

The Politics of Decision Making in the Council of the EU: Explaining Consensus

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Abstract

This paper examines the decision making of the Council of the European Union to gain insight into how consensus decisions emerge and how they change power allocations and influence the behavior of negotiators and voting blocs. It surveys rationalist and non-rationalist accounts of consensus decisions in the Council and concludes that rationalist explanations are more convincing. In this connection, the central argument of the essay is that consensus emerges as rational negotiators (a) coalesce into blocs dominant enough to win over and suppress opposing coalitions and (b) undertake strategies to avoid blame for failing to win consensus around their own preferred policy.

Keywords: Blocking-coalitions, consensus, Council of the European Union, qualified majority voting (QMV), blame avoidance.

Introduction

When top decision makers in complex organizations, such as firms and governments, make executive decisions, they tend to do so with consensus, or large majority, rules. This tendency alters power allocations and exerts influence on the behavior of negotiating actors. This essay attempts to explain how consensus decisions are reached by studying the decision making of the Council of the European Union in light of the recent changes to its voting rules, from the qualified majority voting (QMV) threshold of 74.8% to a threshold of 65% effective November 2014. It reviews relevant literature that has attempted to explain the high rate of consensus decision making in the Council and it draws insights from the arguments of Frank Häge (2013) to suggest that consensus emerges as negotiators act rationally to form coalitions as a means of strengthening their position in the decision making process and of enhancing their prospects of surmounting QMV thresholds near their own policy preferences. It differs from the views of Häge, however, in that it does not accept the blocking-coalition thesis exactly as he describes and it attempts to offer an alternative rationalist explanation of consensus in the Council of the European Union: namely, that consensus decisions emerge, in part, as negotiators coalesce into dominant blocs strong enough to win over, or suppress, opposing coalitions. It extends this rationalist account by arguing along the lines of R. Kent Weaver (1986) and Stéphanie Novak (2014) to suggest that losing negotiators become motivated to form consensus around the policy preferences of the winners in order to avoiding blame and public disapproval for failing to secure consensus around their own preference.

Consensus in the Council of the European Union

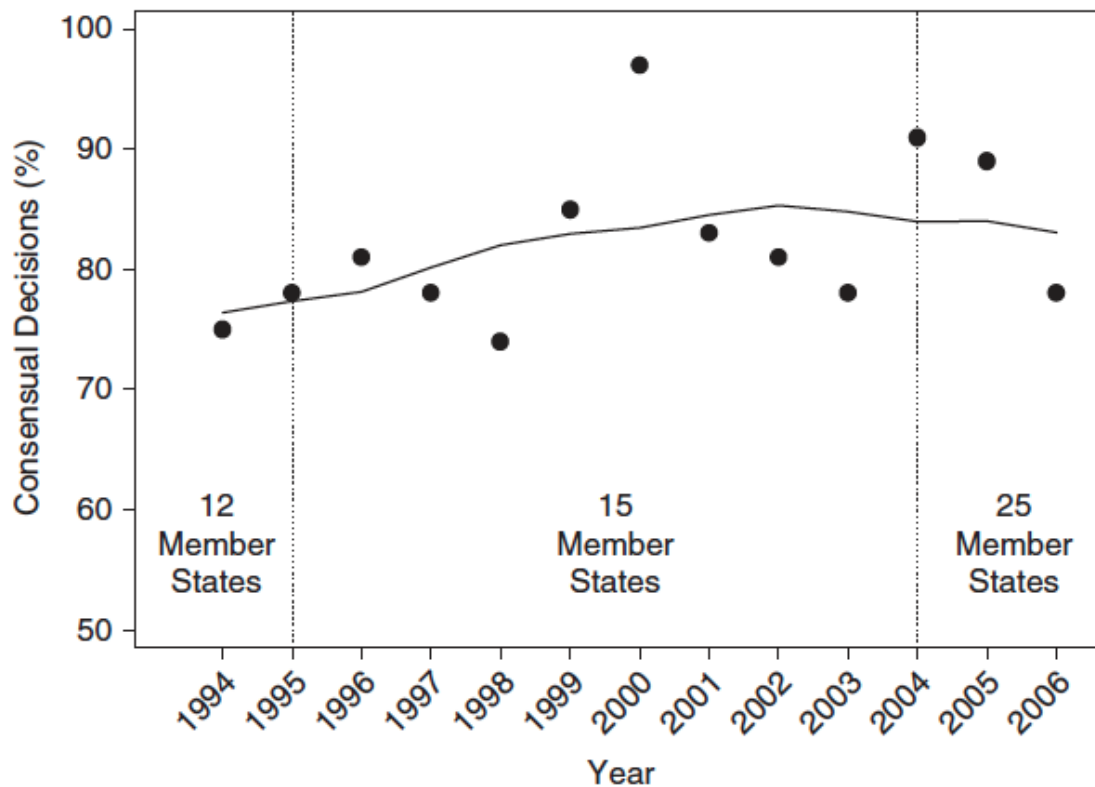
The Council of the European Union is a decision making body of the European Union; its decision makers are the national ministers from each EU country who meet in a variety of arrangements to 'negotiate and adopt new EU legislation, adapt it when necessary and coordinate policies'.⁶³ Decisions in the Council of the European Union (EU) are formally subject to qualified majority voting (QMV) rules which require that votes above a certain threshold be received in order for proposals to pass. The current threshold of the Council is set at 258 out of 345, or 74.8 per cent,⁶⁴ established under the Treaty of Nice in February 2001. Countries are assigned artificial vote shares which were defined under the same Treaty (Dunleavy and Konstantinidis, 2013). Interestingly, despite the fact that decisions in 'most major policy areas under EU jurisdiction has long been subject to qualified majority rule... unanimous decisions are still the norm rather than the exception in the Council of the EU' (Häge, p. 481). Indeed, decisions by consensus have occurred, on average, 82 per cent of the time between 1994 and 2006 (Häge, p. 484). In this context, it is important to note that consensus does not necessarily imply unanimity but rather that collective decisions are adopted 'without contesting votes' (Häge, p. 482). What is more is that these high rates of consensus decision making in the Council of the EU have been achieved notwithstanding the increased membership to the Council from 12 states in 1994 to 25 member-states in 2006. Intuition would dictate that as more Member States join, the heterogeneity of policy preferences would increase, thus making consensus more difficult to

