

Why is the EU Council of Ministers More Active in some Policy Domains?

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In order to fully grasp what the European Union (EU) is up to, it is essential to examine the decisions made by the EU Council of Ministers, as this is the institution which adopts the Union's laws (even if they are called 'regulations' or 'directives', not 'laws'). In the course of European integration, the ministers have had to share their legislative power with the members of the European Parliament (MEPs)—the usual legislators in parliamentary democracies—on the grounds that it would help to resolve the Union's 'democratic deficit'. Yet the Council, alone or with the European Parliament, continues to adopt all the EU 'legislative' acts.

The problem is that it is not easy to ascertain what the Council actually does. The confidential nature of their work is well-known: ministers from the member states meet behind closed doors, which restricts public knowledge of their debates and decision-making methods. The transmission of parts of their meetings over the Internet is an innovation which provides few changes because it tends to be limited to formal exchanges of views. It undoubtedly leaves some questions open. For example, knowing that many acts can be adopted by 'qualified majority voting' (QMV), why in most cases do all the ministers seem to rally to the decision made and adopt it by 'consensus'? Are they reluctant to move to a vote because they would publicly be placing some of their colleagues in a minority? Or is it because the states in the minority do not wish to appear as such? Are the same attitudes observed in all policy domains? In any case, this lack of clarity is not helping citizens to understand what the ministers are doing, nor who is defending which policy.

The cross-sectoral analysis undertaken here aims to answer some of the questions surrounding the Council's decisions and to identify the areas in which the ministers are the most, or least, involved. The Union's limited competences in some fields is a variable that is traditionally put forward to explain why the Council's interventionism may differ from one policy domain to another. However, to go beyond this traditional argument, we will review the impact of three other factors, relating to the Council's decision-making *process*: the voting rule, the role of the co-decision procedure with the European Parliament, and the propensity to vote. Such factors seem to

contribute to the emergence of different decision styles across policy domains, which explains, in addition to the EU competences, why the Council is more active in some areas.

1. An activity concentrated in a few policy domains

Identifying the policy domains in which the Council intervenes should be an easy task, since it actually meets in specialized configurations to deal with sector-specific issues. The concerned ministers currently meet in nine different configurations: General Affairs and External Relations; Economic and Financial Affairs (ECOFIN); Justice and Home Affairs (JHA); Employment, Social Policy, Health and Consumer Affairs; Competitiveness; Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; Education, Youth and Culture. A brief review of the legislative output of these various Councils should therefore suffice.

Yet such a review is more challenging than it might seem for three reasons. First, each configuration covers a broad range of issues. How, for example, can acts relating to social policy be distinguished from those produced by a Council which also handles health and consumer protection? Second, the number and names of the Council's configurations have changed over time, which complicates any long-term analyses. Third and most importantly, a study of each of the acts adopted by the various Councils reveals a practice that limits the relevance of configurations as a basis for sector breakdowns.. Once an act is agreed upon in the appropriate Council configuration, it has to be finalized and duly translated. Then, to save time, it is officially adopted by the first Council which follows, even though the act does not relate to its area of responsibility. It is therefore not uncommon to find at the top of press releases from the Agriculture and Fisheries Councils a list of adopted acts that have nothing to do with the policy domains substantively handled by those Councils!¹

As for the sector data released by the Council's General Secretariat, they only concern the member states' 'public votes'², thereby rendering an in-depth analysis difficult.

¹ See, for example, the Agriculture Council press release of 18 and 19 December 2008, at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/fr/agricult/104918.pdf, which adopted some texts that notably concern Justice and Home Affairs, the Common Foreign and Security Policy (CFSP), trade policy, the customs union, consumer protection, energy, and the environment.

² On these 'public votes', see later, part 5 of the chapter.

