p. 11.

²⁰ Westlake, *A Modern Guide to the EP*, p. 134.

²¹ European Parliament, *Rules of Procedure*.

²² Corbett et al., *The European Parliament*, p. 180; Westlake, *A Modern Guide to the EP*, p. 136.

²³ Bernard Steunenberg, ‘Decision-making under different institutional arrangements: Legislation by the European Community’, *Journal of Institutional and Theoretical Economics*, vol. 150, no. 4, 1994, pp. 642-69, p. 651.

²⁴ Christophe Crombez, ‘Legislative Procedures in the European Community’, *British Journal of Political Science*, 26, 1996, pp.199-228, p. 205.

²⁵ Christophe Crombez, ‘The Co-Decision Procedure in the European Union’, *Legislative Studies Quarterly*, XXII, 1, February 1997, pp. 97-119, p. 112.

EP some negative power over legislative outcomes, but little else.²⁶ As far as the role of lobbyists is concerned, all this literature presents a lack of theory of interest representation under the consultation procedure. But it is possible to apply the interest representation part of my theory starting from other predictions of these theories. If the EP has no power to affect the equilibrium outcome under the consultation procedure, as those models predict, lobbyists will have no incentive to lobby the EP and there will be no lobbying towards this institution.

In order to clearly delimit the power of the EP under the consultation procedure I will start by arguing what it is not, before moving to the question of what it really is. First of all, the power of consultation is not a power of veto. As said, some articles just required that the EP was consulted before the council decided. But a right is of little use if it cannot be enforced and the EP's legal right to a hearing under the consultation procedure was not very clearly defined. The limits of this right to be consulted were unclear, mostly until the Isoglucose ruling, that annulled a council decision because it had not waited for the EP's opinion. But this ruling did not elucidate the question completely. Many authors argued that what this confers upon the EP is a power of delay, that can be used by the EP as a threat to obtain concessions from the commission and the council. Indeed, as Kapteyn and VerLoren van Themaat note, in these judgements the Court left open the consequences of a refusal by the Parliament to give an opinion. But '[i]t is often submitted that in such circumstances the Council can validly adopt the measure involved as it cannot have been intended to confer a veto right on the Parliament in this manner.'²⁷ The real meaning of the Isoglucose ruling became more apparent in 1995, when a judgement of the ECJ stated that indefinite delay is not a legitimate parliamentary tactic on legislation designated as 'urgent' by the council.²⁸ In conclusion, the right to be consulted is not a right of veto.

Secondly, the power of the EP under the consultation procedure is not the so-called 'conditional agenda-setting power'. Conditional agenda-setting power is defined as the EP's ability to make a proposal which, if accepted by the commission, is easier to accept than to amend by the council. The notion of conditional agenda-setting power

²⁶ Scully, 'Policy Influence and Participation in the EP', p. 235.

²⁷ P. J. G. Kapteyn and P. VerLoren van Themaat, *Introduction to the Law of the European Communities: After the Coming into Force of the Single European Act*, Deventer: Kluwer, 1990, p. 261.

²⁸ Richard Corbett, 'Governance and Institutional Developments', *Journal of Common Market Studies*, Vol. 34, (Aug.), 1996, pp. 29-42; Corbett et al., *The European Parliament*, p. 181.

was first applied to the EP's second reading under the co-operation procedure.²⁹ But later it was extended to first reading amendments.³⁰ Conditional agenda-setting power, as defined by Tsebelis, is a power that anyone may have. Anyone, from a national minister to a shopkeeper can present the commission with a proposal which, if made its own by the commission, is easier to accept than to amend by the council. In other words, conditional agenda-setting power as defined by Tsebelis does not capture the essence of the EP's power under the consultation procedure. But if consultation does not mean a veto or conditional agenda-setting, it means more than a simple power of delay.³¹

Consultation gives the EP the power to force the commission to absorb a policy alternative. The council and the commission are forced to consider parliament's amendments. As we have seen, the importance of this power arises from the many competing claims on legislators' time. Whereas lobbyists spend time and money trying to get access to the legislators, consultation confers that access for free upon the EP. Other treaty articles that were conceived after the Isoglucose ruling seem to clarify the nature of parliaments legal right to a hearing, and to establish the way through which this power will be guaranteed. Article 251, defining the co-decision procedure and article 252, defining the co-operation procedure devise a useful way to ensure that the EP's legal right to a hearing is respected by the other community institutions. Article 251 provides that after the EP's first reading opinion, unless the council approves all amendments contained in the EP's opinion, the council shall 'adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.'³² Informing of the reasons which led to the commissions position actually forces the commission to study parliament's amendments. Article 253 seems to reinforce this when it states that 'Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the

²⁹ George Tsebelis, 'The Power of the EP as a Conditional Agenda Setter'.

³⁰ George Tsebelis and A. Kalandrakis, 'The European Parliament and environmental legislation: the case of chemicals', *European Journal of Political Research*, Vol.36, No.1, Aug 1999, pp.119-154.

³¹ The role of the threat of delay in intercameral bargaining is studied in Tsebelis and Money, *Bicameralism*, p. 8 and chapter 7.

³² Article 252 EC, on the co-operation procedure, also states that, after obtaining the opinion of the European Parliament, the council shall adopt its common position and communicate it to the EP. It then goes on: 'The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.'

reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.' Again, the other institutions are forced to show proof that they have considered parliament's amendments. In other words, what consultation represents is a legal claim to a hearing.

Voice is a formal power, not because the EP is a formal institution but because its claim to a hearing arises from a treaty obligation.³³ There are other very common consultation procedures that do not imply a legal claim to a hearing, for instance, the committees of experts that advise the commission in the initial stages of legislation. The consultation of these committees, which are composed mainly by national civil servants acting in an unofficial capacity,³⁴ does not arise and is not guaranteed by a legal obligation. Thus, those committees would be considered mere lobbyists in my model. The same applies to coreper working groups that are consulted in the initial stages of drafting proposals. In conclusion, unlike the EP, they do not have a legal right to a hearing by the commission.³⁵ They are just listened to for the same reason as other lobbyists are. Consultation is a legal power to force the commission to listen to what the EP has to say.

Step 1. The legislative subgame equilibrium: simulating the consultation procedure

My simulation of the consultation procedure starts by chance or nature determining a random status quo and a configuration of preferences within the outcome space. Nature also creates two random ordered lists of potential lobbyists, one for the commission and another one for the EP. Then the commission receives a given number of lobbyists' pet proposals, in the order created by chance, from which the commission chooses its preferred policy among those that will be acceptable to the council as a take-it-or-leave-it offer (better than the status quo). Next, the EP receives the commission proposal. The EP also receives policy alternatives from a given number of lobbyists, in the order given by chance. From its pool of alternatives, the EP chooses its preferred policy from those that will improve both its utility and that of the commission with respect to the unamended commission proposal, and still be acceptable to the council. The EP

³³ Similarly, Pollack, 'Delegation, Agency and Agenda Setting in the EC', p. 121 distinguishes between formal and informal agenda-setting.

³⁴ Shirley Williams, 'Sovereignty and Accountability in the European Community', in Robert O. Keohane and Stanley Hoffmann, *The New European Community: Decisionmaking and Institutional Change*, Boulder and Oxford: Westview Press, 1991, p. 160.

³⁵ See Dietrich Rometsch and Wolfgang Wessels, 'The Commission and the Council of the Union', in Edwards and Spence (eds.), *The European Commission*, 2nd ed., London: Catermill, 1997, p. 226.

transmits this alternative to the commission, which modifies its proposal accordingly. The modified commission proposal is then accepted by the council and becomes law. Figure 3.1 pictures the transmission of policy relevant information under the procedure.

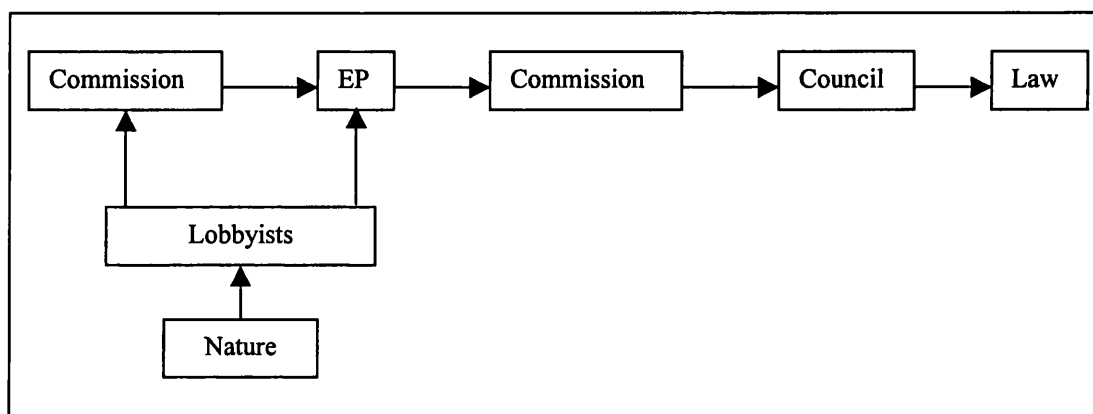


Figure 3.1. The consultation procedure

The simulation yields results about the players' utility, marginal returns to lobbying and marginal information benefit to the legislators different combinations of dimensionality, number of commission alternatives and number of EP alternatives. These are presented in figures section A2.2 in appendix two. The figures show how the success and the power of the commission, as expected, always increase with the size of its pool of alternatives. The commission's utility also generally increases with the availability of ideas to the EP. However, there is a threshold beyond which the commission loses out from further increases in the EP's pool of alternatives. This threshold is lower the greater the number of commission alternatives and increases with the dimensionality of the political space. Initially, the veto player has an interest in the agenda-setter enhancing its set of alternatives, because that increases the likelihood of finding mutually beneficial proposals (to realise pareto improvements). However, when the agenda setter knows too much, distribution tends to prevail over efficiency. Needless to say, increases in EP alternatives can never bring down the commission's success below its level for no EP alternatives, since the commission retains gate-keeping power on EP amendments to its proposal.³⁶

³⁶ I assume that the EP does not embark in filibuster techniques, such as presenting the commission with amendments the EP knows that the commission will not accept, in order to reduce the commission's time. Their inclusion would reinforce the conflict among the institutions. The commission would have an increased interest in reducing the EP's capacity to absorb alternatives in order to defend itself from the EP's filibuster techniques.

As far as the EP is concerned, the first result is that, whenever it has a strictly positive information endowment (it knows at least one alternative), the EP has power:

Result CNS.1: Under the consultation procedure, for strictly positive EP information endowments, the power of the EP is strictly positive.

$$\text{Power}_{EP} > 0, \forall (y_C, y_{EP}) \text{ such that } y_{EP} > 0$$

As in the case of the commission, the utility and power of the EP increase with increases in its pool of policy alternatives. Again, the parliament sees its utility increased when the commission increases its pool of alternatives, up to a threshold beyond which the EP loses out from increases in the commission's alternatives. Similarly to the commission's case, this threshold is lower the greater the number of EP alternatives. In fact, only for very reduced levels of supply of ideas to the EP does parliament gain from an increase in the supply of ideas to the commission. As in the case of the commission, these thresholds increase with the dimensionality of the issue space. The reason is as follows: an increase in the availability of ideas to the commission has two effects. First, the better researched proposals are, the more likely it is that they find outcomes which increase utility for all the institutions involved (efficiency effect). Second, proposals better researched by the commission approximate the commission proposal to the commission's complete information ideal (distribution effect), which reduces the likelihood parliament will find an alternative to the commission proposal which is acceptable to the commission and has a chance to pass through the council. In other words, an increase in proposal research by the commission produces a depreciation in the EP's power of amendment. For low levels of the EP's information endowment (relative to the complexity of the issue space), the benefits to the EP from the efficiency effect will outweigh the costs from the second effect (depreciation of the parliament's amendment power). However, for increased levels the EP's pool of alternatives, the depreciation effect prevails and conflict arises with the commission, with the EP having an interest in reducing the commission's research capacity.

For the council the main result is that there is an optimum level for the pools of alternatives of both institutions, which increases with the dimensionality of the issue at hand. The reason why the council will prefer co-operation between the commission and

the EP in agenda-setting is that such co-operation introduces ‘checks and balances’ which avoid any one institution alone using its agenda-setting power to drive the outcome to a very extreme position, at the expense of the council. This explains why the council may have wanted to confer the power of voice upon the EP and not rely exclusively on the role of the commission as an agenda-setter. Also, when the dimensionality of the issue increases, the optimum alternative endowment moves more in the direction of increasing the EP’s alternatives than those of the commission. This is so because at the council’s optimum, an additional alternative in the hands of the commission has a much greater distributional impact than an additional alternative in the hands of the parliament. So, in order to maintain the correct level of checks and balances, an increase in the alternatives of the commission has to be offset by a greater increase in the EP’s pool of alternatives.

As far as the dummy is concerned, who can represent a citizen without any power to influence the outcome of legislation, the argument about checks and balances also applies. It is interesting that the dummy appears to suffer sooner from the distributional effects of large pools of alternatives in the hands of the commission, which strengthens the checks and balances argument. This can explain how citizens are generally supportive of the EP.

All in all, we can draw three main conclusions from this analysis. First, an increase in information produces two simultaneous effects. On the one hand, an efficiency effect, which means that additional information at the disposal of a given legislative body can be used to realise gains which also benefit the other legislative bodies (pareto improvements). On the other hand, a distribution effect, which means that additional information at the disposal of a given legislative body can be used at the expense of other legislative bodies. For lower levels of information, the efficiency effect tends to prevail over the distribution effect, but there is usually a threshold after which the latter prevails. Secondly, greater dimensionality means greater relative scarcity of information and therefore raises the threshold beyond which distribution prevails over efficiency. Finally, there is a ‘checks-and-balances’ effect, which makes that the efficiency thresholds of information transmission to a given institution increase when information transmission to other institution increases. This effect makes both the council and the dummy player benefit from the fact that information is not concentrated in the hands of either the commission or the EP.

There are also interesting results concerning returns to lobbying. First, lobbyists always benefit from lobbying the commission or the EP, however large the pool of information these institutions have may already be.

Result CNS.2a: Under the consultation procedure, the marginal returns to lobbying the commission are always positive, for any combination of information endowments.

$$\text{MRL}_C(y_C, y_{EP}) > 0, \forall (y_C, y_{EP})$$

Result CNS.2b: Under the consultation procedure, the marginal returns to lobbying the EP are always positive, for any combination of information endowments.

$$\text{MRL}_{EP}(y_C, y_{EP}) > 0, \forall (y_C, y_{EP})$$

Secondly, there are decreasing returns to lobbying any one institution, which is unsurprising. Thirdly, lobbying the commission or the EP are substitutes, since increases in the lobbying to one institution reduce the returns to lobbying the other institution. Fourthly, lobbying the commission is more effective than lobbying the EP, for any combination of information endowments

Result CNS.3: Under the consultation procedure, the marginal returns to lobbying the commission are always greater than the marginal returns to lobbying the EP, for any combination of information endowments.

$$\text{MRL}_C(y_C, y_{EP}) > \text{MRL}_{EP}(y_C, y_{EP}), \forall (y_C, y_{EP})$$

This is consistent with the literature on lobbying, which considers the EP a secondary access point to the policy process in the consultation procedure, mainly used by groups which do not have enough resources to lobby the commission directly. Fifthly, the disparity between the returns to lobbying the commission and the parliament increases with the amount of lobbying that the EP receives. Finally,

Result CNS.4: *Under the consultation procedure, the marginal aggregate benefit (to the lobbyist plus to the legislator) of lobbying the commission is greater than the marginal aggregate benefit of lobbying the EP, for any combination of information endowments.*

$$\text{MRL}_C(y_C, y_{EP}) + \text{MIB}_C(y_C, y_{EP}) > \text{MRL}_{EP}(y_C, y_{EP}) + \text{MIB}_{EP}(y_C, y_{EP}), \forall (y_C, y_{EP})$$

As far as the overall effects of dimensionality are concerned, greater dimensionality increases both potential informational and distributive gains from law-making. Greater dimensionality implies differences from three main sources. Firstly, greater dimensionality means greater utility for the institutions, for any given combination of information endowments.

Result CNS.5: *Under the consultation procedure, greater dimensionality means greater utility for the European Parliament, for any given combination of information endowments.*

$$\Delta U_{EP} / \Delta \text{DIM} > 0, \forall (y_C, y_{EP})$$

Secondly, greater dimensionality also means greater total marginal benefit of lobbying.

Result CNS.6a: *Under the consultation procedure, greater dimensionality means greater total marginal benefits of lobbying the commission, for any given combination of information endowments.*

$$\Delta(\text{MRL}_C + \text{MIB}_C) / \Delta \text{DIM} > 0, \forall (y_C, y_{EP})$$

Result CNS.6b: *Under the consultation procedure, greater dimensionality means greater total marginal benefits of lobbying the EP, for any given combination of information endowments.*

$$\Delta(\text{MRL}_{EP} + \text{MIB}_{EP}) / \Delta \text{DIM} > 0, \forall (y_C, y_{EP})$$

Finally, greater dimensionality means greater need for information and higher information thresholds separating efficiency from redistribution.

Step 2. The lobbying subgame equilibrium under consultation

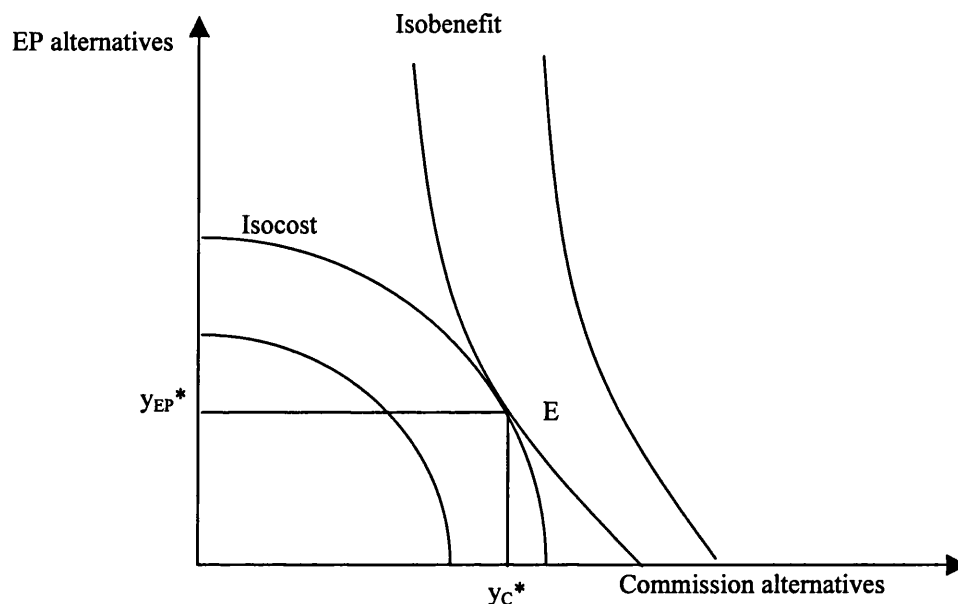


Figure 3.2. General equilibrium under the consultation procedure

Figure 3.2 depicts the general equilibrium of the lobbying subgame under the consultation procedure. The isocost curves, along which the total cost of absorbing information is constant, are fairly symmetric with respect to the origin, to account for the assumption of equal fixed administrative allowances and equal costs of access functions for the EP and the commission. At any point along an isocost curve, the slope of the curve represents the relative marginal cost to lobbying either legislative body ($-MTC_C / MTC_{EP}$). The isocost curves are concave from the origin, because the marginal costs of absorbing information for both the commission and the EP are increasing (property 2.2). The isobenefit curves, along which the total aggregate benefits from lobbying are constant, are convex. The slope of the isobenefit curves indicates the relative marginal aggregate benefit from lobbying either the commission or the EP ($-(MIB_C + MRL_C) / (MIB_{EP} + MRL_{EP})$). The shape of these curves can be obtained from the simulation results in section A2.1 of appendix two. The absolute value of the isobenefit curves is greater than one, because under consultation the marginal aggregate benefit of lobbying is always greater for the commission than for the EP (result CNS.4). The curves are convex because there are decreasing aggregate benefits from lobbying either institution. The curves show how the aggregate benefits of lobbying the EP approach those of lobbying the commission as the information of the EP decreases.

The equilibrium of the lobbying subgame is reached at some point like E, where the slopes of the isocost and isobenefit curves are equal. At a point like E, the relative marginal costs of absorbing information by the commission or the EP equal the relative marginal aggregate benefits from lobbying either institution. The two main conclusions from figure 3.2 are that (1) the EP will be lobbied and (2) it will be so to a lower extent than the commission. Both propositions can be developed analytically:

Proposition CNS.1: Under the consultation procedure, in the equilibrium, the European Parliament will always receive a positive amount of lobbying.

$$P_{EP}^* \cdot y_{EP}^* > 0$$

Proof:

From result CNS.2b,

$$MRL_{EP}(y_C, y_{EP}) > 0, \forall (y_C, y_{EP}) \Rightarrow MRL_{EP}(y_C^*, y_{EP}^*) > 0 \quad (1)$$

which implies that

$$P_{EP}(y_C^*, y_{EP}^*) > 0 \quad (2)$$

and of (1) and because MIBL is always non-negative,

$$MRL_{EP}(y_C^*, y_{EP}^*) + MIB_{EP}(y_C^*, y_{EP}^*) > 0 \quad (3)$$

which in turn implies that

$$MTC_{EP}(y_{EP}^*) > 0 \quad (4)$$

which, from properties 2.1 and 2.2 of the transaction cost function in chapter two implies that

$$y_{EP}^* > 0 \quad (5)$$

And, finally, from (2) and (5),

$$P_{EP}^* \cdot y_{EP}^* > 0$$

This proposition is important not only because it predicts that lobbyists will not neglect the EP under the consultation procedure, but mostly because this result is not obvious, considering the literature's neglect the power of the EP under the procedure. It could be deduced hence that there was no reason for lobbyists to waste time and money in defending their cases before the EP. Crombez's model of lobbying under consultation, for instance, completely disregards the role of the European Parliament and, therefore, does not allow for any lobbying towards that institution.³⁷ At an empirical level, Beate Kohler-Koch writes that '[i]t is the experience of MEPs that the codecision procedure receives the highest attention of interest groups whereas *the consultation procedure is more or less neglected.*'³⁸ Proposition CNS.1 goes precisely in the opposite direction. Not only are there reasons for the EP to be lobbied under the consultation procedure but, even more, the EP will be always lobbied under consultation.

Proposition CNS.2: *Under the consultation procedure, in the equilibrium, the commission will always receive a greater amount of lobbying than the EP.*

$$(P_C^* \cdot y_C^*) / (P_{EP}^* \cdot y_{EP}^*) > 1$$

Proof:

In equilibrium,

$$MRL_C(y_C^*, y_{EP}^*) / MRL_{EP}(y_C^*, y_{EP}^*) = P_C^* / P_{EP}^* \quad (1)$$

From simulation result CNS.3 we know that

³⁷ Crombez, 'Information, Lobbying and the Legislative Process in the EU'.

³⁸ Beate Kohler-Koch, 'Organized Interests in the EC and the European Parliament', *European Integration Online Papers (EioP)*, Vol. 1, No. 9, 1997, <http://eiop.or.at/eiop/texte/1997-009a.htm>, p. 9.

$$\text{MRL}_C(y_C, y_{EP}) / \text{MRL}_{EP}(y_C, y_{EP}) > 1, \forall (y_C, y_{EP}) \quad (2)$$

So, from (1) and (2), in equilibrium,

$$P_C^* / P_{EP}^* > 1 \quad (3)$$

Also in equilibrium, from equation 2.4

$$\text{MTC}^* = \text{MRL}^* + \text{MIBL}^* \quad (4)$$

And from (4) and simulation result CNS.4,

$$\text{MTC}(y_C^*) / \text{MTC}(y_{EP}^*) > 1 \quad (5)$$

From the assumption of equal transaction cost functions for the commission and the EP and from property 2.2 in chapter two, which states that MTC is increasing in y ,

$$y_C^* / y_{EP}^* > 1 \quad (6)$$

Finally, from (3) and (6),

$$(P_C^* \cdot y_C^*) / (P_{EP}^* \cdot y_{EP}^*) > 1$$

This is a very important result because it derives, from solid formal foundations, what has been pointed out in a number of descriptive studies, namely that the EP is a cheaper ($P_C^* / P_{EP}^* > 1$), less effective ($\text{MRL}_C^* / \text{MRL}_{EP}^* > 1$) channel used by lobbyists to access the commission. The idea of the EP being a cheaper channel of access is implicit in Mazey and Richardson's remark that groups 'which lack the resources to sustain continuous contact with Commission officials on very technical matters often see the Parliament as an alternative policy-making arena –particularly in terms of agenda-setting.'³⁹ In the equilibrium, although always the subject of lobbying, the EP will never receive as much information from lobbyists as the commission ($y_C^* / y_{EP}^* > 1$).

³⁹ Mazey and Richardson, 'Transference of Power, Decision Rules, and Rules of the Game', p. 12.

The lobbying subgame equilibrium is the result of some sort of ‘venue shopping’, similar to the one predicted by Baumgartner and Jones. The difference is that in this model it happens because of the increasing costs of lobbying an individual institution, not because lobbyists target the legislative body with more favourable preferences (recall from the previous chapter that the model assumes that lobbyists have no information about the preferences of the institutions).⁴⁰ The properties of the lobbying subgame equilibrium are used in the next step, which analyses the equilibrium of the whole law-making game.

Step 3. The law-making game equilibrium under consultation

Point E represents a pair of information endowments (y_C^* , y_{EP}^*) (lobbying subgame equilibrium) which, transposed to the relevant figures in appendix two (legislative subgame equilibrium), yields the expected utility gain and the power of each institution in the law-making game equilibrium. The main conclusion of this equilibrium is that the EP has power under the consultation procedure. The argument runs as follows: from proposition CNS.1.(5) we know that, under consultation, in the legislative subgame equilibrium, the EP will receive a strictly positive information endowment ($y_{EP}^* > 0$). From result CNS.1 we know that, for positive information endowments, in the legislative subgame equilibrium, the EP has power. Since in the law-making game equilibrium, both subgames are in equilibrium, the conclusion is that EP has power under consultation.

Dimensionality is also likely to have an influence on the European Parliament. The simulations have produced three main results related to dimensionality. The first result, a direct increase in the EP’s utility (result CNS.5), is undoubtedly positive from the EP’s point of view. The effect of the second result, however, is more mixed. Greater aggregate information benefits (results CNS.6a and CNS.6b) imply that, in equilibrium, the transmission of information to each institution will be greater the greater the dimensionality (both the commission and the EP will receive more alternatives from lobbyists). The EP will benefit from an increase in its private pool of alternatives, but it is likely to be hurt by an increase in the commission’s pool of alternatives. So the effect of the indirect information effect upon the EP’s success and power is uncertain. Finally, the third result, greater need for information, will work in the EP’s favour. All in all, the

⁴⁰ Cf. Baumgartner and Jones, ‘Agenda Dynamics and Policy Subsystems’; Baumgartner and Jones,

influence of dimensionality on the EP's success and power is not clear, although it seems to be more likely that it is a positive one.

Proposition CNS.3: Under the consultation procedure, greater dimensionality is likely to mean greater success and power for the European Parliament.

Conclusions on the consultation procedure

The literature has probably overfocused on the power of delay for three main reasons. First, the concentration on conflict about preferred policies. Secondly, the assumption of complete and perfect information, under which the power to be consulted is reduced to a power of delay, since the commission will not learn anything new from the parliament's opinion. Finally, this is my speculation, the literature is mostly British. In Westminster a bill dies if it does not manage to pass within the annual parliamentary session. Unlike in the EC, in the British parliament carry-overs are not possible and therefore the power of delay is more important. The Westminster background may have influenced the focus of attention of the literature towards the power of delay. Conversely, my model shifts attention away from divergences in preferences about outcomes and towards the effects of the frictions inherent to the political process itself. I present a new power, the power to force the absorption of information, in a context of imperfect information caused by costs of absorbing information. The EP enjoys this power under the consultation procedure. The power benefits the EP by creating incentives upon lobbyists to transmit information to the EP, using it as an intermediate channel to access the commission. The EP can then strategically transmit part of this information at no cost to the commission, thus affecting the equilibrium outcome. I named this right to be heard the *power of voice*.

The European Parliament will be lobbied under the consultation procedure, which proves that it is able to influence the outcome of legislation. However, the inverse is not necessarily true, because although being able to influence the outcome of legislation is a necessary condition for an institution to be susceptible to lobbying by political entrepreneurs, the condition is not sufficient to ensure a positive amount of lobbying, because being able to influence legislation does not mean being able to

benefit lobbyists (we will see an example of this in the next section on the assent procedure).

Finally, there are other interesting findings such as the fact that, against conventional wisdom that the EP and the Commission are allies in the legislative field, the EP may have an interest in seeing the administrative resources of the commission decrease. This will have to be taken into account in order to understand the EP's position in debates about the reform of the commission. Another interesting finding is that both the council and the rank and file citizen benefit from the EP's enjoying a right to be consulted and being provided with sufficient financial autonomy.

3.2.2. The power of veto: the assent procedure

As said, although the assent procedure is not contained in a single article, several articles establish that parliament must give its approval before council can adopt a measure. The assent procedure has not awoken so much interest as other procedures among rational choice scholars. For instance, Steunenberg (1994) and Steunenberg et al. (1999) do not deal with the assent procedure.⁴¹ On the other hand, other scholars completely dismiss the role played by the European Parliament in the assent procedure. For instance, George Tsebelis and Geoffrey Garrett write: 'So long as the median voter in the Parliament is more integrationist than the least integrationist member of the Council, however, Parliament will not exercise its veto right' and conclude: 'In sum, in all those instances where voting in the Council is by unanimity, including the assent procedure, one can ignore the roles played by other EU institutions.'⁴² Only Christophe Crombez seems to give some value to parliament's veto under the procedure.⁴³

Under the assent procedure the EP has a power of veto, i.e., a power to reject outcomes that leave it worse off with respect to the status quo. Of the three procedures analysed in this chapter, assent is the closest to Romer and Rosenthal's single shot take-it-or-leave-it game.⁴⁴ The only particularity is that there are two veto players (the EP and the council) instead of only one.

⁴¹ Steunenberg, 'Decision-making under different institutional arrangements'; Steunenberg et al., 'Strategic power in the EU'.

⁴² George Tsebelis and Geoffrey Garrett, 'Agenda Setting Power, Power Indices, and Decision Making in the European Union', *International Review of Law and Economics*, 16, 1996, pp. 345-361, p. 353.

⁴³ See Crombez, 'Legislative Procedures in the EC'.

⁴⁴ Romer and Rosenthal, 'Political Resource Allocation, Controlled Agendas, and the Status Quo'.

Step 1. The legislative subgame equilibrium: simulating the assent procedure

My simulation of the assent procedure starts by chance determining a random status quo and a configuration of preferences within the outcome space. Chance also creates a random ordered list of potential lobbyists. Then the commission receives a given number of lobbyists' pet proposals, in the order created by chance, from which the commission chooses its preferred policy among those that will be acceptable to both the council and the EP under closed rule (better for them than the status quo).⁴⁵ The transmission of information is pictured in figure 3.3.

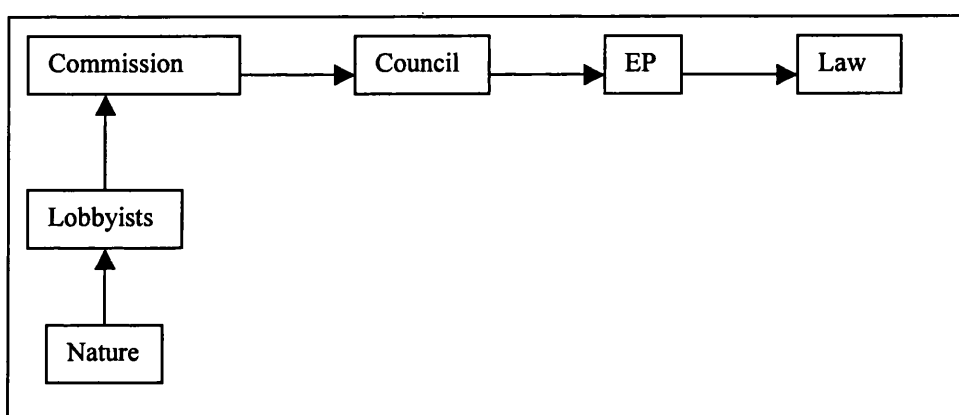


Figure 3.3. The assent procedure

The results of the simulation of the assent procedure are reported in section A2.2 of appendix two. As far as the commission is concerned, its success always increases with the number of policy alternatives at its disposal, which is unsurprising. The cases of the EP and the council are identical and are much more interesting. Their utility initially increases sharply with the number of alternatives in the hands of the commission, almost at the same pace as the commission's utility. But matters change when the number of alternatives reaches a certain point and the utility of both the EP and the council starts to decline. This threshold is quite high as compared to other procedures and it increases with the dimensionality of the issue.

⁴⁵ In the model the commission appears as the agenda setter in the assent procedure. This is usually the case but it is not always so. The commission is the agenda setter in association agreements (300.2) or important international agreements (300.3), structural funds (161) and special tasks to be entrusted to the ECB (105.6). But the EP is the agenda setter concerning the uniform procedure for European elections (190.4), and applicant states when it comes to the accession of new members (49 EU). In other cases the commission shares the right to initiate: with member states, for sanctions to a member state in breach of EU principles (7 EU) and with the ECB for amendments to the protocol of the ESCB (107.5). This fact does not affect the model's validity, as long as there are still an agenda setter and to veto players.

<i>Dimensions</i>	<i>1</i>		<i>2</i>		<i>3</i>	
	EP	Council	EP	Council	EP	Council
Success	51	50	84	87	105	95
Power	23	24	30	34	37	37

Table 3.3. No. of commission alternatives maximising EP and council's success and power. From appendix two.

Table 3.3 contains the numbers of alternatives that maximise the EP's and the council's success and power, for different dimensionalities. The evolution of the dummy's utility is also very interesting. The dummy player's results represent those which an average citizen, unable to affect the outcome of legislation, can expect. The results also give an indication of how centrist the new policies are. The dummy's utility seems to increase with increases in the commission's pool of alternatives. If there is a maximum such as in the case of the council and the EP's success, it is not apparent from the simulations, so if it exists it is much higher than that for the council or the EP (> 200). So we can also appreciate the interaction of the efficiency and distribution effects of information increases identified for the consultation procedure. The relative weight of efficiency also seems to increase with the dimensionality of the issue. The main difference would be that there is not an equivalent 'checks-and-balances' effect as the one present under the consultation procedure.

As far as lobbying is concerned, the expected marginal returns to lobbying decrease with the number of alternatives at the commission's disposal (total amount of lobbying), which is completely intuitive. As the number of lobbyists grows, the proposal looks closer and closer to the commission's ideal, so the likelihood that the marginal lobbyist will change the outcome as well as the average marginal change diminish. The marginal information benefit to the commission is always positive and decreasing.

As far as the overall effects of dimensionality are concerned, greater dimensionality increases both potential informational and distributive gains from law-making. Greater dimensionality implies differences from three main sources. Firstly, greater dimensionality means greater expected utility gains for all the players, for any given combination of information endowments.

Result AVC.1: *Under the assent procedure, greater dimensionality means greater utility for the European Parliament, for any given combination of information endowments.*

$$\Delta U_{EP} / \Delta DIM > 0, \forall (y_C, y_{EP})$$

Secondly, greater dimensionality also means greater total marginal benefit of lobbying.

Result AVC.2: *Under the assent procedure, greater dimensionality means greater total marginal benefits of lobbying the commission, for any given combination of information endowments.*

$$\Delta(MRL_C + MIB_C) / \Delta DIM > 0, \forall (y_C, y_{EP})$$

Finally, greater dimensionality means greater need for information and higher information thresholds separating efficiency from redistribution.

Result AVC.3: *Under the assent procedure, greater dimensionality means higher thresholds from which both the EP and the council stop benefiting from increases in the commission's pool of alternatives.*

Step 2. The lobbying subgame equilibrium under assent

Since we have assumed that under the assent procedure there is only one agenda setter and there is no legislative body with power of voice, the equilibrium analysis is simpler. There is only one point of access to the legislative process, the commission, which we have assumed to be the agenda-setter. So in the assent case, the general equilibrium analysis coincides with the partial equilibrium of information transmission to the commission.

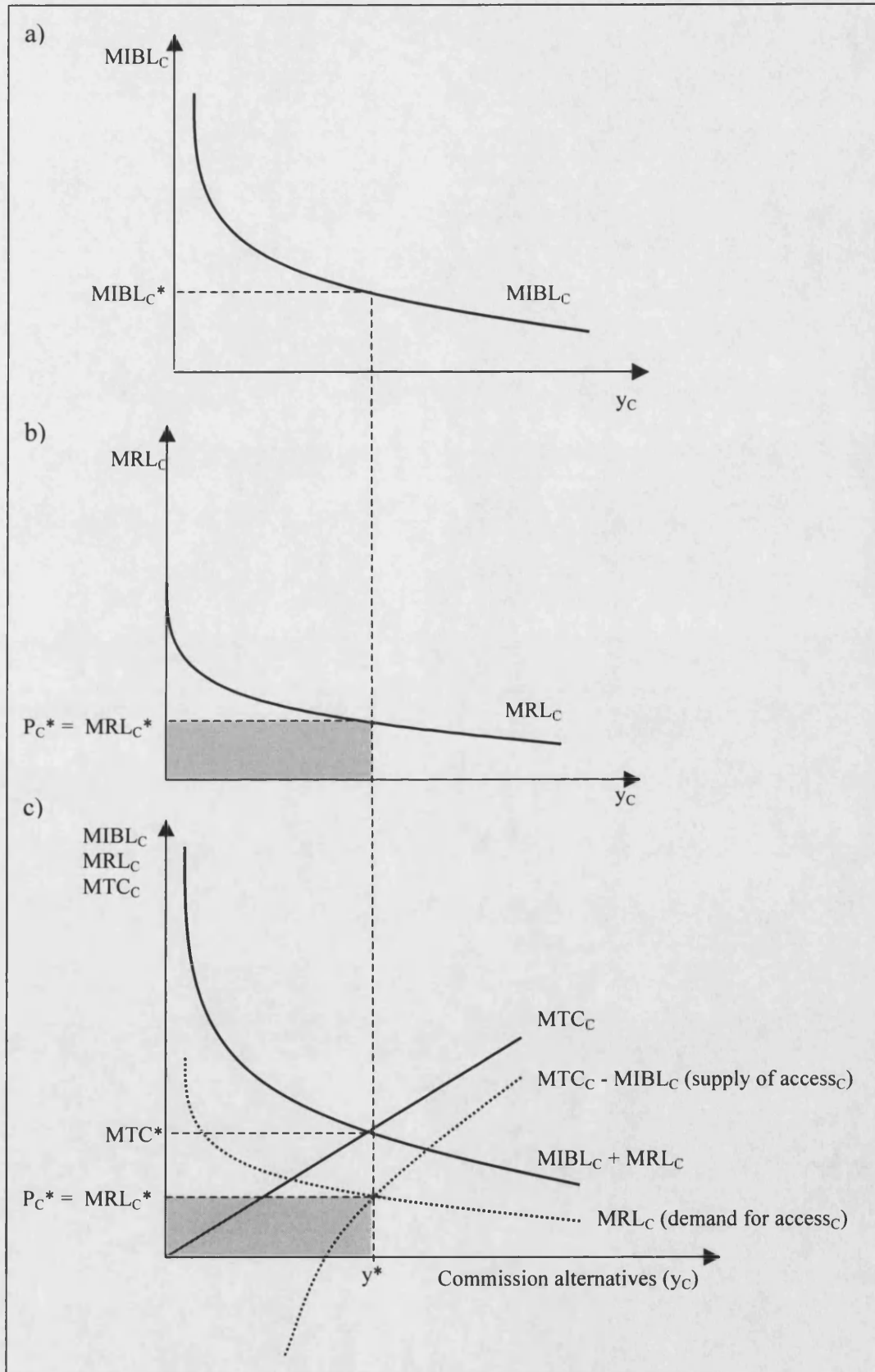


Figure 3.4. Lobbying equilibrium under the assent procedure

Figure 3.4 is based on figure 2.4 in the previous chapter, and depicts the equilibrium transmission of information to the commission. As we know from equation 2.2 in the previous chapter, the equilibrium is reached when the marginal transmission costs (MTC_C) equal the marginal aggregate information benefit, to both the commission and the lobbyist ($MIBL_C + MRL_C$). Figure 3.4c also depicts the equilibrium in terms of supply and demand for access to the commission. As we have seen in the previous chapter, the information transmission costs, or costs of absorbing information, should in principle be borne by the legislator, in this case the commission. But in equilibrium, lobbyists compensate the commission for part of these costs, each of the lobbyists paying the equilibrium price of access to the commission (P_C^*). Thus, in equilibrium, the expenditure on lobbying, which is the shaded area in figures 3.4b and 3.4c, equals the number of alternatives (y_C^*) times the price of access (P_C^*). We can also see from the figure that, under assent, in equilibrium, the commission receives a positive amount of lobbying.

Step 3. The law-making game equilibrium under assent

The main result is that the EP has power under the assent procedure, which stems directly from the simulation results of the legislative subgame. The three simulation results related to dimensionality also indicate that the latter will have an impact on the equilibrium outcome from the EP's point of view. The combination of those three results produces both direct and indirect effects upon the EP. The first factor (result AVC.1) will have an undoubtedly positive effect, bringing about a direct procedural gain upon the EP. The second effect (result AVC.2) will increase the commission's pool of alternatives and produce an indirect effect upon the EP. The sign of this effect is uncertain, since it depends on whether the threshold from which the EP starts to lose from increases in the commission's pool of alternatives has already been overcome. However, given the high values of the thresholds in the simulation results, it is likely that this indirect information effect upon the EP will also be positive. Finally, result AVC.3 reduces the likelihood that the indirect information effect will be negative upon the EP. All in all, although the sign of the influence of dimensionality on the EP is not clear-cut, everything seems to point in the direction that greater dimensionality will lead to greater success and power for the EP.

Proposition AVC.3: *Under the assent procedure, greater dimensionality is likely to mean greater success and power for the European Parliament.*

Conclusions on the assent procedure

The assent procedure as modelled here is a procedure with a single door for the access of information, the commission, since the other institutions have no procedural prerogative to transmit information to the commission. Information in the hands of the commission brings about both efficiency gains for all the actors involved and distributional gains for the commission. The result of the simulations indicate that, up to a given threshold, an increase in the alternatives at the commission's disposal brings the outcome of legislation closer to the dummy's ideal outcome. However, once that threshold is overcome the dummy becomes worse off. And this threshold is higher the greater the dimensionality of the outcome space. The interpretation of these results seems to be that there are two opposing effects of an increase in the commission's pool of alternatives. On the one hand, information increases allowing efficiency gains. On the other hand, the balance of power leans to the side of the commission, furthering the outcome away from the centre. For smaller pools of commission's alternatives, the first effect outweighs the second. But from a certain threshold the relationship is reversed. Increases in the dimensionality of the issue reinforce the efficiency effect, increasing the threshold. In conclusion, it seems that the information scarcity provoked by the fact that the commission is the only channel for the access of information increases the importance of efficiency relative to redistributive effects of information.

3.2.3. Voice and veto: the co-decision procedure

The co-decision procedure, which was introduced at Maastricht and reformed at Amsterdam, is contained in article 251 EC, formerly article 189b EC. Co-decision starts like the consultation procedure, with the difference that council's decision is not final, but just a 'common position'. The EP has a right to present amendments to this common position again, which it normally uses to confirm first reading amendments, in conformity with rule 80 of its rules of procedure.⁴⁶ If the council fails to take on all of parliament's amendments, a conciliation committee is convened to resolve interinstitutional differences, similar to the conference committee convened to resolve

⁴⁶ European Parliament, *Rules of Procedure*.

House-Senate differences in the US. In order for legislation to be passed under the procedure, it has to be approved by both the council and the EP.

The literature on the co-decision procedure is wider than that on the consultation and assent procedures, the reason being an institutional particularity of the pre-Amsterdam version of the procedure. Debate centred around the question whether the EP had increased or decreased its power as compared to the co-operation procedure.⁴⁷ Independently of who was right (evidence seems to support the argument that co-decision increased the power of the EP as compared to co-operation), the fact is that with Amsterdam's reform of the procedure and the simultaneous great reduction in the scope of co-operation (see table 3.1 above) this question has lost practical interest. But co-decision remains interesting not only because of its increasing relevance in quantitative terms, but also because it features both of the EP's powers, namely voice and veto.

Step 1. The legislative subgame equilibrium: simulating the co-decision procedure

Under the co-decision procedure the EP has both a legal claim to a hearing (as under the consultation procedure) and a veto (as under the assent procedure). My model of the co-decision procedure, depicted in figure 3.5, is similar to that of the consultation procedure. Chance determines a random status quo and a configuration of preferences within the outcome space. Chance also creates two random ordered lists of potential lobbyists, one for the commission and another one for the EP. Then the commission receives a given number of lobbyists' pet proposals, in the order created by chance, from which the commission chooses its preferred alternative from those that will be acceptable to both the council and the EP as a take-it-or-leave-it. Here is where the difference with the consultation procedure lies, since the commission will anticipate the possibility of an EP veto and choose its proposal accordingly. Next, as in the consultation procedure, the EP receives the commission proposal. The EP also receives policy alternatives from a given number of lobbyists, in the order given by chance.

⁴⁷ See Geoffrey Garrett and George Tsebelis, 'An Institutional Critique of Intergovernmentalism', *International Organization*, vol. 50, no. 2, 1996, pp. 269-99; George Tsebelis, 'Maastricht and the Democratic Deficit', *Aussenwirtschaft*, vol. 52, no's 1/2, pp. 29-56; Scully, 'The EP and the Co-Decision Procedure: A Reassessment'; George Tsebelis and Geoffrey Garrett, 'Agenda Setting, Vetoes and the European Union's Co-decision Procedure', *Journal of Legislative Studies*, Vol. 3, No. 3, Autumn 1997, pp. 74-92; Roger M. Scully, 'The European Parliament and Co-Decision: A Rejoinder to Tsebelis and Garrett', *Journal of Legislative Studies*, Vol. 3, No. 3, Autumn 1997, pp. 93-103; George Tsebelis and

From its pool of alternatives, the EP chooses its preferred policy from those that will improve both its utility and that of the commission with respect to the initial commission proposal, and still be acceptable to the council (better than the status quo). The transmission of information under the assent procedure is depicted in figure 3.5.

