Resolving Controversy in the European Union:
Inputs, Processes and Outputs in Legislative Decision-Making before and after Enlargement

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Brussels. Others worked in the European Commission, European Parliament, Council Secretariat or various interest groups. During lengthy semi-structured interviews, these individuals spoke frankly about the controversies raised by the legislative proposals included in this study. I thank these practitioners by their institutional affiliations to respect the discretion they were promised. Decision-making in the EU, particularly in the Council of Ministers where I contend that most power lies, suffers from a lack of transparency, despite some reforms to provide more openness. Lack of transparency is a topic I discuss in the concluding chapter of this book. Despite my criticisms of the system in this respect, the practitioners did their utmost to give my colleagues and me all of the information we require for our analyses. In doing so, they provided a valuable set of information with which political scientists can examine and explain key aspects of the EU's legislative system.

Chapter 1

Introducing the political system of the European Union

1.1 Diversity and controversy in the European Union

Decision makers in the European Union constantly disagree with one another, yet they usually find ways of resolving their disagreements by taking decisions. These decisions have significant and sometimes unwelcome consequences for citizens. Member states vehemently disagreed on important institutional reforms set out in the Lisbon Treaty that came into force in December 2009. EU member states are diverse in terms of their population sizes. As a result, they have different views on the appropriate weighting of large and small states in the voting system of the Council of Ministers where countries are represented. This controversial issue was raised in the Constitutional Convention that was charged with designing a new set of rules for governing the EU. Despite the long discussions held in the Constitutional Convention between February 2002 and July 2003, talks among member states' governments collapsed on this issue in December 2003. Representatives of Poland and Spain were among those who wanted to keep the existing rules that gave substantial voting weights to small and medium-sized member states. The French and German governments were among those in favour of reform that would give more voting power to large states. The disagreement was resolved with an amended version of the Franco-German proposal that made some concessions to meet the concerns of smaller countries. This deal was set out in the constitution signed by EU leaders in Rome in October 2004.[1]

But this controversy re-emerged after French and Dutch voters rejected the constitution in national referendums in May and June 2005. A period of reflection followed during the next eighteen months. Then the German government called for a resumption of the institutional reform process. Under the stewardship of the German government, the constitution was repackaged as a treaty that contained most of the same reforms, but dispensed with the symbols of a constitution such as the flag and

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[1] Details of the voting procedures are described later in this chapter and in Chapter 7. Duff (2006) and Norman (2003) describe the Constitutional Convention and its outcomes. A comparative analysis of states' positions on the main controversies during the Constitutional Convention is given by König and Hug eds. (2006). See also Finn ed. (2008) and Prins (2010) for studies that examine the subsequent Lisbon Treaty.

anthem. The advantage of the treaty form from the perspective of EU leaders was that it did not legally require a referendum in most member states. During this repackaging of the constitution as a treaty, the Polish government argued that the reform of member states' voting rights should be revisited. Tensions rose as the Polish Prime Minister Jaroslaw Kaczynski accused Germany of trying to dominate its smaller neighbours, and recalled that Germany had done so violently in Europe's troubled past. The Czech government was sympathetic to the Polish argument, but most other member states were reluctant to revisit the issue. The controversy was resolved by revising the proposed voting system again. EU leaders postponed the new system of voting until 2014, introduced a new transition period until 2017, and introduced a new power of delay for minorities of states that were outvoted on issues of national interest. After a marathon round of talks in which this and other controversies were resolved, the late Polish President Lech Kaczynski said 'the one who wins in these kinds of situations is the one with the strongest nerves'. The treaty was then signed by EU leaders in Lisbon in December 2007, and became known as the Lisbon Treaty.[2]

EU member states are diverse in terms of economic wealth. This type of diversity often leads to disagreements between net contributors to and recipients from the EU budget. Negotiations on the financial perspectives for 2007-2013, which set the EU's spending plans for that period, stalled in June 2005. The group of six net contributors – Austria, France, Germany, the Netherlands, Sweden and the UK - argued against an increase in the EU's budget beyond one percent of the EU's Gross National Income, while other actors pressed for more spending. EU leaders also disagreed on the relative priority that should be given to different policy areas. With low levels of economic growth, 'the question of how a slowly increasing Brussels pie is cut into slices becomes all the more important' (Schild 2008: 535). Both the Commission and European Parliament called for more spending in new areas including research and development. They argued that these new spending priorities would lead to more growth in the long term than the EU's traditional spending priorities. These controversies were resolved in the Interinstitutional Agreement of

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[2] President Kaczynski's statement was cited in 'EU leaders scrape treaty deal at 11th hour', *EU Observer*, 23 June 2007. The Lisbon Treaty was due to come into force at the start of 2009, but was delayed by the Irish electorate's rejection of it in June 2008, in the only referendum held on the treaty. The Irish government received guarantees regarding sensitive national issues, and the Irish electorate approved the treaty in a second referendum in October 2009.

May 2006. Overall, Schild (ibid.) describes the agreement as one of incremental change compared to previous financial perspectives. It involved a small increase in the budget, close to the net contributors' preference, and only modest increases in priorities for new policy areas.

EU member states also differ from one another in styles of national regulation. This type of diversity is often the source of controversies regarding proposals to reform markets. For example, at the end of 2005, the European Commission introduced a legislative proposal to liberalize the market for payment services such as credit and debit cards. The responsible Commissioner, Internal Market Commissioner Charlie McCreevy, argued that this would give consumers more choice and savings by allowing businesses other than banks to provide payment services. A fierce debate ensued that was described as 'tribal' by one insider.[3] On one side of the debate, a group of member states informally led by the UK supported the Commission's liberal approach. The proposal was broadly in line with their existing national regulations. On the other side, a group of member states informally led by France argued for a tougher regulatory approach in line with their national regulations, one that would restrict entry to the payment services market. This, they argued, would protect consumers and the wider economy from financial risks. Others argued that the regulatory approach would only protect the banks' interests by limiting competition. This controversy, discussed in more detail later in this book (Chapter 9), was resolved by amending the legislative proposal in response to the French concerns. Nonetheless, the legislation has the effect of liberalizing payment services in line with the Commission's proposal.

Despite the ubiquity of controversy and difficulty of finding ways to resolve it, EU leaders have built the furthest-reaching form of international cooperation that presently exists in the world. The once divided and still diverse countries of Europe are now united by their decisions to adhere to thousands of common rules. EU laws now affect a broad range of policies throughout Europe and beyond. EU laws govern standards for products and services, including everything from food to telecommunications and banking. EU laws guarantee workers' rights, such as maternity leave, safety conditions, and freedom from discrimination. EU laws also provide significant subsidies, not only for agriculture as was once the case, but also

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[3] Interview, Brussels, July 2007.

for environmental protection and research. Each one of these rules may seem relatively small if considered alone. But the sheer weight of their numbers means that they give substance to the present state of European integration. Jean-Claude Juncker, Prime Minister of Luxembourg and a prominent figure in the EU, highlighted the importance of apparently small decisions when he said: 'We decide on something, leave it lying around and wait and see what happens… If no one kicks up a fuss, because most people don't understand what has been decided, we continue step by step until there is no turning back'.[4]

The European Union's ability to resolve controversy is being tested by the enlargements of 2004 and 2007. These enlargements added to the existing diversity of the EU, as well as increasing its membership from fifteen to twenty-seven member states. The new members differ markedly from the old in terms of their recent historical experience and levels of economic development. Practitioners and academics expressed concern about the impact of enlargement on the EU's capacity to act. This may have made decision-making more difficult, even raising the danger of paralysis in response to disagreement (Hosli 1999; König and Bräuninger 2004: 421). Since most new members are relatively poor, they put extra demands on EU spending programmes, and this may have widened the gulf between net-contributors and net-recipients from the EU budget (Zimmer *et al*. 2005). In addition to warnings from EU specialists, research on collective decision-making in other contexts suggests that increasing the number of decision makers can fundamentally alter the way in which groups take decisions. Social psychologists have long known that small and large groups typically have different ways of taking decisions (e.g. Simmel 1902). Only some groups manage to preserve cooperative ways of taking decisions when their membership is increased. The research presented in this book examines whether the EU is one of these groups.

The way in which decisions are taken in the EU is also the subject of controversy. Many experts on EU politics have criticized its decision-making process for being undemocratic (e.g. Weiler *et al*. 1995; Scharpf 1999; Hix 2008a; Habermas 2009: Chapter 6). EU leaders' decision to press ahead with the Lisbon Treaty despite the fact that its contents were rejected in three national referendums seems to add credence to this criticism. Although the EU's democratic deficit is contested, there are

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[4] Cited in *The Economist*, 14 September 2002.

some recurring charges: the EU is dominated by a large unelected bureaucracy; the elected European Parliament has too little effective say in the process; and there is a lack of real political competition for the levers of power. As a result, it is argued, citizens are uninterested in EU politics and EU decisions do not reflect their interests. By examining the way in which the EU resolved a wide range of controversies in recent years, this book presents evidence that is highly relevant to some of the key issues in this debate, as well as to proposals for improving how the EU works.

1.2 Analyzing contemporary EU decision-making as a political system

In this book I present the results of more than ten years of research that has focused on how the EU decides amid controversy. This research examines how the contemporary system of legislative decision-making works. The following chapters address a range of descriptive and explanatory questions regarding the inputs, processes and outputs of the political system. Inputs are competing policy demands made by different political actors. Processes are the mechanisms through which these demands are turned into outputs. And outputs are the authoritative decisions produced by decision makers in the system. Easton (1953; 1957) was one of the first political scientists to set out a framework for analyzing political systems in terms of inputs, processes and outputs. These concepts are useful heuristics because they point toward important research questions for political scientists to address.

Since inputs are competing policy demands, we can observe inputs when the EU decides on controversial issues. The examples given earlier show that EU decision makers often disagree with one another. One of the first steps in analyzing the political system is to describe a range of controversies systematically. A systematic analysis should also describe and explain the policy demands made by different actors. To what extent are there strong patterns in policy demands made by different actors? Do certain member states, for instance, tend to agree more with each other, and if so why? What explains variation in the policy demands made by main actors in the EU: the European Commission, the European Parliament and the member states? Answers to these questions are important because political systems in which there are cross-cutting cleavages among actors are fundamentally different from systems in which there are reinforcing cleavages.

'Process' refers to the transformation of demands into outputs, and since policy demands are competing, it is common for some demands to be satisfied more than others in any single decision. Therefore, this concept directs our attention toward the mechanisms through which some demands are selected and other demands are rejected. These mechanisms are partly defined by the formal rules of decision-making. However, if we consider a political system as a system of action, we should not be satisfied with descriptions of the legal rules of decision-making and analyses of their consequences; we should also be concerned with what actually happens (Almond 1956: 393). The formal rules do not necessarily reflect the actual distribution of power in a political system accurately. In the context of the EU, the concept of process prompts us to question the relative importance of the EU's formal decision-making procedures and informal bargaining. And also to ask: Which actors are most powerful in the EU's decision-making process?

Relevant questions regarding the outputs or authoritative decisions of the EU's legislative system concern the contents of EU laws. Explaining variation in outputs requires that we refer to the inputs and processes of the system. Why do some laws reflect some actors' demands, for instance for more integration, more regulation or higher subsidies, to a greater extent than other laws? The answer to this question depends partly on the distribution of power among the actors. Another important aspect of the contents of EU laws is the amount of discretion they delegate to the actors charged with implementing them. These implementing actors are the European Commission and member states' national authorities. Why do some laws give a great deal of discretion either to the Commission or to member states national authorities while other laws tightly prescribe implementers' actions? Variation in discretion may depend partly on the differences among actors' policy demands.

Although these concepts are useful for structuring the analysis by identifying relevant questions, my research does not apply Easton's systems theory in its entirety. Like many other political scientists today, I do not subscribe to the functionalist logic of systems theory. For Easton, political systems are comparable to biological systems in their adaptation to their environment. While there are undoubtedly insights to be gained from combining evolutionary biology and political science, these are not my concern here. Rather, the analysis examines the interactions among purposeful political actors operating within institutional constraints to produce decision outcomes. These are the main building blocks of rational choice institutional analysis.

In contrast to my focus on how the contemporary system of decision-making works, a considerable amount of existing research on EU politics focuses on the development of the system over time. Analyses of how the system developed over time can provide insights into how the system works at any given point in time, but these foci are distinct and oftentimes disjointed. Many theories of European integration have little of direct relevance to say regarding the way in which the contemporary system works in terms of resolving specific controversies; indeed, they do not set out to do so. One of the earliest theories of European integration, neofunctionalism (Haas 1958; Lindberg 1963; Schmitter 1969), gives an account in which cooperation in one area creates demands for cooperation in other related areas. Integration, therefore, occurs though a process of 'spillover' from one area to another. Neofunctionalism attributes important roles to non-state actors, including the supranational Commission, in realizing demands for integration. This theory is still a reference point for contemporary integration theorists, particularly for those who stress the impact of supranational institutions on the integration process (e.g. Sandholtz and Stone Sweet 1998). However, neofunctionalism has largely been discarded, even by its original proponents (Haas 1975), mainly because it failed to account for the stalling of the European integration process in the 1970s. Regarding the analysis of the current decision-making system, neofunctionalism emphasizes the distinct role and power of the Commission. However, it was not designed to offer concepts for analyzing how actors resolve specific controversies.

Various strands of intergovernmentalism are the main alternatives to neofunctionalism in explaining the course of European integration. While intergovernmental theory has some implications for how the current system of decision-making works to resolve specific controversies, it is also of limited relevance. Hoffman (1966) interpreted European integration as a process driven by member states' interests in cooperation, rather than by supranational or non-state actors' interests. Milward's (1992) historical research on the early stages of European integration confirmed the paramount importance of hard bargaining among national governments that were motivated by the pursuit of self-interest, not the supranational actors and ideals emphasized by neofunctionalists. Moravcsik's (1998) liberal intergovernmental theory of integration builds on this intergovernmental tradition. Liberal intergovernmentalism links a theory of national preference formation with a theory of interstate bargaining. The intergovernmental perspective has implications

for some aspects of contemporary decision-making that will be explored in the following chapters. For instance, it leads us to expect that national interests pervade what are supposedly supranational institutions, that member states' policy demands are motivated by domestic interests rather than lofty European ideals, and that member states dominate the decision-making process. However, like other integration theorists, intergovernmental theorists are generally more concerned with explaining the milestones that mark changes to the system, rather than explaining how controversies are resolved within the EU system.

Rational choice institutionalism gives more relevant theoretical guidance for the analysis of how specific controversies are resolved. This approach offers a framework for examining how purposeful actors operate within institutional constraints to produce decision outcomes. The relevant actors in the EU's legislative system include the European Commission, the European Parliament, the Council of Ministers, and actors within those institutions. The relevant actors are assumed to act purposefully, in the sense that they make policy demands that are motivated by their interests, and they try to achieve their policy demands in the contents of legislative outputs. Actors are constrained in their ability to realize their demands by formal and informal 'institutions'. In the broadest sense, institutions are 'humanly devised constraints that structure political, economic and social interaction' (North 1991: 97). They include formal institutions, such as voting procedures, adherence to which can be compelled by third parties such as courts. They also consist of informal institutions, such as informal norms of behaviour, adherence to which depends only on the actors themselves. After summarizing the main actors and decision-making procedures in the next section, I will outline how my study is informed by this approach.

1.3 Legislative decision-making in the EU: Actors and decision-making procedures

This book examines legislative decision-making in the period 1996-2009. As described above, the current twenty-seven members are highly diverse, which often means that their interests diverge. The aggregate measures of economic wealth and freedom depicted in Figure 1.1 illustrate this diversity. The 2007 data indicate that the three poorest members are Bulgaria, Romania and Poland, while the three richest are Luxembourg, Ireland and the Netherlands. Luxembourg, with its small population and

concentrated financial sector, is clearly an outlier in terms of per capita GDP. Differences in economic wealth often mean that member states have different interests when decisions are taken regarding EU subsidies. However, some relatively rich member states do quite well from certain subsidy programmes because they fulfil other criteria, such as disparities in regional economic development. The impact of different levels of wealth will be explored further later in this book (Chapters 3 and 6 in particular).

< Figure 1.1>

EU member states are also diverse in terms of the way in which they organize their national economies. Despite sharing a common market, national governments have considerable room for manoeuvre to allow or constrain economic freedom. Figure 1.1 depicts an often-cited indicator of economic freedom calculated by the Fraser Institute, an economically liberal think tank. It identifies Ireland, the UK and Estonia as the members with most economic freedom, and Bulgaria, Poland and Romania as the members with least economic freedom. This aggregate indicator includes a range of indicators of economic freedom, including the size of government expenditures, levels of taxation and strength of regulation. If we consider economic freedom defined more narrowly in terms of the regulation of credit, labour and business, then Austria, Denmark and the UK are the most free, while Greece, Germany and Cyprus are the least free (Sector 5 freedom indicator; Gwartney and Lawson 2009). Such differences in national economic structures affect controversies at the EU level. When deciding on European rules for governing the single market, member states' national policy positions are influenced by their existing national arrangements (Chapter 6).

Differences among member states' population sizes are reflected in the system of qualified majority voting (QMV; Table 1.1). The numbers of votes held by the member states were changed after the 2004 and 2007 enlargements, as were the thresholds for adopting laws under QMV. In the EU-15, the numbers of votes held by member states ranged from two to ten. For a proposal to be passed by QMV in the EU-15, it had to be supported by member states holding at least sixty-two of the eighty-seven votes. When the EU enlarged to twenty-five and then twenty-seven members, a new system of voting was brought in by the Nice Treaty, in which the

numbers of votes ranges from three to twenty-nine. For a proposal to pass under the Nice system of QMV in the EU-27, it must have the support of member states holding at least 255 of the 345 votes. In addition, these member states must be at least fourteen in number and have at least 62 per cent of the EU's total population. This triple-majority system will remain in place until 2014, when the new Lisbon Treaty rules come into effect. In the first three years, 2014-2017, any member state can request that a decision be taken according to the present triple-majority system. I will examine the possible effect of the new Lisbon rules in Chapter 7.

<Table 1.1>

Figure 1.2 summarizes the two main procedures according to which legislation is passed in the EU: the consultation and co-decision procedures. The co-decision procedure, which was slightly changed and renamed the ordinary legislative procedure by the Lisbon Treaty, is now the most common procedure.[5] The most important feature of the co-decision procedure is that it gives equal decision-making power to the Council and the European Parliament. For a bill to pass, it must be approved by both the Council and the EP. The European Commission introduces the proposal, often in response from requests from member states or the EP (Rasmussen 2007). According to the co-decision procedure, if there is still disagreement between the Council and EP after two readings, a conciliation committee is formed. The conciliation committee, which consists of representatives of the Council and EP, then attempts to formulate a draft that will be approved by both the Council and EP. Since the Commission need not approve of the text adopted by the Council and EP after the conciliation committee, some observers view the co-decision procedure as a decision-making procedure in which only the Council and EP matter. However, in practice the Commission is involved in the discussions that take place within and between the Council and EP. It monitors these discussions and gives its opinion on amendments to the legislative proposal. Co-decision is usually combined with QMV in the Council, although there are still some policy areas in which the Council must adopt a bill

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[5] According to the ordinary legislative procedure defined in the Lisbon Treaty, the EP can reject the bill in the second reading with a simple majority of members present. Under the co-decision procedure, an absolute majority of all members was required. In practice, this is a minor change.

unanimously under co-decision. Of the cases examined in this study, co-decision applied to internal market proposals, one of the most important policy areas under the EU's remit.

<Figure 1.2>

The consultation procedure is an older procedure than co-decision, and involves a more limited 'consultative' role for the EP. Consultation can be combined with either QMV or unanimity in the Council. If the QMV rule applies, then the Council can approve of the Commission's legislative proposal by a qualified majority, or may amend the proposal with the approval of all member states. If the unanimity rule applies, then both approval and amendment of the proposal require the support of all member states. The EP must give an opinion on the legislative proposal, but legally the Council may put aside the EP's opinion after considering it. In practice, the EP's opinion can affect the contents of the adopted act (Nugent 2006: 404), particularly since the Commission ensures that its concerns are taken into account during the decision-making process. During the time period considered here, the consultation procedure applied to many policy areas including agriculture and justice and home affairs. One of the main changes brought about by the Lisbon Treaty is to extend the scope of co-decision to agriculture, a major policy area of the EU that was previously subject to consultation. Consultation still applies to some nationally sensitive areas of policy, such as taxation and immigration and asylum policies.

The European Commission formulates legislative proposals, which means it has an important executive function in the legislative process. The Commission President and the individual Commissioners also provide leadership by setting the medium-term goals of the EU. In the EU-15, there were twenty Commissioners including the Commission president, two from each of the five largest member states and one from each of the smaller states. The number of Commissioners was increased to twenty-five and then twenty-seven after the 2004 and 2007 enlargements, one from each member state. A Commissioner leads each of the main organizational units of the Commission, referred to as Directorates-General. These organizational units are in some ways similar to national ministries or departments of government. The most prized Commissionerships are those covering the EU's core policy competencies, such as agriculture, internal market and competition policy. Commissioners are

nominated by member states, and have usually had distinguished careers in national politics prior to their appointment (e.g. Wonka 2007). However, they are legally prohibited from representing their member states or political parties' interests. Instead, they are supposed to represent the general European interest. In Chapter 4 I examine whether they do so in practice.

The European Parliament is the EU's directly elected legislature. Members of the European Parliament (MEPs) are affiliated with both national political parties and transnational party groups. The two largest transnational party groups each control around a third of EP seats. The centre-right Christian democratic parties of Europe cooperate in the EP's European People's Party (EPP). The left of centre social democratic parties cooperate in the Party of European Socialists (PES).[6] These transnational party groupings are internally cohesive, increasingly so, and have played a vital role in increasing the EP's influence in the legislative process (Hix *et al*. 2007). The transnational party groups organize political business in the EP, for example by distributing appointments to legislative committees. As in any national legislature, most of the real policy work is done in specialized committees within the EP. These committees scrutinize legislative proposals and formulate drafts of amendments for the plenary to debate and vote on.

The Council of Ministers is at the centre of the decision-making process examined here. The Council is divided into sectoral Councils composed of the national ministers from the relevant policy areas. So, for example, national ministers for agriculture meet in the Agriculture Council and national ministers for finance meet in the Economic and Finance Council (Ecofin). Below the ministerial level, many committees prepare ministers' decisions. The Permanent Representatives Committee (Coreper) sits at the top of this committee structure. Coreper meets in two configurations: as Coreper I composed of the deputy permanent representatives to deal with technical matters and as Coreper II composed of the member states' ambassadors to deal with more politically contentious matters. Below this, there are many working groups composed of officials from each country. These officials are either based in the member states' permanent representations to the EU or in relevant

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[6] The EP party group of the socialists and democrats is now called the Progressive Alliance of Socialists and Democrats (S&D). Prior to 2004, the S&D party group called itself the PES party group. Nowadays, the term PES refers to the party, not the EP party group. I use the term PES to avoid using two different names.

national ministries. Legislative proposals are passed up and down the Council hierarchy during the decision-making process. Lower level committees may pass an issue they were unable to resolve upwards. Ministers may agree the general contours of a settlement and instruct lower level committees to work out the details. As mentioned above, the Council usually decides either by QMV or by the unanimity rule. It is often remarked that the Council attempts to reach a consensus, even when QMV is formally required, and that actual votes are rare (e.g. Hayes-Renshaw and Wallace 2006: Chapters 10-11).

This study focuses on political actors with decision power in the legislative system: those actors whose support is needed for a proposal to be initiated or for a decision to be taken. An obvious but justifiable limitation of my study is therefore that it excludes actors without formal decision power, most notably interest groups. Interest groups play a vital role in communicating oftentimes competing sectoral and public interests to decision makers in the EU (e.g. Coen and Richardson eds. 2009). Interest groups' main point of access to the EU is via the Commission. The Commission goes to great lengths to consult a wide range of relevant interests, including interest groups, before it formulates legislative proposals. Interest groups must exert influence early in the decision-making process, before the Commission formulates a legislative proposal, if they are to be successful. Interest groups increasingly also lobby the European Parliament. The present study focuses on the stage of the decision-making process between the introduction of the legislative proposal and the adoption of the legislative act. At this stage, the actors with decision power are most relevant.

1.4 An institutional approach to analyzing decision-making

To answer a range of substantively important questions regarding the EU's legislative system, I apply the rational choice institutional approach to the study of politics. This approach informs a large part of contemporary political science analyses of politics around the world. This approach is characterized by the 'fundamental equation of politics' (Plott 1991: 905; Hinich and Munger 1997: 17), which states that actors' preferences and institutions interact to produce outcomes. Political actors are conceived of as acting purposefully. This simply means that they have goals and act in pursuit of those goals, for instance to influence decision outcomes in line with their

interests. This does not mean that actors have perfect information, or that they each have only one goal, or that they are always able to achieve those goals. The kernel of the approach is that actors are constrained by institutions in the pursuit of their goals. Political science in the early twentieth century was mainly concerned with describing and categorizing the formal institutions of government. This legalistic tradition was replaced by the behavioural revolution that swept the social sciences in the postwar period (Almond 1996). Behaviourists were less concerned with institutions than with how actors' interests and preferences affected outcomes. Rational choice institutionalism combines early political scientists' focus on institutions with behaviourists' preoccupation with actors' preferences. This combination was born out of the observation that, in the absence of stabilizing institutions, outcomes are inherently unstable when actors must agree on more than one issue (Plott 1967; McKelvey 1976; Schofiled 1978). Formal analyses demonstrated that under common majority voting procedures, any decision outcome could potentially be overturned by an alternative outcome, which itself could also be overturned. Given that such voting cycles are rare, political scientists began to search for institutional mechanisms that could prevent them (Shepsle 1979; Riker 1980). Institutionalism is a broad approach and many types of institutions have been explored. North (1991), as mentioned above, gives a broad definition that encompasses formal rules and informal norms. It is also common to distinguish between 'rational choice', 'historical' and 'sociological' institutionalism (Hall and Taylor 1996; Peters 1999; Aspinwall and Schneider 2000). My focus on how the contemporary EU resolves specific controversies means that the rational choice variant of institutional analysis is the most relevant one.

This is by no means the first study to examine the interplay between actors' preferences and institutions in the EU. Many previous studies that applied this approach focused on the process stage of the political system: how actors' preferences are transformed into decision outcomes. The first political scientists to use this approach to study the EU examined the effects of changes to the formal decision-making procedures (e.g. Tsebelis 1994; 1996; Moser 1996; Tsebelis and Garrett 2000; Crombez *et al.* 2000). Bueno de Mesquita and Stokman's 1994 book, *European Community Decision Making*, was the first major publication to examine how specific controversies are resolved in the EU using the rational choice institutional approach. That study marked an important innovation in the application of rational choice institutionalism, since it focused not only on formal decision-making procedures laid

down in treaties, but also the dynamics of informal bargaining. A later study that I co-edited, *The European Union Decides* (Thomson, Stokman, Achen and König eds. 2006), developed these earlier applications. That study examined a broader range of specific controversies in the EU-15 using models of decision-making that incorporated formal and informal institutions.

The following chapters apply this established approach to examine the inputs, processes and outputs of the political system. This analytical framework emerges from Chapter 4 onwards, when the analysis turns from mainly description to explanation. I consider a range of possible interests that may motivate actors and a range of institutions that may constrain them. For example, Commissioners, MEPs and national governments may be motivated at least partly by their national interests or by their party political interests. Commissioners may also be motivated by the interests of the Commission as a supranational actor. All actors are subject to institutional constraints of various forms. For example, Commissioners are constrained by the behavioural norm and legal principle that they should be impartial. The organizational division of the Commission into DGs, each led by a different Commissioner, is another institutional constraint. The committee structure in the EP is an institutional constraint that affects MEPs' ability to pursue their interests. Within the Council, member states may be constrained by voting rules and the rotating Council presidency. In addition, member states' representatives are constrained by informal norms of behaviour, such as the norm that decision makers should respond to each other's interests, even to the interests of minorities whose support is not strictly required for a decision threshold to be achieved.

1.5 Outline of the book

The following chapter describes the research design that is common to all of the subsequent chapters. This study examines the largest and most detailed dataset on decision-making in the European Union presently available. For a broad selection of controversial legislative proposals (125 in total), information was collected systematically on controversial issues (331 in total) raised by these proposals and the policy positions of the main actors. This information was collected partly through 349 in-depth interviews with key informants over a ten-year period. The research design gives details of how these legislative proposals were selected and how the interviews

were conducted. It illustrates the reconstruction of controversial issues with the highly contentious proposal to reform the sugar sector that took place after the 2004 enlargement. Each of the following chapters uses a controversy from a different proposal to illustrate the concepts put forward.

Part I of the book, containing Chapters 3-6, focuses on inputs: actors' policy demands on controversial issues. Chapter 3 begins the analysis of inputs with a general overview of the main patterns found. The first main question addressed in that chapter concerns the extent to which there are patterns in the policy positions taken by the main decision-making actors. To the extent that these patterns exist, the analyses describe these systematically. Identifying the strength and nature of these patterns is central to understanding what type of political system the EU is. For instance, the analyses reveal a pattern whereby the Commission and EP tend to take radical positions compared to member states. The analyses also reveal a pattern whereby old Northern member states take positions that differ from those of old Southern. In addition, on a substantial minority of issues, there are divisions between old and new members. The chapter identifies the types of controversies on which these patterns are found and interprets the meaning of these patterns.

Chapter 4 examines the policy positions taken by the European Commission. This chapter addresses the question of what kind of actor the Commission is. The Commission portrays itself as a supranational organization that is independent of member states. However, the chapter presents an alternative view, that it is a body imbued with the ideological party political interests and national interests that run through its compartmentalized structures. Under certain conditions, individual Commissioners have significant latitude to shape the Commission's policy positions. Although the Commission's policy demands are typically radical compared to those of member states, there is considerable variation in the level of congruence between the Commission and member states' policy positions. One finding is that the Commission's policy positions are systematically biased toward the policy demands of the primarily responsible Commissioner's home member state.

The policy demands expressed by the European Parliament are the inputs studied in Chapter 5. As the EP is the only directly elected body within the EU, its policy demands are of special importance. The evidence shows that the EP's policy positions are generally very representative of the demands expressed by different transnational party groups within the parliament. In this respect, the EP works as it

should. In addition, Chapter 5 examines the impact of the EP's internal decision-making processes – particularly the characteristics of *rapporteurs* who are involved in formulating the EP's opinions – on the content of the EP's policy demands. Although party groups structure politics in the EP, at the margins, MEPs' national affiliations also play an important role.

Chapter 6 concludes the study of inputs by examining the policy positions of member states in relation to one another. What factors explain variation in the extent to which member states make similar policy demands? The analyses in this chapter bear upon the question of whether states' policy positions are strategic or reflect their underlying policy preferences. This is a highly contentious question among international relations theorists. Chapter 6 shows that the level of agreement between states can be explained to a significant extent by objective structural conditions. For instance, states with large agricultural sectors typically make similar policy demands on controversies about agriculture; likewise, states with strong regulations regarding banking services typically express similar views on controversies about banking regulation. Therefore, states' policy positions are not only strategic stances, but reflect their underlying preferences to a considerable extent.

Part II of the book, containing Chapters 7-9, examines the processes through which inputs are transformed into outputs in the contents of EU laws. Chapter 7 tests radically different perspectives on the main features of this process. The first perspective is that the process is driven by the formal decision-making rules laid down in the treaties. The second perspective is that the process is driven by informal cooperative bargaining among all of the actors involved. These two perspectives are represented as alternative models that make predictions of the contents of EU laws based on information about the inputs (actors' policy positions on controversial issues). Several variants of the bargaining perspective are considered. The models' predictions of the contents of laws are compared with the actual contents to identify which sets of predictions are generally most accurate. The main finding is that a variant of the cooperative bargaining perspective makes the most accurate predictions of decision outcomes both before and after the recent enlargements.

Chapter 8 turns to the relative power of the three main institutions in the process of legislative decision-making: the Commission, the EP and the Council. Supranationalists and intergovernmentalists disagree on what the distribution of power is, as well as what it should be. The evidence shows that power is held mainly

by the member states in the Council; the Commission and the EP have considerable power, but are far weaker than the Council members. Here, an actor's power is defined as its potential to realize its policy demands in the contents of decision outcomes, even in the presence of opposition from other actors. The analysis takes into account the fact that an actor's policy demand may be reflected in the content of a law simply as a consequence of the fact that the demand was similar to an obvious compromise outcome. This would be an expression of luck rather than power.

Given the concentration of power in the Council, the distribution of power among the member states is a particularly salient question. This is the topic of Chapter 9. Some critics of the EU hold the view that power is held mainly by large member states. The evidence does not support this view. Instead, small and medium-sized member states hold substantial power. Models that assume relatively equal distributions of power among member states make more accurate predictions of decision outcomes than models that assume power is held by a few large states. Chapter 9 also shows that new member states are exerting significant influence on decisions in the enlarged EU.

Part III, containing Chapters 10 and 11, analyzes the outputs of the system. Chapter 10 describes and explains the contents of EU laws in relation to the range of demands expressed by the actors. On any given controversy that has been resolved, the decision outcome is usually more congruent with some policy demands than others. An actor's policy demand may be met as a result of factors that are largely outside the control of the actor concerned. This would be 'luck' rather than power. The analyses examine a range of factors that affect the congruence between actors' policy demands and decision outcomes. This includes the impact of other actors' support for the policy demands being expressed, and the power resources that actors can bring to bear during the decision-making process.

Chapter 11 focuses on another important aspect of the content of EU laws, the amount of discretion that laws delegate to implementers. The implementers of EU laws are the European Commission and member states' national authorities. EU laws vary considerably in the extent to which they delegate either to the Commission or to member states. The existing literature on delegation in the EU and other political systems offers a rich set of explanations that are tested in this chapter. One of the main findings is that EU laws grant broad discretion to member states as a means of resolving controversy in the Council.

Chapter 12 concludes by drawing together the main findings in an analysis of the effects of the recent enlargements on the political system of the EU. A nuanced picture of continuity and change emerges. This is distinct from both the excessively pessimistic prognoses of legislative gridlock prior to the main 2004 enlargement and the blithe business-as-usual reports in the immediate wake of 2004. Although the political system is functioning effectively in transforming inputs into outputs, important features of the political system have changed significantly. This assessment has implications for evaluating the system against normative criteria. It has become commonplace to argue that the EU suffers from a democratic deficit. Chapter 12 examines the main claims made by proponents of this view in the light of the evidence presented in this book. Despite the widespread acceptance of the democratic-deficit thesis, many of its claims do not withstand scrutiny. This does not imply that the EU is the best political system it could possibly be. The book concludes by assessing the likely impact of measures intended to improve how the EU works.

Chapter 2

Research design: measuring controversy spatially

2.1 Applying the spatial model of politics to legislative decision-making in the EU

The modern conception of politics is spatial. We think about political views that we agree with as close to our own, and views that are distant from ours as further away. When we think of changes in the policy stances of political parties, it is common to think of parties moving to the left or to the right of the main ideological dimension that characterises politics in our national contexts. Thinking about politics in terms of space has been with us for a long time. Thomas Carlye's account of the French National Constituent Assembly in July 1789, which was established after the French Revolution, describes a consistent ordering in the plethora of deputies' views (1871: 192, cited in Benoit and Laver 2006: 16). He observed a consistency between the physical location of deputies to the right or left of the President and their positions on the major issues of the day, the Revolution and the status of the aristocracy in France. The use of the terms Right and Left to denote conservative and liberal forces, as well as the more general notion of political difference as distance, has pervaded popular and academic writing about politics throughout the world until today.

Political scientists have systematized this spatial conception of politics; I will refer to this systematic conception as the spatial model of politics. Hotelling (1929) was one of the first to formulate a spatial model that could be applied to politics. In passing, he noted that his model of shopkeepers' decisions regarding product prices and shop location on a street could be applied to politics (ibid. 54-5). In particular, he drew an analogy between the physical clustering of shops a short distance from each other on a street and the convergence of policy stances taken by the Democrats and Republicans of his home country, the United States, at that time. However, it was not until Downs' *An Economic Theory of Democracy* (1957) and Black's *The Theory of Committees and Elections* (1958) that the analytical power of the spatial model of politics became apparent. Today, the spatial model is at least implicit in most research that tries to explain aspects of real-world politics.

This book uses the spatial model to study decision-making in the European Union. The spatial model informs the way in which information about political actors' policy demands is collected and structured, the topic of the present chapter. In the

following substantive chapters, this spatial model is also an integral part of theories and expectations regarding the inputs, processes and outputs of the legislative system. In addition, the spatial model is implicit in the methods and techniques used to test these theoretical expectations. The way in which the spatial model is applied in the present study is similar to the way it has been applied in many previous studies of international, national and local decision-making (e.g. Bueno de Mesquita and Stokman eds. 2004; Bueno de Mesquita 2009a). The present chapter describes how the spatial model is applied to the EU, and how this study differs from some other studies' that applied the spatial model in the past.

Figure 2.1 depicts the sugar sector reform to illustrate the application of the spatial model in the present study. This was the first important reform of agricultural policy that took place after the 2004 enlargement. The reform had a major effect on the sugar industry in Europe, leading to the closure of many refineries. To obtain and verify the information contained in Figure 2.1, eleven semi-structured interviews were held with experts from the member states' permanent representations, the Commission and the European Parliament. The main controversial issue raised by this proposal was the size of the price cut, which would in effect reduce EU subsidies for sugar production. The first issue line at the top of Figure 2.1 represents this controversy. The position of the actor in favour of maintaining the highest level of subsidy is at the right of this line. This position was taken by the Polish government, which called for the current intervention price to be retained. At the left of the continuum, we find the positions of the member states that favoured lowest subsidies. In this case, Denmark, Sweden and Estonia supported a very large price cut of more than 39 percent. Intermediate positions are placed between these two alternatives on a scale of 0-100, to reflect experts' judgements of the political distances between the alternatives.

The first line in Figure 2.1, which represents the price-cut controversy, is a spatial representation of politics in the simplest form: a unidimensional scale. I will also refer to policy scales of this type as issue continua or simply issues. Political actors are placed on this and other issue continua to represent their policy positions. An important assumption of the spatial model is that of all of the policy alternatives represented on the issue, each actor prefers, or gains most utility from, the policy alternative corresponding to its position. The further a policy alternative is located from an actor's position, the less the actor favours that alternative. This is the

assumption that each actor has a single-peaked preference function. The issues must be formulated appropriately in order to meet this assumption. Doing so often involves an interaction between researchers and policy experts in semi-structured interviews, which are described in more detail later in this chapter.

The distance between any two policy positions on an issue refers to the political distance between those positions. The political distance between two positions may differ from the difference between those positions in terms of the quantities (if any) referred to in those positions. The only justification for the actors' locations on each issue is that these locations correspond to experts' perceptions of the political distances among the actors. This is illustrated by the policy positions on the first controversial issue raised by the sugar sector reform. In this case, Poland favoured the highest level of subsidy, since it demanded no price cut. Poland was placed to the right of the issue continuum on position 100. Denmark, Sweden and Estonia favoured the largest cut, but did not articulate their demand in more detail that 'more than 39 per cent', which was the cut referred to in the legislative proposal. Where should the other actors be placed? The experts interviewed thought that the political distances between these two extremes and the other positions certainly related to the exact numerical cuts proposed, but not in a neat linear fashion. Indeed, how could they since the "Danish" position was expressed imprecisely, albeit clearly? According to the experts, the legislative proposal favoured by the Commission and several member states was far closer to the Danish position than the Polish position. One way of operationalizing this view was to place the Commission's proposal at position 22 on the scale. This value was first suggested by multiplying the proposed price cut by two and subtracting this from 100 (100-(39*2)=22). Similarly, Hungary and other states' demand for a cut of only 20 per cent was placed at position 60 on the scale (because 100-(20*2)=60). Greece, Italy, Spain and Cyprus favoured a 'small cut' without specifying the size of the cut. It was clear to the experts that these countries favoured a smaller cut than Hungary and a larger cut that Poland. Since they could not discern which position was closer, they placed these four countries on position 80, exactly half way between Hungary and Poland. Again, the only justification for the precise location of the actors relative to each other is that these locations reflect experts' judgements of the political distances among the actors.

The second issue in the sugar case is the extent to which producers should be compensated for the price cut (also depicted in Figure 2.1). Actors' positions on the

first issue, on the size of the price cut, were clearly related to their positions on this issue. Member states that favoured smaller price cuts tended to favour higher levels of compensation. Given a certain budget available for financial compensation, larger price cuts meant that a smaller percentage of producers' losses could be compensated. However, some member states called for an increase in the budget available for compensation. Moreover, compensation was treated as a separate issue in the discussions. For these reasons, it is appropriate to define compensation as a separate but related issue, rather than merging it into the first issue. It is also clear that the positions on these two issues differ. For instance, Denmark and Sweden shared the same position on the issue of the price cut, while Denmark was more isolated on the issue of compensation.[1]

The third issue raised by the sugar sector reform concerned the sequencing of cuts in production quotas for different types of sugar (Figure 2.1). Although rather technical, this issue was the subject of considerable disagreement between some of the new member states on one side of the argument and the Commission and most of the old member states on the other. The new member states favoured cutting the so-called B-quotas before cutting the A-quotas. By contrast, the Commission and new member states favoured merging these two types of quotas and cutting both at the same time. Without dwelling on the technicalities, a sequential cut would have benefited the new member states' sugar industries because of the types of quotas they held at that time; they wanted to protect their A-quotas.

The issues raised by the sugar sector reform show that issues can differ markedly from each other in the numbers of policy alternatives they contain. Since the first issue concerns the percentage of the price cut, it appears to approximate a real continuum or scale-level of measurement, on which every position on the scale could have a substantive meaning. By contrast, the third issue appears to be dichotomous; only two alternatives are mentioned, either merge or do not merge the quotas, and no compromise positions are reported. It could be asserted that some issues are inherently dichotomous. A couple deciding whether or not to have a baby are faced

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[1] Note that a high linear or ordinal correlation between actors' positions on two issues may give a misleading impression of the similarity between two issues. Consider five actors that take positions 0, 20, 40, 60, 80 and 100 on a first issue and positions 0, 5, 10, 95 and 100 on a second issue, whereby the actors are ordered in the same sequence from left to right on the issue scale. Their positions are highly correlated, but quite different when considering the distances between the positions. This is a reason for specifying these issues separately.

with two apparently irreconcilable alternatives. However, given sufficient will and imagination, there are invariably other alternatives (to labour the baby example, these alternatives postponement of pregnancy, adoption or surrogacy). One of Riker's many profound insights into politics is that the political space is constructed by and may be manipulated by the political actors who inhabit it (1986). Therefore, the fact that an issue appears to be dichotomous may reflect the way in which political actors viewed the issue, rather than anything inherent in the policy question to which the issue refers.

The spatial model of politics assumes that political actors share a common perception of the political space. The actors, at least the ones that take positions on the issues, agree that these are the main issues that need to be resolved and that these issues contain the main policy alternatives considered. However, actors may differ greatly from each other in terms of the importance they attach to issues. This means that one actor may invest far more time and effort in attempting to influence the decision outcome on an issue than other actors do. It also means that actors may differ in their perception of the size of the difference between two policy alternatives. For example, the size of the price cut was a far more important issue to most of the actors than the merging of the A and B quotas. However, for both the Czech Republic and Slovakia, the merging of the quotas was as important as the size of the price cut, due to the impact of the quota on their domestic sugar industries. We will return to the operationalization of issue salience below.

The present study's application of the spatial model differs from that of other applications in the specificity of the controversies or dimensions examined. The present study focuses on specific controversies raised by separate legislative proposals. This focus on specific controversies is part of a well-established research approach (e.g. Bueno de Mesquita and Stokman eds. 2004; Bueno de Mesquita 2009a). Other studies, however, apply the spatial model to more abstractly defined dimensions. Benoit and Laver's (2006) study of party positions in 47 countries around the world is a fine example of this tradition. They surveyed more than 1,500 experts on these countries' political parties and asked them to place the parties on a number of pre-defined dimensions. For example, on economic policy, experts were asked to locate parties on a twenty-point scale to indicate those parties' stances on deregulation, from 1 for parties that favour high levels of state regulation and control of the market to 20 for parties that favour deregulation of markets at every

opportunity. McElroy and Benoit (2007) applied a similar approach to the study of parties in the European Parliament. There are several reasons for the present focus on specific controversies when measuring actors' positions. The first is simply that the present study is interested in studying inputs, processes and outputs in the context of individual legislative proposals. It is therefore appropriate to measure actors' positions on the specific controversies raised by these proposals. A second, related reason is that there is considerable disagreement among EU observers on the extent to which there are consistent patterns in the alignments of actors. This will become particularly clear in Chapter 3. To measure actors' positions on pre-defined dimensions, it is necessary that their positions on specific controversies that relate to these dimensions can be summarized accurately by their positions on these pre-defined dimensions. This assumption does not hold strongly enough in the EU. As will be demonstrated in more detail in the following Chapter, a member state's position on one issue that is ostensibly about the strength of regulation typically differs from its positions on other issues that are also about the strength of regulation. There is therefore much to be gained by focussing on the specific controversies raised by a broad selection of legislative proposals.

<Figure 2.1>

2.2 Legislative proposals selected by researchers

A total of 125 legislative proposals were selected for study in the present research, 69 from the EU-15 time period and 56 from the post-2004 time period. The Appendix contains a complete list of these legislative proposals. This selection includes a broad range of policy areas in legislative decision-making before and after the 2004 and 2007 enlargements. The selection criteria were formulated for a study of decision-making in the EU-15 carried out between 2000 and 2003 (Thomson *et al*. eds. 2006). Subsequently, my colleagues and I extended these criteria to the enlarged EU.

Regarding the balance between the number of legislative proposals selected and the amount of information gathered on each case, the present study lies somewhere between large-n quantitative research and case study research. This book focuses on how controversies raised by specific legislative proposals are resolved. Such a detailed focus necessarily limits the number of legislative proposals that can

be covered. My study covers fewer legislative proposals than research based on more readily-available quantitative indicators. For instance, studies of decision-making duration typically include thousands of legislative proposals over a relatively long period of time (for a critical review of duration studies see Golub 2008). Covering a larger number of legislative proposals certainly has the advantage of comprehensiveness. However, since I am interested in how the EU resolves controversy, only a small proportion of all proposals – the ones that are controversial - are relevant. While the selection is designed to identify the important and controversial proposals, it includes considerable variation in the degree of controversy, as will become clear from the examples given throughout the book. The selection is broader than typically found in qualitative case study research. As a result, the present study's treatment of each proposal is in some respects more cursory than case studies. A strength of the present research design is that it gives clear criteria for choosing these cases, while case selection is often dealt with rather casually in qualitative case studies. Moreover, the present study offers a comprehensive inventory of the policy positions of all decision-making actors formally represented in the legislative process. This level of systematic detail on a carefully selected aspect of decision-making distinguishes the present study from most case studies.

Three main criteria were used to select the legislative proposals: procedure, time period and political importance involving controversy. The first of these criteria, procedure, was that the proposals had to be subject to either the co-decision or the consultation procedure. As said in the introduction, these are the two most important procedures in legislative decision-making. According to the co-decision procedure, the EP and Council have equal weight in the decision-making process. In the consultation procedure, by contrast, the EP simply gives an opinion that the Council may set aside after considering. Table 2.1 summarizes the selected legislative proposals by the procedure to which they were subject. Both procedures can be combined with either unanimity or qualified majority voting (QMV) in the Council, but it is most common for the co-decision procedure to be combined with QMV. The selection does not include proposals that were introduced under one procedure and changed to another procedure after the Treaty of Amsterdam came into effect on 1 May 1999. This was the case for some environmental proposals that subject to the old co-operation procedure and then moved to co-decision after the Treaty of Amsterdam came into effect. Including such proposals may have been problematic, since some

models of the process attribute particular importance to the formal rules of decision-making. When applying these models to these cases, it would have been unclear which set of rules was relevant.

\<Table 2.1 Distribution of proposals and issues by procedures\>

The second main selection criterion concerns the time period. For the EU-15 study, proposals that were introduced or pending between January 1999 and December 2000 were selected for study. For the post-2004 study, we selected proposals that were first discussed in the Council and EP after the accession of the ten member states in 2004. The post-2004 study includes proposals that were introduced up to July 2008. One reason for selecting these time periods concerns the practicalities of the data collection procedures. A team of researchers collected information on controversial issues and actors' positions on these issues by conducting semi-structured interviews with key informants or policy experts. Given that decision-making in the Council of Ministers takes place behind closed doors, and there are no useful public records of these meetings, interviews with key informants are the only viable way of obtaining the information required. Key informants are only able to provide the detailed information required for legislative proposals that are either ongoing or relatively recent and fresh in their memories at the time of the interview. Another reason for selecting these time periods is substantive. The present study is interested in how the contemporary system of the EU works and the impact of the recent enlargements on decision-making.

The third main selection criterion is political importance involving controversy. The main research questions posed in this study centre on the ways in which the legislative system of the EU incorporates inputs in the form of diverse policy demands, and processes these into outputs in the form of laws. From this perspective, there is little to be gained by including legislative proposals that were uncontroversial. A few subtle variations in the implementation of this criterion were implemented during the course of this research. For the EU-15 period, each proposal, which could be a proposed directive, regulation or decision, was mentioned in a report of *Agence Europe,* a daily news service devoted to EU affairs read mostly by EU

practitioners.[2] In addition, the experts we interviewed had to identify at least one substantive disagreement between at least some of the actors for the proposal in question to be included in the selection. We also asked the experts to name other proposals they were working on that met our selection criteria of relevant procedures and political importance and included these if they were not already in the selection. These procedures led to a relatively large number of proposals that were initially selected, but then found to be uncontroversial when the researchers consulted the experts. Consequently, for the post-2004 cases, two changes were made. First, decisions were excluded because most of the decisions included in the initial selection proved to be uncontroversial. Decisions are legislative acts directed toward specific member states or legal entities. As such they are narrower in scope than regulations and directives and typically less controversial. Second, we tightened the news report coverage to require that a proposal be mentioned in both *Agence Europe* and *European Voice*. *European Voice* is a weekly newspaper with a somewhat broader and less specialized readership than *Agence Europe*. The consequence of these changes is that the post-2004 cases are confined to a set of proposals with a somewhat higher profile than the EU-15 selection. In addition, during the semi-structured interviews, the interviewers regularly asked whether there were other cases that the experts were working on that would be suitable for us to include. The experts referred to proposals that were already included in the selection.

The selection was not restricted to particular policy areas. Legislative proposals from all policy areas covered by the EU that met the above criteria were considered. We aim to examine patterns that may be present in different policy areas and therefore should not restrict the selection to certain areas. Given the policy areas in which legislative activity is most intense in the EU, certain areas feature prominently (Table 2.2). Unsurprisingly, the selection contains a high proportion of legislative proposals from the areas of agriculture (twenty-six), internal market (eighteen), Justice and Home Affairs (eleven) and fisheries (fourteen). However, many other policy areas are present too, which allows us to examine the extent to which patterns in inputs, processes and outputs can be generalized across different policy areas. There are fewer internal market proposals in the post-2004 selection. However, there are several proposals in the post-2004 selection concerning the

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[2] The *Agence Europe* report had to be at least five lines long, so as to exclude passing mention of a proposal when reporting what was on the Council's agenda that day.

internal market in services that were discussed in other Council configurations. For example, the payment services directive (COD/2005/245) was discussed in ECOFIN and voted on in the General Affairs Council; while the broadcasting directive (COD/2005/260) was discussed in the Education, Youth and Culture Council; both have implications for the internal market. The fact that there are no environmental proposals in the EU-15 selection reflects the fact, as mentioned above, that these changed legislative procedure when the Treaty of Amsterdam came into effect and were not selected for that reason.

<Table 2.2 Policy areas>

When selecting the legislative proposals listed in the appendix, the selection approximates as closely as possible an exhaustive selection of all proposals that meet the abovementioned criteria. The selection is very clearly not a random sample of all legislative proposals. A random sample would be inappropriate given the research questions addressed by the present study. A random selection would include a large proportion of proposals that were uncontroversial, and that would tell us little about how the EU processes competing policy demands. As outlined in the previous chapter, the analyses in Part I of the book explain variation in actors' policy demands. On uncontroversial matters, by definition all actors take the same policy positions. In such cases, there is simply no variation to explain. Part II of the book includes analyses of the ways in which actors' policy positions are transformed into decision outcomes. There are fundamentally different theories of how this transformation process takes place. However, these different theories make the same predictions of decision outcomes on uncontroversial issues. According to all models, if all of the relevant actors have the same policy position, that position will also be the decision outcome. Therefore, including uncontroversial issues would not bring information that would be useful in testing alternative explanations. Furthermore, a random sample is likely to exclude important proposals. The present study could not claim to offer a comprehensive analysis of legislative decision-making in the time periods covered if it ignored certain pieces of legislation. What would the present study be without the sugar sector reform discussed above, the controversial savings tax proposal introduced in 1998, the working time directive proposed in 2004 or the liberalization of postal services proposed in 2005, to name but a few of the cases

included here? King *et al.* (2004: 124-7) warn against the inappropriate application of random selection; applied unwisely, random selection can make a study substantively irrelevant, while giving only the thinnest veneer of scientific respectability.[3]

2.3 The experts selected by researchers

The researchers involved in the data collection for this study conducted 349 semi-structured interviews with experts to gather information on the controversies raised by the legislative proposals selected (Table 2.3). The experts were usually participants in the decision-making processes about which they were asked. The interviews lasted on average an hour and eighteen minutes. During these interviews, experts gave information on the actors' policy positions on the controversial issues and the levels of importance the actors attached to the issues. This information was given in a way that could be expressed as numerical estimates, as in the example in Figure 2.1. In addition, the experts gave qualitative information to substantiate their estimates.

Interviewing experts is the only viable method of collecting information on the policy positions of the key actors on controversial legislative proposals, in particular on the policy positions of the member states' in the Council. There are no publicly available records of what is said in Council meetings, which means that document-based data collection strategies are unworkable. On some occasions, I obtained uncensored preparatory documents, which contained drafts of the legislative acts with footnotes detailing member states' objections and proposed revisions to individual articles. A detailed comparison of the information from these documents with information from experts concluded that there is a high level of consistency between the two sources (Thomson 2006). However, the documents were no substitute for the information from experts in two respects. First, the experts were able to identify the main controversial issues while the documents only identified states' positions on individual articles. Without experts' detailed knowledge of the proposals in question, it is practically impossible to distinguish the main controversies from peripheral points of discussion on the basis of Council documentation. Some controversial issues

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[3] The research team also experimented with selecting legislative proposals randomly. It soon became clear that this was inappropriate. The random selection included many proposals that did not lead to substantive disagreements among decision makers. Of the randomly selected proposals that did lead to controversy, all were included in the selection procedures outlined in this chapter.

touch upon several articles of a legislative proposal, and such linkages are not obvious on the basis of documents alone. Second, experts are able to provide more accurate and extensive information on actors' policy positions. Some documents indicate member states' support for compromise proposals made during the course of the negotiations, rather than what we are interested in: namely, states' initial policy positions at the outset of the discussions. Box 2.1 summarizes reliability and validity tests of the present study's data that were published elsewhere.

Information from voting records in the Council of Ministers does not provide an appropriate alternative to information from experts on member states' policy positions. The analysis of voting records in the Council has provided valuable insights into states' behaviour at the voting stage, after the negotiations have taken place (e.g. Hayes-Renshaw *et al.* 2006; Hagemann 2008; Mattila 2009). However, this behaviour is distinct from the actors' policy positions, the 'inputs' on which we wish to focus. States display some kind of dissent at the voting stage on only a small percentage of cases, by either voting against, abstaining and/or entering a statement detailing their objections into the minutes. By contrast, there are usually some differences between states' initial policy positions and the decision outcomes contained in the laws that are adopted.

Expert judgements are widely used in political science in several different subfields, and their use has been the subject of criticism and debate (e.g. Budge 2000). Like any other method, expert judgements have their limitations. However, the main criticisms levelled against their use in other subfields do not apply here. For instance, when different experts place political parties on the Left-Right dimension, or other abstractly defined dimensions, experts may have fundamentally different understandings of what these dimensions mean (ibid.). In the present study, by contrast, experts are asked to place actors on specifically defined controversies, not abstract dimensions. Likewise, when expert judgements refer to the positions of corporate actors, such as political parties or member states, there may be ambiguity regarding which individuals in these corporate actors the judgements refer to. This limitation is not inherent in the method itself, but in the way in which it is applied. The present study is explicit in defining these questions, as will be detailed further in Section 2.5 below.

The approach to expert judgements applied in the present study relies on a relatively small number of experts who are interviewed face-to-face and required to

justify the information they provide substantively. This approach is quite distinct from the use of expert judgements in other subfields of political science. For instance, several studies have used standardized surveys to obtain judgements from a large number of individuals on political parties' positions on general dimensions of conflict in domestic politics (e.g. Huber and Inglehart 1995, Laver and Hunt 1992; Benoit and Laver 2006). The approach used here is preferable in the present context because this study focuses on controversies raised by each of the selected legislative proposals. We need detailed discussions with experts to find out what exactly was controversial about these proposals. Moreover, given that decision-making in the Council of ministers is not open to the public, the information we require is often perceived to be of a sensitive nature. Few experts would be willing to divulge this information in a standardized questionnaire to researchers whom they have not met personally.

