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## **The Dynamics of Treaty Change: Measuring the Distribution of Power in the European Union?\***

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**Abstract:** Analysing the distribution of power among political actors is at the heart of political science. I propose a way of analysing changes to the institutional equilibrium of the EU institutions as well as changes in the relationship between the supranational level and the member states from a historical perspective. At the core of the paper is a new dataset that allows us to trace changes to the EU treaties from 1958 to date. The findings are largely in line with what we know from the existing literature: Supranational actors, namely the European Parliament and the Commission have gained power, while the intergovernmental mode of decision-making has subsequently become more limited, thereby weakening the Council. Additionally, the expanding number of policy areas has strengthened the supranational level. The specific contribution of this paper is the transparent and replicable way in which I am able to reveal and map these changes. The dataset could function as a starting point for both qualitative and quantitative studies of European Integration. The dataset is available from the author upon request and will be made public on his website in due time.

**Keywords:** treaty reform, institutions, Europeanization, constitutional change, federalism, polity building, political science

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## Introduction

The EU treaties can be regarded as the constitution or basic law of the European Union: Just like national constitutions, they allocate power by establishing which institution has a say in a the legislative process. In addition, the treaties assign policy competences between the EU level and the member states. The treaties have been in constant flux ever since the establishment of the Communities. Taking the 1958 Treaty of Rome as a starting point, there were six major treaty reforms: the Merger Treaty (in force 1967), the Single European Act (1987), the Maastricht (1993), Amsterdam (1997), Nice (2003) Treaties as well as the Lisbon Treaty agreed upon in 2007, which entered into force in 2009. All reforms led to a reshuffle of power, be it through the transfer of more competences to the EU level or through altered decision-making procedures at the EU level. If we understand the distribution of political power as a zero-sum game, where the gain of one player necessarily implies the loss for another, the general trend can best be described as a shift away from individual member states: First, ever more policy-making competences were allocated to the EU level, whereby national policy making was subsequently limited, while the institutions at the EU level were strengthened. Second, when looking at the EU level, the move from unanimity to qualified majority voting in the Council of Ministers has weakened the individual member states, in that they lose their veto right, while the European Commission's margin of discretion has increased. Additionally, the Council of Ministers as an institution has been weakened through the introduction of legislative procedures that give the European Parliament a true say. Additionally, as in these legislative procedures, the Commission has the exclusive right of initiative, and this has been strengthened over time. These very general trends are widely acknowledged. But: How exactly has the distribution of power as codified in the treaties changed and how can we evaluate this reshuffle over time? In this paper I illustrate how to quantitatively assess these changes.

A review of the literature on the distribution of political power in the EU reveals that a major interest is in the design of legislative decision-making procedures. This research strand was triggered through the introduction of the Cooperation procedure in the Single European Act. Various conclusions have been drawn with respect to the distribution of power amongst the Council, the European Parliament and the Commission, and its variation through the introduction of the Codecision procedure. Next to the essentially descriptive analyses (e.g. Earnshaw and Judge 1995; Fitzmaurice 1988), there are some game-theoretical models (see e.g. Tsebelis 1994; Steunenberg 1994; Crombez 1997; Holzinger 1997; Tsebelis 2002, pp. 252–282; Selck and Steunenberg 2004; Schure and Verdun 2008). The prime interest of these models is to evaluate the impact of individual institutions on legislative outcomes given different decision rules and specific preference constellations. Yet, the scope of the different legislative decision-making procedures – their application to the different policy-areas – is neglected in this research.

Another strand looks at changes to the EU treaties in terms of the allocation of policy-making competences. It has become common place to present tables or graphs which are supposed to indicate the evolution of the Union's policy-making competences over time by somehow

defined policy areas on four or five point scales (Börzel 2005, pp. 221ff.; Hix 2005, p. 20; Schmitt 2005, p. 654; Donahue and Pollack 2001, p. 107; Hooghe and Marks 2001, p. 187f.; Lindberg and Scheingold 1970, pp. 67ff.). Some come from classical integration theory (e.g. Börzel 2005); some compare the allocation of competences between different federal entities such as the EU and the United States (e.g. Hix 2005). In terms of measurement, some rely on expert interviews (Schmitter 1996), others give their own estimates (Lindberg and Scheingold 1970; Börzel 2005), either based on the treaty text or “projected obligations” from the treaties. While some concede that their numbers are only indicative, the major drawback of all papers lies in the fact that no author gives an exact account of how they proceed in their measurement and consequently, the findings are not replicable.

In this paper, I propose a reasonable and transparent way to determine what changes to the treaties have taken place since 1958 and how those changes have affected the distribution of power among the institutions and between the supranational level and the member states. At the heart of the paper is a new dataset assembled for that purpose, which allows us to easily replicate findings.

The paper is organised as follows: I will first elaborate on the role and function of constitutions in federal systems in general and then transfer this well-established notion to the EU treaties. This serves to develop an analytical framework that has enabled me to extract and analyse relevant information from the treaty texts. Thereafter I will present the data-collection process and the resulting dataset, which includes all provisions in the EU treaties from the Treaty of Rome to the Lisbon Treaty. It allows one to trace how treaty provisions were changed in great detail. I then present some descriptive statistics to analyse changes in the power distribution in the European Union over time. I shall make it clear that this paper does not deal with the political practice of the EU evolving from the treaty texts. For now, I am only seeking to make constitutional choices taken by the Heads of State and Governments at particular points in history measurable. From here I can compare the resultant constitutional provisions over time. I neither deal with legislative acts produced, nor do I take into account informal practices that have developed (see e.g. Christiansen and Reh 2009 or Farrell and Heritier 2007). Yet, the data presented may serve as a sound foundation for comparing the treaty text to the empirically observed developments and possible deviations from the codified texts.

## **1. The EU treaties as a constitution**

In the following section I will outline the notion of a constitution in federal systems and then apply this notion to the EU treaties. This definition has guided the data collection process which was to enable us to quantify change in the power distribution.

**What is a constitution?** In the broadest sense, constitutions lay out the basic rules for a political system (Voigt 1999, p. 2), which are “agreed upon in advance and within which subsequent action will be conducted” (Buchanan and Tullock 1962, p. vii). They are thus

“rules on how the bulk of other rules are produced, how they enter into force, how they are implemented and, where there are differences over their interpretation and application, who is empowered to settle a dispute” (Tomuschat 1993, p. 216). Constitutions therefore have primacy over daily politics and normally need super majorities to be changed.

