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Jacques de Maillard, Andy Smith

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Andy Smith and Jacques de Maillard

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# UNDERSTANDING THE EU'S COUNCIL OF MINISTERS THROUGH ITS COMMITTEES: EXISTING KNOWLEDGE AND NEW DIRECTIONS FOR RESEARCH

**Jacques de Maillard**

Professeur des Universités,  
Université de Versailles-Saint-Quentin-en-Yvelines

**Andy Smith**

Directeur de recherche FNSP, SPIRIT-Sciences Po Bordeaux

## **Abstract**

*Despite its centrality for the EU, the Council of Ministers has long been a comparatively under-researched organization. Fortunately, by focusing upon Council committees, recent research has revitalized this object of study around two questions: intra-Council socialization and extra-Council co-ordination with the European Parliament and Commission. Drawing upon empirical studies in the 1<sup>st</sup> and 3<sup>rd</sup> pillars, this essay both synthesizes the new knowledge produced and critically assesses the theories and methods behind it. Overall, it proposes refocusing study of both socialization and co-ordination in the Council in such a way as to deepen analysis of this body's evolving role within the government of the EU.*

## **Résumé**

*En dépit de sa centralité au sein de l'Union Européenne (UE), le conseil des Ministres a longtemps constitué un objet de recherche sous-investi. Des travaux récents consacrés aux comités du Conseil ont cependant revisité cet objet d'étude autour de deux questions de recherche : la socialisation interne au Conseil et la coordination externe entre le Conseil, le Parlement européen et la Commission. Fondé sur des recherches empiriques portant sur les 1<sup>er</sup> et 3<sup>e</sup> piliers, cet article revient sur les recherches récentes en la matière, à partir d'une lecture critique de leurs fondements théoriques et méthodologiques. Les auteurs proposent ensuite un recentrage sur l'étude de la socialisation et de la coordination au sein du Conseil de façon à approfondir l'analyse du rôle changeant de cette organisation dans le gouvernement de l'UE.*

## **Keywords | Mots clés**

*Committees, Council of Ministers, socialization, co-ordination  
Comités, Conseil des Ministres, socialisation, coordination*

## INTRODUCTION

Over the last ten years, research on the European Union (EU) has at last begun to pay serious attention to the way the Council of Ministers functions. Beforehand, and prior to the first major book devoted to this organization (Hayes-Renshaw and Wallace, 1997), publications had been dominated by useful but descriptive accounts of what the Council is supposed to be and should be doing (Westlake, 1995). Supplementary information could also be gleaned as by-products of analyses of European decision and policy making (Wallace and Wallace, 1996; Richardson, 1996) or, some years later, through studies of how national administrations participate in such processes (Kassim *et al.*, 2001; Maurer *et al.*, 2001). Notwithstanding the quality of the information and insights generated by this initial literature, few testable hypotheses were developed about what structures actor behaviour within the Council. Moreover, much of this organization -and in particular its system of committees- were left as a virtually unexplored 'black box'.

In contrast, a 'new generation' of research on the Council has been much more attentive to the development of clear hypotheses and systematic methodologies in order to study this body. In particular, these basic prerequisites of social science have been applied to examining the composition of, and relationship between, ministerial meetings, COREPER and Council working groups (CWGs). The objective of this article is to successively set out and discuss the two main lines of questioning that have thus far been developed in this literature in order to unpack the Council and explain how it operates.

Centred upon the socialization of individual actors operating within Council committees, the first of these questions has been chiefly concerned with determining whether national officials change their loyalties, preferences and logics of action whilst negotiating within and around the Council (Section I). Studying the Council through the concept of socialization has indisputably generated a wealth of

knowledge about those who work within this organization, their modes of interaction and the norms which govern this behaviour (Checkel, 2005). Notwithstanding the importance of this academic acquis, studying the Council through socialization has been undertaken from a variety of theoretical angles whose analytical consequences merit discussion. Indeed, the fascinating question of what socialization actually occurs within this body at times runs the risk of drowning out how studying this process allows us to better understand the Council and its role in EU decision-making.

Focused upon the impact on negotiators in the Council of rules set by the EU's treaties, as section II relates, the second line of questioning on this organization has thus far generated much less of a single focus. Indeed, centred upon how treaty provisions effect interactions between actors working in the Council and their counterparts in the European Parliament (EP) and Commission, until now a disparate range of empirical studies have given rise to little sustained theoretical debate. Moreover, the concepts used to structure and guide this research often remain underspecified.

In short, recent research on Council committees has certainly produced valuable new knowledge about two questions concerning these vital components of the EU's central decision-making body. What is less certain is the extent to which these findings reveal how the Council's traits impact upon the making of EU law and public policy. By drawing upon our own research into the way Council committees operate in the first and third pillars (Fouilleux, Maillard, Smith, 2005 & 2007; Maillard, Smith, 2005 & 2007), each section also identifies a certain number of its 'blind spots' and suggests new avenues for linking research on socialization and the impact of treaty provisions to the question of what the Council is. Overall, the article argues that studying the Council through its committees is indeed the best means of understanding this organization. However, it also claims that if one wants to go a stage further to understand how this body and its component parts participate in 'the government of the

EU' (Smith, 2010), fundamental theoretical and methodological choices need to be faced up to and taken.

