

# Who Decides in the Council of the European Union?\*

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## Abstract

This study presents reliable cross-sectoral data on the relative involvement of working parties, senior committees and ministers in legislative decision-making of the Council of the European Union. In general, the results challenge the received wisdom that ministers are hardly involved in legislative decision-making. However, the findings also indicate that the involvement of different Council levels varies considerably across policy sectors. The study concludes with a discussion of the implications of these findings for the debate about the democratic legitimacy of Council decision-making.

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## Introduction

The legitimacy of Council decision-making is regularly subject to debate, usually as part of the wider discussion on the alleged democratic deficit of the European Union (EU). According to one view, the influential role of the Council in making EU legislation is not a concern. Moravcsik (2002, p. 612), for example, argues that there is a clear line of accountability from the bureaucrats and ministers acting in the Council through national parliaments to the domestic electorate. However, other authors (e.g. Héritier, 2003, p. 830; Follesdal and Hix, 2006, p. 19) find that the lack of transparency of the

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Council's proceedings inhibits control by domestic voters. As bureaucratic negotiations on the lower levels of the Council hierarchy are both more opaque and further removed from domestic political oversight than deliberations by ministers, it clearly matters for the legitimacy debate on which level legislative decisions are made in the Council.

This study provides robust cross-sectoral information on the involvement of different levels of the Council in decision-making on Community legislation. As yet, such information is not available. Therefore, the study contributes to setting the EU legitimacy debate on firmer empirical ground. Indeed, the results of the study rectify some of the received wisdom in the field. The existing literature on the Council usually argues that bureaucrats play an overwhelming role in Council decision-making while ministers deal only with a rather small fraction of bills. In this respect, the estimates reported in Hayes-Renshaw and Wallace (1997, pp. 40, 78) have almost taken on a life of their own. According to these figures, ministers are only involved in 10 to 15 per cent of all Council decisions. These numbers are cited by researchers of Council working groups and committees to illustrate the relevance of their research topic (e.g. Beyers and Dierickx, 1998, p. 291; Lewis, 1998, p. 483; 2003, p. 1009; Beyers, 2005, p. 905), they are used in evaluations of the democratic legitimacy of the EU (e.g. Meyer, 1999, p. 630), and they are referred to for descriptions of the division of labour in the Council in textbooks of EU politics (Nugent, 2003, p. 165; Hix, 2005, p. 83) and other EU-related work (e.g. Egeberg, 1999, p. 461; Menon *et al.*, 2004, p. 287; Niemann, 2004, p. 403; Zimmer *et al.*, 2005, p. 408). Although Hayes-Renshaw and Wallace (1997, p. 40) are explicit in pointing out that the numbers are based on 'hearsay evidence', they are treated sceptically in only a few instances (Jordan, 2001, p. 652; Bostock, 2002, p. 225). According to Bostock (2002, p. 226, fn. 217), the original source for these figures was a member of the Committee of Permanent Representatives. The disadvantage of such estimates is that they are rather subjective. The main contribution of the current study is therefore to provide a more reliable basis for scientific discourse in this field.<sup>1</sup> To achieve this goal, the study relies on a large number of cases, covers all Community policy sectors and employs several indicators to ensure that the findings are robust and hold up more generally.

The results of the analysis show that such an effort is justified. The findings strongly challenge the view that ministers are hardly involved in Council decision-making: almost 50 per cent of all legislative dossiers under

<sup>1</sup> Thus, the study does not criticize the presentation of these figures in Hayes-Renshaw and Wallace (1997), nor that the figures have been referenced by other authors. With the advent of a more liberal transparency policy of the Council, it is now possible to gain more accurate information and the current study improves in this respect on existing research.

the Community pillar are discussed by ministers in the course of Council negotiations, and in roughly one third of all legislative acts is the final decision also directly taken on the highest political level. But the data allow not only for identifying the highest Council level at which a dossier was discussed and the Council level at which the final decision was made, but also for measuring these indicators across different policy sectors. Indeed, this is another important feature of the data. As the results show, ministerial involvement varies highly across Council configurations. The variation in ministerial involvement across policy sectors could be either caused by differing opportunity costs of ministers or differing degrees of legitimacy of EU jurisdiction in the policy fields.

The remainder of this article is structured as follows. Section I gives a brief description of the internal working method of the Council. Section II discusses existing research on the topic in more detail and points to the comparative advantages of the current study. Section III describes the data set and its collection. The results of the analysis are presented and analysed in section IV. The conclusion summarizes the main results of the study, discusses some limitations, and makes some suggestions for future research.

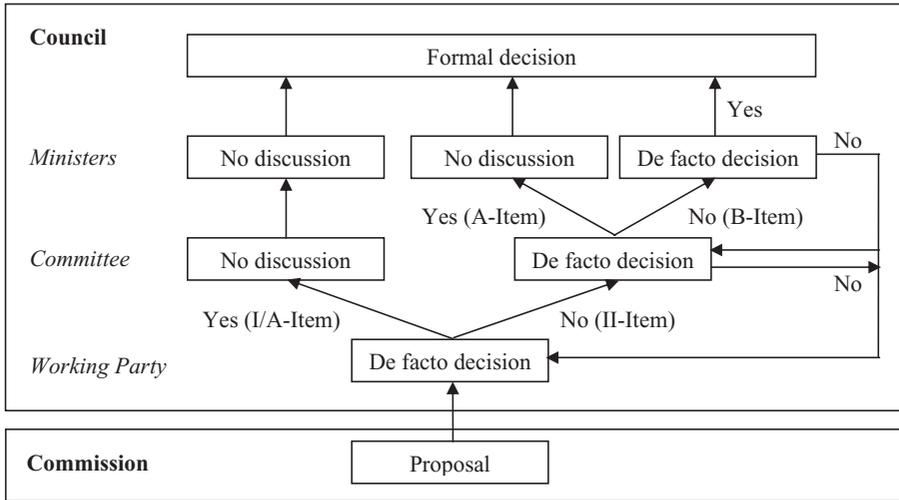
## I. The Internal Decision-Making Process of the Council

This section gives a necessarily stylized account of the rather complex and often idiosyncratic process of how the Council machinery deals with Community legislation internally. The Council structure is made up of three hierarchical levels as illustrated in Figure 1.<sup>2</sup> After the Commission transmits its proposal to the Council, the relevant working party at the lowest level of the hierarchy first discusses the dossier. These working parties are composed of national officials and experts. If the members of the working party reach complete agreement, the dossier is not discussed further at higher Council levels. The file is simply channelled through one of the committees making up the middle layer of the hierarchy onto the agenda of a forthcoming ministerial meeting. Files that are not discussed are listed as roman I-points on the agenda of senior committees and as A-points on the agenda of ministerial meetings. The ministers adopt A-points '*en bloc*' at the beginning of each meeting.<sup>3</sup>

<sup>2</sup> Certain exceptions to this rule exist, one of the most important being the four-level organization in most areas dealt with by the Justice and Home Affairs Council (Nilsson, 2004, pp. 131–7).