In face-to-face interviews, interviewers assess the expertise of interviewees and the amount of effort interviewees devote to providing estimates. Throughout the semi-structured interviews, interviewers asked respondents to justify the information they gave. The guiding questions for these justifications were 'why did each of the actors favour the alternatives they did?' and 'why did the actors prioritize the issues as they did? (Thomson and Stokman 2006: 32). Respondents' answers to these questions and the knowledge they displayed of the proposal in question were used to gauge their expertise and the credibility of their estimates. The numerical representations of actors' positions are not averages of the estimates provided by different experts. When necessary, researchers made a judgement about which sets of estimates to include based on respondents' answers. For instance, one expert may have been uncertain about a particular member state's policy position on one of the controversial issues. If this was the case, other experts were consulted to confirm or provide this information.

Interviewing experts to obtain information on controversial issues and actors' positions on those issues is more challenging with twenty-five or twenty-seven member states than it is with fifteen member states. We endeavoured to stay as close as possible to the procedures we applied in the EU-15 study, so as to ensure the comparability of the data, but some practical adjustments to the research design were necessary. In particular, it was necessary to interview a larger number of experts on each legislative proposal in the post-2004 study before we felt sufficiently confident about the estimates. We increasingly encountered some 'blind spots' in our

respondents' knowledge of actors' positions, whereby they were unsure about the positions of some actors on some of the issues. Whenever this was the case, we interviewed other experts to obtain more certainty. Compared to the EU-15 study, the interviews in the post-2004 study were more explicitly cumulative. In the EU-15 study, in each interview the researcher generally attempted to define the issues and collect the expert's judgements of actors' positions and the levels of importance they attached to the issues. If we had different sets of experts' judgements regarding the same proposal, we selected the set of estimates from the expert who displayed the most detailed knowledge of the proposal and the strongest ability to translate this knowledge into quantitative estimates. In the post-2004 study, we would generally obtain a complete or partly complete set of estimates from one expert, and then present this to another expert in the next meeting and so on. The next expert was asked whether they agreed with the estimates from the previous interview. Where they differed, the new experts were asked to substantiate their estimates and the researchers then decided which one to follow by comparing the justifications given. If this was unclear, more interviews were conducted.

The experts were affiliated with different institutions: the European Commission, the member states' permanent representations and the European Parliament. The individuals in the European Commission were usually the officials responsible for drafting the legislative proposals. These individuals also monitored closely the discussions that took place in the Council and EP. The officials from member states' representations were desk officers responsible for representing their states in the Council discussions. The officials from the Commission and Council invariably had detailed knowledge of the Commission and member states' policy positions on the main controversies raised by the proposal in question. In addition, they had detailed information on the positions taken by the EP in the inter-institutional negotiations. Few experts from the EP were interviewed in the EU-15 study. This is because decision-making within the EP fell outside the scope of that study; the EP was treated throughout as a unitary actor. Whenever we contacted individuals within the EP in the EU-15 study, they were unable to provide the detailed information we required on member states' policy positions. For part of the post-2004 study, as will be discussed in Section 2.6, data were gathered on the policy positions of the party groups, and where relevant national groups within the EP. This part of the study was led by Rory Costello (2009). To obtain information on the positions of

actors within the EP, Costello interviewed MEPs, their legislative assistants and EP committee officials.

<Table 2.3 Institutional affiliation of the experts interviewed for this study>

Box 2.1 Tests of the accuracy of expert judgements

Two previous publications tested the accuracy of the expert judgements used in the present study (Thomson 2006; König *et al*. 2007). More precisely, we can distinguish between the validity and the reliability of expert judgements. A measure's validity can be assessed by the extent to which the estimates obtained by applying this measure correspond to the estimates obtained by applying an alternative measure of the same construct to the same cases. The reliability of a measure refers to the extent to which repeated applications of the same measure to the same cases yield the same estimates.

Thomson (2006) assessed the validity of the expert judgements by comparing expert judgements with information from documentation on Council decision-making on two cases: the directive on the manufacturing and sale of tobacco products (COD/1999/244) and the directive on resale rights for artists (COD/1996/085). The documents contained uncensored drafts of the legislative texts that detailed member states' objections to articles within these proposed laws. The comparison of the expert judgements and the documents revealed that the experts' issues were indeed the main controversies. From the documentary information I identified the articles in the proposed laws to which states objected. For both legislative proposals, I compared the controversial articles from the documents that related to the experts' issues with the controversial articles from the documents that did not relate to the experts' issues. The documentary evidence showed that more member states took positions on the related articles than the unrelated ones. In addition, the related articles took longer to resolve and were discussed at higher levels of the Council's hierarchy. The comparison of documents with expert judgements also supported the validity of the experts' judgements of actors' policy positions. For the tobacco products directive, there was a high level of agreement between experts' judgements of states' positions and the documentary information; forty-eight of fifty-three positions matched perfectly. On the resale rights directive, only eighteen of the fifty-seven positions that could be compared matched. This lower level of agreement showed the limitation of the

documents as a source of evidence. On the basis of a qualitative inspection, it was clear that the positions in the documents referred to states' responses to a compromise proposal during the course of the negotiations, not to the policy positions they initially favoured.

Both Thomson (2006) and König *et al.* (2007) assessed the reliability of the expert judgements by comparing the judgements of different experts with each other. I compared two sets of estimates from different experts on the controversies raised by the proposed decision on the European Refugee Fund (CNS/1999/274). The comparison revealed a high level of congruence between the experts' judgements of the controversial issues, actors' positions on those issues and the levels of importance the actors attached to the issues. The differences between the two sets of estimates indicated that experts differ in terms of the level of detailed information they were able to provide, not that they held fundamentally different perspectives on the decision situation. When selecting a set of expert judgements, the researchers in this project always took those judgements that reflect the most detailed knowledge of the case in question. In another reliability test, König *et al.* (2007: 294) examined the point location of thirty-nine policy positions from seven of the issues included in the present study that were the subject of negotiation between the Council and the EP in conciliation committees. They compared the estimates of the experts used for the present study with estimates from experts in the EP: either *rapporteurs* or their legislative assistants. They found that thirty-five of the thirty-nine estimates matched perfectly or almost perfectly.

2.4 Reconstructing controversial issues with experts

The first part of each interview focussed on specifying the issues as policy scales, such as those depicted in Figure 2.1, or checking the issues specified in previous interviews. The aim was to arrive at a stylized representation of the main disagreements raised by the proposal in question. To achieve this aim, the interviewers had to engage actively with the expert; more was required of interviewers than simply reading out a standardized questionnaire. The experts were first asked to identify the main disagreements or controversies raised by the legislative proposal in question. After making an initial inventory of the issues, the interviewer then took one issue, typically the one that appeared to be the main controversy, and

attempted to specify this in more detail. The specification of the issues is closely connected with the collection of information on actors' policy positions, since the policy positions are represented on the issues. Therefore, for the issue in question, the expert was then asked to identify the actors that favoured the most extreme policy alternatives. These policy alternatives then defined the endpoints of the issue continuum used to represent this controversy, which for convenience we gave a range of 0-100. Depending on the flow of the discussion, the interviewer either then continued with the collection of information on actors' policy positions, or moved to the next issue, returning to the policy positions on the first issue later in the meeting.

The experts we interviewed were typically professional negotiators. Thinking about competing views on the main controversies raised by proposals was not unusual for them. However, they were usually unfamiliar with our stylized representation of the main controversies. The interviewers, therefore, had to play an active role in formulating the issues by translating what experts had told them into a spatial representation. The spatial representation was then shown to the expert by drawing the issues on paper and writing the actors' names at the relevant points on the scale. This often resulted in reformulations of what the experts had said. For instance, in one of the early specifications of the sugar sector reform, the merging or splitting of A and B quotas (issue 3 in Figure 2.1) were represented as alternatives on a scale about the size of the price cut (issue 1 in Figure 2.1). It soon became clear, however, that this was a separate issue; actors that took different positions on the size of the price cut held the same position on the merging of the quotas (e.g. the Czech Republic and Poland). The reformulated issues were presented to several experts who agreed that this was an appropriate way of representing the main controversies.

The following criteria are important when specifying issues. The issues should:

- Represent the main points of controversy;
- Contain positions that define the substance of the alternative decision outcomes; and
- Respect the assumption that actors have single-peaked preference functions (Thomson and Stokman 2006: 35).

The first criterion emphasizes that the issue specifications are stylized representations; they are not intended to capture all of the nuances and detailed points of discussion. We did not impose a limit on the number of issues specified, but experts generally found two or three issues to be sufficient. The average number of issues used to

represent the controversies in each proposal is 2.65, ranging from one to six (s.d. 1.28, n=125; see also Table 2.1). There is obviously some room for judgement by researchers and experts on how many issues to formulate, taking into account the uniqueness of each case. We generally excluded points that were of relevance to only a few actors. For instance, in the sugar sector reform, individual member states called for provisions that would enable them to deal with particular difficulties faced by their own sugar industries. This sometimes involved granting national governments the discretion to allocate funds to aid certain regions. Such detailed points were generally only of relevance to the member states that asked for them.

The second criterion implies that the points on the policy scales should be defined in terms of the substantive decision outcomes considered during the decision-making process. In general, whenever placing an actor at a point on a policy scale, that position should be defined in terms of the substance of the decision outcome favoured by that actor. However, some actors' positions are inherently ambiguous. For example, on the issue of the size of the price cut, Greece, Italy, Spain and Cyprus did not specify a particular percentage, but made clear that they preferred a 'small cut'. Occasionally, experts placed an actor between two substantively defined points on the scale, indicating that this actor was 'in between' these two positions. Note that points on the scales can also be defined substantively, without any of the actors supporting those positions. For example, the decision outcome on the issue of the price cut in the sugar sector reform does not correspond to any actor's initial policy position.

The third criterion reiterates that the issues should be unidimensional policy scales. This means that actors are assumed to derive most benefit or utility from the decision outcome that corresponds to their positions on the policy scales. Decision outcomes located further from actors' positions are valued less by those actors. In addition, as described above, the distances between the positions should reflect the political distances between the policy alternatives.

Given the range of policy areas and proposals included in the selection, the issues specified differ considerably from each other. For instance, some issues contain alternatives that involve different levels of harmonization of national arrangements, while others do not. Another difference between the issues concerns the number of policy alternatives on offer. Some issues contain a scale of alternative policies with one or more possible compromise outcomes between the extremes; others contain

only two policy alternatives, and are referred to as 'dichotomous' issues. A total of 61 of the 331 issues are dichotomous. Earlier, this chapter mentioned the possibility that the number of alternatives on an issue may be a reflection of how the actors involved chose to define the political space, rather than a reflection of inherent differences between different types of issues. Nonetheless, it may be instructive to compare these dichotomous issues with the others when carrying out some of the analyses.

2.5 Expert judgements of actors and their policy positions

For each issue, the experts were asked to 'indicate the policy alternative *initially* favoured by each stakeholder *after the introduction of the proposal before the Council formulated its common position*' (Thomson and Stokman 2006: 36). Interviewers emphasized the time point at which actors' positions were sought: as soon as the actors had formulated their positions after the introduction of the proposal. This emphasis on the time period in question is important because practitioners frequently observe shifts in actors' positions during the course of the negotiations (Arregui *et al*. 2004; Arregui 2008). We followed the convention of talking about 'stakeholders', since practitioners rarely use the term 'actors'. Interviewers asked experts to substantiate their judgements by giving reasons for the positions actors took. When referring to member states' positions, the reasons given usually related to the interests of the states in the sectors concerned. For example, in the sugar sector reform, states' positions were defined by the extent to which large cuts would lead to job losses in their domestic sugar industries.

When making judgements about actors' positions, experts relied on the stances taken by those actors when the legislative proposal was introduced, or a soon as the actors took a stance after the introduction. Therefore, the information contained in the dataset examined here reflects actors' behaviour, in the form of statements made by representatives of those actors, rather than the actors' hidden preferences. This became clear in a small experiment with different question wordings held at the start of the research project. After collecting the positional information using the above wording, two interviewers asked fifteen experts whether they could distinguish between the actors' real preferences and the policy positions they expressed at the outset. While the respondents recognized the theoretical significance of this

distinction, none were able to translate this distinction systematically into different scale positions for each of the actors.

The distinction between actors' stated positions and hidden preferences is central to many theories in political science. Bueno de Mesquita noted that the question used in the semi-structured interviews was likely to elicit information on actors' revealed or strategic positions; information that is well-suited to a certain class of bargaining models (2004: 130-1). Many political scientists hold the view that since actors' real preferences are private to themselves, by definition preferences cannot be measured (ibid.; see also Benoit and Laver 2006: Chapter 1). Nonetheless, the positions reported do appear to reflect actors' underlying interests. The sugar sector reform illustrates this, since actors' positions largely reflect their economic interests in the sugar sector. Chapter 6 addresses this question more systematically, by examining the extent to which similarities in member states' positions can be explained by the extent to which they share similar underlying economic and political attributes. To some extent they can, which implies that the positional data also reflect the underlying structural conditions that inform actors' preferences.

On any given controversial issue, it is common that some actors do not have policy positions. Actors that do not have a policy position are referred to as 'indifferent' to the outcome. Land-locked countries, for instance, rarely have positions on fisheries issues. Table 2.4 gives information on the numbers of actors that took positions on the controversial issues in the dataset. One view, expressed by Arregui and Thomson (2009), is that indifference is a fundamental feature of the decision-making process and generally reflects actors' underlying interests. They show that there is a strong positive correlation between member states' size and the percentages of issues on which they take positions. They argue that large states, which have a broader range of interests, are bound to take positions on more issues than small states, which are affected by fewer issues. Another view is that actors without positions are hiding these positions for strategic reasons; they are 'missing data' rather than 'indifferent' (König *et al.* 2005). This certainly happens too; some state representatives may remain quiet in the negotiations, allowing other states to make the case for them. The evidence does not however indicate that such hidden positions are a fundamental feature of inputs examined in the present study. For example, regarding the sugar sector reform, it seems implausible that the Maltese, who are not sugar producers and therefore were not be affected by the reallocation of quotas, actually

had a position on the issue that they were not revealing. In addition, the technical solutions to the problem of 'missing' positions reviewed by König *et al*. (2005) are not well suited to the data we examine in this study. The solutions involve 'imputing' actors' positions based on the positions they take on other issues. The next chapter will demonstrate that there is considerable variation each actor's positions, even across issues that apparently refer to the same underlying theme. This variation makes it inappropriate to infer what an indifferent actor's position should be on the basis of its positions on other issues.

Experts gave information on the policy positions of the Commission, the member states and the European Parliament, each of which was treated as a unitary actor. This is a simplifying assumption, but an appropriate one given the focus of this study. Each of these actors is in fact a complex composite of a large number of individuals and competing factions. Their policy positions are a consequence of the internal politics of each. However, if any of these actors are to participate in the European level decision-making process, they must take a single position. For instance, the separate Directorates-General of the Commission may hold different views on the contents of a legislative proposal. These differences must be resolved in the legislative proposal introduced by the Commission. Similarly, within member states, different ministries or political parties may take different policy positions. However, when taking a position in the Council, each state's representative must take a single stance. Within the EP, different party groups often take different positions on controversial issues. However, in its interactions with the Council, the EP either resolves these differences and takes a singular stance, or does not take a position at all on the issues in question.

The present study disaggregates the Council by identifying the positions of the member states, but treats the EP and the Commission for the most part as unitary actors. Decision-making within the EP is for the most part outside this study's focus. This is a Council-centric view of the European Union: the view that the Council is 'arguably the most powerful of the institutions involved in the day-to-day decision-making of the EU' (Naurin and Wallace 2008:1). However, the present study also uses a unique set of data on the positions of the party groups in the EP on a subset of the legislative proposals (Costello 2009); sixteen of the post-2004 selection. This allows us to broaden the focus of our inquiry when examining how the EP formulates

its policy positions in Chapter 5. In addition, Chapter 8 tests this Council-centric view by estimating the power of the Council relative to the other institutions empirically.

<Table 2.4 Numbers of actors that took positions on issues>

2.6 Expert judgements of the reference points

The experts identified the 'reference point' for each issue, whenever possible. This is the decision outcome that would occur if the legislative proposal were not adopted: in other words, the decision outcome in the event of failure to agree. The reference point differs conceptually from the status quo. While the status quo refers to the current policy state, the reference point refers to the policy state that would occur if the actors failed to reach an agreement. These are not always the same thing. For instance, if a programme of expenditure is about to run out, failure to agree on a new programme may mean that no money is spent, rather than the current level of expenditure. On the issue of the price cut in Figure 2.1 the experts indicated that if the proposal had failed, which they viewed as unlikely, the outcome would probably have been that the current system would have continued, at least until a new reform proposal was formulated.

Many theoretical models of decision-making processes refer to the disagreement outcome: in particular the values that actors attach to the disagreement outcome. In general, actors that benefit more (or suffer less) from failure to agree are in a stronger bargaining position. The disagreement outcome bears a superficial resemblance to the reference point; they are not the same thing, as Achen (2006a: 101-3) explains. The reference point refers to the policy alternative that would occur on the specific controversy in question if the actors fail to adopt the legislative proposal. By contrast, the amount of benefit, or more likely in this context loss, that actors receive from the disagreement outcome includes a wider set of considerations. Of particular relevance is the impact of decision failures on the long-term relationships among actors. Achen argues that EU decision makers generally expect large utility losses from the disagreement outcome and go to great lengths to avoid it. Achen notes that the value of the disagreement outcome is difficult to measure empirically, and this study does not attempt to do so.

Even the narrower concept of the reference point could not be measured for some issues. On some of the issues, the decision outcome in the event of disagreement referred to several different points on the scale. This is the case, for instance, when states favour an EU regulation in line with their own national regulations. Failure to agree would then mean the continuation of different regulations in different member states. On some other issues, the issues are defined in such a way that they presuppose some kind of agreement. For example, the third issue in the sugar sector reform (Figure 2.1) presupposes that there is some agreement on cutting quotas, and the question is about which quotas to cut.

2.7 Expert judgements of issue salience

Experts estimated the level of importance that each actor attached to each of the controversial issues. We refer to this as actors' issue salience. Issue salience reflects the intensity of actors' policy positions, a concept with a long pedigree in empirical political analysis (Achen 2006a: 92). A high level of salience is what turns a potential to influence into actual influence, because an actor with a high level of salience will put a high proportion of its potential to influence other actors and the decision outcome into effect. Actors may differ from each other in the level of the salience they attach to a given issue. In addition, any given actor may attach different levels of salience to two or more controversial issues. Issue salience is a key concept in models of political exchange and logrolling, in which actors make concessions on some issues in return for concessions from others on other issues (e.g. Coleman 1972; 1990; Stokman and Van Oosten 1994).

Experts estimated the level of salience that each actor attached to each issue on a scale of 0 to 100. The scale was introduced as follows:

Stakeholders differ from each other in the salience or importance they attach to issues. For example, a particular issue may be of great importance to one stakeholder but only marginal to another. Please estimate the salience each stakeholder attaches to each issue on a scale from 0 to 100. A score of 100 indicates that an issue is of the highest importance to a stakeholder, while a score of zero indicates that the issue is of no importance whatsoever to a stakeholder. A score of 50 indicates that the issue has an average level of

priority for the stakeholder concerned, and that it is willing to use arguments but not power politics to convince opponents. Note that it is possible for a stakeholder to attach a high level of salience to an issue on which it takes a moderate position, and a low level of salience to an issue on which it takes an extreme position.

When obtaining experts' estimates of the salience of each issue to different actors, extensive comparisons were made both between the scores of different actors on the same issues and between the scores of the same actors on different issues. Interviewers often found it useful to ask the expert to first identify the actor with the highest salience score on any of the issues raised by the proposal, and then to make the other estimates relative to this benchmark. Interviewers asked experts to give reasons for their estimates throughout the interview. The 0-100 salience scale has proven to be a useful heuristic for obtaining expert judgements on issue salience. In practice, experts use units of ten (50, 60, 70 etc.) and occasionally five (50, 55, 65 etc.).

Table 2.5 contains expert judgements of issue salience for the controversial issues raised by the sugar sector reform. The experts gave the highest possible salience score of 100 to several member states on the first issue. According to the experts, in the context of agricultural reforms, there could hardly have been a more important issue for these countries. The Polish government, for example, faced extraordinary domestic pressure to safeguard EU support for sugar production. A high level of salience need not reflect a low level of flexibility, but in this case it did. It was reported that the Polish government even refused to engage in negotiations during the extremely tough talks held by agriculture ministers in November 2005.[4] Poland was one of the member states that voted against the regulation when it was adopted. The Danish government also attached an extremely high level of importance to the first and second issues, but from a completely different perspective. The substantive justification for this high level of salience was that the Danish parliament had taken a keen interest in this dossier. Denmark generally favours liberalizing the EU's agricultural policies, and its government saw these issues as central to that cause. Most member states attached more importance to the first issue (price cut) than to the

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[4] This was confirmed by all eleven experts interviewed and in a report by a news service that covers agricultural issues in the EU, *AgraFacts*, 24 November, 2005.

third issue (merging of the quotas); the Czech Republic and Slovakia were exceptions. From the perspective of these countries' governments, the proposed reform offered an opportunity to rectify what they viewed as imbalances in the allocation of different types of quotas prior to their accession to the EU. This was as important to them as the liberalization of the sugar sector, which they did not oppose in principle.

<Table 2.5 Salience scores on the issues raised by the sugar sector reform>

Issue salience is conceptually and empirically distinct from actors' policy positions. As described above, interviewers alerted experts to the conceptual distinction between the two concepts. There is a weak tendency whereby actors with more extreme policy positions on an issue also tend to attach higher levels of salience to the issue. This is the case, for instance, in the issue of the price cut in the sugar sector reform. Denmark and Poland took relatively extreme positions on this issue and attached very high levels of importance to the issue. Nonetheless, this tendency is weak when we consider all of the controversial issues examined in this study. The concepts may therefore be considered both conceptually and empirically distinct.[5]

2.8 Analyzing the data

Each of the following chapters contains a short research design section that gives details of how the data are analyzed in that chapter. Two general points are worth noting at this stage, since they are common to all of the following analyses. The first point concerns the question of whether the controversial issues should be combined or integrated in some way to form a single space before performing the analyses. One alternative, not followed in the present study, is to combine the issues raised by each legislative proposal in a multidimensional space. For instance, it would be possible to combine the three issues in Figure 2.1 in a three-dimensional space. The analysis could then focus on the Euclidean distances among the actors' positions in this three-

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[5] There is a weak, although statistically significant positive correlation between the extremity of actors' positions and the level of salience they attach to issues. There are 6,253 positions in the dataset considering all 331 issues in the dataset. Define the extremity of a position as the absolute distance between the position and the average position taken by all of the actors. The Pearson correlation between this measure of extremity and actors' issue salience is .19 (p=.00, n=6,253). This indicates that there is a positive association between position extremity and issue salience, but not a particularly strong one.

dimensional space. Benoit and Laver (2006: Chapter 1) discuss an analogous possibility of combining their abstractly defined policy dimensions into multidimensional spaces. They point out that this involves assumptions that are not supported by any evidence or theory. When constructing multidimensional spaces, analysts often place the component dimensions at right angles to each other, but there is no rationale other than analytical convenience for doing so. The present study treats the controversial issues as separate, although not necessarily independent, prior to performing the analyses. For instance, multilevel models take into account the fact that observations of actors' positions on issues are nested within legislative proposals. Treating issues separately accords with the views of many of the experts that the controversies are generally dealt with separately, in the sense that the discussions focus on one issue at a time. Some of the analyses, however, reveal that there are similarities between the issues and that, to a certain extent the actors' positions on these separate controversies can be summarized in a single political space. This is, however, a result of analysis, not an *a priori* assumption about the data before conducting the analyses.

The second point concerns the comparison of distances on different policy scales. This point highlights the important distinction between political controversy, which is the main focus of this study, and substantive differences between policy alternatives, which is not the main focus. The distinction is obvious when we consider that political actors may disagree vehemently about policy alternatives that most others would view as being only marginally different. Each policy scale is standardized so that it ranges from 0-100, where the endpoints of the scale refer to the most extreme possible decision outcomes considered during the discussions. In other words, the range of each scale refers to the range of the bargaining space. Many of the following analyses make no claims about the substance of the policy positions taken by the actors in question. For example, some of the analyses of the Commission's positions in relation to member states' positions show there is a bias whereby the Commission's policy positions are systematically closer to the positions of the home member state of the responsible Commissioner. This is an important finding, but does not specify the content of the issues on which such biases occur. Other analyses in the following chapters do consider the substance of the issues on which actors disagreed. Certain sub-sets of issues are substantively comparable in that they relate to similar policy themes. Using the wealth of qualitative information available on each of the

controversial issues, I categorized the issues into thematically related groups. Some issues are about subsidy levels, other issues are about choices between free market and regulatory solutions to policy questions, and other issues are about levels of harmonization. I coded these issues consistently so that policy positions with higher values on the policy scales involve higher levels of subsidy, stronger regulation or more harmonization, where relevant. Using this information, it is possible to investigate patterns whereby certain actors consistently called for higher subsidies (or stronger regulation or harmonization) when these types of issues were raised.

Chapter 3

The European Union's political space

This chapter describes the inputs into the legislative process. These inputs consist of the policy demands made by the main actors - the Commission, the European Parliament and member states' representatives in the Council - on controversies raised by legislative proposals. The following three descriptive questions are addressed in this chapter:

1. To what extent are there patterns in the alignments of actors' policy positions across a range of controversies?

2. To the extent that these patterns exist, what are they?

3. Do these patterns tend to emerge on particular types of controversies?

Before attempting to explain a phenomenon, which Chapters 4 to 6 do with respect to different actors' policy demands, it is necessary to describe it systematically. With the benefit of good description, the explanatory analysis can focus on the most salient features of actors' policy positions. Chapters 4 to 6 are based on some key insights from the present chapter. The present identifies a number of interesting patterns in the alignments of actors' policy positions, but the main descriptive finding is actors' positions vary considerably across different controversial issues. This is true of variation in the positions of the two supranational actors, the Commission and EP, and of the positions of member states' representatives.

What should a description of EU actors' policy demands consist of? Accurate summary is an important part of good description. A description of the policy demands should summarize them and specify the extent to which this summary accurately reflects the patterns found in all of the controversies raised by the selected legislative proposals. If you were asked to describe the income of 1,000 households, a good place to start would be to state the average and the range of incomes. In practical terms, this would be far more informative than listing the incomes of each of these 1,000 households. Likewise, a useful description of EU actors' policy demands should provide a summary without recounting the detail of each case. Indeed, there are too many details to recount; there are a total of 6,253 actors' policy positions in the information on the 331 controversial issues from the 125 selected legislative proposals. A good description of the policy demands should tell us what types of

patterns there are, how frequently these patterns occur, and whether they occur on certain types of issues. For instance, how often and on what types of issues do we encounter divisions between old and new member states, as in one of the controversies in the sugar sector reform discussed in the last chapter?

3.1 Previous research on the EU's political space

Previous research on EU politics offers many ideas regarding the strength and type of structures that typify the EU's political space. These ideas affect the descriptions offered in this chapter, because they affected the patterns I looked for. However, the results are far from determined by ideas from previous research. As will become clear, the evidence does not support some plausible propositions about the EU's political space from previous research.

The first descriptive question concerns the strength of structures or patterns in actors' policy positions across different controversies. Researchers have come to different conclusions on this seemingly straightforward descriptive question. Some researchers argue that there is little structure to actors' positions, particularly in the Council of Ministers, the centre of power in the EU. Nugent (1999: 474) states that: 'cohesive and fixed alliances… between particular governments do not exist. Rather, governments tend to come together in different combinations on different issues'. Many other researchers share this view (e.g. Wright 1996; Heyes-Renshaw and Wallace 2006: 250). I arrived at a similar conclusion based on previous analyses of some of the data examined here (Thomson *et al*. 2004; Thomson 2009).

By contrast, other researchers have come to quite different conclusions, and argue that we would find strong structures if only we looked properly. Zimmer *et al*. (2005) examined the same information on EU-15 decision-making that I and others examined in the previous year using a different technique. They argued: 'contrary to Thomson *et al*. (2004) who forecast an overall lack of structure in the positions of the legislative actors, we were able to associate actors' preferences and the resulting coalitions with specific financial, economic and protectionist interests' (ibid.: 413). However, their findings are not as distinct from my previous findings as their bold assertion suggests. Their analysis does not identify how often these patterns occur in

the set of controversial issues they examine. This chapter will do so, thereby providing a clear indication of how strong these structures are.

The strength of structure in actors' policy positions is an important topic for political scientists because it concerns a defining characteristic of any political system. Consider for a moment legislative politics at the national level, in which the main political actors are the nationally organized political parties. There are typically strong structures in the positions taken by national political parties, in the sense that the views of Left-wing and Right-wing parties differ consistently from one another on a range of issues, including levels of taxation, and investments in public health care, education and law enforcement. These patterns are a consequence of parties' differences on the main ideological dimensions that structure politics at the national level. Such ideological structures simplify politics for citizens, who are able to make informed choices among parties without having to gather information on the details of parties' positions on each separate issue (e.g. Budge *et al.* 1987). Research on national politics shows that political parties' specific pre-election pledges generally reflect their ideological positions (for a review see Mansergh and Thomson 2007). The absence of structure makes a political system complex. This may limit the practical possibilities for meaningful citizen involvement in EU-level decision-making. This is a topic we will address in the final chapter of this book when discussing the democratic deficit.

To the extent that there are patterns in EU actors' policy positions, previous research offers different views on what these might be. An early application of the spatial model to the EU featured the integration-independence dimension (Garrett 1992: 548-53), and this has been followed in subsequent analyses (e.g. Tsebelis 1994; Crombez 1996). According to this conceptualization, many controversies in the EU are about what the level of harmonization to introduce in different policy areas. The integration-independence dimension can be visualized as a line or scale. At the left end of this dimension, we find the position of the status quo, the current policy state. At the right end of this dimension, we find the positions of the Commission and EP. As supranational actors, they favour most harmonization. Between these two extremes, we find member states' positions. All member states favour some integration, but they differ from one another in the amount of harmonization they favour. The integration-independence dimension has observable implications for the

types of issues raised and the alignment of actors on those issues. First, we would expect a substantial number of controversies to concern choices between different levels of harmonization. Second, we would expect the Commission and EP to take pro-integration positions on those issues. Third, we would expect member states' positions to correspond to their general orientation toward European integration. The next section discusses alternative ways of measuring states' general orientation toward European integration.

The integration-independence dimension is a useful concept for structuring inquiry into the political space. It may not, however, be particularly relevant to contemporary legislative politics in the EU. Politics in the EU have changed from being mainly about the level of integration to being mainly about regulating the single market. Consequently, the integration-independence dimension may have been more relevant to decision-making in the earlier stages of the EU's development. Moreover, some scholars who referred to the integration-independence dimension did not suggest that it accurately summarizes actors' policy positions, but simply referred to it to illustrate the working of a model of legislative decision-making.

The Left-Right dimension structures politics in the EU, at least in the European Parliament. The Left-Right dimension is familiar to us from national politics, but its manifestation at the EU level takes on a unique form. At the national level, the Left-Right dimension typically distinguishes between Left-wing groups that favour higher levels of public expenditure and taxes, and Right-wing groups that favour cuts in public expenditure and taxes. In many countries, the Left-Right dimension captures differences among political actors in their policy stances on social issues, such as abortion, homosexuality and euthanasia, with Left-wing actors taking more liberal stances on these issues and Right-wing actors taking more traditional or conservative stances. Benoit and Laver's (2006: Chapter 6) cross-country comparison of national political parties' positions shows that the meaning of the Left-Right dimension differs across countries. In some countries, parties' Left-Right positions closely correspond to their positions on economic issues; in other countries, parties' Left-Right positions correspond more closely to their positions on social issues. It should therefore come as no surprise that the Left-Right dimension in the EU is affected by the particular features of the EU's political system.

Most importantly, the EU has competencies in policy areas that define national actors' Left-Right positions. Regarding economic issues, the EU does not set taxes on income or capital and its levels of expenditure are miniscule compared to expenditure by national authorities. Regarding social issues, the main policy activity takes place at the national level, since national laws that determine arrangements with respect to issues such as abortion, marriage for same-sex couples and euthanasia. The absence of EU policy activity in these areas does not mean that what that EU does is unimportant. It does mean that the EU has a relatively thin slice of the issues that define Left and Right at the national level. That thin slice consists of the regulation of markets. Therefore, in the EU the most relevant way to define the Left-Right dimension is in terms of support for or opposition to the regulation of markets.

Previous research shows that there is a strong Left-Right dimension in the European Parliament. This is the conclusion of research based on interviews with MEPs (Thomassen *et al*. 2004), surveys of experts on EP parties' positions (McElroy and Benoit 2007) and MEP's voting behaviour (Hix *et al*. 2007; 2009). McElroy and Benoit (2007) identified two groups of EP parties on the economic Left-Right dimension. The Left-wing group consists of the main social-democratic party grouping, the Party of the European Socialists (PES), together with the Greens and the European United Left/Nordic Green Left (GUE). The Right-wing group consists of the main Christian-democratic party grouping, the European People's Party (EPP), and the European Liberal and Democratic Reform Party (ELDR). Also on the Right of the Left-Right dimension are the Union for a Europe of Nations (UEN) and the Group for a Europe of Democracies and Diversities (EDD). However, these two groups take a far more Eurosceptic stance on European harmonization than the EPP. The importance of the Left-Right dimension is also confirmed by MEPs' voting behaviour (Hix *et al*. 2007; 2009). MEPs from the same party groups vote similarly; MEPs from different groups also vote similarly, but significantly less so than MEPs from the same groups.

The political space within the EP has been described as a two-dimensional space consisting of a Left-Right dimension and an integration-independence dimension (Hix and Lord 1997). The Left-Right dimension is the most important one, in the sense that it describes the policy differences between the largest party groupings in the EP, the social democrats (PES) and the Christian democrats (EPP).

These main parties do not take radically different positions on the integration-independence dimension; they are both broadly pro-integration. Rather, the integration-independence dimension distinguishes the positions of the main party groups from the Eurosceptic UEN and EDD. It is noteworthy that these are two parties of the Right. Hooghe and Marks (2001) show that the Left-Right dimension is to some extent correlated with the integration-independence dimension, with actors on the Right being on average more Eurosceptic than actors on the Left.

The Left-Right dimension is less relevant to politics in the Council. It is unusual for member states with Left-wing governments to agree with each other while disagreeing with member states with Right-wing governments. It is far more common for a policy position to be supported by a group of member sates with both Left and Right-wing governments. This was the conclusion of my previous analyses of some of the data examined here (Thomson *et al*. 2004; Thomson 2009). I searched for correlations between the positions of member states' governments on the Left-Right dimension and the positions of member states on specific controversial issues raised by legislative proposals in the EU. I found significant correlations in only a small minority of issues (less than 5 per cent of the issues).

Some researchers suggest that the Left-Right dimension is relevant to structuring member states' policy positions, but the evidence for this is weak. Kreppel and Tsebelis (1999) argue that there was a marked degree of conflict between the EP and Council in the 1989-93 period because the Left controlled the EP while a majority of member states governments were centre-Right. Kreppel and Tsebelis' claim was not central to the study on which their 1999 article reported; that article was mainly concerned with voting behaviour in the EP, and did not empirically investigate Council members' policy positions. Zimmer *et al*. (2005: 404) do claim to have evidence that the Left-Right dimension structures politics in the Council: 'the left-right dimension also explains the alignments of governments to a certain degree.' Zimmer *et al*. go on to state that the evidence gives 'very weak support to the hypothesis that party lines or ideology determine the preference structure in the Council' (ibid.: 404). Indeed, the evidence consists of an insignificant and weak correlation between the positions of member states' governments on a general Left-Right dimension and their positions on a dimension constructed using a data-reduction technique.

There is stronger evidence that the Left-Right dimension structures member states' voting behaviour in the Council, which is of course distinct from states' policy positions. It is relatively rare for member states to vote against or abstain from voting in the Council. Nonetheless, there is a significant tendency whereby such signals of dissent are more likely to come from states with Right-wing governments that are more Eurosceptic (Mattila 2004). Hageman (2008) also notes that member states with Left and Right-wing governments tend to behave differently at the voting stage. This is an intriguing contrast to the finding that the Left-Right dimension is not relevant to structuring states' policy positions. The Left-Right dimension may be more relevant to voting behaviour than policy positions, because domestic groups can more readily observe voting behaviour than policy positions taken behind closed doors.

The following analysis reinvestigates the claim that the Left-Right dimension structures member states' policy positions. In doing so, special attention will be devoted to the comparability of the Left-Right dimension in different countries. As mentioned above, Left and Right mean different things in different countries (Benoit and Laver 2006: Chapter 6). In addition, the analysis will pay particular attention to the prevalence of the Left-Right dimension. If it is indeed a prominent feature of politics in the Council, we could expect to find that national governments' Left-Right positions frequently correspond with their positions on specific controversies.

Among the old member states (the EU-15), Northern states tend to take different positions from Southern states (Thomson *et al*. 2004; Thomson 2009; Zimmer *et al*. 2005). Northern states, particularly the UK, Sweden, Denmark and the Netherlands tend to be close to each other and far from France, Spain and Italy, Greece and Portugal. Northerners and Southerners also differ in their voting behaviour (e.g. Mattila 2009), and behaviour in forming coalitions (e.g. Elgstöm *et al*. 2001; Naurin and Lindahl 2008). The North-South dimension is not perfectly correlated with geographical latitude and no political analyst has suggested that geography is what causes states to take different positions from each other.

Previous research offers different interpretations of what this North-South dimension means. Perhaps the most general interpretation is that it is a culturally defined dimension (Elgstöm *et al*. 2001: 120). Previously, I described it as a dimension based on fundamentally different views on the role of the state in regulating the economy (Thomson *et al*. 2004; Thomson 2009). The narrowest

interpretation of the North-South dimension is offered by Zimmer *et al*. (2005). They interpret it as a consequence of the fact that the Northerners are mostly net contributors to the EU budget, while the Southerners are net recipients.

One of the main concerns prior to the EU's 2004 enlargement was that the prospective new members would form a cohesive block. This could have the effect of polarizing politics in the EU. Zimmer *et al*. (2005) predicted that the Southern states from the EU-15 and new member states would form a new coalition in favour of high subsidies. The evidence available so far suggests that this has not happened to the extent that was feared. My previous analysis showed that there was indeed a North versus South-East tendency in the enlarged EU, and that this pattern was concentrated on issues about levels of financial subsidies (Thomson 2009). However, this pattern concerned only a small percentage of all controversies. Similarly, Naurin and Lindahl (2008) observed a North versus South-East pattern in the network relations among states' permanent representations in Brussels. However, they also noted that there is considerable variation in the strength of relations among new members. These reflect historically rooted affinities, such as those among the group of Visegrad states and among the Baltic states, rather than a crude distinction between old and new states. On the basis of a study of voting records in the Council, Mattila (2009) notes that old and new members vote differently. Therefore, the following analysis examines the extent to which and when old and new members take different policy positions.

3.2 Research design

The proposed working time directive from 2004 illustrates some of the patterns referred to above. The main controversy focused on the opt-out from the 48-hour limit on the working week. The controversy pitched the UK, an old 'Northern' member state, together with many new members against several old Southern sates including France and Spain, as well as the Commission and EP. In the 1993 directive on working time, the UK had secured an opt-out of the 48-hour limit on the working week. The legislative proposal introduced in 2004 sought to limit the conditions under which countries could allow employers and employees within their territories to opt-out of 48-hour limit. According to the 2004 proposal, where relevant, the opt-out would have to be approved by a collective agreement signed by the social partners,

and in all cases workers would need to give their consent. Moreover, workers' consent to the opt-out could not be given at the start of the employment relationship or during a probation period. The UK opposed this proposed limitation of the opt-out. Many new member states also wished to maintain the possibility of applying the opt-out, even if they did not use it currently. By contrast, the EP and several member states, notably France and Spain, argued that the legislative proposal did not go far enough. The EP called for the opt-out to be phased out within three years. This issue led to a breakdown in talks between the Council and EP in the conciliation committee in 2009, as a result of which the opt-out remains in place.

Fascinating as such specific controversies are, the questions raised in the previous section demand a more general analysis that abstracts from the details of each case. I apply two analytical approaches to explore structures in the alignments of actors' policy positions. The first approach is a form of multidimensional scaling (MDS). MDS is a technique for uncovering general patterns in the alignments of actors to the extent that these exist. The results of MDS are very informative but general. MDS generates maps that summarize the aggregate distances among different actors' policy positions. The second analytical approach is issue-level analysis. Issue-level analysis consists of classifying the controversial issues into different thematic groups, summarizing the positions of different actors within those groups of issues, and identifying the frequency with which and conditions under which different patterns of alignments occur. This issue-level analysis helps us to interpret the results of the MDS.

Multidimensional scaling techniques provide graphical summaries of objects, in this case EU actors, based on a matrix containing numerical information on the dissimilarities between each pair of objects. The matrices on which the following analyses are performed contain the total distances between each pair of actors, summed over all of the issues in the dataset. Therefore, if two actors take consistently different positions on many issues, there will be a relatively large number in the cell of the matrix that refers to the dissimilarity between these two actors. The results of multidimensional scaling are often likened to a geographical map. For example, the geographical distances between cities in a country could be represented perfectly in two dimensions. The MDS solution is unlikely to get "North" and "South" pointing in the right direction, but with appropriate rotation of the coordinates of the objects, the

MDS solution would resemble the location of the cities in relation to each other, as found on any regular map. It is up to the researcher to specify the number of dimensions in the MDS solution and to assess the extent to which the maps give an adequate representation of the dissimilarity matrices by referring to various goodness-of-fit measures. Separate analyses were performed on the EU-15 data and the post-2004 data using the same MDS model.[1]

Part of the issue-level analysis requires that we establish whether member states that share certain attributes, such as having similar general dispositions toward the expansion of EU authority or having governments with similar Left-Right positions, also take similar positions on specific issues. To establish this, for each of the issues, I test whether there is a significant (Spearman rank) correlation between member states' values on measures of these attributes and their specific policy positions.

To examine the prevalence of the integration-independence dimension, we need a measure of states' general orientation toward EU integration. One measure of this is the general attitude toward EU membership among the general population of each state. Every six months, the Eurobarometer survey asks a random sample of citizens in each member state a battery of questions, including the question:

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[1] The present study applies an individual difference model, INDOSCAL (Carroll and Chang 1972; Cox and Cox 2000: Chapter 10). The EU-15 data were also analyzed using a slightly different MDS model (Thomson *et al.* 2004). The MDS technique applied here is preferable since it allows the spatial representation of the objects to be manipulated to a greater degree by the original dissimilarities between the objects (Cox and Cox 2000: 211). Nonetheless, the results are practically identical.

The matrices on which the following analyses are performed are symmetrical: the distance from actor A to actor B is the same as the distance from actor B to actor A. Thomson *et al.* (2004) also analyzed asymmetrical matrices, in which the distances were weighted by the levels of salience each actor attached to each issue. The results did not differ substantively. In addition, issues subject to different legislative procedures (consultation and co-decision) and different policy areas were examined separately. The results did not differ substantively from those on the basis of the aggregated information presented here.

Multidimensional scaling procedures can assume either ratio-level information or ordinal-level information. I report the results assuming ratio-level information, but the results for the ordinal-level assumption are substantively the same.

Indifferent actors (actors with no positions on an issue), as well as missing reference points and outcomes, are coded as having a position equal to the mean average of all positions. I examined alternative ways of dealing with missing positions, none of which substantially altered the results.

For presentation purposes, the orientation of the MDS solutions was changed so that the Commission and reference point are at position zero on the y-axis, and equidistant from the origin.

'Generally speaking, do you think that (your country's) membership of the European Union is a good thing?' The percentage of respondents answering positively to this question varies considerably among member states. In the Spring 2007 Eurobarometer (EB 67), the percentage of respondents answering positively varied from low levels in Austria (36%), Hungary (37%), Latvia (37%) and the UK (39%) to high levels in Spain (73%), Luxembourg (74%), Ireland (76%) and the Netherlands (77%). The analysis will explore whether states' positions on controversial issues correspond to these differences.

An alternative measure of states' orientation toward the EU is based on the positions of national governing parties on the general issue of European integration. Benoit and Laver's (2006) survey of experts on national political parties contains a relevant question. Experts estimated each national party's position on the expansion of EU authority. Experts were asked to describe each party's position by placing it on a scale from 1 to 20, where 1 stands for parties in favour of increasing the range of areas in which the EU can set policy and 20 for parties that favour reducing the range of areas in which the EU can set policy. These surveys were carried out in 2003, in the middle of the time period of the present study. To obtain an estimate of each government's position on this dimension, the scores of each of the parties in government at the time of the introduction of the legislative proposal were averaged, weighted by the number of cabinet posts held by each of the parties.[2]

The following issue-level analyses will also explore the association between national governing parties' positions on other salient ideological dimensions and member states' positions on specific issues at the EU level. Again, Benoit and Laver's (2006) expert survey provides relevant information. First, I measure each national government's position on the general Left-Right dimension, based on the average of the Left-Right positions of the parties in government at the time of the introduction of each legislative proposal, weighted by the number of cabinet posts held by each party. Since the Left-Right dimension means different things in different countries, I also

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[2] Since the surveys were held in 2003, we do not have estimates for the new member states' governments after 2004; these values are treated as missing. Furthermore, the experts were not asked the 'EU authority' question in Ireland and France. Instead, experts were asked a similar question about 'EU strengthening' in Ireland and 'EU larger/stronger' in France. The responses to these similar questions were used, after rescaling the direction of the 'EU larger/stronger' to make it compatible with the 'EU authority' question.

examine governments' positions on more specific economic and social dimensions. On the economic dimension, experts estimated each national party's position on a scale from 1 to 20 where 1 stands for 'promotes raising taxes to increase public services' and 20 stands for 'promotes cutting public services to cut taxes'. On the social dimension, 1 stands for 'favours liberal policies on matters such as abortion, homosexuality, and euthanasia', while 20 stands for 'opposes liberal policies on matters such as abortion, homosexuality and euthanasia'. Of course, the specific issues referred to in the wording of these dimensions are dealt with mainly at the national level, not the EU level. However, the main differences among parties at the national level may also be reflected in their governments' stances on controversies at the EU level.

The following analyses examine other characteristics of member states that may correspond to their positions on specific issues. Member states differ from one another in terms of wealth, as measured by per capita GDP, population sizes and net budgetary status with respect to the EU. These factors have all been referred to in previous research as relevant to structuring the positions taken by member states in EU decision-making.

3.3. Multidimensional scaling analyses

Figure 3.2 is a two-dimensional map of the aggregated distances between the actors on the controversial issues in the EU-15 period. Two dimensions offer an appropriate representation of the structure in the actors' policy positions.[3] There are two main patterns in Figure 3.2. First, the Commission and EP tend to take positions relatively far from the reference point. Member states' positions are located between the reference point and the Commission and EP's positions. This suggests that the Commission and EP are in general relatively radical actors in the sense that they seek more policy change than member states. Recall that the reference point is the decision outcome that would be realized if the actors were to fail to reach an agreement, which is often the policy before legislative proposal was introduced.

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[3] One-dimensional solution: S-Stress .41, Dispersion Accounted For (DAF) .77; two-dimensional solution (Figure 3.2): S-Stress .13, DAF .94; three-dimensional solution: S-Stress .08, DAF .97; four-dimensional solution: S-Stress .04, DAF .99.

The second pattern in Figure 3.2 is that the old Northern member states take different positions from the old Southern member states. The UK, Sweden and Denmark take relatively similar positions. Likewise, France, Spain, Greece, Italy and Portugal take relatively similar positions. We will refer to this tendency as the North-South alignment, although it is not perfectly correlated with geographical latitude.

Figure 3.3 is a two-dimensional map of the aggregated distances among the actors after the 2004 enlargement. Again, the two-dimensional map gives an accurate summary of actors' policy positions.[4] There are three noteworthy features of the post-2004 map. First, as in the EU-15, the Commission and the EP's positions are far from the reference point, while member states are located between the supranational actors and the reference point. Second, as in the EU-15, old Northern members' positions are distinct from old Southern members' positions. Some Northern states, such as the UK, the Netherlands, Sweden and Denmark, are grouped together at the right of the map, while some Southern members, notably France, Spain, Italy, Greece and Portugal, are grouped together at the bottom left of the map. Third, there is clear evidence of a new-old division, whereby new member states' positions are clustered together and distinct from those of the old members.

3.4. Issue-level analyses

The results of multidimensional scaling have two limitations, both of which are addressed by issue-level analysis. The first is that while MDS depicts the form of structure to the extent that such a structure exists, it does not indicate how strong that structure is in all of the cases that feed into the analyses. In other words, we detected a North-South alignment in the EU-15, but on what percentage of issues does this alignment actually occur? Recall that the MDS analyses are performed on matrices that contain the total aggregated distances between each pair of actors or other points in the policy space. There may be a lot of variation in actors' positions on most of the issues that are used to construct the matrices, and clear patterns on a minority of issues. If this is the case, the MDS maps may summarize well the relative distances

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[4] One-dimensional solution: S-Stress .31, Dispersion Accounted For (DAF) .83; two-dimensional solution (Figure 3.3): S-Stress .15, DAF .94; three-dimensional solution: S-Stress .09, DAF .97; four-dimensional solution: S-Stress .05, DAF .98.

among the actors in the aggregated matrices, while identifying patterns that occur in only a minority of controversial issues. The simplest solution to this limitation is to identify the percentage of issues on which each of these patterns actually occurs. As will be discussed, these patterns occur in a substantial minority of issues, in about a quarter to a third of controversial issues.

The second limitation is that the MDS results do not indicate what these patterns mean. In other words, the results do not indicate what the North-South alignment is about. The simplest solution to this limitation is to identify whether there are regularities with respect to the types of issues on which these patterns are found, and with respect to the types of positions actors take. For instance, the analyses below show that the North-South alignment in the EU-15 occurred mainly on issues about levels of regulation, with Northerners favouring lighter regulation and Southerners favouring stronger regulation.

Table 3.1 gives the frequencies of the alignments identified by the previous MDS analyses. Consider first the pattern in which the Commission and EP take positions relatively far from the reference point. An extreme form of this pattern, whereby the Commission takes a position at the opposite end of the policy scale to the reference point, occurs on about a third of all issues. The EP's position is opposite to the reference point on just over a quarter of the controversies. The Commission and EP's policy positions were close to each other on about one third of the issues. In the post-2004 EU, the distance between the Commission and EP's positions was 10 scale points or less on 54 of the 158 issues (34 per cent). An extreme form of inter-institutional conflict occurs when member states take the same position and either the Commission or EP supports a different position. This occurred in only 9 per cent of issues before the 2004 enlargement and 6 per cent of issues after enlargement.

Table 3.1 also contains the frequencies of the geographical alignments depicted in the MDS results. The North-South alignment among the old member states occurs on about one third of the issues: on 36 per cent of issues before enlargement and 30 per cent of issues after enlargement. There is a new-old alignment in the post-2004 EU on 47 of the 158 issues (30 per cent). In these controversies old members' positions differ from new members' positions.

In Figure 3.3 it appears that the new member states are somewhat closer to the old Southern members than the old Northern members. There is evidence of an old

North versus old South and new East alignment on 34 of the 158 issues (22 per cent). On these issues Northern members are clustered at one end of a controversial issue, while Southern and Eastern members are clustered at the other end. However, there is also evidence of an old North and new East versus old South alignment on twenty-four (15 per cent) of the issues. On these issues, Northern and Eastern members take positions at one end of an issue, while Southern states are clustered at the other end.[5]

It is rare for member states' positions on controversial issues in the EU to correspond to the differences among their governments on the main dimensions that structure party politics at the national level. Table 3.2 shows just how rare it is for Left-wing and Right-wing governments to take consistently different positions in the Council. There are hardly any cases (three in the EU-15 data and none in the post-2004 data) in which national governments' Left-Right positions correlate significantly with their positions on a controversy at the EU level. The test in Table 3.2 uses arguably the best-available data on national parties' positions from the late 1990s to the mid 2000s from the expert survey fielded by Benoit and Laver (2006). Because the Left-Right dimension means different things in different countries, Table 3.2 also tests the relevance of more specific dimensions included in Benoit and Laver's expert survey. Experts were asked to place national parties on specific dimensions relating to taxes versus spending, social questions and the extension of EU authority. The results are similar. States' policy positions rarely correlate significantly with their national governing parties' positions on salient dimensions in national politics.

Table 3.2 also reports the results of tests that explore the extent to which other differences among member states are reflected in the positions they take on controversial issues in legislative politics. It is rare for states' policy positions to correlate significantly with support for EU membership in those countries. On only 23 of the 331 issues (7 per cent) do states with relatively high levels of public approval for EU membership take different policy positions from states with relatively low levels of approval for EU membership.

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[5] I use an improved measure of the occurrence of the North versus South-East division compared to an earlier publication (Thomson 2009). In that publication, I did not consider the North-East versus South alignment. Moreover, I coded some issues as displaying a North versus South-East alignment even if they also displayed a North-East versus South alignment. The present measures are improvements, since they identify issues that display only one of the patterns (North versus South-East or North-East versus South).

Actor alignments that correlate significantly with states' wealth, population sizes and net EU budgetary positions were relatively rare in the EU-15, but have become considerably more common since the 2004 enlargement. This increase is most likely due to the prevalence of divisions between old and new member states on a third of the post-2004 issues mentioned above. Most of the new members are relatively poor, have smaller populations and are net recipients from EU budgetary transfers. The prevalence of issues on which there are significant correlations between states' policy positions and their GDP per capita increased from 11 to 29 per cent. The prevalence of issues on which states' policy positions correlate significantly with their population sizes increased from 6 to 13 per cent. We also observe an increase from 19 to 26 per cent in the issues on which there are significant correlations between states' policy positions and their net EU budgetary positions.

<Table 3.2 about here>

Now that we have established what the common alignments of actors are and how frequently they occur, it is now time to interpret what these alignments mean. To do so, we will identify whether the patterns occur more frequently on certain types of issues than others. In addition, we will identify whether certain actors tend to take the same types of positions, for example positions favouring higher or lower levels of harmonization or regulation.

Table 3.3 classifies the 331 controversial issues into three substantive issue types. The first type of issue involves choices between different levels of harmonization. The working time directive is an example of a harmonization issue, because keeping the opt-out means there could be greater diversity among national arrangements than if the opt-out were abolished. The second type of issue concerns the level of regulation that should be imposed on an industry or sector. Controversies about the strength of regulation frequently arise when product descriptions and standards are discussed. For example, a controversy about the ingredients that should be allowed in vodka arose following the introduction of a legislative proposal about spirit drinks in 2005 (COD/2005/028). Poland and Sweden were among the member states in favour of a regulation that strictly controlled the ingredients allowed, while the UK and others favoured fewer restrictions on the ingredients allowed. A third type

of issue is about the level of financial subsidies that should be given to a certain sector or industry. The sugar sector reform discussed in the previous chapter is a clear example of this. An issue may be about both the level of harmonization and regulation, and many issues do not fall clearly into any of the three categories. Of the three categories, issues about the strength of regulation are most common. At total of 118 of the 331 issues (36 per cent) are about the strength of regulation (Table 3.3). Issues concerning harmonization are somewhat less common: in total 98 of the 331 issues (30 per cent) are harmonization issues. The least common issue type is about levels of financial subsidies: in total 43 of the 331 issues (13 percent) are about subsidies.

Table 3.3 also contains information on the prevalence of the patterns in these different types of issues. The first row refers to the pattern in which the Commission takes radical policy positions far from the reference point. Recall that the Commission and reference point are at opposite extremes on 33 per cent of the issues in the EU-15 and 32 per cent of the issues post-2004. Table 3.3 shows that there is no clear pattern whereby the Commission is far more radical on certain types of issues. It might have been expected that the Commission's radicalism is concentrated in the group of harmonization issues, but this is not the case. The only noteworthy pattern is that the Commission is on average less radical – i.e. closer to the reference point – on issues about subsidies. We shall see that this is because the Commission typically favours lower levels of subsidies than other actors.

Figures 3.4, 3.5 and 3.6 contain information on the positioning of the actors on the three substantive categories of issues: harmonization issues, regulation issues and subsidy issues. This information helps us to draw more inferences on the meaning of the patterns that have been identified. Consider first Figure 3.4 that summarizes actors' positions on harmonization issues. These issues have been coded so that positions closer to 100 favour more harmonization. The vertical lines in the graph represent the 95 per cent confidence intervals around each actor's policy positions on these issues. The range of the lines gives an indication of the amount of variation in actors' policy positions. The mark at the midpoint of each line is the average policy position of the relevant actor.

As mentioned above, the Commission is generally a radical actor, irrespective of the type of issue raised, with the notable exception of subsidy issues. Figure 3.4

shows that the Commission's positions are generally pro-harmonization, both before and after the 2004 enlargement. Figure 3.5 shows that the Commission favours moderately strong regulation compared to other actors both before and after the 2004 enlargement. By contrast, the Commission generally favours lower levels of subsidies than many other actors (Figure 3.6). Although there are relatively few controversial issues about subsidies, Figure 3.6 suggests that since the 2004 enlargement, the Commission has increasingly favoured lower levels of subsidies. The sugar sector reform discussed in the last chapter is an example of this development.

The European Parliament is also a radical actor in the sense that its policy positions are generally far from the reference point. In the EU-15, the EP's radicalism was most prevalent on issues about subsidies (Table 3.3), and the EP generally favoured high levels of subsidy during that period. Since enlargement, the EP has taken more moderate positions on subsidies. When controversies arise about the strength of regulation, the EP's positions tend to favour strong regulations, as opposed to free market alternatives. Since enlargement, the EP's radicalism appears to be more concentrated in harmonization issues, where it has called for more harmonization on average than any other actor. These patterns are depicted in Figures 3.4, 3.5 and 3.6. The Commission and EP also appear to take similar positions across a range of different issues. Figures 3.4 and 3.5 indicate that, on average, the Commission and EP agree in supporting policy positions that entail relatively far-reaching harmonization and strong regulation both before and after the 2004 enlargement. Figure 3.6 suggests that the EP tends to favour somewhat higher levels of subsidies than the Commission.

