Explaining outcomes of Conciliation Committee's negotiations

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Abstract: Who gets what, and why, in the Conciliation Committee of the Codecision procedure? Are the European Parliament and the Council of Ministers really on an equal footing? The study of negotiations within the Conciliation Committee, especially from a quantitative perspective, has been rather neglected. This paper illustrates the results drawn from an innovative dataset applying Wordfish to the analysis of all the legislative texts produced prior and after the proceedings of the Conciliation Committee. The initial results indicate that the joint texts produced by the Committee are more similar to the prior positions of the Council than that of the Parliament. However, over the two decades since the Maastricht Treaty, this advantage appears to have diminished and compromise positions, located in between those of the two institutions, are more likely. Preliminary analysis indicates than the Parliament is more successful when the Council’s president, during the negotiations, comes from an new member state, when the parliamentary rapporteur comes from one of the two largest party groups, in case of similar partisanship of the majority within the Parliament and the Council, in case of directives and in the post-Treaty of Amsterdam period.

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1. Introduction

In the codecision procedure, now the ordinary legislative procedure of the European Union, the European Parliament (EP) and the Council of Ministers employ a conference committee, called the Conciliation Committee, to settle the differences that may arise during the adoption of legislation. Who wins in these negotiations, the Council or the Parliament? Are they really on an equal footing? What are the factors that determine bargaining success within the Conciliation Committee?

In the only empirical research on this issue, König et al. (2007) concluded that, in the period between 1999 and 2002, there was a general pattern of the parliamentary dominance in conference interactions. But further investigation for the entire period the codecision procedure has been into force is warranted. It will shed more light on the bargaining mechanisms inside the Conciliation Committee.

At the core of this enterprise is a comparison between the positions that the Parliament and the Council have prior to the Conciliation Committee negotiations and the final outcome. This comparison is a methodological challenge and it is fraught with difficulties. After a brief introduction to the codecision procedure and a review of the literature, a large section of the paper is dedicated to the measurement of the dependent variable and to issues of validity, reliability and replicability.

We will then present an original dataset that employ a text comparison technique called Wordfish to the analysis of all the legislative texts produced prior and after the
proceedings of the Conciliation Committee. The initial results indicate that the joint
texts produced by the Committee are more similar to the prior positions of the Council
than that of the Parliament. However, over the two decades since the Maastricht
Treaty, this advantage appears to have diminished and compromise positions, located
in between those of the two institutions, are more likely. We conclude with
preliminary inferential results on the determinants of negotiation outcomes.

2. The codecision procedure and the Conciliation Committee
The codecision procedure was introduced by the Treaty of Maastricht in 1993
(codecision I) and a second version was adopted by the Treaty of Amsterdam in 1999
(codecision II). The 2009 Treaty of Lisbon has identified the codecision procedure as
the ordinary legislative procedure, increasing the policy areas in which it applied: from
15 in 1993 to 80 areas of Community activity in 2009 – including the internal market,
environment, Common Agriculture Policy, trade policy, transport, structural funds, the
total budget, penal judicial cooperation and police cooperation. Moreover, also the
number of bills increased dramatically over the years: from 153 acts in the 1993-1999
According to article 294 of TFEU, the codecision procedure is initiated with the
submission of a policy proposal by the Commission to the EP and the Council. The
European Parliament can approve the proposal or amend it. Then, the Council can
approve the accepted version of the European Parliament or it can initiates a second
reading of the decision making, by making a version on its own. The Council version,
called the Council Common Position, can be approved or amended by the European
Parliament. In the latter case, if the Council does not accept modifications, then the
Conciliation Committee shall be convened with the task of reaching agreement on a
Joint Text within 6 weeks. If the EP and Council delegations to the Conciliation
Committee agree on a Joint Text, it is submitted to the European Parliament and the
Council for acceptance in third reading. They agree according to their decision rules:
the single majority for the EP, the QMV or unanimity for the Council.
The Conciliation Committee is a conference committee where the delegations of the
Council and the European Parliament, equally represented, attempt to solve
disagreements between chambers and it provides the last stage where legislative
compromises may be worked out and bicameral conflicts may be solved.
When the Conciliation Committee is convened, each chamber appoints an equal
number of representatives. After the 2004-2007 Enlargement the Conciliation
Committee is thus composed of 27 representatives of the Member States and 27
MEPs. The delegates of the Council are the Member States or their representatives
(sometimes they are deputy permanent representatives from COREPER I), while the
deleagtes of the European Parliament are appointed by their party groups, in relation
of the size of each group in the Assembly. Moreover, EP vice-presidents and the
rapporteur are permanent members. The Commissioner takes part to the Conciliation
meeting without right to vote. The Conciliation Committee acts as a conditional
agenda setter, since it proposes a compromise to the parent bodies under closed rule:
the Council and the European Parliament may only accept or reject the Joint Text
drafted by the Conciliation Committee, but they cannot amend or renegotiate it. Even
though the Treaties highlights that the Conciliation Committee “shall have the task of
reaching agreement on a joint text”, since half 1995 the practice of informal restricted
meetings between the three institutions – the so called triilogues – has become
standard. Indeed since the Spanish presidency in 1995 representatives of the Parliament, the Council and the Commission have started talking to each other routinely, strengthening better contacts between the institutions. The 1999 and 2006 formulations of revisited Joint Declaration have played useful role in facilitating the bargaining, by making official the adoption of trialogues from the initial stages of the codecision procedure and not only in the Conciliation phase.

3. Literature

The question on who has much influence on legislation in the European Union has interested many scholars. These applications, however, are mainly concentrated on the intra-institutional distribution of power. Most of the literature, indeed, investigates the factors influencing the decision-making process inside either the European Parliament or the Council of Ministers. Scholars have tended to examine each chamber in isolation, missing the point on the truly important element of the institutional design of the European Union: its bicameralism. Unlike the study of the legislative institutions the analyses of the bicameral nature of the European Union and the features of the crucial Conciliation stage of codecision are rather neglected by scholars. A few works are trying to examine the Conciliation Committee from a rational choice and spatial perspective. For our purpose, we present 4 important researches on the Conciliation Committee: the first two present theoretical models on the legislative outcomes enlightening procedural advantages or disadvantages between the Council and the EP, the third of König et al. (2007) is an empirical analysis based on expert survey, while Rasmussen adopts the principal-agent framework to understand how the two delegations behave in the Conciliation Committee.

Both Tsebelis and Garrett (2000) and Napel and Widgrén (2003) agree on the procedural symmetry of power between the two institutions (always taken as unitary), since the Conciliation Committee is equally composed by 27 representatives of the Member States and 27 MEPs. Napel and Widgrén (2003), however, observe that indirect procedural (dis-)advantage should influence the Conciliation Committee outcomes: different majority threshold – the qualified majority for the Council and the simple majority for the EP – creates asymmetry of power and different bargaining positions. According to the two authors “This implies that Council of Ministers is far more often the player closer to the status quo and, by bargaining’s status quo bias, to define the compromise reached in the Conciliation Committee. Measuring a player’s power as the sensitivity of the collective decision to its preferences, Council of Ministers’ a priori power turns out to exceed that of EP by an order of magnitude” (2003: 2).

The empirical analysis of König et al. (2007) confirms some theoretical claims as the importance of the status quo location and the cohesiveness actors’ preferences. In particular, this suggests that European Parliament may succeed only with highly cohesive coalitions and closeness to the status quo for winning in the conciliation process, even if the Council is split. The authors state that in 56% of the cases the EP won, while the Council only in 26% of the cases. A surprising finding is the role played by the Commission: despite its lack of agenda-setting power, which makes it not to be included in the analysis of most of the theoretical models, “the Commission seems to have informational advantages and is an active mediator between the two institutional actors” (König et al. 2007: 302).
Finally, the research of Rasmussen (2005) illustrates, through interviews and official documents, the Conciliation Committee is not a “runaway agent. Under the principal-agent framework, she emphasizes the two stages of delegation: the first entail the two chambers with the respective delegation groups, the second one is from the conciliation delegations to the key negotiators.

