The Engine of European Integration?
An Empirical Analysis of the Legislative Agenda-Setting Power of the European Commission

--- WORK IN PROGRESS ---

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Abstract
This study presents a theoretical discussion and empirical analysis of the agenda-setting power of the European Commission. The theoretical discussion shows that we should not expect the Commission to put legislative proposals on the agenda that are not in line with the interests of the Council and the Parliament. The perception that the Commission is a driving force of European integration might therefore be due to a selection bias in empirical studies. The results of the empirical analysis of the Commission’s legislative agenda-setting activity between 1979 and 2007 are consistent with the implications of this view. In particular, the statistical analysis demonstrates that the unanimity requirement in the Council and, to a lesser extent, the involvement of the European Parliament as a co-legislator constrain the Commission’s agenda-setting activity.

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The role of the Commission in European integration

The influence of the European Commission on the European integration process is subject to considerable public and scientific debate. In public discourse, the Commission is often portrayed as a large bureaucracy far removed from the reality of the life of European citizens. The Commission is considered to be mainly responsible for the alleged over-regulation originating from Brussels. This perception is also fostered by the long-standing practice of national governments to divert the blame for inconvenient European rules to the Commission, although Member States themselves play a substantial part in adopting these rules in the Council of Ministers. Because the Commission is the sole initiator of legislation in most policy areas, observers can easily get the impression that the Commission is responsible for the increasing level of regulation originating from the EU level. Indeed, even the Commission itself seems to have accepted the validity of this criticism. As part of its recent strategy for better regulation, the Commission now aims to keep the amount of newly introduced proposals to a minimum and to focus on the simplification and consolidation of existing legislation (Commission 2008).

The scientific debate about the Commission’s role in European integration is far less normatively laden but similarly one-sided. Many scholars consider the Commission to be a major driving force of European integration. Some authors (Sandholtz & Zysman 1989) go so far as to argue that the Commission has a major impact on the outcome of inter-governmental treaty reforms. This assertion is heavily contested in the literature (Moravcsik 1998), but many commentators agree that the Commission’s resources and legal rights put it in a favourable position to advance European policies in day-to-day decision-making of the European Union (e.g. Pollack 1997; Stone Sweet & Sandholtz 1997; Tsebelis & Garrett 2000). In particular, the Commission’s exclusive right of initiative is regarded as a valuable asset for determining the legislative agenda of the Council and the European Parliament (EP) (e.g. Burns 2004; but see Rasmussen 2007).

This study examines the extent to which the Commission is indeed able to set the agenda in EU policy-making. More specifically, the study investigates whether the Commission has legislative agenda setting power independent of the formal prerogatives and interests of the other major actors involved in EU decision-making. Agenda-setting power is an abstract concept and scholars have used it with at least
two distinct meanings in mind: first, the power to determine what is and what is not discussed or decided by a political body; second, the power to influence the outcome of decision-making of this body through formal proposal and amendment rights. This study focuses on the first meaning of agenda-setting power. The study investigates the factors determining the extent to which the Commission initiates legislation on certain topics and therefore puts these topics on the legislative agenda of the EU. Despite much theoretical debate about the agenda-setting power of the Commission, this question has not been examined systematically over a larger period of time and across multiple policy areas. To improve on this situation, I rely on data on all legislative initiatives of the Commission transmitted to the Council and the EP between 1979 and 2007.

In the next section, I describe a formal model of the Commission’s agenda-setting decision-making. The model illustrates why we should expect the Commission’s agenda-setting activity to depend crucially on the anticipated ‘good will’ of the other legislative actors. According to the model, the outcome of EU decision-making will never deviate from the interests of the majority of legislators required to pass legislation. The member states in the Council and the European Parliament have the final say on legislation. They would be irrational if they agreed to anything that would make them worse off than the existing policy. A behavioural prediction of the model is that the Commission will only introduce a proposal when it knows that the proposal will be acceptable to the required majority of member states and the EP. This result points to an important and well-known problem for empirical studies of decision-making: non-decisions, or in this case non-proposals, are not observable but just as important for the attribution of power to individual actors than their observable counter-parts (Bachrach & Baratz 1962). Thus, empirical studies of Commission agenda-setting activity that focus on individual proposals as their unit of analysis are likely to be affected by a severe selection bias. The fact that most Commission proposals are eventually adopted as legislation cannot be taken as

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3 In formal models, only the latter meaning is referred to with the concept of agenda-setting. The former meaning is usually associated with the concept of gate-keeping.

4 See Princen (2007) for a recent review of EU agenda-setting research.
evidence of the Commission’s agenda-setting power. The high adoption rate could just be an indication that the Commission acts strategically and anticipates the views of the other actors in the legislative process. The Commission is simply unlikely to introduce proposals with a small chance of being adopted. In this case, the picture of the European Commission as a major driving force of European integration or of the allegedly growing bureaucratization of Europe is misleading. To investigate the extent to which the theoretical argument is in line with the empirical record, I derive two theoretical predictions about the effects of the legislative procedure and the decision-making rule in the Council on the Commission’s decision-making calculus. In particular, the introduction of a Commission proposal is expected to be less likely when the Council decides by unanimity rather than qualified majority and when the EP is not only consulted but has a right to veto legislation.