<Figure 3.4. Confidence intervals for the positions of actors on issues concerning choices between different levels of harmonization>

<Figure 3.5. Confidence intervals for the positions of actors on issues concerning the strength of regulatory intervention>

<Figure 3.6. Confidence intervals for the positions of actors on issues concerning levels of financial subsidies>

The North-South division was a particularly salient feature of the European political space in the EU-15 period, and it was most likely to occur when controversies concerned the strength of regulation. On thirty-two (51 per cent) of the sixty-three controversies about the strength of regulation in the EU-15, Northern member states took different positions from Southern members. More often than not, the Northerners supported lighter regulation; on twenty-five of these thirty-two issues, the Southerners supported stronger regulation, while on the other seven issues the Northerners supported stronger regulation. The Northerners typically supported stronger regulation on issues concerning animal welfare. The North-South alignment is weaker in the post-2004 period and also different in nature. On nine of the sixteen issues about the strength of regulation post-2004 on which there is a significant North-South divide, the Northerners called for stronger regulation. These patterns concerning regulatory issues are also evident in Figure 3.5. On fourteen controversies regarding levels of subsidies in the EU-15, there was a North-South divide. The Southerners called for higher subsidies on all fourteen of these. On eight of the nine issues from the post-2004 period on which there was a significant North-South divide, the Southerners called for higher subsidies.

In the post-2004 period, there was a division between old and new members on about a third of the controversial issues. Some of these disagreements concerned controversies about the level of harmonization. There were twenty-one issues about appropriate level of harmonization in the post-2004 period in which old and new members took significantly distinct positions. On fifteen of these twenty-one issues (71 per cent), the new members called for less harmonization than the old members. On thirteen of the fifteen issues on which old and new members disagreed about the strength of regulation, old members called for stronger regulation. On seven of the eight issues on which old and new members disagreed about subsidies, the new members supported higher subsidies. Clearly, new members hold different views about the desirable level of EU policy activity, depending on whether financial subsidies are involved.

The MDS analyses also revealed a pattern whereby the new members grouped together with either the old Southern members or the old Northern members. The North versus South-East division was more common; it occurred on thirty-four (22 per cent) of the issues, compared to the North-East versus South division, which

occurred on twenty-four (15 per cent) of the issues. When these alignments occur, the new member states generally take positions in favour of less harmonization, lighter regulation, but higher subsidies. On nine of the twelve harmonization issues with a North versus South-East division, the old Southern and new Eastern states supported less harmonization than the Northern states. On ten of the thirteen regulation issues with a North versus South-East division, the new members favoured lighter regulation. On six of the seven subsidy issues with a North versus South-East division, the new members supported higher subsidies. Similarly, on eight out of the eleven harmonization issues with a North-East versus South alignment, the new members supported less harmonization. On all eight of the regulation issues on which there was a North-East versus South division, the new members supported less regulation. On the two subsidy issues on which the old Northern states and the new Eastern states joined together against the old Southern states, the new members supported higher subsidies on one and lower subsidies on the other.

3.5. Conclusions

The headline finding in response to the first question is that there is a great deal of variation in the positions taken by the main EU actors. The analyses identified a number of patterns in the actor alignments, but these patterns are only evident in a quarter to a third of all controversies. It is typically the case that actors with similar positions on one controversy issue take different positions on other controversies. This finding supports the results of some previous research (e.g. Wright 1996; Nugent 1999: 474; Heyes-Renshaw and Wallace 2006: 250).

The lack of structure in the positions of the main decision-making actors has consequences for the type of political system the EU is and can be. On the one hand, variation in actors' policy positions is one of the factors that make the EU a successful political system. Since any two actors agree on some issues and disagree on others, there are no clear dividing lines between political allies and adversaries. In pluralist democratic theory, such cross-cutting cleavages support a sense of solidarity in the presence of diversity (e.g. Dahl 1989: 251-4). Moreover, variation in actors' policy demands combined with decision outcomes that are compromises, which are examined in Part II of this book, means that there are no significant differences

between winners and losers across a range of controversies. These must be viewed as positive consequences of the lack of structure in actors' policy positions. On the other hand, the lack of structure, particularly in the Council, limits the possibility that citizens might exert visible control over EU policies. In most national governments, a single party or coalition of parties gains control of the executive and legislature for the duration of the governing period after elections. The making and breaking of governing coalitions is perceived as an important and legitimizing response to election results. Given the variation in member states' policy positions, a coalition of member states across a range of issues for a period of several years would be unfeasible and undesirable.

To the extent that there is structure to actors' policy positions, this chapter identified three broad patterns. The first pattern is that the Commission and EP tend to take relatively radical positions compared to member states' policy positions. The integration-independence dimension, according to which most of the controversies are about choices between different levels of harmonization, helps us to understand this pattern to a limited extent. At a very general level, the interests of both the Commission and EP lie in developing more EU policies and this is often reflected in their policy positions. However, only a minority of controversies concerned choices between different levels of harmonization. Moreover, the supranational institutions' radicalism is not confined to these harmonization issues. This suggests that there may be other reasons why the Commission and EP are sometimes outliers in terms of their policy positions. For instance, the Commission and EP may take radical positions in the knowledge that their policy demands will be watered down in the compromises that reached with and within the Council.

The second pattern is the difference between Northern and Southern states' policy positions, particularly prior to the 2004 enlargement. In the EU-15, North-South disagreements occurred relatively frequently on issues about levels of regulation and subsidies. Northerners generally supported light regulation and low subsidies, while Southerners generally took the opposite positions. Given the prevalence of North-South disagreements on issues about the strength of regulation, the interpretation of this alignment purely in terms of conflict between net recipients and net contributors to the EU budget is too narrow. Rather, the North-South division reflects different views on the appropriate level of regulatory intervention in free

markets. In recent years the North-South alignment appears to have weakened and changed form. To the extent that North-South disagreements occurred on issues about subsidies post-2004, the Northerners still favoured lower subsidies. However, several Northern states have supported stronger regulation in recent years. This may be due to the specific sectoral issues that have been on the agenda in the post-2004 period.

The third pattern is that old and new member states take different positions on a substantial minority of issues in the enlarged EU. The new member states are remarkably consistent in their policy positions when such disagreements occur. On issues about levels of integration, when old and new disagree, new members generally support less integration. Similarly, when old and new members disagree on issues about the strength of regulation, new members typically support lighter regulation. However, when old and new disagree about levels of subsidies, new members typically support higher subsidies, in line with their national interests. Clearly, regulatory and subsidy issues need to be considered separately to describe new members' policy positions adequately.

Variation in actors' positions does not imply that these positions are unpredictable or inexplicable, far less that the positions are irrationally or arbitrarily chosen. Explaining variation in actors' positions requires a research strategy that considers the effects of actors' characteristics that vary among pairs of actors both within and across issues and legislative proposals. These characteristics should include indicators of actors' interests in the controversies in question. The illustrative cases considered so far, and the cases that will be discussed in the following chapters, suggest that actors' positions are influenced by their domestic interests. For instance, member states' positions on the sugar sector reform appear to reflect the presence of this sector at the domestic level. Likewise, states' positions on the working time directive appear to reflect national governments' stances on the flexibility of their labour markets. The positions of the supranational institutions also vary considerably across issues, and may be affected by the national - and in the case of the EP transnational - actors involved in formulating their collective positions. The following three chapters are devoted to explaining variation in actors' positions, starting with the European Commission.

Chapter 4

The European Commission's policy positions

4.1. A supranational technocrat, a party political ideologue or a multinational?

This chapter examines the European Commission's policy positions in more detail. The main explanatory question is the following: What factors explain variation in the Commission's policy positions? In answering this question, this chapter explores the effects of characteristics of the Commissioners who were responsible for formulating the Commission's positions on each controversy. This chapter examines the effects of Commissioners' ideological, party political and national affiliations.

The Commission's policy positions are particularly important in the EU's legislative process, not least because the Commission has an effective monopoly on the introduction of legislative proposals. Although the Commission cannot refuse to introduce a legislative proposal if requested to do so by the Council or EP, neither of these other bodies can determine the contents of the proposal (Crombez *et al.* 2006: 331). The fact that the Commission formulates and introduces legislative proposals gives it the potential to exert considerable influence on decision outcomes. The EU's rules of procedure stipulate that the Council can only amend the Commission's proposal unanimously when the consultation procedure applies. Potentially at least, this means that the Commission can use the rules of procedure to ensure that decision outcomes are a close as possible to its policy preferences. We will examine this agenda-setting power in more detail in Chapter 7.

Many practitioners view the Commission's policy positions as authoritative and broadly 'European', due to the extensive consultations the Commission holds with affected interests before it introduces legislative proposals (Thomson and Hosli 2006: 398). The Commission often goes to great lengths to consult with a wide range of affected stakeholders when formulating its proposals. The Commission may also consult with member states and MEPs before formulating its proposals. This gives the Commission's proposals the authority associated with policy positions that have been formulated after hearing a wide range of views. Decision makers generally view the Commission's policy positions as an important point of reference in the legislative process, regardless of whether the consultation or co-decision procedure applies.

The first view of the Commission considered in this chapter is the legalistic view that it is an independent, supranational technocrat. This view is embodied in the text of the Treaty that outlines the role of Commissioners:

> The Members of the Commission shall, in the general interest of the Community, be completely 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. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks (Article 213.2, Treaty of the European Union).

This view is also supported by a considerable number of studies (e.g. Donnelly and Ritchie 1994: 35; Crombez 1996; Pollack 1998; Tsebelis and Garrett 2000; Nugent 2001: 112). This view accounts for the fact that the Commission's positions are generally distinct from member states' positions, as the previous chapter demonstrated.

However, the supranational view does not explain the substantial amount of variation in the Commission's positions. While the Commission's positions are generally pro-harmonization compared to member states' positions, the degree to which this is the case varies from issue to issue. Similarly, while the Commission's positions often favour strong regulation, on many issues the Commission supports economically liberal policy alternatives. To account for this type of variation, we need to consider explanatory variables that distinguish different time periods, legislative proposals and controversial issues from each other.

This supranational view of the Commission may be somewhat naive. Commissioner McCreevy spoke frankly on the subject at the end of his tenure as Commissioner for Internal Market during the first Barroso Commission (2004-2009). He described it as a 'myth' that Commissioners 'leave aside their home member state national interests and political priorities and act exclusively in the community interest' when they go to Brussels (*Irish Times*, December 19, 2009). McCreevy referred to the appointment of Michel Barnier to succeed him as a victory for French-style capitalism over the Anglo-Saxon approach to the internal market that he had championed. However, the implication of McCreevy's observation is more general.

Commissioners' party political and national interests may affect the Commission's behaviour.

An alternative to the view is that the Commission is an organization imbued with ideological interests in the party political sense. Several recent studies have examined this view (e.g. Wonka 2005, 2007; Egeberg 2006; Hix 2008; Warntjen *et al.* 2008). Prior to their appointment to the Commission, most Commissioners had careers in national politics in which they were affiliated with national political parties. Moreover, Commissioners are nominated by national governments, and most Commissioners were affiliated with governing parties at the national level at the time of their nomination. This means that, at least prior to their appointment as Commissioners, most were loyal to national political parties with identifiable ideological positions. Controversies at the EU level are often framed in such a way that Commissioners' nationally defined ideological positions may inform their stances. We learned in the previous chapter that many controversies concern choices about the extent to which free market activity should be regulated. These issues are substantively similar to the issues that typically divide Left and Right-wing politicians at the national level. Therefore, we would expect Commissioners' ideological positions to explain at least some of the variation in the Commission's policy positions.

A third view is that the Commission is a multinational organization. From this perspective, the Commission's internal decision-making processes are imbued with national interests. Several studies have addressed the role of nationality in the Commission's decision-making processes (Crombez 1997; Egeberg 2006; Hooghe 1999a, 1999b, 2002, 2005; Hug 2003; Trondal 2006). The studies by Hooghe and Trondal examine the role of national affiliations in explaining the attitudes of Commission officials. They find that national socialization is more important than socialization in the Commission in explaining their attitudes. Similarly, Egeberg's study considers the extent to which Commissioners' behaviour is shaped by their adherence to a 'country role'.[1] Like the ideologue view, the multinational view questions the Commission's detachment from national politics. In addition, like the

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[1] Egeberg (2006) also considers a 'portfolio' role in which Commissioners follow the interests of groups that have special relationships with their Directorates-General. Since the present study does not focus on interest groups, I do not consider this 'portfolio' role separately.

ideologue view, the multinational view emphasizes the importance of Commissioners' characteristics in explaining variation in the Commission's policy positions. Commissioners' national affiliations may mean that they are more attentive to the interests of their home member states than other states. From this perspective, Commissioners' national affiliations are more relevant than their party political affiliations.

4.2. Expectations regarding the Commission's policy positions

These three views of the Commission have implications for explaining variation in the Commission's policy positions. If the Commission is a supranational technocrat that is insulated from party political and national interests, we would not expect Commissioners' political party and national affiliations to affect the Commission's policy positions. By contrast, if the Commission is imbued with ideological interests or national interests, we would expect Commissioners' party and national affiliations to affect the Commission's policy positions significantly. This section formulates expectations regarding variation in the Commission's policy positions based on the party ideology and multinational views of the Commission.

The first expectation posits that the Commission's behaviour is affected by Commissioners' ideological party political interests. The expectation refers to the effect of these interests on the Commission's positions on controversies concerning the strength of regulation and levels of subsidies during different Commission periods. Although the College of Commissioners always includes politicians from both Left-wing and Right-wing parties, there are notable differences among time periods in the general ideological orientation of the College of Commissioners (Wonka 2005, 2007; Hix 2008; Warntjen *et al.* 2008). Commission Presidents and Commissioners are nominated by member states' governments and approved by the member states and EP. Consequently, the ideological leanings of Commissioners vary as the success of Left and Right-wing parties varies at national and EP elections. Decision-making in the College of Commissioners is highly consensual. Although the Commission may adopt a legislative proposal with the support of a simple-majority of Commissioners, votes are rare. The Commission also adheres to the principle of collective responsibility, whereby the College as a whole must support the

Commission's actions. Therefore, we might expect that the ideological leanings of the Commission as a whole to be reflected in the policy positions it takes in legislative proposals. The following expectation focuses on the ideological position of the Commission in terms of the economic Left-Right dimension, because this is most clearly linked to the substance of issues about the strength of regulation and the level of subsidies.

H1: When the ideological position of the Commission is further to the Right on the economic Left-Right dimension, the Commission's policy positions generally favour lighter regulation and lower subsidies.

The next section examines differences among the positions taken by the Commission during the Santer Commission (1994-99), the Prodi Commission (1999-2004) and the first Barroso Commission (2004-09). The consensus among EU observers is that the Barroso Commission was further to the Right on the economic Left-Right dimension than its two predecessors. On the basis of the ideological view of Commission decision-making, we would expect the Barroso Commission to favour lighter regulation and lower subsidies than its predecessors.

While the above hypothesis was formulated in terms of the Commission's policy positions on issues about the strength of regulations and subsidies, the following three hypotheses are formulated in terms of the distance between the Commission and each member state's policy positions. This alternative focus provides another way of testing the different views of the Commission. The main advantage of this focus is that it yields a much larger number of observations, which makes tests of the expectations more powerful. This will be described in more detail in the research design section below.

A variant of the view that the Commission is influenced by the ideological affiliations of the Commissioners is that the ideological affiliations of the primarily responsible Commissioner have an important effect. Despite the principle of collective responsibility, the division of the Commission's organization into different Directorates-General (DGs), each led by a Commissioner, is an important institutional constraint. Each legislative proposal is prepared by one or more DGs, and there is always one Commissioner who is charged with primary responsibility for it. This

arrangement is analogous to the division of portfolios among ministers at the national level (Laver and Shepsle 1996). Given to the complexity of policymaking, Commissioners have clear incentives to specialize in their own policy areas. This specialization gives Commissioners a considerable degree of control over the policy positions taken by the Commission in their jurisdictions.

If individual Commissioners have some degree of autonomy within their jurisdictions and are influenced by their ideological affiliations, this will affect the Commission's policy positions on issues relevant to their ideological principles. As discussed in the previous chapter, member states' policy positions may also be influenced by the ideological leanings of the parties in their national governments. If this is the case, the Commission's policy positions on specific controversies will differ from member states with governments of which the ideological leanings differ markedly from those of the responsible Commissioners. The economic Left-Right ideological dimension is most relevant to issues about the strength of regulations and the levels of subsidies. The following hypothesis therefore refers to these issues.

H2: If a controversy concerns regulations or subsidies, the Commission's policy position is generally biased toward policy positions of governments with similar ideological positions to the responsible Commissioner.

This second expectation is based partly on the premise that member states' policy positions are influenced by the ideological preferences of the parties in their national governments. The findings from the previous chapter give reason to be sceptical about this. We found hardly any controversies on which member states' policy positions matched the ordering of those states' governments on the economic Left-Right dimension. Nevertheless, it is still possible that we could find an effect of government ideology at this level of analysis. Moreover, since this expectation is a clear implication of the ideologue view of the Commission, it is worthwhile testing, even if we have reason to be sceptical about it.

The third expectation is also based on the view that the Commission's behaviour is affected by the party political affiliations of primarily responsible Commissioners. However, this expectation is relevant to all controversies, not only controversies concerning the strength of regulations or levels of subsidies. If a

responsible Commissioner is affiliated with a party that is in government in his or her home country, the Commissioner and his or her home government may view issues in the same way and take similar positions. This reasoning implies the following expectation:

H3: If the primarily responsible Commissioner's national party is in government office at the national level, the Commission's policy position on a controversy is generally biased toward the policy position of the responsible Commissioner's home member state.

This implies, for example, that if the responsible Commissioner is Austrian and is affiliated with a governing party at the national level, the Commission's position will be close to the Austrian position. It also implies that member states with positions far from the Austrian position are also far from the Commission's position. Unlike the first two hypotheses, this third expectation does not mention the ideological positions of Commissioners and member states. In other words, it does not require that we identify the ideological distance between an Austrian Commissioner affiliated with the ÖVP and the German government consisting of the CDU and FDP, or any other government for that matter. This is certainly an advantage because, even if we consider the same economic Left-Right dimension in different national contexts, such comparisons are problematic. As this third hypothesis is relevant to all issues, not only issues about the strength of regulations or levels of subsidies, it can be tested using a broader set of controversies.

The fourth and final expectation is derived from the multinational view of the Commission. If Commissioners are motivated by national interests and have some autonomy to set the Commission's policy within their own jurisdictions, then we would expect to observe the following:

H4: The Commission's policy position on a controversy is generally biased toward the policy position of the responsible Commissioner's home member state.

This is the same as the third hypothesis, except that the effect is expected to occur regardless of whether the Commissioner's national party – if he or she has one – is in

government office at the national level. Here, the underlying proposition is that national interest, rather than party political interest, is the motivating factor.

Each of the above expectations combines interests, in the form of party political or national affiliations, with institutional factors. The institutional factors are the appointment of different sets of Commissioners in different periods (H1) and the division of the Commission's administration into different organizational units led by different Commissioners (H2-H4). The decision rule in the Council – qualified majority voting (QMV) or unanimity – is another institutional factor that might affect the extent to which the Commission's positions are influenced by Commissioners' party political or national interests. If the legislative proposal must be adopted by unanimity, the Commission's proposal must appeal to all member states. The Commission and individual Commissioners then have little room for manoeuvre to bias the proposal in favour of certain party political or national interests. By contrast, in policy areas subject to QMV, there may be more opportunity to include such biases, while still receiving the required level of support in the Council. If this is the case, then we would expect the effects referred to in the hypotheses to be particularly pronounced when the QMV rule applies.

What are the theoretical implications of this distinction between QMV and unanimity? First, it identifies the conditions under which an effect occurs. Few political effects occur in all contexts. Second, the distinction implies that the Commission has accurate information about member states' policy positions and that it uses this information when formulating its legislative proposals. Consequently, evidence of different effects under QMV and unanimity has substantive implications for the way in which the Commission formulates legislative proposals.

4.3 Research design

The analyses in the following section examine variation in the Commission's positions on the controversies raised by the selected legislative proposals. These proposals were introduced during three Commission periods: Forty-three were introduced at the end of the Santer Commission (1994-99), thirty-eight were introduced during the Prodi Commission (1999-2004), and forty-four were introduced during the first Barroso Commission (2004-2009). Table 4.1 lists the three

Commission presidents and the Commissioners who were primarily responsible for at least one of the legislative proposals selected in the present study. Most of these Commissioners were affiliated with a political party at the national level. Table 4.1 gives an estimate of the economic Left-Right position of the Commissioner's party on a scale of 1 to 20, where 1 indicates that the party 'promotes raising taxes to increase public services' and 20 indicates that the party 'promotes cutting public services to cut taxes'. These estimates are from Benoit and Laver's (2006) survey of experts on national party systems. Although the EU has relatively few competencies on taxation and public spending, we might expect the economic Left-Right position to be relevant to EU-level controversies regarding the strength of regulation and the level of subsidies.[2] There is considerable variation among Commissioners within each Commission period in their ideological leanings. For instance, the first Barroso Commission included Commissioner Spidla, who is affiliated with a centre-Left party in the Czech Republic, and Commissioner Frattini, who is affiliated with a centre-Right party in Italy.

<Table 4.1. Overview of the Commissions and the Commissioners>

All three Commissions are relatively centrist in terms of the average ideological orientation of all Commissioners. This lack of variation among Commission periods means that the data offer a limited test of the first hypothesis. In terms of the economic Left-Right dimension, the Barroso Commission is generally considered to be to the Right of the Santer and Prodi Commissions. Warntjen *et al.* (2008: 1248) confirm this using dynamic data on the party political positions of all Commissioners since 1979. They place the Santer Commission to the centre-Left, the Prodi Commission also to the centre-Left but slightly closer to the centre, and the Baroso Commission to the centre-Right.

The first part of the analysis focuses on the location of the Commission's policy positions on issues concerning the strength of regulation and levels of subsidies. The unit of analysis is therefore the issue. Whenever relevant, the issue

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[2] In analyses not reported here, I used alternative measures of the ideological positions of Commissioners' parties and member states' governments, including Benoit and Laver's general Left-Right dimension and the EU Authority dimension. The results were the same.

continua used to represent the controversies are coded such that position 0 represents the policy position that favours of the lightest regulation or lowest level of subsidy considered in the policy space and 100 represents the policy position that favours the strongest regulation or highest level of subsidy. The second part of the analysis focuses on the distance between the Commission and each member state's policy positions. The unit of analysis is therefore the Commission-issue dyad on each issue.

<Figure 4.1>

Figure 4.1 depicts two of the controversial issues raised by the legislative proposal on emission allowances in the aviation sector. The Commission introduced this proposal in December 2006. Despite extensive consultations prior to the introduction of the proposal, it raised considerable controversy among the member states and EP. This legislative proposal sought to address climate change by including the aviation sector in the EU's emissions trading scheme. The first controversial issue concerned the calculation of the CO_2 pollution allowances that should be given to the airline industry. On one side of this debate were the actors that favoured a relatively low quantity of allowances, which would drive up the cost of polluting; these actors consisted of the Commission, EP and old EU-15 member states, although there were some differences within this latter group. On the other side of the debate were the twelve new member states; these actors promoted a relatively high quantity of allowances, which would permit the aviation industry to pollute more. The second controversy concerned the auctioning of carbon credits; the issue was about what proportion of these credits should the aviation industry be allowed to auction. Again, the new member states took the same position, which was that there should be no auctioning. They argued that this would impose unacceptable costs on the aviation industry. The other actors favoured auctioning, but to different degrees. The Commission and most old member states took a conservative position that a small proportion of the credits should be auctioned. The EP together with Ireland and Sweden took the most radical position, arguing that the industry should be allowed to auction a far larger amount of credits. The EP's first opinion stated that 25 per cent of credits should be auctioned in 2011 and that this percentage should be increased to the level in other sectors in subsequent years.

This legislative proposal was introduced under the Barroso Commission. The Commissioner with primary responsibility for the proposal was the Commissioner for the Environment, Stavros Dimas. Mr. Dimas is a Greek national. Prior to taking up his post at the Commission, he had a long and distinguished career in Greek national politics. Between 1977 and 2004, Mr. Dimas was a member of the Greek Parliament representing New Democracy, the centre-Right party of Greece. He also held several ministerial appointments in the Greek government during this period. At the time of the introduction of the legislative proposal, New Democracy was the single-party government of Greece.

To what extent is the aviation emissions allowance case consistent with the theoretical expectations? Since the proposal was subject to QMV in the Council, we would expect the party political and national affiliations of Commissioners to affect the Commission's policy positions. The first hypothesis refers to the position of the Commission on issues about the strength of regulation. The first issue, concerning the quantity of emissions allowances, is clearly about the strength of regulation. The second issue, concerning the introduction of auctioning, is not unambiguously about the strength of regulation; it is more about the form that the regulation should take. The first issue is not consistent with the first hypothesis that the Commission's positions will favour light regulation when the economic Left-Right orientation of the Commission is to the Right. Indeed, the Barroso Commission is considered centre-Right, but the Commission's position on the first issue clearly favours strong regulation. The other hypotheses refer to biases in the Commission's positions toward the positions of certain member states. The second hypothesis posits that the Commission's position is biased toward the policy positions of governments with similar ideological positions to the responsible Commissioner. Since Commissioner Dimas is a centre-Right politician, this proposition implies that the Commission's positions should be closer to the positions of centre-Right governments than centre-Left governments. This is clearly not the case, because the member states' positions are not correlated with the economic Left-Right position of their national governments. For instance, at the time of the introduction of the legislative proposal Spain and Italy had centre-Left governments, while these member states shared the same position as the Commission. Similarly, several new member states, which

disagreed with the Commission, had centre-Right governments: for example, the Czech Republic, Estonia and Latvia.

Both issues raised by the aviation emissions proposal are consistent with the third and fourth hypotheses, because the Commission's policy position agrees with the policy position of the home member state of the responsible Commissioner, Greece. This means that the further a member state's position is from the Greek position, the further its position is from the Commission. By examining only one case, we obviously cannot discriminate between the third and fourth hypotheses. To do so, we need to compare cases in which the responsible Commissioners' political parties are in government at the national level with cases in which those parties are in opposition at the national level.

<Figure 4.2>

Figure 4.2 illustrates the structure of the multivariate quantitative analyses that will be presented in the next section. The structure of the first analysis is quite simple. The dependent variable is simply the position of the Commission on issues that concern either the strength of regulation or the level of subsidies. In the second analysis, the dependent variable is the distance between the Commission's position and each member state's position. If a member state does not take a position on an issue, there is a missing value for this observation. The second analysis includes an independent variable that indicates the size of the ideological distance between the responsible Commissioner's party (if he or she has one) and the government of the member state referred to in the case (H2). It also includes variables that indicate whether the responsible Commissioner's party was in office at the national level (H3) and the distance on the policy scale between the member state referred to in the case and the responsible Commissioner's home member state (H3 and H4).

The structure of the data in both analyses is such that a multilevel modelling approach is appropriate (e.g. Snijders and Bosker 1999; Goldstein 2003; Andrew and Hill 2007; Rabe-Hesketh and Skrondal 2008). The second analysis is hierarchical in a more complex way. In the first analysis, observations (the Commission's policy positions on issues) are clustered within legislative proposals. In the second analysis, observations (the distance between the Commission and member states' policy

positions) are clustered within issues, which in turn are clustered within legislative proposals. In addition, the observations in the second analysis are cross-classified, in the sense that the same dyads (Commission-member state combinations) appear in each issue. This hierarchical clustering means that the data have a multilevel structure. Each possible explanatory variable varies at a particular level of analysis. For example, whether or not the national party of the responsible Commissioner is in government at the time of the introduction of the legislative proposal varies at the proposal level, not at the issue or Commission-member state dyad level. The multilevel models that will be applied in the following section are appropriate given this hierarchical data structure.

4.4 Analysis of the Commission's policy positions

Figure 4.3 summarizes the location of the Commission's positions in different Commission periods on the issues in each of the three issue categories. The first group of issues are choices between policy alternatives that involve different levels of harmonization of states' national policies. The controversial issue from the working time directive discussed in the previous chapter, which was about whether there should be opt-outs from the maximum 48-hour working week, is an example of an issue about the level of harmonization. The 0-100 policy scales are coded consistently, such that the pro-harmonization positions are close to 100 and the pro-national independence positions are close to 0. In each of the three Commission periods, the Commission took positions in favour of harmonization. Indeed, there is no significant difference between the location of the Commission's positions on harmonization issues among the three periods, as is clear from the fact that the 95 per cent confidence intervals displayed in Figure 4.3 overlap.

Figure 4.3 also summarizes the location of the Commission's positions on issues about the strength of regulation. Some issues, such as the controversy just mentioned from the working time directive, are about both harmonization and the strength of regulation. The first issue from the aviation emissions case discussed earlier is another example of an issue about the strength of regulation. A prominent example of an economically liberal proposal from the Barroso Commission was the legislative proposal to liberalize postal services across the EU (COD/1996/196; see

Chapter 6). In Figure 4.3, policy positions closer to 100 represent positions that favour stronger regulation. The information in Figure 4.3 also indicates that the Commission's positions do not vary significantly across the three periods.

The third group of issues depicted in Figure 4.3 are issues about the levels of subsidies. Here, we are only able to compare the Santer and Prodi Commissions quantitatively, because we have only four issues from the Barroso Commission regarding subsidy levels. The data indicate that the Prodi Commission's policy positions were somewhat less in favour of subsidies than the Santer Commission's positions, but again the difference is not significant. In the six subsidy issues from the Barroso Commission, three of which were from the sugar reform controversy discussed in Chapter 2, the Barroso Commission favoured relatively low levels of subsidies.

<Figure 4.3>

<Table 4.2>

We now turn to the distance between the Commission and member states' policy positions. This level of analysis dramatically increases the number of observations in the analysis. Table 4.2[3] tests the second hypothesis, which implies that the distance between the Commission and a member state's policy positions on regulation and subsidy issues can be explained by the economic Left-Right ideological positions of the responsible Commissioner and the government of that member state. The model in Table 4.2 is applied only to the issues that involved choices about the strength of regulation or the levels of subsidies. The evidence does not support the second hypothesis. In Table 4.2 the coefficient next to the variable 'Ideological distance between the Commissioner and member state government on the economic Left-Right dimension' does not differ significantly from zero.

[3] I added control variables to the models presented in Tables 4.2 and 4.3 to check the robustness of the results. In particular, I included variables that distinguished between small, medium and large states (two dichotomous variables) and a variable that identified the co-decision cases. These were not significant and did not alter the results. They are not included in the models presented because they are not theoretically motivated. The model in Table 4.2 does not include a control for QMV because almost all of the regulation and subsidy issues were subject to QMV.

Table 4.2 also includes variables that enable us to test the third and fourth hypotheses. The evidence from Table 4.2 does not support the third hypothesis, but does support the fourth hypothesis. Note, however, that these hypotheses do not refer only to regulation and subsidy issues, while the model in Table 4.2 includes only those cases. According to the third hypothesis, the responsible Commissioner's nationality has an effect, but only if his or her political party is in government at the national level when the Commission introduces the legislative proposal. This hypothesis implies an interaction between two variables that are included in the model. On the basis of this hypothesis we would expect to observe two things: First, there should be no effect of the variable 'Distance between policy position of member state in dyad and position of Commissioner's home state', because this coefficient estimates the effect of the Commissioner's nationality when the Commissioner's party is not in government at the national level. Second, there should be a significant positive interaction between the 'Distance to home state' variable and the variable 'Commissioner affiliated with a governing party at the national level'. This interaction term estimates the difference in the direction and magnitude of the effect of 'Distance to home state' when the Commissioner's party is in government. Instead, we find a positive and significant coefficient next to the 'Distance to home state' variable. Therefore, when the Commissioner's party is not in the national government, 'Distance to home state' has a positive and significant effect; the further a member state's position is from the position of the responsible Commissioner's home state, the further it is from the Commission's position. The coefficient of the interaction between 'Distance to home state' and the variable indicating whether the Commissioner's party was in government is insignificant. This implies that the effect of 'Distance to home state' is not changed by the governing status of the Commissioner's political party at the national level. These findings are in line with the fourth hypothesis, which posits that the Commissioner's nationality will affect the Commission's position, regardless of the political party affiliations of the responsible Commissioner.

The models in Table 4.3 consider the third and fourth hypotheses more thoroughly, since these models are not limited to the regulation or subsidy issues. The main finding is in line with the fourth hypothesis: the responsible Commissioner's nationality has a significant effect on the distance between the Commission and each

state's position on issues subject to QMV. In addition, on issues subject to QMV, the governing status of the responsible Commissioner's political party has a significant effect, but in the opposite direction than suggested by the third hypothesis. In particular, the effect of 'Distance to home state' is significantly lower when the responsible Commissioner's political party is in government at the time the legislative proposal is introduced. Let us look at the models more closely.

Model 2 in Table 4.3 is most pertinent to assessing the third and fourth hypotheses since it is applied to all issues subject to QMV in the Council. This is the condition under which we would expect Commissioners' nationalities and party affiliations to matter most. The variable 'Distance to home member state' is interacted with a dichotomous variable that takes the value of one if the Commissioner is affiliated with a governing party at the national level. This means that the direct effect of 'Distance to home member state' estimates the effect of this variable when the responsible Commissioner is not affiliated with a governing party at the national level. The coefficient is .42, which indicates that when the responsible Commissioner is not affiliated with a governing party at the national level, for every one scale point increase in the distance between the member state in the dyad and the Commissioner's home state, the distance between the member state in the dyad and the Commission increases by .42 scale points. The interaction between this variable and the variable indicating whether the Commissioner is affiliated with a governing party is -.27. This means that the effect of 'Distance to home state' is reduced by .27, so that the effect of 'Distance to home state' is reduced to .15 (the new standard error is .02, p=.00).

Model 1 is applied to all cases, including those subject to unanimity in the Council. This model shows that the interactions we identified do not occur when we include the issues subject to unanimity. The significant positive effect of 'Distance to home state' is due entirely to the effect of this variable in the QMV cases.

We can now summarize these analyses by considering the effect of moving from the maximum to the minimum value of the explanatory variable 'Distance to home state', the distance between the policy position of the member state referred to in the dyad and the policy position of the responsible Commissioner's home member state. Since our policy scales range from 0 to 100, this variable also ranges from 0 to 100. What is the effect of moving from the maximum possible distance, 100, to the

minimum possible distance, 0, on the dependent variable, the distance between the Commission and the state referred to in the dyad?

- When the legislative proposal must be adopted by unanimity in the Council, it has no effect.

- Under QMV in the Council, and when the responsible Commissioner is not affiliated with a governing party, this change decreases the distance between the Commission and the state's policy positions by 42 scale points (95% confidence interval: 35, 49).

- Under QMV in the Council, and when the responsible Commissioner is affiliated with a governing party, this change decreases the distance between the Commission and the state's policy positions by 15 scale points (95% confidence interval: 12, 18).

Considering the controversial issues we have discussed in this and previous chapters (emissions trading, sugar sector reform and the working time) differences of this magnitude often represent important political differences.

4.5 Conclusions

The view of the Commission as an independent supranational technocrat clearly helps to account for some key characteristics of Commission position taking. The Commission generally favours more pro-harmonization policy alternatives than member states. Its radicalism on harmonization issues does not waiver over time as a result of Commissioners with different ideological leanings. As we saw in the previous chapter, the Commission's positions are distinct from those of member states across a broad range of issues, not only those that concern harmonization. Moreover, on many issues the national and party political affiliations of Commissioners have no effect on the Commission's policy positions.

The view of the Commission as a party political ideologue explains little variation in the Commission's positions over time, although there are examples that may perpetuate this view. For instance, the first Barroso Commission, which is generally considered centre-Right, often favoured low subsidies and light regulation. The sugar sector reform discussed in Chapter 2 is an example of a legislative proposal introduced by the Barroso Commission that favoured lowering subsidy levels. The

Barroso Commission's proposal to liberalize postal services (COD/1996/196; see Chapter 6) was another example of its desire to lighten regulation. Similarly, the Barroso Commission's legislative proposal on payment services (COD/2005/245; see Chapter 9) sought to liberalize the payment services market by reducing the capital requirements that payment service providers would have to meet before being admitted to the market. The general ideological makeup of the Commission cannot, however, account for variation among Commission periods. The Prodi Commission, which was centre-Left, also favoured light regulation and low subsidies in many of its proposals. This might be explained partly by preparations for enlargement during the Prodi Commission. The Prodi Commission was aware that the enlarged EU could not maintain the same subsidy structures without considerable increases in the budget. For example, the Prodi Commission introduced proposals to reduce subsidies for the production of sugar (CNS/2000/250) and cotton (CNS/1999/202; discussed in Chapter 7).

There is no evidence that the party political affiliations of the primarily responsible Commissioners influence the Commission's policy positions. Contrary to the second hypothesis, the Commission's positions are not closer to those of member states that share the primarily responsible Commissioners' economic Left-Right ideological positions. In addition, contrary to the third hypothesis, we did not find that the impact of the responsible Commissioner's nationality is greater when the Commissioner is affiliated with a governing party at the national level. In fact, we found the opposite; the impact of nationality is weakened. In sum, we have examined the impact of responsible Commissioners' political party affiliations from various perspectives and found no evidence of such effects.

The view of the Commission as a multinational actor led to the expectation that the Commission's policy positions are biased toward the policy positions of the home member states of primarily responsible Commissioners. The evidence is consistent with this expectation. The effect of responsible Commissioners' nationalities is present in the group of legislative proposals subject to QMV in the Council. The effect is present regardless of whether the responsible Commissioner is affiliated with a governing party at the national level, but it is stronger when the Commissioner is not.

Why is the effect of Commissioners' nationalities muted, although still significant, when they are affiliated with governing parties at the national level? The explanation might lie in the priority that Commissioners give to the principle that they should be independent of national interests. This principle is clearly the appropriate behavioural norm for Commissioners; it is inscribed in the Treaty and reflected in the conventional view of the Commission as an independent supranational technocrat. However, when a Commissioner is affiliated with a governing party at the national level, there may be additional pressure to obey this principle. In other words, Commissioners who are affiliated with national governing parties may go to greater lengths to avoid the perception of national bias than Commissioners who have no such affiliations. Note that the majority of Commissioners are affiliated with governing parties at the national level, because national governments tend to nominate politicians from parties that are in government at the time of nomination. It is paradoxical that governing parties' attempts to promote their own party interests have the effect of reducing national biases in the Commission's policy positions. We did not have an *a priori* theoretical expectation that the effect of Commissioners' nationalities would be muted if they were affiliated with national governing parties. The above interpretation of this finding is therefore *post hoc*. Future research would need to test other implications of this interpretation before we could be more confident about it.

Primarily responsible Commissioners' nationalities have effects when the QMV rule applies, but not when the unanimity rule applies. This was expected, because if a proposal must be approved by all member states, the Commission must ensure that the interests of all states are accommodated. By contrast, if only a qualified majority of member states need to approve the proposal, the Commission could in principle formulate a viable proposal without appealing to all states. This explanation is in line with theoretical models of the EU's legislative process that will be discussed in more detail in Chapter 7 (e.g. Tsebelis and Garrett 2000). The distinction implies that the Commission usually has information regarding member states' policy positions when it formulates legislative proposals. Such information, in combination with the formal authority to introduce proposals, so-called agenda-setting power, is a source of considerable power. In addition, the distinction between QMV and unanimity implies that the effects cannot be explained by the argument that

Commissioners have disproportionate influence over the positions of their home member states. If this were the case, we would have found the same level of congruence between the Commission's positions and the policy positions of the home member states of the responsible Commissioners when the unanimity rule applies.

The evidence presented in this chapter has implications for conceptualizing the Commission as an international organization. The Commission is clearly not a unitary actor. The assumption that the Commission is a unitary actor is widespread in the literature, and it is undoubtedly a useful theoretical point of departure. From the time of the introduction of the legislative proposal onwards, the Commission generally behaves as if it were a unitary actor. The College of Commissioners almost invariably reaches a consensus on legislative proposals, and the Commission generally responds in a coherent and consistent manner to amendments proposed by the Council and EP. However, we gain analytical leverage to explain the Commission's policy positions if we relax this assumption by focusing on the organizational division of the Commission. The division of policy areas into Commissioners' portfolios is analogous to the division of national ministries into cabinet ministers' portfolios at the national level (Laver and Shepsle 1996). This illustrates the relevance of analyses of comparative politics at the national level to the study of EU politics.

Another implication for conceptualizing the Commission is that the Commission is at least in part multinational, rather than international; different national interests have different weights within the various DGs of which the Commission is composed, depending on the nationalities of the Commissioners in charge of those DGs. This account clearly resonates with state-centric theories of international organizations (Achen 2006a). Realist theorists, for instance, are sceptical of international organizations' ability to act autonomously of the states that created them. In a famous realist critique of 'the false promise of international institutions', Mearsheimer (1994-95) argued that states' national security interests define how they design relevant international institutions. Consequently, international institutions are instruments of powerful states, and those institutions have little room to act autonomously. Closer to the subject matter of the present study, Moravcsik's (1998) influential theory of European integration, liberal intergovernmentalism, attributes limited scope for autonomous action to the Commission. Instead, the main actors are

member states, sometimes acting through the Commission. State-centric theorists typically refer to high politics. We might therefore expect to find more room for autonomous action by an international organization such as the Commission in the day-to-day decision-making that makes up the vast bulk of what the EU does. Nonetheless, this chapter has shown that the Commission's policy positions in the legislative arena are also marked by the national interests that pervade its organization.

Chapter 5

The European Parliament's policy positions

5.1 Policy positions and committee structures in the European Parliament[1]

The fact that the European Parliament is the only directly elected legislative body in the EU gives its policy demands considerable weight in the decision-making process. Under the co-decision procedure, which is now the ordinary procedure, the EP's formal decision-making power equals that of the Council of Ministers. Even when the consultation procedure applies, the EP appears to influence decision outcomes via the influence it exerts on the Commission (Nugent 2006: 404; Thomson and Hosli 2006b: 414; Kardasheva 2009).

This chapter examines the relevance of two general theories of legislative decision-making to explain variation in the EP's policy demands. The first theory is the informational theory of legislative committees (e.g. Gilligan and Krehbiel, 1989; 1990; Krehbiel, 1991). According to this theory, on any given issue the policy position of the chamber as a whole is an unbiased representation of the policy positions of all parliamentarians. The second theory is the distributive theory of legislatures, according to which legislative organization, in particular committee structures and associated procedures, bias the policy positions of legislative bodies (e.g. Ferejohn 1975; Shepsle and Weingast 1987; Weingast and Marshall 1988).

To test these theories, we need to identify the main actors in the EP plenary and their policy positions. The present chapter does this for a subset of the controversial issues. The main political actors within the EP are the transnational party groups, although national factions within those groups regularly play an important role too. As described in the introductory chapter, most MEPs are affiliated with transnational party groups, the largest of which are the European People's Party (EPP-ED), the main centre-Right group, and the Party of European Socialists, the

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[1] In a related article, Rory Costello and I (2010) examined the impact of *rapporteurs*. This chapter differs from the article in that this chapter explains variation in the EP's initial policy positions, while the article examined the EP's first opinions. These may differ in early agreements under the co-decision procedure, where the EP's opinions are the result of negotiations between the EP and the Council. In addition, the present chapter examines a larger dataset, and presents different analyses using multilevel models.

main centre-Left or Social Democratic group. Previous research examined MEPs' views and EP party groups' ideological positions using a variety of methods including the analysis of parties' election manifestos and surveys of MEPs (e.g. Hix and Lord 1997; Thomassen and Schmidt 1997; Gabel and Hix 2004; McElroy and Benoit 2007; 2010). MEPs from different party groups differ in their ideological positions. The main dimension of political conflict in the EP is the socioeconomic Left-Right dimension. The socioeconomic Left-Right dimension is more important than a second noteworthy dimension that concerns the depth of European integration. We would expect to find differences among EP party groups' policy positions on controversial issues when these controversies are linked to their ideological differences. In particular, when controversies concern the strength of regulation, party groups' positions are likely to reflect their positions on the Left-Right dimension.

Although research on MEPs' voting behaviour (e.g. Kreppel and Tsebelis 1999) also highlights the relevance of differences among EP party groups' policy positions, it also suggests that differences among party groups' positions may not be large. The most definitive study of MEPs' voting behaviour is *Democratic Politics in the European Parliament* (Hix *et al*. 2007). The authors of that study examined roll-call votes. Approximately one-third of all votes taken in the EP are roll-call votes, which means that the voting behaviour of each MEP is recorded and publically available. Hix *et al*. conclude that EP party groups are relatively cohesive actors. MEPs generally vote similarly to MEPs in the same party group. To the extent that party groups' differ from each other, they differ on the socioeconomic Left-Right dimension. Moreover, party group loyalty appears to be stronger than national loyalty, in the sense that MEPs vote more similarly to MEPs from the same party group than to MEPs from the same member state. However, the analysis of roll-call votes also reveals clearly that party groups often vote similarly to each other. In the first half of the sixth parliament (2004-06), on 64.5 per cent of the 2,452 roll-call votes that were held, the majority of EPP and PES MEPs voted the same way (Hix and Noury 2009: 165). In addition, case studies of particularly important legislative proposals reveal that groups of MEPs from some member states break away from their party groups and vote in line with the policy positions of their member states (ibid.). These findings imply that the political differences among the main party groups are often

modest in size, and also that national groups of MEPs regularly play an important role.

The distributional theory of legislatures focuses on legislative organization, in the form or rules and procedures (e.g. Ferejohn 1975; Shepsle and Weingast 1987; Weingast and Marshall 1988). In the context of the EP, this theory directs our attention to the EP's committee structures and the decision-making procedures associated with those committees. As in most legislatures, legislative proposals are scrutinized in parliamentary committees before they are discussed in the plenary. The relevant committee drafts a report on each legislative proposal that forms the basis for discussion in the plenary, and usually also the basis for the EP's opinion. Committee chairmen play an important leadership role in the EP, along with the president and vice presidents of the EP, and the leaders of the parliamentary party groups. In addition, for each legislative proposal, a committee member is given the role of *rapporteur*; the *rapporteur* drafts the committee report, leads discussions in the plenary and, when necessary, takes the lead in representing the EP in negotiations with the Council.

The committee structure empowers the EP by allowing MEPs to specialize in the policy areas of the committees of which they are members (Gilligan and Krehbiel 1989; 1990). Such specialization strengthens the EP's capacity to participate effectively in the decision-making process. Many legislative proposals are quite technical, which means that MEPs require a significant amount of subject area expertise to identify the implications of those proposals. Without the committee system's division of labour, most parliamentarians would be poorly informed about the political consequences of legislative proposals. The committee structure therefore strengthens the power of the EP relative to the Council.

As well as strengthening the power of the EP as a whole, the committee system privileges certain parliamentarians over others. For any given legislative proposal, committee members have more information about the available policy alternatives and their consequences than parliamentarians who are not committee members. If the interests of committee members and non-members differ, then committee members could use this information advantage to exert influence over parliamentary decision-making. This situation can be seen from the perspective of the classic principal-agent problem. Here, the parliamentarians who are not committee

members are the principals who delegate some power to committee members who are their agents in order to gain the benefits of a legislature with policy area specialization. A principal-agent problem occurs when the interests of principals and agents diverge, which raises the danger that outcomes are biased toward the interests of agents. Here, the relevant outcome is the policy position of the EP as a whole. The principal-agent problem suggests that the EP's policy positions are biased toward the interests of committee members or perhaps even key parliamentarians within those committees.

The distributional theory posits that groups of parliamentarians strike grand bargains with each other across the jurisdictions of different committees. Parliamentarians who attach less importance to a particular policy area cede legislative control over that area to other parliamentarians. These other parliamentarians become members of the relevant committee. In return for ceding policy control over less salient areas, parliamentarians receive control over other policy areas that are more important to them. The distributional theory implies that committees are generally composed of parliamentarians with relatively extreme preferences regarding the policy areas over which their committees have jurisdictions.

The evidence does not support the distributional theory's expectation regarding the composition of EP committees. Detailed empirical research shows that committees are broadly representative of the EP as a whole (McElroy 2006). The composition of the EP's legislative committees reflects the composition of the EP as a whole in terms of the party affiliations and nationalities of parliamentarians. Committee members obviously have more expertise and experience in the policy areas of their committees than non-committee members, but there is little evidence of bias in terms of committee members' interests.

Representative committees do not, however, eliminate the principal-agent problem entirely. In practice, committee members do not have equal influence on any given legislative proposal. As mentioned above, for each legislative proposal one committee member is appointed as the EP's *rapporteur*. The *rapporteur* plays a prominent leadership role regarding most legislative proposals (Hausemer, 2006; Farrell and Héritier, 2004; Benedetto, 2005; Mamadouh and Raunio, 2003). The *rapporteur* drafts the committee's report on the proposal and also leads discussions in the plenary. If *rapporteurs* do indeed wield more influence than other committee

members and parliamentarians, they may use this influence to bias the EP's collective policy positions toward their own interests. Therefore, the EP's policy positions may be biased despite the fact that committees are representative of the plenary.

The importance of *rapporteurships* is reflected in the attention given to the allocation of committee reports. EP party groups compete vigorously for important reports. At the start of each legislative term, auctions are held for the right to select *rapporteurs* for the legislative proposals that will be handled in the coming term (Corbett *et al.* 2003: 117). The party groups are the bidders in these auctions and they receive a quota of points, determined by the size of the groups, with which they can bid. Political scientists have also devoted significant attention to the allocation of reports among committee members in the EP (e.g. Kaeding 2004; Benedetto 2005; Hausemer 2006; Hoyland 2006). The research confirms that most reports go to the large party groups, which have relatively centrist positions. Moreover, since the large party groups are given the highest quota of points for the bidding process, they can nominate *rapporteurs* on the most important legislative proposals (Hausemer 2006). Hoyland's (2006) study of report allocation finds that MEPs who are affiliated with governing parties at the national level receive significantly more reports than MEPs from opposition parties. This suggests that party leaders who nominate *rapporteurs* look ahead to the possible negotiations between the EP and the Council. *Rapporteurs* who are well connected with governing parties at the national level may be in a better position to negotiate with Council members.

These studies identify the causes behind the allocation of committee reports. They do not, however, provide evidence regarding the effects of report allocation. Some of the following analyses assess these effects, by examining the possible impact *rapporteurs* have on the EP's policy positions. In doing so, the analyses investigate two possible interests that might motivate *rapporteurs*: the interests of the party groups with which they are affiliated and the interests of their home member states.

5.2 Expectations regarding the European Parliament's policy positions

According to the informational theory, the legislature's collective position is an unbiased representation of the policy positions of actors within the legislature. The informational theory does not ignore the existence of committee structures and

internal decision-making procedures. However, it posits that the main effect of legislative committees is to empower the plenary by providing ordinary parliamentarians with information about pending legislation (e.g. Gilligan and Krehbiel, 1989; 1990; Krehbiel, 1991). Committee selection procedures and monitoring mechanisms ensure that potential principal-agent problems do not develop into real political sores.

Some of the key implications of the informational theory hold in the EP. First, as mentioned above, research shows that the composition of committees is 'highly representative of the EP as a whole, in terms of both party and policy representation' (McElory 2006: 5). Moreover, party groups have put in place a 'shadowing' procedure for monitoring the activities of *rapporteurs* from other party groups, which ensures that their actions are highly constrained. *Rapporteurs* are shadowed by MEPs from the party groups that did not receive the committee report. This practice is designed to ensure that the preparatory work carried out by the actual *rapporteurs* is not biased in any way. In addition, the decision-making rules within committees and within the EP plenary minimize the danger posed by powerful *rapporteurs*. The committee is under no obligation to accept the *rapporteur*'s draft report, which may be amended and must receive the support of a majority of the committee before it is passed to the plenary. Furthermore, the committee's report may be amended in the plenary. Amendments may be proposed by party groups or groups of MEPs. From the perspective of the informational theory, the ease with which *rapporteurs* and committees' reports can be amended minimizes *rapporteurs'* opportunities to bias the EP's policy positions toward their interests.

If the information theory of legislative decision-making posits that the EP's collective policy position is unbiased by the committee structure, where should this unbiased position be located? An appropriate answer is that the EP's collective policy position should be the position of the median parliamentarian. The median voter theorem is one of the simplest and most powerful concepts in political science (Hotelling 1929; Bowen 1943; Black 1958). The theorem proves that if certain conditions hold, the outcome of unbiased decision-making in any legislature or other body that must decide by simple majority vote will be the position of the median voter within that legislature. The medium voter theorem assumes that the possible decision outcomes can be represented on a single dimension, that voters have single-peaked

preference functions, and that they cast their votes in line with their preferences. Each pair of outcomes is pitted against each other. The winner is the decision outcome that defeats all others. The theorem proves that the position of the median voter is always the winner under these conditions. To identify the position of the median parliamentarian, imagine lining up MEPs in a row corresponding to their positions on a controversial issue. The median voter theorem assumed there are an odd number of voters. The EP, however, has an even number of MEPs. The position of the median MEP is the position of the 366th or 367th of 732 MEPs; in other words the MEP who is exactly in the middle, the 50th percentile of all MEPs. Specifically, the informational theory implies that:

H1: The EP's policy position is the position of the median legislator.

In reality, MEPs' positions are clustered into groups, mainly party groups and sometimes also national groups. Therefore, to identify the location of the median MEP, the analysis must identify the positions of the party groups, where relevant national groups, and the numbers of seats held by these groups of MEPs.

One of the conditions that must be present for the median voter theorem to hold is that the political space is unidimensional. If the political space is multidimensional, the median voter theorem does not apply. Indeed, it has been proven that there is no equilibrium outcome if decision outcomes must be reached on two or more controversial dimensions at the same time (Plott 1967; McKelvey 1976; Schofield 1978). This is because for any point in a multidimensional policy space, there is always another point that could receive more political support. There is, therefore, an ever-present danger of policy instability in multidimensional policy spaces, in which new policy proposals are constantly formulated in order to defeat policies that have just been approved. Since many of the controversial legislative proposals selected for this study raised several controversial issues, it could be argued that the relevant policy spaces are multidimensional and, therefore, that the median voter theorem does not apply. It is only if we consider the controversial issues as separate dimensions that the median voter theorem applies. In practice, the EP also follows this convention in that the EP votes on separate amendments to the legislative

proposal in a sequence, and each amendment typically refers to a specific article of the bill.

If the committee system and associated procedures bias the EP's policy positions toward the interests of privileged parliamentarians, other factors may explain variation in the EP's positions. Although constrained by shadow *rapporteurs* and open amendment procedures, *rapporteurs* are possible agents of bias. Under what conditions would we expect this bias to occur? The main source of *rapporteurs'* potential influence over the EP's policy positions is their specialized information regarding the legislative proposal with which they are charged. Other parliamentarians would bear high costs in terms time and energy if they were to acquire this information themselves. Consequently, a *rapporteur*'s information advantage over other parliamentarians depends on other parliamentarians' willingness to invest the time and effort in obtaining information on the proposal for which the *rapporteur* is responsible. This willingness is likely to depend on the impact that the EP has on the decision outcomes on the proposal in question. Scully (1997) provides evidence that MEPs participate more when the EP has more policy influence. Since the EP has more influence on decision outcomes under the co-decision procedure than under the consultation procedure, MEPs are more active when the co-decision procedure applies. Consequently, *rapporteurs* may have more influence on the EP's policy positions when the consultation procedure applies than when the co-decision procedure applies.

There is reason to expect *rapporteurs* to have considerable influence on the EP's policy positions when there are early agreements under the co-decision procedure. *Rapporteurs'* influence in this context derives from their role in negotiations with the Council. Negotiations between the institutions take place at various stages of the co-decision procedure. Informal meetings, known as 'trialogues', can take place from an early stage. These are attended by representatives of the EP, Council, and Commission. The *rapporteur* is always a member of the parliamentary delegation, while other key members of the EP committee (such as shadow *rapporteurs*, party group coordinators and the Committee Chair) are involved to varying degrees. The parliamentary delegation presents the EP's policy position that has not been officially approved by the EP in a plenary vote. Only after an agreement has been reached between the EP and Council is the agreement put to a formal vote in

the EP. In the informal meetings that lead to early agreements between the two chambers, *rapporteurs* are believed to have 'quite extraordinary latitude to set the agenda of negotiations' (Farrell and Héritier, 2004: 1200). Given that *rapporteurs* are not constrained by plenary-approved EP opinions when there are early agreements, they may have more autonomy in defining the EP's policy positions that are presented to the other institutions. This suggests that *rapporteurs'* influence on the EP's policy positions is particularly strong where there are such early agreements.

Several other factors might account for variation in *rapporteurs'* influence on the EP's policy positions. These refer to the resources of *rapporteurs* themselves. Hoyland (2006) argues that *rapporteurs* who are affiliated with governing parties at the national level may be in a better position to obtain information on member states' preferences than *rapporteurs* who are affiliated with opposition parties at the national level. If this perception is widespread among MEPs, *rapporteurs* who are affiliated with governing parties may be given more discretion to shape the EP's policy positions. *Rapporteurs* from large party groups may have a relative advantage. Some of the key informants we interviewed suggested that particular *rapporteurs* were ineffective because they came from small party groups and were, as a result, unable to garner support for their reports in the plenary. The analysis should therefore explore differences among *rapporteurs* in terms of the size of the member state with which they are affiliated.

