

Council working groups
Advisors or de facto decision makers?

Ingvild Olsen

PhD Dissertation

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Advisors or de facto decision makers?**

Politica

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ISBN: 978-87-7335-154-3

Cover: Svend Siune

Print: Juridisk Instituts Trykkeri, Aarhus Universitet

Layout: XXXX

Submitted 30 June 2011

The public defence takes place 11 November 2011

Published November 2011

Forlaget Politica

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*This dissertation is dedicated to the memory of my father
Knut Olsen (1953-2011)*

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Acknowledgements

The opportunity to devote all your time and resources on an unexploited research subject that genuinely interests you, is a once in a lifetime privilege. However, writing a PhD thesis can without doubt be challenging and frustrating at times. A certain group of people have contributed both directly and indirectly to smoothen and support the process of writing this thesis. I would like to express my deepest gratitude to you.

First of all, I would like to thank my advisors Jens Blom-Hansen and Derek Beach. I could not have wished for better advisors. Your insights, detailed comments and continued enthusiasm for my project have been of great value to me. I am also deeply grateful for your tremendous support and understanding the last couple of months.

I would also like to thank the department of public administration for highly qualified and constructive comments on different chapters. Being a part of such a resourceful and competent department has been both educative and inspiring. The same goes for the PhD group. Thank you all for indispensable comments and ideas, exchanges of experience and for making the life as a PhD a lot more fun. In particular, I would like to thank Jakob Tolstrup, who I have shared office with. Your good sense of humour and pleasant personality have made days at the office enjoyable. I am also grateful to my dear colleague Anne Heeager for your persistent care and support. Without you the last months of my PhD period would have been a lot harder to get through. Thanks also to Birgit Kanstrup, Henrik Friis Bach and Peter Munk Christiansen for support and understanding in difficult times.

Another person who has contributed to the work with this dissertation is Helene Helboe Pedersen and I would like to express my sincere gratitude to you for support and for qualified help with statistical challenges. Thanks also to Martin Bækgaard for taking the time to go through parts of my analyses.

I also owe my gratitude to Annette Andersen for brilliant and efficient language editing and to Anne-Grethe Gammelgaard for doing the final set up of the dissertation.

In February-March 2010 I had the privilege of visiting the Institute of European Studies (IES) in Brussels. Thanks to Sebastian Oberthür for making the visit possible. Thanks also to Erik Oddvar Eriksen, who made it possible for me to visit ARENA, Centre of European Studies, October 2010. I hope to be able to visit your institute again in the future.

Quite a few persons have contributed with crucial help with the data collection to the thesis. In particular I would like to thank Jakob Thomsen at

Council General Secretariat, for providing me with insights about the functioning of the Council's Public Register. I am also grateful to the staff at the Danish Permanent Representation in Brussels for helping me find the right persons to contact for interviews.

Finally I would like to express my gratitude to my family and friends, who have been a great support throughout the process. Special thanks go to my children Tobias and Vilde for being a constant reminder of what's most important in life and for being the best possible distraction from the work with the PhD thesis.

Last, but not least, I owe my deepest gratitude to my husband Thomas. Thank you for your unconditional and continued faith in me and my PhD project. Thank you for motivating me and for giving me strength when necessary. I admire you for your patience and for allowing me to be totally absorbed with working on this dissertation the last couple of months. Without you this thesis would never have been realized.

Ingvild Olsen
Aarhus, June 2011

Chapter 1

Introduction

1.1. Introduction to the thesis

In a meeting room in the Council of Ministers building in 2003 the member states officials in the working group on chemicals discusses a legislative proposal about the registration, evaluation, authorisation and restriction of chemicals (Reach).¹ The purpose of the proposed regulation is to improve and streamline legislation on chemicals and to make the industry more responsible for assessing and managing the risks posed by chemicals. Negotiations in the working group are problematic. Several meetings about the regulation take place and six times the working group sends the act on for discussion by the permanent representatives of the European Union in Coreper. Coreper is not able to reach agreement either and sends the act on for discussion at the Council of Ministers, who discusses the regulation 13 times before reaching an agreement. The act is finally adopted in 2006.

In October 2006 the member states' officials in the working group technical harmonization discuss another legislative proposal concerning supervision of explosives for civil users.² The officials in the working group quickly reach agreement on the act and send it on to Coreper with recommendations to forward the act to the Council of Ministers for formal adoption. The act is adopted formally by the Council of Ministers in April 2007 without further discussion.

The two examples illustrate how much the decision making process in the Council of Ministers of the European Union can vary. In the second case the officials in the Council working group acted alone and finalised negotiations on the legislative act without involvement of the higher levels of the Council. In the first case Coreper and the Council discussed the act several times and the final decision was made by the ministers in the Council. The present thesis questions what causes such variations in the Council's decision making process. My argument is that the decision making process and the extent of decision making that takes place at the different levels of the Council vary depending on (1) policy area, (2) the legislative act on the table and (3) how the Council presidency plays its role.

¹ Com 2003 (644).

² Com 2005 (457).

Even though the Council of Ministers is the most important decision making body in the European Union, we know very little about the internal decision making process and the relative role of the different levels in the Council's decision making hierarchy. This is surprising as the Council of Ministers, alone or together with the European Parliament, adopts numerous major decisions with extensive implications for the member states and their populations. So far, the literature about the Council of Ministers has mainly focused on voting and coalition patterns and on identifying the lines of conflict between EU's member states (Beyers & Dierickx 1997; Hooghe & Marks 1997; Golub 1999; Elgström, Bjurulf, Johansson & Sannerstedt 2001; Mattila 2004; Mattila & Lane 2001; Thomson, Boerefijn & Stockmann 2004; Zimmer, Schneider & Dobbins 2005; Hayes-Renshaw, Van Aken & Wallace 2006; Aspinwall 2007; Heisenberg 2007; Tallberg & Johansson 2008; Hosli, Mattila & Uriot 2008; Mattila 2008; Hagemann 2008; Hagemann, & Høyland 2008; Naurin & Lindahl 2008; Miklin 2009), the Council's role and influence in the inter-institutional decision making process (Crombez 1996, 1997, 2000; Tsebelis 2002; Tsebelis & Garret 2000, Garret & Tsebelis 2001; Napel & Widgrén 2006), the role of the Council presidency (Tallberg 2003, 2004, 2006, 2008; Begtsson, Elgström & Tallberg 2004), the negotiation climate in Coreper and the Council working groups (Joerges & Neyer 1997a, 1997b, Beyers & Dierickx 1997, 1998; Lewis 1998, 2000, 2003, 2005; Elgström & Jönsson 2000; Naurin 2007b, 2009; Neyer 2006; Jacobsson & Vifell 2007; Wessels 1998) and finally on the socialisation effect in the Council working groups (Beyers 1998; Egeberg 1999, 2002; Trondal & Veggeland 2003; Trondal 2000, 2001, 2002; Egeberg, Shaefer & Trondal 2003; Beyers & Trondal 2004; Beyers 2005; Radaelli & Banducci 2008).

This project focuses on the lowest level in the Council's hierarchy; the Council working groups. One of their most important characteristics is their ability to create compromises and solutions on an ever growing amount of issues and policy areas. This capability is to a large extent a result of strong norms of mutual understanding and compromise-seeking behaviour, where the actors involved share a solid commitment to finding common solutions. In addition, the willingness of working group members to minimise the number of issues left for Coreper and the Council of Ministers to decide upon is generally high (Fouilleux, Maillard & Smith 2005: 614). We know surprisingly little about how much decision making actually takes place in the Council working groups. How often do they reach agreement at their level without involvement of the higher levels in the Council's hierarchy like in the second example described above? The lack of research about the role of the Council working groups, and the amount of decision making that takes place at

this level, is surprising as the role of the working groups has been strongly emphasised in the literature about the Council of Ministers. According to the most cited estimates of working group decision making, the Council's preparatory level solves around 75-90 pct. of the legislative acts at their level without involving ministers in the Council (Hayes-Renshaw & Wallace 1997; Hayes-Renshaw 2002; Westlake & Galloway 2004).

However, we know even less about what causes variations in whether or not the working groups finalise negotiations about the legislative proposals at their level or send them on for further discussion at the higher levels of the Council. Under what circumstances do the working groups act alone or ask Coreper and the Council of Ministers to resolve outstanding issues? Does it depend on the organisation of the working groups or on the act on the table? Do the acts that are sent on from working groups to the higher levels of the Council share any characteristics?

The central research questions of the thesis are:

How much decision making takes place in the working groups of the Council of the European Union?

What explains variations in the extent to which the working groups reach agreement at their level or send acts on for further discussion at the higher levels of the Council?

Only few studies of the Council's decision making process shed light on how much decision making takes place at the different levels of the Council and thereby deal with the research question of this thesis. The most exhaustive work has been conducted by Frank Häge in his PhD thesis (2008b) and three related articles (2007, 2007, 2008a). Most of Häge's research focuses on how much the ministers in the Council are involved in the decision making process compared to the two preparatory bodies; Coreper and the working groups. In one of his articles, Häge studies the extent of decision making taking place in Council working groups compared to the higher levels of the Council of Ministers (Häge 2008a). But Häge's study only covers one year and does not shed light on the circumstances under which the acts are discussed by the different levels in the Council.³

Other studies of Council decision making primarily address how much the ministers in the Council actually decide (Hayes-Renshaw 2002; Hayes-Renshaw, Van Aken & Wallace 2006; Häge 2008b, 2007a, 2007b) or they

³ Häge studies the circumstances under which the Council of Ministers is involved in the decision making process in his PhD thesis (2008b) and two articles (2007a, 2007b). However these studies do not shed light on the role of the working groups and the amount of decision making that takes place at this level.

examine the relative role of the working groups within specific decision making areas (Van Schendelen 1996; Andersen & Rasmussen 1998; Gomez & Petersons 2001). This implies that research on the working groups and insights about how much the working groups actually decide are still lacking.

In order to shed light on working group decision making and what may cause variations in the extent of decision making taking place in the Council working groups, the thesis draws on different theoretical perspectives. Applying Wilson's (1989) theory about the effect of different interest configurations, intergovernmentalism, neofunctionalism, delegation theory and literature about the Council presidency, the theoretical model of the present thesis proposes that the extent of working group decision making depends on (1) policy area, (2) the level of socialisation among the working group members, (3) the level of conflict among the member states and institutions involved in the decision making process, (4) the financial consequences of the legislative acts, (5) the technical complexity of the legislative acts and on (6) the size of the member state holding the presidency.

The thesis addresses the research questions and the theoretical propositions through a quantitative study of all legislative acts adopted in the period of 2005 to 2009, in a total of 259. For each act I have observed how the acts were dealt with in the decision making machinery of the Council of Ministers. Through close studies of the reports and notes sent on from working groups to Coreper derived from the Council's Public Register, I have been able to observe whether or not, and how many times, Coreper was asked to resolve outstanding issues. This data was combined with data about the legislative acts and the inter-institutional decision making process which was retrieved from Prelex and Eurlex. To my knowledge, the data set is the first of its kind and it allows me to dig far deeper than previous research into how much the working groups actually decide and the circumstances under which working groups send acts on for further discussions at the higher levels of the Council. This extensive quantitative study is supplemented by a qualitative study of 36 interviews with officials from eight working groups. In addition to providing more in-depth insights about the decision making process in the working groups and about the plausibility of the proposed theoretical hypotheses, the qualitative study will shed light on whether the interview persons statements corresponds to the reasoning behind the proposed theoretical expectations.

1.1.1. Contributions

There are at least four reasons why the research question of this thesis is extremely relevant. First, the thesis provides empirical knowledge about the

relative amount of decision making that takes place in the working groups, which is crucial in terms of understanding the decision making process in the Council of Ministers as a whole. The thesis will shed light on questions like: How does the decision making process in the Council proceed? Who makes the decisions? Under which conditions do the working groups, Coreper or the ministers in the Council play the most central role in the decision making process?

Second, the thesis informs several theoretical debates and fields of research. It obviously contributes to the literature on the workings and decision making process of the Council of Ministers, primarily research on the extent of decision making taking place at the different levels of the Council (Van Schendelen 1996; Andersen & Rasmussen 1998; Hayes-Renshaw & Wallace 1997; Gomez & Petersons 2001; Hayes-Renshaw 2002; Westlake & Galloway 2004; Hayes-Renshaw, Van Aken & Wallace 2006; Häge 2008b, 2007a, 2007b; Fouilleux, Maillard & Smith 2005).

The thesis also informs the debate on the democratic legitimacy of decisions made by the EU and by the Council of Ministers more specifically (Curtin 1996; Føllesdal & Koslowski 1997; Vos 1997; Grønbech-Jensen 1998; Lord 1998; Eriksen & Fossum 2000; Moravcsik 2002; Rhinard 2002; Héritier 2003; Føllesdal & Hix 2006; Naurin 2006; Häge 2007a, 2007b, 2008a, 2008b). A central question in this debate is whether ministers can be held accountable for their decisions in a situation where the decision making process lacks transparency and where it is unclear who actually makes the decisions. On the one hand, Moravcsik in a study of the democratic deficit of the EU puts forth that officials and ministers in the Council clearly are accountable to the national parliaments and domestic voters (Moravcsik 2002: 612). On the other hand, quite a few researchers problematise the lack of transparency in the Council's decision making process. According to Héritier, EU citizens can only hold the legislators accountable if decisions are made public and if it is possible to identify the decision makers. For this reason she recommends, in line with Grønbech-Jensen (1998: 196), Føllesdal & Hix (2006: 553), that decisions are made public and that it is possible to clearly identify the decision makers. Føllesdal and Hix furthermore urge that the public should be able to observe who proposes what, what coalitions are formed and who the winners and losers are in Council decision making. In contrast, Naurin states that the Council of Ministers in reality cannot be held collectively accountable and that increasing the transparency of Council decision making cannot change this fact. He points out that governments are accountable to their electorates, but that EU policies play only a minor role in national elections and therefore elections are not really adequate mechanisms for pun-

ishing political decisions made by the Council of Ministers (Naurin 2007c: 2-3). In addition, Naurin (2007c: 3), Lord (1998: 88) and Curtin (1995: 85) question whether greater transparency may destabilise and damage the efficiency of Council decision making.

The legitimacy of Council decision making depends not only on the transparency of the process, but also on the extent to which Council decisions are made by bureaucrats in the Council's preparatory bodies or by the ministers in the Council. Relying on the working groups and Coreper in Council decision making may have clear advantages as it may ensure the effectiveness and technical quality of Council decision making. However, as pointed out by Häge, the question is whether these advantages are cost free. Can working group decision making weaken the democratic legitimacy of the decisions adopted by the Council? Is the ministers' accountability weakened when decisions are made before the legislative acts reach the table of the Council of Ministers (Häge 2008b: 38)? As Häge points out, the answers to these questions depend first of all on the amount of decision making that actually takes place in the Council working groups. Secondly the democratic legitimacy of Council decision making depends on the circumstances under which the working groups act alone and send the legislative acts on for further discussions at the higher levels of the Council. The thesis will shed light on the extent of decision making that takes place in the working groups compared to the higher levels of the Council. Furthermore, it will study the circumstances under which the working groups finalise negotiations at their level entailing that the acts are adopted in the Council of Ministers without further discussion. More specifically, I will amongst other things examine whether or not working groups typically handle technically complex issues and leave the more conflictual and political decisions for the higher levels in the Council. If this is the case then a high rate of working group decision making would be less critical for the legitimacy of Council decision making.

The thesis thirdly contributes to the debate about whether EU integration and the decision making processes in the EU should be regarded as supranational or intergovernmental. Supranationalism stems from neofunctionalist theory, which was first developed by Ernst Haas (1958, 1961) (see also Lindberg 1963; Lindberg & Scheingold 1970). The central argument of neofunctionalism is that integration in the EU is a deterministic process where one decision leads to another in a spill-over mechanism; 'a given action, related to a specific goal, creates a situation where the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more, and so forth' (Lindberg 1963: 9). Another focal claim of neofunctionalism is that the member states' officials' and politicians' sus-

tained participation in the supranational organisations of the EU will result in supranational allegiances among these officials and politicians: 'Political integration is the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states' (Haas 1968: 16). The intergovernmental approach to European integration (represented by Hoffmann 1966; Taylor 1982; Moravcsik 1991, 1993, 1998) states that the integration in the EU and the decisions made in the EU reflect the interests and actions of the member states. At the heart of the intergovernmental perspective is the assumption of state rationality. In relation to this thesis, one would from an intergovernmental perspective envisage working groups exclusively as venues for the clash of nationally defined interests. Furthermore one would expect that the same lines of conflict that exist between the member states in the Council of the European Union will be reflected in the Council working groups. Based on theories and research about the lines of conflict in the Council (Beyers & Dierickx 1997; Hooghe & Marks 1997; Golub 1999; Mattila 2004; Mattila & Lane 2001; Thomson, Boerefijn & Stockmann 2004; Zimmer, Schneider & Dobbins 2005; Hayes-Renshaw, Van Aken & Wallace 2006; Aspinwall 2007; Heisenberg 2007; Naurin 2007a; Tallberg & Johansson 2008; Hosli, Mattila & Uriot 2008; Mattila 2008; Hagemann 2008; Naurin & Lindahl 2008; Miklin 2009) the thesis will shed light on whether this is the case. From a supranational perspective the expectation would be the opposite. This perspective would predict that the working group members through their participation in the working group gradually will become more and more oriented towards the EU level and shift their allegiance towards the EU. In other words the supranational approach would expect working groups to be focused on finding common solutions at EU level and to be able to overcome the conflicts among the member states. In addition, it is likely that the working group members' contact to the EU level impinges on their orientation and loyalty towards the EU. This leads to the expectation that the working group members' level of contact to the EU in turn influences the working groups' ability to reach a compromise. The thesis will investigate whether the supranational claim is true by studying whether the level of contact the working group members has to the EU system affects the working groups' abilities to reach agreement.

Applying delegation theory to develop hypotheses about the types of legislative acts the working groups can be expected to finalize, or not to finalize, at their level, the thesis will also shed light on the applicability of delegation theory when studying Council working groups. Assuming that the

working groups' ability to reach agreement depends on the room of manoeuvre of the working group members, the thesis draw on delegation theory to formulate hypotheses about the circumstances under which national authorities delegate more or less autonomy to the officials in the working groups. Delegation theory more specifically expects more delegation when legislation is technically complex and less delegation when legislation implies financial consequences. The thesis will shed light on the plausibility of the predictions of delegation theory by examining whether or not the extent of working group decision making depends on the technical complexity and the financial implications of the legislative acts.

Not only will the present thesis contribute to several theoretical debates and perspectives, the fact that the thesis applies a mixed method design means that the thesis will contribute by ensuring new experience with applying two research methods. The thesis will shed light on questions like: What do we learn from applying a mixed method design? What are the challenges? What are the advantages?

1.1.2. The results of the thesis

The current thesis stresses the importance of Council working groups in EU decision making as the study shows that the working groups finalized negotiations on 33.2 pct. of the legislative acts included in the thesis' quantitative study. The qualitative analysis emphasizes the role of the Council working groups even further, as many interview persons stated that the working groups normally finalize negotiations on between 70-99 pct. of the content of the legislative acts, sending only few, however politically important issues for discussion at the higher levels of the Council.

The thesis not only provides insights about the extent of working group decision making it also sheds light on variations in the role of the working groups. First of all the thesis shows that the extent of decision making taking place in Council working groups varies across policy areas. In some policy areas the working groups reaches agreement at their level in the majority of cases, while in other policy areas discussion at the higher levels of the Council is often necessary. The thesis furthermore reveals that the level contact the working group members has to the EU system impinge on their orientation towards finding common solutions at EU level and thereby also on the working groups abilities to reach agreement. Not surprisingly, the thesis finds that the extent of working group decision making depends on the legislative act on the table. More specifically, the analysis shows that the extent to which the member states and institutions involved in the decision making process

have conflicting interests, the legislative acts financial implications and the technical complexity of the legislative acts affects the extent of working groups decision making. Finally the thesis shows no support to the hypothesis that the size of the member state holding the presidency may impinge on the working groups' rate of decision making.

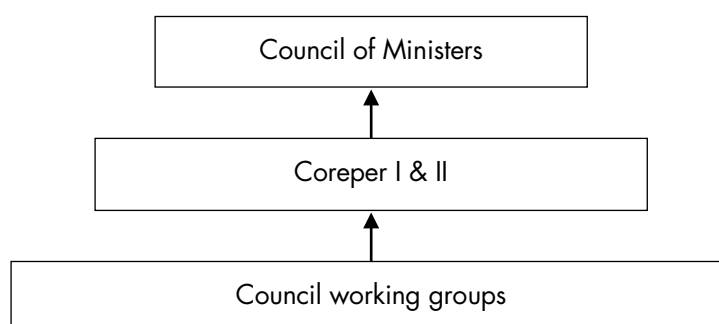
1.2. Introduction to the phenomenon: Council working groups

This section gives an empirical description of the phenomenon studied in the thesis: the Council working groups. This introduction serves both to specify the research question and to underpin why it is so important. I will start with a brief description of the internal decision making process of the Council of Ministers (1.1.1). Next, I will describe in more detail the three layers in the Council's decision making hierarchy and the organisation, composition and role of the Council of Ministers, Coreper and the Council working groups.

1.2.1. The Internal Decision Making Process of the Council of Ministers

This section briefly describes the Council machinery's rather complex process of dealing with Community legislation. The Council may be envisaged as a layered triangle with the Council of Ministers at the top, followed by Coreper, which consists of the member states' permanent representatives, and, at the base, a large number of working groups consisting of member state officials.

Figure 1.1: The Council hierarchy



The Council's internal process of reading a proposal from the Commission always starts at the Coreper level. Coreper is made up of the member states' ambassadors to the European Union (Permanent Representatives) and is chaired by the member state that holds the Council Presidency. When Core-

per receives a proposal from the Commission it normally sends the proposal on to a relevant working group for technical, specialised consideration. If Coreper cannot find a suitable working group to handle the proposal, an ad hoc working group can be established.⁴

The actual negotiations on the Commission's proposals thus start out in the Council working groups. Depending on the outcome of the working groups' negotiations, the proposals are sent on as Roman I or Roman II items to Coreper (Westlake & Galloway 2004: 208). Roman I items are legislative proposals on which the working group has reached agreement. These items are not normally subject to discussion in Coreper, but are sent directly to the Council as A items for formal adoption. Roman II items are legislative proposals on which the working groups have been unable to compromise and therefore require further discussion in Coreper.

Coreper can either proceed with the negotiations on the proposal, send the proposal back to the working group with new instructions, or it can forward the proposal to the Council. Most commonly Coreper and the working groups send proposals back and forth to clarify problems, identify potential solutions, and gradually work out an agreement between the member states.

When the proposals reach the Council of Ministers, they are marked as *A-* or *B-points* on the Council's agenda. Proposals on which the working parties and Coreper have reached agreement are marked as *A-points* (Agreed Points), they are not discussed any further but are formally adopted en bloc by the Council of Ministers. *B-points* are proposals that require discussion by the ministers because agreement could not be reached in the preparatory bodies.⁵ The Council's decision making process is illustrated in figure 1.2 below.

Note that the Council's decision making procedure varies according to two factors: the voting rule in the Council of Ministers and the inter-institutional decision making procedure.

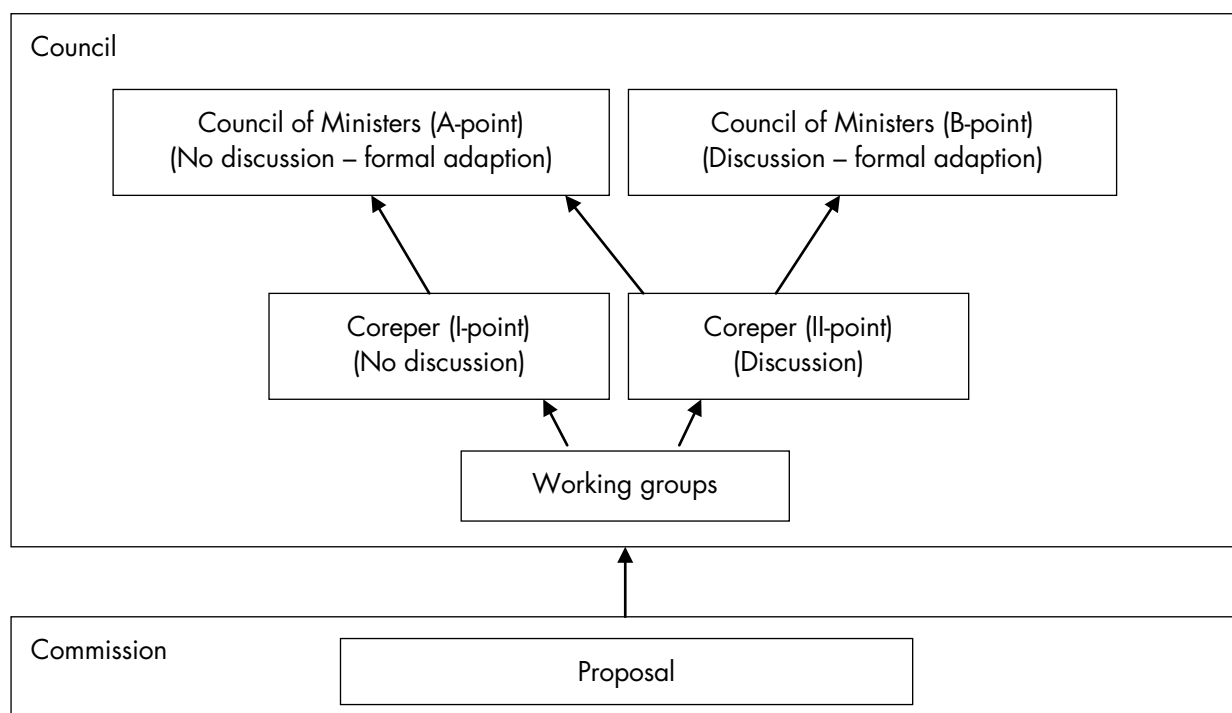
In the Council of Ministers community legislation can be adopted by unanimity, simple majority or qualified majority. Today, qualified majority voting is applied in most decisions. Each new treaty has expanded the policy areas where qualified majority can be applied and the Lisbon Treaty has expanded the use of qualified majority voting even further. Under qualified majority a decision can be adopted when a majority of the member states approve of the decision (50 pct.) and when a minimum of 74 pct. of the vot-

⁴ Council's rules of Procedure (2004/338/EC) Article 19 (3).

⁵ Council's rules of Procedure (2004/338/EC) Article 3 (6).

ing weights are cast in favour. An additional criterion is that the votes in favour of a legislative proposal represent at least 62 pct. of the total population of the European Union.⁶ Under unanimity all member states have to agree and under simple majority a majority of the member states has to agree.⁷

Figure 1.2: The Council's internal decision making process



The Council's decision making process is also highly dependent on the inter-institutional decision making procedure. Under consultation the Council can adopt the legislative acts after one reading without being obliged to take the position of the European Parliament into account. Under co-decision,⁸ up to three readings take place and the Council has to consider the proposed amendments put forth by the European Parliament and reach agreement with the Parliament under the so called trilogues.⁹ The procedure implies that

⁶ The voting rules imposed by the Lisbon Treaty do not take effect until October 2014. The voting rules of the Nice Treaty apply until then, which is why I refer to the Nice Treaty here.

⁷ Treaty on the Functioning of the European Union (TFEU), Article 238 (1).

⁸ 'Ordinary legislative procedure' as it is known with the entry into force of the Lisbon Treaty (Article 294 of the Treaty of the Functioning of the European Union (TFEU)).

⁹ Tripartite meetings are attended by representatives of the European Parliament, the Council and the Commission. As a general rule trilogues involve the rapporteur from the European Parliament, the chairperson of COREPER I, or the appropriate Council working party assisted by the General Secretariat of the Council, and rep-

the Council can only adopt a legislative act if the European Parliament has not proposed any amendments or if the Council agrees to the amendments.

The presentation above has shown that the internal decision making process in the Council moves over three levels. However, a full overview of the decision making process requires a more thorough presentation of each level in the Council's decision making hierarchy. I will start at the top with the Council of Ministers, then move on to Coreper, and finally the research topic of the thesis: the Council working groups.

1.2.2. The Council of Ministers: A short description

The Council of Ministers is composed of 'a representative of each Member State at ministerial level, authorised to commit the government of that Member State'.¹⁰ This means that the Council represents the interests of the national governments that comprise the EU. Furthermore the Council is responsible for making the major policy decisions of the European Union. Alone or with the European Parliament it is up to the Council to decide which EU legislation to adopt and in what form (Bomberg & Stubb 2008: 50-1). This underlines the importance of the Council as an institution and stresses why it is so important to gain more insights about the Council's internal decision making process.

The Council meets in different configurations depending on the issue on the table. For example if the legislative act is about the environmental policy area it will be discussed by the environment ministers of each member state in the Environment Council. All in all there are nine Council configurations:

- General Affairs and External Relations
- Economic and Financial Affairs (ECOFIN)
- Justice and Home Affairs (JHA)
- Employment, Social Policy, Health and Consumer Affairs
- Competitiveness
- Transport, Telecommunications and Energy
- Agriculture and Fisheries
- Environment
- Education, Youth and Culture

representatives of the Commission (usually the expert in charge of the legislative proposal).

¹⁰ Article 203 TEC.

Note that EU relations with the world are handled by the General Affairs and External Relations Council, which also sorts out more general issues relating to policy initiatives and coordination of politically sensitive matters (Bomberg & Stubb 2008: 51).

The meetings in the different Council configurations are chaired by the appropriate minister of the member state holding the Council Presidency. The frequency of Council meetings varies with the configuration. However the General Affairs and External Relations Council, the Financial Affairs Council and the Agriculture and Fisheries Council meet on a monthly basis (Council General Secretariat February 2006: Council Guide: The Presidency handbook: 17).

1.2.3. Coreper: A short description

As pointed out, Coreper's role is to prepare the work of the Council of Ministers.¹¹ This horizontal task applies to the Council in all its configurations except the Agriculture and Fisheries Council for which most preparations are conducted by the Special Committee on Agriculture (SCA).¹² In order to simplify the presentation and analysis of the thesis, I will use the term Coreper for this level of the Council. In other words when I refer to Coreper in the following, this includes Coreper and SCA.

As its name signifies (*Comité des représentants permanents*), Coreper is composed of the permanent representatives of the EU member states. Coreper is divided into two sections: Coreper I, which consists of the deputy permanent representatives, and Coreper II, which consists of the permanent representatives. Coreper I prepares Council meetings in Employment, Social Policy, Health and Consumer Affairs, Competitiveness (Internal Market, Industry and Research), Transport Telecommunications and Energy, Agriculture and Fisheries, Environment and finally Education, Youth and Culture. Coreper II handles institutional matters and prepares Council meetings in General Affairs and External Relations, Economic and Financial Affairs and finally Justice and Home Affairs.

Coreper meets every week and its work is prepared by the personal assistants of its members, who meet under the name 'Mertens Group' for Core-

¹¹ Article 207 TEC.

¹² The Special Committee on Agriculture (SCA) was set up in May 1960 and is responsible for preparing a variety of matters within the scope of the Agriculture and Fisheries Council. The SCA plays the same role in very technical agricultural areas as Coreper does in other policy areas. SCA is the only exception to Coreper's monopoly in preparing the Council's work (General Secretariat, November 2007: Council guide II – Comments on the Council's Rules of Procedure).

per I and 'Antici Group' for Coreper II (General Secretariat, November 2007: Council guide II – Comments on the Council's Rules of Procedure: 8).¹³ The two groups are not negotiating bodies but prepare timetables and agendas for Coreper (Westlake & Galloway 2004: 210). However, the meetings at this level might give the presidency and the member states a first impression of the positions the various delegations will put forth at the Coreper meeting.

Due to an extensive the workload, Coreper sessions often last an entire day and frequently continue into the late evening or to the next day (Lewis 1998: 482). Another important part of the workings is lunches and dinners where the permanent representatives can speak off the record and get a better understanding of each other's positions. Such close and regular contact inevitably leads to familiarity, if not friendship, and mutual trust and respect (Westlake & Galloway 2004: 207). This has been established by research on the internal workings of Coreper, which shows that Coreper negotiations are marked by thick trust among its participants and by a strong culture of compromise (Lewis 1998, 2000, 2003, 2005).

1.2.4. The Council working groups: How are they organised?

There is no exact number of working groups. In February 2011 there were around 147 working groups preparing the work of the Council.¹⁴ They may be permanent, temporary or ad hoc; in fact a working group might meet only once and then be dissolved (Hayes-Renshaw & Wallace 1997: 97). In general the number of working groups under each Council configuration varies considerably. In 2011 there are only two working groups under Environment compared to 27 working groups under Agriculture and Fisheries (for a total list of the Council working groups in 2011 see appendix A). The total number of working groups has been steadily decreasing in recent years. In 2000 the total number of working groups was 179 compared to 160 in 2002 and 142 in 2004 (Häge 2008: 29).

The working groups meet at very irregular intervals, ranging from every week to every six months. The number of meetings depends on the number of legislative acts within the field of responsibility of the working groups. The more acts, the working groups have to deal with the more often they meet.

The Council working groups are attended by national experts, from either the permanent representations or the national capitals, and furthermore by a representative from the Commission and the Council General Secretariat

¹³ The present thesis focus on the main features of the Council's committee system. For a more thorough description of the Council committee system see Häge 2008b.

¹⁴ <http://register.consilium.europa.eu/pdf/en/11/st05/st05688-re01.en11.pdf>.

(Kassim 2001: 17). Working group meetings are normally convened and chaired by the Council Presidency and the Presidency decides whether and when the working group has finalised a negotiation and when further discussions in Coreper are necessary.¹⁵ The presidency also plays a central role outside the meeting room. For example it may be crucial for the progress in the decision making process that the presidency holds bilateral meetings with other member states or the Commission as the presidency this way may attain more detailed insights in for example the other member states positions or ensure a fruitful cooperation with the Commission.

The Commission is in most cases represented by one or two representatives in the working group. The primary role of the Commission during working group negotiations is to present and explain its legislative proposal to the member states. The Commission is also present to answer questions about the legislative proposal and to indicate which amendments the Commission will accept and not accept.

The role of the Council General Secretariat is to assist the presidency with planning and organising working group meetings and to assist the presidency during working group negotiations, for example by drafting the compromise texts.¹⁶ More specifically, the Council General Secretariat is responsible for drafting reports about the legislative acts that have been discussed in the working groups as a basis for the next stage of negotiations.¹⁷ Furthermore, during working group negotiations the Secretariat is in charge of keeping track of the list of speakers and noting what the different delegations state.

In general, the working climate in the working groups is considerably less formal than in Coreper and the Council of Ministers. Voting does not take place at this level and it is considered good tone to use technical, legal arguments rather than political arguments. According to the literature the continual interaction between the members of the working groups combined with the pressure to reach consensus has generated an 'esprit de corps' in the working groups with a shared commitment to finding common solutions (Beyers 1998; Egeberg 1999; Trondal 2001, 2002; Egeberg, Shaefer & Trondal 2003; Beyers & Trondal 2004; Beyers 2005; Sannerstedt 2005; Naurin 2007b, 2009; Radaelli & Banducci 2008). I will return to these studies on the negotiation climate in Council working groups in the next chapter, which presents previous research on Council and Council working groups' decision

¹⁵ Council's rules of Procedure (2004/338/EC) Article 19 (4).

¹⁶ TEC Article 207 (2).

¹⁷ Council's rules of Procedure (2004/338/EC, Euratom) Article 23 (3).

making. As for now it can be noted that the norms of compromise-seeking behaviour in working groups stresses the importance of the question of how much the working groups actually decide.

I have now described the organisation and the composition of the Council working groups, the role of the actors attending the groups and the negotiating climate in the working groups. Another element in working group negotiations is the bond between the national officials in the groups and their national administrations. Below, I will describe what these relationships may imply for working group decision making.

The actual negotiations in the working groups are based on instructions given to the national representatives by their national authorities. These instructions usually concern the position of the member state on a given proposal and an indication of how far the member state is willing to go. Sometimes the instructions also include a recommended negotiation strategy. Instructions may be written or verbal, or both; they may be more or less detailed and thereby determine the room of manoeuvre for the national official (Fouilleux, Maillard & Smith 2007: 100-1).

After, and sometimes during, meetings in the Council working groups, the participating officials are obliged to report back to their national authorities. This reporting can be verbal or in writing and normally includes a description of the course of the meeting, the negotiating position of the other member states and what the representative has achieved under the negotiations. The report functions as a control mechanism for the national authorities and gives them an outline of what is going on in the working groups. In addition, the report provides the background for a new negotiation instruction from the national authorities.

As described above, the instructions given to the national representatives in the working groups, and the reporting obligations, affect the margin of discretion for the negotiators to shape deals at the working group level. Generally, the room of manoeuvre of the national experts in the working parties, and hence their flexibility and deal making capacity, varies considerably between member states and across issue areas. The following quotations from interviews with two Danish officials from two different working groups illustrate how much the autonomy of national representatives can differ.¹⁸

In most cases, I actually prepare the instructions myself before working group meetings. Of course I have to consult with the administration at home, but I

¹⁸ The interviews were conducted as part of a pilot study in February 2009. I interviewed four Danish attachés in the Permanent Representation of Denmark to gain more insights about the internal workings of the Council working groups.

think I generally have quite a lot of freedom to form our position (Danish attaché, Brussels, February 2009).

It is the ministry at home that draws up the instructions. They are usually very long and specific, containing lots of details, but of course this varies (Danish attaché, Brussels, February 2009).

The officials' room of manoeuvre may vary due to several reasons. It may depend on the legislative act on the table and on the member state's level of interest in the act. It may also depend on the officials and more specifically on their experience and competence. Note, however, that another important factor is that the national coordination processes in the member states differ considerably (Kassim, Peters & Wright 2000, 2001; Fouilleux, Maillard & Smith 2007). In some member states (e.g. France) the coordination process is highly centralised, in others (e.g. Germany and Spain) the regions are consulted. Some national coordination processes (e.g. in Denmark and Germany) include the national parliaments, others do not (Fouilleux, Maillard & Smith 2007: 100). The effect of such variation in national coordination processes was studied by Beyers and Trondal (2004). They found that the domestic institutional structure affects the representational roles of the member state officials in the Council working groups. For example their study showed that the room of manoeuvre and the role of the working group officials depend on the number of veto players involved in the decision making process and on the relationship between them. The authors claim that the national coordination process will be more complicated when a large number of veto players with conflicting interests are involved in the decision making process. Under such circumstances the political mandating tends to be less detailed and the officials in the working groups will have more room of manoeuvre (Beyers & Trondal 2004: 930). Beyers and Trondal also show that the instructions from national administrations to working group officials are more imperfect and ambiguous the more actors are involved in the domestic coordination process (2004: 931).

Other studies reject that national coordination processes affect the role perceptions of the officials in EU committees. Trondal claims that the role perceptions and actions of EU officials depend on the national coordination processes prior to EU committee meetings. He expected that a lack of written mandates from the member states' foreign ministries will generate sufficient flexibility for the national officials to evoke loyalties towards the EU, but he found that this was not the case (Trondal 2002: 484).

It is important to bear in mind that behind the national positions of the officials attending the Council working groups are 27 different national coordi-

nation processes and ways of mandating the officials. I will not go further into the question of how the different coordination processes affect working group decision making. This thesis focuses on what goes on at the EU level rather than in the national administrations. Even so, it would undoubtedly be an interesting topic for future research. I will return to this subject in the conclusion of the present study (Chapter 7).

In order to shed light on the factors that may affect the decision making process and the relative amount of decision making that takes place at the different levels of the Council, it is necessary to look at previous studies on Council decision making and the dynamics between the member states of the European Union. Chapter 2 presents previous research on Council decision making and research that may offer ideas about what affects the amount of decision making taking place at the different levels of the Council's hierarchy. But first I will describe the chapters of the thesis.

1.3. The structure of the thesis

The thesis consists of seven chapters. Chapter 2 reviews existing studies about the Council working groups and the decision making process of the Council. I present studies that deal more or less directly with the research question of my thesis as well as studies of other aspects of Council decision making, which may offer insights and ideas about what affects working group decision making.

Chapter 3 outlines the theoretical framework of the thesis. The hypotheses are mainly based on findings from previous studies about working group and committee decision making. The theoretical framework is split into three categories: (1) Working group-specific variables; (2) issue-specific variables which are variables related to each legislative act; and (3) variables associated with the institutional setting of the working group. The chapter is summed up in an illustration of the theoretical model and a description of how I expect the variables in the model to be interrelated.

Chapter 4 describes the method applied in the thesis. As mentioned, the thesis combines quantitative and qualitative research methods and the chapter starts out with a discussion of the advantages and limitation of this design. I then present the quantitative data and the case selection for the qualitative study. Both sections outline the considerations behind the case selection for the two studies. After the presentation of the method and case selection I discuss the operationalisation of the variables in the theoretical model.

Chapter 5 presents the results of the quantitative analysis. I first address the question of how much the working groups actually decide. Do the Council working groups act alone in the majority of cases as claimed in some of the earlier studies of working group decision making? The chapter conducts an analysis of the variables in the theoretical model to investigate whether or not the extent to which the working groups reach agreement or send acts on for discussion at the higher levels of the Council seems to be affected by the variables in the theoretical model.

The crucial question in Chapter 6 is whether the qualitative analysis supports the results of the quantitative study. The chapter presents the qualitative analysis and besides analysing the theoretical hypotheses of the thesis it sheds light on possible explanations of the results of the thesis. Finally the qualitative analysis allows me to address other potential variables that may impinge on working group decision making and to ensure that the thesis has not left out important explanatory variables.