## **1. HOW SOCIALIZATION MATTERS: NEW KNOWLEDGE IN A THEORETICAL DEBATE**

Ever since Ernst Haas's first book on European integration (1958), specialists of this subject have wrestled with the question of how a Council composed of state representatives has managed to reach decisions in a fashion that most commentators see as generally harmonious and relatively 'efficient'. Whereas early 'intergovernmentalists' gave a short answer to this question by asserting that it was in the interests of states to ensure that the Council operated smoothly (Hoffman, 1966), Haas's 'neo-functionalist' explanation differed considerably for a number of reasons. In particular, it stressed the impact of socialization upon the actors who actually negotiated within this organization. More precisely, Haas argued that through meeting frequently to discover European solutions to common problems, many national actors came to modify their visions of what the European Community could and should be doing. As a consequence, he found that these actors were often prepared to interpret instructions received from their respective national capitals in such a way as to favour both consensual decision-making and 'supranational' policy outcomes.

Of course, since its very inception this thesis has been widely debated, supported or contested throughout EU studies. However, it is only during the last decade that socialization has given rise to systematic reflection and research. Indeed as Checkel underlines, prior to the late 1990s, 'theoretical underspecification and methodological challenges hindered empirical research' (2005: 806). If one defines socialization in general as 'a process of inducting actors into the norms and rules of a given community (whose) outcome is sustained compliance based on the internalization of these new norms', Checkel concludes that in

research on European integration this concept was 'hinted at' rather than studied (2005: 804 & 806). In contrast, the new generation of research on Council committees has sought to identify and explain what Checkel himself defines as three different mechanisms of socialization:

- compliance resulting from strategic calculation and 'a logic of consequences';
- compliance based on 'a logic of appropriateness' reflected in 'conscious role-playing' where actors acquire 'the knowledge that enables them to act in accordance with expectations- irrespective of whether they like the role or agree with it';
- compliance caused by 'a logic of appropriateness' which entails 'unconscious role-playing' where actors have so internalized group norms that the latter are 'taken for granted' and seen as 'the right thing to do' (Checkel, 2005: 804; Rise, 2000).

Checkel himself hypothesizes that empirical research on socialization in the EU (and more generally throughout International Relations) will find that one of these three types of norm induction has occurred. Whilst convinced by his proposal, we use it here instead as a means of structuring our review of publications on socialization in Council Committees. This is because, either wittingly or not, research on this subject thus far has strongly tended to focus upon one of these three types of socialization rather than to compare them within the committees under study. In other words, although one single theoretical debate about socialization in the Council has emerged, three different types of empirical study have actually been carried out. Through identifying their respective research goals, methods and findings, our overall concern is to question whether this cleavage has promoted cumulative knowledge or academic autism.

### **1.1 Socialization as strategic calculation**

Thus far, two sets of research -one pioneering, one ongoing- have studied Council Committees through an approach to socialization



which has almost exclusively ascribed actor behaviour to a logic of consequences, ie. one driven by material incentives or sanctions.

Jan Beyers and Guido Dierickx were amongst the first to systematically study Council committees (1997; 1998). Using questionnaire-only interviews with members of different CWGs and statistical network analysis, they found that most communication occurred between 1) national officials and 'non-state institutional actors' (Commission, Council secretariat, the Presidency) and 2) officials from the large member states. More generally, they concluded that national actors communicated most with actors likely to provide them with tangible benefits such as supporting votes or information.

A similar conclusion is reached in recent research on CWGs in the Common Foreign and Security Policy (CFSP) sector conducted by Juncos and Pomorska (2006). As with other research on CFSP, they show that some socialization occurs in these bodies through various channels (regular council meetings, extraordinary meetings, meetings with the presidency, private meetings, personal networks). In so doing, they identify various components of what they call a 'code of conduct' within CWGs: a co-ordination reflex (ie. taking into account other national positions when defining one's position), consensus-building practice (eg. 'keeping everyone on board'), the acceptance of 'no go' issues never to be discussed in CWGs, etc. However, they do not ascribe compliance with committee norms concerning communication and co-operation to a deep logic of appropriateness, but to a logic of consequences which stems from strategic calculations about negotiating outcomes and actor legitimacy. For instance, the common practice of continuous communication and information-sharing ('reflex co-ordination') in the CFSP is analyzed as a means of anticipating potential isolation within the Council. Moreover, these authors underline that at the heart of negotiations within CWGs lies the need to enhance their own credibility.

Despite apparent similarities, these conclusions are nonetheless

arrived at from a slightly different angle than that of Beyers and Dierickx. First, they ascribe communication amongst committee members as a means of anticipating and avoiding isolation within the Council. They therefore conclude that consensus-building is a form of long-term calculation about reciprocal exchanges. Second, methodologically, they define the scope conditions under which their findings on weak socialization specific to CFSP may be explained: low isolation from national capitals; a narrow rather than a dense range of issues; high rotation of staff.

