Voting in the Consensual Council*

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ABSTRACT

In the Council governments refrain from opposing new legislation at the final voting stage, although preferring the existing policy to the proposed legislation. This type of behaviour is attributed to the norm of consensus. We evaluate the strength of this norm by combining positional data with voting data on 44 controversial directives. We measure the magnitude of the norm of consensus. The results show that there is a positive, but very weak, relationship between the spatial location of a government and its actual voting behaviour. However, all governments are substantively more supportive of new legislation than the spatial model predicts. Nevertheless, on salient issues the norm of consensus breaks down. The norm is hence best understood as a conditional.

Keywords: Council, Voting, Legislative Studies

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The Council is the main decision-making body of the European Union (Hayes-Renshaw and Wallace, 2006). Until the late 1990s voting in this body was secret. Following the call for transparency in international organisations (Stasavage, 2004), the Council started to publish the minutes from their meetings. This development has spurred new research on voting in the Council (e.g. Hagemann and Høyland, 2008; Mattila and Lane, 2001; Mattila, 2004, 2009). This line of research has demonstrated that the vast majority of decisions in the Council are adopted unanimously. Dissent occurs in a minority of the cases. Nevertheless, interviews with decision-makers suggest that governments hold different positions on EU policies (Thomson, Stokman, Achen and König, 2006). This pattern has been described as the *norm of consensus* in Council decision-making (Lewis, 2000, 2003; Heisenberg, 2005).

We combine positional data with voting data in order to evaluate to what extent governments base their voting decisions on a comparison between the status quo and the new policy and measure the extent to which the norm of consensus changes the probability that a government will vote in favour of a proposal. Instead of measuring “ideal - points”, we measure the deviation from the prediction of the spatial model. This deviation can be interpreted as a measure of the norm of consensus.

The next section situates our contribution in the existing literature. Although the different strands in the literature have made valuable contributions by either shedding light on bargaining processes or on voting behaviour, the interaction between issue positions, the norm of consensual decision-making and voting behaviour is not fully understood. We can think of the norm of consensus as a fixed cost of dissenting. Some governments may have a higher cost than others. A conditional formulation of the norm of consensus could imply that governments oppose if the legislation is sufficiently controversial. We then describe the data and method employed to test these two formulations of the norm of consensus. We combine positional data on 104 issues on 44 directives (Thomson et al., 2006) with voting data on those 44 directives (Hagemann, 2006) and use a Bayesian MCMC statistical approach. We find that issue-positions are a weak predictor of voting behaviour in the Council. The norm of consensus is by far the predominant predictor of
governments’ behaviour at the voting stage. However this effect is not constant across
governments. For example, Ireland behaves in a manner consistent with a strongly inter-
 nalised norm of consensus, while Spain and Portugal do not. Furthermore, the norm of
consensus is conditional on legislation not being too controversial. If the existence of the
norm of consensus is conditional on non-controversial, i.e. consensual legislation, it may
not be particular helpful for understanding politics in the European Union.

BACKGROUND

The Council is a complex institution. It shares executive functions with the Commission
and legislative functions with the European Parliament. The Council members are, first
and foremost, national politicians appointed by their Member States, but at the same time
also ambassadors of the agreements and decisions taken by the EU in their home countries.
The Council meets in different configurations based on the subjects addressed, and usually
the ministers with the relevant specialist responsibilities meet in these configurations.
Before these meetings there are extensive preparatory phases where the proposals are
discussed at the working group level and then passed on to COREPER, the committee
of the permanent representatives from each Member State. Most decisions (70 %) are
hence made before reaching the Council level in practice (Hayes-Renshaw and Wallace,
2006). But the Council still has to adopt all legislative decisions. Mattila and Lane (2001)
show that the Council, in the period from 1994 to 1998, had a preference for finding a
solution that is acceptable for all Member States, and that the expansion of memberships
(from 12 to 15 states) did not affect voting patterns in any significant way. In general,
the tendency is for one or two countries to oppose the majority and rarely three or four
countries. Heisenberg (2005, 68) explains this tendency as the result of a more than
40-year long history of negotiations among the same partners. The new members are
immediately introduced to the norms governing this culture of consensus. Because of
the high frequency of meetings and negotiations, she stresses that the trust among the
partners is very high and that reputation matters a lot. Negotiations may hence be more
personalised in the Council than in other multilateral settings (Heisenberg, 2005, 68). This institutional setting also allows for a diffuse form of reciprocity where the different actors do not expect their needs to be immediately accommodated (Lewis, 2000, 2003). Instead the actors engage in sequential exchange with long time horizons, which again facilitates a stable norm of consensus. This norm is also evident in the new EU. Thomson (2009) concludes his analysis regarding actor alignment after the enlargement by noticing the absence of clear winners and losers, and takes this as support for both the continuation of consensus-based decision-making and the EU’s capacity to deal with the challenges that the enlargement presented for the decision-making processes. Even though the extensive working group level and the norm of consensus facilitate few clear winners and losers, it is still possible to determine some patterns of bargaining and conflict in the Council.