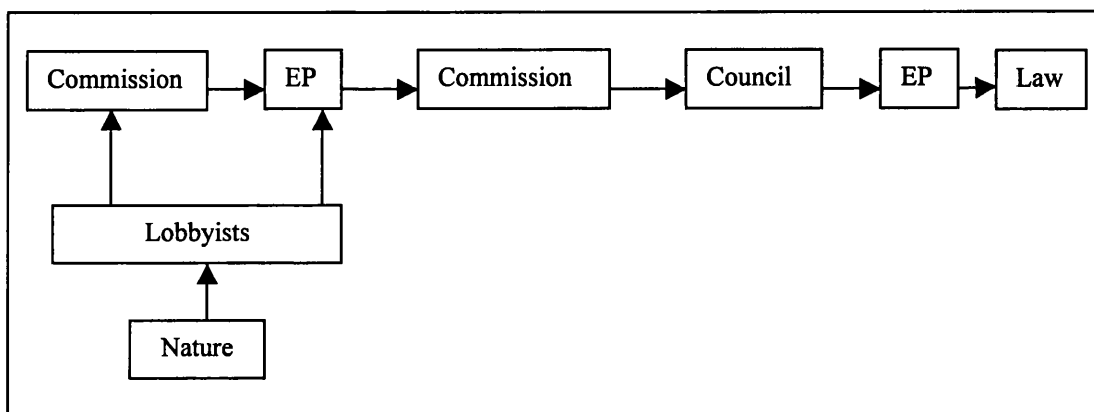


Figure 3.5. The co-decision procedure

The results of the simulation of the co-decision procedure are reported in section A2.3 of appendix two. The relationship between increases in the number of alternatives transmitted and the utility gains of the different players is similar to the one noted under the consultation procedure. Both the commission and the EP have an interest in increasing their private information endowments. As under the consultation procedure, there is also some room for competition, the EP generally seeing its power reduced with increases the better informed the commission is. The same interaction of efficiency and distribution effects pointed out about the consultation procedure is present under the co-decision procedure. An increase in an institution's information endowment produces both distribution and efficiency effects, the latter gaining weight for lower levels of information endowments, for greater dimensionality of the issue space and for greater balance in the institution's information endowments. As in the consultation case, this explains why both the council and the powerless dummy benefit from the EP's power of voice and prefer information not to be too concentrated in the hands of the commission.

There are also interesting results concerning returns to lobbying. First, as under the consultation procedure, lobbyists always benefit from lobbying the commission or the EP, however large the pool of information these institutions have may already be.

Geoffrey Garrett, 'More on the Co-Decision Endgame', *Journal of Legislative Studies*, Vol. 3, No. 4,

Result COD.1a: *Under the co-decision procedure, the marginal returns to lobbying the commission are always positive, for any combination of information endowments.*

$$\text{MRL}_C(y_C, y_{EP}) > 0, \forall (y_C, y_{EP})$$

Result COD.1b: *Under the co-decision procedure, the marginal returns to lobbying the EP are always positive, for any combination of information endowments.*

$$\text{MRL}_{EP}(y_C, y_{EP}) > 0, \forall (y_C, y_{EP})$$

Secondly, there are decreasing returns to lobbying any one institution, which is unsurprising. Thirdly, lobbying the commission or the EP are substitutes, since increases in the lobbying to one institution reduce the returns to lobbying the other institution. Fourthly, lobbying the commission is more effective than lobbying the EP, for any combination of information endowments

Result COD.2: *Under the co-decision procedure, the marginal returns to lobbying the commission are always greater than the marginal returns to lobbying the EP, for any combination of information endowments.*

$$\text{MRL}_C(y_C, y_{EP}) > \text{MRL}_{EP}(y_C, y_{EP}), \forall (y_C, y_{EP})$$

Fifthly, the disparity between the returns to lobbying the commission and the parliament increases with the amount of lobbying that the EP receives. Finally,

Result COD.3: *Under the co-decision procedure, the marginal aggregate benefit (to the lobbyist plus to the legislator) of lobbying the commission is greater than the marginal aggregate benefit of lobbying the EP, for any combination of information endowments.*

$$\text{MRL}_C(y_C, y_{EP}) + \text{MIB}_C(y_C, y_{EP}) > \text{MRL}_{EP}(y_C, y_{EP}) + \text{MIB}_{EP}(y_C, y_{EP}), \forall (y_C, y_{EP})$$

As far as the overall effects of dimensionality are concerned, greater dimensionality increases both potential informational and distributive gains from law-making. Greater dimensionality implies differences from three main sources. Firstly, greater dimensionality means greater utility for the institutions, for any given combination of information endowments.

Result COD.4: Under the co-decision procedure, greater dimensionality means greater utility for the European Parliament, for any given combination of information endowments.

$$\Delta U_{EP} / \Delta DIM > 0, \forall (y_C, y_{EP})$$

Secondly, greater dimensionality also means greater total marginal benefit of lobbying.

Result COD.5a: Under the co-decision procedure, greater dimensionality means greater total marginal benefits of lobbying the commission, for any given combination of information endowments.

$$\Delta(MRL_C + MIB_C) / \Delta DIM > 0, \forall (y_C, y_{EP})$$

Result COD.5b: Under the co-decision procedure, greater dimensionality means greater total marginal benefits of lobbying the EP, for any given combination of information endowments.

$$\Delta(MRL_{EP} + MIB_{EP}) / \Delta DIM > 0, \forall (y_C, y_{EP})$$

Finally, greater dimensionality means greater need for information and higher information thresholds separating efficiency from redistribution.

The lobbying subgame equilibrium under co-decision

The above results determine some properties of the information benefit functions, whose interaction with the cost functions introduced in chapter two determine the

equilibrium transmission of information. This, in turn, acts as an intermediate variable which together with procedure determines the equilibrium legislative outcome.

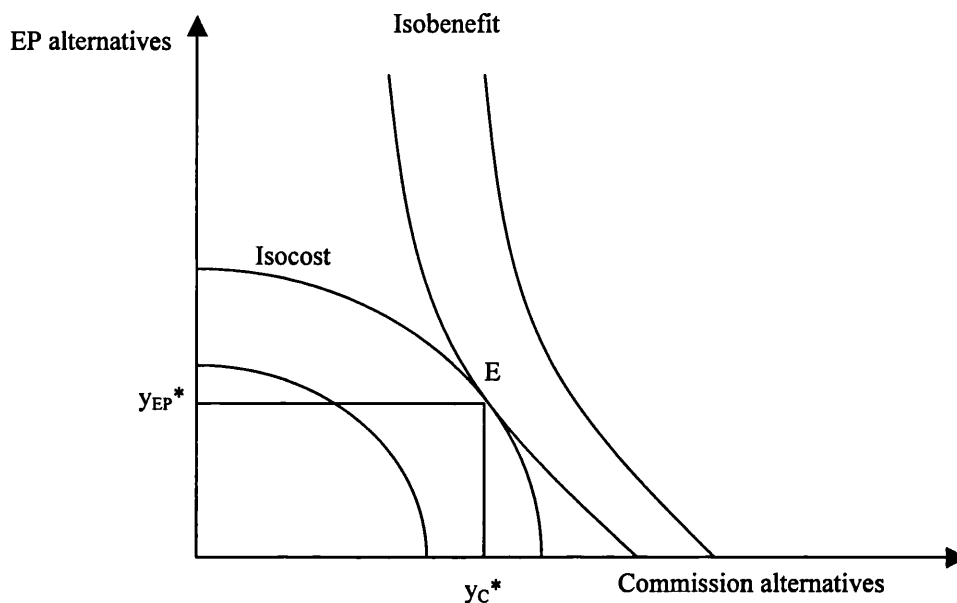


Figure 3.6. General equilibrium under the co-decision procedure

Figure 3.6 shows the general equilibrium analysis of the lobbying subgame under the co-decision procedure. The isocost curves are identical to those under the consultation procedure. The shape of the isobenefit curves is derived from the simulation results in section 2.3 in appendix two. As in the consultation case, they show the marginal aggregate information benefit from lobbying the commission ($MIB_C + MRL_C$) is always greater than that from lobbying the EP ($MIB_{EP} + MRL_{EP}$). The reduction in the absolute value of its slope also shows how the returns to lobbying parliament get closer to those of lobbying the commission as the amount of lobbying received by the EP decreases. As in the consultation case, the equilibrium of the lobbying subgame is reached at a point like E, where the slopes of the isocost and isobenefit curves are equal. Point E represents the pair (y_C^*, y_{EP}^*) which, transposed to the relevant figure in appendix two, yields the expected success and the power of each institution in the law-making game equilibrium. As under consultation, the equilibrium in point E is the result of a kind of ‘venue shopping’ like the one predicted to occur under the consultation procedure.

Proposition COD.1: *Under the co-decision procedure, in equilibrium, the European Parliament will always receive a positive amount of lobbying.*

$$P_{EP}^* \cdot y_{EP}^* > 0$$

Proof:

From result COD.1b,

$$MRL_{EP}(y_C, y_{EP}) > 0, \forall (y_C, y_{EP}) \Rightarrow MRL_{EP}(y_C^*, y_{EP}^*) > 0 \quad (1)$$

which implies that

$$P_{EP}(y_C^*, y_{EP}^*) > 0 \quad (2)$$

and of (1) and because MIBL is always non-negative,

$$MRL_{EP}(y_C^*, y_{EP}^*) + MIB_{EP}(y_C^*, y_{EP}^*) > 0 \quad (3)$$

which in turn implies that

$$MTC_{EP}(y_{EP}^*) > 0 \quad (4)$$

which, from properties 2.1 and 2.2 of the transaction cost function in chapter two, implies that

$$y_{EP}^* > 0 \quad (5)$$

And, finally, from (2) and (5),

$$P_{EP}^* \cdot y_{EP}^* > 0$$

This prediction is intuitive, although it gains scientific relevance from the fact that some of the literature that the EP will have no effect under the procedure.

Proposition COD.2: *Under the co-decision procedure, in equilibrium, the commission will always receive a greater amount of lobbying than the EP.*

$$(P_C^* \cdot y_C^*) / (P_{EP}^* \cdot y_{EP}^*) > 1$$

Proof:

In equilibrium,

$$MRL_C(y_C^*, y_{EP}^*) / MRL_{EP}(y_C^*, y_{EP}^*) = P_C^* / P_{EP}^* \quad (1)$$

From result COD.2 of the simulations we know that

$$MRL_C(y_C, y_{EP}) / MRL_{EP}(y_C, y_{EP}) > 1, \forall (y_C, y_{EP}) \quad (2)$$

So, from (1) and (2), in equilibrium,

$$P_C^* / P_{EP}^* > 1 \quad (3)$$

Also in equilibrium, from equation 2.1 in chapter two,

$$MTC^* = MRL^* + MIBL^* \quad (4)$$

And from (4) and simulation result COD.3,

$$MTC(y_C^*) / MTC(y_{EP}^*) > 1 \quad (5)$$

From the assumption of equal transaction cost functions for the commission and the EP and from property 2.2 in chapter two, which states that MTC is increasing in y ,

$$y_C^* / y_{EP}^* > 1 \quad (6)$$

Finally, from (3) and (6),

$$(P_C^* \cdot y_C^*) / (P_{EP}^* \cdot y_{EP}^*) > 1$$

The interest of this prediction stems not only from the fact that the co-decision procedure is expected to become the default legislative procedure in the EC, but also because it is rather counterintuitive that the parliament will still receive a lower amount of lobbying than the commission under the procedure which confers more power upon it and under which the EP is formally considered a legislator (jointly with the council) whereas the commission is not.

Step 3. The law-making game equilibrium under co-decision

Under co-decision, the EP has power, which is obvious if we take into account that in it has power under both consultation and assent. Dimensionality is also likely to have an influence on the European Parliament under the co-decision procedure. The simulations have produced three main results related to dimensionality. The first result, a direct increase in the EP's utility, is undoubtedly positive from the EP's point of view. The effect of the second result, however, is more mixed. Greater total information benefits imply that, in equilibrium, the transmission of information to each institution will be greater the greater the dimensionality (both the commission and the EP will receive more alternatives from lobbyists). The EP will benefit from an increase in its private pool of alternatives, but it is likely to be hurt by an increase in the commission's pool of alternatives. So the effect of the indirect information effect upon the EP's success and power is uncertain. Finally, the third result, greater need for information, will work in the EP's favour. All in all, the influence of dimensionality on the EP's success and power is not clear, although it seems to be more likely that it is a positive one.

Proposition COD.3: Under the co-decision procedure, greater dimensionality is likely to mean greater success and power for the European Parliament.

Conclusions on the co-decision procedure

Under the co-decision procedure the EP has both a power of voice and a power of veto. Parliament can force the commission to take the time and effort necessary to give full consideration to its proposals, and parliament can also reject proposals which it dislikes.

I have modelled the co-decision procedure in a very similar way to the consultation procedure, the only difference being that the EP has to approve the final act and therefore the commission has to take into account the EP's veto when its proposal. The main conclusions are that both the commission and the EP will be lobbied and that the former will be more lobbied than the latter, as under the consultation procedure.

3.2.4. Comparisons among procedures

So far we have seen what the model predicts to happen under the three most important legislative procedures of the EC, namely consultation, assent and co-decision. It is now time to make some comparisons about the legislative power of the EP under the different procedures.

Proposition COMP.1: The European Parliament has more power under the co-decision than under the consultation procedure.

This proposition is straightforward after the discussion in this chapter. Under the co-decision procedure, the EP has both power of voice and power of veto, whereas under the consultation procedure it only has power of voice.

Proposition COMP.2: The European Parliament has more power under the co-decision than under the assent procedure.

This proposition is also straightforward. Under the co-decision procedure the EP has both power of voice and power of veto, whereas under the assent procedure it only has power of veto.

Proposition COMP.3: The European Parliament may have more, equal or less power under the assent procedure than under the consultation procedure.

This proposition does not represent a prediction, but it is still interesting because it shows what can happen. The power of veto may be less or more important than the power of voice, depending on factors such as the dimensionality of the issue and the fixed administrative allowances of the different institutions. So although the model in

this chapter does not predict a concrete result, it gives us the insight necessary to explain the different possible outcomes.

3.3. CONCLUSIONS AND CAVEATS

In this chapter I have applied the model developed in chapter two to the three main legislative procedures in the EC, namely consultation, assent and co-decision. The study of those three procedures allowed me to identify a new legislative power, the power of voice, and to compare it to the EP's power of veto. The powers of voice and veto are different in nature and work through different mechanisms, but both are procedural powers and both allow the EP to drive the outcome of legislation closer to its ideal policy. The power of veto, which the EP enjoys under the assent and co-decision procedures, is the power to avoid undesirable outcomes. It works by reducing the set of possible outcomes to those which increase the EP's utility with respect to the status quo.

The power of voice, which the EP enjoys under the consultation and co-decision procedures, is different in nature to the power of veto. The power of voice consists in a legal claim to a hearing, which forces the commission to give full consideration to proposals coming from the EP. The mechanism by which the power of voice operates is also different. The power gains relevance in a world where the absorption of information is costly and leads to a certain level of rational ignorance. The power of voice works by encouraging some lobbyists to lobby through the EP, as indirect channel to communicate their alternatives to the European Commission. This lobbying provides the EP with a valuable set of alternatives from which it strategically chooses which to transmit to the commission in order to affect the equilibrium outcome. So the model gives a formal institutional explanation to information asymmetries, i.e. why some institutions are better informed than others in the EC legislative system. This explanation is based not only on the financial resources of the institutions, for which the model controls, but mostly on the constitutional division of powers enshrined in the EC's legislative procedures. The commission is predicted to be more lobbied and thus to have more information than the EP not because it has more administrative resources, but because it has agenda-setting power. The EP is also predicted to be lobbied because of its power of voice. The council, modelled as a simple veto player, is not predicted to be lobbied. The information that the EP obtains from lobbyists and is

able to transmit to the commission as a result of its power of voice is the mechanism by which the latter operates.

The power of voice should not be confused with the power of information. The EP's power of voice is a legal claim to a hearing, a legal claim to the commission's attention. The power of voice generates information and the means to transmit this information to the agenda setter, but information is the mechanism, not the power. The proof is that you give the power of voice to the most ignorant person, and lobbyists' interests will ensure to make this person knowledgeable. Conversely, without the power of voice, the most knowledgeable person has no guarantee that her views will be considered by the agenda-setter.

The chapter has yielded some testable propositions about how the power of voice works through the transmission of information, which I will test in chapter five. These are:

Proposition CNS.1: Under the consultation procedure, in equilibrium, the European Parliament will always receive a positive amount of lobbying.

Proposition CNS.2: Under the consultation procedure, in equilibrium, the commission will always receive a greater amount of lobbying than the EP.

Proposition COD.1: Under the co-decision procedure, in equilibrium, the European Parliament will always receive a positive amount of lobbying.

Proposition COD.2: Under the co-decision procedure, in equilibrium, the commission will always receive a greater amount of lobbying than the EP.

The chapter not only tells us what the power of voice is and how it works, but also to what extent it is useful to drive the legislative outcome towards the EP's ideal. In this respect, the power of voice is compared to the power of veto. The comparison between the magnitudes of the power of voice and the power of veto is particularly interesting. The main result is that both powers are important for the EP, but that it is not possible to tell which one is more important. That depends on the circumstances of the case, such as the dimensionality of the issue or the fixed administrative resources of the legislators. This result is very important, because it allows to compare the power of voice to an established power, the power of veto, which is the strongest form of voting power. The

fact that voting power is rarely found in its strongest form or power of veto, leads to an important non obvious result. Namely, as a general rule, the power of voice tends to be stronger than voting power.

The chapter produces the following set of testable propositions about the magnitude of legislative powers, which will be tested in the next chapter:

Proposition COMP.1: The European Parliament has more power under the co-decision than under the consultation procedure.

Proposition COMP.2: The European Parliament has more power under the co-decision than under the assent procedure.

Proposition COMP.3: The European Parliament may have more, equal or less power under the assent procedure than under the consultation procedure.

Propositions CNS.3, AVC.3 and COD.3: The legislative power of the European Parliament increases with the dimensionality of the issue space.

Another important finding concerns the rationale for the EP's powers and in concrete the reasons that may have led the council to confer the power of voice upon the EP. Evidence in this chapter shows how both the council and the dummy player benefit from the fact that the commission is forced to give full consideration to EP proposals under the consultation and co-decision procedures. This explains why European heads of state and government have included mandatory consultation in several articles of the treaties, irrespective of whether we assume that the council has acted in order to maximise its own legislative benefit or that of the average European interest.

The main caveat is that the models of the consultation, assent and co-decision procedures do not capture all the institutional particularities of those procedures. The models assume that the council has no power to amend the commission proposal, whereas in reality it can amend it by unanimity. The chapter also presents a simplified model of the co-decision procedure which does not include the conciliation committee where the council and the EP can jointly amend the commission proposal without its approval. Finally, the models assume that the commission, the EP and the council are unitary actors, whereas in reality they are not. These assumptions, however, do not only simplify the solution of the model but bring about another main advantage. The fact that

the model does not capture all the institutional particularities of the EC procedures makes it more generally applicable to other legislative systems. In concrete the only requirements are to identify an agenda-setter and how the powers of voice and veto are distributed among the legislative bodies. In this light, these simplifying assumptions can be considered not only as a lesser evil but as good in themselves.

CHAPTER FOUR

The dependent variable: the price of power in the market for rapporteurships*

In this chapter I undertake the first test of the predictions developed in chapter three about the legislative powers of the EP under different legislative procedures. In order to do this, in this chapter I will have to develop a proxy for the legislative power of the European Parliament.

Hardly anything is as difficult to measure as legislative power: that is a statement which virtually all students of legislatures would agree.¹ Huber, for instance, speaks of the ‘thorny practical difficulties associated with identifying and quantifying the amorphous concept of policymaking “importance” of the legislature.’² The difficulty of measuring legislative power arises from two main problems. The first problem concerns the concept of power itself. Sometimes scholars disagree about the concept of power and, what is worse, fail to make their disagreement explicit. Debate becomes fruitless. This problem is attenuated by adopting the generally acceptable definition that I made explicit in the first chapter. The second problem concerns the measuring of power. Power, by definition, is not a directly observable phenomenon. Rather, strictly speaking, when power is observed, it ceases to be power. To remedy this problem, this chapter develops a proxy for the legislative power of the European Parliament, by drawing information from the auction-like markets for rapporteurships that are held in the different EP committees. The chapter presents data on the price of nearly two thousand rapporteurships that were allocated to individual MEPs between 1989 and 1999. The data are analysed statistically to determine the effect of the legislative powers

* A previous version of this chapter was presented at the UACES 30th Annual Conference and Fifth Research Conference, Budapest, Hungary, 6 - 8 April 2000. I thank the participants for their comments, and in particular Neill Nugent.

¹ David Judge, David Earnshaw and N. Cowan, ‘Ripples or waves: the European Parliament in the European Community Policy Process’, *Journal of European Public Policy* 1(1), 1994, pp. 27-52; Francis B. Jacobs, ‘Legislative Co-Decision: A Real Step Forward?’, Paper produced for the Fifth Biennial ECSA Conference in Seattle, May 29 to June 1 1997.

of the EP under different procedures on the price of rapporteurships, after controlling for other relevant factors such as the dimensionality of the issue or the committee responsible.

This rest of the chapter will be divided in five sections. In the first section I review, in the light of the definition of power presented in the introduction, the ways in which the literature has attempted to measure legislative power. In the second section, I develop an innovative way of measuring legislative power which solves many of the deficiencies inherent to measures in the current literature. In the third section, I present the empirical evidence and the main results. Finally, the conclusions focus on the validity of the models in chapter three, as well as the methodological contribution of the chapter for the measurement of legislative power.

4.1. THE MEASUREMENT OF LEGISLATIVE POWER IN THE LITERATURE

In the literature on legislatures there has been a division of labour between those scholars who focused on theoretical aspects and those with an empirical approach. Theorists have traditionally developed very sophisticated models, sometimes with a strong mathematical component, while empiricists have measured directly observable phenomena that they thought could shed some light into their research questions. And both approaches have traditionally worked independently from each other. As an example, we can look at the literature on EC legislative procedures. On the one hand, there are scholars such as George Tsebelis, Geoffrey Garrett, Christophe Crombez, Bernard Steunenberg and Peter Moser who developed more or less sophisticated game theoretical theories of the power of the European Parliament under different legislative procedures. On the other hand, the conciliations secretariat of the European Parliament used to publish annual statistics on the rate of acceptance of EP amendments under both the co-operation and the co-decision procedure.³ But there was little connection between both approaches, at least until Roger Scully pointed at the necessity of testing the theories against data and joined for the first time formal rational choice theories and the empirical data.⁴ To his article a response followed from Tsebelis and Garrett, praising the idea of testing the formal theories and criticising the way the data were

² Huber, *Rationalizing Parliament*, p. 12.

³ European Parliament, *Activity Report 1 November 1993 – 30 April 1999 of the delegations to the Conciliation Committee*, PE 230.998, 1999.

⁴ See Scully, 'The EP and the Co-Decision Procedure', pp. 67-69.

the idea of testing the formal theories and criticising the way the data were dealt with.⁵ Pandora's box was open. However, those methods of measuring power had a number of problems.

The most common a posteriori measures of legislative power are those based on counts of influence attempts, such as amendments or vetoes. The attempted-influence technique focuses directly upon the interaction pressures themselves and power is usually measured by some index of influence attempts accepted by the other individuals.⁶ The rate of acceptance of parliamentary amendments has been widely used in the literature on EP power.⁷ Amie Kreppel is a prominent supporter of amendment acceptance as a measure of legislative power. She recalls that already Earnshaw and Judge (1993 and 1997) and Judge and Earnshaw use amendments as indicators of power at case study level. She also argues that at a more theoretical level 'the fundamental measure of EP influence is the extent to which its amendments are adopted and incorporated into EU law.'⁸ A similar measure has also been used to assess the legislative power of other chambers, such as the British House of Lords.⁹

Conversely, the number of vetoes has rarely been used as an indication of the power of the EP vis-à-vis the other institutions involved in EC legislation. Although the number of vetoes exercised has been recorded by the conciliation committee secretariat, the count has been used as a measure of failure rather than as a measure of power for the EP.¹⁰ This may have been due to an interventionist bias in the committee secretariat. Conversely, the veto method has been applied to other legislatures. In his theory of US

⁵ Tsebelis and Garrett, 'Agenda Setting, Vetoes and the EU's Co-decision Procedure', pp. 85-89.

⁶ James G. March, 'An Introduction to the Theory and Measurement of Influence', in Roderick Bell, David V. Edwards and R. Harrison Wagner (eds.), *Political Power: A Reader in Theory and Research*, New York and London: The Free Press and Collier-Macmillan, 1969, p. 177.

⁷ See Gary Miller, 'Post-Maastricht Legislative Procedures: Is the Council Institutionally Challenged?', Paper presented to the 4th Biennial Conference of ECSA, Charleston, South Carolina, (May) 1995, pp. 11-14; European Parliament, *Activity Report 1 November 1993 – 30 April 1999 of the delegations to the Conciliation Committee*; Tsebelis et al., 'Legislative procedures in the EU: an empirical analysis'; Kreppel, 'What affects the EP's legislative influence?'

⁸ Kreppel, 'What affects the European Parliament's legislative influence?'. She cites Tsebelis, 'The Power of the EP as a Conditional Agenda-Setter'; Tsebelis, 'Maastricht and the Democratic Deficit'; Garrett and Tsebelis, 'An Institutional Critique of Intergovernmentalism'; Moser, 'The European Parliament as a Conditional Agenda-Setter: What Are the Conditions?'; Claudia Hubschmid and Peter Moser, 'The co-operation procedure in the EU: why was the European Parliament influential in the decision on car emission standards?', *Journal of Common Market Studies*, Vol.35, No.2 (June), 1997, pp.225-242; Scully, 'The EP and the Co-Decision Procedure'.

⁹ Donald Shell, *The House of Lords*, 2nd ed., Hemel Hempstead: Harvester Wheatsheaf, 1992; Donald Shell and David Beamish (eds.), *The House of Lords at Work*, Oxford: Oxford University Press, 1993.

¹⁰ European Parliament, *Activity Report 1 November 1993 – 30 April 1999 of the delegations to the Conciliation Committee*.

lawmaking, Keith Krehbiel reviews the literature on 'presidential power'.¹¹ He recalls that it is a long-standing tradition in U.S. politics to evaluate and compare presidents in terms of their success vis-à-vis the Congress. Mark Peterson uses veto sustain rates as indicators of "effectiveness of the president".¹² Todd Shields and Chi Huang study the number of vetoes cast.¹³

Both the counting of successful amendments and vetoes as measures of power share two major problems, namely the 'law of anticipated reactions' and the aggregation of different influence attempts. The law of anticipated reactions implies that actors will foresee power and make concessions in anticipation, making these appear voluntary instead of a result of power. This is also known as 'the second face of power', power based on anticipated response.¹⁴ In the EU context, Roger Scully also detects what the problem of 'anticipatory compliance'.¹⁵ In this line, Tsebelis and Garrett also recognise that data on the acceptance of amendments are 'significantly less revealing than generally believed in the empirical literature'. They argue that 'strictly speaking, the number of amendments is an indicator of incomplete information (otherwise either the amendments would have been anticipated and incorporated, or their failure would have been anticipated and the amendments not proposed).'¹⁶ Bernard Steunenberg also recognises the problem of anticipated reactions in a footnote, although he does not give any empirical alternative to influence-attempts measures of power. He writes:

In a multi-stage game with perfect information each player is able to anticipate future courses of action. Therefore, it is not the actual use of power which is important, but rather the attribution of authority to specific players. This implies, for instance, that the number of rejections or amendments of a proposal by the European Parliament or the Council does not provide a valid indication of their influence in the decision making process. Even without the use of power, as will be shown, the outcome of decision making may be adapted towards their preferences. This may, for instance, explain why rejections of Council proposals are very rare.¹⁷

¹¹Keith Krehbiel, *Pivotal Politics*, p.147-164.

¹²Mark Peterson, 'The President and Congress', in Michael Nelson (ed.), *The Presidency in the Political System*, Washington: Congressional Quarterly Press, 1990, table 16.1.

¹³Todd G. Shields and Chi Huang, 'Presidential Vetoes: An Event Count Model', *Political Research Quarterly*, 48, 1995, pp. 559-72.

¹⁴Peter Bachrach and Morton Baratz, 'The Two Faces of Power', *American Political Science Review*, 56, 1962, pp. 947-52; Charles M. Cameron, *Veto Bargaining: Presidents and the Politics of Negative Power*, Cambridge: Cambridge University Press, 2000, pp. 18-19.

¹⁵Scully, 'The EP and the Co-Decision Procedure'.

¹⁶Tsebelis and Garrett, 'Agenda Setting, Vetoes and the EU's Co-decision Procedure', p. 86.

¹⁷Bernard Steunenberg, 'Decision-making under different institutional arrangements', p. 645, footnote 7.

The law of anticipated reactions makes it difficult to tell the real origin of proposals. It is almost impossible to know whether a commission proposal arises from the commission itself or it anticipates the EP's and the council's reaction. This problem was recognised by George Tsebelis, one of the most prominent supporters of amendment-based measures when he jokingly replied to this criticism at an academic conference: 'Paternity has always been difficult to determine'.¹⁸ Traditionally, it is assumed that proposals originate from the legislative body that formally proposes them. Needless to say, there have been attempts to trace the origin of proposals but, as said before, this is a difficult task.¹⁹ Indeed, for John W. Kingdon, tracking down the origin of a proposal is not only difficult but almost impossible, leading often to 'an infinite regress'.²⁰ As far as vetoes are concerned, the problem is similar. The influence-attempts method does not measure the cases when legislation is dropped, or simply not introduced at all, because of the credible threat of a veto.

The second major problem with the influence-attempts method of measuring power is the aggregation of influence attempts. The main objection is directed at the assumption that each influence attempt (amendment or veto) is equal to every other influence attempt (amendment or veto).²¹ Francis Jacobs points out that amendments vary not only in importance, but also in their degree of acceptance.²² Amie Kreppel recognises that 'certainly not all amendments are created equal' but tries to solve the problem by grouping amendments in four categories: (1) simplifications or clarifications, (2) domain-expanding, (3) adding a new policy dimension or (4) several of the above. Similarly, she groups amendments according to whether they amend the recitals or the text of the law. Although her objective is not to measure power but to analyse what types of amendments are more likely to be accepted by the other institutions, these or similar groupings could be used to grade the importance of amendments. The next question is the variable extent to which amendments can be accepted and for which up to four categories have been used in the literature (Kreppel reduced these four categories to two). But the final question is the different saliency of different issues, which could perhaps be dealt with also by grouping amendments into

¹⁸ Sixth Biennial ECSA conference, Pittsburgh, PA, June 1999.

¹⁹ E.g. Shell, *The House of Lords*; Shell and Beamish (eds.), *The House of Lords at Work*.

²⁰ Kingdon, *Agendas, Alternatives and Public Policies*, p. 73.

²¹ March, 'An Introduction to the Theory and Measurement of Influence', p. 177.

²² Jacobs, 'Legislative Co-Decision', pp. 15-16.

categories such as EP committee responsible, which is in part done in this chapter.²³ Needless to say, any of these groupings is very time consuming.

Recall from the introduction my definition of the *legislative power* of an actor as his present legislative means, to obtain some future apparent Good (utility) and the conclusion that if we want to measure legislative power, we must measure how much ‘apparent Good’ those different legislative means convey to that who controls them. In essence, what these grading systems do is a translation from influence attempts (amendments) into utility, by assigning weights to different amendments in the following way:

$$\text{Utility} = \alpha_1 \cdot \text{attempt}_1 + \alpha_2 \cdot \text{attempt}_2 + \dots + \alpha_i \cdot \text{attempt}_i + \dots + \alpha_n \cdot \text{attempt}_n$$

Utility (Hobbes’ ‘apparent Good’) would be a linear combination of those influence attempts, with weights α_i indicating both the importance and the degree of consecution of the different influence attempts (amendments). The simplest models value all influence attempts equally but, as we have already seen to a certain extent, systems for weighting influence attempts can get really sophisticated. But the problem is that those weights are exogenously assigned by the author in what involves a great deal of subjectivity. Principles for counting acts or items of behaviour (such as amendments) are always controversial, given the unlimited possibilities of subdividing, grouping or weighting those items. According to Goldman, this is one of the reasons why a behaviour approach is not satisfactory to substitute a welfare approach to measuring power.²⁴ However, in the next section I will show how it is possible to find certain types of observed behaviour from which empirical measures of power considered in welfare terms can be derived.

4.2. AN ECONOMIC APPROACH TO MEASURING POWER

The question is how to measure how much ‘future apparent Good’ different legislative powers confer upon the person who enjoys them? In economics, the best indicator of the value a good is its price, as long as there is an efficient market where that good is

²³ Kreppel, ‘What affects the European Parliament’s legislative influence?’, also groups them in this way, although for a different purpose.

²⁴ Alvin I. Goldman, ‘Toward a Theory of Social Power’, in Steven Lukes (ed.), *Power*, New York: New York University Press, 1986, p. 194.

traded. In an efficient market, the price reflects the willingness to pay of the buyer of a good, which reflects the marginal utility that the good yields to her. However, there is no market where the legislative powers of the EP are directly traded. But the same happens with many other non-market goods for which it would be interesting to have an economic value, such as clean air or the absence of noise. Fortunately, economists have developed alternatives to the market price to value such non-traded goods, mostly in the area of the environment.

These economic methods solve the two shortcomings of the influence-attempt methods: firstly, they solve the problem of anticipated reactions because they do not measure influence attempts, but the willingness to pay for the legislative means. Secondly, they do not have the problem of having to assign controversial weights to different influence attempts, because they measure utility directly. They do not need weights in a conversion between influence attempts and utility.

Those economic valuation methods can be divided in two categories: methods based on *hypothetical* questions of the form ‘would you be willing to pay...?’ and methods based on *observed behaviour* of people reflecting utility maximisation in real-world settings. From the first category the most common method is the contingent valuation method, which asks people willingness-to-pay questions. Although this method has the advantage of being direct, it has a number of problems from which I will highlight two: firstly, the respondents may lack enough motivation to think carefully their answers. Secondly, and especially when the method is applied to the measurement of legislative power, respondents may find it offensive to assign economic values to political goods. It is in order to avoid those problems that in this dissertation I will use indirect methods based on observed behaviour.

Observed behaviour methods derive information on revealed preferences from the choices of people in surrogate markets which are related to the non-traded good whose value is to be measured. Two of these methods are the most common: the hedonic pricing method and the travel cost method.²⁵ The *travel cost method* derives information from markets for goods whose consumption is complementary to that of the non-traded good. A typical example would be to use the travel costs incurred by people in order to enjoy bathing on a public beach as a measurement of their willingness to pay for that non-market good. The *hedonic pricing method*, which will be used in this

²⁵ Nick Hanley and Clive L. Spash, *Cost-Benefit Analysis and the Environment*, Cheltenham, UK and Northampton, MA: Edward Elgar, 1993, p. 74.

chapter, looks at markets for goods whose prices are affected by the provision of the non-traded good that is to be valued. The hedonic pricing method is based on the characteristics theory of value, developed by Lancaster (1996), Griliches (1971) and Rosen (1974). A traded good can be described as a vector of characteristics, one of which would be the non-traded good to be valued. The price of the traded good can be assumed to be a function of these characteristics. Differentiating the unit price with respect to the quantity of any characteristic gives the implicit price of that characteristic, including the non-traded good. A typical example is to look at how air pollution affects the prices of housing in different areas in order to derive an economic value for clean air.²⁶ As said, these methods draw information about the value of non-traded goods from surrogate markets. A surrogate market where legislative powers are indirectly traded is the EP's market for rapporteurships.

As most legislatures, the EP distributes much of its workload among different committees. But, in the EP, the division of labour reaches the internal workings of committees. I am speaking of the figure of the *rapporteur*. The *rapporteur* is normally elected within the committee responsible for a particular bill. Her function is to prepare initial discussion, to present a draft text and to amend it to take into account the views of the committee. She must also present and defend the proposal in plenary.²⁷ The *rapporteur's* job makes her an incredibly powerful agenda setter within a particular bill. Finally the *rapporteur* of the bill has a place guaranteed in the conciliation committee.²⁸ The power of a *rapporteur* is such that, for example, a diplomat in charge of relations with the EP, commented in one interview that the first thing he does on a particular proposal is not to contact the MEPs from his member state, but the *rapporteur*, even before the first reading.²⁹ Also, in the case of the US congress it has been shown that there is a relation between changes in a representative's committee assignments and changes in PAC contributions received by the representative.³⁰ It is not strange that rapporteurships are much sought after.

The EP has a very interesting system to distribute rapporteurships among the political groups. The system consists in assigning a number of points to each political

²⁶ Roger Scully used a hybrid of both when he analysed how legislative procedures affected participation in European Parliament votes. Such method is called the *hedonic travel cost* method. See Scully, 'Policy Influence and Participation in the EP'.

²⁷ Corbett et al., *The European Parliament*, p. 117.

²⁸ European Parliament, *Rules of Procedure*.

²⁹ Simon Hix, interview with UK diplomat, Brussels, Friday 9 June 2000.

group according to its size in the committee, and organising an auction whereby the groups bid for the different rapporteurships.³¹ The system varies across committees but in essence it is the same. The case of the environment committee (one of the most active committees) can be illustrative. Each political group receives two points for each member in the committee. With these points periodical auctions for rapporteurships and draftsmanships are held among the group co-ordinators. The price of an assignment is the number of political groups who bid for it. From all those who bid, the assignment goes to the group that has used to date the smallest proportion of its points. If any group finishes its points, another round of points is added to the current endowment of every group.

The price of an assignment is a relatively good indicator to compare the value of different assignments. It might appear at first sight that, since when a group spends all of its points all groups get their quotas automatically topped up, points are not scarce and the system leads to 'hyperinflation'. But is not the case for two main forces which put together counteract this inflationary tendency. The first one is the fact that the maximum bid is limited by the total number of political groups in the committee. The second one is the fact that in case of a tie, the group which has spent a smaller proportion of its points prevails. In addition, preferences revealed in this market are cardinal in the sense that with the two points necessary for a two-point report, exactly two one-point reports could be bought. Cardinal preferences deliver more information than just a ranking, and allow the use of simpler statistical techniques. The market for rapporteurships is suitable for the application of the hedonic pricing method.

In the following sections I apply the hedonic pricing method to the market for rapporteurships in order to obtain a price for the power of the European Parliament under different legislative procedures. First, a rapporteurship is described as a vector of characteristics. Then, I model the price of a rapporteurship as a function of these characteristics, among which are dummy variables accounting for the applicable legislative procedure. Finally, differentiating the unit price of a rapporteurship with respect to any of these dummies gives the implicit price of the power of the EP under the legislative procedure the dummy represents. But, first of all, it is necessary to have data on the price of rapporteurships (dependent variable) as well as on the

³⁰ Thomas Romer and James M. Snyder, Jr., 'An Empirical Investigation of the Dynamics of PAC Contributions', *American Journal of Political Science*, Vol. 38, No. 3, August 1994, pp. 745-69.

³¹ Corbett et al., *The European Parliament*, p. 117; Westlake, *A Modern Guide to the European Parliament*, p. 198.

characteristics that affect those prices. Such data will be presented in the following section.

4.3. THE SAMPLE AND SOME PRELIMINARY STATISTICS

The data were collected during my stay in the European Parliament as a Robert Schuman scholar in the spring and summer of 1999.³² The data roughly cover the period between 1989 and 1999. In this section I will present the main features of the sample, as far as the dependent variable (the price of rapporteurships) and the independent variables (the characteristics of the rapporteurships) are concerned.

The dependent variable

The prices of rapporteurships are not only difficult to obtain, but there are some issues related to this variable that require it to be interpreted with care. In particular, it is impossible to pay a negative price for a rapporteurship. However, being a rapporteur or a draftsman imposes not only rights but also obligations on an MEP. When the expected benefits of a rapporteurship are not very great, the cost of those obligations may well outweigh the benefits. However, it is impossible to pay a negative price for dealing with a report. In the cases the value is negative, no-one will bid for the rapporteurship and consequently no price will be recorded.

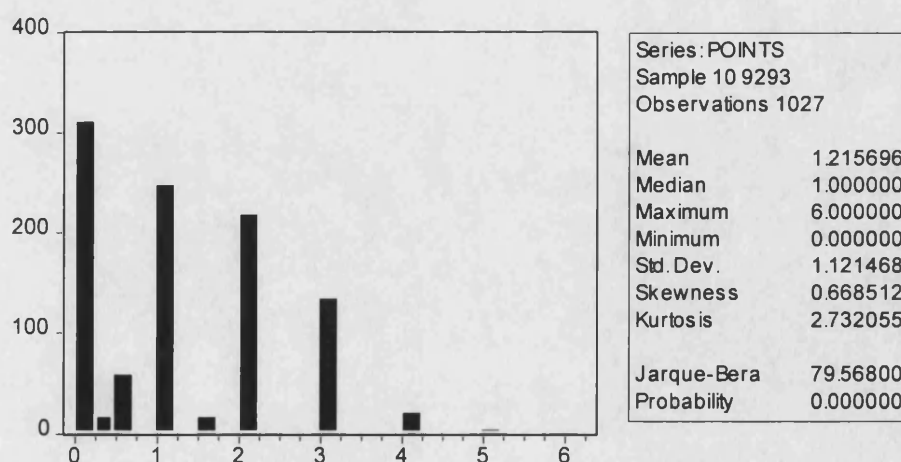


Figure 4.1. Recorded number of points (POINTS): truncated sample

³² I would like to thank Peter Schiffauer, Clare Wells-Shaddad, Doris Breggar-Schuller, Maria Angeles Martinez Valls and Pietro Ducci from the EP secretariat. I would also like to thank Daniel Varela MEP, as well as Papi Boucher, José Botella and Dimitrios Katiforis from the EPP secretariat. Finally, my thanks to Carmencita Cortizas, for her assistance in coding the dataset.

Figure 4.1 shows the distribution of points recorded in the auctions for rapporteurships taking place in the EP committees. The sample distribution resembles the right side of a bell, the minimum value of the dependent variable being zero. We are facing a so-called ‘truncated’ sample. We want to measure the willingness to pay for rapporteurship, but this is only recorded for non-negative values. There is not much that we can do to solve the problem of a truncated sample. To use Ordinary Least Squares (OLS) might be one’s first inclination. With truncated samples, OLS estimates tend to be roughly proportional to consistent maximum likelihood estimates although, in applications, it is usually found that OLS estimates are biased toward zero.³³ Consistent maximum likelihood estimation is more complex. But we may spare the latter method, since we have more information about the distribution.

We not only know the points for which a record exists but we also know for what cases there is no record. In other words, we also ‘know what we don’t know’. We can assume that the absence of a recorded price means either 1) the auction system was not yet in place, or 2) the piece of the legislation was not considered of sufficient importance to justify a report, so the report was substituted by a letter from the chairman of the committee under the simplified procedure (rule 158.2) or the procedure without report was applied (rule 158.1).³⁴ The treatment I have given to either group is very different. Whereas the first group of cases are not included in the dataset, the second group of cases was included, coded as zero points, in a new variable named POINTS0. Since we do not know precisely when the point system started, neither whether it started at the same time in all EP committees, I devised a system to discard from the sample the cases where it was uncertain whether the point system was already in place. For each committee, I find the observation with an earliest announcement date (in case there are more than one I consider the latest) and with a recorded number of points. Then I discard all observations containing any previous announcement date. To all remaining rapporteurship without a recorded number of points, I assigned a price of zero points. These are the break dates for the different committees:

³³ William H. Greene, *Econometric Analysis*, 3rd ed., London: Prentice Hall, 1997, p. 956.

³⁴ European Parliament, *Rules of Procedure*.

<i>Committee</i>	<i>Code</i>	<i>Date of first valid record</i>	<i>CNS</i>	<i>AVC</i>	<i>COD</i>	<i>Total</i>
Economic and monetary affairs	ECON	21/01/91	104	0	65	169
Legal Affairs	JURI	09/07/90	95	1	98	194
Environment	ENVI	19/11/90	68	2	57	127
Institutional affairs	INST	08/02/93	3	0	0	3
Rules of procedure	REGL	19/06/98 ³⁵	0	0	0	0
Petitions	PETI	12/03/99 ³⁶	0	0	0	0
Women's rights	FEMM	09/12/91	4	0	2	6
Culture, education, youth and media	JEUN	10/12/90	41	0	18	59
Agriculture	AGRI	09/12/91	584	0	7	591
Civil liberties	LIBE	09/03/92	48	0	3	51
Foreign Affairs	POLI	09/09/91	16	47	1	64
Fisheries	PECH	21/01/94	108	2	0	110
Regional Affairs	REGI	14/09/92	8	3	1	12
Research and energy	ENER	21/01/91	105	1	15	121
Transport	TRAN	08/06/92	25	1	32	58
Social affairs	ASOC	27/07/89	45	0	23	68
Development co-operation	DEVE	14/09/92	16	10	4	30
Budgets	BUDG	21/01/91	57	0	1	58
Budgetary control	CONT	None	0	0	0	0
External economic relations	RELA	15/04/91	156	25	1	182
Temporary	TEMP	None	0	0	0	0
All	---	---	1483	92	328	1903

Table 4.1. The sample of the censored variable

Table 4.1 shows the distribution of the sample of the variable POINTS0, which adds to POINTS the information on the rapporteurships for which there is no recorded price when there could be one (the auction system was already in place). The sample is classified by committee responsible and by legislative procedure. As a whole, there are 1903 observations, of which a large majority fall under the consultation procedure (1483), followed at a great distance by co-decision procedures (328) and assent procedures (92). In spite of the fact that, as expected, there is some correlation between the committee responsible and the applicable legislative procedure, the sample presents enough variation as far as legislative procedures are concerned to avoid serious multicollinearity problems.

³⁵ All cases would qualify if the procedure without report were equated to the existence of points.

³⁶ All cases would qualify if the procedure without report were equated to the existence of points.

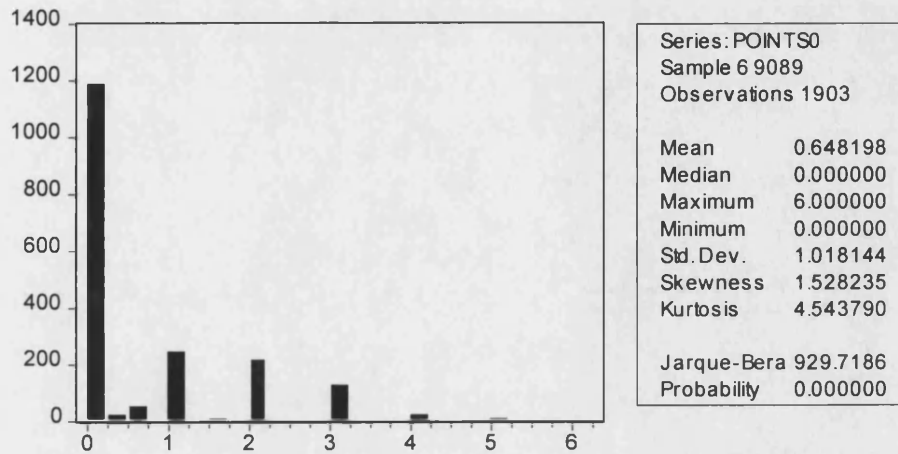


Figure 4.2. Completed number of points (POINTS0): censored sample

Figure 4.2 represents the distribution of the new variable (POINTS0). For values greater than 0 the distribution seems bell-shaped but at zero the frequency rockets. This is so because a value of zero does not mean a willingness to pay of precisely zero, but rather 'zero or less'. Matters have improved with respect to the sample in figure 4.1. Now, instead of a truncated sample, we are dealing with a so-called 'censored' sample, which conveys more information than a truncated one. There are estimation methods more appropriate than OLS to deal with censored data. One of such methods is the Tobit model.³⁷ The tobit model, also known as the censored regression model, uses an index function that explains the latent variable (willingness to pay, in our case).³⁸ For our purposes, when the index function takes a value of zero or less, the tobit model assigns a zero.