Notwithstanding their differences of research object and method, ultimately both these sets of scholars reduce socialization to communication driven by strategic calculation through their central empirical question: why do committee members communicate and co-operate? In both cases, conclusions about the causal role of 'a logic of consequences' are heavily influenced by the reliance placed upon directly asking interviewees this 'why?' question. Given who they work for, it is hardly surprising that most interviewees 'respond in terms of national interest' (Juncos and Pomorska, 2006: 3). But do responses to such a blunt question really reveal much about actor perceptions and motivations? More fundamentally, asking 'why?' in this way constitutes a choice driven by rational choice theory which posits from the outset that actors within the Council always act 'rationally', ie. they constantly make cost-benefit analyses, decide on this basis then behave accordingly during negotiations. Of course, it is often useful to set up compliance with organizational norms for reasons of pure strategic calculation as a 'null hypothesis' against which stronger forms of socialization can be identified should they occur. However, even here, one runs the risk of biasing research design in such a way as to preclude findings of deeper forms of socialization from the outset.

## 1.2. Socialization as conscious role-playing

Inspired by organizational sociology, a second set of research on Council committees has used the concept of socialization in quite a different way to scholars influenced by rational choice theory (Egeberg, 1999; Trondal, 2001a & b; Egeberg, Schaefer and Trondal, 2003; Beyers and Trondal, 2004; Beyers, 2005). As defined by Checkel, this approach considers that 'organizational and group environments trigger roles, in which a degree of 'automaticity' governs individual behaviour. Agents adopt certain roles because they are appropriate in that particular setting' (2005: 810). Here socialization is therefore taken to mean how actors within the Council represent themselves, their colleagues and the structures within which they work. The key intermediary concept then used is that of 'roles' defined as 'the behaviour of an actor in a specific social position' (Homans cited in Beyer, 2005: 902). These authors have approached Council committees from the angle of 'administrative integration' within the EU (Trondal, 2001a: 4). Rather than assuming that representatives of national and EU administrations are strongly integrated in a form of 'administrative fusion' (Wessels, 1998), this approach has set out to show that the 'embedding' of relationships between both sets of actors is conditioned by the intensity of each specific mode of exchange within which they operate. As such, Council Committees are seen as 'imperfectly integrated orders' within which representatives of national governments are called upon to define their respective roles during negotiating processes (Trondal, 2001a: 258). In terms of research design, and essentially using questionnaire-based analysis, this 'imperfect' integration has been evaluated along two dimensions: role perceptions and co-ordination behaviour. Despite appearances to the contrary, however, the principal focus here is upon conscious role-playing rather than deeper logics of appropriateness.

This perspective first becomes apparent when one recognizes that for these authors role perceptions are 'those norms, rules, expectations and prescriptions of appropriate behaviour perceived by those

carrying out representational tasks' (Beyers and Trondal, 2004: 920; Beyers, 2005). As with Beyers' previous work, they then proceed to distinguish between the role conceptions of Council working group members that are 'supranationalist' or 'intergovernmentalist'. For instance, in Beyers' research design, interviewees were asked to choose between nine possible responses in order to measure how they consider they behave during negotiations. Their reaction to responses such as 'In working groups representatives should develop a strong common policy and lay down clear directions for the national governments', were seen as a means of placing the interviewee on an intergovernmentalist-supranationalist continuum.

Two sets of scope conditions were then hypothesized to influence the role perceptions of these actors. The first concerned the degree of engagement by each actor in EU negotiating sites. Here, research examined the impact of variables such as the length of time each questionnaire-respondent has spent in CWGs and whether they are 'full-timers' (permanent representatives) or 'part-timers' (national 'experts' coming to meetings on an occasional basis). Beyers' research in fact shows that scope conditions of intensity, duration and density of contact have no direct effect upon the role conceptions of national representatives (2005). The second set of scope conditions examined in order to understand role perceptions concerns their relationship with 'domestic institutional arrangements' made up of three sets of variables: degrees of politico-administrative specialization, numbers of veto players and levels of trust in domestic and European institutions. To give just one example of the empirical findings produced, on this basis, Beyers and Trondal (2004) claim to explain why the role perceptions of Belgian members of CWGs are more supranational than those of their Swedish counterparts by arguing that unitary and vertically integrated polities, like Sweden, produce more intergovernmental positions than decentralized and less integrated ones (such as Belgium). More generally, Beyers goes so far as to conclude that 'weak domestic socialization contributes to supranational roles' (2005: 933). Such findings are thus coherent

with an institutionalist perspective that considers role perceptions are shaped by the institutional affiliation of officials. This also leads such authors to reject the strong socialization thesis which considers that sustained contacts within EU negotiations lead to more supranational roles.