<sup>3</sup> To avoid conceptual confusion, the terms 'ministerial meetings', 'committees' and 'working groups/parties' are exclusively used to refer to the three different Council levels. Thus, in the remainder of the article, the term 'Council' refers to the organization as it exists in reality rather than to the legal entity described in the Treaty establishing the European Community, which corresponds to the meetings of ministers.

Figure 1: The Internal Decision-Making Process of the Council



Source: Author.

Note: The term 'Council' refers to the organization as a whole as it exists in reality, not to the legal entity described in the Treaty establishing the European Community. The 'Council' as a legal entity corresponds to the 'ministers' in the figure.

When the working party cannot reach complete agreement, the dossier is referred to one of the senior committees, where it appears on the agenda as a roman II-point for discussion. Only three committees report directly to the ministers: two formations of the Committee of Permanent Representatives (Coreper) and the Special Committee on Agriculture (SCA).<sup>4</sup> The permanent representatives themselves meet in Coreper II and deal with the more horizontal issues and politically sensitive policy areas.<sup>5</sup> Their deputies meet in

<sup>4</sup> Although working parties can also be described as 'committees' and although there are several groups comprising more senior officials that are actually called 'committees' (e.g. the Economic and Financial Committee, the Political and Security Committee, the Article 36 Committee, or the Article 133 Committee), the term is reserved in this article for bodies that report directly to ministerial meetings. Besides Coreper, only the SCA has this prerogative (Culley, 2004, p. 153). Note that this does not imply any judgement about the importance of these committees. A distinction has to be drawn between levels, and the authority to directly put points on the agendas of ministerial meetings seems to be a relatively objective criterion. In methodological terms, this criterion has the advantage that it allows for an unambiguous identification of decision- and discussion-levels in the Council. Proposals that are handled by the other senior preparatory bodies still have to be channelled through one of the Coreper formations on their way up to the ministers. Thus, classifying senior preparatory bodies also as 'committees' would make a clear-cut identification of whether a proposal has been decided or discussed at the committee level difficult.

<sup>5</sup> More precisely, Coreper II prepares the ministerial meetings of the General Affairs and External Relations, the Justice and Home Affairs, as well as the Economic and Finance Council. Coreper I handles dossiers for the remaining Council configurations (Westlake and Galloway, 2004, p. 204).

Coreper I, which is concerned with the more sectoral and technical policy areas. Finally, the SCA consists of senior officials from national agriculture ministries and covers most matters related to the Common Agricultural Policy (CAP).<sup>6</sup> Only agriculture dossiers with implications for trade and public health, dossiers dealing with the harmonization of legislation and the financial aspects of proposed acts are handled by Coreper I (Culley, 2004, pp. 151–2; Hayes-Renshaw and Wallace, 2006, p. 95). If the members of the responsible committee agree on the text, the dossier forms an A-item on the agenda of a subsequent ministerial meeting and is formally adopted by ministers without discussion. In many instances, the portfolio of the ministers adopting the dossier is completely unrelated to the substance of the legislation.<sup>7</sup> In the case that neither the working party nor the senior committee reaches a complete agreement, the dossier is put on the agenda of ministers as a B-point. The ministers responsible for the policy area then have the task of resolving the remaining outstanding issues.

As noted earlier, this description of the decision-making process within the Council abstracts from many complications and idiosyncrasies of specific cases. The feedback arrows in Figure 1 originating from the ministerial and the committee level indicate that dossiers can be discussed several times on different levels of the Council hierarchy before they are finally adopted as legislation (Andersen and Rasmussen, 1998, p. 589).<sup>8</sup> In addition, a decision might not be reached at all when the Member States and the Commission cannot agree on a compromise. In this case, the dossier is shelved by the Presidency and eventually withdrawn by the Commission.

During the time period studied, Community legislation was mainly adopted according to two institutional procedures, i.e. the consultation and the co-decision procedure. When the consultation procedure applies, the EP can only give its opinion on a proposal, which is not binding for the Council. In this case, there is only one Council reading and a positive decision of the Council corresponds to the adoption of the legal act. Under the co-decision procedure, however, the Council's first reading decision can also refer to a so-called 'common position'. A common position has to be adopted when the EP suggests amendments that are not fully acceptable to the Council. When

<sup>6</sup> In contrast to the two Coreper formations, the SCA does not divide its agenda into I- and II-items (Culley, 2004, p. 152). All proposals under the responsibility of the SCA are, at least formally, also discussed by it.

<sup>7</sup> For example, asylum legislation can be adopted by agriculture ministers. In legal terms, there exists only one 'Council' that has decision-making authority. It does not matter in which formation this Council meets. Since A-items are not discussed by ministers anyway, they are often put on the agenda of the next scheduled meeting of ministers simply to speed up the decision-making process (Gomez and Peterson, 2001, pp. 62–3).

<sup>8</sup> In practical terms, such a shuttle-process severely complicates the identification of the decisive Council level. This and related problems for the validity of indicators are more fully discussed in section III below.

such disagreement takes place, the legislative process incurs one or even two more reading stages in which both the Council and the Parliament are involved.

The internal decision-making process of the Council for second and third reading decisions is in principle similar to the decision-making process for first reading decisions. However, in practice, negotiations with the EP under co-decision are mainly handled by bodies on the lower levels of the Council hierarchy, in particular Coreper (Bostock, 2002, p. 219). After the Council has adopted a common position, ministers hardly discuss co-decision dossiers anymore. Thus, for reasons of comparability with decisions made under consultation, this study focuses exclusively on first reading decisions, which includes the adoption of legal acts as well as the adoption of common positions.<sup>9</sup>

## II. The State of the Art

In general, quantitative studies considering the role and relative importance of different decision-making bodies in the Council are rare. Until recently, the Council was a rather secretive organization. Thus, research relied mainly on personal insights and anecdotal evidence (e.g. Hayes-Renshaw and Wallace, 1997; Sherrington, 2000; Westlake and Galloway, 2004). Indeed, the lack of transparency of Council proceedings probably goes some way in explaining the pervasiveness of the Hayes-Renshaw and Wallace (1997) figures. In the absence of more reliable information, relying on the judgements of informed insiders is the only feasible option to gain some insights into the phenomenon of interest. But there are also some less well-known studies that provide figures based on more systematically collected evidence, although only for certain policy sectors or other more restricted samples. The analyses by van Schendelen (1996) and Gomez and Peterson (2001) rely on the agendas of ministerial meetings. Andersen and Rasmussen (1998) and van den Bos (1991) also provide important insights through data based on Council documents and expert interviews, respectively. Recently, Hayes-Renshaw and Wallace (2006) provided new figures in the second edition of their book, which are also based on an analysis of the agendas of ministerial meetings.

Table 1 shows the statistics provided by these studies for the proportion of decisions taken at different Council levels. The original figures advanced in Hayes-Renshaw and Wallace (1997) are also given for reasons of comparison. One conclusion is immediately apparent: no consensus exists among

<sup>9</sup> The focus on first reading decisions hardly affects the measure of ministerial involvement. If dossiers are discussed by ministers at all, they are usually discussed in the first reading stage of the legislative process.