But an attentive reader may also have noticed another interesting characteristic of the dependent variable, namely that observations are concentrated in some discrete points (0, 1, 2, 3 ...). It is possible to consider the dependent variable as discrete and apply a method especially developed for those types of variables. The Poisson count or the Normal count estimation methods are suitable for dependent variables that take integer values. Most of the observations in the sample take integer values, although there are also some cases of non-integer values, mostly .5 and 1.5, but also .25, .33 and others. For the sake of comparison, it may be interesting to neglect the latter cases and run a regression just with the observations taking integer values. In the next section, I

³⁷ First proposed in James Tobin, 'Estimation of Relationships for Limited Dependent Variables', *Econometrica*, 26, 1958, pp. 24-36.

³⁸ Greene, *Econometric Analysis*, p. 962.

will show the results of different regressions explaining the three alternative dependent variables.

What determines the price of a rapporteurship?: The independent variables

To apply the hedonic pricing method, the first step is to identify the characteristics that affect the price of a particular rapporteurship. MEPs will assign values to different rapporteurships based on the expected net benefits associated with holding those positions. Please note how ‘the expected net benefits associated with different positions’ fits the Hobbesian definition of power as the ‘present means, to obtain some future apparent Good’. For instance, members are likely to consider the perks associated with holding the position, the general amenity of the issues dealt with, etc. But more importantly, MEPs will look at what is really at stake in the Parliament, namely the possibility of shaping European legislation.

To account for these factors I have identified three main characteristics, namely the legislative procedure, the dimensionality of the issue and the committee responsible. The equation of the price of power would remain as follows:

Equation 4.1:

Price = f(legislative procedure, committee responsible, dimensionality)

The *legislative procedure* that applies to the issue at stake is a clear candidate in any model trying to explain the price of rapporteurships. As I show in chapter three, different legislative procedures confer different powers upon the EP. One of the objectives of political groups is to exert some influence on the outcome of a piece of legislation. Then, if the rapporteur’s influence is proportional to the influence of the EP on that particular issue, political groups will give more value to rapporteurships for which the legislative procedure gives more power to the EP. In the regression, I will consider the consultation procedure as the baseline, and introduce dummies for the assent and co-decision procedures.

<i>Procedure</i>	<i>Average</i>	<i>Std. Deviation</i>	<i>N</i>
Consultation (CNS)	.53	.75	1483
Assent (AVC)	1.09	1.20	92
Co-decision (COD)	1.05	1.13	328
			1903

Table 4.2. Legislative procedures and the price of rapporteurships

Table 4.2 shows the distribution of the sample across legislative procedures. Consultation procedures account for 3/4 of the sample, co-decision procedures for 1/6 and assent procedures for a mere 1/12. On average approximately half a point was paid for a consultation rapporteurship whereas one point was given for both assent and co-decision procedures. Preliminary evidence supports only in part the predictions derived from the analysis in chapter three. Whereas both assent and co-decision rapporteurships are on average more expensive than consultation ones, no difference seems to exist between assent and co-decision procedures and, if any, assent cases tend to be more expensive than co-decision ones, contrary to the predictions from chapter two. But since, as we will see next, there are other variables affecting the price of rapporteurships besides the legislative procedure, for the time being, these can only be considered preliminary findings.

The *dimensionality of the issue* also has an influence on the willingness-to-pay for a rapporteurship. In the models in chapter three, I show that the power of the EP increases with the dimensionality of the issue at stake. In the regression, I operationalise the dimensionality of the issue as the number of committees of the EP that were asked for either a report or an opinion. Indeed, the number of committees to which the proposal is referred is not a direct measure of dimensionality. It is a proxy, i.e. a variable which we have reasons to believe to be positively correlated to the abstract concept of dimensionality. The committee-referral variable has the advantage of being simple, easy to obtain and objective. The variable is easy to obtain from legislative databases, which allows its use by other researchers and the comparability of results. Objectivity is guaranteed by the fact that the variable is not developed exclusively for the purposes of the study.

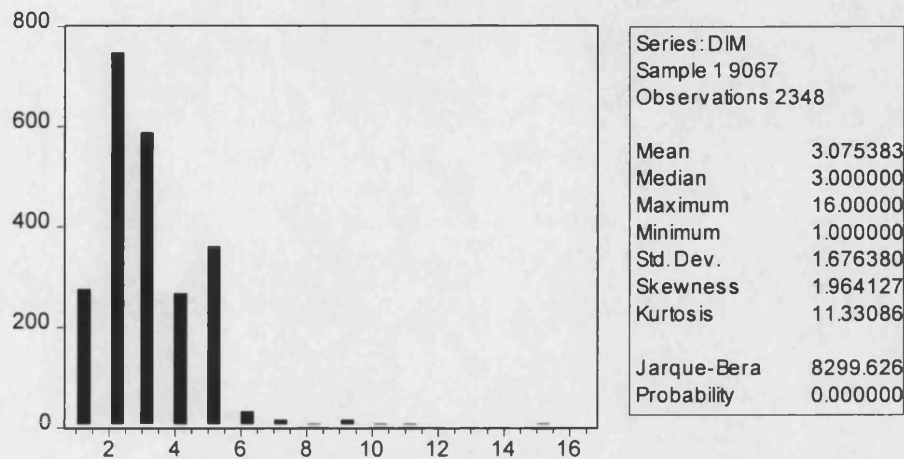


Figure 4.3. Number of EP committees legislative proposals were referred to

Figure 4.3 shows the sample distribution of the dimensionality variable. The average value is very close to three, which is the sample median. The modal value is two referrals. The distribution of the dimensionality variable is bell-shaped, with a certain right skew. The number of referrals varies from one to sixteen, examples of very referred proposals being association agreements. Christophe Crombez argues that ‘the assumption of unidimensionality in models of the EC policy making is more realistic than in similar models of the United States government’ since ‘the EC does not adopt omnibus legislation and its institutions use germaneness rules’.³⁹ However, if committee referrals can be taken as indicators of the dimensionality of issues, data from both the EP and the US Congress seem not to support Crombez’s claim. In the American House of Representatives, despite a notable increase from 6 percent in 1975-76, only 18.2 percent of all measures were multiply referred in 1989-90.⁴⁰ And even if one is only to consider major legislation, the proportion of multiply referred bills was only 40 percent in 1995, from a level of 8.6 in 1975-76.⁴¹ In the Senate figures are lower. By contrast, in the European Parliament as much as 85 percent of all legislative proposals were multiply referred in the period 1989-99. So statistical evidence seems to support the convenience of considering multidimensionality when analysing EC law-making.

³⁹ Crombez, ‘Legislative Procedures in the EC’, p. 202. See also, Crombez, ‘Information, Lobbying and the Legislative Process in the EU’, p. 9.

⁴⁰ Gary Young and Joseph Cooper, 1993. ‘Multiple Referral and the Transformation of House Decision Making’, Laurence C. Dodd and Bruce I. Oppenheimer, *Congress Reconsidered*, 5th ed, Washington, D.C.: Congressional Quarterly, p. 214.

⁴¹ Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*, Washington, D. C.: Congressional Quarterly, 1997, p. 84.

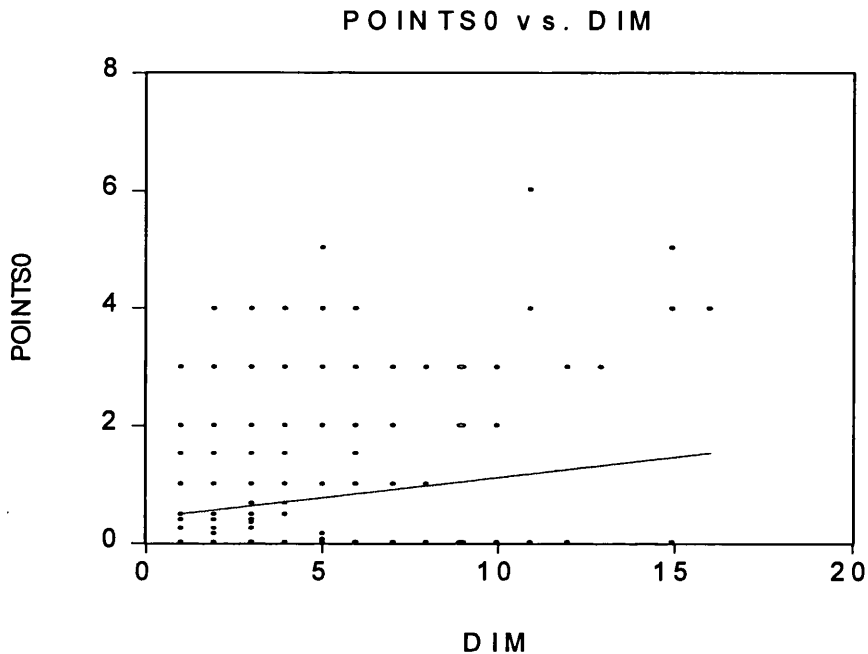


Figure 4.4. Points as a function of the dimensionality of the issue

Figure 4.4 is a scatter plot of points paid by a rapporteurship against the dimensionality variable. There seems to be a positive relationship, represented in the figure by the fitted regression line. So the preliminary analysis of the dataset supports the relationship between dimensionality and power predicted in chapter two.

The *committee responsible* is also a relevant characteristic of a rapporteurship, which can account for two main factors. On the one hand, the committee responsible is a good indicator of the main issue of the legislative act, and can account for factors such as the saliency of the issue area. For this purpose, Amie Kreppel points out that the committee jurisdictions are probably too broad categories and suggests the possibility of other categorisations more related to the specific topics of proposals.⁴² However, besides simplicity and objectivity, the committee variable presents the advantage of being consistent with the dimensionality variable which is also based on committee referrals. On the other hand, the committee responsible can account for differences in general price levels generated by the use of different ‘currencies’ across committees. The auctions whereby the rapporteurships are distributed take place in different committees which use different currencies. The points assigned to a political group in one committee cannot be used in a different committee. In summary, the committee responsible accounts for the *joint* effect of (1) the saliency of the issue area and (2) the

general price level in a committee. Joint effect means that we cannot distinguish among the two factors. The regression will consider the economic and monetary affairs committee as the baseline and introduce dummy variables for all the other committees.

<i>Committee</i>	<i>Mean</i>	<i>Std. Dev.</i>	<i>N</i>
Institutional affairs (INST)	2.000000	1.632993	3
Foreign Affairs (POLI)	1.671875	1.528068	64
Women's rights (FEMM)	1.666667	0.816497	6
Regional Affairs (REGI)	1.666667	1.354006	12
Economic and monetary affairs (ECON)	1.597633	1.084942	169
Civil liberties (LIBE)	1.127451	0.851431	51
Fisheries (PECH)	1.126182	0.949688	110
Social affairs (ASOC)	1.132500	0.925749	68
Culture, education, youth and media (JEUN)	0.923898	1.004887	59
Legal Affairs (JURI)	0.711340	0.876714	194
Research and energy (ENER)	0.633636	0.965059	121
Environment (ENVI)	0.468504	0.679506	127
Transport (TRAN)	0.362069	0.290470	58
Agriculture (AGRI)	0.283350	0.562714	591
Budgets (BUDG)	0.258621	0.623706	58
Development co-operation (DEVE)	0.200000	0.420526	30
External Economic Relations (RELA)	0.131813	0.439496	182
Total	0.648198	0.858845	1903

Table 4.3. Committee responsible and the price of rapporteurships (POINTS0)

Table 4.3 shows the distribution of the sample by committee responsible. The first feature one can observe is that not all committees have the same legislative workload. The greatest number of rapporteurships belong to the Agriculture, Legal affairs and External Economic Relations committees. From the committees who are responsible for any bill at all, Institutional Affairs, Women's Rights and Development are responsible for fewer bills. In table 4.3, committees are sorted by their average price of a rapporteurship in descending order. There is wide variation in the general price level

⁴² See Kreppel, 'What affects the EP's legislative influence?'

across committees. The committee with a greatest average price level is the Institutional Affairs committee with an average price of 2 points, followed by the Foreign Affairs committee, the Women's Rights committee. The one with a lowest price level is the External Economic Relations committee, with an average price of .13 points, followed by the Development committee and the Budgetary committee. The committee closest to the average is the Energy committee whereas the median committee is the Culture committee. The large variation across committees seems to be preliminary evidence that the committee responsible will be a relevant factor affecting the price paid for a rapporteurship. Since each committee has a different currency it might appear interesting to break down the analysis by committee responsible. Unfortunately, it is not possible to get significant results in this way for two main reasons (see table 4.1 above). First, some committees have too small a number of rapporteurships. Secondly, procedure types (consultation, assent and co-decision) are not evenly distributed across committees. Although almost all committees are responsible for some consultation procedure, many committees lack assent or co-decision procedures at all. For these two reasons it is necessary to deal with aggregated EP data instead of analysing committees individually.

4.4. TESTING THE MODEL: THE REGRESSION

In this section I test the propositions about the legislative powers of the EP developed in chapter three. In the previous section I argued that there are three factors that are likely to affect the price of a rapporteurship, namely the legislative procedure, the dimensionality of the issue and the committee responsible. In this section I explain the price of rapporteurships as a function of those factors. There is no universal functional form that social scientists prefer to all others but the ideal functional form depends very much on the case at stake. Garrod and Allinson list five criteria, statistical and practical, which a functional form should desirably meet: (i) requiring as few parameters as possible (parsimony); (ii) requiring that the parameters have clear theoretical interpretations; (iii) choosing the form which economises on computing time; (iv) explaining the observed data well and (v) making good predictions.⁴³ The fourth criterion is desirable even though the aim of the regression is not to predict the price of rapporteurships since, the better the fit, the less likely it is that a relevant variable is

being omitted and therefore that the estimates are biased. The last criterion is also desirable, but cannot drive the selection of a given functional form, since the role of the regression in this chapter is precisely to test the validity of the predictions (with a chance for them being rejected).

Tables 4.4 and 4.5 show the results of the regression applying four different estimation methods (Ordinary Least Squares, Poisson Count, Normal Count and Tobit) and two different dependent variables (POINTS and POINTS0).

POINTS								
	OLS		Poisson count		Normal count		Tobit	
	Coeff.	Std. Err.	Coeff.	Std. Err.	Coeff.	Std. Err.	Coeff.	Std. Err.
C	1.574**	0.101	0.397**	0.081	0.409**	0.072	1.436**	0.132
AVC	-0.072	0.165	-0.089	0.179	0.014	0.229	-0.224	0.252
COD	0.173*	0.083	0.168*	0.076	0.133*	0.066	0.187	0.111
DIM	0.116**	0.018	0.072**	0.014	0.065**	0.010	0.139**	0.024
FEMM	0.034	0.433	0.020	0.322	0.052	0.130	0.101	0.555
INST	1.080	0.678	0.483	0.414	0.467	0.291	1.148	0.869
PECH	-0.545**	0.131	-0.043	0.121	-0.046	0.092	-0.505**	0.169
POLI	0.063	0.207	0.033	0.183	-0.005	0.221	0.085	0.286
REGI	-0.163	0.338	-0.128	0.243	-0.026	0.178	-0.218	0.438
LIBE	-0.509**	0.172	-0.259	0.148	-0.241*	0.094	-0.533*	0.223
ASOC	-0.181	0.170	-0.051	0.131	-0.032	0.060	-0.130	0.219
JEUN	-0.798**	0.162	-0.479**	0.157	-0.422**	0.163	-0.982**	0.215
ENVI	-0.595**	0.126	-0.367**	0.106	-0.329**	0.093	-0.654**	0.164
ENER	-0.953**	0.143	-0.618**	0.132	-0.586**	0.143	-1.193**	0.190
JURI	-1.416**	0.123	-1.250**	0.149	-1.198**	0.147	-1.965**	0.172
TRAN	-1.131**	0.212	-0.734**	0.244	-0.717**	0.062	-1.062**	0.272
AGRI	-0.903**	0.11	-0.363**	0.107	-0.331**	0.094	-0.924**	0.148
BUDG	-0.927**	0.269	-0.617*	0.267	-0.678*	0.335	-1.129**	0.358
RELA	-1.745**	0.131	-2.150**	0.222	-2.120**	0.317	-2.895**	0.208
DEVE	-0.489	0.485	-0.250	0.415	-0.191	0.448	-0.755	0.660
R ²	0.292		0.309		0.311		0.287	
Adj. R ²	0.279		0.294		0.296		0.273	
N	1022		901		901		1022	
							* $\alpha < .05$	
							** $\alpha < .01$	

Table 4.4. Hedonic pricing model of the market for rapporteurships

Baseline: Consultation procedure in the Economic and Monetary Affairs Committee

Table 4.4 shows the results of the regression applying four different estimation methods to the number of registered points (POINTS). First, although the number of variables may seem excessive at first view, they just account for three characteristics (legislative procedure, dimensionality and committee responsible), so the model can be said to be

⁴³ G. Garrod and P. Allinson, *The Choice of Functional Form for Hedonic House Price Functions*.

parsimonious. Secondly, all those parameters have clear theoretical interpretations, which I have explained in the previous section. Thirdly, as far as computing resources are concerned, all the four estimation methods are standard in most econometric packages.⁴⁴ Both OLS and the tobit method are applied to the whole sample of 1022 rapporteurships, whereas the count models are applied to a reduced sample of 901 which excludes the rapporteurships for which a non-integer number of points was paid. As far as the goodness of fit is concerned, it is around 30% in all the models. The OLS method seems to fare slightly better than the tobit model. As far as the count models are concerned, the normal count seems to fare also slightly better than the Poisson count. The goodness of fit of count models is not comparable with that of OLS or the tobit model, because they explain different dependent variables.

As far as the estimated coefficients are concerned, the results are more interesting. First, in none of the regressions is the estimated coefficient for the assent procedure's dummy (AVC) significant. Secondly, the coefficient for the co-decision procedure's dummy (COD) is statistically significant at the 5% level in all the regressions but the tobit model. Thirdly, the estimated coefficient for the co-decision procedure is larger than the coefficient for the assent procedure applying any of the four estimation methods, but this difference is not significant at the 5% level, although it is significant at the 10% level in all the models except for the normal count (one-tailed test).⁴⁵ Fourthly, the coefficient for the dimensionality of the issue (DIM) is highly significant in all four regressions. According to the OLS model, for instance, an increase in one dimension increases the price of a rapporteurships by .116 points. Finally, most of the dummies for the committee responsible are significant (10 in the OLS case, 8 in the Poisson count and 9 in the other two models, out of 16 committee dummies). According to the OLS model, for instance, a rapporteurships from the legal affairs committee (JURI) attracts on average 1.416 points less than one from the baseline committee (economic and monetary affairs).

Discussion paper 23, Countryside Change initiative, University of Newcastle-upon-Tyne, 1991, p. 3.

⁴⁴ The statistics in this chapter have been done using *Econometric Views, Version 3.0*.

⁴⁵ The p-values are .0880, .0880, .3075 and .0630 for the OLS, poisson count, normal count and tobit models, respectively. The figures are given for a one-tailed test, since it does not make sense that a co-decision procedure, where the EP has both voice and veto, attracts less points than an assent procedure, where the EP enjoys only a power of veto.

POINTS0									
	OLS		Poisson count		Normal count		Tobit		
	Coeff.	Std. Err.	Coeff.	Std. Err.	Coeff.	Std. Err.	Coeff.	Std. Err.	
C	1.272**	0.080	0.070	0.083	0.044	0.114	0.738**	0.175	
AVC	0.111	0.126	0.088	0.179	0.188	0.315	0.103	0.334	
COD	0.321**	0.064	0.373**	0.076	0.303**	0.089	0.633**	0.144	
DIM	0.073**	0.013	0.082**	0.014	0.085**	0.015	0.112**	0.030	
FEMM	0.092	0.367	0.072	0.322	0.146	0.183	0.241	0.761	
INST	0.216	0.518	-0.063	0.426	-0.808	1.118	0.213	1.080	
PECH	-0.284*	0.112	0.108	0.122	0.125	0.127	-0.026	0.235	
POLI	-0.062	0.162	-0.103	0.184	-0.196	0.324	-0.154	0.375	
REGI	-0.184	0.272	-0.238	0.246	-0.142	0.219	-0.312	0.581	
LIBE	-0.366*	0.143	-0.195	0.149	-0.166	0.129	-0.335	0.303	
ASOC	-0.466**	0.127	-0.304*	0.131	-0.210*	0.106	-0.676*	0.274	
JEUN	-0.678**	0.134	-0.559**	0.157	-0.467*	0.193	-1.030**	0.294	
ENVI	-0.913**	0.094	-0.835**	0.105	-0.744**	0.125	-1.543**	0.208	
ENER	-0.944**	0.107	-0.892**	0.133	-0.793**	0.179	-1.645**	0.245	
JURI	-1.136**	0.104	-1.283**	0.148	-1.180**	0.161	-2.023**	0.242	
TRAN	-1.291**	0.135	-1.590**	0.244	-1.511**	0.194	-2.043**	0.313	
AGRI	-1.234**	0.081	-1.643**	0.109	-1.650**	0.145	-2.306**	0.184	
BUDG	-1.235**	0.137	-1.680**	0.268	-1.665**	0.377	-2.681**	0.372	
RELA	-1.408**	0.099	-2.429**	0.222	-2.413**	0.339	-3.410**	0.282	
DEVE	-1.376**	0.181	-2.022**	0.417	-1.995**	0.723	-3.449**	0.589	
R ²	0.255		0.268		0.272		0.253		
Adj. R ²	0.247		0.260		0.264		0.245		
N	1898		1788		1788		1898		
							* $\alpha < .05$		
							** $\alpha < .01$		

Table 4.5. Hedonic pricing model of the market for rapporteurships

Baseline: Consultation procedure in the Economic and Monetary Affairs Committee

Table 4.5 shows the results of the regression applying four different estimation methods to the number of registered points adjusted to include the procedures for which there is no record (POINTS0). Both OLS and the tobit method are applied to a sample of 1898 rapporteurships, whereas the count models are applied to a reduced sample of 1788 which excludes the rapporteurships for which a non-integer number of points was paid. As far as the goodness of fit is concerned, it is around 25-27% in each of the models. A comparison of the fit of different models leads to the same conclusions as in the previous case. The OLS method seems to fare slightly better than the tobit model. As far as the count models are concerned, the normal count seems to fare also slightly better than the Poisson count. Again, the goodness of fit of count models is not comparable with that of OLS or the tobit model, because they explain different dependent variables.

As far as the estimated coefficients are concerned, the results are also interesting. First, in none of the regressions is the estimated coefficient for the assent procedure dummy (AVC) significant at conventional levels. Secondly, the coefficient for the co-decision procedure's dummy is highly significant in all the regressions without exception. In the OLS model, for instance, a co-decision rapporteurship is predicted to attract .321 points more than a consultation procedure, after controlling for other factors. Thirdly, the coefficient for the co-decision procedure estimated in the regressions is larger than the coefficient for the assent procedure, but the difference is not significant at the 5% level, although it is significant at a 10% level in all the models except for the normal count (one-tailed test).⁴⁶ Fourthly, the coefficient for the dimensionality of the issue (DIM) is again highly significant in all the four regressions. Under the OLS model, for example, an increase of one dimension is estimated to increase the price of a rapporteurships by .073 points. Finally, most of the dummies for the committee responsible are significant (between 10 and 11 out of 16 committee dummies) in line with the expectation that the committee responsible is a relevant variable in affecting the price of rapporteurships. For example, under the OLS model, a rapporteurships from the environment committee is .913 points less expensive than one from the baseline economic and monetary affairs committee, after controlling for the legislative procedure and the dimensionality of the issue. As far as the value or sign of those coefficients is concerned, my theory did not predict any particular value for them.

The results of the regressions above allow to test the predictions of my informational theory of EC law-making presented in chapter three:

Proposition COMP.1: *The European Parliament has more power under the co-decision than under the consultation procedure (COD > 0).*

Null hypothesis: *The European Parliament is as powerless under the co-decision as under the consultation procedure (COD = 0).*

This proposition stems from the fact that under the co-decision procedure the EP has the powers of voice and veto, whereas under the consultation procedure it only has the power of voice. This test, therefore, is equivalent to testing whether the veto is a significant power for the EP. The null hypothesis, following some prominent authors, is that the EP is as powerless under the co-decision as under the consultation procedure,

⁴⁶ The p-values are .0640, .0672, .3614 and .0687 for the OLS, poisson count, normal count and tobit

since for them, in equilibrium, parliament will never exercise its veto. In this chapter, if proposition COMP.1 is right, we should expect a positive coefficient for the co-decision procedure ($COD > 0$, in the regressions). Conversely, if the null hypothesis is right, the coefficient should equal zero. Based on the evidence from the regressions in this chapter, we can confidently reject the null hypothesis in favour of my alternative hypothesis that the power of veto is relevant for the EP. The estimated coefficient for the dummy representing the co-decision procedure (COD) is positive and highly significant.

Proposition COMP.2: *The European Parliament has more power under the co-decision than under the assent procedure* ($COD > AVC$).

Null hypothesis: *The European Parliament has as much power under the co-decision as under the assent procedure* ($COD = AVC$).

This proposition arises from the fact that under the co-decision procedure the EP enjoys the powers of voice and veto, whereas under the assent procedure it only enjoys a veto. Testing this proposition is equivalent to checking whether the power of voice was a significant legislative power for the EP. The null hypothesis was that the power of voice was worthless for the EP and, therefore, the power of the EP will not be significantly different between the assent and the co-decision procedures. In this chapter, if the proposition is right, we should find evidence that the coefficient for the co-decision procedure is greater than that for the assent procedure ($COD > AVC$). Conversely, if the null hypothesis is right and the power of voice is worthless, we should expect equal coefficients ($COD = AVC$). The evidence in this chapter points in the direction predicted by chapter three, but it is not as strong as it would be desirable. The estimated coefficient for the dummy representing the co-decision procedure (COD) is greater than that for the dummy for the assent procedure (AVC). That difference is not significant at the 5% level, although it is significant at a 10% level if we undertake a one-tailed test. Therefore, the evidence is not sufficient to confidently reject the null hypothesis stating that the power of voice is worthless for the EP. The problem is not serious yet, since we will have another opportunity to test this prediction in the next chapter showing evidence from lobbyists' channels for the transmission of information.

Proposition COMP.3: *The European Parliament may have more, equal or less power under the assent procedure than under the consultation procedure (AVC = 0).*

Alternative hypothesis: *The European Parliament has more power under the assent procedure than under the consultation procedure (AVC > 0).*

This is a test of the importance of the power of voice vis-à-vis the veto, the proposition being equivalent to saying that the claim to a hearing may be less important, as important or more important than the power of veto for the EP. For some authors in the existing literature, as I have shown in chapter three, the power of veto is always greater than the power of the EP under the consultation procedure. So if proposition COMP.3 in chapter three is right, we should expect the estimated coefficient for the assent procedure (AVC) not to be significantly different from zero. Conversely, if the alternative hypothesis is right, the estimated coefficient should be positive and significant. The estimated coefficient for the dummy representing the assent procedure (AVC) is positive but not significant at conventional levels. This is consistent with the prediction that the power of voice may be as important as the power of veto for the EP, since the evidence is insufficient to point in the opposite direction.

Propositions CNS.3, AVC.3 and COD.3: *The legislative power of the EP increases with the dimensionality of the issue space (DIM > 0).*

Null hypothesis: *The legislative power of the European Parliament is unrelated to the dimensionality of the issue space (DIM = 0).*

The existing literature does not make any prediction in this respect, so we can consider the null hypothesis to be that the dimensionality of the issue does not affect the power of the EP. If the prediction of the model in chapter three is right, we should expect a positive coefficient for the dimensionality of the issue (DIM > 0). Conversely, if the null hypothesis is right, we should expect a null coefficient (DIM = 0). The statistical evidence presented in this chapter is highly supportive of the dimensionality prediction of my models in chapter three. The estimated coefficient for the dimensionality of the issue is positive and highly significant. This implies that we can confidently reject the null hypothesis stating that the dimensionality of the issue does not have any effect on the power of the EP, in favour of my alternative hypothesis stating that the power of the EP increases with the dimensionality of the issue space. The impact of dimensionality on the price of rapporteurships is strong enough to overturn preliminary evidence in this

chapter showing that assent procedure rapporteurships tend to be more expensive than co-decision rapporteurships. The reason is that rapporteurships under the assent procedures tend to be more multidimensional than other procedures, the mean dimensionality being 4.33, as compared to 3.02 and 2.96 for consultation and co-decision procedures, respectively.

4.5. CONCLUSIONS

In one of my interviews in 1999, a former senior official in the EP secretariat described the distribution of rapporteurships in the EP as a clear instance of the application of the *Manuale Cencelli*, which is a method for the ‘mathematical division of power’.⁴⁷ The term *Manuale Cencelli* was coined in Italy in the late 1960s. It was initially applied to a system which was used by the Christian Democracy to allocate both ministerial portfolios (ministries and junior ministries) in proportion to the size of its different factions. But the system used to distribute rapporteurships in the EP has a feature that makes it much more interesting than its Italian counterpart. Whereas in the Italian case there was proportionality for each type of assignment (ministries and junior ministries), in the EP that was not necessary. The relative value of different committee assignments was left to the preferences and wealth of political groups in each committee. The result was a ‘market value’ for different committee assignments. The market value of a rapporteurship, I have argued, can be explained by a vector of characteristics of the rapporteurship. Prominently among those characteristics is the power of the EP in the issue at stake, given by the legislative procedure applied. By means of regression analysis, one can single out the effect of different legislative procedures on the ‘market value’ of a committee assignment. The result is an economic measure of the power of the EP under different legislative procedures, which lacks the sorts of problems from which traditional measures suffer.

The results of the regression, using data on nearly two thousand legislative procedures between 1989 and 1999, strongly support the predictions of the theoretical models I developed in chapter three. Evidence in this chapter confirms that the power of veto is an important power for the EP, with co-decision rapporteurships attracting significantly higher bids than consultation cases, after controlling for other factors. Evidence also shows that rapporteurships falling under the co-decision procedure tend

⁴⁷ Personal interview.

to be more expensive than those under assent. In this case, however, the evidence is not as strong as would be desirable (the difference becomes significant at the 10% level if we apply a one-tailed test), so it is not possible to strongly confirm the relevance of the power of voice for the EP. On the other hand, there is not significant evidence either that the veto is more important for the EP than the power of voice. So the evidence that the power of voice makes a significant impact on the price of rapporteurships is weak, but there is not sufficient evidence either that the power of voice is less important for the EP than the power of veto. The results of the regressions also confirm that the power of the EP increases significantly with the dimensionality of the issue. In general, evidence in the chapter can be said to be quite supportive of the predictions in chapter three, all the estimates being significant and of the right sign, save for the estimated effect of the power of voice which, although going in the right direction, is not as significant as would be desirable. But in the next chapter we will have further opportunities to test the relevance of the power of voice, by testing the propositions related to the mechanism by which it operates. This is an advantage of the triangulation method that I use in the empirical part of this dissertation, i.e. to cross examine the evidence in this chapter with the evidence on lobbyists' channels for the transmission of information that I present in the next chapter. In any case, evidence in this chapter is highly supportive of the predictions in chapter three and, in turn, of my new method of measuring legislative power.

In all the regressions the coefficient of determination exceeds .25, which means that the model is capable of explaining at least one fourth of the variance of the dependent variable. As William Greene points out, 'whether a regression line provides a good fit to a body of data depends on the setting [...] coefficients of determination in cross sections of individual data as high as .2 are sometimes noteworthy.'⁴⁸ Indeed, a coefficient of determination of .25 may be a remarkable success for such a parsimonious model explaining the price of rapporteurships across different EP committees. In order to improve on these results, the answer may be in introducing more accurate indicators of the saliency of the issue. Indeed, as Amie Kreppel suggests, the committee responsible is probably too broad a categorisation.⁴⁹ But perhaps the solution is not in narrower categorisations but in some sort of quantitative indicators of the saliency of

⁴⁸ Greene, *Econometric Analysis*, p. 256.

⁴⁹ See Kreppel, 'What affects the EP's legislative influence?'

individual proposals, such as measures of media coverage.⁵⁰ Of course this would be a time consuming endeavour that exceeds the scope of this thesis. In addition to better measures of saliency, another relevant factor that could be included is the configuration of preferences of the different institutions involved, although this would be somewhat harder to operationalise.

The implications of this chapter go beyond the testing of propositions derived in chapter three. Most models of legislative bargaining in the EC assume that the EP is a unitary actor and they conclude that the it has power. But the EP exerts power *collectively* (only by majority can it pass an opinion or veto a legislative proposal), which, in principle, does not ensure that MEPs have power *individually*. However, this paper has shown a feature of the EP's organisation that works in the direction of transforming collective into individual power. For a political group inside the EP, to have more members in a committee means to have more points. To have more points means to have more committee assignments. To have more committee assignments means to have greater quotas of power.⁵¹ The EP's organisation leads to a 'parcelling out' of power, which makes it easier to translate the conclusions about the power of the EP to conclusions about the power of individual MEPs.

⁵⁰ See Lee Epstein and Jeffrey A. Segal, 'Measuring Issue Saliency', *American Journal of Political Science*, Vol. 44, No. 1 (Jan.), 2000, pp. 66-83.

⁵¹ See Renato Venditti, *Il Manuale Cencelli*, Roma: Editori Riuniti, 1981, p. 16.

CHAPTER FIVE

The intermediate variable: Lobbyists' channels for the transmission of information*

The study of interest groups was once, according to a recent survey of the field, perhaps the most imperial of literatures in political science. Scholars of the generation of David Truman thought that a political system could best be understood by looking at how groups formed and interacted with each other and with the government.¹ Studies of interest groups were studies of the entire political system, and students of politics were students of interest groups, virtually by definition. 'These studies had in common an ambition to use the activities of groups as a lens through which to view all of politics.'² Today, political scientists are more likely to see lobbyists as marginal actors compared to institutions such as the council, the European Commission, the EP, and the ECJ. Many studies of interest groups focus on narrower subjects such as the collective action dilemmas of the internal organisation of groups, but less than it would be desirable study how interests influence government and how government influences interests' behaviour.³ This is not only a trend in EU political science, but a general phenomenon, pointed out by Baumgartner and Leech.⁴ This chapter is within a body of literature aiming to bring back to the forefront the study of interest groups as an instrument to understand broader issues of politics.

In this chapter I use the external activities of groups to test the validity of a model of the effect of constitutional arrangements on the legislative power of different chambers in a pluricameral legislature. In particular, the chapter tests a portion of the

* A previous version of this chapter was presented at the Sixth Biennial Conference of the European Community Studies Association (ECSA), University of Wisconsin-Madison, 31 May - 2 June 2001. I thank the comments of the participants.

¹ See David B. Truman, *The Governmental Process: Political Interests and Public Opinion*, New York: Alfred A. Knopf, 1951.

² Baumgartner and Leech, *Basic Interests*, p. 44.

³ See Justin Greenwood and M. Aspinwall (eds.), *Collective Action in the European Union*, London: Routledge, 1998.

⁴ Baumgartner and Leech, *Basic Interests*.

model's predictions related to the mechanism by which the power of voice operates, i.e. the transmission of information from lobbyists to legislators. This chapter complements the tests in the previous chapter and both together constitute, as I argued in chapter one, an excellent example of triangulation at different levels of the theory.

The rest of the chapter will be divided in five sections. The first section reviews the empirical literature on the relationship between legislative powers and lobbying. The second section proposes a method for the measurement of lobbying. The third section introduces the survey and its key features. The fourth section undertakes the tests of the hypothesis on the relationship between legislative procedures and lobbying developed in chapter three. The final section presents the chapter conclusions.

5.1. LEGISLATIVE POWERS AND LOBBYING IN THE LITERATURE

The literature on lobbying is most advanced in the U.S. Frank Baumgartner and Beth Leech undertake a thorough review of what we know about how interest groups influence day-to-day governing.⁵ The connection between lobbying and law-making has been the subject of several formal models such as Austen Smith's article on Information and Influence.⁶ The relationship between lobbying and legislation has also been the subject of empirical studies more or less connected to theoretical developments. However, as Baumgartner and Leech note, 'surprisingly absent from the surveys on lobbying are discussions of how groups choose the targets of their lobbying efforts.'⁷ In this respect, controversy has centred around the question of whether lobbyists will direct their efforts towards their allies or towards the undecided or even their opponents.⁸ Empirical analyses have also looked at how lobbying tactics vary across issues.⁹ But studies have rarely focused on how interests select their targets among the different legislative bodies of a separation of powers system.

The reason why in the American literature one seldom finds studies of the influence of the constitutional division of legislative powers on lobbyists' targets is twofold. Firstly, on the supply side, is that it is very difficult to find different

⁵ Baumgartner and Leech, *Basic Interests*.

⁶ Austen-Smith, 'Information and Influence'.

⁷ Baumgartner and Leech, *Basic Interest*, p. 155.

⁸ See, for example, Raymond A. Bauer, Ithiel de Sola Pool and Lewis A. Dexter, *American Business and Public Policy: The Politics of Foreign Trade*, New York: Atherton Press, 1963.

⁹ See Jeffrey M. Berry, *Lobbying for the People: The Political Behavior of Public Interest Groups*, Princeton, N.J.: Princeton University Press, 1977 and Kay Lehman Schlozman and John T. Tierney, *Organized Interests and American Democracy*, New York: Harper and Row, 1986.

institutional arrangements in lawmaking, since the American legislative procedure is much more streamlined than its EU counterpart, which features different legislative procedures for different issue areas. In addition, the American legislative procedures have not varied across time as much as the EU ones, so that it is also difficult to find variation due to the effect of constitutional reforms. In other words, the American legislative system does not constitute such a natural laboratory for the study of the influence of different institutional arrangements on law-making as the EC system represents. Secondly, on the demand side, since in the US less need is perceived to modify the constitution than in the EU, the study of different institutional arrangements loses interest. For these two reasons, the question of the influence of the division of powers on lobbying targets has been left for other legislative systems, such as that of the European Community.

The EC legislative system presents ideal conditions for the study of the influence of the division of legislative powers on lobbyists' strategies. But, nevertheless, studies of this issue can be counted with the fingers of one hand, the deficit being not only quantitative but also qualitative. When such studies have been undertaken, it has been in a mostly empirical way, where intuition has taken the place of formal theory. In this fashion, Sidjanski has early pointed out the possibility of using interest group targets as indicators of the powers of different institutions within the political system of the European Community. His argument ran as follows:

To the extent that interest groups orient their action to an institution and seek to influence its decisions, they can constitute indicators both of the role and of the powers of the institution which is the object of their claims and pressures. Interest groups, which do not usually undertake gratuitous acts, seek the greatest effectiveness. Thus, the study of interest groups allows to assess their influence but also the importance that they confer to an institution within a political system.¹⁰

Similarly, Kohler-Koch points out that 'several factors support the argument that the European system of interest intermediation is highly dependent on the "logic of

¹⁰ 'Dans la mesure où les groupes d'intérêt orientent leur action vers une institution et cherchent à infléchir ses décisions, ils peuvent constituer des indicateurs quant au rôle et aux pouvoirs de l'institution qui est l'objet de leurs sollicitudes et pressions. D'autant que les groupes d'intérêt qui n'ont pas costume d'accomplir des actes gratuits visent le maximum d'efficacité. Ainsi l'étude des groupes d'intérêt permet d'évaluer leur influence mais aussi l'importance qu'ils accordent à une institution dans un système politique.' Dusan Sidjanski, 'Le Parlement Européen et les Groupes d'Intérêt', in R. Hrbek, J. Jamar and

influence” and that interest organizations reacted to political system formation.’¹¹ She writes:

Treaty provisions frame the participants perception of the role of the EP in European policy-making, the timing of interest representation and the kind of actors to be contacted. There is a broad agreement that the political weight, and accordingly the attention of interest groups will vary depending on the different legislative procedures. It is the experience of MEPs that the codecision procedure receives the highest attention of interest groups whereas the consultation procedure is more or less neglected.¹²

She explains how interest groups ‘pursue a “dual strategy”, striving for access through national governments as well as directly to the Community institutions’. She argues that the combination of multiple channels of access is mandatory because of two main reasons: First, in the EU policy-making cycle, the arena changes. Decision at EU level-implementation at national level. Secondly, even though the locus of policymaking may be unequivocal, different procedures apply to different issues, distributing decision-making powers differently.¹³

There are at least four instances in the literature where the study of lobbying is used as a means towards understanding the powers of the different institutions within the EU political system. These are Sidjanski (1984), Coen (1997), Coen (1998) and Kohler-Koch (1997). All these studies are based on surveys. Table 5.1 shows a classification of past surveys used in empirical studies as a function of two variables: (1) whether the surveys are based on hypothetical or factual questions, and (2) the unit of analysis.

W. Wessels, (eds.), *The European Parliament on the Eve of the Second Direct Elections: Balance Sheet and Prospects*, Bruges: De Tempel, 1984, p. 520.

¹¹ Beate Kohler-Koch, ‘Organized Interests in European Integration: The Evolution of a New Type of Governance?’, in Helen Wallace and Alasdair R. Young, *Participation and Policy-Making in the European Union*, Oxford: Clarendon Press, 1997, p. 46,

¹² Kohler-Koch, ‘Organized Interests in the EC and the EP’, p. 9.

¹³ Kohler-Koch, ‘Organized Interests in European Integration’, pp. 47-48.

		<i>Units of analysis</i>		
		Lobbyist-period of time	Lobbyist-group of issues	Lobbyist-issue
<i>Questions</i>	Hypothetical	Sidjanski 1984 Coen 1997	Coen 1998	
	Factual	Sidjanski 1984	Kohler-Koch 1997a	This study

Table 5.1. Surveys of lobbyists' targets

Sidjanski aims to analyse the impact of institutional changes on the influence of the EP as indicated by interest group targets. He focuses mainly on the advent of direct elections to the EP and the increase in Parliament's budgetary powers. In his paper, Sidjanski uses the results of a survey conducted by the research service of the Economic and Social Committee distributed in 1978 among 22 people responsible for the main European interest groups.¹⁴ The survey asked those managers to rank four European institutions, namely the commission, the economic and social committee, the EP and the council as channels to exercise influence.¹⁵ The result was that the commission came first, followed by the economic and social committee, the council and, finally, the EP. Sidjanski wanted to check whether the situation had changed as a consequence of the move towards direct EP elections and the increase in its budgetary powers. However, for the period after the advent of direct elections and the increase in the EP's budgetary powers, Sidjanski does not count on a similar survey to the one he had for 1978. Instead of replicating the survey in 1980, his evidence for the second period consists in two case studies. Such a method presented a number of limitations, the first being the heterogeneity of the sample. The evidence for the two moments is so heterogeneous that it is difficult to compare: on the one hand, evidence for the first period was based on an interpretative question whereas evidence for the second period was based on actual facts. On the other hand, evidence on the first period was based on a survey whereas that for the second period was a set of two case studies. The second shortcoming was that the questions in the survey were hypothetical rather than factual. The final limitation was the scarcity of data, provoked by the fact that the study's units of analysis

¹⁴ Dusan Sidjanski, 'Le Parlement Européen et les Groupes d'Intérêt', p. 522; Economic and Social Committee, 'Les Groupements d'intérêts européens et leurs relations avec le Comité économique et social', Brussels: Delta, 1980, pp. 22-24.

were lobbyist-periods of time. The study only counted on two periods of time, or rather, one and a half (because of the use of case studies for the second period). With such a small dataset, it is impossible to separate based on the data the influence of different institutional changes.

David Coen (1997) improves on Sidjanski in that he is consistent in using the same type of data for the two periods that he analyses. He uses a sample of 54 firms from an industrial survey of 300 large firms to which he asked how they *would* allocate a finite amount of political resources between various political channels within the EU in 1994 and in 1984. The questionnaire was designed in part 'to see if firm activity had altered after the SEA and how much effect the Maastricht Treaty would have.' The study has a number of problems, however. First, as the previous study, it is based on time periods so it is impossible to separate the effect of different institutional changes (for instance the SEA and Maastricht treaty reforms). Secondly, the study is based on a hypothetical question. It is difficult to believe that respondents are able to give sensible answers to the questions. Even more difficult when they are asked about two periods of time ten years away from each other. It is at least dubious whether respondents are able to determine who they would allocate political resources now but to expect that they are able to make a reasonable allocation for ten years earlier is far too optimistic. And even if they were, the fact that the question is hypothetical makes it impossible to assess the experience of the respondents of the area they are being questioned.

David Coen (1998) also shows the result of asking the government affairs directors of Europe's largest companies to rank four different channels of influence in terms of their effectiveness in influencing policy issues. These channels are national associations, national authorities, European Federations and European Institutions. For the purposes of our analysis, the limitation of this survey is that such categorisation does not allow to separate between the different European institutions, such as the commission and the EP. But it also presents an advantage with respect to Coen (1997), in that questioning about six different policy issues generates greater variation than just asking about two time periods. What is not clear is whether the question refers to total or marginal effectiveness. But, as in the previous study, the conclusions are based on hypothetical questions about perceptions rather than on factual questions. As the study warns, 'it does not represent real differences in activity or allocation of resources'.

¹⁵ Draws were allowed.

Finally, Beate Kohler-Koch reports that 85% of the consultants she surveyed agree that the attention that they pay to the EP differs according to what legislative procedure is applied.¹⁶ She also argues that '[i]t is the experience of MEPs that the codecision procedure receives the highest attention of interest groups whereas the consultation procedure is more or less neglected.'¹⁷ In the absence of more information about the design and implementation of her survey, it seems that she may have asked about the validity of her intuitive hypothesis directly, thus inducing in the respondents a bias in favour of a positive answer.