In the third section, I discuss how the adopted research design deals with the problem of unobservable non-proposals. Rather than taking individual proposals as the unit of analysis, the study takes the aggregate Commission agenda-setting activity over a certain period of time as the basic unit of analysis. Any co-variation between the Commission’s aggregate agenda-setting activity and certain rule configurations are then taken as indirect evidence for the conditional nature of the Commission’s agenda-setting power. Although not an optimal solution to the problem of non-observable proposals, the move to a higher level of aggregation yields some leverage to investigate the validity of the theoretical argument. The research setup also allows a direct examination of the rival hypothesis: the absence of a relationship between the number of Commission proposals introduced during a certain period of time and preference and rule configurations of the other legislative actors would support the notion that the Commission exercises its right of initiative independent of the formal prerogatives and interests of the legislators. Following the discussion of the research design, I also describe the sample selection and the data collection process.

5 König et al. (2006: 563, Table 4) report that only 523 out of 9832 (5.3 percent) proposals introduced between 1984 and 2003 were either withdrawn by the Commission or rejected by the legislators.

6 In other contexts, this strategy has been employed to study legislative production (Chiou & Rothenberg 2003, 2006; Santoni & Zucchini 2006), bureaucratic discretion (Shipan 2004), and judicial decision-making (Spiller & Gely 1992; Bergara et al. 2003).
In the fourth section, I present the results of the empirical investigation. The statistical analysis is based on monthly data on the number of legislative proposals introduced by the Commission between January 1979 and December 2007. In accordance with the necessary condition character of the institutional explanatory factors, I investigate the effects of the Council’s decision-making rule and the EP’s veto-right on the central tendency as well as the variance of the distribution of the number of introduced Commission proposals. The results are largely in line with the theoretical expectations. In the final section, I summarize the findings, discuss possible objections, and spell out some implications of the results for the study of European integration and the public debate about the role of the Commission in EU politics.

**The Commission as a strategic actor with foresight**

The theoretical model I present in this section sheds some light on the conditions under which the Commission decides to introduce a proposal for legislation. In line with earlier models designed to explain EU legislative decision-making, I treat the Commission and the Parliament as unitary actors. To illustrate the effects of qualified majority voting, I model the Council as a collective body consisting of seven member states. If decisions can be taken by a qualified majority of votes, I assume that the consent of five out of seven member states is sufficient to adopt a decision. Each actor has a most preferred position or ideal point in a one-dimensional policy space. Furthermore, each actor prefers policies closer to his or her ideal point to policies further away from it. The actors know each others’ ideal points, the location of the existing status quo policy as well as the sequence of play of the game.

The model consists of two stages. In the first stage, the Commission decides about whether or not to introduce a legislative proposal on a certain topic. In the second stage, the interaction between the Commission, the Council members and, if the co-decision procedure applies, the European Parliament generates the actual decision-making outcome. I do not argue that any specific sequence of play best captures the dynamics of legislative bargaining among the actors. The primary goal of this study is to investigate the conditions under which the Commission decides to initiate the legislative process and not to make predictions about the outcome of EU decision-making or about the influence of individual actors on such an outcome. Thus, rather than to posit a specific sequence of play that allows the derivation of a
precise point prediction for the outcome of decision-making, I describe the equilibrium of the model in terms of a range of feasible outcomes.

In general, the range or set of feasible policies contains all policies that are both stable decision-making outcomes and that are preferred to the status quo by a majority of actors required to change legislation. In technical terms, the set of feasible policies is the intersection of the core and the winset. The core is a set of points that includes all policy positions that are unbeatable by other policy positions in a pairwise vote among the actors. In other words, the core contains stable policy positions that cannot be changed given the current constellation of actor preferences and institutional rules. The winset includes all policy positions preferred to the status quo by a majority of actors required to change policy. A proposal for a policy outside the winset would not rally the majority required to change the status quo. A proposal outside the core would not be stable because alternative policy positions exist that yield additional benefits for a winning coalition of actors. As a result, the proposal would be successfully amended by this coalition.

Figure 1 illustrates the logic of the model graphically. The figure depicts a situation where the consultation procedure and the unanimity rule in the Council apply. Under the consultation procedure, the Council is the sole legislative institution. If the Commission (C) decides to initiate the legislative process, the Council members have to unanimously agree on a policy to adopt new legislation. The figure indicates only the ideal points of the most extreme Council members. I refer to them as L and R, respectively. The other Council members are located somewhere between these two actors, but their precise location within this interval is irrelevant for the logic of the model. Each Council member accepts a new proposal only if it is at least as beneficial to her as the current status quo policy (SQ). I call the set of policies that an actor prefers to the status quo the preferred-to-SQ set, \( P_i(SQ) \) for actor \( i \in \{L, R, C\} \). On one side of the actor’s ideal point, the preferred-to-SQ set is delimited by the status quo. Obviously, the actor will prefer any policy that is located closer to her ideal position than that. On the other side of the actor’s ideal point, the preferred-to-SQ set

\[\text{No agreement exists in the literature about the sequence of play that best characterizes the interaction of actors in EU legislative bargaining (for reviews, see Selck & Steunenberg 2004; Steunenberg & Selck 2006). Describing the model prediction in terms of the range of feasible outcomes has the advantage that it largely side-steps these controversial issues.}\]
is demarcated by the indifference point of the actor, \( i(SQ) \). The indifference point is equally distant from the actor’s ideal point and thus yields exactly the same amount of utility as the status quo policy\(^8\).

**Figure 1** Consensual policy change \((SQ < L < C)\)

\[
\begin{array}{cccccc}
SQ & L & L(SQ) & R & C & R(SQ) \\
\hline
P_i(SQ) & \hline
P_R(SQ) & \hline
W(SQ) & \hline
Core & \hline
F & \hline
P_c(SQ) & \hline
\end{array}
\]

\( SQ \) = Status quo point  
\( L \) = Member state with the leftmost ideal point  
\( R \) = Member state with the rightmost ideal point  
\( C \) = Ideal point of the Commission  
\( i(SQ) \) = Set of policies preferred to the status quo by actor \( i \) (preferred-to-SQ set of actor \( i \))  
\( W(SQ) \) = Set of policies preferred to the status quo by the required majority of member states (winset)  
Core = Set of policies that cannot be successfully amended  
\( F \) = Set of feasible policies that are both preferred to the status quo and stable, i.e. the intersection of \( W(SQ) \) and the core.