Chapter 7 holds the conclusion of the thesis. In addition to presenting the results of the thesis the chapter also discusses the results' implications for relevant debates and fields of research; (1) literature about Council decision making, (2) literature about whether EU decision making should be regarded as intergovernmental or supranational and (3) literature about the democratic legitimacy of EU decision making, (4) delegation theory and (5) the debate on the strength and weaknesses of applying mixed methods.

Chapter 2

Literature review

2.1. Introduction

Before introducing the theoretical framework, I will describe existing research on the role of the Council working groups. As it will appear from the review, there are to date no studies that present a clear picture of how much the working groups actually decide and what their function is in the larger hierarchical structure of the European Council of Ministers. We do not know when, and under what conditions, the working groups send legislative acts on for discussion in Coreper and the Council of Ministers, and when they finalise discussions at their level. This lack of knowledge about the exact role of the working groups is surprising considering how much their role is emphasised in the literature. Frequently cited textbook accounts estimate that around 75-90 pct. of the Council's decisions are clarified at the preparatory level and are adopted by the Council of Ministers without further discussions (Hayes-Renshaw & Wallace 1997; Hayes-Renshaw 2002; Westlake & Galloway 2004). However, this is an informed guess rather than a precise measure. Regardless of the strong acknowledgement of the role of the preparatory committees in the Council, research on the division of labour between the Council of Ministers, Coreper and the working groups and on the extent of decision making that takes place at the different levels is scarce.

The literature review is structured as follows: First I present studies that deal more or less directly with the research question of this thesis (2.2), i.e. studies of the decision making processes in the Council which offer insights about the extent of decision making that takes place at the level of the working parties, the Coreper and the ministers in the Council. The research in this field not only provides insights about the role of the working groups, but also points at several important factors that might influence whether or not the working groups finalise negotiations at their level or send outstanding issues on for discussion at the higher levels of the Council.

To date only one study deals directly with the research question of this thesis and analyses the extent to which working groups finalise negotiations at their level or send legislative acts on for further discussion at the higher levels of the Council hierarchy. The study is conducted by Frank Häge and will be presented in Section 2.2. Otherwise the existing literature on the decision making process in the Council and on the relative role of the different

levels of the Council can be divided into two categories. One category focuses on single policy areas and studies the extent of working group decision making within the selected policy area (Van Schendelen 1996; Andresen & Rasmussen 1998; Gomez & Peterson 2001). These studies are based on quantitative analyses as well as on qualitative case analyses. The other category studies the role of the preparatory level (the working groups and the Coreper) compared to the political level (The Council of Ministers) (Hayes-Renshaw, Van Aken & Wallace 2006; Häge 2007a, 2007b, 2008a). As it will appear in the review these studies look at the role of the Coreper and the working parties under one.

Not only does the research on the relative role of the different levels in the Council provide us with insights about the extent of decision making that takes place in the Council working groups, it also offers ideas about factors that can explain why some legislative acts are handled solely by the working groups while others are discussed at all levels in the Council hierarchy. These ideas and insights will in Chapter 3 form the basis of the theoretical propositions of this thesis.

After presenting the studies on the decision making process in the Council, and on the relative role played by the Council working groups, I will focus on other fields of research which offer ideas about what may affect the role of the working groups. Section 2.3 introduces studies on the conflict dimensions and coalition patterns in the Council of Ministers. These studies have important implications for this thesis because they account for the inner workings and decision making mechanisms of the Council of Ministers as an institution.

Section 2.4 presents research on the negotiation climate in the Council working groups specifically and in the committees of the European Union more generally. Studies within this research field examine whether negotiations in the working groups are marked by hard intergovernmental bargaining or deliberative debate and supranational characteristics. Furthermore they elucidate under which conditions the two negotiation forms are likely to occur.

The fourth field of research which is relevant for this thesis analyses the committee members' role perceptions (Section 2.5). Quite a few studies look at the extent to which committee members of the Council working groups assume supranational role perceptions and to what extent the role perceptions can be connected to interactions in the working groups. The question pertinent for this study is whether differences in the level of contact between the national officials in the working parties and the EU system can affect the

working groups' ability to reach agreement and finalise negotiations at their level.

2.2. Who decides in the Council of Ministers and what is the role of the working groups?

This section presents the literature that deals more or less directly with the research questions of this thesis: At what level in the Council's hierarchy are decisions most often made? What is the role of the Council working groups? How much do they decide? Does this differ from case to case and in what way? The purpose of the presentation is to provide an overview of what we already know about the research question and to pinpoint the questions that remain open and will be addressed here.

One of the first studies of how the Council 'decides' was conducted by Van Schendelen in 1996. He studied how 500 items on the Agricultural Council agenda were handled by the Council and its preparatory bodies and found that discussions on 65 pct. of the items on the agenda had already been finalised at the preparatory level (1996: 538). The study also indicated that the members of the Coreper and the working groups often had considerable discretionary freedom in policy making. However, the fact that Van Schendelen only looks at one policy area limits the generalisability of the results and he concludes that patterns may vary considerably among the different councils and that further research is needed.

Another study of Council decision making examines legal acts adopted by the Council of Ministers on environmental issues (Andersen & Rasmussen 1998). By studying protocols from meetings in the Council and its preparatory bodies, Andersen and Rasmussen are able to map in detail the decision making processes regarding the legislative acts. In contrast to Van Schendelen, Andersen and Rasmussen observed that most issues are first dealt with as B-items and later concluded as A-items through a series of unified sequences with repeated deliberations at the working group and Coreper levels (Andersen & Rasmussen 1998: 595). They find that acts are rarely passed as A-points without substantial discussion among ministers. Another interesting result is that on sensitive issues, ministers keep a relatively close eye on the negotiations at lower levels of the Council's machinery.

Gomez and Peterson's study of the decision making processes in the General Affairs Council (GAC) modifies the general impression of the role of the preparatory level. The study is an empirically grounded analysis of the extent to which the GAC's agenda has become increasingly dominated by

external relations and CFSP issues at the expense of its other responsibilities (Gomez & Petersons 2001: 53). However, their quantitative analysis of ministerial agendas in the GAC also provides some interesting results for this thesis; more specifically that only about half of all agenda items included in the analysis had been decided at committee level.

One of the few cross-sector studies of the decision making processes in the Council was conducted by Hayes-Renshaw, Van Aken and Wallace in 2006. The three researchers find that a very large proportion of decisions are crucially framed and shaped well before the ministerial sessions. Of the 626 decisions included in their dataset, 411 were adopted as A-points without discussion in the Council of Ministers (2006: 183). Another interesting result is that the voting patterns in the Council of Ministers clearly differ between policy areas. In some fields, such as agriculture, fisheries and the internal market, explicit voting at the ministerial level is clearly more usual and routinised, while in others it is hardly observable. In yet other fields, for example trade policy, the impact of implicit voting is played out at the level of the officials (2006: 184). The authors observe that routinised voting occurs more readily in policy fields with a settled rhythm to EU decision making and where the national positions are relatively clear. In other words the decision making mechanisms vary between policy areas. The results stress the relevance of examining the decision making processes within the different policy fields of the Council which is the aim of this thesis.

Hayes-Renshaw, Van Aken and Wallace only look at the final stage in the decision making process, examining which legislative acts the Coreper sends on to the ministers for final adoption. This approach means that the three researchers are unable to observe whether the ministers in the Council were involved earlier in the process. Frank Häge's studies from 2007 and 2008 analyse all stages in the decision making process in the Council.

Häge (2007a, 2007b, 2008a, 2008b) provides the most exhaustive study of the decision making process in the Council to date. In his PhD thesis and two related articles he presents cross-sectoral data on the relative involvement of the preparatory level and the level of the ministers in legislative decision making processes in the Council. Häge questions whether it is true that the ministers hardly ever are involved in the decision making process and whether the involvement of the different levels of the Council varies across policy sectors. In his PhD thesis Häge employs quantitative large-N as well as qualitative case study methods. The quantitative analysis is based on 439 legislative Council decisions and the qualitative analysis compares six decision making processes in three policy fields (Häge 2008b: 4). In his quantitative study Häge finds that the ministers are involved in more than 60 pct. of

all legislative decision making cases; a finding which clearly goes against results from previous studies. Note, however, that Häge's qualitative case study qualifies this finding to a certain degree as it shows that in the situations where the ministers decided or discussed concrete issues, they usually concentrated on two or three points of contestation in the legislative proposals. In other words, ministers in the Council discuss a large share of the legislative acts adopted by the Council of Ministers, but these discussions usually focus on a very limited number of issues in the legislative acts. That being said, it should be emphasised that the issues discussed by the ministers in most cases are the most important and conflictual according to Häge's study (2008b: 242).

In one of his articles Häge also looks at the extent of decision making that takes place in the Council working groups compared to the higher levels of the Council of Ministers (Häge 2008a). His dataset includes 180 legislative acts, i.e. decisions, regulations and directives, adopted in 2003. In his study of the Council's decision making process, Häge observed both at which level in the Council the final decision was made and which level in the Council was the highest level at which the legislative acts were discussed during the course of negotiations. Häge's analysis showed that 35 pct. of the legislative decisions included in the study were taken by the ministers themselves, 22 pct. by Coreper and 43 pct. by the Council working groups. Furthermore, 48 pct. of the legislative acts were discussed by the ministers at some point in the decision making process, 21 pct. were discussed by Coreper and working groups and 31 pct. were discussed solely by working groups without involvement by the higher levels of the Council (2008a: 554). Häge's results clearly modify conventional knowledge about the role of the bureaucratic level in the Council of Ministers according to which the ministers only seldom are involved in the decision making process. However, as Häge's study only covers one year, the generalisability of his results is of course limited. Therefore it is still highly relevant to obtain broader insights about the role of the different levels of the Council's hierarchy and about the extent of decision making that takes place in the Council working groups.

I have now presented the studies that to different extents deal with the research question of this thesis. As it appeared in the review, the literature does not agree on how much of the decision making takes place at the different levels of the Council. Furthermore, only one study (Häge 2008a) offers insight about the roles of the working groups across policy areas, but since it only focuses on the role of the working groups within a limited period, our knowledge about the research question of the present thesis is still limited. We still know little about the conditions under which working groups act

alone or send acts on for II/B-point discussions at the higher levels of the Council. This underlines the relevance of this study. Table 2.1 summarises the results from previous studies.

Table 2.1 Summary of studies

	Data source	Relative involvement of WP, Coreper and the Council of Ministers
Van Schendelen 1996	Ministerial Agendas	65 pct. Working groups and Coreper 35 pct. Council of Ministers
Hayes-Renshaw & Wallace 1997	Practitioner estimate	70 pct. Working group 15-20 pct. Coreper 10-15 pct. Council of Ministers
Andersen & Rasmussen 1998	Council documents	26 pct. Working groups and Coreper 74 pct. Council of Ministers
Gomez and Peterson 2001	Ministerial Agendas	48 pct. Working groups and Coreper 52 pct. Council of Ministers
Hayes-Renshaw, Van Aken & Wallace 2006	Ministerial Agendas	66 pct. Working groups and Coreper 34 pct. Council of Ministers
Häge (2007a, 2007b, 2008b)	Prelex	40 pct. Working groups and Coreper 60 pct. Council of Ministers
Häge 2008a	Prelex and Council Public Register	43 pct. Working group 22 pct. Coreper 43 pct. Council of Ministers

Source: Häge 2008a: 539.

The literature on the decision making process in the Council not only provides insights about the relative involvement of the different levels in the Council hierarchy, it also offers ideas about what might explain the variations in the decision making processes in the various policy fields.

Häge's quantitative study in his PhD thesis showed that the extent to which legislative acts were discussed by the ministers in the Council varies across policy areas. More concretely Häge found that negotiations on the majority of the acts in agriculture, fisheries, justice and home affairs, internal market and economic and financial affairs were clarified at working group and Coreper level without discussion in the Council of Ministers. The pattern was different in policy areas such as environment, industry and energy, research, employment and social affairs where most legislative acts were discussed by the ministers at some point in the decision making process. Häge does not offer any possible explanations of these variations. He concludes that the extent to which working groups and the Coreper send acts on for discussion in the Council does not vary according to whether the policy ar-

areas are relatively new or more settled, or according to the decision making procedures applied in the policy areas (Häge 2008b: 93-94).

Häge's extensive analysis of the decision making process in the Council of Ministers furthermore pointed at preference divergence among the member states as an explanation of why legislative acts are discussed by the ministers. While his quantitative study was more ambivalent on the effect of this variable, his qualitative study clearly showed that the preference divergence among the member states is a necessary but not sufficient condition for involvement of the Council of Ministers. In particular, issues with high preference polarisation are sent on for discussion at the ministers' level (Häge 2008b: 244).

Häge's quantitative study also showed that the salience of a legislative act was the most important determinant of committee decision making and that the ministers are only involved in the negotiations when the legislative acts are salient (2008b: 247). His case studies underpinned this result and pointed at two factors that make legislative acts salient: (1) the extent to which the legislative acts have direct, wide-ranging consequences for the member states domestic industries and companies; and (2) the legislative acts' financial consequences, including the costs to comply with the adopted legislation. Overall Häge's case study showed that the saliency that member states attach to an issue has little to do with ideologic viewpoints but are consequences of domestic interest group pressures and national financial interests (2008b: 248).

One could argue that it would be less problematic from a legitimacy point of view if the working groups focus on routine decisions and technical proposals and leave the important political decisions to ministers (Häge 2008b: 5). The question of whether or not the working groups typically focus on technical issues was studied by Fougère, Maillard and Smith in 2005. Through case studies based on interviews the authors observe how working group members handle the legislative acts and how they interact with civil servants in Coreper and ministers, on the one hand, and representatives from the Commission and the Parliament on the other. They conclude that the distinction between technical and political issues is rarely clear-cut. For example a frequent proceeding is that the working groups send legislative acts on to Coreper because they cannot reach agreement and not necessarily because they are political. In other words working groups do deal with issues that can be regarded as political (Fougère, Maillard & Smith 2005: 612). Although the distinction between political and technical issues is not always clear-cut, Frank Häge finds that the legal complexity of the legislative acts affects the decision making process in the Council and the extent to which

negotiations are finalised at working group or Coreper level, or sent on for further discussion in the Council of Ministers. More specifically, his case study showed that as the committee members have more expert knowledge about the legislative acts they are often better equipped to judge the legal consequences of the wording of a provision. In cases where the legislative acts are highly technically complex, officials in the working group often abstain from referring a legislative act to the higher levels of the Council's hierarchy (Häge 2008b: 248).

As mentioned, Van Schendelen found in his study from 1996 that the members of the Coreper and the working groups often seemed to have considerable discretionary freedom in policy making. However, his study also indicated that the officials are subject to pressures both from the Commission and the European Parliament and that they often develop contacts with members of these two institutions (1996: 543). Häge also studied the effect of the influence of the European Parliament. In his quantitative study he looked at whether the decision making procedure influenced the number of A and B points on the Council of Ministers' agenda. More specifically, Häge observed whether there were more discussion points on the ministers' agenda when the European Parliament had veto power (co-decision procedure) than when the European Parliament did not have this influence (consultation procedure). His study showed that the involvement of the Parliament in the co-decision procedure seemed to make it more difficult to conclude negotiations at the working group and Coreper level (Häge 2008b: 106). This result corresponds well to Andersen and Rasmussen's finding that it is more difficult to reach agreement at an early stage in the Council's decision making process under co-decision than when the Parliament's role is more limited (Andersen & Rasmussen 1998: 596).

One of the unforeseen findings in Häge's study was that the Presidency plays a major role in Council decision making. The presidency decides what subject should be discussed, when and by whom. This central decision making role is often used by the presidency and Häge found that the presidency for example can choose to send legislative acts on for discussion in the Council of Ministers to speed up negotiations (Häge 2008b: 249). This way the presidency is able to steer the decision making process and influence the relative involvement of the different levels of the Council's hierarchy. Andersen and Rasmussen also found that the Council presidency plays a central role in working group negotiations. Furthermore their study showed that that the member states generally understand how to use the presidency to promote certain issues in the Council that are of particular interests to themselves (Andersen & Rasmussen 1998: 596). In this connection it is natural to

expect that how the Council presidency plays its cards might affect the decision making process in the Council working group and the extent to which working groups finalise negotiations at their level or send legislative acts on for discussion at the higher levels of the Council.

All in all the previous studies on the decision making process in the Council of Ministers leave us with many ideas about what affects the relative role of the working parties. The research on Council decision making has amongst other things pointed at variables such as preference divergence among member states, the salience and technical complexity of the legislative acts, the position of the European Parliament and the Commission and finally the Council presidency as factors that can affect at which level in the Council decisions are made and thereby affect the relative role of the Council working groups. In the following I will present the literature that deals with other aspects of the decision making process in the Council. These studies also offer insight about what might explain variations in the extent of decision making taking place in the working parties compared to the higher levels of the Council. Below, I first introduce the studies on the conflict dimensions between the member states in the Council. As pointed out, Häge's study of Council decision making showed that the extent to which the member states have diverging interests impinges on whether or not the legislative acts are sent on for discussion by the ministers. But what do the conflict dimensions between the member states actually look like?

2.3. The lines of conflict in the Council of Ministers

In order to formulate theoretical expectations to what explains the decision making process in the Council and the extent of decision making taking place in Council working groups, it is highly relevant to look closer at studies of the coalition patterns and the lines of conflict between the member states in the Council. These studies give an insight into what type of decision making institution the Council is and offer ideas about the factors and dynamics that are likely to affect the decision making process in the working groups. Generally the lines of conflict in the Council are more pronounced when the Council deals with certain types of legislative acts. It is likely that these differences in the level of conflict are reflected in the decision making processes in the working groups.

The literature offers many suggestions on what is the most important conflict dimensions within the political space of the Council of Ministers (Beyers & Dierickx 1997; Hooghe & Marks 1997; Golub 1999; Mattila 2004; Mattila & Lane 2001; Thomson, Boerefijn & Stockmann 2004; Zimmer, Schneider &

Dobbins 2005; Hayes-Renshaw, Van Aken & Wallace 2006; Aspinwall 2007; Heisenberg 2007; Tallberg & Johansson 2008; Hosli, Mattila & Uriot 2008; Mattila 2008; Hagemann 2008; Naurin & Lindahl 2008; Miklin 2009; Veen 2011). Some find that there is a political left-right cleavage between the member states in the Council, others that the main cleavage is between EU positive and EU sceptical governments. Finally, several analyses indicate that the redistributive dimension is the most pronounced line of conflict in the Council of Ministers. Below, I account for the results from these studies of the conflict dimensions in the Council more thoroughly.

It is common knowledge that EU member states do not agree on the level of integration in the EU. Generally the member states can be put into two categories: EU positive member states and EU sceptical member states, although the specific interests of the member states may vary according to policy area and legislative act. The question relevant for this thesis is whether these conflicting interests are reflected in the Council's decision making process? This question was studied by Mattila (2004) and Zimmer, Schneider and Dobbins (2005). In his analysis of voting patterns in the Council of Ministers, Mattila finds that the member states' interests concerning the level of integration in the EU are reflected in the way the member states vote. More specifically, his study shows that that pro-integration member states are least likely to vote against the Council majority (Mattila 2004: 29). Zimmer, Schneider and Dobbins arrive at a different result. They studied the preferences of the member states regarding 174 issues from 70 Commission proposals on decrees, directives and decisions.¹⁹ The negotiation preferences were measured through expert interviews conducted before the adoption of a common position on the part of the Council of Ministers (Zimmer, Schneider & Dobbins 2005: 408). Zimmer et al. conclude that the member states' preferences and the resulting conflicts do not appear to be a product of the member states' desire for more or less integration (2005: 414).

The ministers in the Council of Ministers are not only representatives for their country; they are also politicians who represent a political party. Scharpf points out that ideological conflict often occurs between member states with

¹⁹ The analysis is based on the DEU data set (Decision Making in the European Union) developed by an international team of researchers and based on the results of quantitative expert interviews. 125 experts from the national delegations in Brussels were interviewed and Zimmer, Schneider and Dobbins expanded the dataset by conducting interviews with Commission officials, members of the European Parliament and interest groups. The dataset applied in Zimmer et al.'s study all in all contains the ideal points of 15 member states, the Commission and the Parliament on 174 issues from 70 Commission proposals (2005: 408).

highly diverging political interests. He finds it likely that different governments with different political backgrounds may disagree on the general level of regulation in the EU (Scharpf 1996: 22). Mattila (2004) has studied whether conflicts between right-wing and left-wing governments are apparent in the Council. His results show that there is a left-right dimension in the ministers' voting patterns; but more specifically that left-wing governments tend to vote less against the Council majority than right-wing governments (2004: 46). Mattila argues that socialists are often the most pro-European and bases this claim on earlier studies of e.g. the policy positions of the members of the European Parliament (2004: 32). Hagemann (2008) also found that the political background of the ministers in the Council can affect Council negotiations. She observed that member states often shift positions when the domestic governments changes. However, this tendency was not apparent in Hagemann's dataset in the years after the eastern enlargement (2008: 56). Another study of the effect of the political background of the ministers was conducted by Eric Miklin in 2009. His case study of the service directive suggested that a government change can affect the member states' positions in the Council.

Contrary to Mattila, Hagemann and Miklin, Zimmer et al.'s study lends only weak support to the thesis that party lines or ideology determine the preference structure in the Council. Zimmer et al. suggest that the results differ because, for example, Mattila studies the voting patterns in the Council, while Zimmer et al. study the positions of the member states before negotiations in the Council have started. However, more studies reject that Council politics are affected by party politics. Hayes-Renshaw, Aken and Wallace find no evidence of traditional left/right cleavages in the patterns of explicit voting in the Council of Ministers (2006: 177). Similarly, Tallberg and Johansson find no signs of party politicisation in the European Council in a study from 2008. They conclude that the heads of government seldom are mobilised along transnational party lines (2008: 25).

Quite a few studies of the conflict dimensions in the Council of Ministers come across one common result and identify a north-south dimension in the Council (Beyers & Dierickx 1997; Mattila & Lane 2001; Thomson, Boerefijn & Stockmann 2004; Zimmer, Schneider & Dobbins 2005; Mattila 2008; Naurin & Lindahl 2008). Generally the northern member states communicate more with each other than with the southern member states and they often vote together with other northern member states (Beyers & Dierickx 1997: 436), just as southern member states most frequently vote together (Mattila & Lane 2001: 45; Mattila 2008: 31). However, exactly what causes this line of conflict is still an open question. Some researchers claim that the north-south conflict

dimension reflects the diverging interests of the net contributors and the net receivers of the EU budget; other researchers point to the diverging interests in terms of level of regulation in the European Union. However, these economic and regulatory questions are often interrelated. To explain the conflict between net contributors and net receivers, Zimmer et al. draw attention to the fact that the two groups have different views on the extent of market regulation, protectionism and subsidies. The poorer member states, both from the south and the east, most often prefer extensive regulation of the market with low production costs, while the northern member states tend to advocate more competition and keeping EU expenses down (2005: 417).

Mattila (2008) and Naurin and Lindahl (2008) have studied whether this north-south conflict dimension is also apparent after the eastern enlargement. The overall purpose of Mattila's 2008 study was to examine the voting patterns in the Council again to see whether the enlargement of the EU in 2004 with 10 new member states has changed the voting patterns in the Council and whether the north-south dimension is still apparent. Mattila concludes that the voting patterns are relatively stable and that the north-south dimension remains the most apparent line of conflict among EU member states (2008: 35). Naurin and Lindahl reach the same conclusion, but they find that after the enlargement a horizontal line of conflict has emerged between the western and the eastern member states in addition to the north-south dimension (2008: 75).

The literature on the conflict dimensions in the Council demonstrates that there are some clear lines of conflict between the member states. Earlier research has shown that the member states have conflicting interests when it comes to the policy directions of EU policies, the level of integration in the EU and about economic and regulatory questions. We know from the reviewed studies that these conflicts affect the voting patterns of the ministers in the Council and the coalition patterns in the Council more broadly. However, we do not know whether these lines of conflict are also reflected at the preparatory level and more specifically in the working groups. Do the working groups send legislative acts on for II/B-point discussions at the higher levels of the Council more often when the legislative acts are marked by a high level of conflict between the member states involved in the decision making process? Do the working groups that handle policies characterised by high ideological, institutional and material conflict more often send legislative acts on for further discussions in Coreper and the Council of Ministers? Does the interest configurations among the member states and actors involved in the decision making process affect the general decision making capacity of the working groups? As already accounted for, Häge's research on the decision

making process of the Council of Ministers showed that the extent to which legislative acts are sent on for discussion at the minister's level is dependent on the preference divergence among the EU member states (2008b: 244). All in all it is relevant to question whether and how the lines of conflict between the actors involved in the Council's decision making process affect the role of the working groups. I will return to this question in Chapter 3 where I present the theoretical framework of the thesis.

2.4. Negotiating climate

A large share of the previous research on the working groups, and on EU committees more broadly, addresses communication patterns and the negotiation climate in the committees (Joerges & Neyer 1997a, 1997b; Beyers & Dierickx 1997, 1998; Lewis 1998; Elgström & Jönsson 2000; Naurin 2007b; Neyer 2007; Naurin 2009; Jacobsson & Vifell 2007; Wessels 1998; Dehousse 2003; Pollack & Shaffer 2008; Blom-Hansen & Bradsma 2009). These studies are relevant for this thesis, not only because they offer interesting insights about how negotiations in the working groups generally proceed, but because it is likely that the factors that affect the negotiating climate might also affect the extent of decision making in the working groups.

Some of the studies on the negotiating climate in the working groups and EU committees question whether the negotiations in the committees can be regarded as supranational or intergovernmental, and others examine whether the negotiations can be seen as deliberative or marked by hard bargaining. Below, I will first present the literature that examines whether negotiations in the EU committees are supranational or intergovernmental and then the studies of whether negotiations in the committees are deliberative or marked by hard bargaining are introduced.

One of the first studies of the negotiating climate and communication patterns in the working groups was conducted by Beyers and Dierickx in 1998. They questioned whether negotiations are marked by intergovernmental or supranational characteristics and explore the communication networks of the negotiations in the working groups. Their study is based on interviews with members of 13 working parties. The main finding is that the institutional actors: representatives from the Commission, the General Secretariat of the Council and the presidency form the core of the communication network together with the large member states (UK, France and Germany). Even the representatives from more EU-sceptical states emphasised the importance of non-state institutional actors (Beyers & Dierickx 1998: 313). The question is whether these findings indicate that communication in the work-

ing group is more symptomatic of a supranational than of an intergovernmental model of policy making. The fact that the inter-institutional actors play such an important role points to a supranational pattern. On the other hand, the fact that the large member states constitute the core of the negotiation network blurs the picture. All in all Beyers and Dierickx' results are interesting for this thesis because they indicate that the positions of the large member states together with the Commission, the General Secretariat of the Council and the presidency are likely to affect negotiations in the working groups and the working groups' abilities to finalise discussions at their level.

In 2003, Egeberg, Schaefer and Trondal conducted a comparative study of the EU committees observing whether negotiations are marked by supranational or intergovernmental debate. They compare the Commission expert groups, the working parties and the comitology committees and their study builds on survey data including 218 national officials from 14 member states who have participated in EU committee meetings (2003: 19). The researchers find that the role of expertise is fundamental across the three types of committees and that participants assign more weight to arguments presented by actors with high expertise than to views expressed by representatives from large member states (2003: 20-21). This result supports the supranational account. That being said, Egeberg, Schaefer and Trondal conclude that of the three committee types, the Council working groups appear to be the most intergovernmental arena. The participants in the working parties act as representatives for their respective home government and tend to assign most weight to their relationship to their own government. At the same time, the empirical results found in the study of Egeberg et al show that officials in the working groups feel greatest responsibility towards EU-level units (2003: 31).

Moving on to the studies of the presence of deliberative debate in Council working groups it should firstly be pointed out that these studies offer different definitions of deliberation and different propositions about how it can be identified. Nevertheless, the studies generally all see deliberative problem solving as based on reasoning and evaluation of arguments rather than on bargaining or functional adaption (Chambers 2003: 309). Furthermore the interaction is characterised by fair arguing and a communicative rather than a strategic rationality. The opposite of the problem solving negotiating style is bargaining. The defining difference between a problem solving and a bargaining approach seems to lie in their respective focus on self-interest versus common interest. Where the main focus in the problem solving approach is to find pareto-optimal solutions, bargaining is characterised by every participant's insistence on getting as much as possible for him- or herself without

caring about the consequences for other players (Elgström & Jönsson 2000: 685).

The starting point of Elgström and Jönsson's questionnaire study from 2000 is the presumption that both hard bargaining and deliberative problem solving negotiations occur in EU committees. They hypothesise that the negotiation climate depends on the context and that the pattern varies with the decision making rule, the level of politicisation and type of policy and according to the stage in the decision making process (2000: 684). Their findings confirm that both bargaining and problem solving behaviour take place during negotiations in EU committees and that the negotiation climate depends on the context (2000: 699). However, problem solving seems to be the most predominant negotiation style. In the working groups more specifically, Elgström and Jönsson found that negotiations generally are marked by a focus on national interests, including taking the interests of other member states into account and bringing everybody on board when compromises are formed. All in all Elgström and Jönsson conclude that consensus seeking behaviour and cooperation are the norm in the working groups (2000: 698). As for the factors that influence the negotiating climate it seemed to be of less importance whether legislative acts are adopted by qualified majority or unanimity. Type of policy area on the other hand matters a great deal. Elgström and Jönsson find that hard bargaining is often prevalent in redistributive and constituent issue areas, and where high levels of politicisation make defending national interests an important objective (2000: 701). In the light of Elgström and Jönsson's results, it is relevant to question whether variables such as the distributive implications of a legislative act or the level of politicisation impinge on the working groups' decision making capacity and the extent to which they involve the higher levels in the Council hierarchy in the decision making.

Blom-Hansen and Bradsma 2009 study the negotiation climate in the comitology committees. Like Elgström and Jönsson, they start with the assumption that both the deliberative and the intergovernmental image of committee negotiations may be true. They question whether the two images may have different domains of application (Blom-Hansen & Bradsma 2009: 720). Their results show that the relative magnitude of the two negotiation forms depends on the nature of the act on the table and on the policy area of each committee more generally. Blom-Hansen and Bradsma suggest that the negotiating climate will be affected by the technical complexity and the distributive effects of the legislative acts dealt with in the policy areas, the duration of the committee members' interaction at EU level and finally the preference intensity among the member states. The empirical data shows

that the negotiations in the comitology committees is often marked by hard bargaining when they are dealing with acts which entail distributive effects or are technically complex. Furthermore the longer the committee members have participated in the committees, the less bargaining occurs (2009: 720). Blom-Hansen and Bradsma find that deliberation often occurs when the committees are dealing with technically complex legislative acts. On the contrary, their empirical results show no effect of the level of socialisation among committee members. Blom-Hansen and Bradsma conclude by emphasising that their results are highly relevant for the other types of committees in the European Union, among these the Council working groups.

Some of the sociological accounts of committee decision making also identify a requirement to justify negotiation positions as an important element of the committee negotiation style. Daniel Naurin (2007b, 2009) has conducted a large-scale quantitative study of reason-giving in the Council working groups. Naurin argues that previous research on deliberation has focused too much on observing cooperative versus competitive behaviour. He explicates that actors can act cooperatively for strategic reasons and therefore the best way to measure deliberation is to examine actors' motivations for giving reasons. Was it to convince others of the merits of their position or to facilitate a compromise? Naurin's study shows that delegates almost always give reasons for the positions they represent in the working groups. However, he finds that there are considerable differences in the levels of arguing and bargaining between different Council working groups in different policy areas (Naurin 2007b: 25). More specifically, he finds that the propensity to argue seems larger in policy areas co-ordinated by soft law than by legally binding acts. This raises the question of whether the decision making capacity is also affected by the type of legislation on the table. Naurin's analysis furthermore shows that voting rule has an impact on negotiation styles. According to Naurin, the unanimity requirement promotes arguing whereas majority voting leads to a more conflictual communicational dynamic. The rationale is that veto power gives the actors the security they need to engage in arguing rather than bargaining (Naurin 2007b: 7-8). Another interesting result is that the negotiation climate also depends on the stage in the decision making process. Naurin finds that deliberative behaviour most often occurs in the starting phase of negotiations (2009: 50).

The finding that the negotiation climate in the working groups depends on the stage in the decision making process was also found in case studies conducted by Jacobsson and Vifell (2007) and by Niemann (2008). Jacobsson and Vifell (2007) study the presence of the deliberative mode of policy making in the EU committees that deal with EU employment policy.

The two researchers find that strategic bargaining is not the general mode of interaction in the committees. Their results indicate that committee discussions take on quite different characteristics depending on the issue on the table (2007: 20). For example consensus seeking behaviour occurs more often when the committees are handling more technical rather than directly political issues and well-founded technical arguments are regarded as more important for the discussions in the committees than for example the size of the member states (2007: 26-27). These results, which also have been found in other studies, are interesting for this thesis as they indicate that the issue discussed may affect the decision making possibilities of the working parties. More specifically, they emphasise the relevance of observing the technical complexity of the legislative acts as an explanatory variable for whether or not working groups send legislative acts on for II/B-point discussions at the higher levels of the Council.

The last study on the negotiation climate that I will present here is Niemann's study from 2008. Niemann examines the presence of deliberative behaviour on two specific negotiations: the article 113 Committee's negotiations on the 1997 World Trade Organization (WTO) Basic Telecommunications Agreement, and the 1996-97 Intergovernmental Conference (IGC) Group of Representatives negotiations on the scope of the common commercial policy. Niemann studies the negotiation climate through interviews, public and non-public documents and direct observations and presents four conditions under which he expects deliberative behaviour to occur: when the committees are dealing with new issues where policy solutions and the member states' interests still are uncertain; when the issues discussed are technically complex; when the time pressure is low; and when the level of politicisation is low (2008: 124-25). Niemann's empirical results show that most negotiations in the Council are not dominated by deliberation but rather by strategic action and hard bargaining. However, more deliberation takes place when the four conditions are present (2008: 141-42).

The studies on the negotiation climate in the working groups specifically, and in the EU committees more generally, offer relatively different images of the decision making process. While some researchers find that negotiations are primarily marked by intergovernmentalism and hard bargaining, others mainly find indicators of a more supranational and deliberative negotiation form. However, these different results can also be a consequence of the different ways of observing and measuring the negotiation climate. What is clear from the review is that the negotiation climate in the EU committees, including the Council working groups, seems to depend on the nature of the policy areas in which the committees operate and on the issues on the

agenda. According to previous research, the negotiation climate in the committees is influenced by the decision making rule, the stage of the decision making process, the technical complexity of the legislative acts, the financial implications of the legislative acts, the level of politicisation and by the type of issue on the table. In relation to the subject of this thesis it is relevant to question whether the variables that affect the negotiation climate in the committees also influence the decision making capacity of the EU committees, specifically in the Council working parties. I return to this question in Chapter 3 which outlines the thesis' theoretical framework.

The literature on the socialisation effects of participation in the Council working groups, and in EU committees as such, is associated with studies of the presented studies of the negotiation climate. I will present these studies next and highlight their implications for the thesis.

2.5. Socialisation

As mentioned, a large field of research analyses the socialisation effects of the European institutions. Since Haas' seminal work from 1958, literature on EU integration has studied the extent to which (1) committee members in the EU committees, and in the Council working groups more specifically, invoke supranational role perceptions and (2) to what extent the role perceptions can be connected to interaction in the committees (Beyers 1998; Egeberg 1999; Trondal & Veggeland 2003; Trondal 2000, 2002; Egeberg, Shaefer & Trondal 2003; Beyers & Trondal 2004; Beyers 2005; Juncos & Pomorska 2006; Quaglia & Radaelli 2008).²⁰ These studies show that the members of the committees in the European Union, working together over time, often begin to think alike and come to hold supranational role perceptions. The reason is that EU officials, as a result of long-lasting exposure to the EU system and interactions with EU colleagues, build up a feeling of 'we-ness' with their colleagues and shift allegiance toward the European Union (Beyers 2005: 899). The studies of the socialisation effect do not only offer insights about whether such an effect actually exists; some of the studies also investigate the scope conditions and the factors that can explain socialisation effects, or the lack thereof.

²⁰ There are also several studies of the socialisation effect in the Coreper (e.g. Lewis 1998, 2003, 2005; Lempp, & Altenschmidt 2008). I will not go further into these studies as the Coreper as an institution where the members negotiate continuously and on a daily basis differs significantly from the working groups where the meeting frequency is more limited.

An important element of the socialisation theory is the claim that socialisation not only affects officials' role perceptions but also their behaviour. In the case of the Council working groups, socialised national representatives are supposed to take on a more cooperative negotiation style and focus more on finding common solutions than on national interests. The underlying rationale behind these expectations lies amongst other things in the presumed effect of continuous interaction. When the involved actors know that they will meet again within the foreseeable future, the negotiators have an interest in cooperating and playing by the rules to avoid being penalised in future negotiations.

It can be expected that the socialisation effects will affect the decision making processes in the Council working groups. If the members of the working groups have had long-lasting and close contact to the European level, it will, according to the socialisation perspective, affect their role in the groups. For this reason socialisation studies are highly relevant for the thesis. In the following I will present the research within this field and the results that are of relevance here.

One of the first studies of the socialisation effect in the Council working groups was conducted by Beyers (1998). In the article: 'Where does supranationalism come from?', Beyers seeks explanations of why some officials in the working groups are more positive towards the EU than others. In his empirical study, based on a multinational sample of 203 working group participants, Beyers did not find a clear relationship between the officials' level of contact with the EU and EU-positive attitudes. Instead he observed that a variety of national experiences and backgrounds seemed to have a greater impact on the officials' attitudes towards the EU.

Egeberg (1999) questions to what extent supranational identities replace or complement the officials' national orientations and examines the circumstances under which supranational identities are likely to appear. The study is based on face-to-face interviews with 47 national officials involved in EU level policy making in the transport area. Egeberg concludes that the identities that form at EU level are complementary and in fact secondary to national identities. Nevertheless his study shows that the more the national officials are in contact with the EU system, the more they develop a sense of responsibility for the committee and its outcome (1999: 470-71). Another interesting result is that the members of the working groups often attach great importance to their own policy sector.

Similarly to Egeberg (1999), Trondal (2000 and 2002) finds that the supranational identifications merely supplement pre-established national and sectoral allegiances. His questionnaire survey study of 160 Danish, Swedish

and Norwegian civil servants shows that the relationship between the officials and the national administration is more pivotal for the level of supranational attitudes than whether the officials come from an EU member state or not. According to Trondal, one of the most central explanations of supranational attitudes is the general lack of *ex ante* coordination mechanisms at the national level of governance (2002: 484).

The question of how differences in domestic administrations affect the representational roles of committee members was addressed more profoundly by Beyers and Trondal in 2004. They used interview and survey data on Belgian and Swedish officials in Council working groups and the empirical study indicated that considerably fewer Swedish working group members adopt a supranational role perception compared to the Belgian officials. Beyers and Trondal claim that this is due to differences in the way the two member states are organised (Trondal & Beyers 2004: 938). They suggest that Belgian officials are more supranational minded because the government apparatus is highly specialised, due to the country's federal state structure, a large number of competing veto players, a large number of actors involved in the domestic coordination of the EU policy and due to a lack of trust in the Belgian government accompanied by a high level of trust in the EU (2004: 938-39).

Although socialisation at EU level does not necessarily happen at the expense of the officials' loyalty towards the national governments, previous research agrees that members of EU committees, and of the working groups more specifically, are socialised to some extent when they are in contact with the EU system. However, we know very little about how this socialisation effect, and differences herein, may affect the role played by the national officials during negotiations and more specifically whether it affects the decision making process in the working groups. It seems suitable to presume that the level of socialisation amongst the members of the working groups affects the working groups' ability to compromise and reach agreement. The more officials interact at EU level, the better they get to know each other and each other's positions and the easier it ought to be to enter into a deal. Häge's study from 2008 finds no connection between level of socialisation in the working groups and their decision making capability. From a delegation perspective one could reason that this finding reflects the fact that national administrations compensate potential diverging interests between the national administration and the representatives by tightening the mechanisms controlling the officials. Nevertheless, even though Häge did not find an effect of the level of EU socialisation among the working group members, it seems

relevant to examine the variable more closely here. I will return to the variable in Chapter 3.

2.6. Summary of the literature review - what are the implications for the present study?

In this chapter I have reviewed the literature on the decision making process in the Council of Ministers that is either directly or indirectly related to the research question of the thesis. In the first part of the chapter I presented the literature on the Council decision making process and the amount of decision making that takes place at the working group, the Coreper and the minister's level. The review showed that previous studies offer quite diverging estimates about the relative role of the different levels of the Council hierarchy. This is partly due to different ways of observing the Council's decision making process, partly because many of the studies focus solely on one policy area. To date, Frank Häge has conducted the most exhaustive study of Council decision making. He is also the first to make a statistical analysis of the relative role of the Council working group. However, as Häge only studied working group decision making over one year the generalisability of his results has some limitations.

All in all, the literature review stresses the necessity and relevance of the present thesis. There are still numerous unanswered questions about what affects working group decision making and the extent to which working groups finalise negotiations at their level or send legislative acts on for II/B-point discussions at the higher levels of the Council. This is what the thesis aims to remedy.

The different studies about the decision making process in the Council not only provided insights about the relative role of the different levels of the Council, they also pointed at several possible explanations of why the Council working groups sometimes finalise negotiations at their level without involvement of the higher levels of the Council and sometimes send legislative acts on for discussion in Coreper and the Council of Ministers. The studies more specifically showed that Council decision making, and the relative role of the different levels of the Council, varies across policy areas. Furthermore the studies pointed at factors such as preference divergence among the member states involved in the decision making process and the saliency of the acts. Häge's extensive research showed that legislative acts more often are sent on to the Council of Ministers when the member states have highly diverging interests and when the legislative acts are perceived as salient in

the sense that the acts implied costs for both member states and the member states' industries and companies. The different studies about Council decision making furthermore pointed at the technical complexity of the legislative acts, the positions of the European Parliament and the Commission and the presidency as possible explanations of why some legislative acts are sent on to the higher levels of the Council's hierarchy for II/B-point discussions and others are not.