My survey tries to overcome the limitations in these other surveys. First and foremost, my survey asks factual questions (as opposed to questions about opinion) on how firms have allocated their resources among the different institutions. Second, the unit of analysis is not a period of time or a group of issues, but a single legislative procedure. For the most part, surveys have tended to ask respondents what they 'usually' do, not what they did in a particular case. But it is also possible to ask respondents about particular issues, as Kingdon did in his *Congressmen's Voting Decisions* where he asked members of Congress to answer questions of their decision making in the context of particular issues.¹⁸ Heinz et al. (1993) did the same applied to interest groups, asking them about eighty different specific issues.¹⁹ But Beth Leech went a step further: she asked respondents to identify the issue with which they had most recently been involved and to answer some questions on that issue.²⁰ In this sense, her survey can also be useful to understand with what types of issues lobbyists are more involved. For its numerous advantages, I adopt her design for my survey. When questions focus on specific issues rather than on broad groups of issues or on generalisations, questions become more concrete and easier to answer by the knowledgeable respondent.²¹ Secondly, the issue-based approach allows to obtain more potential variation in the variable of interest. Thirdly, questions are about the recent past so that facts are easier to remember by the respondents. Finally, the purpose of the

¹⁶ Kohler-Koch, 'Organized Interests in the EC and the EP', p. 9, footnote 7.

¹⁷ Kohler-Koch, 'Organized Interests in the EC and the EP', p. 9.

¹⁸ John W. Kingdon, *Congressmen's Voting Decisions*, 3rd ed. Ann Arbor: University of Michigan Press, 1989.

¹⁹ John P. Heinz, Edward O. Laumann, Robert L. Nelson and Robert H. Salisbury, *The Hollow Core: Private Interests in National Policymaking*, Cambridge: Harvard University Press, 1993.

²⁰ Beth L. Leech, *Lobbying Strategies of American Interest Groups*, Ph.D. dissertation, Texas A&M University.

²¹ See Baumgartner and Leech, *Basic Interests*, p. 147.

survey is not unveiled by dividing issues into groups or issue areas in order not to induce a bias in the respondents.

5.2. LOBBYING AND ITS MEASUREMENT

The proper measuring of lobbying requires a previous definition of what is understood by lobbying, which is not absent from difficulties. Baumgartner and Leech have observed that ‘the word *lobbying* has seldom been used the same way twice by those studying the topic.’²² Lester Milbrath wrote that ‘the words “lobbyist” and “lobbying” have meanings so varied that use of the almost inevitably leads to misunderstanding’.²³ If one is to avoid these kinds of misunderstandings, a clear definition must be given. I have chosen my definition keeping two considerations in mind. First, the definition should be consistent with the model of law-making that I developed in chapter two and applied to the EC case in chapter three, whose predictions this chapter is intended to test. Second, the definition should be compatible with what in the literature is defined as lobbying, in order to facilitate comparisons. By succeeding in these two fronts I think I can get this chapter to serve its purpose and avoid being accused of using a too ‘ad hoc’ definition. Lobbying is ‘strategic information transmission’, as Austen-Smith has pointed out.²⁴ This is also what my model proposes so this can be the base of a definition that unites consistency with the model developed in chapters two and three and applicability to other models. Thus, I define lobbying as *the strategic transmission of policy-relevant information from lobbyists to legislators with the intention of influencing the outcome of legislation*. This definition is concrete enough to define essential features of lobbying as understood in my model of lawmaking, whereas it is at the same time broad enough to be applicable to other models where lobbying is not modelled in exactly the same way as in my model.²⁵ But once lobbying is defined, another question is how to measure it.

In principle there are two possible ways to quantify the transmission of policy-relevant information. The first consists in counting the number of lobbyists active over a given issue. In my model lobbyists transmit policy alternatives. Since each lobbyist transmits not more than one policy alternative over a given issue, the number of

²² Baumgartner and Leech, *Basic Interests*, p. 33.

²³ Lester W. Milbrath, *The Washington Lobbyists*, Chicago: Rand McNally, 1963.

²⁴ Austen-Smith, ‘Information and Influence’, p. 799.

²⁵ For example Austen-Smith, ‘Information and Influence’, pp. 799-833.

alternatives transmitted equals number of lobbyists active over that given issue. The second possibility consists in measuring the expenditure in lobbying activities. This approach takes account of the fact that lobbying is costly, i.e. it is costly for a lobbyist to transmit a policy alternative to a legislator. Since there is a direct relationship between the number of alternatives transmitted by a given lobbyist and the cost of transmitting those alternatives, it is possible to quantify lobbying as the amount of resources spent in lobbying. This approach presents an important advantage over the one based on the counting of lobbyists active over a given issue. This advantage consists in the fact that some legislative procedures are multiple, this is, they consist of several independent issues (not to be confused with multiple dimensions) whereas other legislative procedures are not. In these instances measuring based on expenditure of resources is likely to represent more faithfully the amount of policy relevant information transmitted than a simple counting of lobbyists active, the latter giving the same weight to the information transmitted by a lobbyist in a three-issue legislative proposal as to that transmitted in a simple one. This is one of the reasons why I prefer to use measures of lobbying based on the expenditure of resources rather than on a simple count of active lobbyists.

There are two main sources of data on lobbying activity. The first one is registers of lobbyists, which presents the advantage of being a very objective way of measuring lobbying. The greater the number of lobbyists that are registered to work with a given institution, the more important we can assume the lobbying towards that institution to be. But this approach also presents some problems. First, it is possible that some lobbyists are not on the registry. There might be some interest for lobbyists not to be considered as lobbyists and the access to legislators is not usually difficult. They frequently receive constituents, visitors, etc. In addition, contacts with legislators take many forms, for many of which it is not necessary to be registered in any registry. But the second and foremost problem of the registry approach is that institution's registers of lobbyists may allow to study the variation in lobbying towards a given institution across time, but they do not permit to disaggregate the results to lower levels, such as issue areas or individual issues.

The second source of data on lobbying activity is self-reports of lobbying activity, usually obtained from surveys. Surveys can be addressed to lobbyists or to legislators. In both cases registers are needed first, in order to elaborate a mailing list. In the case of legislators, registers are more accurate because legislators are public and stay

in their positions for rather long periods of time. But in the case of professional lobbyists, without being public figures, registers can also be obtained because of their interest in advertising their services. There is one reason why it is more convenient to address the survey to lobbyists than to legislators: the former are in a better position than the latter to know the amount of resources spent in trying to influence the outcome of legislation. The main advantage of surveys over institutions' registers is that surveys allow to ask the questions about the units of analysis of the study the survey is intended to serve. For example, surveys allow to have data not only by period of time, but also by issue area or even by piece of legislation. It is mainly for this reason that in this study I have opted for a survey of lobbyists.

Uncertainty and the representativeness of the sample

In this chapter I intend to obtain a measure of the resources spent by the lobbying industry in trying to influence EC legislation. However, my survey is directed only to a subset of the lobbying industry, namely political and public affairs consultants. The question is now the following: will the expenditure decisions of this subset be representative of those of the whole lobbying industry? In this section I will argue in favour of an affirmative answer.

Policy entrepreneurs (lobbyists in my model) are 'people willing to invest their resources in return for future policies they favour.'²⁶ Lobbying is an investment in the sense that lobbyists spend present resources in exchange for the expectation of a future and uncertain good (policy). In this sense, lobbyists bidding for access to legislators are not unlike financial investors bidding for firms shares. The total amount of resources invested in a given financial asset is relatively easy to measure. But measuring spending on lobbying a given legislative body is not so easy, since the legislative market is not as efficient as its financial counterpart. Money is spent on lobbying, but more indirectly. As we have seen in chapter two, expenditure takes the shape of time, report writing, etc., in addition to direct money payments, which are less common. Furthermore, legislative bodies do not have a registry of those who access them, namely political investors or lobbyists. Since it is so difficult to measure the cost of access to different legislative bodies, it may be worth looking at simplified methods, such as analysing the decisions of just a sample of the lobbying industry.

²⁶ Kingdon, *Agendas, Alternatives and Public Policies*, p. 204.

There are several ways to obtain a sample of the lobbying industry. On the one extreme, we can draw a random sample of the whole lobbying population. But drawing such a sample is not exempt from difficulties, mostly once we realise that we do not know the whole lobbying population from which to draw the sample. On the other extreme, it is possible to concentrate exclusively on a particular type of lobbyists, such as professional European public affairs and political consultants. This simplifies things much, since the population is then reduced. And a second advantage is that political consultants can be assumed to know better than others how the legislative system works, since they operate in a very competitive market that leads to the survival of the fittest and the best. But what if professional lobbyists' portfolios are specialised? In other words, can we expect the predictions for the whole lobbying industry to hold for just a subset of the former?

There is a theoretical basis for thinking that the unrepresentativeness of the sample will not be so much of a problem. The argument goes that if lobbying decisions are risky investments, then risk averse lobbyists have an incentive to diversify their portfolios. In concrete, it can be enlightening to apply here a model that was developed for financial investments, the Capital Asset Pricing Model (CAPM).²⁷ The CAPM assumes that there is a market interest rate (r_m) at which investors can borrow and lend at will without risk and that investors are risk averse. The model represents investments on a two dimensional space according to their average returns and their risk. Given these assumptions it is a prediction of this model that all investors, irrespectively of their degree of risk aversion, will have the same portfolio of risky assets, known as the market portfolio of risky assets and represented by the point (σ_m, R_m) in figure 5.1. Differences in risk aversion will translate only into differences in the rate of risky to risk-free assets, along the line starting at $(0, R_0)$ and passing through the market portfolio of risky assets (σ_m, R_m) .

²⁷ See S. Ross, 'The capital asset pricing model (CAPM), short sales restrictions and related issues', *Journal of Finance*, 32, 177-83.

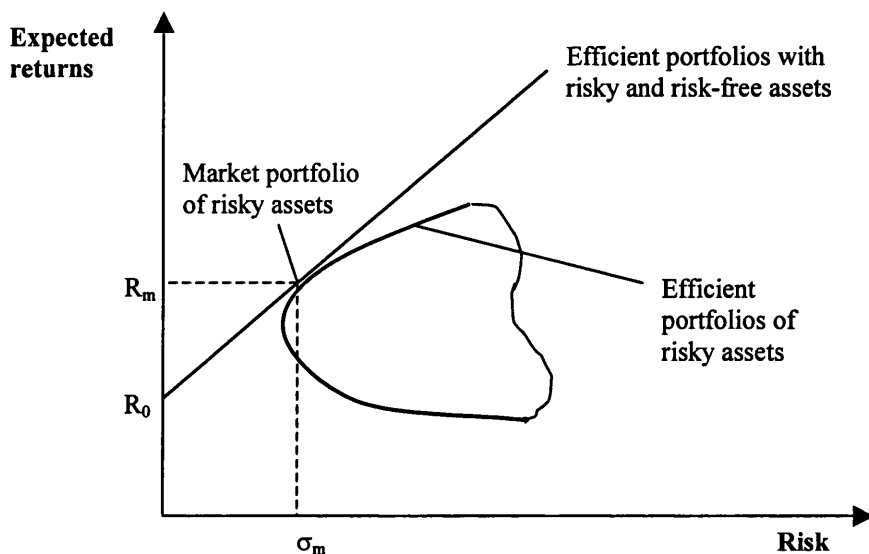


Figure 5.1. The Capital Asset Pricing Model

Source: Adapted from Varian (1992)

If we apply the CAPM to lobbyists' decisions, then we can expect that the portfolio of targets of any subset of the lobbying industry will be representative of the whole lobbying industry, with no need that the sample be random. Therefore, the predictions we developed about the composition of the portfolios of the lobbying industry as a whole will also apply to the portfolios of professional lobbyists, on which we have data. I will use those data to test the prediction of my model, in chapter three. The appeal of applying the CAPM to the analysis of lobbyist targets' portfolios is backed both theoretically and empirically. Theoretically, the simulations in chapter three showed a great variability in the marginal returns to lobbying. Most of the time, the marginal lobbyist had no influence on the policy outcome, whereas a few times it was extraordinarily successful. With so much variability in returns to lobbying risk aversion is very likely to affect lobbyists decisions.

Empirical evidence seems to support the assumptions on which the CAPM is based, as well as its predictions. As far as the assumptions are concerned, the risky nature of lobbying may be evidenced by the low survival rate of lobbying firms evidenced in the survey. Of 153 questionnaires sent, 12 were returned because the recipient had left without an address, which represents a 7.84%. If we take into account that the directory on which the survey is based is updated annually, the fact that 7.84% of lobbyists disappear within one year makes one think that lobbying is not free of risk. Empirical evidence from the US and the EU also appears to support the fact that

lobbyists do diversify their portfolios, as predicted by the CAPM. In this direction, Baumgartner and Leech (1999) conclude, on the basis of extensive empirical evidence, that 'specialisation on a single lobbying tactic is quite uncommon.'²⁸ Empirical evidence from the EU legislative system seems to point in the same direction. Mazey and Richardson conclude that 'effective lobbying (especially since the introduction of the co-decision procedure) requires a multi-track strategy, which utilises the multiple access points that the complex EU policy process provides.'²⁹ Similarly, Long draws from the success of the environmentalists in changing the structural funds that a group should not rely on trying to influence just one or two EU institutions, 'but has to try to use the whole range of possibilities at different times to achieve maximum effect'.³⁰ Finally, lobbyists' portfolio diversification is given other names, such as multi-level networks. In particular, Wessels notes the increasingly important role of the EP in those networks.³¹ In conclusion, if the CAPM can be applied to political entrepreneurs' lobbying decisions, as empirical evidence seems to support, we should expect the results obtained from the survey of political and public affairs consultants to be quite representative of the whole lobbying industry.

5.3. THE SURVEY

Data presented here stem from a postal survey of 153 political and public affairs consultants engaged in EU issues drawn from Euroconfidentiel's *Directory of EU Information Sources* and Landmarks' *European Public Affairs Directory*.³² The survey was undertaken in the spring and summer of 2000. Following Leech, lobbyists were asked to identify the two most recent legislative procedures on which they had been active.³³ On each of these two procedures, they were asked to report how much time they had spent and to tell how they had distributed their time and resources among the

²⁸ Baumgartner and Leech, *Basic Interests*, p. 154.

²⁹ Sonia Mazey and Jeremy Richardson, 'The Commission and the Lobby', in Geoffrey Edwards and David Spence (eds.), *The European Commission*, 2nd ed., London: Cartermill International Ltd., pp. 178-98, p. 179, quoting Mazey and Richardson, 1995.

³⁰ Tony Long, 'Shaping Public Policy in the European Union: a Case Study of the Structural Funds', *Journal of European Public Policy*, Vol.2(4), 1995, pp. 672-79. P. 677.

³¹ Wolfgang Wessels, *The Growth and Differentiation of Multi-Level Networks: A Corporatist Mega-Bureaucracy or an Open City*, in Helen Wallace and Alasdair R. Young, *Participation and Policy-Making in the European Union*, Oxford: Clarendon Press, 1997. p. 35.

³² Euroconfidentiel, *The directory of EU information sources*, 10th revised edition, Genväl, Belgium: Euroconfidentiel, 1999; Landmarks, *European Public Affairs Directory 2000*, Brussels: Landmarks, 1999.

³³ Leech, *Lobbying Strategies of American Interest Groups*.

commission, the European Parliament, the council or member governments and other institutions. The questionnaire also included questions on the organisation they worked for and on their rank and experience.

Of the 153 questionnaires sent, 12 were rejected on the grounds that the recipient was unknown or had moved without leaving a forwarding address. This represents 7.84% of the total and can be considered a rough indicator of the turnover of firms in the industry. If we deduct those 12 rejected questionnaires we obtain an adjusted sample size of 141. Comparing it with other similar surveys on EU lobbying, this sample size is on an intermediate level, between the 22 cases of the Economic and Social Committee's survey and David Coen's 300-strong survey of large firms.³⁴ If compared to US surveys of lobbyists' activities, this sample size compares well to Milbrath (1963), Berry (1977) or Schlozman and Tierney (1983, 1986) with samples of 101, 83 and 175 respectively. However, it is far from medium and large surveys such as those in Walker (1983, 1991), Heinz et al. (1993), Knoke (1990), Nownes and Freeman (1998) with samples of more than 1000, more than 1000, circa 9000 and circa 900, respectively.

As far as the response rate is concerned, 29 questionnaires were responded, which represents a 20.57% of the adjusted sample size. This response rate is smaller than that of other postal surveys but, as Kohler-Koch and Quittkat point out, 'in the social sciences a return rate of 20 percent is considered to be sufficient'.³⁵ Even more so if we take into account that the questions asked are factual rather than hypothetical, the former demanding much more knowledge from the respondents.

³⁴ Economic and Social Committee, 'Les groupements d'intérêts européens et leurs relations avec le CES'; David Coen, 'The evolution of the large firm as a political actor in the European Union', *Journal of European Public Policy* 4, 1997, pp. 91-108.

³⁵ Beate Kohler-Koch and Christine Quittkat, 'Intermediation of Interests in the European Union', *Arbeitspapiere - Mannheimer Zentrum für Europäische Sozialforschung* Nr. 9, 1999, p. 2, footnote 1.

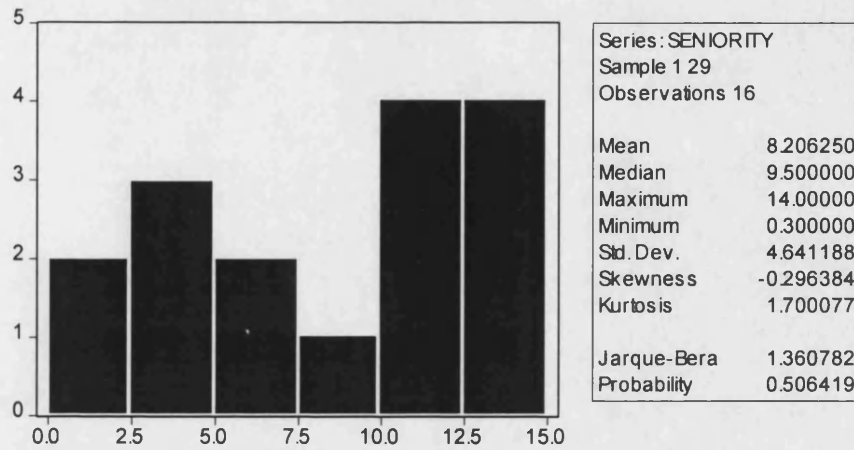


Figure 5.2. Respondents' seniority within the firm

As far as the respondents are concerned, of the 18 who answered the question about their rank in the firm, 14 were directors of the firm or of its Brussels office (77.78%), 3 were middle managers or account managers (16.67%) and only one was a staff member (5.56%). Figure 5.2 shows the seniority of those interviewed. Among the 16 who replied to this question, the average experience amounted to eight years. All in all, the median respondent was a director with nine-and-a-half-years experience in the firm. Rank and seniority are relevant in so far as they are related to the knowledge of the respondent about the lobbying activities of the firm, although in the case of this survey reliability is guaranteed by the type of questions asked, which are factual questions about two cases of legislation with which the respondent was familiar. In other words, statistics on the respondents' rank and seniority do nothing but confirm that the survey design was successful in ensuring that the respondents had knowledge of the issue they were questioned about.

<i>Procedure</i>	<i>No.</i>	<i>Title of procedure</i>
CNS	1	Council Regulation (EC) No 133/94 of 24 January 1994 amending Regulation (EEC) No 1785/81 on the common organization of the markets in the sugar sector
CNS/2000/0118	1	Excise duties: temporary quantitative restrictions for products brought into Sweden (amend. direct. 92/12/EEC)
CNS/2000/0038	1	Excise duty beer imports into Finland: temporary quantitative restrictions (amend. direct. 69/169/EEC, 92/12/EEC)
CNS/1999/0056	2	Value added tax VAT: reduced rate on labour-intensive services (amend. direct. 77/388/EEC)
CNS/1998/0811	1	Foodstuffs produced from GMOs: compulsory indication on the labelling
CNS	1	Abolition of Duty free for intra EU trade Directives 91/681 and 92/12 EEC
SYN/1995/0340	1	Contained use of genetically modified micro-organisms GMM (amending Direct. 90/219/EEC)
SYN/1997/0085	1	Waste management: landfill
COD/1997/0194	1	End of life vehicles
COD/1998/0072	1	Genetically modified organisms GMOs: deliberate release into the environment (amend. Direct. 90/220/EEC)
COD/1995/0350	2	Legal protection of biotechnological inventions
COD/1998/0240	1	Pharmaceutical industry: marketing and Community procedure for designating orphan medicinal products
COD/1996/0112	2	Cocoa and chocolate products intended for human consumption
COD/1998/0289	1	Air pollution: incineration of waste (replacing direct. 89/369/EEC, 89/429/EEC, 94/67/EC)
COD/1996/0164A	1	Air pollution: emissions from motor vehicles, Auto-oil programme (amend. direct. 70/220/EEC)
COD/1995/0079	1	Public procurement: services, supply and public work contracts (amend. direct. 92/50/EEC, 93/36/EEC, 93/37/EEC)
COD/1999/0090	1	Foodstuffs, consumers' protection : labelling, presentation and advertising. (codif. direct. 79/112/EEC)
COD	1	Waste directive
COD/1991/0385	2	Natural gas: common rules for the internal market
COD/1996/0123	1	Packaging: marking and establishment of a conformity assessment procedure
COD/1992/0436	1	Packaging and packaging waste
COD/1998/0228	1	Environment: substances depleting the ozone layer (regul. 3093/94/EC, amend. Montreal protocol)
COD/1998/0191	1	Electronic communication, open networks safety: electronic signatures, common regulatory framework
COD/1997/0124	1	Credit institutions and investment firms: capital adequacy (amend. Direct. 93/6/EEC)
COD/1994/0130	1	Public health: Community action programme on health promotion, information, education and training 1996-2000
Other	1	Recommendation of the Council of Europe animal welfare Committee regarding force feeding of Barbary ducks & geese (binding recommendation)
Other	1	Legislation concerning rules of origin for processed foods in EEA

Table 5.2. List of issues covered by the survey

Table 5.2 shows the list of issues in which the respondents reported to have been active. The most common procedure was the co-decision procedure, with 20 cases, followed by the consultation procedure with seven cases. At a much larger distance appear the co-operation procedure (SYN) with 2 cases and two other procedures, which are not proper EC procedures involving the Council of Europe and the European Economic Area. There was no assent procedure. The table shows that there is wide variation as far as the issues concerned, which range from environment to tax harmonisation and agriculture. Also very interesting is the fact that there are four instances of multiple lobbyists lobbying over the same piece of legislation, which is in line with the theory in chapters two and three. It is a somewhat ironic coincidence that one of these four issues happens to be the chocolate directive, which is used as an example all throughout Crombez's model which, for the sake of simplicity, assumes the existence of a single lobbyist.³⁶

5.4. TESTING THE THEORY

As said in the introduction to this chapter, the purpose of this survey is to test some predictions of a model of EC law-making under different legislative procedures. These predictions relate to the amount of lobbying received by the commission and the EP under different legislative procedures of the EC. First the predictions on the consultation procedure are analysed followed by those on the co-decision procedure. Predictions on the assent procedure are not tested in this chapter, since there is no assent case in the dataset. For each prediction, some preliminary statistical data are shown first, which is followed by the test itself. Predictions are always tested against alternative hypotheses, derived from the existing literature. This is always followed by an analysis of the results and how they relate to the model of lawmaking in the first part of the thesis.

The consultation procedure

Proposition CNS.1: *Under the consultation procedure, in the equilibrium, the European Parliament will always receive a positive amount of lobbying.*

Null hypothesis: *Under the consultation procedure, the EP will not be lobbied.*³⁷

³⁶ Crombez, 'Information, Lobbying and the Legislative Process in the EU'.

³⁷ Crombez, 'Information, Lobbying and the Legislative Process in the EU'.

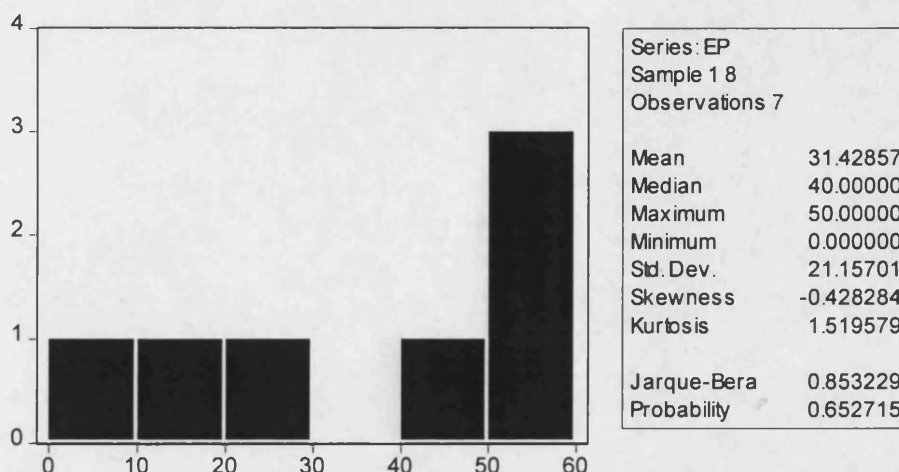


Figure 5.3. EP's share of lobbying under consultation

Figure 5.3 shows some descriptive statistics of the EP's share of lobbying under the consultation procedure. The first feature to note is that observations concentrate in the extremes of the distribution, which is consistent with the model's prediction that lobbying through the commission and lobbying through the EP are substitutes. The mean value of 31.4 means that the average lobbyist directs 31 per cent of its resources to lobby the EP. This seems to support the model's prediction that the EP will receive a positive amount of lobbying under consultation, against the null hypothesis, although we still do not know how significant this result is.

Hypothesis Testing for EP's share of lobbying

Sample: consultation procedures

Included observations: 7

Test of Hypothesis: Mean > 0.000000

Sample Mean = 31.42857

Sample Std. Dev. = 21.15701

Method	Value	Probability 1-tailed
t-statistic	3.930243	0.0039

Table 5.3. Testing the EP's mean share of lobbying under consultation

Table 5.3 shows a preliminary hypothesis test of the EP's mean share of lobbying. The test shows that the mean value of 31.4 per cent is significant at a 1 per cent level. In this case the relevant p-value is the one corresponding to a one-tailed test, since the alternative hypothesis (the model's prediction) is that the EP will receive a positive amount of lobbying and the null hypothesis is that the EP will receive zero lobbying

because variable 'EP's share of lobbying' cannot take negative values. The result is very supportive of the model's prediction, since it allows us to reject the null hypothesis that states that the EP will not be lobbied under the consultation procedure at a confidence level of 99 per cent.

Dependent Variable: EP's share of lobbying				
Sample(adjusted): consultation procedures				
Included observations: 6 after adjusting endpoints				
Weighting series: TIME				
Variable	Coefficient	Std. Error	t-Statistic	Prob. (1-tailed)
C	35.55465	4.792080	7.419459	0.0004

Table 5.4. Testing the weighted EP's share of lobbying under consultation

Should a small case of lobbying involving a few hours be awarded the same weight in calculating the average than a case of lobbying that consumed thousands of hours? This is the question of whether observations should be weighted. In their 175-strong sample of interests, Schlozman and Tierney, was weighted toward the most active organisations, according to the number of times the group appeared in the National Journal's Index to Organisations.³⁸ In table 5.4 the sample is also weighted, although in this case the weights are determined within the survey, this is, the actual amount of time lobbyists reported having spent in each lobbying case. This weighting is natural if we want to assess the total share of lobbying that each institution receives for a given group of cases (those falling under the same legislative procedure) instead of the behaviour of the average lobbyist.

The results are in the same direction but even stronger this time. The null hypothesis that the EP will receive no lobbying can be rejected at a significance level of 0.1%, which means that we can reject the null hypothesis in favour of the model's prediction with a confidence level of 99.9%. In conclusion, the survey data offer very strong evidence in favour of the prediction of my model in chapters two and three, against the hypothesis derived from the prevailing rational choice literature that the EP will not be lobbied under the consultation procedure. In my model, the EP is lobbied because it has what I have called a 'legal claim to a hearing' that affords it the ability to influence legislation. In chapter four, empirical evidence from the market for committee

assignments was insufficient to conclude that this power was significant, at conventional significance level. However, the evidence from the activity of professional lobbyists presented in this chapter provides very strong evidence that the legal claim to a hearing is an important power for the EP.

Proposition CNS.2: *Under the consultation procedure, in the equilibrium, the commission will always receive a greater amount of lobbying than the EP.*

Null hypothesis: Under the consultation procedure, the commission and the EP will receive equal amounts of lobbying.

We have evidence to test this prediction. Observations are paired, so I create a new variable named COMMEP by subtracting the EP's share of lobbying from the commission's. A preliminary description of results is shown in figure 5.4.

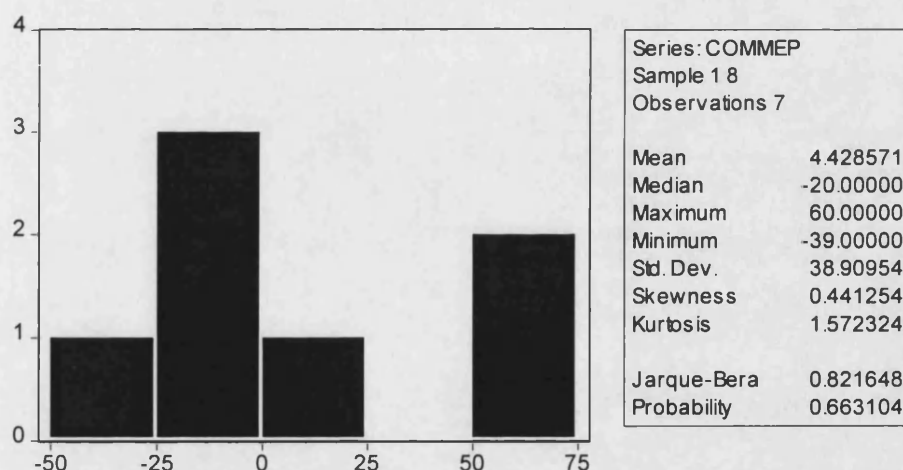


Figure 5.4. Difference between the commission's and the EP's share of lobbying under consultation

When one looks at figure 5.4, the first thing one notes is the great degree of variation in the difference in the share of lobbying directed towards the commission and the EP under consultation. This is not unexpected, since the unit of analysis of the survey is a lobbyist-legislative procedure. In fact the theory predicted that lobbyists would approach either the commission or the EP but not both at the same time over the same issue. So we should expect differences to be great in absolute value and the distribution to be concentrated on the extremes. However, we also find a few central values, in cases

³⁸ Kay Lehman Schlozman and John T. Tierney, 'More of the same: Washington Pressure Group Activity in a Decade of Change, *Journal of Politics* 45, pp. 351-77, 1983; Schlozman and Tierney, *Organized*

where lobbying is directed to both the commission and the EP over the same issue, against the model's prediction. One possible way to accommodate these exceptions would be to consider that some pieces of legislation may be composite, dealing with several independent issues. The second thing one notes is the mean difference of seven percentage points, which seems to go in the predicted direction that the commission will be more lobbied than the EP, although we still do not know how significant this difference is.

Hypothesis Testing for COMMEP
 Sample: consultation procedures
 Included observations: 7

Test of Hypothesis: Mean = 0.000000

Sample Mean = 4.428571
 Sample Std. Dev. = 38.90954

<u>Method</u>	<u>Value</u>	<u>Probability</u>
t-statistic	0.301132	0.7735

Table 5.5. Testing the difference between the commission's and the EP's share of lobbying under consultation

Table 5.5 shows that the mean difference in shares of lobbying is not significant at conventional levels (the p-value is 0.7735). As a result, we cannot confidently reject the null hypothesis in favour of the model's prediction. The lack of significance of the results is probably due to the reduced size of the dataset (just seven paired observations). Other possibility is that the effect of the fixed administrative resources offsets the effect of the superior institutional powers of the commission over the EP. This possibility would mean that the EP has greater fixed administrative resources than the commission, which is dubious, in view of the empirical evidence presented at the start of chapter three seems not to go in that direction.

Dependent Variable: COMMEP
 Method: Least Squares
 Sample(adjusted): consultation procedures
 Included observations: 6 after adjusting endpoints
 Weighting series: TIME

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-24.29764	15.70865	-1.546769	0.1826

Table 5.6. Testing the difference between the commission's and the EP's weighted share of lobbying under consultation

Table 5.6 presents a similar test, only this time weighting observations by the time dedicated to lobbying. Again, the results are not significant at conventional levels (p-value of 0.18). Besides, results go in the opposite direction to those of the previous test: the EP appears to be more lobbied than the commission on average for the sample considered, receiving on average a weighted share of lobbying 24 percentage points greater than that of the commission. Giving these contradictory results and the fact that the sample consists of merely six observations, increasing the sample size seems not to be a wrong path to try.

The co-decision procedure

Proposition COD.1: *Under the co-decision procedure, in the equilibrium, the European Parliament will always receive a positive amount of lobbying.*

Null hypothesis: Under the co-decision procedure, the European Parliament will not be lobbied.

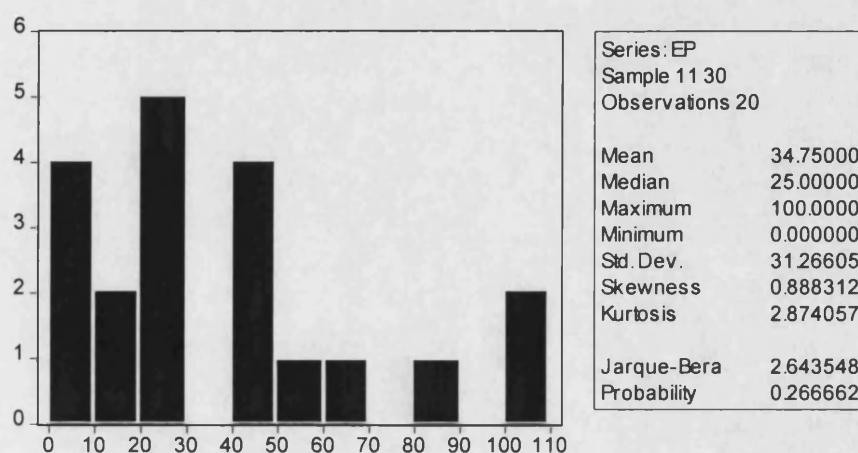


Figure 5.5. EP's share of lobbying under co-decision

Figure 5.5 shows some descriptive statistics on the EP's share of lobbying under the co-decision procedure. The first important fact is that the number of observations is greater than that for the consultation procedure. With 20 observations, although the sample cannot be considered large, we should expect more statistically significant results than for the consultation procedure. The sample mean of 34.75 indicates that for issues decided under co-decision the average lobbyist in the sample dedicated more than one third of its time and resources to lobby the EP. This goes in the direction of the model's prediction, but we still have to check whether this result is significant.

Hypothesis Testing for EP's share of lobbying		
Sample: co-decision procedures		
Included observations: 20		
Test of Hypothesis: Mean > 0.000000		
Sample Mean = 34.75000		
Sample Std. Dev. = 31.26605		
<u>Method</u>	<u>Value</u>	<u>Probability (1-tailed)</u>
t-statistic	4.970463	0.0001

Table 5.7. Testing the EP's share of lobbying under co-decision

Table 5.7 shows a hypothesis test for the mean share of lobbying received by the European Parliament. The mean value of 34.75 is extremely significant, allowing to confidently reject the null hypothesis that the EP will receive no lobbying under the co-decision procedure at a 0.1 per cent significance level (one-tailed test). Now it is interesting to see whether these results, which apply to the average lobbyist, also apply to the industry as a whole.

Dependent Variable: EP's share of lobbying				
Method: Least Squares				
Sample(adjusted): co-decision procedures				
Included observations: 18 after adjusting endpoints				
Weighting series: TIME				
<u>Variable</u>	<u>Coefficient</u>	<u>Std. Error</u>	<u>t-Statistic</u>	<u>Prob. (1-tailed)</u>
C	28.19123	1.821096	15.48036	0.0000

Table 5.8. Testing the EP's weighted share of lobbying under co-decision

Table 5.8 carries out the same test, but in this case the observations are weighted by the time that the lobbyists dedicated to the procedure. These results should give an

indication of the amount of resources directed by the whole lobbying industry towards the EP. The results go in the same direction as the previous test, but in this case the evidence is even stronger. Although the weighted mean is somewhat lower, the results are even more significant. The null hypothesis stating that the EP will not be lobbied under the co-decision procedure can be rejected at a 0.01 per cent significance level. The result confirms the prediction of the model in chapter three that the EP will be lobbied under the co-decision procedure.

Proposition COD.2: *Under the co-decision procedure, in the equilibrium, the commission will always receive a greater amount of lobbying than the EP.*

Null hypothesis: Under the co-decision procedure, the commission and the EP will receive equal amounts of lobbying.

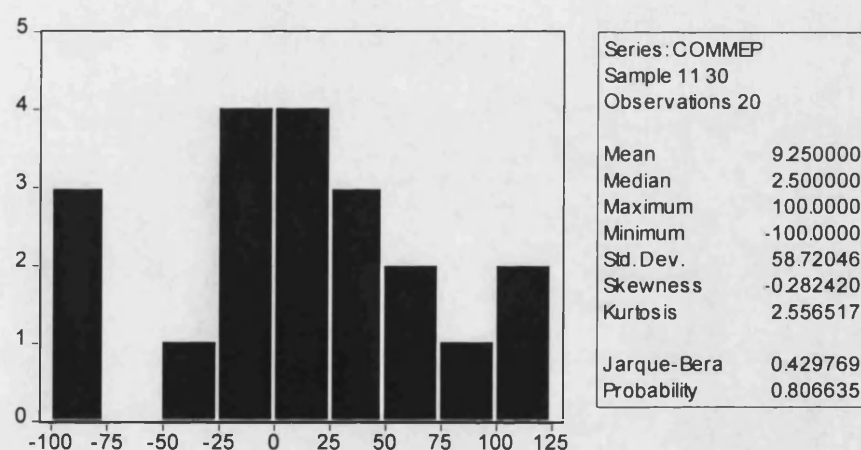


Figure 5.6. Difference between the Commission's and the EP's share of lobbying under co-decision

Figure 5.6 shows some descriptive statistics on the difference between the commission's and the EP's share of lobbying (COMMEP) under the co-decision procedure. Although the sample mean of 9.5 is positive, which is consistent with the model's prediction, the great variation in the dataset makes it necessary to test whether the sample results allow as to make inferences about the whole population.

Hypothesis Testing for COMMEP
Sample: co-decision procedures
Included observations: 20

Test of Hypothesis: Mean = 0.000000

Sample Mean = 9.250000
Sample Std. Dev. = 58.72046

<u>Method</u>	<u>Value</u>	<u>Probability</u>
t-statistic	0.704478	0.4897

Table 5.9. Testing the difference between the Commission’s and the EP’s share of lobbying under co-decision

Table 5.9 undertakes a preliminary test for the difference in amounts of lobbying directed by the mean lobbyist to the commission and the EP, without weighting the observations. The result goes in the predicted direction, the sample average difference being 9.25 percentage points. However, as in the case of proposition CNS.2, the results are not significant at conventional levels, even though we have more observations this time.

Dependent Variable: COMMEP
Method: Least Squares
Sample(adjusted): co-decision procedures
Included observations: 18 after adjusting endpoints
Weighting series: TIME

Variable	Coefficien t	Std. Error	t-Statistic	Prob.
C	5.286116	2.319323	2.279164	0.0358

Table 5.10. Testing the difference between the Commission’s and the EP’s weighted share of lobbying under co-decision

Table 5.10 undertakes the same test, this time weighting the observations by the time dedicated to each lobbying case. These results correspond to mean lobbying, as opposed to lobbying by the mean lobbyist. Here results are more enlightening than in the previous test. Although the average sample difference is smaller, results are significant at conventional levels (5%). This supports proposition COD.2, stating that the commission will be more lobbied than the EP under the co-decision procedure. This is a very important result, since it goes against the intuitive result that the EP, which is formally considered a legislator under the co-decision procedure will be more lobbied than the commission.

5.5. CONCLUSION

This chapter has tested the theory developed in chapter two and applied to the EU legislative procedures in chapter three, in particular in relation to the way the power of voice operates through the transmission of policy relevant information. In order to test the theory this chapter analyses how professional lobbyists distribute their efforts among the different institutions that conform the EU tricameral legislature. The activity of lobbyists is an intermediate variable within the model in chapter two. The main result is that the prediction of chapter three that the EP will be lobbied in equilibrium both under the consultation and the co-decision procedures is supported by empirical evidence. The conclusion is not that the legal claim to a hearing is an important legislative power for the European Parliament but also that it works through the mechanisms proposed in the theoretical part of the thesis. The fact that the EP has the power of voice encourages lobbyists to supply the EP with policy-relevant information, which the EP can use strategically in its dealings with the other legislative bodies of the EC system.

The survey used in the chapter has been conducted by the author and presents a number of features that improve on other surveys of EU lobbying. The two most prominent features are, first, that the questions asked are factual questions about resources actually spent by lobbyists. Secondly, the units of analysis are individual pieces of legislation. This level of disaggregation increases the variability in the explained variable, increases the sample size and increases the likelihood of obtaining statistically significant results.

The results of the survey are quite supportive of the predictions of the theoretical model. There is only one instance in this chapter in which the survey results were not significant, namely the test of the prediction stating that the commission will be more lobbied than the EP under the consultation procedure. This is probably due to the reduced number of observations available to test that prediction. However, for the rest of the predictions of the model, namely that the EP will be lobbied under both the consultation and co-decision procedures and that the commission will be more lobbied than the EP under the co-decision procedure, evidence is sufficient to confidently reject the hypotheses of alternative models. This can be done at times at very high significance

levels. So, all in all, we can say that survey evidence is rather supportive of my model of lawmaking.

But the survey results do not only support the general validity of the theoretical model developed in chapters two and three but also confirm the convenience of methodological approach of the empirical part of this thesis. In concrete, evidence in this chapter brings support to the convenience of using triangulation when testing positive models empirically. Existing models neglected the power to be consulted that the EP enjoys under the consultation and co-decision procedures. And evidence presented in the previous chapter, although pointing in the same direction as my model, was not decisive to reject pre-existing models and adopting my alternative model within conventional levels of confidence. Evidence presented in this chapter is however strong enough to reject the models that neglected the legal claim to a hearing. This is a clear instance of triangulation: the reference in the previous chapter was a hint, but not strong enough to confidently reject existing predictions. The observation of another reference, however, provides the missing evidence to determine with reasonable confidence that some existing predictions were wrong and that the new model is better suited to explain the reality of EC law-making. Another major contribution of this chapter is that it shows that statistical analysis can also be used to test the validity of the mechanism the theory predicts in order to arrive to certain political outcomes. Such an analysis was usually left for case studies.³⁹

A clear extension of this chapter would be to increase the scope of the survey to include other types of lobbyists such as interest groups. It would also be interesting to try to increase the size of the datasheet through repetition of the survey along time, as some results were not significant presumably because of the rather reduced size of the dataset. In this respect, the replication of the methodology presented in this chapter appears to be quite promising.

³⁹ See Tsebelis and Money, *Bicameralism*, p. 126.

CHAPTER SIX

Two ‘textbook’ cases of legislative procedures

In the first part of the book I presented the actors and the relationships of the EC legislative system, i.e. how the system works, with particular emphasis on the different powers of the EP under different legislative procedures. I identified two main powers of the EP, namely the veto and the claim to a hearing, and analysed how they work in the main legislative procedures of the EC. The case studies that follow are intended to show how those powers have worked –or not worked- in recent issues before the European Parliament. The history of these cases draws heavily on the European Parliament’s Legislative Observatory (OEIL), but is also completed with the commission’s database for the monitoring of the decision-making process between institutions (PRELEX), background information from the press and other sources.

The first case illustrates the power of voice. The issue consisted of legislation introduced in 1993 codifying and amending existing legislation banning the use of hormones and other growth promoting substances in stockfarming. The issue was very salient and featured a lot of lobbying, since there were many interests at stake, ranging from consumers to EU farmers to U.S. meat exporters. Thanks to its power of voice, the European Parliament succeeded in getting an amendment passed that contributed to the fight against the illegal market in the substances through which the ban was being circumvented, therefore increasing consumer safety in Europe.

The second case illustrates the power of vote. The issue was this time the reform of structural funds under Agenda 2000, covering the period 2000-2006. The objective of this piece of legislation was to concentrate the structural funds in the geographical areas most in need for assistance and to improve the functioning of the funds. Thanks to its power of vote, the EP managed in this case to keep the URBAN community initiative for urban regeneration, which was set to disappear under the original commission proposal.

Although, at first sight, the use of case studies might appear inconsistent with the general rational choice orientation of the thesis, *Analytic Narratives* illustrates how case studies are compatible with rational choice models.¹ Ironically, Jon Elster, who has contributed greatly to rational choice theory, has strongly criticized the book.² Many of Elster's substantive criticisms have merit: the inadequacy of the assumption of instrumental rationality, the problem of nonrational motivations, the challenges of aggregating from individual to collective behavior, the problem of assessing actors' "real" preferences, and the pervasiveness of many kinds of uncertainty. On the whole, however, the authors' response to Elster is more convincing in arguing that the use of case studies to test and modify formal models is in its infancy and should not be abandoned prematurely.³

The two case studies in this chapter increase the added value of the thesis for two main reasons. First, case studies are empirical evidence. Whereas some readers are convinced by statistics, others prefer case studies. Case studies allow analysing details that escape statistical analyses, being particularly useful in determining whether the mechanism by which one arrives to the final results is the one predicted in the model.⁴ This is also one of the main contributions of *Analytic Narratives*, and it deserves to be emulated because it eschews the dubious assumption that political actors need only behave "as if" they go through rational choice processes. However, case studies are not the only way to test the mechanisms that lead to political outcomes. In the previous chapter on the transmission of policy-relevant information, I have shown that quantitative analysis can and should also be used for those purposes. Secondly, and not less importantly, people do not memorise computer models as easily as stories. How many times does not one realise that after having read a three-hundred-page book full of mathematical models and statistical tables, after some time one just remembers the stories included in the case studies? If correctly chosen, case studies are a good mnemonic device to help the reader keep the main conclusions of the study. Moreover,

¹ Robert Bates and Avner Greif and Margaret Levi and Jean-Laurent Rosenthal and Barry Weingast, *Analytic Narratives*, Princeton, NJ: Princeton University Press, 1998.

² Jon Elster, 'Rational Choice History: A Case of Excessive Ambition', *American Political Science Review*, Vol. 94, No. 3 (Sept.), 2000, pp. 685-695.

³ Robert H. Bates, Avner Greif, Margaret Levi, Jean-Laurent Rosenthal and Barry R. Weingast, 'The Analytic Narrative Project', *American Political Science Review*, Vol. 94, No. 3 (Sept.), 2000, pp. 696-702.

⁴ Tsebelis and Money, *Bicameralism*; Huber, *Rationalizing Parliament*.

some readers would have never read such books in the absence of case studies. This moves us to the question of why I have selected these two particular cases.