The Council can only adopt policy proposals that are supported by the majority of member states as stipulated by the formal decision-making rule. For the moment, I assume that the decision-making rule is unanimity: all member states have to agree to change the current status quo policy. The unanimity winset includes all policies preferred to the existing policy by all Council members. Technically, the unanimity winset is the intersection of the preferred-to-\( SQ \) sets of all Council members. Figure 1 illustrates that the unanimity winset is equivalent to the preferred-to-\( SQ \) set of the most conservative Council member. Any proposal that is acceptable to the most conservative Council member is automatically also acceptable to any of the more progressive Council members, since the latter are even more dissatisfied with the current status quo policy. Thus, under the unanimity rule, the first condition for a

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\(^8\) The equal distance between, on the one hand, the ideal point and the status quo and, on the other hand, the ideal point and the indifference point is a result of the assumption that actors have single peaked and symmetric utility functions.
policy to be feasible is that the most conservative member state prefers it to the status quo.

The second condition is that the policy cannot be altered through an alternative proposal. In Figure 1, the line segment between the leftmost and rightmost member state indicates the unanimity core. Any policy located on this line segment is stable. Although some member states might benefit from a change in policy, these benefits would come at the expense of at least one other member state. The latter would therefore not agree to the policy change. In contrast, policies outside this line segment are generally not stable. Alternative policies inside the core can be found that all actors prefer to policies outside the core. Neither the inclusion in the winset nor the inclusion in the core is a sufficient condition for a policy to be a feasible decision-making outcome. Any feasible decision-making outcome must be both efficient and individually rational. An efficient outcome is an outcome located in the core. This means that no alternative exists that would make all legislators better off. An individually rational outcome is an outcome located in the winset. Policies in the winset are individually rational because each individual actor prefers them to the status quo.

In the example, policies on the line segment between the status quo and the ideal point of the leftmost Council member are individually rational decision-making outcomes because all of the Council members prefer them to the status quo. However, these policies are not efficient. All Council members would profit from moving such a policy, for example, to the ideal point of the leftmost Council member. In contrast, policies on the line segment between the indifference point of the leftmost Council member and the ideal point of the rightmost Council member are efficient but not individually rational. Once located on this line segment, the policy would be a stable outcome, as any change further to the right would be vetoed by the leftmost Council member and any change further to the left would be vetoed by the rightmost Council member. However, given the current location of the status quo, the leftmost Council member would never agree to changing policy to such a location in the first place. The new policy would make her worse off than the existing status quo legislation, so agreeing to such a change would be irrational.

In Figure 1, the set of feasible decision-making outcomes is the set demarcated by the ideal point of the leftmost member state and her indifference point. In this example, all the players are dissatisfied with the current status quo and agree about the
direction of the desired policy change. Thus, the only disagreement is about the precise extent of policy change. Given the unanimity requirement, the most views of the most conservative member state are decisive and the result of decision-making will be close to a lowest-common denominator agreement. Still, all legislators can agree to such a solution because they are better off with any new policy than with the existing status quo. The Commission also prefers any of the feasible policies or potential decision-making outcomes to the status quo policy, thus it will clearly submit a proposal in this case. Thus, the situation can be described as one of consensual policy change. Although the example in Figure 1 depicts the Commission as being most dissatisfied with the status quo, this extreme attitude is not necessary for the situation of consensual policy change to occur. The Commission will always introduce a proposal if it desires at least as much policy change as the most conservative member state.

However, other preference and status quo constellations change the Commission’s incentives. Figure 2 illustrates the situation in which the member states are divided about a change in policy. The left- and rightmost member states straddle the status quo. While the rightmost member state prefers a change in policy in the same direction as the Commission, the leftmost member state prefers a change in policy in the opposite direction. The member states’ interests are diametrically opposed. Anticipating the gridlock in the Council, the Commission is indifferent between introducing a proposal that will be rejected and not introducing a proposal at all. The outcome will be the same in both cases: no change in policy. However, if the slightest costs result from producing and discussing a proposal, the Commission will prefer not to introduce a proposal that it knows will not pass in the Council. The Commission is therefore not expected to introduce a proposal in this situation.
The Commission will also not introduce a proposal in the case were the Council members and the Commission have fundamentally conflicting preferences. Figure 3 shows the situation in which the Commission prefers changing the existing policy in the opposite direction to the one preferred by all the member states. This constellation comes closest to a situation in which the Commission could be described, depending on the normative views of the observer, with terms like runaway bureaucracy or engine of European integration. However, although the Commission would prefer to impose a policy that member states like less than the status quo, the Commission is not able to do so. If the Commission would introduce a proposal, the member states could amend it and adopt a policy even further removed from the Commission than the status quo policy. To avoid a new policy that is even less satisfactory than the status quo, the Commission would not introduce a proposal in this situation.\footnote{Even if we change the model and grant the Commission a veto right during Council negotiations, the Commission would only be able to secure the status quo. Anticipating that the introduction of a proposal would not result in any policy change, the Commission would also refrain from introducing a proposal when equipped with ex post veto power.}

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Note: See the note to Figure 1 for an explanation of the abbreviations.
Figure 3  A runaway bureaucracy ($R < SQ < C$)

<table>
<thead>
<tr>
<th>$L$</th>
<th>$R(SQ)$</th>
<th>$R$</th>
<th>$SQ$</th>
<th>$C$</th>
<th>$C(SQ)$</th>
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<td></td>
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$P_L(SQ)$  
$P_R(SQ)$  
$W(SQ)$  
$Core$  
$F$  
$P_c(SQ)$

Note: See the note to Figure 1 for an explanation of the abbreviations.