Much more could and should be said about the concepts, questions and findings of this approach to socialization within the Council. Given the constraints of space, only two sets of points can be emphasized here. First, and despite the emphasis apparently placed upon questions of self-perception, this approach does not use the concept of socialization to delve deeply into the actor perceptions and representations its empirical research has collated. Here we raise doubts over this approach's exclusive dependence upon questionnaires. The questionnaires used by tenants of the approaches presented above rely upon members of Council committees answering general questions about their representations of Council committees that are divorced from the context of negotiating precise pieces of legislation. Rather than explaining in their own terms how they position themselves and act within such bodies, interviewees are asked to respond either to closed questions or to rank their response on a scale (eg. of 1 to 6). The methodological danger here is that for interviewees these questions are so abstract as to render their responses haphazard and thus unreliable. The empirical question here is how these answers to such general questions generate new information about behaviour in concrete negotiations, ie. how role conceptions expressed in abstract fashion reveal more concrete ways of acting and interacting.

Second, if organizational theory has certainly driven research to generate valuable new knowledge about how participants in CWGs perceive their respective roles and the negotiating processes in which they are involved, we question its tendency to polarize research findings around behaviour that is categorized as either 'supranational' or 'intergovernmental'. Omnipresent in EU studies since its outset, this dichotomy actually has little heuristic value in general. This is

particularly so in the case of Council committees where, as other specialists of this question have shown (Lewis, 2005, see below), national delegates frequently find themselves mediating between 'instructions' from their respective capitals and intra-working group impetus to concoct negotiating solutions which are sufficiently acceptable. Beyers and Trondal (2004) implicitly recognize this problem when developing the notion of 'ambiguous representation'. However, in the rest of their work they still cling grimly on to the supranational-intergovernmental dichotomy.

### **1.3. Socialization as unconscious role-playing**

Building upon descriptive accounts of the importance of 'methods of Community' (Wallace and Wallace, 1996), administrative interdependence (Wessels, 1998) and committees throughout EU governance (Pedler and Schaefer, 1996; Christiansen and Kirchner, 2000), over the last ten years a third and final approach to socialization in the Council has taken theoretical nourishment from new institutionalism and constructivism. Using qualitative research techniques, the aim of research here is to discover whether parts of the Council have generated a logic of appropriateness which is so institutionalized that actors within these bodies unconsciously take for granted both the roles they play and the norms which guide this behaviour.

Within this perspective, and through empirical research on a range of CWGs<sup>1</sup> as well as COREPER, Jeffrey Lewis has become the best known challenger of intergovernmentalist images of the Council as an arena for 'hard bargaining' between self-interested nation states (1998; 2000; 2003; 2005). Lewis's challenge to this representation of reality essentially makes three arguments.

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<sup>1</sup> Namely the SCA, the Article 113 committee, the Budget Committee, the Monetary Committee, the Political Committee and the K-4 committee.

First, and in keeping with publications discussed above, arenas such as COREPER are seen as possessing a degree of permanency which socialize their members into accepting certain modes of exchange and negotiation. In dealing regularly with their opposite numbers from other member states, Lewis updates the neo-functionalist claim that members of such bodies loosen their allegiance to their national and administrative origins and thereby become more open to quests for 'supranational' negotiating solutions. Contrary to much of the research on conscious role playing, however, Lewis himself considers that his findings are 'at odds' with research perspectives, such as that of Beyer (2005), which claim to offer 'clear-cut evidence of ranked 'primary' and 'secondary' allegiances.' Instead, he strongly suggests that, at least in and around COREPER, 'identities and role conceptions are not so clearly juxtaposed'. Consequently there is 'a cognitive blurring of the sharp definitional boundaries of the national and the European' (Lewis, 2005: 967).

Second, Lewis mobilizes constructivist concepts and questions in order to build this cognitive dimension of EU negotiations into analysis of the Council's dynamics. Rather than consider that national delegates have clearcut and unalterable positions over each and every issue debated in Council, Lewis underlines how most negotiations at this level are best described as iterative processes during which interpretations of the issue in hand are frequently modified. Moreover, he highlights how competition between Council committees can influence these processes (2000).

Finally, and at greater length, Lewis again draws upon constructivism to underline the importance of formal and informal rules in structuring 'processes of collective rationality formation' (1998, 481). These 'methods of Community' are reconceptualized by Lewis around five recurrent norms discovered in his case studies: 'diffuse reciprocity', 'thick trust', 'mutual responsiveness', 'the consensus-reflex' and 'the culture of compromise' (2000: 268-274). Indeed, through combining his three claims, Lewis's research (1998, 2005) has been consistent

and rigorous as regards how rules impact upon actor behaviour within the Council. In particular, in explaining the decision-making process within COREPER, he develops the hypothesis that there is framework of unwritten norms to which national representatives adhere. Due to the relative isolation of COREPER from domestic pressure and the intense and sustained contacts between its members, these norms are claimed to have causal impacts upon Council decisions. Indeed, from this perspective, Lewis goes so far as to conclude that formal rules have no real effects without being accompanied by informal norms which determine the extent to which compromises can be reached. Consequently deliberation is more important than voting: 'In COREPER, the power of a good argument can be as compelling as a blocking minority or the shadow of a veto' (Lewis, 2005: 951). More generally still, he concludes with the finding that within this body actors frequently develop 'an expanded conception of the self that includes non-instrumental, pro-norm behaviour without the threat of external sanctioning; it is based on the internalization of standards of appropriateness' (2005: 941).