Table 1: Proportion of Decisions by Council Level: Previous Research

<i>Author (year)</i>	<i>Data source</i>	<i>Policy/period</i>	<i>Working Party</i>	<i>Committee</i>	<i>Ministers</i>
Hayes-Renshaw and Wallace (1997, pp. 40, 78)	Practitioner estimate	General/Unspecified	70	15–20	10–15
Hayes-Renshaw and Wallace (2006, p. 53) <sup>a</sup>	Ministerial agendas	General/2004	66		34
Andersen and Rasmussen (1998, p. 589) <sup>b</sup>	Council documents	Environment/1993–94	26		74
Gomez and Peterson (2001, p. 540)	Ministerial agendas	GAER/1995–2000	48		52
van den Bos (1991, p. 232) <sup>c</sup>	Expert interviews	General/1987	37	16	47
van Schendelen (1996, p. 538)	Ministerial agendas	Agriculture/1992–93	87/65 <sup>d</sup>		13/35

*Sources:* Hayes-Renshaw and Wallace (1997, 2006); Andersen and Rasmussen (1998); Gomez and Peterson (2001); van den Bos (1991); van Schendelen (1996).

*Notes:* All numerical entries are percentages. GAER stands for General Affairs and External Relations. <sup>a</sup> The total number of B points and the total number of agenda points in GAER seem to be incorrect in the original Table 2.2. As a result, the percentage figures given in the original table are also incorrect. The percentages given here result from re-calculations made based on the raw numbers given in the original table; <sup>b</sup> Proportions refer to acts discussed at different levels and were calculated from raw figures as presented on p. 589; <sup>c</sup> Proportions were calculated from raw figures as presented on p. 232, see also pp. 149–65. Decisions by the Article 133 Committee were counted as working party decisions; <sup>d</sup> The first number is the proportion of A-items plus the proportion of B-items discussed but not decided; the second number is the proportion of A-items only.

researchers on how the number of 'de facto' decisions is distributed among different types of Council bodies. Hayes-Renshaw and Wallace (1997) ascribe only 10 to 15 per cent of decisions to ministers. This estimate is only in line with the results of the quantitative analysis of agenda-items performed in van Schendelen (1996). Looking at all agendas of agriculture ministers' meetings in 1992 and 1993, this study finds that only 13 per cent of the items were actually decided by ministers. Also by examining the agendas of ministers, the analysis by Hayes-Renshaw and Wallace (2006) finds that ministers are somewhat more involved, with, on average, 34 per cent of the decisions being made on the ministerial level.<sup>10</sup> Although the time-period of their study is restricted to meetings that took place during the last quarter of 2004, the scope of their study is larger in that they consider agendas of ministerial meetings in all fields of Council activity.

A similar study undertaken by Gomez and Peterson (2001) for the General Affairs and External Relations (GAER) Council finds even more ministerial involvement. Examining the agendas of foreign ministers over the period from 1995 to 2000, Gomez and Peterson (2001) find that on average roughly half of all agenda items are discussed by ministers. This estimate is much closer to that advanced in van den Bos (1991). Based on a sample of 74 legislative 'decisions which are important for the Netherlands' (van den Bos, 1991, p. 62), the results of van den Bos' (1991) expert interviews also indicate that in almost half of all cases the most important decisions are taken by ministers. Tracing the history of the decision-making process on 43 environmental policy acts adopted during 1993 and 1994, the study by Andersen and Rasmussen (1998) even finds that about three-quarters of the acts were discussed at the ministerial level. Interestingly, the only two sets of estimates that distinguish between working groups and committees on the administrative level (van den Bos, 1991; Hayes-Renshaw and Wallace, 1997) largely agree in that 15 to 20 per cent of decisions are ascribed to the committee level.

The disparate results point to some limitations of previous studies but also to interesting questions. First, the reliability of experts' estimates as given in Hayes-Renshaw and Wallace (1997) is questionable. These figures are likely to be biased by selective perceptions. Furthermore, it is not clear to what kind of decisions these proportions refer. In the absence of further specification, one can only assume that the figures relate to all decisions taken by the Council, including non-legislative acts like conclusions, recommendations,

<sup>10</sup> The percentages given in Table 2.2 of Hayes-Renshaw and Wallace (2006, p. 53) seem to be incorrect. The percentages used here are based on re-calculations from the raw numbers given in Table 2.2. See also notes to Table 1.

opinions, etc. The time period to which the figures refer is also not clear. Overall, such estimates do not constitute a very precise and reliable base for scientific discourse.

The quantitative studies are more explicit about their population of cases and about what constitutes their unit of analysis. Andersen and Rasmussen (1998), Gomez and Peterson (2001) and van Schendelen (1996) concentrate on specific policy areas and van den Bos (1991) focuses on decisions with important implications for the Netherlands. Only the study by Hayes-Renshaw and Wallace (2006) considers all policy areas. While Andersen and Rasmussen (1998) and van den Bos (1991) are exclusively concerned with legislative decisions, the other three studies also consider non-binding acts. Despite looking at different populations of decisions, Gomez and Peterson (2001) and van den Bos (1991) arrive at very similar figures. Thus, the difference between legally binding and more rhetorical acts does not seem to account for the conflicting estimates here.

Taking into account the similarities of the research design of the studies by van Schendelen (1996), Gomez and Peterson (2001), and Hayes-Renshaw and Wallace (2006), the differences in their estimates is somewhat surprising. A partial explanation of this discrepancy lies in the fact that van Schendelen (1996) did not rely on only counting A and B-items, but also distinguished between B-items that were merely discussed and B-items on which a decision was taken by ministers. In contrast, Gomez and Peterson (2001) and Hayes-Renshaw and Wallace (2006) differentiated only between A and B-items in general. Thus, while the figures in van Schendelen (1996) refer to actual decisions of ministers and exclude mere discussions, the statistics of the other two studies include ministerial deliberations that had no conclusive outcome. For comparative reasons, it is therefore useful to look at what happens to the figures in van Schendelen (1996) when the non-decided B-items are also taken into account: as a result, the proportion of ministerial 'decisions' increases from 13 to 35 per cent. This adjusted proportion comes quite close to the 27 per cent given in Hayes-Renshaw and Wallace (2006) for Agriculture and Fisheries.<sup>11</sup> However, in the case of GAER, the figure of 31 per cent ministerial decisions provided in Hayes-Renshaw and Wallace (2006) does not correspond to the 52 per cent that the study by Gomez and Peterson (2001) finds, which uses the same measurement system. Hence, the differences in measurement can only account to some extent for the lack of correspondence of the results of the different studies.

<sup>11</sup> The proportions for individual policy areas were calculated from the raw numbers given in Table 2.2 in Hayes-Renshaw and Wallace (2006, p. 53).