Another type of conflict between member states and the Commission occurs when all actors prefer a new policy to the status quo but the Commission is much more conservative than the Council members. In this case, the Commission might refrain from introducing a proposal because it fears that the member states will agree to a more extensive change of the existing policy. This situation is depicted in Figure 4. Note that the incentives change when the Commission position is sufficiently close to the position of the rightmost member state or when the status quo is sufficiently far removed from the Commission’s position.10

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10 More precisely, the Commission will introduce a proposal if $C < (L + SQ)/2$. Then, the Commission prefers any feasible Council decision to the status quo. As long as $C \geq (R + SQ)/2$, the Commission prefers the status quo to any feasible Council decision. For a Commission ideal point such that $(L + SQ)/2 \geq C < (R + SQ)/2$, we need to introduce an additional assumption to generate a prediction for the behavior of the Commission. I assume that the Commission is able to anticipate the precise outcome ($B \in [L, R]$) of Council decision-making, even if we as analysts are ignorant about it. As a general rule, the Commission submits a proposal if $C < (B + SQ)/2$. 
In sum, the theoretical discussion shows that the Commission’s legislative agenda-setting activity should never result in the adoption of a policy that is less preferred than the status quo by any of the Council members. This result is illustrated in Figure 5. The Figure indicates whether or not the Commission introduces a proposal for different locations of the status quo policy. The Commission does not introduce a proposal when the status quo is located between the member states, which would result in a rejection of any proposal, or when the member states would agree to a policy change further away from the Commission’s ideal point than the status quo. Thus, the model suggests that the Commission’s legislative agenda-setting activity is not an indication of the power or influence of the Commission, but depends on the collective will of the member states in the Council. At best, the Commission could keep topics off the agenda when the Council would change the policy in a way that was unfavourable for the Commission.

Although the scenario of a conservative Commission is logically possible, the historical record and the existing literature suggest that such a situation should be
rather exceptional in practice. In the remaining theoretical and empirical analysis, I assume that the Commission’s ideal point is always far enough removed from the status quo that it prefers any Council outcome to the status quo when the Commission agrees with the legislators about the direction of policy change\textsuperscript{11}. Several hypotheses with regard to Commission agenda-setting activity can then be deduced from the model. The first hypotheses relates to the effect of preference divergence in the Council. Keeping everything else constant, increasing preference divergence in the Council may transform a situation of consensual policy change as depicted in Figure 1 to a situation of gridlock as depicted in Figure 2. While the Commission introduces a proposal in the first scenario, it does not do so in the second. Thus, the first comparative static result reads as follows:

\textit{Preference divergence effect}: An increase in the preference divergence among Council members might induce the Commission to refrain from introducing a proposal when it would have introduced one otherwise.

Note that the use of the words ‘might induce’ indicates that the change in preference divergence in the Council is only a necessary condition. Whether or not such a change has indeed an effect on the Commission’s agenda-setting activity depends also on the exact location of the status quo. In principle, this relationship can of course be compared against empirical evidence. However, any such comparison faces considerable practical obstacles. An empirical examination of this relationship requires precise and reliable data on the preferences of Council members. In fact, the variable would have to be measured on an interval scale to allow for a reasonable test. Despite promising efforts in recent works (Franchino 2007; König 2007), no such data is available. Therefore, I focus the empirical analysis on theoretical implications that relate to more readily observable institutional factors. Besides being directly observable, institutional variables are also of more practical relevance. In contrast to actors’ preferences, institutions are amenable to direct human design. I leave an examination of the preference divergence prediction for future research.

\textsuperscript{11} The theoretical discussion about whether the Commission has the power to keep topics off the legislative agenda against the will of the legislators (Steunenberg 1994) or only has a monopoly proposal right (Crombez 1996; Crombez et al. 2006) is practically irrelevant under this assumption. If the scenario of a conservative Commission is ruled out, the Commission never has an incentive to withhold a proposal that the required majority of legislators would like to receive.
The effect of the voting rule in the Council is very similar to the effect of preference divergence. Given a certain configuration of preferences and the status quo policy, a move from unanimity to qualified majority voting tends to decrease the core, as fewer member states have to agree to a change in policy. The exception occurs when the decisive member under qualified majority voting has the same ideal point as the decisive member under the unanimity rule. In this case, a change in the decision-making rule has no effect on the core and thus on the Commission’s agenda-setting activity. Again, the change in the decision-making rule is therefore only a necessary condition for a change in the Commission’s proposal initiation decision. Whether it actually affects the Commission’s decision depends also on the exact location of the ideal points of the Council members and of the status quo. These insights lead to the second comparative static result:

**Council voting rule effect:** A change from the unanimity to the qualified majority voting rule in the Council might induce the Commission to introduce a proposal when it would have refrained from introducing one otherwise.