To examine *rapporteurs'* influence on the EP's policy demands, we must identify what interests they pursue that are distinct from those of the median MEP. Once we have identified such an interest, we can turn the above expectations regarding variation in *rapporteurs'* influence into testable propositions. In the remainder of this section, we consider two candidates for interests that *rapporteurs* might pursue: the interests of their party group and the interests of their home member state. Existing research on *rapporteurs* indicates that both are relevant. Unfortunately, as will be explained below and in the analysis, the analysis is only able to test the impact of *rapporteurs'* national interests systematically. Nonetheless, for theoretical consistency, we begin by considering *rapporteurs'* party group interests.

Rapporteurs' party group interests are the first interests that they may pursue if given the opportunity to do so. Competition in the EP is structured around party groups; as mentioned earlier, MEPs from different party groups differ in terms of

their ideological positions and voting behaviour. To the extent that there are divisive votes in the EP, MEPs tend to divide along party group lines more than national lines. In addition, MEPs depend on their party group for the development of their career within the EP (Hix 2005: 90; McElroy 2008). Since party groups nominate MEPs as *rapporteurs*, MEPs who do not perform to the satisfaction of their party group leaders are unlikely to be given important *rapporteurships* in the future. Therefore, *rapporteurs* have incentives from both their political beliefs and career ambitions to promote their party groups' interests when they have the opportunity to influence the EP's policy positions. This reasoning leads to the following proposition:

H2: When the rapporteur *has influence, the EP's policy position is biased toward the position of the* rapporteur*'s EP party group.*

This implies that the EP's collective policy position on a controversy is closer to the positions of actors (which include member states in the Council and party groups within the EP) that have similar positions to the *rapporteur*'s party group.

While theoretically interesting, this hypothesis turns out to be untestable and irrelevant in practice. For the hypothesis to be testable, there would need to be a sufficient number of cases in which the policy position of the *rapporteur*'s party group differs from the policy position of the median MEP. In practice, however, there is much collusion among the main party groups in the EP in the sense that they take the same position on controversial issues. Recall that most members of the two main party groups, the EPP and the PES, vote the same way on most roll-call votes (Hix and Noury 2009: 165). Similarly, the evidence shows that the two main groups take the same policy positions on most controversial issues. This means that for most *rapporteurs*, ensuring that the EP's collective policy position represents the median MEP is consistent with pursuing the interests of their party group.

A second possibility is that *rapporteurs* are motivated by national interests. There are three related reasons to expect national interest to be relevant. First and perhaps most fundamentally, controversial issues in legislative decision-making often divide actors on the basis of national lines, rather than party political lines. MEPs are regularly faced with controversial issues on which there is a clear national interest that is distinct from their party group interest. Second, national governments attempt to

influence their MEPs, regardless of those MEPs' party affiliations. These attempts include regular high-level meetings with their MEPs and written briefings on current issues (Corbett *et al.* 2003: 280). Pressure from MEPs' national governments tends to be much greater when MEPs are acting as *rapporteurs,* presumably because the national governments perceive *rapporteurs* to have an influential position (Corbett *et al.* 2003: 119). National parties also attempt to monitor and influence the actions of their MEPs (Raunio 2000; Whitaker 2005). Third, national considerations are relevant in the selection of *rapporteurs*. While report allocation is controlled by party groups, once a group has secured a report through the bidding process, national delegations within the groups have a say in determining which committee member gets the report (Mamadouh and Raunio, 2003; Kreppel, 2002: 202-5). Consequently, we expect that:

H3a: When the rapporteur *has influence, the EP's policy position is biased toward the position of the* rapporteur*'s home member state.*

This hypothesis implies that the EP's policy position is closer to that of another actor, the closer that other actor's position is to the position of the *rapporteur*'s home member state.

The caveat 'when the *rapporteur* has influence', or 'when *rapporteurs* have the opportunity', refers to the conditions under which *rapporteurs* are expected to wield most influence on the EP's opinions. We might, therefore, reformulate this third hypothesis as follows when considering the distinction between consultation and co-decision:

H3b: When the consultation procedure applies, the following relationship is stronger than when the co-decision procedure applies. The EP's policy position is biased toward the position of the rapporteur*'s home member state.*

Or, considering *rapporteurs'* influence when there are early agreements under the co-decision procedure, the hypothesis reads:

H3c: When there are early agreements under the co-decision procedure, the following relationship is stronger than when there are no such early agreements

under the co-decision procedure. The EP's policy position is biased toward the position of the rapporteur*'s home member state.*

The last two formulations translate the expectations about variation in *rapporteurs'* influence into testable hypotheses. The other expectations, which concern *rapporteurs'* affiliations with governing or opposition parties, large or small party groups and large or small/medium-sized member states, will be explored in a similar way. They are not, however, formulated as separate hypotheses, but treated as points to explore.

5.3 Research design

The selected legislative proposals span three legislative periods: the fourth, fifth and sixth parliaments. This enables the analysis to examine the extent to which the EP's policy positions on controversial issues vary in line with changes in the relative strength of party groups in the EP. Table 5.1 gives an overview of the party groups and their seat shares in these three legislative periods. Following the 1999 elections, the percentage of seats held by the PES declined while the percentage of seats held by the PPE increased. Table 5.1 also contains information on the positions of the main party groups on general ideological dimensions from McElroy and Benoit's (2007) expert survey held in 2003 and 2004. Given the changes in the relative strength of the party groups, the mean average ideological position of MEPs shifted to the Right on the socioeconomic Left-Right dimension after the 1999 elections. However, because the main party groups of the Left and Right are both broadly in favour of European integration, there has been little change in the average MEP's positive disposition to integration. This assessment is consistent with findings from previous research based on the analysis of party manifestos (Warntjen *et al*. 2008) and roll-call votes (Hix *et al*. 2007; Hix and Noury 2009). This might suggest that the EP's policy positions should have shifted to the Right after the 1999 elections. However, neither the Social Democrats nor the Christian Democrats controlled a majority of seats. It appears that the liberal ELDR, which renamed itself the ALDE in 1999, controlled the median legislator in all three periods. Therefore, on the basis of the general ideological

position of the median MEP, the EP's policy positions should be stable throughout this period.

<Table 5.1 about here>

For sixteen of the selected legislative proposals, Costello (2009) collected information on the policy positions of the main actors within the EP (see the Appendix for a list of these proposals). For each of forty controversial issues raised by these sixteen proposals, Costello interviewed experts in the EP and consulted records of plenary debates to identify the policy positions of the six main party groups. For each of the three largest groups, EPP, PES and ALDE, he also identified whether national groups of MEPs took different positions from their party groups. With this information the position of the median MEP on each controversial issue will identified. The analysis will then determine whether the EP's collective policy position was congruent with the position of the median MEP.

Consider the proposed regulation establishing a European Neighbourhood and Partnership Instrument (ENPI; COD/2004/219). The proposal was introduced by the Commission in September 2004 and signed into law in October 2006, after a single EP reading had taken place in July 2006. This legislative proposal was part of a package of proposals designed to consolidate the EU's external assistance programmes. It also introduced a set of criteria on the basis of which potential recipients of EU external aid will compete for funding. Figure 5.1 depicts two of the main controversial issues raised by this proposal on which the EP and actors within the EP had policy positions. The first issue was an inter-institutional disagreement about the extent to which the EP should be involved in the implementation of the ENPI. All six party groups called for extensive EP involvement in the implementation of the ENPI. The EP's collective policy position was clearly in line with this demand. In an EP resolution of January 2006, it called for extensive involvement of EP representatives in the implementation of the ENPI, for example in the sub-committees that would monitor the implementation of the ENPI in recipient countries.

<Figure 5.1 about here>

The second issue was deeply divisive in the Council and also resulted in several national groups of MEPs taking a different position from that of their party groups. The controversy focused on the principles by which ENPI funds should be allocated. The principles for allocating the funds would determine to a large extent whether neighbouring countries to the East or to the South would benefit most. The general expectation was that the neighbouring countries to the East would be more successful in competing on the basis of the general criteria proposed in the bill than the neighbouring countries to the South. The Southern member states, in particular France, attempted to safeguard funding for Northern Africa, where they have strong interests, by proposing to split the budget so that a large proportion would be set aside for this region. The French proposal was supported by Italy and Portugal. In addition, Spain, Greece, Cyprus and Malta also called for more weight to be given to historical allocations, which would favour Southern neighbours when allocating funds. Within the EP, the six main party groups all supported the general criteria proposed by the Commission. However, the EPP, PES and ALDE MEPs from the five Southern member states mentioned above took a different position from their party groups. These national groups within the three main parties amounted to 139 of the 732 MEPs. Therefore, the median MEP clearly supported the general criteria proposed by the Commission. Even if we assume that the Green, GUE and UEN MEPs from these five countries also supported their member states' positions, the median MEP still supported the legislative proposal. Therefore, it is unsurprising that the EP's collective policy position on this issue was the same as the Commission's legislative proposal.

The EP *rapporteur* on the ENPI proposal was Mr. Konrad Szymański, a Polish MEP affiliated with the UEN group. Mr. Szymański's national party is the *Prawo i Sprawiedliwość* (PiS), a Right-wing party that came to power in Poland in November 2005. Since Mr. Szymański's national party was in power at the time the EP formulated its policy position in its January 2006 resolution, he is coded as being affiliated with a governing party at the national level. Clearly Mr. Szymański did not face any competing pressures from the policy positions of his party group and the policy positions of the median MEP since these were the same on both issues. However, on the first issue there was a difference between the Polish position and the position of the median MEP (also the UEN position). Clearly, the EP's collective

position reflects the position of the median MEP on both issues. In this particular case, the key informants we interviewed did not indicate that the *rapporteur* had any discernable influence on either the EP's collective policy position or the decision outcome. Several key informants were of the opinion that the small size of his EP party group and his rather extreme ideological position made it difficult for him to garner support among a broad group of MEPs.

5.4 Analysis of the European Parliament's policy positions

The first part of this section compares the EP's collective policy positions across the three legislative periods. This analysis examines whether the EP's policy positions changed on issues that are thematically similar. The second part identifies the extent to which the EP's policy positions reflect the position of the median MEP. This analysis focuses on the forty issues for which we have information on the positions of actors in the EP. The third part of this section examines the influence of *rapporteurs* on the EP's policy positions. In particular, the analysis identifies conditions under which the influence of *rapporteurs*' nationalities varies.

The EP's policy positions in the fourth, fifth and sixth legislatures

Figure 5.2 summarizes the EP's collective policy positions on three groups of thematically similar issues. The main finding is that there is little variation in the EP's policy positions across the three legislatures. The first group of issues involve choices between different levels of harmonization. An example of this type of issue was given in Chapter 3 (Figure 3.1): the issue involving the abolition of the opt-out from the 48 hour working week in the proposed working time directive. The EP took a pro-harmonization position on that issue by calling for the abolition of the opt-out. The EP has consistently taken pro-harmonization positions throughout the three legislatures. Chapter 3 already identified this by summarizing the EP's positions on all harmonization issues (Figure 3.4); Figure 5.2 adds that this general stance did not vary significantly among the three legislative periods. This lack of variation is consistent with the observation that the main party groups are broadly in favour of European harmonization. Therefore, variation in the percentages of seats held by

these groups does not result in sharp shifts in the EP's policy positions on controversies about the level of harmonization.

<Figure 5.2 about here>

The EP's average policy positions on issues regarding the strength of regulation also do not vary significantly among the three legislative periods. The EP's policy positions have favoured relatively strong regulation throughout the three terms. The working time directive mentioned above is an example of an issue on which the sixth legislature favoured relatively strong regulation of the free market, as well as harmonization. The directive on emission allowances in the aviation sector (Figure 4.1) is another example in which the sixth legislature favoured strong regulation, this time by calling for restrictions in the quantity of emission allowances. This lack of variation in the EP's positions is consistent with the observation that the position of the median MEP has remained stable throughout the three legislative periods, despite fluctuations in support for the various party groups. Despite the increase in the EPP's seat share and the decrease in the PES's seat share after the 1999 elections, neither of the two main groups controlled a majority of parliamentary seats. Experts on EP party groups generally consider the liberal group, ALDE, to be located between the EPP and the PES on the main Left-Right dimension (McElroy and Benoit 2007; Table 5.1). If we assume that the EPP and the PES can rely on the support of the smaller groups to their Right and Left respectively, each had to rely on the support of the liberal ALDE group to form a majority. We should also consider experts' judgements regarding the party groups' general stances on deregulation (ibid.), since these are perhaps more relevant to the issues regarding the strength of regulation. The experts generally place the ALDE to the Right of the EPP, indicating that the liberals favour more deregulation than the Christian Democrats (ibid.). If this is the case, then it could be argued that the EPP has controlled the median legislator throughout this period. So whether we consider party groups' locations on the general Left-Right dimension or the deregulation dimension, the position of the median MEP remained stable throughout the three periods. This explains the lack of marked differences in the EP's collective policy positions among the three legislative periods.

An exception to this stability is the difference between the fifth and sixth legislatures in the EP's collective policy positions on controversies regarding the level of financial subsidies. The evidence suggests that this shift is a consequence of the positions of the new member states' positions, rather than an effect of the party political composition of the EP. Figure 5.2 shows that the EP's collective policy positions differed significantly between the fifth and sixth legislatures. Whereas in the fifth legislature the EP was typically among the actors calling for relatively high levels of subsidy, in the sixth legislature the EP's positions were typically far more conservative in this respect. The legislative proposal to reform the sugar sector described in Chapter 2 (Figure 2.1) is an example of an issue on which the sixth EP legislature took a moderate position on the level of a subsidy. It called for a somewhat higher level of subsidy than proposed by the Commission, but substantially less than many of the new member states. Similarly, on legislative proposals regarding the European Regional Development Fund (COD/2004/167), also included in the selection, there were controversies in which new member states called for higher subsidies, while the EP's collective position supported lower levels of subsidies.

The median legislator on forty controversial issues

Although there are generally small differences in the EP's average policy positions across the three legislative periods, the EP's positions do vary considerably among different legislative proposals and controversial issues. First, the analysis examines the extent to which the EP's collective policy positions correspond to the positions of the median MEP. Answering this question requires detailed information on the policy positions of actors within the EP, which we have for forty controversial issues raised by sixteen legislative proposals.

Figure 5.3 summarizes the policy positions of the six EP party groups on thematically similar issues. The first set consists of twenty-two issues about choices between different levels of harmonization. There are only small differences among the EP party groups on these issues; the main party groups generally take pro-harmonization positions. The controversy regarding the opt-out in the working time directive illustrates this point. Although there were many dissenting national groups within the EPP and ALDE, both these party groups, as well as the PES, the GUE and

the Greens, favoured the abolition of the opt-out. Only the UEN, the small Eurosceptic group, called for the opt-out to be retained.

<Figure 5.3 about here>

The second set of issues referred to in Figure 5.3 consists of sixteen issues about the strength of regulation or the level of subsidies. Regulation and subsidy issues were combined with each other, because there are few cases. There are somewhat larger differences among the party groups on these issues compared to the harmonization issues. Predictably, the liberal ALDE generally favours lighter regulation and lower subsidies than the other party groups. On average, the EPP favours lighter regulation and lower subsidies than the PES.

The controversy concerning the size of the price cut in the sugar sector reform illustrates the typical differences among party groups on issues about the strength of regulation or level of subsidies (Figure 2.1). Although MEPs divided on the basis of national lines within the main party groups, each party group formulated a policy position. These positions broadly correspond to the party groups' positions on the deregulation dimension. The liberal ALDE group called for the largest cuts to the intervention price by calling for a cut of 36 per cent. The EPP called for a somewhat smaller cut of 30 per cent, and this position became the position of the EP. The PES, UEN, Greens and GUE called for a cut of less than 30 per cent. The far-Left GUE opposed any cut whatsoever; its position was therefore in line with that of Poland. Only the UEN's position is surprising. Although the UEN is generally in favour of deregulation, it did not support a large reduction in the subsidy for sugar production.

Despite party groups' differences, they agree with each other on a large proportion of specific controversies. Such agreement is evident in the groups' positions on the ENPI controversies (Figure 5.1). Moreover, the EPP and the PES had the same policy position on twenty-six (65 per cent) of the forty controversial issues on which we have detailed information. This level of agreement is very similar to the percentage of roll-call votes in which the majority of MEPs from the two main party groups vote in the same way (Hix and Noury 2009).

To identify the position of the median MEP on each controversial issue, we also need to identify whether national groups of MEPs took policy positions that

differed from those of their party groups. Costello (2009) identified the positions of national groups of MEPs in the three largest party groups, the EPP, PES and ALDE. National groups of MEPs are evident in most of the issues. On twenty-six of the forty issues, one or more national groups of EPP MEPs took different positions to that of their party group. The same is true of nineteen of the forty issues for PES MEPs. The liberal ALDE party group had a clearly identifiable position on thirty-eight of the forty issues. On twenty-two of these thirty-eight issues, there was at least one dissenting national group of ALDE MEPs. Figure 5.4 depicts the frequency of dissent by groups of national MEPs within the three party groups. The UK MEPs within the EPP were among the most frequent dissenters from their party group's positions. The UK Conservatives subsequently broke away from the EPP to form a new party group with the Czech conservatives and others at the start of the seventh parliamentary term in 2009.

<Figure 5.4 about here>

National groups of MEPs tend to dissent from their party groups' positions when their home member states and party groups' policy positions differ, and when important national interests are at stake. The controversy regarding the principles for allocating ENPI funds to the EU's neighbours to the East and South illustrates this point (Figure 5.1). Another example is the sugar sector reform, in which Polish MEPs and MEPs from other sugar-producing countries took policy positions that clearly differed from their party groups' positions. These MEPs favoured higher subsidies for sugar production than their EP party groups. Regarding the proposed working time directive, the controversy surrounding the abolition of the opt-out was a nationally divisive issue for both the EPP and the ALDE. Within the EPP, the British, German and Czech MEPs, among others, took a clearly different position from their party group by calling for the opt-out to be retained. The ALDE group was similarly divided, but less so than the EPP.

With information on the policy positions of party groups and dissenting national groups of MEPs, we can pinpoint the position of the median MEP on each of the forty controversial issues. This brings us to the most important finding of this chapter. The EP's collective policy position is generally the same as the median

MEPs' policy position. On thirty-two of the forty issues (80 per cent) the EP's collective policy position is exactly the same as the median MEP's policy position. This is the case for both of the ENPI issues depicted in Figure 5.1. On a further three issues, the EP's position is only 10 points away from the median MEP's position on the 0-100 policy scales. The number of national factions within the three largest groups is considerably larger when the EP's collective policy position does not match the position of the median MEP.[2] This suggests that the presence of national factions distorts the transmission of the median MEP's position into the EP's collective position.

Given the earlier discussion of *rapporteurs'* influence, it would be relevant to examine whether the EP's collective policy positions are biased toward the positions of *rapporteurs'* party groups. It is, however, impossible to examine the effect of the policy positions of *rapporteurs'* party groups independently of the positions of the median MEP. Due to the fact that there is a large amount of agreement among the main party groups, on any given issues the position of the *rapporteur'*s party group is usually the same as the position of the median MEP. Indeed, this is the case for thirty-two of the forty controversial issues. This correspondence also means that the EP's position is usually the same as the position of the *rapporteur'*s party group; on thirty of the forty issues it is. This is most likely due to the fact that the *rapporteur'*s party group generally takes the same position as the median MEP.

The theoretical expectations also referred to the policy positions of *rapporteurs'* home member states. At least in the forty issues on which we have detailed information, it appears that the policy positions of *rapporteurs'* home states did not have a significant effect on the EP's collective positions. Unlike the policy positions of *rapporteurs'* party groups, the positions of *rapporteurs'* home member states are seldom the same as the median MEP; on only nine of the forty issues are these positions the same. On only eight of the forty issues did the EP's positions match the positions of the *rapporteurs'* home member states. Six of these eight cases

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[2] On the thirty-two issues on which the EP's policy position matches the position of the median MEP, the total number of national factions in the largest three groups averages 7.88 (s.d. 10.47). On the eight issues on which the EP's positions differ from the median MEP, the total number of factions in the three largest groups averages 17.88 (s.d. 22.33).

can be explained by the fact that the positions of the *rapporteurs'* home states matched the positions of the median MEP.

The impact of rapporteurs *on the EP's policy positions*

Although the results of the above analyses imply that the impact of *rapporteurs'* nationalities is negligible, there is reason to investigate this impact further. The above analyses were based on a relatively small number of cases compared to the larger dataset; only forty issues from sixteen legislative proposals. Moreover, most of the cases examined (fourteen of the sixteen legislative proposals and thirty-seven of the forty issues) were subject to the co-decision procedure. The theoretical expectation is that *rapporteurs'* influence is greater when the consultation procedure applies, due to the fact that other MEPs monitor *rapporteurs'* activities less stringently when the EP has less influence over decision outcomes (Scully 1997).

    We therefore proceed by examining the impact of the policy positions of *rapporteurs'* home member states on the EP's collective policy positions with all of the cases in the larger dataset. These analyses examine the impact of *rapporteurs'* nationalities under different conditions, including different decision-making procedures. The unit of analysis is now the distance between the EP's collective policy position and the position of each member state. If the *rapporteur*'s nationality indeed affects the EP's position, then the EP's position will be closer to the position of a member state (the dependent variable), the shorter the distance between the *rapporteur*'s home member state and the position of that member state. A limitation of this analysis of the larger dataset is that it does not control for the policy positions of the median MEP or the *rapporteur*'s party group. However, we know from the previous analysis of the forty issues that the position of the *rapporteurs'* home state is not often the position of the median MEP, while the positions of the *rapporteurs'* party group and the median MEP often match. This means that although the median MEP is an important explanatory variable, omitting it is unlikely to bias the estimated effect of the *rapporteur*'s nationality on the EP's position.[3]

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[3] The unit of analysis in the following is the EP-member state dyad, and the dependent variable is the distance between the EP's policy position and the policy position of the member state referred to in the dyad. The forty issues on which we have detailed information

Table 5.2 contains a set of statistical models that examine the distance between the EP's collective position and the position of each member state for all issues in the dataset on which the EP had a policy position. The unit of analysis is the EP-member state dyad on each issue, and the dependent variable is the distance between the positions of the EP and the member state in the dyad. The EP took a position on 283 of the 331 issues in the main dataset. The EP was more likely to take a position if an issue was subject to co-decision. The EP had policy positions on 109 of the 148 issues subject to consultation (74 per cent), and on 174 of the 183 issues subject to co-decision (95 per cent). Of course, not all member states, including the *rapporteurs'* home states, took positions on all issues. As a result, we are left with 4,823 EP-member state dyads with information on the distance between the EP and member states' policy positions, as well as the policy position of *rapporteurs'* home member states.

<Table 5.2 about here>

The main finding from the models presented in Table 5.2 is that the EP's collective policy position is affected by the *rapporteur*'s nationality, and that this overall effect varies significantly under different conditions. Consider first the highly significant coefficient associated with the variable '*Rapporteur*'s nationality' in Model 1: .16. This indicates that controlling for other variables, the distance between member state *x*'s (i.e. any given member state's) policy position and policy position of the home member state of the *rapporteur* is positively associated with the distance between state *x*'s position and the EP's position. For every one-unit increase in the distance between state *x*'s position and the position of the *rapporteur*'s home state, the distance between state *x* and the EP's positions increases by .16. Since the policy

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on EP actors' positions were decided in the EU-25, which means there are potentially 1,000 EP-member state dyads on these forty issues. On some issues, some member states, including the *rapporteurs'* home member states, did not have policy positions; they were indifferent or unable to formulate a policy position. This leaves 854 EP-member state dyads in this subset of issues. The correlation between the variable 'Distance between the median MEP's position and the position of the member state in the dyad' and the variable 'Distance between the *rapporteur*'s home state and the member state in the dyad' is weak: r=-.07. Therefore, excluding the median MEP variable is unlikely to bias the estimated effect of the *rapporteur*'s nationality.

scales range from 0 to 100, the distances between state *x*'s positions and the positions of the *rapporteurs'* home states can (and in fact do) vary from 0 to 100. Therefore, moving across the full range of the variable '*Rapporteur*'s nationality' represents an effect of 16 points on the 0-100 policy scales. Such a distance can represent a politically important nuance between different policy positions.

The effect of the *rapporteur*'s nationality varies significantly under different conditions, sometimes in unexpected ways. Model 2 in Table 5.2 contains an interaction between the variable '*Rapporteur*'s nationality' and two indicator variables that distinguish between different procedures. The first of these indicates whether the issue was decided on the basis of the consultation procedure while the second indicates whether the issue was subject to an early agreement between the EP and Council. This means that the main effect of the variable '*Rapporteur*'s nationality', which is .13, refers to the effect of the *rapporteur*'s nationality on issues decided by co-decision, but that did not involve early agreements between the EP and Council. Hypothesis 3b above posits that the effect of *rapporteurs'* nationalities is stronger under the consultation procedure. Indeed, the interaction between the variable '*Rapporteur*'s nationality' and 'Consultation' is positive and significant (b=.15). This means that the estimated effect of the variable '*Rapporteur*'s nationality' is .28 (i.e.: .13+.15) on issues subject to the consultation procedure. Contrary to Hypothesis 3b, the interaction between the variable '*Rapporteur*'s nationality' and 'Early agreement' is negative and significant. When there is an early agreement under the co-decision procedure, the effect of the variable '*Rapporteur*'s nationality' is 0 (i.e. .13 +(-.13)). Table 5.4 summarizes the effects of the *rapporteur*'s nationality under different conditions, along with the associated levels of significance.

The theoretical discussion suggested that *rapporteurs* who were affiliated with governing parties at the national level might have more influence than *rapporteurs* who were affiliated with opposition parties at the national level. To test this expectation, Model 3 in Table 5.2 contains an interaction between the variables '*Rapporteur*'s nationality' and 'National governing party *rapporteur*'. The results indicate that even if *rapporteurs* are affiliated with opposition parties at the national level, their nationalities affect the EP's collective policy positions. In particular, the EP's policy positions are biased toward the positions of their home states. In line with

the expectation, if *rapporteurs* are affiliated with governing parties, the effect of their nationalities is significantly larger.

I also speculated that there may be a difference between *rapporteurs* from large states and those from small or medium-sized states. The tentative expectation was that *rapporteurs* from large states might have more influence on the EP's policy positions. The opposite appears to be the case. Model 4 of Table 5.2 contains an interaction between the variables '*Rapporteur*'s nationality' and '*Rapporteur* from large member state'. This latter variable is coded as one for *rapporteurs* from the four largest member states and zero otherwise. The results indicate that when *rapporteurs* are from small or medium-sized states, their nationalities exert a strong and significant effect on the EP's policy positions. The EP's positions are significantly biased toward their states' positions. However, when *rapporteurs* are from large states, there appears to be no effect whatsoever.

Finally, I speculated that *rapporteurs* from one of the two main party groups might exert more influence on the EP's policy positions than *rapporteurs* from one of the smaller groups. Some of the key informants believed this to be the case. While the present analysis only tests one implication of this belief, there is no evidence to support it. In fact, the evidence points in the opposite direction. *Rapporteurs* from the large party groups have least influence on the EP's collective policy positions; when the *rapporteur* is from a large party group, the EP's policy position is least biased toward the position of the *rapporteur*'s home state. Model 5a in Table 5.2 produces this result with a dichotomous variable that indicates whether or not the *rapporteur* was from one of the two largest groups. The model in Table 5.3, labelled Model 5b, elaborates on Model 5a by distinguishing between five party groups. The UEN had to be dropped from the analysis because there was a UEN *rapporteur* on only two of the issues. The results of the model in Table 5.3, which are summarized along with the other conditions in Table 5.4, indicate that there is least national bias under EPP *rapporteurs*. Nonetheless, even when there is an EPP *rapporteur*, on average the EP's collective policy position is still significantly biased toward the position of the *rapporteur*'s home state. The bias toward the position of the *rapporteur*'s home state is largest when the *rapporteur* is affiliated with the GUE.

<Table 5.3 about here>

<Table 5.4 about here>

5.5 Conclusions

The most important finding from this chapter is that the EP's policy positions are generally in line with the policy positions of the median MEP. The median voter theorem gives a simple and powerful prediction of the decision outcome in a body that must decide by simple majority voting. This finding supports the informational theory of legislatures. It is also good news for the legitimacy of the EP's internal decision-making process. McDonald and Budge (2005) developed an extensive and convincing argument that the position of the median voter has the unique claim to be the democratically justifiable decision outcome. According to this argument, if a legislature's decision-making processes are unbiased, its collective positions should reflect the preferences of the median parliamentarian. Therefore, the fact that the EP's policy positions reflect the positions of median MEPs implies that its decision-making processes are generally unbiased.

The accuracy with which the EP's collective positions reflect the positions of the median MEP reflects the broad agreement that often exists among parliamentarians of different party groups and nations. The location of the median MEP on any given controversy is defined by the positions of the EP party groups and any national groups of MEPs that break away from their party groups. National groups are relevant when controversies affect vital national interests. The median MEP generally favours harmonization and strong regulation of free markets. Regarding harmonization issues, there is little variation in the main party groups' policy positions. Regarding issues that concern the strength of regulation, differences among party groups' positions to some extent reflect the ideological differences among them. Nonetheless, on most issues the main party groups have the same policy positions, just as they often vote in the same way.

The analyses also revealed that *rapporteurs* influence the EP's collective policy positions under certain conditions. Some of the conditions under which *rapporteurs* matter most minimize the practical relevance of *rapporteurs'* influence. For instance, *rapporteurs'* influence is more marked under the consultation procedure than under the co-decision procedure. Although the EP's influence is not negligible

under the consultation procedure, it is obviously less important there. Moreover, the consultation procedure has become less common with the Lisbon Treaty rules. In addition, *rapporteurs* from large party groups and large member states bias the EP's opinions least. Future research might investigate the reasons for this. It may be that smaller party groups have weaker party discipline than large groups. *Rapporteurs* from small states may be under more pressure from their national governments than *rapporteurs* from large states; small states must use all available informal channels of influence open to them, since they cannot rely on a large number of votes in the Council. Since MEPs from larger party groups and member states receive more *rapporteurships*, these conditioning effects minimize the bias caused by *rapporteurs*.

The findings indicate that *rapporteurs* do not bias the EP' collective policy positions when there are early agreements between the EP and the Council under the co-decision procedure. Since such early agreements are becoming more common, the lack of a *rapporteur* effect in early agreements also minimizes the practical relevance of biases caused by the *rapporteur*. In other respects, *rapporteurs* may have more influence in early agreements. Farrell and Héritier's conclude that *rapporteurs* have 'quite extraordinary latitude to set the agenda of negotiations' (2004: 1200). However, Farrell and Héritier's assessment refers to *rapporteurs'* impact on the outcomes of negotiations with the Council, rather than *rapporteurs'* impact on the EP's policy demands. It is possible that *rapporteurs* affect bargaining outcomes in early agreements without noticeably biasing the EP's demands on the main controversies resolved in those agreements.

To the extent that *rapporteurs* bias the EP's collective policy positions, this bias reflects *rapporteurs'* nationalities, not their party group affiliations. There is surprising because previous studies demonstrated the importance of EP party groups in structuring EP politics (e.g. Hix *et al*. 2007; Noury 2002). Two points are worth noting in this regard. First, even if party group affiliations are generally better predictors of MEPs' opinions and behaviour than national affiliations, national affiliations are far from irrelevant. On most of the controversies examined here, at least some national groups of MEPs took policy positions that differed from those of their party groups. Second, the centripetal nature of EP politics minimizes the bias caused by *rapporteurs'* party groups. While *rapporteurs'* home states usually take positions that differ from the positions of the median MEP, *rapporteurs'* party groups

rarely do so. Consequently, *rapporteurs* usually do not face competing pressures from their party groups' positions and their responsibility for assisting the EP in formulating collective policy positions that fairly reflect the views of all MEPs.

Chapter 6

Member states' policy positions

6.1 Member states' policy preferences and positions

This chapter explains variation in member states' policy positions. In Chapter 2 (Section 2.5) I pointed out that states' policy positions are conceptually distinct from their policy preferences. Policy positions, as defined and measured in the present study, are the policies that state representatives support at the outset of the negotiations; policy positions are therefore overt behaviour. By contrast, preferences are hidden and may or may not correspond to behavioural expressions. When explaining variation in states' policy positions, this chapter's point of departure of is the proposition that these positions reflect states' underlying preferences, which are defined by their national economic and political attributes. This point of departure agrees with some of the core assumptions of liberal international relations theory: in particular the core assumption that '[s]tates… represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposefully in world politics', and that 'what states want is the primary determinant of what they do' (Moravcsik 1997: 518, 521). Similarly, Achen also suggests that states' preferences are readily observable in their policy positions: 'An actor's "most preferred point" is a clear idea and relatively easy to measure' (2006a: 121).

The proposition that states' policy positions reflect underlying economic and political attributes is challengeable, even within the framework of liberal international relations theory. Another core assumption of liberal international relations theory is that 'the configuration of interdependent state preferences determines state behavior' (Moravcsik 1997: 520). This means that 'the expected behavior of any single state… reflect[s] not simply its own preferences, but the configuration of preferences of *all* states linked by patterns of significant policy interdependence' (ibid. 523). EU member states certainly are linked to each other in 'patterns of significant policy interdependence'. Research on policy networks among member states concurs that state officials often attempt to coordinate their policy positions with officials in other states (Naurin and Lindahl 2008). This may have the effect of blurring the impact of states' economic and political attributes on their policy positions.

The present chapter's focus on the linkage between states' policy positions and domestic interests is a significant departure from traditional approaches to international relations. Moravcsik notes that this focus has been widely rejected by mainstream international relations theorists over the past fifty years (1997: 521), who have been concerned mainly with security issues. When elaborating his realist approach, Morgenthau derided 'the concern with motives and the concern with ideological preferences' as 'fallacies', because he believed states' behaviour and outcomes to be affected mainly by the international environment (1960: 5-6). Waltz's (1979) neorealism distanced states' behaviour in international relations even further from the realm of domestic interests. Neorealism was an attempt to explain international relations by referring to the constraints imposed on states by the structure of the international system. By contrast, this chapter demonstrates that domestic interests have a significant impact on states' policy positions.

The previous four chapters included illustrative cases that lend considerable plausibility to the proposition that states' policy positions reflect their underlying domestic interests. In the sugar sector reform, the main controversy was about the level of subsidy for sugar production, in the form of the size of the cut in the intervention price (Chapter 2). Member states' positions reflected the importance of sugar production within their territories, which determined how much they would suffer from the price cut. The proposed working time directive raised a controversy regarding the abolition of the opt-out from the maximum number of hours that could be worked in a week (Chapter 3). States with lower levels of labour market protection supported the opt-out. Chapter 4 gave the example of the directive on emissions allowances in the aviation sector. The new member states sought more emissions allowances in line with their interests in allowing their growing aviation industries to expand. The case of the European Neighbourhood and Partnership Instrument raised a controversy about the relative allocation of funds between Eastern and Southern neighbours (Chapter 5). There, member states' policy positions divided along the lines of their geopolitical and economic interests in North Africa relative to Eastern Europe.

The limitation of these illustrative cases is the limitation inherent in all case studies that purport to demonstrate general relationships between two or more variables, in this case domestic interests and policy positions. The cases may simply

be careful selections of information that conveniently confirm prior expectations. Even if two variables are unrelated in a population of cases, one could still find plenty of cases with high values on both variables and contrast these with cases with low values on both variables to make the argument that there is a positive relationship between the two. The proposition that states' positions reflect their domestic interests would stand on firmer ground if we could demonstrate that the relationship is present in a broad set of observations, as will be done in this chapter.

To identify the relationship between states' interests and policy positions we must move to a level of abstraction higher than that of the illustrative cases. This means that we must formulate indicators of states' interests that are applicable to a broader set of observations than those referred to in the illustrative cases. Here, we find a tension between the necessity of formulating general indicators of states' interests for comparative research and the idiosyncratic interests that often appear to define states' positions on specific controversies. The interests referred to in the illustrative cases are idiosyncratic in the sense that they refer primarily to the specific legislative proposals in question. The specificity of relevant interests is a fundamental feature of the political system that we should not lose sight of. This is what accounts for the cross-cutting cleavages described in Chapter 3, whereby states that agree on some issues disagree on other issues. The following section acknowledges this tension by formulating expectations regarding relevant state interests in thematically similar issues and specific policy sectors.

6.2 Expectations regarding member states' policy positions

The following expectations are formulated in terms of the distance between the policy positions of pairs or 'dyads' of member states on controversial issues. As will become clear in the research design section of this chapter, the focus on dyads increases the number of observations in the analysis dramatically, thereby maximizing statistical power. The expectations formulated in this section identify the main factors that define states' interests in three thematically defined groups of issues (regulation, subsidies and harmonization) and two policy areas (internal market and agriculture). These thematically defined groups of issues and policy areas cover most of the legislative proposals and controversial issues selected. After specifying the

expectations, I will identify the control variables that will also be included in the analysis.

The first set of thematically defined issues consists of controversies about the strength of regulation. The controversy regarding the level of emissions allowances is an example of an issue involving a choice between stronger regulatory outcomes (a small quantity of allowances) and free market outcomes (a large quantity of allowances that would enable the aviation market to determine the quantity of pollutants are emitted). Another example could be given from the payment services directive (see Chapter 9). One of the main controversies there concerned the level of capital requirements that banks need to have before they are allowed to enter the payment services market.

On regulatory issues, states' typically prefer to maintain their existing policies, whether they involve free markets or tight regulation. Generally, it is far more difficult for governments to enact policy changes than to accept the policy legacy of previous governments (Rose and Davies 1994). Once a decision is taken, it becomes entrenched in bureaucratic procedures. These procedures foster an inertia that is difficult for governments to challenge. Consequently, when staking out a policy position in EU negotiations, state officials often advocate the uploading of their national arrangements to the European level (Börzel 2002). An official from a permanent representation of a member state in Brussels described the typical way in which states formulate their positions during negotiations: 'member states often try to give their national laws as a "gift" to the rest of Europe by arguing that everyone should do it their way'.[1] Similarly, a case study of the EU's air pollution regime illustrates how Germany and the UK attempted to fashion EU regulations in line with their existing national arrangements (Héritier 1995: 278-9). In addition, a quantitative analysis of twelve member states' positions on six labour market directives and the overall fit of those directives with their existing national policies revealed that states disagreed significantly more with directives that had a high level of misfit with their existing policies (Thomson 2007: 1001). There are certainly numerous counter-examples in which national governments found it expedient to support EU directives that differed from their existing arrangements (e.g. Falkner *et al*. 2007: 399). These

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[1] Interview, Brussels, July, 2006.

counter-examples do not refute the general pattern, which is that states prefer EU policies that match their existing domestic arrangements. This leads to the following expectation regarding the distance between states' policy positions:

H1: Pairs of member states with legal regimes that place similar levels of control on capital and labour take similar policy positions on issues concerning choices between free market and regulatory outcomes.

The second thematically defined set of issues consists of controversies regarding subsidy levels. An example of such an issue is the disagreement on the proposed reduction in the intervention price for sugar production referred to earlier. Member states differ markedly from each other with respect to their net position in terms of the EU budget, considering their total financial contributions and receipts. On the basis of such narrow national economic interests, it could be argued that net contributors' interests lie in lowering subsidy levels while net recipients' interests lie in maintaining or increasing subsidy levels. This implies the following expectation:

H2: Pairs of member states in similar positions regarding their net EU budgetary status take similar policy positions on issues concerning subsidy levels.

The third thematically defined set of issues consists of controversies about the level of harmonization of national policies. These issues involve choices between policy alternatives that differ in terms of states' autonomy to maintain policy arrangements that differ from those of other EU members. An example of a harmonization issue is the controversy concerning the opt-out in the proposed working time directive. The most obvious domestic factor that might influence member states' positions on these issues is the general support for EU integration in the countries concerned. If governments indeed respond to public opinion in this area, then over a large number of observations, we might expect their policy positions on harmonization issues to reflect the general level of support for EU membership among the general public.

H3: Pairs of member states in which there are similar levels of support for EU membership take similar policy positions on issues concerning levels of harmonization.

Internal market and agriculture are two of the most prominently represented policy areas in the selected proposals. The analysis will consider these two policy areas separately. Controversies in the area of internal market generally concern the strength of regulation to be imposed on industry, for instance with respect to product standards. Consequently, the above reasoning regarding regulatory issues also applies to internal market issues:

H4: Pairs of member states with legal regimes that place similar levels of control on capital and labour take similar policy positions on internal market issues.

Controversies in the policy area of agriculture are often directly or indirectly concerned with subsidies for agricultural production. Agricultural expenditure constitutes a relatively large proportion of EU expenditure. Therefore, the above argument regarding the effect of states' net EU budgetary positions may also apply to agricultural issues:

H5a: Pairs of member states in similar positions regarding their net EU budgetary status take similar policy positions on agricultural issues.

Of course, not all agricultural issues concern the level of subsidies for food production. They may also concern standards that agricultural products must meet, such as EU requirements for labelling beef that were introduced after the outbreak of BSE or 'mad cow' disease. In such cases, agricultural producers may have similar interests. The will also examine the following expectation with respect to agricultural issues:

H5b: Member states with similar levels of economic interests in agriculture share similar policy positions on agricultural issues.

The variables referred to in the above expectations are the main foci of the following analyses. The analyses also take into account several other variables that may affect the congruence between member states' policy positions. Including these control variables strengthens the evidence in support of the above expectations. First, the ideological positions of political parties that control government office at the national level may be a relevant factor. It might be the case that Left-wing governments take similar positions to other Left-wing governments, and that Right-wing governments take similar positions to other Right-wing governments. Certainly, the evidence we examined in Chapter 3 suggests that this is not the case. Nonetheless, ideology does shape actors' policy positions in the European Parliament (e.g. Hix *et al.* 2007), and other researchers have noted the relevance of ideology to states' behaviour in the Council, particularly to states' voting behaviour (e.g. Hagemann 2008; Mattila 2009). It is worthwhile to revisit the possible impact of Left-Right ideology from a new perspective in this chapter.

Second, when explaining variation in the congruence between the policy positions of pairs of member states, we should consider whether that pair of states is a pair of old members, new members or a combination of old and new members. Chapter 3 showed that on a substantial minority of issues, new and old member states took distinct policy positions. Moreover, new member states' positions have on average been more cohesive than old member states' positions. This suggests that the positions of pairs of new members are closer together than the positions of pairs of old and new members.

Third, economic wealth is included as a control variable; in particular, the difference in wealth of the two countries represented in each observation is included in the analysis. Member states' interests may depend partly on their level of economic development. For instance, relatively poor states tend to receive more transfers from the EU budget, although the relationship between wealth and states' net EU budgetary position is complex (Mattila 2006; Aksoy 2010a).

Fourth, differences in population sizes may account for some of the differences between states' policy positions. Several researchers have suggested that small member states share similar interests in certain policy areas (e.g. Bunse *et al.* 2005). Small states typically have less diversified economies and by definition smaller domestic markets than large states. Therefore, size may shape states' policy

positions to some extent. It is also noteworthy that the new members, whose positions are distinct from those of the old members, are relatively small.

In addition, two of the above explanatory variables are included as control variables in certain subsets of analysis. The strength of regulation on capital and labour, referred to in Hypothesis 1, is also included as a control variable in the analysis of harmonization issues. Many of the harmonization issues are also about the desired strength of regulation. Therefore, the strength of domestic regulation is relevant when examining states' positions on harmonization issues. Public support for EU membership is the explanatory variable in the third hypothesis above, which refers to harmonization issues. Public support is also included as a control variable when examining the other types of issues, because many issues touch indirectly on the appropriate level of EU authority, even if they do not directly involve choices between different levels of harmonization.

Finally, the following analyses also include control variables that measure averages of as well as absolute differences between the countries in each pair. For example, when explaining the absolute distance between each pair of countries' policy positions on regulatory issues, we include a measure of the average strength of regulation in each pair of countries, as well as the absolute difference in regulatory strength in each pair referred to in Hypothesis 1. Controlling for the average strength of regulation allows us to examine whether countries with light regulation are more likely to agree with each other than countries with strong regulation. It is certainly conceivable that officials from countries with strong regulation agree less with each other than do officials form countries with light regulation. Countries with strong regulation are unlikely to have exactly the same rules. Therefore, when officials take positions that reflect their existing national arrangements, those from countries with strong regulations may tend to take more dissimilar positions than officials from countries with light regulation. Similarly, the following analyses also include measures of the average values of each pair of countries on the other explanatory and control variables.

6.3 Research design

The information on member states' policy positions is organized in a way that yields a large number of observations, which makes for powerful statistical analyses. The information is organized by dyads of member states. For each issue, I measure the distance between the policy positions of each pair of member states that had policy positions. For an issue on which twenty-seven member states had policy positions, there are 351 pairs of member states with which we can observe variation in the distances between states' positions. For an issue on which fifteen states had policy positions, there are 105 pairs of states. A total of 245 issues are included in the following analyses. The total number of observations included is 38,603 (Table 6.1).

Figure 6.1 depicts actors' positions on the main controversy raised by the proposed directive on the liberalization of postal services. The legislative proposal was introduced in October 2006 and adopted in February 2008. The main controversy concerned the timing of the liberalization of national postal services. This is an example of a policy in which harmonization is achieved through liberalization. On one side of the issue (position 0 on the policy scale) were those arguing that the liberalization of postal services be postponed beyond 2010. On the other side of the issue (position 100 on the policy scale) were those who favoured a speedy liberalization of the market, by the start of 2009 with no exceptions. In between these two sides, officials from some states favoured some delay in liberalization and derogations for some states. The outcome was in accordance with the EP's position, which called for a delay of liberalization until the end of 2010 and some derogations for new member states. The states calling for further postponement did not state a clear date for full liberalization, but simply that it should be later than 2010.

<Figure 6.1 about here>

Since the postal services issue was relevant to all member states, all twenty-seven countries took a position on this issue, which gives a total of 351 unique pairs of states with which to examine variation in the distance between states' positions. Each pair of states that had the same position has a value of 0 on the dependent variable: the absolute distance between states' positions. For example, the pair

Belgium-Cyprus (both position 0) and the pair Austria-Denmark (both position 60) have a value of 0 on the dependent variable. Pairs consisting of states with different position have positive values on the dependent variable. The pair Belgium-Austria has a value of 60, and the pair Austria-Estonia has the maximum value of 100.

The postal services issue illustrates the pattern we would expect to observe on the basis of Hypothesis 1; member states with dissimilar domestic regulatory regimes took different policy positions. States that did not have liberalized postal services, in particular Belgium, France and Italy, would have to introduce the most far-reaching changes to their existing regulations. These member states did not oppose liberalization in principle, but favoured postponing full liberalization. By contrast, states that had already extensively liberalized their postal services, notably Sweden, Denmark and Finland, favoured rapid liberalization across Europe. Chapter 3's analyses showed that new member states have often taken more liberal free-market positions than old member states. The postal services controversy is an exception to that general pattern, due to the fact that new member states' postal markets were not ready for full liberalization. Other interests were also motivating factors. For instance, key informants suggested that the Dutch and the Germans favoured rapid liberalization because they saw opportunities for their countries' postal service providers to expand their activities across Europe. It was suggested that the Greeks favoured postponing liberalization because they were particularly concerned about guaranteeing universal delivery to their many island territories.

The explanatory and control variables are measured as follows. Table 6.1 contains descriptive statistics for these measures. The strength of regulation is referred to in Hypotheses 1 and 4. This variable is measured by an index published by Gwartney and Lawson (2009) for the Fraser Institute, a think tank that promotes free enterprise. Gwartney and Lawson's indexes have been used in a wide range of economic and public policy research published in top peer-reviewed journals (Appendix 2 of Gwartney and Lawon 2008 gives a selection of this research; see also Hix 2008a: 22). The following analyses use Gwartney and Lawson's index titled 'Regulation of Credit, Labor and Business', which is an aggregate measure of the

freedom of credit, labour and business from strong regulation in each country.[2] The great advantage of this index for the present study is that it provides a measure of freedom from regulation that is independent of the states' positions on specific controversies.

The index of freedom from regulation takes higher values for countries that generally have lighter regulatory regimes. In 2004 this index ranged from a low of 5.6 for Greece, which has relatively strong regulations, to 7.6 for the United Kingdom, which has relatively light regulation. The explanatory variable referred to in Hypothesis 1, the difference in the strength of regulation, is measured by the absolute difference between the regulation scores of the two countries in each dyad. Countries with similar levels of regulation have low values on this variable. For example, Austria and Spain both have values of 5.9 on the regulation index in 1995, and therefore have a value of 0 on this explanatory variable. Countries with different levels of regulation have high values on this explanatory variable. The maximum difference between the levels of regulation between any pair of states is 3.50, which is the difference between the UK and Italy's scores in 1995, the difference between 4.8 and 8.3. The analyses also control for the average freedom from regulation in each dyad of states. This average ranges from low values in pairs of countries with strong regulation, to high values in pairs of countries with light regulation.

Hypotheses 2 and 5a refer to member states' net budgetary positions. This variable is measured by each state's operating budgetary balances as a percentage of Gross National Income. This information is provided in the *EU Budget Financial Report 2008*, published by the European Commission (2009: 110).[3] These data take into account total allocated operating expenditures and states' contributions. The figures also take into account adjustments, such as the UK's rebate. According to the 2004 figures, the Netherlands, Luxembourg, Sweden and Germany were the largest

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[2] This is the Sector 5 index calculated by Gwartney and Lawson (2009). Gwartney and Lawson (2008) provide values for each member state on this index in the years 1995 and each year from 2000-2008. I matched the 1995 values with issues from legislative proposals introduced up to and including 1999. For issues from proposals introduced in the period 2000-2008 I used the relevant index values.
[3] This budgetary report contains comparable information on states' net position for each year from 1999 up to and including 2008. I used the 1999 values for legislative proposals introduced in that year and earlier and the relevant years' data for proposals introduced in subsequent years.

net contributors, with net balances ranging from -.40 to -.32 percent of GNI. The largest net recipients in 2004 were Greece, Portugal, Lithuania and Estonia, with values ranging from 2.26 to 1.58 percent of GNI. The hypotheses refer to the absolute difference between states' budgetary positions, which is measured by the absolute difference between their net budgetary positions, a variable that ranges from 0 to 3.57 (Table 6.1). The analyses also include the average budgetary position of the states in each dyad, a variable that ranges from -.56 (for the pair of largest net contributors) to 2.74 for the pair of largest net recipients.

Hypothesis 3 refers to the general level of support for EU membership. The Eurobarometer public opinion surveys provide a general measure of support for EU membership. In each survey, respondents have been asked the following question. 'Generally speaking, do you think that ("our country's") membership of the European Union is…?', followed by four answer categories: 'A good thing', 'A bad thing', 'Neither good nor bad' or 'Don't know'. Here, the percentages of respondents who respond by saying that their countries' membership of the EU is a good thing are used. These percentages vary considerably; for example, in 2005 (Eurobarometer 63), they varied from low levels in the UK (36 per cent) and Austria (37 per cent) to high levels in Luxembourg (80 per cent) and the Netherlands (77 per cent). The main explanatory variable of relevance is the absolute difference in the levels of public support in each pair of countries, which ranges from 0 to 50 per cent (Table 6.1). The average level of public support in each pair ranges from 29 to 81 per cent.[4]

States' farming interests, referred to in Hypothesis 5b, are measured by the percentage of agriculture, hunting and fisheries in each country's gross value added in newly generated goods and services (data from Eurostat).[5] This information indicates the prominence of agriculture in each state's economy. In 2007 the percentage of agriculture, hunting and fisheries ranged from low values in Luxembourg (0.4 per cent) and the UK (0.7 per cent) to high values in Bulgaria (6.2 per cent) and Romania (6.5 per cent). Again, the relevant explanatory variable is the absolute difference between the values of the pair of states in each dyad.

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[4] Legislative proposals were matched with the relevant Eurobarometer data from the year in which the proposal was introduced. The Spring wave was used, except in 2004 when the Autumn wave was used so as to include new member states.
[5] Eurostat data, 1997-2008, on gross valued added (GVA) of agriculture, hunting and fishing at current basic prices and current exchange rates as a percentage of all branches.

As for the control variables:

- Governments' ideological positions were measured using experts' judgements on national political parties' economic Left-Right positions; Benoit and Laver's (2006) taxes versus public spending dimension was used. Each government's Left-Right position was calculated as the weighted average of the ideological positions of parties in national government when the legislative proposal was introduced. Each party's Left-Right position was weighted by the number of cabinet seats it held. The relevant control variables are the absolute difference between the Left-Right positions of the governments of the states in each dyad, and the average position of those governments.

- States' population sizes are calculated in millions of inhabitants each year using data from Eurostat. The natural log of the absolute difference in population sizes and of the average population sizes are included in the analyses. The log is appropriate because this variable is highly skewed.

- States' per capita Gross Domestic Product is also included. The relevant variables are calculated using data from the International Monetary Fund on per capita GDP in thousands of US dollars at current prices.

As in previous chapters, the analyses use multilevel models. The observations of the distances between each dyad of states' policy positions are clustered within dyads of member states, as well as within controversial issues that are in turn clustered within legislative proposals. The same dyads of states appear in different controversial issues and proposals; therefore, the data are cross-classified. Where the data allow it, the analyses take this data structure into account. In some of the subsets of analyses, I encountered problems in estimating the models with this full three-level structure. Multilevel models sometimes fail to converge due to the specific structure of the data. I responded to these estimation problems by estimating models with as many of the levels as possible and carrying out additional robustness tests.

6.4 Analyses

The evidence supports the first hypothesis, according to which states with similar domestic regulatory regimes take similar policy positions on controversial issues regarding the strength of regulation. The first two models in Table 6.2 examine the

16,675 observations of distances between states' policy positions on regulatory issues. The first model contains only the explanatory variable 'Difference in strength of domestic regulation' and the related control variable 'Average domestic freedom from regulation'. The coefficient associated with 'Difference in strength of domestic regulation' is 4.05 and highly significant. This coefficient indicates that for every one-unit increase in the absolute difference between states' freedom from regulation scores, the average distance between their policy positions increases by 4.05 scale points. The second model that examines the regulatory issues also supports this finding. This second model differs from the first in that it also includes the full set of relevant control variables. In the second model, the coefficient is similar, 3.51, and is also highly significant. Due to estimation problems, these models do not cross-classify the observations by dyads of member states. However, further robustness tests revealed that the effect of the difference in strength of domestic regulation is robust.[6]

<Table 6.2 about here>

Although the effect of the difference between states' domestic freedom from regulation is highly significant, it is modest in magnitude. Recall that the difference between dyads of states on this variable ranged from 0 to 3.50 (Table 6.1). This means that controlling for other variables, the maximum increase in the difference between states' domestic freedom from regulation is associated with an increase of on average 12.29 scale points between states' policy positions (This is the size of the coefficient in the second model, 3.51, multiplied by the range of the variable 3.50). A difference of 10 or so scale points on the 0-100 policy scales can represent a politically important nuance in actors' policy positions, as some of the cases we have reviewed illustrate. However, it is generally not more than a nuance. For instance, in the postal services controversy (Figure 6.1), the smallest distance between any two distinct policy positions was 20 scale points.

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[6] As part of the robustness tests, I estimated an additional two-level with the full set of control variables. The unique dyads were defined as the second level. Here, the coefficient associated with the variable 'Difference between states' domestic strength of regulation' was 2.90 (s.e. .72, p=.00).

The average domestic freedom from regulation does not have a significant effect on the distance between states' policy positions on regulatory issues. In other words, pairs of states with more freedom from regulation are not significantly closer to each other in terms of their policy positions than states with less freedom from regulation. Since the main focus of the analysis is on the effects of the explanatory variables rather than the control variables, I will discuss the general patterns regarding the control variables at the end of this section.

The second hypothesis suggests that net recipients and net contributors to the EU budget will take different positions on issues about levels of subsidies. The evidence is consistent with this expectation. The last two models in Table 6.2 examine the 7,065 observed distances between states' policy positions on subsidy issues. The first of these models contains only the explanatory variable 'Difference in EU budgetary position' and the control variable 'Average EU budgetary position'. The last model includes the full set of control variables. The coefficient associated with the difference between states' budgetary position is 2.11 in the last model and highly significant. This indicates that for every one-unit increase in the difference between states' net budgetary position, the average distance between their policy positions increases by 2.11. This is also an effect of modest magnitude. The difference between states' net EU budgetary positions ranges from 0 for states with the same budgetary position to 3.57 for states with the most different budgetary positions. The value of 2.11 means that the maximum increase in the difference between states' net budgetary positions is associated with an increase of on average 7.53 (i.e. 2.11 * 3.57) points on the 0-100 policy scales. Both these models include the issue level and member state dyad level, but due to estimation problems not the proposal level. Again, a further robustness test confirmed that the effect of the explanatory variable is robust.[7]

States' average budgetary position is associated with a larger effect on the distance between their policy positions on subsidy issues. Net recipients from the EU budget agree with each other more so than net contributors to the EU budget. The coefficient of -6.01 means that for every one-unit increase in the average of states' net

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[7] As part of the robustness tests, I estimated an additional two-level with the full set of control variables. The legislative proposals were defined as the second level. Here, the coefficient associated with the variable 'Difference in budgetary position' was 3.82 (s.e. .59, p=.00), and 'Average budgetary position' was -6.59 (s.e. 1.05, p=.00).

EU budgetary position, their policy positions are closer by 6.01 points on the 0-100 policy scales. The value of this control variable ranges from -.56 percent of GNI (the pair of largest net contributors) to 2.74 percent of GNI (for the pair of largest net recipients). So the range of this variable is 3.3. This means that the maximum increase in the average benefit that pairs of states receive from the EU budget decreases the average difference between their policy positions by 19.83 points on the 0-100 policy scales.