⁶³ Taken from the website of the Council of the European Union. Accessible at WWW: <http://www.consilium.europa.eu/council?lang=en>.

⁶⁴ Taken from Eurofound. Accessible at WWW: <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/qualifiedmajorityvoting.htm>.

achieve. In practice, however, this has not happened as illustrated in Figure 1. Clearly, then, consensus rules change power allocations and exert influence on the behavior of negotiating actors in the decision making process.

Figure 1: Consensus Decisions in the Council of the European Union, 1994-2006



Source: Frank Häge, *Coalition Building and Consensus in the Council of the European Union* (2013)

Non-rationalist explanations of consensus in the Council

Political scientists are divided in their explanations of the influence of large-majority rules on voting behaviour. Some contend that consensus decision making in the Council of the EU is a result of non-rationalist factors the like of which include informal norms, culture, and ‘good chemistry’ among negotiators (Heisenberg, 2005, p. 68). Dorothee Heisenberg (2005), for example, points to a ‘culture of consensus’ that has developed in the European Union as a ‘result of the 40-year history of negotiations among the same partners’ (Heisenberg, p. 68). Jeffrey Lewis (1998) puts forward the view that this history of negotiation has enabled constant exchange and information gathering among the Council’s Member States which, in turn, has led to the development a “common frame of reference”. This frame of reference allows Member States to see issues through the same lens and to arrive at unified decisions more frequently and more easily. Seeking to confirm this view, Lewis (2000) interviewed participants of Coreper⁶⁵ and found that negotiators developed decision making styles characterized by factors such as ‘diffuse reciprocity, thick trust, mutual responsiveness, a consensus-reflex and a culture of

⁶⁵ Coreper, also known as The Permanent Representatives Committee, is the body responsible for preparing the work of the Council of the European Union.

compromise' (Lewis, p. 261). Other thinkers have argued that consensus is maintained despite growing number of Member States because new Member States will adopt, rather than challenge, existing norms in the Council. Field, for example, maintains that after expansion, new Member states are "likely to at least partly adopt the norm that they should not allow the smooth functioning of the EU's business to be impeded by their desires to further national concerns" (Field, 2001, p. 67). On the basis of these findings, Heisenberg claims that, within the Council of the EU, 'informal norms of consensus are the primary mode of decision making' (Heisenberg, p. 65). She admits, however, that less attention has been paid to 'the informal norms of decision making probably because they are difficult to observe...and even more difficult to generalize in order to theorize' (Heisenberg, p. 66).