The second institutional prediction relates to the involvement of the European Parliament. I treat the Parliament as irrelevant under the consultation and the co-operation procedure, and as a co-legislator under both the initial and current version of the co-decision procedure. Given these assumptions, the Parliament has no effect on the Commission’s agenda-setting activity under the first two procedures and the same effect as an additional veto player under the co-decision procedure. Everything else equal, the involvement of the Parliament under the co-decision procedure tends to increase the core and therefore the chances of gridlock. In such a situation, the Commission is expected not to introduce a proposal. Like the previous two results, this relationship also states only a necessary condition. The effect of the involvement of the EP is dependent on both the preferences of the other players as well as the location of the status quo. If the Council members are already straddling the status quo or if the EP’s position is located within the core of the member states, then granting veto power to the EP does not affect the agenda-setting activity of the Commission. These relationships result in the third comparative static prediction:

**EP veto effect:** A change from the consultation or the cooperation to the co-decision procedure might induce the Commission to refrain from introducing a proposal when it would have introduced one otherwise.
In the next section, I discuss issues of research design and translate the theoretical predictions into empirically testable hypotheses. I also describe the sample selection and the data collection process.

**Research strategy and data collection**

The empirical examination of the theoretical predictions derived above face two problems: the first problem is that non-proposals are not observable; the second problem is that the hypotheses state only necessary but not sufficient conditions. The fact that non-proposals are not observable means that we cannot identify the population of cases that is of interest for the study. Ideally, the characteristics of cases in which the Commission would have liked to change policy but refrained from introducing a proposal should be compared to the characteristics of cases in which the Commission did introduce a proposal. Thus, the population of cases consists of all instances in which the Commission would prefer a change in policy to the current status quo. However, no data on the preferences of the Commission and the status quo is available.

More importantly, a definition of what constitutes a case and the empirical identification of a case is almost impossible without linking it to some types of observable actions. In short, we only observe the cases in which the Commission decides to introduce a proposal, but not the cases in which it chose to remain inactive. To still get some leverage on the research question, I move the empirical analysis to a higher level of aggregation. Rather than to consider individual Commission decision-making cases as the unit of analysis, I examine the aggregate output of Commission proposals over a certain period of time. This strategy makes sense when changes in the probability of introducing a proposal in individual cases translate into variation in the number of introduced proposals at the aggregate level. Given this auxiliary assumption, the factors influencing individual Commission decisions should show a similar effect on the aggregate output.

The necessary condition character of the hypotheses makes the application of standard statistical methods problematic. Statistical techniques usually aim to identify the effect of independent variables on the mean of the dependent variable. However, necessary condition variables do not only affect the mean of a dependent variable but also its variance. In order to be a relevant explanatory factor, the presence of a necessary condition should be associated with a, on average, higher value of the
dependent variable. In addition, the variance on the dependent variable should be larger in this situation as well, given that the presence of the condition is not sufficient to induce a higher value on the dependent variable. One the one hand, the effect on the variance of the dependent variable is a problem because it means that many statistical methods, relying on the assumption of variance homogeneity, are not applicable. On the other hand, this relationship constitutes a further implication that we can examine empirically. As a consequence, it also adds to the power of the evaluation of the plausibility of the theory.

Given the empirical focus on the aggregate proposal output of the Commission and the character of the independent variables as necessary conditions, we can translate the theoretical relationships stated in the previous section into empirically testable hypotheses. The decision-making rule in the Council should have the following effects on the Commission’s agenda-setting activity:

Hypothesis 1a: On average, the Commission should introduce more proposals when the qualified majority rule applies in the Council than when the unanimity rule applies.

Hypothesis 1b: The number of proposals introduced by the Commission should vary more strongly when the qualified majority rule applies in the Council than when the unanimity rule applies.

The legislative procedure is expected to affect the mean and the variance of the distribution of Commission proposals in an analogous way:

Hypothesis 2a: On average, the Commission should introduce more proposals when the consultation or co-operation procedure applies in the Council than when the co-decision procedure applies.

Hypothesis 2b: The number of proposals introduced by the Commission should vary more strongly when the consultation or co-operation procedure applies in the Council than when the co-decision procedure applies.

I investigate the extent to which these statements are valid descriptions of the Commission’s agenda-setting activity through data on legislative proposals introduced by the Commission between 1979 and 2007. As a source for the data, I rely on the Commission’s online database PreLex\textsuperscript{12}. The database documents the procedural steps

\textsuperscript{12} The PreLex website can be found at http://ec.europa.eu/prelex/apcnet.cfm?CL=en (consulted on 31 March 2008).
in inter-institutional decision-making of the EU. PreLex follows all documents produced by the Commission and transmitted to one of the other EU institutions. Besides legislative proposals, the database also documents the progress of proposals for non-binding acts like recommendations and opinions, Commission communications, green and white papers, and Commission staff working papers.

As an initial step in the data collection process, I extracted information on all the Commission documents contained in the PreLex database. I automated this process through a computer script written in the programming language Python. The program uses the database’s search interface to retrieve all Commission documents transmitted during a certain year. Then it loops through all the pages containing the search results for a certain year and collects the links to the pages that contain the detailed information on the individual Commission documents. The program uses these links to download the HTML source code of these webpages. Finally, the program searches the source code for the information of interest, copies it and saves it as an entry in a standard ‘case by variable’ database matrix suitable for further data management in any standard data analysis software. In this way, I collected information on the date of the adoption of the document by the Commission, the type of the document, and, if applicable, on its legal basis and legislative procedure.