The main dataset on the positions of EU actors on key policy-issues is the pre 2004 enlargement “Decision making in the European Union” project (Thomson et al., 2006) and data collected using the same research design after the 2004 enlargement (Thomson, 2009; Arregui and Thomson, 2009). The “Decision making in the European Union” (DEU) dataset consists of Member States’ policy positions on 174 controversial issues raised by 70 legislative proposals initiated by the Commission. The information was collected through interviews with 125 experts and the legislative proposals were subjected to either the consultation procedure or the co-decision procedure. The proposals were introduced during or before December 2000, and were on the agenda in 1999 or 2000. The Commission and the European Parliament were attributed positions in addition to the then 15 Member States, and all 17 actors’ positions on each issue were estimated along a standardised policy scale with values between 0 and 100 in which the distances between the actors reflect the political distance between them (Thomson and Stokman, 2003). Also, the reference point (the status quo), the decision outcome of each issue, and the level of salience that each actor attached to each issue were defined along this continuum. At a later stage, a similar research design was applied to 23 proposals after the 2004 enlargement. The positional data have mainly been used to examine the relative power balance between the institutions in the context of legislative decision-making and
to test various formal models of bargaining in the Council (Thomson et al., 2006). But
the data have also been used to examine Council negotiations and shifts in positions as
well as policy space and actor alignments in a multivariate manner.

Thomson et al. (2006) find that none of the more complex models generated more
accurate predictions than the compromise model (a weighted mean average model). Al-
though simple in nature, the compromise model performed better than many of the more
advanced contenders. Thomson and Hosli (2006) take advantage of this model’s predic-
tive power to test which concept of balance of power, the Council-centric view or the
supranational view, best predicts decision outcomes. By estimating one variant of the
model for each view, they show that the Council-centric variant has a lower mean average
absolute error than the supranational variant regardless of whether the consultation pro-
cedure or the co-decision procedure are the applied procedure. Hence this suggests that
the Council is the most powerful institutional actor in EU legislative politics. Arregui
and Thomson (2009) use the predictions of the compromise model in their analysis of
the determinants of bargaining success before and after enlargement. On the basis of
this model and its notion that decision outcomes are located around the centre of the
actors’ preference distribution, they expected and found that the outcomes are close to
the positions of actors with moderate positions. Also, according to the compromise model
salience matters and their analyses confirm this; decision outcomes tend to be closer to
the positions of governments that attach higher levels of salience to that explicit issue.
Another finding is that large states have less bargaining success than their smaller coun-
terparts both before and after the enlargement with the new states mostly located in the
group of small Member States. Arregui and Thomson (2009) explain this by indicating
that the smaller states have a narrower range of interests and hence can argue stronger
that their position, in fact, is in their essential interest. This finding is also confirmed by
the analysis by Arregui (2008) on shifts in policy positions where it is shown that large
states (before enlargement) make larger concessions than small states when comparing
initial positions with final positions at the last stage of decision making.

