

GRIDLOCK DYNAMICS IN THE EU DECISION-MAKING PROCESS

RESTORING EFFICIENCY AND INTER-INSTITUTIONAL SYMMETRY THROUGH THE REFORM OF CO-DECISION RULES OF DEBATE

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The issue of the duration of the decision-making process has been a source of concern for practitioners and scholars of the EU for a long time. Indeed, while legislation is frequently adopted in the EU, the oft-lengthy negotiations required to pass significant legislation induce gridlock dynamics that put into question the efficiency of the legislative process. To speed up decision-making, the EU institutions increasingly resort to first-early agreements under co-decision. However, this practice has proved limited in curbing delay. Institutions are likely to negotiate early agreements in the shadow of the rules governing the time of debate for the entire co-decision procedure. This brief focuses on these rules to analyze the problem of legislative gridlock. The paper shows that legislative paralysis predominantly occurs as a consequence of the strategic behavior that coalitions in the Council follow with a view to control the policy agenda. In addition, the brief shows that such strategic behavior considerably limits the capacity of the EP to exercise meaningful review of legislation. To improve efficiency and restore inter-institutional balance, the paper recommends a number of reforms of the rules governing the use of time under co-decision.

The policy agenda of the European Union is increasingly challenged by the pressure to undertake important policy reforms. The current financial crisis has dramatically evidenced the need to establish a coherent internal market for financial services. New economic legislation will also be required to liberalize and coordinate national policies in services and energy sectors. The EU

equally needs to address new social regulations to cope with the recurrent instability of the employment and reforms in the education sector to promote competitiveness based on the use information-processing and communication technologies.

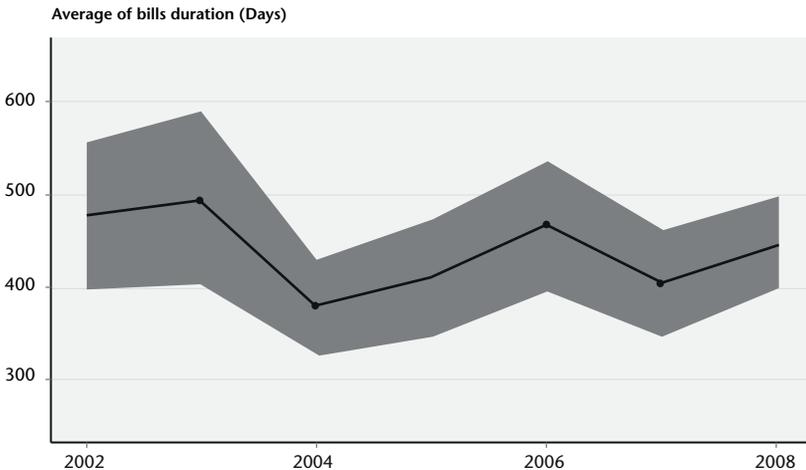
Yet, in the face of these challenges the EU is hampered by legislative gridlock. While the rate of adoption of legislation maintained a steady pace through the last decades, it has consistently decreased since the signature of the Lisbon Treaty. Legislative paralysis, however, has been a constant in the history of the EU. The crux of the gridlock problem, in reality, does not rests as much on the volume of legislation as on the slowness of the legislative process. Figure 1 shows the duration of 1.400 legislative acts in the EU adopted by the Council and the EP between January 2002 and December 2008.¹ The average length for the adoption of a bill is 442 days. To give a comparative perspective, contrast this performance with that of national legislatures. The average lifespan of bills in France and Ireland for the period 1982-2002, and for a total of 1.300 bills, is of 75 days. These two legislatures are characterized by weak institutional systems of legislative review. Yet, the EU does not fare well either when we consider strong legislatures. For Denmark, Germany and the Netherlands bills have an average lifespan of 105 days. In sum, the EU legislative process is conspicuously slow. More worryingly, it becomes increasingly slower for reformist non-technical bills that require agreements on a determined policy direction. In fact, controversial bills on new legislation may take 8 or 10 years to be adopted in the Legislative process.