4. Methodology

We provide a framework for studying the Conciliation Committee’s negotiations taking into account the legislative documents. We compare the three documents that form the basis for the conciliation negotiations: the common position of the Council and the 2nd reading of the EP with the outcome of the Conciliation Committee – the Joint Text. Political texts are the most available source to understand political position and text analysis was developed to exploit this kind of source. Political documents provide information about policy position an actor adopts on a specific issue and at a specific point in time. Research on the measurement of policy positions has developed two major text analysis techniques: hand-coding and computer-assisted text analysis. In our work we applied both: a qualitative hand-coding technique and Wordfish. To test the validity of Wordfish, which is often criticized by a lack of validity in respect of high degree of reliability, we used the hand-coding analysis.

4.1 Wordfish

To derive policy positions of the European Parliament, the Council and the Conciliation Committee, we used a recently developed quantitative text analysis – Wordfish. Wordfish is able to extract policy position from texts on a predefined policy dimension by drawing on word frequencies in text. This recent development has contributed the process to extract data from text to be less time consuming. Wordfish is a computer program which employs the R statistical language platform, in which word frequencies are assumed to be generated on a Poisson distribution and are estimated through an expectation maximization algorithm. According to the two creators – Slapin and Proksch (2008) – the selection of the Poisson distribution was due to its simplicity: it has only one parameter, \( \lambda \), which is both the mean and the variance. The distribution is the following:

\[
\begin{align*}
  y_{ijt} & \sim \text{Poisson}(\lambda_{ijt}) \\
  \lambda_{ijt} & = \exp(\alpha_{it} + \psi_j + \beta_j \ast \omega_{it})
\end{align*}
\]

where \( y_{ij} \) is the count of word \( j \) in actor \( i \)'s document (e.g. manifesto, speech, legislative text, etc.). \( \alpha \) is a set of actor fixed effects and controls for the length of the documents under examination, that is to say the possibility that some actors write or talk more. \( \psi \) is a set of word fixed effects and capture the fact that some words, such as prepositions, articles and stopwords, are more often used than other words by all actors. \( \beta \) is an estimate of a word specific weight capturing the importance of word \( j \) in discriminating between positions, and \( \omega \) is the estimate of actor \( i \)'s policy position. Finally \( t \) is the time when the document was produced. Wordfish assumes that the word usage remains constant over time: a manifesto from party A at time \( t+1 \) is simply treated as a new document and it is assumed to be unrelated to party A’s manifesto at time \( t \). Wordfish has, thus, the ability to produce time-series estimates. Moreover, Wordfish does not require any reference texts and reference values because it obtains policy position assuming an underlying statistical distribution of word counts.
4.2 Hand-coding

The study of amendments as an attempt of the legislative roles of the European Parliament, the Council of Ministers and the Conciliation Committee has been notably ignored by scholars, with the exception of the work of Tsebelis et al. (2001). Differences in legislative texts regards amendments and changes in the EP 2nd reading, the Council Common Position and the Joint Text. In other words what differentiates the institutions’ positions are those modifications, under which some forms of bargaining among the EU institutions – Council of Ministers, European Parliament and Conciliation Committee – can take place. As Tsebelis et al. points out, amendments are the solution institutions give to cases of manifest disagreements: “once such disagreements exist they are resolved one way or another mainly because of the influence that different actors exercise in the law-making process” (Tsebelis et al. 2001). Consequently, amendments and changes with the final text of EU legislation are the best existing empirical evidence to assess the influence of each actor.

We developed a classification scheme with 5 categories regarding the type of changes and amendments. Amendments were coded as “EP Adopted” when they were adopted verbatim by the Joint Text, while they were “EP Partially Adopted” when the Joint Text modified the EP amendment but the substantive meaning was the same. On the other hand, the changes of the Joint Text might adopt the Common Position texts: so we have coded as “CP Adopted” in the case that the Common Position article or recital was fully adopted by the Joint Text, whereas we coded as “CP Partially Adopted” when the Common Position subunit1 was partially adopted with some modification by the Joint Text. We assessed “CP Adopted” also when the EP amends the Council Common Position but the Conciliation Committee did not accept the EP amendment.

Moreover, the Joint Text can change the EP and the Council subunits either partially (less than 40%) or largely (more than 40%): to the former we refer to “Partially Changed”, while the letter is labeled as “Largely Changed”. Finally, since in the Joint Text new statements can appear, we decided to indicate those new insertions as “New”. We assessed as “New” also when the Conciliation Committee deleted the same Council and European Parliament text. Here below the assessment criteria (Table 1).

Table 1: Key to Degree of Adoption Coding

<table>
<thead>
<tr>
<th>Substantive meaning</th>
<th>Coding labels</th>
</tr>
</thead>
<tbody>
<tr>
<td>EP Amendment is adopted verbatim</td>
<td>EP adopted</td>
</tr>
<tr>
<td>CP Amendment is adopted verbatim</td>
<td>CP adopted</td>
</tr>
<tr>
<td>EP Amendment is partially adopted</td>
<td>EP partially adopted</td>
</tr>
<tr>
<td>CP Amendment is partially adopted</td>
<td>CP partially adopted</td>
</tr>
<tr>
<td>EP and CP subunit is changed in less than 40% of the words</td>
<td>Partially changed</td>
</tr>
<tr>
<td>EP and CP subunit is changed in more than 40% of the words</td>
<td>Largely changed</td>
</tr>
<tr>
<td>New JT subunit is adopted or Council’s and EP’s statement is removed</td>
<td>New</td>
</tr>
</tbody>
</table>

1 With the term subunit we refer to article, recital, footnote and statement in the Annex that appear in the text of both the Common Position and the EP position.
Then we summed all the coding labels in each procedure file, so we could, to some extent, have a general picture of the frequencies for type of variations and then we could realize the final positions taken during the Conciliation Committee. The final position declared by the Joint Text is calculated by confronting its total amount of changes with the fully and largely adopted amendments of both the EP and the Council for each codecision files, in two ways. The first takes into account only the Joint Text changes respects the two actors’ positions, while the second includes also preambles, articles, and annexes labeled as “New”. Both processes employ two steps:

1) If the amount of largely and partially adopted changes (and novelties) is bigger than the amount of both two institutions’ amendments adopted, either fully or partially, the final position will be impossible to determine (in the table it appears the label “undefined”);

2) If the amount of largely and partially adopted changes (and novelties) is less than the amount of either of the two institutions’ amendments adopted, the final position will be in favor of that institutions (in the table it appears the labels “EP” for the European Parliament position or “CP” for the Council Common Position).

So, the two processes could produce the same output or not. As regards the second type of output, it occurs when one of the processes creates an “undefined” statement. We decided to label it as “toward EP” or “toward CP”.

5. Data and results

5.1 Selection criteria and data gathering

The dataset includes 176 codecision dossiers on which the Conciliation Committee has reached agreement from 1992 (the entry into force of the Maastricht Treaty) until 31.12.2010. The dossiers are selected according to the fact that the European Parliament’s and the Council’s delegation have drafted the Joint Text at the Conciliation, no matter whether the Joint Text has been approved by each chamber or not. Three of the legislative proposals – the directive on the Legal Protection for Biotechnological Inventions (COD/1988/0159), the Takeover Directive (COD/1995/0341) and the Port Services Directive (COD/2001/0047) – were not adopted in the end because their Joint Text failed to find a majority in EP plenary at third reading. Moreover, we excluded the COD/1994/0098 on Trans-European multimodal transport network, because the Common position presents maps rather than lists of the transport networks, so with Wordfish we would have missed important data and the value of the Council’s position would have been biased. So in the end, the dataset is composed of 175 legislative proposals.