The analyses based on voting records have several similarities with analyses based
on positional data. Before we outline these similarities, it could be useful to address voting in the Council and this data source more thoroughly. First and foremost, the Council does not vote in a formal sense of stating positions or hands. Actual and explicit voting takes place only when some countries contest the proposals during the negotiations. Usually it is the chairperson that keeps track of the different governments’ positions and voting is hence of a more informal character when countries do not oppose the proposal (Mattila, 2004, 30). But if there is any contestation, those governments that are opposing or abstaining can choose to record this officially and they can also choose to record a formal statement. These statements are used to signal to home governments that the representative has stressed his or her position on a piece of legislation, but was reluctant to take a more drastic step and prevent consensus (Hagemann, 2007, 1), and are included in the Council minutes or posted on the Council website following the adoption of the proposal. The contestation levels vary from policy area to policy area; agriculture and fisheries and issues related to the internal market are the most contested ones (Mattila and Lane, 2001, 39). The voting data are coded as binary decisions, and under qualified majority voting (QMV) both abstentions, negative votes and formal statements (if the scholar choose to include these) are coded as “no” votes. When the unanimity rule applies, abstentions are not coded as “no” votes. The number of votes attached to each country is estimated on the basis of each country’s population and the threshold for majorities. In the EU15, the EU primarily considered in this paper, QMV means that 62 out of 87 votes are needed for the adoption of a proposal to be successful.

Because of the differences in voting power, some of the studies based on voting records also advocate a difference between large- and small Member States. Heisenberg (2005) shows that the five large Member States (EU15) account for 46 % of the votes against and 54 % of the abstentions, and that the smaller Member States rarely vote no or abstain from decisions. This suggests that country size matters for the likelihood to oppose decisions at the final stage of decision-making. Mattila (2004) also finds data support for a large versus small countries dimension in addition to a left-right dimension and an independence-pro-integration dimension. He believes that this dimension is more
related to issues of political culture and national pride than the idea that large countries
are overrun by the small countries in the negotiations. Mattila and Lane (2001) also
find support for the large versus small-countries dimension, but Hagemann (2007) shows
that following the enlargement (EU25) the country-group that is voicing their opposition
the most frequently is in fact a group of medium-sized members rather than the largest
countries of the EU.

The studies on voting records also find support for a North-South dimension, which
is partly theorised as the conflict between the net recipients and the net contributors to
the EU budget in Council voting (Mattila and Lane, 2001; Hayes-Renshaw and Wallace,
2006). Mattila (2009) finds evidence for this dimension also after the enlargement, and
evidences that the political space of the Council is two-dimensional. In addition to the
North-South dimension, the analysis also detects a dimension that seems to be related to
the enlargement. Hence Mattila (2009), like Thomson (2009), advocates that a North vs.
the South and the East pattern has replaced the traditional North-South dimension in the
enlarged EU. Related to the enlargement (EU25), Hagemann (2007) shows that the level
of disagreement, which is recorded officially in voting has not increased significantly. But
interestingly she finds that opposition is increasingly voiced in formal statements rather
than via voting.

We match the positional data (Thomson et al., 2006) with votes and formal state-
ments from the Council minutes to test the spatial model, and evaluate to what extent
the norm of consensus guides behaviour once positions are accounted for. There are sev-
eral advantages with this approach to analysing decision-making in the Council. First,
the matching of these two data sources, in this manner, has not been done previously.
Second, instead of measuring “ideal - points” (Hagemann and Høyland, 2008; Mattila,
2009), we are able to measure how much governments deviate from their positions when
voting. Third, instead of using the few negative votes in the voting records as a proxy
for the norm of consensus, we measure the magnitude of this norm by interpreting the
deviation between each member state’s position and actual vote as a measure of the norm
of consensus, controlling for controversial issues.
In order to clarify how we intend to evaluate the unconditional and the conditional version of the norm of consensus we introduce a little bit of notation. Let \( x_{ik} \) be the ideal point of actor \( i \) on vote \( k \). Let \( q_k \) represent the status quo policy-outcome and \( p_k \) represent the location of new policy proposal on the real line. Assume that actors have loss functions over the policy space. Utility maximising implies that legislator \( i \) votes yes if \( U_{ik}(-|x_{ik} - p_k|) > U_{ik}(-|x_{ik} - q_k|) \) and no if not. We introduce \( \theta \) as the norm of consensus. It causes legislator \( i \) to vote yes if \( U_{ik}(-|x_{ik} - p_k| + \theta_i) > U_{ik}(-|x_{ik} - q_k|) \) and no if not. If \( \theta > 0 \) there would exist some combinations of \( p \) and \( q \) such that legislator \( i \) would vote in favour of the new policy \( p \) even if she preferred the status quo policy \( q \) to the new policy \( p \).