In total, PreLex contained 27642 documents. According to the official documentation, the database is only complete since 1976. Therefore, I deleted all documents introduced before 1976 and after the end of the study period in 2007. In line with the research design of this study, I also restricted the dataset to proposals for binding legislation and to proposals introduced under the consultation, co-operation, or co-decision procedure. This reduced the dataset to 14607 proposals. Unfortunately, information on the treaty base was largely missing for proposals introduced before 1979, so I further restricted the timeframe of the dataset to the period after 1979. Given that the legal base of the proposal is required to identify the decision-making rule in the Council, I excluded all proposals for which such information was

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13 The data was extracted on 12 March 2008. PreLex is updated daily, so this number might soon be outdated.

missing\textsuperscript{15}. These exclusions reduced the sample to 13406 cases. Finally, I restricted the sample to cases that mentioned a specific article of the Treaty establishing the European Community (TEC) as its legal base. Hence, I excluded proposals based on articles of the Treaty of the European Union, the Treaty establishing the European Steel and Coal Community, the Treaty establishing the European Atomic Energy Community, accession treaties, international conventions, inter-institutional agreements, and secondary legislation. The final dataset used in the statistical analysis includes 8463 proposals for directives, regulations, and decisions that were based on a TEC article and were adopted by the Commission between 1 January 1979 and 1 January 2008. In the next section, I present the results of the empirical analysis.

\textbf{The agenda-setting activity of the Commission (1979–2007)}

The hypotheses developed above lead us to expect an effect of the voting rule and the legislative procedure on the mean and the variance of the Commission’s agenda-setting activity. I investigate the extent to which these expectations correspond to the empirical record by comparing the number of Commission proposals introduced per month under different institutional arrangements. I examine both the development of the Commission’s agenda-setting activity over time and the characteristics of the distribution of the pooled data. Figure 6 illustrates the effect of the decision-making rule in the Council on the agenda-setting activity of the Commission over time. The figure shows a consistently lower number of proposals introduced under unanimity rule than under qualified majority rule over the entire period. As expected, the variation of the number of proposals introduced under unanimity rule is also much lower than the variation under qualified majority rule.

\textsuperscript{15} Information on the legal basis was available for almost all proposals for directives and regulations. However, about 8 percent of the proposals for decisions did not record a legal basis in PreLex.
Figure 6: Commission agenda-setting activity by Council decision-making rule over time

Note: The time-series indicate the number of Commission proposals introduced per month under a certain Council decision-making rule. The timeframe covers the period from January 1979 up to and including December 2007.

The differences in the distributions of the two sub-samples are more clearly illustrated through histograms. Figure 7 compares the empirical distributions of the number of proposals introduced under qualified majority rule and under unanimity rule, respectively. The figure clearly confirms a difference in the central tendency of the distributions as well as in their variance. The average number of proposals introduced under the qualified majority rule is 20.5 with a standard deviation of 12.8, while the average number of proposals introduced under the unanimity rule is only 3.8 with a standard deviation of 3.5. Thus, hypotheses 1a and 1b about the effects of the Council’s decision-making rule are clearly consistent with the observed empirical patterns.
Given that the co-decision procedure was only introduced after the Treaty of Maastricht entered into force in November 1993, I restrict the examination of the effect of the legislative procedure to developments in the Commission’s agenda-setting activity after that point in time. The results are less clear-cut, but they show a similar pattern as the results regarding the Council’s decision-making rule. Although Figure 8 shows that the number of proposals introduced under the co-decision procedure is slightly increasing over time, the number of proposals introduced under this procedure is generally smaller than the number of proposals introduced under the consultation and co-operation procedures. The expected effect on the variance of the distributions is also visible in the case of the legislative procedure. The variance is generally larger for proposals introduced under the consultation and co-operation than for proposals introduced under the co-decision procedure.
Again, the histograms in Figure 9 illustrate the characteristics of the distributions more clearly. On average, the Commission introduces about 15.2 proposals per month under procedures that do not grant the EP a veto right, but only about 6.2 proposals under the co-decision procedure. With a value of 8.4 under the consultation and co-operation procedure compared to a value of 4.8 under the co-decision procedure, the difference in the standard deviation of the distributions is also in line with expectations. While the pattern is less strong as in the case of the Council decision-making rule, hypotheses 2a and 2b related to the EP involvement are generally consistent with the empirical record. Overall, the results so far lend credence to the theoretical argument. However, the high empirical association between the qualified majority decision-making rule in the Council and co-decision as legislative procedure might obscure or even distort the individual effects of both factors (Häge 2007). Examining different sub-samples of the data helps to tease out the individual effects of the decision-making rule and the legislative procedure, respectively.
First, I consider the effect of the Council’s decision-making rule more closely. Figure 10 prints the histograms of the number of Commission proposals introduced under the two different decision-making rules. In contrast to Figure 6, this plot is restricted to proposals for which the consultation or co-operation procedure was applicable. Thus, the plot ‘controls’ for the effect of the EP’s veto power under the co-decision procedure by excluding these types of proposals. Nevertheless, Figure 10 shows a very similar pattern as Figure 6. With a mean of 17.3 proposals per month under qualified majority rule compared to 3.7 proposals per month under unanimity rule, the difference in the means is only slightly smaller than in the full sample. With a standard deviation of 12.8 in the case of qualified majority voting and 3.4 in the case of unanimity rule, the difference in the standard deviation of the two distributions is even larger than in the sample including proposals introduced under the co-decision procedure. Comparing the effect of the Council decision-making rule for a sample that includes only co-decision proposals leads to a similar result. On average, the
Commission introduces 6 co-decision proposals per month under the qualified majority voting rule, but only 0.15 under the unanimity rule. Similarly, the standard deviation under the qualified majority rule is 4.7 compared to 0.43 under the unanimity rule. In fact, the number of Commission proposals introduced per month under the co-decision procedure with unanimity applicable in the Council is zero most of the time\textsuperscript{16}. Thus, a considerable effect of the Council’s voting rule on the Commission’s agenda-setting activity exists regardless of the applicable legislative procedure.