Arend Lijphart lists six types of case studies: atheoretical case studies, interpretative case studies, hypothesis-generating case studies, theory-confirming case studies, theory-infirming case studies and deviant case studies.⁵ Theory-infirming case studies ‘merely weaken the generalizations marginally.’ The actual value of both theory conforming and theory-infirming case studies is enhanced, however, if the cases are, or turn out to be, extreme on one of the variables: such studies can also be labelled “crucial experiments” or crucial tests of the propositions.⁶ One way of minimising the “many variables, small N” problem of case studies, according to Arend Lijphart, is to focus the comparative analysis on “comparable” cases. In this context, “comparable” means: ‘similar in a large number of important characteristics (variables) which one wants to treat as constants, but dissimilar as far as those variables are concerned which one wants to relate to each other.’⁷ This form of research design is what Adam Przeworski and Henry Teune have labelled ‘Most Similar Systems’ design.⁸ It is also what John Stuart Mill described as the “method of difference” and as the method of “concomitant variations”.⁹ As far as legislative procedures are concerned, a common alternative much seen in the literature is to select the cases from the same issue area.¹⁰

The two cases presented in this chapter, however, range from agriculture and consumer protection to regional policy. The reasons why the cases correspond to different issue areas are mainly three (the first two being supply-side whereas the third one is demand-side): First, it is not easy to find different legislative procedures in the same issue area, since it is precisely the issue area that determines the legislative procedure that applies to a given legislative proposal. Secondly, if finding such cases were possible, it would be probably because of treaty changes concerning what procedure applies to what issue area. This, in turn, would probably mean that the

⁵ Arend Lijphart, ‘Comparative Politics and the Comparative Method’, *The American Political Science Review*, Vol. 65, No. 3. (Sep., 1971), pp. 682-693, pp. 686-87, p. 691-93.

⁶ Lijphart, ‘Comparative Politics and the Comparative Method’, p. 692.

⁷ Lijphart, ‘Comparative Politics and the Comparative Method’, pp. 686-87.

⁸ A. Przeworski and H. Teune, *The Logic of Comparative Social Inquiry*, New York: Wiley, 1970, pp. 32-34.

⁹ John Stuart Mill, *A System of Logic*, 8th ed., London: Longmans, Green, Reader, and Dyer, 1872, Book III, ch.8.

¹⁰ E.g. Ken Kollman, *Outside Lobbying: Public Opinion and Interest Group Strategies*, Princeton NJ and Chichester, West Sussex, UK: Princeton University Press, 1998; Tsebelis and Kalandrakis, ‘The European

different examples of legislation are relatively distant in time, which would make it more difficult to compile the information necessary for the analysis. Finally, and most importantly, no direct effect of the issue area on the workings of the different legislative powers is explicitly derived from the theory developed in the first part of the book. It is for these three reasons that the cases analysed here do not belong to the same issue area. But it is still important to hold some relevant factors constant, and that is done in this selection of cases.

In chapter two, the independent variables were the legislative procedure, the dimensionality of the issue, the fixed administrative resources of the institutions and the configuration of preferences. In order to separate the effect of the legislative procedure, which is what interests us, we should try to minimise as much as possible the effect of the other three factors. The dimensionality of the issue affects the extent of legislative powers but not so much the way they work, which is the main focus of this chapter. The same happens with the fixed administrative resources of the institutions. Besides, this factor is likely to have very limited effect as long as the cases belong to the same period of time (both cases selected took place mostly during the fourth parliament). Furthermore, the fixed administrative resources have no effect on the assent procedure. The configuration of preferences, however, can alter the results of different legislative procedures very significantly. A given preference configuration can make a certain power completely useless. In other words, the configuration of preferences can produce undesirable qualitative effects, the main object of study of this chapter. It is for all the above reasons that I have tried to select two cases with similar configurations of preferences, instead of cases from the same issue area. This similarity is more relevant than the coincidence of the issue area for one basic reason: the configuration of preferences is known to have a clear effect on the outcomes of particular legislative issues. Since the main interest in this book lies on the effect of different institutional arrangements on legislative outcomes, it is important to abstract from differences in preference configurations. This selection of cases fares well in this respect.

The fact that the cases in this chapter have been carefully selected should not make the reader lose perspective of the role that case studies play in the book. This selection of cases is biased, and it is intentionally so. The main purpose of these cases is not to test the validity of the predictions developed in the first part of the thesis. That

has already been done by means of the statistical analysis of a much greater sample of cases in chapters four and five. The main objective of these ‘textbook’ cases is, again, to *illustrate* the findings of the previous chapters. But the study of these two cases can also be interesting in respects other than illustrating the findings of the thesis concerning the influence of legislative procedures on the powers of the EP. Firstly, these cases are very good examples on the general capacity of European legislation to affect the welfare of people’s lives, inside and outside the EU. Secondly, these two cases, which have not been studied as much as landmark procedures such as voice telephony and biotechnology, are of substantive importance in themselves for readers interested in those particular issue areas. Finally, from these case studies preliminary evidence can be obtained to guide future research on the powers of the EP.

Each of the two examples that will be presented in this chapter will be structured in the same manner. First, the issue space will be presented, together with the position of the different interests affected by the issue. Secondly, the positions of the commission, the EP and the council will be presented. Thirdly, the history of the procedure will be described. Finally, the case will be analysed in the light of the models developed in this thesis and conclusions will be drawn.

6.1. BEEF HORMONES: THE POWER OF VOICE

All is not well with the world when French men start growing breasts. More so when the men concerned are macho porters at Les Halles, the old food market in Paris, and are nicknamed les forts for their strength in carrying produce. Back in the 1950s, les forts were also known for their liking for chicken necks, which they were given in large quantities by the butchers for whom they carried. Unknown to the gourmands or their wives who prepared their favourite dish was the practice at the time of implanting hormone pellets in chickens – under the skin in the neck. The connection was eventually made, and les forts were relieved to see their breasts deflate. Some may have later paid a higher price: the hormone used, diethylstilbestrol, can be carcinogenic.¹¹

Horror stories from the Seventies and early Eighties of boys developing breasts after eating hormone reared meat are still around. In 1980, an Italian schoolboy allegedly started to grow breasts after eating veal that contained a synthetic hormone, diethylstilbestrol, which had been given to cattle to promote weight gain and increase the proportion of lean muscle. The product was said to have been injected into the rump

of a veal calf shortly before slaughter. The product was, therefore, concentrated in a small quantity of meat, which was subsequently eaten by the boy who, it was reported, later began to develop breasts.¹² Even before the Italian health scare, it has been reported, 'there had been accounts of butchers fathering more sons than average as a result of their exposure to hormones'¹³ Curiously, the opposite condition is also reported in the press: 'Before the practice of using female sex hormones in farming was outlawed, butchers who handled the hormone-laden meat, as well as those who enjoyed their own products for dinner, were more likely to have girls than boys.'¹⁴ Professor Francois Andre of the French National Reference Laboratory for Hormone Control in Nantes has said the Les Halles porters' embarrassing episode contributed to the first regulations to avoid substance transfer from animals to humans.¹⁵ Certainly, all those embarrassing happenings may have contributed to turning the abuse of hormones in stockfarming from a condition into a problem, using Kingdon's terminology.¹⁶ In 1988, European ministers introduced the first joint ban on hormones in food, with effect from 1 January 1989.¹⁷

In 1990, an outbreak of food poisoning affecting 135 people in Spain was traced back to liver from cattle administered with the drug called clenbuterol.¹⁸ Clenbuterol, also known as 'angel dust', is a beta-agonist. It is known that residues of clenbuterol in the carcass meat can cause palpitations, muscle tremors and pain. The liver retains toxic residues if withdrawal times are not observed before slaughter.¹⁹ In 1991, there was evidence of growing abuse of clenbuterol ('angel dust'), allowed at the time for fertility treatments in cows, to reduce fat levels and increase meat content. This time, cases came to light in Ireland and Belgium particularly.²⁰ It was episodes like these that first

¹¹ 'The Horrors of Factory Farming in the EU', *Time Magazine* 5 July 1999, p. 26.

¹² Katherine Butler, 'Belgians march in memory of 'hormone mafia' victim', *Independent* 20 February 1996, p. 13; Joanna Blythman, 'Brave moo world', *The Guardian* 10 February 1996, p. 34; Katherine Butler, 'Why the mafia is into your beef: The EU ban on growth hormones for cows has created a lucrative black market, reports Katherine Butler', *Independent* 19 March 1996, p. 13; David Richardson, 'Commodities and Agriculture (Farmer's Viewpoint): EU still on horns of beef hormone dilemma – Scientists have vindicated the growth promoters but consumer resistance remains', *Financial Times* 5 December 1995, London, p. 31.

¹³ Butler, 'Why the mafia is into your beef', p. 13.

¹⁴ Dr Thomas Stuttaford, 'How safe is your stake?', *The Times* 2 March 1995, p. 17.

¹⁵ 'The Horrors of Factory Farming in the EU', *Time Magazine* 5 July 1999, p. 26.

¹⁶ Kingdon, *Agendas, Alternatives and Public Policies*.

¹⁷ 'The Horrors of Factory Farming in the EU', *Time Magazine* 5 July 1999, p. 26.

¹⁸ Liz Hunt, 'Health Benefits: Shoppers say no to drugs in food', *Independent* 9 April 1996.

¹⁹ Colin Spencer, 'Food and drink: Beastly deeds', *The Guardian* 29 August 1992, p. 16.

²⁰ David Gardner, 'Commodities and Agriculture: MacSharry urges ban on "angel dust"', *Financial Times* 2 May 1991, London, p. 34.

brought beta-agonists like clenbuterol to the attention of legislators at European level.²¹ In September 1993 the European commission introduced legislation to codify existing regulations on the use of substances with hormonal and thyrostatic action, to strengthen them and to completely ban the use of beta-agonists.

The black market

During the period of the hormone ban a lucrative and well-organised black market, often involving sub-standard and possibly genuinely dangerous hormone substitutes, built up in some countries. Like American prohibition or the worldwide drugs trade this has led to uncontrolled use, crime and occasionally violence, and a threat to health.²² Substances such as angel dust got to farmers through black marketeers copying the tactics of drugs traffickers.²⁴ The mafia was strongest in Belgium, where the issue received widespread coverage, but the illegal market reached also into Holland, Ireland, Spain, France, Germany, Italy, the UK and Eastern Europe, among others.²⁵ The economic importance of illicit trade in hormones used to promote rapid weight gain was impressive. The drugs were believed to be smuggled from eastern Europe in a trade reputed to be worth at least pounds 70 million pounds (sic) a year in Belgium alone.²⁶ According to one study, hormone dealing was the second most lucrative organised crime racket in Belgium after drugs.²⁷ The black market was based on simple sums. 'Normally the profit on an animal sold for slaughter is 5,000 francs (Pounds 106),' said the Belgian health ministry's top hormones expert who, because of the climate of fear, had to remain anonymous. 'If it has been pumped up with hormones it can bring 20,000

²¹ See European Parliament, 'Stockfarming: prohibition of substances with hormonal or thyrostatic action and of beta-agonists - CNS/1993/1036', *The Legislative Observatory (OEIL)*, http://www.db.europarl.eu.int/oeil/oeil_ViewDNL.ProcedureView?lang=2&procid=452, 23/02/1994.

²² Richardson, 'beef hormone dilemma'.

²³ Butler, 'Why the mafia is into your beef'.

²⁴ Gardner, 'MacSharry urges ban on "angel dust"'.
²⁵ Caroline Southey, 'Hormones fuel a meaty EU row: Caroline Southey looks at why US threatens to seek a WTO ruling', FT 7 September 1995, London, p. 2; Patricia Clough, 'Hormone mafia wages bloody war on Belgian vets', *The Sunday Times*, 19 March 1995, p. 1/23; Katherine Butler, 'Belgians march in memory of 'hormone mafia' victim', *Independent* 20 February 1996, p. 13; Katherine Butler, 'Why the mafia is into your beef: The EU ban on growth hormones for cows has created a lucrative black market, reports Katherine Butler', *Independent* 19 March 1996, p. 13; Dr Thomas Stuttaford, 'Cause for concern over picnic pate', *The Times* 3 July 1995, p. 6; Stephen Bates, 'UK resists ban on beef hormones', *The Guardian* 16 March 1996, p. 8; 'The Horrors of Factory Farming in the EU', *Time Magazine* 5 July 1999, p. 26; Hendrik Munsberg, 'Lean times aid veal mafia', *The Guardian* 14 August 1996, p. 12; David Blackwell, 'Imports of contaminated beef on sale, warns report', *Financial Times* 2 April 1991, London, p. 11; Spencer, 'Beastly deeds'; Paul Brown, 'Europe fights US on beef hormones', *The Guardian* 22 November 1995, p. 8.

²⁶ Bates, 'UK resists ban on beef hormones'.

francs, minus 3,000 for the injection. That makes a net increase of 12,000 francs.²⁸ The big money went mainly to middlemen who bought livestock from the farmers, fattened it and sent it to the abattoirs.²⁹

The black market, besides circumventing the ban, brought with it other negative side-effects, such as the introduction of genuinely dangerous sub-standard hormone substitutes and masking techniques, violence and corruption. In 1997, the Guardian reported French authorities were investigating allegations that farmers are injecting beef cattle with rat poison to mask illegal growth hormones. The National Consumer Council, one of several government bodies overseeing food quality, instructed its vets to test carcasses to try to confirm the practice. It feared thousands of cattle in several departments, mainly in eastern France, had been affected. 'At the moment we can only confirm that we have serious indications that this may be happening,' the spokesman for the council said. 'We do not know exactly where or to what degree, but a systematic investigation is warranted. Clearly the implications are alarming.' The practice came to light in August 1997 when police seized a large quantity of growth hormones from a farm in the Saone-et-Loire department. Several people who were questioned told investigators that the farmer was using a rat poison known as dicoumaral, widely available in France, to mask the hormones. Arnaud Morel, a veterinary scientist at Paris University, said it was "physically and chemically possible" that dicoumaral could disguise growth hormones. He added, however, that to his knowledge it had not been proved to work with cattle.³⁰ Intimidation and even murder were not beyond the mafia.³¹ Given the economic importance of the illegal market, it is not strange that it also lead to alleged corruption, in Belgium and elsewhere.³² In conclusion, the fight against the black market was one of the main aspects to be covered in any revision of existing regulations.

The issue was not only important because of the saliency of these poisoning cases or the film-like actions of the hormone mafia, which can be considered anecdotal. The issue was important because it affected millions of people in the EU and elsewhere.

²⁷ Clough, 'Hormone mafia wages bloody war on Belgian vets'; Butler, 'Why the mafia is into your beef'.

²⁸ Quoted in Clough, 'Hormone mafia wages bloody war on Belgian vets'.

²⁹ Clough, 'Hormone mafia wages bloody war on Belgian vets'.

³⁰ Jon Henley, 'European news: Cattle 'given rat poison'', *The Guardian* 25 September 1997, p. 12.

³¹ Munsberg, 'Lean times aid veal mafia'; Butler, 'Why the mafia is into your beef'; Bates, 'UK resists ban on beef hormones'; 'The Horrors of Factory Farming in the EU', *Time Magazine* 5 July 1999, p. 26; 'Belgium skips meat course', *The Guardian* 21 February 1996, p. 14; Stuttaford, 'How safe is your stake?'; Clough, 'Hormone mafia wages bloody war on Belgian vets'.

Many societal groups had a vested interest in the matter and in some cases stakes were high enough to lead to expensive lobbying campaigns, corruption and even violence. Growth promoting substances are used in stockfarming in the USA, Canada and Australia. These substances produce an increase in the weight of cattle which is economically profitable to the farmer. Their ban would also extend to third countries, reducing imports. This, in turn, would create difficulties in US-EU trade relations. It is almost impossible to identify all the interests potentially affected by the issue. What I present next is an overall review, which will serve two main purposes. First, it will illustrate the substantive importance of the issue. Secondly, it will help identify the main dimensions of the issue space. The groups selected are EU consumers, foreign farmers and traders of foreign meat, EU farmers, animal welfare activists, pharmaceutical companies, veterinarians and the WTO.

The potential effect of the ban on *consumers* was rather mixed. A restrictive law would increase food safety, but probably at the expense of higher prices. Although there was survey evidence that consumers opposed a ban on hormone-treated beef which is free of all residues.³³ Consumers were worried that residues of the hormones might be present in meat after slaughter, with consequent health effects.³⁴ Public fears were fuelled by evidence, including a study by Test Achats, a Belgian-based consumer group, that meat containing growth-promoters is sold in supermarkets across Europe.³⁵ As far as quality was concerned, angel dust was said to produce meat which was 'leathery and tasteless'.³⁶ But, on the other hand, the reduced fat levels brought about by hormone treatment seemed to be in consonance with consumer demand. So in this respect there may have been differences among consumers, some of them willing to pay a higher price for naturally reared meat. For instance, the top chefs' international lobby group – Eurotoques- carried out in 1996 a survey of meat sourcing in 11 EU countries, which found that all their members oppose the use of all growth promoters, including natural hormones.³⁷ Finally, EU consumers would not probably benefit anyway from the reductions in production costs that the legalisation of hormones would bring about since the EU market is very regulated. As a hint pointing in this direction, it is believed that

³² Butler, 'Belgians march in memory of 'hormone mafia' victim'; Clough, 'Hormone mafia wages bloody war on Belgian vets'; Butler, 'Why the mafia is into your beef'.

³³ Tim Dickson, 'Meat traders say people want hormone-treated beef', *Financial Times* 26 April 1990, London, p. 4.

³⁴ Butler, 'Why the mafia is into your beef'; Stuttaford, 'How safe is your stake?'

³⁵ Southey, 'Hormones fuel a meaty EU row'.

³⁶ See Gardner, 'MacSharry urges ban on "angel dust"'

since clenbuterol treated meat quality is considerably reduced, farmers selling meat into EC intervention stocks rather than to the fresh market have been the ones most tempted to utilise the drugs on their livestock.³⁸ The case is that consumer organisations supported tightening the hormone ban at the time the decision was taken.³⁹ Kees de Winter, food officer for BEUC, the European consumers' organisation, argued that 'The main reason for retaining the ban is that consumers are not willing to buy products treated with hormones. Every survey shows it.'⁴⁰ Consumer rejection was at the time so strong that EU officials predicted meat-eating would drop by a quarter if hormones were legalised.⁴¹ Consumer groups rejected the argument that the ban fuelled the illegal market. 'We need controls. We can stop the practice if we have strong enough measures. The ban should be extended,' said Mr Kees de Winter.⁴² All in all, the best alternative for consumers might probably be a system in which the sale of hormone-treated meat was legal as long as it was properly labelled.⁴³ Such a system would give EU consumers the right to choose, and to boycott hormone treated meat if they were so averse to it as claimed by politicians.⁴⁴ What is not so clear is whether it would be possible to implement such a system properly.

Foreign farmers using the substances (mostly American) and importers from the U.S. and other hormone-using countries represented by the European Alliance for Safe Meat would be negatively affected by a restrictive law.⁴⁵ The effect on *EU farmers* was mixed. On the one hand, they would be harmed by the reduction in productivity caused by a restrictive law. Farmers estimated that with hormones they could get a 10 per cent increase in the efficiency with which the cows converted their feed into muscle (meat).⁴⁶ But, on the other hand, many then recognised two main objections to reintroduction.⁴⁷ One was that legalisation would, under the terms of Gatt, enable cheap American and other beef to enter the EU and undermine prices, a view shared mostly by smaller farmers.⁴⁸ The other was the realisation that if beef sales were to be maintained,

³⁷ Joanna Blythman, 'Food and drink: Food Chains: French leave', *The Guardian* 5 October 1996, p. 50.

³⁸ Tim Coone, 'Commodities and Agriculture: Ireland cracks down on growth hormone', *Financial Times* 17 September 1991, London, p. 34.

³⁹ Guy de Jonquieres, 'EU defends ban on beef treated with hormones', *Financial Times* 13 January 1996, London, p. 3.

⁴⁰ Quoted in Bates, 'UK resists ban on beef hormones'.

⁴¹ Butler, 'Belgians march in memory of 'hormone mafia' victim'.

⁴² Quoted in Southey, 'Hormones fuel a meaty EU row'.

⁴³ 'Leading Article: A hormones beef', *Financial Times* 1 February 1996, London, p. 21.

⁴⁴ 'Leading Article: A hormones beef', *Financial Times* 1 February 1996, London, p. 21.

⁴⁵ Colin Tudge, 'Beef without the bull, please', *The Times* 5 June 1999, p. 8.

⁴⁶ Butler, 'Why the mafia is into your beef'.

⁴⁷ Richardson, 'beef hormone dilemma'.

farmers.⁴⁸ The other was the realisation that if beef sales were to be maintained, consumer demands would have to be recognised and responded to – and at present the beef business has more than enough problems with ‘mad cow disease’ without adding another possible disincentive to buy.⁴⁹ British and Irish farmers would probably be less favourable to the ban than the rest in the EU. They commonly raised beef cattle outdoors on grass, so they, like Americans, preferred steers to bulls and were happy to employ hormone implants. Conversely, the farmers of continental Europe raised much of their beef in more intensive, controlled conditions, in which it was safe to leave the young males intact: as bulls.⁵⁰ But even British farmers said no to hormones: the National Farmers Union said in 1995 that it supported the commission: ‘We are against additives and want the ban to stay. The consumer’s wishes must be respected.’⁵¹

Besides consumers and farmers on both sides of the Atlantic, there were other actors with a vested interest in the procedure. Animal welfare activists were clearly in favour of a restrictive law.⁵² Veterinarians were in favour of a law that gave them some discretion in the administration of the substances and/or created jobs for them as veterinary inspectors.⁵³ Pharmaceutical companies producing the banned substances would certainly lose from a restrictive law.⁵⁴ FEDESA, the association which represents Europe’s veterinary and pharmaceutical interests, fought to get the ban lifted.⁵⁵ Finally, even an international organisation such as the WTO had a stake in the process. The WTO thought the EU ban was a protectionist measure with no scientific foundation, which made the WTO’s limitations apparent.⁵⁶ So the number and magnitude of potential interests was not at all negligible. But for seasoned food policy observers like Professor Tim Lang of Thames Valley University, this was not just a matter of a few hormones: ‘The industry sees this as a test case for trade and science over irrelevant mumbo jumbo and unscientific fears raised by consumers. If the

⁴⁸ Richardson, ‘beef hormone dilemma’; de Jonquieres, ‘EU defends ban on beef treated with hormones’.

⁴⁹ Richardson, ‘beef hormone dilemma’; Butler, ‘Belgians march in memory of ‘hormone mafia’ victim’; Katherine Butler, ‘Britain outvoted on beef drug ban’, *Independent* 19 Mar 1996, p. 11.

⁵⁰ Colin Tudge, ‘Beef without the bull, please’, *The Times* 5 June 1999, p. 8.

⁵¹ Paul Brown, ‘Europe fights US on beef hormones’, *The Guardian* 22 November 1995, p. 8.

⁵² Tudge, ‘Beef without the bull, please’; Michael Hornsby, ‘Steroid treatment ‘carries no risk’’, *The Times* 19 March 1996, p. 9; Joanna Blythman, ‘Brave moo world’, *The Guardian* 10 February 1996, p. 34; Butler, ‘Why the mafia is into your beef’; Spencer, ‘Beastly deeds’; Munsberg, ‘Lean times aid veal mafia’.

⁵³ Blythman, ‘Brave moo world’; Patricia Clough, ‘Hormone mafia wages bloody war on Belgian vets’, *The Sunday Times*, 19 March 1995, p. 1/23.

⁵⁴ Blythman, ‘Brave moo world’.

⁵⁵ Lucy Kellaway, ‘Commodities and Agriculture: Court upholds hormone ban’, *Financial Times* 14 November 1990, London, p. 32; Spencer, ‘Beastly deeds’; Southey, ‘Hormones fuel a meaty EU row’.

hormone ban is successfully challenged, other objections – to drugs, new food technologies and so on – will be swept aside.’⁵⁷

6.1.1. The issue space and policy alternatives

As it have become apparent in my review of the different interests affected by the procedure, there was more than one dimension to the issue. The two main dimensions were consumer safety, on the one hand, and agricultural productivity, on the other. There was a third dimension, protectionism, which I will not consider in the analysis for the sake of simplicity and because it does not affect the outcomes much.

As far as the options are concerned, there were four prototypes:

1. The status quo, i.e., keeping the regulations of 1988, was the first and the simplest alternative. This alternative did not fare well on consumer protection, did not fare well in agricultural productivity and was very protectionist.
2. Lifting the ban on meat treated with hormones.⁵⁸ This alternative was sponsored mostly by American farmers and American beef traders, as well as pharmaceutical companies. This option would probably imply the importing of the U.S. system into the EU. The alternative was not unfeasible, at least in principle: in 1995 a ‘10-year-old study was finally accepted and vindicated at a conference in Brussels. The scientist who had supervised it, Professor Eric Lamming, a livestock specialist at the University of Nottingham, was delighted’ with the acceptance of the scientific vindication of hormones as legitimate and safe. In favour of the reversal was that many things had changed since the 1985 ban. For instance, there was no longer a beef mountain in the EU. Of greater significance, the EU had also signed the Uruguay Round settlement of General Agreement on Tariffs and Trade.⁵⁹ But the review decision did not mean that beef hormones would automatically become acceptable again. Lifting the ban, like the status quo, did not fare very well on consumer protection, fared well in agricultural productivity and was not at all protectionist.

⁵⁶ ‘Leading Article: A hormones beef’, *Financial Times* 1 February 1996, London, p. 21.

⁵⁷ Blythman, ‘Brave moo world’.

⁵⁸ ‘Belgium skips meat course’, *The Guardian* 21 February 1996, p. 14.

⁵⁹ Richardson, ‘beef hormone dilemma’.

3. Introducing a system in which the sale of hormone-treated meat was legal as long as it was properly labelled. For some, this option represented a sensible compromise with US and other beef exporters.⁶⁰ Although for others this alternative was unfeasible under WTO rules, since the label might constitute yet another 'barrier to trade'.⁶¹ All in all, this might probably be the best option for consumers. Such a system would give EU consumers the right to choose, and to boycott hormone treated meat if they were so averse to it as claimed by politicians.⁶² The system would also be good for agricultural productivity and just a bit more protectionist than repealing the ban. What was not clear was whether such a system could be enforced.
4. Tightening the ban. In fact, tightening the 1988 ban was the intention of the original commission proposal. This option would be good for consumer safety, bad for agricultural productivity and bad for trade. What was not so clear is how the commission could best achieve this objective.

6.1.2. Legislators' preferences

The British government backed the American position that the European Union should lift its eight-year ban on sales of hormone-treated beef.^{63 64} Britain's support for the lifting of the ban was based on the belief, reinforced by a Commission-sponsored conference in 1995, that there was no scientific evidence of human health risk arising from the use of both natural and synthetic hormones.⁶⁵ The Man in Whitehall suspected that the scientific arguments accepted by the other member states were a cover for a protectionist policy to benefit the big and influential European beef producers.⁶⁶ A British official in Brussels said: 'This is a problem of international trade and you cannot control international trade on emotional grounds. To renew the ban could be seen as provocative.'⁶⁷ As far as the beta-agonist clenbuterol was concerned, although the

⁶⁰ Richardson, 'beef hormone dilemma'; 'Leading Article: A hormones beef', *Financial Times* 1 February 1996, London, p. 21.

⁶¹ Blythman, 'Brave moo world'.

⁶² 'Leading Article: A hormones beef', *Financial Times* 1 February 1996, London, p. 21; Richardson, 'beef hormone dilemma'.

⁶³ Polly Ghazi, 'News roundup: UK pus hormone case', *The Observer* 21 January 1996, p. 2.

⁶⁴ Charles Bremner, 'Britain overruled as EU tightens hormone-beef ban', *The Times* 19 March 1996, p. 9

⁶⁵ 'Politicians who simply lack beef', *The Guardian* 19 March 1996, p. 16; Ghazi, 'UK pus hormone case'; Stephen Bates, 'UK resists ban on beef hormones', *The Guardian* 16 March 1996, p. 8.

⁶⁶ 'Politicians who simply lack beef', *The Guardian* 19 March 1996, p. 16.

⁶⁷ Bates, 'UK resists ban on beef hormones'.

British government accepted that angel dust is potentially harmful to the cardio-vascular system – not least to the farmers who inhale it while sprinkling it on fodder – Douglas Hogg, the Agriculture Minister, was expected to argue that its use should be allowed for the treatment of parturient cows.⁶⁸ But the British government ‘was a lone, opposing voice in this debate.’⁶⁹

None of the other governments backed a repeal⁷⁰ All other EU states sided with the Commission argument that a repeal would cause an outcry from consumers. Allowing hormones, they said, would damage the beef industry when it was already suffering from illegal trafficking in dangerous growth-boosting chemicals and the scare over “mad cow” disease.⁷¹ The other governments said that European consumers, still suspicious after the panic over mad cow disease, will not buy hormone-treated beef anyway.⁷² In fact, most EU governments were in favour of tightening the hormone ban.⁷³ Support for the ban was so strong in the council that even the Irish Agriculture Minister, Ivan Yates, whose country’s economy is more dependent on beef than any other EU member, supported it: ‘We are determined to resist US pressure to do anything which would undermine consumer confidence in red meat.’⁷⁴ As regards the arrangements to be applied to imports of red meat from third countries, most delegations were in favour of applying a strict system of equivalence with the rules in force in the Community.⁷⁵

The European Parliament was clearly supportive not only of the keeping but also of the tightening of the ban⁷⁶ In fact, as an EU official said, the EP ‘had an important influence on the original decision to impose a blanket ban’. ‘The arrival of the Scandinavian countries won’t make it any easier to change the policy.’⁷⁷

As far as the commission was concerned, as early as in May 1991, the then agriculture commissioner Ray MacSharry, while stressing that this was his personal view and not yet EC policy, said that he hoped to get a ban on clenbuterol. Commission

⁶⁸ Bates, ‘UK resists ban on beef hormones’.

⁶⁹ Liz Hunt, ‘Health Benefits: Shoppers say no to drugs in food’, *Independent* 9 April 1996.

⁷⁰ Butler, ‘Belgians march in memory of ‘hormone mafia’ victim’; Bates, ‘UK resists ban on beef hormones’; ‘Leading Article: A hormones beef’, *Financial Times* 1 February 1996, London, p. 21.

⁷¹ Charles Bremner, ‘Britain overruled as EU tightens hormone-beef ban’, *The Times* 19 March 1996, p. 9; Polly Ghazi, ‘News roundup: UK pus hormone case’, *The Observer* 21 January 1996, p. 2.

⁷² ‘Politicians who simply lack beef’, *The Guardian* 19 March 1996, p. 16.

⁷³ de Jonquieres, ‘EU defends ban on beef treated with hormones’.

⁷⁴ Butler, ‘Britain outvoted on beef drug ban’.

⁷⁵ European Parliament, ‘Stockfarming - CNS/1993/1036’, *OEIL*, 26/02/1996.

⁷⁶ ‘A hormones beef’, *Financial Times* 1 February 1996, London, p. 21; de Jonquieres, ‘EU defends ban on beef treated with hormones’.

⁷⁷ Southey, ‘Hormones fuel a meaty EU row’.

officials said the problem was not widespread, but it risked turning consumers, already chary of beef because of the 'mad cow' scare, further against bovine meat.⁷⁸ In November 1995, in a Europe-wide media link-up, agriculture commissioner Franz Fischler warned the US that the European Commission would resist attempts to use new GATT [General Agreement on Tariffs and Trade] international trade rules to force consumers to accept additives banned in Europe. He said that beef sales were already dropping in Europe and consumers were resistant to the idea of additives. There was no shortage of beef and therefore no need to produce more by artificial means. "Forcing beef with additives on the already suspicious consumer would have the wrong effect. Simply, the market would contract, prices would go down and everyone would suffer. I can see no point in doing that," he said.⁷⁹ Mr Fischler said at a conference that he hoped to find a 'middle way' through the problem. What this meant is not entirely clear but for David Richardson of the Financial Times it could be interpreted as advocating a labelling system for hormone-treated meat.⁸⁰ On 12 January 1996 the European Commission defended the EU's ban saying removal of the curb would alarm consumers and risk destabilising the market.⁸¹ At the end of January, Brussels insisted the ban reflected strong concern among consumer groups and commanded overwhelming political support.⁸²

6.1.3. The history of the procedure

The history of this consultation procedure can be divided in four main moments, according to the four main legislative bodies' decisions under the procedure: 1) the commission's initial proposal, 2) parliament's amendments, 3) the commission's modified proposal and 4) the council's final vote.

1) In September 1993 the commission presented its initial proposal aimed to clarify and codify existing regulation of the substances with a hormonal or thyrostatic effect and to ban the use of beta-agonists in farming, for whatever use, except for the therapeutic treatment of horses and pets.

⁷⁸ Gardner, 'MacSharry urges ban on "angel dust"'.
⁷⁹ Paul Brown, 'Europe fights US on beef hormones', *The Guardian* 22 November 1995, p. 8.
⁸⁰ Richardson, 'beef hormone dilemma'.
⁸¹ de Jonquieres, 'EU defends ban on beef treated with hormones'.
⁸² 'Leading Article: A hormones beef', *Financial Times* 1 February 1996, London, p. 21.

2) In April 1994, the EP proposed in its first reading opinion five amendments to the commission proposal. The amendments consisted in:

- Demanding the commission to examine the possibility of establishing a positive list that allows to control the synthetic chemical substances with an anabolic effect destined to be administered to animals. That list would be subject to the control procedures specified in article 4.1. of the proposal.
- Obligation for any enterprise selling and/or distributing raw materials used in the fabrication of substances with a hormonal or thyrostatic effect to keep registers indicating in a detailed manner, in chronological order, the quantities produced or acquired as well as those sold or used in the production of pharmaceutical or veterinary products.
- Extension to third countries of the ban on beta-agonists.
- Authorisation of substances having a thyrostatic or hormonal action for therapeutic purposes under veterinary control.
- That the regulation entered into force with immediate effect, given that the original date in the commission proposal had already come and gone.

The first two of these amendments were considered by the EP the most significant.⁸³ They aimed to increase the effectiveness of the ban and, thus, increase consumer protection. The third amendment was also intended to increase consumer safety, but also to increase the protection of farmers against third countries. The fourth amendment also intended to benefit EU farmers, but risked reducing the effectiveness of the ban. Finally, the fifth amendment was just a minor technical correction.

3) In July 1994, the commission modified its proposal to integrate the two EP's amendments leading to 1) the introduction of a positive list of banned substances and 2) the obligation for any enterprise selling and/or distributing raw materials used to manufacture growth-promoting substances to keep a detailed register. However, it did not accept EP's amendment aiming to extend the ban on beta-agonists to third countries, nor that extending the field of authorised application of hormones, which, in the commission's view, would make the proposal inconsistent.⁸⁴ This preliminary modified proposal was passed on to the council which, although it was generally in favour of the

⁸³ European Parliament, 'Stockfarming - CNS/1993/1036', *OEIL*, 19/04/1994.

⁸⁴ European Parliament, 'Stockfarming - CNS/1993/1036', *OEIL*, 07/07/1994.

proposal, found some problems with the system envisaged for reviewing the list of banned substances in the light of scientific progress and the international context. Commissioner Fischler stated that the commission was willing to waive that clause, as its elimination would have no material effect, given that the commission would always have the option of submitting new proposals to the council.⁸⁵ But the commission's modified proposal still included the EP's amendment requiring the detailed register.

4) On 18 March 1996, the council reached political agreement, with the British delegation voting against.⁸⁶ The council finally adopted the directive on 29 April 1996,⁸⁸ by qualified majority, with the negative vote of the UK.⁸⁹ Prominently within the directive was the parliament-sponsored clause obliging enterprises selling and/or distributing raw materials used in the production of hormonal or thyrostatic substances to keep a detailed register. The importance of this amendment will be understood in the next section.

6.1.4. Analysis

Figure 6.1 represents the issue space, the position of the status quo, the preferences of the relevant actors involved and the position of the different alternatives that were considered. As far as preferences are concerned, all three actors were in favour of more consumer protection. The discrepancy was in scientific assessment, with the EP having a more scientific approach than the other two institutions (it wanted to extend the allowed use of beta-agonists for therapeutic purposes beyond horses and pets). The commission's initial proposal increased consumer protection with respect to the status quo, much at the expense of reducing the possibilities for legal use of the substances. The parliament presented amendments to this proposal. One of these amendments introduced the idea of requiring some enterprises to keep a detailed the register, which was intended to fight the black market and therefore increase consumer protection. The amendment benefited the commission so it was incorporated into its proposal. Finally, the amended commission proposal was accepted by the council by qualified majority.

⁸⁵ European Parliament, 'Stockfarming - CNS/1993/1036', *OEIL*, 07/07/1994.

⁸⁶ European Parliament, 'Stockfarming - CNS/1993/1036', *OEIL*, 18/03/1996.

⁸⁷ 'Politicians who simply lack beef', *The Guardian* 19 March 1996, p. 16.

⁸⁸ The original commission proposal was for a regulation.

⁸⁹ European Parliament, 'Stockfarming - CNS/1993/1036', *OEIL*, 29/04/1996.

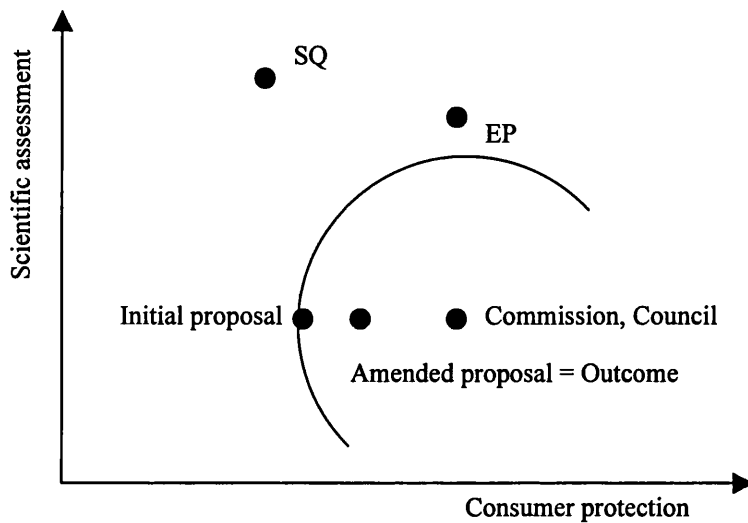


Figure 6.1. The revision of the beef hormone ban

This case will allow to illustrate some important features the EP's legal right to a hearing under the consultation procedure. These features are either assumptions or hypotheses derived from the model of the procedure I developed in chapter three. Whenever possible, I will try that these hypotheses be non-obvious and, whenever possible, contrast them with hypotheses derived from alternative models.

Illustration 1: Under the consultation procedure, the commission will prove that it has considered the EP's opinion.

The commission proved that it had considered each of the amendments, either by adopting them or by indicating the reasons that have lead it not to adopt them. The commission did not adopt the amendment authorising the use of the substances for therapeutic purposes under veterinary control, explaining that in its view such an amendment would render the proposal inconsistent. Similarly, the commission explained the reasons that led it not to adopt the EP's amendment envisaging a system for reviewing the list of banned substances in the light of scientific progress and the international context. Despite its initial agreement with the this EP amendment, the commission later argued that it was willing to waive that clause due to the council's insistence and to the fact that its elimination would have no material effect, given that the commission would always have the option of submitting new proposals to the council. In conclusion, the commission proved that it had give full consideration to all

of the EP's amendments. By giving the reasons why it had not accepted the latter amendments, the commission proved that it had taken the time to analyse them and that, if they had not been accepted, it was because the commission did not find them appropriate and not because the commission had not given them a fair read. In doing so it abode by the treaty provisions guaranteeing the EP's power of voice under the consultation procedure.

Illustration 2: Contrary to some theories' predictions, the EP may get some amendments passed under the consultation procedure.

The commission's initial proposal did not include the clause requiring enterprises to keep a detailed register of the raw materials used in the production of hormones. This amendment was introduced by the EP, and it was incorporated by the commission into its modified proposal, which was accepted by the council and became law. This is explained by the commission's lack of knowledge of all possible regulations. The EP had an alternative that the commission had not proposed in the first place not because the commission did not like it, but because the commission did not know it. With this the EP got what it wanted, overcoming resistance, which in this case was the commission's rational partial ignorance.

Illustration 3: Contrary to theories that predict that only minor and unimportant amendments can succeed under consultation, successful EP amendments under consultation can be important.

The fight against the black market was a very important issue, not only because it could render the ban ineffective and bring with it dangerous collateral consequences but also because it was key in gathering support for the ban. A group of traders and importers in the European Community represented by the European Alliance for Safe Meat argued that the ban indirectly serves the purposes of the illegal market.⁹⁰ They agreed that 'red meat definitely has an image problem', but 'it is made worse by headline news of people being caught for misuse of hormones', they argued⁹¹ FEDESA, a federation representing European pharmaceutical interests, like American exporters, blamed the

⁹⁰ Dickson, 'Meat traders say people want hormone-treated beef'; Southey, 'Hormones fuel a meaty EU row'.

⁹¹ Southey, 'Hormones fuel a meaty EU row'.

ban for the existing black market.⁹² So although there was a majority in the EU in favour of a restrictive law, the black market was a very strong weapon in the hands of those opposing the ban (namely foreign producers and pharmaceutical companies). Measures fighting the black market signified a blow against the opponents of the ban precisely where it hurt them the most. So the question was how to implement the ban in order to avoid the black market. The first answer is by means of inspections but the vital question remains: how thorough should the inspections and tests applied to such animals be?

Time magazine researched the state of inspection systems in 1999. France's inspection chief Vallat said that the current control systems were 'based on the agro-industrial landscape of the '50s.' He said EU member states averaged one public controller for every 100 agro-industrial production centres. 'That's not enough,' said Vallat, when levels of interpenetration mean that an accident in one centre can affect a whole sector. The intensity of testing and inspection varied across member states. In Italy, for example, according to one vet, about 30,000 cattle were tested for steroids each year, out of 4 million slaughtered. In France only half this number were tested. Sterbini said inspectors looked at his 100,000 chickens about once a month. Public vet Ennio Moricone said the fact that he is one of 5,000 inspecting in Italy is misleading. 'We examine all the paperwork, but in the end it's only one chicken in a million that undergoes laboratory testing.' For Time, a big drawback is that the EU's own veterinary inspectors still have to announce well in advance their visits to feed manufacturers, slaughterhouses and farms. There are only 70 of them, and apart from spot checks they have to audit inspection systems throughout the EU and in other food-exporting countries. The European Parliament recommended in 1996 that the Commission authorise surprise inspections. Deputy chairman of the Parliament's powerful agricultural committee, German Green Member Friedrich Wilhelm Graefe zu Baringdorf, said: 'We thought that would help limit the often hand-in-hand relationship between producers and inspectors in many countries. The Commission said it was a reasonable approach, but in the Council [which comprises officials from the member states themselves], the measure died.'⁹³ The problem with animal inspections is the enormous cost that they suppose, given the size of the EU meat market.

⁹² Spencer, 'Beastly deeds'.

⁹³ 'The Horrors of Factory Farming in the EU', *Time Magazine* 5 July 1999, p. 26.

But a second possibility was to control the production of the banned substances, instead of their use. The number of factories producing the substances is smaller than the number of farms or even abattoirs at which meat tests can be taken. But controlling the production of the banned growth-promoting substances was still difficult, because ‘hormone compounds are relatively easy to manufacture.’⁹⁴ According to Thomas Raftery, an Irish academic and former MEP, who was chairman of the Brussels-based European Alliance for Safe Meat, hormone production ‘could be done by anyone with an elementary knowledge of chemistry’.⁹⁵ Sometimes the mafia may have secret hormone laboratories.⁹⁶ De Ruyver said that in some clandestine laboratories in Belgium the latest fashion was to mix “cocktails” of various hormones for cattle, achieving the desired cumulative effect while staying below the legal limits for each individual substance. ‘It’s just like [the doping] you see in cycling,’ he said. ‘They are getting better and better at masking it.’⁹⁷ But there are also instances of lawfully established firms that sell the banned substances to the illegal market. This was the case when several van-load of a cocktail of angel dust and other farm animal growth hormones were seized by Irish authorities in September 1991. The haul was thought to have a potential farm-gate value of tens of millions of pounds. The raid followed a tip-off from the Dutch police, which had raided a pharmaceuticals plant, Dopharma, in the Netherlands two weeks previously where they discovered ‘angel dust’ was being illegally manufactured.⁹⁸ Parliament’s amendment requiring enterprises producing and/or selling raw material used to manufacture the banned substances to keep a detailed register went precisely in the direction of making it more difficult for laboratories to produce and/or sell the drugs illegally. The amendment introduced a check at another level of the production. The amendment made it more difficult for someone ‘with an elementary knowledge of chemistry’ to get hold of the raw materials used in the production of the hormones. It also made it more difficult for legally established laboratories to cheat on the amounts of the drugs produced in order to be able to sell part of their production to the black market. So the amendment had important consequences in the fight against the illegal market, which was the ban’s Achilles’ heel.

⁹⁴ Butler, ‘Why the mafia is into your beef’.

⁹⁵ Dickson, ‘Meat traders say people want hormone-treated beef’.

⁹⁶ Clough, ‘Hormone mafia wages bloody war on Belgian vets’.

⁹⁷ ‘The Horrors of Factory Farming in the EU’, *Time Magazine* 5 July 1999, p. 26.

⁹⁸ Coone, ‘Ireland cracks down on growth hormone’.

Illustration 4: Contrary to what is predicted by other theories, innovative amendments under the consultation procedure are more likely to be successful than corrections.

The commission has to accept an EP amendment for it to pass, so it is key that the amendment does not go against the commission's wishes. This can only happen when the commission had not thought of that alternative before. The new alternative can be a minor technical change or clarification, or an amendment adding a new policy dimension. Amie Kreppel predicts that the former will be more likely to be successful than the latter.⁹⁹ What I argue is something different: amendments, in order to be successful, have to include something that the commission had not thought of, be it a clarification or a new policy dimension. The evidence of this case illustrates precisely that. The extension of the legal use of clenbuterol to parturient cows was not innovative, since it was allowed before the revision and it was precisely one of the objectives of the directive's revision to ban the use of beta-agonists in stockfarming altogether. Conversely, the amendment requiring the detailed register to control the production of hormones was highly innovative. Of course it is always possible *a posteriori* to argue that the amendment was common sense and added nothing new to the debate, but such argument would not be unlike Columbus egg. But the fact is that the amendment passed was innovative, at least in relation to the commission's original proposal.

Illustration 5: Contrary to what is predicted by other theories, under the consultation procedure, political entrepreneurs will not only lobby the commission but also the EP.