In other words, \( U_{ik}(-|x_{ik} - p_k|) < U_{ik}(-|x_{ik} - q_k|) \) and \( U_{ik}(-|x_{ik} - p_k| + \theta) > U_{ik}(-|x_{ik} - q_k|) \) both hold. It is of course also possible to think that \( \theta \) varies across actors. This allows for the possibility that two actors, \( a \) and \( b \), with identical policy preferences, both prefer \( p_k \) to \( q_k \), will vote differently because \( |x_{ak} - p_k| + \theta_a > |x_{ak} - q_k| \) but \( |x_{bk} - p_k| + \theta_b < |x_{bk} - q_k| \) even if \( x_{ak} = x_{bk} \). If \( \theta \) is the same across actors, it makes sense to talk about a common norm.

The conditional version of the norm of consensus can be understood as a proposal-specific term \( \delta_k \). If \( \delta_k \) is positive, it increases the utility of supporting proposal \( p_k \). If it is negative, it decreases the utility. In this situation, utility maximising behaviour for actor \( i \) on vote \( k \) implies voting yes if \( U_{ik}(-|x_{ik} - p_k| + \theta_i + \delta_k) > U_{ik}(-|x_{ik} - q_k|) \) and no if not. It is easy to see that if \( \theta_j + \delta_j = 0 \), we go back to the standard spatial model. Finally, let \( \beta \) capture to what extent the policy position \( |x_{ik} - p_k| - |x_{ik} - q_k| \) matters for the voting decisions.

The pure understanding of the norm of consensus implies that:

1. \( \beta > 0 \), on average, positions guide voting behaviour as governments tend to prefer new legislation to existing,

2. \( \theta > 0 \), \( \forall i \), governments vote in favour of legislation even if preferring the status quo

3. \( \delta_k = 0 \), \( \forall k \), there are no legislation specific effects.

If the third element does not hold, it means that the norm of consensus is conditional.
DATA AND METHOD

We combine positional data on 44 controversial directives (Thomson et al., 2006) with voting data from the minutes of meetings of the Council of Ministers in the period 1999 - 2001 (Hagemann and Høyland, 2008). As introduced previously, the former dataset is compiled on the basis of the assessment of the initial positions of actors and policy alternatives made by experts involved in the negotiations of the directives. The latter dataset contains the formal voting decisions and formal statements recorded in the official minutes or posted on the Council website. We have only included those directives in the two datasets that we were able to match. The positional dataset contains the positions on 104 issues on 44 directives. There are 44 corresponding voting decisions. In the positional dataset, the actors and the policy alternatives are located on a policy-scale ranging from 0 to 100 on all issues. However, governments only vote to support or oppose a directive as a whole. We calculate the stated utility change for each government having the new proposal adopted by subtracting the utility-loss of the status quo policy from the utility loss of the new policy. If this sum is over 0 it implies a utility gain from adopting the new policy. If it is below, it implies a loss. The predicted behaviour of each government is to support those policy-shifts that imply a utility gain, and oppose the other policy shifts.

There is not a one-to-one relationship between voting decisions and issue-positions. Some directives have positional data on more than one issue. We hence estimate a directive-specific parameter that capture variation in the likelihood of a supportive vote that is common to all issues on the directive. We label this term $\delta_k$ where $k$ runs from 1 to 44.

To capture to what extent the utility of the different policy alternatives matters for the likelihood of supporting the new policy, we estimate $\beta$, a parameter that measures to what extent utility considerations matter for government $i$’s, on issue $x$, likelihood of supporting the vote. Here, $j$ captures the issue, it runs from 1 to 104. This term is hence $\beta * x_{i,j}$.