Undoubtedly, informal norms such as the ones pointed out by Heisenberg and Lewis exert some influence on the voting behavior of negotiators, especially in an institution like the Council of the European Union. Indeed, it is difficult to imagine that decisions would be taken in any organization without some degree of trust, reciprocity and mutuality among the negotiators involved. At the same time, formulating and enacting policy decisions within organizations are typically 'long, hard slogs' that necessitate 'a range of formidable capabilities' including 'the capacity to overcome collective action problems, mobilize resources, develop extensive expertise, focus sustained attention, coordinate actions with others, and operate flexibly across multiple domains' (Hacker and Pierson, 2010, p. 172). It therefore seems implausible to suggest that non-rational factors alone are the cause of consensus voting in an organization as complex as the Council of the EU. To say that its decisions are influenced by institutional culture and informal norms does not deny the existence of choices to be made in the first place. Thus, while acknowledging the role that culture and informal norms might play in decision making, this paper maintains that consensus within the Council emerges as actors act rationally.

Rationalist explanations of consensus in the Council

Rationalist explanations maintain that consensus in the Council is the result of negotiators acting rationally in order to have their preferences incorporated into the final outcome of the Council's decisions. Rationalist explanations fall into several categories. For example, some contend that institutions are primarily responsible for achieving high rates of consensus in the Council. Steunenberg (1994), for example, highlights the powers of the European Commission, in its capacity as agenda-setter and the body responsible to initiate legislation, as the main driver of consensus. The Commission anticipates 'the positions of Member States' and will 'only introduce a proposal when a sufficient majority of Member States exists to support the new policy' (Häge, p. 485). Arguing along similar lines, Mattila and Lane (2001) suggest that because the Council is aware of the preferences of various Member States, it will draft legislative proposals in such a manner so as to always have the backing of at least a minimum winning coalition of Member States. Other rationalist explanations include those of vote-trading, or log-rolling. In this respect, Carruba and Volden (2001) as well as König and Junge (2009) argue that consensus is an outcome of swapping votes. That is, negotiators offer support for the proposal of other negotiators in return for support of their own proposals in the future. Finally, another class of rationalist explanations of consensus focuses on compliance concerns. These arguments posit that consensus decisions are reached in order to avoid the possibility of non-compliance or

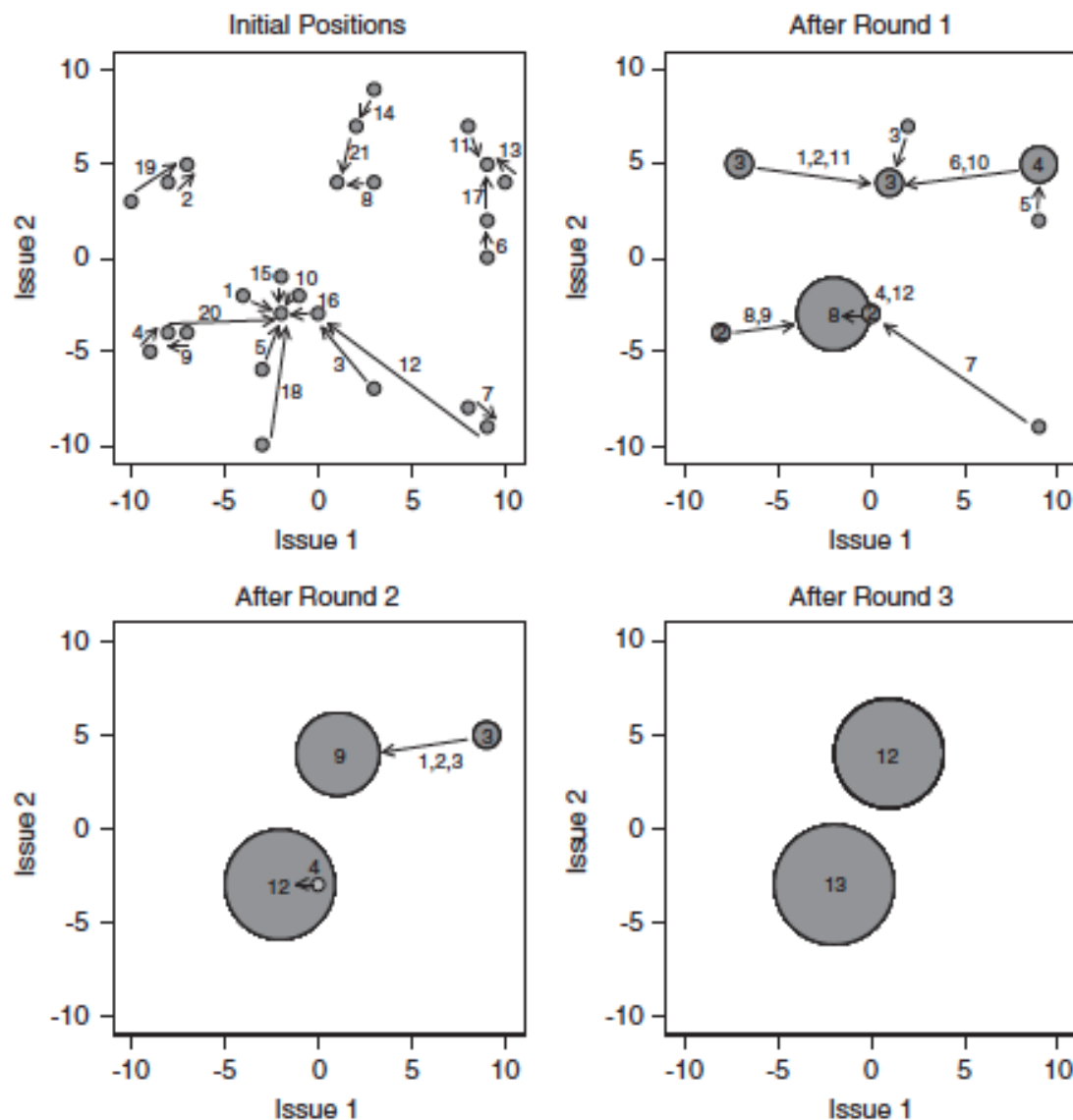
incorrect compliance of policy by dissenters in non-consensus decisions. That is to say laws are adopted by consensus at the EU level in order to avoid difficulties with respect to compliance when those laws are to be implemented at the national level (Falkner, Hartlapp, Leiber and Treib (2004); Maggi and Morelli, (2006); Rittberger and Zangl, (2006)).