We may differentiate between three types of rules: Those that establish, first, the relation of the institutions and, secondly, the levels of governance towards one another. Third, there are rules that determine the relation of the state towards the citizens (Colomer 2006, pp. 219–223). Given my research question, I deal with the first two types of such rules. In this sense, especially from the comparative politics literature, we learn more about the primary aim of constitutions: To provide a system of checks and balances for the exercise of power. For a federal system this comprises two dimensions, which can be labelled horizontal and vertical. The first dimension concerns the distribution of power between the institutions at the federal level. We hence look at legislative – executive relations, which Almond et al. (2008, , pp. 106ff) refer to as the “structural separation of authority” and which Lijphart (1999) calls the “majoritarian vs. consensus” dimension. We are also interested in the type of legislatures. This includes unitary legislatures or, for federal systems, different types of bicameral systems. In the latter case, we want to examine the type of power that the respective legislative chambers have (Clark, Golder, and Golder Nadenichek 2008, pp. 620ff.). We will take this further and distinguish types of representation of the federal entities at the federal level to learn about the distribution of power between the federal subunits (e.g. “Senate” vs. “Bundesrats” model). The second – vertical – dimension is concerned with the distribution of power between the federal level and the subunits, i.e. with the allocation of competences between the levels of governance. This corresponds to what Almond et al. (2008, pp. 106ff.) call the “geographic distribution of authority” and to which Lijphart (1999) refers to as the “centralization vs. decentralization” dimension.

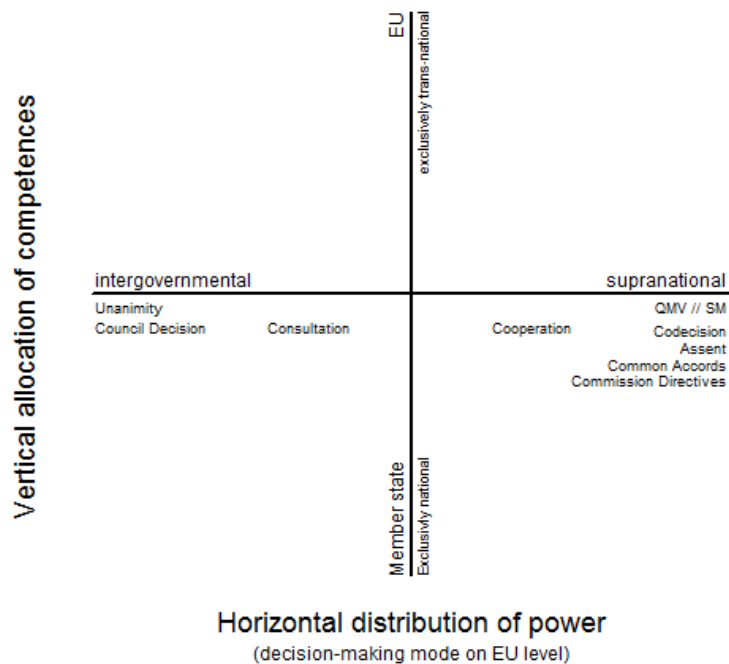
**Constitutional functions of the EU treaties** On the semantic level, many have acknowledged the constitutional character of the EU treaties. As early as 1986, the European Court of Justice speaks about the treaties as a basic constitutional charter (Les Verts vs. European Parliament, European Court of Justice, 1986, para 23). Even before that we find early references to the treaties as a constitution in the law literature (Bernhardt 1987; Bieber and Schwarze 1984; Lerche 1971; Lutz 1977). More recent publications in political science and law mostly agree on the constitutional character of the EU treaties. The argument that there is a large functional equivalence of national constitutions and European primary law is still current (Almond et al. 2008, p. 102; Häberle 2006; Rittberger and Schimmelfennig 2006; Diez-Picazo 2004; Jacqué 2004; Wichard 2004; Zuleeg 2003; Everling 1995). Furthermore, the result of one of the latest attempts at treaty reform, namely the “Treaty establishing a Constitution for Europe” agreed upon by the Heads of States and Governments in 2004 even carried the notion “Constitution” in its title. The discussion of whether the EU is a federal

system also seems settled (see Hug 2003, pp. 123ff; Kelemen 2003; Müller 1997).<sup>1</sup> Accordingly, the terminology employed to describe constitutions in federal systems is widely used in EU studies and in line with what Moravcsik (2002, p. 610) calls the horizontal and vertical distribution of power (on terminology see also Holzinger and Knill 2002, p. 126; Bednar et al. 1996, p. 282; Bellamy and Castiglione 2003, p. 26; Farrell and Heritier 2007, p. 404). Further, Hix and Crombez (2005) apply ideal point estimation techniques to infer missing positions of governments at the 2004 Intergovernmental Conference (IGC). Their approach is based on the a priori assumption of the existence of two dimensions they refer to as horizontal and vertical. Likewise, Finke (2007) establishes the major lines of conflict at three Intergovernmental Conferences as being horizontal and vertical. Finally, König and Finke (2007) refer to a vertical or “distribution of power” dimension and a horizontal “devolution of power” dimension in their analysis of the Rome 2004 IGC.

In sum, the above notion of a constitution can be applied to the EU polity, as the treaties in fact contain provisions along the lines of those mentioned above (see Figure 1 for a graphical illustration): The **horizontal** distribution of power between the institutions on the federal level is determined by two items: Legislative and non-legislative decision-making procedures and the Council voting rule. The former establish the role of the Council of Ministers, the European Parliament, and the Commission and thus their share of power. On the one extreme is the intergovernmental mode of decision-making, where the Council of Ministers decides autonomously and (mostly) by unanimity. Moving further, the Consultation procedure obliges the Council to hear the European Parliament before taking its decision. Next is the Cooperation procedure, which was introduced with the Single European Act and which gave the EP a say as a “conditional agenda setter” (Tsebelis 1994). Finally, and at the supranational extreme, the European Parliament is established as a true co-legislator with a veto right. This holds for the Assent procedure, common accords and the Codecision procedure. In the latter three procedures, the EP may reject the Council’s common position, which may either end the procedure or force the Council into conciliation. Listed for completeness, Commission directives are an exclusively supranational means for the adoption of legislative acts. These are full-fledged directives the Commission may adopt autonomously and which, in terms of their legal status, have the very same character as any directive adopted by the Council and the EP (see Schmitt 2000, 44f). However, the scope of their application is very limited.