The second part of the chapter presented literature that offers additional ideas about what may cause variations in the extent to which working groups act alone or send legislative acts on for II/B-point discussions in Coreper or the Council of Ministers. The general conclusion is that the literature addressing the question of the extent of decision making at the different levels of the Council and the literature about lines of conflict in the Council of Ministers, negotiation climate in the working groups and finally the literature about the socialisation effect of working group interaction point at many of the same potential explanatory variables that could affect the extent to which working groups act alone or send acts on for II/B-point discussions at the higher levels of the Council.

The presentation of the literature about coalition patterns and lines of conflict in the Council showed, amongst other things, that one of the most pronounced lines of conflict in the Council is the conflict about financial and regulatory questions and the conflict about the level of integration in the European Union. The question that is relevant for this thesis is whether legislative acts that concern the financial, regulatory or the national sovereignty of the member states are more likely to be sent on from working groups to the higher levels of the Council than other acts.

Literature about the negotiating climate in the Council working groups, and the European committees more broadly, is also relevant for the thesis and was presented in Section 2.4. One of the relevant finding was that the extent to which hard bargaining or deliberative debate takes place in EU committees may depend on, amongst other things, the legislative act's potential financial consequences, its technical complexity and on the participants' level of contact to the European level. Furthermore the studies found that the negotiating climate may vary across policy areas. In this connexion it is appropriate to question whether these factors also impinge on the relative amount of decision making that takes place at the different levels of the Council's hierarchy.

The effect of the EU committee members' level of contact to the European Union has been studied closely in a large field of research presented in Section 2.5. These studies showed that supranational identities are comple-

mentary to national identities. However, an interesting result for this thesis is that the more national officials are in contact with the EU system the more responsibility they feel to find a common solution with the other member states. This leads us to the question of whether the level of contact the officials in the working groups have to the EU system affects the working groups' decision making capacity.

In conclusion, the many unanswered questions about working groups' decision making stress the relevance of the present study. Furthermore, previous research about Council decision making leaves us with several highly relevant ideas about what may affect the extent of decision making taking place in the working groups compared with the higher levels of the Council's hierarchy. Chapter 3 presents the theoretical framework of the thesis, which to a large extent draws on these ideas.

Chapter 3

Theoretical Framework

3.1. Introduction

In this chapter I will unfold the theoretical argument of the thesis and present the factors that from a theoretical point of view are likely to influence the decision making processes in the Council working parties. The literature review in the previous chapter pointed at several possible explanations of what may affect the extent of decision making that takes place in the Council working groups compared to the higher levels of the Council. In this chapter I discuss the different explanatory factors in more detail and deduce some theoretical expectations.

From an overall point of view, several theoretical perspectives are relevant for studying the decision making process in the Council working groups. The explanatory variables examined in this study can be divided into three types: (1) working group-specific variables, (2) issue-specific variables, which relate to individual legislative acts; (3) variables concerning the institutional setting of the decision making process.

The explanatory variables applied in the present study will draw upon different theoretical perspectives. The point of departure for the first group of explanatory variables is the expectation that the extent of working group decision making varies from working group to working group. In order to formulate expectations to what may cause such variations across working groups I draw on insights about the nature of the EU policy across different policy areas, on literature about the effect of diverging interest configurations and on literature about the socialization effect among EU officials. The issue specific variables, expecting that the extent of working group decision making depends on the legislative act on the table, firstly draw on the literature about the lines of conflict between the member states and institutions of the European Union, which may give us an indication of the circumstances under which it is difficult for the actors in the EU's decision making process to reach a common solution. Furthermore the issue-specific explanatory variables draw heavily on delegation theory. This perspective is highly relevant here because it sheds light on the circumstances under which extensive delegation between the political and the administrative level is likely to take place. As already accounted for, the officials in the working groups negotiate based on instructions from the national ministries. These instructions may be

more or less specific, and thereby leave more or less room of manoeuvre for the officials. Consequently it is likely that negotiations in the working groups, and whether or not they reach agreement at their level, depend on this room of manoeuvre. For this reason it is highly relevant to shed light on the circumstances under which the national authorities are likely to delegate more or less discretion to the officials in the working groups. The last category of explanatory variables, which focuses on the institutional setting of the working groups, is based on literature about the role of the presidency of the Council.

Section 3.2 introduces the variables that are specific to the different working groups, Section 3.3 presents the issue specific variables (3.3), and Section 3.4 presents the theoretical expectations related to the institutional setting of the decision making process.

3.2. Working group-specific variables

As mentioned, our knowledge about the extent of decision making taking place in the Council working groups and how they work is limited. That being said, we know even less about variations across working groups with regard to how they work and the extent of decision making that takes place in the groups. I propose that variables specific to the different working groups can explain variations the extent of decision making that takes place in the Council working groups. I propose that the extent to which working groups finalise negotiations at their level or send the legislative acts on for II/B-point discussions at the higher levels of the Council varies across policy areas (Section 3.1.1). Secondly, I expect that the composition of the working groups affects working group decision making. To be more precise, I propose that whether the speakers in the working groups are experts from the national ministries (or affiliated institutions) or attachés from the national representations in Brussels affects the working groups' ability to finalise negotiations at their level.

3.2.1. Variations between policy areas

As described in Chapter 2, former studies on Council decision making have shown that the extent of decision making that takes place at the different levels of the Council's hierarchy varies across policy areas. There are several plausible theoretical explanations for this. Below, I will present some relevant theoretical perspectives that can shed light on why it is likely that the extent to which working groups reach agreement at their level or send outstanding

issues on for further discussion at the higher levels of the Council varies across policy areas.

First of all, we know that the scope of EU cooperation varies across policy areas. In some policy areas member states have to give up more national sovereignty than in others. For example, in transport, energy, environment etc., the member states cannot exercise competence in areas where the Union has done so.²¹ In other policy areas, such as research, technological development, space etc. the extent of EU cooperation is more limited. Here the Union's exercise of competence shall not result in member states being prevented from exercising theirs.²² This means that the legislation in different policy areas has different implications for the member states. In some policy areas the political, economic and administrative implications are a lot more far-reaching than in others. In other words there is a lot more at stake for the member states in some policy areas compared to others. The question is whether this affects negotiations between the member states. Is it harder to reach agreement at an early stage of the decision making process when the legislative acts within a policy area have extensive implications for the member states? Secondly, does this affect working group decision making? Do working groups finalise negotiations more often in policy areas where the competences of the European Union are less extensive compared to policy areas where the scope of the EU cooperation is more far reaching?

The scope of the EU legislation and the EUs competences towards the member states is not the only factor that varies across policy areas. As mentioned, the economic implications of the legislation in the different policy areas vary as well. Legislation in some policy areas like environment or transport often have far more extensive economic implications for the member states compared to e.g. social policy. We know from the literature that economic questions are among the most profound lines of conflict between EU member states is economic questions. It is therefore relevant to question whether negotiations are more marked by conflict in policy areas where policies often imply extensive financial consequences compared to other policy areas where the economic consequences are less far reaching and whether this affects the extent of decision making that takes place at the level of the Council working groups.

²¹ These categories had already been identified by the ECJ through its case law or were described in the existing Treaties (Piris, 2006: 78-79). The categories have been codified with the Lisbon Treaty in the Treaty on the Functioning of the European Union, Part 1, Article 4 (2)

²² Today: Treaty on the Functioning of the European Union, Part 1, Article 4 (3)

In addition to variations in the extent of EU competences vis-à-vis the member states and the financial implications of the legislation, the general technical complexity of the legislation in the different policy areas varies as well. For example, the legislation in technical harmonisation is far more technically complex than the legislation in social policy. As I argue later in this chapter, such variations in the general level of technical complexity might impinge on the room of manoeuvre of the officials in the working groups. In other words it is plausible that the role of the Council working groups is more extensive in technically complex policy areas.

Another important variable that varies across policy areas is the interest configuration among actors affected by the legislation. Depending on policy area, legislation and its costs affect few or multiple member states, stakeholders or citizens in the member states. Applying Wilson's theories (1989), I will briefly review the interest configurations and what they imply. According to Wilson, variations in interest configurations affect how policies proceed. Wilson distinguishes between four types of political situations. In the first situation most or all benefits of a policy go to a single actor (in this connexion: member state, stakeholder, group of people), while the costs are spread over a large number of actors (e.g. member states). In such a situation a negotiation process is likely to be relatively painless as the actors benefiting from the legislation have clear incentives to press for the law while those who are paying for it have little incentive to oppose it since costs are limited (Wilson 1989: 76). In the second situation costs are heavily concentrated on few actors (member states, stakeholders, groups of peoples) while advantages are spread over a large amount of actors (member state, stakeholder, group of people). Because of the extensive costs, the affected actors are likely to strongly oppose the policy and as the advantages are so scattered and limited the policy will have limited conditions for adoption (Wilson 1989: 77). In situations where actors both draw extensive costs and advantages of a policy both parties will seek to push for their opposing interests and reaching a compromise will be demanding. In the latter situation, no important interests are at stake as policy implies widely distributed and thereby limited costs and benefit. Due to the lack of interest, policies are less likely to be adopted (Wilson 1989: 78). The interest configuration of the actors involved in a decision making process and of the actors affected by legislation varies from act to act. But as indicated, the interest configurations also vary more generally according to policy area. In some areas certain types of interest configurations are more apparent than others. In some areas policies have heavy implications for the member states' industries; in other areas, for example structural funding policies, few member states benefit strongly from legislation.

In sum I propose that the extent of working group decision making varies across policy areas due to four factors; (1) variations in the scope of EU competences towards the member states, (2) variations in the economic consequences of the EU legislation, (3) variations in the technical complexity of the legislation, (4) variations in the interest configurations of the actors affected by the legislation. Now, it should be pointed out that these are only some of the factors that vary across policy areas and I want to emphasise that I will not offer specific expectations as to the policy areas in which we would expect the role of the working groups to be more or less extensive. At this point the ambition is first to shed light on whether or not, and in what way, the amount of decision making taking place at the working group level varies across working groups and policy areas. If this turns out to be the case, then I will discuss potential explanations to the patterns in the analysis. Moreover, if the extent of decision making taking place in the working groups varies across working groups and policy areas, this would clearly encourage more research on the subject. The first hypothesis of the present thesis is as follows:

Hypothesis 1: The extent of decision making taking place in Council working groups varies across policy areas.

3.2.2. Supranational socialisation

As touched upon in the literature review, there is a large field of research on the socialisation effects of the European institutions and of the Council working groups as such (Beyers 1998; Egeberg 1999; Trondal & Veggeland 2003; Trondal 2000, 2002; Egeberg, Shaefer & Trondal 2003; Beyers & Trondal 2004; Beyers 1998, 2005). These scholars have tested the assumption that intensive and sustained participation in supranational organisations will result in supranational allegiances among the participants.

The studies of the socialisation effects draw on varying theoretical perspectives and they have reached diverging conclusions about whether or not officials in the working groups shift their loyalties and become more oriented towards the EU and finding common solutions at this level. Most of the studies find that a certain shift in loyalty amongst officials with close contact to the EU system takes place (Egeberg 1999, Trondal 2000, 2002, Trondal & Beyers 2004). According to e.g. Egeberg (1999), however, these loyalties shift do not take place at the expense of the officials' loyalty towards the national ministry. In other words the supranational role perception comple-

ments rather than replaces the national identification²³ (Egeberg 1999: 499). Beyers and Trondal (2004) found that the extent to which supranational and intergovernmental approaches prevail amongst national officials in Council working groups varies according to certain conditions. They found that the specific role conceptions of working group members depend on a set of domestic factors such as the number of veto points the member state has to consider when forming its position, the role of the foreign ministry etc.

Studies on the socialisation effect thus generally find that loyalty shifts among national officials in the EU do not impinge on the officials' loyalty towards their home affiliation and that their orientation towards the EU level depends on the national coordination processes. Nonetheless it is relevant to question whether the general level of socialisation among working group members affects decision making processes in the working groups. What is more, does the level of socialisation affect the groups' ability to reach agreement? I will argue that it does. More specifically, I expect that the more contact working group members have to the EU system, the more oriented towards the EU level they will be and the more cooperative and consensus seeking they will be. This leads to the expectation that working groups are more likely to reach agreement at their level when working group members are in close contact with the EU system.

The hypothesis on the socialisation effect can be stated as follows:

Hypothesis 2: The more contact the members of the Council working groups have had to the European level, the more consensus seeking they will be, and the greater the decision making capacity the working groups will have.

3.3. Issue-specific explanatory variables

In the previous section I proposed that factors related to the individual working groups can explain variations in the extent to which working groups reach agreement at their level or send legislative acts on for further discussion at the higher level of the Council. In this section I will argue that the decision making process in the working groups is dependent on the legislative proposal on the table. The underlying question is: Does working group decision making vary according to the legislative act under discussion? If so, which types of acts are normally finalised at working group level and which are sent on for discussion at the higher levels of the Council? Below follow

²³ The same result was found in Trondal & Veggeland's study of Commission expert groups, which consists of the same type of officials as the working groups (2003: 59).

three theoretical propositions to these questions: firstly, that the level of conflict between the member states and institutions involved in the decision making process affects working group decision making; secondly, that the economic implications of the legislative acts impinge on working group decision making; and thirdly, that the extent to which working groups finalise negotiations at their level depends on the technical complexity of the legislative act on the table.

3.3.1. Level of conflict

The third theoretical proposition of the thesis is that the extent to which the member states and the institutions involved in the decision making process have conflicting interests about the legislative acts affects whether or not working groups finalise negotiations at their level or send the acts on for further discussion at the higher levels of the Council. The argument is twofold. Based on the literature about the lines of conflict in the Council of Ministers, I argue that the degree to which the member states have conflicting interests about the content and formulation of a legislative act affects whether or not it is possible for the working groups to reach agreement at their level. Secondly, I propose that also the extent to which the institutions involved in the decision making process, the European Parliament and the Commission, have interests that conflicts with the member states' interests impinges on the working groups' possibilities to compromise.

As we saw in Chapter 2, previous studies have shown that there are some clear lines of conflict between the EU member states, which are apparent in the Council of Ministers (Beyers & Dierickx 1997; Hooghe & Marks 1997; Golub 1999; Mattila 2004; Mattila & Lane 2001; Thomson, Boerefijn & Stockmann 2004; Zimmer, Schneider & Dobbins 2005; Hayes-Renshaw, Van Aken & Wallace 2006; Aspinwall 2007; Heisenberg 2007; Tallberg & Johansson 2008; Hosli, Mattila & Uriot 2008; Mattila 2008; Hagemann 2008; Naurin & Lindahl 2008; Miklin 2009; Veen 2011). The review showed that the member states have diverging interests especially when it comes to the level of integration and regulation in the EU, and on economic and distributive questions. According to the literature, these conflicts affect the coalitions and voting patterns in the Council of Ministers, as well as the negotiation climate in the Council working groups. Studies of the negotiation climate showed that the level of arguing and bargaining varies from group to group according to the level of conflict in the different policy areas. The more conflicting the member states' interests are, the more often hard bargaining occurs.

The relevant question for this thesis is whether these lines of conflict are also visible at the working group level and whether they affect the work of the working groups. Does the extent to which the member states have conflicting interests about the legislative acts affect whether or not working groups finalise negotiations at their level? The thesis proposes that this is the case and that the same conflict dimensions that apply for the member states in the Council of Ministers are also visible in the Council working groups. More specifically, it is expected that the more diverging the interests of the member states are, the more likely working groups are to send legislative acts on for II/B-point discussions at the higher levels of the Council. The argument can be illustrated by a negotiation game approach. Perceiving negotiations in the working groups as a negotiation game, one would expect that the level of conflict, or rather the distance between member state positions, affects the member states' ability to arrive at a common solution. *Ceteris paribus*, the more diverging the interests, and the smaller the win set of the individual member states, the more difficult it will be to find a common solution that all member states can agree upon.

The underlying assumption of such an expectation is intergovernmental. According to an intergovernmental perspective, negotiations in the working groups reflect the conflicting interests of the member states and the working groups are just venues for the clash of nationally defined priorities. It is worth discussing whether the earlier mentioned culture of consensus-seeking behaviour in the working groups is likely to blur the picture and reduce the lines of conflict between the member states of the EU. Advocates of the supranational perspective would argue that it is the case. In sum, one could on the one hand expect that the frequency and continuity of interactions make the representatives in the working groups better equipped to overcome disagreements and lines of conflict. On the other hand, we know that the deal making capacity of the national representatives is limited by national control mechanisms and therefore the intensity of the member states' interests is likely to affect the national representatives' autonomy and thereby also the working groups' ability to reach agreements. All in all, the analysis of the effect of the level of conflict will shed light on which perspective on EU decision making that is most plausible; the supranational perspective or the intergovernmental perspective.

When the Council handles a proposal on new legislation from the Commission, the member states are not the only actors involved in the negotiations. For example, when the acts are adopted by co-decision, the Council, the European Parliament and the Commission all have to agree. These three institutions are in other words veto players. This also means that when the

working groups negotiate on a legislative act they have to take the positions of the Parliament and the Commission into account. I will argue more specifically for this below.

As mentioned in Chapter 1, the Commission is always represented at the meetings in the Council working groups. Usually the Commission starts the meetings by presenting its proposal and explaining the purpose of the act and its paragraphs. The Commission is also represented at the table when the member states start discussing the proposals. The Commission can answer questions and indicate which amendments it will accept and not accept. Thus, the Commission is an active participant in the negotiations in the Council working groups and it is likely that its position will affect negotiations. All else being equal, the member states have to take the Commission's standpoint into account as the Commission is in a position to withdraw the proposal.²⁴ This makes the Commission a veto player during negotiations in the Council working groups, and its interests might complicate negotiations. Also this argument can be illustrated by a negotiation game approach. The further away the Commission's position is from the other member states' win sets, the more difficult it will be to find common ground for compromise, and the less likely the working groups are to reach agreement.

During the co-decision procedure the European Parliament is, as a co-legislator, another veto player in the decision making process. Thus, the member states in the Council also have to take the views of this actor into account in order to reach agreement on EU legislation. Contrary to the Commission, the Parliament does participate directly in negotiations in the Council. However, it exerts indirect influence as the Parliament and the Council have to reach an agreement in the so called tripartite meetings (trilogues) between the Parliament, the Council and the Commission. Trilogues include representatives from the Council's presidency, a rapporteur from the European Parliament and a representative from the Commission. According to the Joint Declaration on Practical Arrangements for the Co-decision Procedure, the Council and the Parliament are obliged to try to reach agreement as early as possible, and preferably at the first reading.²⁵ This means that negotiations with the European Parliament often start while

²⁴ The Commission's right to withdraw a proposal is today regulated by the Treaty on the Functioning of the European Union (TFEU) article 293 (2), according to which the Commission may alter its proposal at any time during the procedures leading to the adoption of a Union act as long as the Council has not acted.

²⁵ According to the Declaration's § 11, 'The institutions shall cooperate in good faith with a view to reconciling their positions as far as possible so that, wherever possible, acts can be adopted at first reading'.

the legislative acts are still being handled by working groups, so in reality the working groups have to take the position of the European Parliament into account during negotiations.

Additionally, it is relevant to point out that in the decision making process, the Parliament often reaches agreement before the Council. The Parliament's representatives are therefore able to negotiate on a clear mandate in the form of a report from the responsible committee in the Parliament. In other words, the Council often has to enter the inter-institutional negotiations before the member states have resolved all disagreements. In effect, this underlines the fact that the Parliament is an additional player in the Council negotiations. All in all, it is fair to presume that the Parliament's position will affect negotiations in the council working groups and whether or not the member states are able to reach agreement at working group level.

As described above, the co-decision procedure empowers an additional institution, the European Parliament, with a veto right and the working groups have to take its position into account when the legislative acts are adopted by the co-decision procedure. Under the consultation procedure, however, the Council and the working groups are not obliged to consider the Parliament's position. It is therefore likely that working group negotiations are affected by whether the legislative acts are adopted by the co-decision or the consultation procedure. This leads to the following hypothesis.

Hypothesis 3: The working groups are more likely to reach agreement at their level under the consultation procedure than under the co-decision procedure.

In light of the review of the role of the Commission and the European Parliament, it is fair to presume that working group negotiations will be affected by the level of disagreement between the member states in the Council of Ministers, the European Parliament and the Commission. The further the positions of the three institutions are from each other the harder it is to find a common solution in the Council working groups.

All in all, the insights about the lines of conflict between the member states of the European Union and the role of the Commission and the European Parliament in Council decision making leads to the following hypothesis:

Hypothesis 4: Legislative acts marked by a high level of conflict between the member states, the European Parliament and the Commission of the European Union are more often sent on from the working groups for a II/B-point discussion at the higher levels in the Council hierarchy compared to acts marked by more consensus.

Studying whether the extent of decision making that takes place in the Council working groups is affected by the level of conflict about the legislative acts does not only contribute by providing insights about the role of Council working groups. It also sheds light on the democratic legitimacy of the decisions made by the Council of the European Union. As described in the introduction to the present thesis a large extent of working group decision making is less aggravating for the democratic legitimacy of Council decision making if the working groups typically send the politically important and conflictual legislative acts on for II/B-point discussion at the higher levels of the Council.

3.3.2. Financial implications

As pointed out in the introduction to the present chapter delegation theory is a relevant perspective providing theoretical expectations to which types of legislative acts the working groups are able to finalize at their level and which types of acts they typically send on to the higher levels of the Council. Delegation literature stems from studies of the US congress and has produced several theoretical expectations the circumstances under which the legislative has an incentive to delegate power to the executive branch (Bawn 1995; Epstein & O'Halloran 1994; 1996; 1999; Huber & Shirpan 2000, 2002; Bendor et al. 2001). Applying the delegation theory on working group decision making, it is the national administrations in the member states who decide the optimal level of discretion of the officials negotiating in the working groups. The question is then how the national administrations determine how much autonomy the officials should have. In which situations can we expect working group members to have more or less autonomy to strike deals?

Epstein and O'Halloran claim that legislators delegate powers to the executive in areas that are least favourable to their re-election chances. More specifically, they expect less delegation in financial issue areas as legislators will guard their authority in these areas (Epstein & O'Halloran 1999: 216). Drawing on the delegation theory one would therefore expect that the national authorities in the member states offer less discretion and autonomy for the officials in the working groups when they are handling a legislative act with extensive economic implications for the member states.

In light of the predictions of the delegation literature I presume that whether or not the legislative acts on the table imply financial consequences for the member states influences the decision making in the working groups because the officials in the working groups will be more constrained by the

national administrations when they are handling financial issues. More specifically, I expect that the working groups more often have to send legislative acts concerning financial matters on to the higher levels in the Council hierarchy, than dossiers that do not concern such issues.

Hypothesis 5: Legislative acts that are sent on from the working groups for discussion in Coreper and the Council of Ministers often have financial implications.

3.3.3. Technical complexity

Another variable which I propose is likely to affect the role of the Council working groups is the technical complexity of the legislative act being discussed. First of all, previous studies on working group decision making, and EU committee decision making more broadly, have revealed that the level of technical complexity may affect the extent to which working groups act alone or send legislative acts on for discussion at the higher levels of the Council (Häge 2008b: 248). Secondly, delegation theory points at the level of technical complexity as an explanatory variable that can shed light on why governments delegate more or less autonomy and decision making power to the officials.

Based on the assumption that politicians are rationally calculating when delegating authority, the delegation literature expects legislators to delegate more authority in information-intensive issue areas (Bawn: 1995: 71; Epstein & O'Halloran: 1999: 197; Bendor, Glazer and Hammond: 2001: 248). The rationale is that the gains from the officials' expertise will gradually compensate the possible losses from agency drift (Bendor, Glazer and Hammond: 2001: 248). In other words, from the perspective of the politicians, the optimal level of autonomy increases with growing issue complexity. All in all, drawing on delegation theory, it can be expected that the technical complexity of the dossiers discussed is likely to explain the autonomy of the working group members and their room of manoeuvre in relation to compromising and making decisions together with the other member states.

Delegation theory applies a top down approach to decision making in the Council working groups, presupposing that the politicians, in this case the national administrations, decide the level of autonomy of officials negotiating in the working groups. However, similar expectations can be deduced from a bottom-up point of view. From this perspective, the point of departure is that the officials will increase their autonomy the more they get into the pieces of legislation they handle and the more specialised they become. Furthermore, the more specialised the officials become, the more likely they

are to develop professional norms and pride, which may reduce their inclination to send dossiers on for discussion by the ambassadors in Coreper and the politicians in the Council of Ministers.

On the whole, I expect that the technical complexity of the dossiers affects the working groups' ability and willingness to reach agreement at working group level. The officials can be expected to have more room of manoeuvre when legislative acts are technically complex. In addition, working group members may be more focused on reaching agreement about the technically complex dossiers as they often possess the necessary expertise to handle these legislative acts.

All together this leads to the following hypothesis:

Hypothesis 6: The more technically complex the legislative acts are, the less likely the working groups are to send the dossiers on for discussion in Coreper and the Council of Ministers.

In the same way as the conflict variable the question of whether or not the working groups focus on the technically complex issues and send the more political issues on for debate at the higher levels of the Council is important because it sheds light on the democratic legitimacy of decisions made by the Council of the European Union. If the general rate of working group decision making is high, this finding would be less problematic from a legitimacy point of view if the working groups focus on technical routine decisions and send on the more important conflictual and 'political' decisions to the ministers in the Council.

3.4. Institutional setting

The third category of explanatory variables focuses on the institutional setting of the decision making process in the Council working groups. I will argue that the Council's presidency can have a decisive role in the working groups and can affect at which level in the Council decisions are made.

3.4.1. The Presidency

As we saw in the literature review, previous research has paid limited attention to the role of the Council presidency in the working groups. However, Frank Häge found in his PhD thesis that the presidency to a high extent may influence whether or not negotiations are finalised at working group level or sent on for further discussion at the higher levels of the Council. I propose that working group negotiations and the extent of decision making that takes

place in the working groups are affected by the way the presidency plays its cards. Furthermore, I argue that negotiations in the working groups and their ability to reach agreement can be influenced by which member state holds the presidency. In general, studies of the presidency have focused on large intergovernmental conferences on weighty issues such as Agenda 2000. I will first outline what we know about the formal and informal role of the presidency and then present the theoretical argument.

As mentioned in Chapter 1, the meetings in the Council working groups are chaired by the rotating presidency. The presidency sets the agenda and it is up to the presidency to decide when maximum consensus is reached and when the legislative acts are mature enough to be sent on for discussion in Coreper and the Council of Ministers. Furthermore, an important role of the presidency is to facilitate compromises by negotiating and by producing compromise proposals that the member states can agree upon (Bengtsson, Elgström & Tallberg 2004: 311).

Most research on the Council presidency focuses on whether the member state holding the presidency is able to influence policy outcomes during the six months' presidency. The literature does not concur on this question. Tallberg argues that presidencies possess privileged informational and procedural resources that make it possible to steer negotiations toward their preferred policy outcomes (Tallberg 2008: 187). Firstly, forming the agenda allows presidency governments to prioritise between competing political issues and goals and downplay dossiers and proposals that are less important. Secondly, the actual negotiation process is another way through which the presidencies are able to influence the policies. Tallberg claims that engineering of intergovernmental bargains permits the EU presidencies to select among multiple policy solutions and compromises, and thereby steer negotiations towards the outcomes they prefer. More concretely, Tallberg argues that the presidencies can make use of the privileged information on the member states' positions that they obtain through bilateral meetings (2008: 188).

It should be mentioned that not all researchers acknowledge the importance and influence of the EU Council presidency (Garrett 1992; Hosli 1996; Moravcsik 1998). As pointed out by Tallberg (2004), this can to a large extent be explained by the way these researchers have studied decision making in the EU. The studies are based on game theory, which considers bargaining as decentralised and actors as functionally equal offering little theoretical space for variation in the participants' formal control over the game (Tallberg 2004: 1000).

I will not go into the question of whether the member states are able to politically influence the outcomes of the negotiations in the Council working groups. Instead I put forth that the presidencies may influence whether the working groups can finalise negotiations at their level and the extent to which Coreper and the Council of Ministers are involved in the decision making process. Tallberg claims that the presidency can improve the chances of agreement between the member states. And bearing in mind the important role the presidencies play in the negotiations, it seems plausible that they can affect the member states' abilities to reach agreement at an early stage of the decision making process.

It is relevant to question whether different types of member states handle the presidency role in different ways. There are, for example, several reasons to expect a difference between large and small member states. Firstly the size of the member state holding the presidency may affect both the negotiation style and the general level of ambition. Secondly, size will clearly affect the administrative resources of the presidency. These differences are likely reflected in negotiations in the Council, and in the working groups more specifically, so that the smoothness and efficiency of negotiations vary depending on which member state holds the presidency. Below, I will put forth some more specific expectations that shed light on why I expect that working group negotiations and decision making can be affected by the member states in the presidency chair.

Holding the presidency is a very demanding task. It requires a large staff and a high level of expertise from those involved in the decision making processes. All else being equal, large member states have large national administrations that they can draw upon during their presidency and they should therefore be better equipped than small member states to fulfill the presidency role (Quagila & Moxon-Browne 2006: 364). The advantage possibly puts large member states in a better position to hold the necessary bilateral meetings with the other member states and thereby smoothing the progress of negotiations and facilitating compromises. At the level of the Council working groups, this leads to the anticipation that the working groups more often reach agreement and finalize discussions at the working group level when large member states hold the presidency than when small member states do.

On the other hand, smaller member states may have other advantages. For example, they often have to draw more upon the General Secretariat during negotiations because they lack administrative resources. The General Secretariat functions as the institutional memory of the Council and often knows the positions of the member states, the dossiers discussed and has ex-

tensive experience with drafting the compromise texts. The General Secretariat's experience combined with the fact that the member states perceive the secretariat as being impartial, can make it advantageous to rely on its competence. For this reason it might be expected that smaller member states that depend more on the General Secretariat are more efficient presidents than large member states that attempt to fulfill the role alone.

Another important point is that the presidencies frequently seek to use the privileged informational and procedural resources to promote their own interests. The fact that they have information on the member states' interests and control the agenda enables them to promote their preferred outcomes. Whether or not the presidencies are able to make use of this privileged position is likely to depend on the presidency's resources. More specifically, it can be expected that large member states are better able to promote their own interests than smaller member states. In addition, small member states might also be more hesitant to promote their own interests. As pointed out by Begtsson et al., previous small-state studies suggest that less powerful states have to be more careful with being too pro-active in interstate negotiations (Amstrup 1976; Lindell & Persson 1986). Small states are in a weaker position than the large states and often cannot afford to go against them (Begtsson, Elgström & Tallberg 2004: 315).

Even though the large member states have greater opportunities to pursue their own interests during their presidency, doing so might generate negative reactions among the other member states. It might even complicate negotiations and make it more difficult to reach agreement at the working group level because the other member states are less willing to cooperate. Provided that large member states often use the presidency to promote their own preferences, it can be expected that negotiations in the working groups proceed less smoothly when a large member state holds the presidency. Following this rationale it is plausible that the working groups send more dossiers on for discussion in Coreper and the Council of Ministers when a large member state holds the presidency than when a small member state holds the chair.

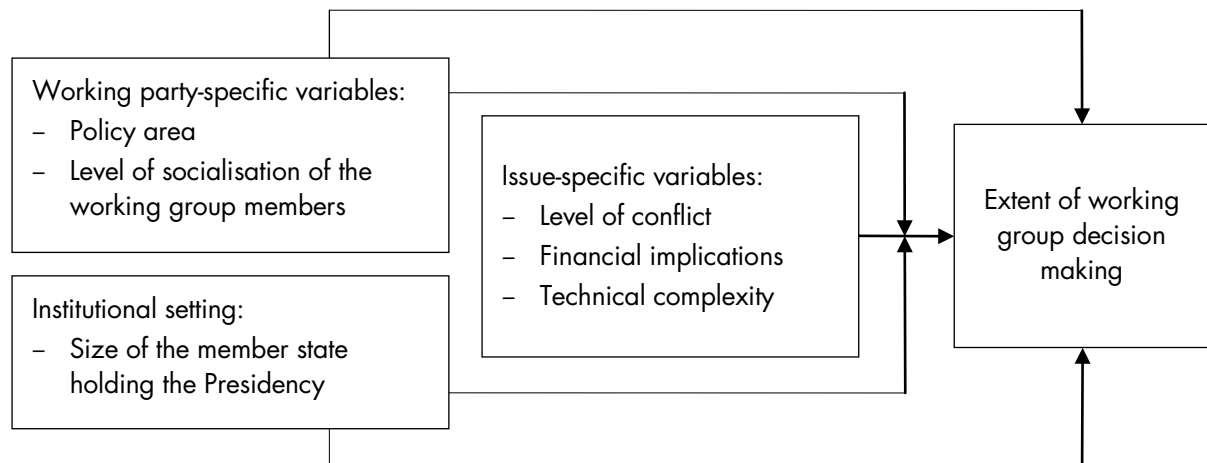
All in all, the theoretical expectations on the effect of the presidency can go both ways. From a resource-oriented point of view, one could expect that the large member states are more efficient leaders and therefore better at concluding issues at working group level. On the other hand smaller member states might be more neutral leaders relying more on the experienced General Secretariat and this may also be an advantage. In sum this leads to the following hypothesis:

Hypothesis 7: The extent of decision making that takes place in the working groups of the Council of the European Union depends on the size of the member state holding the Council presidency.

3.5. Summary

I have now presented the theoretical expectations that will be tested in the empirical study. The theoretical framework is illustrated in Figure 3.1. I expect all three categories of explanatory variables to have a direct affect on the extent to which the working groups finalise negotiations about the legislative acts themselves or send outstanding issues on for II/B-point discussions at the higher levels of the Council.

Figure 3.1: The theoretical model



In addition to the effect of the independent variables on the dependent variable I expect that some of the variables might influence the effect of other variables. As the figure shows, I more specifically expect that the working group-specific variables may reduce or strengthen the effect of the issue-specific variables. For example it is plausible that the level of conflict among the actors involved in the decision making process varies between policy areas. The rationale is that as both the scope of the EU cooperation and the interest configuration among the actors affected by EU legislation varies across policy areas, there are more acts implying a high level of conflict within some policy areas compared to others. In other words, the effect of the level of conflict can be expected to be stronger in some policy areas. Similarly, I expect more technically complex acts in some policy areas, which implies that the general effect of technical complexity is stronger in some policy areas than others.

In the same way I anticipate that the level of socialisation among working group members and the presidency may strengthen or weaken the effects of the issue-specific variables. For example, I presume that working groups with highly socialised participants are better at overcoming conflicting interests about legislative acts or financial implications. The same applies for a strong presidency.

Chapter 4

Method

4.1. Introduction

In the previous chapter I introduced the theoretical expectations of this thesis. I proposed seven hypotheses about what explains the decision making process in the Council working parties, and under what conditions the Council working parties send legislative acts and outstanding issues on for discussion in the higher levels of the Council hierarchy. In this chapter I will address the question of how the decision making process in the Council working parties can be observed and how the theoretical hypotheses can be operationalised.

The chapter is divided into four parts. I start out by introducing the overall research design (Section 4.2). The thesis combines a quantitative and a qualitative research approach and I will discuss the advantages and limitations of this design. In Section 4.3 I present the quantitative data and address questions like: How many cases have been selected? How were the cases selected and why? Does the case selection imply any biases?

The results of the quantitative analysis will form the basis for the case selection for the qualitative analysis. In Section 4.4 I will account for how the cases were selected and introduce the qualitative data. Furthermore the method applied in the qualitative part of the study will also be discussed in this section.

A crucial question is how the variables included in the theoretical model of the thesis can and will be observed. How can the dependent and independent variables be operationalised? This question will be discussed in Section 4.5. However, it is not only the dependent and independent variables that will be studied in the current thesis – I will also address other possible explanations that might affect the results of the analysis. Control variables and the question of how they are operationalised are also discussed in Section 4.5.

Before introducing the research design it is crucial to repeat and emphasise that the study examines two questions. Firstly, the relative role of the Council working parties. How much do they actually decide? Are there any clear differences between working groups and policy areas in the working groups' involvement of the higher levels of the Council's hierarchy? Secondly, is there a pattern with regard to the types of legislative acts that the

working groups send on for discussion in the higher levels in the Council's hierarchy? Do the legislative acts that the working groups send on share any common characteristics? This means that the research design and its variables operate on two levels: working group level and on the level of the legislative acts.

4.2. The research design

In order to observe the work of the Council working groups I have combined a quantitative and a qualitative research approach. A mixed method design allows the researcher to profit from both methods. In this section I will first briefly review methodological debates between qualitative and quantitative researchers and then present the overall research design of the thesis and discuss its strengths and weaknesses.

Over the years there has been an ongoing methodological debate reflecting the trade-off between the advantages and weaknesses of the quantitative and the qualitative research approaches. The protagonists of qualitative research have criticized the quantitative research field for not taking the nature of causality into account and for risking overlooking important variables and causal relations. On the other hand the advocates of the quantitative research design have criticized qualitative research for being too unsystematic and not explicit enough about their research strategies. The debate between the two research branches emerged after King, Keohane and Verba (KKV) published the book *Designing Social Inquiry* (1994). They argue that qualitative research can benefit from the logic of quantitative methods. Amongst other things they advocate increasing the number of observations in order to enhance the inferential leverage of the analyses. Furthermore KKV stress that researchers should report how data are generated, maximize the validity of measurements, ensure that the data collection is reliable and that the analyses are as replicable as possible (King, Keohane & Verba 1994: 23-24). The book triggered numerous reactions from qualitative scholars (McKeown 1999; Brady & Collier 2004; Goertz et al 2006; Mahoney & Rushmeyer 2003; Gerring 2007; George & Bennet 2005; Brady & Collier 2010). McKeown argues that the quantitative and the qualitative methods are fundamentally different and criticizes the quantitative researchers for not being sufficiently aware and explicit about their preconceptions (McKeown 1999). In *Rethinking Social Inquiry* (2010), which as indicated in the title is a reaction to KKV, Thad Dunning puts forth that qualitative evidence can enrich analysts' understanding and interpretation of the causal relationship that they estimate. He argues that qualitative studies can provide a richer understand-

ing of the mechanisms through which explanatory variables exert their effects (Dunning 2010: 309).

Inspired by Lieberman (2005) I propose a research design which draws on the forces of both the quantitative and the qualitative research design. More specifically I apply a mixed method design, where I will let the statistical analysis guide the selection of some of the cases for the qualitative study (Lieberman 2005: 435). Furthermore the qualitative study will be used to shed light on the plausibility of the results from the quantitative study.

The design has some clear advantages. As mentioned, the design allows the study to profit from the advantages of both the quantitative and the qualitative analysis. The two methods can complement each other and the fact that one method often has its advantages where the other has its weaknesses strengthens the mixed method research design. As put forth by King, Keoane and Verba (1994) combining qualitative and quantitative methods is worthwhile as it increases the amount of data used to test a specific theory or hypothesis. Secondly, a mixed method design can provide insights about the results' robustness and thereby increase their validity (Emmenegger & Klemmensen 2010: 418). If the quantitative and qualitative design points at the same explanatory factors, then this would be a strong result. The fact that the different methods often rely on different data sources increases the validity of the analytical results even more (Emmenegger & Klemmensen 2010: 420). If the quantitative and the qualitative analyses do not reach the same results, then it is necessary to discuss more closely the possible reasons behind the diverging results.

The method also has some potential pitfalls. A mixed method design may not be sufficiently focused as it may be tricky to ensure that the two studies observe exactly the same variables and phenomena. Some researchers have been sceptical towards the approach proposed by Lieberman (Rholfing 2008; Ahram 2009), arguing that little can be gained from combining two methods. Ahram claims that the risk of combining methods is that the conceptualisation of the research topic is stretched as two different methods seldom will be able to encapsulate the same phenomenon: 'Simply because qualitative and quantitative findings point in the same direction – statistical significance and coefficient signs match the outcome of a case study – does not make them more likely to be true, since the concepts applied in one methodological component are not equivalent to those applied in the other. It is impossible for qualitative and quantitative methods to say the same thing because they are talking about different things' (Ahram 2009: 6). In spite of this criticism I find it highly relevant and fruitful to combine a qualitative and a quantitative method when analyzing a phenomenon

which we have so limited insights about. As long as we bear in mind that the quantitative and the qualitative analysis does not study the same cases²⁶ the potential drawbacks of a mixed method design will be counterbalanced by the wide-ranging advantages of applying two data sources.

When combining two methods in a mixed method design, it is not irrelevant which method comes first. Does the quantitative study guide the selection of cases for the qualitative study or the other way around? How the two methods are combined may affect the direction and results of the study, and it is therefore crucial to be aware of which paths the different designs open and exclude. Initiating a study with a quantitative analysis allows the researcher to test a theoretical argument quantitatively and then verify whether the same result can be found in a qualitative study. Such a method can furthermore be used to clarify uncertainties that the quantitative study was not able to shed light on (Emmenegger & Klemmensen 2010: 420-21). Letting a qualitative study guide the quantitative study enables the researcher to identify clear causal relationships. This could for example be highly relevant if the theoretical insights are limited (Emmenegger & Klemmensen 2010: 425-26).

In order to answer the research question of the thesis I find it most suitable to let the quantitative study guide the selection of cases for the qualitative study. The quantitative study allows me to observe how a large number of legislative acts were handled by the Council, including the amount of decision making that took place in the Council working groups. The analysis will in other words provide insights about the relative amount of decision making that takes place in the Council working groups. How much do they actually decide? Under which circumstances are legislative acts and outstanding issues sent on for II/B-point discussion in Coreper and the Council of Ministers? Do the legislative acts that are handled solely by working groups have any common characteristics? A more thorough presentation of the quantitative data follows in Section 4.3. The advantage of starting with the quantitative study is that it allows me to test the validity of the quantitative results in the qualitative study, it gives me a more holistic overview of possible explanations to the decision making processes in the working groups and enables me to control for other variables than the independent variables of the theoretical model. The control variables are presented in Section 4.5.8.