For the sake of completeness, it is crucial to know that since the adoption of the codecision procedure, the conciliation committee was not able to reach agreement only in 3 cases: on the draft directive on Open Provision in Voice Telephony (COD/1992/0437) in July 1994, on Investment firm (COD/1995/0188) in July 1997 and on the Working Time Directive (COD/2004/0209) in April 2009.
In order to analyze the Conciliation Committee outcomes and more specifically winners or losers in the Conciliation, for each codecision file we have gathered three legislative texts, namely the EP 2nd reading, the Council Common Position and the Joint Text of the Conciliation Committee. In this way we were able to extract the institutions’ positions on defined dossiers from their respective legislative texts. Data gathering was possible thanks to the Commission’s and the European Parliament’s websites on the codecision procedures. The European Parliament’s website makes available activity reports written by the EP delegation to the Conciliation Committee for each legislature from 1994 onwards. The activity reports give statistics as well as quantitative and qualitative analyses on the codecision procedure and the Conciliation, and most importantly, they list the completed codecision procedures with the relative code of reference.

Two European databases – PreLex of the Commission and OEIL of the European Parliament – monitor the inter-institutional decision-making process in the EU and describe the progress a proposal from the Commission transmission to the other legislative institutions until its adoption or not. From those databases we downloaded the EP 2nd reading, the Council common position and the Joint Text formulated by the Conciliation Committee. Due to the large observation period, documents were not entirely downloadable in either the database, so especially for procedure files started in the 4th legislature (or before) the data collection was conducted manually with the finding of the documents in the respective printed versions of the Official Journal of European Union or asking to the public registers of the European Parliament and the Council.

The total amount of 525 legislative texts was processed in order to correct and standardize them. We corrected the texts of mistyped and misspelled words using at first the spelling and grammar check of Microsoft Word. The tool, however, gives a general and vague correction, since it does not detect a mistaken word if the word is

### Table 1: Legislative dossiers with Joint Text from the 4th to the 7th legislature - by responsible EP committee

<table>
<thead>
<tr>
<th>EP committee</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGRI</td>
<td>0,0%</td>
<td>1,2%</td>
<td>0,0%</td>
<td>0,0%</td>
<td>1,0%</td>
</tr>
<tr>
<td>CULT</td>
<td>12,5%</td>
<td>3,5%</td>
<td>0,0%</td>
<td>0,0%</td>
<td>6,3%</td>
</tr>
<tr>
<td>DEVE</td>
<td>0,0%</td>
<td>2,3%</td>
<td>0,0%</td>
<td>0,0%</td>
<td>1,1%</td>
</tr>
<tr>
<td>ECON</td>
<td>21,9%</td>
<td>0,0%</td>
<td>0,0%</td>
<td>0,0%</td>
<td>8,0%</td>
</tr>
<tr>
<td>EMPL</td>
<td>0,0%</td>
<td>9,3%</td>
<td>4,3%</td>
<td>0,0%</td>
<td>5,1%</td>
</tr>
<tr>
<td>ENVI</td>
<td>43,8%</td>
<td>44,2%</td>
<td>39,1%</td>
<td>50,0%</td>
<td>43,4%</td>
</tr>
<tr>
<td>FEMM</td>
<td>0,0%</td>
<td>1,2%</td>
<td>0,0%</td>
<td>0,0%</td>
<td>0,6%</td>
</tr>
<tr>
<td>ITRE</td>
<td>7,8%</td>
<td>3,5%</td>
<td>0,0%</td>
<td>50,0%</td>
<td>5,1%</td>
</tr>
<tr>
<td>JURI</td>
<td>12,5%</td>
<td>9,3%</td>
<td>4,3%</td>
<td>0,0%</td>
<td>9,7%</td>
</tr>
<tr>
<td>LIBE</td>
<td>0,0%</td>
<td>1,2%</td>
<td>0,0%</td>
<td>0,0%</td>
<td>0,6%</td>
</tr>
<tr>
<td>TRAN</td>
<td>1,6%</td>
<td>24,4%</td>
<td>52,2%</td>
<td>0,0%</td>
<td>19,4%</td>
</tr>
<tr>
<td>Total</td>
<td>100,0%</td>
<td>100,0%</td>
<td>100,0%</td>
<td>100,0%</td>
<td>100,0%</td>
</tr>
</tbody>
</table>
mistyped but not misspelled (for example, the word “form” instead of “from”), and secondly, it is not able to identify those mistaken words containing numbers (e.g. the verb “col1ect” instead of the verb “collect”), unless you check the option of Microsoft Word off expressly. These two kinds of errors are extremely relevant, also taking into account that a lot of the collected documents were scanned, converted in PDF files, and then translated into machine-encoded text through the Optical Character Recognition, known as OCR. As a consequence, this conversion procedure carries lack of accuracy and produces misspelling and mistaken words not detected by Microsoft Word. In addition, we used the program JFreq, to detect and correct the misspelled words as well as to remove stopwords (“and”, “then”, “but”, ...) and words particularly recurrent in legislative texts (“article”, “annex”, “paragraph”, “whereas”, “OJ”) whose information value is almost zero and their estimation would be then inefficient. Finally, using JFreq we stemmed all the words according to the English dictionary. The advantage is that words with the same root are captured as one unique word, making the estimation more efficient: “working”, “worker” and “works” are stemmed into the root word “work”. Unfortunately the stemming process has two potential disadvantages: firstly, certain compound words are stemmed, meaning that information is lost; secondly, it is based on a certain language dictionary, so problems may arise in the case of texts containing words written in other languages. The latter disadvantage occurred in the documents of this research due to the fact that in some legislative texts could appear special references to national institutions or agencies with their original name. The stemming algorithm of JFreq would have stemmed also these words, but according to the English dictionary. Therefore, we took the decision to delete non-English words that refers to national institutions, but to maintain those words that are getting common also in the English lexicon, as for example Latin or other foreign words, such as “inter alia”, “mutatis mutandis” and “Leitmotiv”.

Furthermore, using another text editor program -Notepad++- we have deleted regular expressions as well as symbols and abbreviations that are unnecessary and could biased the text analysis. In particular, we deleted all elements contained in the layout of documents, for example the reference to the document’s author (Council, European Parliament or Conciliation Committee), the competent DG or body subunit in charge, the number of pages. Abbreviations referring to units of measurement, mathematical or chemical formula and non-relevant footnotes as those referring to international Conventions or EU legislations were removed. Further deeper investigation of the legislative texts has contributed to delete legends and abbreviations for technical explanations as well as those acronyms of international organizations or institutions such as “WHO”, “UNESCO”, and so on. On the other hand, some other acronyms were translated into their full name, as in the case of the abbreviation “EU” changed in “European Union”.

5.2 Text analyses

Wordfish – the computer-based analysis

In the first step we applied Wordfish to the documents. The analysis has been developed in two ways: first, Wordfish is applied on all the codecision files reached an agreement in the Conciliation Committee, and then we used Wordfish to a small sample of the codecision files. The two processes have run differently. The first Wordfish application (hereafter Wordfish I) run each legislative file at a time, so it
extracts the positions of the three institutions – European Parliament, Council and Conciliation Committee – from three documents. The second Wordfish application (hereafter Wordfish II), on the contrary, analyses 20 dossiers all together for a total amount of 60 legislative texts.

This explanation on how Wordfish works is extremely relevant because actor positions are extracted on the basis on relative word usage: the amount of documents used by Wordfish brings about different estimates even for the same legislative texts. As a consequence the position estimates extracted through Wordfish I are different from those of Wordfish II. We decided to analyses both processes in order to determine the best valid way to estimate institutions’ positions, even though we are more prone to consider the proposal-by-proposal analysis from a methodological point of view. The diversity of content and issue in the documents is very wide, because the policies treated in the legislative texts vary from agriculture and environmental issues to public health, relationship with third countries, culture, transport and regional affairs, and so on. Moreover, the identification of policy position in Wordfish is achieved by setting the mean to zero and by fixing the standard deviation to one, which implies that absolute distances are not comparable across different issues. The documents are quite short and the position estimates are based on more than 600 words, even though there are a large number of infrequently used words. According to Proksch and Slapin (2009), there might be concerns about the stability of word parameters, estimated on very infrequently used words, because they can produce word weight carrying infinite weight. For all these reasons we want to validate the findings of Wordfish I both with Wordfish II and with the hand-coding techniques.