That is why we resorted to a codification created and used by the EU itself: the Directory of Community Legislation in Force that includes 20 main sectors, divided into sub-sectors.³

When considering a breakdown of the Council's activity into these twenty sectors, what first stands out, as stressed in Chapter 1, is that most of this activity is focused on a few policy domains. From January 2002 to June 2007,⁴ 80% of the Council's legislative acts dealt with only six out of the twenty sectors. The great majority of legislative output therefore concerns agriculture, fisheries, taxation, the internal market, the environment, consumer protection, health protection and internal security⁵ Conversely, the six sectors in which the Council intervenes the least (economic and monetary policy and the free movement of capital; law relating to undertakings; regional policy and coordination of structural instruments; competition policy; People's Europe; Common Foreign and Security Policy) represent only 9% of its legislative production (see Graph 1).⁶

It should be noted that these data do not reveal much about the EU's presumed 'liberal' nature—which is often the focus of debate in France. Settling the question calls for a detailed analysis of the adopted texts' content. Nor do the data suggest that a 'Social Europe' is being built – the other side of the debate.. The social policy sub-sector comprises only 5% of the acts adopted by the Council. The figures rather seem to confirm the two conclusions drawn by Giandomenico Majone: on one hand, the European Community '*is lagging behind in terms of traditional social policies*', because it lacks the necessary financial resources and the ability to harmonize highly diversified national systems; on the other, it is a Community which has developed 'social regulations' to protect the environment, human health and consumers—all crucial issues for the '*quality of life that traditional social policies have neglected*'.⁷ Environment, consumers and health

³ See <http://eur-lex.europa.eu/fr/legis/latest/index.htm>. Each act is characterized by one or several sector codes, depending upon the number of sectors it covers (it can have a maximum of four codes). Each code is comprised of eight numbers so as to clearly identify each sector. For example, the REACH regulation has three sector codes: 13.30.18.00 (Industrial policy and internal market; Internal market; Approximation of laws; Dangerous substances), 15.10.20.50 (Environment, consumers and health protection); Environment; Pollution and nuisances; Chemicals, industrial risk and biotechnology) and 05.20.20.10 (Freedom of movement for workers and social policy; Social policy; Working conditions; Safety at work).

Relying upon an existing sector breakdown has the advantage of avoiding extensive coding work, but the disadvantage is that of perpetuating choices which are not exempt from criticism, or even error. In the future, it would be useful to examine more critically this EU coding system.

⁴ Unless otherwise indicated, the data cited relates to this period.

⁵ The exact names of the six sectors are: *Agriculture; Fisheries; Taxation; Industrial policy and internal market; Environment, consumers and health protection; and Area of Freedom, security and justice.*

⁶ Inasmuch as each legislative act may include several sector codes (and therefore be taken into account several times), the total of the percentages relating to the portion of acts within each sector is greater than 100%.

⁷ Majone Giandomenico, *La Communauté européenne : un Etat régulateur* (Paris: Montchrestien, 1996), 101.

protection (sector 15), a seemingly 'all-encompassing' category, actually serves as a measure of the scope of this "social regulation." Combined with the social policy sub-sector, it represents more than 18% of the EU legislative acts.

Graph 1

Breakdown of Legislative Acts by Policy Domain

INSERT HERE

Source: OIE, January 2002 - June 2007.

Legend:

GEN: General, financial and institutional affairs; CUST: Customs Union and free movement of goods; AGR: Agriculture; FISH: Fisheries; SOC: Freedom of movement for workers and social policy; EST: Right of establishment and freedom to provide services; TRANSP: Transport policy; COMP: Competition policy; TAX: Taxation; ECO: Economic and monetary policy and free movement of capital; RELEX: External relations; ENER: Energy; MKT: Industrial policy and internal market; REGIO: Regional policy and coordination of structural instruments; ENV: Environment, consumers and health protection; EDUC: Science, information, education and culture; ENTR: Law relating to undertakings; CFSP: Common Foreign and Security Policy; AFSJ: Area of freedom, security and justice; PE: People's Europe⁸.

2. Competences are not the only contributing factor

Among the factors likely to explain the Council's greater or lesser focus on a given policy domain, the spheres of competence with which the EU has been endowed by the national governments through the treaties are traditionally considered as most significant. If agriculture and fisheries are listed among the sectors in which legislative activity is most intense, it is because there are common policies in these sectors which require initiating a large number of measures every year. Conversely, the Union's limited competence in matters of social policy explains why this domain represents a small part of the Council's activity.