Figure 10: Distribution of the number of Commission proposals introduced under the consultation and co-operation procedure by Council decision-making rule

![Distribution of Commission proposals](image)

Note: The figure is based on data on the number of Commission proposals introduced per month under the consultation and co-operation procedure in the timeframe from January 1979 up to and including December 2007. The lines represent non-parametric kernel density estimates.

To identify the individual effect of the legislative procedure, I now keep the voting rule in the Council constant. Figure 11 illustrates the distributions of proposals under different institutional procedures when the qualified majority voting rule is applicable

\textsuperscript{16} This characteristic of the data is also the reason why I do not produce a plot for this configuration of institutional rules. The histogram for proposals with the institutional combination of co-decision procedure and unanimity rule consists mainly of a single large bar at the zero point.
in the Council. The differences in the distributions are somewhat smaller than in the full sample that also includes proposals introduced under the unanimity rule. On average, the Commission introduces 12.3 proposals per month under the consultation and co-operation procedures\(^\text{17}\) and 6.0 proposals under the co-decision procedure when qualified majority voting is allowed in the Council. The difference in the standard deviations is also smaller but still substantial: 7.3 in the case of consultation versus 4.7 in the case of co-decision. As discussed in the previous paragraph, the combination of the co-decision procedure with the unanimity rule in the Council is very rare. Thus, the last possible combination of institutional variables also confirms the hypotheses that the legislative procedure matters. Under the consultation and co-operation procedures, the Commission introduced on average 3 proposals per month when the qualified majority rule was applicable in the Council. The standard deviation of 2.9 was almost as high as the mean. In contrast, the Commission introduced hardly any proposals when the unanimity rule applied under the same procedure.

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\(^{17}\) Note that the number differs somewhat from the number given in the examination of the individual effect of the voting rule in the previous paragraph. The reason for this divergence lies in the different time periods covered by the comparisons. See Figure A1 in the appendix for a summary description of the comparisons and the results of the sub-sample analysis.
Figure 11: Distribution of the number of Commission proposals introduced under the qualified majority rule in the Council by legislative procedure

Note: The figure is based on data on the number of Commission proposals introduced per month for which the qualified majority rule applies in the Council in the timeframe from November 1993 up to and including December 2007. The lines represent non-parametric kernel density estimates. The distribution marked ‘consultation’ includes also proposals introduced under the co-operation procedure.

Discussion and conclusion

This study examined the legislative agenda-setting power of the European Commission from both a theoretical and empirical point of view. In the context of this analysis, I referred to the Commission’s agenda-setting power as the power to determine what does and what does not get on the legislative agenda independent from the preferences and institutional prerogatives of the other EU institutions. I argued that the Commission’s agenda-setting power is often overstated. In the public eye, the European Commission is commonly perceived as a largely uncontrolled supranational entity whose sole purpose is to produce regulations that require staff and administrative resources for their implementation. In short, the Commission pushes for ever-further bureaucratization and centralization in order to justify its own existence. The fact that the Commission produces only the initial legislative proposals and that the Council and increasingly also the European Parliament are the actual legislative institutions that adopt all laws is often neglected. Although scholarly work
avoids such harsh normative connotations in descriptions of the role of the Commission, a considerable body of literature also attributes considerable agenda-setting power to the Commission in day-to-day decision-making of the EU.

The Commission might have an influence on the precise outcome of legislative decision-making once it introduces a proposal. However, I argued that the Commission only introduces a proposal if it deems the chances of its adoption to be reasonably high. In this view, the fact that the large majority of Commission proposals is accepted by the legislative institutions is not a sign of the Commission being able to push through its preferred policy against the resistance of other actors, but a sign of the Commission being able to correctly anticipate the views of the legislative institutions. The theoretical discussion illustrated that the Commission would not have an incentive to introduce a proposal when the legislative actors prefer policy change in a different direction than the Commission, when the legislative actors themselves are divided about the direction of policy change, or when the legislative actors would move the policy further away from the status quo policy than preferred by the Commission. The Commission will only introduce a proposal when it agrees with the legislative actors about the direction of policy change and when the legislative actors do not want to move the policy further away from the status quo than acceptable to the Commission. Thus, a main conclusion of the theoretical discussion was that the Commission is expected to introduce a proposal only when a broad consensus exists about the direction and the extent of policy change.\footnote{Note that such a broad consensus does not preclude the occurrence of extensive bargaining about the precise outcome of decision-making after a proposal has been introduced. On the contrary, only such a broad consensus provides the necessary incentives for actors to engage in bargaining about a new policy in the first place.}

The theoretical discussion also yielded predictions about the effects of preference divergence, legislative procedures, and decision-making rules in the Council on the agenda-setting activity of the Commission. Assuming that the situation in which the Commission prefers far less policy change than any of the legislative actors is practically irrelevant, the theoretical model predicts that a decrease in preference divergence among legislators, a change from unanimity to qualified majority voting in the Council, and the absence of a veto right of the European Parliament increases the chances that the Commission introduces a legislative
proposal. The institutional predictions were subsequently compared to the empirical record of the Commission’s agenda-setting activity. To deal with the problem that non-proposals are generally not observable, I focused the empirical analysis on the aggregate level of the number of Commission proposals introduced per month. If an explanatory factor systematically affects the probability of introducing a proposal in individual decision-making cases, this effect should also show up in a correlation with the aggregate output level of proposals.

