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Codecision and the European Commission: a study of declining influence?[1]

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ABSTRACT This article analyses the Commission's role and influence under the codecision procedure, by focusing upon a case study of the adoption of the novel foods regulation. It argues that the Commission is neglected in the empirical literature on codecision and that its role is misrepresented by theorists who have a tendency to overstate its weakness. The article finds that the Commission exercises both agenda-setting and gate-keeping power under codecision and identifies a number of conditions that may shape the Commission's influence in other cases.

KEY WORDS Agenda-setting; codecision; European Commission; legislative influence; novel foods.

1. INTRODUCTION

In November 1993 a new procedure of decision-making came into force in the European Union (EU). Popularly dubbed 'codecision', it introduced a third reading of legislation for the European Parliament (EP), a conciliation procedure that facilitated face-to-face negotiation between the Parliament and Council of Ministers, and an unconditional power of veto for the Parliament. The procedure's introduction had a profound effect upon relations between the key EU legislative institutions: the Council, Parliament and Commission. To date much of the discussion of its impact has centred upon the relationship between the Parliament and Council, with a tendency for the Commission to be overlooked or discussed only briefly (Crombez 2001; Farrell and Héritier 2002; Shackleton 2000; Shackleton and Raunio 2003; Tsebelis and Garrett 1996, 2000, 2001), despite the indication in recent quantitative empirical work that the Commission's verdict on the Parliament's amendments can play a key role in shaping the EP's influence (Tsebelis *et al.* 2001). This oversight is surprising as any change in the Commission's institutional position has potentially significant ramifications for decision-making, future policy development in the EU, as well as for the internal dynamics of the Council.

This article redresses the current imbalance in the literature by focusing upon the role and behaviour of the Commission during the passage of a

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controversial piece of legislation, the novel foods regulation, which set an important legislative precedent in inter-institutional bargaining in conciliation. The article engages with the key literatures on codecision and finds evidence to support the consensus that the Commission's formal and informal influence has declined under this legislative procedure. However, it is argued that many of the theoretical claims made about the Commission's relative influence overstate its weakness as they overlook the institution's agenda-setting and gate-keeping roles. By presenting a detailed empirical case study of the Commission's behaviour and complementing that material with data from interviews with key decision-makers, this article provides a more nuanced and empirically accurate portrayal of the Commission's legislative influence. The article therefore fulfils a dual function: it bridges a gap in the empirical literature on codecision and it corrects the misinterpretation of the Commission's role in the theoretical literature. It also identifies a number of conditions shaping the Commission's influence that may be taken as the basis for a wider empirical investigation of this institution's role under codecision. Below in section two, the literature on codecision is reviewed, in section three the EU's legislative evolution is traced, in sections four and five the case study of the regulation on novel foods is presented and analysed, and some final conclusions are offered in section six.

2. THE COMMISSION AND CODECISION

The literature on codecision can be divided into three areas. The first is a body of theoretical work that is largely informed by rational choice new institutionalist (RCNI) approaches, and draws predominantly upon quantitative data and employs positivist research methods. These theorists analyse the way in which the formal rules of codecision shape strategic interactions between the legislative actors, who are assumed to be strategic utility maximizers seeking to resolve collective action problems (Hall and Taylor 1996: 943–6). The majority of this work is based upon spatial models of non-cooperative games that seek to capture and predict institutional behaviour under codecision (for example, see Crombez 2001; Steunenberg 1994; Tsebelis 1994; Tsebelis and Garrett 1996, 2000, 2001). Although an early criticism levelled against such work was that it failed to make the link between theory and empirical data (Scully 1997a, 1997b), recently authors have attempted to bridge the gap between theoretical abstraction and empirical reality by testing their models against datasets of amendments adopted under the different legislative procedures (Kreppel 1999; Tsebelis and Kalandrakis 1999; Tsebelis *et al.* 2001).

The second branch of literature is dominated by practitioners and is largely composed of detailed qualitative empirical case studies (Earnshaw and Judge 1995; Garman and Hilditch 1998; Judge *et al.* 1994; Shackleton 2000). Whilst less explicitly theoretical than the RCNI approach some authors located within this 'empirical school' have deployed theoretical typologies in order to analyse the exercise of influence under codecision (Judge *et al.* 1994; Shackleton

2000). One clear drawback of this work is that much of it is insufficiently rigorous in its theoretical development and the findings of the case studies cannot be used as a basis for empirical generalization. Nevertheless, this more qualitative approach can highlight aspects of decision-making overlooked by the more formalistic RCNI approach. For example, Earnshaw and Judge (1995), Garman and Hilditch (1998), Judge *et al.* (1994) and Shackleton (2000) have all pointed to the importance of informal influence and norms of behaviour in decision-making. Moreover, whilst the findings of such qualitative work may be impervious to empirical generalization, they can provide a basis for analytical generalization via the testing of theoretical hypotheses.