Yet the 'competence' variable is not the only contributing factor. Although the establishment of a transport policy was provided for under the Treaty of Rome, it took several decades for it to start to develop. Even today, it is one of the areas in which the Council takes the longest time to make decisions (see Graph 2).

Graph 2

⁸ The People's Europe sector comprises acts relating to the 'freedom movement of people and the 'European citizenship'.

Decision-Making Duration by Policy Domain

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(*) Average duration between the submission of legislative acts to the Council and their adoption by the Council.

Source: OIE data, January 2002 - June 2007.

Legend:

GEN: General, financial and institutional affairs; CUST: Customs Union and free movement of goods; AGR: Agriculture; FISH: Fisheries; SOC: Freedom of movement for workers and social policy; EST: Right of establishment and freedom to provide services; TRANSP: Transport policy; COMP: Competition policy; TAX: Taxation; ECO: Economic and monetary policy and free movement of capital; RELEX: External relations; ENER: Energy; MKT: Industrial policy and internal market; REGIO: Regional policy and coordination of structural instruments; ENV: Environment, consumers and health protection; EDUC: Science, information, education and culture; ENTR: Law relating to undertakings; CFSP: Common Foreign and Security Policy; AFSJ: Area of freedom, security and justice; PE: People's Europe.

Rankings based upon duration should naturally be considered with caution. When a sector gives rise to few decisions, certain particularly slow-moving legislative acts can affect the average duration to a great extent. For example, the sector 'law relating to undertakings' appears as the slowest one because, of the 23 acts adopted in that field by the Ministers, it took them more than 11 years to agree upon 2 texts on the Statute for a "European Cooperative Society!"⁹

But this consideration does not apply to sectors which produce a high level of legislative acts. However, in these sectors, the duration of the decision-making process can vary considerably. Table 14, which compares the Council's volume and speed of legislative production, reveals highly diverse trends. Certain sectors (agriculture, taxation and fisheries) are rated high in terms of both number and speed. Yet in other sectors in which the Union is vested with clear competences such as the approximation of laws relating to the internal market, or environmental protection, the ministers take a lot of time to agree upon some joint decisions. These sectors rank second and third in terms of legislative production, yet rank fifteenth or seventeenth in terms of decision speed. The area of freedom, security and justice, on the other hand, falls in the middle: in this sector, the Council adopts many acts (rank 3), at a speed slightly above the average.

To better grasp the way the Council intervenes, we must go beyond the 'competence' variable and review other contributing factors associated with the decision-making process.

⁹ Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SEC) and Council Directive 2003/72/EC of 22 July 2003, which together provide for establishing a European Cooperative Society containing provisions on the involvement of workers.

3. Are decisions easier to make by unanimity?

One of the first factors to be considered is the impact of the voting rule, which is also provided for under the treaties. Although many public debates focus on how difficult it is to reach a decision by unanimity in a 27 Member State EU, statistics say otherwise!

Table 14: Sectors ranked by number of acts adopted and by the time required for their adoption

| Number of Acts (in decreasing order) | | Average Duration (*) (in increasing order) | |
|---|-----|---|-----|
| 01. AGRI | 168 | 01. COMP | 206 |
| 02. MKT | 159 | 02. CUST | 210 |
| 03. AFSJ | 137 | 03. REGIO | 228 |
| 03. ENV | 137 | 04. TAX | 229 |
| 05. TAX | 98 | 05. FISH | 237 |
| 06. FISH | 91 | 06. PE | 300 |
| 07. TRANSP | 74 | 07. AGRI | 313 |
| 08. GEN | 70 | 08. GEN | 316 |
| 09. SOC | 57 | 09. RELEX | 355 |
| 10. CUST | 52 | 10. ECO | 372 |
| 11. RELEX | 48 | 11. CFSP | 393 |
| 12. EDUC | 36 | 12. AFSJ | 418 |
| 13. ENER | 35 | 13. EDUC | 473 |
| 14. EST | 31 | 14. ENER | 486 |
| 15. ECO | 26 | 15. ENV | 539 |
| 16. ENTR | 23 | 16. EST | 597 |
| 16. REGIO | 23 | 17. MKT | 626 |
| 18. COMP | 14 | 18. TRANSP | 638 |
| 19. PE | 4 | 19. SOC | 830 |
| 20. CFSP | 3 | 20. ENTR | 983 |
| Average (**) | 51 | Average (**) | 420 |