Above we have proved that the EP got what it wanted, i.e. it exercised some kind of power. But we have not proved yet that the power of voice had anything to do with parliament's success. What if the amendment got through simply because it was convincing for the commission? What differentiates the power of the EP of that of a regular lobbyist that gets an amendment passed? For Tsebelis and Kalandrakis, there is no difference. But, why should a policy entrepreneur (MEP or not) go through all the EP's formal procedures and not just pass her proposal directly to the commission? This thesis answers this question by arguing that lobbyists go through all the parliamentary procedural formalities because the fact that a proposal has got the label of 'parliament's

⁹⁹ Kreppel, 'What affects the European Parliament's legislative influence?'

first reading opinion' gives the proposal some added value. This added value does not consist in changing the commission's or the councils view of the desirability of the proposal. The added value consists in that having the 'parliament's consultation opinion' label entails a right that the proposal be heard by the commission or, in other words, a legal right to a hearing. And the fact is that this case illustrates how the hearing of EP's amendments by the commission was guaranteed by the commission's comments of why it had or had not accepted each of the amendments. With its legal right of a hearing the EP has a guarantee that if the commission does not accept one of its amendments it will not be because the commission has not taken the time and effort to read it and analyse it.

6.1.5. Conclusions and caveats on the consultation case

The claim to a hearing is of limited importance, but once the EP recognises its constraints, the right turns out to be a non negligible source of power for the EP. Political entrepreneurs spend resources so that their ideas have the 'EP opinion label' that forces the commission to pay attention to them. This power is of limited relative importance but when applied to prominent issues it can make a non-negligible difference in the lives of many people.

There is also a caveat concerning the issue of the separability of amendments. In chapter two it was assumed that amendments were not separable, and that proposals were the basic policy units. However, the case shows that this is not always true. In this case the EP managed to get one of its amendments accepted, and others not. This does not mean that the theory is not valid, as long as it made the right predictions in the previous chapters, and helped to understand the legislative power of the EP better than other existing theories. In addition, the case could be accommodated within the theory in part one by considering that this piece of legislation was a composite one, composed of two or more basic separable issues. In fact, the regulation was intended to codify the different requirements contained in three existing directives.¹⁰⁰

¹⁰⁰ European Parliament, 'Agenda 2000: general regulation governing Structural Funds, revision for the period 2000-2006 – AVC/1998/0090', *The Legislative Observatory (OEIL)*, http://wwwwdb.europarl.eu.int/oeil/oeil_ViewDNL.ProcedureView?lang=2&procid=3040, 22/09/1993.

6.2. THE STRUCTURAL FUND REFORM: THE POWER OF VETO

Structural funds account for roughly half of the EU budget, however modest this may be. And although the EU budget is very small (it only represents 1.27 per cent of the Union's GDP), this does not mean that structural funds are unimportant. In many regions and even countries, structural funds can represent as much as 5% of their income.¹⁰¹ This is possible thanks to concentration, one of the main principles of the EU's regional policy. The EU budget is agreed annually in the framework of wider agreements lasting for seven years. The annual budgetary procedure involves the European Commission, the Council and the European Parliament. The procedure for approving the budget varies depending on whether the expenditure is considered as compulsory or non-compulsory. Structural-fund spending is considered non-compulsory expenditure, so in the procedure the European Parliament has a greater role than in other types of spending such as agricultural guarantee, considered compulsory expenditure. These seven-year frameworks put an overall cap on spending and set the general orientation of the budget for the period they cover. In 1999, the framework for the period 2000-06 was approved, under the name of 'Agenda 2000'. Agenda 2000 was believed to be extremely important, among other things, because it would set the budgetary framework that should prepare the EU for enlargement, with the first new members expected for as early as 2003. Structural funds were an essential part of the agenda 2000 package.

Many actors had a vested interest in the reform of structural funds that would take place as part of Agenda 2000. Less affluent regions (objective one regions, with a GDP per capita lower than 75% of the EU average) fought in order to keep, and where possible increase, the funds they were accustomed to. And the same applied to not so poor regions that were receiving part of the pie and would not like to see it reduced. Sometimes, the opposition was between current members of the EU and less affluent candidates, the latter pressing for aid to be concentrated in the areas most in need. Different levels of government (national, regional, local) also had a stake in the reform, each of them willing to have control of the funds. The same applied to NGOs, that wanted to see their role increased in the procedure. Last, but not least, the European Parliament cared a lot about the structural funds, since it is the part of the budget were it

¹⁰¹ Hix, *The Political System of the EU*, p. 3.

has more power. So it is apparent that there were many interests and issues at stake in the 1999 reform of structural funds.

6.2.1. The issue space and policy alternatives

Although, as we have seen above, there were many potential issues at stake in the procedure, the issue space could be reduced to two dimensions.¹⁰² This reduction is a simplification of reality, but nevertheless contains the main features of the procedure, for the purposes of the particular analysis carried out in this chapter at least. The first dimension was an efficiency dimension that consisted in increasing the effectiveness of the structural funds. The second one was a conflict dimension, which was well recognised by the European Anti-Poverty Network (EAPN), which co-ordinated the interests of many non-profit organisations. In one of its position papers, the EAPN noted that ‘in the urban areas of the Union, it was becoming increasingly common for there to be a coexistence of high-income residents with areas of low incomes, high unemployment, dependence on welfare benefits and overcrowded and poor housing’.¹⁰³ The EAPN also shared the view that ‘many of the problems of adjustment to economic change had fallen on the Union’s major urban areas. There was a very real danger of further fragmentation within European cities, rising unemployment, social exclusion, accompanied by a widening of the social divide between the haves and the have-nots’¹⁰⁴. In relation to the structural funds, they were in favour of ‘targeting particular populations as well as geographical areas’. They argued that

The main thrust of the Structural Funds has been toward geographical areas of need and in identifying the most needy regions of the European Union’

The concept of cohesion developed by the European Union has been largely a geographically-based one, one of enabling the regions lagging behind to move toward the European norm. This approach is of course a valid one, but it must be tempered by an approach which better recognises the needs of particular populations and groups, one of social, as much as regional

¹⁰² There was a third dimension which consisted simply in the overall amount of funds to be allocated to structural funds, although this will not be explicitly considered for the sake of simplicity, since it does not add much to the discussion.

¹⁰³ European Anti-Poverty Network (in partnership with the Community Workers Cooperative), *Social Inclusion: A priority task for the new Structural Funds*, Brussels: EAPN, January 1998, p. 9 citing the first cohesion Report by the Commission COM 96/542.

¹⁰⁴ European Anti-Poverty Network, *Social Inclusion*, p. 9 citing the first cohesion Report by the Commission COM 96/542.

convergence. Area based strategies have limitations, which are that they may miss significant groups in need whilst at the same time assist the less in need.¹⁰⁵

This dimension concerning whether the structural funds should be directed to the regions most in need or to particular populations or groups coincides somehow with the dimension ‘concentration of the structural funds vis-à-vis more even distribution’. Community initiatives represented a more horizontal approach than structural funds based on objective regions.

As far as alternatives are concerned, there were three main possibilities:

1. The status quo was the first alternative, although not supported by many. It was believed that the structural funds did not work as effectively as they could in many operational respects. There were seven objectives and 13 community initiatives.
2. Concentration of aid geographically in the regions most in need through the simplification of the structural funds regulations. Radical reduction in the number of objectives and community initiatives.
3. Less concentration of the areas most in need by means of less radical reduction in the number of objectives and initiatives to allow the taking into account of social groups in need besides geographical areas. In practical terms the difference between the third and the second possibility was that the third option maintained the URBAN community initiative.

6.2.2. Legislators’ preferences

Commission, EP and council, were all in favour of increasing the effectiveness of the structural funds. However, there were divergences among them with respect to the second dimension, i.e. whether to give the funds a more regional or a more social outlook. The commission drafted the original proposal. The first objective of the proposed reform was ‘to concentrate resources on the regions whose development is lagging behind’.¹⁰⁶ This showed that the commission was generally in favour of a more geographical approach to the structural funds than the status quo. The following anecdote may be illustrative of this: in an internal meeting in Brussels in 1999 the

¹⁰⁵ European Anti-Poverty Network, *Social Inclusion*, p. 23.

¹⁰⁶ European Parliament, ‘Agenda 2000: Structural Funds – AVC/1998/0090’, *OEIL*, 18/03/98.

commission presented to its officials the different options for the reform of the Structural Funds. In that meeting, the presenter used a spreadsheet to show what the receipts of each member state would be under alternative arrangements of the objectives of the structural funds. In other words, the analysis was not how much poverty would be reduced by the alternative arrangements, but how the money payments would be distributed among the different member states.¹⁰⁷ The commission was in favour of reducing the number of objectives from seven to three. It also wanted to reduce the number of community initiatives from 13 to 3 as well as their share in the funds' resources from 9% to 5%.¹⁰⁸ All this went in the direction of concentrating aid in the geographical areas most in need.

The European Parliament was in favour of a slightly less geographical and more social approach to the structural funds. This view implied directing aid towards not only geographical areas but also social groups in need. For instance, the Regional Policy committee believed that 'European Social Fund measures should be carried out under a horizontal approach and thus cover all the regions of the member states.'¹⁰⁹ But the divergence was even clearer in the case of community initiatives. Parliament generally welcomed the reduction of community initiatives proposed by the commission.¹¹⁰ But, contrary to the wishes of the commission, the parliament was in favour of retaining the URBAN community initiative for urban regeneration.¹¹¹ Parliament also called for 6% of the total allocation of the structural funds to be assigned to community initiatives, one percentage point more than what was foreseen in the commission's original proposal.¹¹² So overall it could be said that the EP was less concerned than the commission about geographical concentration of the funds. Finally, not everything was conflict with the commission, as the EP shared the commission's concern about the need to improve the performance and cost-effectiveness of the Structural Funds.¹¹³

¹⁰⁷ Brussels, spring 1999.

¹⁰⁸ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 18/03/98

¹⁰⁹ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 27/10/98.

¹¹⁰ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 19/11/98.

¹¹¹ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 27/10/98 and 19/11/98.

¹¹² European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 19/11/98.

¹¹³ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 27/10/98.

The council has traditionally used the structural funds as side-payments to other community policies.¹¹⁴ In this particular case it was shown that the council was in favour of greater concentration of the funds from a geographical point of view. Like the commission, it was in favour of reducing the number of objectives from seven to three and the number of community initiatives from thirteen to three. Like the commission, it wanted to reduce the budget share of community initiatives from 9 to 5 percent. Besides, the council insisted that at least 50 percent of the amount allocated to community initiatives went to INTERREG, a community initiative for cross-border, transnational and inter-regional co-operation.¹¹⁵ There was no doubt that the council was in favour of a more geographical (as opposed to social) approach to the structural funds than the European Parliament and probably the commission as well. So the council position was very similar to the commission's, with the exception that the council wanted a lower level of expenditure than the commission in structural funds in general (EURO 195 million as compared to the commission's preferred EURO 218 million for the seven year period).

6.2.3. The history of the procedure

On 18 March 1998 the commission presented a proposal to revise the general Regulation governing the Structural Funds for the period 2000-2006, taking account of the implications of Agenda 2000. The proposed reform had three main objectives: 1) to concentrate resources on the regions whose development was lagging behind, 2) to simplify financial administration and 3) to divide responsibilities more clearly between the Commission and the Member States. The proposal included a reduction in the number of objectives from seven to three and a reduction in community initiatives from 13 to three, as well as their participation in the funds from 9 to 5 percent. On 6 April 1999, following on from the results of the Berlin Summit of 23 March 1999 and the overall agreement of the Fifteen regarding Agenda 2000, a unanimous council modified slightly the commission's proposal. The new text was for the most part the same as that put forward in March 1998 in the commission's original proposal. However, it had

¹¹⁴ See Andrew Moravcsik, 'Preferences, and Power in the European Community: A Liberal Intergovernmentalist Approach', *Journal of Common Market Studies*, 31/4, pp. 473-524; David Allen, 'Cohesion and Structural Funds: Transfers and Trade-Offs', in Hellen Wallace and William Wallace (eds.), *Policy-Making in the European Union*, Oxford: Oxford University Press, 2000, pp. 243-65.

¹¹⁵ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 06/04/99.

evolved considerably on the financial front: it was mainly in the setting of the sums for structural expenditure that the council's text differed from the commission's proposal.

On its report of 19 November 1998, the parliament had already criticised several aspects of the proposal, and called for the opening of the conciliation procedure with the council with a view to the various recommendations made by parliament being taken into account.¹¹⁶ Although consulting the EP is not compulsory under the assent procedure, it could serve to get to know the EP's preferences better and reduce the probability of a parliamentary veto. So before the proposal approved by the council on 6 April 1999 was formally passed on to the EP for its assent, several voluntary consultations took place with the European Parliament, which asked that the URBAN initiative be maintained.¹¹⁷ As a consequence of parliament's insistence, on 19 April 1999, in a new version of the consolidated text of the Council laying down general provisions on Structural Funds, the Council added to the three existing Community initiatives, a fourth: the URBAN initiative, which would finance the economic and social regeneration of cities and urban neighbourhoods in crisis with a view to promoting sustainable urban development.¹¹⁸

On 6 May 1999 the EP gave its assent to the draft council regulation laying down general provisions on the Structural Funds, which reduced the number of objectives from seven to three and the number of community initiatives from 13 to 4.¹¹⁹ The draft represented the compromise reached with the council in April 1999, which added a fourth community initiative URBAN, for the economic and social rehabilitation of towns and urban areas in crisis. This fourth initiative would have a budget of EURO 700 million.¹²⁰ Concessions also included an increase in the overall financing of community initiatives, from the 5% in the initial proposal to 5.35% of total commitment appropriations for the Structural Funds (the EP had asked for 6%) and a 0.65% for innovative measures and technical assistance.¹²¹

¹¹⁶ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 19/11/98.

¹¹⁷ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 19/04/99.

¹¹⁸ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 19/04/99.

¹¹⁹ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 21/06/99.

¹²⁰ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 06/05/99.

¹²¹ European Parliament, 'Agenda 2000: Structural Funds – AVC/1998/0090', *OEIL*, 21/06/99.

6.2.4. Analysis

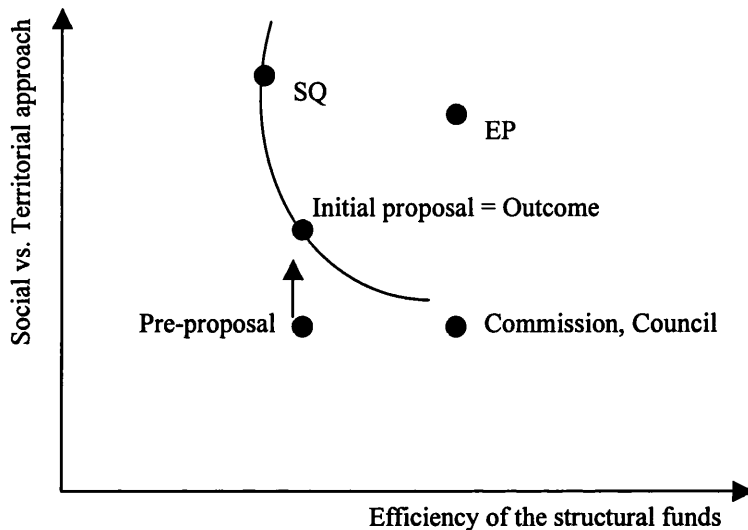


Figure 6.2. The 1999 Structural Fund Reform

Figure 6.2 depicts the history of the procedure. It can be appreciated how the configuration of preferences is equivalent to that in the previous case. All EP, commission and council agree on an efficiency dimension, in this case the increase in the effectiveness of structural fund spending. Again, there was a point in which they disagreed. The case was that the EP was in favour of a more horizontal approach than the EP towards structural funds. The EP wanted to keep the URBAN initiative, and to a greater share of structural funds earmarked for community initiatives than the council or the commission. The original proposal (pre-proposal), included a greater geographical concentration of the funds, reducing objectives from seven to three and community initiatives from 13 to three. This proposal was unacceptable to the EP, which wanted URBAN to be maintained and more many towards community initiatives in general. The EP expressed its discontent with these and other aspects of the proposal, so the council and the commission initiated voluntary consultations with the EP to avoid the risk of a veto. As a result of those consultations, the council approved the final proposal which gave parliament just enough concessions to avoid a veto. This final proposal was given parliament's assent, and became law. This case can serve to illustrate some important features of parliament's role under the assent procedure.

Illustration 1: *Unlike what other theories assume, the EP will not always prefer any legislation to the status quo.*

In this case, it was apparent that the EP did not prefer the pre-proposal, which scrapped the URBAN initiative, to the status quo. Otherwise, the commission would have had no need to modify its original proposal.

Illustration 2: *Unlike what other theories predict, the veto may affect the equilibrium outcome.*

In this case it is apparent how the threat of a veto gained the EP two important concessions: the maintenance of the URBAN initiative and an overall increase in the share of structural funds earmarked for community initiatives.

Illustration 3: *Unlike under the consultation procedure, under the assent procedure the EP may exercise power over non-innovative issues.*

Keeping URBAN was not an innovative amendment. It did not add information about how to obtain a given political outcome. The URBAN programme was already in place, so the consequences of keeping it were likely to be known to the commission. However, it was accepted exclusively because of the credible threat of a veto. This amendment would not have been accepted by the commission under the consultation procedure.

Illustration 4: *Unlike under the consultation procedure, under the assent procedure power is purely through conflict about desired political outcomes.*

The modification of the original proposal to keep the URBAN initiative going and to increase the allocation of funds to community initiatives went against the preferences of both the commission and the council. However they were forced to give those concessions to the EP in order to avoid a veto. This modification was not a pareto improvement that made everyone better off. The power of veto made the EP better off at the expense of the commission and the council.

6.2.5. Conclusions and caveats on the assent procedure

Voting power and, in particular, the power of veto, is easier to understand but more difficult to observe than the power of voice. The credible threat of a parliamentary veto

made the agenda-setter modify its initial proposal. In the particular case presented above, the power of veto was easier to appreciate because the commission had a pre-proposal, which it subsequently modified at parliament's insistence. The role of the veto would not be so easy to appreciate had the commission foreseen the EP's preferences from the outset and therefore not eliminated the URBAN initiative from its original proposal. The fact that in this case the effects of the power of veto were apparent is no coincidence. The case was selected, among other reasons, because it constituted a clear illustration of the power of veto. However, the structural funds case need not be representative of how the power of veto works on most occasions. Generally, the agenda setter will foresee the veto player's preferences, and take them into account when drafting its initial proposal. As a consequence the proposal will be acceptable for the veto player from the beginning, and we will not see any modifications to the original proposal. Therefore, it should not be expected to be able to appreciate so easily the power of veto on all occasions. The caveat concerns the assumption that only the commission can amend its original proposal, since in the case the council amended the commission's proposal.

6.3. CONCLUSION

This chapter has presented two case studies of legislative procedures in which the European Parliament enjoyed power of voice and power of veto, respectively. The other relevant factors, namely the powers of the other legislative bodies and the configuration of preferences, have been shown to be sufficiently similar. Therefore, the case studies allow us to concentrate on the differences between the power of voice and the power of veto, as far as their workings and consequences are concerned.

The case studies in this chapter perform the multiple functions set up in the introduction. They are at the same time theory confirming, theory infirming, hypothesis generating and illustrating. In the first place, the cases in this chapter are theory confirming in that they prove, for the two particular issues they cover, that the theory developed in the first part of this dissertation conforms to reality. This happens at the level of assumptions where, for instance, the structural funds case shows that the EP does not necessarily prefer any legislation to the status quo. The theory is also confirmed by the cases at the level of the workings of the powers, where they show that the power of voice works only for innovative amendments, and that although the power

of voice also overcomes conflict, this is not about differences in preferred political outcomes. Finally, the cases also confirm the theory at the level of its conclusions, showing that both the power of voice and the power of veto are able to produce substantial consequences and that there is no reason to believe that the power of voice need always be less important for the EP than the power of veto.

Secondly, the two case studies presented in this chapter are theory infirming, in that they weaken marginally the predictions of the model. The cases show how the council can modify the commission's proposal by unanimity, a prerogative which was not introduced in the models in chapter three for the sake of simplicity. They also show that it is possible for the commission to accept some of EP amendments and not others, which runs counter the model's assumption that proposals are indivisible units and the prediction that the EP will only make one proposal on a particular legislative issue. Far from invalidating the model, these are mere examples of the compromise between explanatory power and tractability of the model as well as the consequences of the focus on understanding an important issue such as the EP's power of voice under the consultation procedure. In this light, as argued in chapter two, different models are not necessarily substitutes, but can focus on different aspects of reality.

Thirdly, the two cases are hypothesis generating, in that they point at likely extensions of the model. For instance, the council may also enjoy a power of voice under the procedure. Similarly, the different provisions of a legislative proposal may be separable, explaining why the EP would present different amendments to a commission proposal instead of a single amendment.

Last, but not least, the case studies in this chapter are illustrative. Indeed, this was their main purpose as set out in the introduction to this chapter. At this point, the cases should have served the reader to obtain an overview of the whole model of EC law-making developed in the first part of this thesis. In particular, the cases should have been useful to illustrate what the power of voice is, how it works and what results it produces, not only in itself but also in comparison to the power of veto. As the reader will likely remember stories more easily than mathematical models, these cases should serve as a useful mnemonic device for the main issues in this dissertation.

CHAPTER SEVEN

Conclusions: the power of voice, EU democracy and beyond

The right of legislative bodies to be consulted before legislation is adopted has been systematically neglected by formal models of law-making. Yet this power is in the essence of parliaments and democracy in general. This dissertation has been devoted entirely to explaining what the power of voice is, how it works and what results it produces, as well as the reasons that may have led sovereigns, from the early Norman kings to current European heads of government, to delegate this power. In this dissertation, the European Parliament has been the glass through which to see this general political phenomenon. The conclusions of this dissertation about the power of voice are applicable to virtually all of politics.

This concluding chapter will be organised in five sections. In the first section I will recall the main thesis of this dissertation, and review how this has been developed throughout the preceding chapters. In the second section I will summarise the main findings of the dissertation about the power of voice. The third section will investigate the question of why delegate the power of voice. In the fourth section, I will draw some normative conclusions about the power of voice and its implications for democracy. The final section will assess the contribution of this dissertation and propose an agenda for future research.

7.1. LEGISLATION AS COSTLY INFORMATION TRANSMISSION

The main thesis of this dissertation has been that legislative politics is a game of strategic and costly information transmission. The argument can be divided in two parts: first, legislative politics is a game of strategic transmission of information. This is a key feature of the model and the reason why it is called informational in the title of this dissertation. Law-making is a game in which information means power and actors

transmit their information strategically in order to influence the outcome of legislation. The information transmitted is mostly about how to achieve given political outcomes through legislation. Legislators seek to maximise their private information in order to maximise their power and, in so doing, they contribute to making better laws. Their search contributes to finding the best innovative solutions to political problems.

Secondly, the transmission of information is costly. Legislative politics is a game in which lobbyists and legislators maximise the attainment of their most preferred political outcomes, subject to given constraints. Traditionally, the only constraints that were considered in the literature were the so-called institutions, or 'humanly designed rules of the game' that constrain the players' behaviour. But in this dissertation I have shown that as important as those constraints are the natural constraints, or the 'God-made designed rules of the game' that also structure the actors' behaviour. The most important of these constraints, as far as legislative politics is concerned, is the limited ability of the human brain to absorb policy-relevant information. I have shown in the preceding chapters that this limitation conditions lobbyists' and legislators' behaviour as much as institutions do.

To develop this thesis, this dissertation has made use of a series of rigorous and innovative methods. As usual for a positive theory, this dissertation has been organised in two parts, where the first part presents the theoretical model and the second part tests its predictions against empirical evidence. As far as the model is concerned, the main methodological innovation has consisted in the use of computer simulations to derive some results, which are later used as informed assumptions in order to deduce the model's predictions. So the theoretical model uses a combination of induction (in order to obtain the simulation results) and deduction (in order to obtain the model's predictions).

The empirical part of the thesis has also been innovative. In the first place, the thesis develops economic proxies for phenomena such as the powers of the European Parliament or the cost of lobbying. In order to obtain these measures, the thesis used methods such as hedonic prices or issue-based surveys. The model also develops proxies for other variables, such as the dimensionality of the issue space. The second feature of the empirical testing of the theory is that it makes use of triangulation, or the combination of different methods and sources of evidence, in order to increase the power of the tests. In the dissertation triangulation takes place at different levels of the theory (intermediate and explained variable), which besides increasing the power of the

tests, serves to find out whether the mechanism that leads to the model's results is the one proposed by the theory. The use of statistical evidence for this purpose is innovative since, so far, tests of the mechanisms that lead to a given legislative outcome were usually left for case studies. Finally, this dissertation has presented a wide set of new empirical evidence, such as the price of nearly two thousand rapporteurships or its survey of professional lobbyists.

7.2. THE POWER OF VOICE

The main objective of this thesis has been to explain what the power of voice is, how it works and what results it produces, as well as the reason that may lead a sovereign to confer such a power upon an independent legislative body. The power of voice is a legal claim to a hearing, the right of a *vocal* to be heard inside a committee where a decision is being taken. As chapter three has shown to be the case for the European Parliament, the power of voice is usually enforced by means of the possibility of the vocal blocking action until she is properly consulted. But this does not mean that the power of voice is a right to an indefinite delay, a filibuster kind of veto. This is because under consultation delay is a mere instrument to enforce the power of voice and is only legitimate in so far as it is used to ensure that the views of the vocal are given full consideration. In chapters two and three I have shown that voice is a power precisely because in a context of costly absorption of information, it can overcome the agenda-setter's rational ignorance.

As predicted in chapter three and tested in chapter five, the mechanism by which the power of voice operates consists in encouraging lobbyists to provide information to the vocal, who has the prerogative to strategically transmit a selection of this information at no cost to the agenda-setter. This alters the agenda-setter's pool of alternatives, potentially influencing the latter's proposal and the outcome of legislation. Chapter three predicted that when the EP enjoys the power of voice, it will act as an indirect channel of access to the commission, receiving a significant amount of lobbying, although always smaller than the amount directly received by the commission.

The preceding chapters have shown that the power of voice is not innocuous. Where it exists, it enables the vocal to drive the legislative outcome closer to her ideal, as compared to what would happen in the absence of that power. The power of voice

increases with the complexity of the issue and with the scarcity of the administrative resources of the agenda-setter. In this dissertation the power of voice was compared to the power of veto, which is the strongest form of voting power. Chapter three modelled the EP's power of voice together with its power of veto, and derived a series of propositions concerning the importance of the power of voice for the EP vis-à-vis the veto, which were subsequently tested in chapter four. Both chapter three at the theoretical level and chapter four at the empirical level have shown that one cannot say that the power of voice is always less important than the power of veto. It is perfectly possible that in particular cases the power of voice is more important than the power of veto, depending on the agenda-setter's resources to absorb policy-relevant information, relative to the complexity of the issue at stake. Given the fact that voting power seldom takes the form of an absolute veto, it is not adventurous to say that the power of voice is generally stronger than voting power.

The power of voice finds a prominent example in the EP's right to be consulted, but it is not exclusive to the EP nor to consultation. Indeed, the right to be consulted is enjoyed by many other legislative bodies in and beyond the EC legislative system, from the EC's committee of the regions to the Spanish council of state. Nevertheless, the power of voice is not exclusive to consultation, but is behind the whole idea of parliamentary debate and scrutiny. Behind the institutions of question time or written questions lies not only the right of legislators to be informed about what the government does. These questions can often be formulated so that they transmit a policy idea to the government. The fact that these questions must be answered in a reasoned manner, ensures that they are paid due attention. Moreover, when a minister is questioned before parliament, members can ensure that it is the minister herself that is actually hearing the question, not just one of her officials. Finally, a good indicator of the importance of the power of voice in the parliamentary context is how much speaking time is sought after among members.

But the power of voice is a general decision-making power that is not exclusive to legislative bodies. The commission or the United Nations, for instance, award formal consultative status to some international interest groups, thus encouraging them to develop the necessary resources to act as effective representatives of their member organisations, filtering information for legislators. The power of voice is also important in decision-making committees in general. For instance, think of a committee responsible for an appointment which has received hundreds of applications for the job.

The committee members will not be able to pay attention to the CVs of all the candidates. The power of voice inside the committee can be decisive. Think now of a shareholders assembly deciding the future of a company: what is more important, the right to vote or the right to address the assembly? Finally, voice is one of the most important powers of teachers. A teacher gives a lecture, to which the students must pay attention (some students even take notes and review them at home). The right to the students' attention is enforced at the time of the exams. Advertisers would be willing to pay much for that power. Probably this is also one of the reasons why teachers are usually well represented inside political parties.

7.3. WHY DELEGATE THE POWER OF VOICE?

The dissertation also produces some insights on the decision to delegate the power of voice. We have good explanations of the increase in the powers of the ECJ and the commission, but current integration theories do not produce a satisfactory explanation of the delegation of the EP's power of voice. The conclusion of this thesis is that the decision to delegate the power of voice is similar to a firm's make-or-buy decision. The EP is a means of decentralisation, in line with the subsidiarity principle. Delegating the power of voice upon the EP reduces the costs of absorbing policy-relevant information from interests. The parliament brings legislators closer to the interests they represent and from which they obtain policy-relevant information. The reduction of costs of transmitting information arises not only from geographical closeness, but also because a representative parliament allows greater cultural and linguistic closeness to the interests it represents. This kind of informational rationale reaches the internal workings of the EP. The parliament specialises internally through its committee system and through the distribution of rapporteurships in a way that ensures that the most relevant legislators in a particular issue have a particular closeness with the interests most affected by that issue. Usually, internal positions of power in a particular issue, such as committee seats or rapporteurships, are assigned to MEPs from member states or even regions where the issue has high socio-economic importance. This specialisation reduces physical, cultural and linguistic distance between legislator and interests, therefore reducing the costs of information transmission from lobbyists to legislators.¹

¹ Diego Varela, 'Who Does the European Parliament Represent, Members or Interests? An Analysis of Committee Assignments in the Fisheries Committee', Paper presented at the UACES 31st Annual Conference and 6th Research Conference, Bristol, 3-5 September 2001.

A government's commitment to consult a given legislative body is similar to the decision to guarantee a minimum purchase to the provider of a service. Such guarantee encourages the consultative body make the necessary investments in fixed administrative resources, which in chapter two were shown to reduce the costs of absorbing information. Such fixed administrative resources do not only consist in material assets, such as offices where to receive lobbyists, or telephones and computers to receive their phone calls and e-mails. Fixed administrative resources include as well, and most importantly, the expertise built by legislators over the years that makes it easier for them to understand the often complex legislative proposals lobbyists advocate before them.

In the case of the European Parliament, besides the reduction of information absorption costs, there is an additional rationale for the delegation of the power of voice. Unlike other consultative assemblies, which are created by a sovereign for its own advise, the EP was created in order to be consulted mostly by a legislative body other than the sovereign that created it. The power of voice works at the agenda-setting stage. The EP is consulted mostly by the commission, not by the council that created it. So the delegation of the power of voice to the EP is not a classical delegation decision in which an agenda setter such as a king or a president commits himself to consult a parliament. As shown in chapter three, imposing the obligation to consult the EP upon the commission creates a counterweight to the commission's agenda-setting power, which benefits the council. This checks-and-balances argument, particular to the EC legislative system, adds to the reduction in information transmission costs argument for delegation presented above.

7.4. THE POWER OF VOICE AND EU DEMOCRACY

As it could not be otherwise, the results of a thesis of this kind also have normative implications. These are framed in the debate about the lack of accountability of EU governance, the so-called democratic deficit. Although there is not a single and clear definition of the democratic deficit, many authors coincide to blame the lack of powers of the European Parliament.² In a speech in Dublin in 2001, Joschka Fischer, the German minister for foreign affairs, made two points that are shared by many:

1) "Europe" plays a greater and more direct role in the daily lives of the citizens yet the people cannot work out who decided what and whom to hold democratically responsible for these decisions. [...] 2) The role of the European Parliament as a source of direct legitimation is underdeveloped. This role has to be further strengthened if we are to overcome the democratic deficit of the Union – through more decision-making powers for the European Parliament...'³

The understanding of the power of voice that this thesis provides can contribute to the debate on the democratic deficit in two main respects. On the one hand, it can help European citizens understand the real extent of the EP's powers and, as a consequence, reduce their perception of the so-called democratic deficit. In the end, there may be no such democratic deficit, or it is perhaps not as serious as it is generally believed.⁴ As I have shown in this thesis, the power of voice is perhaps more essential to the idea of parliament than voting power. That is why it is imperative to clarify what the power of voice means. Discussions about the Isoglucose judgement should be left for scholars: European citizens cannot be expected to know about EC judgements. The essence of the Isoglucose ruling should be fully incorporated into the treaties. The idea that the power of voice means a power of delay should be eradicated. This would greatly increase EU citizens understanding of the EC legislative process and the EP's function within it, probably changing their perception of the so-called democratic deficit. This could probably increase turnout in European Elections, as well as the participation of civil society in legislation through the EP.

On the other hand, the thesis also provides some suggestions on how to increase the EP's powers that have not been very prominent on the reform agenda. Traditional parliamentary demands include the extension of its budgetary power to compulsory expenditure, the extension of the co-decision procedure to all areas where the council decides by qualified majority, and a greater role in the appointment of the commission. A less visible but also important EP demand is a greater role in the comitology procedures designed to oversee the implementation of EC legislation.

Nevertheless, it is a conclusion of this thesis that the power of the EP could also be increased through an extension and strengthening of its power of voice. In order to

² Cf. Joseph H. H. Weiler, with Ulrich R. Haltern and Franz C. Mayer (1995), 'European democracy and its critique', *West European Politics*, Vol. 18, No. 3 (July), pp. 4-39.

³ E.g. Joschka Fischer, Speech given in Dublin on 30 April 2001 (numbers added).

⁴ Andrew Moravcsik, 'If it ain't broke, don't fix it!: Beware Europe's rhetoric (and America's fears) about what it wants to be. Focus on what it is', *Newsweek* 4 March 2002, p. 19.

extend the EP's power of voice, mandatory consultation could be expanded to all areas of EC legislation. In order to strengthen it, the EP's right to be heard should be properly enforced. In addition, the EP's administrative resources should be increased, in particular, MEPs' administrative allowances. With her limited administrative allowance, an MEP can only afford two well paid full-time assistants.⁵ This number is more than doubled by the average American representative, not to say senator. The increase in MEP's resources should maintain the obligation to justify the expenditure on administration, although the general increase in the MEP's allowances would bring more autonomy to MEP's, who would have the power to decide by themselves how much of these allowances they would pool with their fellow MEPs. Some may decide to run a joint secretariat, probably through their national parties or party groups, something that some MEPs already do at present with their limited allowances. Spanish Socialists, for instance, are prominent supporters of this practice.⁶

In order to help provide for the necessary increase in the EP's budget, the functions and assets of other consultative bodies such as the Economic and Social Committee (Ecosoc) or the Committee of the Regions (CoR) could be taken over by the EP. These bodies respond to the constitutional structure of other times and their functions could easily be absorbed by existing EP committees. The EP already has an economic affairs committee and a social affairs committee that also include the views of industry and trade unions, both reasonably represented among MEPs. The EP also has a regional affairs committee that could take over the functions of the CoR. One may already think that the concerns of the different regions are reasonably represented in the EP, since MEPs come from the different regions of the EU. But if some member state is particularly concerned that its regions should have a distinct place on the EC legislative process, it could organise European elections along regional constituencies. The takeover of the Ecosoc and the CoR by the EP would present the additional advantage of simplifying the EC institutional system, thereby bringing it closer to EU citizens. Finally, the process of EU enlargement and the increase in the number of MEPs should not be seen in a negative light, but as means of increasing the manpower of the chamber. This, of course, would be a nominal increase, since with the arrival of new MEP's come also new issues and interests and additional work for the EP.

⁵ Corbett et al., *The European Parliament*, p. 47.

⁶ Corbett et al., *The European Parliament*, p. 48.

7.5. A RESEARCH AGENDA

Ideally, research should be both scientifically and socially relevant and the present thesis fulfils both criteria. As it was argued in the introduction, it is not straightforward how the right to issue a non binding opinion can represent a legislative power at all. But the study is also socially relevant. The consultation procedure has always been and still is the most common legislative procedure in the EC. As I showed in table 3.1 in chapter three, during the 1998-2001 period the consultation procedure applied to the majority of legislation (55% in 2001). If we add the procedures in which the power of voice is combined with the power of veto, the EP had a right to be heard under 90% of EC legislation. Yet consultation has been inexplicably neglected by the literature, which focused instead on both at the theoretical and the empirical level on the debate around the co-operation and the co-decision procedures. In this thesis I have advocated the social and scientific relevance of consultation, and the power of voice in general.

This dissertation answers some questions, but also leaves others merely indicated and yet others completely unanswered. The dissertation opens the room for further research in different lines, which I divide in immediate and further issues. The immediate issues are those that consist in perfecting and completing the research carried out in this dissertation, or in developing fully some of the arguments developed in the preceding chapters. For instance, the research in chapter four could be perfected by introducing a variable that more closely represented the saliency of issues, which is likely to affect the price of rapporteurships. Such a variable could be elaborated from media prominence of different issues, which would not be absent from difficulties, taking into account the fact that media in the EU are mostly at the national and sub-national levels, and multilingual. It would be more easy, however, to continue the research of chapter five on the channels of access for lobbyists by extending the analysis to lobbyists other than professional political consultants. A more extended survey could include other prominent types of lobbyists such as firms or interest groups. Following the research design of this dissertation would be of great help and allow the additionality of results.

The lines of research which are not so straightforward, but which are also sketched in the dissertation, concern mostly the decision to delegate the power of voice. As pointed out in the previous section, this thesis provides a double explanation for the council's decision to confer the power of voice upon the EP, namely the informational

and checks-and-balances arguments. The first of these arguments could be analysed in more depth by explicitly bringing into the formal analysis the issues that make the provision of two channels of access more cost efficient than one. Such an augmented model would also be useful to understand other issues, such as why the commission finances and provides formal consultative status to some interest groups. It would also be interesting to investigate the reasons that lead to the delegation of the power of voice in some issue areas, while leaving it outside other areas, such as international agreements. An explanation should probably take into account the urgency of the decisions.

Finally, there are yet other interesting questions that this thesis only marginally touches upon that go beyond the scope of this dissertation. Namely, why delegate the power of veto? Or why lobby at the voting stage? As it would be possible for the power of voice, the first issue could be explained by the pressure of public opinion, and the second issue by influence-selling legislators. However, as this thesis has demonstrated, it seems at least interesting to investigate the validity of more optimistic explanations in the line of the one offered by this thesis. Such explanations would consider legislation as a job of making good laws and in which there is room for the voluntary delegation of some powers to independent legislative bodies. These explanations would see lobbying in a positive light, as a contribution to the making of good public policy. It seems natural that an explanation of this sort should reserve a prominent place for information and the costs of obtaining it. Perhaps the way would be in combining this thesis' modelling of information as policy innovation with its modelling as the reduction of uncertainty about how policies relate to outcomes. Clearly there is still much research to be carried out, but I would be satisfied if at this point the reader knew more about the European Parliament, the law-making process and, what is more important, the power of voice.

APPENDIX ONE

Assessing the impact of incomplete information under assent and co-decision¹

In the introduction I argued that the key to a good theory is to choose where to concentrate simplifying assumptions and where to concentrate the realistic ones in order to maximise the model's appropriateness for a given level of complexity. In my informational model of lawmaking in chapter two, I model the creation and the working of information asymmetries about available policies among the different legislative bodies of a separation-of-powers-system. The whole thesis investigates the role of these information asymmetries in EC lawmaking. However, in the same chapter I also assumed that institutions' ideal outcomes and the status quo were common knowledge among the institutions. This is a simplifying assumption which can also have important implications for the model. The aim of this appendix is to justify this combination of appropriateness as far as information about policies is concerned and simplification as far as information about preferences is concerned. It will argue that the impact of incomplete information is limited and that it alone cannot account for important features of EC law-making.

Complete information has shown to be a controversial assumption of formal models of EC lawmaking. For George Tsebelis and Geoffrey Garrett, the consequences of the complete information assumption are not very serious. Although with complete information in their model of the co-decision procedure there would be no place for amendments, they attenuate this problem by restricting the complete information assumption to the last stages of the game.² However, the complete information assumption, even when reduced to the last stage of the game, is incompatible with the

¹ An earlier version of this paper was presented at the Sixth International Conference of the European Community Studies Association, Pittsburgh, PA, 2-5 June 1999.

² Tsebelis and Garrett, 'Agenda Setting Power, Power Indices and Decision Making in the EU', p.352.

existence of parliamentary vetoes.³ This is known as Hicks' paradox, which states that bargaining failures such as vetoes are irrational under complete information.⁴

But vetoes have occurred several times so far under both the assent and co-decision procedures. Roger Scully points out that, when modelling the co-decision endgame, assuming complete information leads to the overestimation of the agenda setter's power. But this does not determine the extent of the problem. Finally, Manfred Holler and Mika Widgrén extend the implications of the argument further. In defence of their models of voting power, they point out that the analysis in Garrett and Tsebelis 'rests on simplifications that *may be crucial* and, again, interesting enough to study further. The most important of them is complete and symmetric information.' (emphasis added).⁵ So the consequences may be crucial and yet they leave the matter for further study. Indeed, the inadequacy of the complete information assumption is a serious critique to sequential game-theoretic models and a potential saviour for voting power indices. If true, their argument would imply that models of sequential bargaining, which take into consideration agenda-setting, would lose their main advantage with respect to models based on voting power alone. So the question must be then rephrased as: 'what is the actual extent of the effect that incomplete information has on the power of the agenda-setter in legislatures?' Is incomplete information so great as to make the concept of agenda-setter irrelevant? However, in spite of the controversial nature of the question, the literature has not assessed the impact of the complete information assumption in EC lawmaking.

In order to answer this question this appendix develops a general model that allows us to estimate the effect of incomplete information on the power of the veto-player, based on evidence on the number of vetoes occurred. This model is then applied to two legislative procedures in which the EP acts as a veto-player, namely assent and co-decision.⁶ The conclusions focus on two main questions: 1) how important is the effect of incomplete information on the legislative power of the EP and 2) can incomplete information capture the role of information in EC law-making.

³ An alternative method to account for the presence of vetoes is to assume that the actors have an interest in vetoing, for instance because of position taking. See Huber, 1996.

⁴ Cameron, *Veto Bargaining*, pp. 29 and 99; John Kennan, 'The Economics of Strikes', in Orley Ashenfelter and Richard Layard (eds.), *Handbook of Labor Economics*, Amsterdam: North Holland, 1986, pp. 1091-137.

⁵ Manfred Holler and Mika Widgrén, 'Why Power Indices for Assessing European Union Decision-Making?', *Journal of Theoretical Politics* 11(3): 321-330, p. 328.

A1.1. A MODEL OF LAWMAKING WITH INCOMPLETE INFORMATION

In this section I develop a simple model of law-making under incomplete information between two legislative bodies: an agenda-setter and a veto player. In order to define the game, I will make assumptions about the legislative procedure, the configuration of preferences and legislators' information. As far as the decision rule is concerned, the legislative game is assumed to be a single shot game. The agenda-setter presents the veto player with a take-it-or-leave-it offer which, unless vetoed, becomes law. If the proposal is vetoed, the status quo prevails.

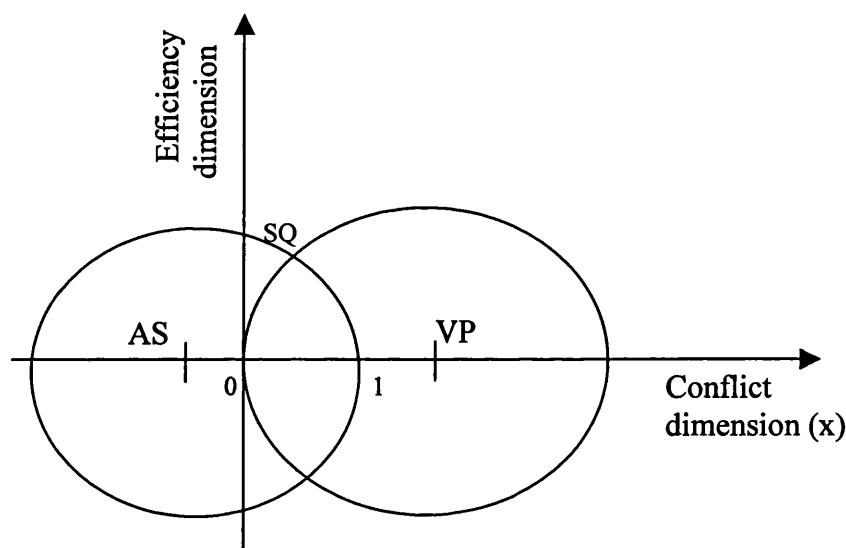


Figure A1.1. The configuration of preferences. Based on Tsebelis and Money, p. 74

Figure A1.1 depicts the configuration of preferences. The figure depicts the status quo and the ideal points of the agenda-setter (AS) and the veto player (VP) on a two-dimensional issue space. The circles around AS and VP are indifference curves and represent the set of points which yield the same utility as the status quo to the agenda-setter and to the veto player, respectively. Following Tsebelis and Money, the outcome space is reduced to two main dimensions.⁷ The vertical dimension has been labelled efficiency dimension because along that dimension the utility of both the agenda-setter and the veto player move together. Conversely, the horizontal dimension has been

⁶ See chapter three.

⁷ Tsebelis and Money, *Bicameralism*, p. 16.

denominated the redistributive dimension, since along that dimension, for points between AS and VP, the agenda-setter's and the veto player's interests are in conflict.

Given this decision rule and the configuration of preferences defined above, there is a set of possible outcomes determined by the lens depicted in figure A1.1. If we further assume that all possible technical improvements will be achieved, the set of possible outcomes is further reduced to the segment $[0,1]$ in the figure (which I will hereafter call "the pie"). Information is key in determining which point of this set of possible outcomes will be the equilibrium.⁸

The agenda setter is assumed to have incomplete information about the minimum acceptable offer to the veto player. Debate previous to the formal proposal is considered cheap talk. It is known from game theory that in order for cheap talk to convey information in bargaining, the game must contain some positive sum component.⁹ In terms of the game depicted in figure A1.1, the positive sum component consists in getting as close as possible to the contract line between the two institutions. It is in the interests of both players that the veto player shows the agenda-setter the direction of the proposals that should be made. However, movements along the segment $[0,1]$ are zero-sum so cheap talk will not reveal the position of the veto player's minimum acceptable offer within that segment. The veto player's message will always be the same, demanding its ideal outcome, irrespective of its minimum acceptable offer, therefore not conveying any information about the latter. In practice debate occurs pretty much like the model predicts. The veto player demands from the agenda-setter a large number of amendments. These amendments point to the agenda setter the direction of policy change that the veto player desires from the agenda setter's ideal position. However, along all the stages of debate the veto player never indicates how many of those amendments need to be accepted by the Council *at least* for the proposal to pass, or indicates a number amendments always greater than the actual minimum acceptable. In summary, from the veto player's cheap talk, the agenda-setter will learn in what direction it has to make concessions, but never exactly how many will suffice.

The agenda-setter is assumed to have rational beliefs about the position of the veto player's minimum acceptable demand. These beliefs are assumed to conform to a normal distribution of mean 0 and standard deviation σ . The mean 0 coincides with the

⁸ Romer and Rosenthal, 'Political Resource Allocation, Controlled Agendas, and the Status Quo'.