Falling between these two broad approaches are a number of contributions that have sought to marry the strengths of each by using detailed qualitative data to test the models of the RCNI school (Varela 1999; Rittberger 2000). This article is located within this middle ground; it uses a detailed case to highlight the Commission's role under codecision and takes the findings of that case as the departure point for identifying the conditions that shape the Commission's influence under codecision. This approach has several benefits: detailed qualitative analysis of case studies allows an empirically rich picture of inter-institutional relations to be drawn. Also, whilst the findings of such cases cannot be generalized, they can be compared to the findings from quantitative research and used to test the arguments and assumptions of RCNI models, and to develop hypotheses for future research. In the following section the literatures' interpretations of the Commission's legislative role are reviewed and it is argued that many of the claims about the Commission's influence should be treated with caution as they rest upon an incomplete or inaccurate understanding of the codecision procedure.

3. THE COMMISSION'S EVOLVING LEGISLATIVE ROLE

The main procedure of decision-making until 1987 in the EU was the consultation procedure, which basically allowed the Commission and Council to negotiate legislation between themselves, with little reference to the Parliament whose powers were effectively limited to offering amendments that could be ignored.[2] However, as the Council had to decide legislation by unanimity, the Commission's formal agenda-setting power (i.e. its ability to make proposals that other actors find easier to accept than to amend) was limited, as it had to secure the support of all the member state governments (Schmidt 2001; Tsebelis and Garrett 2001). The commitment to the Single European Market (SEM) programme, and the introduction of qualified majority voting and the co-operation procedure in 1987, strengthened the Commission's position but also increased the EP's legislative influence. Under co-operation (which applied to all SEM legislation) the Parliament was given a second reading of legislation and a conditional veto power (i.e. although the Parliament could reject legislation its veto could be overturned by a unanimous Council). The Commission plays a central role in policy-making under co-operation as it is

responsible for proposing legislation, and if it offers a positive opinion on the Parliament's amendments the Council requires unanimity to reject those amendments, but only a qualified majority to adopt them. Hence in areas where the Commission agrees with the EP's amendments the two institutions can act together to make it harder for the Council to reject the EP's proposals. Conversely, when the Commission and EP hold diverging preferences the Commission can make it more difficult for the Council to adopt Parliament's amendments.[3]

Tsebelis (1994) argues that this configuration of decision-making means that the Commission and EP share 'conditional agenda-setting power' under co-operation. To exercise this power the Commission and EP must share similar preferences and be able to make a proposal that a qualified majority of the Council will accept. However, the EP's power of rejection does give the Parliament the potential to force both the Commission and Council to accept amendments with which they do not agree, in order to prevent legislation falling. Today the co-operation procedure applies to only a limited range of policies, but between 1987 and 1997 it was used extensively. Its introduction meant that, although the Commission's agenda-setting power increased, the Commission nevertheless had to take greater account of the Parliament's views and, according to Earnshaw and Judge (1997), led to the replacement of the traditional dialogue between the Commission and Council with an informal trialogue between all three key legislative institutions.

Codecision introduced in 1993 under the terms of the Maastricht Treaty, and revised by the Amsterdam Treaty in 1997 (hereafter the Maastricht procedure will be referred to as codecision I and the Amsterdam variant as codecision II), gave the EP a third reading of legislation, an unconditional veto and the right to negotiate with the Council over the final wording of the text in a Conciliation Committee. The Commission's role in the Committee is to act as a facilitator to agreement. A key development arising from the procedure's introduction has been an intensification of informal inter-institutional contacts, particularly between the EP and Council who have developed a set of shared norms to govern the conduct of conciliation meetings. For example, it has become common practice for formal Conciliation Committees to be preceded by one or more trialogues: small informal meetings attended by only the key actors involved in negotiations (Shackleton 2000: 334–6). However, Shackleton (2000: 334–6) suggests that the consolidation of the relationship between the Council and Parliament in conciliation has excluded the Commission from decision-making and it is this fact – that the Commission has little input into the final stages of decision-making – that has led to a broad consensus across the literature that the Commission's formal legislative role has been diminished by the introduction of codecision.