(*) Average duration between the transmission of legislative acts to the Council and their adoption by the Council (in days).

(**) The averages indicated here are calculated on the basis of the 1,019 legislative acts adopted by the Council during the period 2002 to mid-2007. Inasmuch as each act may have several sector codes (and therefore may be taken into account several times), they differ slightly from the averages calculated on the basis of the figures indicated in the table (relating to the portion of acts within each sector).

Source: OIE data, January 2002 - June 2007.

Legend:

GEN: General, financial and institutional affairs; CUST: Customs Union and free movement of goods; AGR: Agriculture; FISH: Fisheries; SOC: Freedom of movement for workers and social policy; EST: Right of establishment and freedom to provide services; TRANSP: Transport policy; COMP: Competition policy; TAX: Taxation; ECO: Economic and monetary policy and free movement of capital; RELEX: External relations; ENER: Energy; MKT: Industrial policy and internal market; REGIO: Regional policy and coordination of structural instruments; ENV: Environment, consumers and health protection; EDUC: Science, information, education and culture; ENTR: Law relating to undertakings; CFSP: Common Foreign and Security Policy; AFSJ: Area of freedom, security and justice; PE: People's Europe.

The conclusions reached in the previous OEI report on the impact of enlargement¹⁰ are still very timely. A Council enlarged to 27 member states can still adopt some acts by unanimity. They are taken even more quickly than those ruled by QMV. A cross-sectoral analysis confirms that there is no correlation between the slowness of the decision and the unanimity procedure. On the contrary, Graph 3 shows that the three sectors in which the share of unanimity is the highest (taxation, People's Europe and area of freedom, security and justice) appear to the left of the diagram—which is to say among the sectors in which the Council makes relatively quick decisions. Conversely, in the six slowest sectors which concern the law relating to undertakings, social policy, transport policy, the internal market, freedom to provide services and environmental protection, less than 50% of the acts were adopted under the unanimity rule.

Graph 3

Decision-Making Duration and Unanimity

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Source: OIE data, January 2002 - June 2007.

Legend:

GEN: General, financial and institutional affairs; CUST: Customs Union and free movement of goods; AGR: Agriculture; FISH: Fisheries; SOC: Freedom of movement for workers and social policy; EST: Right of establishment and freedom to provide services; TRANSP: Transport policy; COMP: Competition policy; TAX: Taxation; ECO: Economic and monetary policy and free movement of capital; RELEX: External relations; ENER: Energy; MKT: Industrial policy and internal market; REGIO: Regional policy and coordination of structural instruments; ENV: Environment, consumers and health protection; EDUC: Science, information, education and culture; ENTR: Law relating to undertakings; CFSP: Common Foreign and Security Policy; AFSJ: Area of freedom, security and justice; PE: People's Europe.

However a closer examination of the acts pertaining to the area of freedom, security and justice suggests to consider this finding with caution. This area, which ranks average in terms of

¹⁰ Renaud Dehousse, Florence Deloche-Gaudez and Olivier Duhamel (dir.), *Elargissement : comment l'Europe s'adapte* (Paris: Presses de Sciences Po, 2006), coll. "Evaluer l'Europe."

duration, actually includes acts whose processing durations varied considerably. Some, which are similar to implementing acts, are adopted very quickly. For example, among the quickest to be adopted (10 days or less), is a Council Decision ‘amending Part V, point 1.4, of the Common Consular Instructions and Part I, point 4.1.2, of the Common Manual as regards inclusion of the requirement to be in possession of travel medical insurance as one of the supporting documents for the grant of a uniform entry visa.’¹¹