Then, we elaborated a simple equation measuring the distance between the Joint Text position and the EP 2nd reading or the Council Common Position for each proposal.

**Equation 1**


Where, JT is the position of the Conciliation Committee extracted from the Joint Text, EP is the position of the European Parliament extracted from the 2nd reading and CP is the Council’s position extracted from the Common Position. The equation provides an insight on which chamber has more power in the Conciliation Committee, since it quantifies the absolute distance between the two differences in positions. In other words it defines the closeness of an institution to the final outcome.

**Equation 2**

\[ [(JT - EP)^2] - [(JT - CP)^2] = \begin{cases} 
CP, & (JT - EP)^2 - (JT - CP)^2 > 0 \\
EP, & (JT - EP)^2 - (JT - CP)^2 < 0 \\
EP = CP, & (JT - EP)^2 - (JT - EP)^2 = 0 
\end{cases} \]

Equation 2 formalizes that the Conciliation Committee has a closer position to the Council when it is positive, indicating more power to the Council. On the contrary the Conciliation Committee has a closer position to the European Parliament when the relation is negative, indicating more power to the EP.

Figure 2 shows both the frequencies of distance between institutions’ positions as a whole (a), and the frequencies by legislature of the European Parliament (b). Surprisingly, then, the Council won in all the parliamentary terms. Only in the 5th term
the European Parliament obtained substantial achievements in Conciliation: almost 40% of the proposals concluded with a Joint Text more similar to the parliamentary 2nd reading. Regarding the 7th EP legislature, remarks are necessary. Despite the success of the Parliament in the term, we should highlight that only 2 dossiers have been concluded up to now and the legislature is still under way. The 7th term indeed will finish in 2013. Moving on, Wordfish II is implemented on 20 proposals at a time. The entire dossier list is in Appendix 2. The different relative word usage from Wordfish I determines also diversities in the outputs. The policy position estimates, indeed, are much closer in this second application than in the first Wordfish process: the reason lies on the fact that the legislative texts belonging to the same proposal share a similar lexicon in respect of other legislative texts. We have used the same equation on the distance also for the application of Wordfish to the subsample and the findings are surprising. Under Wordfish II the Joint Texts are half towards the position of the European Parliament and half the Council’s position.

By comparing the results between the two applications, we would have expected that, despite relative word usage caused different estimates of policy position, the relative distance between the positions were unchanged. At least we could understand to which institution’s position the Joint Text is much closer, independently by the Wordfish process we applied. In other words, if we did note that the Joint Text is closer to the EP’s position than the Council common position for the Wordfish application controlling proposal by proposal, we should have expected that the same relation should verify in the Wordfish II’s output. Despite the expectations, there are 8 cases out of 20 in which the closer institution (either the European Parliament or the Council) is different from what came out in Wordfish I.

Figure 2: Frequencies of the distance of institutions’ positions

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2 The results discussed later refer only to those legislative dossiers of the subsample selected for the second Wordfish application.
Moreover, we elaborated two indices of comparison between Wordfish I and II. First, we analyzed the compromise Joint Texts the two delegations could be agreed on. Compromise Joint Texts happen when the Conciliation Committee is placed in between the European Parliament’s and the Council’s positions. In this sense, because of the bicameral nature of the Conciliation Committee, we would expect that most of the Conciliation Committee’s estimates regard compromise positions (Figure 3a). The second index measures revolutionary position of the Conciliation Committee. Positions are defined as revolutionary when the distance between the Conciliation Committee and both the institutions is larger than the distance between the Council and the Parliament. In Figure 3b the Conciliation Committee can assume revolutionary positions when it is placed in the striped areas. In these cases, the final Joint Text brings so many changes and amendments that it is difficult to determine the closeness either to one or both of the two institutions’ positions. On the contrary the Conciliation Committee might take a position that is closer to one of the two institutions. With reference to Figure 3b, the Conciliation Committee should be placed in the two not-shaded areas on the right of the European Parliament and on the left of the Council.

Both in the cases with compromise Joint Texts and in the cases with extreme Joint Texts, we would expect that they occurred in the same codecision files no matter of the type of Wordfish I applied.

**Figure 3: Positions of the European Parliament, the Council and the Conciliation Committee**

As far as Wordfish I is concerned, surprisingly, the Joint Text is placed in between the two institutions’ positions 27 times (more than 15% of the dossiers), of which only 2 times it is occurred when the Treaty of Maastricht was into force. But on that period revolutionary Joint Text are conversely much more frequent (slightly less than 70% of the total dossiers). Wordfish II shades light on contrasting results. Joint Texts positions close to one of the two institutions were reached only under codecision I. On the contrary, compromise Joint Texts were reached only under the codecision II (6 dossiers out of 20). In addition, only two compromising cases (COD/1997/0067 and COD/2005/0239) and three revolutionary Joint Text positions (COD/1995/0080; COD/1998/0195 and COD/1998/0336) coincide in both Wordfish applications. In order
to solve this incongruence between the two processes and then to decide which is more valid, we decided to employ also a hand-coding text analysis. The hand-coding technique was employed with the aim to identify whether Wordfish is a valid approach to measure the policy positions of institutions by analyzing the legislative texts.

**Figure 4: Frequencies of the institutions' positions**

![Figure 4: Frequencies of the institutions' positions]

**Hand-coding text analysis**

We performed the hand-coding analysis on the same sample of 20 legislative proposals we selected for Wordfish II. Drawing on an in-depth reading of the documents of the European Parliament, the Council and Conciliation Committee, we applied the classification scheme with five categories. The analysis has involved more than five hundreds of modifications of the provisional texts and we were able to describe the adoption degree of the EP and Council amendments and the type of modification presented by the Conciliation Committee. In order to implement the assessment we proceeded as follows. First, for each randomly-selected procedure files a spreadsheet was created in which each row refers to amendments and changes, while the column represents the last three stages of the procedure: namely the Council Common Position, the EP 2nd reading and the Joint Text. Therefore, each amendment and each change generates a profile, indicating the actions taken. Second, a judgment is made as to the degree to which the amendments and the changes can be different depending on the Council Common Position, the EP 2nd reading and the Joint Text. The degree of adoption refers only to the comparison between the last stage with the two other precedents stages. Third, we labeled amendments and changes according to the classification scheme elaborated before (Table 1).

The article 6(1) of the procedure COD/1994/0222 provides a clarifying example on the way we proceeded. The amendment was assessed as “Partially Changed”. The Common position reads:

**Article 6(1)** In the course of implementing this programme, cooperation with non-member countries and with international organizations competent in the field of public health, in particular the United Nations, the World Health Organization and the Council of Europe.
The EP 2\textsuperscript{nd} reading deleted the italicized text above and added the bold text below:

**Article 6(1)** In the course of implementing this programme, cooperation with non-member countries and with international organizations in particular the United Nations, the World Health Organization, the Council of Europe, and non-governmental organizations competent in the field of public health or particularly involved in the fight against AIDS and the prevention thereof.

Finally, the Joint Text deleted the italicized text of the EP position, restated the Council text previously removed (underlined below) and added the bold text:

**Article 6(1)** In the course of implementing this programme, cooperation with non-member countries and with international organizations competent in the field of public health, especially the United Nations and in particular the World Health Organization, the Council of Europe and non-governmental organizations, competent in the field of public health or particularly involved in the fight against AIDS and other communicable diseases and the prevention thereof.

In this situation, we cannot determine that the Conciliation Committee’s intent was to take a position closer to either of the other two institutions. We assessed the Joint Text response to this subunit to be in the “Partially changed” category.