²⁶ In the context of the thesis this is particularly relevant as the quantitative study focuses on individual legislative acts while the qualitative study addresses working group decision making more broadly. I will return to this in the qualitative analysis (Chapter 6).

This quantitative study will in the next step form the basis for the selection of cases for the qualitative study. More specifically, one of the factors that will guide the case selection for the qualitative study will be the insights about the extent of decision making that takes place in the different working groups. I will select working groups which often reach agreement at their level as well as working groups which frequently send legislative acts on for II/B-point discussions at the higher levels of the Council's decision making hierarchy. In addition the working groups are selected with consideration to other relevant factors. The next step is to select interviewees from these groups. This selection process will be presented and discussed in Section 4.4.

4.3. Quantitative data

In this section I will introduce the quantitative data of the study. I will first present the advantages of using quantitative data and then briefly address what data is required to answer the research question and what the data opportunities are. Finally, Section 4.3.1 and 4.3.2 describe the quantitative data and how it was selected.

The advantage of quantitative large-N studies is that they can secure a certain generalisability of the results. The more cases about a phenomenon are included in the study, the larger the basis for drawing general conclusions about this phenomenon. Furthermore, including a large number of cases in a study minimizes the risk that the results are affected by unique factors within the cases. Another important advantage of the quantitative study is that it enables the researcher to draw conclusions about the relationship between different variables. Finally, quantitative studies can allow for a greater objectivity and accuracy of the results. More specifically, if the data is collected in a way that strives to ensure the validity and reliability of the results, then quantitative studies can increase the possibility that the results are relatively accurate.

Shedding light on the research question requires data about the decision making process in the Council working groups; i.e. data that sheds light on how much the working groups actually decide and how much they involve the higher levels in the Council's hierarchy in the decision making process as well as data about the legislative acts discussed to shed light on the potential effect of the issue-specific variables. I for example need data on the technical complexity of the legislative acts, on whether or not the legislative acts have financial consequences and on the extent to which the member states and the institutions of the European Union have conflicting interests about the legislative act on the table. A relatively large dataset is needed to

say anything meaningful about the extent of decision making that takes place in the working groups and about what explains variations in their role. When the EU member states negotiate, many variables may affect the decision making processes, both at the member state and the EU level. A large dataset is therefore crucial.

4.3.1. Data sources

Mapping the data opportunities of the study was a time consuming process. To my knowledge there exists only one study of the extent of decision making taking place in Council working groups (Häge 2008a), so I had to explore more or less uncharted waters. Most importantly I had to find a way to measure the dependent variable, the extent of decision making taking place in Council working groups, and the independent variables. The transparency of the decision making process in the working groups is limited. However, the openness and data availability of the Council's Public Register has increased over the years. The database now contains references to Council documents including meeting reports and notes sent on from the Council working groups to Coreper and from Coreper to the Council of Ministers (for more information about the Council's Public Register see Box 4.1 below).

In other words, the Council's Public Register allows me to observe the Council's internal decision making process, including ensuring insights about whether or not the working groups reach agreement at their level or send acts on for discussion at the higher levels of the Council. In order to get to know the Council's Public Register and which documents and information this database holds, I was in close contact with some of the personnel working in the Council Secretariat that deals with the register. In particular the meeting and the e-mail correspondence I had with Jakob Thomsen in the Councils General Secretariat provided me with crucial insights about how the database works and how I could use it. Observing the independent variables required additional data sources. The databases Prelex and Eurlex contain important information about the legislative acts and the inter-institutional decision making processes and were, in other words, crucial sources.

Box 4.1: The Council Public Register

The public register of Council documents has been operational since January 1999. All non-sensitive documents submitted to the Council or one of its preparatory bodies which are to serve as a basis for deliberations are automatically listed in the register. The register allows access to the full text of a large number of documents in the following categories:

- Provisional agendas for Council meetings and for its preparatory bodies
- Documents submitted to the Council which are listed under an item on its agenda marked with the words 'public deliberation' or 'public debate' in accordance with Article 8 of the Rules of Procedure
- In the legislative field, 'I/A' and 'A' item notes submitted to Coreper and/or the Council, as well as draft legislative acts, draft common positions and joint texts approved by the Conciliation Committee to which they refer
- Documents regarding a legislative act after a common position has been adopted, a joint text has been approved by the Conciliation Committee or a legislative act has been finally adopted
- Any other text adopted by the Council which is intended for publication in the Official Journal
- Documents originating from a third party which have been made public by the author or with his agreement
- Documents which have been made available in full to a member of the public who made an application

Sensitive issues are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as 'TRÈS SECRET/TOP SECRET', 'SECRET' or 'CONFIDENTIEL' in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in areas such as public security, defence and military matters or the financial, monetary or economic policy of the Community or a Member State (Regulation (EC) No 1049/2001, Article 9(1)).

Generally the number of documents that are made public in the Council's register has increased over the years. In 2003 around half of the documents in the register were public, in 2006 68.7 pct. of all the registered documents were public and in 2009 75.8 pct. of the registered documents were public.

Source: Council Annual report on access to documents: 2003, 2006, 2009 (General Secretariat DGF).

For more information on the two databases see Box 4.2 and Box 4.3 below. Not only was the process of mapping the data opportunities time consuming, the data collecting process was a wide scale process as well. Collecting data from three large databases where not all information was easily accessible implied that the coding process took about 30 to 45 minutes per legislative act. For a more thorough description of the data collection see Section 4.3.2 and Appendix B.

Box 4.2: Prelex

Prelex is a database on the inter-institutional decision making procedure which follows the steps of the decision making process between the Commission and the other institutions. Prelex contains various information about how the legislative acts were handled in the different institutions (European Parliament, Council of the European Union, European Commission, European Economic and Social Committee, Committee of the Regions) and what their decisions were.

The database contains links to the relevant original documents, e.g. the original proposal of the Commission, the minutes from the meetings in the European Parliament. In addition to providing links to relevant documents from the decision making process, the database amongst other things holds information about:

- The date of the Commission's proposal and the final adaption of the legislative acts.
 - The date of the readings in the institutions involved in the decision making process.
 - The responsible Directorate General in the Commission
 - The responsible individuals in the Commission and the European Parliament
- Whether the legislative acts were treated as A or B points during the reading of the Council of Ministers and which Council that handled the act.

Source: <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>.

Box 4.3: Eurlex

Eurlex is a database providing access to EU legislation. The contents of the site amount to some 2,815,000 documents with texts dating back to 1951. The database is updated daily and every year around 12,000 documents are added.

The database also holds the link 'bibliographic notice'. The notice is a display of metadata (author, dates, indexes, forms, related documents, etc.) which provides insight into each document and shows relationships between documents.

The database holds different codes (subject matter codes and directory codes) indicating the content of the legislative acts.

Source: <http://eur-lex.europa.eu/en/tools/about.htm>.

4.3.2. Data selection

This section describes how the data which constitute the basis for the quantitative study were selected and identified. The dataset includes all legislative acts (directives and regulations) adopted by the co-decision procedure and the consultation procedure in the period 2005 to 2009. In other words the study focuses on the most important legislative acts regulating EU policies. The case selection leaves us with a dataset including 259 acts selected through Prelex via its search function which allows searches for all legislative acts adopted (specified under 'events') by a certain procedure (specified under 'series') within a certain period (specified under 'between'). The cases were then selected by the wording of the legislative proposals discarding

acts concerning anti dumping, external relations etcetera.²⁷ For a more thorough description of how the legislative acts included in the study were identified, see Appendix B.

The study focuses on the role of the Council working groups in standard legislative procedures through which day to day domestic policies are adopted. Put differently, the study focuses on domestic EU legislation adopted by the classic Community method. The focus on domestic EU politics entails that the dataset does not include external policy decisions that regulate relations to third countries, non-legislative acts and initiatives put forward by member states or acts regulating internal administrative, budgetary and institutional matters in the EU.

The case selection has some clear advantages. First and foremost the selected cases are the most important legislative acts regulating EU cooperation. Secondly the case selection ensures that the cases are relevant when studying the Council working groups. More specifically, the case selection ensures that the working groups actually play a role in the decision making process about the selected acts. This is not the case with all types of legislative acts. For example, acts regulating dumping of prices on import products from third countries are not handled by a working group under the Council, but by an advisory committee under the Commission²⁸. Amongst other things this implies that it is not possible to observe whether or not the committee sends the legislative acts on to the higher levels in the Council's hierarchy. In other words it is not possible to measure the dependent variable. Another group of legislation which is excluded from this study is acts regulating fishery opportunities in third countries, which are not dealt with by a normal working group either and which therefore are not relevant for the analysis. Secondly, the selection of cases also has the benefit that it ensures a certain homogeneity in the cases included in the study. If I had included, for example, legislative cases concerning external relations I would have to control both the fact that the decision making process is organised differently and that the member states' interests would have a different configuration compared to the domestic legislation which has more direct implications for the member states. Table 4.1 lists the regulations and directives included in the analysis.

²⁷ This selection procedure implies a certain risk that legislative acts with certain implications for e.g. external relations or internal administrative matters in the EU are included in the study but ensures that the major part of the cases concerning e.g. external relations or internal administrative EU-matters are omitted from the study.

²⁸ http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc_146035.pdf

Table 4.1: Regulations and directives adopted 2005-2009

Year of adaption	Type of act		Total
	Regulations	Directives	
2005	20	14	34
2006	20	47	67
2007	10	24	34
2008	16	40	56
2009	37	31	68
Total	103	156	259

The selection entails the exclusion of certain legislative cases and I will here discuss in detail which cases are omitted. Firstly, the fact that the study focuses on regulations and directives implies that decisions, resolutions or communications are not included in the study. There are two important rationales behind this choice: (1) Regulations and directives are the two main types on legislation regulating the domestic politics of the EU and (2) the content of the decisions, resolutions and communications are very varied. This discrepancy combined with the fact that the acts often cover issues such as The Commission's or the Councils concrete decisions about e.g. the replacement of members of the EU institutions etc. (Blom-Hansen & Grønegaard 2004: 28) implies that one could argue that these acts are of less relevant in a study of Council working groups. The selection of directives and regulation resulted in the exclusion of 267 decisions, resolutions and communications.

Secondly, the dataset does not include legislative acts adopted by other procedures than the co-decision procedure and the consultation procedure. The reason is that the cooperation procedure is hardly used anymore as it was replaced by the co-decision procedure. The assent procedure is mainly applied when the EU enters into external contracts with third countries and international organisations. In other words it is seldom used in relation to the standard legislation of the Union. The focus on acts adopted by co-decision and consultation led to the exclusion of 9 legislative acts adopted by the assent procedure.²⁹

Lastly, I chose only to look at new legislation and partly amending legislation. Amending legislation is in other words not included. The rationale was that amended legislation is a highly fragmented category. Some amending

²⁹ No legislative acts were adopted by the cooperation procedure in the selected period.

acts have far reaching effects on EU legislation, but many acts only repeal or amend minor parts of existing legislation. Furthermore it is presumed that the role of the council working groups is rather limited when it comes to preparation of amending acts. The exclusion of amending acts led to the exclusion of 214 regulation and directives. Table 4.2 shows the distribution of new and partly amending legislative acts.

Table 4.2: Distribution of new and partly amending acts

	Frequency	Per cent
New legislation	193	74.5
Partly amending legislation	66	25.5
Total	259	100.0

All acts included in the dataset were adopted before the Lisbon Treaty was ratified and are therefore not affected by the treaty and subsequent changes in procedures. Another factor which may impinge on the analysis is the level of activity in the European Union, which generally varies considerably between different periods. Crucial cases where there are changes in the level of activity is the phase before elections for the European Parliament and the phase before a new Commission is appointed. In these periods the level of activity in the EU typically increases because the Commission and the European Parliament often want to finalise discussions on different legislative acts. In the same way, the level of activity is relatively low when a new Commission and a new Parliament starts their work because the newly elected MEPs and the newly appointed commissioners usually spend some time learning how things work. A new Commission, the Barosso Commission, was appointed in 2004 and in 2009. Similarly there was election in the European Parliament in 2004 and again in 2009.

Note that the dataset includes some missing variables, which I was unable to observe in the data collection process due to the limited transparency of the Council's work. More specifically, it was not possible in all cases to observe which working group dealt with the legislative acts or the dependent variable of the thesis: whether or not the Council working groups asked Coreper to solve outstanding issues. To ensure that the lack of data on these nine cases does not imply a bias in the dataset, I examined whether the cases share any characteristics. The examination showed that this was not the case. The nine cases were distributed across different policy areas, decision making procedures, levels of conflict and so on.

All in all, I have gathered a solid and unique dataset which to my knowledge is the first of its kind. The work of the working groups has to my knowledge never been observed in a cross-sector quantitative analysis covering more than one year, and the thesis will be the first to clearly answer how much decision making takes place in the Council working groups. It is also the first study to offer insight about the potential differences in the extent of working group decision making across policy areas, working groups and legislative acts.

4.4. Qualitative data

4.4.1. Introduction

In order to inform the quantitative study, to examine the validity of the results of the quantitative study and to reveal other possible explanations to the decision making processes in the Council working groups, the study is also based on interviews with participants of the working groups. I conducted 36 interviews with participants from 8 working groups. It should be emphasised that the purpose of the qualitative study is to investigate the robustness and validity of the results of the quantitative study as well as to get more substantive insights about the effects of the independent variables and the inner workings of the Council working groups.

In the following I will describe how the respondents of the qualitative study have been selected, how the interviews were conducted and discuss the strengths and limitations of the method. In addition I will provide a short outline of how the qualitative results will be presented in the analysis.

4.4.2. Selection procedure

Generally it is of great importance how the cases for a qualitative study are selected when the selection is based on a quantitative study. The selection procedure is crucial in terms of what kind of conclusions one can draw from the analysis (Emmenegger & Klemmensen 2010: 422). Much of the literature about case selection has questioned whether random case selection is the most appropriate selection procedure. Gerring states that random sampling is unreliable in small-N studies. He argues that there is no guarantee that a few cases, chosen randomly, will provide leverage into the research question. The sample might be representative, but it might at the same time be uninformative (Gerring 2007: 87). For this reason there are several techniques for selecting cases for a qualitative study. I have chosen to apply the 'diverse' case selection strategy, in which the key objective is to ensure

maximum variance along relevant dimensions (Gerring 2007: 97). The object is not only to make sure that the cases vary according to the dependent variable, but also to make sure that there is as much variation as possible according to the independent variables. Encompassing full range of variation is likely to improve the representativeness of the cases included (Gerring 2007: 100). Below I will describe how the cases, i.e. the working groups, for the qualitative study were selected.

Case selection

The case selection process had two stages. First I selected which working parties to focus on and then I selected the respondents from the groups. The selection of the working parties was based on four criteria. The most important criterion is that the cases vary according to how often the working parties involve the higher levels in the Council hierarchy in the decision making process. That is, how often they ask Coreper or the Council to discuss outstanding issues. As shown in the quantitative study, this varies a lot between working groups. The Working Party on the Environment, The Working Party on Land Transport and The Social Questions Working Party seem to involve Coreper and Council the most. Some of these groups almost always invite Coreper and/or the Council of Ministers to handle outstanding issues. The Working Party on Financial Services less often ask Coreper and/or the Council of Ministers to solve outstanding issues and The Working Party on Statistics hardly ever ask Coreper and/or the Council of Ministers to handle outstanding questions. Table 4.3 lists the number of cases where the different working groups have or have not involved Coreper and/or the Council of Ministers in the decision making process.

Based on these quantitative results eight working groups were selected for the qualitative study. However the extent of decision making taking place in the individual working groups was not the only selection criterion. It was also important to ensure that the cases vary on other relevant dimensions. Below is an overview over these other relevant selection criteria.

The second selection criterion was to ensure a relatively broad representation of policy areas. The selected policy areas should for example vary according to whether they are established EU community affairs (e.g. Environment) or policy areas which traditionally have been national concerns (e.g. Social Affairs).

Thirdly, the working groups differ with regard to their composition and who the speakers are. In one of the groups (e.g. Statistics) the experts from

national affiliated institutions (e.g. Statistics Denmark) are the main speakers, while the attachés usually speak in other groups (e.g. Land Transport).

The final criterion in the selection process was to ensure variation in whether the working groups are placed under Coreper I or Coreper II. Coreper I consists of deputy heads of mission and deals largely with social and economic issues and the community law. Coreper II consists of heads of mission and deals largely with political, financial and foreign policy issues, but also to a smaller extent with community law. Variation in the organisational placement of the working groups allows me to observe whether this affects the decision making processes in the groups.

All in all the selection strategy has several advantages. Firstly, as mentioned, the strategy ensures a certain representativeness of the selected cases. Secondly, it allows me to get broad insights about the role of the Council working groups across different sectors. Thirdly, the strategy allows me to observe whether the same tendencies and mechanisms apply across the different policy areas, which is helpful in evaluating the validity of the results.

Table 4.3: Overview over the extent to which different working groups reach agreement at their level or send legislative acts on for a II/B-point discussion in Coreper/Council

Working Party:	II/B-point discussion in Coreper/Council			II/B-point discussion in Coreper/Council		
	Working group agreement	Coreper/Council	Total	Working group agreement	Coreper/Council	Total
Working Party on the Environment	5 18.5%	22 81.5%	27 100%	0 .0%	2 100%	2 100%
Working Party Technical Harmonisation	7 58.3%	5 41.7%	12 100%	0 .0%	1 100%	1 100%
ACP Working Party	1 100%	0 .0%	1 100%	2 66.7%	1 33.3%	3 100%
Working Party on Land Transport	1 5.6%	17 94.4%	18 100%	0 .0%	4 100%	4 100%
Working Party on Transport (Intermodal Questions and Networks)	1 25%	3 75%	4 100%	1 16.7%	5 83.3%	6 100%
Working Party on Frontiers Mixed Committee	1 33.3%	2 66.7%	3 100%	0 .0%	8 100%	8 100%
Working Party on the Protection of Individuals	0 .0%	1 100%	1 100%	0 .0%	2 100%	2 100%
Working Party on Aviation	0 .0%	7 100%	7 100%	1 50%	1 50%	2 100%
Social Questions Working Party	0 .0%	7 100%	7 100%	8 88.9%	1 11.1	9 100%
Working Party on Financial Services	4 50%	4 50%	8 100%	0 .0%	2 100%	2 100%
Working Party on Energy	0 .0%	5 100%	5 100%	0 .0%	1 100%	1 100%
Working Party on Intellectual	0	1	1	0	1	1

Working Party:	II/B-point			II/B-point		
	Working group agreement	discussion in Coreper/Council	Total	Working Party	Working group agreement	discussion in Coreper/Council
Working Party on Foodstuffs	1 12.5%	7 87.5%	8 100%	Working Party on the Generalised System of Preferences	0 .0%	1 100%
Working Party of Veterinary Experts	3 33.3%	6 66.7%	9 100%	Working Party on Atomic Questions	1 100%	0 .0%
Working Party on Telecommunications and Information Society	1 50%	1 50%	2 100%	Working Party on Fruit and Vegetables	0 .0%	1 100%
Working Party on Company Law	0 .0%	2 100%	2 100%	Working Party on Animal Products	1 100%	0 .0%
Budget Committee.	2 100%	0 .0%	2 100%	Missing*	9 64.3%	5 35.7%
Working Party on Substantive Criminal Law	0 .0%	1 100%	1 100%	Total	83 33.2%	167 66.8%
						250** 100%

* Missing: In 18 cases (7.2 %) it was not possible to observe which working group that dealt with the legislative act.

** Missing: In 9 cases (3.5 %) it was not possible to observe how the legislative acts was handled internally in the Council's decision making process.

Selection of interview persons

From the 8 working groups, I selected 4 respondents. From each group I interviewed one person from a small member state (Denmark), one person from a large member state (France, UK or Germany) and one person from a member state which has recently held the presidency (Sweden, Czech Republic, Slovenia or France). The reason I have chosen to speak with representatives with recent experience in the presidency is that they are likely to have profound insights about the dynamics, conflicts and decision making processes in their working group. As I described earlier, the presidency chairs the meetings of the working parties, controls the agenda and the decision making process, and is responsible for driving the negotiations forward and holding the necessary bilateral meetings with the other member states, the Commission, the rapporteurs in the Parliament and so on. The fourth group of respondents from each working group is participants from the Council's General Secretariat. They have followed the working groups for a long time and can be regarded as the institutional memory of the working groups. They therefore have broad insights about the decision making processes in the Council working group and may be able to assess the decision making process and the extent of decision making that takes place in the working groups over time. This may be an advantage both when I ask about how much the working groups actually decide and about the effect of the size of the member state holding the presidency. Another advantage is that they may have a different way of observing negotiations in the working groups because the secretariat is a neutral player in the groups.

Almost all of the respondents from the member states are attachés working in the member states' permanent representations in Brussels. However the respondents from the working group on Statistics are experts situated in the member states capitals. This could imply a certain bias in the data, as working group members with base in the national capitals are underrepresented. However, the officials at the national representations in Brussels can generally be expected to have more insights about, and experience with, the workings and decision making processes of the EU more generally and of the working groups more specifically. This may be an advantage for the interviews.

The interviewees' seniority varies from 6 months to 6 years, but the majority has 2–2.5 years' experience. The varying experience, and thereby varying knowledge about how negotiations work, might on the one hand entail a certain bias in the results. For example, interviewees with limited experience may reject that a certain variable affects negotiations in the working group

just because they do not have experience with it. On the other hand, as the interviewees are not seen as representatives but as informants, the bias is not seen as particularly problematic, especially since the interviewees were very open about not being able to answer due to lack of experience. Furthermore, the fact that I interviewed four respondents from each working group reduces the problem of the potential bias due to differences in experience.

Another important issue is whether the respondents might have interests that result in a bias or systematic errors in their answers. In my opinion, the respondents are not likely to have strong interests related to the questions they are posed in the interviews. The questions are of a general character. They are about what affects negotiations in the working groups and not who wins them. The only questions the interviewees might have certain interests in are the questions about the presidency. For example, the interviewees with experience in the presidency might have strong opinions about how the presidency is run most effectively and consider that their own presidency was run in an ideal way. Secondly there might be a general tendency that large member states approve of large member states' way of fulfilling the presidency role and likewise for small member states.

Identification of interviewees

Finding the right persons to interview was a challenge in itself. There are no official lists of members of the different working groups and even though some national representations have clear lists on their home pages of who is following which working party, the majority of representations do not. The identification process started in the Danish permanent representation in Brussels. The Danish representation has a relatively clear list of staff where it appears which official is following which policy area. Even though this did not in all cases lead me to the right person, it was a good starting point as the Danish representation was very helpful in finding the right persons to talk to when this was unclear in the list of staff. Furthermore many of the Danish representatives gave me contact information about some of the other members of the selected working groups. In other words, the identification of interviewees was to a large extent based on a snowball strategy, i.e. the interviewer asks already contacted and interviewed persons to refer to other relevant interview persons (Harrits, Pedersen & Halkier 2010: 163). The advantage of the strategy was that it enabled me to contact those interviewees who had participated in the working group relatively long as I asked for contact information on officials with relatively long seniority. This was for example highly relevant when selecting interviewees in the Council's General Se-

cretariat. The Secretariat is organised in such a way that it is not necessarily always the same person that follows a particular working group and therefore it was important to get in touch with the personnel with the longest experience in the selected working groups. The question of experience was also important when selecting interviewees from member states with recent experience in the presidency. Furthermore, a crucial selection criterion was that the interviewee actually was in Brussels under the presidency.

As mentioned, many of the respondents from member states other than Denmark were also identified through the homepages, and lists of staff members, of the member states' permanent representations. The Danish, Swedish and Czech representations have very well functioning home pages where it is relatively clear which representative follows the different policy areas.

Another important source for identifying respondents was the homepage *EU Whoiswho* (<http://europa.eu/whoiswho/public/>), which contains contact information on the staff of different EU institutions and on some staff in the member states' permanent representations. Although *EU Whoiswho* is far from complete, it was a helpful instrument in identifying relevant interviewees. For example I used the homepage to find some of the interviewees from the Council's General Secretariat.

Table 4.4 lists the persons who have been interviewed. As the table shows, I interviewed more than four officials from some of the working groups. The reason is that I contacted a large number of officials from the different groups to be sure to cover all selected groups. I therefore sometimes received more than four positive responses, and in this situation I chose to conduct as many interviews as possible. One could argue that that this entails a certain unbalance in the data, but as the interviewees function as informants and not representatives, my claim is that the extra interview just provides a larger basis for validation of the results.

Table 4.4: List of interviewees

Working group:	Member state:		Member state with recent presidency experience:	
	Small member state: Denmark	Large member state: UK/ France/ Germany	Sweden/ Czech Republic/France	General Secretariat
Land transport	IP* 1 (Denmark)	IP 9 (UK)	IP 18 (The Czech Republic)	IP 29 IP 30
Energy	IP 2 (Denmark)	IP 10 (Germany)	IP 19 (The Czech Republic)	IP 31
Environment	IP 3 (Denmark)	IP 11 (Germany) IP 12 (France)	IP 20 (Sweden) IP 21 (Sweden) IP 22 (Czech Republic)	IP 32
Social Questions	IP 4 (Denmark)	IP 13 (UK)	IP 23 (Sweden) IP 24 (Sweden)	IP 33
Financial Services	IP 5 (Denmark) IP 6 (Denmark)	IP 14 (France)	IP 25 (Czech Republic)	IP 34
Technical harmonisation	IP 3 (Denmark)	IP 15 (UK)	IP 26 (France) IP 20 (Sweden) IP 21 (Sweden)	IP 35 IP 32
Public health	IP 7 (Denmark)	IP 16 (UK)	IP 27 (Sweden)	IP 32
Statistics	IP 5 (Denmark) IP 8 (Denmark)	IP 17 (UK)	IP 28 (Slovenia)	IP 36

* IP = Interviewee.

4.4.3. The interviews

As mentioned I conducted a total of 36 interviews. Most were face to face interviews and took place in Brussels in February-March 2010. The interviews with the representatives in the working group on Statistics were partly conducted in Copenhagen in November 2010 and partly by phone. The representatives in this group do not work in the member states' permanent representations in Brussels but in the national ministries and affiliated institutions. The Danish representative thus works at Statistics Denmark, which organisationally is placed under the Danish Ministry of Economic and Business Affairs. Due to limited time and financial resources, the interviewees from the two other member states and from the General Secretariat that participates in this group were conducted by phone. The Danish representative was interviewed in Copenhagen. Now, one could argue that it is problematic that some of the interviews were conducted face to face and some by phone and that this may give a bias in the data. However, the fact that the interviewees function as informants rather than representatives clearly reduces this problem. Furthermore, the interviews conducted by phone were the last three interviews conducted, which means that I had developed a routine

and was aware of many of the aspects of working group decision making at that point. I do not have the impression that this variation in how the interviews were conducted has affected the outcome.

The interviews took between 45 and 75 minutes and were recorded and transcribed by the author. Some respondents wanted to be anonymous in the thesis. For example, the Czech representatives were not allowed to participate in interviews if they could not be anonymous and some respondents from the Council's General Secretariat did not want their name to appear in the thesis. For this reason, the names of the respondents will not be mentioned in my thesis, only their nationality and which working group they participate in. Furthermore, five respondents asked to see their citations and the context in which they have been used in the thesis, which is a request that I accommodated.

The interviews were semi structured interviews and the respondents were asked both open and more specific questions. Semi structured interviews allow the interviewer to form and adjust the interview questions to optimize the interview in the concrete situation. For example the interviewer may change the wording and the order of the interview questions. This might be relevant if the interviewee answers some of the other interview questions before being asked. In other words a semi structured interview can potentially ensure a good flow. Another advantage is that it allows the interviewer to pay attention to unforeseen subjects and important details (Harrits, Pedersen & Halkier 2010: 150). That way the semi structured interview can provide the researcher with a more complete impression of the research topic.

At the end of each interview I presented the results of my quantitative research in order to get the interviewees' reactions and ask whether they recognized the pattern. I also asked them what they thought were the most important explanatory factors for why a working group sends legislative acts on to the higher levels in the Council's hierarchy relatively often or seldom. This paved the way for some interesting discussions about what might explain some of the quantitative results.

4.4.4. Presentation of the interviews

Before describing how each variable included in the theoretical model will be observed, I will shed light on how the qualitative data will be presented in the qualitative analysis. The presentation is crucial for the reader's impression of the basis for the researcher's conclusions. On what grounds is the researcher able to make the statements about the different tendencies in the data?

In order to be as open as possible about the results of the qualitative analysis, and about the basis of the conclusions drawn in the qualitative analysis, I have chosen to present the interview material in displays, which show the interviewees' statements on the different relevant subjects. Presenting the data material in displays may increase the reliability of the results because it allows the reader to observe on which statements the researcher bases his or hers conclusions. In addition, displays are useful for getting an overview of a large amount of interview material: 'As with data reduction, the creation and use of displays is not separate from analysis, it is a part of analysis. Designing a display – designing the rows and columns of a matrix for qualitative data and deciding which data, in which form, should be entered in the cells – are analytic activities' (Miles & Huberman 1994: 11).

Of course the advantages of the displays depend on how the analysis is conducted. Peter Dahler-Larsen recommends that displays are organised with consideration to three factors. Firstly, the data should appear in its authentic form. This means that the analysis should not be based on the researcher's impressions but on data that show the reader how the conclusions are reached (Dahler-Larsen 2010: 195). Secondly, the data should be based on inclusion, meaning that all data on a certain subject should be shown in the display. This ensures that discrepancies can be observed and it ensures openness about the basis of the conclusion (Dahler-Larsen 2010: 196). The final important consideration is to make sure that the displays are as transparent and as easy to interpret as possible (Dahler-Larsen 2010: 198).

In the qualitative analysis I will apply two types of displays depending on the pattern in the interviewees' responses. In some displays I will show statements put forth by all interviewees' in the different working groups. This way of presenting data is useful when the interviewees' statements differ a lot and where it is of high relevance to see whether the interviewees' from the same working groups have corresponding view points. This sort of display will present the interviewees' statements about the extent of decision making that takes place at the different levels of the Council. For other questions it is more useful to show examples of contradicting viewpoints in the display, for example when some interviewees support a theoretical expectation and others reject it. In order to increase the transparency on the basis of the conclusions drawn in the qualitative study even further I will indicate how many interviewees supported or rejected the different theoretical propositions.

I have now described the research design and the data applied in the present study. Below I present and discuss how each of the variables of the theoretical model will be observed.

4.5. Operationalisation of variables

In the previous two sections I described how the data was selected and the methods applied in the thesis. I will now discuss how the variables will be operationalised and measured. In other words I will account for how the data material will be applied to shed light on the research question. First I will address the dependent variable, then, I will outline how the independent variables have been operationalised. Finally I will discuss other variables that might affect the analyses and how they can be operationalised and controlled for.

4.5.1. Measuring the dependent variable: role of the Council working groups

The purpose of the thesis is to shed light on the role of the Council working groups in the decision making process and how much they decide compared to the higher levels of the Council's decision making hierarchy. In other words, the dependent variable is whether or not, and to what extent, the working groups finalise negotiations about legislative acts at their level, and the extent to which the working groups send legislative acts and issues on as II-point to the Coreper and B-points to the Council of Ministers.

In the quantitative study the dependent variable is operationalised by reviewing all meeting documents (reports, notes and I-item notes) sent on from the Council working groups to Coreper and the Council of Ministers. The documents stem from the Council's official register and indicate whether the working groups want Coreper or the ministers to discuss outstanding issues in the legislative acts that the working groups were not able to agree upon. In the coding process it has been important to differentiate between formulations where the working groups simply update Coreper or the Council on the state of the negotiations and where the working groups request Coreper and the Council to confirm an agreement or a formulation agreed in the working groups. These types of requests or updates on the state of play are not coded as situations where Coreper and the Council are involved in the decision making process. On the contrary, formulations such as 'Coreper is invited to examine and reach an agreement on the texts in ...' and 'Coreper is invited to solve the remaining outstanding issues' are coded as legislative acts where the working groups have involved the higher levels in the Council's hierarchy in the decision making process. Table 4.5 explains the dependent variable, namely whether or not the working groups involve Coreper in the decision making process. As we can see, the working groups asked Coreper to solve

outstanding issues at some point during the decision making process in 57.1 pct. of the cases included in the study.

Table 4.5: Involvement or no involvement of Coreper in the decision making process in the Council working parties

	Frequency	Per cent
No involvement of Coreper	102	39.4
Involvement of Coreper	148	57.1
Missing	9	3.5
Total	259	100.0

I have followed the legislative acts throughout the decision making process which amongst other things implies that I have coded every time the working groups asked Coreper to solve outstanding issues related to a legislative act. The number of times Coreper is asked to solve outstanding issues says something about the extent to which the working groups involve Coreper in the decision making process. In other words the dependent variable is both whether or not the working groups involved Coreper in negotiations on individual legislative acts, and also how many times the ambassadors in Coreper were involved. Table 4.6 shows a distribution of how many times the working group asked Coreper to solve outstanding issues during the decision making process about the selected legislative cases.

Table 4.6: Number of times the working groups involved Coreper in the decision making process on individual legislative acts:

Number of times the working groups involved Coreper in the decision making process on the single legislative acts:	Frequency	Per cent
0	102	39.4
1	74	28.6
2	38	14.7
3	19	7.3
4	7	2.7
5	4	1.5
6	6	2.3
Missing	9	3.5
Total	259	100.0

In addition to observing whether or not, and how many times, the working groups have asked Coreper to solve outstanding issues, I have also coded whether or not, and how many times, the selected legislative acts were dis-

cussed as B-points by the Council of Ministers. This variable was observed through Prelex where it appears whether the Council of Ministers dealt with the different legislative acts as an A-point or a B-point during readings.

The operationalisation of the dependent variable has the clear advantage that it quite precisely measures the extent to which the working groups involve the higher levels of the Council in the decision making process. Not only am I able to observe whether or not the legislative acts were discussed as II/B-points by Coreper and/or Council of Ministers, but also how many times a II- or B-point discussion took place in the two institutions. However, the operationalisation has some important limitations. First of all the way the variable is measured only says something about whether or not a legislative act was sent on for discussion at the higher levels in the Council's hierarchy. It does not shed light on the importance or the political weight of the questions that are sent on for discussion in Coreper or the Council of Ministers. Nor is it possible to observe whether one question or several questions demand discussion in Coreper and Council of Ministers. In other words, the issues that are sent on from the working groups might be of minor or crucial importance. Nonetheless, this limitation is unrealistic to solve as it would require exhaustive insights about the individual legislative acts, the policy areas and about the positions of the EU institutions and the member states. Furthermore there is good reason to believe that the issues that are sent on to the ambassadors in Coreper and the ministers in the Council must be of a certain magnitude. If the ambassadors and the ministers were asked to discuss minor issues it would most likely cause negative reactions in Coreper and the Council of Ministers. That being said, we know that legislative acts sometimes are sent on as B-point to the Council of Ministers for symbolic reasons, for example if one or more member states want political focus on a political victory or a political loss. Many member states do not want to make concessions in the early stages of a negotiation when they lose negotiations. Sometimes these member states pressure for a B-point discussion at the ministers' level even though the actual negotiations have been finalised.

All in all the proposed operationalisation of the dependent variable is the most optimal way to measure the role of the working groups. And in order to broaden the insights about the relative role of the working groups, the question also appears in the interviews. More specifically I asked the interviewees to estimate the percentage of the content of legislative acts that typically is finalised in the working groups and how much is sent on for discussion at the

higher levels of the Council's hierarchy.³⁰ As the interviews were not centred on the individual legislative acts included in the quantitative study it will not be possible to shed light on how much the working group decided concerning these specific acts. Instead it will be possible to address the relative amount of decision making that takes place in the Council working groups more generally.

4.5.2. Measuring whether the amount of decision making taking place in Council working groups varies between policy areas

Hypothesis 1 predicts that the role of the working groups differs between policy areas due to variations in the EU's competences versus the member states, due to the varying level of conflict within the policy areas, due to the varying technical complexity of the legislation within different policy areas and due to variations in the interest configurations among the actors affected by the EU legislation within the different policy areas. As mentioned, I do not propose specific hypotheses about within which policy areas I expect the working group decision making to be more or less extensive. Instead the starting point of the present thesis is to will observe whether there seem to be any clear differences between the policy areas with regard to the role played by the Council working groups. Are the negotiations on legislative acts more often finalised at working group level within some policy areas compared to others? If this is the case then it would be highly relevant to go more in depth and study what causes such variations across policy areas.

The variable will be observed via three different variables. Firstly policy area will be operationalised by determining under which Council configuration the working group that discussed the individual legislative acts was placed organisationally. The organisational placement of the working groups appears from the Council's list over preparatory bodies.³¹ Secondly I will observe which Council configuration handled the legislative acts. Although the Council is a single body, the Council meets in different configura-

³⁰ The issue was addressed by the following question: 'One of the limitations of my quantitative study is that I am only able to observe whether or not the working parties ask Coreper to discuss outstanding issues and not the substance or importance of what Coreper is asked to discuss. If you were to give a percentage on how much of the single legislative acts that is finalised in the working parties, what would you say?'

³¹ <http://register.consilium.europa.eu/pdf/en/11/st05/st05688-re01.en11.pdf>. For a list over working groups and their organizational placement in 2011 see appendix A.

tions according to the subject being discussed. The different Councils are attended by the responsible ministers from the member states. Examples of configurations are General Affairs Council, the Economic and Financial Affairs Council and the Agriculture and Fishery Council. Within the time period that I study there were ten configurations in the Council. The final indicator of policy area that I have applied is the Directorate General (DG) in the European Commission, which formulated the proposal for a legislative act. Table 4.7 shows the distribution of legislative acts within the different policy areas. In the table I have applied the first indicator of policy area, namely the organisational placement of the working group that handled the legislative acts.

Table 4.7: Distribution of legislative acts within the different policy areas

Organisational placement of the working group dealing with the legislative act:	Frequency	Per cent
General Affairs	32	12.4
External Relations/Security and Defence/Development	1	0.4
Economic and Financial Affairs	15	5.8
Justice and Home Affairs	21	8.1
Agriculture and Fisheries	50	19.3
Competitiveness (Internal Market, Industry, Research)	33	12.7
Transport/Telecommunications/Energy	49	18.9
Employment/Social Policy/Health and Consumer Affairs	21	8.1
Environment	30	11.6
Foreign Affairs	3	1.2
Missing	4	1.5
Total	259	100.0

Whether or not the extent of working group decision making varies across policy areas will also be studied in the qualitative analysis where I will compare the interviewees' estimates of how much of the content of a legislative act is usually sorted out in the working groups (see footnote 6). The most interesting questions will be whether the members from the different working groups have diverging perceptions about how much the working groups actually decide and whether interviewees from the same working groups have the same impression of the extent of working group decision making.

4.5.3. Measuring socialisation

The second hypothesis expects that the general decision making capacity of the working groups is influenced by the level of socialisation among the participants. More specifically I expect that the more socialised the WP members are the less often the working groups will send legislative acts on for discussion at the higher levels in the Council's hierarchy.

As mentioned Chapter 3, Häge found no connection between the level of socialisation in the working groups and their decision making capability (2008b: 257). Häge measured the level of socialisation by looking at a committee's average number of meeting days per month. He expected that the officials attending working groups which met frequently would be more 'socialised', more EU oriented and committed to finding a compromise. Therefore working groups which met frequently were expected to send legislative acts on for discussion at the higher levels in the Council less often than working groups with a lower meeting frequency. However, Häge's way of measuring the socialisation variable has two limitations. Firstly the operationalisation might overlook that the real explanation behind a high meeting frequency lies in the nature of the policy areas and that the policy area is the real explanation of the role of the working groups and not necessarily the meeting frequency in itself. Secondly, Häge does not take into account that it might not be the same persons who attend the meetings in the working parties. In other words he may not establish the effect of continuous interaction.

I suggest another way of measuring the socialisation variable, namely to look at the people who participate in the different working groups and their level of contact with the European level. As mentioned, the balance within each working group between attachés from the permanent representations in Brussels and experts flown in from the national capitals, differs from group to group. Some groups consist mainly of attachés while others have a tradition of involving national experts from the national ministries or affiliated institutions in the national capitals. I propose that the composition of the working groups affects their decision making capacity. More specifically, I expect that working groups consisting mainly of experts from the national ministries and affiliated institutions more often will send issues and legislative acts on to the higher levels in the Council hierarchy than working groups consisting primarily of attachés because the attachés are more oriented towards the EU.

At this point, a brief discussion of the proposed operationalisation of European socialisation is in order. The question is whether it in all cases is fair to presume that attachés always are more in contact with the EU system.

Some attachés only work at the member states' permanent representations for a limited time and some experts participate in the same working group for a number of years, which means that they have extensive experience with working group negotiations. But even though one could imagine situations where experts actually have more experience with working group decision making than attachés I expect that the attachés' close contact to the EU system combined with the fact that they are far from their home country will make them more oriented towards the EU level than the experts.

One could also argue that the proposed way of measuring the socialisation effect has some of the same drawbacks as Häge's operationalisation. The composition of the working groups might be strongly related to the policy area. For example it is not unlikely that working groups in technically complex policy areas more often consist of national experts from the national ministries and affiliated institutions as they normally have the highest expertise. In the same vein the level of conflict in the policy areas might explain the composition of the working groups. However it is almost impossible to examine these possible explanatory variables. The reasons for the composition of the working groups and how the member states choose to be represented in the working groups might vary between policy areas, working groups and finally the member states might have diverging preferences and motives when they decide who will represent them in the working groups.