As plausible as these explanations may be, arguments have been put forward to show that they cannot explain the reasoning behind consensus voting in the Council of the EU in its totality. In this connection, Häge provides evidence to suggest that each of the three rationalist explanations cited above 'have trouble with the observation that the consensus rate remains largely constant despite a considerable increase in the number of Member States in recent years' (Häge, p. 486). Another explanation is needed and Häge sets out to achieve this task. The idea central to his argument is that of a 'blocking-coalition': a coalition of Member States large enough to block any decision from passing the QMV threshold. His argument is summarized below.

Consensus as an 'unintended byproduct' of blocking-coalitions

Examining decisions of the Council of the European Union, Häge argues that negotiators are 'boundedly rational'⁶⁶ actors who work consciously with like-minded negotiators to form coalitions large enough to block decisions from reaching the QMV threshold. As shown in the panel labeled Initial Positions in Figure 2, the decision making process begins with the Member States defining their initial policy preferences. In order to clear the QMV threshold, negotiators must adapt their preferences and coalesce into blocs. Member States thus have 'an incentive to coordinate their behavior and their negotiation positions with other like-minded states' (Häge, p. 482). Accordingly, a negotiator begins to look at the policy preferences and voting power of her nearest neighbor and other negotiators do the same. If a neighboring coalition is larger, the negotiator adapts her preferences and joins the coalition, knowing that if she does not, she will 'run the risk of becoming marginalized and [her preferences] ignored in the negotiation process' (Häge, p. 482). If the neighboring coalition is not larger, then the negotiator stays put, knowing that others will coalesce around her ideal point. Negotiators continue to adapt their preferences until, at last, only a small number of distinct yet similarly sized coalitions are formed. Under the current 74 per cent rule, three blocking-coalitions of 27 per cent can be realized, each of which is large enough to block the decision from passing the QMV threshold. To surpass the threshold, then, a compromised decision is reached which incorporates the preferences of each coalition. Thus, being 'part of a blocking minority ensures that the Member State's views cannot be ignored' (Häge, p. 482). Put differently, when 'all Member States are organized in blocking minority coalitions, then no policy can be adopted without unanimous consent' (Häge, p. 482). For Häge, then, consensus emerges 'endogenously as an unintended by-product of the coalition-building behavior of negotiators who seek to form blocking minority coalitions' (Häge, p. 482). The end result is consensus through compromise.

⁶⁶ Boundedly rational actors are, in the words of Häge, 'goal oriented' but, because they navigate 'complex and uncertain environments, they rely on simple heuristics to pursue their goals rather than on complicated assessments of the consequences of different courses of action' (Häge, p. 492). Häge also refers to the work of Gigerenzer and Goldstein who explain that boundedly rational actors are those who 'make inferences about the world under limited time and knowledge' (Gigerenzer and Goldstein, p. 650). This is in contrast to purely rational models which suggest that actors have access to complete information and unlimited time.