A general limitation of content analyses of ministerial agendas is that they do not trace policy proposals over time. Thus, whether an A-item has been informally decided in an earlier ministerial meeting cannot be ascertained. For example, in many instances, a decision on the substance of the dossier is reached by ministers and only the text needs to be finalized by the Council's legal and linguistic experts before the act can be formally adopted (Bostock, 2002, p. 226). Therefore, the formal adoption of this proposal occurs as an A-item at a later meeting of ministers. The result is that the act in question is counted twice, once as a B-item for the earlier meeting and once as an A-item for the later one. In the aggregate, the neglect of the temporal dimension of Council decision-making results in a systematic underestimation of the ministers' involvement.

By mapping out the history of Council decision-making for each individual proposal, only the study by Andersen and Rasmussen (1998) overcomes this problem. As expected, it presents a much higher rate of ministerial involvement than other estimates. However, it is not clear whether this is purely a consequence of applying a superior methodology or a result of an idiosyncrasy of environmental policy-making. In addition, although the methodology employed in Andersen and Rasmussen (1998) allows in principle for such a measurement, the study gives no figures on the relative distribution of Council decisions among the bureaucratic levels. The division of decision-making between the political level of ministers and the bureaucratic levels in general is an important one, but it might also be interesting to see whether the decision at the bureaucratic level was reached in a working group of national officials or by diplomats in Coreper.

Although the problems just discussed do not concern the analysis by van den Bos (1991), it also has some limitations. Firstly, the identification of the decisive Council level in van den Bos (1991) involves a strong element of subjectivity. The decision-making level was determined by asking experts about the Council level at which the most consequential decisions were taken. The reliance on the personal judgement of a single participant in Council negotiations puts doubt on the reliability of the classification. Secondly, although the study goes a long way to ensure the representativeness of the sample, it remains limited to decisions deemed important for the Netherlands. Finally, the fieldwork for the study was conducted almost 20 years ago. The EU has fundamentally changed in many respects since then.

The current analysis overcomes at least some of the limitations of previous research and combines many of its advantages in a single framework. Like the content analyses of ministerial agendas (van Schendelen, 1996; Gomez and Peterson, 2001; Hayes-Renshaw and Wallace, 2006) and Council documents (Andersen and Rasmussen, 1998), the study relies exclusively on

documentary evidence, ensuring the reliability of measures. Nevertheless, like the studies by Andersen and Rasmussen (1998) and by van den Bos (1991), it traces proposals over time, guaranteeing that each proposal is counted only once as an agenda item.<sup>12</sup> Like the latter analysis, the study also traces proposals across all three levels of the Council hierarchy. Similar to Hayes-Renshaw and Wallace (2006), the study also covers several policy areas.

Of course, the current study also has its limitations. The main restriction is its exclusive focus on legally binding acts adopted under the Community pillar of the EU. The reason for this restriction is practical: tracing the decision-making process through the Council machinery on a large number of proposals requires the existence of, as well as open access to, Council documents. These requirements are best satisfied in the case of binding Community legislation. While this restriction limits the scope of the analysis and therefore the generalizability of its conclusions to Council decision-making in general, it does not negatively affect the quality of the measures for the type of acts considered in the sample.<sup>13</sup> Furthermore, although the study does not consider the whole population of Council acts, by focusing on binding Community legislation, it nevertheless covers a considerable part of the most important decisions made by the Council.

### III. The Data Set

The study is based on a data set including information on 180 legislative acts, i.e. Decisions, Regulations and Directives, enacted in the year 2003. Non-binding decisions such as Opinions or Recommendations were not

<sup>12</sup> Tracing proposals over time eliminates the problem of the so-called 'pseudo' (de Zwaan, 1995, p. 136) or 'false' A-items (van Schendelen, 1996, p. 540) faced by agenda analyses. A false A-item is a proposal that was de facto decided by ministers as a B-item in an earlier meeting, but the text still had to be finalized by the working group of legal and linguistic experts. There are also so-called 'pseudo' or 'false' B-items, for which complete agreement has already been reached on lower levels of the Council hierarchy, and which are discussed by ministers solely to give a minister or the Commission the opportunity to make an oral statement. False B-items are not very problematic for the purpose of this study, since even when ministers only make a symbolic statement in a meeting, this indicates that they are aware of the content of the decision reached at lower levels of the Council hierarchy and therefore there is not much loss of ministerial control.

<sup>13</sup> Although the restriction to binding Community legislation makes comparisons of the results with studies that consider all kinds of acts more difficult, and although the study's results cannot claim to be representative of the whole population of Council acts, there is also no reason to expect that the sample selection results in a clear over- or underestimation of the involvement of a certain Council level at the aggregate level. Two countervailing effects are at work here: on the one hand, there are many politically salient decisions excluded from the sample, which often demand the involvement of ministers (e.g. decisions made in JHA and External Relations). But on the other hand, the sample also excludes many administrative or routine decisions (e.g. conclusions of international agreements), which are predominantly dealt with on lower levels in the Council.

considered. Several selection criteria were employed to arrive at this set of cases. First, the sample was confined to acts coming into force during the year 2003. This restriction was a result of practical considerations. The Council documents necessary to reconstruct the internal Council decision-making process are more comprehensively available for recent years. Of course, the focus on one specific year limits the ability for generalizations over time, but collecting such detailed data for a larger period of time was not feasible given the constraints of limited resources. Second, only acts adopted through either the consultation or the co-decision procedure were included in the sample. During the time period under study, most legislation was decided through one of these two procedures. Finally, from the resulting set of proposals, all proposals based on 'Treaty of the European Union'-articles were excluded. The sample was therefore restricted to Community legislation.<sup>14</sup>

A major source of information for developing the data set was the Commission's PreLex database.<sup>15</sup> PreLex monitors the progress of legislative proposals in the inter-institutional decision-making process. The database describes each step in the process from the transmission of the proposal by the Commission to its enactment as law by the Council and the European Parliament. Most important for the purpose of the current study, the database identifies when a dossier has been part of the agenda of a ministerial meeting in the Council. The database does not only include information about the formal adoptions of dossiers by ministers, but also about mere discussions and political agreements.<sup>16</sup> For each ministerial meeting, PreLex specifies whether the dossier formed an A- or a B-point on the agenda.

The information obtained from PreLex was supplemented with information gained from the Council's public register of documents.<sup>17</sup> When a dossier had not been decided by ministers, the preparatory body who had reached the final decision was identified through an examination of Council documents. Most of the time, the examination of I/A-item or A-item notes was sufficient to determine whether a dossier was de facto adopted by a working party or by one of the more senior committees. In cases where such a note was not available or its content ambiguous, the agendas of committee meetings were inspected. If the proposal appeared as a roman-II point on the agenda of the committee meeting directly preceding the ministerial meeting in which the act in question was formally adopted, the dossier was coded as having been

<sup>14</sup> Community legislation means legislation based on an article of the 'Treaty establishing the European Community'.

<sup>15</sup> Available at: <<http://europa.eu.int/prelex/apcnet.cfm?CL=en>>.

<sup>16</sup> Political agreements denote agreements on the substance of a dossier. Before such a dossier is formally adopted at a later meeting of ministers, the text is usually checked and finalized by the Council's legal-linguistic experts.