Although the proposed way of measuring the socialisation effect has its limitations, the operationalisation will provide insights about whether the composition of the working groups and who the speakers are seem to have an impact on the decision making capacity of the working groups. The variable will be examined in the qualitative study where I ask the respondents whether negotiations, and the working group's ability to reach agreement, are affected by the composition of the working group, including whether mainly attachés or experts from the national ministries and affiliated institutions speak (see interview guide Appendix C & D). Unfortunately it was not possible to observe this variable in the quantitative study as data on the composition and organisation of the Council working group is not publicly available.

4.5.4. Measuring the level of conflict

In the previous chapter I argued that negotiations in the Council working groups are affected by the extent to which the member states and the institutions involved in the decision making process have strong and conflicting interests about the legislative acts. I first put forth that negotiations in the

working groups are affected by whether or not the group has to take the position of the European Parliament into account. In other words, I expect that the inter-institutional decision making procedure influences the working groups' possibilities to reach agreement and that the working groups more often send legislative acts adopted by co-decision on for discussion in the higher levels of the Council's hierarchy than legislative acts adopted by consultation. Secondly I argued that the more the member states, the European Parliament and the Commission disagree about the legislation, the more complicated negotiations in the Council will be, and the more difficult it will be to find a common position in the working groups.

Observing the decision making procedure is straightforward. When I selected legislative acts for the study, I used the decision making procedure as selection criterion in Prelex so that only legislative acts adopted by co-decision and consultation were included.

Measuring the level of conflict between member states and institutions of the European Union is less straightforward. There are few useful indicators for this variable and the indicators I apply here are far from perfect and should be seen as indirect proxies. The four indicators of the level of conflict are: (1) the number of amendments proposed by the European Parliament, (2) the Commission's reaction to the amendments proposed by the European Parliament (agreement, partial agreement and no agreement), (3) whether or not the Commission introduces a revised proposal, and (4) the length of the decision making process.

Two of the proposed indicators of the level of conflict are inspired by Jens Blom-Hansen's operationalisation of conflict between the legislature and executive in the EU. Amongst other things he suggests looking at the length of the decision making process and whether or not the Commission proposes a revised legislative proposal (2010: 8-9). Both indicators proposed by Blom-Hansen and the indicators proposed in the present thesis are very likely to capture the level of conflict between the institutions of the EU. However one can question whether they also capture the level of conflict between the member states. The quantitative study will show whether the proposed indicators of the level of conflict can help explain variations in the extent of decision making taking place in the Council working groups. Below I will present and discuss the four operationalisations of the conflict variable more thoroughly.

The first indicator of the level of conflict over legislative acts is the number of amendments proposed by the European Parliament at the first reading. All else being equal, the number of EP amendments says something about how much the Parliament agrees with the Commission's original pro-

posals and therefore also about the extent to which the actors involved in the decision making process have diverging interests. That being said, one could argue that the number of EP amendments is strongly related to the length of the legislative acts. Nevertheless, the variable in any case indicates whether the Commission and the European Parliament have diverging interests. Table 4.8 shows that the European Parliament in the majority of cases has 20-59 amendments (44.1 pct. of the cases) and no amendments in 11.6 pct. of the cases. The quantitative analysis will show whether the working groups more often reach agreement in the cases where the level of conflict appears to be low.

Table 4.8: Number of amendments from the European Parliament

Number of EP amendments	Frequency	Per cent
0	30	11.6
1-19	35	13.5
20-39	63	24.3
40-59	52	20.1
60-79	26	10.0
80-99	20	7.7
100-199	38	10.8
200+	5	1.9
Total	259	100.0

The second indicator of the level of conflict between the member states and EU institutions is whether or not the Commission accepts the EP amendments. If the Commission accepts the amendments, the level of conflict is probably low. If the Commission only partly accepts the amendments, it points to a certain level of conflicting interests about the legislative acts. Finally, if the Commission does not accept the European Parliament's amendments, this indicates that the institutions and the member states have quite diverging interests and that there is a high level of conflict over the legislative acts. Table 4.9 shows that the Commission reacts with 'agreement' or 'partial agreement' in the majority of the cases included in the present thesis. In the quantitative analysis I propose that it indicates a high level of conflict when the Commission reacts by 'no agreement' and 'partial agreement' to the amendments of the European-Parliament.

The third indicator of member state and inter-institutional conflict is whether or not and how many times the Commission puts forward a revised proposal. The Commission may formulate a revised proposal if the European Parliament and/or the member states in the Council of Ministers strongly op-

pose the original proposal. In other words, whether or not the Commission formulates a revised proposal may indicate that the member states and institutions of the European Union oppose the original proposal and therefore have conflicting interests about it. Now it should be pointed out that the Commission may formulate a revised proposal for other reasons than opposition to the original proposal from the Parliament and the member states in the Council. It is not unlikely that the Commission sometimes formulates a new proposal because it is in its interest, for example because the Council and the European Parliament support the proposal. Nevertheless it seems plausible that the most frequent reason why the Commission formulates a new proposal is that the member states and the Parliament cannot accept the original proposal.

Table 4.9: Commission's reaction to amendments from the European Parliament

Commission's reaction to EP amendments	Frequency	Per cent
Agreement	112	43.2
Partial agreement	113	43.6
No agreement	4	1.5
No EP amendments	30	11.6
Total	259	100.0

In my dataset I have observed whether and how many times the Commission puts forth a new proposal. Table 4.10 lists the number of times the Commission introduced a revised proposal during the decision making process on the different legislative acts. As it shows, the Commission does not formulate a new proposal in the majority of cases (89.2 pct.). The question is whether the working group sends the legislative acts on for discussion at the higher levels of the Council in the cases where the Commission does formulate a revised proposal and where the level of conflict is high according to the proposed indicator.

Table 4.10: Number of times the Commission formulated a new proposal

Number of times the Commission formulated a revised proposal:	Frequency	Percent
0	231	89.2
1	26	10.0
2	2	0.8
Total	259	100.0

The length of the decision making processes is the last measure of the level of conflict over the legislative acts. The rationale is that the more conflicting

the interests of the member states and institutions involved in the decision making process are, the more demanding it will be to reach agreement, and the longer it will take to finalise the decision making process.³² The length of the decision making process is measured by the time span between the date of the Commission's legislative proposal to the final adoption of the legislative act. Most decision making processes last 1-2 years, and the variable is categorized in three outcomes: (1) 0-24 months, (2) 25-36 months, (3) 37+ months. The frequency table of this variable (table 4.11) shows that the decision making process takes from 0-24 months in the majority of cases and more than 37 months only in 12.4 pct. of the cases included here.

Table 4.11: Length of the decision making process for the selected cases

Length of decision making process	Frequency	Per cent
0-24 months	168	64.9
25-36 months	59	22.8
37+ months	32	12.4
Total	259	100.0

The effect of the extent to which the member states and the institutions involved in the decision making process have strong and conflicting interests is also studied in the qualitative analysis. In the interviews I asked the interviewees about how the decision making process in the Council working groups proceeds and posed five questions to capture the effect of the level of conflict. Three of them follow here:

- Why are you (the working group) not always able to reach a compromise?
- When do you (the working group) typically send a legislative act on for discussion in Coreper or the Council of Ministers?
- Would you say that the legislative acts that are sent on to Coreper and the Council of Ministers share any characteristics?

The reason the interviewees were not asked directly about whether the level of conflict among the member states affects whether the working groups are

³² The length of the decision making process may not always measure the level of conflict. For example one could imagine that there are cases where there is an urgency to adopt a certain acts and we know that when acts are of a particular importance for e.g. the member state holding the presidency, the presidency can seek to exert pressure to finalize negotiations as quickly as possible. In such cases the length of the decision making process may be shortened even though the actors involved have conflicting interests.

able to reach agreement is that it lies in the nature of the decision making procedure and because I did not want to ask questions which were too obvious. I found it more fruitful to ask more indirectly, encouraging the interviewees to describe the decision making process and consider the situations where the working groups send legislative acts on for discussion at Coreper/Council of Ministers. In addition to these indirect questions, I asked the interviewees whether the position and actions of the European Parliament and the Commission may impinge on working group negotiations and on whether the working groups send the legislative acts on for discussion at the higher levels of the Council (see interview guide Appendix C & D).

4.5.5. Measuring financial implications

The fifth hypothesis proposes that the legislative acts that are sent on from the working groups for discussion in Coreper and the Council of Ministers often have financial implications for the member states. This variable was operationalised by asking the national officials in the working groups and the representatives from the General Secretariat whether negotiations in the working groups, and the working groups' ability and possibilities to reach agreement, are affected by whether or not legislation implies financial consequences (see interview guide Appendix C & D).

I tried to operationalise financial implications for the quantitative study but without luck. Firstly I observed the so called directory codes in Eurlex that indicate the content of legislative acts. These codes often refer to economic matters. For example, a legislative act about the mobilisation of the EU Solidarity Fund had the following directory codes: General, financial and institutional matters/Financial and budgetary provisions/Budget. However, this operationalisation turned out not to be very useful as it showed that unrealistically few legislative acts – 23 of 259 – had financial consequences. For this reason the variable was taken out of the quantitative study. Another potential indicator of financial implications is the impact assessments formulated by the Commission. Impact assessments outline the consequences for the member states, including the financial consequences, of the legislative proposals. However a closer study showed that they seldom are exact about the financial implications of individual legislative acts and that the impact assessments are performed differently from act to act. For this reason it would be problematic to use impact assessments as an indicator of financial implications. The variable is therefore only examined in the qualitative study where I asked the interviewees whether the legislative acts' potential financial implications affect working group negotiations. One could argue that a

more precise measure of the explanatory power of delegation theory would be to ask the interviewees whether the act's financial consequences affect their instructions and room of manoeuvre. However, the purpose is to study whether the predictions of the delegation theory seem plausible. If this is case it would be relevant to dig deeper into how the level of delegation from national authorities affects the role of working group members and negotiations in Council working groups.

4.5.6. Measuring technical complexity

Measuring technical complexity is not an easy task. It demands thorough knowledge about each policy area and an exhaustive understanding of each piece of legislation. However there are applicable indicators of the technical content of the legislative acts discussed in the Council.

Inspired by Jens Blom-Hansen's study of the diverging competences of the comitology committees (2010), I will use three indicators of technical complexity. Drawing on Franchino (2004, 2005 & 2007) Blom-Hansen firstly proposes observing whether the Commission has carried out preparatory work when outlining the legislative proposal (Blom-Hansen 2010: 10-12). When legislative acts are technically complex, the Commission often collects relevant technical information and data which in turn results in a preparatory report. The first indicator of technical complexity is therefore whether or not the Commission proposal is based on a preparatory report. This information is found in the final legislative act. For a more thorough explanation to how I observe this variable see Appendix B. Table 4.12 shows the distribution of legislative acts that refer/do not refer to a preparatory report.

Table 4.12: Legislative acts referring/not referring to a preparatory report

	Frequency	Per cent
Legislative acts referring to preparatory report	179	69.1
Legislative acts not referring to preparatory report	80	30.9
Total	259	100.0

Secondly, and also drawing on Franchino, Blom-Hansen suggests measuring technical complexity by whether the Commission has consulted an expert committee when drawing up its proposal (2010: 10). Expert groups are established and composed by the Commission itself, and they function as consultancies for the Commission when it prepares proposals for new legislation. The expert groups provide substantial input during the early stages of the

policy process by giving expert advice, offering technical knowledge, sharing practical experience and information. The groups consist of representatives from the member states, technical experts, stakeholders and representatives from public interest bodies. As accounted for by Blom-Hansen, Franchino argues that when the Commission makes use of these expert groups, this indicates that the Commission needs to gather relevant technical knowledge and furthermore that the legislative act is technically complex. The second indicator of technical complexity is in other words whether or not the Commission has consulted a preparatory committee and this information is found in the final legislative acts (see Appendix B for a more thorough explanation). Table 4.13 shows the distribution of legislative acts with and without reference to work conducted by a preparatory committee. The table shows that only 17 of the legislative acts included in the study refer to preparatory work conducted by a committee.

Table 4.13: Legislative acts referring/not referring to work conducted by a preparatory committee

	Frequency	Per cent
Legislative acts referring to work conducted by a preparatory committee	215	83
Legislative acts not referring to work conducted by a preparatory committee	44	17
Total	259	100

The third indicator of technical complexity proposed by Blom-Hansen is whether or not the legislative acts contain annexes to the act outlining its technical details. This indicator is also applied here and an overview the distribution is shown in Table 4.14.

The proposed way to measure technical complexity is not unproblematic. One could argue that observing whether an act refers to preparatory work conducted by a committee is problematic because the Commission might consult an expert group for other reasons than gathering technical information. The Commission often confers with an expert group to secure a legitimate foundation for its proposals. The main reason to consult an expert group might in other words be to consult the stakeholders or member states affected by a proposal and to ensure their support.

Table 4.14: Legislative acts with/without an annex

	Frequency	Per cent
Legislative acts without annex	101	39
Legislative acts with annex	158	61
Total	259	100

Even though the proposed way to measure the complexity variable has some limitations, it is one of the few ways to measure it and the three indicators of technical complexity are also acknowledged and frequently applied measurements of technical complexity. The variable is also analysed in the qualitative study where I ask the interviewees whether the technical complexity of the legislative acts discussed has an effect on the working group's inclination to send the acts on for discussion in Coreper or the Council of Ministers. I ask this question to investigate whether the predictions proposed by delegation theory help explain working group decision making (see interview guide appendix C & D).

4.5.7. The Presidency

The seventh hypothesis states that the presidency of the Council can affect the working groups' abilities to reach agreement at their level. I expect that the size of the member state holding the presidency can influence on at which level in the Council decisions are made. Large and small member states have varying administrative capacities and often have very different ways of handling the presidency.

Observing this variable in the quantitative part of the study is not straightforward. The legislative acts are often dealt with over a long period, and often over more than one presidency period. However, for each legislative act I have coded the date of the proposal, the dates of the reports and notes sent on from the working groups to Coreper and the Council, and the date of the adoption of the acts. This enabled me to identify which member state held the presidency at the different stages of the decision making process, including who held the presidency when legislative acts were sent on to Coreper and the Council. This way, I am able to observe variations in the extent to which the working groups send legislative acts on for discussion at the higher levels of the Council's hierarchy under different presidencies. Coreper was invited to solve outstanding issues 301 times in the decision making processes for the selected cases. Table 4.15 shows the distribution of these II-points over time.

The operationalisation of this variable has certain limitations. Firstly the data does not allow me to take variations in the amount of legislative acts handled under the different presidency periods into account. In other words, variations in the extent to which the working groups involve Coreper in the decision making process during the different presidency periods might just be a result of variations in the relative load of legislative acts handled under the different presidency periods. Secondly, if legislative acts are handled

over a very long period and over several presidency periods, it might be problematic to say much about the relative role and effect of the different presidencies. Nevertheless, the variable can provide a relatively clear indication of whether the size of the member state holding the presidency seems to affect whether and to what extent working groups send legislative acts on for discussion at the higher levels of the Council's hierarchy. Furthermore, the fact that the variable is also analysed in the qualitative study increases the possibilities to ensure valid insights about the affect of the presidency.

Table 4.15: Number of times Coreper was invited by working groups to solve outstanding issues in different periods

Period:	Number of times the Coreper was included in the decision making process:
Spring 2001 ^b	1
Spring 2003	1
Autumn 2003	12
Spring 2004	19
Autumn 2004	30
Spring 2005	29
Autumn 2005	31
Spring 2006	30
Autumn 2006	24
Spring 2007	27
Autumn 2007	24
Spring 2008	42
Autumn 2008	20
Spring 2009	10
Autumn 2009	1
Total	301

a. The six month presidency period runs from January to June and from July to December.

b. In the cases included in the study (regulations and directives adopted in the period from 2005-2009) Coreper was not asked to address outstanding issues in 2002.

In the qualitative study, the role of the presidency is operationalised by three questions. The interviewees were asked whether, and in what way, the presidency affects the smoothness of the negotiations in the working group and its possibilities to establish compromises; whether it matters who holds the presidency and more specifically whether, and in what way, the size of the member state holding the presidency affects the working groups' ability to reach agreement.

4.5.8. Relevant control variables

A number of variables that are not included in the theoretical model could potentially explain working group decision making and differences herein. Therefore I have sought to take these variables into account and control for them in the quantitative or qualitative study. Table 4.16 lists these variables (see next page). The left column shows the control variable, the middle column explains why I have taken each control variable into account, and the right column shows whether I control for the variables in the quantitative or the qualitative study.

4.6. Summary

I have now described how the variables included in the theoretical model will be analysed. I apply a mixed method design which allows me to profit from the advantages of both the quantitative and the qualitative research design. Furthermore it allows me to get broader insights about the extent of decision making that takes place in the Council working groups and about what explains potential variations in whether or not the working groups reach agreement at their level.

As described, some variables are studied both in the qualitative and the quantitative analysis depending on whether it is possible to observe the variables in the quantitative study. Other variables are only observed in the qualitative analysis, for example whether the composition of the working groups and the financial implications of a legislative act affect the extent of decision making that takes place in the working groups compared to the higher levels of the Council.

Table 4.16: Control variables

Control variable	Explanation	Quantitative/ qualitative study
Type of legislation	Type of legislation might affect WG° negotiations as regulations and directives have diverging implications for the member states. Directives can be adjusted according to the member states' national legislation and are open for interpretation and adaption that takes national circumstances in consideration. Regulations can be applied with direct effect in the member states and entail direct rights and obligations on the part of citizens in the individual EU countries	Quantitative
New or partly amending legislation	Whether the legislative act under discussion in the WG is new or partly amending may affect WG negotiations as it potentially is more difficult to reach agreement about new legislation e.g. if it implies regulation on issues that earlier were national concerns.	Quantitative
Political implications	Working groups might distinguish between political and non political issues and legislative acts, and thus send legislative acts on for discussion in Coreper and the Council because they are political ^b	Qualitative
Public attention	Publicity and media attention may influence WG negotiations and put more pressure on the negotiators and therefore prompt that legislative acts are sent on for discussion in the higher levels in the Council	Qualitative
General secretariat	The General Secretariat of the Council and its effort in smoothing and informing the decision making process may affect WG negotiations and whether agreement can be reached at this level. Possibly the General Secretariat plays different roles in the different working groups. For example it is not unlikely that the expertise of the General Secretariat is more crucial within technically complex policy areas.	Qualitative
Symbolic policy	According to previous literature, legislative acts are sometimes discussed as B-points in the Council of Ministers for other reasons than negotiation lock. Such items are described internally as false B points. This is to give the public impression as a B-point that ministers are actively debating it because of its importance etc. when in fact it could have been treated as an A-point because negotiation and compromise have already taken place in Coreper and the working groups. ^c Symbolic policy may in other words affect whether or not legislative acts are sent on to the higher levels of the Council's hierarchy	Qualitative

Control variable	Explanation	Quantitative/ qualitative study
Involvement by ambassador or minister	As we have limited knowledge about how the interaction between the national representatives, their ambassadors and their ministers function we do not know whether the ambassadors or the ministers may involve themselves in the negotiations in the working groups. Does it e.g. happen that the working groups send legislative acts on for discussion at the higher levels in the Council's hierarchy because the ambassadors and the ministers demand it? In other words do the ambassadors in Coreper and the ministers in the Council have an influence on WG decision making?	Qualitative
a. WG = working groups b. Although earlier studies have shown that the distinction between what is and is not political is not that straightforward, it is important to rule out that this distinction is the underlying explanation of the decision making process in the working groups. c. Lewis (2002: 288).		

Chapter 5

Quantitative Analysis

5.1. Introduction

In this chapter I will present and discuss the results of the quantitative analysis. Section 5.2 addresses the relative role of the Council working groups. How often do they solve negotiations on the legislative acts without involvement of the higher levels in the Council's hierarchy? Do the working groups act alone in the majority of cases as claimed in previous literature? I then move on to the question of what explains possible variations in the relative amount of decision making taking place in the Council working groups. I will address the hypotheses one by one. First I will look closer at whether there are clear differences between policy areas in the extent to which working groups ask Coreper and/or the Council of Ministers to solve outstanding issues (section 5.3). In section 5.4, I will address whether issue-specific factors, e.g. the extent to which actors in the decision making process have conflicting interests and the acts technical complexity, cause variations in how the acts are dealt with in the Council. Finally, I will analyse whether the institutional setting, more specifically the presidency, may impinge on whether discussions on the legislative acts are finalised at working group level or sent on for discussion at the higher levels of the Council's hierarchy (section 5.5).

5.2. How much do the Council working groups actually decide?

As accounted for earlier, literature about the decision making process in the Council of Ministers offers diverging estimates about the relative role of the Council working groups. The majority of researchers estimate that the working groups solve 65-90 pct. of the legislative acts at their level (Van Schendelen 1996, Andersen & Rasmussen 1998, Gomez & Petersons 2001, Hayes-Renshaw, Van Aken & Wallace 2006). Hayes-Renshaw, Van Aken and Wallace found in their study from 2006 that 65 pct. of the legislative acts included in their study were adopted as A-points without discussion in the Council of Ministers (Hayes-Renshaw, Van Aken & Wallace: 2006: 183). However, Häge, who has conducted the most exhaustive study of Council decision making to date, reached a different conclusion (Häge 2007a,

2007b, 2008a, 2008b). In his PhD thesis on Council decision making, he found that a B-point discussion in the Council of Ministers took place in more than 60 pct. of all legislative decision making cases included in his study. This result clearly differs from what earlier studies found. The diverging results when it comes to Council decision making, comprising the insights about the relative amount of decision making that takes place at the different levels in the Council, emphasize the importance of this study. What is more, former studies of Council decision making have primarily focused on the role of the ministers in the Council and not on the lowest level in the Council's hierarchy: the Council working groups. To my knowledge the question of the relative decision making that takes place in the Council working groups has only been studied in a cross sector statistical study once (Häge 2008a). However, as Häge's study only covers one year and as he does not analyse potential variations in the extent to which working groups reach agreement at their level, research on working group decision making is still needed. In this section I will present the results of the quantitative study and offer new insights about the relative amount of decision making that takes place in the working groups.

As outlined in Chapter 4 the decision making process in the Council working groups, and whether or not they send legislative acts on for a II/B-point discussion at the higher levels of the Council's hierarchy, has been measured by observing whether the working groups invite Coreper and/or the Council of Ministers to solve outstanding issues. These are typically issues that the working groups are not able to solve at their level and which therefore require a II/B-point debate at the higher levels of the Council. As accounted for in the previous chapter, the working groups' involvement or non-involvement of Coreper has been examined via a review of all meeting documents that the working groups send on to Coreper. The meeting documents show whether or not a working group wants Coreper to discuss an outstanding issue. The involvement or non-involvement of the Council of Ministers was observed through Prelex where it appears whether the legislative cases were discussed as A- or B-points in the Council of Ministers.

My analysis shows that the working groups ask Coreper to discuss outstanding issues in over half of the cases included in my study (see Table 5.1), which is more than anticipated in earlier studies on Council decision making. For example Hayes-Renshaw and Wallace estimated that around 70 pct. of the legislative acts are solved at working group level (1997: 40). Whether the result of the thesis is representative of how the decision making process in the Council works in general or whether the pattern is specific to the selected period (2005-2009), the selected decision making procedures (con-

sultation and co-decision) or the selected type of acts (regulations and directives), is difficult to say. Although the selected acts are the most typical types of EU legislative acts adopted by the most typical decision making procedures within a relatively long period, I cannot rule out that the pattern would be different if I for example had focused on legislative cases where the Council acts alone or on legislative cases adopted within a different period. Note also that the result of the analysis of the amount of decision making taking place in Council working groups fits relatively well with the results of Häge's study from 2008, which showed that 35 pct. of the legislative decisions included in the study were taken by the ministers themselves, 22 pct. by Coreper and 43 pct. by the Council working groups. In addition Häge found that 48 pct. of the legislative acts were discussed by the ministers at some point in the decision making process, 21 pct. were discussed by Coreper and working groups and 31 pct. were discussed only at working group level (Häge 2008a: 554).

Table 5.1: Number of cases where the working groups reach agreements versus cases where the working groups asks Coreper to discuss outstanding issues (II-point)

Year of adaption	Working group agreement*	II-point discussion in Coreper**	Total
2005	39.4% (13)	60.6% (20)	100% (33)
2006	34.8% (23)	65.2% (43)	100% (66)
2007	32.4% (11)	67.6% (23)	100% (34)
2008	42.3% (22)	57.7% (30)	100% (52)
2009	50.8% (33)	49.2% (32)	100% (65)
Total	40.8% (102)	59.2% (148)	100% (250***)

* The variable 'Working group agreement' covers legislative decision making cases where a working group finalises negotiations at their level without a II/B-point discussion at the higher levels of the Council of Ministers

** The variable 'II-point discussion in Coreper' comprises legislative cases where Coreper was invited by a working group to have a II-point discussion at least one time during the decision making process.

***Missing values: 9 (3.5%) (In 9 of the cases it was not possible to observe how the legislative acts were handled internally in the Council, including whether or not the working groups invited Coreper to discuss outstanding issues. I have examined these 9 legislative acts more thoroughly and they seem to have little in common. They are distributed along different policy areas, periods, legislative procedures, types of acts and so on.).

As Table 5.1 shows, the Council working group sent legislative acts on for a II-point discussion in Coreper in 59.2 pct. of the cases. Furthermore the table shows that the number of legislative acts adopted within the different time periods varies to some extent. In 2006 and in 2009 66 and 65 legislative acts

were adopted, compared to only 33 and 34 acts in 2005 and 2007. The exact reasons behind these variations are difficult to point out. However the high number of adopted acts in 2009 may be due to the election to the European Parliament, June 2009, and the appointment of a new Commission in the same year. The level of activity in the EU often increases before such events as both the European Parliament and the Commission usually strives to finalise negotiations on certain legislative acts before they step down. With regard to the question of whether or not time causes variation in the extent of working group decision making, the pattern seems to be relatively stable over time. A II-point discussion in Coreper was necessary in between 49 to 65 pct. of the legislative cases within the 5 adaption years included in the study.

Whether or not the working groups invite Coreper to address outstanding issues in the decision making process does not necessarily say much about the relative amount of decision making that takes place in the Council working groups. This is because we do not know the political weight of the issues sent on to Coreper as II-points. Nor do we know whether it was just one or more questions the working groups wanted Coreper to solve. In other words, the measurement of this variable has its limitations. Nevertheless, it is clear that the working groups did not act alone in over half of the cases and involved Coreper to some extent.

To be able to say more about the relative amount of decision making that takes place in the Council working groups I have also observed the number of times that the Council working groups asked Coreper to solve outstanding issues. More specifically, I have observed how many times the individual legislative act figured as II-points on Coreper's agenda. As Table 5.2 shows, the Council working groups invited Coreper to solve outstanding questions only one time in the majority of cases (29.6 pct.). That being said, it seems that the acts move back and forth between the working groups and Coreper relatively often. In fact the acts move back and forth between the two levels in 29.6 pct. of the cases. As mentioned in the literature review, previous literature on the Council decision making has already shed light this decision making practice (Andersen & Rasmussen 1998; Westlake and Galloway 2006). Westlake and Galloway described that Coreper and the working groups send proposals back and forth to each other to clear some problems, identify solutions, and thus little by little work out an agreement between the member states (Westlake and Galloway 2006: 208). With the current study, this decision making procedure has been shown empirically.

I have not only observed whether, and how many times, the legislative acts were discussed at Coreper level, but also whether, and how many

times, the acts were discussed as B-points at the level of the Council of Ministers. As it appears from Table 5.2 over half of the legislative cases included in the study were discussed as a B-point by the Council of Ministers at some point during the decision making process. The majority of these cases were discussed as B-points by the ministers once or twice, but 11 pct. were discussed as a B-point by the Council of Ministers more than twice.

Table 5.2: Number of times the legislative acts were Il-points on Coreper's agenda and B-points on the Council of Ministers' agenda

	Il-points*	B-points**
0	40.8% (102)	47.1% (122)
1	29.6% (74)	17.8% (46)
2	(15.2%) 38	23.6% (61)
3	7.6% (19)	5.8% (15)
4	2.8% (7)	1.5% (4)
5	1.6% (4)	1.2% (3)
6	2.4% (6)	0.8% (2)
7		0.8% (2)
13		0.8% (2)
Total	100% (250***)	100% (259)

*The variable covers how many times the selected legislative cases were sent on by the working groups for a Il-point discussion in Coreper.

** The variable covers how many times the selected legislative cases were sent on for a B-point discussion in the Council of Ministers.

*** Missing values: 9 (3.5%).

The fact that I observed not only whether the legislative acts were discussed at Coreper level, but also whether they were also discussed as B-points at the level of the Council of Ministers enables me to observe the decision making process in the Council as a whole and the relative role of each level of the Councils hierarchy. In Table 5.3 follows an overview of whether the legislative cases were handled only by a working group, by a working group and Coreper or by a working group, Coreper and by the ministers in the Council. As we can see, some acts are put on the Council's agenda without being discussed by the ambassadors in Coreper. They are possible so called false B-points, which are acts that are put as B-points on the Council's agenda for symbolic reasons. As mentioned, false B-points are items on the Council's agenda that could have been treated as A-points as negotiation and compromise have already taken place in the working group or Coreper (Zwaan 1995; Van Schendelen 1996; Westlake & Galloway 2008). The reason these

acts are treated as B-points instead of A-points can be that the politicians want political focus on a legislative act and give the public the impression that there was a political debate about it (Westlake & Galloway: 2008: 38).

Table 5.3: Levels at which the legislative acts were discussed in the Council hierarchy

Council decision making:	Frequency	Per cent
Discussion only at working group level*	83	33.2
Discussion by working group and Coreper (II-point)**	33	13.2
Discussion at all levels in Council hierarchy (II-point and B-Point)	115	46
Discussion at working group and ministers level without discussion by Coreper (B-point)***	19	7.6
Total	250****	100

*Number of legislative cases where negotiations were finalised at working group level without II/B-point discussions at the higher levels of the Council's hierarchy.

**Number of legislative cases where negotiations took place in the working groups and in Coreper (II-point) without a B-point discussion in the Council of Ministers.

***Number of legislative cases discussed in the working group and the Council of Ministers (B-point) without a II-point discussion in Coreper

****Missing values: 9 (3.5%).

Table 5.3 shows that the legislative cases are handled by all levels in the Council in 46 pct. of the cases included in the study. Furthermore, a B-point discussion in the Council of Ministers took place at some point during the decision making process in 53.6 pct. of the cases (134 cases). This corresponds relatively well to Frank Häge's finding that the ministers discussed or made a decision in more than 60 pct. of his cases (Häge 2008: 92).

Discussion at Coreper level without discussion at the level of the ministers happens relatively seldom, as this took place in only 13.2 pct. of the cases. The majority of the legislative cases that are not discussed by the ministers in the Council of Ministers are in other words most frequently discussed solely by the working groups (33.2 pct.). In sum this means that the Council working groups act alone without a substantial debate at the higher levels of the Council's hierarchy in 33.2 pct. of the cases. Put differently, 33.2 pct. of the decisions taken by the Council in the selected period were taken by the Council working groups. This result demonstrates that the working groups are without doubt a crucial decision making arena in the EU and stresses the importance of the study.

The following section examines whether there is a pattern in terms of which type of legislative cases are handled at the different levels of the Council's hierarchy. Which types of legislative acts are usually finalised at working group level and which types are discussed at the higher levels of the

Council of Ministers? I will analyse the effect of the independent variables by focusing on whether negotiations were finalised at working group level or sent on to the higher levels of the Council's hierarchy. Focusing only on whether Coreper was involved might give a misleading picture of the relative amount of decision making that takes place in the working groups. As Table 5.3 showed, acts are sometimes sent on from the working groups to the Council of Ministers without discussion at Coreper level. In other words, the working groups sometimes involve the higher levels in the Council without involving Coreper. This means that my dependent variable is dichotomous: Working group agreement / II/B-point discussion at the higher levels of the Council hierarchy. Below follows the frequency table of the main dependent variable.

Table 5.4: Number of legislative cases where the Council working groups reached agreement versus cases where a II/B-point discussion at the higher levels of the Council was necessary

	Frequency (per cent)
Working group agreement*	33.2 (83)
II/B-point discussion in Coreper/Council **	66.8 (167)
Total	100.0 (250***)

*The variable conceals legislative cases where negotiations were finalised at working group level and where a II/B-point discussion at the higher levels of the Council was not necessary.

**The variable contains cases where a II/B-point discussion was necessary in Coreper and/or the Council of Ministers.

***Missing values: 9 (3.5%).

5.3. The working group-specific variables

The previous section showed that the working groups send legislative acts on for discussion in the higher levels of the Council's hierarchy in over half of the cases. I will now examine whether this pattern varies across working groups. Do some working groups send legislative acts on for debate at the higher levels of the Council more often than others – and if so, is there a pattern? First I will look more closely at whether there are some clear differences in working group decision making across policy areas, and I will then discuss what might lie behind the results. If there are clear variations in the role of the working groups across policy areas, it is relevant to discuss what causes them.

5.3.1. Does the extent of working group decision making vary across policy areas?

The first hypothesis stated that the extent to which working groups finalise negotiations at their level or send legislative acts on for II/B-point discussions at the higher levels of the Council's hierarchy is likely to vary across policy areas. The rationale behind the hypothesis is that the general scope of the EU legislation and the EU's competences vis-à-vis the member states vary across policy areas. In some policy areas, EU has extensive competences and the legislation in these policy areas may have fundamental political, economic and administrative implications for the member states. Secondly, the technical complexity of the legislation varies in the different policy areas. Thirdly, the interest configurations among the actors affected by EU legislation vary between the different policy areas. All in all, this leads to the expectation that the extent of working group decision making vary across policy areas.

As explained in the previous chapter, the policy area variable was observed via three indicators. First, I registered which Council of Ministers that adopted the acts. Secondly, I observed which Directorate General (DG) in the Commission that formulated the legislative proposal. Both indicators were observed through Prelex. The third and final indicator of policy area is which working group that dealt with the selected legislative cases and under which Council configuration the working group is placed organisationally. The organisational placement of the working groups appears from the Council's list over preparatory bodies³³ (see appendix E for the most recent list of the preparatory bodies of the Council of the European Union). Below I will present the results of the analysis of the potential variations in Council decision making within different policy areas.

Table 5.5 shows the analysis of how the legislative cases were dealt with within the different policy areas. In the table I have applied the organisational placement of the working group that handled the legislative acts as an indicator of policy area. The analysis clearly shows that there is some variation between policy areas with regard to whether negotiations on the legislative acts were finalised at working group level or sent on for a II/B-point discussion in Coreper and/or Council of Ministers. For example, the working groups in General Affairs finalise negotiations at their level in 80,6 pct. of the cases. In Transport, Telecommunication and Energy the pattern is totally different as the working groups reach agreement without II/B-point

³³ <http://register.consilium.europa.eu/pdf/en/10/st12/st12319.en10.pdf>

discussion in Coreper/Council in only 10.4 pct. of the cases. In other words, almost 90 pct. of the acts in Transport, Telecommunication and Energy were sent on for a II/B-point discussion at the higher levels of the Council's hierarchy at some point in the decision making process. In the same way, legislative acts in Environment are sent on for a II/B-point discussion in Coreper and/or the Council of Ministers in 82.2 pct. of cases.

Table 5.5: Variations between policy areas in the extent to which working group reach agreement or send acts on for II/B-point discussions at the higher levels of the Council. (Indicator: organisational placement of the working group)

Policy area	Working group agreement	II/B-point discussion in Coreper/Council	Total
General Affairs	80.6% (25)	19.4% (6)	100% (31)
Justice and Home Affairs	25.0% (5)	75.0% (15)	100% (20)
Agriculture and Fisheries	40.8% (20)	59.2% (29)	100% (49)
Competitiveness (Internal Market, Industry, Research)	35.5% (11)	64.5% (20)	100% (31)
Transport/Telecommunications/Energy	10.4% (5)	89.6% (43)	100% (48)
Employment/Social Policy/Health and Consumer Affairs	14.3% (3)	85.7% (18)	100% (21)
Environment	17.2% (5)	82.8% (24)	100% (29)
Others*	42.9% (9)	57.1% (12)	100% (21)
Total	33.2% (83)	66.8% (167)	100% (250)

*Due to low N it was necessary to pool some of the cases in the category 'others'. The variable includes: External Relations/Security and Defence/Development (1 act), Economic and Financial Affairs (15 acts), Foreign affairs (3 acts) and missing (4 acts). (In four of the cases it was not possible to observe which working group handled the legislative act. Since it nonetheless was possible to observe how these acts were handled internally in the Council, I chose to leave it in the table).

**Missing values: 9 (3.5%).

Gamma: 0,479 (Sig: .000).

Investigating the second indicator of policy area, namely which Council that adopted the legislative act, gives another impression of the differences between policy areas in terms of whether, and to what extent, the working groups send legislative acts on for discussion at the higher levels of the Council's hierarchy. Table 5.6 shows 68.8 pct. of the acts adopted by the Employment, Social Policy, Health Council were finalised at working group level. This differs a lot from the result in Table 5.5 where only 14.3 pct. of the legislative cases in Employment, Social Policy, Health Council were concluded in the working groups.

Table 5.6: Variations between policy areas in the extent to which working groups reach agreement or send acts on for II/B-point discussions at the higher levels of the Council.
(Indicator: the Council configuration that adopted the acts)

Council configuration :	Working group agreement	II/B-point discussion in Coreper/Council	Total
General Affairs	36.8% (7)	63.2% (12)	100% (19)
Justice and Home Affairs	20.0% (5)	80.0% (20)	100% (25)
Agriculture and Fisheries	37.6% (32)	62.4% (53)	100% (85)
Competitiveness (internal market, industry, research and space)	24.0% (6)	76.0% (19)	100% (25)
Transport, Telecommunications and Energy	21.2% (7)	78.8% (26)	100% (33)
Employment, Social Policy, Health and Consumer Affairs	68.8% (11)	31.3% (5)	100% (10)
Environment	20.0% (5)	80.0% (20)	100% (25)
Others*	45.5% (10)	54.5% (12)	100% (22)
Total	33.2% (83)	66.8% (167)	100% (250**)

*Due to low N I pooled some of the cases in the category 'others'. The variable includes: Economic and Financial Affairs (16 acts) & Education, youth, culture and sport (6 acts).

**Missing values: 9 (3.5%).

The variation in the results of the two indicators is also striking when we focus on General Affairs. Applying the organisational placement of the working group as indicator shows that only 19.4 pct. of the legislative cases are sent on for a II/B-point debate in Coreper/Council. According to the second indicator of policy area (the Council configuration that adopted the act) 63.2 pct. of the legislative cases in General Affairs were sent on for discussion in Coreper and/or the Council of Ministers.

The question is what causes these variations? To get a full overview of the extent of the variations, I registered in how many cases the two indicators are dissimilar. This study showed that the organisational placement of the working group that handled the legislative act and the Council configuration that adopted the final legislative act differ in 62 pct. of the cases. This is a surprising result and raises the question why it is not the same Council configurations that handle the legislative cases in the working groups that finally adopt the acts and the question is which indicator is most reliable?

To gain more insights about the underlying reasons behind the diverging results of the two indicators, I looked closer at 20 acts where it was not the same Council configuration that finally adopted the legislative acts that dealt with the acts in the working group. This study showed that the two indicators only varied when the acts were finally adopted as an A-point. A closer

inspection of which Council of Ministers adopts the legislative acts revealed that the legislative acts adopted by the Council of Ministers are not necessarily adopted by the ministers whose portfolio includes the policy area of the specific acts if the acts are A-points. In comparison, the close study of the variable showed that when the acts were B-points on the agenda of the Council of Ministers it was the 'right' Council that handled the acts. In conclusion, observing which Council configuration adopted the legislative acts can be a misleading indicator of policy area as acts adopted as A-points not necessarily are adopted by the ministers whose portfolio includes the policy area of the specific acts. This finding is highly relevant for future researchers. In the context of the thesis, I will argue that the organisational placement of the working group that handled the act is the most credible measurement indicator of policy area. If this indicator additionally corresponds well to the third indicator of policy area, the DG in the Commission that formulated the policy proposal, I can conclude that I have two highly reliable measurements of policy area.

In Table 5.7 I analyse the third indicator of policy area, the Directorates-General in the Commission that formulated the policy proposals. As mentioned, the Commission and the Council of Ministers are organised quite differently. The Council is organised in ten Council configurations, the Commission is organised in 44 Directorates-General, which are divided into four groups: Policy DGs, External relations DGs, General Service DGs and Internal Service DGs.

A closer look at the results from Table 5.7 shows that the pattern is relatively similar when we apply the organisational placement of the working group that handled the legislative act and the DG that formulated the policy proposal as indicators of policy area. Both indicators show that the legislative acts in General Affairs³⁴ in most cases are clarified at working group level without discussion at the higher levels of the Council's hierarchy. Similarly, the two indicators clearly show that acts both within the policy areas of Employment, Social Policy, Health and Consumer Affairs, Environment and Transport are sent on for a II/B-point discussion in Coreper and/or Council in around 80 pct. of the cases.

³⁴ The Council configuration General Affairs does not correspond entirely to General Services in the Commission. However the two configurations cover many of the same policy areas (Statistics, Eurostat etc).