The classification of the type of changes is rather subjective and can be subjects to different interpretation and codification by other scholars. The task to envisage a proper and univocal definition to the text, indeed, is rather cumbersome: it was difficult for some cases to determine whether changes and amendments were more prone to the Council position instead to the European Parliament’s one, or even whether they can contain such novelties that these text can be identified as a partially or largely changed adoption. We have decided not to take into account the subject itself of the text, rather the mere changes that may have affected the document. In other words, we have not examined whether the Joint Text has brought changes according to the content of either the institutions’ position. Especially in the case of legislative documents, their technicalities are so complex that we cannot understand completely the matter in question.

We are aware that many changes were difficult to classified, for this reason we tried to be as clear as possible to classify the amendments and changes of the documents under scrutiny. In this regard the careful definition of the classification scheme and the article mentioned above should be a useful guideline for other scholars. Achieving acceptable levels of inter-coder reliability is fundamental in text analysis because it measures “the degree to which a process can be replicated by different analysts working under varying conditions, at different locations, or using different but functionally equivalent measuring instruments.” (Krippendorff, 2004: 215). In order to achieve inter-coder reliability, we have employed communicable guidelines specific for the sample selection as well as the coding procedure we followed, giving in details the categories of the modifications occurred in the legislative texts, the respective coding numbers and also we have illustrated some examples so as codifying models. Moreover, we replicated the coding procedure more than one time. In this ways we
aimed at reducing subjective judgments and making the procedure the most transparent and replicable.

The table 2 highlights the outputs of hand-coding analysis. 7 codecision files out of 20 were impossible to determine unequivocally, since many modifications largely or partially changed the Council and EP texts, so there was difficulties to establish the Joint Text’s intent toward either of the two legislative institutions’ position. On the contrary, 8 files have the Joint Text more similar to the Council Common Position and only two codecisions take largely into account the EP 2nd reading. The three remaining dossiers have Joint Texts’ positions oriented toward either the European Parliament (COD/1992/0426 and COD/2001/0257) or the Council (COD/1998/0336).
Table 2: Degree of Adoption for selected proposals

<table>
<thead>
<tr>
<th>COD/Year</th>
<th>EP adopted</th>
<th>CP adopted</th>
<th>EP partially adopted</th>
<th>CP partially adopted</th>
<th>Partially changed</th>
<th>Largely changed</th>
<th>New</th>
<th>Final position of the Joint Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>COD/2005/0239</td>
<td>4</td>
<td>28</td>
<td>15</td>
<td>1</td>
<td>6</td>
<td>5</td>
<td>11</td>
<td>CP</td>
</tr>
<tr>
<td>COD/2005/0191</td>
<td>5</td>
<td>67</td>
<td>6</td>
<td>3</td>
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<td>7</td>
<td>7</td>
<td>CP</td>
</tr>
<tr>
<td>COD/2004/0175</td>
<td>11</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>11</td>
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<td>UNDEFINED</td>
</tr>
<tr>
<td>COD/2003/0168</td>
<td>0</td>
<td>15</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>6</td>
<td>2</td>
<td>CP</td>
</tr>
<tr>
<td>COD/2001/0257</td>
<td>8</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>9</td>
<td>1</td>
<td>1</td>
<td>Toward EP</td>
</tr>
<tr>
<td>COD/1998/0336</td>
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<td>10</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>3</td>
<td>Toward CP</td>
</tr>
<tr>
<td>COD/1998/0289</td>
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<td>2</td>
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<td>1</td>
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<td>CP</td>
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<tr>
<td>COD/1998/0195</td>
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<td>7</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>3</td>
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</tr>
<tr>
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<td>3</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>UNDEFINED</td>
</tr>
<tr>
<td>COD/1997/0176</td>
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<td>2</td>
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<td>11</td>
<td>6</td>
<td>1</td>
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<td>0</td>
<td>2</td>
<td>CP</td>
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<td>25</td>
<td>14</td>
<td>1</td>
<td>23</td>
<td>14</td>
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<tr>
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<td>6</td>
<td>0</td>
<td>2</td>
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</tr>
<tr>
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<td>5</td>
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<tr>
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</tr>
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<td>1</td>
<td>3</td>
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<tr>
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<td>1</td>
<td>0</td>
<td>CP</td>
</tr>
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<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>CP</td>
</tr>
<tr>
<td>COD/1992/0426</td>
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<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>Toward EP</td>
</tr>
<tr>
<td>COD/1992/0415</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>EP</td>
</tr>
</tbody>
</table>

*Note:* CP = Council Common Position; EP = European Parliament 2nd reading; UNDEFINED = impossible to estimate; Toward CP = the final position of the Joint Text converges toward the Council Common Position; Toward EP = the final position of the Joint Text converges toward the European Parliament 2nd reading.
Remarks on the validity and reliability of the text analyses

As we have introduced before, the hand-coding text analysis is needed in order to confirm or not the validity of Wordfish. In this section we would like to explore the debate over reliability and validity in the text analysis. In particular we will understand whether the analyses we have run can have acceptable degrees of reliability and validity, and whether these analyses can be complementary to extract policy position from legislative texts.

The trade-off between validity and reliability is extremely meaningful in the debate over hand-coding or computerized techniques, since usually hand-coded measuring is associated with scarce reliability but high validity, while computer-assisted technique has the advantage to have a high degree of reliability, but lack of validity. The validity of estimates considers whether the used approach measures the intended concept. In Neuendorf’s words validity is “the extent to which a measuring procedure represents the intended, and only the intended, concept. In thinking about validity, we ask the question, ‘Are we measuring what we want to measure?’” (2002: 112). The question thus refers to, on the one hand, the text as the valid source of information about the matter under investigation and the technique we have used – Wordfish, on the other hand it refers to the generalizability of the measures – that is to say, the external validity.

The assessment of the Wordfish approach’s external and internal validity is obtained through cross-validation with hand-coding analysis, the confirmation of the activity reports of the European Parliament and the parametric bootstrap offered by Wordfish. Since hand-coding analysis is characterized by a high validity, due to the in-depth knowledge of the content of the legislative texts, we can test the validity of Wordfish. The comparison between the two measuring techniques shows that, despite seven codecision files were assigned impossible to label, eleven times the hand-coding results confirm either of the two Wordfish applications, while only two hand-coding results did not verify Wordfish’s validity. Moreover, it is necessary to bear in mind that the policy estimates through hand-codification guarantee then the comparability with the other text analysis technique. The hand-coding estimation was a helpful device so that it was possible to select which application of Wordfish measures at best the policy positions of the institutions extracted by legislative texts. As we mentioned before, the two different processes of Wordfish – the proposal-by-proposal estimation and the 20-proposal estimation – result in contrasting positions in 8 out of 20 procedure files. Therefore, by handling the conflicts and by giving the coder an orientation on the right process to apply on the research, the hand-coding approach suggests maintaining the proposal-by-proposal application of Wordfish. The results of the hand-coding analysis on the 8 proposals, indeed, are more similar to those found out in the first process we run out with Wordfish: half of the hand-coded policy positions – those referred to the procedure files COD/2005/0191; COD/2003/0168; COD/2001/0257; COD/1998/0289 – are oriented toward the same estimates obtained with proposal-by-proposal Wordfish application, while only one – the procedure file COD/1992/0426 – is oriented toward the 20-proposal Wordfish application. On the other hand the three other procedure files with conflicting results present ambiguous estimations using the hand-coding analysis, since no numerical code was the majority in comparison to the others. For example, the codecision file COD/1997/0146 on “Public health: Community action programme 1999-2003 concerning
rare diseases” has been subjected of several variations in its content both by the European Parliament and by the Council and by the Conciliation Committee. In particular, the Joint Text has fully adopted three EP amendments and partially adopted two EP amendments. On the other hand, it has accepted four text variations of the Council. Other six variations regard partial changes in which the coder cannot identify the Conciliation Committee’s intent toward either of the two institutions’ position, at the same time the Joint Text include two new more sentences. Since it is unclear the final purpose of the Conciliation Committee the coder has labeled the codecision file as impossible not to estimate equivocally.