Figure 2: Coalition Building Dynamics

Source: Frank Häge, *Coalition Building and Consensus in the Council of the European Union* (2013)

Limitations of blocking-coalitions: an alternative view of consensus

As appealing as Häge's explanation may be, and as much as this paper might endorse its coalition building ideas, this paper asserts that the blocking-coalition thesis cannot explain consensus in the Council of the EU under all conditions. Indeed, Häge's argument is well suited to the current rules of the Council of the EU where the relatively high QMV threshold of 74 per cent allows for three blocking-coalitions to form. In this section, two arguments will be put forward to demonstrate that, while negotiators still act rationally to coalesce into blocs in order to pass QMV thresholds, the precise blocking-coalition mechanism Häge describes—in which every negotiator falls into one or another blocking-coalition whose preferences will ultimately be met in some grand compromise—does not explain large majority decision making in all cases. First, it argues that the new voting rules of the Council have major implications for coalition building

dynamics in the decisions making process, and second, it claims that blame avoidance accounts for part of the reasoning behind large majority decisions in the Council.

i. Lowering the QMV threshold

As of November 2014, both the voting threshold and the voting weights in the Council of the European Union will be altered per the Treaty of Lisbon (established in December 2007). Under the new rules, an act will be adopted if it wins ‘the support of at least 55 per cent of the EU Member States (i.e. 15 Member States) and at least 65 per cent of the population of the EU. A blocking minority must include at least four Member States.’⁶⁷ Moreover, for the first time in the history of the European Union, the voting shares of the Member States have been assigned by population size (Dunleavy and Konstantinidis, 2013). The Member States and their vote shares under both treaties are shown in Table 1.

Table 1: The EU member states and their voting shares under the Nice and Lisbon treaties (Blue countries = already Eurozone member; Black = due to join; Red = opt out states)

Country	Population (M)	Vote Share (%) (Nice Treaty)	Vote Share (%) (Lisbon Treaty)
Germany	82.54	8.4	16.5
France	59.64	8.4	12.9
UK	59.33	8.4	12.4
Italy	57.32	8.4	12.0
Spain	41.55	7.8	9.0
Poland	38.22	7.8	7.6
Romania	21.77	4.1	4.3
Netherlands	16.19	3.8	3.3
Greece	11.01	3.5	2.2
Portugal	10.41	3.5	2.1
Belgium	10.36	3.5	2.1
Czech Republic	10.2	3.5	2.1
Hungary	10.14	3.5	2.0
Sweden	8.94	2.9	1.9
Austria	8.08	2.9	1.7
Bulgaria	7.85	2.9	1.5
Denmark	5.38	2.0	1.1
Slovakia	5.38	2.0	1.1

⁶⁷ Taken from Eurofound. See footnote 63 for website address.

Finland	5.21	2.0	1.1
Ireland	3.96	2.0	0.9
Lithuania	3.46	2.0	0.7
Latvia	2.33	1.2	0.5
Slovenia	2.00	1.2	0.4
Estonia	1.36	1.2	0.3
Cyprus	0.72	1.2	0.2
Luxembourg	0.45	1.2	0.1
Malta	0.40	0.9	0.1
Total for EU	484.2	100.0	100.0
Eurozone Countries Total	316.58	61.9	66

Source: Frank Häge, LSE's European Politics and Policy Blog: <http://bit.ly/1j3ZrAw>.

The changes to the QMV rules render impracticable Häge's blocking-coalition theory. Most fundamentally, the lower threshold of 65 per cent considerably enlarges the effective competition space (ECS) in the Council of the EU. This means that proposals will pass easier and more quickly than before because proposals are more difficult to block. Indeed, under the current 74 per cent threshold, a coalition would need to make up 27 per cent of the vote in order to block. This rule thus allows for up to three coalitions of 27 per cent and the final outcome would need to accommodate the preferences of all three, since any two together would not be large enough to pass the threshold. Moreover, three blocking-coalitions of 27 per cent account for 81 per cent of the vote, leaving 19 per cent as a left over or dummy vote. Given that there are three coalitions to choose from and given that the size of the dummy vote is quite small, Häge's argument that coalition building will continue until each vote is accounted for in one or another coalition seems reasonable.