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<sup>1</sup> While this should not be confused with the normative debate of whether the EU *should* or *should not* be a federal or a confederal entity triggered amongst others by then-German Foreign Minister Joschka Fischer in 2000. For a short overview see e.g. Müller (2005, 64). Further, it should not be confused with the debate on the “optimal” allocation of competences as proposed by economic theories of federalism/fiscal federalism. Breuss and Eller (2004) give a very good systematic overview.

**Figure 1: The two dimensions of the EU polity (own illustration)**

The second item in the horizontal dimension is that of Council voting rules. These are decisive for the distribution of power horizontally among the member states, which has an effect on the other institutions, too (see next paragraph). Substantively, the move from unanimity to QMV implies a reduction of an individual member state's ability to influence legislative decision making: Under unanimity any decision may be blocked by each individual government. However, under QMV, the likelihood of being pivotal decreases significantly. The extent to which this is the case has been examined by studies employing various types of power measures (such as the Banzhaf or Shapley-Shubrik indices). These describe the a priori likelihood of being pivotal when it comes to a vote in the Council (Banzhaf 1965; Riker and Shapley 1968; Weiersmüller 1971; Brams and Affuso 1976). It is therefore not surprising that the scope of QMV and the definition of the QMV threshold is a regular topic at Intergovernmental Conferences, especially prior to enlargement.

For both items, any move from left to right on the continuum implies a strengthened Commission: First, for the legislative procedures involving the European Parliament, the Commission generally acts as a gatekeeper and agenda-setter with its right of initiative. This implies that any legislative procedure needs a proposal from the European Commission (cf. art. 250 TEC Nice). Even though both the Council (art. 208 TEC Nice) and the European Parliament (art. 192 TEC) may request the Commission to make such proposals within the realm of the TEU and TEC (Council) respectively. Within the realm of the TEC (European Parliament), the Commission still enjoys the highest possible degree of discretion regarding what to propose, in the case where the two institutions request it to act (Kluth, 2002, 1914; Wichard, 2002, 1959). Thus, the right of initiative is an important factor in shifting power towards the European Commission. Second, with respect to the Council voting rule, the

Commission's margin of discretion increases with ever more qualified majority voting. If we assume that the Commission regularly takes the most integration-friendly policy stance, the pivotal government in the Council of Ministers will be closer to the Commission's ideal point under QMV than under unanimity. More formally spoken: When the status quo is currently inside the core – i.e. those points in a policy space that cannot be altered because there is no other point that is mutually improving – no policy change is possible and the Commission has no room for maneuver. The introduction of QMV will shrink the core compared to that under unanimity. Now, when the core shrinks, the likelihood of the status quo being inside it shrinks, too. That is, a (smaller) QMV core increases the discretion for the Commission compared to a (larger) unanimity core. Or, put differently, a smaller core increases the winset, i.e. the points which are mutually improving, whereby the Commission's margin of discretion increases, too. This logic holds for the European Parliament when adopting amendments to a Commission proposal or to a common position from the Council of Ministers. Thereby, the European Parliament is strengthened with the introduction of QMV as well.

The **vertical** dimension covers the allocation of power between the member states and the EU level. At the one extreme is a situation in which all competences are at the national level in a given policy area. This includes a state in which this policy area is not even mentioned in lists of general goals, e.g. in the treaty's preamble or an annexed declaration (as was the case e.g. with the "environment" in the 1958 Treaty of Rome). Moving along on the continuum is a state in which a general goal is actually mentioned in the preamble or an annexed declaration. The implication being that this goal needs to be weighed against conflicting goals in other policy areas. A classic example would be to list the protection of the environment as a goal that has to be taken into account in adopting industrial legislation. Moving further along the continuum, either shared or even exclusive competences may be allocated to the EU level. This may include broadly defined goals, particular subject-matters and the competence to adopt legislation or other activities, such as the coordination of national policies. In the case of exclusive competences, member states agreed to completely abstain from national policy-making. Classical examples are monetary policies, the internal market or the regulation of certain environmental standards. Quite trivially, any additional allocation of competences strengthens the Parliament and the Commission, as long as policy-making in that field is not exclusively intergovernmental.

## **2. Mapping treaty change in the EU: A new dataset**

There is no dataset that allows for a comparison of treaty provisions from the very origins of the now-EU to date. However, there is hardly any treaty article that has not been changed, be it in substance and or with respect to the numbering and order of provisions. The only systematic comparisons are the "Tables of Equivalences" attached to the treaties and published in the EU's Official Journal. Those are basically lists in which the new and old articles of the treaties are specified. They may be used to find provisions in case the numbering has changed and they also contain the information regarding whether a provision



has been deleted or was newly introduced. However, they carry no qualitative information and thus do not allow for substantial comparisons. Additionally, they only cover two treaties at a time

In the following I will first describe the process of assembling the dataset. I then describe the dataset at length and the analyses that can be performed with the data: First, I can trace changes in individual provisions, second I can summarise the information contained quantitatively, third, I will show how sequence analyses can be performed on the data.

### **Assembling the dataset**

The dataset I introduce covers all major treaty reform steps. Starting with the Treaty of Rome (entry into force in 1958), it contains all provisions from the Merger Treaty (1967), the Single European Act (1987), and the Maastricht (1993), Amsterdam (1999), Nice (2003), and Lisbon (2009) Treaties.

The very first step was to collect the treaty texts. Those are available from an official EU-Website.<sup>2</sup> Using the Nice Treaty as the then current treaty in force as a focus point, I proceeded as follows: I started from the first article in the Nice EU Treaty and used the attached “Table of Equivalence” to find the respective provision in the previous Treaty of Amsterdam. Then, from the Treaty of Amsterdam I again moved to the previous treaty and so forth. The same was done using the table of equivalences attached to the Lisbon Treaty.