⁹ Austen Smith, 'Information and Influence', p. 145.

veto players's minimum acceptable demand, which means that the agenda-setter is assumed not to systematically underestimate or overestimate the veto-players toughness. The standard deviation σ represents the agenda-setter's degree of uncertainty with respect to how little the veto player will be willing to accept. I have chosen a normal distribution not only for the sake of simplicity, but also because it is a quite plausible representation of the nature of the agenda-setter's uncertainty. For instance, if the veto player were a parliament and members' minimum demands were normally distributed along a single-issue dimension, the agenda-setter's task would be to estimate their median minimum demand (which would coincide with the mean of the minimum demand distribution). The task is not easy for the agenda-setter since, as I have argued above, members will not transmit true information through debate about their minimum demands. There are, however, other means that the agenda-setter can use in order to obtain this kind of information, such as observing costly actions by members.¹⁰ In principle, the agenda-setter could try to assess the minimum demand of each and every member and, afterwards, calculate the mean. However, to obtain this information on every member would be rather costly, if not entirely impossible. Therefore, it is a more likely strategy that the agenda-setter will make its estimation of the parliament's median based not on the whole population but rather on a sample of members. And under the assumptions above, the mean of a random sample is distributed normally around the mean of the population.

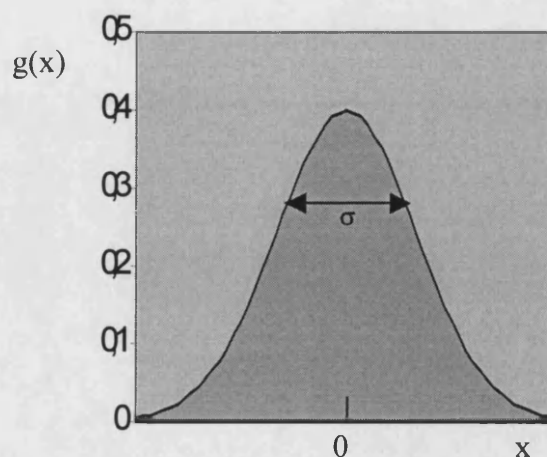


Figure A1.2. Agenda-setter's beliefs about veto player types

¹⁰ See Arthur Lupia and Mathew D. McCubbins, *The Democratic Dilemma: Can Citizens Learn What*

Figure A1.2 depicts the density function of a normal distribution of average 0 and standard deviation σ (the sampling distribution). The standard deviation σ indicates in our model the quality of the agenda-setter's information about the veto player's preferences. The lower the standard deviation, the more concentrated are the likely types of veto players around the central value and the greater confidence the agenda-setter can have in its predictions. The agenda setter's uncertainty (σ) decreases with the cohesion in Parliament, with the size of the sample or with the quality of the measure of each of the minimum demands of the sample of members. The Council can try to minimise its uncertainty by increasing the size and/or quality of its sample of members' minimum demands. However, as it is costly to achieve the necessary information and the benefits from additional information are decreasing, the Council will normally stop collecting information before having absolute certainty about the Parliament's minimum demand. Therefore, Council's uncertainty (σ) will be generally greater than 0.

Estimating agenda-setter's optimum offer

The agenda setter's optimum offer (x^*) is the one that maximises the agenda-setter's expected utility.

$$x^* = \underset{x}{\operatorname{argmax}} [U(x, \eta) \cdot G(x, \sigma)] = \underset{x}{\operatorname{argmax}} [(1 - x)^{1/\eta} \cdot G(x, \sigma)] \quad \text{Eq. A1.1}$$

where $U(x) = (1 - x)^{1/\eta}$ is the agenda-setter's utility as a function of the legislative outcome x and a parameter η directly related to the agenda-setter's risk aversion, and $G(x, \sigma)$ is the agenda-setter's subjective probability that x is accepted by the veto player, which I have assumed to be the accumulative normal distribution function of standard deviation σ .

If the magnitude of σ were known to political scientists, it would be straightforward to calculate the agenda-setter's optimal offer, given a certain utility function. But the value of σ is not directly measurable. Nevertheless, a piece of information is readily available which is related to both the offer and the σ , namely the effective veto rate. That rate is the best estimator of the *a priori* likelihood of rejection of the agenda-setter's optimal offer for a given set of issues. We know that

They Need to Know, Cambridge: Cambridge University Press, 1998.

$$G(x^*, \sigma) = 1 - \nu$$

Eq. A1.2

Equations (1) and (2) together form a system of two equations with two unknowns (x and σ). The solution to this system yields both the agenda-setter's optimal offer and the degree of uncertainty it faces (given by σ).

$$x^* = \frac{\alpha \cdot \eta}{1 - \nu + \alpha \cdot \eta}$$

where $\alpha = \frac{\tau \cdot e^{-\frac{\tau^2}{2}}}{\sqrt{2 \cdot \pi}}$ and τ is such that $G(\tau) = 1 - \nu$

and

$$\sigma = \frac{x^*}{\tau}$$

These results mean that having an estimate for the veto rate (ν) and assuming a given risk aversion coefficient (η) for the agenda-setter, it is possible to estimate both the uncertainty faced by the agenda-setter (σ) and its mean offer (x^*). An analysis of how parameters ν and η relate to the equilibrium outcome shows that greater veto rates (ν) are associated with greater agenda setter's offers. Similarly, greater risk aversion coefficients (η) are also associated with greater agenda setter's offers. This model can be applied to a varied number of legislative and non-legislative settings. In the next section, it will be applied to lawmaking in the EC under two different legislative procedures.

A1.2. LEGISLATIVE PROCEDURES AND INCOMPLETE INFORMATION

There are at least two legislative procedures in the EC to which the model in the previous section is susceptible of application, namely the assent and co-decision

procedures.¹¹ Under both of these procedures the European Parliament has a power of veto over the final legislative proposal, which it receives as a take-it-or-leave-it offer. These procedures differ substantially from each other, the main difference being that whereas under assent there is only one formal EP reading, under co-decision there are three. Therefore, it may not be unreasonable to suppose that there may be differences in the quality of the agenda-setter's information about the EP's minimum acceptable demand.

	Procedures	Vetoes	Veto rate	Prob. (2-tailed)
Co-decision	342	3	.0088	
Assent	50	7	.1400	
Difference			.1312	<.0001

Table A1.1. Estimated probabilities of a veto under co-decision and assent

Table A1.1 shows statistical data on veto occurrences under both assent and co-decision, which allow to estimate the equilibrium a priori probability of a veto taking place. Under the co-decision procedure, between 1 November 1993 and the end of 2001 parliament's veto was exercised in 3 out of 342 procedures.¹² Therefore the a priori likelihood of parliament's veto (ν) can be estimated to be 3/342.¹³ Conversely, under the assent procedure, seven vetoes occurred out of fifty procedures (two were rejected and five failed to obtain an absolute majority), a rate fifteen times greater than under the co-decision procedure.¹⁴ This difference cannot be attributed to chance, since a two-tailed difference of rates test allows to reject the equality hypothesis at a .0001 significance level.¹⁵

¹¹ The analysis will focus on the procedure as it applied until the Amsterdam treaty reforms came into force.

¹² OEIL (all co-decision procedures by real end of procedure).

¹³ It is not necessary to undertake any test to know that the probability of a veto is greater than zero. A single veto is sufficient to prove that.

¹⁴ Martin Westlake, *The Commission and the Parliament: Partners and Rivals in the European Policy-making Process*, London: Butterworths, 1994, pp. 41-42.

¹⁵ The veto rate in the US during the period 1945-92 was .023 (434 out of 17,428), which lies between the assent and the co-decision veto rates.

	η	x^*	σ	Expected accepted offer
<i>Co-decision</i>	1	.0539	.0227	.0540
	2	.1022	.0430	.1024
	3	.1459	.0614	.1464
	4	.1855	.0781	.1858
	5	.2216	.0933	.2222
<i>Assent</i>	1	.2185	.2023	.2330
	2	.3586	.3320	.3816
	3	.4562	.4222	.4865
	4	.5279	.4887	.5588
	5	.5830	.5396	.6198

Table A1.2. The equilibrium under co-decision and assent

Table A1.2 shows the equilibrium agenda setter's offer, the degree of uncertainty and the EP's expected utility under the co-decision and assent procedures, for different levels of the agenda-setter's risk aversion. The first thing to notice is that for the case of no risk aversion, the EP receives a mean offer of 5.39% of the pie under co-decision, and of 21.81% under the assent procedure. In both cases the offer is closer to the agenda-setter's ideal point than to either the EP's or even to a medium point between both. Both the agenda-setter's mean offer and the EP's expected utility increase with the level of risk aversion of the agenda-setter. However, we do not know the exact level of risk aversion of agenda-setters in EC legislative politics. The conclusion is that, in the absence of additional information on the degree of risk aversion of the agenda-setter, it seems prudent not to disregard agenda-setting power as irrelevant for legislative outcomes.

Another important thing to notice is that under the assent procedure the level of uncertainty is greater than under the co-decision procedure. This result is not surprising if we take into account that under the co-decision procedure, before the EP is presented with the final offer, parliament will have already gone through up to three parliamentary readings, with the corresponding debates whereas under the assent procedure there is no formal provision for parliamentary consultation. As a consequence of greater uncertainty, there is not only a greater proportion of vetoes under the assent procedure but, what is more important, under assent both the agenda-setters mean offer and the EP's expected utility are estimated to be greater than under co-decision. The conclusion that one could draw from this is that, according to this incomplete information model, the EP is worse off under the co-decision procedure than under the assent procedure.

This result runs counter to conventional wisdom on legislative procedures and, what is worse, taking into account that MEP's favoured the extension of co-decision over assent, also runs counter to MEP's rationality.

A1.3. CONCLUSION

The aim of this appendix has been to determine whether incomplete information is an essential assumption for a model of EC law-making or else it is possible to assume complete information for the sake of simplicity without loss of much appropriateness of the model. The question of incomplete information is so important that it has been used by some proponents of power indices to justify their neglect of agenda-setting power. This question is therefore also very relevant to this thesis. In order to answer this question, this appendix constitutes the first attempt to formalise and quantify the impact of incomplete information on EC law-making.

Estimates derived from the application of the model to evidence on the EC co-decision and assent procedures show that the impact of incomplete information is rather limited, at least for low levels of agenda-setter's risk aversion. And, in any case, the effects of incomplete information are never so strong as to eliminate the agenda setter's advantage. Therefore, it seems justified to continue to take into account the location of agenda-setting power when analysing bargaining in legislatures such as the EC political system. Models that take into account the sequential nature of the legislative game, such as those developed in chapter three, do still enjoy a competitive advantage with respect to models of voting power alone.

Furthermore, the results of this appendix estimate that the EP is better off under assent than under co-decision. This result runs counter to evidence of MEPs demanding the extension of co-decision at the expense of assent. Therefore, we should be cautious about taking the model's results at face value. This contradictory result can be the consequence of omitting some relevant variables which, in addition to the legislative procedure, may affect the quality of the agenda-setter's information about the veto player's preferences. Potential candidates are the cohesiveness of the veto player and dimensionality. But, more importantly, the contradictions may be the result of the neglect of other important features of law-making, such as the role of information about available policies.

The limited role incomplete information is estimated to play in EC law-making as well as the rather contradicting results concerning the EP's welfare under different procedures contrast with the fact that one can smell the role of information in EC legislative politics. One just has to look at the number of proposals and amendments that float in the EC legislative sphere. Therefore, the most sensible approach seems to be to accept the simplifying assumption of complete information, and to keep the sequential nature of the legislative game in the analysis. However, in view of the likely relevance of information for EC legislative politics, it also seems sensible to look at other ways of incorporating it into the analysis, so that it produces more substantial results and does not lead to contradictions with evidence. This is the approach I have undertaken in the informational model of lawmaking I develop in this thesis.

APPENDIX TWO

Simulating the EC Legislative Subgame

This appendix contains the simulations of the EC legislative subgames corresponding to the three main legislative procedures analysed in the thesis: consultation, assent and co-decision.¹ The evidence from these controlled experiments allows me to induce some characteristics of the information benefits associated to lobbying, and of the relationship between information and legislative power and success. These characteristics enter the model in chapter three as reasoned assumptions. The results serve two main purposes: on the one hand, the results on the marginal information benefit to the legislators and the marginal returns to lobbying are used as an input in order to analyse the equilibrium of the lobbying subgame. On the other hand, the results on legislative success and power are used once the lobbying subgame is solved in order to investigate the solution to the law-making game.

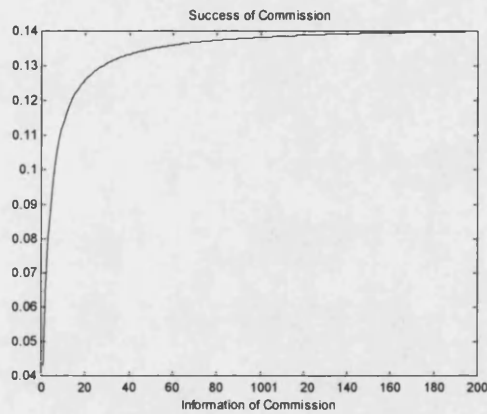
The rest of this procedure is divided into three sections, corresponding to the three EC legislative procedures analysed, namely consultation, assent and co-decision. For each of these procedures, I undertake three different simulations, which assume a one-, two- and three-dimensional outcome space, respectively. In each of these nine simulations, I draw curves for the legislative success of the different players, the legislative power of the three legislators, the marginal information benefit (MIB) to the legislators and the marginal returns to lobbying (MRL) and the aggregate marginal information benefit (MIB + MRL), as well as the difference between the aggregate information benefits associated with lobbying the different legislative bodies $((MIB_C + MRL_C) - (MIB_{EP} + MRL_{EP}))$ where there is a more than one legislative body being lobbied (consultation and co-decision procedures). The simulations of the assent procedure are carried out for one million iterations, whereas the simulations of the consultation and co-decision procedures are carried out only for 100,000 iterations,

¹ The simulations have been carried out using MathWorks' Matlab 5.2.

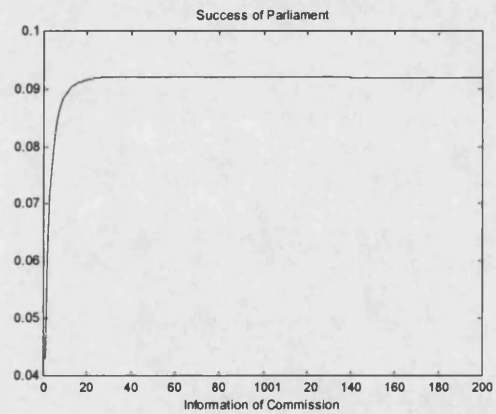
given the increased complexity of the procedures and the corresponding draw on computing resources.

A2.1. THE ASSENT PROCEDURE (1,000,000 iterations)

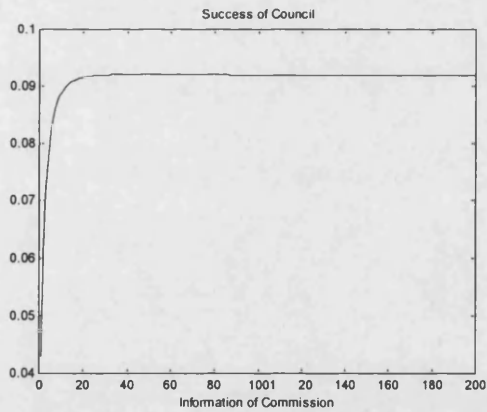
A2.1.1. Assent procedure - 1 dimension



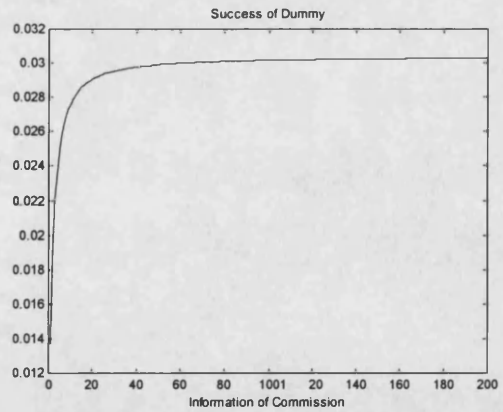
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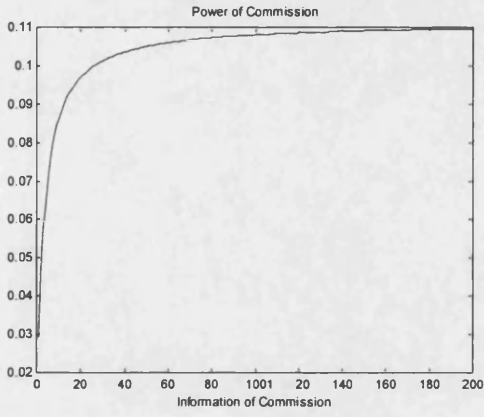
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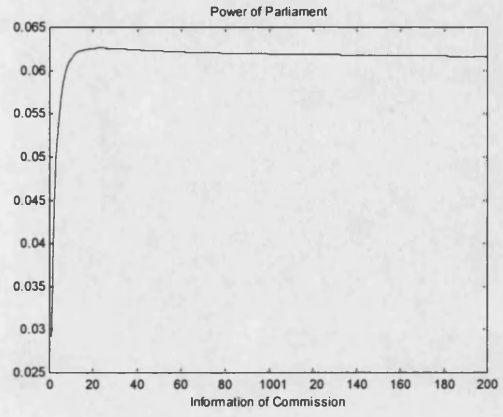
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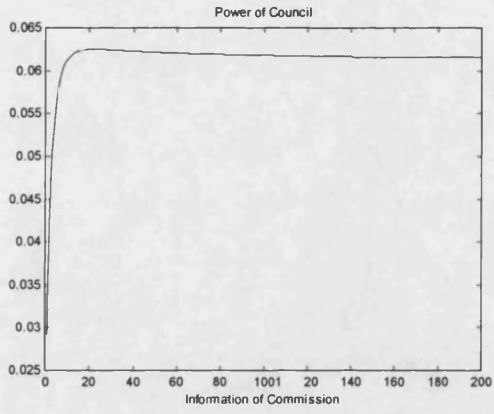
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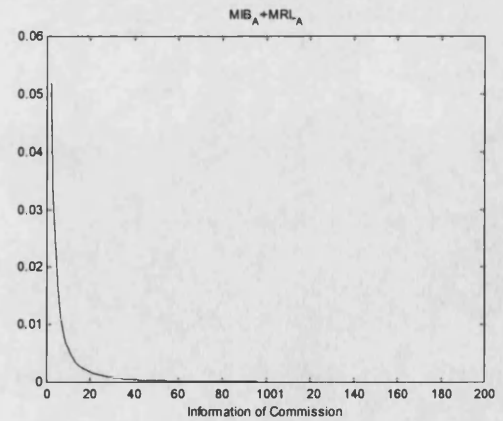
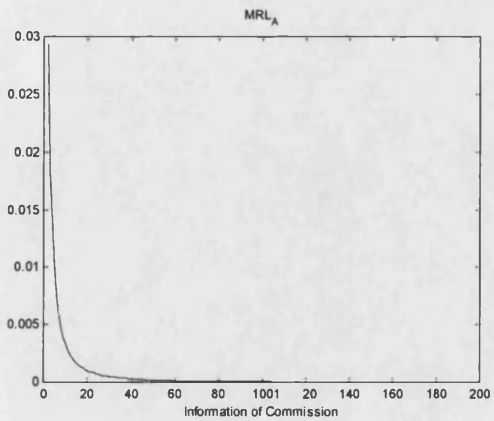
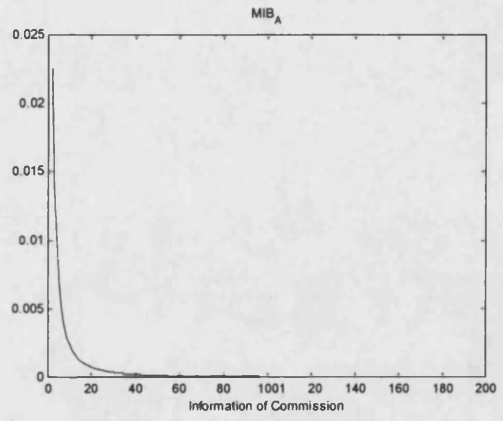
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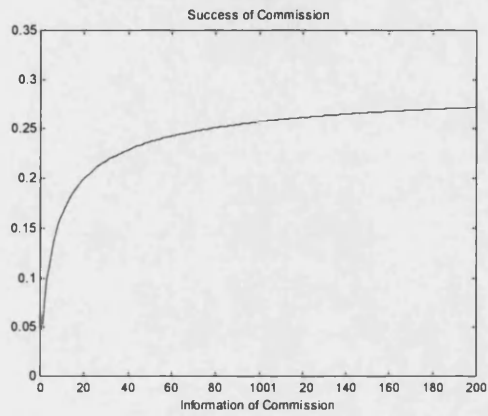
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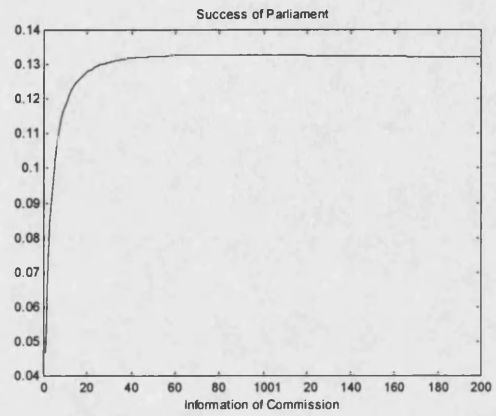
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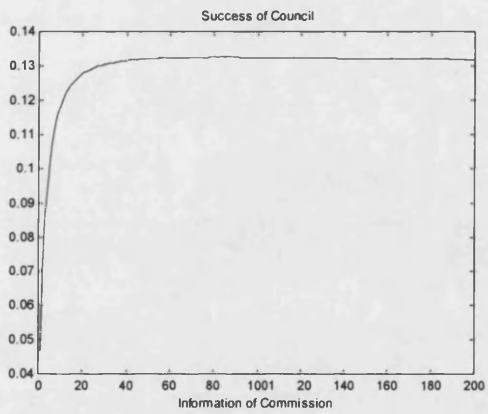
A2.1.2. Assent procedure - 2 dimensions



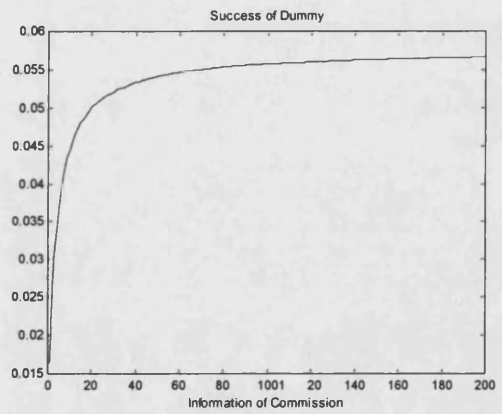
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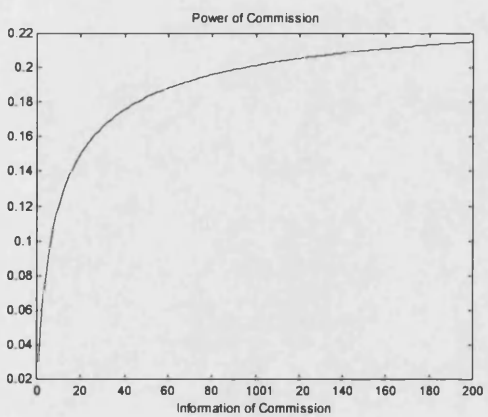
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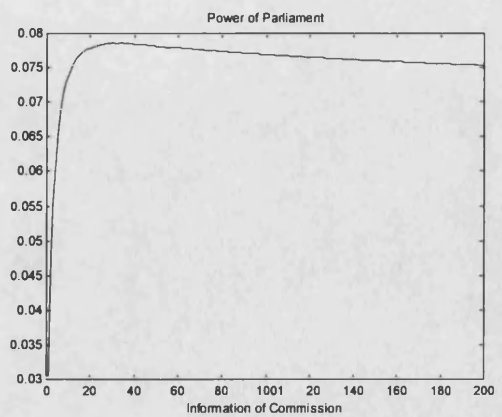
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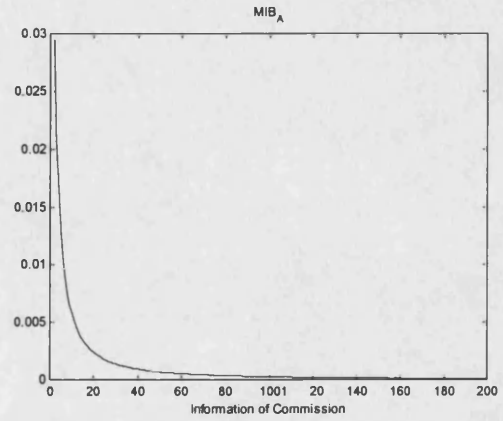
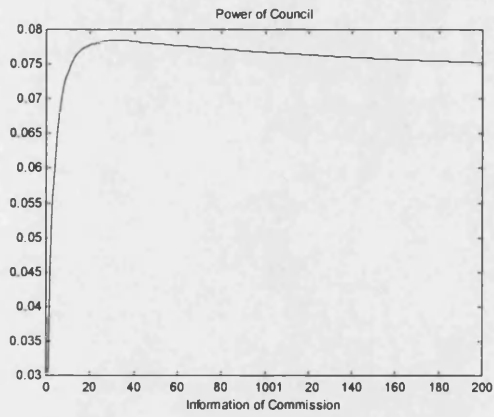
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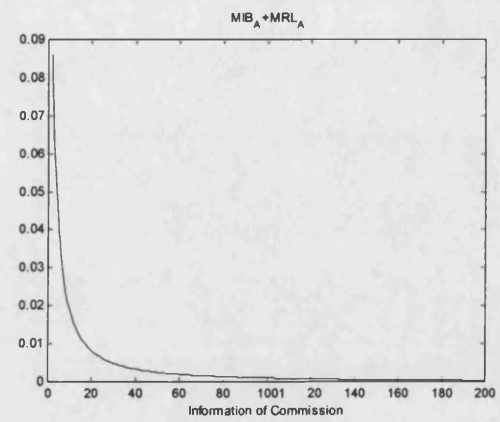
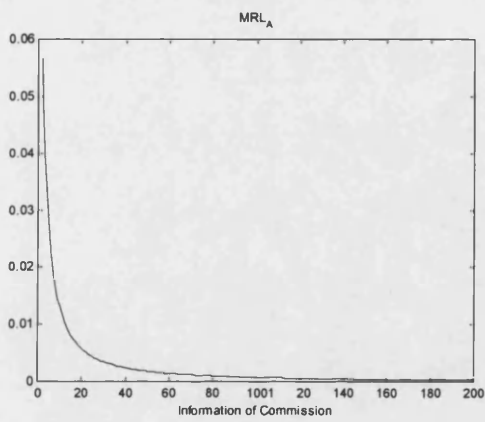
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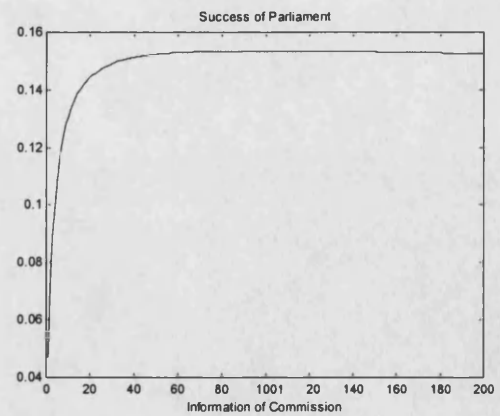
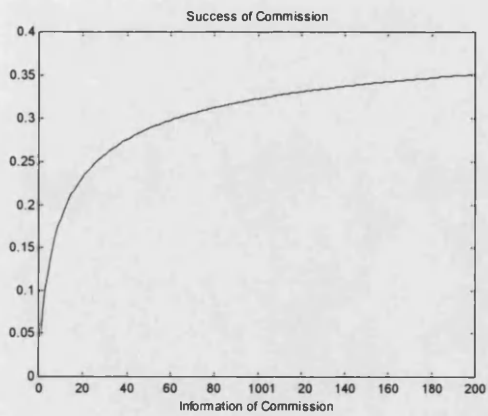
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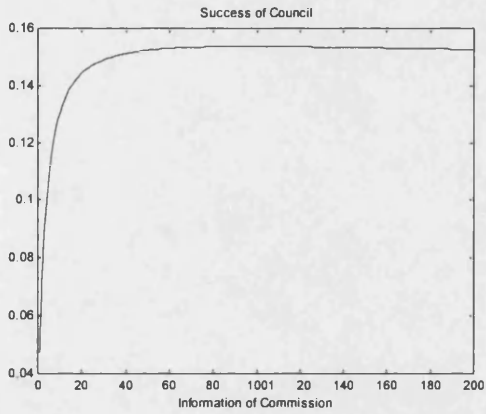


A2.1.3. Assent procedure - 3 dimensions

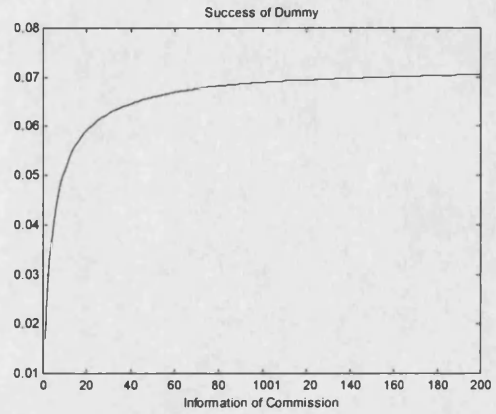


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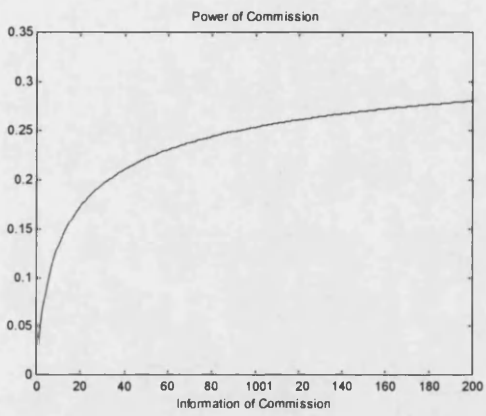
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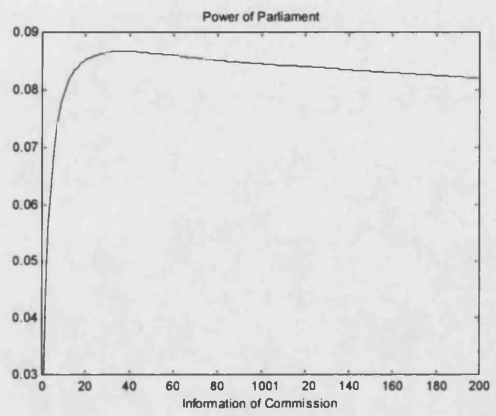
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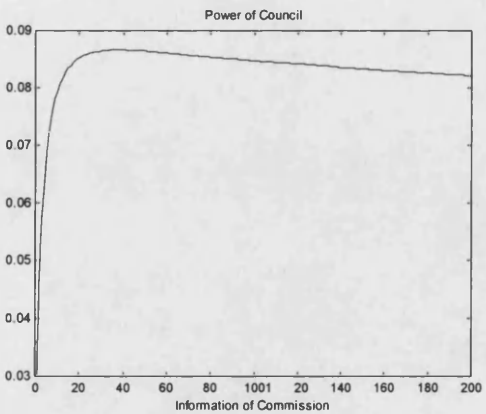
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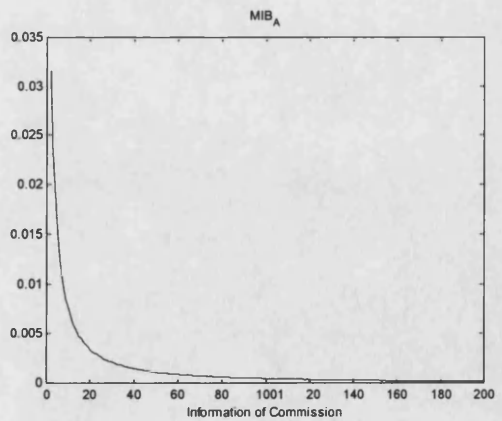
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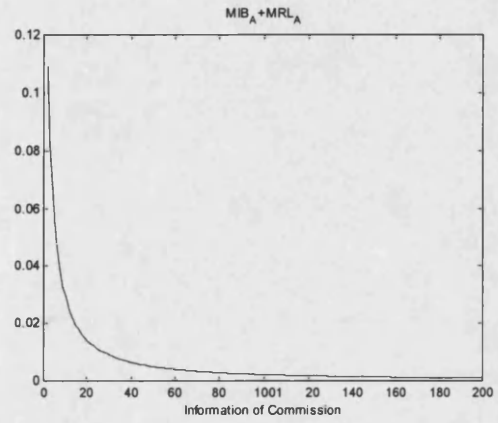
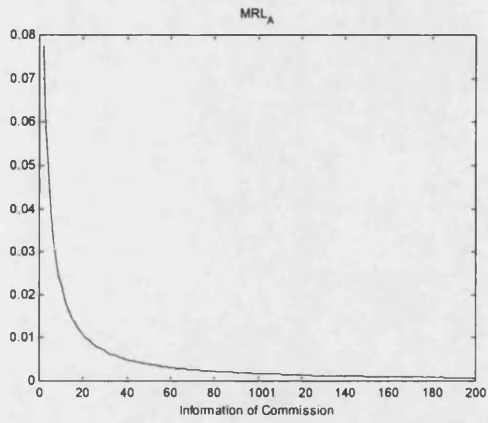


PowerMax = 0.0867 InfoMax = 37



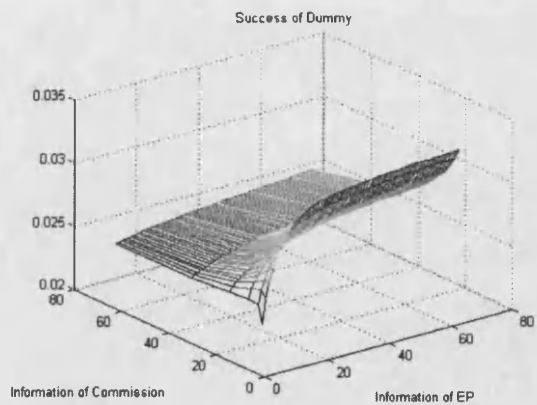
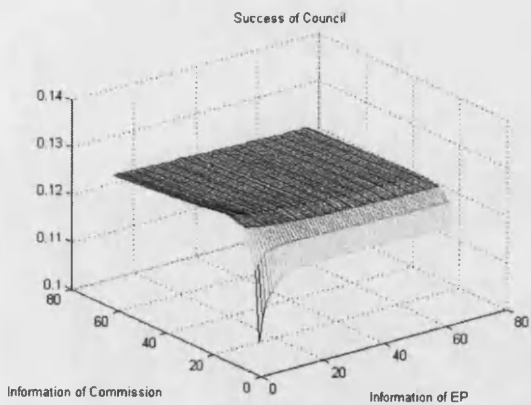
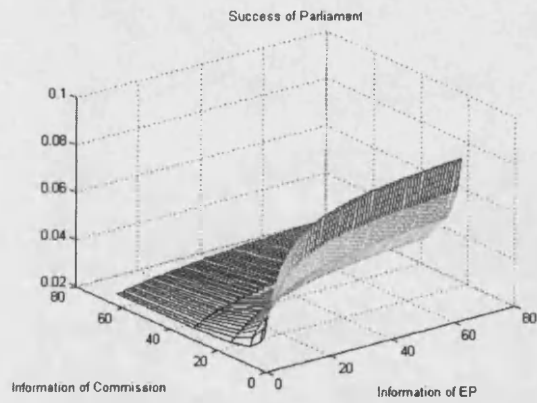
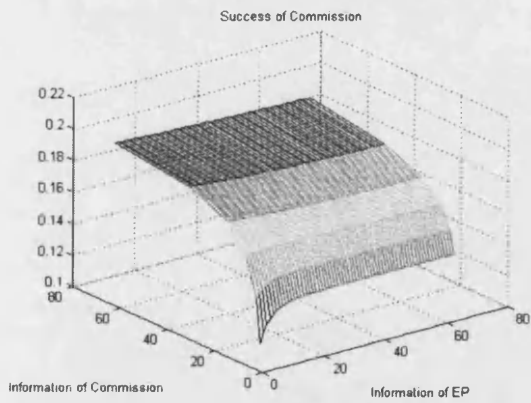
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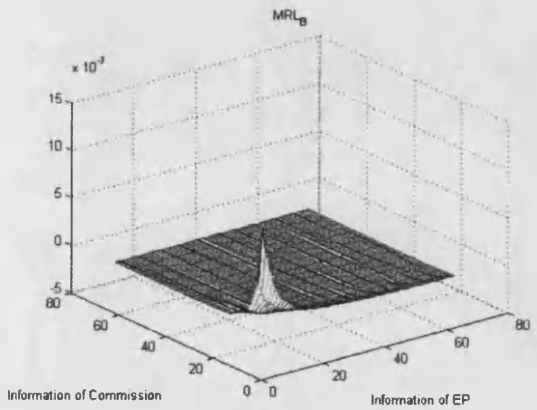
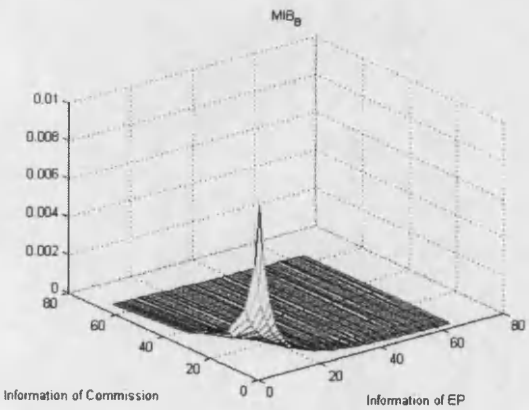
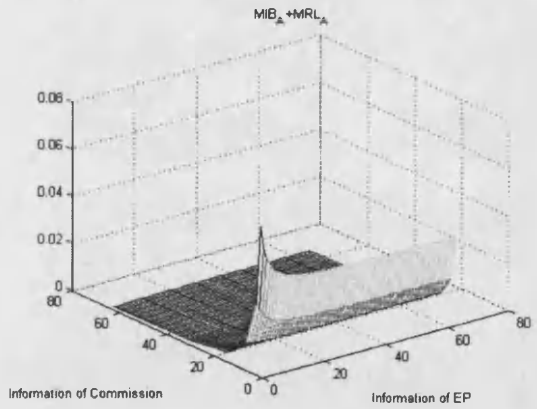
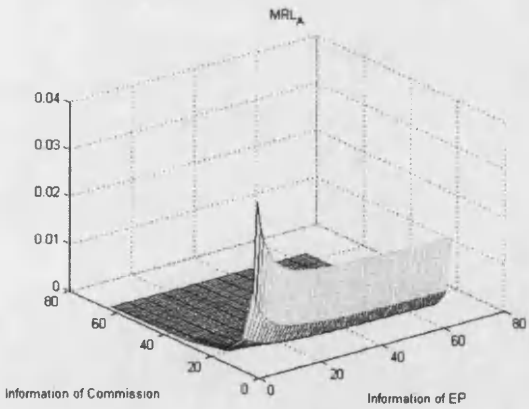
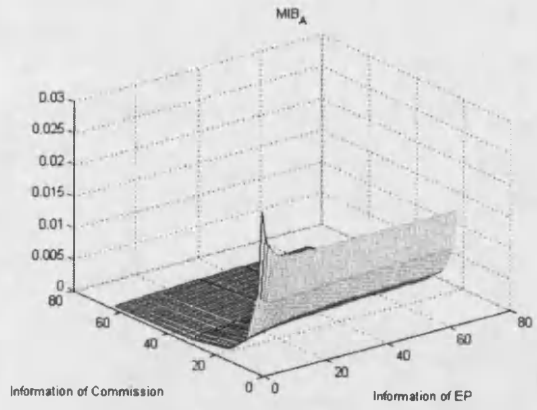
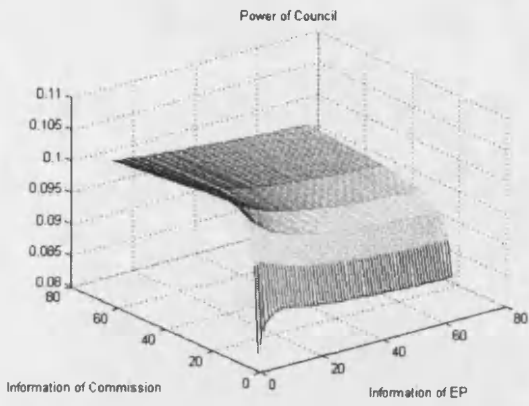
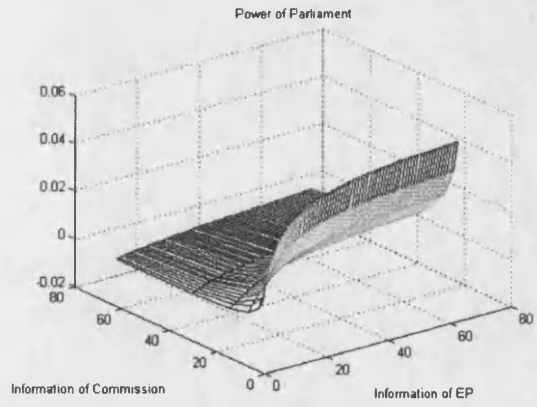
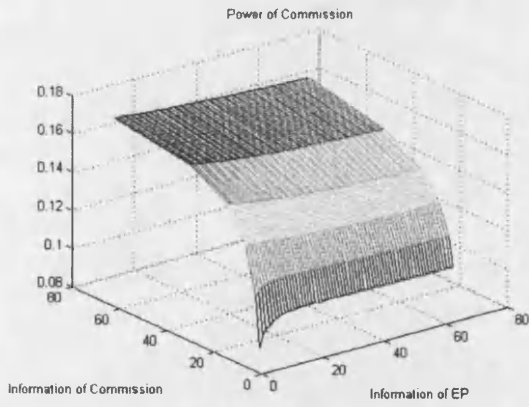


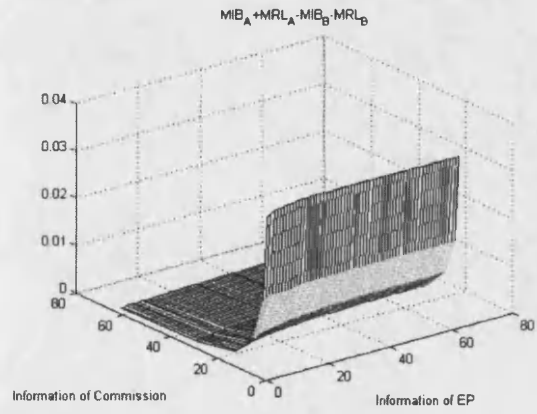
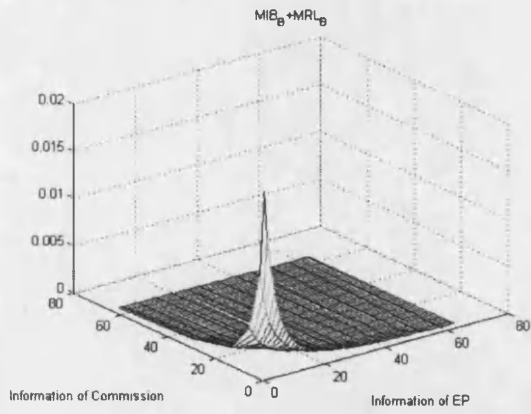


A2.2. THE CONSULTATION PROCEDURE (100,000 iterations)

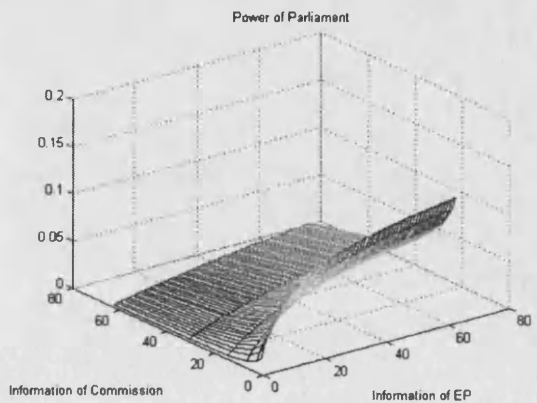
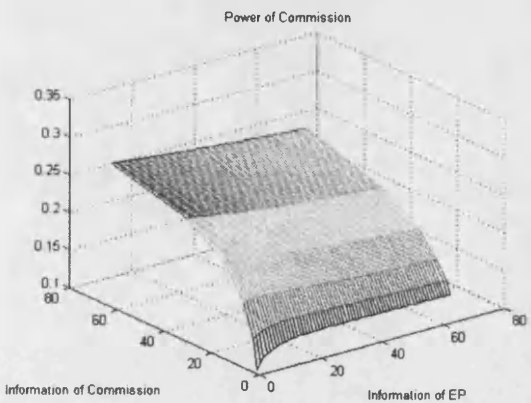
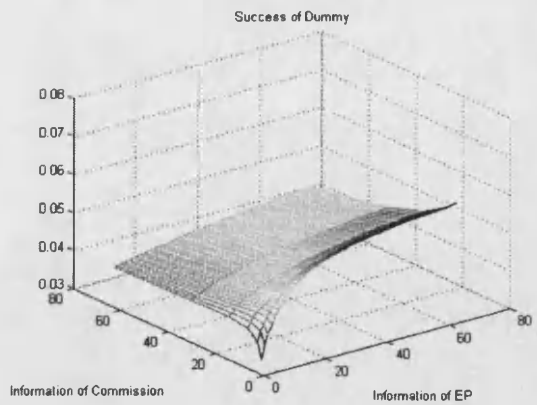
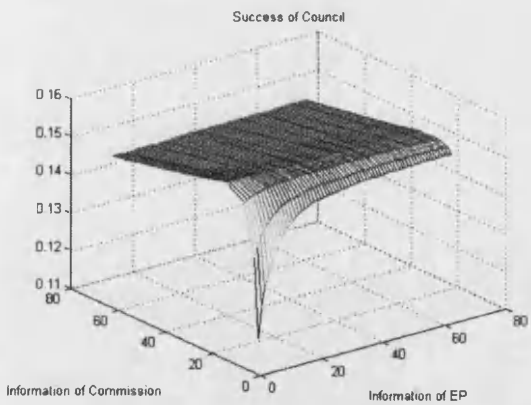
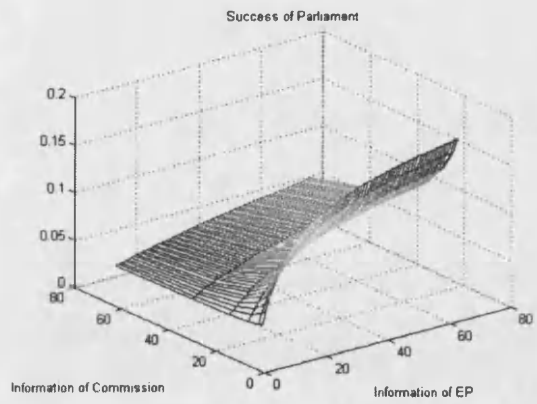
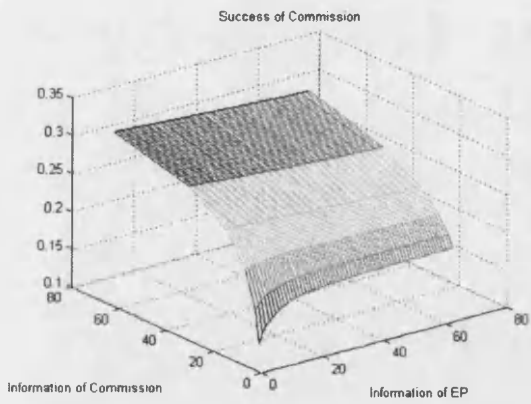
A2.2.1. Consultation procedure - 1 dimension