At the other end of the duration spectrum are much more fundamental texts, which required much more time. For instance, the Council has taken more than five years to adopt directives concerning the granting of refugee status, or family reunification.¹² In these cases, the delay can be explained by two factors: first, the existence of divergent opinions between ministers from Northern and Southern countries—the former being more concerned about individual rights, while the latter focus more on the impact of immigration; second, the lack of concordance between the Commission’s initial proposals and the Council’s more restrictive positions. Thus, the example of the European Arrest Warrant—adopted in less than nine months, even though it laid the groundwork for significant progress in the pursuit of criminals beyond national borders— appears as an exception made possible by the very sensitive post-11 September 2001 context.¹³

The unanimity procedure may not only require time but also have a negative repercussion on the texts’ legibility and scope. When internal security European legislation needs to be incorporated into national laws, the experts responsible for getting it done often come back to the Commission to ask for an explanation of texts that they consider ‘incomprehensible’, because there are so many exceptions to the rule. Obtaining unanimity in the Council no doubt implies making concessions to all of the states opposed to the provisions under consideration, thus including as many exceptions in the text. Some legislators regretted, for example, that in order to adopt the framework decision on the European evidence warrant, certain progress made on the European arrest warrant had to be reworked due to the impossibility of proceeding to a vote and of isolating the reluctant countries.¹⁴

Therefore, although the unanimity requirement is not necessarily a stalemate factor, even in an enlarged Council, it does have some effect on text quality and the Council’s decision-making

¹¹ Decision 2004/17/EC of 22 December 2003.

¹² Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status; and Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification.

¹³ Interviews at the Council General Secretariat and at the European Commission on 1-04-2008 and 14-04-2008.

¹⁴ Ibid.

capacity. In addition, if the Council takes longer to adopt acts by QMV than it does by unanimity, that is often because it then needs to reach agreement with another actor: the European Parliament. When it is able to make decisions without the latter's approval, they are made much more quickly by QMV than by unanimity.

4. Are relations between the Council and the European Parliament becoming more conflictual?

In a growing number of policy domains, in order to adopt legislative acts, the Council needs to reach an agreement with the European Parliament within the framework of the co-decision procedure. With regard to this procedure, the figures reveal two conflicting trends. On the one hand, the Council and European Parliament are still more and more often reaching a consensus at first reading, which should facilitate joint decision-making.¹⁵ On the other hand, the duration of the decision process tends to lengthen whenever the Council and European Parliament have to co-decide. The six domains in which the decision's timeframe is the longest (law relating to undertakings; freedom of movement for workers and social policy; transport policy; industrial policy and internal market; right of establishment and freedom to provide services; and environment, consumers and health protection) are largely governed by the co-decision procedure. More than 70% of the acts dealing with these sectors are jointly adopted by the Council and the Parliament, whereas, on average, only 38% of the acts are subject to the co-decision procedure.

It is natural, of course, for a procedure involving more actors to take more time. However, it should be noted that the average duration of the co-decision procedures has tended to increase. When considering all voting rules and procedures, this is the only case in which decisions have been taken less rapidly since enlargement (see Graph 4).

Graph 4 Legislative Procedure Duration Before and After Enlargement (in days)

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¹⁵ See Chapter 5.

A cross-sectoral analysis of the acts co-adopted by the Council and the European Parliament provides an explanation for this apparent contradiction: the slowdown in the decision-making process is caused by a small number of acts concentrated in a few sectors. Since the 2004 enlargement, the 21 acts for which the Council adoption process lasted more than 1,000 days primarily concerned three sectors: environment, consumers and health protection; industrial policy and the internal market; and transport policy. Apart from the special case of three acts which actually consisted of a codification of existing instruments,¹⁶ they were all adopted by the Council and the Parliament after two or three readings.