The initial idea was to include one treaty article as one observation in the dataset. However, oftentimes articles needed to be split up in order to ascertain comparability. This was the case for example when, through treaty reform, parts of articles were either moved to another location in a successive treaty or parts of an article were altered and others remained. Individual observations can be as small as half-sentences so that each treaty is split into 1681 observations.

I validated the information contained in the official tables by comparing the treaty texts for the respective articles. In addition, I conducted a full text search for certain keywords and phrases in any individual provision in order to ascertain whether the information in the “Tables of Equivalences” was complete. In fact, I found some instances where the official tables only hinted at the most important supposedly equivalent provision, but where in fact an article was portioned into two or more articles.

I went through both the European Union and the European Community treaties from top to bottom. I included all qualitative information on individual provisions relevant for the horizontal and vertical distribution of power, as established in the previous section. This is the decision-making procedure and the Council majority requirement to be applied, as well as the

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<sup>2</sup> [http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/treaties\\_introduction\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_introduction_en.htm) [last accessed on 19/11/2010].

information concerning whether a Commission proposal was necessary for a legislative procedure to be initiated. I can also examine whether provisions allow the community institutions to adopt legislative measures or if non-legislative types of actions such as decisions are foreseen. Further, I included the policy area of each provision. Finally, I included the treaties' full text. The full list of variables contained in the dataset is in the annex of this paper (see Table 8).

**Figure 2: Screenshot of the dataset**

	refNUMBER	year	treatyNAME	originalART	policyAREA	proc	cmajSIMPLE~t
7785	553	1958	Treaty of Rome	49	Free movem	CONP [Cons	Simple maj
7786	553	1967	Merger Treaty	49	Free movem	CONP [Cons	Simple maj
7790	553	1987	SEA	49	Free movem	COOP [Coop	QMV
7791	553	1993	Maastricht	49	Free movem	COD I [Cod	QMV
7793	553	1999	Amsterdam	40	Free movem	COD II / 0	QMV
7794	553	2003	Nice	40	Free movem	COD II / 0	QMV
7797	553	2009	Lisbon Treaty	46	Free movem	COD II / 0	QMV

### Tracing individual provisions

The dataset allows one to trace the evolution of every single treaty provision in the period covered. How has decision making in a policy field changed over time? Which provisions have been introduced through which treaty? In Figure 1, I present a screenshot of the dataset as an example. The first column contains a running reference number which allows the user to match corresponding provisions. The second and third columns contain information on the treaty (entry into force and name). The fourth column holds the original article number which allows the user to find the provision in the full text version of the treaty. As can be seen, this number has changed from 49 to 40 in the case of the Amsterdam Treaty, and then to 46 with the Lisbon Treaty. This means that in both those treaties the whole of the provisions were renumbered. The next column holds the policy areas which were set according to the treaty chapter under which the provision is located. This is the area of free movement for workers. The last two columns hold information on the legislative decision-making procedure and on the Council majority requirement within those procedures. We see that while in 1958 the decision-making procedure for this particular article was Consultation, this changed first to Cooperation with the Single European Act, then to Codecision with the Maastricht Treaty, where it remains to date. With respect to the Council majority, this was first a simple majority while with the introduction of Cooperation, the voting quorum was changed to a qualified majority.

To further illustrate the structure of the dataset I have listed another example where a provision in the area of citizenship was introduced with the Maastricht Treaty. Here, we see that the variables that would have contained qualitative information were left blank in those treaties, where there was no corresponding provision. In regard to the content of article 8a, paragraph 2 in the Maastricht Treaty, we therefore learn that there was no such provision contained in the earlier treaties.

**Figure 3: Screenshot of the dataset II**

	refNUMBER	year	treatyNAME	originalART	policyAREA	proc	cmajSIMPLE~t
6021	428	1958	Treaty of Rome	.	.	.	.
6022	428	1967	Merger Treaty	.	.	.	.
6026	428	1987	SEA	.	.	.	.
6027	428	1993	Maastricht	8a (2)	Citizenshi	ASS [Assen	Unanimity
6029	428	1999	Amsterdam	18 (2)	Citizenshi	COD II / 0	Unanimity
6030	428	2003	Nice	18 (2)	Citizenshi	COD II / 0	QMV
6033	428	2009	Lisbon Treaty	21 (2)	Citizenshi	COD II / 0	QMV

### 3. Analysis

In the following, I present some basic descriptive statistics from the dataset and graphically illustrate the horizontal dimension by means of sequence analyses. This is followed by a description of the vertical dimension.

#### Horizontal dimension – descriptive statistics

**Procedures** The various decision-making procedures all differ with respect to the power distributed to the different players and the degree to which supranational actors are involved. As indicated above, this covers both extremes, from purely intergovernmental Council Decisions via the various legislative procedures (no supranational actors involved) to the European Parliament and the Commission deciding autonomously. Most prominent are legislative procedures, which comprises the Consultation procedure, the Cooperation procedure, Codecision I and II (renamed “Ordinary legislative procedure” (OLP) with the Lisbon Treaty) and the Assent procedure and Common Accords. These are the procedures through which directives, regulations, and sometimes decisions are adopted and in which the most important players are the Council of Ministers, the European Parliament and the European Commission. In addition, the Council and the Commission are both entitled in certain cases to adopt directives without any other institution being involved. The non-legislative forms of action include Parliament, Commission or Council decisions or recommendations. Altogether 13 distinct decision-making provisions can be identified. For this descriptive analysis, I included only those procedures through which legally binding acts are adopted. That is, the whole of EP, Council or Commission recommendations, albeit included in the dataset, are omitted here.

Table 1 shows both the absolute and relative numbers of all treaty provisions starting from the year 1958. We can see that the portion of provisions that foresee purely intergovernmental decision-making have continuously decreased since 1958. Yet, even in the Lisbon Treaty this decision mode is still the one that applies in a relative majority of treaty provisions. This seems surprising, but can be explained through the predominantly intergovernmental policy area of external action. Additionally, in the areas of institutional provisions and economic and monetary policy, we find mostly intergovernmental decision-making. Additionally, Table 1 allows for a comparison of relative and absolute values. Here, very much in line with what we

learn from the literature, newly introduced procedures empowering the European Parliament (i.e. Assent and Codecision I and II) become more and more popular while the relative frequency of Council decisions decreases from treaty to treaty. Still, when considering the legislative procedures in which the European Parliament is involved, even in the Treaty of Nice there are more provisions that foresee Consultation than Codecision.