To some extent the evidence supports the third hypothesis, which posits that states with similar levels of public support for EU membership take similar policy positions on issues regarding the level of harmonization. The relevant coefficients are statistically significant. However, the magnitude of the effect is very small. Moreover, robustness tests give slightly different results. Table 6.3 contains the models of the 16,452 observations of the absolute distances between each pair of states' positions on harmonization issues. As in the previous analyses, the first model contains only the main explanatory variable, 'Difference in levels of public support for EU membership', and the control variable 'Average level of support'. The second model contains all relevant controls. The main explanatory variable has a coefficient of .06 in the second model. Thus, for every one-unit increase in the difference between pairs of states in terms of the percentages of their populations that approve of EU membership, the distance between their policy positions increases by .06 points on the 0-100 policy scales. The value of this explanatory variable ranges from 0 for pairs consisting of states with the same level of public support to 50 for pairs consisting of states with very different levels of public support. Therefore, the maximum increase in the difference between states' levels of public support for EU membership is associated with an increase of on average 3.0 points on the 0-100 policy scales. This is obviously a very small increase. Again, robustness tests gave somewhat different results. In one specification, the effect of difference in levels of public support remained positive, but became weaker, falling short of statistical significance.[8]

<Table 6.3 about here>

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[8] In an additional two-level with the full set of control variables and the unique member state dyads as the second level, the effect of 'Difference in levels of public support' was .50 (s.e. .04, p=.20).

We now turn to the fourth and fifth hypotheses that concern the distances between states' policy positions in the areas of internal market and agriculture. According to the fourth hypothesis, states with similar levels of national regulatory control take similar policy positions on internal market issues. The evidence presented in Table 6.4 supports this hypothesis. The second model, which includes the relevant controls and the full multi-level structure of the data, gives a coefficient of 3.99 to the variable 'Difference in strength of domestic regulation'. This positive effect indicates that pairs of states which differ more from each other in terms of the strength of their domestic regulatory regimes also take different policy positions on internal market issues. The size of the effect is comparable to, but slightly stronger than the effect of this variable in the larger set of issues about the strength of regulation (Table 6.2).

<Table 6.4 about here>

The final analyses examine the policy area of agriculture (Table 6.5). The results support both of the hypotheses on agricultural issues. Because many agricultural issues concern subsidies, either directly or indirectly, Hypothesis 5a held that pairs of states with similar net EU budgetary positions have similar policy positions on agricultural issues. The coefficient associated with the variable 'Difference in budgetary positions' is 1.63 in the second model that contains the full set of control variables. This value means that for every one-unit increase in the difference between the budgetary positions of the states in a dyad, the average difference between those states' policy positions increases by 1.63 policy scale points. Although statistically significant, this is a small effect considering the range of values taken by this explanatory variable. Hypothesis 5b was that states with similar levels of economic interests in agriculture take similar policy positions. The coefficient of 1.06 indicates that for every one-unit increase in the difference between states in terms of the importance of agriculture in their economies, the distance between those states' policy positions increases by 1.06. The value of this explanatory variable ranges from 0 for states with the same levels of agricultural production to 9.1 for states with the most different levels of agricultural production. Therefore, moving from the minimum

to the maximum value of this explanatory variable increases the distance between states' policy positions by 9.65. Again, this is a significant effect, but modest in size.

States that are net recipients from the EU budget tend to agree somewhat more with each other on agricultural issues than do states that are net contributors to the EU budget. This is the implication of the negative and significant coefficient associated with the variable 'Average budgetary position' in Table 6.5. Again, this effect is relatively modest in size given the range of this control variable.

Before concluding, I will summarize the main results regarding the control variables. First, national governments' ideological positions generally do not affect the distance between their policy positions on specific controversies. The analyses used information on national governing parties' ideological positions on the main economic Left-Right dimension that structures politics in most countries. This information was taken from one of the most comprehensive and authoritative studies of national party positions presently available: Benoit and Laver's (2006) expert survey. I also experimented with an alternative indicator of governments' ideological positions. The results support the same conclusion.[9]

Public support for EU membership is included as a control variable in four of the analyses above (as opposed to an explanatory variable in the analysis of the harmonization issues). When included as a control variable, differences in the levels of support for EU membership have little effect on the distance between states' policy positions. Also, pairs of countries with high levels of support generally do not agree more with each other than pairs of countries with low levels of support.

Of the control variables, those referring to the difference between new and old member states are associated with the largest effects. Each of the analyses contain two indicator variables that identify dyads consisting of only old member states or only new member states, leaving dyads consisting of both old and new as the reference group. In all five sets of analyses, at least one of these variables is statistically significant and substantively important. The coefficients refer to the estimated effect of a dyad consisting of only old members (or new members) compared to mixed dyads. For example, the coefficient associated with 'Old member state dyads' in the

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[9] I also used Benoit and Laver's (2006) data on the general Left-Right position of national parties (as opposed to the specific economic Left-Right dimension used in the analyses presented) and reached the same conclusion.

regulation cases in Table 6.2 is -3.74. This means that controlling for other variables, pairs of old member states are on average 3.74 policy scale points closer than pairs of old and new member states. These coefficients are negative and generally significant. Another noteworthy pattern is that the effect of the variable 'New member state dyads' is far stronger than the effect of 'Old member state dyads'. This indicates that new member states' positions are relatively more cohesive than old member states' positions.

The evidence does not suggest a significant difference between the positions of large and small member states. In none of the five analyses is the difference between population sizes significantly associated with the distances between states' policy positions. However, in three of the five analyses (regulation, harmonization and internal market issues) the coefficient 'Average population size' is positive and significant. This indicates that pairs of large member states tend to disagree with each other more than do pairs of small member states.

Finally, the difference between rich and poor member states, as measured by their per capita GDP, is important regarding some subsets of issues, but not all. The direction of the effect is not very robust. In both the regulation and subsidy issues, the variable 'Difference in GDP per capita' has a positive effect. The positive effect of 'Difference in GDP per capita' means that the more countries differ from each other in terms of their per capita GDP, the further their policy positions are on these issues. This effect is particularly strong in the subset of subsidy issues. The coefficient of .45 indicates that for every one-unit increase in the difference between states' per capita GDP, the distance between their policy positions increases on average by .45 policy scale points. In the subset of subsidy issues, the variable 'Difference in GDP per capita' ranges from .01 to 69.74, almost the same as the entire sample (Table 6.1). Therefore, moving from the minimum to the maximum value of 'Difference in GDP per capita' is associated with an increase in the distance between states' policy positions of 31.38 (.45 * 69.73) policy scale points. In the subset of internal market issues, by contrast, 'Difference in GDP' has a negative effect.

The negative effect of 'Average GDP per capita' in the regulation and subsidy issues means that pairs of rich member states tend to agree with each other more than do pairs of poor member states. Again, this effect is particularly strong in the subset of subsidy issues. The coefficient of -.94 means that for every one-unit increase in the

average per capita GDP of the countries in the dyad, the distance between their policy positions on subsidy issues decreases by 0.94 policy scale points. The variable 'Average GDP per capita' varies from 11.54-65.39 in the subset of subsidy issues, again almost the same as in the entire sample. Therefore, the maximum increase of 53.85 in the value of 'Average GDP per capita' is associated with a decrease of 50.62 policy scale points in the distances between member states positions on the 0-100 policy scales.

6.5 Conclusions

The main inference to be drawn from this chapter's analyses is that member states' domestic economic and political interests exert significant effects on their policy positions. Although significant, these effects are not always large. I formulated six hypotheses regarding factors that affect the distance between each pair of states' policy positions on five subsets of issues. Each of the hypotheses focused on the effect of differences between states regarding attributes that define their interests, such as the strength of their existing domestic regulations. The statistical evidence is to at least some extent consistent with each of the hypotheses. In addition, the cases discussed throughout this book indicate that states' policy positions are informed by their underlying interests.

This main conclusion supports one of the main assumptions of liberal international relations theory (Moravcsik 1997: 518), namely that states' behaviour is affected by their domestic interests. Although this conclusion is a simple one, it is far from being a truism. Strategic considerations, including the preferences of other powerful states, may blur the linkage between states' interests and their policy positions (ibid.: 520). Moreover, many traditional approaches to international relations downplay or deny the relevance of domestic interests to explaining states' behaviour (e.g. Morgenthau 1960; Waltz 1979).

The variables that affect states' policy positions are structural in nature, in the sense that they are characteristics that change slowly over time and impose constraints on national governments' behaviour. For example, differences between states' policy positions on issues about the strength of regulations are affected significantly by differences in the strength of existing national regulations. States' national regulations

are legacies of previous decisions and typically change incrementally. Similarly, differences among states' policy positions on agricultural issues are affected significantly by the prominence of agriculture in their national economies. By contrast, differences between states' policy positions are generally not affected by the incumbent governing parties' ideological positions. These findings are consistent with the cases presented throughout this book. These cases illustrate the rather narrow sectoral interests that influence states' policy positions. The measures of states' interests used in this chapter's quantitative analyses only pick up on these narrow sectoral interests to some extent. Therefore, they are arguably conservative estimates of the extent to which domestic interests influence states' policy positions.

The present chapter's findings are easily reconcilable with those of Chapter 3. Chapter 3 included descriptions of member states' policy positions across controversial issues, took note of the main geographic patterns and emphasized the large amount of variation in actor alignments. The present chapter explained variation in the distances between states' policy positions and identified several significant explanatory variables relating to states' structural attributes. The main point to note when considering these two sets of findings together is that the variation highlighted in Chapter 3 does not imply that states' policy positions are random, irrational or inexplicable. The present chapter demonstrated that variation in states' positions can be explained by formulating relevant hypotheses and implementing an appropriate research design. The hypotheses formulated earlier in this chapter could be described as narrow, in the sense that they identified explanatory variables that are relevant to particular types of controversial issues. Therefore, the evidence for these hypotheses does not contradict the earlier finding that there are weak patterns in the alignments of states' policy positions across different types of issues. In addition, the research design implemented in this chapter was powerful, in the sense that it yielded tens of thousands of observations of distances between pairs of states' positions from a few hundred issues. Such large numbers of observations make it possible to have confidence about the impact of explanatory variables that exert only small effects. Indeed, some of the effects are modest in size. Therefore, the present chapter's findings are consistent with the earlier observation that there are weak patterns in the alignments of member states on the range of issues on the Council's agenda.

Chapter 7

Transforming policy positions into decision outcomes

7.1 From inputs to outputs

How are diverse policy positions transformed into decision outcomes? This chapter examines the extent to which different theories accurately predict decision outcomes in the cases selected. Chapter 1 summarized the formal decision-making rules in the Treaty of the EU that structure the decision-making process, such as the Commission's right to initiate proposals, voting procedures in the Council and the involvement of the European Parliament. Such formalities are at best the start of an answer to the above research question. To assess the impact of formal decision-making rules, we will identify the implications of those rules for decision outcomes, given the policy demands made on each controversy. The analysis will also consider alternative accounts of the decision-making process that attribute less importance to the formal rules, and that instead focus on informal bargaining among political actors.

This chapter uses a modelling approach to compare the relevance of different explanations of the EU's decision-making process. Each explanation is specified in such detail that it makes specific predictions of what the decision outcomes will be given the distributions of actors' initial policy positions on the controversial issues. This approach allows the analysis to compare the accuracy of different explanatory models' predictions of decision outcomes. The analysis also identifies the extent to which alternative models differ from each other in their predictions of decision outcomes.

This chapter builds on analyses presented in the book *The European Union Decides* (Thomson *et al*. 2006). That book used the same modelling approach to compare a wide range of models of the EU's decision-making process. It included several models that predicted decision outcomes based on different interpretations of the EU's formal decision-making rules; these were labelled procedural models (Steunenberg and Selck 2006; König and Proksch 2006). It also included several models that contained alternative accounts of informal bargaining; these were labelled bargaining models (Achen 2006a; Arregui *et al*. 2006; Bailer and Schneider 2006; Boekhoorn *et al*. 2006; Widgrén and Pajala 2006). One of the main findings of that

study was that a particular specification of the Nash Bargaining Solution, also called the compromise model, generated more accurate predictions than any other model that was tested.

The main differences between this chapter and *The European Union Decides* concern the ranges of models and cases examined. This chapter examines a narrower range of models, but a broader range of cases. Regarding the range of models, the analysis includes one procedural model and four bargaining solutions. This is partly for the pragmatic reason that the present chapter cannot cover the same ground as an entire book devoted to the same research question. One area for future research is to apply a broader range of models to this dataset. The substantive reason for limiting the range of the models is that many of the models examined in *The European Union Decides* turned out to be observationally equivalent in their predictions of decision outcomes. For instance, alternative procedural models that contain different interpretations of the formal decision-making rules often make similar predictions of decision outcomes (Junge and König 2007). Many of the bargaining models' predictions were also similar to each other, so that it was impossible to say whether certain bargaining models were significantly more accurate than others (Achen 2006b: 290). The analyses contained in the present chapter also have this limitation; three sets of predictions turn out to be similar. However, the main focus here is on the comparison of models that differ both in terms of their conceptions of the decision-making process and their observable implications.

While *The European Union Decides* examined decision-making in the EU-15, the present analysis includes cases from the EU-25 and EU-27 periods too. These post-enlargement cases allow us to examine whether enlargement has changed the decision-making process. Prior to enlargement, practitioners and academics expressed concern about the possible impact of increased numbers and diversity of decision makers on the EU's decision-making processes. Increasing numbers of actors could have made decision making more difficult, introducing a bias toward the status quo (Hosli 1999). Similarly, König and Bräuninger (2004: 421) noted that enlargement has the potential to create gridlock.

In addition to warnings from EU specialists, research on collective decision making in other contexts suggests that increasing the number of decision makers fundamentally alters the way in which groups take decisions. Social psychologists

have long known that small and large groups take decisions differently (e.g. Simmel 1902). Small groups can reach decision outcomes based on informal contacts. Intense communication and personal contacts facilitate the exchange of information and ideas about alternative options, and the effective imposition of sanctions if social norms are violated. Larger groups, by contrast, find it more difficult to engage in such processes effectively, and free riding may be more prevalent. Brewer and Kramer (1986: 549) found that individuals were less willing to contribute to public goods when they were part of larger groups. However, other studies have shown that cooperative patterns of behaviour are possible in 'large' groups of twenty individuals (e.g. Liebrand 1984). This implies that at least some larger groups maintain cooperative ways of deciding. Is the EU such a group?

7.2 Alternative formulas for predicting decision outcomes

A procedural model

Procedural models generate predictions of decision outcomes based on the formal rules of decision-making or 'procedures' and actors' policy preferences. The earliest studies that used this approach examined the effects of successive changes to the EU's decision-making rules on the balance of power among the institutions (e.g. Tsebelis 1994; Steunenberg 1994; Crombez 1996). Formal rules stipulate which actors can introduce proposals, so-called agenda setters, which actors can amend these proposals, and the levels of support required for proposals and amendments to be accepted. When there is a clearly identifiable agenda-setter, procedural models assume that the agenda setter will use the formal rules to ensure that decision outcomes is as close as possible to its policy preferences.

The value of the disagreement outcome to the decision makers is a key concept in all procedural models, as well as in many bargaining models. The value that an actor attaches to the disagreement outcome is the value or utility that the actor receives in the event of the failure to adopt the proposal. Consider, for example, the legislative proposal to liberalize postal services discussed in the previous chapter. If the actors had failed to adopt the legislative proposal to liberalize postal services, different national regulatory regimes (some quite competitive and some highly

regulated) would have persisted indefinitely. All actors wanted to avoid this disagreement outcome, but some would have valued it less than others. The value actors attach to the disagreement outcome is affected not only by the policy outcome in relation to the controversy in question, but also by the effect that failure to agree has on the long-term relationships among political actors. For procedural models, the disagreement outcome is a key concept, because it determines whether actors will be willing to reject a proposed outcome. I will return to the concept of the disagreement outcome below, because the operationalization of this concept is problematic.

Consider first the simplest of the EU's legislative procedures, the consultation procedure combined with unanimity voting in the Council of Ministers. Here, the Commission introduces a proposal and the member states must approve it unanimously. The member states may also amend the Commission's proposal by unanimity. The European Parliament is consulted, and gives an opinion, but neither the Commission nor Council is obliged to incorporate the EP's proposed amendments.

The formal rules of decision-making in relation to the consultation procedure are relatively simple, and there is little room for different interpretations of this procedure. The present analysis is based on Crombez's (1996) model of the consultation procedure. Since the EP gives only a non-binding opinion in the consultation procedure, the game is reduced to an interaction between the Commission and member states. The Commission can be compelled to introduce a proposal by the member states or EP, and empirical analyses show that this is indeed often what happens (Rasmussen 2007). In this respect the Commission is not a gatekeeper (Crombez *et al.* 2006: 324-5). However, the Commission decides on the contents of legislative proposals, which is the relevant point for the procedural model.

The top part of Figure 7.1 gives a stylized illustration of the procedural model's prediction on an issue subject to consultation and unanimity voting in the Council. Like the controversial issues studied in previous chapters, the policy space is represented as a unidimensional scale of policy alternatives with actors placed on these alternatives to indicate their policy preferences. Each actor has a single-peaked preference function, which means that it derives less utility from decision outcomes further away from its preference. Figure 7.1 considers a policy scale, ranging from 0-100 as in previous examples, on which the Commission takes an extreme policy

position, at position 100. The disagreement outcome is located at position 0 on the scale. Suppose that the member states' policy preferences are distributed between positions 10 and 100 of the policy scale. The alignment of actors in Figure 7.1 is not part of the model; it is for illustrative purposes only, and the model could generate a prediction for any alignment of actors' policy preferences.

<Figure 7.1 here>

The concept of pivotal positions is central to all procedural models. Which position is pivotal depends on the decision-making rule that applies and the distribution of actors' policy preferences relative to the disagreement outcome. In Figure 7.1, the actor whose position is furthest from the Commission and closest to the disagreement outcome is located at position 10. Therefore, position 10 is referred to as the unanimity pivot, denoted P_U in Figure 7.1. The location of the unanimity pivot defines the range of potential decision outcomes that all member states prefer to the disagreement outcome. This range of outcomes is referred to as the unanimity winset. If the disagreement outcome is located at position 0 and the unanimity pivot is at position 10, then the unanimity winset is the range between positions 0 and 20. If the Commission were to introduce a policy proposal anywhere in this range, all member states would prefer it to the disagreement outcome. Since the Commission aims to realize decision outcomes that are as close as possible to its own policy preference, it will select the policy proposal in this range that is closest to its preference. Therefore, the procedural model's prediction of the decision outcome is 20. Stated more generally, when the consultation procedure is combined with unanimity voting in the Council, the decision outcome will be the policy position within the unanimity winset that is closest to the Commission's preference.

The procedural model of the consultation procedure combined with qualified majority voting (QMV) in the Council is a little more complex. Again, the Commission introduces the legislative proposal, but now the Council must either approve the proposal with a qualified majority of member states or amend it with the support of all member states. The rules for qualified majority voting differ between the EU-15 and the post-2004 periods. In the EU-15, member states held a total of eighty-seven votes, distributed among them in relation to their population sizes, but

with small states being overrepresented in relation to their population sizes. According to the QMV rule, a legislative proposal had to be approved by member states with votes that summed to at least sixty-two of the eighty-seven votes. In the enlarged EU in the time period examined here, QMV was based on the triple majority system introduced by the Nice Treaty. In the EU-25, a legislative proposal subject to QMV had to be approved by member states with at least 232 of the 321 newly defined votes, which were again distributed among states in relation to their population sizes, but with smaller states being overrepresented. In addition, the member states approving the proposal had to be at least thirteen in number with at least 62 per cent of the EU's total population. In the EU-27, the number of qualified majority votes increased to 255 of the 345 votes, and at least fourteen member states constituting at least 62 per cent of the population. The dual majority system introduced by the Lisbon Treaty is examined separately in Box 7.1.

The QMV pivot refers to the location of the preference of the member state or states that turn a losing minority into a blocking minority, when counting votes from the state furthest from the agenda setter. Consider, for instance, an EU-15 scenario in relation to the top of Figure 7.1. Suppose that the member states to the left of position 30 control fewer than twenty-six qualified majority votes. This means that they do not control enough votes to block a decision. Furthermore, suppose that with the addition of the votes of the country or countries located at position 30, the states to the left of position 30 control a blocking minority of at least twenty-six votes. This makes position 30 the QMV pivot, labelled P_{QMV} in Figure 7.1. Similarly, position 30 would be the pivot under the triple majority system in the EU-25 if the addition of the state(s) located at position 30 brought the sum of states to the left above eighty-nine votes (ninety votes in the EU-27), twelve member states (thirteen in the EU-27) or 38 per cent of the population. If position 30 is the QMV pivot, then the range of positions between position 0 and position 60 is the QMV winset. All of the potential outcomes in this range are preferred to the disagreement outcome by a group of member states that controls at least a qualified majority.

When formulating the content of its legislative proposal, the Commission attempts to introduce a proposal that will not be amended by the Council. Since the Council can amend a proposal unanimously, this means that the Commission must also consider the location of the unanimity winset, even when the QMV rule applies.

143

The Commission can secure a decision outcome by introducing a proposal such that the actor (or actors) located at the QMV pivot is indifferent between the Commission's proposal and the possible unanimously supported amendment by the Council. This is position 40 on the top of Figure 7.1. Note that this point is as far from the QMV pivot as the predicted decision outcome under unanimity.

In contrast to the consultation procedure, procedural modellers have offered competing interpretations of the co-decision procedure. In this procedure the Commission introduces a proposal that must be approved by both the Council and EP. Co-decision is usually combined with QMV in the Council. In the version of the co-decision procedure defined in the Amsterdam Treaty, and that applies to all of the co-decision cases examined here, the Council and EP formally have equal power as co-legislators.[1] In the event of protracted disagreements between the Council and EP, a conciliation committee composed of representatives of the Council and EP is formed. This committee then works on a text that must be approved by both the Council and the EP if the legislative proposal is to be passed.

Analysts' disagreements on how to best model the contemporary co-decision procedure focus mainly on the questions of whether the Commission is involved and which actor, if any, has a first-mover advantage in the conciliation committee. Some analysts have argued that the Commission is still an important actor in the co-decision procedure, and that its preferences should be taken into account (e.g. Crombez 2003). However, given that the formal rules of the co-decision procedure allow the Council and EP to amend the Commission's proposal in the conciliation committee without the Commission's approval, most analysts view the co-decision procedure as a game between the Council and the EP only. Nevertheless, there are different views on whether the Council, EP or neither of the two has a first-mover advantage in these negotiations. Steunenberg (1997) proposes that the EP takes the lead in making a

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[1] The introduction of the first version of the co-decision procedure led to a debate among formal modellers on whether this increased or decreased the power of the EP relative to the Council compared to the older cooperation procedure (see Tsebelis 1997; Crombez 2001; Steunenberg 1997; 2002). This debate concerned the importance of the possibility, introduced by the first version of the co-decision procedure, that the Council could revert to its earlier common position if the EP failed to approve the outcome of the conciliation committee. The Amsterdam version of the co-decision procedure removed this possibility. The Nice Treaty did not change the co-decision procedure, but extended its application to several new treaty articles.

proposal that a qualified majority in the Council prefers to the disagreement outcome. By contrast, Tsebelis and Garrett (1997) suggest that the Council takes the lead in making the proposal. It has also been suggested that neither institution has a first-mover advantage in the negotiations that take place between the Council and EP (Tsebelis and Garrett 2000: 24-5; Tsebelis 2002: 264-5).

This chapter takes what is arguably the most literal interpretation of the treaty rules regarding the co-decision procedure. Since the Council and EP can amend the legislative proposal without the approval of the Commission, the Commission is excluded from the formal decision-making process. Moreover, since the formal rules give equal power to the Council and EP, the specification of the procedural model's prediction should not ascribe an advantage to either of the two. In line with this view, Tsebelis and Garrett (2000: 24-5) posit that a reasonable expectation of the decision outcome under co-decision is a Nash 'split the difference' outcome between the Council and EP. Specifically, the co-decision procedure is a bargaining game between the pivotal member state in the Council and the EP. This does not, however, necessarily mean that the outcome is exactly half way between the position of the Council pivot and the EP. The bargaining space ends when either the Council pivot or EP is indifferent between the possible decision outcome and the disagreement outcome. Therefore, under QMV, the outcome predicted on the basis of the configuration at the bottom of Figure 7.1 is 60. Note that this is not half way between the position of the QMV pivot (position 30) and the EP (position 100). Under the less common rule of co-decision combined with unanimity in the Council, when the unanimity pivot is at position 10 and the EP is at position 100, the predicted outcome is 20.

The Nash Bargaining Solution with the disagreement outcome as the reference point (NBS-RP)

Nash formulated the bargaining solution that bears his name as an answer to the question of what two actors should get in a situation where they must collaborate for mutual benefit (Nash 1950). Informally, the essence of Nash's answer is that if four well-known and plausible axioms are met, actors select the outcome that maximizes the product of their utilities relative to the disagreement outcome. The Nash

Bargaining Solution (NBS) has been extended to multi-actor settings and has had a profound effect on the study of games (Achen 2006a: 98-101).

The four well-known axioms of the NBS are summarized in a non-technical form by Achen (2006a: 98-9). The rescaling axiom is that utilities can be expressed in an equivalent form without changing the bargaining solution. The Pareto optimality postulate is that the bargaining solution should be Pareto optimal. This means that there should be no other outcome that could lead to higher utility for at least one of the actors without reducing the utility of at least one of the other actors. All actors should receive at least the same, if not higher, utility from the bargaining solution compared to the disagreement outcome. The anonymity axiom, also known as the symmetry axiom, states that the bargaining solution should be invariant to the identities of the players; it should only be affected by their utility functions. Finally, there is the independence from irrelevant alternatives axiom, which is the axiom that is most questionable. This axiom states that the selection of one outcome over another should not depend on the availability of a third outcome that is less preferable to all actors than the two outcomes in question. The remarkable truth demonstrated by Nash is that if these axioms hold, the decision outcome will be the Nash Bargaining Solution.

Nash was of course not thinking about choices by political decision makers among alternative decision outcomes on a policy scale, far less about decision-making in the contemporary European Union that did not exist at that time. He did, however, mention the applicability of his bargaining solution to trade between nations (1950: 155). Nash formulated the NBS in terms of actors' utilities. Therefore, to apply the NBS to predict outcomes on policy scales, we must make assumptions about how actors' utilities are affected by different possible decision outcomes. Both Achen (2006a: 100) and Bailer and Schneider (2006: 162) suggest an operationalization of the NBS that is similar to the following equation:

$$\underset{outcome \in Y}{\arg\max} \prod_{i=1}^{n} s_i(disagreement{-}preference_i)^2 {-} s_i(outcome{-}preference_i)^2 \qquad (7.1)$$

Where:

Y is the set of possible decision outcomes on the issue, defined as the set of whole numbers from 0 to 100 that all actors prefer to the disagreement outcome.

$\underset{outcome \in Y}{\arg\max}$ is the decision outcome that maximizes the following equation.

The uppercase letter pi ($\prod$) is the symbol for the product operator.

i is the letter used to denote the first actor in the set of *n* actors. The set of actors consists of the Commission, EP and member states.

s_i is the level of salience that actor *i* attaches to the issue.

disagreement is the disagreement outcome on the issue.

outcome is a possible decision outcome on the issue from the set of possible decision outcomes Y.

preference$_i$ is the policy preference of actor *i* on the issue.

So the NBS is the decision outcome that maximizes the product of each of the actors' utilities. In other words, imagine finding the product of the actors' utilities for each real number on a 0-100 policy scale in set of possible outcomes. This implies the assumption that political actors are inventive enough to come up with a policy alternative that reflects each real number. The NBS is then the point on the policy scale that maximizes the above equation.

The first part of the equation ($s_i(disagreement–preference_i)^2$) captures the utility that actors receive from the disagreement outcome. If an actor's policy preference is close to the disagreement outcome, this part of the equation will be small, reflecting the fact that the disagreement outcome may not be a bad outcome for that actor. The second part of the equation ($s_i(outcome\text{-}preference_i)^2$), which is subtracted from the first part, captures the utility loss that actors receive from the decision outcome under consideration, which may be the disagreement outcome or any other outcome. If the actor's policy preference is far from the policy alternative under consideration, then this second part of the equation will yield a large number.

The utility for each actor from each possible decision outcome is defined by the salience-weighted squared distance between the actor's policy preference and the possible decision outcome. Quadratic utility functions are standard in applied modelling (Achen 2006a: 100). The multiplication of the squared distance by salience means that actors experience larger losses from decision outcomes that deviate from

their preferred outcome if they attach a high level of salience to the issue. As described in Chapter 2, for legislative proposals that raise more than one controversial issue, the salience scores reflect the relative importance of those issues to the actors. Therefore, this equation also captures to some extent the linkages between issues that are central to models of logrolling and vote trading (e.g. Coleman 1972; 1990; Stokman and Van Oosten 1994). It does not, however, model the micro-level behaviour of actors in their interactions with one another.

<Figure 7.2>

In this formulation of the Nash Bargaining Solution, the disagreement outcome is conceptualized as a policy alternative located somewhere on the 0-100 policy scale. This way of viewing the disagreement outcome bears an obvious resemblance to the reference point defined in Chapter 2. Recall that for each controversial issue, the reference point is the decision outcome that would occur if the actors failed to reach an agreement. Therefore, the reference point captures the issue-specific implication of the disagreement outcome. If this was the only relevant implication of the disagreement outcome, then the Nash Bargaining Solution could be found by using the reference point as the disagreement outcome in the above equation. This means that whenever one or more actors favours the reference point, this is the prediction of the decision outcome. This is the first variant of the NBS applied in the following analysis, labelled the NBS-RP, which stands for the Nash Bargaining Solution with the Reference Point as the disagreement outcome.

The Nash Bargaining Solution without the reference point (NBS-no RP)

In reality, the reference point rarely captures the full implications of the disagreement outcome for actors' utilities in the EU (Achen 2006a: 101). There are two other important implications of failure to agree. First, failure to resolve a controversy by adopting the legislative proposal that gave rise to it means that other uncontentious parts of the proposal are lost. Oftentimes, controversy centres on a relatively small but important part of a legislative proposal. All actors agree on the rest of the proposal and value the adoption of those parts of it. Second, failure to resolve a controversy

148

would damage the long-term relationships among actors. Because decision-makers in the EU cooperate on a wide range of policy areas, deterioration in the quality of the relationships among them has far-reaching consequences. Therefore, the disagreement outcome is generally highly undesirable in EU decision-making. Hayes-Renshaw and Wallace refer to the imperative of avoiding the disagreement outcome as making policy proposals 'yesable' (2006: 303).

When the disagreement outcome is extremely undesirable, the Nash Bargaining Solution can be represented in a very simple form. Achen (2006a: 112-7) provided the formal proof of this equivalence. As the value that each of the actors attaches to the disagreement outcome becomes smaller and smaller, the Nash Bargaining Solution approaches the following equation, and at the limit, is identical to it:

$$outcome = \frac{\sum_{i=1}^{n} salience_i \, preference_i}{\sum_{i=1}^{n} salience_i} \qquad (7.2)$$

Where:

outcome is the predicted outcome.

salience$_i$ is the level of salience that actor *i* attaches to the issue.

The uppercase letter sigma ($\sum$) is the symbol for the summation operator.

And the other terms are defined as above.

In other words, when the disagreement outcome is highly undesirable, the NBS is approximated by the weighted mean average of actors' preferences. The weights assigned to those preferences are the levels of salience that actors attach to the issue. Therefore, the NBS is closer to the preferences of the actors that attach higher levels of salience to the issue. If an actor does not have a preference on an issue, by definition it attaches a salience of zero to the issue and therefore drops out of the equation.

Another theoretical insight provided by Achen (2006a: 94) is that this salience-weighted mean is also a quasi-utilitarian decision outcome that minimizes the combined utility losses of all of the actors. Such quasi-utilitarian solutions to

bargaining problems are found in a wide range of discursive and formal political theories. In particular, the salience-weighted mean is also the decision outcome that maximizes the sum of actors' negative utilities:

$$outcome = \operatorname*{arg\,max}_{outcome \in Z} \sum_{i=1}^{n} - salience_i(outcome\text{-}preference_i)^2 \qquad (7.3)$$

Where Z is the set of possible decision outcomes on the issue, defined as the set of whole numbers from 0 to 100. The other terms are defined as above. Again, imagine finding the sum of actors' negative utilities for each point on a 0-100 policy scale, as defined in Equation 7.3. The point at which this sum has the highest value is also the salience-weighted average of actors' preferences, which is also the Nash Bargaining Solution when the disagreement outcome is infinitely undesirable.

Achen's proof of this equivalence makes a number of assumptions. One is that actors' utilities are defined as quadratic utility losses, as defined above. This is a standard assumption in applied modelling. A more contentious assumption is that apart from the levels of salience actors attach to issues, actors' preferences are weighted equally. It may of course be the case that a model containing information regarding differences in actors' capabilities is more accurate. This is such an important question that the following two chapters are devoted to it.

Prior to Achen's theoretical work in linking the Nash Bargaining Solution to the salience-weighted mean, the weighted mean was viewed as nothing more than a sophisticated baseline forecast (Bueno de Mesquita and Stokman 2004). Van den Bos had proposed a weighted mean average of actors' positions as the compromise model (Van den Bos 1991). The only difference between the compromise model and Equation 7.2 is that the compromise model also weighted actors' policy preferences with an indicator of their relative capabilities, as well as the levels of salience they attached to the issue. Achen's work is an important theoretical contribution, because it links this simple formula with the Nash Bargaining Solution.

The Nash Bargaining Solution with an infinitely undesirable disagreement outcome discards information on the location of the reference point. It considers the reference point a wholly inadequate representation of the disutility that actors receive from the disagreement outcome. For simplicity, the value of the disagreement

outcome is defined as 'infinitely small'. Therefore, in shorthand, we refer to the NBS without the reference point as the disagreement outcome as NBS-no RP, which stands for the Nash Bargaining Solution without the Reference Point.

The minimax solution

An alternative solution to the bargaining problem is the minimax solution. This is the position that minimizes the maximum utility loss of any of the actors. The relevant decision outcome can be found by applying the following formula:

$$outcome = \min_{outcome \in Z} \arg\max_{i \in n} salience_i(outcome\text{-}preference_i)^2 \qquad (7.4)$$

Where the terms are defined as above. In other words, find the decision outcome in the set of all possible outcomes on the policy scale ranging form 0 to 100 (defined as the set Z) that minimizes the maximum of any of the actors' utility losses. As above, each actor's utility loss is defined as the squared distance between the actor's policy preference and the decision outcome in question multiplied by the level of salience the actor attaches to the issue.[2]

The minimax solution is an important concept in political philosophy and features prominently in the theory of justice. For Rawls, social and economic inequalities may be justified if they serve the minimax principle. He writes that such inequalities 'are to be to the greatest benefit of the least advantaged members of society' (2001: 42). Clearly, Rawls and other political philosophers direct their attention to society at large, and there are important differences between this broad societal level and the social system of decision-making in the EU. The obvious relevance of the minimax principle is that decision outcomes should cause as little disutility as possible to the actor disadvantaged most by the decision outcome.

The minimax formula involves making comparisons between the utilities of different actors. Such comparisons are also implicit in the above specifications of the

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[2] The minimax solution defined here is not the same as Von Neumann and Morgenstern's (1944) maximin theorem according to which each of the players of a zero-sum two-player game attempt to minimize the maximum payoff received by the other player. On the contrary in fact, Equation 7.4 minimizes the maximum utility *losses* of any player.

Nash Bargaining Solution. In this sense, these formulas are utilitarian. Utilitarianism, expounded in the late eighteenth century by Bentham (1789) and expanded by Mill (1861/1998), maintains that the righteousness of actions should be judged by the results they produce; moreover, that government actions should promote 'the greatest happiness of the greatest number of people', which obviously involves making interpersonal comparisons of utility. Interpersonal comparisons of utility became controversial and even inadmissible in political economy in the twentieth century. Arrow, for instance, expressed what is often considered to be the orthodox view when he stated 'that interpersonal comparison of utilities has no meaning and, in fact, that there is no meaning relevant to welfare comparisons in the measurability of individual utility' (1963: 9). The objection to comparing utilities is that it is impossible for one person to know the magnitude of pain or happiness being experienced by another person. This orthodox view is often contrasted with the ease with which we compare the benefits of alternative actions for other people in our everyday lives (e.g. Little 1950/2002: Chapter 4; List 2003: 229-30). But this 'everyday use' argument skirts the fundamental objection, namely that such comparisons cannot be shown to be 'true or false on empirical grounds' (Waldner 1972: 91). This implies that the objection to comparing utilities centres on the issue of measurement and verifiability, and that it may be overcome if we offer appropriate indicators of actors' utilities. Similarly, List (2003) concludes that the objections to comparing utilities can be overcome if empirically observable proxies are available. Two points are noteworthy in relation to the present study. First, actors' utilities are compared thorough the lens of empirically observable proxies. These proxies incorporate information regarding the distances between actors' policy positions and alternative decision outcomes, and the levels of salience actors attach to the issues. Second, the present analysis is concerned with collective actors – member states and institutional actors – rather than individuals. The objection to comparing utilities is usually formulated in terms of the impossibility of knowing what another person is experiencing. By contrast, the implications of alternative decision outcomes for member states are in principle readily observable and comparable.

The mean position

Finally, the simplest formula for identifying the decision outcome that is applied here is simply the mean average of the preferences of the actors that are not indifferent to the outcome. One the face of it, the mean prediction may be viewed as a baseline forecast against which we could compare the predictive accuracy of the somewhat more complex formulas stated above. However, its computational simplicity masks its theoretical significance. Caplin and Nalebuff (1991) develop a 'mean voter theorem', as a multi-dimensional analogue of the median voter theorem (see Chapter 5 for a discussion of the median voter theorem in relation to majority decision-making within the European Parliament). Caplin and Nalebuff's formal work specifies the conditions under which the mean voter's position is unbeatable according to a voting rule that requires a supermajority of 64 per cent of votes. Such supermajority voting is of obvious relevance to decision-making in the Council, which often requires a qualified majority of votes. The mean voter is also central to several models of political decision-making in which actors search for a unanimously supported compromise, rather than take a vote on the basis of a simple majority or supermajority rule (Grofman *et al*. 2001: 222).

The theoretical significance of the mean is also clear in Achen's (2006a) work that proved the equivalence between the Nash Bargaining Solution with un undesirable disagreement outcome and the weighted average of actors' policy preferences. Equations 7.2 and 7.3 are simply the mean average of actors' preferences if salience is removed from them. In relation to Equation 7.3 then, the mean preference is the decision outcome that minimizes the sum of the actors' utility losses, when utility losses are measured as the squared distances between actors' policy preferences and each potential decision outcome.

7.3 Research design

The decision formulas described in the previous section were applied to the controversial issues in the dataset. The predictions made by each formula were then compared to the actual decision outcomes to assess the relative accuracy of the predictions.

<Figure 7.3 about here>

Figure 7.3 gives an example of the controversies raised by a legislative proposal from 1999 on production aid for cotton. The proposed regulation raised two main controversies regarding the provision of subsidies for cotton production (see also Boekhoorn *et al*. 2006 for a discussion of this case). Due to relatively low cotton prices, EU expenditure on production aid for cotton was increasing. The proposed regulation aimed to bring this expenditure under control. The two member states affected most by this reform were Spain and Greece, the main cotton producers in the EU. Portugal also had an interest in maintaining subsidies for cotton production because Portuguese farmers planned to increase production in the future. The other member states had a financial interest in these issues.

The first main controversial issue identified by key informants concerned the system of penalties for production that exceeded states' National Guaranteed Quantities (NGQs). The Commission wished to increase the penalties for overproduction. In particular, its preference and proposal was to introduce a system whereby the subsidy received by a member state would be cut by 0.6 per cent for every 1 per cent that the member states' production exceeded its NGQ. Commission officials believed that this proposal balanced the interests of cotton producers with the need to control expenditure. The proposed reduction would result in a substantial reduction in the subsidies received if the quota was exceeded. Portugal, Spain, Greece and the EP favoured no increase in the current system of penalties, which involved a cut of 0.5 per cent. While some member states agreed with the Commission, others, notably Denmark, the Netherlands and Sweden, called for a far higher penalty that would in effect withdraw subsidies if states exceeded their NGQs. The decision outcome that was adopted involved a system of increasing penalties for higher levels of overproduction. According to the key informants, this meant a somewhat higher level of overall penalties than the Commission's initial proposal. The reference point is to the right of this policy scale, because this represents the highest level of subsidy that any of the actors favoured.

The second controversial issue concerned the related question of whether the NGQs should be increased. Almost all of the actors favoured leaving the NGQs at

their present levels. However, the Spanish and Greek representatives in the Council favoured an increase, and argued that these quotas had been set using data from years in which there was a particularly bad cotton harvest. The final decision outcome kept the NGQs at their present levels. However, the key informants agreed that the flexible system of penalties met the Spanish and Greek demand to a considerable extent. In particular, the relatively low penalties for modest levels of overproduction had the effect of reducing the importance of the legally set NGQ. The key informants judged that this political compromise met the Spanish and Greek demand half way.

The procedural model predicts decision outcomes based on the relevant legislative procedure, which in the cotton case was the consultation procedure combined with QMV in the Council. On both issues, the procedural model predicts a decision outcome in line with the Commission's preference, position 80 on the first issue and position 0 on the second issue. As discussed in the previous section, the locations of the unanimity pivot and the QMV pivot are relevant to deriving the prediction of the procedural model. When applying the procedural model, the reference point is treated as the disagreement outcome, in line with previous applications of procedural models (e.g. Steunenberg and Selck 2006; Junge and König 2007). On both issues, the reference point is located at position 0, and since there is at least one member state positioned at this point, this position is the unanimity pivot. On the first issue, the member states to the right of position 80 do not hold a blocking minority of Council qualified majority votes. Greece, Portugal and Spain hold eighteen votes, while twenty-six votes were required for a blocking minority. The member states at position 80, however, bring the total number of votes comfortably above the blocking minority threshold. This means that the QMV winset is in the range of positions from 60 to 100. In principle, the Commission could propose any policy in this range and it would receive the required support. Since the Commission's preference is within this range, at position 80, according to the procedural model, the Commission would simply propose its preference as the decision outcome that would be adopted. The second issue is even simpler, since the unanimity pivot, the QMV pivot and the Commission's preference are located at the reference point, position 0. When this is the case, the procedural model predicts the reference point as the outcome.

The Nash Bargaining Solution with the reference point as the disagreement outcome (NBS-RP) predicts that the reference point will be the decision outcome on each of the two issues. Whenever one or more actors support the reference point, this variant of the NBS predicts that the reference point will be the decision outcome.

The Nash Bargaining Solution with undesirable disagreement outcomes, in other words the NBS without the reference point (NBS-no RP), generates different predictions. On the first issue, the NBS-no RP gives a prediction that rounds off to 62, just to the left of the mean at position 65. This is because the actors to the left of the mean attach somewhat higher salience to the issue than the actors to the right of the mean. On the second issue, the NBS-no RP gives a prediction of 15, just left of the mean at 18. On the second issue, most of the actors to the left, at the reference point, attach more importance to the issue than the three actors to the right. Despite variation in the salience scores, the NBS-no RP and the mean are very close to each other.

The minimax solution finds the decision outcome that minimizes the utility loss suffered by any one of the actors involved. On the first issue, a salience score of 90 is the highest level of importance any of the actors attach to the issue. At positions 0 and 100 there is at least one actor that attaches this high level of salience. Whenever this is the case, the minimax solution is exactly half way along the policy scale, at position 50. On the second issue, the minimax solution is located slightly to the left of centre, nearest to position 47. At position 47, Austria, with a salience of 90, has the greatest utility loss. For all other possible decision outcomes, at least one actor suffers more than would Austria with an outcome located at position 47 on the policy scale.

The remainder of this section describes the main research design decisions that were taken when applying these formulas to derive predictions of decision outcomes. First, the analyses follow previous studies by taking the decision outcomes favoured most by each of the actors as the inputs into the formulas. Therefore, while the theoretical discussion referred to actors' policy preferences, the application of the models uses information on their policy positions. This creates an obvious disjoint between the theory and the empirical application, but one that can hardly be avoided. As discussed in Chapter 2, preferences cannot be observed directly; strictly speaking, preferences are only known to the actors that hold them. At the extreme, this renders theories that need information on preferences useless for explaining decision outcomes in the real world. If we are unwilling to leave the theories as thought

experiments, we must be willing to use the information that is available. As reported in Chapter 2, key informants were unable to distinguish between actors' preferences and policy positions, whether that concerned the member states, the Commission or EP. Their inability to do so is hardly surprising if preferences are indeed hidden. Another consideration for using actors' positions as the inputs into the formulas comes from the previous three chapters' analyses of those positions. These analyses indicate that to a considerable extent actors' policy positions are linked to their underlying interests. The Commission's positions are generally more pro-harmonization than member states' positions, and they reflect the national interests of responsible Commissioners under certain conditions (Chapter 4). The EP's opinions usually reflect the positions of the median MEP (Chapter 5). Member states' positions reflect their underlying economic and political interests (Chapter 6). These findings clearly suggest that positions reflect preferences in the sense that they are linked to actors' underlying interests.

There are usually a small number of actors that do not have policy positions on issues (Chapter 2). These actors were reported to be indifferent to the decision outcome. The procedural model, however, requires that they be assigned some position on each policy scale; without this, the model could not generate a prediction. The appropriate way of treating indifferent actors reflects their behaviour in the decision-making process as accurately as possible. In general, such actors remain silent and try not to obstruct agreements reached among the actors that do have an interest. As in previous research (Thomson and Stokman 2006: 52), when applying the procedural model, the following analysis places indifferent actors exactly half way between the Commission and the reference point on issues subject to consultation. This means that these indifferent actors would accept any proposal made by the Commission. Similarly, when applying the procedural model to issues subject to the co-decision procedure, indifferent actors are placed half way between the EP and the reference point. This means that they would accept any outcome that the EP might offer as a decision outcome to the Council. I also report the results of the procedural model on the issues on which only one or two actors do not take a position, which shows that the results are not driven by this procedure for dealing with indifferent actors. For the formulas other than the procedural model, indifferent actors are simply excluded from the calculations.

Whenever the specification of an issue does not include the reference point, the two models that require a reference point, the procedural model and the NBS-RP are not applied. Reference points are sometimes missing when the issue is formulated in such a way that the actors have already decided to change the status quo, but disagree on how to change it. It would not be appropriate to simply assign a policy scale value to the reference point when the key informants were unable to identify one.

The issues are treated as separate cases when applying the formulas in the sense that they are not combined into some multidimensional space. Combining the issues of a legislative proposal into a single multidimensional space makes arbitrary assumptions about the way in which these dimensions are positioned relative to each other. A common assumption to make is that the dimensions are positioned orthogonally to each other, but this is arbitrary, as discussed earlier in Chapter 2 (see also Benoit and Laver 2006: Chapter 1). Previous studies that applied the procedural model to several orthogonally-linked issues found little difference in the predictions compared to issue-by-issue predictions (Steunenberg and Selck 2006; König and Proksch 2006; Junge and König 2007). Treating the issues separately accords with key informants' view that the issues were distinct, although oftentimes related, aspects of the controversy. Formulas that incorporate salience contain information on the relative importance of different issues raised by the same legislative proposal. In this respect, the application considers linkages between issues.

The tests of the accuracy of the models' forecasts focus on what has become a standard measure of predictive accuracy: the mean average of the absolute distances between the models' predictions and the actual decision outcomes (e.g. Bueno de Mesquita and Stokman 1994; Achen 2006b). Particular attention will also be given to the models' relative predictive accuracy in different subgroups of issues, such as issues before and after enlargement, subject to different legislative procedures and in different policy areas. Of the 331 issues in the dataset, decisions were taken on 324 issues by the time of the end of the data collection for this project. Not all of the models, however, make predictions on all 324 issues. Not all of the 324 issues have a reference point. Therefore, the analyses also devote attention to a pairwise comparison of each pair of models on the set of issues on which both models in each pair make predictions. This pairwise comparison involves a non-parametric sign test.

This enables us to draw inferences regarding the significance of the differences between the models' predictive accuracy.

7.4 The models' predictive accuracy

Overall, the Nash Bargaining Solution without the reference point (NBS-no RP) gives the most accurate predictions of decision outcomes. The first column in Table 7.1 shows the mean average absolute difference between the decision outcomes, the reference points and alternative predictions of decision outcomes. The NBS-no RP has the lowest average error of 23.72 across all 324 controversial issues. This means that the predictions of the NBS-no RP are on average 23.72 points to the left or the right of the actual decision outcome on the 0-100 policy scales. By contrast, the NBS that treats the reference point as the disagreement outcome (the NBS-RP) has the highest error, at 44.03. The error of the mean position is also comparatively low, almost as low as that of the NBS-no RP, and the minimax prediction performs reasonably well too. The procedural model's prediction errors, at 34.32 are quite large by comparison.[3]

<Table 7.1 here>

Table 7.1 includes information on the distances between the reference points, outcomes and alternative predictions. This suggests that the procedural model and NBS-RP's predictions are generally too close the reference point. Actual decision outcomes are on average 51.32 policy scale points away from the reference point. The procedural model's predictions, however, are on average only 25.74 policy scale points away from the reference point, while the NBS-RP's predictions are 7.70 policy scale points from the reference point. By contrast the outcomes predicted by the NBS-

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[3] The poor predictive accuracy of the procedural model is not caused by the way in which the analysis deals with indifferent member states. If we restrict the analysis to issues on which at most one or two member states are indifferent, the procedural model is still significantly less accurate than the NBS-no RP. On these 166 issues, the procedural model has an average error of 36.45 (s.d. 34.62) and the NBS-no RP an error of 23.66 (s.d. 20.41). The procedural model's predictions are also significantly worse than the NBS-no RP according to the sign test (p=.00).

no RP, minimax and mean formulas are also on average around 50 points from the reference point.

The information in Table 7.1 indicates that some of the models' predictions differ substantially from each other, which is necessary if we are to distinguish among them in terms of their predictive accuracy. The difference between the NBS-RP and NBS-no RP is large, at 40.99 scale points. This indicates that adding or taking away information on the reference points drastically changes the predictions. However, the differences between the NBS-no RP and the mean position are small. This means that adding or taking away salience from the calculations has a relatively small effect on the predictions made.

There is a similar pattern of predictive accuracy before and after the 2004 enlargement. Table 7.2 contains measures of the models' predictive power before and after enlargement. Prior to enlargement, the mean position and the NBS-no RP generated the most accurate predictions; the mean was fractionally more accurate. Prior to enlargement, the NBS-RP and the procedural model were the worst performers, while the minimax rule's predictive power was in between those of the other models. The same pattern in relative performance is evident in the post-2004 controversies. The only noteworthy difference is that the NBS-no RP was fractionally more accurate than the mean in the more recent cases.

<Table 7.2 here>

Table 7.2 also reports on the relative accuracy of the predictions regarding controversies subject to different procedures. Table 7.2 divides the cases into issues subject to consultation and co-decision, and into those subject to QMV and unanimity in the Council. The consistent pattern is that under each decision rule, the procedural model and the NBS-RP make less accurate predictions than the three other formulas. The relative performance of the NBS-no RP, minimax and mean varies somewhat among the different decision rules. There is no obvious pattern in the variation in this relative performance.

Table 7.3 examines the performance of the models in different policy areas. The issues are divided into the policy areas in which we have the largest numbers of controversial issues: internal market and agriculture. Again, the procedural model and

the NBS-RP have relatively large prediction errors in these two policy areas compared to the other three sets of predictions. In the area of internal market, the minimax formula generates the most accurate prediction. In the area of agriculture, the mean position's error is lowest, but only fractionally lower than that of the NBS-no RP and the minimax solution.

<Table 7.3>
<Table 7.4>

Issues differ from each other in terms of the numbers of policy alternatives they contain. It is worthwhile exploring whether the models' relative predictive accuracy differs according to the number of alternatives on offer, which is the focus of Table 7.4. The evidence suggests that there is little systematic variation by the number of alternatives featured in a controversy. A total of 60 of the 324 controversial issues feature only two policy alternatives. On this subset of issues, we find a similar ranking of relative performance to issues on which there are three or more alternatives. On the 60 'dichotomous' issues, the procedural model and the NBS-RP again perform rather poorly. The NBS-no RP and the mean position perform relatively well. The only noteworthy difference is that the error of the minimax formula appears to be relatively high in the subset of dichotomous issues. This is because the minimax formula usually makes a prediction close to the centre of the range of policy positions, while decision outcomes on dichotomous issues are always at one of the extremes.

Table 7.5 takes a somewhat different approach to comparing relative predictive accuracy, but reaches the same conclusion. Each model is pitted against each other model in a separate head-to-head contest. The NBS-no RP beats each other model in each of these head-to-head contests. This test has the advantage of comparing each pair of models only on the issues on which both models make a prediction. The pairwise comparison reported in Table 7.5 considers the number of times the row prediction is closer to, further from or the same distance from the actual outcome as the column prediction. A simple non-parametric test, the sign test, indicates whether the difference in performance is statistically significant. The NBS-

no RP improves significantly on the predictive accuracy of each of the other models, except the mean prediction, from which it is statistically indistinguishable.

<Table 7.5>

Box 7.1 The Nice and Lisbon rules for Council voting compared

The Lisbon Treaty introduced a new system of qualified majority voting (QMV) in the Council. From the year 2014, decisions taken by QMV need the approval of 55 per cent of member states, currently fifteen of twenty-seven EU members, that make up 65 per cent of the combined total of EU states' populations. To prevent a small number of large states from blocking a decision, the population criterion only applies if at least four member states are against adoption. If only three or fewer states oppose the adoption of a bill, the population criterion will not apply, even if these states have more than 35 per cent of the EU's population. The new system will come into effect gradually after 2014. In the first three years after its introduction, any member state can request that a decision be taken according to the triple-majority Nice rules that were used in the cases examined in this study.

Despite the differences between the Lisbon and Nice variants of QMV, there is unlikely to be a clearly visible change when the Lisbon rules come into effect. Consider the controversies studied in this book that were subject to QMV in the post-2004 period. Suppose the Lisbon rules rather than the Nice rules on QMV were applied to these controversies. Would this have produced different decision outcomes? No: In almost 90 per cent of the controversies, the decision outcomes would have been the same, even if we make the rather strong assumption that the formal decision-making rules determine decision outcomes.

To assess the likely impact of the Lisbon double-majority system, I applied a new variant of the procedural model described earlier to all of the post-2004 controversies that were subject to QMV. Instead of using the Nice triple-majority rule

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to find the location of the QMV-pivot, I used the Lisbon rule. There are 106 issues in the dataset subject to QMV in the post-2004 period.[4] On 93 of these 106 issues (88 per cent) the Lisbon variant of the procedural model gives exactly the same prediction of the decision outcome as the Nice variant. The clustering of actors' policy positions often means that the same position is occupied by a group of member states that could block a decision on the basis of the Nice rules or the Lisbon rules. For example, the first example in Part I of this book concerned the proposed amendment of the working time directive, in particular the controversy regarding the abolition of the opt-out (See Figure 3.1). The UK and nine other member states opposed the abolition of the opt-out, preferring the status quo, which in this case was also the reference point, or the decision outcome in the event that the proposal was not adopted. These ten member states control 148 qualified majority votes as defined in the Nice Treaty, and approximately 53 per cent of the EU's total population. Therefore, this group of member states comfortably meets the requirements for a blocking minority under both the Nice rules and the Lisbon rules.

7.5 Conclusions

This chapter examined how the inputs into the legislative system, actors' policy demands, are transformed into outputs, in the form of decision outcomes. The findings show that the process through which inputs are transformed into outputs is defined by informal bargaining rather than formal decision-making procedures. Predictions of decision outcomes based on assumptions regarding informal bargaining are generally more accurate than predictions based on assumptions regarding formal rules. The relative accuracy of the predictions is remarkably consistent before and after the 2004 enlargement. A previous study that compared a broader range of procedural and bargaining models in the EU-15 also found that bargaining models generated the most accurate predictions (Achen 2006b). The continued relative accuracy of predictions based on informal bargaining compared to formal procedures

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[4] There are 101 issues subject to QMV from the post-2004 period to which we can apply the procedural model and on which we have decision outcomes (Table 7.3). For the present analysis of the impact of the Lisbon rules, we have an additional five cases that were pending at the time of the completion of the study.

suggests that enlargement has not fundamentally disrupted the way in which the EU resolves controversy. This does not imply that formal procedures are unimportant, but it does imply that formal procedures are usually not in the foreground when actors are resolving controversy.

The general conclusion that EU's decision-making process is driven by informal bargaining and consensus is also supported by practitioners' accounts of the process and by evidence from case studies. Indeed, one researcher criticized the type of quantitative comparative research presented here for offering nothing new compared to the conventional wisdom (Heisenberg 2008; for a chapter-length response see Schneider 2008). The fact that the general conclusion supports what might be considered the conventional wisdom is worth noting, but does not lessen the value of the modelling approach on which it is based. Practitioners' views, while valuable, are generally based on personal experience, not systematic and comparative analyses of broad selections of cases. Case studies, while valuable, provide insights into particular cases. It is therefore of interest to know how well the insights from particular cases travel across a broad selection of controversies that are studied in a comparative research design.

There are many different ways in which actors may reach a decision outcome through informal bargaining while paying heed to the informal norm of reaching consensus. The modelling approach applied here enables us to distinguish among at least some of these alternative accounts of the process. For instance, two variants of the Nash Bargaining Solution were applied: the first variant (the NBS-RP) treated the reference point as the disagreement outcome, and the second (the NBS no-RP) did not include the reference point. In this second model, it was instead assumed that all actors attached an infinitely small value to the disagreement outcome, in other words that they would do their upmost to resolve the controversy by adopting the legislative proposal in at least some form. This second model generated far more accurate predictions. This implies that the way the actors view the disagreement outcome is an essential part of the decision-making process.