Table 5.7: Variations between policy areas in the extent to which working groups reach agreement or send acts on for II/B-point discussions at the higher levels of the Council.
(Indicator: The DG in the Commission that formulated the policy proposal)

DG in the Commission*:	Working group agreement	II/B-point discussion in Coreper/Council	Total
Statistical office/Eurostat/ Secretariat General	81.5% (22)	18.5% (5)	100% (27)
Justice, Freedom and Security	33.3% (6)	66.7% (12)	100% (18)
Agriculture and Rural Development/ Fisheries/Maritime Affairs and Fisheries	39.3% (11)	60.7% (17)	100% (28)
Internal Market and Services/ Research/Taxation and Customs Union	16.7% (4)	83.3% (20)	100% (24)
Enterprise and Industry	40.0% (10)	60.0% (15)	100% (25)
Employment, Social Affairs and Equal Opportunities/Health and Consumers	13.8% (4)	86.2% (25)	100% (29)
Energy and Transport	9.0% (4)	91.0% (40)	100% (44)
Environment	11.5% (3)	88.5% (23)	100% (26)
Others**	70.4% (19)	29.6% (8)	100% (29)
Total	33.2% (83)	66.8% (167)	100% (250***)

* Many of the DGs are grouped due to the low N. The DGs are organised to make the results as comparable as possible with the Council configurations.

** The category 'others' includes DG Information Society and Media (4 cases), DG Development (3 cases), DG External Relations (4 cases), DG Trade (2 cases), DG Legal Service (14 cases).

*** Missing values: 9 (3.5%).

In sum, the decision making process in the Council, including the relative role of the Council working groups, seems to vary across policy areas. In some policy areas, e.g. General Affairs, a large share of legislative cases are finalised at working group level without real discussion in Coreper and Council of Ministers. In other policy areas such as Transport, Environment, Social Policy a II/B-point discussion in Coreper and/or the Council of Ministers takes place in the majority of cases. I also looked closer at variations between policy areas with regard to how many times Coreper was asked to discuss outstanding issues (see Appendix E) and found that acts are II-points on Coreper's agenda more than one time more frequently in Transport, Environment and Social Policy. In Environment the acts were discussed as a II-point on Coreper's agenda more than one time in 60 pct. of the cases. The General Affairs acts were discussed as a II-point in Coreper more than one time in only 12 pct. of the cases. The question is what causes these variations in the decision

making process within the different configurations of the Council? I suggest that the variations arise because the extent of EU cooperation varies across policy areas and because EU legislation has more far reaching implications in some policy areas than others. Put differently, there is more at stake for the member states in some policy areas. Furthermore I suggest that the variations in working group decision making may be caused by the varying level of technical complexity of the legislation in the different policy areas and by the varying interest configurations of the actors affected by the legislation. A closer look at some of the policy areas where the working groups often send legislative acts on for II/B-point discussions at the higher levels of the Council shows, among other things, that the majority of the legislative acts in Environment, Transport and Energy required a debate at Coreper/Council level. In these policy areas the EU has extensive competences and this may explain why a Coreper/Council discussion was necessary in so many cases. However, in other policy areas such as Employment, Social Policy, Health and Consumer Affairs where the EU has more limited competences, the working group sent legislative acts on for Coreper/Council discussion in the majority of cases as well. This reduces the confidence in the explanation that the varying scope of EU competences in the different policy areas causes the variations in working group decision making. The two policy areas where working group decision is most extensive are General Affairs and Agriculture and Fisheries. The fact that working group decision making without involvement of the higher levels of the Council is so extensive in Agriculture and Fisheries is surprising as EU has far reaching competence in these policy areas and as the member states cannot exercise competence in areas where the Union has done so. The reason why so much decision making takes place at working group level in these policy areas after all might be long and established traditions for EU cooperation. Agricultural and Fisheries are two of the oldest policies of the European Community and the actors involved in the decision making process know the policies and each other's positions very well. Most cases in General Affairs concern Statistics and the explanation behind the high rate of working group decision making within this field might be that statistics is very technically complex and that ambassadors in Coreper and the ministers in the Council possibly lacks the technical expertise to negotiate on these legislative acts. In Chapter 6, which presents the qualitative study, I investigate and discuss possible explanations for the patterns found in the quantitative study. For now, I conclude that the quantitative study increases our confidence in the validity of hypothesis 1:

The extent of decision making taking place in Council working groups varies across policy areas.

5.4. The issue-specific variables

I have argued that negotiations in the Council of the European Union depend on the legislative act on the table. Some legislative acts have more extensive implications for the member states than others and the member states may have more or less conflicting interests about the EU legislation. In this section I present the results of my study of whether factors related to the individual acts seem to cause variations in the decision making process in the Council, including the extent of decision making taking place in the Council working groups.

5.4.1. Does the extent of working group decision making vary according to the level of conflict?

In Chapter 3 (theoretical framework) I proposed that the level of disagreement between the member states and between the institutions involved in the decision making process impinges on the negotiations in the Council working groups. The justification behind the hypothesis is that the more diverging the interests of the member states are the harder it is to find a compromise at a early stage of the decision making process. Previous literature has shown that there are clear lines of conflict between the member states of the European Union and they are particularly apparent in questions on the level of integration and regulation in the EU, and economic and distributive questions. Furthermore, researchers have found that these lines of conflict affect the negotiations and voting patterns in the Council of Ministers (Beyers & Dierickx 1997; Hooghe & Marks 1997; Golub 1999; Elgström & Jönsson 2000; Mattila 2004; Mattila & Lane 2001; Thomson, Boerefijn & Stockmann 2004; Zimmer, Schneider & Dobbins 2005; Hayes-Renshaw, Van Aken & Wallace 2006; Aspinwall 2007; Naurin 2007a; Heisenberg 2007; Tallberg & Johansson 2008; Hosli, Mattila & Uriot 2008; Mattila 2008; Hagemann 2008; Niemann 2008; Naurin & Lindahl 2008; Miklin 2009). I argued in Chapter 3 that the member state representatives in the working groups not only have to reach agreement with each other but also that they have to take the position of both the Commission and the European Parliament into account when negotiating about the EU legislation. The Commission is an active participant in the working groups and can amongst other things indicate whether the Commission can accept the policy proposals discussed in the working

groups. Although the European Parliament does not participate directly in the working groups, the Council has to reach agreement with the Parliament in the so called trilogues. The working groups therefore have to bear the position of both the European Parliament and the Commission in mind when they negotiate. If the positions of the three institutions are conflicting, it will all else being equal be difficult to find a common solution at an early stage of the decision making process.

In Chapter 4 I argued that the level of conflict between the member states and the institutions involved in the decision making process can be measured by applying four indicators: number of amendments proposed by the European Parliament, the Commission's reaction to these amendments, whether the Commission formulated a revised legislative proposal and the length of the decision making process. Below I will discuss these indicators one by one.

Before the analysis of the indicators of the level of conflict, one factor needs to be addressed. When we focus on the role of the European Parliament, the underlying premise is that negotiations in the Council will be affected by which decision making procedure the legislative acts were adopted. Was it co-decision where the European Parliament and the Council have to reach agreement and where the Council and the Commission have to take the amendments of the Parliament into account? Or was it consultation where the Council is free to adopt or not to adopt the EP's amendments? Table 5.8 shows whether the decision making procedure seems affect the decision making process in the Council and whether agreement is reached in the working groups. Judged from the table, the share of legislative acts sent as II/B-points to Coreper and/or the Council of Ministers is the same under the two procedures. In other words, negotiations on the acts are solved at the working group level in around 30 pct. of the cases regardless of whether the acts were adopted by co-decision or consultation. Häge found the opposite result in his study from 2008. His analysis showed that the attempts of the Council and the European Parliament to reach agreement had a negative effect on the working groups and Coreper's opportunities to reach agreement at their level (Häge 2008: 106). In the present thesis it must be concluded, based on Table 5.8, that the analysis does not increase our trust in the validity of the third hypothesis:

The working groups are more likely to reach agreement at their level under the consultation procedure compared to the co-decision procedure.

Table 5.8: Number of cases where the working groups reach agreements versus cases where the working groups ask Coreper to discuss outstanding issues (II-point) under different inter institutional decision making procedures

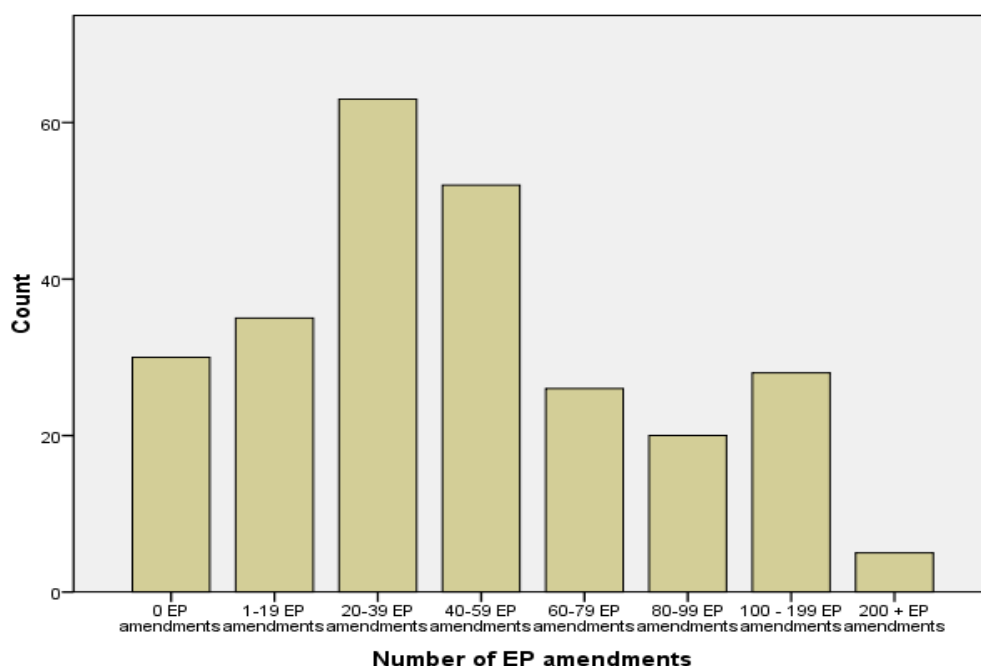
	Working group agreement	II/B-point discussion in Coreper/Council	Total
Consultation	28.8% (15)	71.2% (37)	100.0% (52)
Codecision	34.3% (68)	65.7% (130)	100.0% (198)
Total	33.2% (83)	66.8% (167)	100.0% (250*)

*Missing values: 9 (3.5%).

Gamma: -.114 (Sig: 0.453).

I will now look closer at the effect of the different indicators of the level of conflict on the extent of working group decision making. The first indicator is the number of amendments proposed by the European Parliament at the first reading, which say something about the extent to which the Parliament agrees with the Commission's original proposal. If the European Parliament formulates no or a few amendments this indicates that a low level of conflict.

Figure 5.1: Number of EP amendments proposed



On the contrary if the Parliament formulates a large number of amendments this indicates a high level of conflict. In turn I expect a high level of conflict to complicate working group negotiations and make a working group agreement without II/B-point discussion at the higher levels of the Council less likely. Figure 5.1 shows the distribution of the legislative cases according to the number of EP amendments. Most legislative proposals resulted in 20 to

59 EP amendments, but the figure also shows a clear variation between the cases.

Moving on to the question of whether the number of amendments proposed by the European Parliament causes variations in the extent of decision making taking place in Council working groups, the answer seems to be yes. According to table 5.9, discussion at the higher levels of the Council's hierarchy takes place more frequently the more amendments are proposed by the European Parliament. 85.7 pct. of the legislative acts without EP amendments were solved at working group level. 95 pct. of the acts that implied 80-99 amendments from the European Parliament were discussed at the higher levels of the Council's hierarchy. In other words, the more amendments proposed by the European Parliament the more often working groups sends legislative acts on for debate at the higher levels of the Council's hierarchy.

Another indicator of the level of conflicting interests among the member states and institutions of the European Union is the Commission's reaction to EP amendments. Whether the Commission agrees fully, partly, or not at all with the amendments says something about the level of conflict between the institutions as well as the member states.³⁵ I expect that the more disagreement there is between the Parliament and the Commission, the higher the level of conflict. A high level of conflict complicates negotiations in the working groups and makes them more likely to send legislative acts on for a II/B-point discussion in Coreper and/or the Council of Ministers.

Table 5.9: The extent to which working groups reach agreement or send legislative acts on for II/B-point discussion at the higher levels of the Council under differing levels of conflict (Indicator: number of EP amendments)

Number of EP amendments:	Working group agreement	II/B-point discussion in Coreper/Council	Total
0	85.7% (24)	14.3% (4)	100% (28)
1-19	57.6% (19)	42.4% (14)	100% (33)
20-39	30.6% (19)	69.4% (43)	100% (62)
40-59	18.0 % (9)	82.0% (41)	100% (50)
60-79	16.0 % (4)	84.0% (21)	100% (25)
80-99	5.0 % (1)	95.0% (19)	100% (20)
100+	21.9% (7)	78.1% (25)	100% (32)
Total	33.2% (83)	66.8% (167)	100% (250)

Missing values: 9 (3.5%).

Gamma: 0.475 (Sig, 0.000).

³⁵ The Commission's reaction to EP amendments can be observed through Prelex.

Table 5.10 shows that 87 pct. of the acts where the Commission reacted to the EP amendments with no or partial agreement, were discussed at the higher levels of the Council hierarchy. In other words the level of conflict between the member states and the institutions of the EU clearly seems to affect at which level decisions are made in the Council. However the result is not unequivocal. The reason is that the majority of the cases (57.5 pct.) where the Commission agreed with the amendments from the European Parliament, and where the level of inter-institutional conflict is low, were discussed at the higher levels of the Council's hierarchy. When there are no EP amendments, which indicates a very low level of conflict, a working group decision takes place in 80 pct. of the cases. More importantly, 87.9 pct. of the legislative cases where the Commission did not agree, or agreed only partially with the EP amendments were sent on for a II/B-point discussion at the higher levels of the Council's hierarchy. In sum, the level of conflict between the member states and the institutions of the EU, measured by the Commission's reaction to EP amendments, seems to cause the expected variations in the extent of decision making taking place in the Council working groups.

Table 5.10: The extent to which working groups reach agreement or send legislative acts on for II/B-point discussion at the higher levels of the Council under differing levels of conflict (Indicator: Commission's reaction to EP amendments):

	Working group agreement	II/B-point discussion in Coreper/Council	Total
No EP amendments	85.7% (24)	14.3% (4)	100% (28)
Agreement	42.5% (45)	57.5% (61)	100% (106)
No*/Partial agreement	12.1% (14)	87.9% (102)	100% (116)
Total	33.2% (83)	66.8% (167)	100% (250)

Missing values: 9 (3.5%).

*In four legislative cases the Commission reacted with *no agreement*. Two were solved at working group level and the other two were sent on for a II/B-point discussion in Coreper and/or Council
Gamma: 0.596 (Sig: 0.000).

It is relevant to question whether the Commission's reaction to the EP amendments varies according to the inter-institutional decision making procedure. But first, it should be made clear that the Commission does respond to the proposed amendments from the European Parliament regardless of decision making procedure. However, Table 5.11 shows that the Commission reacts quite differently to EP amendments depending on whether the acts were adopted by the co-decision or the consultation procedure. More specifically, the Commission seems to agree far more frequently under the

co-decision procedure: the Commission agrees in 52 pct. of the cases under co-decision, but only in 9 pct. of cases adopted by consultation.³⁶

Table 5.11. Commission's reaction to EP amendments under different decision making procedures

Decision making procedure	Commission's reaction to EP amendments			
	No EP amendments	Agreement	No/Partial agreement	Total
Consultation	14.8% (8)	9.3% (5)	75.9% (41)	100% (54)
Codecision	10.7% (22)	52.2% (107)	37.1% (76)	100% (205)
Total	11.6% (30)	43.2% (112)	45.2% (117)	100% (259)

The variation in the Commission's reaction to EP amendments makes it relevant to question whether the effect of conflict on council working group negotiations is dependent on decision making procedure. Table 5.12 lists the effect of the Commission's reaction to the EP amendments on working group decision making under the two procedures. Working groups more often send legislative acts on for II/B-point discussion when the level of conflict is high (Commission does not agree or agrees partially with the EP amendments) and when the acts are adopted by co-decision compared to when the acts are adopted by consultation. The fact that working groups more often send legislative acts on for II/B-point discussion at the higher levels of the Council is relatively clear under both decision making procedures. 80 pct. of the acts adopted by consultation, where the Commission reacted with no or partial agreement, were discussed as II/B-points at Coreper and/or the Councils of Ministers level. This variation caused by the conflict indicator is even stronger when we focus exclusively on the legislative cases adopted by co-decision. 92.1 pct. of the cases where the Commission reacted with no or partial agreement to the EP amendments, were discussed as II/B-points at Coreper and/or the Council of Ministers level.

The third indicator of member state and inter-institutional conflict is whether the Commission formulates a new and revised policy proposal during the decision making process. According to Table 5.13, the Commission only formulated a revised proposal in 36 of the cases. 94.4 pct. of the cases where the Commission formulated a new policy proposal were discussed at the higher levels of the Council's hierarchy. In other words, the level of conflict, measured by whether or not the Commission formulates a new policy proposal, seems to cause the expected variation in whether acts are sent on

³⁶ These results however have to be taken with a slight reservation due to the low N in some of the groups.

from the working groups for further discussion at the higher levels of the Council hierarchy.

Table 5.12. The effect of the Commission's reaction to EP amendments on Council decision making under different decision making procedures

			Council decision making		
Decision making procedure			Working group agreement	II/B-point discussion in Coreper/Council	Total
Consultation	Commission's reaction to EP amendments:	No EP amendments	87.5% (7)	12.5% (1)	100% (8)
		Agreement	0.0% (0)	100% (4)	100% (4)
		No/Partial agreement	20.0% (8)	80% (32)	100% (40)
	Total		28.8% (15)	71.2% (37)	100% (52)
Codecision	Commission's reaction to EP amendments:	No EP amendments	85.0% (17)	15.0% (3)	100% (20)
		Agreement	44.1% (45)	55.9% (57)	100% (102)
		No/Partial agreement	7.9% (6)	92.1% (70)	100% (76)
	Total		34.3% (68)	65.7% (130)	100% (198)

Missing: 9 (3.5%).

Table 5.13. The extent to which working groups reach agreement or send legislative acts on for II/B-point discussion at the higher levels of the Council under differing levels of conflict (Amended proposal by Commission?):

Amended proposal by the Commission?	Working group agreement	II/B-point discussion in Coreper/Council	Total
No	37.9% (81)	62.1% (133)	100% (214)
Yes	5.6% (2)	94.4% (34)	100% (36)
Total	33.2% (83)	66.8% (167)	100% (250)

Missing values: 9 (3.5%).

Gamma: 0.617 (Sig: 0.000)

The final indicator of the level of conflict is the length of the decision making process. If the member states and the institutions involved in the decision making process have high stakes in the legislation, the decision making process will likely be long. In other words I presume that the level of conflict is low when the length of the decision making process is relatively short (0-24 months) and that the level of conflict is high when the decision making

process is long (more than 36 months). The analysis of this indicator shows clearly, like the other conflict indicators, that the extent of working group decision making is highest when the level of conflict is low. 57.8 pct. of the legislative acts were sent on for II/B-point discussion at the higher levels of the Council when the level of conflict is low, whereas 100 pct. of the legislative acts require II/B-point discussion when the level of conflict is high measured by the length of the decision making process.

Table 5.14. The extent to which working groups reach agreement or send legislative acts on for II/B-point discussion at the higher levels of the Council under differing levels of conflict (Indicator: Length of decision making process)

	Working group agreement	II/B-point discussion in Coreper/Council	Total
0-24 months	42.2% (68)	57.8% (93)	100% (161)
25-36 months	25.9% (15)	74.1% (43)	100% (58)
37 months +	0.0% (0)	100.0% (31)	100% (31)
Total	33.2% (83)	66.8% (167)	100% (250)

Missing values: 9 (3.5%).

Gamma: 0.483 (Sig: 0.000).

To get an overall impression of the variation in working group decision caused by the level of conflict, I have composed an index measuring the level of member state and inter-institutional conflict. The index consists of two indicators of conflict, namely the number of EP amendments and the Commission's reaction to these amendments³⁷. The two indicators were re-coded so that both had 3 values³⁸ and a correlation analysis showed that they correlated with a Gamma-value of 0.531. A reliability analysis resulted in an alpha value of 0.660. Table 5.15 shows that 85.7 pct. of the cases with no conflict among the member states and institutions of the EU were finalised at working group level and did not require a II/B-point discussion in Coreper/Council of Ministers. In contrast 87.9 pct. of the cases with a high level of conflict were sent on for II-B-point discussion at the higher levels of the Council's hierarchy at some point in the decision making process.

In addition to studying how the level of member state and inter-institutional conflict causes variation in whether legislative acts are sent on for II/B-point discussion in Coreper/Council of Ministers I looked at whether

³⁷ The reason why I did not include more variables in the index is that it reduced the alpha value in the reliability analysis.

³⁸ EP amendments: 0 = 0 EP amendments, 1 = 1-50 EP amendments, 2 = 51 + EP amendments. Commissions' reaction to EP amendments: 0 = 0 EP amendments, 1 = Agreement, 2 = Partial/No agreement.

the level of conflict affects the number of times individual legislative cases appear in Coreper as II-points. The analysis shows that the legislative acts mainly were sent on for a II-point discussion in Coreper more than once when the level of conflict between the member states and institutions of the EU was high. When there was no member state and inter-institutional conflict, more than one II-point discussion in Coreper took place in only one of the cases. In other words, the study shows that the practice where the legislative acts are sent back and forth between the working groups and Coreper mainly occurs when there is a high level of conflict between the member states and institutions involved in the decision making process.

Table 5.15. The extent to which working groups reach agreement or send legislative acts on for II/B-point discussion at the higher levels of the Council under differing levels of conflict (Indicator: Combined measure)

Level of conflict	Working group agreement	II/B-point discussion in Coreper/Council	Total
No conflict	85.7% (24)	14.3% (4)	100% (28)
Medium level of conflict	42.5% (45)	57.5% (61)	100% (106)
High level of conflict	12.1% (14)	87.9% (102)	100% (116)
Total	33.2% (83)	66.8% (167)	100% (250)

Missing values: 9 (3.5%).

Gamma: 0.596 (Sig: 0.000).

Table 5.16: Does the level of conflict (combined measure) cause variations in the number of times working groups send legislative acts on for a II-point discussion in Coreper?

Level of conflict	Number of times the cases were sent on for a II-point discussion in Coreper*							Total
	0	1	2	3	4	5	6	
No conflict	89.3% (25)	7.1% (2)	0% (0)	0% (0)	3.6% (1)	0% (0)	0% (0)	100% (28)
Medium level of conflict	48.1% (51)	34% (36)	12.3% (13)	4.7% (5)	0.9% (1)	0% (0)	0% (0)	100% (106)
High level of conflict	22.4% (26)	31% (36)	21.6% (25)	12.1% (14)	4.3% (5)	3.4% (4)	5.2% (6)	100% (116)
Total	40.8% (102)	29.6% (74)	15.2% (38)	7.6% (19)	2.8% (7)	1.6% (4)	2.4% (6)	100% (250**)

*The variable covers how many times the selected legislative cases were sent on for a II-point discussion in Coreper. This varies from 0 to 6 times.

**Missing values: 9 (3.5%).

Gamma: 0.491 (Sig: 0.000).

As pointed out in the theoretical framework (Chapter 3), it is relevant to question whether the level of conflict over the legislative acts varies according to policy area. It is plausible that this is the case, considering the varying implications of the legislation within the different policy areas as well as the diverging interest configurations among the actors affected by the legislation. An analysis showed that the level of conflict to some extent seems to depend on the policy areas as there are more high conflict cases in, e.g., Environment, Employment/Social Policy/Health/Consumer Affairs and Transport/ Telecommunications/Energy than in the other policy areas (see Appendix E).

The analysis of the four indicators of conflict has left a clear impression that the level of conflict affects whether legislative acts are sent on from the Council working groups for a II/B-point discussion at the higher levels of the Council's hierarchy. The more the member states, the Council of Ministers, the European Parliament and the Commission disagree, the more likely a II/B-point discussion in Coreper and/or the Council seems to be. One could argue that this result supports the intergovernmental approach to EU decision making, and a more thorough discussion of this question follows in Chapter 7. For now, I conclude that the analysis increases our confidence to the validity of hypothesis 4:

Legislative acts marked by a high level of conflict between the member states, the European Parliament and the Commission of the European Union are more often sent on from working groups for a II/B-point discussion at the higher levels of the Council hierarchy than acts marked by more consensus.

5.4.2. Does working group decision making vary according to the technical complexity of the acts discussed?

As a part of my theoretical framework I proposed that the technical complexity of the legislative acts causes variations in the extent of decision making taking place in the Council working groups. The rationale is twofold. Firstly I expect that the officials in the working groups have more room of manoeuvre to handle these acts. This expectation is based on delegation theory which presumes that legislators, in this case the national administrations, delegate more authority in information intensive issue areas (Bawn: 1995: 71; Epstein & O'Halloran: 1999: 197; Bendor, Glazer & Hammond: 2001: 248). Secondly I expect that officials in the working groups will often seek to expand their autonomy as they become more specialized in their field. In other words I anticipate that the officials in the working groups often strives to solve the technically complex acts as they in most cases are the ones who

possess the technical expertise. To sum up, the theoretical expectation of the thesis is that the more technically complex the legislative acts are, the more likely the working groups are to reach agreement at their level. Below I will review the three indicators of technical complexity one by one to see if they cause the expected variation in working group decision making and their inclination to send acts on for II/B-point discussions at the higher levels of the Council.

The first indicator of technical complexity, namely whether a preparatory document exists for the legislative act, does not seem to cause variation in the way the legislative acts are handled internally in the Council. Both when legislative acts refer to a preparatory document and when they do not, the majority of acts are dealt with at the higher levels of the Council's hierarchy (68 pct. and 66.3 pct.). In other words, an act's technical complexity does not seem to make a working group decision more likely.

Table 5.17: Does the extent to which working groups reach agreement or send legislative acts on for II/B-point discussion at the higher levels of the Council depend on the complexity of the legislative acts? (Indicator: reference to preparatory document?)

	Working group agreement	II/B-point discussion in Coreper/Council	Total
No reference to preparatory document	33.7% (58)	66.3% (114)	100% (172)
Reference to preparatory document	32.0% (25)	68.0% (53)	100% (78)
Total	33.2% (83)	66.8% (167)	100% (250)

Missing: 9 (3.5%).

Gamma: 0.03 (Sig: 0.981).

It is not unlikely that the lack of effect of technical complexity is due to underlying factors that might reduce the impact of an act's technical complexity. For example it seems plausible that the level of conflict between the member states and the institutions involved in the decision making process might affect how weighty the consideration of the technical complexity is. Strong disagreement between member states and institutions may complicate negotiations in the Council working groups and make it necessary to send the act on for a II/B-point discussion in Coreper/Council, even though it is technically complex. In other words, the conflict variable might be an interaction variable between the technical complexity variable and the Council decision making variable. To measure the level of conflict I apply the conflict index.

In Table 5.18 I examine more closely whether the potential variation in working group decision making caused by the acts' technical complexity is affected by the level of conflict between the member states and institutions involved in the decision making process. As the table shows, the effect of the conflict variable increases the effect of the technical complexity variable slightly. Working groups solve 60 pct. of the technically complex acts themselves when the level of conflict is low, which is over 25 pct. more than when I did not control for the conflict variable. This result is not equivocal since 91.3 pct. of the technically non-complex acts were finalised at working group level.

Table 5.18: Does technical complexity (indicator: reference to preparatory document?) cause variations in working group decision making when we control for level of conflict?

Level of inter-institutional conflict:			Working group agreement	II/B-point discussion in Coreper/Council	Total
No conflict	Technically complex act (Reference to preparatory document)?	No	91.3% (21)	8.7% (2)	100% (23)
		Yes	60.0% (3)	40.0% (2)	100% (5)
	Total		85.7% (24)	14.3% (4)	100% (28)
Medium level	Technically complex act (Reference to preparatory document)?	No	39.1% (25)	60.9% (39)	100% (64)
		Yes	47.6% (20)	52.4% (22)	100% (42)
	Total		42.5% (45)	57.5% (61)	100% (106)
High level	Technically complex act (Reference to preparatory document)?	No	14.1% (12)	85.9% (73)	100% (85)
		Yes	6.5% (2)	93.5% (29)	100% (31)
	Total		12.0% (14)	87.9% 102	100% 116

Missing values: 9 (3.5%).

Looking at the legislative acts with a high level of member state and inter-institutional conflict it appears that only 6.5 pct. of the technically complex acts were solved in the working groups. All in all it can be concluded that the level of conflict between the member states and institutions of the European Union seems to affect considerations of the legislative acts' technical complexity. It is also clear that technical complexity is still not a factor that seems to cause the expected variations in whether or not acts are solved at working

group level or sent on for a II/B-point discussion in Coreper and/or the Council.

The general impression of the effect of technical complexity is not clarified by looking closer at the second indicator of technical complexity. Whether or not the legislative acts refer to the work by a preparatory committee does in other words not give a clear variation in whether negotiations are finalised at the working group level or sent on. Table 5.19 shows that the legislative acts included in this study are sent on to the higher levels in the Council's hierarchy in 55.8 pct. of the cases which refer to the work of a preparatory committee. This goes against the theoretical expectation of the thesis, which anticipates that the legislative acts are solved more frequently at working group level when they are technically complex measured by whether or not the Commission has consulted a preparatory expert committee before formulating the legislative proposal.

Table 5.19: Does the extent to which working groups reach agreement or send legislative acts on for II/B-point discussion at the higher levels of the Council depend on the complexity of the legislative acts? (Reference to work by preparatory committee?)

	Working group agreement	II/B-point discussion in Coreper/Council	Total
No reference to preparatory committee	30.9% (64)	69.8% (143)	100% (207)
Reference to preparatory committee	44.2% (19)	55.8% (24)	100% (43)
Total	33.2% (83)	66.8% (167)	100% (250)

Missing values: 9 (3.5%).

Gamma: -0.274 (Sig.: 0.096).

As with the previous indicator of technical complexity, it is relevant to observe whether the level of conflict among the actors in the decision making process affects the absence of variation in working group decision making caused by the acts technical complexity. According to table 5.20 the effect of technical complexity is increased when the level of conflict is low. Negotiations on 75 pct. of the legislative acts that are technically complex are finalised at working group level when the level of member state and inter-institutional conflict is low. Of course, this is still not a strong tendency especially since negotiations on 87.5 pct. of the technically non-complex acts are also finalised at working group level. Nevertheless, it is clear that technical complexity causes more variation in the extent of working group decision making when we control for level of conflict between the member states and institutions involved in the decision making process.

Table 5.20: Does technical complexity (Indicator: reference to work by preparatory committee?) cause variation in working group decision making when we control for level of conflict?

Level of conflict:			Working group agreement	II/B-point discussion in Coreper/Council	Total
No conflict	Technically complex act (Reference to work by preparatory committee)?	No	87.5% (21)	12.5% (3)	100% (24)
		Yes	75.0% (3)	25.0% (1)	100% (4)
	Total		85.7% (24)	14.3% (4)	100% (28)
Medium level	Technically complex act (Reference to work by preparatory committee)?	No	36.4% (32)	58.0% (51)	100% (88)
		Yes	56.5% (13)	43.5% (10)	100% (23)
	Total		42.5% (45)	57.5% (61)	100% (106)
High level	Technically complex act (Reference to work by preparatory committee)?	No	11.0% (11)	89.0% (89)	100% (100)
		Yes	18.8% (3)	81.3% (13)	100% (16)
	Total		12.1% (14)	87.9% (102)	100% (116)

Missing: 9 (3.5%)

Whether the legislative acts contain an annex with technical details does not seem to cause variation in the internal decision making process in the Council either. Discussion at the higher levels of the Council hierarchy takes place in the majority of cases both with and without an annex (64.4 pct. and 64.2 pct.) (see table 5.21).

Table 5.21: Does the extent to which working groups reach agreement or send legislative acts on for II/B-point discussion at the higher levels of the Council depend on the complexity of the legislative acts? (Indicator: technical annex?)

	Working group decision	II/B-point discussion in Coreper/Council	Total
No technical annex	33.7% (33)	66.3% (65)	100% (98)
Technical annex	32.9% (50)	67.1% (102)	100% (152)
Total	33.2% (83)	66.8% (167)	100% (250)

Missing: 9 (3.5%).

Gamma: 0.032 (Sig: 0.8).

It is also here relevant to examine whether the effect of technical complexity (measured by whether or not the legislative acts contains an annex sorting

out the technical details) might be dependent on the level of conflict among the actors involved in the decision making process. As seen in table 5.22 the pattern is the same as with the other two indicators. The number of technically complex acts that are solved at working group level increases when we focus only on acts with a low conflict level (49 pct.). Conversely, only 12 pct. of all legislative acts (both technically complex and non-complex acts) are finalised at working group level when the level of conflict is high. Nonetheless, these results do not change the fact that technical complexity does not seem to cause variations in terms of the level at which decisions are made in the Council's decision making process.

Table 5.22: Does technical complexity (Indicator: technical annex) cause variations in working group decision making when we control for level of conflict?

Level of conflict:			Working group decision	II/B-point discussion in Coreper/Council	Total
No conflict	Technically complex act (Technical annex)?	No	100.0% (13)	0.0% (0)	100% (13)
		Yes	73.3% (11)	26,7% (4)	100% (15)
	Total		85,7% (24)	14.3% (4)	100% (28)
Medium level	Technically complex act (Technical annex)?	No	38.2% (13)	61,8% (21)	100% (34)
		Yes	44.4% (32)	55,6% (40)	100% (72)
	Total		42.5% (45)	57.5% (61)	100% (106)
High level	Technically complex act (Technical annex)?	No	13.7% (7)	86.3% (44)	100% (51)
		Yes	10.8% (7)	89.2% (58)	100% (65)
	Total		12.0% (14)	87.2% (102)	100% (117)

Missing: 9 (3.5%).

Based on the analysis of the three indicators of technical complexity we can conclude that technical complexity does not seem to affect how the legislative acts are handled in the working groups. None of the three indicators of technical complexity seem to make a working group decision without II/B-point discussion in Coreper and/or the Council of Ministers more likely. The quantitative analysis thus shows no support to the prediction based on delegation theory presuming that working group members have more room of

manoeuvre when handling technically complex acts implying that it is easier for the working group to reach agreement. In sum the analysis reduces our trust in the validity of hypothesis 6:

The more technically complex the legislative acts are, the less likely the working groups are to send the dossiers on for discussion in Coreper and the Council of Ministers

The reason behind this result might be that technical acts can be political at the same time as pointed out by Fougère, Maillard and Smith. In their study from 2005 they conclude that the distinction between technical and political issues is rarely clear-cut (Fougère, Maillard and Smith: 2005: 612). Chapter 6 will shed light on whether the result of the quantitative study corresponds to the interviewees' impressions of whether technical complexity causes variation in the extent of decision making that takes place in the Council working groups. Do they confirm that it does not impinge on whether the acts are sent on for further discussion at the higher levels of the Council, or do they have another point of view?

5.5. Institutional setting

It is not only factors related to the working group handling the legislative acts or factors related to the acts themselves that might cause variations in the decision making process of the Council working groups. The institutional setting around the working group might also impinge on its ability to reach a compromise. In this section I will examine whether the role played by the Council presidency seems to affect the internal decision making process in the Council.

5.5.1. Does the rotating presidency cause variation in the extent of decision making taking place in the Council working groups?

As accounted for in the theoretical framework, the Council presidency decides when negotiations on individual legislative acts in the Council working groups can be finalised or sent on for further discussions at the higher levels of the Council's hierarchy. In other words the presidency plays a central role in deciding at which levels in the Council decisions should be made. Furthermore, how the presidency plays its role and plays its cards can be expected to affect the negotiation climate and consequently the working groups' abilities to reach agreement. On these grounds I expect that the de-

cision making process in the Council, and the relative role played by the working groups, is dependent on the member state holding the presidency. More specifically I expect that the extent to which the working groups send acts on for a II-point/ B-point discussion at the higher levels in the Council hierarchy depends on whether a large or a small member state holds the presidency. The argument is based on the fact that large and small member states have different levels of administrative resources at their disposal and that large and small member states often have different ways of running the presidency. While large member states have the capacity to seek to impose its own interests (Quagila & Moxon-Browne 2006: 364), small member states may be better at paving the way for compromises as they often act more neutrally and draw more on the competences of the Council's General Secretariat.

As accounted for in the previous chapter, observing whether the role played by the rotating presidency can cause variation in the extent of decision making taking place in the Council working groups is not straightforward. The reason is that in most cases it takes around one and a half year from a legislative proposal is forwarded by the Commission until the final adoption. The inter-institutional legislative process in the EU is cumbersome and time consuming. For this reason, observing the date of adoption of a legislative act would not provide an accurate impression of which member state held the presidency during the decision making process in the working group. In many cases, the presidency shifts between the time an act is discussed in the working group and the act is formally adopted. To ensure a reliable measurement of the effect of the rotating presidency, I have therefore observed the date of the meeting documents where the working groups invite Coreper to solve outstanding issues. This allows me to study how many times each presidency has sent issues on for a II-point discussion in Coreper.

Below follows an overview over the number of times Coreper was asked to solve outstanding problems during the different presidency periods. All in all the acts included in the study were discussed at Coreper level 301 times. However, 14 were discussed at Coreper level in 2001 (1) and 2003 (13), which is outside the relevant period. For this reason I focus only on the presidency periods that fall within the selected time period plus 2004.

The data set has a limitation and even though this drawback has been addressed in the previous chapter, I find a short discussion of it fruitful. The dataset implies a certain bias when it comes to this measurement of the effect of the rotating presidency. The reason is that the proposed measurement only provides insights about how many of the *selected cases* were discussed as a II-point at Coreper level in the selected period (2004-2009).

Therefore the measurement does not say much about the total number of II-points that were on Coreper's agenda during the different presidency periods. For example, one could imagine that the Swedish presidency sent more legislative acts on for a II-point discussion at Coreper level which do not appear in this dataset because the acts were adopted after 2009. In addition, the general impression of how the presidency may cause variation in the extent of decision making that takes place in the working groups might have been different if I had focused on the total of acts handled by Coreper in the different presidency periods. For this reason the results of the study need to be concluded with caution and this is why the results of the Czech and the Swedish presidencies are in parentheses.

Table 5.23: Number of times Coreper was invited by working groups to solve outstanding issues during different presidency periods

Time period and member state holding the presidency:	Number of times Coreper was invited by working groups to solve outstanding issues**:
Spring* 2004 – Ireland	19
Autumn 2004 – Netherlands	30
Spring 2005 – Luxembourg	29
Autumn 2005 – United Kingdom	31
Spring 2006 – Austria	30
Autumn 2006 – Finland	24
Spring 2007 – Germany	27
Autumn 2007 – Portugal	24
Spring 2008 – Slovenia	42
Autumn 2008 – France	20
(Spring 2009 – Czech Republic)	(10)
(Autumn 2009 – Sweden)	(1)
Total	287***

* The six month presidency period runs from January to June and from July to December.

**The variable covers how many times a II-point discussion took place during the different presidency periods.

***The total covers how many times a II-point discussion in Coreper took place across all cases included in the study.

Table 5.23 shows that the acts included in the study appeared more often as a II-point on Coreper's agenda during some presidencies. For example, 42 issues were discussed at Coreper level during the Slovenian presidency in 2008, but only 10 issues were sent on to Coreper during the Czech presidency in 2009. Both are small member states and the results generally show no support to the hypothesis that negotiations and the decision making pos-

sibilities of the working groups depend on whether a small or a large member state holds the presidency.

As touched upon in the previous chapter observing the number of times a legislative act was discussed at Coreper level during the different presidency periods does not necessarily give a representative picture of how the presidency affects the decision making process in the Council and the amount of decision making taking place in the working groups. One reason is that the amount of acts may vary considerably in different periods. Amongst other things it depends on whether the Commission is recently appointed and whether there has been a recent election to the European Parliament. To say more about this potential bias I have looked closer at the amount of legislative acts adopted within the different presidency periods.

Table 5.24: Number of legislative acts adopted within the different presidency periods

Time period	Number of acts adopted*
Spring 2005 – Luxembourg	8 (3.1%)
Autumn 2005 – United Kingdom	25 (9.7%)
Spring 2006 – Austria	26 (10%)
Autumn 2006 – Finland	36 (13.9%)
Spring 2007 – Germany	18 (6.9%)
Autumn 2007 – Portugal	23 (8.9%)
Spring 2008 – Slovenia	19 (7.3%)
Autumn 2008 – Portugal	36 (13.9%)
Spring 2009 – Czech Republic	41 (15.8%)
Autumn 2009 – Sweden	27 (10.4%)
Total	259 (100%)

*The variable indicates how many legislative acts were adopted during the different presidency periods.

It appears from the table that the number of acts adopted within the different presidency periods varies to some extent. However the variation in the number of acts adopted during the different presidencies does not necessarily vary in the same way as the number of times Coreper was involved in decision making. For example, the number of legislative acts adopted during the Slovenian and the Czech presidencies was not relatively higher. In other words, the variations in the number of acts handled during the different presidency periods do not seem to explain why Coreper was involved more frequently during the Slovenian and the Czech presidencies. In sum, variations in the number of acts adopted during the different presidency periods does not appear to be the underlying reason behind the variations in the ex-

tent to which the working groups send legislative acts on for a II-point discussion in Coreper.

Even though table 5.24 at first glance showed little support to the hypothesis that the size of the member state holding the presidency causes variations in whether or not the working groups are able to reach a compromise at their level, a more thorough study of the question is required. In Table 5.25 I have divided the member states into small and large to get a clearer picture of the effect of the size of the presidency. I have grouped the member states according to their voting weight in the Council. Large member states have voting weights over 20 and included in this category are Germany, France, Spain, Italy, UK and Poland.