As a result, the qualitative hand-coding text analysis enables to reach two important conclusions on Wordfish’s validity. Firstly, the comparison of the hand-coding results with the Wordfish estimates (both applications) shows the validity of Wordfish in estimating policy positions of the institutions involved in the decision-making from legislative texts. Secondly, in cases of disagreements between the two applications of Wordfish, the hand-coding technique identifies the proposal-by-proposal solution as the most valid.

Moreover, Wordfish has the merit to obtain 95% confidence interval for the document estimates using a parametric bootstrap, being able to assess the validity of our work and to measure the uncertainty associated with the estimation (Slapin and Proksch 2008). Since our work analyses very infrequently words, concerns on uncertainty estimates can occur. In order to avoid this, we ran the parametric bootstrap to compute the confidence intervals. The parametric bootstrap has the property that confidence intervals of the estimates shrink as the number of words increase. The longer documents are, the smaller the confidence intervals appear.

In addition, the policy positions extracted with Wordfish are consistent with the main findings described in the several activity reports of the EP delegation to the Conciliation Committee. Such reports note that the practice of trialogue meetings became standard since the mid of 1995. With the Spanish presidency in the second half of 1995, indeed, meetings between the Council delegations – COREPER – the EP delegations and the Commission are increasing in quality and quantity, bringing about the increasing number of first reading agreements (being possible only with Amsterdam Treaty) as well as of several early second-reading agreements (becoming common after 2004). Part of the explanation lies in the greater familiarity with the codecision procedure of Parliament, Council and Commission and larger number and better contacts between the institutions whose representatives start talking to each other routinely. The codecision procedure as well as the Conciliation stage is not only an important step toward bicameral structure of the European Union legislative making, but also it brings elements of novelties in the relations between the institutions. Therefore, it has taken some years for the institutional actors to get more familiar with the new procedure, so the 1999 and 2006 formulations of revisited Joint Declaration have played useful role in facilitating the working of the codecision procedure. Even though going to conciliation is perceived as a risk for both the institutions, the 2004-2009 EP activity report states that:

“the time and effort necessary [are] justified in view of the results obtained. It can be argued that the additional time and effort make it possible to find the very fine balance between the positions of the institutions. [...]Not in a single procedure did the
Council at the end step "backwards" from positions it had taken earlier in the procedure; on the contrary Council showed flexibility and moved towards Parliament’s position.” (2009: 23).

In this regards the findings of Wordfish align with these statements, since the number of Joint Text’s position amidst the positions of the two institutions has considerably increased throughout the period under examination (Figure 5).

**Figure 5: Joint Text’s positions across the EP legislature**

![Graph showing Joint Text’s positions across the EP legislature](image)

As far as the reliability is regarded, the hand-coded text analysis has not the same high level assured for the validity of the measurement: the reliability of the results is relatively low compared with the computerized text analysis. We would like the estimation of policy position from political texts to be valid, reliable and replicable. (Mikhaylov, Slava, Laver, and Benoit 2008). According to Krippendorff (2004, 211):

“*a research procedure is reliable when it responds to the same phenomena in the same way regardless of the circumstances of its implementation...In text analysis, this means that the reading of textual data as well as of the research results is replicable elsewhere, that researchers demonstrably agree on what they are talking about.*”

In this case, then, reliability and reproducibility go hand in hand: subjective measurement, particularly evident in hand-coding text analysis, can invalidate any attempts to replicate the results. In order to avoid it, we have employed communicable guidelines specific for the sample selection as well as the coding procedure we followed, giving in details the categories of the modifications occurred in the legislative texts, the respective coding numbers and also we have illustrated some examples so as codifying models. Moreover, we replicated the coding procedure more than one time. In this ways we aimed at reducing subjective judgments and making the procedure the most transparent and...
replicable. Hand-coding has other drawbacks. It is very labor intensive and time consuming. Finally, political issues, especially as treated in legislative texts, may sometime be highly technical so that is difficult for researchers and coders to understand the content and to identify the exact classification scheme in order to allocate the text units to the predefined categories.

Turning now to reliability of policy positions estimated through computer-assisted text analysis, it is not an issue with this technique. The selection procedure largely defined for document pre-processing and processing witnesses the accuracy employed to guarantee the reliability of Wordfish output over time. Many scholars adopting Wordfish envisage in the β estimators – characterizing the policy space dimension – so to verify the reliability of the results with hand-coding approaches. Slapin and Proksch (2008), for example, find out their results implied the same ideological left-right dimension highlighted by the Comparative Manifesto Project. Unlike these works, our research cannot rely on the β estimators, since differences in lexicon throughout the several codecision files under examination are due to the variety of policy themes. In other words, there are several dimensions underlying the institutions’ distinct positions which share a plethora of technical terms.

6. Hypotheses and descriptive statistics

6.1 Hypotheses on relative success

Committee negotiators: Council president and Parliament rapporteur

We begin our list of possible factors determining relative success in Conciliation Committee negotiations with the two key actors involved: the president of the Council and the rapporteur of the Parliament.

The president’s influence on negotiation outcomes is particular relevant in the codecision procedure because of the frequent contacts she has with the European Parliament. Farrell and Héritier (2004) argue that relay actors, as the Council president, influence the outcome by playing a key role in negotiations with the other EU institutions. This is particular pertinent in the Conciliation Committee where negotiations take place among the key negotiators of the three institutions involved in the legislative process: the Council, the European Parliament and the Commission. Even though, the Conciliation Committee represents in equal size both the Council and the European Parliament, it is a matter of fact that informal trialogues have become the modus operandi since half of 1995 and they have been formalized by the 2007 Joint Declaration in the decision-making process. As Farrell and Héritier point out “the power of the presidency has been enhanced vis-à-vis other Member States” (2004: 1203). Bearing in mind that “during trialogues, the Presidency is the single voice of the Council” (European Council, 2000) and that the presidency is an active player in the Conciliation Committee, not all the MSs have the same strength and power of initiative in shaping the Council’s agenda and pushing forward their claims. In informal settings, having longer experience on how the process develops and how to use channel of influence is crucial. Therefore, it is plausible to

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4 The Presidency can assist to the plenary and EP committee session and can give opinion on some relevant issues that are under debate in the EP plenary.
assume that the new EU Member States should gradually adapt to the negotiating environment that characterizes the Conciliation Committee, because “actor learning” and a gradual familiarity or “socialization of actors into processes of European Integration and decision-making” (Hosli et al. 2011) matter. Accordingly, we suggest the following hypothesis:

**H1: If the President of the Council during the negotiations comes from an old member state, the joint text is more similar to the Council’s than to the European Parliament’s position.**

Like the Council presidency, the EP rapporteur plays a significant role in shaping and affecting the conciliation outcomes. The rapporteur is in charge of preparing the discussion on the subject within the EP responsible committee, presenting a draft text, amending the Commission’s proposal and the Common Position and taking into account comments raised both in the committee and in the plenary. Moreover, in the final stage of the codecision procedure the rapporteur is in the parliamentary delegation of the Conciliation Committee as *ex officio* member and especially in the restricted meeting along with the Chairman of the Committee and the EP vice-president. Because of her crucial role in the formulation of the parliamentary position within the Conciliation Committee, we control for the party membership of the rapporteur. Although König et al. (2007) find out that party membership does not have empirical evidence in shaping negotiations inside the Conciliation Committee, according to Farrell and Héritier, rapporteurs linked to the large political groups – the EPP or the PES (from the 7th legislature with the name of S&D – Socialists and Democrats) – are particularly powerful because of their ability to muster votes in plenary. The Council looks for the consensus within the European Parliament so it tries to be in contact especially with rapporteurs coming from large groups. As a result, Farrell and Héritier note (2004: 1201), “the smaller group find themselves increasingly excluded from decision making”: small groups are less involved also in informal meetings with the Council than larger groups. Within the Conciliation Committee and especially in the triilogues, the rapporteur of larger groups stands in a favorable position and can bargain at the same level of her counterpart. As a conclusion, party membership of the rapporteur ought to be controlled for and we consider the following hypothesis:

**H2: If the rapporteur is a member of either the EPP or the PES, the joint text is more similar to the European Parliament’s than to the Council’s position.**

In bargaining reciprocal knowledge of the counterparts is extremely relevant, especially in the Conciliation Committee where the two delegations face each other and they have the last chance to make legislation possible. Uncertainty over the real intentions and positions of the other negotiator may lead to extreme final positions. In such a situation, uncertainty of one delegation over the other’s position may reduce the possibility of a compromise text.