Tsebelis and Garrett (2000, 2001) argue that because the EP and Council can reach agreement without the Commission in the final stages of codecision, the Commission has lost the agenda-setting power that it enjoyed under co-operation, where it *could* shape the decision-making rule used by Council in

the final stages. The fact that the Commission has no formal right to affect the outcome of legislation in the final stages of codecision makes it harder for the institution to achieve an outcome close to its ideal policy and consequently reduces its policy influence. Tsebelis and Garrett substantiate their argument with empirical evidence from Tsebelis *et al.* (2001: 596–8) suggesting that the higher acceptance rate of EP amendments under codecision I compared to co-operation may be partly attributable to the decline in the Commission's formal power. These findings lead the authors to conclude that 'the evolution of the EU's legislative regime from consultation to codecision ... has substantially reduced the Commission's legislative powers' by effectively limiting its role 'to that played by traditional national bureaucracies' which may draft legislation but have no say over its final content (Tsebelis and Garrett 2001: 374).

Crombez (2001: 105) also argues that codecision I reduced the Commission's power as it became harder for the Commission to achieve its ideal policy position because there were more actors whom its proposals had to satisfy, namely a qualified majority of the EP and Council. Crombez further contends that under codecision II, because the Commission can be excluded from conciliation discussions, its proposals become 'irrelevant' (Crombez 2001: 119).

However, some of these arguments rest upon a poor understanding of the decision-making process and should therefore be treated with caution. For example, Tsebelis and Garrett (1996: 356) incorrectly claim that under codecision I the Commission had no power to comment upon the EP's second-reading amendments before conciliation.[4] Yet, the Commission did have the right to do so, and if it offered a negative opinion on the EP's amendments then the Council required unanimity to adopt them. Thus, the Commission retained the ability to make it easier for the Council to accept than to reject the EP's amendments, and could therefore either expedite or delay the conclusion of legislative dossiers. Tsebelis and Garrett (2000: 26; 2001: 374) also claim that a key reason for the Commission's relative weakness under codecisions I and II is that the Council and Parliament are the main agenda-setters under these procedures. However, the two authors underestimate the importance of the Commission's initial right of proposal. By drafting legislation in the first place the Commission has the ultimate agenda-setting power, as it is much harder to shape legislation once it has been formally published.

Crombez's (2001) claim that the Commission's proposals become irrelevant under codecision II is also problematic. There are two main differences between codecision I and II. First, under codecision II the EP and Council can, if they wish, reach agreement at first reading. Consequently, informal contacts between the two institutions may start much earlier in the process than under codecision I, where it was unusual for the EP and Council to contact each other directly until after the Council opinion on the EP's second-reading amendments (EP official, interview 08/03/00). Second, the Council no longer has the right to reinstate its Common Position after an EP rejection, making conciliation the final stage of decision-making. The fact that the Council and Parliament are able to reach agreement earlier in the process under codecision II does not

necessarily work against the Commission, as in offering its opinion on EP amendments the Commission can still affect the decision-making rules used in Council. The Commission therefore retains significant gate-keeping power and on a formal reading of the rules is far from being 'irrelevant'.

Nevertheless, there is often a gap between the *de jure* interpretation of formal rules of decision-making and their *de facto* operation and whilst the RCNI school has produced theoretical work on the Commission, as yet there have been few empirical studies investigating how the institution has responded to the new challenges that it faces under codecision.[5] In the absence of such studies, speculation and confusion abound. For example, Tsebelis and Garrett (2000: 26) suggest that in future the Commission's influence over legislation is 'likely to rely more on informal channels – asymmetries of information, persuasion, deal-brokering – than on formal roles written into the various procedures'. By contrast, Burns (2002: 72–3) suggests that the introduction of codecision has reduced the Commission's scope to act as an informal agenda-setter within the legislative process, as the Council's and Parliament's willingness to talk to each other directly has eroded the Commission's role as their informal interlocutor. The case study in the following section sheds light upon these competing claims by providing a detailed account of inter-institutional bargaining during the passage of the novel foods regulation. The case was selected as it provides an example of a theory confirming case, which was extreme in one aspect (see Lijphart 1971: 692). As the discussion above illustrates, the theory suggests that the Commission's influence has declined because it has no formal role in conciliation. In the case of the novel foods negotiation the Commission was physically and very deliberately excluded from meetings between the Council and Parliament. The case therefore set an important informal legislative precedent that the Commission could be excluded from meetings and it is argued that this precedent has shaped the Commission's behaviour ever since.