The norm of consensus is measured by the term $\theta_i$, it estimates the utility loss gov-
ernment $i$ is prepared to accept and still support the new policy. If $\theta_i$ is 0, it means that government $i$ is voting in line with the logic of the spatial model. If it is positive, it means that government $i$ attaches positive utility to being on the winning size of adopted legislation. A positive $\theta$ can be interpreted as a norm of consensus.

We test two different model-specifications, the unconditional and the conditional norm of consensus models. If errors are extreme-value distributed, the models can be parameterized in terms of a hierarchical logistic model (Clinton, Jackman and Rivers, 2004).

\begin{equation}
Pr(y_{(k,i)} = 1) = \logit^{-1}(\beta x_{(i,j)} + \theta_i)
\end{equation}

\begin{equation}
Pr(y_{(k,i)} = 1) = \logit^{-1}(\beta x_{(i,j)} + \theta_i + \delta_k)
\end{equation}

Model 1 is the unconditional model where $\beta$ captures the average effect of positions on the voting behaviour, and $\theta_i$ captures the effect of the norm of consensus on the voting behaviour of government $i$. Model 2 is conditional as it also estimates a separate intercept $\delta_k$ for each directive.

Our priors are diffuse. We assume that $\beta$, $\delta$ and $\theta$ are drawn from a normal distribution with mean 0 and standard deviation 100. It should be clear from the model that $\delta$ varies by vote, $\beta$ is common across issues, and $\theta$ varies by government.

We estimate the model in JAGS (Plummer, 2009). The JAGS code is included in the appendix. We ran one MCMC chain for 2 million iterations after an initial adaptation stage consisting of 1 million iterations. We stored every 100\textsuperscript{th} iteration as initial tests suggested slow mixing. Heidelberg tests suggest that the model has converged (Gill, 2008, 485 - 489).

RESULTS

Before we discuss the results from the model, it would be valuable to illustrate the country differences by comparing the negative positions during the negotiations with negative
votes or statements recorded at the Council meeting that adopted the directive. A comparison of the positional data and the voting data reveal that some Council members are supposed to show opposition more often than others but still vote yes when it matters (Wøien Hansen, 2008). For instance Sweden, Denmark, Finland, Germany and Austria enact upon their preference less often than Spain, Portugal and Greece. An even better case than these five countries is Ireland, which according to the positional data should have turned down roughly 1/4 of the directives but in reality never recorded any formal opposition at the final stage of voting. This indicates that the norm of consensus may have an effect on Council voting. Our model can say something more about this effect.

Table 1 summarises the results from model 1 and model 2. The key insight is that $\theta$ is positive for all governments across all models. Hence the norm of consensus means that more governments support the new legislation than the standard spatial model would predict. Nevertheless, we see that the $\beta$ is positive in both models, which means that the spatial model has some predictive power on governments’ voting behaviour, on average. It must be noted that the magnitude of $\beta$ is small. This means that the directive-specific utility consideration is not a strong guide for the observed voting behaviour in the Council. Furthermore, the models suggest that some governments subscribe to the norm of consensus to a larger extent than others. This is particularly the case for Ireland, but France and Sweden are also distinguishable from Spain and Portugal, the two countries that seem to be the least guided by the norm of consensus on the votes under investigation here. Hence Spain and Portugal have a higher probability for enacting upon their positions when voting. The large $\theta$ of especially Denmark, Italy, France, Sweden and Ireland mean that these countries initially have a negative position but in the end still want to appear on the winning side of the decision-making process. Figure 1 shows the effect of the difference in utility between the status quo and the adopted policy on the probability of voting yes. The black line shows the mean predicted utility, the grey area covers the 95 per cent credibility interval. The effects are calculated from model 1. The figure is ordered so that those with the strongest “consensual norm” are located at the upper left.
corner. The effect of the norm is decreasing as we move to the left and downwards. The government with the weakest norm is in the bottom right corner.

[Figure 1 about here.]

The first thing to note is that all governments have very high probabilities of voting yes. We see that there does not seem to be any utility considerations going into the voting behaviour of the Irish government. This also holds to a large extent for Sweden, France, Denmark and Italy. There are only tiny effects of utility considerations in the probability of voting yes for the next group of countries, which includes Luxembourg, the Netherlands, Finland, Germany, UK, Belgium and Greece. Only Austria, Portugal and Spain have less than 95 per cent probability of voting yes when the new proposal is clearly making them worse off than the status quo.