The rapporteur and the MS holding the presidency are the key negotiators. As Farrell and Héritier state, rapporteurs are the favored contact persons of the presidency, bypassing the committee structure. Bargaining uncertainty may be reduced in the case in which the rapporteur and the Council president come from the same country or party. According to
Rasmussen (2011), country coherence, indeed, may lead to a better understanding of the negotiators, because of common cultural and linguistic background. Uncertainty may be reduced when the rapporteur and the presidency share the same ideological background, that is, they belong to the same transnational party group. For instance, a rapporteur of the EPP may share the same priorities and policy preferences of the German presidency in the second half of 1994. Reduced uncertainty however does not necessarily favor one institution over the other. We will not therefore put forward specific hypotheses but we will control for both national and ideological similarity of the Council president and the parliamentary rapporteur.

Referent institutions: decision rules in the Council and Council-EP conflict
The existing literature on the EU bicameralism and the Conciliation Committee (Tsebelis 2002; Napel and Widgrén 2003) agree on the fact that the voting rule inside the Council may affect the final legislative outcome. The Council, indeed, decides either by qualified majority or unanimity voting, depending on the legal basis the Commission’s proposal is enacted on. As Tsebelis shows in the bicameral setting of the codecision procedure the core depends on the voting rules each chamber applies. The core will increase if the Council votes under unanimity rather under QMV, bringing about a major consequence: the final legislative “outcome shifts in favor of the less flexible chamber” (2002: 247) – the Council. Also Napel and Widgrén note that the distinct internal decision mechanisms provide an indirect procedure advantage for the Council, despite the apparent symmetry between the two co-legislators.

H3: If the adoption of the joint text requires unanimity in the Council, the joint text is more similar to the Council’s than to the European Parliament’s position.

Ideological conflict between the Council and the Parliament is also likely to affect negotiation outcomes. However, whether such conflict would benefit one institution over the other is not clear. Also in this circumstance, we will not put forward a specific hypothesis but we will control, in a simple way, for the ideological similarity between the Council and the Parliament.

Implementation oversight: national authorities and Commission
A final element that may affect relative success in Council negotiations is related to the institutions involved in the implementation of the legislation. Some measures are primarily implemented by national authorities, others by the Commission. The ex-ante and ex-post resources available for overseeing implementation, for both Council ministers and the European Parliament, vary systematically across these two implementation paths.\(^5\) The European Parliament has at its disposal a greater array of ex-post oversight mechanisms when a law is mostly implemented by the Commission rather than national authorities. One could therefore expect the Parliament being more accommodating over the content of a law when the Commission is the primary implementer, exactly because they can rely more easily on other non-legislative means of implementation control (from appointment power to committee inquiries and other police patrol mechanisms). We

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\(^5\) Legislation is generally seen as a traditional ex-ante control mechanism over implementation.
should instead expect the Parliament to be less accommodating when the primary implementers are national authorities, exactly because ex-ante control, via legislation, is its key mechanism to oversee implementation.

We should expect the opposite behavior from Council ministers. When a law is primarily implemented by the Commission, each single Council minister has to rely on the collective will of its institution to exercise control over the supranational executive. When national authorities are instead the primary implementers, Council ministers, as head of their national departments, are, individually, in charge of overseeing implementation nationally. Having a wider array of ex-post control mechanisms at their disposal in the latter circumstance, we can therefore them being more accommodating at the legislative stage. For the time begin we differentiate between directives, when national authorities are the primary implementers, and the other type of acts, where they are not. We formulate the following hypothesis.

**H4: In case of a legislative proposal for a directive, the joint text is more similar to the European Parliament’s than to the Council’s position.**

### 6.2 Variables

**Dependent variable**

In the previous sections we have extensively explained how the institutions’ position were extracted from the Common position, the EP 2nd reading and the Joint Text formulated by the Conciliation Committee. We interpret the absolute distance between the Council (or the EP) and the Conciliation Committee as the conciliation bargaining and the final outcome (the Joint Text). The equation 2 shows, indeed, the closeness of an institution to the final legislation. As shown above, the preliminary analysis reveals that:

- the Council won in 69.3 per cent of cases;
- the European Parliament in only 30.1 per cent, and
- the European Parliament and the Council tied in 1 case.

**Independent variables**

In our data set the period under investigation lasts for more than 20 years, so we consider the Presidency as new when it joined the EU less than 5 years before the Conciliation Committee was convened. For the first hypothesis, we employ a dichotomous variable (*Old member state*) taking the value of 1 if the Member State holding the Presidency is old, and zero otherwise. For the second hypothesis, we use a party group dummy variable (*Rapporteur party*). It takes the value of 1 if the rapporteur is a member of the EPP-ED or the PES. This was the case 67 percent of the times. For the third expectation, the variable on the voting rule operating in the Council – *Council unanimity* – is coded as 1 if a unanimous vote is required for the adoption of the Joint Text. Finally, for the last expectation, we use a dummy variable (*Directive*) taking the value of 1 in case of a proposal for a directive, and zero otherwise.

We consider then other possible factors affecting negotiations. As far as bargaining uncertainty in conciliation is concerned, we employ three variables corresponding to country coherence and party coherence, both between the key players and between the
two legislative institutions. The variable *country congruence* takes the value of 1 if the parliamentary rapporteur and the Council president come from the same country, and zero otherwise. The variable *party congruence* refers to the same party membership of the two key negotiators: the rapporteur and the presidency. As a result, we coded as ‘1’ when the political group of the rapporteur and the presidency coincides, while we coded as ‘0’ when it does not. Since there were mostly coalition governments, we interpret the political group of the presidency as all the parties forming the coalition. For example, the Belgian government in 2001 was composed by a coalition of liberal, leftwing and green parties. In the case of the dossier on Information and consultation of employees (COD/1998/0315), the rapporteur was Ghilardotti Fiorella, an Italian MEP of the PSE. So we coded it as ‘1’, because the political transnational group of the rapporteur and of one of the parties in the coalition was the same. The reason to look at the entire composition of the coalition government, rather than on the biggest party lies on the fact that most of the negotiations at the conciliation phase are conducted by the COREPER and not by ministries or deputy ministries, so the political line adopted in the Conciliation regards that of the government as a whole. Moreover, the variable is problematic: values for the Italian presidency in the first half of 1996 are missing, since the Italian government held by Lamberto Dini was non-partisan with experts and officials. During that presidency 5 dossiers were adopted by the Conciliation. Finally, the variable *party institutional congruence* takes the value of 1 if the majority party in the Parliament and the simple majority in the Council come from the same political group.