Table 5.25: Number of times Coreper was invited by working groups to solve outstanding issues during presidencies held by large versus small member states

Member state holding the presidency	Number of times Coreper was invited by working groups to solve outstanding issues
Large member states:	
United Kingdom	31
Germany	27
France	20
Total	78
Small member states:	
Ireland	19
Netherlands	30
Luxembourg	29
Austria	30
Finland	24
Portugal	24
Slovenia	42
(Czech Republic)	(10)
(Sweden)	(1)
Total	287

The analysis is problematic, however, because there only three large member states held the presidency during the selected period; France, Germany and UK. But focusing only on the number of times legislative acts were discussed as a II-point on Coreper's agenda during the presidency periods when small and large member states held the presidency makes it clear that the variation is limited. Therefore little attention should be paid to the totals of the number of times Coreper was asked to address outstanding issues during

large and small presidencies. Instead it is relevant to focus on whether there is great variation in the number of times Coreper was invited to have a II-point discussion during the different presidencies. As the table shows, there are no clear differences between small and large member states; in both cases Coreper was asked to solve outstanding issues 19-42 times.

The conclusion is that the size of the member state holding the presidency does not seem to cause the expected variations in level at which decisions are made in the Council of Ministers. In other words, hypothesis 7, claiming that the size of the member state holding the presidency affects the extent to which working groups send legislative acts on for discussion at the higher level in the Council, do not find support in the quantitative analysis.

5.6. Investigating the theoretical model as a whole

To get a clear overview of the relative effect of all the independent variables on the dependent variable I perform a logistic regression (see Table 5.26). As the coefficients are difficult to interpret in non-linear regressions, I will focus on the significance of the different variables and whether the variables have the expected positive or negative effect. The analysis to a large extent confirms previous results. First of all it is clear that the effect of the level of conflict is strong and significant even when controlling for other relevant variables, including policy area. More specifically the analysis shows that working groups are less likely to send legislative acts on for a II/B-point discussion at the higher levels of the Council hierarchy when there is no or a medium level of conflict, compared to when the level of conflict is high.

The analysis furthermore underpins the finding that the technical complexity of an act does not impinge on the extent of decision making taking place in the working groups. In contrast the results show that working group decision making depends on the policy area. The results confirm the finding that working groups less often send legislative acts on for discussion at the higher levels of the Council in General Affairs than other policy areas.³⁹

Finally the analysis shows that two of the control variables, the inter-institutional decision making procedure and whether the act is new or partly amending does not affect the extent of working group decision making.⁴⁰

³⁹ The result of this variable should be taken with a slight reservation due to low N in some of the groups.

⁴⁰ Overview over variables included in the regression:

Dependent variable: 0=working group agreement/ 1=II/B-point discussion in Coreper /Council

On the contrary Council decision making appears to be affected by the type of legislative act on the table. More specifically a II/B-point discussion at the higher levels of the Council is less likely when the legislative act on the table is a regulation compared to when the working group discusses a directive. This is surprising as regulations arguably can be expected to often have more far reaching consequences for the member states. Regulations are self-executed and are implemented directly in the member states without the opportunity to adjust legislation to national legislation. Directives on the other hand can be adjusted to national legislation and typically leave member states with a more leeway as to the exact rules to be adopted. The result of the logistic regression gives an incentive to study the variable in a bivariate analysis of the effect of type of legislation on Council decision making (See appendix F). The analysis does not indicate that the extent of working group decision making depends whether the act under discussion is a regulation or a directive. Working groups send the majority of issues on for debate at the higher levels of the Council both when dealing with directives and regulations. Although the logistic regression shows no sign that the type of legislative acts affects the effect of the level of conflict it is also relevant to study these two variables in a bivariate analysis. This study (appendix F) showed that 66.8 percent of the legislative acts implying a high level of conflict were regulations which indicate that the level of conflict about the acts is not the explanation behind the result of the logistic regression indicating that working group decision making is more extensive when dealing with regulations. In sum the uncertainty about in what way type of legislative acts affects Council decision making points to the need for further research on the subject.

Level of conflict. Dummy variables: 0=Others/ 1= no conflict, 0=Others/ 1=medium level of conflict, reference category=high level of conflict

Technical complexity. reference to a preparatory document=1/ no reference to a preparatory document=0, reference to the work of a preparatory committee=1 / no reference to a preparatory committee=0, annex to the act=1 / no annex to the act=0

Policy areas. Dummy variables: 0=Others/ 1=Justice and Home Affairs, 0=Others/ 1= Agriculture and Fisheries, 0=Others/ 1= Competitiveness, 0=Others/ 1= Transport/ Telecommunications/ Energy, 0=Others/ 1= Employment/ Social Policy/ Health and Consumer Affairs, 0=Others/ 1= Environment, 0=Others/ 1= Others, reference category=General Affairs

New/ Partly amending act. 0=New legislation, 1=Partly amending legislation

Legislative procedure. 0=Codecision, 1=Consultation

Type of act. 0=Directive, 1=Regulation

Table 5.26: Logistic regression

Independent variable	Model 1	Model 2	Model 3	Model 4
Conflict (Ref: High conflict):				
No conflict	-3.778*** (0.611)	-3.787*** (0.614)	-4.446*** (0.795)	-4.506*** (0.788)
Medium conflict	-1.682*** (0.346)	-1.702*** (0.354)	-2.369*** (0.489)	-2.383*** (0.532)
Technical complexity:				
Preparatory document		0.235 (0.361)	0.324 (0.437)	0.449 (0.456)
Preparatory committee		-0.724 (0.411)	-0.221 (0.505)	-0.204 (0.523)
Annex to the act		0.201 (0.337)	0.479 (0.391)	0.343 (0.397)
Policy area (Ref: General Affairs):				
Justice and Home Affairs			4.079*** (0.898)	4.006*** (0.938)
Agriculture and Fisheries			1.503* (0.673)	1.176 (0.722)
Competitiveness (Internal Market, Industry, Research)			2.700*** (0.728)	2.439** (0.760)
Transport/Telecommunications/Energy			3.832*** (0.765)	3.531*** (0.800)
Employment/Social Policy/Health and Consumer Affairs			3.659*** (0.940)	3.482*** (0.936)
Environment			2.861*** (0.775)	2.670** (0.803)
Others			2.104** (0.750)	1.800* (0.799)
New/partly amending legislation (Ref: New legislation):				
Partly amending				0.375 (0.429)
Legislative procedure (Ref: Consultation):				
Codecision				-0.547 (0.593)
Type of act (Ref: Directive):				
Regulation				-0.937* (0.432)
-2 Log likelihood	252.934	249.651	200.669	194.932
Nagelkerke R Square	0.318	0.332	0.520	0.540
N	250	250	250	250

*p<0.05 **p<0.01 ***p<0.001.

Dependent variable: Dichotomous measure of whether working groups send legislative acts on for a II/B-point discussion at the higher levels of the Council of Ministers 0=working group agreement; 1=II/B-point discussion in Coreper /Council.

5.7. Summary and discussion

In this chapter I have analysed the quantitative data and investigated the role of the Council working groups. To which extent do they finalise negotiations on legislative acts at their level and under what conditions are legislative acts sent on for II/B-point discussions at the higher level of the Council's hierarchy? Do these legislative acts have any common characteristics? The analysis was guided by the theoretical expectations laid out in Chapter 3. In this section I briefly discuss the results of the quantitative study and draw some initial conclusions.

First of all my analysis of the role of the Council working groups showed that the working groups acted alone in 33.2 pct. of the legislative cases included in my study. Put differently, 33 pct. of all decisions made by the Council of Ministers in the selected period were made by the Council working groups. This result clearly emphasises the central role played by the working groups and the importance of the current study.

One of the contributions of the quantitative study is that it looked at the relative involvement of each level in the Council's hierarchy; the working groups, Coreper and the Council of Ministers. Amongst other things this study showed that a discussion at all levels in the Council took place in 46 pct. of the legislative cases. This is more than what has been estimated by many other researchers (Van Schendelen 1996; Hayes-Renshaw, Van Aken & Wallace: 2006). However, my results correspond quite well to Häge's results in his extensive work on the Council's decision making process from 2007-2008.

Another central contribution of the study is the empirical evidence that the working groups and Coreper often send legislative cases back and forth between them during the decision making process. Previous literature has hinted at this practice and it has now been underpinned with statistical results. The study furthermore showed that this practice is more pronounced when the level of conflict between the member states and institutions involved in the decision making process is high.

Interestingly, and as expected in the theoretical framework, the relative role of the working groups, and the extent to which they send legislative acts on for discussion at the higher levels of the Council, varies across policy areas. My theoretical proposition was that these variations can be explained by the varying scope of the EU's competences across policy areas, the varying levels of technical complexity of the legislation in the different policy areas and finally by the varying interest configurations in the policy areas. The analysis more specifically showed that legislative acts in for example Environment, Transport and Social policy are discussed in Coreper and/or the

Council of Ministers in the majority of cases. The fact that the working groups in Social Policy so often involved Coreper and the Council of Ministers in the decision making process was unexpected as the legislative competences of the European Union are relatively limited at this area. However, social policy is a sensitive area as many member states see social policy as a national concern. This may explain why legislative acts often are sent on from the working groups to the higher levels of the Council in this area. In General Affairs the pattern was the opposite; the negotiations on the majority of acts were finalised at working group level without substantial debate at the higher levels of the Council's hierarchy.

In accordance with the theoretical expectation, the analysis furthermore indicated that the level of conflict among the member states and the institutions involved in the decision making process impinge on the extent to which the working groups finalise negotiations on their level or send legislative acts on for II/B-point discussions at the higher levels of the Council. More specifically, working group decision making without II/B-point discussions at the higher levels of the Council takes place less frequently when the level of member state and inter-institutional conflict is high even when controlling for the other variables included in the theoretical model. The wider implications of this result for the debate between the neofunctionalist and intergovernmental approach to EU decision making will be discussed in the conclusion. Surprisingly, however, the analysis indicated that the inter-institutional decision making procedure does not impinge on the level at which decisions are made. Both under the consultation and the co-decision procedure around 65-70 pct. of all legislative cases were sent on for a II/B-point discussion in Coreper and/or Council of Ministers at some point.

The empirical findings of the quantitative study are not consistent with two of my theoretical expectations. The analysis did not show support to the hypothesis that the technical complexity of the legislative acts affects whether acts are concluded in the Council working groups or sent on for II/B-point discussions at the higher levels of the Council. This is surprising as one would expect that the national officials in the working groups often possess most technical expertise about the policy areas and that the technically complex acts therefore would be solved at their level. When controlling for the level of conflict among the actors involved in the decision making process, the effect of the legislative act's technical complexity was somewhat clearer. Nevertheless, the investigation of this variable did not underpin the hypothesis that technical complexity affects at which level in the Council decisions are made and the relative decision making that takes place in the Council working groups.

Secondly, the quantitative analysis indicated that the size of the member state holding the presidency does not affect at which level in the Council decisions are made. The number of legislative acts sent on for a II-point discussion in Coreper did not vary according to the size of the member state fulfilling the presidency role. As discussed in both this chapter and in Chapter 4 (Method), the measurement of the number of cases sent on for a II-point discussion in Coreper during the different presidencies was far from perfect. For this reason, and in order to dig deeper into the question of whether the presidency can cause variation in the extent of decision making that takes place in Council working groups, it shall be interesting to study the role of the presidency more thoroughly in the qualitative analysis.

In Chapter 6 I will analyse whether the results of the quantitative study can be validated in the qualitative analysis. Do the interviewees paint the same picture as the analysis of the quantitative data? Furthermore the interviews will hopefully offer explanations to the patterns that were found in the quantitative material. Finally, the qualitative study may point to new and unexpected explanations for why working groups in some cases finalise negotiations on legislative cases at their level and at other times send them on for II/B-point discussions at the higher levels of the Councils hierarchy.

The findings of the quantitative study can be summarized as follows:

- Council working groups finalised negotiations in 33.2 pct. of the acts included in the study.
- The extent of working group decision making varies across policy areas. The role of the working groups seems to be particularly wide ranging in General Affairs.
- A high level of conflict between member states in the Council, the Commission and the European Parliament about a legislative act makes working groups more likely to send legislative acts on for II/B-point discussion at the higher levels of the Council.
- A legislative act's technical complexity does not seem to impinge on the extent of working group decision making.
- The size of the member state holding the Council presidency does not seem to affect the extent of decision making taking place in Council working groups.

Chapter 6

Qualitative Analysis

6.1. Introduction

In the previous chapter I presented the results of the thesis' quantitative study. The analysis yielded highly interesting results and contributed with new insights about the role of the Council working groups in the decision making process of the Council of the European Union. The study showed that the national officials in the Council working groups finalised the negotiations on 33.2 pct. of the legislative cases included in the study. In other words, the working groups are without doubt central actors in the Council's decision making process. Interestingly, the quantitative study also showed that the extent of working group decision making varies across policy areas and according to the level of conflict among the member states and institutions involved in the decision making process. In contrast, the extent to which working groups finalise negotiations at their level did not seem to depend on the technical complexity of the legislative acts or on the size of the member state holding the presidency. In this chapter I will present and discuss the results of the qualitative study of Council working group decision making.

6.1.1. In what way does the qualitative study contribute to the thesis?

This section describes how the qualitative study contributes to the analysis. A focal question in the qualitative analysis will be: Do the interviews confirm the results of the quantitative analysis or do they point in other directions? In other words, the qualitative analysis has the potential to shed light on the validity of the results of the quantitative study. Secondly, the interviews may contribute by providing more thorough explanations to the patterns that were found and not found in the quantitative study. For example, it will allow me to dig deeper into the question of why the extent to which working groups send acts on for II/B-points discussions at the higher levels of the Council varies across policy areas and working groups. Furthermore, it gives me broader insights about each of the variables that may impinge on the decision making process of the Council working groups. Where the quantitative study only sheds light on whether or not certain variables affect working group decision making, the qualitative study can provide more thorough explanations to the mechanisms behind the different variables.

Last but not least the qualitative study permits me to address and study hypotheses which were not possible to observe in the quantitative study. Firstly the qualitative study enables me to shed light on hypothesis 2, which states that the composition of the working groups, including whether the speakers are experts based in the national ministries or affiliated institutions, or attachés based in the permanent representations in Brussels, affects working group decision making. As pointed out in the theoretical framework (Chapter 3), the level of contact to the EU, and thereby the level of socialisation among working group members, is likely to vary according to whether the working group members are experts or attachés, as attachés are based in Brussels and experts are based in the member states' capitals. Furthermore I proposed that this variation in the level of socialisation is likely to affect the working group member's willingness to compromise and that working groups composed mainly of attachés will reach agreement at working group level more often than working groups composed of experts, as attachés generally are more oriented towards finding common solutions at EU level. The second hypothesis, which could not be addressed in the quantitative study, claims that whether or not the working groups send legislative acts on for discussion at the higher levels of the Council depends on the extent to which the acts have financial consequences for the member states. More specifically, I expect that acts implying considerable economic consequences for the member states are more likely to be sent on from the working groups to the higher levels of the Council's hierarchy than acts without such consequences. In the qualitative study I will be able to shed light on whether or not this is the case.

As pointed out in Chapter 4 (Method) the observation objects of the quantitative and the qualitative study differ in some respects. While the quantitative study focuses on individual legislative acts and their way through the Council's decision making process, the qualitative study has a more general focus. If the qualitative study had been a case study focusing on some of the legislative acts that were part of the quantitative dataset, the situation would have been different. But the interviews are based on broader questions about the general tendencies in working group decision making rather than on specific legislative acts. In other words the qualitative analysis will enable me to address whether the tendencies found in the quantitative study can be confirmed by the interviewees. All in all, the qualitative study both sheds light on the validity of the quantitative results and enriches the study with more insights about what affects the extent of decision making taking place in Council working groups. Below I will present the interviewees and recapitulate how they were selected.

6.1.2. A presentation of the interviewees

As described in Chapter 4 where I present the research design, I have interviewed representatives from a minimum of 3 member states in 8 working groups. Additionally, I have interviewed a representative from the Council's General Secretariat from each group. All in all I have interviewed 36 respondents and the research design allows for both comparisons between policy sectors and working groups, and between member states. More specifically, it will be possible to study whether, and in what way, working group decision making varies across working groups and policy areas. Furthermore, the research design will allow me to observe whether respondents from different member states have diverging perceptions about negotiations and decision making in the Council working groups.

As explained in Chapter 4, the selection of cases for the qualitative study is based on the results of the quantitative analysis. Amongst other things, the mixed method research design allowed me to select working groups that vary according to the extent to which they finalise negotiations on the legislative acts at their level. For example, the Working Party on the Environment, The Working party on Land Transport and The Social Questions Working Party asked Coreper and Council to discuss outstanding issues in the majority of the cases included in the study. In comparison, The Working Party on Financial Services and The Working Party on Statistics more seldom involved the higher levels of the Council in the decision making process. In other words, the interviewees come from groups that frequently send acts on for discussion at the higher levels of the Council as well as from groups that usually finalise negotiations themselves. Another important factor in the selection of cases for the qualitative study was to ensure variation in the working groups' composition, so that groups that are composed mainly by experts based in the national capitals as well as groups composed of attachés based in Brussels are represented in the qualitative study. Finally, I strived to ensure a relatively broad representation of policy areas and variation in the working groups' organisational home under Coreper I or II. Figure 6.1 gives an overview of the interviewees who contributed to the study.

Table 6.1: Overview of interviewees

Working group	Member state		Member state that has recently held the presidency:	
	Small member state: Denmark	Large member state: UK/France/Germany	Sweden/Czech Republic/France/Slovenia	General Secretariat
Land transport	IP* 1 (Denmark)	IP 9 (UK)	IP 18 (Czech Republic)	IP 29 IP 30
Energy	IP 2 (Denmark)	IP 10 (Germany)	IP 19 (Czech Republic)	IP 31
Environment	IP 3 (Denmark)	IP 11 (Germany) IP 12 (France)	IP 20 (Sweden) IP 21 (Sweden) IP 22 (Czech Republic)	IP 32
Social Questions	IP 4 (Denmark)	IP 13 (UK)	IP 23 (Sweden) IP 24 (Sweden)	IP 33
Financial Services	IP 5 (Denmark) IP 6 (Denmark)	IP 14 (France)	IP 25 (Czech Republic)	IP 34
Technical harmonisation	IP 3 (Denmark)	IP 15 (UK)	IP 26 (France) IP 20 (Sweden) IP 21 (Sweden)	IP 35 IP 32
Public health	IP 7 (Denmark)	IP 16 (UK)	IP 27 (Sweden)	IP 32
Statistics	IP 5 (Denmark) IP 8 (Denmark)	IP 17 (UK)	IP 28 (Slovenia)	IP 36

6.1.3. How will the qualitative results be presented?

The qualitative data will be presented in displays showing the statements of the interviewees. The advantage is that it may increase the reliability of the results as the reader is able to observe on which statements the researcher bases his or hers conclusions. Furthermore, displays give the researcher, and the reader, an overview of a large data material and uncover potential tendencies and patterns in the data. Of course the advantages of the displays depend on how the analysis is conducted. Peter Dahler-Larsen recommends that displays consider three factors. Firstly, the data should appear in its authentic form. This means that the analysis should not be based on the researchers' impressions but on data where the reader can see how the researcher reaches his/her conclusions (Dahler-Larsen 2010: 195). Secondly, the data should be based on inclusion meaning that all data on a certain subject should be shown in the display. This ensures that discrepancies can be observed and it ensures openness about the basis of the conclusions (Dahler-Larsen 2010: 196). The third important consideration is to make sure that it is as transparent and as easy to interpret as possible (Dahler-Larsen 2010: 198).

6.1.4. Can we trust the validity of the interviews?

Before moving on to the presentation of the qualitative analysis I will briefly comment on the validity of the results and conclusions based on the interviews. Overall, the advantage of the research design is that I have interviewed more than one person from each group. If all interviewees from a group offer the same viewpoints about e.g. the extent of decision making that takes place in the working groups, then it is likely that these viewpoints correspond quite well to the reality. In the same way, if a majority of the interviewees have analogous views on issues such as the effect of the technical complexity of the legislative acts, then this would be a convincing result. The general confidence in the validity of the interviews is further improved by the fact that the interviewees do not have strong interests in distorting their responses. The interview questions do not concern sensitive issues and they would be far more problematic if they for example touched upon the relative influence of the officials.

That being said, it is important to bear some limitations in mind. Firstly it is relevant to question whether the working group members have the necessary overview to consider the extent of decision making in the Council working groups and to consider what affects the decision making in the groups. Secondly, there is the question of memory. Are the interviewees always able to remember for example which factors have been decisive for the extent of decision making taking place in the working group? Finally, it is important to bear in mind how experienced the interviewees are. Have they participated in the working group long enough to be able to assess what affects the working group's decision making etc.? Now, it is important to stress that I have strived to accommodate some of these limitations as far as possible. Firstly by interviewing persons from the Council's General Secretariat, who are permanent members of the working groups and therefore have long experience with how working group decision making proceeds. Secondly I have sought to ensure that the interviewees are as experienced as possible. More specifically, the majority of the interviewees have participated in their respective working group at least a year.⁴¹

⁴¹ The seniority varies from 4 months to 9 years. The majority of the interviewees are attachés and some have participated in their working group as experts before becoming attachés. Some have experience from more than one group, which enables them to compare experiences from the different groups.

6.1.5. Outline of the chapter

The chapter is structured as follows: First I will account for the interviewees' descriptions of working group decision making and how their work is organised. I then will address the overriding research question of the study, namely: What is the role of the Council working groups and how much decision making takes place at this level? The next part of the chapter examines the causes of the variations in the extent to which working groups act alone or send legislative acts on for discussion at the higher levels of the Council's hierarchy. Does working group decision making vary across policy areas and is it affected by factors such as the organisational placement of the working group members (Sections 6.4.1 and 6.4.2)? Section 6.5 looks closer at the more issue specific variables. Does the extent to which the member states and institutions involved in the decision making process have conflicting interests about the legislative acts affect whether or not a compromise can be reached in the working groups? And what about factors such as the acts' economic and financial implications and technical complexity – do they impinge on working group decision making? Finally, I will present how the interviewees considered the institutional setting around the working group: Does the size of the member state holding the presidency, and the presidency's manoeuvres, affect at which level in the Council's hierarchy decisions are made? After the study of the hypotheses, I will present the more surprising results of the study and discuss what these unforeseen outcomes imply for future studies on the Council working groups.

6.2. Working group negotiations – general characteristics

Before moving on to the analysis of the interviews I will briefly describe how negotiations in the working groups generally proceed according to the interviewees. Our knowledge of the daily workings of the working groups is limited and therefore it is relevant to present how the interviewees described the decision making process in the working groups.

As described in Chapter 1, the working groups consist of representatives from the member states, the Council's General Secretariat, The Council's Legal Service and representatives from the Commission. Some member states send their attaché from the member states' permanent representation in Brussels, others sends an expert from the ministry back home. The representatives from the member state negotiate based on instructions from their governments, but the extent to which the representatives blindly follow these

instructions, or have room of manoeuvre to make compromises, varies according to how binding the instructions are. In addition, different representatives have different reporting responsibilities⁴².

Negotiations in the working groups are headed by the Council Presidency, which is assisted by the Council's General Secretariat. Negotiations usually start with the Commission presenting its proposal. Some interviewees pointed out that it was common practice before the eastern enlargements to make a round table where all member states had the opportunity to share their views on the Commission's proposal. Today only member states that have important objections to the proposal speak. Furthermore, quite a few interviewees emphasised the strong norms for how negotiations should proceed and how member states should act. For example, it can cause irritation among other member states if an official from one member state takes up too much speaking time or takes the word repeatedly during a negotiation.

Table 6.2: Working group characteristics

Working group	Meeting frequency	Composition
Land transport	About 3 times a week	Both experts and attachés, but attachés usually speak
Energy	About 1-2 times a week	Mainly attachés but some are accompanied by experts. The attachés speak
Environment	About 3-4 times a week	Mainly attachés but some are accompanied by experts. The attachés speak but most delegations have 2-3 environment attachés so the exact composition of the groups varies
Social Questions	1-2 times a month	Attachés
Financial Services	About 1-3 times a month (varies)	Experts and attachés. Experts usually speak in the early stages of the negotiations and the attachés take over when the technical details are cleared
Technical Harmonisation	About 1-4 times a month (varies)	Experts and attachés. Experts usually speak in the early stages of the negotiations and the attachés take over when the technical details are cleared
Public Health	1-4 times a month (varies)	Attachés are the main speakers supported by experts
Statistics	1-2 times a month (varies)	Experts speak (attachés participate only occasionally)

Another effect of the enlargements is that much negotiation takes place outside the meeting rooms. Today member states contact each other before

⁴² To set the record straight it should be pointed out that none of the interviewees have experienced that their ambassador in the permanent representation or their minister have involved themselves directly in working group negotiations. In other words the thesis indicates that the ambassadors in Coreper and the Ministers in the Council do not have a direct influence on the extent of working group decision making.

meetings in the working groups, they negotiate in the corridors and many interviewees expressed that it is really important and regarded as good practice to send your member state's position out in writing in advance of the meetings. One interviewee even stated that failure to do so causes irritation and negative reactions. In other words, working group negotiations are initiated already in advance of the actual meetings in the working groups. The concrete organisation of the working groups may vary in some respects, for example composition and how often they meet (see Table 6.2).

6.3. How much do the Council working groups actually decide?

In this section I will address the question of how much the working groups actually decide. To what extent do they finalise negotiations about the legislative acts at their level without involvement of the higher levels in the Council's hierarchy? The quantitative study showed that 33.2 pct. of the legislative cases included in the study were finalised at working group level without II/B-point discussion at the higher levels of the Council. However, as already pointed out, one of the limitations of the quantitative study is that it can only shed light on whether or not the working groups send legislative acts on for II/B-point discussions at the higher levels of the Council's hierarchy. But this does not necessarily say anything about the relative amount of decision making taking place in the Council working groups as it was not possible to observe the number of issues, or the political weight of the issues, sent on to Coreper and/or the Council. The qualitative study allows me to dig deeper into this question and to enrich the study of the extent of decision making that takes place in the working groups. More specifically, the interviewees are able to describe not only whether or not the working groups send legislative acts on for discussion at the higher levels of the Council, but also the extensiveness and political weight of the issues sent on.

To find out more about the relative amount of decision making taking place in the working groups, I asked the interviewees about the general decision making capacity of their working group. I also asked them to assess how much of the legislative acts is sorted out in the working groups and how much they send on to the higher levels of the Council.⁴³ It should be men-

⁴³ The question was: 'One of the limitations of my quantitative study is that I am only able to observe whether or not the working groups ask Coreper to discuss outstanding issues and not the substance or importance of what Coreper is asked to

tioned that many of the interviewees answered this question with reservations. They pointed out that the decision making process depends a lot on the legislative act on the table and on external factors such as time pressure, the urgency of the act and so on. For this reason, some interviewees found it too difficult to give a qualified answer to the question. Figure 6.1 presents the statements of the interviewees; although not all interviewees from each working group made a statement about the relative role of the working group, at least one person from each group offered his/hers considerations on the subject.

Interestingly, some of the interviewed officials from the same working groups had diverging considerations about the relative amount of decision making taking place in the working group and how many of the issues in the single legislative acts that are normally settled in the working group. For example, the Danish (IP 4) and the British (IP 13) officials in the Social Questions working group considered the relative role of the working groups quite differently. While the Danish official estimated that about 95-98 pct. of the regulations' content is finalised in the working group, the British official estimated that only around 50 pct. of the content of the legislative acts are solved in the working group. However, when discussing legislation other than regulations, the Danish official estimated that the working group finalises around 60 pct. of the legislative acts. Nevertheless, it is clear that the two interviewees have very diverging views on the relative role of the working group and whether this is due to diverging perceptions of the extent of working group decision making, or whether they just understood the question in different ways, is difficult to say. Either way it is a reminder that the interviewees' considerations on this subject should be concluded on with care. Below, I will present and discuss the interviewees' viewpoints more closely.

As Figure 6.1 shows, the interviewees generally emphasises the role played by the Council working groups. Quite a few interviewees estimate the extent of decision making that takes place in the working group, compared to the higher levels of the Council, to be close to 100 pct. This result differs a lot from what the quantitative study showed and puts more emphasis on the role of working groups in EU decision making as well as on the importance of this study.

discuss. If you were to give a percentage on how much of the single legislative acts is finalized in the working group, what would you say?

Figure 6.1 : Statements about the relative role of the Council working group

The extent of working group decision making: How much of the single legislative acts is sorted out in the Council working groups?	
Working group :	
Land transport	IP 18: '60-70 pct. of the legislative acts are solved at working group level. Again depending a lot on the sensitivity of the dossier. 20 pct. of the acts are sorted out in COREPER and the last 10 pct. are sorted out in the Council of Ministers'
Energy	IP 2: 'There is always a political decision that has to be made at the political level. Everything is not sorted out in the working groups – that is not how things work'. IP 10: 'We never finalise the whole dossier in the working group'. IP 19: 'I would say that about 80-90 pct. of the individual dossiers are finalised in the working group, 10 pct. in Coreper and almost nothing in the Council of Ministers'.
Environment	IP 11: 'It is so difficult to say but normally we are able to solve 70 pct. of the problems of a legislative act in the working group'. IP 20: 'I think we solve around 90-93 pct. of the issues in the working group. But politically it is the most important issues that are sent on for discussion in Coreper'. IP 22: '70-80 pct. of the content of the dossiers are solved in the working party. That being said, it is the crucial issues that are sent on – the issues of a high political nature. In general the Ministers do not spend that much time with the dossiers. They do not really decide that much'. IP 4: 'About 95-98 pct. of the regulations are finalised in the working group. The pattern is different with other types of legislative texts – it may be more difficult to reach agreement about other types of legislative texts and I think we finalise 60 pct. in the working group'. IP 13: '50 pct. are solved in the working groups and 50 pct. are left for Coreper to sort out. The ministers' level is not the best place to make decisions because they do not have the necessary technical understanding'. IP 24: 'Negotiations on the majority of issues are finalised in the working groups and the issues sent on to Coreper are usually minor. It is very seldom that we invite Coreper to solve outstanding issues. Our ministers meet only seldom. Maybe 1-2 times per presidency. Most of the points on their agenda are false B-points'
Social Questions	
Financial Services	IP 6: 'It depends on how you weigh it. About 95-99 pct. are sorted out in the working groups. The value added by Coreper is limited and the final agreement is reached in ECOFIN. But this is where the major political issues are solved. IP 14: '2/3 solved in the working group'. IP 25: 'It depends a lot on the dossier. You have to choose what you will be able to brief the ambassador on and the question is always whether the legislative act is too complicated'. IP 34: '95 pct. are finalised in the working group, 5 pct. in Coreper and about 1 pct. of the issues are solved by the ministers'.

Working group :	The extent of working group decision making: How much of the single legislative acts is sorted out in the Council working groups?
Technical Harmonisation	<p>IP 15: '90-95pct. of the issues are sorted out in the working group. For example we recently had a legislative act containing 8 articles and 3 of them were sent on to Coreper'.</p> <p>IP 26: 'In technical harmonisation we have very long articles. Often 5-6 of the articles are open for Coreper. 80-85 pct. of the wording are solved in the working group. But in terms of political weight it is less. All the horizontal articles are usually sent on and some articles are just more politically important than others'.</p> <p>IP 35: '80-90 pct. are solved in the working group'.</p>
Public Health	<p>IP 16: '95 pct. are solved in the working group. It is by definition the very political issues that are solved in Coreper. And it is always issues that could not be solved by the WP'.</p> <p>IP 27: 'The working group's general ability to reach agreement is very good. The working group on Public Health is almost always able to go to Coreper without any outstanding issues. When there are any II-points they are usually false B-points'.</p>
Statistics	<p>IP 8: 'It is close to 100 pct. of the issues that are sorted out in the working group'.</p> <p>IP 17: '100 pct. of the content in the dossiers are solved at working group level. It is only matters of principle that are sent on for discussion in Coreper'.</p> <p>IP 36: 'I have never experienced that legislative acts have been sent on for discussion in Coreper or the Council of Ministers so I will have to say that 100 pct. of the content of the legislative acts are sorted out in the working group'.</p>

In addition the interviewees' assessments stress the relevance of supplementing the quantitative study with qualitative data as the interviews clearly change our general impression of the extent of decision making taking place in the Council working groups. For example, the Czech official from the working group on land transport estimated that around 60-70 pct. of the legislative acts are solved at working group level. In other words the Czech official accentuates the role of the working group compared to the impression from the quantitative study. According to the quantitative analysis the working group sent the majority of cases on for II/B-point discussions at the higher levels of the Council. But in terms of how much of the content of individual acts is sorted out in the working group, the relative role of the working group is greater according to the interviewees. The same pattern appears when we focus on the responses of officials from some of the other working groups. Interviewees in the working group on environment thus estimate that negotiations on around 70-93 pct. of the issues in an individual legislative act are finalised in the working group. This is interesting as the quantitative study left the impression that the working group on environment is one of the working groups that involves the higher levels of the Council the most. The quantitative study showed that almost all legislative acts within this policy area are discussed at the higher levels of the Council at some point during the decision making processes. This indicates that even though the working groups send legislative acts on for II/B-point discussion at the higher levels of the Council relatively often, most of the content of the legislative acts is sorted out at working group level. That being said, many interviewees underlined that in terms of political weight, the issues left for Coreper and the Council of Ministers are the politically important ones. This was for example stressed by one of the Swedish interviewees from the working group on environment (IP 20): 'But politically it is the most important issues that are sent on for discussion in Coreper'.

In sum, the interviews upgrade our general notion of the relative amount of decision making that takes place in Council working groups compared to the quantitative study. The quantitative study showed that working groups send legislative acts on for II/B-point discussion in Coreper/Council at least once in 68 pct. of the cases. The interviews showed that most of the content of these acts are sorted out in working groups and that the issues left for Coreper and the Council are few, but often of high political importance.

6.4. Working group specific variables

In this section I will look closer at the question of whether working group decision making varies between policy areas and working groups and address the question of what causes these variations. Within which policy areas is working group decision making more extensive and what is the explanation? Do working group specific variables, such as the composition of the group, affect the decision making? Do negotiations and the extent of working group decision making differ according to who the speakers are? Is it easier to reach agreement when the participants have close contacts to the EU system as proposed in the theoretical framework?

6.4.1. Does the role of the Council working group vary across policy areas?

As described in the theoretical framework in Chapter 3 and in the quantitative analysis, there is good reason to expect that the extent of decision making that takes place in the Council working groups varies between policy areas: the EU's competences are more extensive in some policy areas than others; the level of technical complexity varies; and finally the interest configurations of the actors affected by the legislation differ between policy areas. The quantitative study increased our confidence in the thesis that working group decision making varies and is more extensive within some policy areas than others. More specifically, the quantitative study showed that the working groups in, e.g., environment, transport, social policy send outstanding issues on for II/B point discussions in Coreper and/or the Council of Ministers more frequently than, e.g., in general affairs. In this section, I will examine whether the interviewees' responses support these results and I will look at the interviewees' explanations of why their working group often or seldom send legislative acts on for discussion at the higher levels of the Council.

The point of departure is Figure 6.1, which shows the interviewees' responses to how much decision making they think takes place in their working group. The interviewees had varying perceptions about the relative amount of decision making taking place in their working group and estimated that the working group solves from 50 up to 100 pct. of the legislative acts. However, the estimates vary somewhat across policy areas. While the Czech official from the working group on land transport estimated that around 60-70 pct. of the legislative acts are solved at working group level, the officials from the working group on statistics claimed that the working

group hardly ever asked Coreper or the Council of Ministers to solve outstanding issues. In other words, the interviewees seem to confirm the results of the quantitative study. Still, it is problematic that not all interviewees gave their estimate on this question and the fact that many interviewees found the question difficult to answer underlines the importance of concluding with care.

Luckily, some of the interviewees have experience from more than one working group and some of them were able to shed light on whether the extent of decision making taking place in the working group varies between policy areas. The Danish official who participates in two working groups, on Environment and the Technical Harmonisation (IP 3) was most clear about this question: 'In the working group on Environment we have no reservations about sending dossiers on for discussion in Coreper and the Council of Ministers. In other groups, proceedings are different. They can be far more reserved about sending dossiers on to Coreper and the Council. I think such variations appear due to different working traditions that have developed over time'. One official from the Council's General secretariat (IP 32), who has participated in 3 of the working groups included in the current study, also confirmed that the level of decision making taking place in the working groups varies between policy areas: 'The general ability of the working groups to reach agreement differs a lot between groups. How much decision making that takes place in the working groups depends on factors such as how well the participants know each other'.

In sum, the interviewees provide additional confidence in the validity of hypothesis 1: The extent of decision making taking place in Council working groups varies across policy areas.

An important question is what explains these differences between policy areas. Why is working group decision making for example so much more far reaching within Statistics compared to other policy areas? Why are some working groups far more reluctant to send legislative acts on for discussion at the higher levels of the Council while others have no reservations about involving Coreper and the Council of Ministers in the decision making process? As pointed out by the Danish official from the working group on Environment (IP 3), who also has experience from other working groups, much of the variations in working group decision making is possibly caused by variations in organisation, traditions and norms. Below I will account for the interviewees' explanations of the variations between policy areas in the extent of decision making taking place in the working groups. A focal point in this review is whether the interviewees point at the same explanatory variables that formed the reasoning behind hypothesis 1 (see above).

Overall it must be concluded that the interviewees offered diverging explanations for the extent of decision making taking place in their working group; some correspond to the underlying reasoning behind the hypotheses, some are unforeseen. First of all, some of the interviewees from the working group on technical harmonisation, who expressed that they would rather not send legislative acts on for discussion in Coreper and the Council, stated that this reluctance is partly due to the technical complexity of the legislation within the policy area. The British interviewee (IP 15) stated that the legislation is more technical than political, which confirms the expectation that technical complexity may affect the amount of decision making taking place at the preparatory levels in the Council.

As mentioned, the Danish interviewee from the working group on technical harmonisation (IP 3), who also participates in the working group on environment, was surprised with how reluctant people in the working group on technical harmonisation are to send acts on to Coreper. She described that proceedings are different in the working group on Environment and suggested that such differences might have to do with traditions and culture. However the Danish official also emphasised that the legislation in this area has far more wide-ranging economic and political consequences for the member states. In addition she stressed that there is a large flow of legislative acts and that the legislation is far more heterogeneous than in Technical Harmonisation. The other interviewees from the working group on Environment also emphasised that the environmental legislation generally has significant implications for the member states and that this often complicates negotiations as the member states have diverging levels of ambition.

The officials from the working group on Land Transport and on Energy also focused on the fact that the legislation within their field has considerable consequences for the member states both politically and economically. Furthermore they pointed out that the two areas generally are very wide-ranging. The Danish interviewee stated that almost 25 pct. of all the acts adopted by the co-decision procedure are about transport. The interviewees from the working groups on Environment, Land Transport and Energy furthermore emphasised that negotiations within their policy areas are affected by the strong interests of stakeholders and interest groups that seek to put their fingerprints on the legislation. All in all, the interviewees generally supported the theoretical expectation that working group decision making differs due to variations in the scope of EU legislation and due to variations in the interest configurations among lobbyists, interest organisations etc. affected by the EU legislation. However the interviewees also emphasised other factors.

First of all there seemed to be a clear explanation of why the working group on Statistics so seldom sends legislative acts on for discussion at the higher levels of the Council. The interviewees emphasised that statistical politics should be independent and therefore the working group strives to avoid political interference. The Danish official (IP 8) elaborated: 'We see ourselves as watchdogs in the same way as the media. We make sure that things are examined and presented correctly and ultimately it is messy when politicians use co-decision to put their fingerprints on the legislation. We have a more professional approach to statistics'.

In the working group on Financial Services another, totally different, consideration was at stake. The French interviewee explained that the officials in the group, many of whom come from the member states' financial ministries, often are reluctant to send legislative acts on for discussion in Coreper because that implies handing acts on to people from the member states' foreign ministries. This suggests that there is a turf battle between different policy areas which may affect the policy processes in the European Union. The question is whether this appears in other working groups and whether turf battles are common in the EU. This would be an interesting topic for future research.

Another factor which may cause variations in the extent to which working groups send legislative acts on for discussion at the higher levels of the Council is whether they refer to Coreper I or II. According to a few of the interviewees, Coreper I is far more willing to discuss daily politics in the form of community legislation, and Coreper II, which deals mostly with foreign policy issues, is less eager to discuss community legislation. According to the Swedish official in the working group on Environment (IP 21), this difference may be due to variations in experience: 'Coreper I deals with legislation all the time. They are used to it. Coreper II deals with foreign policy, which is of a totally different nature'. Due to these variations in the two Corepers' willingness to discuss legislation, it would be relevant for future to study more closely whether working groups organisationally placed under Coreper II may often be more reluctant to send legislative acts on for discussion in Coreper compared to working groups that refer to Coreper I.

In sum, there seems to be different explanations of why the extent of working group decision making varies across policy areas. In the next section I will address the question of whether the working group members' general level of contact to the EU level can affect the working groups' ability to reach agreement at their level.

6.4.2. Does the level of socialisation among the working group members affect the role of the working group?

One factor that may affect the extent to which working groups finalise negotiations at their level is the organisational association of the working group members. As described earlier, some working groups consist mainly of experts sent out from the national ministries or affiliated institutions. Other working groups consist of attachés from the member states' permanent representations in Brussels. However, most working groups consist of both attachés and experts, but it varies who the speakers are. In some groups the attachés do the talking and are supported by experts; in other groups, it is the other way around.