How can we explain this paralysis? Traditional explanations of the duration of the EU legislative process have invariably point to the complexity of the decision-making process (Drüner 2008, König 2007, Golub 2007, Golub 2008, Golub and Steunenberg 2007. On the one hand, the increase in the use of Qualified Majority Voting (QMV) in the Council of the European Union (henceforth the Council), instead of unanimity, has tended to speed up legislation. On the other hand, however, the positive

1. Legislative production of the European Union 2002-2008 [database], the Centre for Socio-Political Data (CDSP) and the Centre for European Studies (CEE) of Sciences Po [producer], Centre for Socio-Political Data [distributor]. For more information see the OIE's website at <http://blogs.sciences-po.fr/recherche-observatory-european-institutions>.

effect of the decision rule on efficiency appears to be reversed by the increasing involvement of the EP in the co-decision procedure, now the Ordinary Legislative Procedure. The formal complexity of the EU inter-institutional decision-making has also been at the core of the political proposals aimed at increasing the efficiency EU polity. In this view, Lisbon lowered the Council quota of QMV by introducing a double-majority rule requiring 55 per cent of the votes of the member states and 60 percent of EU population. More strikingly, EU legislators have increasingly resorted to the informal practice of negotiating early agreements or trilogues in the first reading of the legislative process (Costa, Dehousse and Trakalová 2012). And yet, these efforts have clearly failed in curbing delay and avoiding stalemate in the legislative process. Certainly, agreements are now pervasively concluded in the first reading. In the last parliamentary terms, 72 and 77 per cent of the co-decision files, respectively, have been negotiated and adopted at this stage. However the total average duration of the process has not decreased accordingly.²

Figure 1. Average duration of bills in the EU



Note: The shaded region reports the standard deviation of the average bill duration.

Source: Own elaboration from the database of the Observatory of European Institutions (see note 1).

2. "Conciliations and Co-decision, Statistics on concluded co-decision procedures (by signature date)." EP website, http://www.europarl.europa.eu/code/about/statistics/_en.htm.

This brief shows that inter-institutional complexity has a limited effect on the gridlock. Contrary to the conventional wisdom, parliamentary involvement in the EU has, in fact, only a moderate influence on legislative delay. Instead, the predominant factor that explains legislative paralysis in the EU is the strategic behavior coalitions of governments in the Council follow with a view to control the policy agenda of the legislative process.

1. Co-decision rules of debate, strategic coalitions in the Council, and weakness of the EP

In reality, the expectation that informal early agreements would substitute the formal process in any consequential way contradicts elementary institutional strategic analysis. Simply put, as long as the formal rules governing the use of debating time in co-decision remain in place, legislators are likely to negotiate early deals in first stages of the procedure reasoning by backward induction, that is, anticipating the sequence of choices that would lead to the last stage of the procedure, even if this stage is never reached. A fortify, legislators are also likely to negotiate in the shadow of the formal balance of power mediating the last stage of the procedure.

The formal track of the co-decision procedure involves two stages or readings in which, upon a proposal of the Commission, the Council adopts a common position and the EP can introduce amendments to this position. If no agreement is reached in the second reading, a Conciliation Committee, comprising delegations of the 28 representatives of the Council and 28 representatives of the EP, is convened. The final decision requires the approval of a qualified majority of the Council delegation and a simple majority of the EP's. In the bicameral bargaining of the Conciliation stage, the mere difference on decision rules introduces a structural asymmetry between the Council and the EP. Under the assumption that both institutions prefer an agreement than the failure of negotiations (an assumption that should normally hold under the information-rich environment of the EU), the pivotal member of the Council will have a larger disagreement value than the pivotal member of the EP. As a consequence, the Council will be able to present a tighter compromise to the EP than the EP to the Council

(Franchino and Mariotto 2013). In addition, this asymmetry will be considerably reinforced when the majority in the Council is cohesive. Thus, if both institutions are in opposing sides of the political spectrum (and they are likely to be so if they get to Conciliation), a cohesive majority in the Council will increase the disagreement value of the pivotal member of the Council, hence forcing the EP to give further concessions (Garcia Perez de Leon 2011).

In this context, the rules governing the time of debate in co-decision have a double effect. They increase the likelihood that the Council delays the legislative process, and they reinforce the asymmetric balance of power that disfavors the EP.

Consider first that the Treaty of Lisbon does not institute any procedural time limit in the first reading. Once the proposal of the Commission is received, the EP can deliberate on its first amendments without any formal deadline. The Commission can modify its original proposal on the basis of the EP amendments. Concomitantly, the Council can also consider the proposal of the Commission without any time restriction in the first reading. In case the Council does not accept the amended version of the EP, it should deliver a common position, which the Commission cannot revise further. Once a decision reaches a second reading, time limits are set for both institutions, and a legislative negotiation can only last as much as 8 months and 24 weeks if it reaches the final Conciliation, with some qualified extensions considered in case of no-agreement.