Two other formulas performed significantly better than the NBS-RP and only slightly worse than the NBS-no RP. The mean position prediction is the same as the NBS-no RP without salience. Like the NBS-no RP, the mean position gives no particular importance to the reference point. The mean position's prediction was often

similar to the NBS-no RP and performed only fractionally worse than the NBS-no RP. This implies that the intensity of actors' preferences has only a slight effect on the location of the decision outcomes. We will return to the effect of actors' salience in Chapter 10, which examines variation in the congruence between decision outcomes and actor's initial policy positions. The analyses in Chapter 10 show that decision outcomes are significantly closer to the policy demands of actors that attach higher levels of salience to controversies. Therefore, while the effect of salience is not sharply clear in terms of the location of decision outcomes on controversial issues, it can be detected if we examine a lower level of analysis, which will be discussed in detail in Chapter 10.

The minimax prediction, which selects the decision outcome that minimizes the maximum utility loss suffered by any actor, also performed better than the NBS-RP. Its predictions were also significantly worse than the NBS-no RP. The main difference between the minimax prediction and the NBS-no RP is that the minimax formula considers only the worst affected actors when making its predictions, while the NBS-no RP considers all actors' policy positions. Like the NBS-no RP, the minimax formula places no particular importance on the reference point. The finding that the NBS-no RP improves on the predictive accuracy of the minimax formula implies that the process is inclusive in the sense that all actors' positions are taken into account. However, the fact that the minimax formula and the mean position prediction improve significantly on the predictive accuracy of the NBS-RP implies that avoiding disagreement is far more important in defining the process than including the positions of all of the actors or issue salience.

These insights are clearly of a more specific nature than the general conclusion that decision outcomes are reached by informal bargaining guided by the norm of reaching consensus. Future research might examine a broader range of models to add further nuance to our knowledge about the nature of the decision-making process. This research is well under way, particularly with the part of the dataset relating to decision-making in the pre-enlargement period (e.g. Thomson *et al.* 2006; Bueno de Mesquita 2009; Dijkstra *et al.* 2008; Schneider *et al.* 2010). These studies are theoretically and empirically sophisticated. However, no model has yet convincingly and significantly improved on the predictive accuracy of the Nash Bargaining Solution (in particular, the NBS-no RP) to predict the outcomes of a broad range of

EU decisions. There are other, perhaps more fruitful ways of testing models than gauging the accuracy of their predictions of decision outcomes. In future research, more attention could be devoted to examining models' testable predictions of shifts in actors' policy positions, their behaviour at the voting stage, and the duration of decision-making.

Formulas based on different assumptions regarding informal bargaining gave relatively accurate predictions despite the fact that they did not include information regarding the actors' relative power. In other words, it was assumed implicitly that all of the actors are equal in weight. There are marked differences in opinion, even among well-informed EU observers, on the relative power of the Commission and EP relative to the Council. Practitioners and researchers also express different views regarding the relative power of large and small member states and old and new members. The next two chapters examine the evidence for these views by formulating and testing models that make different assumptions about the distribution of power among the actors.

Chapter 8

The relative power of the institutions

8.1 Supranationalism versus intergovernmentalism

This chapter answers the question 'who has power in the European Union?' by assessing the power of the Commission, EP and Council relative to each other. During the process that transforms policy demands into decision outcomes, actors attempt to influence each other so that their policy demands are incorporated into outcomes as much as possible. Actors may differ from each other in their potential to exert such influence; in other words, they may differ in power. Researchers and practitioners express a wide range of views on the distribution of power among the Commission, EP and Council. The impact of EU enlargement on the distribution of power among these three institutions is also uncertain.

A classic definition of power that gives an appropriate point of departure for this chapter is that it is the potential a person or group has 'to realize their own will in a social action even against the resistance of others' (Weber 1914/2007: 247). This simple definition holds a number of insights that are highlighted by later definitions and discussions of power. First, Weber's definition implies that the focus of power is on influencing 'social' or collective actions. In the context of the legislative process, this implies that the focus of power is on influencing the contents of legislative acts. Influencing other actors may be an important means to the end of influencing the contents of legislative acts, but this is not always necessary. By contrast, Dahl's often-cited definition of power focuses on interactions between actors, rather than outcomes: actor 'A has power over [actor] B to the extent that he can get B to do something that B would not otherwise do' (Dahl 1957: 203). Depending on the decision rule, it is not always necessary for actor A to convince B to change its behaviour for A to influence decision outcomes. For instance, under the co-decision procedure, the Council and EP could in principle change the legislative proposal and adopt an act that the Commission does not support. Therefore, it is not necessary for the Council and EP to change the Commission's behaviour to influence the decision outcome.

The important distinction between power and luck is also implicit in Weber's classic definition. The clause 'even against the resistance of others' implies that sometimes actors may realize their preferences without having power. The relationship between an actor's power and the extent to which decision outcomes incorporate its demands is far from straightforward. A decision outcome might be the same as the policy position of an actor with little or no power, simply because other powerful actors also took that position, or because that position was an obvious compromise among the positions of other powerful actors. Likewise, the decision outcome might differ from a powerful actor's policy position; perhaps the powerful actor did not care much about the issue; perhaps the decision outcome would have been even further from the powerful actor's position if that actor had not exercised its power. Barry's famous discussion of power distinguishes between power and luck when examining the agreement between actors' preferences and outcomes:

> If an individual's power is defined as his ability to change outcomes from what they would otherwise have been in the direction he desires, the likelihood of outcomes corresponding to his desires does not depend solely on his power. In addition to his power, it depends on what the outcomes would have been in the absence of his intervention. This is what I shall call luck. (Barry 1980: 184)

To assess what the decision outcome would have been without the intervention of the political actors we are interested in, we require information on the policy demands of other relevant actors. Since the present study includes information on all of the main decision makers in the EU's legislative process, we are in a good position to do so.

By defining power as the 'chance' or probability an actor has to influence outcomes, Weber suggests that power is an attribute, rather than something that is always put into effect. Similarly, whether or not power is put into effect or lies dormant depends on the powerful actor's decision on whether to use its power. Some rational choice models of collective decision-making formalize this idea as the distinction between power and influence (e.g. Bueno de Mesquita and Stokman eds. 1994; Thomson *et al*. eds. 2006). Power is the potential or capability an actor has to influence other actors and decision outcomes. Influence is the proportion of that potential which the actor puts into effect on a given controversial issue. The proportion it will use depends on the salience of the issue to the actor. Formally, an

actor's influence is given by the product of its power and the salience it attaches to the issue at stake.

Weber's definition does not list the factors that contribute to power. However, his discussion of power distinguished itself from Marxist approaches of his day that equated economic power with political power. For Weber, a broad range of resources, not only economic ones, contribute to an actor's power. Similarly, rational choice models of collective decision-making typically define power as a set of resources on which actors may draw. The relevance of a resource depends on the context in which the controversy occurs. Relevant resources in everyday EU negotiations include the rights an actor receives from the formal decision-making procedures. For example, the EP clearly has more power under the co-decision procedure than under the consultation procedure. In the Council, large member states hold more votes than small member states, which may give their policy positions more weight in the decision-making process. Timely access to policy relevant information and expertise is also a relevant resource, since it allows actors to make a more convincing case for the policy demands they express. Actors with strong relationships with other actors, so-called network capital (Naurin and Lindhal 2008), also hold a valuable resource, since this allows them to access others through informal channels. If power is conceived of as a set of resources, then different actors may have a similar level of power for different reasons.

A Weberian definition of power is arguably an appropriate point of departure given the present study's focus on resolving controversy. Other foci would require different conceptions of power. For instance, if we wished to explain which controversies emerged and which ones did not, then a definition of power in the agenda-setting stage would be necessary (e.g. Princen 2009). Bachrach and Baratz (1970) point to the exercise of power in shaping the issues that get on to the agenda in the first place. Lukes' (1974) definition of power is also a broader than the Weberian definition. Lukes' definition includes the use of power in shaping other actors' preferences, or their perceptions of their own interests. Lukes writes that power may be exercised non-intentionally, by the system, rather than political actors within the system: 'The bias of the system' consists of the 'socially structured and culturally patterned behaviour of groups, and practices of institutions' (Lukes 1974: 21-2). However, even for Lukes, who clearly subscribes to a broad definition of power, the

present study's focus on overt controversy and resistance is relevant to gauging actors' relative power: Overt controversy is 'relevant in the sense that, *if* it is actualized, it provides the test by which one can measure relative power, where parties conflict over an issue' (Lukes 1986: 2).

Practitioners express a range of views on the distribution of power among the Commission, EP and Council. A small survey was held among twenty-one EU practitioners to obtain their views on the power of the Commission and EP relative to the Council in the legislative decision-making process examined here (see Thomson and Hosli 2006b for a more detailed report). These individuals included policymakers from the Commission, EP, Council Secretariat and permanent representations of several member states. The selection consisted of people who had considerable experience and positions of responsibility, including two former heads of the Commission's civil service. During the face-to-face semi-structured interviews, respondents were asked for numerical estimates of the power distribution as well as the reasons for the estimates they gave. Their views varied enormously from each other. A majority held a supranational view, in which the Commission and EP held at least as much power as the Council. A substantial minority held an intergovernmental view, in which the Council held most power. There was no clear association between the institutional affiliation of the interviewees and their views; several of those working in the Council held a supranational view. Practitioners working in the same policy area also held different views.

Although the practitioners disagreed on the relative power of the Commission, EP and Council, they often mentioned similar power resources in relation to each of the institutions (ibid.). Therefore, they appear to disagree on how these resources should be weighted. Regarding the Commission, the Commission's right to initiate a proposal was often mentioned, as well as its expertise in facilitating agreements between other actors. Regarding the Council's power, respondents referred to the expertise and authority provided by national bureaucracies. Respondents referred to the formal rules in the co-decision procedure as a reason for the EP's power when this decision rule applied. Although small in size, this survey of practitioners' views shows that there is substantial variation, and that this variation is partly due to uncertainty regarding how different sources of power should be weighted.

Academics also hold different views on the relative power of the three institutions. Detailed analyses of the EU's legislative procedures generally emphasize the power of the supranational institutions (e.g. Tsebelis 1994; Steunenberg 1994; Tsebelis and Garrett 2000). According to these analyses, the Commission's right to formulate the initial proposal gives it a resource with which it can influence decision outcomes to its advantage. Similarly, models of the EU's legislative procedures often attribute equal power to the EP and Council. On the basis of a close reading of the EU Treaty, it would appear that the Council and EP are on an equal footing (Tsebelis and Garrett 2000: 24-5). A strong argument can also be made that the EP is in a stronger position relative to the Council and Commission than most national parliaments are in relation to their executives (Hix *et al.* 2007). Such analyses support the views of those practitioners who attributed at least equal power to the Commission and EP as the Council.

Some researchers argue that the Council dominates the supranational institutions. Naurin and Wallace begin an edited volume on Council decision-making by noting that it is 'arguably the most powerful of the institutions' (2008: 1). Similarly, Moravcsik (2008: 335) asserts that the Council is the most powerful of the three institutions. The Commission, which in Moravcsik's view is the least powerful of the three institutions, has seen its power usurped by changes to the procedural rules that have eroded its power in legislative decision-making. The extension of the co-decision procedure gives the EP more possibilities to change the Commission's initial proposal. More generally, liberal intergovernmentalism posits that the main actors in international relations are states, rather than supranational actors like the Commission and EP (Moravcsik 1997).

The impact of enlargement on the balance of power among the institutions is uncertain. Enlargement could have increased the power of the Commission relative to the Council. With a more diverse set of interests present in the Council, decision-making may have become more challenging. Consequently, the Commission's involvement in brokering agreements between other actors may have become even more relevant than before. Some practitioners believe that this brokering role gives the Commission a resource with which it could influence decision outcomes to its advantage. Enlargement may also be associated with, although not necessarily cause, an increase in the EP's power. Over time, the EP has undoubtedly matured as a

171

political actor, for example by displaying increasingly coherent transnational party discipline (Hix *et al.* 2007). These developments may have strengthened the EP's relative power.

Tsebelis and Yataganas' (2002) analysis of the impact of the Nice Treaty rules in preparation for enlargement also suggests that that enlargement may have shifted power toward the Commission in certain respects, but not necessarily in the legislative arena examined here. They show that the new rules make it more difficult for the Council to take decisions that change the status quo. In other words, the Commission may find it more difficult to initiate proposals that will receive adequate support in the Council for adoption. According to this analysis, the Council's inability to decide increases the discretion enjoyed by the Commission (and the Court) when interpreting legislation, because the Council's inability to decide is also reflected in its inability to censor the Commission for pushing the boundaries of the discretion it is given.

8.2 Modelling supranationalism and intergovernmentalism

This chapter builds on the results of the previous chapter by examining the relative power of the three institutions. The previous chapter identified a variant of the Nash Bargaining Solution (NBS) as the model that gives more accurate predictions of decision outcomes than other models. The distinguishing feature of this variant of the NBS is that the disagreement outcome as extremely undesirable from the perspective of all of the actors. This formulation of the NBS has a very simple specification: the salience-weighted average of all actors' policy positions. This specification is equivalent to assuming that each of the actors has equal power, whereby both the Commission and EP have the same power as one member state. So even with this apparently unrealistic assumption, the NBS outperformed the procedural model.

In the following analyses I relax this assumption by formulating and applying models with different assumptions regarding the distribution of power among the institutions. Consider the following extension of the NBS (compare with Formula 7.2).

$$outcome = \frac{\sum_{i=1}^{n} power_i salience_i preference_i}{\sum_{i=1}^{n} power_i salience_i} \qquad\qquad (8.1)$$

Where:

outcome is the predicted outcome.

$power_i$ is the power of actor i from the set of n actors.

$salience_i$ is the level of salience that actor i attaches to the issue.

$preference_i$ is the policy preference of actor i.

The uppercase letter sigma ($\sum$) is the symbol for the summation operator.

So rather than weighting actors' policy positions by the levels of salience they attach to the controversy at stake, as in the previous chapter's formulation of the NBS (Formula 7.2), Formula 8.1 weights the positions by both power and salience.

This chapter applies two complementary analytical approaches. The first approach formulates and applies a small number of models encapsulating the main supranational and intergovernmental views. The analyses then identify which model makes the most accurate forecasts of decision outcomes. The second approach varies the power of the Commission and EP relative to each other and the Council, covering a large number of alternative specifications, to identify the distribution of power that enables the NBS to generate the most accurate predictions.

Supranational versus intergovernmental models

The supranational view attributes a large amount of power to the Commission and EP relative to the Council. In the following analyses, the member states in the Council have a total power score of 100. This is an arbitrary number, but it makes it easy to compare the power of the other institutions with the Council. For legislative proposals subject to the consultation procedure, a less common procedure nowadays, the supranational view gives a power score of 100 to both the Commission and Council. The EP is excluded from the analysis of the consultation issues. Although the EP may have some power in the consultation procedure, the consensus among practitioners is that the EP's influence is exerted mainly through the Commission in this procedure.

The supranational view of the co-decision procedure, which is of primary interest because it is now the commonly used ordinary procedure, is somewhat more complex. There are different views among researchers on whether the Commission is a relevant player in co-decision. Therefore, we will investigate two variants of the supranational view. The first variant includes both the Commission and EP and gives each a power score of 100: i.e. equal to the Council. This specification accords with the view that the Commission is a relevant actor in the co-decision procedure (e.g. Crombez 2003). The second variant of the supranational view excludes the Commission, but gives equal power to the EP and Council. This specification accords with the view that the co-decision procedure is a bargaining game between the Council and EP and that neither has an advantage (e.g. Tsebelis and Garrett 2000: 24-5).

An extreme variant of the intergovernmental view is that all power is held entirely by the member states. This specification sets both the Commission and EP's power scores to 0 relative to the Council's 100, under both the consultation and co-decision procedures. This specification accords with the view that while supranational institutions may appear to play an important role in international negotiations, their input is not more than the sum of the member states of which they are composed. Achen (2006a) also specified this model as the realist view of EU decision-making. Few EU practitioners or analysts subscribe to such a view, but it is nonetheless a useful point of comparison for the supranational specifications.

When applying these model variants, we must make at least an implicit assumption regarding the distribution of power among the member states in the Council. The next chapter is devoted entirely to this question. Here, we consider two alternatives. The first alternative is that power is distributed equally among member states. This means that a large member state's policy position is given equal weight to a small member state's position. The second alternative is that power is distributed unevenly among the member states in a regressive form, whereby large member states are weighted more heavily than small member states, but not as heavily as one would expect on the basis of their population sizes. This regressive distribution is roughly equal to the share of qualified majority votes held by each member state. In fact, this second alternative uses weights from a voting power index, the Banzahf index (1965), that will be discussed in more detail in the following chapter. The distribution of

power among member states according to this second alternative is depicted in Figure 9.1 in the following chapter. I applied this regressive power distribution in the Council to issues subject to both QMV and unanimity in the Council, because it may be that large states are more powerful than small states even when the unanimity rule applies. It turns out that the results regarding the distribution of power among the Commission, EP and Council are very similar, regardless of whether the analysis assumes an equal or an unequal distribution of power among the member states.

For comparison, the following analysis will also include the variant of the Nash Bargaining Solution (without the reference point: NBS-no RP) that was identified as the overall best-predicting model in the previous chapter. This specification is equivalent to weighting all actors' positions only with the level of salience they attach to the issue at stake; it therefore implicitly assumes that all actors' positions are weighted equally apart from issue salience. The NBS-no RP therefore attributes some power to each of the supranational institutions, the same amount of power it attributes to each of the member states.

Finding the best-fitting power distributions

The second research approach varies the power of the Commission and EP to identify the variant of the model that generates the most accurate predications of decision outcomes. For the controversies raised by legislative proposals subject to the consultation procedure, I vary the power of the Commission relative to the Council, to find the relative power score for the Commission, *power*$_{COM}$, that minimizes the model's error. The analysis examines the consultation issues subject to QMV and unanimity separately. It may be the case that the distribution of power among the institutions differs by the decision rule that applies. As a formula, the analysis finds the value of *power*$_{COM}$ that:

$$\min \ \sum_{a=1}^{m} \left\{ \left| \ actual \ outcome_a - \frac{\sum_{i=1}^{n} power_i salience_{ia} preference_{ia}}{\sum_{i=1}^{n} power_i salience_{ia}} \ \right| \right\} / m \qquad (8.2)$$

Where the terms are defined similarly to above. Here, since we are interested in the power score of the Commission, *power$_{COM}$*, that minimizes the model's error over a set of issues, we need to include notation that identifies the set of issues. Subscript *a* stands for issue *a* from the set of issues *m*. The set of issues is defined as issues subject to consultation and QMV in the Council, consultation and unanimity in the Council, or as discussed below co-decision.

actual outcome$_a$ is the actual decision outcome on the controversial issue *a*.

power$_i$ is the power of actor *i* from the set of actors *n*, which includes the Commission. In the analysis of the consultation issues, the set of actors excludes the EP.

salience$_{ia}$ is the level of salience actor *i* attaches to issue *a*.

preference$_{ia}$ is the policy preference of actor *i* on issue *a*.

In other words, find the value of *power$_{COM}$* that minimizes the average absolute distance between the actual decision outcome and the model's forecast of the decision outcome. The following analysis varies the power of the Commission from 0 to 200 relative to the Council's total power score of 100 in steps of 1. Therefore, for each of the 148 controversial issues subject to the consultation procedure on which we have a final decision outcome, the analysis applies 201 variants of the NBS-no RP, to identify the variant with the smallest prediction error. The maximum value of 200, or two times the power of the Council, is arbitrary, but it is far higher than any of the practitioners estimated the Commission's power (Thomson and Hosli 2006b).

The analysis of controversies raised by proposals subject to the co-decision procedure includes both the Commission and the EP in the relevant set of actors. Like the analysis of the consultation cases, we wish to find the values of *power$_{COM}$* and *power$_{EP}$* that minimize the model's prediction errors across all of the co-decision cases. Since co-decision is usually combined with QMV in the Council, we will not run a separate analysis on the small number of co-decision cases combined with unanimity in the Council. For the co-decision controversies, the analysis varies the power of both the Commission and the EP independently from 0 to 200 relative to the Council's power score of 100 in steps of 1. Therefore, for each issue a total of 40,401 (201 * 201) variants of the model were applied. Since we have 176 co-decision controversies with decision outcomes, this amounts to 7,110,576 applications of the

model. I performed the analyses twice: once assuming an equal distribution of power among the member states in the Council and once assuming a regressive distribution of power in the Council, based on member states' Banzhaf index scores as defined by the QMV rule. It turns out that the results are very similar, regardless of the assumptions made regarding the power distribution within the Council.

For the co-decision controversies, the analyses also consider the best-fitting power distribution between the Council and EP excluding the Commission from the decision-making process. As mentioned above, the co-decision procedure is considered by some analysts to be a bargaining game between the Council and EP alone. It might be the case that we underestimate the power of the EP because we include the Commission in the analysis. This concern turns out to be unfounded. The EP's best-fitting power score for the co-decision controversies remains much the same whether or not the Commission is included.

Over a large set of controversies, this method of searching for the distribution of power associated with the most accurate predictions of decision outcomes allows us to make inferences regarding the distribution of power. The results show that over each set of controversies, there is a unique combination of power scores associated with the most accurate predictions. However, depending on the distribution of actors' policy positions, some controversial issues offer more insight into the distribution of power than other issues. For example, suppose actual decision outcomes are generally compromises among powerful actors. Suppose that most actors' positions are located at one of the two extreme positions on a policy scale, and that their positions are quite evenly distributed between the two end points of the policy scale. If the outcome is approximately half way between these two extremes, then an actor with a position close to the middle of the scale, and therefore close to the outcome, may either be powerful or lucky. The moderate actor may be lucky in the sense that the decision outcome would have been close to its favoured outcome even if it had expressed no policy position at all. In such cases, assigning different power scores to these moderate actors will have little effect on the model's predictions. In other words, such a scenario is consistent with the moderate actor being either powerful or weak, and such issues do not allow us to differentiate between these alternatives. Crucially, this analytical procedure does not lead to the inference that moderate actors are more powerful in such cases, but rather that different assumptions about moderate actors'

power lead to similar predictions. Fortunately, as described in Chapter 3, there is a large amount of variation in actors' policy positions. No actors are extreme or moderate all of the time.

8.3 Research design

The decision-making process prior to the adoption of the data retention directive suggests that the Commission and EP may exert only a modest amount of influence in some cases. The proposal, which was introduced in 2005, aimed to align member states' policies regarding the retention of telecommunications data (i.e. phone calls and internet communications) for the purposes of fighting terrorism and crime. One of the controversies raised is depicted in Figure 8.1. It concerned the types of crimes against which retained data could be used. Some actors favoured a text stating that the data could be used against a narrow list of very serious crimes, namely terrorism and organized crime. Member states would be free to allow their law enforcement agencies to use the data against a wider range of crimes if they decided to do so. This policy position, favoured by the Commission, Germany and several other states, is located at position 30 on the first issue. Most of the other member states, including the UK and France, favoured the use of the data against all serious crimes in all member states. This policy position is position 100 on the issue. Note that member states such as the UK and France wanted to ensure that other European countries allowed their law enforcement agencies to use the retained data to fight a broad range of crimes. They were not content to leave this to the discretion of those other states. This was particularly relevant to neighbouring countries that had cross-border crime problems. For instance, the Danish government favoured a system that would allow German law enforcement to use the data retained by German telecommunications operators.

<Figure 8.1>

This legislative proposal was adopted after a single reading in the EP. This has implications for identifying the EP's policy position or policy demand that was its input into the decision-making process. Negotiations took place between MEPs and the Council prior to the full EP plenary vote that formally approved the agreement

reached between the EP and the Council members. In this context, the outcome most favoured by the EP is not the decision outcome that it adopted, but rather the position with which it entered negotiations with the Council. The interviews with MEPs revealed that this position was located between the Commission's position and the UK's position. The EP committee favoured the use of the data against crimes that fall under the European Arrest Warrant, a policy demand that our key informants placed at position 70 on the scale. The EP committee's position was a compromise among a diverse range of views in the parliament, which are not depicted in the figure. The Greens and GUE party groups favoured leaving this entirely up to national discretion (position 0). Most of the EPP group favoured the same position as the UK (position 100), while most of the Swedish, Belgian and Dutch EPP MEPs favoured a more limited list of crimes. Most of the liberal ALDE group also favoured a more limited list of crimes than the European Arrest Warrant, while the French and Italian ALDE MEPs favoured the same position as the UK. Most of the MEPs in the PSE group favoured using the retained data for the crimes that fell under the European Arrest Warrant. The decision outcome was that retained data can be used against all serious crimes, in line with the position of the UK, France and most other member states (position 100).

This is one of a number of issues raised by this legislative proposal. In addition, there were differences of opinion on the length of time for which data should be retained, on whether telecommunications providers themselves or governments should pay for storage, on exactly what types of data should be stored, and what data protection requirements should be put in place. As is often the case for proposals that raise several controversies, the actors had different patterns of agreement on these different aspects of the proposal. For example, regarding the length of time that data should be retained, Ireland and Italy in particular favoured a longer period of time than stipulated in the legislative proposal. Their policy demand was met partly by the amendment of the relevant article. The final act states that telecommunications operators must store the data for at least six months; however, national governments have the discretion to require them to store the data for up to two years.

The data retention directive is a clear example of a case in which the EP appears to have had a relatively modest amount of influence over the decision outcomes, despite the fact that this was a co-decision procedure. The decision

outcomes appear to be compromises among the diverse positions taken by member states. In the controversy regarding the types of crimes, taking into account the positions of the EP and Commission in fact leads to less accurate predictions of decision outcomes. In the example featured in Figure 8.1, the intergovernmental model makes a prediction of 93 on the policy scale (rounded off to the nearest whole number), which is a distance of seven scale points from the actual outcome (position 100). The first variant of the supranational model, which attributes equal power to the Commission, the EP and the Council, makes a prediction of 69 on the policy scale, considerably less accurate than the intergovernmental model. Similarly, the second variant of the supranational model, which attributes equal power to the EP and Council while excluding the Commission, makes a less accurate prediction than the intergovernmental model. The second variant of the supranational model predicts an outcome of 81 on the policy scale.[1]

In this case, of all possible combinations of power scores, the combination that attributes all power to the Council and none to either the Commission or EP, is associated with the most accurate forecasts of decision outcomes. As described above, the power scores of the Commission and EP were varied independently of each other from 0 to 200, relative to the Council's total power score of 100. Of the 40,401 combinations of scores examined, the combination 'Commission 0, EP 0, Council 100' gives the most accurate prediction of the outcome.

There are a number of reasons why the EP was particularly weak in this case. First, law and order is a policy area that member states' governments generally consider should be dealt with at the national level. There was some dispute regarding the appropriate legal basis for this legislative proposal. The Commission introduced the proposal on the basis of Article 95, which usually applies to internal market directives. However, the content of the directive clearly raises issues that are central to law and order. Second, the Council had done a considerable amount of policy work on the issue of data retention prior to the introduction of the legislative proposal. Prior

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[1] These predictions are of the model variant that assumes an equal distribution of power among the member states in the Council. If we assume instead an unequal distribution of power in the Council that reflects states' voting power (as measured by the Banzahf index), the results are similar. On this particular issue, with unequal member states, the models predict the same outcomes when rounded off to the nearest whole numbers. There are marginal differences behind the deimal place.

to the introduction of the proposal there was another similar proposal on the agenda in the Council. This similar proposal was based on a different treaty article, one that would have allowed the Council to take a decision without involving the EP in a co-decision procedure. The Council had almost reached an agreement on this similar proposal when it was replaced by the Commission's new legislative proposal. This may also have increased the Council's bargaining power. MEP's could have reasoned that the Council may have reverted back to the earlier proposal, which would not have required co-decision, if they attempted to alter the outcome of the Council's negotiations significantly. Third, terrorist attacks were carried out in London during this period. In this context, MEPs would not wish to be seen preventing measures that assist anti-terrorism operations. Fortunately for the EP, this is an unusual combination of factors. As the results in the following section show, although the EP may not have the power of the Council as a whole, it is generally a powerful actor in the EU's legislative process when the co-decision procedure applies.

8.4 Analysis of alternative power distributions

The predictive accuracy of supranational and intergovernmental models

Table 8.1 compares the different predictions with each other and with actual decision outcomes. The predictions of the supranational and intergovernmental models differ considerably from each other. For example, the average distance between the predictions of the intergovernmental model and the first variant of the supranational model is 27.12 scale points. The intergovernmental model's errors are lower than either of the supranational variants. The intergovernmental model's predictions have an average error of 24.67, compared to the best-predicting supranational model's error of 27.93. However, the most accurate forecasts are generated by the baseline NBS-no RP, with an average error of 23.72. Since the NBS weights all actors' positions equally, this is equivalent to assuming that each of the supranational institutions has the power of a member state, again each of which is weighted equally.

<Table 8.1>

Table 8.2 examines the errors of the models before and after enlargement and by legislative procedure. There is a similar pattern of model performance before and after enlargement. Both before and after enlargement, the NBS that weighs all positions (not institutions!) equally has the lowest prediction errors. The intergovernmental model generates more accurate predictions of decision outcomes than either of the supranational models, both before and after enlargement.

<Table 8.2>

In general, the NBS makes the most accurate predictions of decision outcomes within each sub-set of controversies that were subject to a different legislative procedure. There are two exceptions. This first is that on the controversies in the EU-15 that were subject to the consultation procedure and unanimity in the Council, the intergovernmental model gives the most accurate predictions. This means that including information regarding the Commission's policy demands actually decreases predictive accuracy. The second exception is perhaps less important, since it concerns the small group of cases that combine co-decision with unanimity voting in the Council. In these cases, the supranational models perform relatively well, but there are few of these cases.

Table 8.3 refers to the models' predictive power by comparing each pair of models. The only significant difference is that the NBS is significantly more accurate than the intergovernmental model. This means that across all of the controversies examined, taking at least some account of the information regarding the Commission and EP's policy demands increases predictive accuracy. There is, however, no significant difference between the accuracy of the intergovernmental and supranational models' predictions. Nor is there a significant difference between the accuracy of the NBS and the supranational models' predictions. Therefore, although the models make considerably different predictions, the accuracy of those predictions do not differ significantly. This suggests that both the intergovernmental and NBS underestimate the power of the Commission and EP while the supranational models

overestimate their power. This is a possibility that will be further investigated in the next section.[2]

<Table 8.3>

The best-fitting power distributions

This part of the analysis begins by finding the best-fitting power scores for the controversies that fell under the consultation procedure. For these controversies, I vary the power of the Commission relative to the Council and exclude the EP. I first divide the controversial issues into those before and after the 2004 enlargement and those subject to QMV and unanimity. For each group of issues, Figure 8.2 depicts the model's error with different assumptions about the power of the Commission relative to the Council. These analyses assume an equal distribution of power among the member states in the Council. The unbroken line in the EU-15 graph depicts the error of the model's predictions for the issues subject to unanimity voting in the Council. As the power of the Commission relative to the Council increases from 0 to 200 in the model, the model's errors increase from just under 20 points to just over 30 points. In other words, giving any power at all to the Commission in the model only decreases the model's predictive accuracy. This result is exactly the same if we assume an unequal distribution of power among the Council members (Figure 8.3).

For the controversies subject to consultation and QMV in the EU-15 the results differ. For these issues, up to a point increasing the power of the Commission relative to the Council decreases the model's errors. As depicted in Figure 8.2, assuming that power is equally distributed in the Council, that point is a power score for the Commission of 27 relative to the Council's 100. Giving the Commission either

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[2] The results reported in this section are based on models with the assumption that power is distributed evenly among the members states in the Council. The relative performance of the NBS, the intergovernmental and supranational models are the same if we assume an unequal distribution of power in the Council. Weighting member states' positions with their voting weights (Banzahf indicies) the intergovernmental model has an error of 24.67 (s.d. 21.43), the first variant of the supranational model (with equal weights for the Commission and EP under co-decision) an error of 27.69 (s.d. 23.11), and the second variant of the suprantional model (which excludes the Commission under co-decision) also has an error of 27.59 (s.d. 23.11). Again the superior predictive performance of the NBS over the intergovernmental model is significant (p=.03, two-tailed sign test).

higher or lower power scores reduces the predictive accuracy of the model. If we assume an unequal distribution of power in the Council, the results are very similar. The lowest error is associated with a model that gives a power score of 30 to the Commission relative to the Council's total score of 100 (Figure 8.3).

In the post-2004 period, the best-fitting power score for the Commission is also close to 0 for those controversies decided under the consultation procedure with unanimity in the Council. The lower half of Figure 8.2 illustrates that modestly increasing the power of the Commission decreases the model's error. For the consultation issues subject to unanimity, the best-fitting power score for the Commission is 3 per cent of the Council's total, assuming an equal distribution of power in the Council and 4 per cent assuming an unequal distribution in the Council (Figure 8.3).

The Commission's best-fitting power score for controversies decided by consultation and QMV is considerably lower than its power score in the EU-15. For these post-2004 controversies, the best-fitting power score for the Commission is 17 per cent of the Council's total, assuming equal distribution in the Council, and 18 per cent assuming an unequal distribution.

<Figure 8.2>

<Figure 8.3>

The power-fitting analyses of the co-decision cases examine different combinations of power scores for the Commission and EP relative to the Council. Figure 8.4 depicts variation in the model's performance with different assumptions regarding the distribution of power among the Commission, EP and Council. The vertical axis in Figure 8.4 shows the size of the model's average prediction errors. If we attribute relatively high power scores to either or both the Commission and EP relative to the Council, then the model's errors are relatively high. The most accurate predictions are given by model variants that attribute modest power scores to both the Commission and EP. This is the case for controversies before and after the 2004 enlargement.

The best-fitting power scores are summarized in Figure 8.5. Consider first the best-fitting power scores for the co-decision controversies prior to the 2004 enlargement. The Commission's power is 9 per cent of the Council's total power, while the EP has 12 per cent, if we assume an equal distribution of power in the Council. Assuming an unequal distribution of power in the Council, the Commission's power amounts to 15 per cent and the EP's to 20 per cent of the Council's total.

The power of both the Commission and EP relative to the Council appears to have decreased somewhat since enlargement. If we assume an equal distribution of power in the Council, the Commission's power in the co-decision procedure decreased from 9 to 5 per cent after the 2004 enlargement. Assuming an unequal distribution of power in the Council, the Commission's score decreased from 15 to 3 per cent of the Council's power. Assuming equal weights for the Council members, the EP's power decreased from 12 to 9 per cent of the Council's power. Assuming an unequal distribution of power, the EP's power decreased from 20 to 11 per cent.

<Figure 8.4>

<Figure 8.5>

The results are similar if the analysis excludes the Commission and instead varies only the power of the EP relative to the Council in the co-decision controversies. The only noteworthy difference is that the power of the EP is estimated to be somewhat higher for the EU-15 cases assuming an equal distribution of power in the Council. In other words, the fact that the best-fitting power scores for the EP under co-decision attribute a modest amount of power to the EP is generally not due to the inclusion of the Commission in the analyses. First, assuming an equal distribution of power in the Council, excluding the Commission, the best-fitting power score for the EP is 28 and 8 per cent of the Council's total before and after enlargement. This compares to 12 and 9 per cent before and after enlargement when including the Commission in the analysis. Second, assuming an unequal distribution of power in the Council, excluding the Commission from the analysis, the best-fitting power scores for the EP are 23 and 12 per cent of the Council's total before and after

185

enlargement. This is quite similar to the power scores obtained from the analyses that included the Commission; there, the EP had 20 and 11 per cent of the Council's total before and after enlargement, assuming an unequal distribution of power in the Council.

8.5 Conclusions

The headline finding from this chapter is that the Commission and EP have substantial power to shape the way in which controversy is resolved in the co-decision procedure, now the ordinary legislative procedure. Attributing some power to these supranational institutions allows the model to predict decision outcomes more accurately. The analysis also searched inductively among a large number of different assumptions regarding the power of the institutions to find the assumption that allowed the model to generate the most accurate predictions of decision outcomes. These best-fitting power scores give the Commission and EP up to about 30 per cent of the Council's power, depending on the legislative procedure and the assumptions made regarding the distribution of power among the member states. Depending on the legislative procedure, each of the supranational institutions has a similar level of power to two or three large member states. It is not, however, realistic to place either the EP or the Commission on a par with the Council as a whole in terms of its power.

In the now less frequently used consultation procedure, in which the main actors are the Commission and the Council, the Commission retains substantial power relative to the Council when QMV applies in the Council. The Commission's power in the consultation-QMV controversies appears to have declined considerably since enlargement, from around 30 to around 15-20 per cent of the Council's total. This supports the view that the Commission's power is in decline (Moravcsik 2008). Regarding controversies subject to consultation-unanimity, the Commission had and still has little to no power relative to the member states.

Although the Commission and EP have substantial power relative to the Council, their power is less than that estimated by practitioners who hold a clearly supranational view of the decision-making process. Their power is also lower than might be supposed by scrutinizing the formal procedural rules. The co-decision procedure, for instance, can reasonably be read as giving equal power to the Council

and the EP (e.g. Tsebelis and Garrett 2000). So there is certainly a difference between the findings of this chapter and at least some commonly held views regarding the distribution of power among the institutions.

Part of the difference between this chapter's research findings and the supranational view is due to this chapter's specific focus on power as the ability to affect decision outcomes in the face of opposition from other actors. The supranational view, particularly of practitioners, may be informed by an awareness of the importance of the Commission and EP in other respects. For instance, the Commission's preparatory policy work, often including extensive consultations with interest groups and member states, undoubtedly affects the contents of adopted legislation. The Commission, in addition to the Council presidency, is also adept at forging political compromises among other actors. Although these are important tasks, they are distinct from power as defined here. Similarly, the EP perhaps has more prominence than power relative to the Council. Not only is the EP highly visible in the process, parliamentarians often raise issues that did not occur in the oftentimes technical discussions that take place among member states' representatives in Council working groups. Such EP actions undoubtedly also affect the contents of adopted legislation. However, this chapter's findings indicate that when the Council members and EP take different positions on a controversy, the EP has less power than the Council. Since power is concentrated in the Council, it is particularly pertinent to examine the distribution of power among the member states. This is the focus of the following chapter.

Chapter 9

The relative power of the member states

9.1 Large and small; old and new

This chapter assesses the relative power of the member states in the Council. Part of this assessment considers the relative power of large and small member states. Small states may have considerable power relative to large states in the EU. Small states have the same voting power as large states when the Council must adopt a legislative proposal by unanimity. In addition, even in policy areas where qualified majority voting (QMV) applies, small states have more power than their formal voting weights imply (e.g. Bunse *et al*. 2005). However, many observers hold the view that large states dominate the small in the EU. A realist view of EU decision-making attributes greater power to the larger states (e.g. Pedersen 1998). Even researchers who recognize that small states have considerable weight in the decision-making process also note that the large generally have more power than the small (e.g. Heyes-Renshaw and Wallace 2006: 252).

What is the relative power of old and new member states? The answer to this question is partly conflated with the assessment of large and small states' relative power, because most of the new member states are small. In addition to their small size, new member states face the challenge of adapting to and integrating into the EU's system of decision-making. The process through which policy demands are transformed into decision outcomes is defined by informal bargaining. To participate effectively in such informal processes, state representatives need strong relationships with representatives of other states. Such relationships take time to form. Consequently, new member states may be at a disadvantage to old members, at least in the period soon after their accession. It has been suggested that new member states have not had a marked influence on decision outcomes (Goetz 2005: 254), which may indicate that they have less power than the old members.

This chapter uses the same definition of political actors' power as the previous chapter: Weber's definition of power as a political actor's potential to realize its policy demands in decision outcomes, even in the presence of opposition from other actors. The following analysis also uses a similar modelling approach to the previous

chapter. Alternative propositions about the distribution of power among member states are formulated. These alternative propositions are incorporated into different variants of the Nash Bargaining Solution. The analyses then examine variation in the predictive accuracy of these different variants to draw inferences about which propositions are most plausible.

9.2 Alternative power distributions among member states

This section identifies six alternative propositions regarding the distribution of power among member states in the Council.

1. Power is distributed equally among member states in the Council (the 'equal' distribution).

According to this first proposition, small member states' policy positions are weighted equally to large states' positions. This is the simplest proposition in the sense that it does not add any information that differentiates among member states. This view may be particularly relevant when the formal procedures give each member state equal voting weights, namely when the Council must adopt a proposal by unanimity. However, formal voting rights are not the only, or necessarily the most important resource available to states' representatives. During the negotiations that take place prior to the adoption of legislation, small member states may have just as much potential to influence as large states. This potential may be based on the quality of their relationships with other actors, the policy expertise they bring to bear in support of their policy demands, and their ability to negotiate skilfully. Here, we are interested in states' relative power, regardless of the resources upon which that power is based. The equal distribution is a relevant baseline against which to evaluate other propositions.

2. Power is distributed in a regressive form among member states in the Council (the 'regressive' distribution).

Such a regressive form is present in the distribution of voting weights among member states according to the QMV rule in the Council. Large member states have greater weight than small member states, but not as great a weight as one would expect on the basis of relative population sizes. This is true of the QMV rules in the EU-15 and of the QMV rules in the Nice Treaty's triple majority system that applied in the controversies studied here.

Figure 9.1 gives the distribution of voting power among the twenty-seven member states based on their voting rights under the Nice Treaty's QMV rules. Member states' voting power is quantified with a commonly used voting power index, the Banzhaf index (1965). To calculate the Banzhaf index, first list all of the combinations of member states that pass the qualified majority threshold, based on the three Nice criteria (at least a majority of member states holding at least 255 of the 345 votes and at least 62 per cent of the EU's population). For each member state in each coalition, identify whether the exit of that member state from the coalition would turn the winning coalition into a losing coalition. There may be one or more states that are such 'swing' states. Then, for each state calculate the number of times that it is a 'swing' state divided by the total number of 'swings'. The figures presented in Figure 9.1 multiply this proportion by 100, so that the total voting power of the Council sums to 100. These figures were calculated using a calculator devised by Pajala *et al.* (2002), and they confirm figures from a separate analysis by Algaba *et al.* (2007). The Banzhaf index scores are obviously highly correlated with the distribution of votes among states. The advantage of these Banzhaf scores is that they also incorporate the criteria regarding population and numbers of votes, although the population criteria does not differentiate among states when the scores are rounded off to two decimal places. Other voting power indicies, such as the Shapley-Shubik index (Shapley and Shubik 1954), give similar results.

<Figure 9.1>

Differences among member states in terms of formal voting power may reflect differences in their power to influence decision outcomes. Riker famously noted that institutions, of which the Council's QMV rules are an example, are 'best seen as congealed tastes' (1980: 445). We might therefore think of the differences among

states' voting weights as a reflection of the differences in their long-run potential to influence decision outcomes in the system.

Practitioners' estimates of the distribution of power among member states also correspond closely to the distribution of states' voting power based on the QMV rule. In 2000 and 2001, a small survey was held among practitioners to record their views on the distribution of power among the then fifteen member states (Thomson and Stokman 2006; see also Bailer 2004 and Thomson 2008b). Fourteen sets of estimates of the distribution of power, or 'capabilities' as it was referred to in the survey, were obtained from officials working in the permanent representations of member states, the Commission and the EP. In general, their estimates regarding the relative power of member states were very close to the relative numbers of qualified majority votes held by different states. This was the case even in policy areas where the unanimity rule applies to Council decision-making. Indeed, it is quite conceivable that large states have more power than small states when the unanimity rules applies because they have more weight in the informal negotiations that take place in the Council. Therefore, I apply the regressive power distribution depicted in Figure 9.1 to issues decided by unanimity, as well as to those decided by QMV.

In the small survey just referred to, there were some differences between practitioners' views on the distribution of power and the relative numbers of votes held by states. However, these differences are not large enough to lead to very different predictions of decision outcomes. Most practitioners thought that Germany had slightly less power than France and the UK. Some practitioners believed that Germany's federal system presented German diplomats with a challenge when formulating and coordinating its policy positions. Most practitioners gave Italy a lower power score than the other three large member states in the EU-15. These practitioners reported that the Italian delegation often appeared poorly organized and unable to articulate a clear position in Council meetings. By contrast, Spain was rated higher than the relative number of votes it held. The difference between Spain and Italy has also been observed in Bindi and Cisci's 'tale of contrasting effectiveness' of Italy and Spain in the EU, in which they note that 'Italy has been generally passive in low politics' (2005: 156). By contrast, research shows that Spain is an important player in the discussions that take place at working group level (Beyers and Dierickx 1998: 312).

Propositions 3-5 posit that large or medium to large member states dominate legislative decision-making in the Council. The propositions differ regarding the particular large member states to which they refer.

3. All power in the Council is held by the five or six medium to large member states (the 'big 5/6' distribution).

This third proposition attributes all power to France, the UK, Germany, Italy and Spain in the EU-15, and to these five plus Poland in the EU-25 and EU-27. All five or six states are weighted equally and no power is attributed to the other states.

4. All power in the Council is held by France, Germany and the UK (the 'big 3' distribution).

Similarly, this fourth proposition attributes all power to these three large states and weights them equally. The exclusion of Italy from this group is based on the above-mentioned practitioners' reports and research, which indicates that Italy may not belong to the most powerful states in the Council.

5. All power is held by France and Germany in the Council (the 'Franco-German' distribution).

This proposition is at least worthwhile investigating due to the importance of cooperation and compromise between France and Germany in shaping the European Union and its policies (e.g. Pedersen 1998).

The sixth and final proposition is relevant to the post-2004 period only:

6. All power is held by the old member states in the enlarged EU (the 'old member state' distribution).

According to this proposition, the new member states have no effective power, despite their membership of the EU and associated formal voting rights. For

comparison with the first proposition regarding the distribution of power (the 'equal' distribution), I assume that the old members' have equal power to each other.

9.3 Research design

Each of the six propositions is applied as a variant of the Nash Bargaining Solution (NBS; specifically NBS-no RP) used in the previous two chapters. Formula 8.1 from the previous chapter identified the NBS as the weighted average of actors' policy positions. The weight attributed to each actor's position is the actor's power multiplied by the salience it attaches to the controversial issue at stake. The six propositions regarding the distribution of power among the member states are used in six different variants of the NBS. These six different variants of the NBS generate different predictions of decision outcomes, which are then compared with actual decision outcomes.

When applying the NBS, an assumption is required regarding the distribution of power among the Commission, EP and Council, because the Commission and EP are also involved in the decision-making process. The previous chapter identified the distributions of power among the three institutions associated with the most accurate predictions of decision outcomes. The following analyses use these power scores for the three institutions. In particular, I use the power scores for the institutions that were derived from simulations assuming an equal distribution of power among the Council members. When consultation-QMV applies, this means that the Commission has 27 per cent of the Council members' total power in the EU-15 and 17 per cent of the Council's total in the post-2004 period; the EP has no power. When consultation-unanimity applies, the Commission has no power in the EU-15 period and just 3 per cent of the Council's total in the post-2004 period; again, the EP has no power. When the co-decision procedure applies in the EU-15, the Commission has 9 per cent of the Council's total while the EP has 12 per cent of the Council's total. When the co-decision procedure applies in the post-2004 period, the Commission's power is 5 per cent of the Council's total while the EP's power is 9 per cent of the Council's total. The findings do not differ if we use the inter-institutional power scores that were calculated using the assumption that power is unequally distributed in the Council. These will be reported in a footnote in the following section.

Figure 9.2 illustrates the different variants of the NBS with one of the main controversies raised by the proposed payment services directive. The controversy concerned the extent to which the market for providing payment services should be opened up to businesses other than banks. Specifically, it concerned the capital requirements, if any, that companies should fulfil to be permitted to provide payment services (Figure 9.2). A group of member states led informally by the UK took the most economically liberal position, which is located at the left end of the issue continuum (position 0). These actors favoured few restrictions on market entry. Another group of member states led informally by Germany favoured tight restrictions on market entry in the form of high capital requirements. These actors are located at the right end of the continuum (position 100). Intermediate positions are placed on positions between these two alternatives on the scale of 0 to 100, to reflect key informants' judgments on the political distances between the alternatives. One such position was a compromise proposal, suggested by the Finnish delegation when it held the presidency. This compromise was judged by our key informants to be half way between the two opposing camps and placed on position 50. The final outcome contained lower capital requirements than the Finnish proposal and is therefore somewhat closer to the Commission and UK's position (position 40).

<Figure 9.2>

In the controversy regarding capital requirements, NBS with the equal distribution of power among member states gives the most accurate prediction of the decision outcome. This model gives a prediction of 56 on the scale rounded off to the nearest whole number: i.e. closest to the Finnish proposal. This prediction has an error of 16 scale points because the actual outcome is located at position 40. The predictions given by the NBS with the other propositions regarding the distribution of power in the Council have larger errors. The largest error is given by the Franco-German distribution, which predicts an outcome of 92 on the scale, closest to the position taken by the French and German representatives. Since the NBS gives some weight to the Commission and EP, its predictions are not fully in line France and Germany's position when it uses the Franco-German distribution.

194

This illustration makes clear that the distribution of member states' policy positions can be such that the different propositions give similar predictions of decision outcomes. The prediction of the regressive, old member states and NBS-no RP are the same when rounded off to the nearest whole number, position 58 on the policy scale.[1] The reason for this is that each of the two extreme positions on the policy scale are occupied by a mixture of large and small states as well as by a mixture of old and new states. In such a situation, taking the positions of only the large states, or only the old member states, is like taking a fairly representative sample of all states' positions. Chapter 3 established that it is unusual for large states to take different positions from small states, or for old members to take different positions from new members. This makes it difficult to distinguish between the different predictions empirically.

As in the previous two chapters, the predictions' accuracy is tested by the mean average error across the issues. For comparison, I also include the NBS-no RP, the model that gave the most accurate predictions of decision outcomes in Chapter 7. This is simply the average of all of the actors' positions weighted by issue salience. As far as the power relations among member states is concerned, the NBS-no RP is the same as the equal distribution formulated above. However, the NBS-no RP differs from the above specification of the equal distribution in that it also weights the policy positions of the Commission and the EP the same as the positions of any member state. Therefore, the higher predictive power of the equal distribution over the NBS-no RP, which will be demonstrated in the next section, is entirely due to a more realistic estimate of the power distribution among the Commission, EP and Council.

9.4 The predictive accuracy of different distributions of power among states

Table 9.1 contains information on the differences among the predictions of decision outcomes, as well as the differences between the predictions and actual decision

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[1] The 'regressive' prediction in Figure 9.2 uses the inter-institutional weights derived from the simulations in Chapter 8 that assumed an equal distribution of power in the Council. The results are almost identical if the NBS is loaded with the inter-institutional weights derived from the simulations that assumed an unequal distribution of power in the Council. The regressive prediction differs by only one scale point (it becomes position 59 rounded off to the nearest whole number).

outcomes. Some of the predictions are quite similar to each other, despite making different assumptions regarding the distribution of power among member states. In particular, the equal distribution's predictions are on average only 3.96 policy scale points away from the regressive distribution's predictions.[2] As expected, the distributions that differ most from each other also give the most different predictions. The predictions of the equal and Franco-German distributions differ markedly from each other.

The first column in Table 9.1 gives the average distances between each prediction and the decision outcomes. Overall, the equal distribution's predictions are closest to the actual decision outcomes, with an average error of 22.70 scale points. The regressive distribution's predictions, despite containing additional information regarding the differences among states' power, does not improve on this. In fact, it makes fractionally less accurate predictions, with an average error of 22.76 scale points. The distributions that assume power is concentrated among large states give less accurate predictions.

<Table 9.1>

Table 9.2 reports the predictions' errors separately for the issues before and after the 2004 enlargement and for the issues subject to different procedures. Both before and after enlargement, the most inclusive power distributions, the equal and the regressive distributions, have the lowest errors. Before enlargement, the equal distribution is slightly more accurate than the regressive distribution, while after enlargement the equal distribution is slightly less accurate.

The relative accuracy of the predictions does not vary systematically among procedures. Contrary to what might have been expected, the regressive distribution is

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[2] As mentioned earlier, the regressive distribution's prediction is based on a distribution of power among the Commission, EP and Council derived from analyses that assumed an equal distribution of power within the Council (see previous chapter). The results do not differ substantively if we instead calculate the regressive prediction using the inter-institutional power scores derived from analyses that also assume a regressive distribution of power among member states. If we do so, the average difference between the equal and regressive distributions' predictions is 4.10 (s.d. 3.66, n = 331). The average error of this new regressive distribution's predictions is 22.65 (s.d. 19.31, n=324), and does not differ significantly in accuracy from the equal distribution (p=.61, two-tailed sign test).

not systematically more accurate than the equal distribution when QMV applies in the Council. For instance, the equal distribution makes somewhat more accurate predictions than the regressive distribution in the QMV controversies subject to co-decision in the EU-15 and consultation in the post-2004 EU.

For the post-2004 issues, the old member state distribution, which excludes the new members, has a higher error than both the equal and regressive distributions, which include the new members.

<Table 9.2>
<Table 9.3>

Table 9.3 displays the results of another way of assessing the accuracy of the predictions. The differences between each pair of predictions are assessed by examining whether the row prediction is closer to, further from, or equidistant from the outcome than is the column prediction. The non-parametric sign test is applied to indicate the statistical significance of the differences. Again, the equal distribution gives the most accurate predictions. On 153 issues, the regressive distribution's predictions are more accurate than the equal distribution's predictions, while on 163 issues, the regressive distribution's predictions are less accurate. Similarly, for each of the more restrictive power distributions, the predictions are more frequently worse than the equal distribution's predictions. The differences are statistically significant for the predictions that differ most from the equal distribution's predictions. For example, the old member state distribution gives significantly less accurate predictions than the equal distribution.

As the controversy from the payment services directive illustrates, alternative distributions often give similar predictions of decision outcomes. This is especially the case when the set of large member states take a range of different policy positions. This means that large states' positions are quite representative of all states' positions. However, when there is some difference between large and small member states' positions, the equal and big-5/6 distributions' predictions differ. On these issues, the equal distribution clearly outperforms the big-5/6 distribution. For example, when their predictions differ by at least 20.14 policy scale points (one standard deviation above the average difference between the predictions: Table 9.1), the error of the

equal prediction is 26.68 (s.d. 16.21, n=44) compared to the big-5/6's error of 36.56 (s.d. 24.64, n=44). The sign test indicates that the difference is significant (p=.00).

The equal and regressive predictions differ marginally in predictive accuracy. This is true even for the issues on which the predictions of the equal and regressive distributions differ by a relatively large amount. For the fifty-one controversies on which there is a difference of 7.52 policy scale points or more between the predictions (one standard deviation greater than the average distance between the predictions), the equal distribution has an error of 28.61 (s.d. 15.69), while regressive has an error of 29.15 (17.40).[3]

Finally, note that the baseline NBS performs significantly worse than the equal distribution. As mentioned above, these two predictions differ only regarding the relative power of the three institutions. Therefore, the smaller errors of the equal distribution are due entirely to the larger weight it gives to the Commission in the consultation procedure and the Commission and EP in the co-decision procedure.

9.5 Conclusions

Predictions of decision outcomes are more accurate when they take into account the policy demands of all member states. The equal and regressive distributions give significantly more accurate predictions than other, less inclusive distributions. The propositions that power is held by medium and large states only, or by France, Germany and the UK only, or by France and Germany alone, generally give less accurate predictions. Power in the Council is more widely dispersed than these propositions suggest. The power of smaller states is partly reflected in the formal decision-making rules that give them a larger share of voting power than their share of the EU population. In addition, small states' representatives make use of informal channels of influence, the relationships they have with other states and institutions, to influence decision outcomes (Naurin and Lindahl 2008; Bunse *et al.* 2005). These

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[3] This difference is marginally significant (p=.09). However, the difference between the equal and regressive distributions' predictive accuracy is insignificant if we load the regressive distribution with the inter-institutional weights based on a regressive distribution within the Council (see footnote 2 of this chapter), and examine the cases on which they make different predictions.

formal and informal resources mean that small member states have considerable power in the EU.

The equal and regressive distributions give very similar predictions that do not differ significantly in accuracy. In addition, it is not the case that the equal distribution is more applicable to controversies to which the unanimity rule applied and the regressive distribution to controversies to which the QMV rule applied. The similarity between the equal and regressive distributions' predictions is intriguing, because practitioners perceive there to be differences among member states' power. With a few relatively minor exceptions, the distribution of power among member states perceived by practitioners is similar to the distribution of voting power under QMV (the regressive distribution examined here). Heyes-Renshaw and Wallace agree: 'It would be naïve to suggest that some member states do not carry more weight than others in the Council' (2006: 252). So why does this naïve equal distribution predict as well as the regressive distribution? The answer lies in the nature of the inputs into the decision-making process that were described in Chapter 3. There are relatively few controversies on which states with large populations take different positions to states with small populations (Table 3.2); most policy demands are supported by a mixture of large and small states. This means that on most issues, taking large member states' positions gives a reasonably representative sample of all states' positions. As a result, any differences among member states' power that may exist do not have clearly observable implications for decision outcomes.

New member states in the enlarged EU are having marked effects on decision outcomes. The proposition that power is held by old member states resulted in significantly less accurate predictions than the more inclusive equal and regressive propositions. This assessment adds nuance to that of Goetz (2005: 254), who wrote that '[t]he capacity of the new members to influence the integration process is limited as a consequence of their diverse interests and weak intraregional coordination'. I agree that new member states' power is not always clearly visible, but this does not imply that their power is marginal. When there is no sharp divide between old and new members' policy positions, as was the case in the payment services controversy for example, a prediction based on the old members' positions is similar to a prediction based on all states' positions. Nonetheless, taking all of the post-enlargement controversies, old and new members' policy positions differ enough that

199

including new members' policy positions in the analysis gives significantly more accurate predictions of decision outcomes.