The case is also revelatory (Yin 1994: 40–1) as it sheds light upon institutional behaviour in conciliation, specifically providing an empirical investigation of the Commission's role and influence under codecision. Interestingly, although at face value the case confirms the dominant theoretical assumptions, it also reveals flaws in that theory by showing that even in this extreme instance of the Commission's physical exclusion from meetings, the Commission was still able to exercise short-term influence over the legislation. The case therefore provides empirical support for the criticisms of the literature's portrayal of the Commission's formal powers, outlined above. The discussion and subsequent analysis are based upon data from a series of élite interviews conducted between October 1999 and June 2000, and documents from the EP's conciliation archives.

4. THE NOVEL FOODS REGULATION

The aim of the proposal for the regulation on novel foods and food ingredients was to introduce Community-wide safety-assessment procedures for the mar-

keting of new food products, i.e. foods with no established history of use such as genetically modified (GM) or functional foods (European Commission 1992). Although the aim of the regulation was to provide assessment procedures for all new food products, because many of them would be based on biotechnology the policy debate surrounding the proposal concentrated on the issue of labelling of GM foods and became the focus of a conflict between the Parliament and Commission.

The prevalent belief within Directorate-General (DG) III for Industry,[6] which was responsible for drafting the proposal, was that GM-specific labelling of food and food ingredients could stigmatize biotechnological products. In addition, DG III was concerned about the potential impact of GM-specific labelling upon trade relations with the United States (European Commission 1996). By contrast, the EP's rapporteur for the Environment Committee, Dagmar Roth-Berehndt, argued that consumers had a right to be informed if products contained or consisted of GM foodstuffs (PE Debates 13/09/93 No. 3-434: 5). At its first reading the EP adopted thirty-six amendments that restructured and reoriented the aims of the Commission's proposal by putting in place a rigorous GM-labelling scheme for novel foods (European Parliament 1993).

However, in its opinion on the EP's first reading the Commission adopted only six of the Parliament's amendments and failed to take on board any of the EP's proposed labelling provisions (European Commission 1993). Moreover, the structure of the rules of decision-making under codecision I meant that the Commission's treatment of the EP's amendments affected the decision-making rule used in Council, as the member states needed unanimity to adopt those amendments rejected by the Commission. It is consequently unsurprising that, on the whole, the Council followed the Commission's lead, taking a different position in only four instances and on only one amendment was that difference substantive (European Council 1995). That said, the amendment in question concerned GM-specific labelling. A minority within the Council was keen to ensure that the Common Position contained some labelling provisions and a new article to that effect was inserted. Despite this addition five governments still felt that the proposal's labelling provisions were inadequate. Austria, Sweden, Denmark and Germany voted against the Common Position, and the Netherlands made a statement expressing its opposition to the proposed labelling regime on the grounds that not enough products were to be subject to its provisions (European Council 1995).

The Parliament's Environment Committee was also unimpressed with the Common Position, and adopted forty-eight amendments in its second-reading report (European Parliament 1996). However, those amendments failed to gain sufficient support in the EP's Plenary, as the centre-right European People's Party (EPP) refused to vote for them. Instead, the EPP and the Party of European Socialists crafted five, less radical, compromise amendments on GM-labelling, which the Plenary adopted with absolute majorities (PE Minutes

of Sitting 11/03/96–15/03/96: 16–17). The EPP's decision to withdraw support for the Committee amendments was prompted by:

1 the belief that the labelling regime proposed by the Environment Committee was too rigorous (PE Debates 12/03/96);
2 an impatience to see the legislation adopted, as new products that could be subject to its provisions were waiting for release on to the market (PE Debates 12/03/96);
3 the belief that the Commission and a qualified majority in the Council would adopt the regulation as amended by the plenary.[7]

Yet the Commission rejected all but one of the EP's second-reading amendments, thereby prompting the need for unanimity in the Council and making conciliation almost inevitable. The fragile nature of the consensus between the member states meant that the Council Presidency was keen to avoid protracted negotiations with the Parliament and consequently proposed that the Council should accept the EP's amendments as they stood, and that in addition a series of 'clarificatory' statements should be printed in the Council's minutes (European Council 1996). The Commission agreed to this plan and the Parliament was informally consulted.