Rightly concerned not to overstate his argument, Lewis does not go so far as to claim that this level of socialization occurs within every Council committee or for members of every national delegation. Indeed, he concludes that three factors reinforce supranational socialization within COREPER and thus perhaps differentiate it from other committees: its insulation from domestic politics, the density and complexity of issues it deals with and the low level of rotation amongst Ambassadors and their deputies. Nevertheless, his overall approach and findings invite comparative research which keeps an open mind to the levels of socialization empirical enquiry will uncover.

Our own research on CWGs has implicitly replied to Lewis's invitation to compare socialization across the Council through applying the same research design in issue areas from different sectors and even different 'pillars' (Fouilleux *et al.*, 2007; Maillard and



Smith, 2005). However, in tracing the institutionalization of each of the committees, we have sought to extend Lewis's research agenda by simultaneously discovering how such arenas participate in the construction of 'European problems' and EU policies. A fundamental building block in our approach is thus the argument that the shape and meaning of public problems are progressively defined through mediations between a wide-range of actors (Rocheftort and Cobb, 1994; Muller, 1995). Our comparative examination of CWGs has thus not been undertaken with the intention of identifying when, where or precisely by whom decisions are taken. Instead we have examined these groups as both potential sites for the institutionalization of problems meriting EU intervention ('European problems'), and as part of sectoral communities of public, collective and private actors. In short, we propose widening research on socialization in the Council to include the question of how actors within it simultaneously negotiate over the shaping of European problems whilst managing their ongoing relationships with a range of external interlocutors.

Based upon three quite different theories of socialization –rational choice, organizational sociology and constructivism-, it is hardly surprising that research upon this process within the Council has thus far produced quite different sets of conclusions. So long as theories are made explicit, such divergence is not in itself a problem for studies of the Council; indeed it should be welcomed as part of a vibrant and reflexive field of research. What is both surprising and regrettable is that genuine and open-minded comparisons of the three levels of socialization identified by Checkel –strategic calculus, conscious role-playing, internalized roles- (2005: 804) have yet to become standard practice within studies of Council committees. Nor have systematic attempts been made to combine quantitative and qualitative research methods in order to operationalize such comparison. Finally, on the basis of findings produced thus far, the distinction between conscious and unconscious role-playing now deserves to be revisited and refined or replaced. To our mind, these are the three main challenges for future research on the Council using the concept of socialization.

## 2. HOW TREATIES MATTER: EMPIRICAL RESEARCH IN NEED OF THEORETICAL DEBATE

The second dimension of existing research on the Council through its committees concerns the relationships between members of these bodies on the one hand and, on the other, ministers, representatives of the European Parliament (EP) and the Commission. The division of labour between officials and ministers within the Council was frequently commented upon in previous generations of analysis of the Council. However, the authors concerned rarely engaged with the content of intra-committee activity. As for representatives of the EP and the Commission, most traditional analyses tended to reduce these actors to anonymous external influences upon the mind-sets and behaviour of officials working in the Council's committees. In contrast, a number of recent publications including our own shows that analysis of the Council gains a great deal by discovering how ministers, MEPs and Commission officials interact with its committees. However, debates have yet to crystallize within and across segments of EU studies and thereby generate cumulative findings and interpretations. In inventorying the publications that have emerged thus far, this section therefore also suggests some issues over which mutually beneficial discussion could be structured. First, it successively argues that moving in such a direction would further encourage this emerging field of enquiry to deepen knowledge about the effects upon the government of the EU of three major Treaty changes introduced since Maastricht: revised Council voting rules, codecision and the right to initiate legislation. Second, couched in more theoretical terms, this section shows that the analytical challenge which emerges throughout these three subject areas is centred upon whether and how formal rules impact upon the workings of Council committees. Indeed, here the debate between rationalists and constructivists discussed in section 1 takes on a slightly different guise. Whilst for rationalists, formal rule changes have strongly affected behaviour within the Council because they define the institutional setting, resources and targets within which

and around actors interact, constructivists tend to advance more conditional findings. For the latter, even formal rules are reinterpreted during Council negotiations through the prism of social mechanisms, notably informal rules and networks of influence.

## 2.1. QMV and Council Committees

Since the Single European Act, the introduction, progressive expansion and modification of Qualified Majority Voting (QMV) has spawned a vast literature in EU studies, most of which must simply be placed to one side here. The subset of this research topic that will be discussed concerns how QMV has impacted upon behaviour within the Council itself and, more particularly still, upon the relationship between members of its specialist committees and their respective ministers.