Although these procedural rules for the use of time of debate for the EP and the Council appear to be fairly similar, there is a fundamental difference that brings a crucial strategic component in the behavior of governments in the Council, and which substantially reinforces the structural asymmetry between the two chambers. To see this, consider that once the elections to the EP define a composition of parties in the EP legislature, this composition remains constant through the five years of the legislative term. Thus, although deliberations to decide on amendments on any given bill, and at any given stage of the decisional process, can take considerable time in the plenary, once the MEPs form a simple majority to vote on amendments, this majority will not change. Indeed, absent any evident policy gain from waiting, it would be in the interest of the assembly to speed up the collective decision.

Contrast this state of affairs with the situation in the Council. Each time there is a domestic election leading to a government turnover in one of the member states of the EU, there is a change in the composition of the Council. Elections across Europe are very common. They take place several times a year. This means that the life of a bill in the EU usually covers several changes in the ideological composition of the Council. Constant changes in the ideological composition of the Council will create several sequential opportunities for governments to form majority coalitions with like-minded governments. As a consequence, governments will harbor incentives to control the timing of the agenda in order to obtain a coalitional deal close to their policy choice. Specifically, when a given preference composition of the Council allows governments to form an ideologically cohesive majority coalition, the opportunities of adopting an advantageous collective policy will give members of the coalition incentives to force a quick decision on the issue, so as to realize their payoffs immediately and save opportunity costs of leaving other issues of the agenda unaddressed. Conversely, when only a heterogeneous majority coalition with a large dispersion of preferences can form, the policy payoffs that members of the coalition may obtain from an immediate decision are diluted. Therefore, under conditions of preference heterogeneity, governments are likely to postpone the adoption of legislation and wait for better deals in the future.

Given these strategic incentives in the Council and the lack of them in the EP, we can draw two clear implications: First, electoral compositions of the Council in which heterogeneous or disperse majority coalitions form are likely to induce significant delays in the passage of legislation. Second, electoral compositions prompting the formation of a cohesive coalition in the Council tend to accelerate the adoption of a collective position by the Council at any stage of the legislative process, but will also curtail the capacity of the EP to introduce significant amendments.

The corroboration of these implications becomes clear when we examine the probability that bills are adopted in the EU legislative process during their lifespan, that is, their hazard rate.³ The Table shows how this probability is affected by coalitional heterogeneity in the Council, for the 108 different compositions of the Council configured between January 2002 and December 2008, and for

1.400 legislative acts, adopted through consultation and co-decision. We can observe first that coalition heterogeneity has a strong effect on legislative delay. Specifically, looking at the two first two covariates in the table, we can see that for the left-right dimension of conflict in the EU, a one-standard-deviation increase in coalition heterogeneity is linked to an 80 per cent decrease in the likelihood of adopting any given piece of legislation at any given period. The effect for the EU-related dimension of conflict is even stronger, with a decrease of the hazard of about 90 percent. To isolate the effect of coalitional behavior, I also integrate covariates for the polarization of the Council, that is, the heterogeneity of the institution in the absence of any coalitional bargaining (“left-right polarization” and “EU polarization”, in the table). The lesser magnitude of the polarization effect confirms the prevalence of coalitional bargaining as a decisional mechanism in the Council.

Table. Duration model of legislative activity in the EU

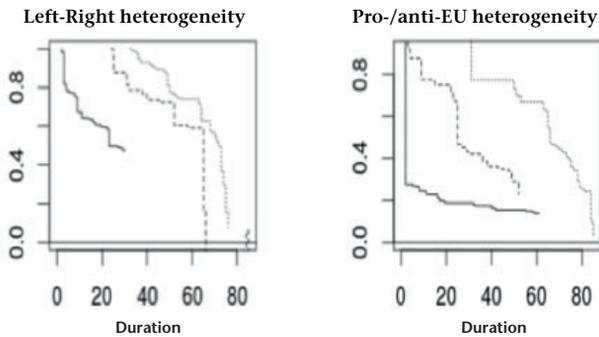
	coefficient (se)	exp (coefficient)
Left-Rightcoalition majority	-5.073 (1,205)	0.006
EU majority coalition	-2.342 (0,281)	0.096
Left-Right polarization	-1.141 (0,328)	0.320
Polarisation EU	-0.574 (0,059)	0.563
Co-decision	-0.501 (0,069)	0.606
Plus.readingsNombre de lectures	-0.339 (0,087)	0.713
Backlog	2.068 (0,451)	7.907
Left-Rightcoalition majority*ln(t)	0.863 (0,328)	2.369
Left-Right polarization*ln(t)	0.163 (0,100)	1.177
Backlog*ln(t)	-0.684 (0,135)	0.505
Rsquare	0.044	
Likelih.ratio test	730.8	
Wald test	476.9	
logrank test	630.1	

Source: Own elaboration from the database of the Observatory of European Institutions (see note 1).