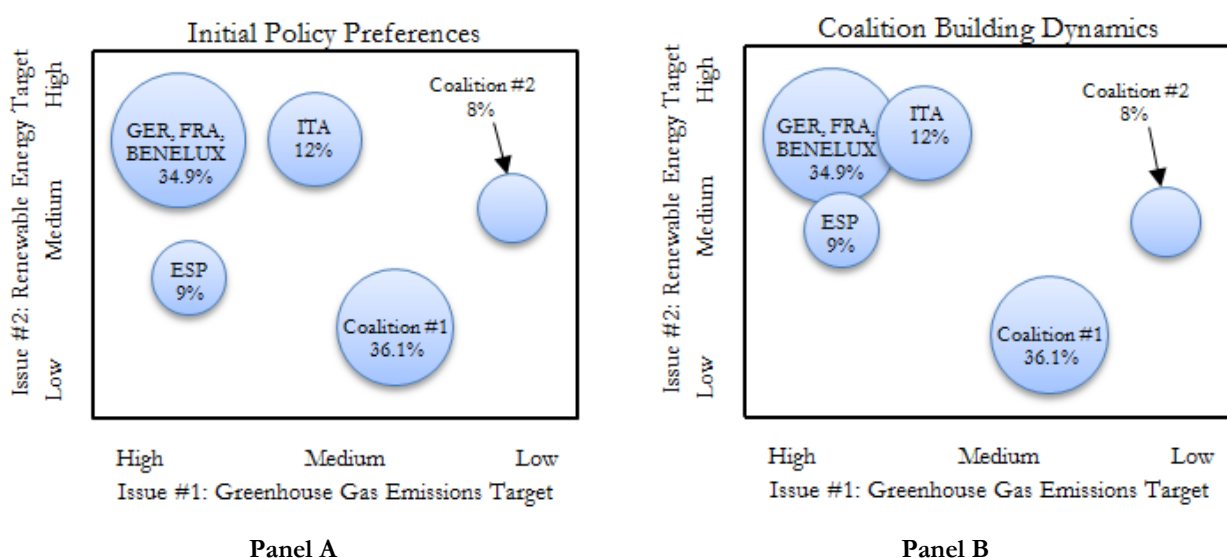
It does not seem plausible, however, that such dynamics would unfold under the new rules. The 65 per cent threshold, as mentioned, enlarges the effective competition space and makes blocking proposals much harder. With the new rules, a coalition must command 36 per cent of the vote or greater in order to block; this allows for only two blocking-coalitions to form which, together, would account for 72 per cent of the total vote, leaving a 28 per cent dummy vote. The size of the dummy vote is much larger and the number of options to join other coalitions is less. Whereas under the Nice Treaty, a 19 per cent dummy vote could join one or another of three coalitions, the new rules leave negotiators in the 28 per cent dummy vote with only two coalitions to choose from. Given the greater size of the dummy vote and the reduced choice negotiators in it face, it is unlikely that they will merge with one or another coalition as easily as they would under the current rules. As a result, the new rules, more than the present ones, allow for the dummy vote to simply be dismissed. Accordingly, this paper suggests that consensus will emerge as the two blocking-coalitions seek to win over one another, knowing that if they do, the remaining dummy vote will have no choice but to join. Consensus is thus achieved as rational actors in the main voting bloc seek to win over, or unblock, the opposing blocking-coalition.

This idea is supported by historical evidence. Historically, the 'dominant axis driving for EU integration has been the near-permanent coalition of Germany, France and the Benelux countries sandwiched between them (Belgium, Netherlands, and Luxembourg)' (Dunleavy and