As regards the Council as a whole, the research question generally posed is to what extent does the Council actually vote 'explicitly'? Taking advantage of increased data released by the Council since 1998 under its 'transparency' procedures, considerable new knowledge has been produced on this question. For example, Hayes-Renshaw, Van Aken and Wallace have shown that despite the expansion of QMV, explicit voting by ministers is rare and strongly affects only two sectors: agriculture and fisheries (2006; see also Hayes-Renshaw and Wallace, 2006). Overall, they argue that the vast majority of ministerial decisions are still taken by consensus rather than through contested voting. Significantly for the subject matter of this article, they also conclude that 'the data show rather clearly that a very large proportion of decisions agreed are crucially framed and shaped well before the ministerial sessions' (2006: 183). They even suggest that within the committee meetings which do much of this framing and shaping, 'implicit voting' by national officials is often played out (2006: 184). Indeed, and for all these reasons, their article ends by stressing that EU studies needs 'ways of getting more traction on

what happens at earlier stages of the Council's deliberations, as well as on how national negotiating strategies and tactics are developed' (2006: 185).

Less focused on voting per se and more on 'ministerial involvement' in Council decision-making, Häge provides a slightly different take on the data now available which further encourages the building of bridges between research on ministerial activity within this organization and what takes place within its committees. He finds that in the first pillar 'almost 50% of all legislative dossiers (...) are discussed by ministers in the course of Council negotiations', and that 35% of 'legislative decisions' were taken by ministers, 22% by COREPER and the SCA and around 43% by CWGs (2008: 534-5 & 554). Just as interestingly, however, he also shows that this 'involvement' of ministers varies considerably across policy sectors.

Both these sets of statistically-based conclusions invite engagement with qualitative research undertaken by specialists of socialization and the induction of norms within the Council (see section I), and during our own cross-sectoral studies. Recall that the former claim these norms to be decisive for the way decisions are adopted because they cause consensus-seeking deliberation in the Council to be more important than voting (Lewis, 2005: 951). In comparing the impact of voting rules upon 1<sup>st</sup> and 3<sup>rd</sup> pillar CWGs, our own conclusions are a little different (Fouilleux et al., 2007; De Maillard and Smith, 2005). We found that even under circumstances where unanimity voting could be invoked, the goal of achieving unanimity never dominates a negotiation throughout its duration. This is because even when the representatives of a member state are completely isolated over draft legislation, they rarely attempt to block it from the very beginning of a negotiation because they are simultaneously engaged in a range of decision-making processes which are taking place within the same Council committee or which stretch across others. However, voting rules play a role later on in the firming up of draft legislation because they may be used to structure the nature of compromise formation.

Here a citation from an interviewee working on issues of internal security captures a widely shared practitioner viewpoint: 'In the Third Pillar, with unanimity voting, our recurrent question is: 'do we block or not?' (whereas) in the First Pillar, with QMV, our question is: 'can the legislation be voted without us?''<sup>2</sup>. Unanimity voting therefore certainly does introduce the possibility that a negotiation can become completely blocked within the Council. However, in many instances member state representatives will have anticipated the likelihood of a blockage and altered their initial positions in order to avoid being isolated within CWGs, let alone COREPER and ministerial meetings.

Within CWGs, altering either the position of a member state or that of the Commission so as to conclude negotiations invariably entails a great deal of contact between the personnel who actually sit in such committees, the Permanent Representations, the hierarchy of the Commission, national ministries and, in many cases, ministers themselves. However, it is important to avoid considering that changing positions involves different actors when issues are either 'technical' or 'political' (Häge, 2008). Rather than being objective categories of analysis, it is instead vitally important to consider that both these terms are used in order to either refer decision-making to other arenas, or to retain its discussion within the working group. In short, it is during negotiations within Council committees that issues are framed as being either 'political' or 'technical'. Framing them in either way is therefore an activity which research on the Council needs to grasp if it is to capture the interdependencies which structure this body (Fouilleux *et. al.*, 2005).

More generally, studying the Council around the question of how its decisions are reached and by whom is clearly of great importance to studies of the EU. New research is already providing important new information here, particularly on post-Enlargement effects (Dehousse and Deloche-Gaudez, 2006). In order to go further,

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<sup>2</sup> Interview with a French national official, March 2003.

however, much theoretical nourishment could and should be taken from more general social science analyses of decision-making.

## **2.2. Codecision and Council Committees**

At least until the mid-1990s, specialists of the EU scarcely bothered to investigate the importance of the interdependencies between the Council and the EP. Because of the weakness of the latter, research on the Council largely reproduced the contempt with which national government and Commission officials treated MEPs. However, given that a principal aim of introducing 'Codecision' into successive EU Treaties has been to change the relationship between the EP and the Council, research has slowly begun to develop knowledge about the effects of treaty change upon norms and practice within Council committees. As we shall also see, however, even less information has been produced about the effects of codecision upon another set of key participants in these bodies: Commission officials.

In the case of EP-Council relations, the main focus has been upon the interactions between the respective committees of these two bodies and how they determine the speed and character of the EU's legislative process. According to Neuhold and Settembri, the codecision procedure has progressively tended to reach its conclusion at an earlier stage: 'between 1999 and 2004, the share of dossiers concluded at first reading rose from 19 to 39 percent. Simultaneously, the number of dossiers concluded at third reading fell from 28 to 15 percent of the total. Conclusion at second reading remained relatively stable' (2007: 172). These authors attribute this shift in part to the enhanced specialization by policy sector of MEPs which is seen as improving their expertise and, thereby, encouraging them to understand and support draft legislation which has the backing of administrative and socio-professional actors (Neuhold, Settembri, 2007: 175-6). Quicker codecision is also explained by these and other specialists of the EP (Benedetto, 2005) through analyzing the work carried out by

EP committee chairs and rapporteurs. By mediating between their own committees and CWGs, these actors are seen as playing a pivotal role in EP-Council relations (Farrel, Hérítier, 2004: 1199).