In the empirical analysis, I considered the monthly agenda-setting activity of the Commission between 1979 and 2007. I examined both the time-series of the Commission’s agenda-setting activity and the characteristics of the pooled distributions of different sub-samples. Given that the institutional explanatory factors constitute only necessary conditions, I investigated their effects on both the central tendency of the distributions of the sub-samples as well as their variances. The analysis showed that the Commission introduces far more proposals under the qualified majority rule than under the unanimity rule. In line with the necessary condition character of the hypothesis, the variance of the number of proposals introduced under the qualified majority rule was also larger than the variance of the proposals introduced under the unanimity rule. Although the results of the analysis are less clear-cut with respect to the effect of the legislative procedure, they are in line with the hypothesis that the absence of veto power of the European Parliament reduces the agenda-setting activity of the Commission on average and increases the distribution’s variance.

The relatively small effect of the legislative procedure comes as no surprise. Because the institutional factors are only necessary conditions, their effects on agenda-setting activity should only be visible in the data under specific preference and status quo configurations. In the case of the veto right of the European Parliament, the co-decision procedure should only show an effect on agenda-setting activity in cases where the EP favours policy change in the opposite direction from the status quo than either the Council or the Commission. While diametrically opposed interests vis-à-vis the Council might not be uncommon, the scholarly literature suggests that the positions of the Commission and the EP are usually rather closely aligned19 (e.g.

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19 At least in the sense that the two institutions agree about the direction of desired policy change and about its approximate magnitude.
Thus, the lower effect of the EP involvement corresponds to prior beliefs about the close alignment of the Commission’s and the EP’s preferences. In fact, given the prevailing view that the Parliament and the Commission tend to have similar positions, the identified effect of the legislative procedure lends additional credence to the usefulness of the theory.

Overall, the observed pattern in the agenda-setting activity of the Commission is consistent with the theoretical argument proposed in this paper. Still, the data might also be consistent with alternative explanations. Unfortunately, the analysis could not control for the prevalence of a certain rule configuration. Thus, the larger number of proposals introduced under qualified majority voting compared to unanimity might be due to a larger number of treaty bases or policy areas governed by this decision-making rule. Also, the larger number of consultation and co-operation proposals than co-decision proposals might be due to the larger number of areas to which the procedures apply that grant the EP no veto power. The empirical evidence for this alternative explanation is mixed. As mentioned above, the number of proposals introduced under the co-decision procedure seems to be slightly increasing over time (see Figure 8). This trend supports the prevalence hypothesis. But at the same time, the number remains considerably lower than the corresponding number of consultation proposals, even at the end of the study period.

Similarly, the number of Commission proposals under the qualified-majority voting rule increases considerably during the first years after the Single European Act entered into force in 1987, when qualified majority voting was extended to more policy areas (see Figure 6). Again, this increase can be interpreted as an indication of the effect of the larger prevalence of the qualified majority rule. However, the number of proposals transmitted under the qualified majority voting rule decreases again after the main initiatives to complete the internal market were introduced during the first half of the 1990s. This reduction might be an indication that the Commission was satisfied with the new policies and therefore refrained from introducing more proposals. Also, the applicability of qualified majority voting was further widened through subsequent treaty reforms, but no corresponding surge in the introduction of proposals under qualified majority rule occurred in later years. These patterns are all indications that the data reflect changes in the behaviour of the Commission rather than the semi-automatic effects of the prevalence of different rule configurations. While the data considered in the empirical analysis are probably a product of the
combined effects of conscious Commission behaviour as well as rule prevalence, no indications exist that the latter factor dominates the distribution of the number of Commission proposals introduced per month.

In general, the findings of the study indicate that the Commission does not have as much power to implement its own agenda as sometimes assumed. With respect to scientific theories, the findings of the study contradict in particular neo-functionalist accounts of European integration that stress the entrepreneurship of the Commission as a decisive factor in advancing the integration process (e.g. Stone Sweet & Sandholtz 1997). The Commission might well have played an important role in the achievement of the current level of integration. However, the analysis sheds doubt on the assertion that the Commission is able to advance European integration against the resistance of the legislative institutions in the EU, in particular against the will of the member states. With respect to the debate about the legitimacy of the EU and the European Commission in particular, the analysis shows that the often negative picture of the Commission as an unaccountable supranational bureaucracy pushing for more centralization and imposing European legislation on reluctant member states is unwarranted.
Appendix

Figure A1: Summary of the sub-sample analysis

a. The effect of the unanimity rule

<table>
<thead>
<tr>
<th></th>
<th>Unanimity</th>
<th>QMV</th>
<th>Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-decision</td>
<td>0.2</td>
<td>6.0</td>
<td>-5.8</td>
</tr>
<tr>
<td>(post-1993 sample)</td>
<td>(0.4)</td>
<td>(4.7)</td>
<td>(-4.3)</td>
</tr>
<tr>
<td>Consultation</td>
<td>3.7</td>
<td>17.3</td>
<td>-13.6</td>
</tr>
<tr>
<td>(full sample, Figure 5)</td>
<td>(3.4)</td>
<td>(12.8)</td>
<td>(-9.4)</td>
</tr>
</tbody>
</table>

b. The effect of the EP’s veto power

<table>
<thead>
<tr>
<th></th>
<th>Unanimity (post-1993 sample)</th>
<th>QMV (post-1993 sample, Figure 6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-decision</td>
<td>0.2 (0.4)</td>
<td>6.0 (4.7)</td>
</tr>
<tr>
<td>Consultation</td>
<td>3.0 (2.9)</td>
<td>12.3 (7.3)</td>
</tr>
<tr>
<td>Effect</td>
<td>-2.8 (-2.5)</td>
<td>-6.3 (-2.6)</td>
</tr>
</tbody>
</table>

Note: The cell entries represent the average number of Commission proposals introduced per month. The associated standard deviation is given in brackets below the mean. The entries in the row marked ‘consultation’ are based on data that also includes proposals introduced under the co-operation procedure.
References