However, the EP's conciliation delegation rejected the plan outright because it believed that the 'clarificatory' statement to be printed in the Council's minutes directly contradicted the EP's second-reading amendments, which not only undermined the EP's opinion but could also create legal uncertainty. The delegation also expressed serious reservations over the Commission's behaviour, specifically its refusal to endorse the EP's second-reading amendments and its willingness to associate itself with the plan to print the contradictory statements in the Council minutes. The EP delegation believed that the Commission was more interested in reaching agreement between the member states than in seeking to reconcile the Parliament and Council positions. The depth of resentment against the Commission was such that, in the first informal meeting between the three institutions, the EP requested that Commission officials be excluded from future meetings between the Council Presidency and Parliament. Consequently, between July and September 1996 the EP and Council met without the Commission four times and Commission officials were also excluded from the EP's conciliation delegation meetings, at which the EP representatives discuss their negotiating tactics and strategy for conciliation.[8]

The Commission's exclusion from these meetings was unprecedented, but there was nothing in the Parliament's rules of procedure, in the Treaty, or in the 1993 inter-institutional agreement on the conduct of conciliation (European Parliament 1994: 13–14) stipulating that the Commission was entitled to, or should, attend either delegation meetings in the Parliament or informal meetings between the Council and Parliament. However, the EP delegation would normally want the Commission to be present, as Commission representatives sit in on meetings in both the Council and the Parliament. The Commission therefore has an informational advantage, as it is privy to

the discussions of both delegations, and is therefore in a perfect position to help forge a compromise. Consequently, the Commission can play a vital role in explaining to the EP what is going on in the Council, and suggesting to the Parliament what may be acceptable to the Council (EP official, interview 08/03/00). Thus, the Commission is expected to, and often does, play the role of interlocutor between the institutions, and is consequently well placed to act as an informal agenda-setter: as the only actor with perfect information, in conciliation the Commission can act as a political entrepreneur by crafting policy solutions acceptable to all the relevant actors (Pollack 1996: 448–9). In order to exploit its power the Commission must be able to command the trust of both sides. Yet it is palpably clear that in the case of novel foods the Commission lost the trust of the Parliament, and as a consequence the Council Presidency, rather than the Commission, was left to broker a compromise formula that both the EP and Council could accept (Irish civil servant, interview 28/04/00).

The Presidency responded to the crisis by engaging in extensive informal contacts with the EP. Of the twenty-six conciliation-related meetings held on the novel foods dossier, fifteen were informal, an extraordinarily high number at the time. The use of informal meetings as part of the conciliation process had been established under the German Presidency in the latter half of 1994 (Garman and Hilditch 1998), but the Dutch Presidency, which sat in the first half of 1997, is often credited with establishing the working practices that made such informal meetings an accepted part of reaching agreement under codecision (Commission official, interview 20/03/00). However, a senior Commission official dealing with codecision believed that it was the Irish Presidency in the latter half of 1996 that was responsible for the institutionalization of these informal meetings (interview 20/03/00). Certainly, the novel foods case offers some evidence in support of this belief. Owing to the antipathy between the Parliament and Commission, the Presidency was placed in the position of trying to achieve consensus within the Council, as well as between the Council and Parliament, which is the role that the Commission is expected to play. The Presidency set about trying to reach agreement with the Parliament through numerous informal meetings and negotiations, thereby establishing a pattern of working that became an accepted norm under subsequent Presidencies.

An illustration of the close relationship forged between the Presidency and Parliament in this case, and of the degree to which the Commission had alienated its legislative partners, is provided by the admission of a key Member of the European Parliament (MEP) involved in the delegation that in the final conciliation meeting there was a tacit understanding between the Council and Parliament not to give the Commissioner the floor, as agreement was close and it was felt that a contribution from him would be obstructive (former MEP, interview 16/06/00). The final outcome of the negotiations was a joint text that saw four of the six EP amendments fully adopted and the two further amendments partly incorporated into the legislation (European Parliament and

Council 1997). In recommending the text to the plenary the EP delegation's report took the unusual step of criticizing the way in which the Commission had approached and behaved within the conciliation, stating that

> Regrettably the delegation was faced with [an] uncooperative attitude on the part of the Commission throughout the entire decision-making process. Although the regulation was adopted under the codecision procedure, the Commission gave the impression that the Council's approval was much more important to it than Parliament's. The Commission would have done better to come to terms with Parliament's views and, prior to the second reading, make a constructive effort to find compromise solutions in order to prevent a confrontation between the Council and Parliament.
>
> (European Parliament 1997: 5)

Hence, the Parliament made clear that although the Commission still retained the right to shape the decision-making rule in Council after the EP's second reading, the Parliament believed that the Commission should have surrendered that right in order to act as a neutral arbiter between the Council and EP, thereby obviating the need for conciliation.