**Table 1: Binding decision making provisions by treaty**

Procedure		1958	1967	1987	1993	1999	2003	2009
Council Decision	n	99	98	98	144	143	151	151
	%	71.2	71.5	61.3	54.3	48.2	47.8	41.8
Consultation	n	34	33	44	67	79	82	75
	%	24.5	24.1	27.5	25.3	26.5	26.0	20.8
Cooperation	n	–	–	9	21	5	5	–
	%	–	–	5.6	7.9	1.7	1.6	–
Codecision I/II, OLP	n	–	–	–	15	54	60	109
	%	–	–	–	5.7	18.2	19.0	30.2
Assent / Common Accord	n	2	2	5	14	15	16	25
	%	1.4	1.4	3.1	5.3	5.0	5.4	6.9
Commission Directive	n	4	4	4	4	1	1	1
	%	2.9	2.9	2.5	1.5	.3	.3	.3
Total	n	139	137	160	265	297	316	361
	%	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Only with the Lisbon Treaty is this reversed as Codecision is established as the “Ordinary legislative procedure”. The Cooperation procedure, which was introduced with the Single European Act and gave the EP a say as a “conditional agenda setter” (Tsebelis, 1994) is abolished with the Lisbon Treaty. Those provisions were mostly transferred to Codecision as we will see in the following section on sequence analysis. The empowerment of the European Parliament becomes apparent when summing up the percentages for those procedures where the Parliament has true veto power: Codecision, Assent and Common Accord. This number has risen from 1.4% in 1958 to 11% in 1993 to 37.1% in the 2009 Lisbon Treaty. The EP has clearly been a winner over the last years as we can see in detail here.

Finally, it is worth noting that the European Commission initially had the right to adopt directives in four cases, in contrast, after the Amsterdam Treaty it was left with the right to do so only in the field of undertakings in the area of public service provision (Art. 86 (3) TEC).

**Council majorities** There are six types of Council majorities in the treaties. Those are simple majority, qualified majority, unanimity, 3/5, 4/5, and 2/3 majorities, where the fractions may refer to both the number of member states or the number of votes in the Council. For the sake of simplicity at this point, I have only included the three major modes, which are simple majority, qualified majority, and unanimity. Those make up a total of 98.3%

of all decisions (total N=1654) in all treaties, so the omitted majority requirements do not bias the analysis. This is especially true as the omitted types are evenly distributed over the different reform steps.

Over time we can observe an ever increased absolute and relative use of qualified majority voting (QMV) in the Council (see Table 2). While only 53 (40.8%) of Council decision-making provisions in the Treaty of Rome foresaw QMV, this number has increased to 247 (or 68.8 % of all provisions) in the Lisbon Treaty. Meanwhile, unanimity becomes ever less important as the relative occurrence of this rule has constantly decreased: With the Treaty of Rome, 46.9% of the provisions foresaw unanimity. Until now, this number has decreased to 27%. We might expect to see more simple majority voting in Council. In fact, the absolute number of provisions where this rule applies increases from treaty to treaty. With Lisbon it would then drop, however. This is due to the fact that as a bottom line, i.e. when no Council voting rule was explicitly stated, this should be simple majority (Art. 148 (1) in the Treaty of Rome from 1958). With Lisbon, the bottom line rule was changed to QMV (Art. 16 (3) TEU Lisbon), so that former simple majority provisions were automatically transferred to QMV.

**Table 2: Council majority provisions by treaty**

Council Majority		1958	EP	1967	EP	1987	EP	1993	EP	1999	EP	2003	EP	2009	EP
Unanimity	n	61	--	60	--	66	3	108	11	116	13	100	8	97	13
	%	46.9		46.5		43.7		42.7		39.6		32.2		27.0	
QMV	n	53	--	54	--	72	--	127	14	153	52	185	63	247	114
	%	40.8		41.9		47.7		50.2		52.2		59.5		68.8	
Simple Majority	n	16	--	15	--	13	--	18	--	24	--	26	--	15	--
	%	12.3		11.6		8.6		7.1		8.2		8.4		4.2	
Total	n	130	0	129	0	151	3	253	25	293	65	311	71	359	127
	%	100.0		100.0		100.0		100.0		100.0		100.0		100.0	

**The Role of the European Commission** As outlined in Chapter 2, the European Commission's influence varies in two respects: First, with its right of initiative, second, with respect to the Council voting rule. Table 3 shows the absolute and relative number of provisions for both items. The most extreme constellation is the one where the Commission does not have the right of initiative (no agenda-setting) and the Council votes by unanimity (no margin of discretion). This leaves the Commission without any formal say in decision-making. At the other extreme, the Commission is quite influential, when it has the right of initiative (agenda-setting) and the Council votes by QMV (margin of discretion).

Table 1 shows first of all that the number of provisions where the Commission in fact has the right of initiative has always been higher than the number of provisions where this was not the case. Second, the number of provisions that leave the European Commission without influence has continuously decreased from 28.1% in 1958 to 14.4% with the Nice Treaty. However, through the Lisbon Treaty, the Commission was pushed back to the level of the Amsterdam and Maastricht Treaties. On the other hand, the provisions that give the

Commission the strongest role (row 4) have steadily increased: While this number was at 34.2% with the 1985 Treaty of Rome, it is currently at 46.9%. The grand picture therefore is that the European Commission has been a winner over the last reform steps.