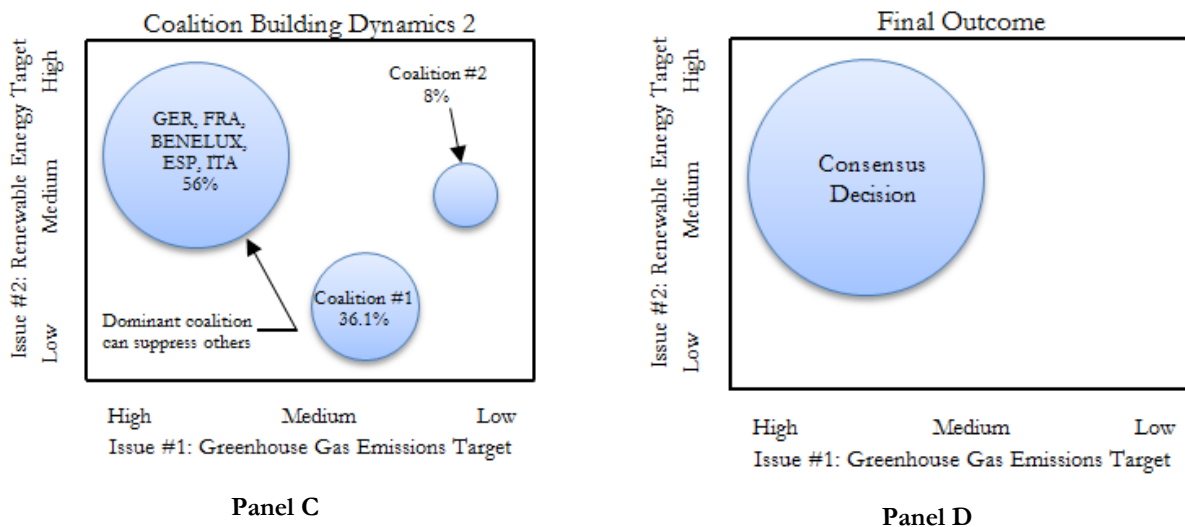
Konstantinidis). Under the present rules of the Nice Treaty, these five countries command 25.3 per cent of the vote. Recall that 27 per cent is required to block a proposal from passing. Effectively, then, these Member States under the current arrangements can block any proposal which they do not agree with, though they would need to coalesce with a number of other member-states in order to pass a proposal. Under the new Lisbon Treaty rules, these five states possess 34.9 per cent of the vote which puts them in a similar position in terms of blocking. However, should nations such as Spain, the UK or Italy share the preferences of this dominant axis, then this coalition will become much stronger than the other, thus making consensus around its preference much more likely than compromise.

Let us suppose, for the sake of an example, that the policy preferences of Spain and Italy (9 per cent and 12 per cent vote share, respectively, under the new rules) with respect to environmental matters are initially located close to the preferences of the dominant axis. One can well envision that through effective bargaining Spain and Italy can be negotiated to share the policy preferences of the dominant axis, thereby forming a dominant coalition that would command 56 per cent of the vote. Let us suppose further that one blocking-coalition exists that occupies 36 per cent of the vote share; this would leave 8 per cent as a dummy vote. Far from seeking a grand compromise, as Häge might suggest, the rationale put forward in this paper anticipates that consensus will emerge as the dominant 56 per cent bloc seeks to exert its influence in order to win over the 36 per cent blocking-coalition entirely, thereby surpassing the QMV threshold around its own preferences and leaving the 8 per cent dummy vote with no choice but to join a consensus vote. These initial positions, along with the coalition building dynamics that might unfold throughout the process, are shown below in a stylized two-dimensional policy space (actors denoted by their country initials).

Figure 3: Coalition Building Dynamics in the Council of the EU⁶⁸



⁶⁸ The issues used in this stylized example are taken from actual policy decisions made by the Council regarding its 2030 Policy Framework on Climate Change (<http://www.consilium.europa.eu/homepage/showfocus?lang=en&focusID=101784>), though the actors and their positions are simulated for the purposes of demonstrating the argument of the essay.



Source: Author

ii. *Blame avoidance*

In addition to the coalition building dynamics described above, this essay argues that consensus decisions occur owing to yet another feature of rationality: that of blame avoidance, an idea wholly absent from Häge's analysis. Simply put, losing negotiators are motivated to form consensus, even if it is around a policy preference which they do not share, in order to avoid blame for losing out on negotiations.

Developing a more elaborate theory of the concept, R. Kent Weaver's (1986) model of blame avoidance rests on two key insights: first, it is based on the assumption that rational policymakers are motivated to a significant degree by their 'desire to maximize their prospects for reelection' or, in the case of the Council of the European Union, 'for reappointment and advancement' (Kent, p. 373). Second, and crucially, Kent argues that blame avoidance is based on an asymmetry between the response to losses and gains. In this connection, he cites a range of evidence to show that policy losses are felt more acutely than are policy gains inasmuch as 'persons who have suffered losses are more likely to notice the loss, to feel aggrieved and to act on that grievance, than gainers are to act on the basis of their improved state' (Kent, p. 373). Because people are more sensitive to losses than they are to gains, it is more important for rational policymakers to ensure that they are unassociated with policy decisions that lead to losses than they are associated with decisions that lead to policy gains. To accomplish this, legislators undertake blame avoidance strategies. Kent analyzes eight such strategies, the like of which include limiting the agenda, redefining the issue and scapegoating (Kent, p. 385). And whilst it could be argued that anyone of these blame avoidance strategies may account, at least partially, for why losing negotiators in the Council of the European Union throw in their lot with the policy preferences of the more dominant bloc, his 'jump on the bandwagon' strategy appears most convincing for the particular context in question (Kent, p. 388).