Chapter 10

Decision outcomes

10.1 Winners and losers with respect to decision outcomes

To what extent are there differences among actors in the congruence between their policy positions and decision outcomes across a broad range of controversial issues? When the decision-making process transforms diverse and competing policy demands into a single decision outcome, some actors might lose more than others. Losers with respect to one decision outcome may be winners with respect to other decision outcomes. The above question directs our attention to the incongruence between demands and outcomes across a range of controversies, which is obviously distinct from who wins and loses on any specific controversy. The answer to this descriptive question is relevant to the legitimacy of the EU. Whether a political system is legitimate or not is defined by relevant actors' perceptions; a regime is not legitimate unless it is 'reasonable from every individual's point of view' (D'Agostino 2008). The relevant individuals in this context must include the decision makers: decision makers in the Commission, EP and Council. In a representative system such as the EU, these actors are charged with representing a range of interests. Decision makers' perceptions of legitimacy are conditioned by the extent to which decision outcomes differ from their policy demands. Suppose that decision outcomes across a range of issues failed to reflect a particular member state's policy demands. Over time, the representatives of the disadvantaged member state would come to believe that the system is biased against their state's interests.

Political actors may use different logics to evaluate the fairness of decision outcomes in relation to their policy demands (Barry 1989). According to the logic of mutual advantage, actors are concerned that they gain at least as much as other actors, and preferably more than other actors. From this perspective, actors consider whether decision outcomes are at least as congruent with their own policy demands as they are with other actors' policy demands. According to the logic of impartiality, actors are not concerned that they gain at least as much as others, but rather that outcomes can be approved of on a footing of equality. Whichever logic is applied, actors'

judgements are conditioned by comparisons of decision outcomes with the diverse policy demands expressed by all actors.

My expectation is that there is little variation among decision-making actors in terms of the congruence or incongruence between their policy positions and decision outcomes across a broad range of controversial issues. This expectation follows from the analyses of the inputs and processes presented in the previous chapters. Inputs - the policy demands expressed by the decision-making actors - are diverse. Chapter 3 showed that there are few regularly reoccurring alignments of actors across a range of controversies. To the extent that there are patterns, such as Northern versus Southern member states, new versus old members, or agreement between the supranational actors, these patterns occur on only about a third of the controversies. The decision-making process through which actors' policy demands are transformed into outcomes is consensual and inclusive. Chapter 7 showed that decision outcomes are best predicted by a variant of the Nash Bargaining Solution. This prediction is a compromise among all actors' positions. In addition, Chapters 8 and 9 showed that decision outcomes are best predicted by models that give relatively equal weights to different actors. When inputs and processes have these features, there is likely to be little difference among actors in the average distance between their policy demands and decision outcomes across a range of controversies.

The expectation that decision-making actors do not differ much in this respect is also supported by previous research that examined sub-sets of the data used here. Bailer (2004), for instance, examined the EU-15 data and concluded that that it was not possible to identify clear winners and losers among the member states prior to the 2004 enlargement. Arregui and Thomson (2009) examined the EU-15 data and some of the data from the post-2004 period used here. That study also concluded that there were no clear winners or losers among the member states either before or after the 2004 enlargement. This chapter revisits the same question as these previous studies with new data and a more refined method to explain variation in the congruence between decision outcomes and actors' policy demands.

10.2 Explaining incongruence between decision outcomes and policy positions

This chapter also answers a second, explanatory question: What factors explain variation in the distance between decision outcomes and member states' policy positions on different issues? So after describing variation in the levels of incongruence between actors' demands and outcomes, I will turn to explaining that variation. There is no contradiction between the expectation that there is little variation among actors at the aggregate level and the task of explaining variation across different issues. Indeed, the analyses will show, in line with the expectation, that there is little variation among actors in terms of the aggregate distances between their demands and outcomes across a range of issues. However, there is a large amount of variation among actors in terms of the distances between their demands and outcomes on controversial issues considered separately. This means that there is considerable variation to be explained.

The explanatory question is formulated in terms of member states, rather than all of the decision-making actors, which would include the Commission and EP. The analysis does not ignore the positions of the Commission and EP. The Commission and EP's policy demands are important explanatory variables, as will be discussed below.

'Luck' and distance to other actors' policy positions

The congruence between decision outcomes and actors' policy demands has been described as actors' 'bargaining success' in previous research (e.g. Bailer 2004; Arregui and Thomson 2009; Aksoy 2010b). The term 'bargaining success' is misleading if we consider that 'luck' has a large effect on the congruence between outcomes and policy demands. Success implies achievement and causality; if individuals or organizations are said to have 'succeeded' in realizing a particular outcome, this implies that that they achieved the outcome in the sense that their actions in some way caused the outcome. However, an outcome may coincide with an actor's policy demand without the actor having caused the outcome in any way. As mentioned in Chapter 8, Barry defines actors' luck as the likelihood of outcomes corresponding to their desires that depends on 'what the outcomes would have been in

the absence of [their] intervention' (1980: 184). The first explanations of variation in the difference between member states' demands and outcomes refer to their luck in this sense.

Assessing the extent to which the realization of a state's policy demands is due to luck requires that we consider what decision outcomes would have been reached without that state's intervention. In doing so, we must refer to the positions of other actors – other member states, the Commission and EP - and how these are typically transformed into decision outcomes. The following hypotheses consider the positions of other member states and the supranational institutions separately. The expectations are formulated in terms of distances between positions on policy scales using the same spatial model applied in previous chapters.

The first hypothesis is that:

H1: The greater the distance between a member state's policy position and the average policy position of other states, the greater the distance between that member state's position and the actual decision outcome.

The mean average of actors' policy positions was shown to be a relatively powerful prediction of decision outcomes (Chapter 7). As discussed in Chapter 7, the mean has strong theoretical foundations. Caplin and Nalebuff's (1991) mean voter theorem is the multi-dimensional analogue of the median voter theorem that applies to cases of supermajority voting. In addition, when the disagreement outcome is highly undesirable, as is the case in the EU, a prediction based on the average of actors' positions is an appropriate representation of the Nash Bargaining Solution (Achen 2006a). In the previous chapters, I also weighted the mean by actors' issue salience and voting power. These variables will be considered separately below.

The second hypothesis is that:

H2: The greater the distance between a member state's position and the Commission's position, the greater the distance between that state's position and the decision outcome.

The Commission has resources that give it considerable power to realize its policy demands in decision outcomes. Therefore, if a member state agrees with the Commission, the congruence between that state's policy position and the outcome may be at least partly attributable to the Commission's power. The Commission's resources include the fact that it introduces the legislative proposal, which gives it some potential to set the agenda. The Commission's policy demands also have the authority of proposals that are formulated after extensive consultations. Chapter 8 discussed these and other aspects of the Commission's power. The Commission might be more powerful when the consultation procedure applies than when the co-decision procedure applies. There is some difference of opinion among analysts regarding the relevance of the Commission when the co-decision procedure applies (Crombez 2003; Tsebelis and Garrett 2000: 24-5). Some analysts view the co-decision procedure as a game between the Council and the EP, in which case the distance between states and the Commission's positions may be irrelevant under this procedure.

The third hypothesis is that:

H3: When the co-decision procedure applies, the greater the distance between a member state's position and the EP's position, the greater the distance between that state's position and the decision outcome.

The co-decision procedure gives the EP formal power by stipulating that the final text of the proposal must be approved by both the Council and EP. Even if the EP has less power than the Council in practice, as indicated by the results of Chapter 8, the EP still carries more weight than any one of the member states. Therefore, if the co-decision procedure applies and a state agrees with the EP, whether or not that state's demand is realized will be due at least in part to its proximity to the EP's position.

The analysis also explores whether outcomes are biased toward the reference point. Recall that the reference point is the decision outcome that would be realized with respect to the controversy if the actors fail to reach an agreement, which is often but not always the status quo position. Aksoy (2010b) argues that any measure of states' bargaining success should incorporate the status quo position. Some analyses of the EU's legislative process attribute great importance to the disagreement outcome, sometimes simply referred to as the 'status quo' (e.g. Tsebelis 1994;

Steunenberg 1994; Crombez 1996). While the effect of the reference point is worth exploring, I do not expect it to influence the location of the decision outcome. In Chapter 7, it was argued that the reference point is quite distinct from the disagreement outcome. The disagreement outcome is the outcome of the decision-making process in its totality, while the reference point refers to the particular controversy at stake. The disagreement outcome is therefore a broader concept than the reference point (Achen 2006a: 101). As discussed in Chapter 7, actors' disutility from the reference point does not include the consequences of failing to agree for the loss of the uncontentious parts of the legislative proposal or for the damage to the long-term relationships among decision-makers. Moreover, models that attribute importance to the reference point generally performed poorly in predicting decision outcomes. I do not therefore expect outcomes to be biased toward the reference point.

Issue salience

Some of the variation in the incongruence between decision outcomes and member states' policy demands is due to the power exercised by those states. Actors' propensity to use their power is conditioned by the level of importance or salience they attach to the issue in question. According to one definition of salience, it is the proportion of an actor's power that the actor is willing to put into effect to influence the decision outcome on that issue. This conception of salience is found in many rational choice models of collective decision-making (e.g. Bueno de Mesquita and Stokman eds. 1994; Thomson *et al*. eds. 2006). It leads to the following expectation:

H4: The more salience a member state attaches to an issue compared to other states, the smaller the distance between that state's position and the decision outcome.

Salience is defined and operationalized in terms of each specific controversy (Chapter 2). Salience is therefore distinct from the general importance of a legislative proposal to an actor, or the intensity of an actor's preference for reaching an agreement.

An alternative expectation regarding the effect of salience is that states which attach more salience to an issue generally make more concessions; therefore, decision outcomes are further from their policy demands (Schneider *et al*. 2010: 92). In my

view, this argument conflates issue saliency with actors' relative disutility from the disagreement outcome. There is indeed evidence that actors which benefit most from an agreement are more likely to make concessions to achieve that agreement, but this effect is distinct from actors' issue salience. The kernel of Keohane and Nye's (1977) asymmetrical interdependence theory is that countries with open economies have most to gain from trade liberalization and are therefore more willing to make concessions to achieve this. Similarly, Moravcsik and Vachudova's (2003) analysis of EU accession argued convincingly that during the process of accession to the EU, candidate countries made concessions to existing members because they had much to gain from EU membership. These examples, however, refer to cases in which actors that attached relatively *low* salience to specific controversial issues made large concessions. For instance, the candidate countries to the EU had an intense preference for achieving membership, i.e. avoiding a breakdown in the accession negotiations. Compared to the importance of achieving membership, the way in which specific controversial issues were resolved, such as limits on transfers from structural funds, was of modest salience to the candidate countries. The above hypothesis regarding the effect of issue salience does not, therefore, contradict the proposition from interdependence theory that actors with more intense preferences for agreement make more concessions.

The Council presidency

The rotating Council presidency may also affect the congruence between states' policy positions and decision outcomes. Every six months a different member state has the position of president of the Council of Ministers. The Council president has responsibilities for the management of the decision-making process (Elgström 2003: 4–7; Schout 1998; Tallberg 2006: 10–11; Wallace 1985: 10–20; Kirchner 1992: 79–82). Council presidents are responsible for the effective running of business during their term by organizing meetings and setting the detail of those meetings' agendas. This gives them some opportunity to set priorities. Council presidents also facilitate agreements. They hold bilateral meetings with representatives of member states that have particular concerns with the proposals being discussed. In addition, Council presidents represent the Council in negotiations with the European Parliament.

Some analysts conclude that the president's tasks give incumbent member states responsibility, but little power to influence decision outcomes in line with their own preferences (Dewost 1984: 31; Wallace 1985). The success of a presidency is usually assessed by the amount of progress made on pending policy proposals. In the interests of achieving such progress, Council presidents must put their national interests aside and play the role of 'honest broker'. After analyzing eight Council presidents, Kirchner concluded that 'most appeared prepared, to a considerable extent, to put the Community interest above the national interest' (1992: 114). The discretion that Council presidents have to shape the agenda is indeed limited. The six-month tenure is short and the agenda is full of proposals that were introduced prior to the start of any given presidency.

Despite these constraints, other researchers argue that the Council presidency gives incumbent member states a resource with which they can influence decision outcomes in line with their preferences (e.g. Bunse 2009; Tallberg 2004: 2006: 29-39). Council presidents have privileged access to information regarding other actors' policy preferences and the decision outcomes those actors would be prepared to accept. Presidents obtain this information in the abovementioned bilateral meetings with other states. The Council Secretariat, which supports the presidency, is another important source of information for presidents. This information enables presidents to formulate proposals that are both acceptable to other actors and as close as possible to their own policy positions. Bunse and Tallberg's case studies also provide evidence for this conclusion.

There is also evidence from quantitative studies that decision outcomes are somewhat closer to the policy positions of member states that held the Council presidency at the time the decision was taken than to other policy positions (Schalk *et al.* 2007; Thomson 2008c; Warntjen 2008). These quantitative studies examined most of the information from EU-15 decision-making used here. I examined the effect of so-called 'initiating' and 'intermediate' presidents, as well as 'finalizing' presidents (Thomson 2008c). The 'initiating' president is the member state that held the Council presidency when the legislative proposal was introduced by the Commission. 'Intermediate' presidents are the states that held the presidency after the introduction of the proposal, but before it was adopted. The 'finalizing' president is the state that held the presidency at the time of adoption. My research found that only finalizing

presidents had a direct effect on decision outcomes in line with their own policy demands. The following hypothesis therefore considers only finalizing presidents:

H5: The greater the distance between a member state's position and the finalizing president's position, the greater the distance between that state's position and the decision outcome.

If the state in question holds the presidency at the time of the decision outcome, there will of course be a distance of 0 on the policy scale between its position and the finalizing president's position.

The following analyses examine whether the Council presidency is as relevant in the enlarged EU as it was in the EU-15. Arregui and Thomson (2009) suggested that it is not. They found that while decision outcomes were significantly closer to finalizing presidents' positions in the EU-15, they were not in the enlarged EU. They argued that since facilitating decision-making had become more challenging in the enlarged EU, Council presidents had to devote all their attention to this, putting their own national interests aside more so than before. A limitation of Arregui and Thomson's analysis is that it used a dichotomous measure of presidential status: simply whether or not a member state held the presidency at the time the act was adopted. This measure does not consider the fact that a member state that did not hold the presidency might have agreed with the presidential member state. According to Tallberg (2010: 252) there is as yet no evidence that the power of the Council president has declined since enlargement.

Member states' characteristics: Voting power, population size and wealth

The following analysis would not be complete without exploring the effects of member states' characteristics on the difference between their policy positions and decision outcomes. The explanatory variables referred to in the hypotheses are characteristics of member states in relation to controversial issues. By contrast, the variables referred to in this sub-section are member states' characteristics that do not vary over a set of issues. The first descriptive expectation is that actors do not differ markedly from each other in terms of the distances between their policy demands and

decision outcomes across large sets of issues. If this is true, which indeed turns out to be the case, I would not expect member states' characteristics to have much explanatory power.

Population size will be included in the analysis. It could be argued that decision outcomes are likely to be more congruent with large states' policy positions than small states' positions. Larger states generally have larger bureaucracies at their disposal that might be deployed to lobby other actors. Population sizes are also reflected in the distribution of qualified majority votes in the Council. States' formal voting power is of course an important aspect of the formal rules of decision-making emphasized in models of the EU's legislative procedures. Large states also tend to be consulted more frequently in the informal discussions among member states' representatives (Naurin and Lindahl 2008). But sheer size does not necessarily translate directly into preference attainment. Mattila's (2006) study of the allocation of EU funds concludes that these decisions were disproportionately favourable to small member states. Likewise, Slapin's (2006) analysis of the intergovernmental conference negotiations leading to the Treaty of Amsterdam concludes that large states did not obtain more favourable outcomes than small states.

Member states' wealth is also included in the analysis. Again, while there is reason to include this as an exploratory control variable, there is no compelling argument to expect that variation in states' economic wealth affects the difference between their policy demands and outcomes. It could be argued that states with high per capita GDPs have a surplus that they can use to project power beyond their borders (Moravcsik 2009: 415). However, this argument is really only effective when it is deployed (as Moravcsik indeed deploys it) to global politics. Considered globally, all EU member states are rich. The EU's 'poor' members have ample capabilities to participate in the decision-making process.

The analysis also considers the possibility that decision outcomes are biased against the policy demands of new member states. Most new member states are both small and relatively poor. So if these characteristics are disadvantageous, they would be compounded in the experience of most new members. Goetz (2005: 254) suggests that new members have not had a marked effect on decision outcomes. This might suggest that decision outcomes are biased against new members' policy demands. However, a more likely explanation for this observation is that new member states

seldom share the same policy positions, as shown in Chapter 3, and as a result of this their influence is not marked. While there may not be a theoretically compelling argument to expect that decision outcomes are less congruent with new members' demands than old members' demands, it is a possibility worth exploring.

10.3 Research design

The directive laying down rules for the protection of chickens kept for meat production illustrates the distances between actors' policy positions and decision outcomes (Figure 10.1). The proposal was introduced in May 2005 and adopted as law in June 2007. The main controversy raised by the proposal concerned the minimum amount of space that should be given to the animals when being reared. This controversy was expressed in terms of the maximum weight of animals that could be kept in one cubic meter. The Commission proposed a relatively high standard; its proposal stipulated that chickens weighing a maximum of 38 kilograms could be kept in a cubic meter of space (position 80 on the first policy scale).[1] Four member states (Denmark, Germany, Sweden and Austria) called for a higher standard of animal protection than proposed by the Commission; they demanded a lower weight of 35 kilograms per square meter (position 100 on the policy scale). By contrast, a group of member states led by France opposed the introduction of any maximum stocking density (position 0). The French position meant the continuation of the status quo, in which member states could set any or no limit at all on the maximum stocking density. The decision outcome on this issue was close to the Commission's proposal. The Commission's proposal was amended to bring it somewhat closer to the French position. The adopted directive stipulates a maximum of 39 kilograms of chickens per cubic meter, but allows member states to increase this by 3 kilograms if certain quality standards are met (position 70).

<Figure 10.1 about here>

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[1] Article 3 of the Commission's proposal refers to 30 kg with the possibility of derogating to 38 kg. Similarly, Article 3 of the adopted directive refers to 33 kg with the possibility of derogating to 39 kg and a possibility of further derogations with an extra 3 kg if additional criteria are met. The scale used refers to the quantities that were the focus of the negotiations.

A second issue, which was somewhat less prominent in the negotiations, concerned the checks on animal welfare in slaughterhouses in addition to the facilities in which the animals were reared. The legislative proposal provided for an extensive system of checks, including detailed sampling by independent veterinarians (position 100). The final proposal took out these extensive checks, a position advocated by Germany, France and many other member states (position 0).

Member states' policy positions on these issues were motivated by both the relative importance of animal rights concerns and the prevalence of intensive chicken rearing for meat in different member states. Public support for animal rights is particularly strong in Denmark, Sweden, Germany and Austria. These countries also have relatively high standards in national rules regarding the maximum permitted stocking density of chickens. Since this directive provides for minimum standards, these progressive countries could keep their high domestic standards. However, they feared that their domestic industry faced unfair competition because producers in other EU states were not subject to the same standards. Therefore, they favoured the imposition of high minimum standards across the EU. The proponents of higher standards argued that this would benefit farmers throughout Europe, because consumers would be willing to pay more for meat produced according to these standards. Climate also affected states' positions. It is not possible to rear chickens at very high densities in warm climates. This means that Southern member states, in particular Italy and Spain, were not particularly affected by the introduction of limits on stocking density and could therefore support the Commission's proposal.

This legislative proposal passed through the hands of five Council presidents. Some of these appear to have affected the content of the act. The proposal was introduced in May 2005 toward the end of the Luxemburgish presidency. The UK (July-December 2005), Austria (January-June 2006) and Finland (July-December 2006) were in the Council chair in the intervening period. The directive was adopted in June 2007 at the end of the German presidency. Most of the discussions were held during the Austrian, Finnish and German presidencies. On the issue of stocking density, a noteworthy change in direction took place between the Austrian and Finnish presidencies. The Austrian presidency appeared willing to take out the provisions for a maximum stocking density. At the end of their presidency it appeared

that an informal political compromise had been reached: a maximum stocking density would not be included, but a commitment would be made to return to this issue at a later date (position 20). Indeed, at the end of summer 2006 one key informant described this as the provisional outcome. The Finnish presidency, however, was not satisfied with this outcome and reintroduced this issue. The German government, which also favoured the introduction of a specific limit on stocking density, ensured that this was kept in the proposal. According to the key informants, the German presidency also affected the outcome on the second issue, by removing the requirement of intensive checks in slaughterhouses from the proposal. This was in line with the policy position taken by the German delegation in the Council, and it reflected concerns from domestic producers that such checks would be too burdensome.

The dependent variable in the following analyses is the absolute distance between each actor's policy position and the decision outcome on each controversial issue. For example, on the first issue there is a distance of 30 points between Germany's position and the decision outcome, while on the second issue there is a distance of 0 policy scale points between Germany's position and the decision outcome. This reflects the fact that there is some incongruence between Germany's position and the outcome on the first issue and none on the second issue. This distance variable reflects the incongruence between each actor's policy demand and the decision outcome, not necessarily how badly the actor 'felt' about the outcome. For instance, a state's representatives may feel collectively worse about the decision outcome on one issue that was 100 points distant from their policy demand than they do about the decision outcome on another issues that was also 100 points distance from their policy demand. What these two issues have in common is that both decision outcomes are as incongruent with the state's policy demands as they could have been given the range of the bargaining space. That is what is of interest here. Table 10.1 includes summary statistics for this variable. On average, the distance between a state's policy position and the decision outcome is 34.41 points on the 0 to 100 policy scales. The standard deviation of 32.23 indicates that there is a large amount of variation in the congruence between states' positions and outcomes.

<Table 10.1 here>

Table 10.1 also includes summary statistics for the variables used in the explanatory analyses. These will be of use when interpreting the size of the effects. Here, the unit of analysis is the member state-issue dyad; there is a separate observation for each member state on each issue, as long as the member state took a position on the issue. Most of the operationalizations are self-explanatory, but for clarity the following are mentioned. 'Extremity of policy position' is the distance between the state's position and the average position of other states. 'Relative salience' is the salience the state attaches to the issue minus the average salience that all actors attach to the issue. 'Distance to finalizing presidency' is the absolute distance between the policy position of the member state referred to in the observation and the policy position of the finalizing president. If the member state in question was the finalizing president then this variable has a value of zero.

10.4 Analysis of the incongruence between actors' positions and decision outcomes

In answer to the first question, there are small differences among actors in terms of the incongruence between their policy positions and decision outcomes. In other words, decision outcomes are not systematically closer to or further from the policy positions of certain actors. Figure 10.2 depicts the quantitative evidence for this finding. The marks in the middle of each vertical line refer to the average absolute distance between decision outcomes and the policy positions of the relevant actor on all of the issues on which it took a position. Before the 2004 enlargement, Sweden was on average closest to decision outcomes, with an average distance of 27.43 (s.d. 29.71, n=160); France was furthest with an average distance of 37.92 (s.d. 33.51, n=168). The most important pattern is not the marginal differences in averages, but rather the large amount of variation in the congruence between decision outcomes and each actor's positions. The length of each vertical line depicts the 95 per cent confidence interval around each mean. These are large relative to the differences among the means. Almost all of these confidence intervals overlap, indicating that there is generally no significant difference among the actors regarding the incongruence between their positions and decision outcomes. The only exception is the difference between Sweden and France in the EU-15; Sweden's confidence

interval ranges from 22.79 to 32.07, while France's confidence interval ranges from 32.81 to 43.02. All of the actors' confidence intervals overlap in the post-2004 period.

The ordering of member states in terms of the average distances between their policy positions and decision outcomes changes before and after enlargement. However, since there are no significant differences among actors, no substantive importance should be attributed to these changes. For instance, Sweden is closer to the decision outcomes in the EU-15 than are other states, but further from decision outcomes in the post-2004 period. The confidence intervals for Bulgaria and Romania are somewhat wider than for the other actors because there are fewer observations for these two new member states that joined in 2007.

<Figure 10.2 here>

The average distances between decision outcomes and the supranational institutions' policy positions are similar to the distances between outcomes and member states' positions. For instance, in the EU-15, the average distance between decision outcomes and the Commission's positions was 36.32 (s.d. 34.46, n=168), and the EP's position was 35.17 (36.84, n=138). Both before and after enlargement these distances are within the range of distances we observe for the member states. Moreover, the confidence intervals for the Commission and EP overlap with those of all member states.

Decision outcomes are not biased toward the reference point, which is the decision outcome if the actors fail to agree, often the status quo position. On the contrary, decision outcomes are on average further from the reference points than from the positions of any of the actors. In the post-2004 period, the average distance between decision outcomes and reference points was 51.37 (s.d. 33.41, n=106). This is similar to the pattern found in the EU-15.

I now turn from describing the aggregate differences among the actors, or rather lack of differences, to explaining variation in the distances between decision outcomes and states' positions. The dependent variable in the multilevel models presented in Tables 10.2-10.4 is the absolute distance between decision outcomes and each state's position on each issue. I apply essentially the same model to all of the observations and to subsets of observations. This procedure examines the effects of

explanatory variables that are only available on subsets of observations, such as the reference point and the EP's position. In addition, it assesses whether each explanatory variable is equally important in different contexts.

Consider first the effect of the extremity of a state's policy position, as measured by the distance between the state's position and the average position of other states. In line with the first hypothesis, extremity has a large and statistically significant effect on the distance between the decision outcome and a state's position. Model 1 in Table 10.2 is applied to the largest number of observations (it excludes the variables 'Distance to EP' and 'Distance to reference point' on which there are a large number of missing values). A one-unit or 1 scale point increase in a state's extremity (on the policy scales ranging from 0 to 100) increases the distance between the decision outcome and the state's position by .49 scale points (Model 1, Table 10.2). Since extremity ranges from 0 to 100, and has a large standard deviation of 22.39 (Table 10.1), this represents a substantial effect. Moving from the minimum to the maximum value of extremity increases the distance between the decision outcome and a state's position by half of the full range of a policy scale (49 scale points). The effect is of a similar magnitude if we control for 'Distance to EP' and 'Distance to reference point' (Model 2, Table 10.2), or 'Distance to EP' only (Model 3, Table 10.2). The effect of extremity is also present if we divide the data into sets of issues by decision-making rules (Table 10.3) and time periods, before and after enlargement (Table 10.4).

<Table 10.2 here>

<Table 10.3 here>

<Table 10.4 here>

An increase in the distance between a state's position and the Commission's position is generally associated with only a very small increase in the distance between that state's position and the decision outcome. Although the coefficient associated with the variable 'Distance to Commission' is positive (.03) and significant (p=.00) in Model 1, the coefficient is so small as to be substantively unimportant. It

means that for every one-unit increase in the distance between a state and the Commission's positions, the distance between the outcome and the state's position increases by .03 policy scale points. Since the distance between states and the Commission's positions ranges from 0 to 100, this represents a maximum possible effect of only 3 scale points when moving from the minimum to maximum values of 'Distance to the Commission'. Most of the other coefficients associated with 'Distance to Commission' are similarly small. In Model 6 (Table 10.3), which focuses on the co-decision cases combined with QMV, the effect is insignificant. The only substantively important effect is found in Model 5 (Table 10.3), which focuses on the consultation cases combined with unanimity in the Council. Here, the effect is .15, indicating a maximum possible effect of 15 scale points when moving from the minimum to the maximum values of the variable 'Distance to Commission'. In some policy issues, such a distance can refer to substantively important differences in policy outcomes.

The evidence supports the third hypothesis, which states that when the co-decision procedure applies, the distance between a state and the EP's positions is positively associated with the distance between that state's position and the decision outcome. The most relevant result is the coefficient associated with the variable 'Distance to EP' in Model 6 (Table 10.3), because this model is run on the co-decision cases. The significant coefficient of .17 indicates that the effect of moving from the minimum to the maximum value of 'Distance to the EP' (a difference of 100 policy scale points) is an increase of 17 policy scale points between the decision outcome and the state's policy position. Other models also include this explanatory variable, but since these other models include issues that were not subject to the co-decision procedure, it is most appropriate to see this as a control variable in these models.

As the descriptive analysis suggested, decision outcomes are not biased toward the reference point. Model 2 (Table 10.2) includes the variable 'Distance to reference point' for the issues on which the reference point was defined. The fact that the reference point could not be defined on all of the controversial issues means that some observations drop out of the analysis in this model. The negative and significant coefficient of -.16 indicates that there is a bias away from the reference point. Every increase of 1 policy scale point in the distance between a state's position and the

reference point is associated with a decrease of .16 policy scale points in the distance between the decision outcome and that state's position.

In line with the fourth hypothesis, decision outcomes are more congruent with a state's policy demand if that state attaches a higher level of salience to the issue than other actors. The coefficient associated with 'Relative salience' is -.08 in Model 1 (Table 10.2). The effect is of a similar magnitude in the other models. The explanatory variable 'Relative salience' varies from a minimum of -67.65, for the case in which the state in question attaches least salience to the issue relative to other actors, to a maximum of 88.15, for the case in which the state in question attaches most salience to the issue relative to other actors, a range of 155.80 (Table 10.1). For every one-unit increase in that measure of relative salience, the distance between a state's position and the decision outcome decreases by .08 policy scale points. Therefore, moving from the minimum to maximum values of relative salience is associated with an average decrease in the distance between decision outcomes and policy positions of 12.46 policy scale points. In some subsets of issues, however, there is no evidence that relative salience has an effect.

The evidence supports the fifth hypothesis, which is based on the proposition that decision outcomes are biased toward the position of the finalizing Council presidency. The positive and significant coefficient associated with the variable 'Distance to presidency' indicates that if a state's position is further from the finalizing president's position, the decision outcome is also further from that state's position. The size of the effect varies among different models. It is particularly strong in Model 7, which focuses on the pre-2004 cases, compared to Model 8, which focuses on the post-2004 cases (Table 10.4). The coefficient is .27 in Model 7. This indicates that a 100-point increase in the distance between a state's position and the finalizing president's position (the range of this explanatory variable) is associated with an increase of 27 policy scale points in the distance between the decision outcome and that state's position. In Model 8, the coefficient is less than half that value, .12, although still significant. The effect of the finalizing presidency is also particularly strong in the cases subject to consultation and unanimity (Model 5, Table 10.3).

Country characteristics have little effect on the congruence between decision outcomes and states' positions. Decision outcomes are not systematically closer to the

policy positions of larger or richer states. The effects of population size and voting power are insignificant in all of the models.[2] The effects of GDP per capita are also insignificant in most of the models. An exception is the effect of wealth in Model 4 (Table 10.3), which focuses on the consultation-QMV cases. In that model the effect of GDP per capita is negative and significant. The size and direction of the effect indicates that decision outcomes are somewhat closer to the policy positions of richer states. This is not, however, a robust effect, because it is not evident in other subsets of issues.

Decision outcomes are not biased against the positions of new member states. Model 9 includes a dichotomous indicator variable for new member states. Since new members are smaller and poorer than the averages of old members, Model 9 excludes population size and wealth from the set of explanatory variables. The small and insignificant coefficient indicates that decision outcomes are no closer to or further from the positions of new member states than old member states.

10.5 Conclusions

Decision outcomes are not systematically biased in favour of or against the policy positions of certain actors. Across a large range of controversies, there are no clear distinctions between winners and losers. Since each of the actors does at least as well as any of the other actors at the aggregate level, decision outcomes are fair if evaluated with the logic of mutual advantage (Barry 1989). Since decision outcomes are equally congruent with all actors' policy positions at the aggregate level, decision outcomes are also fair if evaluated with the logic of equality (ibid.). This congruence is made possible by the nature of the inputs and process of the political system. Inputs are diverse. Across different controversial issues, actors are aligned quite differently in terms of their policy demands. Actors that agree with each other on some issues disagree on other issues. Although there are some structures in actor alignments, these structures are only evident in minorities of cases. The process through which demands are transformed into outputs is defined by consensus, inclusiveness and a relatively

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[2] Voting power and population size are highly correlated and therefore not included in the same model: r=.89 for the 4,104 QMV cases.

equal weighting of actors. Together, these phenomena make for decision outcomes that, at the aggregate level, incorporate all actors' policy demands to a similar extent.

On any given controversy, there are usually winners and losers with respect to the differences between the decision outcomes and different actors' policy positions. This chapter explained some of this variation. Relevant explanatory variables are those that distinguish among actors in relation to different specific issues, not variables that distinguish among actors in relation to all or many issues. Notably, characteristics of member states, such as their size, voting power, wealth or length of membership, have little explanatory power. By contrast, characteristics of states in relation to specific issues, such as the extremity of their policy positions and the salience they attach to the issue, have significant explanatory power.

The congruence between decision outcomes and member states' policy positions can be explained by two sets of factors. The first set consists of explanatory variables that reflect states' luck, and the second consists of variables that reflect their use of power. Luck has a larger effect than power on the congruence between decision outcomes and states' policy positions. The extremity of a member state's policy position has the largest effect; more extremity is significantly associated with more incongruence. This is what we would expect if, in line with Barry's definition of luck (1980: 184), decision outcomes were formulated without the intervention of the member state in question.

In addition, actors that choose to exercise their power or that have more power with regard to specific issues pull decision outcomes closer to their favoured policy positions. Decision outcomes are significantly closer to the positions of member states that attach higher levels of salience to the issues in question. The obvious mechanism behind this effect is that actors with higher levels of issue salience make more use of their potential to influence decision outcomes. Decision outcomes are also biased toward the position of the finalizing Council presidency. The mechanism behind this effect is that Council presidents have an information advantage over other states, which gives presidents the potential to influence decision outcomes (e.g. Tallberg 2006: 29-39). This effect of the Council presidency has weakened in the enlarged EU, although is still significant (c.f. Arregui and Thomson 2009). Presidents' task of facilitating agreements in the Council may be more challenging in the enlarged EU, as

a consequence of which they can devote less priority to their national interests than before.

Chapter 11

Delegation

11.1 Delegating discretion to resolve controversy[1]

Decision outcomes differ from each other in the extent to which they specify the details of policies to be followed by implementers. Some decision outcomes contain detailed rules that give implementers little or no opportunity to interpret decisions in different ways. Other decision outcomes delegate considerable room for manoeuvre to implementers. In this chapter, a decision outcome is said to delegate discretion to an implementer if the implementer can take one of two or more policy actions and still comply with the law of which the decision outcome is part.

In most political systems, decision makers delegate at least some discretionary power to implementers (e.g. Hawkins *et al.* 2006). Decision makers often argue that this is appropriate, because implementers can use technical knowledge decision makers lack to fill in the details of policies. Moreover, implementers with discretionary power can react dynamically to unforeseen developments within the same general policy framework set by their political masters. The danger of delegating discretionary power to implementers is that implementers may carry out policies that are not in line with decision makers' preferences, behaviour known as 'bureaucratic drift'. If implementers have more information regarding policies and their effects than decision makers, it may be difficult for decision makers to detect and sanction policy drift. Consequently, in political systems around the world, decision makers must balance the costs and benefits of delegating discretionary power to implementers when formulating decision outcomes.

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[1] This chapter builds on a co-authored article with René Torenvlied on the topic of delegation in the EU (Thomson and Torenvlied 2011). The article and this chapter use different approaches to examine the question of delegation. The article examines whole laws as the unit of analysis, and asks why some laws have more provisions that grant delegation to the Commission or member states. By contrast, this chapter examines specific controversial issues as the unit of analysis, and asks why some controversies are resolved by granting discretionary powers while other controversies are resolved by taking tightly defined decisions. Despite this and other differences, the findings of this chapter largely confirm those of the article.

In the legislative system of the EU, decision makers must decide how much discretion to grant the Commission and/or member states' national authorities when implementing legislative acts. The Commission is often granted discretionary power regarding the detailed implementation of the EU's policy programmes. For example, the Commission received a certain amount of discretionary power regarding the implementation of the European Neighbourhood and Partnership Instrument (ENPI) discussed in Chapter 5. The ENPI Regulation provides the legal framework for the EU's aid and development budget for countries neighbouring the EU. The ENPI Regulation sets out criteria for allocating these funds, but it also gives the Commission some discretion when interpreting these criteria.

National authorities are also implementers of EU laws, and decision outcomes vary in the extent to which they give discretionary power to national authorities. For example, member states received some discretionary power regarding the implementation of the directive on the protection of chickens kept for meat production discussed in Chapter 10. The directive sets out minimum standards that all member states must implement, such as the maximum stocking density of chickens per cubic meter. However, if certain conditions are met, the directive allows member states to apply lower standards. As in these examples, this chapter focuses on the delegation of discretionary power, not on the delegation of inflexible rules. Indeed, a decision outcome stating that the Commission or member states' national administrations must follow a specific and detailed rule does not involve the delegation of discretionary power. On the contrary, it constrains those implementers' room for manoeuvre. When I refer to 'delegation' in this chapter, I refer to the delegation of discretionary power.

Although delegation to implementers takes place in all political systems, the EU differs from many other systems when it comes to delegation to member states' national administrations. In most political systems, delegation generally involves decisions by politicians regarding the amount of discretion to give to implementing agencies. This means that decision makers and implementers are quite distinct actors with different sets of interests. By contrast, in the EU member states are both decision makers and implementers. They are not distinct actors at all. This means that member states' preferences for delegation to their national administrations may be motivated by a desire to maintain existing policy practices, rather than by the desire to make

efficient use of implementers' detailed policy expertise. Hix argues that too much delegation to member states is an indication that the EU is experiencing legislative gridlock and that this problem has become worse since enlargement. According to Hix, 'most new EU policies are extremely watered-down deals that hardly change existing … national provisions' (Hix 2008a: 47).

Since decisions that delegate to the Commission and member states are distinct types of decision outcomes, I will examine them separately. In particular, the following research questions will be examined:

1. How frequently do decision makers resolve controversy by delegating discretionary power to a) the Commission and b) member states?

2. Under what conditions do decision makers resolve controversy by delegating discretionary power to a) the Commission and b) member states?

The first question is obviously descriptive, while the second is explanatory. Posing and answering the questions separately leaves open the possibility that decisions to delegate to the Commission and member states occur with different levels of frequency and are a result of fundamentally different causal processes, which indeed turns out to be the case.

11.2 Three perspectives on delegation in the EU

This section formulates expectations from three theoretical perspectives on delegation. The first one, the transaction-costs perspective, focuses on information asymmetries between decision makers and implementers. Implementers generally have more specialized knowledge than decision makers regarding the effectiveness of different policy alternatives. Decision makers may wish to take advantage of implementers' expertise by delegating discretionary power to them, at least when implementers' policy preferences do not diverge from theirs. The transaction-costs perspective is relevant to delegation to both the Commission and member states' national authorities. Second, the commitment perspective attempts to explain delegation to the Commission only. According to the commitment perspective, decision makers delegate to implementers in an attempt to commit themselves credibly to decision outcomes from which they have incentives to deviate. This may be the case if member states' positions are polarized, and reaching a decision outcome

therefore requires that at least some member states agree to an outcome far from their policy positions. How can decision makers commit credibly to implement an outcome far from their preferences? Delegating power to an independent agent, such as the Commission, offers a solution. The third perspective, referred to as the consensus-building perspective, explains delegation to member states' national authorities only. From the perspective of consensus building, delegation to member states is an integral part of the bargaining process. When member states' policy positions are highly polarized on a controversial issue, delegation to national authorities allows a decision to be taken at the EU level, while giving member states at least some scope to implement different national arrangements regarding that issue.

The transaction-costs perspective

This explanation of delegation refers to the transaction costs that decision makers would incur if they were to attempt to overcome the information asymmetries between themselves and implementers (e.g. McCubbins *et al.* 1987; 1989; Epstein and O'Halloran 1999; Bendor *et al.* 2001: 242; Huber and Shipan 2002). When there are large information asymmetries between decision makers and implementers, implementers generally know a lot more about the effectiveness of different policies than decision makers. The effectiveness of different policy actions varies across different contexts, even within member states. For decision makers, the transaction costs of acquiring as much expertise as implementers are usually prohibitively high.

The transaction-costs perspective has been applied to explain decisions to delegate in the European Union (Franchino 2004; 2007). There are certainly information asymmetries between decision makers and implementers in the EU. At the top of the Council's hierarchy, national ministers are involved in negotiating the most controversial issues that affect their national interests. National ministers should certainly be knowledgeable regarding their own portfolios. However, they are career politicians with a wide range of responsibilities, and national affairs usually take priority. Consequently, national ministers lack the Commission's detailed knowledge of EU policy programmes or the knowledge of other member states' national bureaucracies regarding policies in those countries. Even at lower levels of the Council's hierarchy in its working groups, where discussions are of a more technical

nature, officials are often generalists who must deal with a broad range of legislative proposals. These decision makers must also recognize that implementers – either the Commission or national authorities - have more detailed knowledge regarding many of the proposals they consider. Like ministers at the apex of the Council's hierarchy, MEPs are politicians, not bureaucrats. The EP's committee system certainly allows MEPs to develop specialized knowledge of their committees' policy areas. However, this specialization is unlikely to eradicate the information asymmetry between MEPs and implementers regarding the more technical aspects of the legislative proposals under consideration.

The transaction-costs perspective recognizes that implementers are also political actors. Like decision makers, implementers have policy preferences. When decision makers and implementers' policy preferences are the same, it is efficient for decision makers to delegate discretionary power. However, when decision makers and implementers' preferences diverge, there is a danger of policy drift, whereby implementers do not implement the policy preferred by decision makers, but rather a policy in line with or closer to their own preferences. Even when decision makers and implementers' policy preferences diverge, decision makers may decide to delegate to implementers to take advantage of implementers' superior policy expertise. When they do so, they are likely to incur transaction costs associated with monitoring implementers' compliance with their instructions. The transaction-costs perspective, therefore, explains variation in delegation by the magnitude of the information asymmetry between decision makers and implementers and the incongruence between decision makers and implementers' policy preferences.

The magnitude of the information asymmetry between decision makers and implementers depends on the nature of the issues in question. The transaction-costs perspective refers to the concept of 'information intensity' to describe the importance of technical knowledge during the implementation process. In the EU, there are different types of information-intensive issues on which decision makers are more likely to grant discretion to either the Commission or member states' national administrations. The Commission and member states' national administrations clearly have expertise in different areas of policy implementation. The Commission's expertise focuses primarily on the implementation of EU-level programmes and rules. National administrations' expertise relates mainly to the implementation of national

rules. Therefore, the transaction-costs perspective leads to different expectations regarding the types of issues on which decision makers delegate to the Commission and the types of issues on which they delegate to member states' national administrations. Regarding delegation to the Commission:

H1a: Decision outcomes are more likely to delegate discretionary power to the Commission if they refer to issues on which the Commission has superior technical expertise, in particular the implementation of EU-level programmes and rules.

Regarding delegation to member states:

H1b: Decision outcomes are more likely to delegate discretionary power to member states if they refer to issues on which member states have superior technical expertise, in particular the implementation of rules at the national level.

The level of congruence between decision makers and implementers' policy preferences relates to the 'ally principle' in the transaction-costs perspective. According to the ally principle, decision makers are more likely to delegate to implementers whose policy preferences are close to their own. When implementers are policy allies of decision makers, decision makers need not incur high transaction costs from monitoring implementers' policy actions stringently. Previous chapters (in particular Chapters 3 and 4) demonstrated that there is considerable variation in the distances between the Commission's policy positions and both member states and the European Parliament's policy positions. The transaction-costs perspective implies that the likelihood of delegation to the Commission is negatively related to the distance between the Commission and these decision-making actors' policy positions. With respect to the effect of the difference between the Commission and member states' policy positions on the likelihood of delegation to the Commission, I will investigate the following hypothesis:

H2: Decision outcomes are more likely to delegate discretionary power to the Commission, the smaller the distance between the Commission and member states' policy positions.

Since the EP is a powerful actor when the co-decision procedure applies, the distance between the EP and the Commission's policy positions may be relevant. In particular:

H3: Decision outcomes on issues subject to the co-decision procedure are more likely to grant discretion to the Commission, the smaller the distance between the Commission and European Parliament's policy positions.

Consider now the distance between decision makers and implementers' policy positions with respect to delegation to member states. Member states are both decision makers and implementers. It is rarely possible to distinguish between the policy positions of a member state's representative in the Council and its national administration. This means that as far as delegation to member states is concerned, disagreement between Council decision makers and implementers cannot be distinguished from disagreement among Council decision makers themselves.

The transaction-costs perspective has also been used to formulate hypotheses regarding the effect of disagreement among decision makers on the likelihood that they will delegate to implementers. However, the main foci of the transaction-costs perspective consist of the information asymmetries between decision makers and implementers and the congruence between decision makers and implementers' policy positions. The possible effect of disagreement among decision makers is not central to the transaction-costs explanation. Moreover, different transaction-costs models lead to different expectations regarding the effect of disagreement among decision makers. In what is perhaps the most general formalization of the transaction-costs perspective, Bender and Meirowitz (2004: 304-5) hypothesize that disagreement among decision makers decreases the likelihood of delegation. The decision to delegate discretionary power requires that decision makers reach an agreement with each other to do so. When decision makers disagree with one another, achieving such an agreement is difficult, particularly when decisions have to be taken by decision rules that require supermajority or unanimous approval. Other transaction-costs models predict that polarization among decision makers' policy positions leads to more delegation (Epstein and O'Halloran 1999: 75; Volden 2002). Decision makers who disagree with each other are less likely to inform each other accurately regarding the effects of

different policy actions. The resulting information deficit in highly polarized situations perpetuates the information asymmetry between decision makers and implementers, which in turn makes delegation more likely. Franchino's transaction-costs model of delegation in the EU also makes different predictions regarding the effect of disagreement among decision makers (2004; 2007). According to Franchino, disagreement leads to less delegation to the Commission, but more delegation to member states. Given these contrasting predictions, there is clearly no single transaction-costs hypothesis regarding the effect of disagreement among decision makers. The following two perspectives, by contrast, are more clearly defined in this respect.

The commitment perspective on delegation to the Commission

The commitment perspective explains decisions to delegate as responses to problems of credible commitment (Kydland and Prescott 1977; Melumad and Mookherjee 1989; Martin 1992; Gilardi 2002; Stone 2002). Decision makers may face a commitment problem when they agree to a decision outcome that differs from their preferred policy, either at the time the decision is taken or some time in the future. The previous chapter's findings show that decision outcomes in the EU often differ from the policy alternatives that decision makers favoured when the legislative proposals were introduced. Decision makers may wish to agree to decision outcomes that differ from their initial positions because they perceive these outcomes to be acceptable compromises, or because they received concessions on other issues that are more important to them. Of course, in the case of QMV, it is also possible that member states are outvoted. When decision outcomes differ from member states' preferences, those member states may have incentives to deviate during the national implementation of those decision outcomes. A member state has an incentive to deviate if the implementation of its preferred policy, rather than the decision outcome, would mean that it does not comply with the decision outcome. Research on compliance with EU laws has found that member states with incentives to deviate are less likely to comply (Thomson *et al.* 2007; Thomson 2010), and that compliance is less likely when there is more conflict in the Council (König and Luetgert 2009: 187-8).

A solution to the commitment problem is to delegate power to an independent agent, in this case the European Commission. The commitment perspective has been applied to explain the development of the Commission's competencies in the EU's treaties (Majone 2001). Pollack (2003: 106) reports that commitment problems also play a role in decision makers' decision to delegate discretionary power to the Commission in EU legislation. The analysis will test the following expectation from the commitment perspective:

H4: Decision outcomes are more likely to grant discretion to the Commission when member states' policy positions in the Council are more polarized.

When member states' policy positions are highly polarized but they nevertheless manage to reach a decision outcome, there are inevitably some member states with large incentives to deviate.

The European Parliament is of course also an important decision-making actor under the co-decision procedure. However, the EP does not face the same commitment problem as member states when the decision outcome differs from its preference. Since the EP is generally not involved in the implementation of legislation, a difference between the EP's preferred policy and the decision outcome does not result in uncertainty regarding the decision outcome that will be realized during the implementation stage.

The commitment perspective does not imply that there will be no delegation to the Commission if member states agree entirely with the decision outcome adopted. Commitment problems may also arise when decision makers' preferences agree with decision outcomes. If the costs and benefits of alternative policies vary over time, decision makers may have incentives to deviate in the future. For example, in monetary policy, political decision makers often find it difficult to sustain anti-inflationary policies, partly due to the varying pressures they face over the course of electoral cycles (Rogoff 1985). A common solution to this problem is to delegate monetary policy to independent central banks. It is not clear when this second type of commitment problem is most prevalent in decision-making regarding legislation in the EU. However, the presence of commitment problems due to variation in costs and

benefits over time indicates that delegation to the Commission may still occur to some extent when member states' policy positions converge.

The consensus-building perspective on delegation to member states

According to the consensus-building perspective, when EU decision makers delegate to member states, they do so as a result of their desire to overcome disagreement among member states (Dimitrova and Steunenberg 2000; Thomson *et al*. 2007). Such disagreement is often a consequence of the fact that member states have different national arrangements, and they wish to maintain these (see Chapter 6 of this book). Decision outcomes that delegate discretionary power to member states allow states to keep their existing national arrangements to at least some extent. Decision outcomes that delegate discretion to member states are likely to result in the persistence of more policy diversity across Europe than decision outcomes that are tightly defined. The consensus-building perspective leads to the following hypothesis:

H5: Decision outcomes are more likely to grant discretion to member states when member states' policy positions in the Council are more polarized.

Even if all the controversial issues raised by a legislative proposal were resolved by delegating discretionary power to member states, the law adopted may still be more than a purely symbolic act for two reasons. First, when a law delegates discretion, such discretion is almost invariably limited by constraints. These constraints can take a variety of forms. Member states may be given a limited range of alternatives from which they may choose. For example, in the directive relating to welfare conditions for chickens referred to in the previous chapter, member states were granted discretion to increase the maximum permitted stocking density of animals, but only if certain conditions are met and only by a certain number of kilograms. Second, controversial issues refer to only some of the provisions in the legislative proposal. Therefore, while controversial issues may be resolved by formulating discretionary provisions, the uncontentious parts of the proposal may contain non-discretionary provisions.

Although disagreement may be more difficult to resolve when decisions must be taken with inclusive decision rules, there is unlikely to be a sharp difference in the effect of polarization between issues subject to unanimity and QMV rules. Legislative proposals subject to the unanimity rule in the Council generally take longer to adopt than proposals subject to QMV (Golub 1999; Schultz and König 2000; Thomson 2008c). This might suggest that the effect of polarization is more marked when proposals must be decided by unanimity than by QMV. In theory, when the QMV rule applies, member states could be outvoted and forced to change their existing national arrangements by the majority. In practice, however, voting is rare, and even when the QMV rule applies, decision makers go to great lengths to ensure that decision outcomes are acceptable to all actors.

11.3 Research design

The analyses examine delegation to the Commission separately from delegation to member states. For each controversial issue on which a decision was taken, I established whether the decision outcome gives discretionary power to either the Commission or member states' national administrations during the implementation of the law with respect to that issue. I excluded proposals that were not adopted, either because they were pending at the end of the study period, or because they were rejected. If a decision outcome allowed the Commission or member states to take one of two or more policy actions while still complying with the EU law, then I coded the outcome as one that delegates discretionary power. The examples given earlier in this chapter illustrate these coding decisions.

This coding procedure differs from previous ways of coding discretionary provisions in legislation. Epstein and O'Halloran (1999) developed a procedure for coding entire legislative acts that has been adapted and applied to legislation in the EU (Franchino 2004; 2007; Thomson and Torenvlied 2011). According to Epstein and O'Halloran's procedure, all major provisions of a law are examined to establish whether each provision grants discretionary powers to implementers. The proportion of all provisions in a law that grants discretion provides a quantitative, scale indicator of the amount of discretion granted by the law. In addition, Epstein and O'Halloran developed a procedure for coding the constraints to which implementers are subject

when exercising their discretionary powers. The magnitude of these constraints can also be incorporated into an overall measure of delegation. Epstein and O'Halloran's study - as well as Franchino (2004; 2007) and Thomson and Torenvlied's (2010) studies - focussed on the overall level of delegation in different laws. By contrast, the present chapter focuses on the conditions under which specific controversies are resolved by delegating discretionary powers. These different foci make different procedures for coding delegation appropriate.

Measures of delegation that are based entirely on the contents of legislative acts do not take into account the fact that decision outcomes may preserve existing national arrangements by limiting the scope of a law, rather than incorporating discretionary provisions. An EU directive or regulation may exclude important topics on which member states were unable to agree. By excluding these topics, member states are free to keep their existing national arrangements. Regarding topics on which member states could agree, by contrast, the law may contain non-discretionary provisions. Since Epstein and O'Halloran's method considers only those provisions that are included in the law, a directive that is narrow in scope and gives member states no discretion would be identified as a law that delegates no discretion to member states. In fact, however, directives with narrow scope may allow member states to keep their existing national arrangements.

The legislative proposal on the taxation of savings (Dir. 2003/48/EC) income from the EU-15 period illustrates how limiting the scope of a directive could preserve states' room for manoeuvre at the national level. It also illustrates how controversy among member states can be resolved by specifying discretionary provisions. The first legislative proposal preceding this directive was introduced in 1998. Figure 11.1 depicts two of the main controversial issues raised by that proposal. The first issue concerns the scope of the directive and was discussed extensively during the early stages of the negotiations in 1999. The British representatives in particular called for a directive with limited scope. They argued that if the directive were to include Eurobonds, this would be particularly detrimental to the City of London's interests. Similarly, the Luxemburgish representatives called for the exclusion of investment funds. The UK and Luxembourg gave up their opposition to the inclusion of these areas in the year 2000, as part of the overall compromise. Had these areas been excluded from the scope of the directive, member states would have maintained more

autonomy to set diverse policies in these areas. Moreover, had these areas been excluded, this would not necessarily have meant that the directive would have contained discretionary provisions. More likely, these areas of the financial sector would simply not have been mentioned as areas covered by the directive. Therefore, Epstein and O'Halloran's method would not have coded member states' autonomy in these areas as discretion.

<Figure 11.1>

The second controversial issue raised by the savings tax proposal was more difficult to resolve. That issue concerned the system that should be adopted to govern the taxation of savings. Luxembourg and Belgium favoured a system of withholding tax, although differed somewhat on the level of that tax. According to the withholding tax system, member states would deduct a percentage of interest on savings at source. There would be no need for a first member state to report the identity of residents of a second member state who held savings accounts in the first state. Luxembourg and Belgium favoured this system because it would have allowed them to maintain their laws on banking secrecy. There were also some differences among the actors regarding the question of whether it was feasible and desirable to share the revenue raised among the affected member states. An alternative system based on information sharing was favoured by the UK. According to this system, member states would share information with other member states regarding the identities of residents of those other member states with savings accounts in their territories. Clearly, this system is incompatible with banking secrecy. The UK representatives argued that a system based on information sharing should be introduced if agreements could be reached with third countries, notably Switzerland. A political agreement was reached at the European Council held under the Portuguese presidency in 2000. That agreement consisted of a commitment to move toward a system based on information sharing, but it was stated that this move would depend on reaching agreements with third countries. This agreement was followed by the introduction of a new legislative proposal by the Commission in 2001 (CNS/2001/164). The directive that was adopted in 2003 delegates considerable discretion to member states regarding the system to be implemented. During a lengthy transition period, Belgium, Luxembourg and Austria

are not required to apply the provisions concerning the exchange of information. This outcome, position 80 on the policy scale, is close to the outcome favoured by the UK, although our key informants estimated that the outcome gives somewhat more discretion to member states than the UK preferred. Nonetheless, other decision outcomes were discussed that would have given even more discretion to member states. A permanent 'dual' system was discussed as a possible outcome and supported by many states as well as the Commission. According to the dual system, some states would apply the system of withholding tax, while other states would apply the system of information exchange.

The following analyses focus on three dependent variables, each of which is dichotomous. The first concerns delegation to the Commission and identifies those controversies that were resolved by delegating at least some discretionary power to the Commission. The second and third variables concern delegation to member states. The second applies a narrow definition of delegation in line with the work of Epstein and O'Halloran (1999) and others (Franchino 2004; 2007; Thomson and Torenvlied 2011). In particular, a decision outcome is only coded as discretionary if it entails a legal provision that explicitly delegates discretionary power to member states. This measure excludes decision outcomes that limit the scope of an EU law so as to preserve member states' autonomy in certain areas. According to this second measure, therefore, if Eurobonds and investment funds had been excluded from the savings tax directive, this outcome would not have been coded as a discretionary. The third measure of delegation applies a broad definition of delegation to member states. This third measure identifies a decision outcome as discretionary either if it stipulates a discretionary rule, or if it excludes a certain topic or area from the law, thereby preserving member states' autonomy. Excluding a certain area from a law, thereby preserving states' autonomy, differs from including that area and defining discretionary rules for it. Nevertheless, both types of decision outcome preserve the possibility that member states have diverse policies.