This phenomenon could have been fully accounted for by the norm of consensus, if it was not for the finding in model 1 that the strength of the \( \theta \)s differ across governments. Furthermore, we see that there are some heterogeneity across the directives. 9 directives were sufficiently controversial to cancel out the effect of the \( \theta \)s. This means that we are only able to claim support for the conditional version of the norm of consensus. We will now investigate the votes where the unconditional norm of consensus broke down.

Discussion of the directives with negative \( \delta \)

Of the 9 directives where the probability of voting yes is lower than the unconditional norm of consensus would suggest, four belong to the internal market and two to fisheries. The policy areas agriculture, health and general affairs also have one directive each where the unconditional norm of consensus breaks down. These 9 directives can hence be linked to the analysis of Mattila and Lane (2001). They show that contestation vary from policy area to policy area and that agriculture, fisheries and issues related to the internal market are the most contested ones. The higher contestation levels indicate that more controversial legislation is passed in these policy areas. This again can contribute to explain why the unconditional norm of consensus does not hold that well for the
9 directives under investigation here. To elaborate a bit more on some of the cases with negative $\delta$, we will now discuss the Tobacco Directive, the directive regarding closer dialogue with the fishing sector and the directive on certain aspects of the sale of consumer goods and associated guarantees in more detail.

Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the governments concerning the manufacture, presentation and sale of tobacco products (COD/1999/244), the so-called Tobacco Directive, was a conflict between the tobacco industry and the public health camp where the latter was supported to a large extent by the European Parliament. Even though it was a health question, the regulatory nature of the directive makes it possible to place this directive in a wider internal market branch, in accordance to Mattila and Lane’s analysis of contested decisions.

In the positional data this directive is listed with five different issues: 1) whether the maximum permitted yield levels (of carbon, tar, monoxide and nicotine) should also apply to products manufactured in the EU, but intended for export to third countries; 2) the size and strength of the health warning on tobacco products; 3) what arrangements should be made for the disclosure of information on the ingredients contained in tobacco products; 4) the features of the committee that would write a report on the basis of which the directive could be amended in the light of new scientific evidence and 5) whether product descriptions, such as light and mild, should be banned. Regarding the first issue, Greece, Spain, Luxembourg, Germany and Austria where said to be against. The same governments minus Greece and Spain favoured status quo over an increase in size of the health warning on tobacco products (issue 2). Regarding issue 3 and issue 5 there where more consensus between the governments, all agreed on the need of a common list of permitted ingredients (issue 3) and the need to avoid positive connotations like mild and light (issue 5). The discussion here was more about time frames and whether to ban all positive connotations completely. Issue 4 was of a more institutional nature and the Commission proposed that it could undertake responsibility for this. Even though most of the actors supported this proposal, Spain, France, UK, Ireland and Germany preferred
to establish an independent scientific committee (Thomson et al., 2006, 330 - 332).

This directive compromised issues that touched upon different aspects of conflicts, both more regulatory and more institutional. Issue 1 and issue 2 were most debated and countries with substantial tobacco manufacturing industries like Greece, Spain, Luxembourg, Germany and Austria were naturally not in favour of introducing new rules. Hence the health lobby vs. the tobacco industry was the main conflictual axis in the bargaining process. The directive was a victory for the health lobby despite Luxembourg, Austria, Greece, Germany and Portugal showing opposition towards the final agreement reached in the Conciliation Committee. This shows that when strong interests are involved, the norm of consensus breaks down, even at the last voting stage. The high issue density of the Tobacco Directive may also have rocked the consensual mode of decision-making. Five governments showing some sort of opposition in the final round was not a common feature of the EU15. Even so, the positional data manage to predict the negative votes correctly for four governments and to predict the positive votes correctly for ten governments. While Greece, Austria, Germany and Luxembourg were listed with a negative view in both datasets, Portugal was not supposed to show any opposition. The success of the positional data in this case indicates that if the position is important enough, the consensus suffers.