**Other control variables**

We include several control variables, which relate to the formal characteristics of the dossiers. First of all, we want to control whether the codecision version has an impact on the final outcome (a dummy variable with values equal to ‘0’ under codecision I and ‘1’ under codecision II). The two versions are rather different especially in the last stage of the codecision procedure, and the European Parliament plays a radical incisive role under codecision II. Since “procedure learning” may affect the bargaining within the Conciliation Committee we control for the variable *term*. In particular we can expect more compromise text in the last two legislative terms. More frequent informal meetings between the Council and the European Parliament have taken place in the 6th and 7th legislatures, so we coded them as ‘1’, while the 4th and the 5th ones are coded as ‘0’. Third, if the act is new or amending a previous one is crucial (amending is coded as ‘0’, new as ‘1’). Agreeing on amending acts indeed could be easier than agreeing on new acts. Fourth, acts discussed simultaneous, because included in a package, may be subject of policy linkages and logrolling between the two institutions. As a result, compromise texts are more likely to occur in case of legislative package. Member States and the European Parliament can compromise on their positions on some policy issues in returns for others’ support on other issues (Moravcsik 1998). We coded the package act as ‘1’, while unique act as ‘0’. Finally, the last control variable has to do with the issue of the dossiers under examination. The number of the EP advisory committees may affect the character of a file:

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6 This is a rough approximation of institutional congruence. We will modify the variable in further reiterations of the paper.
files on which several committees are consulted involve a range of different issue interests and attract considerable attention. Table 3 summarizes our variables, their range, the coding of the values, while Table 4 shows the descriptive statistics of the variable included in the models.

7. Preliminary results
Table 4 presents some preliminary findings on the determinants of Conciliation Committee negotiations. We estimated two ordinary least squared models with Huber-White robust standard errors. Model 1 includes only the key variables of our hypotheses, while model 2 adds several controls.

The joint text is more likely to be closer to the Council common position than to the parliamentary position when the Council’s president comes from an older member state. This factor seems to have the largest substantive impact on the final outcome. A learning process therefore appears to be at work here. The Council is also more successful when the parliamentary rapporteur comes from a smaller party group. The lesser capacity of these actors to garner support from the largest parliamentary parties weakens them vis-à-vis the Council delegation. Rapporteurs from one of the two larger party groups can more credibly threaten rejection of the text, making the Council more accommodating. Co-partisanship may be at work here as well. A rapporteur from a large party is more likely to negotiate with co-partisans within the Council. Ministers may therefore be more prone to compromise and take into account the views from their fellow party members in the Parliament. This view is also supported by the fact that similar partisanship of the majority within the Parliament and the Council also leads to a more accommodating Council and a joint text that is closer to the Parliament’s position. Instead, the requirement of unanimity within the Council to adopt the joint text does not seem to favor this institution.

The Council also has to compromise more in case of directives, where national authorities are the primary implementers of the measure. In these circumstances, the Parliament almost solely relies on ex-ante control through legislative design and is less likely to be accommodating. Finally, of the control variables, only the type of codecision procedure has a (weak) impact on negotiating outcomes. The joint text was more similar to the Council’s position in the period before the Treaty of Amsterdam, when the amended codecision procedure came into force. In other words, the Parliament has become less accommodating in the post-Amsterdam period.

This preliminary analysis requires further robustness tests as well as better operationalization of the variables.
Table 3 – Variables and descriptive statistics

<table>
<thead>
<tr>
<th>Dependent variable</th>
<th>Description</th>
<th>N</th>
<th>Mean</th>
<th>SD</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council success relative to Parliament</td>
<td>Higher values, greater Council</td>
<td>175</td>
<td>0.998232</td>
<td>2.367675</td>
<td>-3.463682</td>
<td>3.463906</td>
</tr>
<tr>
<td><strong>Independent variables</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee variables</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Old member state</td>
<td>1 if Council President from Member State older than 5 years, 0 otherwise</td>
<td>175</td>
<td>0.9371429</td>
<td>0.2427521</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Rapporteur party</td>
<td>1 if PPE/PES rapporteur, 0 other parties rapporteur</td>
<td>175</td>
<td>0.6685714</td>
<td>0.4720775</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Country congruence</td>
<td>1 if rapporteur and Council President from the same country, 0 otherwise</td>
<td>175</td>
<td>0.1142857</td>
<td>0.3190709</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Party congruence</td>
<td>1 if rapporteur and Council President from the same party group, 0 otherwise</td>
<td>175</td>
<td>0.48</td>
<td>0.5010334</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Referent institution variables</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unanimity (Council voting rule for the adoption of the joint text)</td>
<td>1 if unanimity, 0 if qualified majority voting</td>
<td>175</td>
<td>0.8285714</td>
<td>0.3779645</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Party institutional congruence</td>
<td>1 if majority party in Parliament and simple party majority in Council are the same, 0 otherwise</td>
<td>175</td>
<td>0.4628571</td>
<td>0.5000493</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Implementation variables</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Directive</td>
<td>1 if directive, 0 otherwise</td>
<td>175</td>
<td>0.6514286</td>
<td>0.4778853</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>
Control variables

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
<th>N</th>
<th>Mean</th>
<th>Median</th>
<th>Min</th>
<th>Max</th>
<th>Std. Dev</th>
<th>0</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Codecision</td>
<td>1 if codecision II, 0 if codecision I</td>
<td>175</td>
<td>0.634286</td>
<td>0.483012</td>
<td>0</td>
<td>1</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Term</td>
<td>1 if 6\textsuperscript{th} or 7\textsuperscript{th} legislature, 0 if 4\textsuperscript{th} or 5\textsuperscript{th} legislature</td>
<td>175</td>
<td>0.142857</td>
<td>0.350931</td>
<td>0</td>
<td>0</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>New act</td>
<td>1 if new act, 0 if amending act</td>
<td>175</td>
<td>0.571429</td>
<td>0.496292</td>
<td>0</td>
<td>1</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Legislative package</td>
<td>1 if the act is included in a legislative package, 0 otherwise</td>
<td>167</td>
<td>0.239521</td>
<td>0.428075</td>
<td>0</td>
<td>1</td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Advisory committees</td>
<td>Number of advisory EP committees involved</td>
<td>175</td>
<td>1.662857</td>
<td>1.424556</td>
<td>0</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**TABLE 4: Determinants of Conciliation Committee outcomes**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Old Member State</td>
<td>1.427*</td>
<td>1.495*</td>
</tr>
<tr>
<td></td>
<td>(0.794)</td>
<td>(0.862)</td>
</tr>
<tr>
<td>Rapporteur party</td>
<td>-0.670*</td>
<td>-0.985**</td>
</tr>
<tr>
<td></td>
<td>(0.358)</td>
<td>(0.458)</td>
</tr>
<tr>
<td>Country congruence</td>
<td>-0.353</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.500)</td>
<td></td>
</tr>
<tr>
<td>Party congruence</td>
<td>0.512</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.420)</td>
<td></td>
</tr>
<tr>
<td>Council Unanimity</td>
<td>0.634</td>
<td>0.814</td>
</tr>
<tr>
<td></td>
<td>(0.401)</td>
<td>(0.512)</td>
</tr>
<tr>
<td>Party institutional congruence</td>
<td>-0.725*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.375)</td>
<td></td>
</tr>
<tr>
<td>Directive</td>
<td>-1.150***</td>
<td>-0.862**</td>
</tr>
<tr>
<td></td>
<td>(0.339)</td>
<td>(0.378)</td>
</tr>
<tr>
<td>Codecision</td>
<td>-0.728*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.371)</td>
<td></td>
</tr>
<tr>
<td>Term</td>
<td>0.817</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.665)</td>
<td></td>
</tr>
<tr>
<td>New act</td>
<td>0.520</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.408)</td>
<td></td>
</tr>
<tr>
<td>Legislative package</td>
<td>0.216</td>
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</tr>
<tr>
<td></td>
<td>(0.481)</td>
<td></td>
</tr>
<tr>
<td>Advisory committees</td>
<td>0.113</td>
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</tr>
<tr>
<td></td>
<td>(0.129)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>0.750</td>
<td>0.646</td>
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<tr>
<td></td>
<td>(0.791)</td>
<td>(1.012)</td>
</tr>
<tr>
<td>Observations</td>
<td>175</td>
<td>167</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.100</td>
<td>0.145</td>
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</tbody>
</table>

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Dependent variable: Council success, relative to EP, in Conciliation Committee negotiations.
Bibliography


Krippendorff, K., 2004. *Content analysis: an introduction to its methodology*, SAGE.