Coming instead from the angle of what occurs within CWGs, our own research has also revealed the importance of informal mediations with MEPs in order to avoid the conciliation procedure (Fouilleux *et al.*, 2007). For example, in preparing two health and safety at work directives on 'Scaffolding' (2001/445) and 'Vibrations' (2002/44), lengthy negotiations took place between members of the Council's social affairs working group and the EP's Employment and Social Affairs committee in order to avoid conciliation. More generally, we again concluded that EP rapporteurs and committee chairs frequently played key roles in realizing this ambition. However, we also found that the legitimacy of such actors is often hindered by the rules of each organization. In the case of the Council, its rotating presidency often poses problems for this 'external' dimension of committee chairing. The role of EP rapporteurs and committee chairs is also difficult because their authority, and that of their committee, can easily be undermined by the Parliament's plenary sessions and by the decentralized coordinating structures of the EP (Farrel and Hérítier, 2004). More generally, a shortage of clear rules regarding inter-committee interaction itself means that relations between CWGs and EP Committees are often highly unpredictable and thus are treated as a risk by many of the protagonists involved. Indeed, this finding chimes with that of specialists of the EP who have studied codecision and the Conciliation procedure in some depth (Rasmussen, 2007). From such a perspective, Shackleton and Raunio go so far as to conclude that the organization of informal fora designed to facilitate or avoid Conciliation 'opens a broader debate about the criteria that the EU legislative procedure should fulfil, the best institutional arrangements for meeting the criteria, and the relationship between EU legislative mechanisms and public acceptability' (2003: 18). Farrel and Hérítier then take this issue a stage further by linking it into the over-riding question of how informal rules in the EU become, or fail to become, part of its treaties (2006).

This literature on Conciliation also claims to reach conclusions about the second major impact of codecision upon the balance between the EU's principal 'institutions': its effect upon the power and influence of the Commission. Specialists of the EP consistently claim that codecision in general, and the conciliation procedure in particular, has weakened the Commission's influence over EU law-making (Tsebelis and Garrett, 2000). In disputing this finding, Burns has convincingly shown that this body has been consistently 'neglected' in empirical studies of codecision and that, consequently, conclusions about its loss of power and influence have been 'overstated' (2004: 1-2). Drawing evidence from a detailed case study of the novel foods regulation, she argues instead that when examining this question, one needs to bear in mind the Commission's agenda-setting and gate-keeping roles. The case of novel foods was chosen precisely because it prompted a controversial conciliation procedure during which the Commission was excluded from a range of official meetings between representatives of the Council and the EP. However, even in this 'least likely' case, Burns shows that the Commission was still able to exercise influence over the final version of legislation produced. As such, its representatives successfully resisted calls by MEPs to make the Commission as a whole surrender its 'gate-keeping rights' during conciliation (Burns, 2004: 12). More generally, her article ends with a call for more qualitative research in this area based on the assertion that 'the minutiae of EU decision-making, so often overlooked by those dedicated to parsimonious models, do make a difference to the exercise of legislative influence' (2004: 15).

This call for more qualitative research on the relationship between the Council, the EP and the Commission, and implicitly therefore upon the committees and representatives of these bodies raises wider points than ones of methodology. Indeed, this subject demands reflection about the choice of theories with which to structure research in this area. Rather than speculate about how and why relations between the Council, the EP and the Commission are changing on the basis of theories which do not disaggregate such bodies into their component



parts (Farrel, Héritier, 2004; König 2008), institutionalist and sociological based approaches appear to offer a robust way forward.

### **2.3. The right of initiative and Council Committees**

Existing literature on the Council based on such theories is also to be embraced because it recognizes that the representatives of the Commission who sit in these groups are not just passive presenters of draft legislation. Instead, they are active participants in Council committees. Many years of public-policy making research have shown that the Commission's duty to initiate proposals for EU law and policy has constituted a major resource for its personnel (Peters, 1994). Our research on 1<sup>st</sup> Pillar working group confirms this general hypothesis. In addition, it has enabled us to highlight a much neglected aspect of the work of Commission officials: how they operate within Council and, in so doing, shape the agenda of the former. Drawing upon our research in what until the treaty of Lisbon were officially known as the 1<sup>st</sup> (internal market) and 3<sup>rd</sup> (internal security) Pillars, at least, two points need stressing here: how Commission officials work with presidencies of the Council in general, and how this takes place when the right to initiate legislation is shared with the member states.