5. ANALYSIS

The events surrounding the adoption of the novel foods regulation were in many respects exceptional as it is rare for the Commission to be deliberately and physically excluded from meetings.[9] The case provided a critical turning point in the evolution of the codecision procedure, as in excluding the Commission from meetings the EP was able to set a legislative precedent and underline the fact that the Commission had no formal right to attend informal meetings between the Council and Parliament. The case also saw the use of numerous informal meetings between the Council and Parliament, and the Presidency's willingness to engage in such informal dialogue contributed towards the institutionalization of a now accepted norm of codecision. The case therefore offers strong support to Shackleton's (2000) claim that the Commission can be excluded from decision-making in conciliation, and to the arguments of Tsebelis and Garrett (1996, 2000, 2001) and Crombez (2001) that the Commission's legislative influence has declined under codecision because the Council and EP can reach agreement without it. However, in drawing lessons about the Commission's legislative influence under codecision, a distinction must be drawn between the outcomes in this specific instance and the long-term implications arising from it.

For example, when analysing the Commission's influence with regard to the novel foods regulation, it should be remembered that the Commission proposed the regulation in the first place and therefore shaped its content in a fundamental way. Furthermore, the Commission's negative opinion on the EP's first-reading amendments made it more difficult for the Council to adopt those amendments and in only one instance was there any significant difference

between the positions adopted by the Commission and Council. Furthermore, the EP's plenary adopted less radical second-reading amendments partly because of its awareness that the Commission would not support the Environment Committee's amendments. Thus by making clear its opposition to the Environment Committee's opinion, the Commission was able to shape the position taken by the EP at its second reading.

Moreover, although the Commission's negative opinion on the EP's second-reading amendments may have infuriated the Parliament and ultimately led to the Commission's exclusion from meetings, by issuing its negative opinion the Commission was able to prevent a qualified majority in the Council adopting the legislation as amended by the Parliament. Whilst the joint text incorporated four of the EP's amendments, the two to which the Commission was most opposed were not fully adopted.[10] Thus, although the legislation went further than the Commission wanted, it was not as far from the Commission's ideal policy as would have been the case had a qualified majority in the Council fully adopted the Parliament's second-reading amendments.

Finally, although the Commission was excluded from some informal meetings between the Council and Parliament, it still took part in internal Council meetings and therefore (in theory) continued to shape Council opinion. Hence, overall, whilst it is clear that the Commission's ability to act as an informal agenda-setter was circumscribed in this case, and that the final legislative outcome was not the Commission's ideal policy, the Commission still played a central role in shaping the legislation and the final text was closer to its ideal policy than would have been the case if either the Environment Committee's or the EP's second-reading opinions had been adopted. This point is illustrated in Figure 1, which depicts the institutions' preferences in one dimension, which in view of the subject of dispute in this case has been modelled as a dimension of labelling. It is assumed that there are seven Council members with Euclidean preferences, that governments 1 to 5 can form a qualified majority and that 5 to 7 can form a blocking minority. Potential blocking minority coalitions are often overlooked in such models which tend to concentrate on the qualified majority groupings (for example, see Crombez 1997, 2001; Tsebelis and Garrett 1996, 1997, 2000, 2001); however, as the discussion of the novel foods case has shown, the presence of a potential blocking minority can be important in determining legislative outcomes. The figure illustrates that government 5 – the Dutch – is the swing government,

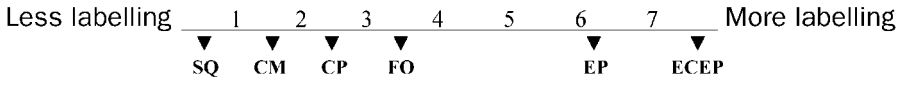

Figure 1 Institutional preferences on novel foods

Notes: The Commission's ideal policy is represented by CM; the status quo by SQ; the EP Environment Committee's second-reading opinion by ECEP; the EP's second-reading opinion by EP; the Common Position by CP; and the final outcome by FO.

which was able to shift the outcome closer to the EP's preferred position. The figure also shows that whilst the final outcome was not the Commission's ideal position, it was closer to CM than either ECEP or EP, both of which the Commission was able to block.

The long-term implications of the case are more complex. By setting the precedent of physically excluding the Commission from meetings, the Parliament underlined the Commission's limited formal role in the final stages of decision-making under codecision I and made clear that the Commission faced the threat of exclusion from informal meetings whenever it lost the trust of one of the institutions or failed to fulfil its role as a neutral arbiter. In addition, the successful use of extensive direct informal contacts between the Council and Parliament and the intensification of their use in subsequent years has eroded the Commission's potential to act as an informal interlocutor. The fact that the Council is now willing to engage in such contacts even prior to the EP's first reading under codecision II could contribute further to the Commission's exclusion from dialogue between the co-legislators, as predicted by Burns (2002).