According to this strategy, once a policymaker is clear as to which piece of legislation is likely to pass, he or she realizes that his or her preference (and hence, his or her vote) for an 'unpopular side no longer serves any useful purpose' (Kent, P. 388). As a result, he or she 'can switch [his or

her] vote to support the more popular side on final passage' (Kent, p. 388). Indeed, it is this particular strategy of blame avoidance which analysts suggest account for high rates of consensus in the Council of the European Union. Losing negotiators within the Council 'anticipate when they are in a losing position and refrain from making their opposition public' (Novak, 2014). The reason why Ministers refrain from public opposition is 'because they expect that the media and their domestic constituencies will interpret said opposition to adopted measures as a failure in the negotiation process' (Novak, 2014). As a result, losing Ministers, one by one, jump onto the winning bandwagon until consensus around that point is achieved. One might even imagine that, if a Minister's initial policy preference has not been made public, he or she, if clever enough, may attempt to claim credit for building consensus, arguing all along that he or she maintained the popular policy preference in the first place and that he or she helped persuade others to join the dominant coalition which, privately, he or she opposed.

Whatever the particular case may be, this paper asserts that consensus in the Council of the European Union emerges as rational actors work to build coalitions strong enough to win over opposing coalitions and as losing negotiators consider blame avoidance strategies, including jumping from off the losing bandwagon of their own policy preference and onto the winning bandwagon of the dominant coalition and its policy preference.

Conclusion

For the past twenty years, the decisions of the Council of the European Union have, by and large, been made by consensus, even as the number of Member States represented in the Council has more than doubled over this time period. The explanations of how and why such consensus is reached are varied but they generally fall into two categories. First, non-rationalist accounts maintain that factors such as culture, norms and good chemistry among the negotiators of the Council are what account for high rates of consensus. Second, rationalist accounts posit that consensus is the result of rational actors who make deliberate and calculated choices to ensure that their interests are incorporated in the final outcome of the Council's deliberation. This essay has taken somewhat of a pluralist approach. On the one hand, it has maintained that any organization—especially one as complex as the Council of the EU—is likely to have a good measure of non-rationalist factors that inform the decision making of its senior decision makers. However, given the complexity of decision making at such levels, the essay cast doubt on the assertion that non-rationalist factors alone have the capacity to explain such high rates of Consensus in the Council of the EU and it accordingly set out to provide a rationalist account of consensus.

Within the rationalist class of arguments, the explanations of consensus are equally varied. Perhaps the most prominent accounts of consensus are those of institutions, vote trading, and compliance. Where each of these accounts fall short, however, is that their arguments prove either unsatisfactory or inadequate when one seeks to understand why consensus decision making in the Council of the EU should remain so high even as the membership to the Council of the EU grows. Recognising this gap, Häge does an admirable job of offering a compelling account of consensus that holds up in the face of increased heterogeneity on the Council of the EU due to increased membership. Where his account falls short, however, is that his arguments, which centre on the concept of a blocking coalition, do not seem capable of explaining

consensus under the new voting rules of the Council. The new rules lower the QMV threshold thus making it easier to pass proposals and harder to block them. Accordingly, this essay set out to complement Häge's analysis by furthering its coalition building ideas while at the same time refuting its commitment to the notion of a blocking-coalition. The paper argues that high rates of policy consensus among such varied Member States are achieved when negotiators act rationally to build coalitions as a means of buttressing their power against opposition in a decision making process. As negotiators adapt their preferences and adjust their goals, they form dominant coalitions which, while not large enough to enact decisions on their own, are strong enough to win over opposing blocs and thus build consensus around their own ideal point. In addition, losing negotiators are motivated not to block proposals as Häge might suggest—for such efforts under the new rules have greater risk of simply being dismissed—but rather to throw in their lot with the dominant bloc so as to avoid blame from constituents. In the final analysis, then, it is the combination of strategies undertaken by rational negotiators to (a) build strong, dominant coalitions and (b) avoid blame for losing negotiations that accounts for high rates of consensus in the Council of the European Union.

It is hoped that the arguments presented in the paper and the evidence used in support provide useful insights that can help better understand the influence of large majority voting rules on the behavior of voting blocs and actors within complex organizations.

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