An analysis of the environment sub-sector might clarify the reason why, in some domains mainly governed by the co-decision procedure, the Council and the European Parliament find it more difficult to reach a consensus. In this area, the ministers are working with some MEPs who have both acquired a genuine expertise and chosen to defend very strict positions rather than to try to seek a compromise at first reading. For instance, the Directive on the protection of groundwater against pollution and deterioration was adopted in 2006 after three readings and three years of discussion. In this case, the European Parliament defended the principle of maximum public health, whereas the Council had to consider other positions, such as that of France, which was anxious to protect the interests of a fertilizer-intensive agriculture.¹⁷

This example suggests that a slow legislative procedure should not necessarily be considered as a negative element. When the Council's difficulty to make a decision results from conflicting opinions with the European Parliament, it can offer certain advantages even though it prevents the two institutions from reaching consensus at first reading.. First, it allows the Europeans concerned better to understand the provisions at stake and who is advocating what. It should be borne in mind that consensus at first reading can be reached only if some of the representatives of the Commission, the Council and the Parliament have previously met to informally reconcile their views, even before the MEPs adopt the opinion which they have to transmit to the Council. These informal meetings and agreements make the decision-making process more opaque and whether the

¹⁶ Directive 2006/95/EC of the European Parliament and of the Council of 12 December 2006 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (codified version); Directive 2006/94/EC of the European Parliament and of the Council of 12 December 2006 on the establishment of common rules for certain types of carriage of goods by (codified version); Directive 2006/93/EC of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988) (codified version).

¹⁷ Interview at the Council General Secretariat on 24-04-2008; Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration.

EP should give priority to compromises with the Council at first reading has become a matter of controversy among the MEPs themselves.¹⁸ Second, the disagreements between the ministers and MEPs broaden the scope of preferences debated by the Union's actors, making it all the more likely that the citizens' expectations will be considered, for example, in promoting environmental protection, as demonstrated by the Directive on the protection of groundwater mentioned above.

5. Differentiated voting habits

Lastly, the Council's lesser or greater propensity to make decisions within a given policy domain is influenced by one final factor relating to the decision-making process: its propensity to vote. It may appear easier for the Council to make decisions in areas in which, whenever possible (that is to say when the act under consideration is governed by the QMV rule and not by that of unanimity), the ministers would not hesitate to vote in order to ratify an agreement without waiting for everyone to agree on the joint decision.

Far from being known for its propensity to vote, the Council is rather described as an institution which favours 'consensus-building'.¹⁹ Available data tends to confirm this. Only votes which intervene during the definitive adoption of a legislative act are made public. 'Upstream' votes, which enable a common position to be decided upon prior to its final adoption, are kept hidden. As a matter of fact, this rule mechanically reduces the number of apparent votes. It should be noted that it does not help either to achieve the announced objective of fostering greater transparency. Member States can change their positions between the negotiations taking place behind closed doors and the act's public adoption in order better to position themselves at the national level.²⁰

Again, in this instance, the cross-sectoral analysis is proving valuable. Firstly, it shows that some voting habits can be differentiated by sector. The percentage of votes made public as compared to the number of decisions governed by QMV could have been almost the same from one policy domain to another. Yet such is not the case. Even if the low number of votes made public implies that these percentages should be considered with some caution, they suggest that, in certain

¹⁸ See Olivier Costa's chapter on the European Parliament in this work.

¹⁹ Fiona Hayes-Renshaw, Wim Van Aken and Helen Wallace, "When and Why the EU Council of Ministers Votes Explicitly," *Journal of Common Market Studies*, Vol. 44, No. 1 (2006): 161–94.