However, since the novel foods debacle, the Commission has responded robustly to the challenges to its authority under codecision. Commission officials lobbied the Council and EP to expand the Commission's formal role in decision-making under codecision II and when officials in the Secretariat General of the Commission were asked to draft the joint declaration on the practical arrangements for the operation of the procedure, they were able to write the institution back into the process (Commission official, interview 15/11/99). Unsurprisingly, the declaration explicitly mentions the Commission throughout, and it has a formal role at every stage of decision-making (European Parliament, Council, Commission 1999). The Commission's codecision unit also now actively encourages Commission rapporteurs in the competent DGs to contact the EP early in the process in order to build good relations and informal dialogue, thereby minimizing the risk of exclusion and maximizing the level of information available to Commission rapporteurs (Commission official, interview 15/02/00). Thus, the Commission has sought both to expand its formal role and to build closer informal relations with the Parliament, thereby placing it in a better position to exploit informal channels of influence.

Nevertheless, the EP's pointed criticism of the Commission's refusal to adopt Parliament's second-reading amendments in this case highlights a key dilemma facing the Commission under codecision. The Parliament made clear that it expected the Commission to surrender its legislative gate-keeping rights after the EP's second reading in order to facilitate agreement between the Council and Parliament. The case illustrates that a key challenge facing the Commission under codecision is pressure from either the Council or Parliament (or both) for it to surrender its policy preferences in order to craft agreement between the two co-legislators. If the Commission is not prepared to do so, it may be excluded from decision-making. The trend for legislation to be concluded as

early as possible under codecision II raises the prospect of Commission officials increasingly being faced with the choice of either exercising their legislative prerogative or behaving neutrally.

However, the novel foods case also suggests some conditions that may shape the Commission's ability to influence legislation, and by being aware of these conditions officials may be able to shift legislative outcomes closer to their preferred policy. The key variable in the novel foods case was the location of institutional preferences. The fact that the Commission and Parliament held divergent preferences, and that a blocking minority in the Council supported the EP, tipped the balance of power away from the Commission in conciliation. This finding fits with Tsebelis and Garrett's modelling of the Commission as siding with the Council rather than the Parliament along a dimension of regulation (Tsebelis and Garrett 2000, 2001). However, their models tend only to take account of the preferences of a qualified majority of the Council, whilst neglecting the behaviour of potential blocking minorities. Yet, as this case showed, even when the Commission sides with a qualified majority in the Council, if the EP can secure the support of a minority the Commission's position will be weakened. Thus the preferences of both majority and minority coalitions in the Council can play a part in shaping the Commission's influence. If the Commission wishes to influence legislation in future, we would expect it to identify possible coalitions supporting its position in the Council and Parliament and to seek to shape their preferences from the earliest opportunity.

Another condition that shaped the Commission's success in this case was asymmetric impatience. The Parliament and Council were more impatient than the Commission to secure the adoption of legislation and ultimately they could forge agreement in conciliation without the Commission, which adopted a poor strategy for securing its policy preferences. By lobbying the EP to change its second-reading opinion and then voicing its opposition to the EP's second-reading amendments, thereby making conciliation inevitable, the Commission angered the Parliament and showed a lack of awareness about its formal position within the conciliation process, for which it was punished by exclusion. However, the Commission's subsequent attempts to strengthen its formal and informal position within the codecision procedure does seem to demonstrate that it is capable of learning lessons from past mistakes.

Finally, another key condition shaping legislative outcomes was the relationship between the relevant actors. Thus far the Commission and Parliament have been discussed as unitary actors; however, the Commission is a 'multi-organization' (Cram 1994) comprising twenty-three DGs, and the EP currently consists of 626 members from different states who sit in different political groups and different committees. The fact that the rapporteur in this case was a German Socialist, who sat on the Environment Committee; that the lead Commissioner was a German Free Democrat Party member who was in charge of the industry DG; and that the rapporteur had lost her amendments to the report following Commission lobbying of the EPP all played a role in shaping the tenor of the negotiations on novel foods. However, the Commission seems

to have learnt from past mistakes in this area as well: an informal norm has now developed whereby Commission delegates to the Conciliation Committee, who have a poor personal relationship with key MEPs on the Committee, are encouraged to take a less active role in meetings involving the Parliament (interviews with former MEP 16/06/00; EP official 08/03/00; Commission official 08/03/00). Thus, whilst the Commission faces significant challenges to its legislative authority under codecision, by being flexible and seeking to improve its informal relationship with the Parliament, it has been able to strengthen its legislative position.