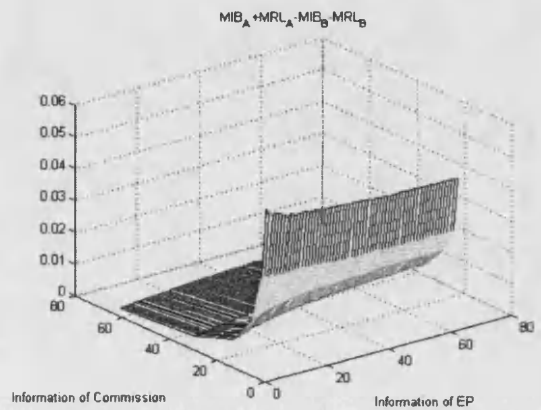
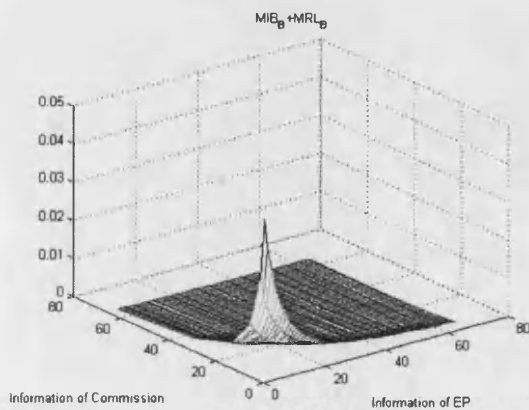
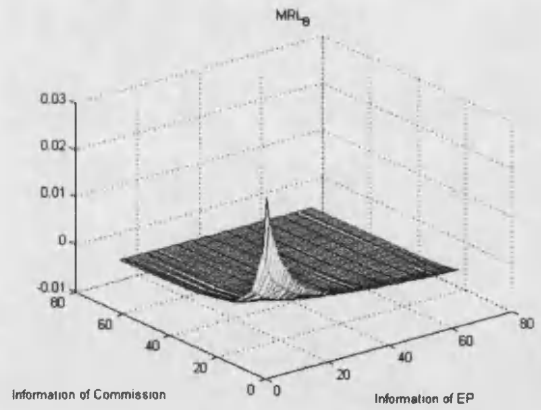
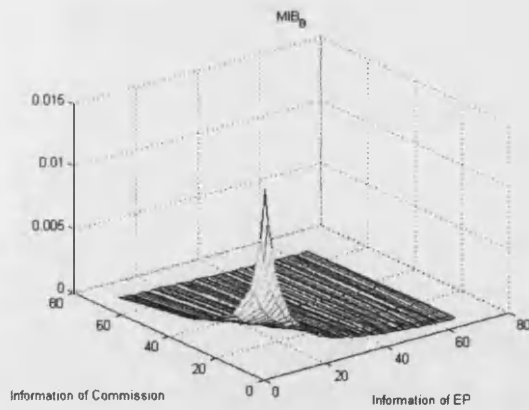
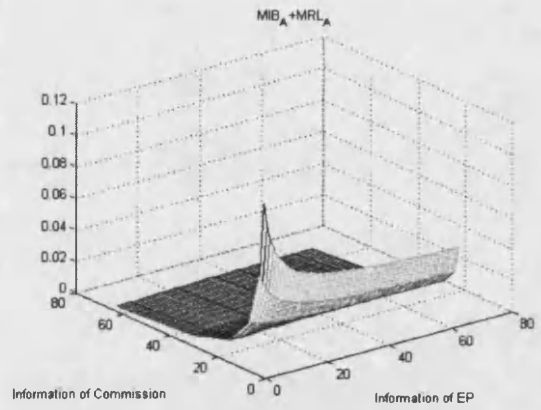
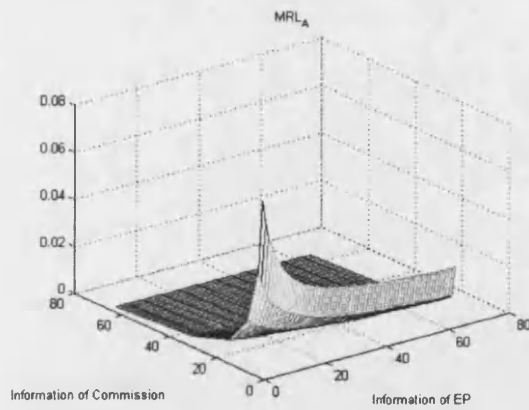
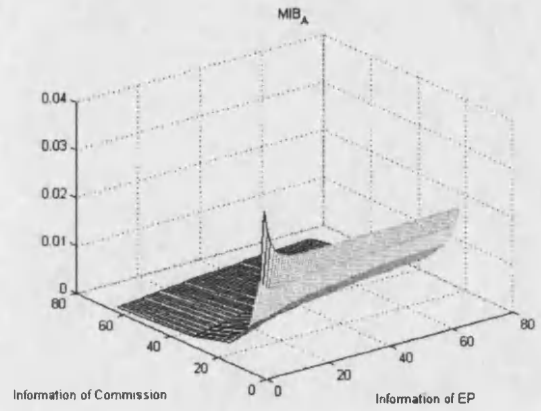
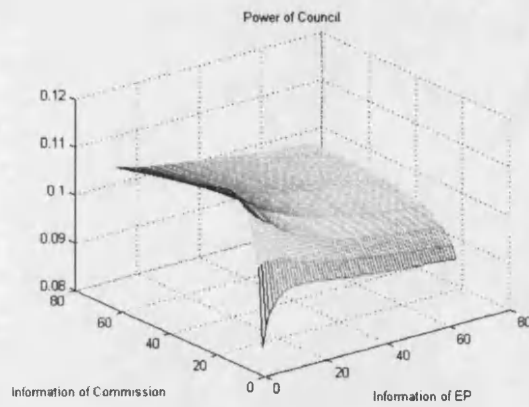




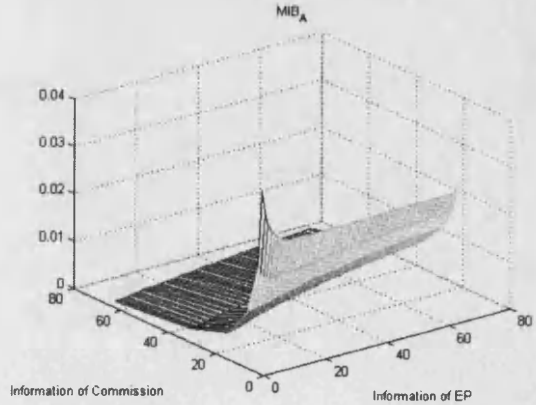
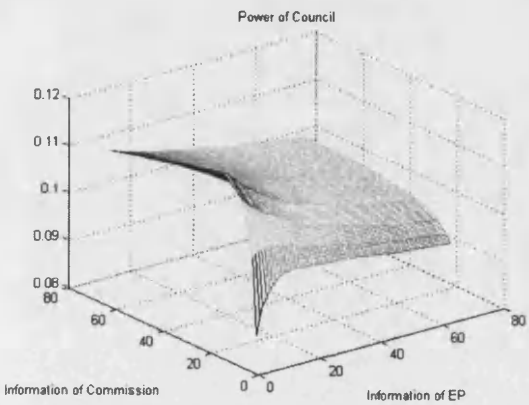
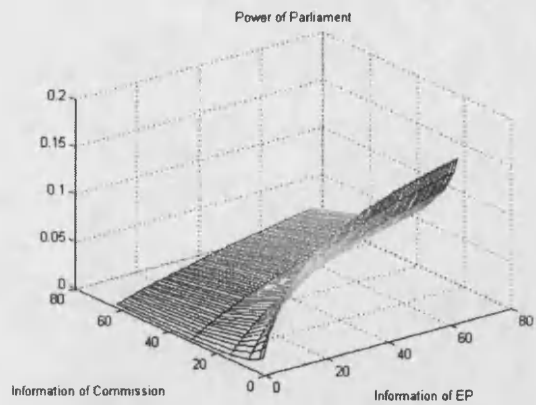
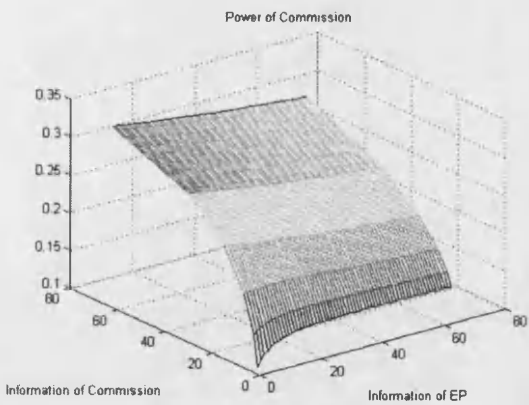
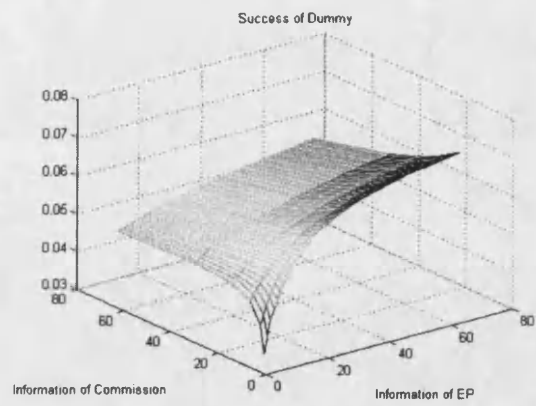
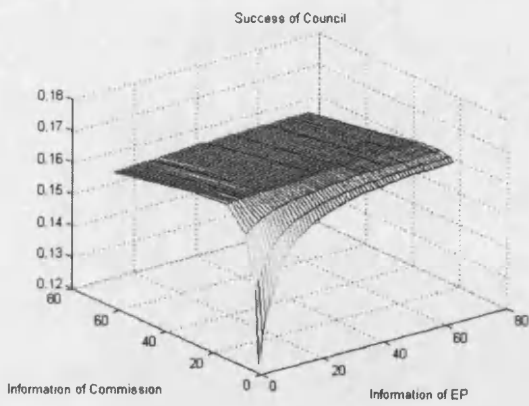
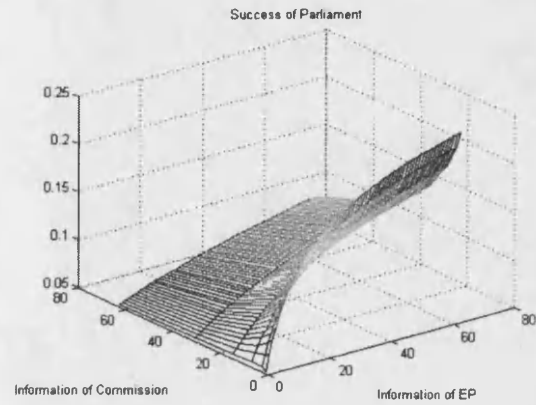
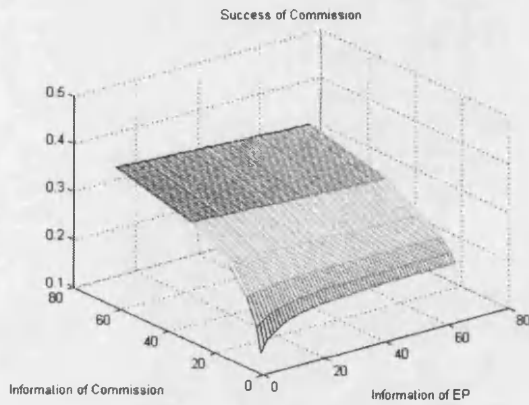


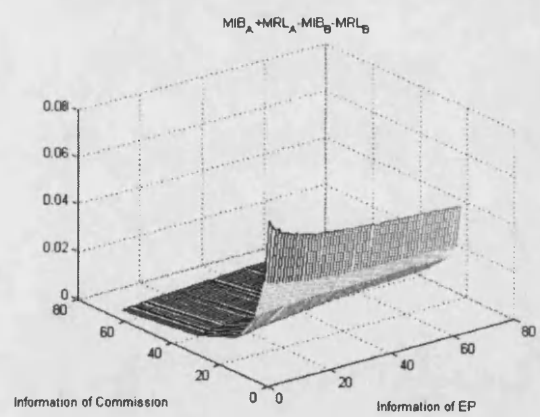
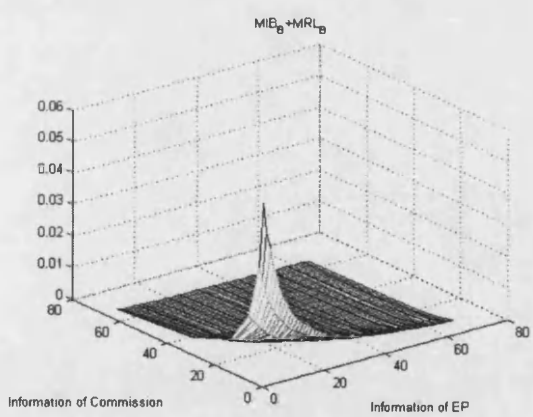
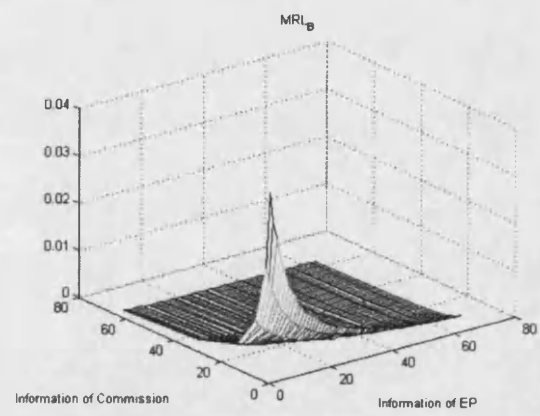
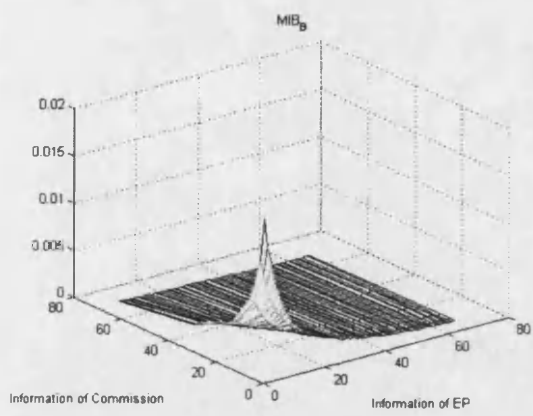
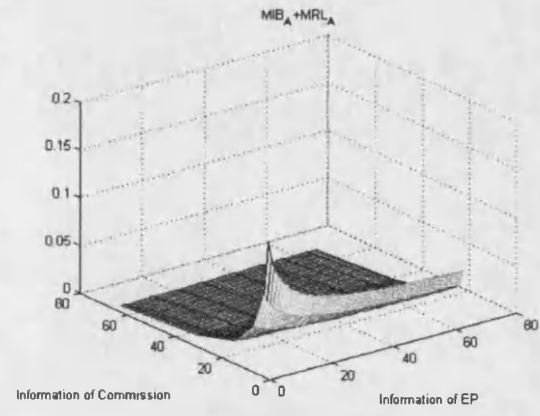
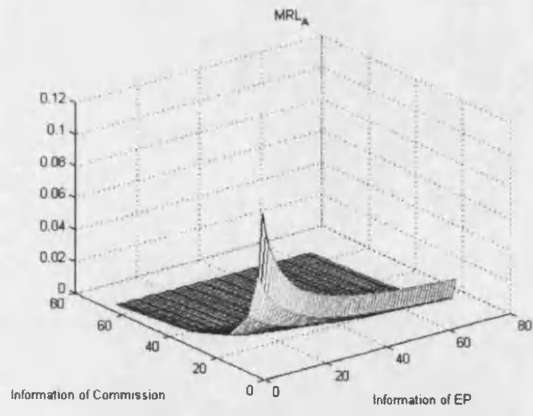
A2.2.2. Consultation procedure - 2 dimensions





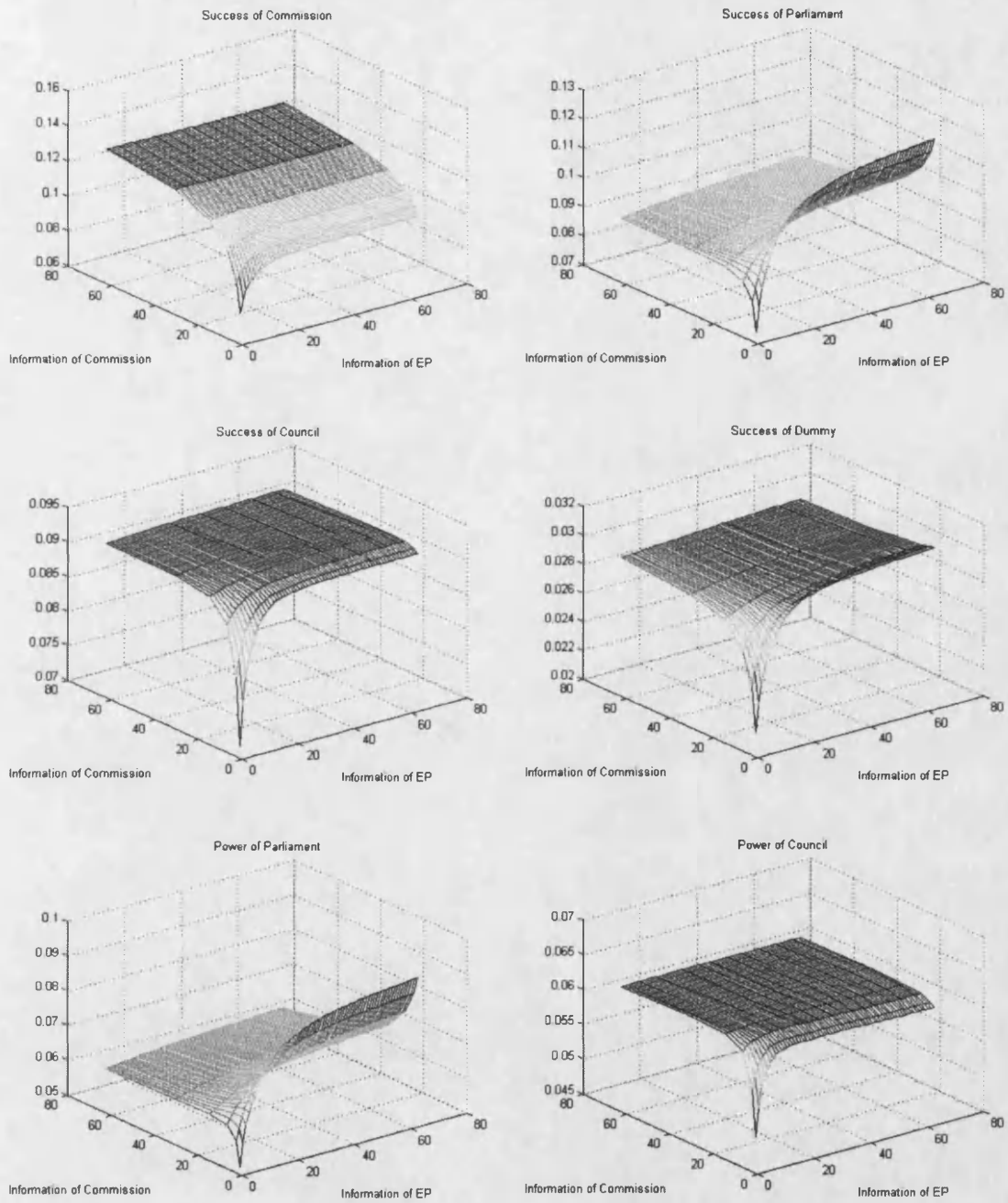
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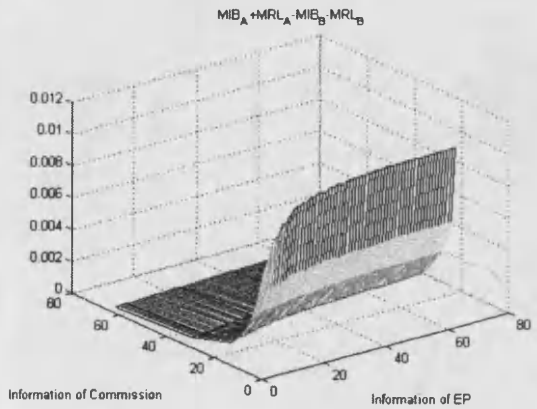
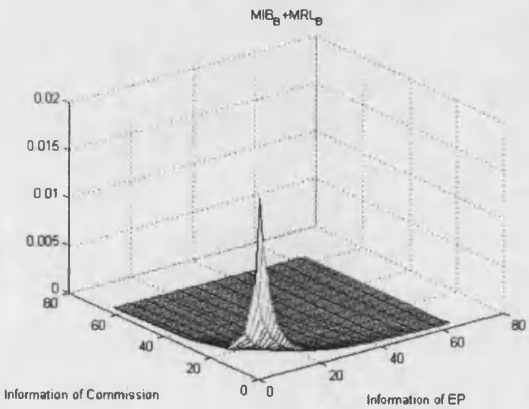
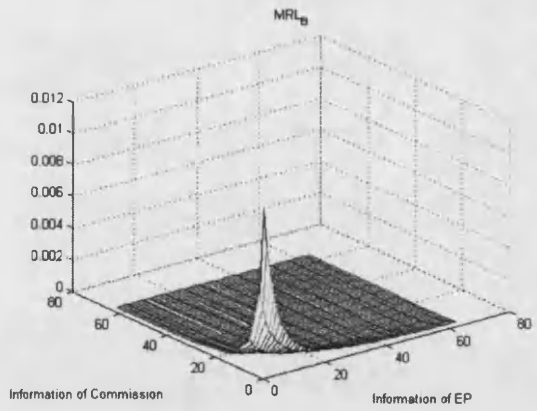
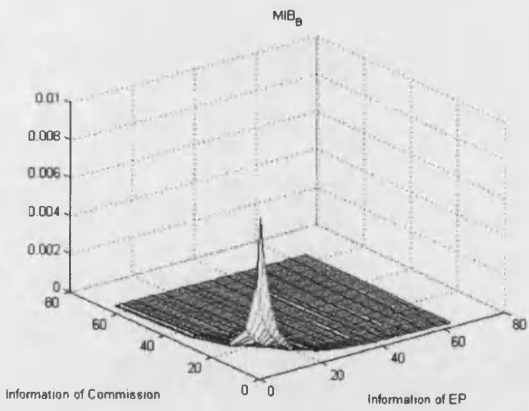
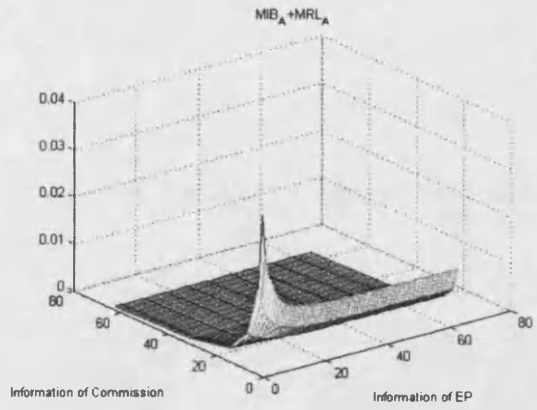
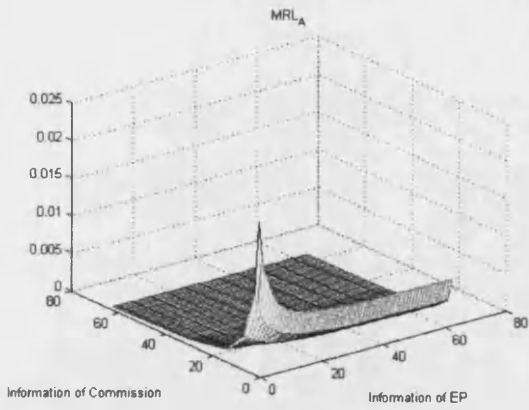
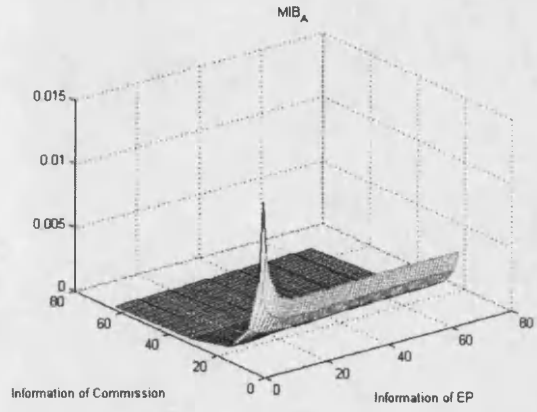
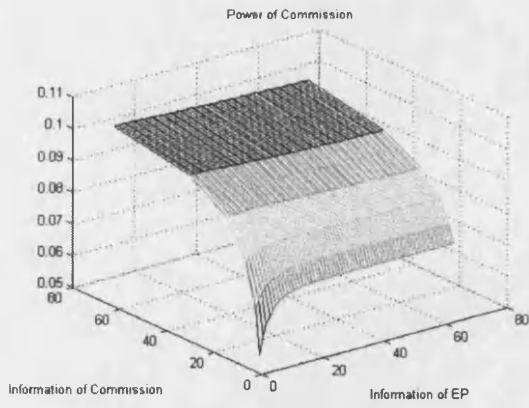




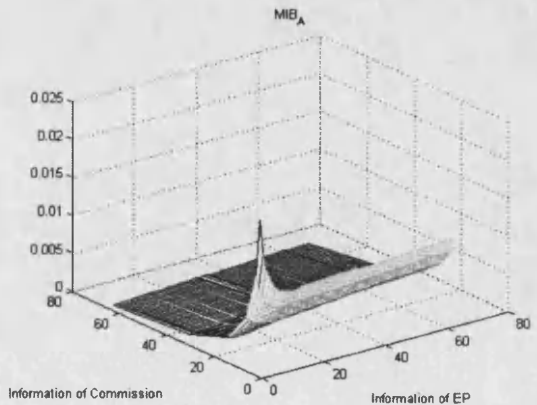
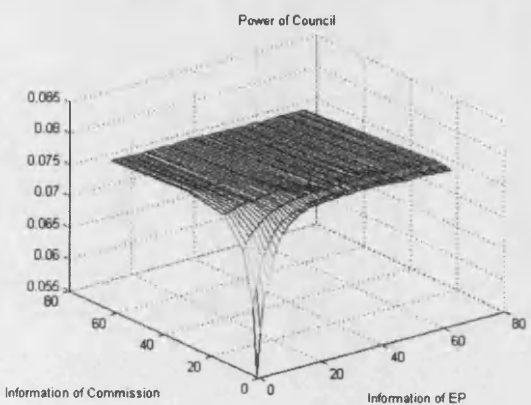
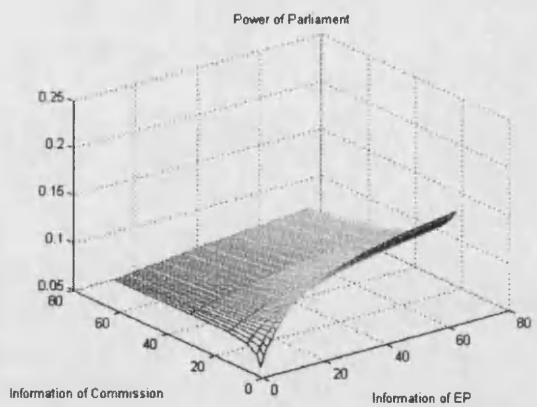
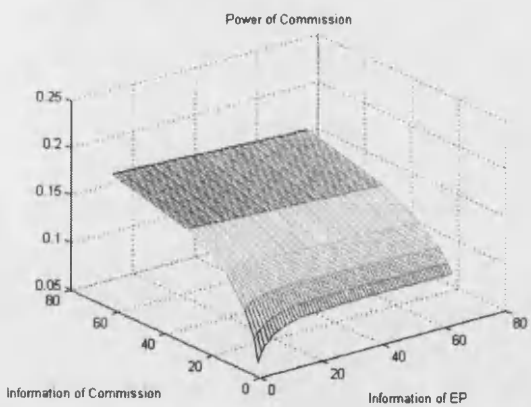
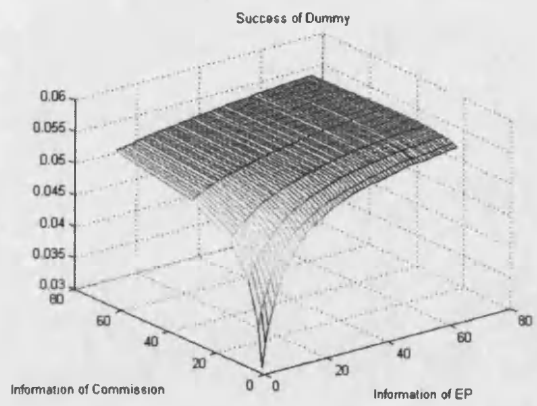
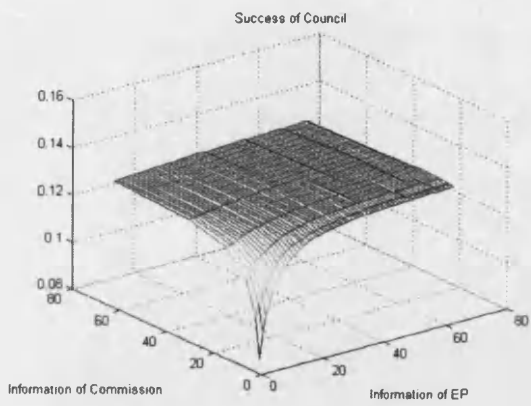
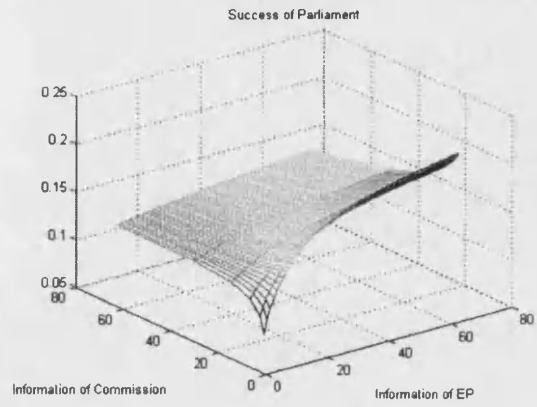
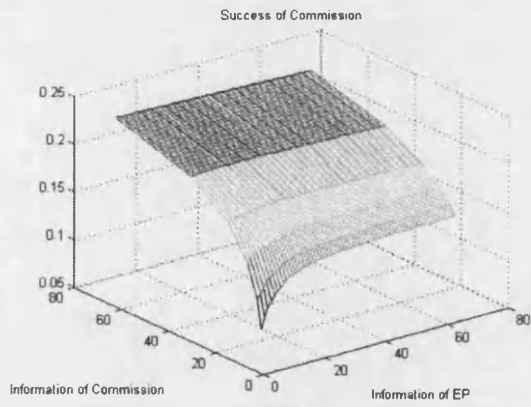
A2.3. THE CO-DECISION PROCEDURE (100,000 iterations)

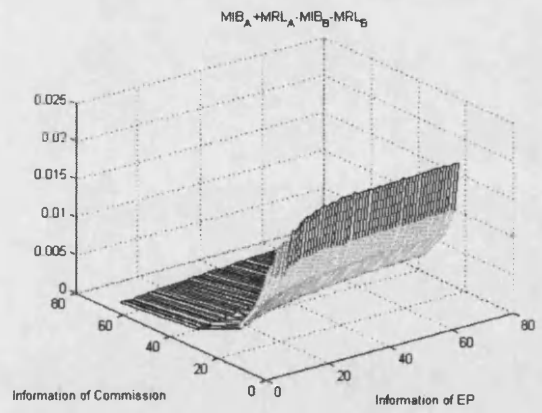
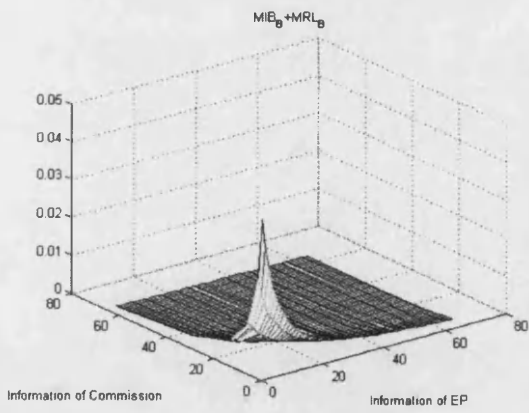
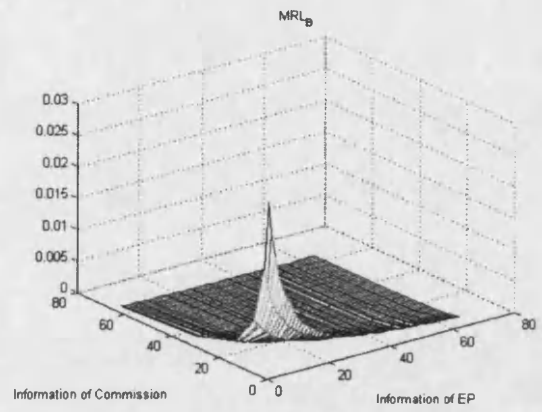
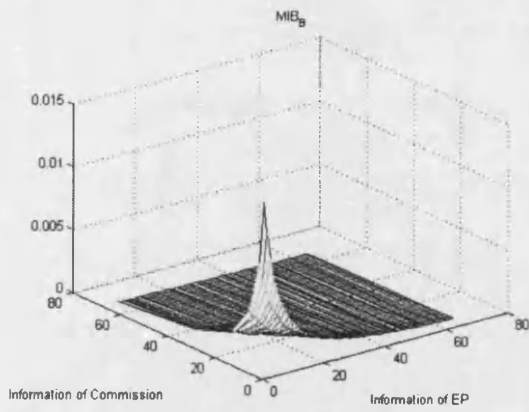
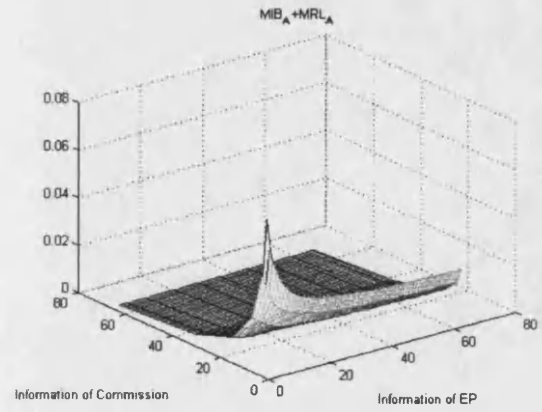
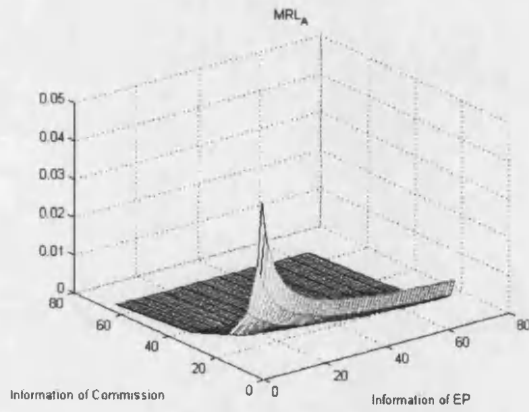
A2.3.1. Co-decision procedure - 1 dimension



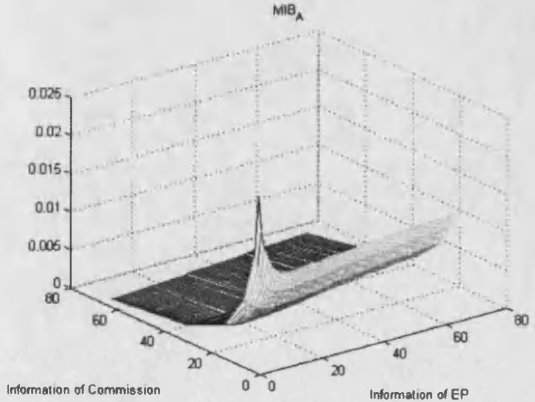
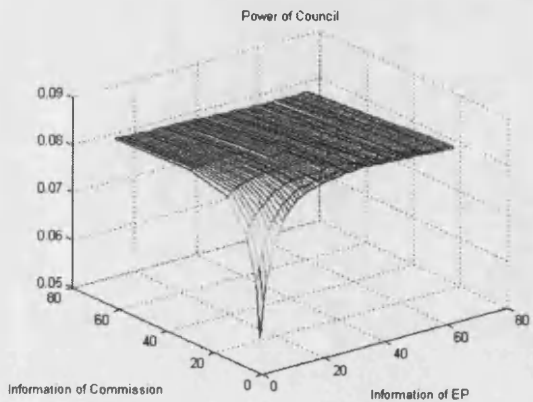
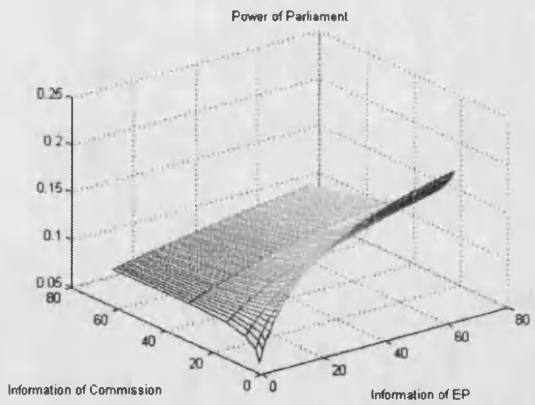
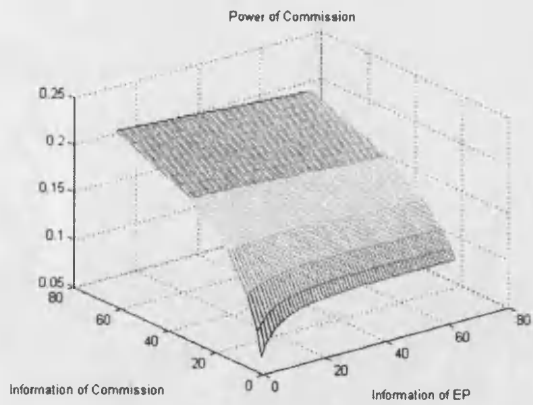
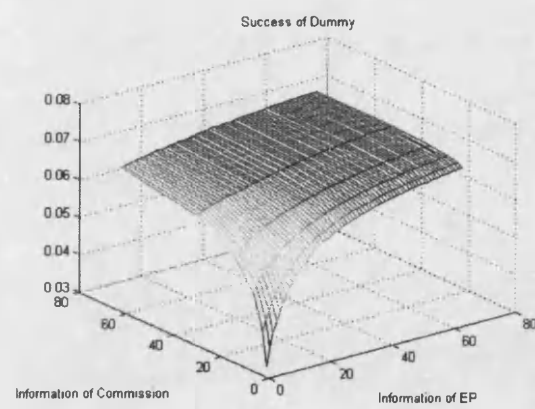
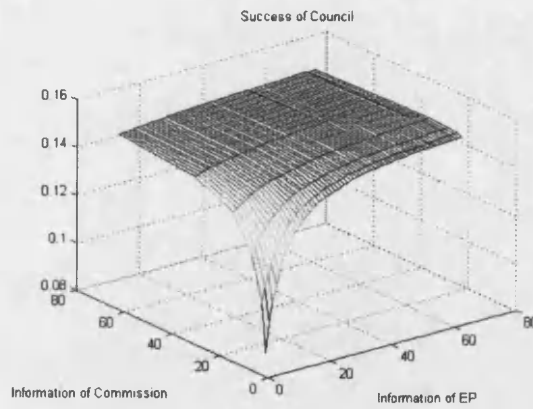
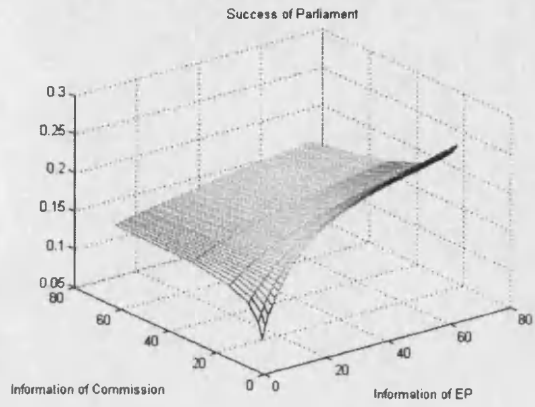
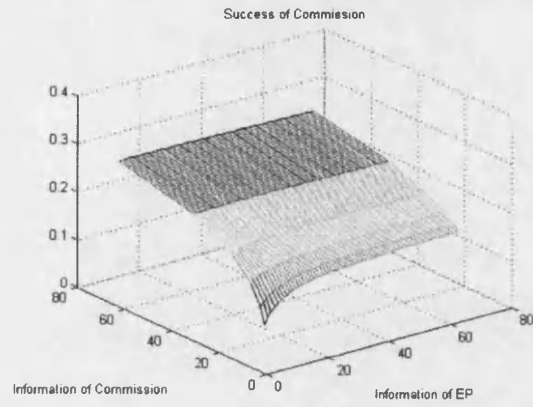


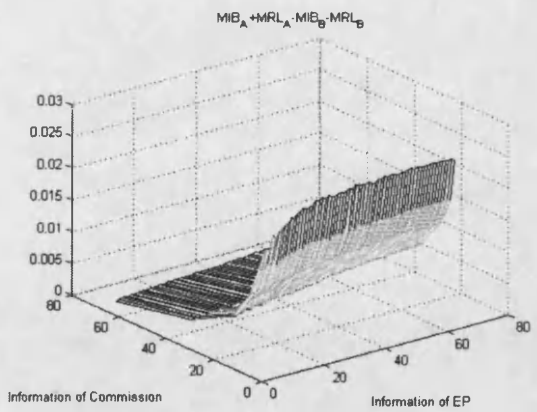
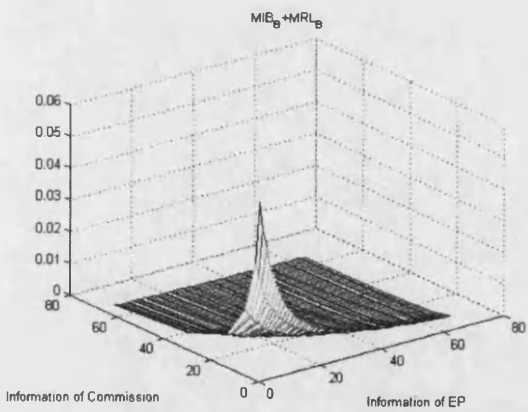
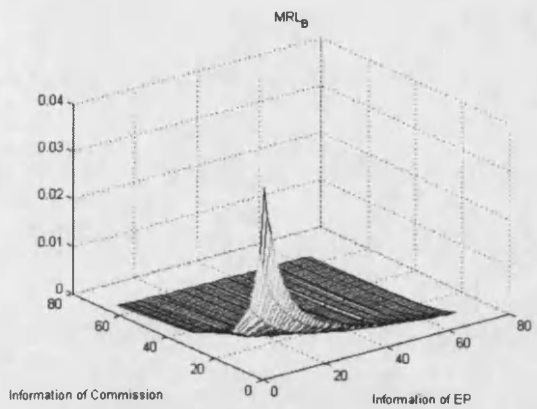
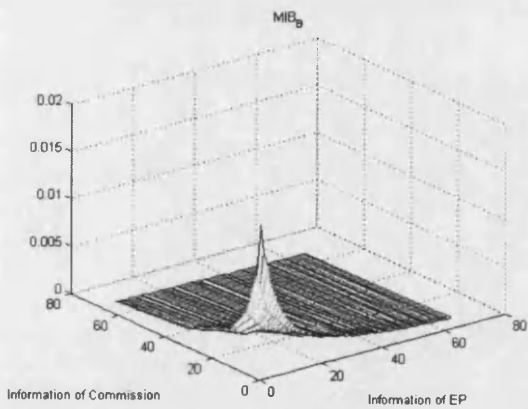
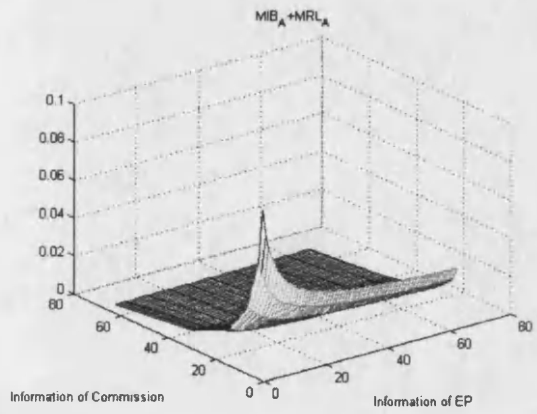
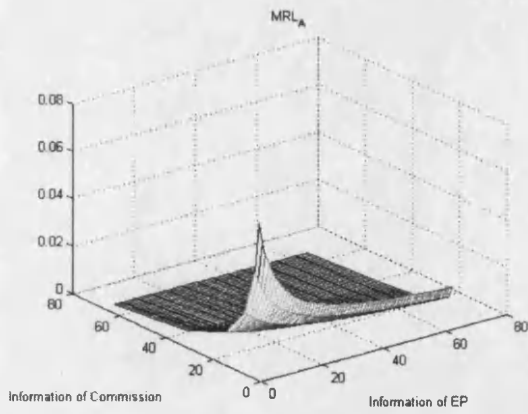
A2.3.2. Co-decision procedure - 2 dimensions





A2.3.3. Co-decision procedure - 3 dimensions





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