²⁰ Concerning the limited nature of available data on votes, see Renaud Dehousse, Florence Deloche-Gaudez, Olivier Duhamel (dir.), *Elargissement Comment l'Europe s'adapte* (Paris: Presses de Sciences Po, 2006), Chapter 3.

areas, the ministers are more inclined to move to a vote and to isolate the states in a minority. If we exclude the competition policy sector, in which the low number of acts (6) and votes (3) produce the artificially high percentage of 50%, the share of votes made public in the total number of acts governed by QMV ranges from 0%²¹ to 37% for agriculture. The 11% result in the social policy sector does not entirely reflect the true picture: of the four acts which gave rise to votes made public, three were agreed upon either by the Transport Council or the Economic and Financial Affairs Council. In a domain in which more than 80% of the acts are, in principle, governed by QMV, the Employment and Social Policy Council's reluctance to move to a vote may be explained by its desire to strengthen the legitimacy of European legislation by associating all actors in the decision. More precisely, the ministers are reluctant to make public that one delegation - the British - is regularly opposed to the Union's interventions in social affairs. That is why the Council does not publicly outvote the British, who are therefore in a position to negotiate extensively over the details before rallying to the common view.²²

There are also significant differences across sectors as regards the average duration required by the Council before it decides to call for a public vote. The variations range from 182 days for the fisheries sector to 894 days for the right of establishment and freedom to provide services sector.

Graph 5

Number of Legislative Acts and Votes Made Public

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Source: OIE data, January 2002 - June 2007. The share of public votes is expressed as a percentage of the number of acts governed by QMV.

Legend:

GEN: General, financial and institutional affairs; CUST: Customs Union and free movement of goods; AGR: Agriculture; FISH: Fisheries; SOC: Freedom of movement for workers and social policy; EST: Right of establishment and freedom to provide services; TRANSP: Transport policy; COMP: Competition policy; TAX: Taxation; ECO: Economic and monetary policy and free movement of capital; RELEX: External relations; ENER: Energy; MKT: Industrial policy and internal market; REGIO: Regional policy and coordination of structural instruments; ENV: Environment, consumers and health protection; EDUC: Science, information, education and culture; ENTR: Law relating to undertakings; CFSP: Common Foreign and Security Policy; AFSJ: Area of freedom, security and justice; PE: People's Europe.

Secondly, the figures above confirm that the Council's legislative productivity is higher in domains in which voting is more frequent. Excluding once again the special case of the competition policy sector, Chart 15 shows that the number of acts adopted and the share of the votes made

²¹ There is no public vote recorded in three sectors: economic and monetary policy and free movement of capital; Common Foreign and Security Policy; and People's Europe

²² Interview at the European Trade Union Institute on 24-04-2008.

public follow the same trend. The agriculture sector accounts for the highest number of legislative acts and votes made public, while the lowest vote percentages appear on the right side of the diagram, among the least productive domains. As for the data on the environment, consumers and health protection sector, it indicates that the ministers agree to vote quite often and it tends to confirm that, in this domain, the slow pace of the decision-making process results from differences of opinion with the MEPs.

It is harder to draw conclusions from Graph 6. It compares the speed of the decision-making process in the Council with the duration of the process when it gives rise to public votes. In general, the acts adopted after voting take longer to adopt, suggesting that voting is ultimately a last-resort decision method which is used when unanimous agreement cannot be obtained. However, the trend is less evident in high-productivity sectors such as agriculture and fisheries.

Graph 6 Decision-Making Process (in case of Votes Made Public)

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Source: OIE data, January 2002 - June 2007.

Legend:

GEN: General, financial and institutional affairs; CUST: Customs Union and free movement of goods; AGR: Agriculture; FISH: Fisheries; SOC: Freedom of movement for workers and social policy; EST: Right of establishment and freedom to provide services; TRANSP: Transport policy; COMP: Competition policy; TAX: Taxation; ECO: Economic and monetary policy and free movement of capital; RELEX: External relations; ENER: Energy; MKT: Industrial policy and internal market; REGIO: Regional policy and coordination of structural instruments; ENV: Environment, consumers and health protection; EDUC: Science, information, education and culture; ENTR: Law relating to undertakings; CFSP: Common Foreign and Security Policy; AFSJ: Area of freedom, security and justice; PE: People's Europe.

Conclusion

Behind the legal fiction of a single Council, decision-making processes differ from one sector to another, which may account for the Council's differentiated levels of activity across policy domains. Three factors have helped to shape different styles of decision-making: the respective roles of the QMV and unanimity rules, the increasing role of co-decisions with the European Parliament and the use of voting.