<sup>17</sup> Available at: <<http://ue.eu.int/showPage.asp?id=254&lang=en&mode=g>>.

decided by the committee. If the dossier was listed as a roman I-point, the dossier was coded as having been decided by a working party. When a working party had made the final decision, an extensive search in the register was conducted to establish whether the proposal had earlier been discussed at the committee level. Through this procedure, two variables for the importance of different Council levels in decision-making were constructed. The first variable signifies the level on which the final decision was made on a dossier before it was formally adopted as legislation. The second variable indicates the highest level in the Council on which the dossier was discussed during the course of negotiations. These indicators, combined with information on the policy sector and the senior committee involved, form the basis of the following analysis.

#### IV. Research Findings

Table 2 classifies the sample of legislative acts according to Council configuration and 'de facto' decision-making level.<sup>18</sup> Across policy areas, the largest number of bills was passed in agriculture, followed by economic and financial affairs (EcoFin), competition, transport, environment, justice and home affairs (JHA) and general affairs. In contrast, external relations, employment and education were areas with rather little legislative activity during the time period studied.<sup>19</sup> The results for the latter areas have to be treated with caution, because they rely only on a small number of cases. The information in the table gives answers to the two main questions of interest: on which Council level was the final decision reached and which Council level was involved in the negotiations leading up to this decision? The remainder of this section discusses the answers to these questions.

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According to the second column of Table 2, 35 per cent of Council decisions were made by ministers, about 22 per cent by the senior committees and almost 43 per cent by one of the working parties. Comparing these figures

<sup>18</sup> The 'de facto' decision-making level refers to the last Council level at which the dossier was discussed before it was formally adopted as a legislative act by ministers. In what follows, the term 'decision-making level' refers to the level where the 'de facto' decision was made. Note that the finalization of the text of an act by the Working Party of Legal/Linguistic Experts after a decision had been reached by ministers was not counted as another discussion of the dossier.

<sup>19</sup> For reasons of readability, some Council configurations are referred to by an abbreviated version of their title in this article. The full titles of these configurations are: Employment = Employment, Social Policy, Health and Consumer Affairs; Competition = Competition (Internal Market, Industry and Research); Transport = Transport, Telecommunications and Energy; Agriculture = Agriculture and Fisheries; Education = Education, Youth and Culture.

Table 2: Number of Legislative Acts by Decision-Making Level and Council Configuration

Decision-making level	Total (%)	Council configuration									
		General	Extern	EcoFin	Justice	Employ	Comp	Trans	Agri	Envi	Edu
Ministers (B-Items)	63 (35.0)	1 (10.0)	7 (20.6)	5 (41.7)	5 (83.3)	7 (26.9)	14 (66.7)	12 (26.7)	9 (60.0)	3 (75.0)	
Formal adoption	4 (2.2)				1 (16.7)	1 (3.9)	2 (9.5)				
Political agreement	59 (32.8)	1 (10.0)	7 (20.6)	5 (41.7)	4 (66.7)	6 (23.1)	12 (57.1)	12 (26.7)	9 (60.0)	3 (75.0)	
Committee (II-Items)	40 (22.2)	1 (10.0)	4 (11.8)		1 (16.7)	9 (34.6)	3 (14.3)	19 (42.2)	3 (20.0)		
Autonomous decision	23 (12.8)	1 (10.0)	4 (11.8)			2 (7.7)		14 (31.1)	2 (13.3)		
Prior ministerial discussion	17 (9.4)				1 (16.7)	7 (26.9)	3 (14.3)	5 (11.1)	1 (6.7)		
Working Party	77 (42.8)	8 (80.0)	7 (100.0)	23 (67.7)	7 (58.3)	10 (38.5)	4 (19.1)	14 (31.1)	3 (20.0)	1 (25.0)	
Autonomous decision	55 (30.6)	8 (80.0)	6 (85.7)	9 (26.5)	6 (50.0)	9 (34.6)		13 (28.9)	3 (20.0)	1 (25.0)	
Prior committee discussion	15 (8.3)		1 (14.3)	13 (38.3)				1 (2.2)			
Prior ministerial discussion	7 (3.9)			1 (8.3)	1 (8.3)	1 (3.9)	4 (19.1)				
Total (%)	180 (100.0)	10 (100.0)	7 (100.0)	34 (100.0)	12 (100.0)	26 (100.0)	21 (100.0)	45 (100.0)	15 (100.0)	4 (100.0)	

Sources: Author's own data based on information from the PreLex database and Council documents.

Notes: Percentages are given in parentheses. Not all percentages sum up to 100 because of rounding errors. Abbreviations: General = General Affairs; Extern = External Relations; EcoFin = Economic and Financial Affairs; Justice = Justice and Home Affairs; Employ = Employment, Social Policy, Health and Consumer Affairs; Comp = Competition (Internal Market, Industry and Research); Trans = Transport, Telecommunications and Energy; Agri = Agriculture and Fisheries; Envi = Environment; Edu = Education, Youth and Culture.

with the estimates discussed in section II, the figure of 34 per cent ministerial decisions inferred from the raw numbers given in the second edition of Hayes-Renshaw and Wallace's (2006) book is very similar. Thus, despite differences in measurement strategy and sample coverage, the two analyses yield very similar results regarding the overall involvement of ministers. The results of both studies cross-validate each other to some extent. However, a further comparison of the distribution of decisions made among lower, administrative levels is not possible. The agenda analysis in Hayes-Renshaw and Wallace (2006) does not provide for a differentiation of decision-making levels below the level of ministers.

Either way, cross-sectoral averages have to be interpreted with care. Looking at columns 4–12 in Table 2, the existence of considerable variation in the decision-making level across Council configurations becomes apparent. Indeed, the proportion of decisions that are directly taken by ministers seems to be related to the workload of a certain Council configuration. The fewer acts that are dealt with in a certain policy area, the higher the proportion decided on the ministerial level. For example, three out of the four decisions in Education were made by ministers and five out of the six in Employment. Notable exceptions to this pattern are Transport, with an overall number of 21 decisions, of which 14 (67 per cent) were made on the political level of the Council, and GAER, in which only 1 out of 17 decisions (roughly 6 per cent)<sup>20</sup> was decided by the ministers.