The second decision, Council Regulation (EC) No 657/2000 of 27 March 2000 on closer dialogue with the fishing sector and groups affected by the common fisheries policy (CNS/1999/163), had less identified issue density than the Tobacco Directive. The first issue concerned the creation of a financial base for the funding of the Advisory Committee on Fisheries (ACF) and the second issue was about the representation of national representatives in the ACF. The interviews conducted by the DEU project (Thomson et al., 2006) revealed that the experts thought these two issues where interlinked, i.e. some governments were only willing to provide financing if there was a degree of national representation in the committee. This made possible conflicts even stronger.

According to Thomson and Stokman (2003) and the procedural summaries in the European Parliament Legislative Observatory, the purpose of the proposal was to create
a legal basis for expenditure to support national level fisheries organisations, enabling them to organise effectively at the EU level. This would allow them to participate in the newly established Fisheries Advisory Committee in which only EU level organisations are represented. The funding issue was contested because some governments felt that it was unnecessary to create a new obligatory spending category for this expenditure. Such expenditure should be left instead to the industry itself to avoid a legal obligation that would make it more difficult to reduce expenditure in the future. The second issue, on the representation of national organisations, raised conflict because the desire of some members to maintain a voice for their national organisations. In addition to these conflicts, there were also other factors that led to disagreement in the bargaining process. Previous controversial decisions on this matter and timing issues (implement immediately or delay implementation) also divided the Council to some degree. Hence a variety of factors may have contributed to making this directive less coherent with the positional data and the unconditional norm of consensus. Germany, Portugal and Denmark opposed the directive at the final stage of voting and even though the positional data identified two main issues, previous decisions and timing issues may have made the consensus norm less important in the decision-making process. Furthermore, the expert interviews revealed that the previous decision taken on this policy area was much more controversial than this one. This may account for some of the negative positions listed that did not transpose into final opposition, as previous disagreements were present in the negotiations. Although negative positions also can have been accommodated during the bargaining process in order to meet the QMV criteria.

The third directive, Directive 1999/44/EC of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (COD/1996/161), was based on the principle that goods must be in conformity with the contract and that the seller is liable for any shortcomings. The most important aim of this piece of legislation was to provide consumers with a legal guarantee of the conformity of consumer goods, regardless of the member state in which the purchase was made. Both the expert interviews and the procedural summaries available in the European Parliament Legislative Observatory
outlined two explicit issues that was of main concern in the negotiations. The first issue
was about the hierarchy of rights and who (the producer or the consumer) should be
eligible to decide whether the article should be replaced or repaired. The second issue
concerned the period of notification, i.e. the time period within the consumers would
have to notify the producer of the fault. The positions of the Council on these issues
somewhat reflected the division between the producers who was strongly opposed to the
proposal and the European Consumers’ Organisation (BEUC) which endorsed it and
wanted even stronger obligations for the consumers. France, Germany, the UK, and
the Netherlands especially wanted the producers to be able to have their say on how to
handle the guarantees provided to the consumers and formed a producer-friendly bloc in
the negotiations. The expert interviews stressed that although the Nordic countries were
reported to be on the consumer’s side of the dossier, this was actually not the case. This
was reportedly due to peculiarities of these countries’ own domestic legislation.

According to the European Report (5th of November, 1997), the Commission spent
seven years “preparing a rather low key proposal” and the initial proposal left a lot to be
decided upon by the EP and the Council. Due to conflictual positions within the Council
and the EP’s effort to secure a deal in favour of the consumers, an agreement could not
be reached during the first and the second reading. Hence a deal was first settled in the
Conciliation Committee where the notification issue was left somewhat to the discretion
of the Member States. Even so, when voting on the final proposal in May 1999, the
Netherlands abstained and Denmark voted against this proposal. This means that the
interests of these two governments, which also were opposed to the directive before the
Council formulated its common position and listed with consumer friendly positions in
the positional data, were still not fully accommodated in the Conciliation Committee.
In addition, Greece issued a formal statement with their concerns. This shows again, that
when strong opposing interests are present in the negotiations, the unconditional norm of
consensus breaks down.

[Figure 2 about here.]