3. These results are derived from an article by Garcia Perez de Leon and Grossman, currently under review. The interested reader may contact the authors for more detailed information at cesar.garciaperezdeleon@sciences-po.fr.

To gain a better sense of the coalitional effects on duration, Figure 2 shows survival functions for minimum, medium and maximum levels of coalitional heterogeneity for all the compositions of the Council considered. The vertical axis shows the proportion of bills that have not been adopted, while the horizontal axis shows the time elapsed since the introduction of the bills, as measured by successive periods of compositions of the Council. It is immediately apparent from the figure that minimum levels of coalition heterogeneity (solid line) are associated with quick adoption of legislation. For maximum levels of heterogeneity (dashed line), the probability that a bill survives is much greater, hence increasing the duration of the legislative process. In fact, most of these bills last for almost all the length of the period considered, tending to be adopted after 60 consecutive compositions of the Council or four years.

Figure 2. Cumulative survival functions



Source: Own elaboration from the database of the Observatory of European Institutions (see note 1).

Consider next the effect of parliamentary involvement in Table. The use of co-decision decreases the hazard rate by close to 40 percent. The comparison of this result with effect with the effects we find for coalitional bargaining shows that most of the legislative deliberation in the EU occurs in the Council, and confirms the asymmetric balance of power between the two legislative chambers. In particular, the estimated coefficients indicate a cumulative effect on delay of coalitional heterogeneity in the Council and the intervention of the EP. This suggests that parliamentary influence in the EU is likely in issues that were already controversial in the Council negotiations and comes at the cost of

increasing further the duration of the process. However, the weaker effect of parliamentary involvement on delay indicates that when a cohesive majority coalition forms in the Council, its members are likely to force the quick adoption of legislation, leaving the EP with little chance to introduce amendments. An additional covariate for inter-institutional complexity is the number of readings in co-decision. The magnitude of the effect of multiple readings is, as expected, not very strong. Reaching the second reading only decreases the probability of adoption by 23 per cent. Arguably, the considerable workload of the legislative institutions also tends to reduce the efficiency of the decisional process over time. However, the effect of legislative backlog does not prove to be significant.

Finally, we should further note that the capacity of ideological majority coalitions to delay the adoption of legislative bills wanes over time. The coefficient of the interaction of the covariate and the logarithmic function of time, $\ln(t)$, has a positive sign, suggesting that, as the negotiations last for several periods of bargaining, all governments in the Council become more concerned about opportunity costs and tend to speed up the adoption of legislation.

2. Reforming co-decision's rules of debate

Gridlock in the EU legislative process appears greatly influenced by the strategic behavior of coalitions of governments in the Council. As a consequence of this behavior, delays in the adoption of legislation in the EU are frequent. In addition, the strategic use of time in the Council clearly reinforces the current structural asymmetry between the Council and the EP. EU constitutional designers and legislators should address extant institutional failures by reforming the co-decision rules of debate in a way that takes into account the formal institutional structure already in place:

- The EU should establish *procedural time limits in the first reading of the co-decision procedure*, both for the Council and the EP. This measure would help to prevent strategic behavior in the Council, while keeping a realistic framework for negotiations. Given the current institutional context of the EU, the Rotating Presidency period of six months would

be an acceptable timetable for the first reading. Since countries holding the Rotating Presidency are mainly responsible to manage the co-decision files, this schedule would also give more coherence to the EU periodic legislative agenda.

- Discretion should be delegated to the Council President and the Commission President, acting conjointly, to establish an *Urgency Procedure* that restricts the timetable for legislative consideration of bills where expediency is required. Urgency bills would still be debated under open rule in the Council, so that there would be no restrictions as to who can amend the bill. The European Council has increasingly taken the role of addressing urgent matters. The proposed measure would translate this informal prerogative to the ordinary legislative process.
- *The rule of decision for the Council in the Conciliation Committee should be changed to Simple Majority.* Note that this recommendation is restricted to the stage of Conciliation. Its basic aim is to introduce symmetry of bargaining power in inter-institutional relations without for this changing the basis of quantitative voting in the Council for the whole decisional process.
- *The chairmanship of the EP's delegation in the Consultation Committee should be fixed to one of the vice-presidents of the EP.* This measure aims also at restoring inter-institutional symmetry. A permanent senior chair is expected to enhance the credibility of the EP delegation in Conciliation negotiations in proposing positions that are likely to be backed by the assembly. Additionally, this measure is likely enhance the public visibility of the EP as a powerful body, helping to direct electoral competition in EP elections toward issues related to EU public policy.⁴

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