**Table 3: Council majorities and the Commission's right of initiative**

		1958	1967	1987	1993	1999	2003	2009
		<b><u>No Commission right of initiative</u></b>						
Unanimity	n	32	32	37	45	49	41	61
	%	28.1	28.1	26.4	18.6	18.4	14.4	19.6
QMV	n	14	14	16	28	40	56	68
	%	12.3	12.3	11.4	11.6	15.0	19.9	21.9
		<b><u>Commission right of initiative</u></b>						
Unanimity	n	29	28	31	72	66	57	26
	%	25.4	24.6	22.1	29.8	24.8	20.3	11.6
QMV	n	39	40	56	97	111	127	146
	%	34.2	35.1	40.0	40.1	41.7	45.2	46.9
Total	n	114	114	140	242	266	281	311
	%	100	100	100	100	100	100	100

### Horizontal dimension – sequence analysis

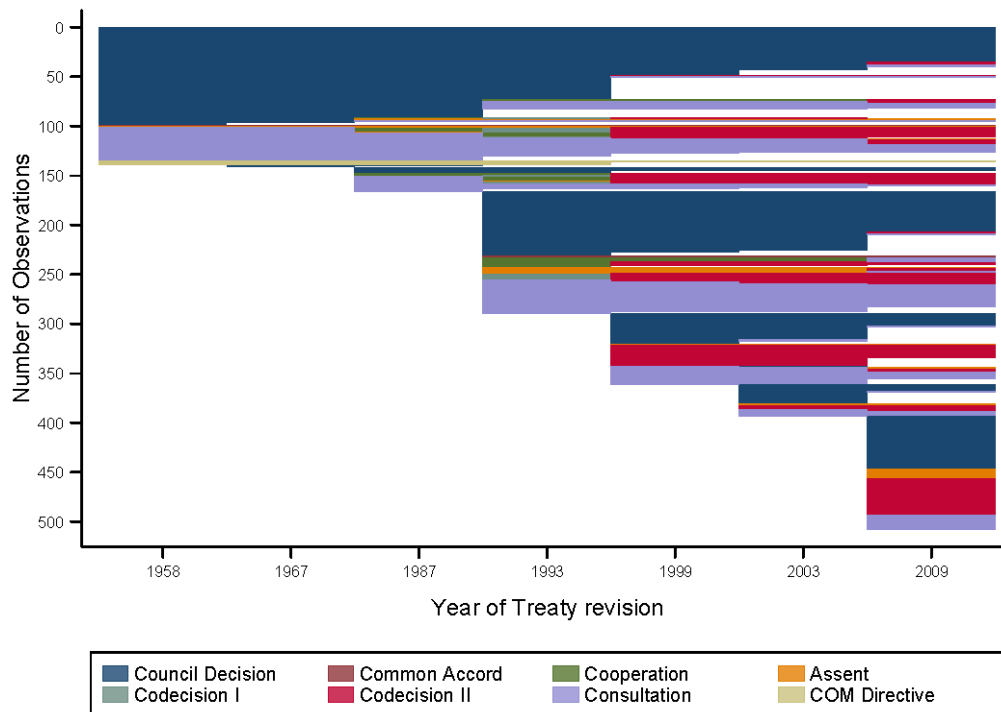
Finally, apart from mere counting, we can explore the data using sequence analyses.<sup>3</sup> This allows us to quantitatively trace the evolution of individual treaty provisions. This shall be done for legislative procedures and Council majority requirements in the following.

**Legislative Procedures** Figure 4 shows the sequences of procedures. In this chart, every treaty provision is displayed as a thin horizontal line, indistinguishable to the eye. On the x-axis, the year of treaty revision is indicated. For example, for 1958 we see several hundred Council Decisions printed in dark blue and some 40 Consultations, then, hardly identifiable, some Commission Directive provisions, some Common Accord, and some Assent (which is of course in line with Table 1). Now, when a provision persists after the next reform step and the decision mode remains the same, the colour remains, too. For this see e.g. the block of 35 Council Decision provisions at the very top of the graph, which have not changed from 1958 to now. When a decision mode is changed, the colour changes. From this figure we see that actually quite a few provisions (about one hundred) were introduced with the Lisbon Treaty alone (cf. observations 400 to 500). Note that wherever there is a white space in a graph, a provision was either abolished or had not yet been introduced. Note further that the abolition

<sup>3</sup> For this I used the STATA module developed by Ulrich Kohler, Magdalena Luniak and Christian Brzinsky-Fay (see <http://ideas.repec.org/c/boc/bocode/s456755.html>).

of a provision does not imply disintegration, but rather, that a particular provision was settled in secondary law.

**Figure 4: Sequences of procedures**



The tabular depiction of sequences (cf. Table 4) allows for a more systematic analysis. This table is to be read as follows: We find in the first line that the dataset holds 75 procedural provisions (namely Council Decisions) that only “lived” in one treaty, while we find 63 instances of such Council Decisions that survived four treaty reform steps (second line) and so forth. It is interesting to see that there is not much of a transferral of provisions from intergovernmental to more supranational modes as we might expect: Only in the third line from the bottom of this table extract can we see five cases that were introduced as Council Decisions and where the EP was then consulted later. In the second last and last columns we also see changes from Consultation to Codecision or from Consultation to Cooperation to Codecision. Still, one can see switches in only 17.5% of the total 508 observations. Thus, rather than changing procedural rules in persisting provisions, the move to supranationality occurred through the abolition of provisions that foresaw intergovernmental modes or through the introduction of provisions where supranational decision modes were applied from the beginning. From the full list we see that from the initial four provisions in which the European Commission was empowered to issue directives, three were deleted with the Amsterdam Treaty. Those were outdated provisions from the areas of customs duties, quota restrictions, and agriculture.

**Table 4: Sequences of procedures (extract)**

Sequence-Pattern	Freq.	Percent	Cum.
CD-	75	14.76	14.76
CD-CD-CD-CD-	63	12.40	27.17
CD-CD-CD-	37	7.28	34.45
CODII-	37	7.28	41.73
CD-CD-CD-CD-CD-CD-CD-	35	6.89	48.62
CON-CON-CON-CON-	27	5.31	53.94
CD-CD-	26	5.12	59.06
CON-	23	4.53	63.58
CON-CON-CON-	17	3.35	66.93
CODII-CODII-CODII-	13	2.56	69.49
CODII-CODII-	12	2.36	71.85
ASS-	10	1.97	73.82
CON-CON-	9	1.77	75.59
CD-CD-CD-CD-CD-	8	1.57	77.17
CON-CON-CON-CON-CON-CON-CON-	8	1.57	78.74
COD-CODII-CODII-CODII-	6	1.18	79.92
CD-CD-CD-CON-CON-CON-CON-	5	0.98	80.91
CON-CON-CON-CON-CON-CON-CODII-	5	0.98	81.89
CON-COOP-CODII-CODII-CODII-	5	0.98	82.87
(...)	(...)	(...)	(...)
Total	508	100.00	