Indeed, when distinguishing between matters in general affairs and external relations (GAER) issues, the latter is the only policy field in which all decisions were taken on the working party level. These figures contradict those in Gomez and Peterson (2001), which found that foreign ministers take about half of all decisions themselves. Hayes-Renshaw and Wallace's (2006, p. 53) figure of 31 per cent for GAER takes a position in the middle. A possible explanation of this divergence in findings hints to the different population of acts considered. While Gomez and Peterson's (2001) and Hayes-Renshaw and Wallace's (2006) figures are based on all kinds of decision, the selection of cases for the current study precludes decisions in areas of major activity of the GAER Council, such as Common Foreign and Security Policy (CFSP) and the Common Commercial Policy (CCP). The exclusion of these areas is due to the sample selection criteria: the CFSP is not part of the Community pillar of the EU and decisions in the CCP often concern conclusions of international agreements that are decided by the Council without any involvement of the EP (i.e. these dossiers are neither

<sup>20</sup> For subcategories that have only a small number of observations, the percentage figures are not very robust and have to be used with caution when comparing them with figures from other subcategories.

decided according to the consultation nor the co-decision procedure). Similarly, the General Affairs part includes the responsibility for decisions regarding the administration of the EU institutions for which EP participation is also often not required or which are 'by any measure, trivial, low-key or technical' (Gomez and Peterson, 2001, p. 62). Thus, the very low proportion of higher-level decisions in GAER found in this study might be due to the fact that, in contrast to other policy fields, the 'really important' decisions in GAER are not covered by the sample of cases. This illustrates the importance of keeping in mind the types of cases on which the statistics are based.

The results of the study should be more comparable to those of van Schendelen's (1996) analysis. However, by assigning only 13 per cent of all decisions in Agriculture to ministers, van Schendelen's (1996) figures seem to under-represent the importance of the ministerial level of the Council in this area. As column 10 indicates, about 27 per cent of the decisions were made directly by the agriculture ministers. Whether and to what extent the difference in the results is due to the different populations of acts considered or the neglect of tracing dossiers over time is hard to establish. According to the first possibility, non-legislative decisions, such as 'answers to questions from the EP, nominations [ . . . ] to advisory committees, general statements in the form of declarations of a position and resolutions' (van Schendelen, 1996, p. 538), might be less likely to be discussed by ministers than legislative decisions. According to the second possibility, the research set-up leads to an overestimation of dossiers not decided by ministers. As an illustration, consider an item that has been substantially decided as a B-item in an earlier meeting and which is only formally adopted as an A-item in the current session. Although the item will be correctly counted as a decision for the earlier session, it will also be counted as a non-decision for the current meeting. In the aggregate, the false A-item cancels out the correct B-item and biases the proportion of decisions to non-decisions in favour of the latter. That this situation is quite common can be seen in the third row of Table 2, which shows that a decision was made and immediately formally enacted in the same ministerial meeting in only four cases.<sup>21</sup> In the remaining cases, the ministers reached a 'political agreement' but postponed the formal adoption of the act to a forthcoming meeting where the act was passed as an A-item.

The proportion of proposals discussed by environment ministers is only somewhat lower than the figures given by Andersen and Rasmussen (1998).

<sup>21</sup> Furthermore, closer scrutiny of these four cases revealed that they are most likely false B-items, with one of the Transport proposals and the Competition proposal substantially decided at lower levels of the hierarchy. The other two cases were substantially decided in earlier meetings of ministers. Three of the cases were adopted in the context of a 'public deliberation' held by ministers.

While Andersen and Rasmussen (1998) indicates that 75 per cent of dossiers are discussed at the ministerial level, the current study shows that about 67 per cent of proposals are subject to deliberations by ministers in this policy field. Overall, this finding confirms that ministers have a rather firm grip on Council negotiations in environmental policy (Andersen and Rasmussen, 1998, p. 595).

Turning now to the distribution of decisions across the two administrative levels of the Council hierarchy, much variation between policy areas is visible. Coreper II seems to play a minor role as a decisive forum for the acts considered here. The overwhelming majority of dossiers in GAER, EcoFin and JHA were decided by the relevant working party. The seemingly low involvement in the GAER area could have the same reason as the apparently low involvement of the foreign ministers. The low involvement could simply be a result of the selection of cases for this study. Another reason could be the rivalry with the Political and Security Committee, which competes with Coreper II for influence in EU foreign policy (Lewis, 2000, p. 280). In the JHA Council, a four-tiered structure exists, with an additional layer of high-level committees that are formally subordinated to Coreper. These high-level committees co-ordinate the work of the 'normal' working parties (Nilsson, 2004, pp. 131–7). As mentioned earlier, these committees are also classified as working parties for the purpose of this study. Thus, the fact that Coreper II did not take any of the decisions in this area might be due to an enhanced decision-making ability at the lower level through the additional layer of groups which co-ordinate the work of the working parties.<sup>22</sup> The 'competition' with the Economic and Financial Committee (Lewis, 2000, p. 279) comes to mind as a possible explanation for the low involvement of Coreper II as a decision-maker in the EcoFin area. However, there is a relatively clear division of labour between the two committees (Korkman, 2004, p. 99): the Economic and Financial Committee deals with issues of economic and monetary policy co-ordination and Coreper II with acts for Community legislation. Indeed, closer inspection of the decision-making processes showed that the EcoFin committee was not involved in preparing any of the legislative dossiers considered in the sample. Hence, the relatively low involvement of Coreper II in this area remains puzzling.

As mentioned above, the administrative levels hardly play any role in Employment and Education. Besides these less established areas, Coreper I is

<sup>22</sup> Note, however, that Nilsson (2004, pp. 117, 135) regards this four-tier structure to be problematic, because nobody takes responsibility and 'there will always be a tendency to push the decision to the next level'.

also responsible for issues that include core aspects of Community policy: Competition, Transport, Environment and some parts of Agriculture. Interestingly, decisions below the level of ministers are approximately equally divided between the committee and the working party level in these fields. The only exception is Agriculture, with slightly more decisions made on the committee level. Here, Coreper I shares the right to prepare the ministers' agenda with the SCA. Of the 47 decisions made in Agriculture, Coreper I was concerned with 27 dossiers while the SCA was responsible for 18 proposals. Taking into account that the SCA insists on discussing all dossiers in its field of competence, the relatively large number of decisions made on the committee level is not surprising. Regarding the dossiers handled by the SCA, 11 decisions (61 per cent) were made by the SCA, while on the remaining 7 (39 per cent) proposals a political agreement was reached by the agriculture ministers. The 14 working party decisions (52 per cent) that are shown in Table 1 all concerned other agricultural matters for which Coreper I was the co-ordinating committee. Coreper I itself was the decisive body in 8 instances (30 per cent) and a political agreement was again found on the ministerial level for the outstanding 5 dossiers (19 per cent). Overall, the working parties seem to play a more important role in agricultural areas for which Coreper I is responsible.

A clear pattern of the division of labour between the committee and working party level in the Council does not seem to exist. In fact, the variation could simply be a result of different working styles among the different senior committees. This is probably an adequate explanation in the case of the SCA, which decides all proposals in its area of responsibility as matter of principle (Culley, 2004, p. 152). Coreper I also plays a major role as decision-maker, making about half of all decisions below the ministerial level. In contrast, Coreper II leaves almost all decisions to the working parties. It is doubtful though whether the differences between the two Coreper formations are also due to different working routines. Two other explanations are more plausible: first, Coreper II faces much more 'competition' from other sector-specific senior committees than Coreper I, diminishing the need for the permanent representatives to become substantively involved. Second, many and arguably the more important types of topics dealt with by Coreper II are not part of the sample of decisions considered in this study. In this view, Coreper II is not less involved in Council decision-making but focuses its attention on types of acts that are not taken into account in the current analysis.