6. CONCLUSION

A number of conclusions emerge from this discussion of the novel foods conciliation. First, and perhaps most importantly, the case illustrates that the Commission is still a central actor under codecision I and II because it proposes legislation and is able to influence the decision-making rules used in Council. The findings therefore correct the theoretical literature's rather skewed portrayal of the Commission's influence: for example, Crombez's (2001) claim that the Commission is 'irrelevant' has been shown to be inaccurate. However, the case also demonstrates that in the absence of a formal role the Commission faced the challenge of exclusion from informal meetings under codecision I and, as contended by Burns (2002), its role as an informal interlocutor was eroded as a consequence. Hence, the case offers qualitative empirical evidence to support the argument that the introduction of codecision I weakened the Commission's formal and informal legislative influence. Moreover, with the intensification of direct informal contacts between the Council and EP under codecision II, the Commission's position may be further weakened in future. Nevertheless, as predicted by Tsebelis and Garrett (2000), the Commission has sought to improve its ability to influence legislative outcomes under codecision II by building informal contacts with the EP. In addition, it has tried to bolster its formal position by ensuring that it has a role at every stage under codecision II.

The case also highlights a further challenge that codecision poses for the Commission: even when the Commission retains its legislative prerogative and can continue to shape the rules of decision-making in Council, it may come under pressure to surrender that prerogative in order to perform the role of crafting agreement acceptable to the executive (in this case the two co-legislators). The events of the novel foods conciliation demonstrated that if the Commission insists upon its legislative rights it faces the threat of exclusion. Thus, the case offers a degree of support to Tsebelis and Garrett's (2001) portrayal of the Commission as an institution increasingly expected to play the role of a bureaucracy rather than a legislator. Furthermore, it points to some of the conditions that shape the Commission's influence under codecision. The location of institutional preferences, especially of minority coalitions in Council, was crucial. Although the Commission found itself in agreement

with a qualified majority in the Council, its position was weakened by the minority coalition siding with the Parliament. The Council and Parliament's impatience to see the legislation adopted swiftly also worked against the Commission, which showed a lack of awareness of its formal role and little skill at playing the legislative 'game'. Finally, the institutional and political allegiances of the actors played a key role in shaping the way in which the conciliation unfolded.

Whilst these conditions were clearly specific to this case, they can nevertheless be taken as a departure point for future research as they point to three hypotheses.

1 In order to be able to secure an outcome close to its ideal policy, the Commission must share preferences with a majority of both the Council and the EP, or with a minority of the Council and a majority of the EP.
2 If the Commission, Parliament and Council are equally impatient, or if the Commission has the same level of impatience as either the Council or the Parliament, the Commission is more likely to achieve an outcome close to its ideal position.
3 The Commission is less likely to achieve its policy goals if it has a poor relationship with the relevant officials in the Parliament.

It seems likely that in future the Commission will continue building early informal contacts with officials in the Council and EP and will seek to anticipate and shape the Council's and EP's policy preferences. It is unclear, however, what the Commission is likely to do if, as in the novel foods case, it has different preferences from the Council and EP. The novel foods case suggests that it would be dangerous for the Commission to seek to impose its preferences or to block or withdraw legislation, as such action can have long-term implications. It seems likely, therefore, that if faced with similar circumstances in future the Commission will cede to the preferences of its legislative partners.

Finally, it is worth returning to the principal aim of this article, which was to shed light on an under-researched aspect of the codecision procedure by presenting an empirical case study. One of the most important findings to have emerged is 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. Consequently, if future research is to offer any genuine insight into the exercise of influence under codecision it should include qualitative analysis of individual pieces of legislation.

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NOTES

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2 Although after the 1980 isoglucose ruling the EP could seek to delay legislation.
3 The same is true under consultation when qualified majority voting is used.
4 Tsebelis and Garrett have not made this claim in their more recent work (see Tsebelis and Garrett 2000, 2001), but they have not acknowledged their original error or explored the implications arising from the Commission's right to comment on the EP's second-reading amendments.
5 Tsebelis *et al.* have conducted quantitative analysis of the Commission's treatment of the EP's amendments under codecision (Tsebelis *et al.* 2001). Rasmussen has produced an unpublished dissertation that includes qualitative case studies focusing on the Commission's role under codecision (Rasmussen 2001).
6 Now known as DG Enterprise.
7 Internal EP memo.
8 Taken from internal EP minutes of conciliation proceedings.
9 According to a Commission official (interview 20/03/00) it has happened only twice, in this and one other case.
10 In its opinion on the EP's second-reading amendments the Commission expressed strong opposition to Amendments 51 and 55 (European Commission 1996), neither of which was fully incorporated into the proposal (European Parliament and Council 1997).

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