The effect of controversy on the probability of supporting a directive is illustrated in
figure 2. The effect is calculated on the basis of the Tobacco Directive and the estimates from model 2. It is clear that the many governments are prepared to dissent at the voting stage on controversial directives. This means that the norm of consensus only applies as long as the directive is not too controversial. If the European publics and the media become more alert to the policy-consequences of EU legislation, the norm of consensus is likely to come under increased pressure. It is hence a conditional norm.

CONCLUSION

While researchers emphasise that there is a norm of consensus operating in the Council, the precise definition of consensus is often left vague. We propose two alternative operationalisations of this norm, an unconditional and a conditional norm of consensus. By combining positional data and voting data, we are able to estimate the effect of issue preferences and normative considerations in the same model.

We find some support for the conditional version of the spatial model. As actors’ utility of the status quo policy increases compared to their utility of the proposed policy, the probability of a negative vote increases as well. It should however be noted that this effect is very weak. One may hence question the extent to which voting in the Council is driven by utility considerations related to the specific directive. The results also show that all governments have positive $\theta$s, suggesting that something like a norm of consensus operates in the Council. However, as the size of the $\theta$s vary somewhat across the governments, it could be argued that this is not in line with the common understanding of a shared norm. Furthermore, we found directive specific effects of a sufficient magnitude to cancel out the effects of the norm. This leads us to question the common understanding of the consensual bargaining style in the Council. Instead, we suggest that there is, at best, a conditional norm of consensus operating in the Council. The norm is conditional on legislation not being too controversial. As this is not a satifying condition, we encourage future research on the Council to incorporate positional data and voting data into models of bargaining and decision-making that account for logrolling and issue-linkages as well as
different levels of patience across directives and actors. There is also an inherent danger that the support for the norm of consensus is a result of the fact that only legislation that passed are recorded in the minutes of the Council meeting. The hard bargaining is likely to occur before the legislation is voted on. The time that elapses between the Commission proposes a directive and adoption of this directive may give us some idea of the intensity of the bargaining, but we also need to investigate those directives that are awaiting decision in the Council (Golub, 1999, 2007). This could be incorporated into a voting framework via a selection mechanism (Hug, 2010). Future research on legislative politics in the Council of Ministers would benefit from taking the whole legislative process into account, as well as the interaction with the other legislative actors.
REFERENCES


APPENDIX: JAGS CODE

The code for the unconditional consensus model is:

```jags
model{
  # We let discrimination parameter vary by vote
  # theta measures strength of the consensus norm by country
  for(j in 1:m){  ## positions
    for(i in 1:n){ # governments
      logit(pi[i,j]) <- beta[j]*x[i,j] + theta[i]
      y[i,j] ~ dbern(pi[i,j])
    }
  }
  ## Priors
  for(i in 1:n){
    theta[i] ~ dnorm(0,.001)
  }
}
```

The code for the conditional consensus model is:

```jags
model{
  # We let discrimination parameter vary by vote
  # theta measures strength of the consensus norm by country
  for(j in 1:m){  ## positions
    for(i in 1:n){ # governments
      logit(pi[i,j]) <- delta[vote[j]] + beta*x[i,j] + theta[i]
      y[i,j] ~ dbern(pi[i,j])
    }
  }
  ## Priors
  for(k in 1:vote.no){
    delta[k] ~ dnorm(0,tau.delta[k])
  }
  for(k in 1:vote.no){
    tau.delta[k] <- pow(sigma.delta[k],-2)
    sigma.delta[k] ~ dunif(0,10)
  }
  beta ~ dnorm(0,.001)
  for(i in 1:n){
    theta[i] ~ dnorm(0,.001)
  }
}
```
Figure 1: Probability of voting yes as a function of utility of the new proposal.
Figure 2: Probability of supporting a controversial directive (example Tobacco Directive, $\delta_{26}$).
<table>
<thead>
<tr>
<th>Parameter</th>
<th>Model 1</th>
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<th>Model 2</th>
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<td>2.5 %</td>
<td>97.5 %</td>
<td>median</td>
<td>2.5 %</td>
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Table 1: Parameter estimates from model 1 and model 2.