As mentioned earlier, there seems to be a negative relationship between the workload in a certain policy field and the percentage of decisions made on the ministerial level. A simple regression analysis corroborates this

impression.<sup>23</sup> Two potential explanations for this pattern can be put forward. On the one hand, the variance across policy sectors could be due to differing opportunity costs of ministers. Here, opportunity costs refer to the costs of discussing a certain proposal that are incurred through not being able to attend to other proposals at the same time. Ministers have only a limited amount of time available for EU business. Paying attention to one dossier therefore implies the neglect of others.<sup>24</sup> The more legislation has to be passed in a certain area, the more ministers have to restrict their attention to what they perceive to be the most important dossiers. On the other hand, the differences could reflect varying degrees of fundamental political conflict in different policy areas. In some policy fields, EU jurisdiction has long been accepted as legitimate; in other fields, Council negotiations are still battles about whether or not and how much regulating authority should be transferred to the EU institutions rather than battles purely about the specific content of EU policy.

### *Who Discusses Legislation in the Council?*

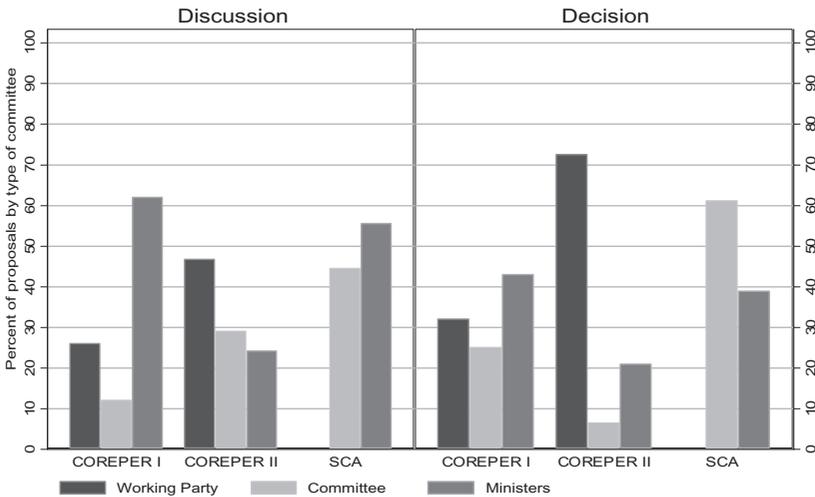
Up to now, only the distribution of final decisions across Council levels and policy sectors was considered. One of the advantages of the data set is that it also allows for tracing the history of a dossier. Table 2 indicates that some dossiers on which the decision has been made by a committee or working party had previously been subject to deliberations on a higher Council level.<sup>25</sup> Interestingly, Employment and Transport ministers had discussed all dossiers in their field of responsibility before they formally adopted them. A considerable number of proposals decided by Coreper I in the field of Competition and the SCA in Agriculture had also been subject to discussions by ministers at an earlier point in time. Coreper II was particularly busy in the EcoFin area where it had discussed 13 out of 23 dossiers before one of the working parties

<sup>23</sup> Excluding General Affairs and External Relations configurations for the reasons outlined earlier, an ordinary least squares regression of the proportion of decisions taken by ministers against the total number of decisions made in a certain year shows a significant negative relationship: each additional decision to be made in a certain policy area decreases the proportion of decisions taken by ministers in this area by 1.41 percentage points. More precisely, the estimation results are as follows:  $78.77 (8.06) - 1.41 * \text{'Total number of decisions'}$  (3.50); absolute values of t-statistic in parentheses, adjusted R-square = 0.62, N = 8.

<sup>24</sup> At least as long as ministers do not have enough time to discuss all proposals. An anonymous reviewer pointed out that the high number of decisions taken by ministers in Council formations that have a low overall number of decisions to be made could be due to the fact that ministerial meetings are scheduled at least once every six months. In order to get ministers to attend, officials must put some important issues on the agenda for the ministers to discuss. This argument is consistent with a special case of the opportunity cost argument, in which there is more time available for ministers than needed and the opportunity costs of discussing a certain dossier are therefore zero.

<sup>25</sup> Note that the 'discussion-level' variable consists of mutually exclusive categories that indicate the highest Council level reached during the course of negotiations.

Figure 2: Discussion and Decision Level by Committee Responsible



Source: Author's own data based on information from the PreLex database and Council documents.

Note: The discussion level refers to the highest Council level at which a dossier has been discussed during the course of Council negotiations. The decision level refers to the Council level at which the final substantial decision regarding a dossier has been made.

reached a final agreement. In general, the impression of little involvement of Coreper II in decision-making derived from the decision-measure is somewhat mitigated when considering the discussion levels.

As Figure 2 shows, Coreper II discussed quite a lot of dossiers, but left the final decision to the working parties. Almost all of the dossiers it forwarded to the ministers were actually also directly decided by the ministers. In contrast, a considerable proportion of Coreper I and SCA dossiers were discussed by ministers but sent back to lower level bodies which then made the final decision.<sup>26</sup> A simple explanation for this pattern could be that the majority of co-decision dossiers falls within the competence of Coreper I. When the ministers reach a political agreement before the EP has produced its amendments, it is often up to Coreper I to decide whether or not to incorporate them and the legal act or common position is subsequently formally adopted by ministers through the A-point procedure.

By focusing on the highest level at which a dossier has been discussed during the course of Council negotiations rather than the level at which the

<sup>26</sup> Note that the zero proportion of working party discussions given in Figure 2 does not mean that no working party discussions took place, but only that all proposals were subsequently also discussed by the SCA. As noted earlier, the SCA does not divide its agenda into items for discussion and items for adoption without discussion (Culley, 2004, p. 152).

Table 3: Number of Legislative Acts Decided and Discussed on Different Council Levels

<i>Council level</i>	<i>Decision</i>	<i>Discussion</i>
Ministers	63 (35.0)	87 (48.3)
Committee	40 (22.2)	38 (21.1)
Working Party	77 (42.8)	55 (30.6)
Total (per cent)	180 (100.0)	180 (100.0)

*Source:* Author's own data based on information from the PreLex database and Council documents.

*Note:* Percentages in parentheses.

final decision has been made, a somewhat different picture of the relative importance of different layers in the Council hierarchy emerges. According to this measure, the ministers are even more involved in Council decision-making. As the last column in Table 3 reveals, about 48 per cent of proposals were at some stage discussed by ministers. However, about 21 per cent of the proposals were not discussed at a higher level than the co-ordinating committee, while approximately 30 per cent were still exclusively dealt with by working groups.

Note that the figures based on the discussion level measure come very close to those advanced by van den Bos (1991), who asked experts on which Council level the most important decisions had been made on a dossier. If the discussion level variable really corresponds to van den Bos' (1991) indicator of the level at which the most important decisions are made, then this is a rather unexpected finding. Such a correspondence would mean that the distribution of labour within the Council has not substantially changed since van den Bos' (1991) time of data collection in 1987.