The EU's legislative process is always a lengthy one. Commission officials of course know this and, more precisely, always anticipate that turning their proposals into directives or regulations can only be achieved by working closely with at least two successive presidencies. In some respects, Commission officials can also be seen to have an inter-institutional brokering role because they often anticipate when a member state sympathetic to their policy objectives will next hold the Council presidency. Indeed, in order to get legislation through that may provoke inter-governmental blockages, Commission officials sometimes try to identify successive favourable presidencies. To use a 1<sup>st</sup> pillar example from the late 1990s, for example, in order to pass a telecommunications directive (98/10), Commission officials

anticipated support from three presidencies in a row (Italy, the Netherlands and the UK). Delegates from all three of these member states were very much in favour of liberalization and thus facilitated the adoption of a piece of legislation that had initially sparked considerable resistance, particularly in France and particularly over the definition of ‘universal service’ requirements.

Comparing this work with that carried out by Commission officials in 3<sup>rd</sup> Pillar CWGs is useful because within such groups, at least formally, the right and duty to initiate legislation is shared between the member states and the Commission. This difference has important effects because it has led to a plethora of policy proposals from national administrations, many of which are made by at the beginning of their respective presidencies. However, in CWGs, some of these proposals are rapidly dismissed as impracticable, sometimes with the full consent of the national officials who were instructed to make the proposal in the first place! More fundamentally, most of the legislative proposals given full consideration by CWGs are those that have been prepared and formulated by the Commission. According to interviewees, the Commission has the skills (particularly in comparative law) that most member states lack: ‘The Commission can do in-depth comparative law studies’ whereas what most member states propose are ‘just peanuts’<sup>3</sup>. However, competition over the right to initiate EU legislation remains a contentious issue in the 3<sup>rd</sup> Pillar. Indeed, in a sectoral environment where representatives of numerous member states are often distrustful of the intentions of the Commission, many are inclined to make proposals that run parallel to ones made by the Commission. Such competition is even reinforced by a reform that was supposed to be internal to the Commission. Within the framework of the Better Regulation Strategy, from 2004 onwards any proposal made by the European Commission in the third pillar has had to be accompanied by an impact assessment. This has certainly changed the rules of the competition with the member states because the latter are not required to accompany their proposals

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<sup>3</sup> Interview with a French ministerial official, March 2003.

with a statement of impact assessment. For example, this difference recently provoked controversy over a Commission proposal in the field of availability of information between law enforcement agencies. Whilst the Commission was still conducting consultation of the national governments and various stakeholders involved, just after the Treaty of Prüm in May 2005 some member states made a proposal that was different to that being developed by the Commission (and whose provisions have since become EU law).

In summary, when undertaking research upon Council through its committees, Commission civil servants therefore merit studying as part of each working group rather than as external appendages. More generally, as our sub-sections on Council voting and codecision also underline, focusing exclusively upon Council committees as isolated entities is not only limiting but, given the integrated nature of the EU's government, ultimately futile. Indeed, although we have come across considerable variation between CWGs, these differences cannot simply be ascribed to treaty provisions regarding QMV, Codecision and the status of the Commission. Instead, explanations for similarities and differences between CWGs need tracing to the precise sets of rules and expectations engendered over time by each Council committee. Carefully crafted generalizations can then be made upon the basis of the recurrences observed.

## CONCLUSIONS

Studying the Council from the angle of its committees allows research, teaching and practitioners to best understand this central body and how it fits within the government of the EU. The new generation of scholarship that has emerged in the last decade around this subject has already contributed a great deal to shedding light upon what takes place within Council committees on the one hand and, on the other, how this links to other parts of the Council as well as components of the EP and the Commission. Indeed, this

work deserves to be better known and better discussed within other parts of EU studies. This article constitutes an attempt to encourage and facilitate the realisation of this objective. However, members of this new generation could also help themselves reach and convince a wider audience by engaging in a collective endeavour which has two dimensions.

First, research would benefit from better combining the two lines of questioning that have thus far dominated the field and all too often been kept separate: socialization and the effect of treaty provisions. Indeed, in our view, both need to be made to come together around the central question of how the Council contributes to the making of EU law and policy (Quaglia, De Francesco, Radaelli, 2008: 164). Couched in more theoretical terms, there is a need to join up studies of the micro (individual actors' perceptions and behaviour) with that of the macro (the meta-institutions which structure EU policy-making). For the moment, many studies either produce data about particular committees or about the overall behaviour of the Council as a whole (eg. its voting or codecision practices). Our suggestion here is that the meso, ie. the sector, provides an optimal unit of analysis from which both in-depth study and cross-sectoral comparisons of the Council can best be engaged in. In this way, general data about this body can be contextualized and better linked to analysis about what structures concrete decision-making processes.

Second, bringing together analyses of sectoral policy-making and Council committees, would fit with a wider research agenda for EU studies which consists of moving it away from an excessive focus upon the supranationalist-intergovernmentalist debate and, instead, towards the production of new knowledge about the intrinsically transgovernmental nature of EU politics. More specifically, the fundamental challenge for research then becomes which actors with national executives, the Commission, the EP and the Council Secretariat are working towards the shaping of problems and decisions at the scale of the EU, and which actors are resisting this

change in the very framing of EU politics? Having produced data on this question, research could then move on to delve deeper into the causes of such behaviour, as well as their cumulative impact upon the way that the EU is both governed and legitimated.

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