I apply Esteban and Ray's (1994) measure of polarization to member states' policy positions on each controversial issue. This measure has been used in a range of studies that examine political polarization (e.g. Esteban and Schneider 2008; Zhelyazkova and Torenvlied 2009). This measure captures the concept of polarization, while simpler measures, such as the range or standard deviation of

positions, do not. Member states' policy positions are more polarized to the extent that two large groups of member states take opposing positions at the endpoints of a policy scale. According to this measure, polarization is defined by the magnitude of both the alienation between member states that disagree with each other and the identification between member states that agree with each other. Crucially, the frequency of actors in different positions affects polarization (Esteban and Ray 1994: 821). According to this measure, an issue with two actors at opposite extremes has a lower polarization value than an issue with four actors divided evenly at opposite extremes. This means that an issue on which only a few member states take policy positions has a lower maximum possible polarization value than an issue on which all member states take positions. Likewise, the maximum possible level of polarization increased as the membership of the EU expanded. Formally, the measure of polarization of positions on an issue has the following form:

$$P(\pi, positions) = K \sum_{i=1}^{n} \sum_{j=1}^{n} \pi_i^{1+\alpha} \pi_j |position_i - postion_j| \qquad (11.1)$$

Where :

The letter i denotes the first member state in the set of n member states in the political system.

$position_i$ is the position of actor i on the issue.

K is a multiplicative constant and as such does not affect the relative values of polarization (it is set to a value of one in the calculations).

The letter π refers to the relative frequency of member states. It sums to a value of one across all member states. Since there is a maximum of twenty-seven member states in the political system, each member state has a value of 1/27 for π.

The constant term α is part of Esteban and Ray's axiomatic deduction, which shows that $\alpha \in (0, \alpha*]$ where $\alpha* \approx 1.6$. This constant reflects the 'polarization sensitivity' of the measure (ibid.: 834). In the following calculations I set α to a value of one.[2]

The explanatory variables also include the distance between the Commission and member states' policy positions. For this, I calculate the absolute distance

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[2] Following Duclos *et al.* (2004) I varied the value of α between 0 and 1, which did not affect the results.

between the Commission's policy position and the mean average of member states' policy positions. Similarly, I include the distance between the Commission and the EP's policy positions where relevant. The distance between the EP's policy position and the average of member states' policy positions is also included in some of the models.

Hypotheses 1a and 1b refer to the distinction between issues concerning EU-level programmes and rules on the one hand and rules to be implemented at the national level on the other. Almost all of the issues from directives concern choices between different rules to be implemented at the national level.[3] Of the 171 issues from proposed regulations 78 concern rules to be implemented at the national level, while 93 refer to EU-level programmes and rules. For example, the controversies regarding cuts in subsidies for sugar production discussed in Chapter 2 refer to an EU-level programme administered at the EU-level by the Commission. All sixteen controversial issues from decisions refer to EU-level programmes.

11.4 Analysis of delegation to the Commission and member states

Delegation to the Commission

Decision outcomes that resolve controversy by delegating discretionary power to the Commission are rare. A total of 317 decision outcomes were examined to establish whether they delegated discretionary power. Only 9 of these 317 issues (2.84 per cent) delegated discretionary power to the Commission. These nine decision outcomes are summarized in Table 11.1. Note that this 2.84 per cent is not an estimate of the total amount of discretion that is delegated to the Commission in this selection of laws. Rather, it is an estimate of the percentage of controversial issues raised by proposed laws that were resolved by delegating discretionary power to the Commission. The Commission received more discretion regarding the implementation of the uncontentious parts of laws examined here. I and Torenvlied

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[3] Only 4 of the 144 issues from proposed directives in the dataset concerned an EU-level rule. One of these was a controversy raised by the proposed directive on minimum standards for temporary protection of refugees (CNS/2000/127). The controversy concerned the question of whether the decision to cancel an EU-wide temporary protection operation should by taken by QMV or unanimity in the Council.

examined each major provision of eighty-six of the laws studied here to establish whether it delegated discretionary power to the Commission (Thomson and Torenvlied 2011). We found an average of 3.10 (s.d. 5.54, n=86) provisions that delegated discretionary power to the Commission in each law. This indicates that the total frequency of delegation to the Commission is higher than the nine decision outcomes in Table 11.1. Similarly, although Franchino's (2004; 2007) quantitative estimates of delegation are not directly comparable with mine, his findings suggest that the delegation of discretionary power to the Commission is common if we consider whole laws, not only controversial issues.

<Table 11.1>

The nine decision outcomes that delegate to the Commission refer mainly to EU-level programmes and rules, as predicted by Hypothesis 1a (Table 11.1). For example, the Regulation governing the European Neighbourhood and Partnership Instrument discussed earlier is an EU-level programme administered by the Commission. As mentioned above, the decision outcomes delegated a certain amount of discretion to the Commission when interpreting the criteria for allocating funds. Another example is the regulation on public access to documents of the EU institutions, which sets out rules that EU institutions, including the Commission, are obliged to follow regarding the provision of access to documents. These aspects of the regulation concern EU-level rules, not rules to be applied at the national level. Only the last two of the nine issues − numbered eight and nine in Table 11.1 - were not coded as EU-level rules. The qualitative information gathered during the interviews with key informants indicated that there was a substantial amount of national-level policy activity in relation to the implementation of these decision outcomes. Nevertheless, it is clear that the outcomes that delegate discretion to the Commission mainly concern issues relating to EU-level programmes and rules.

Table 11.2 contains statistical models that allow us to test the hypotheses from the transaction-costs and commitment perspectives on delegation to the Commission. The dependent variable in these analyses is the dichotomous variable that indicates whether the decision outcome on the issue delegated discretionary power to the

Commission. Since delegation is infrequent and the sample size is small, logit models that correct for rare events and small sample sizes are applied.

<Table 11.2>

The only significant finding concerns the higher likelihood of delegation to the Commission on issues regarding EU-level programmes and rules (Hypothesis 1a). Model 1 in Table 11.2 includes all controversial issues in the sample that were resolved. The exponent of the coefficient associated with the variable 'EU-level programme' indicates the following: the odds of an issue being resolved by delegating to the Commission are 5.57 times greater if the issue concerns an EU-level programme or rule rather than a rule to be implemented at the national level. Model 2 adds the variables pertaining to member states' positions. The effect of 'EU-level programme' remains positive and significant. In Model 3, which adds the EP variables, the effect of 'EU-level programme' is of a similar size, but falls just short of marginal statistical significance.

The second and third hypotheses concern the ally principle, according to which increases in the distances between the implementer and decision makers' policy positions decreases the likelihood of delegation to the implementer. There is no evidence for Hypotheses 2 concerning the effect of the distance between the Commission and member states' policy positions. The coefficients associated with the distance between the Commission and member states' positions in Table 11.2 do not differ significantly from zero.

There is weak evidence for the ally principle with respect to the distance between the Commission and EP's positions (Hypothesis 3). Since Hypothesis 3 refers to co-decision issues, it would have been appropriate to apply a model with the variable 'Distance Com.-EP' to the co-decision issues only. However, there are only three co-decision issues that were resolved by delegating discretionary power to the Commission (Table 11.1). On all three of these issues, the Commission and EP' positions were the same. By contrast, on the 159 co-decision issues that did not delegate discretionary power to the Commission and on which the EP took a position, the average distance between the Commission and EP's positions was 42.27 (s.d. 39.33). This agreement between the Commission and EP when the Commission is

granted discretion is of course in line with the ally principle referred to in Hypothesis 3. However, the small number of observations and lack of variation make it impossible to model the effect statistically. Model 3 in Table 11.2, which is applied to both consultation and co-decision cases, indicates that there is no evidence of an effect of disagreement between the Commission and EP. Therefore, the evidence for the ally principle is suggestive, but highly uncertain.

Disagreement among decision makers does not affect delegation to the Commission, contrary to Hypothesis 4 from the commitment perspective. The effects of polarization in the Council and of the distance between the EP and member states positions do not differ significantly from zero. In summary, there is little to no evidence that the positional variables influence the likelihood of delegation to the Commission.

Delegation to member states

Decision outcomes that resolve controversy by delegating to member states are more common than those that delegate to the Commission. I examine two measures of delegation to member states. The first measure is the narrow measure that identifies decision outcomes that formulate a discretionary rule in the text of the EU law. This measure is similar to other measures of delegation that focus on discretionary rules included in laws. The second measure is the broader measure. The broader measure includes decision outcomes that stipulate discretionary rules and also decision outcomes that exclude certain areas from an EU law, thereby preserving national autonomy in those areas. Tables 11.3a and 11.3b contain descriptive statistics regarding these two measures. According to the narrow definition of delegation, 56 (17.67 per cent) of the 317 decision outcomes examined delegate to member states. According to the broad definition, 73 (23.03 per cent) decision outcomes delegate to member states.

<Table 11.3a>
<Table 11.3b>

Almost all delegation to member states relates to issues concerning rules to be implemented at the national level, regardless of whether the narrow or broad definitions of delegation are used. Using the narrow definition, all but three of the decision outcomes that delegate to member states by setting flexible rules concern rules to be implemented at the national level, such as the savings tax directive referred to earlier. The three exceptional decision outcomes that concern an EU-level programme were taken as part of the Regulation concerning the Visa Information System (VIS; Reg. 767/2008/EC). This Regulation establishes a legal framework within which member states can share information regarding visas issued. Although the Visa Information System establishes an EU-level system for the exchange of visa data, it delegates considerable discretion to member states. For instance, member states have discretion regarding the sharing of information with third countries and the organization of national points of access to the Visa Information System.

Since enlargement, decision outcomes on controversies that delegate discretion to member states have become more common. This is the case regardless of whether we consider the narrow or broad definition of delegation. Using the broad definition of delegation, decision outcomes on controversies concerning national rules that delegate to member states increased from 25.86 per cent to 42.05 per cent. The increase in the level of polarization in member states' positions explains part of this increase in delegation to member states. For all 331 issues in the dataset, the average level of polarization is .49 (s.d. .44, range 0-1.83). For the issues prior to the 2004 enlargement, the average polarization is .28 (s.d. .17, n=173). For the issues after the 2004 enlargement, the average polarization is .72 (s.d. .53, n=158). This significant increase (t=10.38, p=.00) is largely due to the increase in the number of member states.

Tables 11.4a and 11.4b contain multivariate analyses of delegation to member states. The results are very similar, regardless of whether the narrow or broad definition of delegation is used. As indicated by the descriptive tables, the evidence is consistent with Hypothesis 1b from the transaction-costs perspective. Controlling for other variables of interest, decision outcomes concerning national rules are far more likely to delegate to member states than decision outcomes on other issues (Models 1 and 2 in Tables 11.4a and 11.4b). Model 2 in both tables is restricted to co-decision issues and include the distance between the EP and member states' positions.

Disagreement between the Council and EP does not affect the likelihood of delegation to member states.

<Table 11.4a>
<Table 11.4b>

There is significant evidence in support of Hypothesis 5, from the consensus-building perspective on delegation to member states. The third model in Tables 11.4a and 11.4b is restricted to the set of issues concerning national rules. More polarization in member states' policy positions increases the odds of delegation to member states. The magnitude of this effect is depicted in Figure 11.2 that plots the predicted probabilities of delegation to member states, using the broad definition of delegation, at different values of polarization. Increasing the level of polarization of states' positions from the minimum to the maximum value leads to a large increase in the probability of delegation to member states. At the lowest level of polarization, this probability is .24 (95% CI .16, .35). At the highest level of polarization, this probability is .61 (95% CI .32, .83).

<Figure 11.2>

11.5 Conclusions

The delegation of discretionary powers to the Commission follows a different logic to the delegation of discretionary powers to member states. The transaction-costs perspective explains some of the variation in delegation to the Commission. This perspective explains delegation to implementers with reference to the information asymmetries between implementers and decision makers (e.g. McCubbins et al. 1987; 1988; Epstein and O'Halloran 1999; Bendor *et al*. 2001: 242; Huber and Shipan 2002). Implementers generally have superior technical expertise regarding the effectiveness of different policies. Therefore, decision makers may find it efficient to formulate discretionary rules that allow implementers to select the most effective policies. This implies that decision makers delegate discretionary power to the Commission regarding issues on which the Commission has a particularly large

amount of relevant expertise, namely the implementation of EU-level programmes and rules. Indeed, the evidence shows that almost all of the decision outcomes that delegate power to the Commission concern EU-level programmes and rules, rather than rules to be implemented at the national level.

In general, the differences between actors' policy positions do not affect the likelihood of delegation to the Commission. The transaction-costs perspective also predicted that delegation to the Commission is more likely when the distance between the Commission and member states policy positions is small, and also when the distance between the Commission and EP's policy positions is small: in other words, when the Commission is a policy 'ally' of decision makers. The findings do not indicate that the distance between the Commission and member states' positions affects the likelihood of delegation, and there is only weak evidence that the distance between the Commission and the EP's positions has an effect. Therefore, this expectation from the transaction-costs perspective is not clearly confirmed. The reason for this may be that decision makers do not fear 'policy drift' by the Commission as much as the transaction-costs perspective suggests they do (Thomson and Torenvlied 2011). The costs of monitoring the Commission's policy actions are perhaps not as prohibitively high as the transaction-costs perspective suggests. Control mechanisms ensure that the Commission reports its activities regularly to the member states and EP. Moreover, as shown in Chapter 4, the Commission is imbued with national interests. The importance of nationality in the Commission strengthens member states' ability to monitor the Commission's compliance. This enables member states to delegate to the Commission even when the Commission takes policy positions far from theirs.

The evidence does not support the expectation from the commitment perspective on delegation to the Commission, according to which the decision to delegate to an independent implementing agent is a solution to the problem of credible commitment (Kydland and Prescott 1977; Melumad and Mookherjee 1989; Martin 1992; Gilardi 2002; Stone 2002). In particular, delegation to the Commission is no more likely when member states' policy positions are polarized. Since this chapter examines legislative decision-making, this negative finding does not bear on the relevance of the commitment perspective to delegation to the Commission in treaty negotiations (Majone 2001).

One of the most striking findings of this chapter is that decision outcomes that resolve controversy by delegating to the Commission are rare events. This study focuses on resolving controversy; it does not examine decision outcomes on uncontroversial matters on which all actors agreed. Related research on delegation to the Commission in EU legislation suggests that delegation is more common when decision outcomes are uncontroversial (Franchino 2004; 2007; Thomson and Torenvlied 2011).

Decision outcomes that resolve controversy by delegating to member states are more common than delegation to the Commission. Nevertheless, most controversies are resolved without giving discretionary power to member states. This is the case even for decision outcomes on national rules in the enlarged EU, where decision outcomes that delegate to member states are most common, and using a broad definition of delegation. Furthermore, even when decision outcomes give discretionary power to member states, this discretion is often highly constrained. There is little evidence for the view that the EU is unable to take decisions that change existing national provisions (cf. Hix 2008a: 47).

Delegation to member states is more likely to occur when decisions concern issues on which national authorities have particular expertise. This supports one of the main expectations from the transaction-costs perspective, that delegation is more likely when implementers' information advantage is greater. Decision makers at the EU level are unlikely to hold detailed knowledge regarding the effectiveness of alternative policies in twenty-seven different national contexts. From the perspective of transaction costs, in this case it is efficient to delegate the choice of specific measures to national implementers.

The evidence supports the consensus-building perspective on delegation to member states (Dimitrova and Steunenberg 2000; Thomson *et al*. 2007). Member states formulate discretionary decision outcomes as a way of resolving disagreement among themselves. Delegation to member states regarding the implementation of rules at the national level is more likely when states' policy positions are more polarized. Member states' policy positions are more polarized to the extent that two large groups of member states take opposing positions at the endpoints of a policy scale (Esteban and Ray 1994). The numbers of actors with policy positions affects polarization; polarization increases with the strength of alienation between actors that

disagree with each other and the strength of identification within groups of actors that agree with each other (ibid.: 821). It is indeed the case that the average level of polarization is significantly higher in the enlarged EU. This higher level of polarization explains at least in part the higher frequency of decision outcomes that delegate discretionary power to member states in the enlarged EU.

Chapter 12

Evaluating and improving the European Union

The previous chapters examined the inputs, processes and outputs of the EU's political system with theories and methods of modern political science. Each chapter focused on an important aspect of the political system. It is now time to bring together the main findings and consider their implications. The three sections of this chapter summarize the main findings and dwell on their implications for three areas of knowledge regarding EU politics: enlargement, the democratic deficit and proposals for improving how the EU works.

12.1 Continuity and change in EU decision-making since enlargement

There has been more continuity since the main 2004 enlargement than some observers and practitioners feared there would be. Three defining characteristics of the political system that helped make the EU successful have endured. First, inputs are diverse. Part I of this book examined inputs in the form of political actors' policy demands regarding controversies raised by legislative proposals. There are only weak structures in these policy demands. This means, for example, that two member states that disagree with each other on one controversy are likely to agree on another controversy, even on a related matter. Variation in political actors' policy demands is central to pluralist democratic theory (Dahl 1989: 251–254). According to pluralist theory, decisions are not controlled by a powerful elite group of actors with similar policy preferences on most of the important issues dealt with in the political system. Instead, different groups of actors share similar preferences depending on the issue at stake.

Second, processes are consensual and inclusive. Part II of this book defined processes as the ways in which actors' policy demands are transformed into decision outcomes. The formalities of the decision-making procedures, such as member states' voting weights in the Council and the inter-institutional interactions, are well known, but they tell us little about the actual process. The process is defined more by informal, consensually orientated bargaining than by formal procedures. Member states' policy positions are weighted more equally than the formal procedures suggest

they are. Furthermore, political actors in the EU go to great lengths to resolve controversies with decisions that accommodate each other's demands.

Third, decision outcomes are equitable. Part III of this book examined the contents of the decisions taken. There are often winners and losers in relation to any particular decision outcome, in the sense that some actors' policy demands are closer to the outcome than other actors' demands. However, if a broad range of decision outcomes is considered, there are no significant differences among the actors in the average levels of congruence between their policy demands and decision outcomes. Moreover, when member states' policy demands are particularly far apart, decision outcomes often grant discretion to national authorities, which allows national policymakers to tailor EU laws to national contexts. These three defining characteristics help make the EU what it is today: the furthest reaching form of voluntary international cooperation.

Why did enlargement not disrupt decision-making as some people thought it would? The concerns about enlargement were directed primarily toward the durability of the informal norms that structure decision-making in the EU (Schneider *et al*. 2006: 315). Some people were concerned that the new member states might not follow the norms according to which states take into account each other's interests when the formalities of the decision-making procedures do not compel them to do so. Behaviour that violates this norm has been rare. One reason for this is that enlargement was preceded by a long period of adjustment, during which the candidate countries internalized the EU's norms, as well as its laws and procedures (Schimmelfennig 2005; Schneider 2009). Prior to accession, policymakers from the candidate countries watched the EU's decision-making processes closely and even attended Council working group meetings as observers. Furthermore, perhaps most importantly, the new member states are themselves a diverse group of countries. Regarding any given controversy, new member states generally make different policy demands. Previous analytical studies concluded that member states' policy preferences would determine whether enlargement would lead to decision-making paralysis (König and Bräuniger 2004; Steunenberg 2001). The diversity in new members' policy demands means that it has not. Because of their diverse policy demands, new member states' representatives soon experienced having a range of different policy allies on different controversies, and being in both majority and

minority positions. Such experience makes clear why it is in each actor's long-term self-interest to accommodate other actors' demands, even when the formal rules do not compel such accommodation. Each state's representatives know that they could be in a minority situation one day, a situation in which their country's essential interests are at stake but the formal rules mean they could be outvoted. National representatives can only expect themselves to be accommodated when they are in a minority situation in the future if they behave accordingly with respect to other states that are in such a situation today.

One of the most important characteristics of the bargaining process that has persisted since enlargement is that actors usually find the prospect of failing to adopt a law highly undesirable. This may mean adopting a law that contains compromises or gives discretion to national authorities. However, the prospect that one or more actors may block a decision is generally a remote possibility during the decision-making process. Controversy generally occurs within a broader context of agreement. It is usually the case that actors agree on parts or most of a bill and disagree on other parts. If the actors fail to take a decision, they lose the entire proposal, including the parts they agreed with. Moreover, persistent failures to resolve controversies would damage the long-term relationships among actors (Achen 2006a: 101). I draw this conclusion regarding the undesirability of the disagreement outcome from the findings in Chapter 7. Models that attribute special importance to the disagreement outcome, for example by assuming that actors vote against a bill if they prefer the disagreement outcome, generally make poor predictions of actual decision outcomes.

Another enduring characteristic of the decision-making process is that it generally incorporates the positions of all actors. The best-predicting models are not based on the formalities of the decision-making procedures, but on quasi-utilitarian formulas that weight the positions of all actors relatively equally (Chapter 7). This implies that formal procedural rules are not in the foreground of the process. Nonetheless, procedural rules are important. Decision-making processes based on persuasion and cooperative exchange are stronger when they are embedded in institutional structures that clearly allocate rights and responsibilities (Stokman and Vieth 2004: 293). When actors have recourse to legally binding procedures to enforce their power, even if they do not actively use these procedures on a regular basis, they are in a stronger position during informal decision-making processes.

Member states' representatives in the Council have remained the most powerful actors in the legislative process since enlargement. With respect to how controversies are resolved, member states' policy positions taken together generally matter more than the Commission or the European Parliament's policy positions. The supranational institutions' power is considerable, but their power is also considerably less than that of the member states together. This inference is based on analyses that followed a Weberian definition of power as the potential a person or group has 'to realize their own will in a social action even against the resistance of others' (Weber 1914/2007: 247; Chapter 8). These findings support an intergovernmentalist description of how the EU works (Moravcsik 1997). They contradict analyses that attribute equal power to the Council and EP in the legislative process (e.g. Tsebelis and Garrett 2000).

Although I attribute considerable power to the Commission, my critics might argue that I underestimate the Commission's real power. The Commission, they might reason, has important agenda-setting power that is not considered here. They may argue that by being able to introduce legislative proposals, the Commission is able to affect decision outcomes more than my analyses suggest. I agree that the Commission's agenda-setting power is relevant, and this probably accounts for some of the Commission's power that my analyses identify. However, the Commission is not a gatekeeper in the sense that it can prevent issues from being raised (Crombez *et al.* 2006: 324-5; Rasmussen 2007), and it cannot compel member states or the EP to take decisions. On the contrary, the cases examined here show that any of the member states or actors in the EP can object to any aspect of the Commission's proposal. Such objections to the Commission's proposals are likely to be accommodated by other actors due to the inclusive nature of the decision-making process. In this respect, the Commission's agenda-setting power is weak. Moreover, Chapter 4's analysis shows that the Commission is not independent of national interests when it formulates its legislative proposals. The evidence indicates that Commissioners are agents of their home member states, as well as agents of an independent supranational technocrat. This reduces the power of the Commission as an independent actor relative to the member states.

The EP holds substantial power relative to the Council and Commission when the co-decision procedure, now the ordinary legislative procedure, applies. However,

it is weaker than the Council. By contrast, the rules of the co-decision procedure can reasonably be interpreted such that the EP is guaranteed equal power to the Council (Tsebelis and Garrett 2000). This finding, therefore, suggests that there is a discrepancy between the formal rules and actual practices. There may be practical impediments to the EP turning its treaty rights into effective power. I will discuss what I consider to be the most pertinent of these at the end of this chapter in the context of reform proposals. The EP functions effectively in other respects. Its collective positions are generally unbiased in the sense that they reflect the preferences of the median parliamentarian (Chapter 5). Finding such unbiased collective positions is made easier by the fact that there is a large amount of collusion and agreement among the main party groups within the EP. On the majority of controversies the party groups agree with each other. Similarly, previous research shows that MEPs from different party groups vote in the same way more often than not (Hix *et al*. 2007). Nonetheless, when party groups do take different positions, these positions reflect their ideological differences accurately.

One of the more noteworthy features of enlargement is that the new member states take distinctive policy positions on certain types of controversial issues. As mentioned above, the dominant characteristic of actors' positions is that they are marked by diversity and lack of structure. Nonetheless, on a minority of issues, there are recurring patterns. On issues regarding levels of integration, when old and new members disagree, new members generally support less integration and more national discretion. New member states are generally disinclined to accept what they consider to be unnecessary meddling in domestic affairs by Brussels. This is quite understandable given their experience of foreign intervention during the decades of Soviet rule. When old and new members disagree on issues about the strength of regulation, new members typically support lighter regulation. In this respect, the new member states' policy positions are in line with the liberal free market regimes they introduced before they joined the EU. However, when old and new disagree about levels of subsidies, new members typically support higher subsidies, in line with their national interests and net EU budgetary positions. This evidence supports and adds to previous research on new member states' behaviour in the first years since enlargement (e.g. Naurin and Lindahl 2008; Mattila 2009). In particular, it shows the types of issues on which there are divisions between old and new member states.

New member states also have real power over decision outcomes, despite the fact they have relatively little experience of the EU's institutions and most of them are small. This conclusion clearly nuances an early and somewhat pessimistic assessment of new member states' power (Goetz 2005: 254). I agree with this early assessment in the sense that new members' power is seldom obviously visible. But this lack of visibility is attributable to the diversity in member states' positions, not to an inherent weakness of new member states. The analyses in Chapter 9 showed that a model makes more accurate predictions of decision outcomes if it takes into account new member states' policy demands. The increase in predictive accuracy is significant, but not large. The reason for this is that the policy positions of new and old member states differ on only a minority of issues. This means that any given policy demand is usually supported by a mixture of old and new members. Consequently, the majority of controversies are resolved in ways that are similar to how they would have been resolved before enlargement. There is clearly a tension between this observation and the earlier conclusion that new members have real power over decision outcomes. This tension highlights the paradox of power in the European Union: While power is distributed quite evenly among the member states, no individual or group of states has an obviously visible effect on decision outcomes.

As was the case before the 2004 enlargement, there are no clear winners and losers among the actors across a wide range of decision outcomes (Chapter 10). This finding follows quite naturally from the previous findings regarding the diversity of actors' positions and the consensual nature of the decision-making process. In addition, decision outcomes on controversial issues frequently respond to member states' competing policy demands by granting discretion to national authorities (Chapter 11). This means that although EU laws are adopted, member states' national authorities receive discretionary power to implement different arrangements within their territories with respect to some issues. The practice of delegating discretionary power to national authorities to resolve controversy has increased since the 2004 enlargement. This has been criticized as evidence of policy gridlock (Hix 2008a: 47). However, the evidence presented here does not suggest that the EU has become unable to decide. Even when decision outcomes delegate discretionary power to national authorities, this is usually within limits, which means that national laws are harmonized more than they were before. Moreover, discretionary provisions are

arguably appropriate policy responses to controversies in which member states'
democratically chosen representatives express a preference to maintain, at least to
some extent, their existing national arrangements.

12.2 The European Union's democratic deficit

What implications do the previous analyses have for the EU's democratic deficit?
Many people, including many prominent academics, believe that the EU suffers from
a democratic deficit (e.g. Habermas 2008; Hix 2008a; Weiler *et al.* 1995). It is not an
exaggeration to say that this is the conventional wisdom. Analysts hold different
opinions regarding what exactly the democratic deficit is, depending on their beliefs
regarding the democratic standards the EU should meet. While there are different
versions of the argument that the EU has a democratic deficit, there are a number of
recurring charges. These concern citizens' relationship with the EU, the decision-
making process itself and the outcomes of the decision-making process. This book's
findings are relevant to many of these concerns, although they do not specifically
address the relationship between individual citizens and the EU. So while I do not
pretend to give a comprehensive assessment of the democratic deficit, I discuss four
of the main charges that have been prominent in previous discussion of the
democratic deficit and that are addressed to at least some extent by this book.

The first charge is that 'unelected bureaucrats have too much power.' According to
this charge, the EU has usurped democratic politics at the national level. Instead of
democratically elected representatives deciding on matters of concern to citizens,
Brussels bureaucrats are now in control.

This first charge does not withstand scrutiny, even without the findings
presented here. All of the key decision makers in the EU are subject to democratic
control by citizens. MEPs are of course directly elected. Member states'
representatives in the Council of Ministers are members of democratically elected
national governments. Within the Council working groups, officials are subordinate to
national ministers. Commissioners are nominated by democratically elected national
governments and approved by the elected EP. Democratic control over
Commissioners and Commission officials is most indirect. Crombez (2003) is

concerned that citizens control over the Commission may be too indirect. He argues that excessive delegation blurs the lines of accountability.

Several findings are pertinent to the charge of 'bureaucratic despotism'. These findings lead us to question this charge, but raise new concerns. First, the Commission, to which the charge of being unaccountable is most relevant, holds a modest amount of power in the EU's decision-making process compared to the Council. In the co-decision procedure, and by implication the now widely used ordinary legislative procedure, both the Council and EP have more power over decision outcomes than the Commission. This implies that unelected officials in the Commission are not in control, but it raises the more specific concern that unelected officials in the Council working groups wield too much power. Given that national ministers spend most of their time on national issues, they must delegate the task of representing their countries' interests to officials. The findings indicate that officials usually do this well. Member states' policy demands reflect their domestic interests (Chapter 6), and all member states' policy demands are taken into account when formulating decision outcomes (Chapter 10). However, the Council is far from being a transparent decision-making body, which means that citizens have little opportunity to monitor how their national representatives behave.

Another response to the charge that 'unelected bureaucrats have too much power' is to agree that unelected bureaucrats do indeed wield a great deal of power. However, according to Majone (1994; 1996), this is entirely appropriate because EU policies are concerned with 'regulatory' as opposed to 'redistributive' issues. By 'regulatory', he means that the EU focuses on issues about the coordination of different national policies to increase the welfare of citizens in all member states while decreasing the welfare of no one; in other words, the EU focuses on achieving Pareto improvements in welfare. According to Majone, although the EU is broader in scope, it is essentially similar to other regulatory agencies, such as telecommunications operators, standards agencies and central banks. Introducing more democracy in the EU would mean that decision outcomes would no longer bring Pareto improvements. Instead, the majority would attempt to adopt decision outcomes in their own interests. These outcomes would inevitably involve redistributions of welfare, which would in turn undermine the legitimacy of the system.

Majone's sharp distinction between regulatory and redistributive issues is unconvincing when applied to legislative decision-making. Controversies and outcomes are not only or even primarily regulatory as he uses the term, because decision outcomes do not involve welfare improvements for all. The analyses in Chapter 10 showed that over a broad range of issues there are no clear winners and losers, but there are still winners and losers with respect to particular decision outcomes. Consider, for example, the sugar subsidy reform discussed in Chapter 2. These subsidies, which were cut considerably, benefited some member states more than others. The cut may have been the right decision to take, but it was clearly not a Pareto improvement. Similarly, decision outcomes on controversies regarding forms of regulation were also more favourable to some actors than others and were not viewed by all as improvements in comparison to the status quo. Therefore, it is unconvincing to argue that bureaucratic control is justified because the EU is essentially a large regulatory agency that does not deal with redistributive issues.

If the first charge is taken to mean that the Commission holds too much power, then my findings regarding the impact of Commissioners' nationalities are relevant (Chapter 4). These findings show that the Commission is not entirely a bureaucratic actor. Instead, it is imbued with the influence of Commissioners' nationalities. The evidence shows that the Commission's policy proposals are more congruent with the policy demands of the home member states of primarily responsible Commissioners than other policy demands. From the perspective of the treaty rules, the impact of Commissioners' national identities is undesirable. This bias in the Commission's behaviour may be due to responsible Commissioners meddling in the contents of the legislative proposals that come out of their Directorates-General. Another possibility is that the bias is due to Commission officials anticipating their Commissioners' preferences and formulating legislative proposals accordingly. Either way, the bias could pose a threat to the formulation of policy proposals that are well coordinated across the boundaries of Commissioner portfolios.

The second charge is that 'the European Parliament has too little power.' The EP is the only institution in the EU with members directly elected by citizens. As such, a powerful EP is an important part of the EU's democratic infrastructure of checks and balances. Part of the argument for having a powerful EP is that the EU has been given

254

competency over policy areas that were previously controlled by national political systems (e.g. Lodge 1994: 82-3). In national political systems, parliamentarians check the power of their national governments. Without a strong EP, the transfer of policy competencies to the EU level means that governing executives are subject to less control than they previously were in national arenas.

This second charge is often rebutted by two arguments, neither of which is entirely convincing. The first argument is that the EP has been given a stronger position in the formal legislative procedures in successive revisions of the EU's treaties, most recently in the Lisbon Treaty (e.g. Hix 2008a: 73). In the co-decision procedure as revised in the Treaty of Amsterdam, and in the almost identical ordinary legislative procedure introduced by the Lisbon Treaty, the EP is formally a genuine co-legislator together with the Council. The formal rules do not contain any provisions that disadvantage the EP relative to the Council. Moreover, the EP's co-decision power has been extended to most important policy areas, now including the budget and agriculture since the Lisbon Treaty. However, political scientists should not be content with a reading of the formal procedural rules. What matters is how these rules are brought into practice. Therefore, formal procedures are an important part of the assessment of how powerful an actor is, but the analysis should not stop there. Assessing an actor's power inevitably involves the study of real-world decision-making.

The second argument in response to the claim that the EP is too weak refers to information on the extent to which EP amendments are incorporated into laws (e.g. Kreppel 2002; Tsebelis *et al*. 2001). A considerable proportion of the EP's amendments are incorporated into laws. Kreppel (2002) finds that almost half of the EP's substantive amendments, which are distinct from semantic or technical amendments, are adopted. This type of evidence is highly relevant to questions about variation in the EP's power, for instance the effect of changes in formal rules on the EP's power, notably the change from the old co-operation procedure to the co-decision procedure. However, this type of evidence is of limited use for gauging the EP's power relative to other institutions. If we are interested in the extent to which the EP offers an effective check on the power of the other institutions, we are interested in the EP's relative power. To assess the EP's relative power, we need information on opposition to the EP's policy positions by other actors. Research on EP amendments

does not take into account the extent to which each of the member states supported, opposed or was entirely indifferent to the EP's substantive amendments.

My finding, that the EP is considerably less powerful than the Council, explicitly refers to the EP's relative power. Chapter 8's analyses take into account the policy positions of all main legislative actors, which studies of EP amendments do not. Moreover, my analyses do not conflate power and luck; an actor is not attributed with more power simply because its policy position is close to an obvious compromise. It is not inconsistent to argue that the EP is considerably less powerful than the Council, while acknowledging that almost half of the EP's substantive amendments are incorporated into EU laws. This simply implies that many of the EP's substantive amendments are not contested strongly, if at all, by member states. A more important implication is that there is a large discrepancy between the formal rules and the practice of politics in the EU as far as the EP's power is concerned. It also implies that there is evidence for this second claim of the thesis that the EU suffers from a democratic deficit.

The third charge is that 'the EU lacks an electoral competition regarding European issues with which citizens can engage.' Democratic theorists agree that for a political system to be called a democracy, it must fulfil more criteria than simply having elections. For elections to be meaningful, some democratic theorists insist that political leaders must offer citizens choices that allow them to express preferences regarding the direction of policy. Responsible political parties offer voters choices among coherent packages of proposals, according to the prominent mandate theory of democracy and the responsible party model (APSA 1950; Downs 1957; Friedrich 1963; Klingemann *et al.* 1994). Responsible political parties that enter government after an election then carry out the policies they promised voters during the previous election campaign. European citizens are not offered such choices regarding the direction of EU policies. Candidates for election to the EP do not compete on European issues. Rather, candidates for EP election spend a lot of time talking about national politics. And if citizens bother to vote at EP elections, they appear to be motivated by their attitudes on national, rather than European issues. Moreover, in the Council of Ministers where power is concentrated, there is no clearly identifiable governing coalition of states in control of the political agenda. This makes it

impossible for citizens to attribute credit or blame for policy performance, and to reward or punish incumbents accordingly. This third charge is arguably the least contested of the set of charges in support of the democratic-deficit thesis. Follesdal and Hix (2006; Hix 2008a: 76) in argue that this is the only charge that withstands scrutiny.

This third charge, however, looks problematic in the light of arguments made by liberal democratic theorists. They reject the proposition that elections provide clear signals to governments about policies, even at the national level where national elections are mainly about national issues (e.g. Pennock 1979, 315-21; Riker 1982). Even if we assume that voters do vote for parties that reflect their policy preferences best, election results generally give rather unclear expressions of 'the will of the people' (Riker 1982). For instance, election results in multiparty systems usually support several alternative coalition governments, each with a different set of policy preferences. According to liberal democratic theory, the main function of elections is to prevent those in power from abusing their positions, not to send signals about the desired direction of policy. It is unrealistic to expect that EP election results provide clear signals to political leaders about the direction of policy if few other election results do so.

The third charge may be interpreted in a different way, namely that the general lack of political competition on European issues reinforces or even causes public apathy toward EU politics in general. Follesdal and Hix (2006: 545-6) point out that public opinion is at least partly caused by the behaviour of political elites. They argue that citizens' apathy toward the EU is undesirable because the issues the EU deals with affect their lives. Moravcsik (2008) accepts that there is little competition between alternative comprehensive policy programmes at the EU level and that many citizens' are apathetic toward the EU. However, he disputes that the lack of competition causes citizens' apathy. Instead, citizens' apathy is simply due to the nature of the issues dealt with by the EU. Citizens of all countries consistently say that they care most about taxation, education, welfare and healthcare, not necessarily in that order. These policy areas are mainly the responsibility of national governments, not the EU. The EU's budget is tiny compared to national budgets, and its policies do no more than tinker around the edges of these electorally salient policy areas, particularly in relation to cross-border aspects. Moravcsik's argument does not

deny that EU policies affect citizens' lives in important ways. Instead, his argument refers to EU policies' inherent lack of electoral salience.

These arguments raise two main questions regarding political competition in the EU, each of which is addressed at least partly by the research in this book. The first question is whether the controversies dealt with in the EU's day-to-day politics have the possibility of engaging citizens? The answer is a qualified yes. This study examined more than 300 controversial issues that arose in the EU during a recent decade. As the examples showed, each controversy was of substantial interest to at least some groups of citizens. The controversies included choices between different levels of subsidies for various programmes, new rules to liberalize or protect different markets, and rules to harmonize regulations across Europe. Choices between free markets and strong regulations are similar to those faced by national politicians. It is true that controversies in the EU do not refer to the electorally salient policy areas of taxation and spending in which voters generally say they are most interested. However, EU-level controversies relate to the same themes that energize national politics. Arguably, these controversies are important enough to warrant more informed public debate than they currently receive.

The second question is whether it is possible for the main political actors in the EU to offer citizens competing comprehensive packages of policy proposals. The answer is no, not without damaging one of the most important features of the political system that makes the EU successful. For a group of political actors to formulate a coherent and comprehensive package of proposals, they must have similar policy positions across a broad range of issues. This contrasts with the situation found in the Council of Ministers, where member states' policy positions are marked by variation across issues. My analyses identified some important patterns in member states' policy positions, but these patterns are found in no more than substantial minorities of issues. It is notable that none of the patterns in member states' positions related to the left-right positions of their national governments, terms that structure politics for citizens at the domestic level. This lack of structure contributes to the absence of clear winners and losers in the EU across a broad range of decision outcomes. Maintaining this desirable feature of the EU's political system runs counter to Hix's (2008a: 90) call for more competition across a range of issues so that citizens can identify 'the winners and losers of policy outcomes'. I agree that information on the winners and

losers of each controversy should be publicly available. However, redesigning the system of political competition so that some member states are forced into the losing side on a range of issues is neither feasible nor wise.

The fourth charge is that 'EU policy outcomes do not reflect European citizens' policy preferences' or more generally that outcomes are biased in favour of certain interests. This charge has been levelled partly by people with left-wing social democratic convictions. Scharpf (1999), for instance, argues that EU policies are generally to the right of what most citizens want. According to Chari and Kritzinger (2006), business groups have a disproportionately large amount of influence in EU policymaking. Equally however, people on the right complain that the EU imposes too much regulation on companies. According to Hix (2008a: 75) 'radical free-marketeers are just as frustrated with the EU as left-wing socialists', because decision outcomes are often centrist.

My research does not examine citizens' preferences on EU issues, which is part of the fourth charge. However, my findings regarding decision outcomes are relevant to the charge of bias. Chapter 10's results are consistent with Hix's judgement that outcomes are centrist. Decision outcomes generally lie between the most extreme policy positions advocated by any of the actors. This does not imply that decision outcomes in the EU do not bring change. Indeed, decisions often appear radical to people who would have preferred no change at all. Decisions on choices between free markets and strong regulations generally lie between these extremes. Likewise, if we consider decisions to cut subsidies for agricultural production, these cuts are generally less than Denmark's representatives would like, but more than France's representatives would like.

Chapter 11's findings relating to delegation are also relevant to the charge that the EU imposes unwanted rules on citizens. In line with the consensus-building perspective on delegation, the more polarized member states are on an issue, the more likely it is that the decision outcome will delegate discretionary powers to national authorities. So it is precisely where citizens' national representatives disagree most that member states preserve the most autonomy.

12.3 Reforms to improve the European Union

Europeans are unlikely to make fundamental changes to the EU's formal structures anytime soon. The EU has reached a constitutional equilibrium that is unlikely to shift in the foreseeable future (Moravcsik 2005). Despite the great difficulties of ratifying the Lisbon Treaty, the institutional reforms it brought were modest in scale compared to previous reforms. The EU's constitutional equilibrium includes the division of policy areas into those that fall under the EU's jurisdiction and those that are left to the national level. The EU's jurisdiction excludes electorally salient policy areas of public expenditure. Even with higher levels of fiscal coordination following the financial crisis, national governments remain responsible for deciding on levels of taxation and expenditure. The constitutional equilibrium also consists of the EU's institutional capacity relative to national administrations. In terms of numbers of personnel and revenue-raising powers, EU institutions are weak compared to national institutions. Recent revisions of the EU's treaties did not change these and other basic features of the equilibrium. The most important of the changes brought by the Lisbon Treaty included the extension of the co-decision procedure, renamed the ordinary legislative procedure, to new areas. This continued the gradual expansion of the EP's power brought by previous treaty reforms. The system of qualified majority voting was adjusted, as discussed in Chapter 7. This reform preserved the principle of regressive proportionality among states, whereby larger states have more voting power than small states, but where small states have more voting power than their population sizes suggest. The Lisbon Treaty also introduced a new role of President of the European Council, where heads of state and government meet. However, it preserved the rotating Council presidency in the Council of Ministers. Some of the changes brought by the Lisbon Treaty fall outside the scope of this study: the creation of the post of the High Representative for Foreign Affairs and Security Policy along with a new EU diplomatic service. However, it is noteworthy that the EU did not receive new competencies in external affairs.

The fact that Europeans have no appetite for far-reaching institutional reforms does not imply that the EU is the best political system it can be. Rather, EU policymakers are focusing, as they should, on making the institutional arrangements laid down in the Lisbon Treaty work as best as they possibly can. In conclusion, I

draw your attention to the relevance of this book's findings to two sets of reform proposals. There are many other reform proposals to which this study's findings are relevant. However, I consider the following two to be most pressing. They are also realistic in the sense that they are possible within the established constitutional settlement.

The first of these reforms is that the European Parliament's real capacity to exercise power on a par with the Council should be strengthened. Formally, the EP is equal the Council in the ordinary legislative procedure that applies to most important policy areas. My findings indicate that even when the EP is formally a co-legislator with the Council, in practice it is far weaker. The problem is not with the formal rules laid down in the Treaty, but rather with deficiencies in MEPs' informal power resources that enable them to use the formal rules as effectively as possible. There is no serious dispute about whether the EP should have equal power to the Council in most policy areas. Despite low turnout at EP elections, the fact that the MEPs are directly elected adds to the democratic legitimacy of the decision-making process. A strong EP checks the power of the Council and Commission. Moreover, MEPs often consider proposals from quite different perspectives than the officials who handle much of the legislative business in the Commission and Council. Such diversity of perspectives has a positive impact on the quality of lawmaking. Strengthening the power of the EP would accentuate these benefits.

What practical steps could be taken to increase MEPs' informal power resources? MEPs should be given greater support in terms of more personnel at more senior levels. At present, most MEPs' have two or three assistants, often at quite junior levels. In addition, MEPs draw on support from staff in their party groups and relevant parliamentary committees, but these staff must also support other MEPs. This level of support compares unfavourably to the support available to representatives of members states in the Council of Ministers, who draw on the resources of large national ministries. By comparison, Members of Congress in the United States have large teams of advisors at their disposal. In supporting this proposal, I do not wish to denigrate the work and expertise of many dedicated MEPs and EP staff. In many ways it is remarkable that the power of the EP is so marked given the resources they have at their disposal; this is testimony to their hard work and skill. However, the fact

remains that the power of the EP is far less than the Council, even when the formal rules stipulate that it should be the same.

High levels of turnover in the EP negatively affect MEPs' experience, which in turn weakens the EP relative to the Council. Strengthening personnel support for MEPs would encourage more MEPs to stay longer. Larger teams of more senior staff increase the prestige of being an MEP, which would dissuade some from returning to a career in national politics or elsewhere. Better-resourced MEPs are more likely to achieve desired changes to legislative proposals, and such successes would encourage more MEPs to run for office again.

Funding to strengthen staff support for MEPs should be found in the current EU budget. The EP should abolish its sessions in Strasbourg to find the required savings. Every month, the EP moves all its operations from Brussels to Strasbourg, to hold meetings in a building that remains empty the rest of the time. The yearly cost of doing so is estimated at about Euro 200m, enough to fund more than three full-time senior-level staff members for each MEP. The Strasbourg routine also wastes time and energy that could otherwise be devoted to checking the power of the Council of Ministers and Commission. There is no serious intellectual argument for keeping the Strasbourg sessions. Defenders of the status quo refer to the importance of symbols for political systems. Symbols are indeed important, but Strasbourg is not a symbol that benefits the EU. On the contrary, EP sessions in Strasbourg are used by Eurosceptics to perpetuate the image of a wasteful EU. Opponents of the Strasbourg sessions generally argue that abolishing these sessions would reduce waste. A more important argument in my view is that abolishing these and investing the savings appropriately would make the EP a more powerful legislature.

The second reform is that the Council of Ministers should introduce greater transparency when it acts as a legislative body. Citizens are denied the opportunity to see what positions their national representatives defended during the decision-making process. To obtain information on member states' policy demands for this book, I and my colleagues developed personal contacts with officials, often assuring them that we were not journalists and would protect their anonymity. As much as we enjoyed these meetings, this is not how it should be in a democratic legislature. The need for transparency is far greater than the benefits this would have for political science research, however. The first reason for transparency is that a more open Council

would partly correct the imbalance of power between the Council and EP. Secretive Council meetings institutionalize information asymmetries between the Council and the EP (Benedetto 2005). While Council members know what goes on in the EP, MEPs depend on Council members for information on discussions in the Council. The second reason for opening up the Council is that it would give citizens the opportunity to engage in debates on issues that affect their lives. It would also allow citizens to monitor whether their national representatives are representing their interests adequately in the EU's most powerful legislative body. My research shows that the legislative system works well in representing member states' diverse policy demands. Therefore, a more open Council could lead to increased support for the EU among citizens. Journalists have an important role to play in informing citizens about European issues. Opening the Council would give journalists a source of news events regarding political issues of substantive importance on which there are often marked differences of opinion among national representatives. It is not realistic to think that European citizens will become as interested in European issues as they are in national issues. However, citizens' apathy toward the EU is partly a consequence of the way in which European issues are presented to them, or not presented to them at all, by national media.

The arguments for preserving secrecy when the Council acts as a legislature are weak. One argument against change is that there is already enough transparency in the EU compared to other political systems (Moravcsik 2008: 334). This is true of the EP, but not of the more powerful Council. There is no other legislative body in the free world that meets in such secrecy. The Council pays lip service to transparency in its formal procedures, but these formalities do not give citizens and journalists access to useful information on political differences among member states. Another argument against opening up the Council is that it would destroy the consensual nature of decision-making that currently exists. According to this argument, if subjected to public scrutiny, national representatives would be unable to make the concessions required to resolve controversies. Against this argument, I contend that national representatives make concessions out of national self-interest, and such self-interested behaviour is defendable to domestic audiences. National representatives make concessions only because decision outcomes across larger sets of controversial issues are congruent with their policy demands (Chapter 10). This kind of self-

interested willingness to compromise is the stuff of coalition politics at the national level with which almost all European citizens are now familiar. In addition, although citizens do not have systematic access to information on Council decision-making, in practice it is difficult to keep information secret. The information on member states policy positions examined in this study was difficult to obtain, but not impossible. Therefore, opening the Council would not disrupt decision-making as supporters of secrecy suggest it would.

The practical steps that should be taken to increase transparency in the Council are well known and have been detailed in a recent study by Hix (2008a: 149-55). All documentation regarding legislative decision-making in the Council should be publically available in real time. Citizens should have access to information on the amendments proposed and supported by each member state in relation to each legislative proposal. Whenever the Council considers a legislative proposal, its deliberations should be conducted public. Finally, all legislative proposals should be put to a recorded vote. Only with such transparency can citizens ensure that their representatives are acting in their interests. With such transparency, the most powerful legislative body in the EU could credibly claim to be democratically accountable.

All political systems contain tensions between principles and practices, between the ideals to which people aspire and the realities of governing. Political science should reveal these tensions by showing how political systems work in practice. This concluding section mentioned two areas of tension between principles and practices in the EU: the power of the EP and transparency in the Council. Such tensions may result in cynicism that damages a political system's legitimacy, but they may also lead to demands for reforms that change a political system for the better.

Subject index

Appendix
List of selected proposals

The following 125 legislative proposals are included in this study. See Chapter 2 for details of the selection criteria Asterisks indicate the sixteen proposals on which Costello (2009) collected detailed data on the policy positions of EP groups, data that are examined separately in Chapter 5. The dataset will be available at http://www.robertthomson.info.

Agriculture
Proposal for a directive laying down minimum standards for the protection of laying hens kept in various systems of rearing 1998/092/CNS
Regulation on the common organisation of the market in beef and veal 1998/109/CNS
Regulation on the common organisation of the market in milk and milk products 1998/110/CNS
Regulation for the prevention and control of certain transmissible spongiform encephalopathies 1998/323/COD
Regulation on the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin 1999/072/CNS
Directive on the marketing of forest reproductive material 1999/092/CNS
Regulation on production aid for cotton 1999/202/CNS
Regulation establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products 1999/204/COD
Directive on health problems affecting intra-Community trade in bovine animals and swine 1999/217/COD
Regulation on the common organisation of the market in bananas 1999/235/CNS
Regulation regarding a support system for producers of certain arable crops to include flax and hemp grown for fibre 1999/236/CNS
Regulation on the common organisation of the market in milk and milk products 1999/246/CNS
Regulation on the common organisation of the markets in the sugar sector 2000/250/CNS
Regulation regarding the extension of the period of validity of the aid scheme and the quality strategy for olive oil 2000/358/CNS
Regulation on the European Agricultural Fund for Rural Development 2004/0161/CNS
Regulation on financing the common agricultural policy 2004/0164/CNS
Regulation on spirit drinks 2005/028/COD*
Directive on chickens kept for meat production 2005/099/CNS*
Regulation on the sugar sector 2005/118/CNS*
Directive on pesticides 2006/132/COD
Regulation on milk 2007/026/CNS
Regulation on financing the common agricultural policy 2007/045/CNS
Regulation on the common organisation of the market in wine 2007/138/CNS
Regulation regarding the support scheme for cotton 2007/242/CNS
Regulation on modifications to the common agricultural policy 2008/0104/CNS
Regulation on rural development 2008/0105/CNS

Internal Market
Directive (thirteenth) on company law concerning takeover bids 1995/341/COD
Directive on the resale right for the benefit of the author of an original work of art 1996/085/COD
Directive relating to cocoa and chocolate products intended for human consumption 1996/112/COD
Directive relating to honey 1996/114/COD
Directive relating to fruit juices and certain similar products intended for human consumption 1996/115/CNS
Directive on the sale of consumer goods and associated guarantees 1996/161/COD
Directive relating to insurance against civil liability in respect of the use of motor vehicles 1997/264/COD
Directive on the harmonization of certain aspects of copyright and related rights in the Information Society 1997/359/COD
Regulation concerning the Community customs code 1998/134/COD
Directive on a common framework for electronic signatures 1998/191/COD
Regulation on orphan medicinal products 1998/240/COD
Directive on certain legal aspects of electronic commerce in the internal market 1998/325/COD
Directive on food additives other than colours and sweeteners 1999/158/COD
Directive concerning the safety of toys 1999/238/COD
Regulation laying down the Community Customs Code 2005/246/COD
Directive on postal services 2006/196/COD
Regulation laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State 2007/0028/COD
Directive on mergers 2007/035/COD

Justice and Home Affairs
Regulation concerning the establishment of Eurodac for the comparison of the fingerprints of applicants for asylum and certain other third-country nationals 1996/116/CNS
Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 1999/154/CNS
Decision creating a European Refugee Fund 1999/274/CNS
Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement 2000/030/CNS
Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons 2000/127/CNS
Regulation on the Visa Information System 2004/287/COD*
Directive on intellectual property rights 2005/127/COD*
Directive on illegally staying third-country nationals 2005/167/COD
Directive on data retention 2005/182/COD*
Directive on weapons 2006/031/COD
Regulation on Rapid Border Intervention Teams 2006/140/COD

General Affairs
Regulation regarding the implementation of measures to intensify the EC-Turkey customs union 1998/299/CNS
Regulation regarding the implementation of measures to promote economic and social development in Turkey 1998/300/COD
Decision establishing a Community Action Programme in the field of civil protection 1998/354/CNS
Regulation relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, in particular through the setting-up of the European Agency for reconstruction 1999/132/CNS
Regulation on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership 1999/214/CNS
Regulation concerning access to documents of the European Parliament, the Council and the Commission 2000/032/COD
Regulation on the European Regional Development Fund, the European Social Fund and the Cohesion Fund 2004/163/AVC (same package as 2004/167/COD)*
Regulation on the European Regional Development Fund 2004/167/COD*
Regulation on the European Neighbourhood and Partnership Instrument 2004/219/COD*
Regulation establishing an EU Agency for Fundamental Rights 2005/0124/CNS
Directive on payment services 2005/245/COD

Fisheries
Regulation laying down certain technical measures for the conservation of fishery resources 1996/160/CNS
Regulation laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector 1998/347/CNS
Regulation on the common organisation of the markets in fishery and aquaculture products 1999/047/CNS
Regulation establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy 1999/050/CNS
Regulation laying down certain control measures applicable in the area covered by the Convention on Future Multilateral Co-operation in the North-East Atlantic Fisheries 1999/138/CNS
Regulation on closer dialogue with the fishing industry and groups affected by the common fisheries policy 1999/163/CNS
Regulation for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms 1999/255/CNS
Regulation on hake 2003/0318/CNS
Regulation on sole 2003/0327/CNS
Regulation on the European Fisheries Fund 2004/169/CNS
Regulation concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters 2007/114/CNS
Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing 2007/223/CNS
Regulation on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears 2007/224/CNS

Regulation on the conclusion of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania for the period 1 August 2008 to 31 July 2012 2008/093/CNS

Environment
Regulation on the financial instrument for the environment LIFE+ 2004/218/COD*
Directive on air pollution 2005/183/COD*
Directive establishing a Framework for Community Action in the field of Marine Environmental Policy (Marine Strategy Directive) 2005/0211/COD
Directive on waste 2005/281/COD*
Directive on water policy 2006/129/COD
Regulation on the banning of exports and the safe storage of metallic mercury 2006/206/COD
Directive on the trading of emission allowances in the aviation sector 2006/304/COD
Regulation on car emissions 2007/297/COD

Transport and telecommunications
Directive with regard to the transport of dangerous goods by road 1999/083/COD
Directive on the interoperability of the trans-European conventional rail system 1999/252/COD
Directive laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic 2000/060/COD
Regulation on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers 2000/067/COD
Directive on a common regulatory framework for electronic communications networks and services 2000/184/COD
Regulation on the further implementation of the European satellite radionavigation programmes (EGNOS and Galileo) 2004/156/COD
Directive on port services 2004/240/COD
Regulation on passengers with reduced mobility travelling by air 2005/007/COD*
Directive on energy-efficient vehicles 2005/283/COD
Regulation on common rules for the operation of air transport services in the Community 2006/0130/COD
Directive on railway safety 2006/272/COD
Directive on the interoperability of the Community rail system 2006/0273/COD
Directive on airport charges 2007/013/COD
Regulation establishing the European Electronic Communications Market Authority 2007/249/COD
Regulation establishing the European Network and Information Security Agency as regards its duration 2007/291/COD

Economics and Finance (ECOFIN)
Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States 1998/087/CNS
Directive on taxes on cigarettes 1998/189/CNS
Directive to ensure a minimum of effective taxation of savings income 1998/193/CNS

Directive on the taking up, the pursuit and the prudential supervision of the business of electronic money institutions 1998/252/COD
Directive on the common system of value added tax 1998/311/CNS
Directive on the possibility of applying on an experimental basis a reduced VAT rate on labour-intensive services 1999/056/CNS
Regulation on budgetary discipline 1999/151/CNS
Directive on the common system of value added tax, with regard to the length of time during which the minimum standard rate is to be applied 2000/223/CNS
Directive on reduced rates of value added tax 2008/143/CNS

Culture
Decision on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA - Training) (2001-2005) 1999/275/COD
Decision on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus - Development, Distribution and Promotion) (2001-2005) 1999/276/CNS
Directive on broadcasting 2005/260/COD*

Development
Regulation concerning action against anti-personnel landmines in developing countries 2000/062/COD
Regulation concerning action against anti-personnel landmines 2000/062B/CNS

Education
Decision establishing the second phase of the Community action programme in the field of education Socrates 1998/195/COD

Employment
Decision establishing the Employment Committee 1999/192/CNS
Directive establishing a general framework for equal treatment in employment and occupation 1999/225/CNS
Directive on working time 2004/209/COD*
Directive on occupational pensions 2005/214/COD*

Energy
Directive on energy efficiency requirements for ballasts for fluorescent lighting 1999/127/COD

Health
Directive concerning the manufacture, presentation and sale of tobacco products 1999/244/COD

Industry
Regulation implementing Articles 85 and 86 of the Treaty 1998/288/CNS

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