However, a correspondence between the two measures is highly questionable. In general, whether the decision- or the discussion-level is a better indicator for the level at which the 'real' or 'important' decisions are made is not clear. On the one hand, discussions do not necessarily result in substantial decisions. Discussions can simply depict an exchange of views or, particularly in the case of ministerial meetings, the presentation of a new proposal by the Commission. On the other hand, although the decision-measure indicates which level had the last word on a dossier, the outcome might have more extensively been shaped by previous decisions on a higher or lower layer of the Council. In short, both indicators are not ideal. The decision-level

measure probably overstates the importance of administrative bodies, particularly the importance of committees. The discussion-level measure in turn exaggerates the influence of ministers. Thus, a range of proportions rather than a single value seems more useful as a description of the importance of different levels in Council decision-making: a working party was the decisive body in 31 to 43 per cent of all proposals, Coreper and the SCA shaped the legislative act in 21 to 22 per cent, and the ministers played a major role in 35 to 48 per cent of all dossiers.

## Conclusion

This article described the involvement of different types of Council bodies in decision-making on Community legislation. The case was made that more reliable information was needed to answer the question of 'who decides in the Council'.<sup>27</sup> It was also argued that an empirical answer to this question would greatly inform the debate about the legitimacy of Council decision-making. The article proceeded by outlining how Community legislation is processed within the Council structure. A review of existing estimates of the importance of different hierarchical levels in Council decision-making followed. The large discrepancies of existing estimates pointed to limitations in previous studies, such as the reliance on subjective judgements of participants in Council negotiations, the use of measurement approaches with built-in biases, and the focus on a specific Council level or policy sector. By relying on quantitative data on a large number of cases across policy sectors and by tracing the history of these cases through the Council hierarchy, the current study overcomes or at least mitigates some of these problems.

The analysis of the distribution of decisions across Council levels shows that 35 per cent of the legislative decisions in the Community pillar were taken by the ministers themselves, about 22 per cent on the level of Coreper and the SCA, and approximately 43 per cent by working parties. When considering the highest Council level on which a dossier was discussed during the course of negotiations, the role of the ministerial level seems even stronger (48 per cent). According to this measure, the senior committees (21 per cent) and particularly the working parties (31 per cent) are even less important. This finding revises the conventional wisdom, which attributes an overwhelming proportion of Council decisions to the bureaucratic level and only a minimal proportion to the political level of ministers.

<sup>27</sup> For a related study that examines the question of what types of proposals are considered on different Council levels, see Häge (2007).

While improving in several respects on previous estimates, several caveats regarding the results of the current study have to be noted. Most importantly, the results of the study are based on a specific population of Council acts. For practical reasons, the analysis was restricted to legally binding Community legislation that was adopted according to either the consultation or co-decision procedure in the year 2003. The focus on consultation and co-decision files covers the most common procedures and, arguably, also the most important pieces of legislation in the Community pillar of the EU. However, the sample also omits many other types of Council acts that can be deemed important, particularly from the second and third pillars of the EU framework. Thus, the results cannot be generalized to all types of Council acts.<sup>28</sup> An obvious avenue for future research would be to extend the sample to non-Community acts decided by the Council.

Another caveat relates to the unit of analysis. This study focused on proposals as a whole, but even if some problems in a dossier are tackled by ministers, committees and working parties will have resolved most other issues before the proposal is referred to the ministerial level. From this point of view, the results of the study exaggerate the involvement of ministers in Council decision-making. However, practitioners argue that bureaucrats confine themselves to the technical details of a dossier and leave the politically sensitive issues to ministers (Fouilleux *et al.*, 2005). Ideally, a distinction should be drawn between technical and political issues. Surely, not all important or political issues are decided by ministers. Likewise, some issues decided by working groups or Coreper are of such a technical nature that they cannot be treated on a level with the more political issues. The difficult question is of course how to define *a priori* issues as being of a political or technical nature. Is such a distinction possible at all or are all such classifications socially constructed during the negotiation process by the actors involved? In this respect, more conceptual and theoretical work on what types of issues are, or become to be seen as, political and technical is needed. For the use and interpretation of the results of this study, it is sufficient to keep in mind that the figures are based on whole proposals as the unit of analysis; they do not refer to individual issues within proposals.

The third caveat relates to the implications of the findings for the evaluation of the legitimacy of Council decision-making. Although the proportion of decisions with ministerial involvement is, at least for binding Community legislation, not as low as often alleged, this does not necessarily mean that there is no legitimacy problem. If one regards legislative decision-making by

<sup>28</sup> However, as discussed earlier, it is also not obvious whether the sample selection criteria induces any bias, or if so, what direction this bias takes with regard to ministerial involvement in Council affairs.

bureaucrats as incurring an accountability gap, this gap is less severe than has commonly been assumed. At the same time, these figures probably cannot satisfy critics of the legitimacy of Council decision-making. Even if ministers are directly involved in Council decision-making in about half of all dossiers, the fact remains that a considerable proportion of Council acts are decided by diplomats and national experts without any direct involvement of ministers. Hence, the question remains whether the glass is half full or half empty. Empirical comparisons with similar institutions might shed some more light on this point (Moravcsik, 2002).<sup>29</sup>

Fourth, the legitimacy of Council decision-making can, of course, not be exhaustively evaluated on the basis of a single indicator. Regarding the accountability of decision-makers in the Council, personal participation in the decision-making process is only one way through which ministers can increase their grip on what happens in the Council decision-making process. The members of Council committees and working groups act on instructions from their national governments. The more closely ministers are involved in the formation of national positions at home and in authorizing concessions during the negotiation process that takes place in Brussels, the less of an accountability gap exists. Thus, while the discussion and decision-making activity of ministers in Brussels is an important indicator for the evaluation of the legitimacy of Council decision-making, it is only one mechanism through which ministers can keep control of the decision-making process in the Council. Empirical comparisons of the link between national governments and negotiators in Brussels could well find that the legitimacy of Council decision-making varies from one Member State to the other or even within Member States across policy areas.<sup>30</sup>

Finally, the usefulness of generalizations across policy sectors is debatable. As the analysis showed, the proportion of decisions made at different Council levels varies considerably between policy areas. For example, the proportion of decisions taken by ministers ranged between 10 and 83 per cent. This variation in itself calls for an explanation. Two potential candidates were mentioned in the text: from a sociological institutionalist perspective, it could be argued that this variation is a result of the different degrees of acceptance among Member States of EU jurisdiction in the respective policy sector. Alternatively, the pattern is also consistent with a rational choice explanation stressing varying opportunity costs of ministers. Given the fixed amount of time ministers can devote to work on EU-related matters, ministers have to be more selective the more legislation has to be passed in a certain sector. Either way, accounting for

<sup>29</sup> For example, a comparison with the German *Bundestag*, which represents the regional states (*Länder*) in legislative decision-making on the federal level, might produce novel insights.

<sup>30</sup> I am thankful to an anonymous reviewer for this suggestion.

the causes and consequences of variation in ministerial involvement in the Council seems to be a promising topic worthy of further investigation.

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