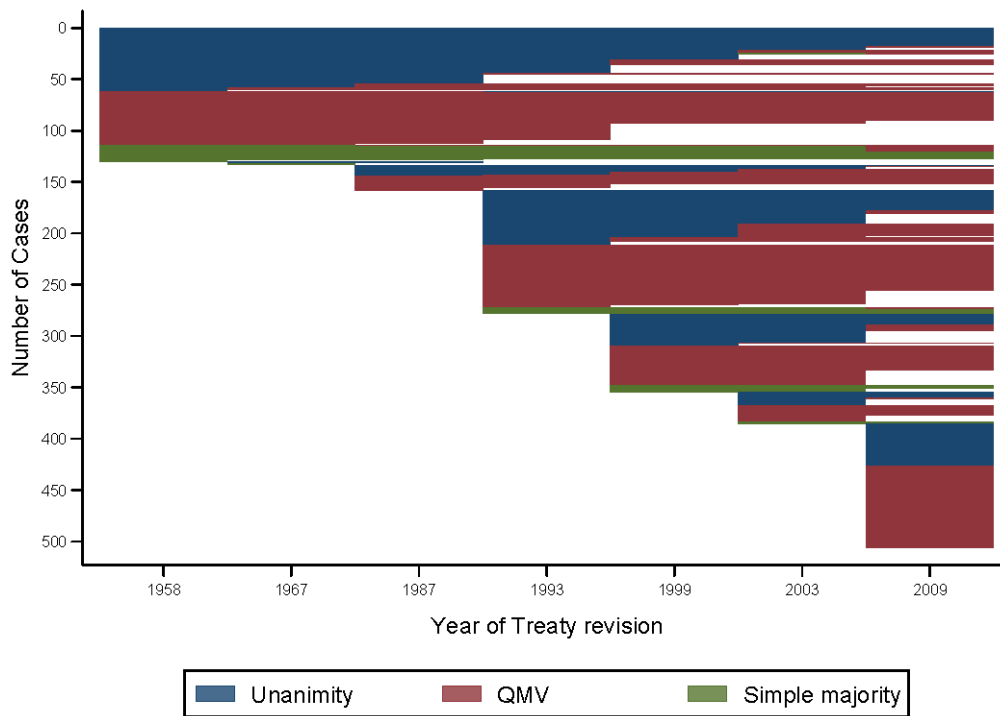
CD = Council Decision; COD = Codecision; CON = Consultation; ASS = Assent; COOP = Cooperation

**Council majorities** The exercise applied to legislative procedures is repeated here for Council majorities (cf. Figure 5). We find 506 distinct provisions. In line with what we saw for procedures, there are mostly sequences that either do not take any different value over time or that start from unanimity and then switch to provisions that reduce the member states' veto positions (from unanimity to QMV or simple majority). There are no switches from QMV to unanimity. However, there are some switches from simple majority to QMV from Nice to the Lisbon Treaty due to the change of the baseline Council voting rule described above.

Again, the table allows for a more systematic analysis. Just as with procedures, switches of Council voting rules in persisting provisions occur only rarely. In only 11.5% of sequences can we observe any switches at all.



**Figure 5: Sequences of council majorities**



**Table 5: Sequence of council majorities (extract)**

Sequence-Pattern	Freq.	Percent	Cum.
QMV-	94	18.58	18.58
QMV-QMV-QMV-QMV-	60	11.86	30.43
U-	55	10.87	41.30
QMV-QMV-QMV-	41	8.10	49.41
U-U-U-	32	6.32	55.73
QMV-QMV-	30	5.93	61.66
U-U-U-U-	29	5.73	67.39
QMV-QMV-QMV-QMV-QMV-QMV-QMV-	28	5.53	72.92
U-U-	20	3.95	76.88
U-U-U-U-U-U-U-	18	3.56	80.43
U-U-QMV-QMV-	12	2.37	82.81
(...)	(...)	(...)	(...)
Total	506	100.00	

**Vertical dimension**

The vertical dimension is about the allocation of competences. However, comparing competences of the national and the EU level is somewhat problematic. To do so we would need a catalogue containing state functions for all members, from which we could then subtract whatever competence has been transferred to the supranational level. This seems a hardly achievable task. My solution is to employ a relative measure with the Rome Treaty

from 1958 as a starting point. I will assume that this early treaty represents the lowest degree of vertical competences allocated to the supranational level. Following Alesina et al. (2005), I then assume that an increase in the number of treaty articles in the respective policy fields can be used as a rough indicator of an increase of policy competences at the EU level. This is justified in that all treaty provisions positively describe the Union's and the Community's competences. The first line of Table 6 contains the total number of articles per treaty. The second line excludes provisions from the chapters "Principles and final provisions" and "Institutional provisions", as they do not contain information on policy areas and are therefore not relevant for the vertical allocation of power. As expected, the number increases in the course of history as more policy competences are transferred to the EU level. While the treaty text initially held only 145 substantial articles, the Lisbon treaty now holds 256 articles. When looking at the mere number of policy areas at the EU level, the dataset reflects what is common knowledge, in that we see an ever increasing number of policy areas in which the European Union has a say. Currently, policy competences are allocated to the EU level in 28 areas, while this was the case with only 15 areas in the Treaty of Rome (to discriminate between policy areas I used the titles of the treaty chapters).

**Table 6: Number of articles and policy areas by treaty**

	1958	1967	1987	1993	1999	2003	2009
Articles in TEU+TEC (n)	247	254	281	377	363	380	410
Articles in TEU + TEC (excluding policy areas 1 and 23)	145	147	176	245	231	240	256
Policy Areas (n)	15	15	17	23	24	24	28

The Annex contains a more detailed table of the policy areas introduced through the respective reform steps. It also holds the number of articles per policy area. It is not overly surprising that the largest increase in treaty articles comes with the Treaty of Maastricht when, through the creation of the European Union Treaty, the Common Foreign and Security Policy and Justice and Home Affairs were included as policy areas.

What seems, a quite straightforward measure has to deal with a particular problem: Over the course of history, we observe that outdated provisions were removed from the treaties. While an increasing number of provisions certainly leads to more competences allocated to the EU level, a repealed provision cannot be equated with less competences. This is e.g. true for provisions that have simply been abolished after the policy goal has been achieved and was secured by secondary law (see e.g. transitional provisions on the elimination of customs duties (art.s 13-17) and the common customs tariff (art.s 18-29) in the Treaty of Rome). Those provisions were abolished with the Amsterdam Treaty but did not result in a reduction of power allocated to the EU level. This explains the slight drop in the number of articles in the Amsterdam Treaty compared to Maastricht.