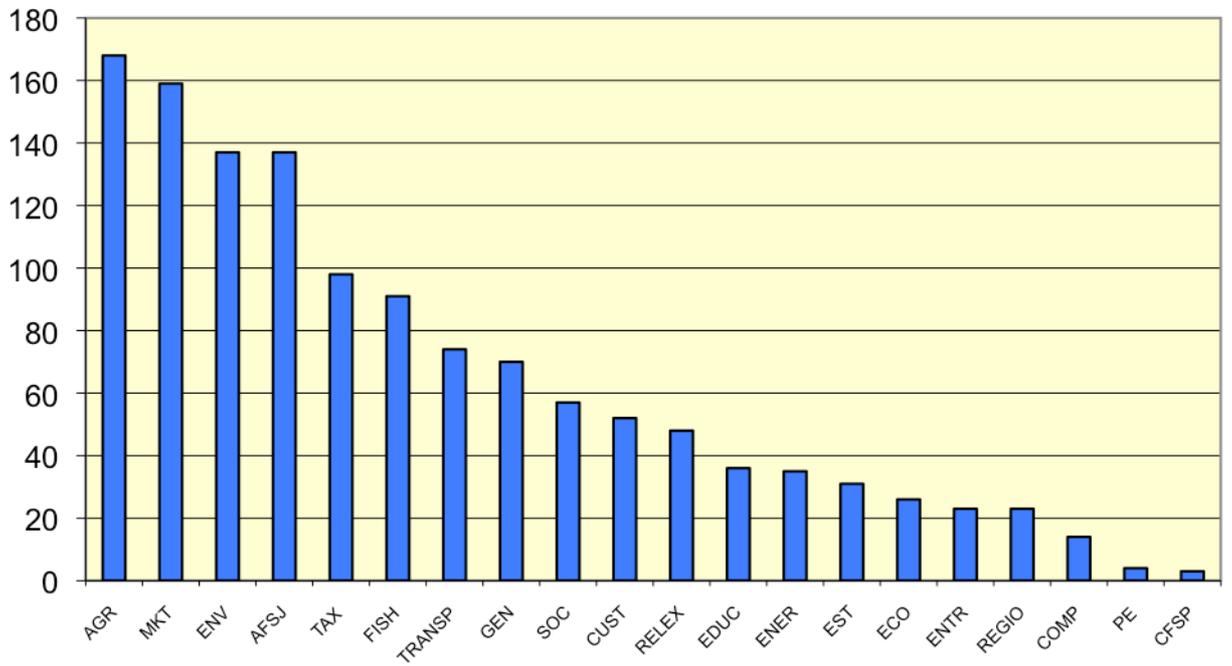
Although often the subject of public debate, the role of the voting rule is more complex than it might appear. When circumstances require it, even with a 27-member EU, it is still possible to reach decisions by unanimity, as proved by the number of acts adopted within the area of freedom,

security and justice sector. However, in the areas in which voting is permitted, the propensity to resort to votes seems to favor the Council's productivity.

If the EU institutions' activity can ever be hoped to reflect the priorities of European citizens, the little-known role played by these institutional factors must be clarified and taken into consideration. Broadening the European Union's competences does not guarantee that the latter will be adequately applied; the options for action provided for by the treaties must be fully implemented by the key actors. As we have seen, this often calls for a more systematic use of the option to vote. For example, it is striking to note that, in the social policy sector, in which there is a sustained demand for more European intervention,²³ the ministers seem to have formed the habit of not calling for a vote at the risk of curtailing their legislative production. This is merely a custom; but changing a habit is not necessarily any simpler than changing a legal rule.

²³ See the chapter by Renaud Dehousse and Nicolas Monceau in this work on the policies of the European Union and Europeans' expectations.

Graph 1
Breakdown of Legislative Acts by Policy Domain



Graph 2
Decision-Making Duration by Policy Domain (*)
(in days)