## Conclusion

This paper has proposed a way to quantitatively assess the changes to the EU treaties and the implications of these changes for the distribution of political power in the EU polity. After briefly elaborating on the EU treaties as a constitution, I presented my dataset and explained my approach to making the degree of distribution of power over time into a quantitative measure. The dataset is the first of its type to allow researchers to systematically trace treaty provisions, be it qualitatively or quantitatively, over the whole course of EU integration. I have shown in detail how the treaties were changed in terms of horizontal and vertical distribution of power. I could thereby show that the European Parliament and the Commission have an increased amount of power at their disposal, while individual member states and the Council of Ministers have lost power.

The particular contribution of this paper is the transparent and replicable way in which I am able to show and trace formal changes in the EU treaties. This may be a starting point for both qualitative and quantitative studies of EU integration: Scholars interested in particular policy areas may make use of the dataset to easily trace provisions of interest to them. The data can be further be used to evaluate the assumptions of “classical” theories of European integration on the degree to which certain policy areas are integrated. They may also serve to replicate the studies cited in the introduction.

So far, the dataset contains no measure for the de facto importance of the individual provisions. But, more quantitatively oriented researchers may use the data to match it e.g. with legislative databases such as Prelex (Häge 2010 and Kovats 2009) in order to evaluate the practical relevance of the individual treaty provisions. Unfortunately, this database only goes back to 1976, while the Celex database (which has information on earlier legislative acts) has not yet been extracted in a systematic manner. Alternatively, the data can be used to evaluate the puzzle of an ever increasing pace of treaty changes despite constant enlargements. While enlargement may have triggered the need for reform to avoid gridlock, we would also postulate that any increase in group size would lead to more heterogeneity in preferences. This should lead to more stable institutional arrangements under the condition of unanimity in particular, and favour incremental changes, as any player may veto any decision to be taken (see e.g. Tsebelis 2002). If this holds true for the European Union we would expect that changes of the constitutional arrangement will occur less frequently, as more members join the Union. Alternately we might expect that changes would at least be more and more incremental with respect to the respective status quo. So, the data could be matched with government positions to test these various possibilities.

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## Annex

**Table 7: Variables in the dataset**

Variable	Variable Label	Specification
year	Year of Treaty revision	1958, 1967, 1987, 1993, 1999, 2003, 2007
treatyNAME	Treaty Name	String
treaty	Location of provision: Union or Community Treaty?	EU Treaty, EC Treaty
refNUMBER	Running reference number	1 to 1681
originalART	Original article number in Treaty	String
treatyTEXT	Text of the respective provision	String
policyAREA	Policy area	Taken from the Treaty chapters
legis	Legislative instrument	Decision, Regulation, Directive
proc	Decision-making Procedure	Assent, Common Accord, Consultation Procedure, Cooperation Procedure, Council Decision, Council Recommendation, Codecision I, Codecision II / Ordinary Legislative Procedure, Commission Decision, Commission Directive, European Parliament Decision, European Parliament Recommendation
comPROP	Community action only after Commission proposal?	yes / no
cmaj	Council Majority	Unanimity, Qualified Majority, Simple Majority
judREVIEW	Judicial Review by ECJ	yes/no
dateSTART	Entry into force of Treaty/Treaty amendments	Date
dateEND	Expiry date old Treaty	Date
provINTrep	Introduced or repealed provision	introduced, remains, repealed

**Table 8: Policy areas by treaty**

Policy areas	1958		1967		1987		1993		1999		2003		2009	
Principles and final provisions	x	38	x	38	x	38	x	55	x	55	x	60	x	67
Citizenship and non-discrimination	x	1	x	1	x	9	x	7	x	8	x	8	x	9
Internal market – general	x	1	x	1	x	4	x	4	x	3	x	3	x	3
Free movement of goods	x	29	x	29	x	29	x	29	x	10	x	10	x	9
Agriculture	x	10	x	10	x	10	x	10	x	7	x	7	x	7
Free movement of persons	x	26	x	26	x	26	x	34	x	22	x	22	x	22
Transport	x	11	x	11	x	11	x	11	x	11	x	11	x	11
Competition, taxation	x	18	x	18	x	20	x	22	x	17	x	17	x	18
Economic and monetary policy	x	8	x	8	x	9	x	28	x	26	x	27	x	29
Social policy	x	12	x	12	x	14	x	13	x	15	x	15	x	16
Economic and social cohesion	x	2	x	2	x	8	x	8	x	7	x	8	x	7
External action (incl. cooperation w/ third countries and econ. cooperation)	x	11	x	12	x	12	x	27	x	33	x	38	x	43
Association of the overseas countries and territories	x	7	x	7	x	7	x	8	x	8	x	8	x	8
Institutional provisions	x	64	x	69	x	67	x	77	x	77	x	80	x	87
Financial provisions	x	9	x	10	x	11	x	13	x	13	x	13	x	15
Research and technology	–	–	–	–	x	11	x	11	x	11	x	11	x	12
Environment	–	–	–	–	x	3	x	3	x	4	x	3	x	5
Justice and home affairs	–	–	–	–	–	–	x	10	x	23	x	25	x	23
Culture	–	–	–	–	–	–	x	1	x	1	x	1	x	1
Public health	–	–	–	–	–	–	x	1	x	1	x	1	x	1
Consumer protection	–	–	–	–	–	–	x	1	x	1	x	1	x	2
Trans-European networks	–	–	–	–	–	–	x	3	x	3	x	3	x	3
Industry	–	–	–	–	–	–	x	1	x	1	x	1	x	1
Employment	–	–	–	–	–	–	–	–	x	6	x	6	x	7
Energy	–	–	–	–	–	–	–	–	–	–	–	–	x	1
Tourism	–	–	–	–	–	–	–	–	–	–	–	–	x	1
Civil protection	–	–	–	–	–	–	–	–	–	–	–	–	x	1
Administrative cooperation	–	–	–	–	–	–	–	–	–	–	–	–	x	1
	15	247	15	254	17	281	23	377	24	363	24	380	28	410