Naturally, the officials' level of contact with the EU system and the other member states varies depending on whether they are experts or attachés. Attachés are based in Brussels for a longer time, normally 2-5 years. Experts are sent to participate in individual meetings.⁴⁴ Based on a socialisation thesis, it is likely that by working together over time, attachés begin to think alike and may become more oriented towards the EU rather than towards their respective national representations. This socialisation process might imply that attachés start to focus more on finding common solutions in the EU and are more willing to compromise. According to previous literature, the role perceptions of officials in the EU are affected by their level of contact to the Union (Beyers 1998; Egeberg 1999 & 2002; Trondal & Veggeland 2003; Trondal 2000 & 2002; Egeberg, Shaefer & Trondal 2003; Beyers & Trondal 2004; Beyers 2005; Radaelli & Banducci 2008). Although previous studies have shown that the orientation towards the EU normally complements rather than replaces the officials' orientation towards the national level, I expect that negotiations in the working groups are affected by the composition of the groups and that more decision making takes place in working groups composed of attachés or where attachés are the main speakers, compared to working groups composed of experts or where the experts speak.

In general, the interviewees confirmed that it affects negotiations whether experts sent out from the national ministries or affiliated institutions, or attachés from the permanent representations in Brussels, sit around the negotiating table. However, many of the interviewees described that negotiations often proceed in such a way that the experts do the talking in the initial phase of negotiations and the attachés take, usually when the technical

⁴⁴ Note that in some cases the same experts may be sent to Brussels for working group meetings over a long period of time. In such cases the experts based in the national capitals may have longer seniority in the working group than attachés.

details are solved. A few even stated that the presidency often uses this practice to speed up negotiations because attachés are more diplomatic, seeking to find a common solution at EU level. The French official from the working group on Technical Harmonisation stated (IP 26): 'Experts are very helpful and they can even take the floor. But when the time comes for decision making they are not necessarily the best persons to strike deals. They are extremely focused on the details and compromising often has a negative meaning for them because they feel they lose something. Therefore it is necessary that the attachés take over at some point during negotiations'.

A majority (26 out of 36) of the interviewees expressed that working group discussions proceed more easily when the attachés negotiate. Many pointed out that attachés are more oriented towards what is politically possible and finding common solutions. Some stressed that the fact that the attachés meet frequently and participate in so called continuous negotiations gives them a broader perspective. Continuity makes it easier for the attachés to form alliances and to follow the logic of give and take. Others focused on the aspect that experts usually have more technical expertise and that they are so eager to reach a technically perfect solution that they are less willing to compromise. One official said that experts are more focused on the technical rather than the political details: 'The experts have a tendency to see problems from a technical rather than a political point of view. This often implies that when the experts find that an issue is important, they are very reluctant to compromise because they want to get things right' (Official from the Council's General Secretariat – IP 34).

Only three interviewees rejected that working group negotiations are affected by whether the speakers are attachés or experts. The British official from the working group on Statistics (IP 17) said that how working group negotiations proceed depends more on people's personality. He found that the negotiators' knowledge, presentation technique and networking skills are far more important for the working group's ability to reach agreement than whether they are experts or attachés.

It should be mentioned that responses to the question of the effect of organisational placement possibly entail a certain bias. As the majority of the interviewees are attachés this may affect their views and explain why they find that working group negotiations proceed most smoothly when attachés sit around the negotiation table. Furthermore, it cannot be ruled out that the responses would have been different if the selected working groups consisted mainly of experts. It is relevant to point out that the Danish official from the working group on Statistics (which consists of experts from the national

agencies in the member states) found that attachés are not able to negotiate in this policy area because it is so technically complex.

Figure 6.2 shows examples of the different viewpoints about whether or not working group negotiations and the working groups' ability to reach agreement depend on whether attachés or experts sit around the negotiation table. The left side lists examples of interviewees confirming that the composition of the group impinges on its ability to reach agreement; the right side lists examples of the opposite views.

Figure 6.2: Examples of interviewees' notion of whether working group negotiations are affected by the composition of the working group

The composition of the working groups and who the speakers are <i>does</i> affect working group negotiations (N=26):	The composition of the working groups and who the speakers are <i>does not</i> affect working group negotiations (N=3):
<p>'Yes it does affect negotiations whether experts or attachés speak. That is why we have to be here. We attachés have to be more focused on the broader perspective and try to find a solution everyone can agree upon' (Danish official, Energy, IP 2).</p> <p>'Whether attachés or experts speak matters quite a lot. The experts have less understanding of what is politically possible and they speak from personal conviction. Attachés are more oriented towards what is politically possible and towards finding a common solution. The decisive factor is that the attachés are here for many years and meet their colleagues again and again' (Official, Council's General Secretariat, IP 30).</p> <p>'The meetings are a lot more complicated and time consuming when the experts speak' (British official, Social Questions, IP 13).</p> <p>'It is not always easy to reach agreement in the working group and that is mainly due to the experts. They want to get the details right whereas attachés are more oriented towards finding a common solution' (British official, Technical Harmonisation – IP 15)</p> <p>'Attachés are very keen to solve as many issues as possible. When you are here over a longer period of time you become more aware that many things are interlinked and that if you insist on having your will on one issue you will have to give up on another issue' (Czech official, Financial Services – IP 25)</p>	<p>'No – I do not think that it affects negotiations whether the speakers are attachés or experts' (French official, Environment, IP 12).</p> <p>'The arguments from the experts are often more convincing because they are founded on technical details and knowledge. I would not say that it is easier to reach agreement when the attachés speak' (Czech official, Energy, IP 19).</p> <p>'It does not matter who the speaker is. Personality matters a lot: presentation technique, confidence, knowledge, ability to develop good personal relations' (British official, Statistics, IP 17).</p>

In his PhD thesis about the extent of decision making taking place in the Council's preparatory bodies compared to the Council of Ministers, Frank Häge found no connection between the level of socialisation of the working group members and the extent of decision making taking place in the Council's preparatory bodies (Council working groups and Coreper) (Häge 2008b: 257). He measured the socialisation variable by observing the number of meeting days of the working groups, expecting that working groups meeting often would be better at finding common solutions at an early stage of negotiations because the members have more contact to the EU system. This thesis arrives at a different result as the analysis shows that working group negotiations and the working groups' ability to reach agreement seems to be affected by the negotiators' level of contact to the EU system. On the basis of the qualitative analysis it can more specifically be concluded that negotiations in the Council working groups seem to be affected by whether the members, more specifically the speakers, are attachés based in Brussels or experts based in the national capitals. Many interviewees expressed that negotiations proceed more smoothly when attachés negotiate, and all in all the qualitative analysis increases the confidence in the validity of hypothesis 2: The more contact the members of the Council working groups have had to the European level, the more consensus seeking they will be and the greater the decision making capacity the working groups will have.

6.5. Issue specific variables

As described in the theoretical framework, it is not only likely that the extent of decision making taking place in the working group depends on characteristics related to the policy area and the working group itself. It is also fair to presume that the extent to which the working groups are able to finalise negotiations at their level is dependent on the legislative act on the table. In this section I will look closer at whether, and in what way, the nature and content of the legislative acts affect working group negotiations. First, I will examine whether the level of conflict on a legislative proposal affects the extent of decision making that takes place in the working group (Section 6.5.1). Do working groups tend to send outstanding issues on to the higher levels of the Council more often when the interests of the institutions and member states involved in the decision making process are strong and conflicting? I then move on to the question of what causes such conflicting interests by studying whether the financial implications of the legislative acts affect working group decision making (Section 6.5.2). Finally, I will address the hypothesis that the

technical complexity of the legislative acts affects the deal making capacity of the working group members and thereby also their ability to reach agreement at their level (Section 6.5.3).

6.5.1. Does the level of conflict between the member states and institutions involved in the decision making process affect the extent of working group decision making?

As I argued in the theoretical framework working group negotiations are likely to be affected by the extent to which the member states and the institutions involved in the decision making process have strong and conflicting interests in the legislative proposal put forth by the Commission. When the positions of the actors involved in the decision making process are inflexible and far from each other it is demanding to find a common solution. It is therefore a fair assumption that it is difficult to reach agreement at an early stage of negotiations and that working groups more often send legislative acts to the higher levels of the Council when the issues on the agenda are marked by strong and conflicting interests among the actors involved.

In the theoretical framework I described issues pointed out by previous studies as particularly complicated. The review showed that EU's member states above all have strong and often diverging interests e.g. about level of integration in the EU and about issues with wide-ranging economic and administrative consequences for the member states. This led me to the expectation that issues with far-reaching implications for the member states' sovereignty and economies generally are harder to agree on at working group level.

I not only expect that working group negotiations are affected by the configuration of the member state's positions, I also expect that the working groups' ability to finalise negotiations at their level depends on the positions of the European Parliament and of the Commission. As argued earlier, the two institutions can be regarded as additional players in Council, and Council working group, negotiations⁴⁵. Another theoretical expectation is that negotiations in the working groups are entangled if the positions of the European Parliament and the Commission are firm and far away from the member states' positions in the Council. All in all my theoretical proposition is that the more steadfast and conflicting interests member states and institutions

⁴⁵ As explained earlier in the thesis the European Parliament does not participate directly in the working groups. But as the Council have to reach agreement with the European Parliament when acts are adopted by co decision, the working groups have to take the position of the Parliament into account.

involved in the decision making process have on a legislative proposal, the harder it will be to reach a compromise at working group level.

The quantitative study clearly increased our confidence in the validity of the hypothesis that the level of conflict among the member states and institutions involved in the decision making process impinge on the working groups' ability to reach agreement. The analysis showed that 85.7 pct. of the legislative acts which implied no conflict between the member states and EU institutions were agreed at working group level without discussion at the higher levels of the Council. In comparison, 87.9 pct. of the legislative acts that were marked by a high level of conflict were discussed at all levels of the Council. The quantitative analysis furthermore showed that the effect of the level of conflict was strong even when controlling for the other variables included in the study. Below I will present the interviewees' responses regarding the effect of conflict on working group decision making. First, I present their general statements about whether and how different types of conflict can impinge on the working group's ability to reach agreement; then I present their responses regarding whether and how the positions and actions of the European Parliament and the Commission affect working group negotiations.

I want to emphasise that I did not ask the interviewees directly about the effect of conflict. Instead I asked questions such as; 'Would you say that the legislative acts that you send on for discussion in Coreper and the Council share any common characteristics?' and 'As far as you can see: are there any dynamics or factors that influence the working group's ability to reach agreement?'. Any responses about the effect of conflict on working group decision making thus came at the interviewees' own initiatives.⁴⁶ In addition to these indirect questions, the interviewees were asked whether the position and actions of the European Parliament and the Commission may impinge on the extent of decision making taking place in the working groups (see interview guide Appendix C & D).

All in all, the interviews provided a clear impression that steadfast and conflicting interests are a major explanatory factor for why legislative acts

⁴⁶ As described earlier in the thesis, the explanation to why the interviewees were not asked directly about whether the level of conflict among the member states affects the extent of working group decision making is that it lies in the nature of the decision making procedure and because I did not want to ask questions which were too evident. Instead, I found it more fruitful to ask indirectly, encouraging the interviewees to describe the decision making process and consider the circumstances where the working groups send legislative acts on for discussion at Coreper/Council of Ministers.

are sent on from working groups for further discussion at the higher levels of the Council. However the interviewees described these conflicts differently. While some focused on political conflict, others were more specific and focused on conflicts about the scope or financial implications of EU legislation. Many interviewees revealed that all these types of conflicts appear in their working groups and affect negotiations.

The vast majority, 29 of 36 interviewees, pointed out that issues sent on to the higher levels of the Council are politically important and conflictual issues. Some stated that political and fundamental questions just are not suited for discussion at working group level: 'Attachés are just not the suitable decision makers when the issue on the table is highly political' (British official, Public Health – IP 16). Others emphasised that political issues are just harder to reach agreement about: 'The issues that we send on to Coreper and Council are politically difficult questions where it is hard for the member states to reach agreement' (Official, the Council's General Secretariat – IP 34). This confirms the expectation that the issues that working groups send on for discussion at the higher levels of the Council are conflictual issues that are of political importance for the member states.

Figure 6.3: Examples of interviewees' statements about the tendency that political issues are sent on from working groups for discussion in Coreper and the Council of Ministers:

'It goes without saying that political issues are sent on' (Czech official, Land Transport – IP 18)
 'Political and more fundamental issues are often sent on to Coreper because they are more suited to be handled at the higher levels of the Council' (Danish official, Energy – IP 2)
 'The only similarity between issues that are sent on to the higher levels of the Council is that they are political' (Swedish official, Environment – IP 20)
 'The dossiers and issues that are discussed in Coreper and the Council of Ministers have to be the political issues' (Official, Council's General Secretariat – IP 33)

The fact that an issue is political is a very general frame and may mean different things. Many interviewees explicated more closely what the political conflicts in the working groups may be about (see below). As indicated earlier, the interviewees mainly focused on two sources of political conflict. One issue was the consequences of the legislative acts for the member states' sovereignty; i.e. it may complicate negotiations in the working groups if a legislative proposal encroaches on the member states' competence. According to some of the interviewees, the problem is both that the different member states, and the member states and the Commission, may have different ambitions within certain areas. A Swedish official from the working group on Environment (IP 21) stated that this often is the case within Envi-

ronment. Furthermore, 12 out of 36 interviewees emphasised that the problem with issues that affect national sovereignty is that they often also impose extensive administrative and economic costs on the member states (see Figure 6.4). For this reason the member states often try to resist such acts. In sum this implies that the integration dimension (pro/anti-EU) is apparent in the EU's decision making process.

Figure 6.4: Examples of responses about how a legislative act's consequences for the member states' sovereignty may impinge on working group decision making

'At the policy area of Environment there are large discrepancies in the level of ambition, which complicates negotiations. The conflict is related to assessments of the dossiers' consequences for the member states' self-determination, industries and companies' (Swedish official, Environment – IP 21).
 'One of the common characteristics of the issues that we send on to Coreper and Council is that they often concern the question of whether the policy is perceived as an EU competence or a national affair' (Swedish official, Social Questions – IP 23).
 'Dossiers which affect the member states' competences are often difficult to reach agreement about. In such cases there is a lot at stake for the member states' (Danish official, Public Health – IP 7)
 'New legislation that impinges on the national sovereignty is often difficult to agree upon' (British official, Statistics – IP 17)

When asked about whether the acts that are sent on from the working groups to Coreper and the Council share any characteristics many interviewees pointed at the acts' financial costs as one of the major explanatory variables. Generally the interviews left the impression that financial consequences for the member states are issues that makes legislative acts political. I also asked directly whether extensive economic implications complicate working group negotiations (see next section). However, 12 of the 36 interviewees pointed at economic implications as one of the major explanatory variables for why working groups send acts on for discussion before I had asked about the issue directly. Examples of these statements follow in the display below (figure 6.5).

The interviewees' responses about the effect of strong and conflicting interests among the member states generally support the theoretical expectations of the thesis. In the theoretical framework I proposed that the working groups more often send legislative acts on to the higher levels of the Council when the member states have strong and conflicting interests and the interview increased our confidence in this hypothesis. Furthermore I expected that the member states often have diverging interests about issues such as the economic implications and the scope of the legislation and this corresponds very well to what the interviewees stated. Before concluding on the hypothesis I will account for the interviewees' statements about how the po-

sitions of the European Parliament and the Commission affect working group negotiations.

Figure 6.5: Examples of the interviewees' responses about how the legislative act's financial consequences may impinge on working group decision making

'I would say that the primary conflict in our working group is the financial issue. Can we afford to implement the legislation?' (Danish official, Statistics – IP 8)

'The issues that are sent on for discussion in Coreper and the Council are the politically difficult issues such as economic consequences for the member states' (Official, Council's General Secretariat – IP 34)

'What is left for Coreper and the Council of Ministers to discuss is often the financial aspects of the dossiers' (Official, Council's General Secretariat – IP 35)

'I would say that finance matters a lot. If the dossiers imply a lot of expenses for the member states this will complicate negotiations' (British official, Social Questions – IP 13)

'Legislative acts that are burdensome for the member states, for example financially, are often difficult to reach agreement about' (Official, Council's General Secretariat – IP 36)

The interviewees' responses to whether working group negotiations are affected by the position of the European Parliament were also very clear. Only three of the interviewed officials found that the position of the European Parliament is not taken into consideration in working group negotiations. The Czech official from the working group on Environment (IP 22) did not think that the position of the European Parliament affects what the member states in the working groups think. The French official from the working group on Financial Services (IP 14) stated that if the European Parliament agrees on a position after the Council has done so in the financial policy area, the Council working group does not have to take the European Parliament into account under their negotiations. Finally, an official from the Council General Secretariat (IP 36) stated that the European Parliament is very responsive to what the member states have to say about the legislative acts: 'Within Statistics the European Parliament waits for us to state what we want and in the majority of cases take on board what we say' (Official, Council's General Secretariat – IP 36).

Even though the vast majority of the interviewees found that the position of the European Parliament affects working group negotiations, the interviewees had diverging perceptions about the extent of this effect. Approximately half of the interviewees stated that whether or not the working groups have to take the position of the European Parliament into account during negotiations depends a lot on the stage of the decision making process. More specifically, many interviewees found that it is more towards the end of a reading that it is vital to consider the Parliament's position. In the beginning it is most important to reach agreement among the member

states. According to the British official in the working group on Land Transport (IP 9), this can be particularly important if the legislative acts are very complicated: 'Sometimes the dossiers are so complicated that it is too difficult and demanding to negotiate with the member states and the Parliament at the same time'.

Overall, the interviews left the impression that it varies both among working groups and among legislative acts whether it is the Council or the European Parliament reaches its position first. According to the rules of procedure, the Parliament must declare its position first, but the majority of the interviewees said that the Council often reaches its position first. However, one official from the Council's General Secretariat (IP 29) stated that working groups can evaluate from case to case whether to announce its position before the European Parliament does so: 'We start out by dealing with the proposals on our own to find a common position. After that we negotiate with the European Parliament to see if we can reach a first reading agreement. Other times we do not announce a common position simply because it would upset the European Parliament. So then we still negotiate in the working group when the presidency starts its negotiations with the Parliament'. This statement leaves the impression that the working group can consider from case to case whether it is fruitful to wait for the European Parliament to account for its position before the member states in the Council do so. It is relevant to point out that one official from the Council's General Secretariat (IP 34) stated that it is an advantage to reach agreement in the Council first because it is easier to negotiate with the European Parliament when the Council has a clear position. On the other hand, a Danish official from the working group on Financial Services (IP 6) said that it can complicate negotiations between the EU institutions if the member states in the Council have not considered the positions of the European Parliament and the Commission: 'The Council finalises its negotiations before the Parliament does so. But this is a bizarre situation. The three institutions may have totally different approaches and negotiations can be strange and complicated if we are talking about different things. It seems absurd!'

13 interviewees stated that the position of the European Parliament can be used as an argument in the working groups. The interviews left the impression that member states, the presidency and the Commission can draw attention to the position of the Parliament during working group negotiations and argue that the Council should move in the same direction. In addition, many interviewees clearly indicated that the Parliament is an additional player in the Council working groups. Two of the interviewees pointed out

that many delegations are in contact with MEPs⁴⁷ from their member states and discuss possible amendments. The Slovenian official from the working group on Statistics (IP 28) stated that the European Parliament can be used as a partner in working group negotiations: 'For example, when your country holds the presidency you can hold meetings with the rapporteurs from the Parliament and try to convince them to support your position'. This possibility was also emphasised by the French official in the working group on Environment (IP 11): 'The Parliament can be one of your players if you are not able to get your position through in the Council'. Figure 6.6 lists examples of the interviewees' statements about how the position of the European Parliament can be used as an argument in the working groups.

Figure 6.6: Examples of the interviewees' statements about how the position of the European Parliament can be used to support an argument in the working group

'If a report from the European Parliament supports our position we will clearly refer to it during the negotiations' (Swedish official, Environment – IP 21)

'Many delegations are in contact with their MEPs and use the insights about what the Parliament will do as an argument in the working group' (Danish official, Social Questions – IP 4)

'If the European Parliament goes in the same direction as us we will argue in the working group that we have to go in the same direction as the Parliament' (Czech official, Financial services – IP 25)

'The Commission and the presidency often refer to the position of the European Parliament to support their statements' (British official, Technical Harmonisation – IP 15)

The interviewees not only demonstrated that the position of the European Parliament can be used as an argument during negotiations in the working groups, some interviewees also explained in more detail how the position of the European Parliament can complicate working group negotiations. The Danish official in the Social Questions working group (IP 4) expressed that the European Parliament may have unrealistic expectations to policy outcome. He stated that the main difference between the European Parliament and the Council is their responsibilities: 'The members of the Parliament strive to show their voters what they accomplish because they are accountable to their voters. In the Council we are responsible for agreeing on policy that is realistic to implement at the national level. It is clearly more difficult to reach agreement in the working group when the European Parliament is involved'. The Danish and British officials from the working group on Statistics also described how the European Parliament affects negotiations by making problematic and unrealistic requests: 'The European Parliament sometimes proposes something that is totally senseless and out of proportion and we have

⁴⁷ Member of the European Parliament.

to take it seriously. It complicates negotiations a great deal when the Parliament comes up with such proposals' (Danish official, Statistics – IP 8).

All in all the interviews leave the impression that the position of the European Parliament can affect working group negotiations both directly as the working groups have to take the Parliament's position into account and indirectly as its position is used as an argument in the working groups. Below I will examine whether the interviewees find that the position of the Commission impinge on working group negotiations.

21 of the 36 interviewees stated that the position and actions of the European Commission affect working group decision making. None of the interviewees rejected that the Commission is a central and influential player in working group negotiations, but the 16 interviewees who did not confirm that the Commission affects working group decision making did not say much about the issue.

Generally the interviewees who expressed that working group negotiations are affected by the position and actions of the Commission confirmed the expectation that the Commission is an active player in the working group. A Swedish interviewee (IP 21) from the working group on Environment explained that the Commission plays an important role in the working groups in two ways: 'First of all they have to explain the background of their proposal, answer questions and shed light on uncertainties. Secondly we need to know whether or not they can accept our amendments. Can they agree on our changes?' Likewise, many interviewees explained that a lot depends on how the Commission reacts to the amendments proposed by the member states and on the Commission's flexibility. If the Commission is inflexible and unwilling to accept changes to its proposals then it is difficult to finalise negotiations at an early stage of the decision making process. The Danish official from the working group on Environment (IP 3) explained that the flexibility of the Commission depends a lot on whether more than one Directorates General in the Commission are affected by a legislative act. If so, it can be more problematic for the Commission officials to compromise with the member states. She described that environmental legislative acts (DG Environment) often have implications for DG Enterprise and Industry, which makes it more difficult for DG Environment to be flexible during negotiations in the working group.

Three interviewees from the working group on Statistics were very specific about what the conflict between the Commission and the member states is about and explained that the two parties often have diverging ambitions. The Commission often wants more statistics and increased spending in the area, while the member states focus on what is realistic: 'Often we dis-

agree with the Commission on the budgetary questions. The Commission often wants to spend a lot of resources on the area but many member states do not have these resources. Most arguments circle around this question' (British official, Statistics – IP 17).

In addition to the statements about how working group negotiations are affected by the divergence between the Commission's and the member states' interests, 11 interviewees emphasised that the relationship between the Commission and the Council Presidency can have crucial implications for a working group's ability to reach a compromise. The Danish representative from the working group on Financial Services explained that if the presidency and the Commission have oppositional interests the negotiation climate in the working group can become very unpleasant. Under such circumstances a compromise has limited potential.

The different viewpoints about the role of the Commission under working group negotiations appear in Figure 6.7. The left side lists statements about the effect of diverging views between the Commission and the member states and the right side shows statements about how the relationship between the presidency and the Commission affects working group negotiations.

In conclusion, the extent to which the member states and the institutions involved in the decision making process have strong and diverging interests about the legislative acts seems to have a clear effect on the working groups' ability to reach agreement. Firstly the majority of interviewees drew attention to the tendency that issues marked by political conflict are often sent on to the higher levels of the Council. More specifically, issues that have strong implications for the member states' sovereignty, and issues that imply financial costs, are according to the interviewees more difficult to reach agreement about and are therefore often sent on for discussion at the higher levels of the Council. In the interviews I also asked specifically about how the legislative acts' economic consequences impinge on working group decision making and I will come back to the interviewees' responses to this question in the following section. As for now it can be concluded that issues with strong implications for the member states often cause conflict in the working groups and are therefore often sent on for discussion at the higher levels of the Council. As already pointed out this corresponds well to the theoretical expectations of the thesis as well as the reasoning behind the hypothesis.

Figure 6.7: Examples of statements about how working group negotiations are affected by the level of disagreement between the Commission and the presidency and between the Commission and the member states

Examples of the interviewees' statements about how disagreement between the Commission and the member states affects working group decision making:	Examples of the interviewees' statements about how working group negotiations is affected by the relationship between the presidency and the Commission:
<p>'When the member states have problems it is usually with the Commission's proposal. The question is then how much the Commission is willing to accept and this affects how the working group negotiations proceed a lot' (Official, Land Transport – IP 29)</p> <p>'There can also sometimes be very different views in the Commission and the member states and then it is necessary to send legislative acts on to Coreper' (Czech official, Energy – IP 19)</p> <p>'If the Commission opposes the proposals that the member states agree on, progress in the working group negotiation will be reduced' (Swedish official, Environment – IP 21)</p> <p>'A factor which complicates working group negotiations is disagreement between the Council and the Commission and when the position of the Commission is really firm (Danish official, Environment – IP 3)</p>	<p>'It affects negotiations a lot whether or not the presidency is able to cooperate with the Commission and involve the Commission when drafting its compromises' (Danish official, Land Transport – IP 1)</p> <p>'It is very important that the presidency is backed by the Commission. Otherwise the progress in working group negotiations slows down' (Swedish official, Social Questions – IP 24)</p> <p>'It can be very interesting to see the dynamics between the Commission and the presidency. It can be crucial for working group negotiations' (British official, Social Questions – IP 13)</p>

The interviews also increase our confidence in the theoretical expectation that working group negotiations are affected by the positions of the two other institutions involved in the inter-institutional decision making process: the Commission and the European Parliament. The data showed that working group negotiations become more complicated when the Commission and the Parliament have strong interests which differ from the interests of the member states in the Council. In sum, the analysis of the interviewees' statements about how strong and diverging interests among the member states and institutions involved in the decision making process affect the extent of decision making taking place in Council working groups increases our confidence in hypothesis 4: Legislative acts marked by a high level of conflict between the member states and the institutions of the European Union are more often sent on from the working groups for a II/B-point discussion at the higher levels in the Council hierarchy compared to acts marked by more consensus.

6.5.2. Is working group decision making affected by whether or not the legislative acts have economic consequences for the member states?

In the theoretical framework of the present thesis I proposed that the extent of decision making taking place in working groups depends on whether the legislative acts have financial implications for the member states. I draw on delegation theory which expects politicians to delegate less decision making power to their officials in financial issue areas (Epstein & O'Halloran 1999: 197). More specifically, a delegation perspective would expect working group officials to have more narrow instructions and less room of manoeuvre when the working group is dealing with issues that have financial consequences. In this section I present the interviewees' responses to the question of whether the legislative acts' economic consequences affect the extent of decision making taking place in the working groups.

The interviews provided a clear impression that the economic impact of the legislative acts is of great importance. Many interviewees pointed out that it is one of the first factors that the member states consider and that economic implications are a central issue in the Commission's impact assessment, which outlines the consequences of a legislative act. 30 of the 36 interviewees stated that legislative acts that have extensive economic consequences more often are sent on for further discussions at the higher levels of the Council. Only three interviewees rejected that economic implications are an issue which can complicate working group negotiations. Figure 6.8 lists quotations supporting the thesis that economic consequences complicate working group decision making (left side) and statements rejecting this theoretical expectation (right side).

Even though the majority of the interviewees stated that economic consequences affect working group decision making the interviews also left the impression that the extent to which the economic consequences affect working group decision making varies between working groups. More specifically, the interviewees from the working group on Land Transport, Energy, Technical Harmonisation, Environment and Statistics emphasised economic consequences more than the representatives from the working groups on Social Questions, Financial Services and Public Health. Quite a few of the interviewees from these working groups emphasised that the economic conflict is not explicit in the working group, but rather an issue that lies behind the officials instructions and decreases their room of manoeuvre. Furthermore, a few of the interviewees stated that economic consequences cannot be used as arguments to reject a proposal. For example the Danish official

from the Financial Services working group (IP 6) stated: 'Financial implications are not an issue that can be used as an argument to reject a proposal. In other words it is an issue which has affected negotiations directly'.

Figure 6.8: Examples of the interviewees' notion of whether the legislative acts' economic consequences affect working group decision making

Statements confirming that working group decision making can be affected by the economic implications of the legislative acts (N=30):	Statements rejecting that working group decision making can be affected by the economic implications of the legislative acts (N=3):
'The financial consequences are maybe the most important criterion for many. How expensive is it going to be?' (Swedish official, Environment – IP 20)	'Economic consequences are not an argument that can be used to reject a proposal and so it is not something that really affects negotiations in the working group' (Danish official, Financial Services – IP 6)
'If there are strong economic interests at stake it is just more difficult to reach agreement' (Official, Council's General Secretariat – IP 31)	'I think that the economic consequences of the legislation are not mentioned enough. The working group is more focused on other elements' (British official, Technical Harmonisation – IP 15)
'Economic consequences are one of the most important questions' (Czech official, Technical harmonisation – IP 25)	
'At the end of the day, finance is often one of the aspects that form the member states' positions' (Swedish official, Public Health – IP 27)	
'The financial crisis has entailed that the member states are far more reluctant to accept legislation which implies economic consequences' (Swedish official, Social Questions – IP 24)	
'Discussing the economic consequences is always the starting point during negotiations about a legislative act' (Official, Council's General Secretariat – IP 32)	

In addition, the interviews left the impression that the pivot of the debate on the economic questions may vary. The interviewees from the working groups on Land Transport, Energy, Technical Harmonisation and Environment emphasised that economic consequences were often a matter of member states wanting to protect their industries. The Danish interviewee from the working group on Land Transport stated that acts that are sent on from the working groups to the higher levels of the Council typically in some way affect the competitiveness of the member states and thereby their potential earnings. A Swedish interviewee from the working group on Environment (IP 21) stated that the legislative acts' potential effect on the member states' industries and businesses is a crucial discussion point in working group negotiations. In the working group on Statistics the economic question is more centred on the Commission and the member states' diverging level of ambition according to the interviewees from the group. Where the Commission

wants to increase spending in the area, the member states are in many cases more interested in keeping expenses down. In other words, the issue is not so much how the legislation affects the industries of the member states, but more how it effects public spending. The same tendency was reflected in the interviews with representatives from the working group on Social Questions and the working group on Public Health. Although the economic conflict is not that apparent and explicit in these working groups in general, the conflict seems to be more centred on public spending when it appears. Figure 6.9 shows some examples of statements focusing on potential consequences for the member states' industries as the main source of conflict (left side) and statements focusing on the issue of public spending as the main source of conflict (right side).

Figure 6.9: Examples of the interviewees' descriptions of the main subject of the economic conflict in the working groups

Statements centring on potential consequences for the member states' industries:	Statements focusing on potential consequences for the member states' public spending:
'The issues that are sent on for debate in Coreper and the Council are typically acts that affect our competitiveness which in turn affects our economies. Ultimately it is about money' (Danish official, Land Transport – IP 1)	'Conflicts about economic questions are seldom explicit in the working group. I have only experienced it once and it was about a legislative act on maternity leave which had clear consequences for public spending' (Swedish official, Social Questions – IP 23)
'Economic implications certainly affect working group negotiations. Within the energy area big companies are influenced by the legislation so economy is a central issue' (Czech official, Energy – IP 19).	'We often disagree with the Commission on the budgetary questions. The Commission often wants to spend a lot of resources in the area but many member states do not have these resources' (British official, Statistics – IP 17)
'Financial implications are a major issue in my area. Each member state tries hard to protect its industries' (French official, Environment – IP 12)	
'The size of the member states' industries varies a lot and therefore the member states have conflicting interests about issues affecting their industries and which have economic consequences' (French official, Technical Harmonisation – IP 26)	

Based on the interviews, whether or not legislative acts have economic consequences for the member states seems to impinge on how conflictual negotiations in the Council working groups are, and on the extent to which negotiations can be finalised at working group level. However, the financial conflict seems to be more pronounced in some working groups than others. Furthermore, the conflicts seem to have different focal points in the different working groups. In some working groups the economic conflict is centred on questions about the consequences for the member states' industries; in other

groups the conflict concerns public spending. In sum, the qualitative study underpins our trust in the validity of hypothesis 5: The legislative acts that are sent on from the working groups for discussion in Coreper and the Council of Ministers often have financial implications.

6.5.3. Does the technical complexity of the legislative acts affect the extent of working group decision making?

The analysis of the issue-specific variables has so far shown that the extent to which the actors involved in the decision making process have conflicting interests about an act, and whether or not the acts have economic consequences, affects working group decision making. However, the extent to which the working groups act alone or send acts on for further discussion at the higher levels of the Council may also depend on other factors. In this section I will study whether the technical complexity of the legislative acts affects at which level in the Council decisions are made and the relative amount of decision making taking place in the Council working groups. From a theoretical point of view, it is likely that this is the case. Based on delegation theory, I argue in the theoretical framework that officials in the working groups are delegated more decision making capacity when they deal with technically complex acts and thereby have more room of manoeuvre to strike deals. The rationale is that the politicians seldom have the technical expertise to handle these acts and therefore delegate more power to the officials (Bawn 1995: 71; Epstein & O'Halloran 1999: 197; Bendor, Glazer & Hammond 2001: 248). In addition, I argued that a bottom up perspective leads to the expectation that officials in the working groups attain extensive knowledge about the legislative acts on the policy area and that they over time will develop professional pride and an eagerness to sort out the technical details themselves. In sum, the more technically complex the legislative acts are the more likely the working groups are to finalise negotiations at their level.

Previous research has found that technical complexity and political importance often go hand in hand and that it therefore is difficult to identify an effect of technical complexity (Fouilleux, Maillard & Smith: 2005: 612). My quantitative study showed no supported the thesis that the technical complexity of the legislative acts affects the extent of working group decision making. The question is whether this result had something to do with the limitations with regard to ensuring a valid indicator of technical complexity, or whether technical complexity simply does not have a pivotal effect on work-

ing group decision making. I will address this question more thoroughly here and show what the interviewees said about the issue.

The interviews provided the overall notion that the technical complexity of the legislative acts affects the extent of decision making taking place in the working groups. Some of the interviewees even expressed that the working groups do their utmost to solve technically complex acts and technical details in the working group. 30 of the 36 interviewees stated that the technical complexity affects whether or not the working groups send acts on for discussion at the higher levels of the Council.

The vast majority of the interviewees pointed at the lack of technical expertise in Coreper as the main explanatory variable for why technically complex acts should be sorted out at working group level. More specifically, they stated that the ambassadors often do not have the necessary expert knowledge to sort the technical issues in all the different policy areas. The Danish official from the working group on Financial Services (IP 5) stated: 'The ambassadors are extremely good at what they do but they are not experts in all policy areas'. That being said, the same Danish official stated that Coreper sometimes is able to strike deals precisely because they are not experts. The French official from the working group on Technical Harmonisation (IP 26) pointed out that the value of the ambassadors is that they have a view to the horizontal issues and they are able to strike deals based on the give and take in different policy areas.

Some interviewees pointed out that it may trigger a negative reaction from the ambassadors in Coreper if the working groups submit technical details for discussion in Coreper. An official from the Council's General Secretariat who has experience from 3 working groups (IP 32) expressed that Coreper does not like overly technical issues on its agenda which could have been solved at the lower levels. Furthermore, he expressed that the attachés know that they should not disturb Coreper unless there is a need for a Coreper decision. Some interviewees described how Coreper often sends legislative acts back to the working groups if there are too many outstanding technically complex issues. In other words, they confirmed the tendency identified in the quantitative analysis that a large number of the legislative acts are sent back and forth between the working group, Coreper and the Council of Ministers.

Even though the general impression from the interviews was that the technical complexity affects whether or not the working groups send the acts on for discussion at the higher levels of the Council, there are some variations between working groups with regard to how weighty this factor seems to be. The interviewees from the working group on Environment recounted that the

ambassadors have no problems dealing with the technically complex issues within this policy area. The French interviewee from the group even stated that the ambassadors are able to deal with all issues within the policy area and that the level of technical complexity therefore does not affect whether or not an issue is sent on to Coreper (IP 12). The Danish official from the group (IP 3) confirmed the statement and expressed that the practice is different in the Technical Harmonisation working group. Here the officials are far more cautious with sending technically complex issues on to Coreper and the technical complexity of an act can be an argument against sending it on.

Many of the interviewees expressed that technical issues in fact can be of political importance. The fact that something is technical does not preclude that it is political at the same time. The Czech official from the working group on Land Transport (IP 18) stated: 'We try to avoid sending technical issues on – but sometimes it goes hand in hand'. Such statements substantiate the conclusions of Fouilleux, Maillard & Smith, who found that it generally is difficult to distinguish between what is political and what is technical (2005: 612).

Figure 6.10 shows examples of the interviewees' statements about whether or not a legislative act's technical complexity affects the extent of decision making that takes place in the Council working groups. Statements on the left confirm that the extent of working group decision making is affected by the technical complexity of the legislative act on the table and statements on the right reject that this is the case. Note that all the interviewees who reject that this is the case are members of the working group on Environment. The middle column shows statements emphasizing that technical issues can be political at the same time.

Figure 6.10: Examples of the interviewees' viewpoints about the effect of a legislative act's technical complexity on working group decision making

Examples statements confirming that legislative acts' technical complexity affects the extent of working group decision making (N=30):	Examples of statements pointing out that technically complex acts can be highly political at the same time (N=4):	Examples statements rejecting that the legislative acts' technical complexity affects the extent of working group decision making (N=3):
<p>'Coreper cannot discuss the technical details because it does not have the technical expertise to do so' (Danish official, Land Transport – IP 1)</p> <p>'Technical dossiers should not be discussed in Coreper because the ambassadors do not have the expertise to handle such acts unless they are politically important' (Danish official, Social Questions – IP 4)</p> <p>'In the working group on Technical Harmonisation there is a pronounced aversion against sending technically complex acts on to Coreper' (Danish official, Technical Harmonisation – IP 3)</p> <p>'You would not send a highly technical question for discussion in Coreper unless it is really political. It is not appropriate that they should discuss highly technical details. And it would not be received well by Coreper' (British official, Public Health – IP 16)</p> <p>'Yes – the act's technical complexity clearly affects whether or not we send it on to Coreper. The ambassadors are very good at what they do, but they do not appreciate receiving dossiers with 100 footnotes' (Swedish official, Public Health – IP 27)</p>	<p>'I do not think that the separation between what is political and what is technical is that clear' (German official, Environment – IP 11)</p> <p>'Even very technical things can be very political' (French official, Financial Services – IP 12)</p> <p>'There can be crucial political issues hidden in technicalities' (Czech official, Financial Services – IP 25)</p>	<p>'In the Environment working group we have no reservations about sending technically complex dossiers to Coreper if they are politically important' (Danish official, Environment – IP 3)</p> <p>'No – the ambassadors are able to deal with everything. They are used to discussing very technical issues' (French official, Environment – IP 12)</p> <p>'I find that we get a signal from Coreper that the technical issues is something the working groups should deal with. Sometimes Coreper send dossiers back to the working groups, but this does not happen too often because Coreper is really able to discuss the technical details as well' (Swedish official, Environment – IP 21)</p>

The overall result of the analysis of the effect of the legislative act's technical complexity generally supports the theoretical expectation that the legislative acts' technical complexity impinge on whether or not working groups send acts on for discussion at the higher levels of the Council. A clear majority of the interviewees stated that their working group is more reluctant to send technically complex acts on for discussion in Coreper and the Council. However, the interviewees' reasoning for why technically complex acts usually are solved at working group level focused more on the lack of technical expertise in Coreper, than on whether the working group members actually have more room of manoeuvre when dealing with technically complex acts. None of the interviewees actually stated that he or she has more autonomy to strike deals when the acts are technically complex. The question is therefore whether the bottom up perspective is more plausible. This perspective predicts that working group members gradually attain extensive technical expertise and thereby a professional pride which leads them to strive to sort technical details at their level. That being said, the fact that some interviewees explain that technical issues can be political at the same time indicates that technical complexity is most relevant when the issues are not politically important. This corresponds well to the findings of the quantitative study. Even though the quantitative analysis did not support the hypothesis that a legislative act's technical complexity affects the extent of decision making taking place in the Council working groups, it did suggest that the negotiators' consideration of the technical complexity increased when the general level of conflict was low.

The fact that the quantitative and qualitative analyses points in different directions when it comes to the question of whether or not the technical complexity of the legislative acts affects the extent of decision making taking place in Council working groups emphasises one of the advantages with applying a mixed method design. Allowing the researcher to test the robustness the results, the mixed method design limits the risk of drawing false conclusions. All in all, it must be concluded that the qualitative analysis of the effect of an act's technical complexity increases our confidence in the validity of hypothesis 6: The more technically complex the legislative acts are, the less likely the working groups are to send them on for discussion in Coreper and the Council of Ministers.

6.6. Institutional setting

The third category of explanatory variables focuses on the institutional setting of the decision making process in the Council working groups. In this

section I will look closer at whether the Council presidency can affect the extent of decision making that takes place in the Council working groups and whether the size of the member state holding the presidency impinges on the working groups' ability to reach agreement at their level.

6.6.1. Is working group decision making affected by the size of the member state holding the presidency?

As described earlier, the Council presidency plays a central role in the Council working group. The presidency leads the negotiations, is responsible for drafting compromise texts and it is up to the presidency to decide whether or not, or when, a legislative act is mature enough for discussion at the higher levels of the Council. In the theoretical framework I argue that the size of the member state holding the presidency has an impact on the extent of decision making that takes place in the Council working groups.

From one point of view it is likely that large member states are better at paving the way for compromises at an early stage of negotiations. Large member states have more administrative resources to draw on and thereby the capacity to ensure effective and fruitful negotiations (Quagila & Moxon-Browne 2006: 364). This approach leads to the expectation that working groups finalise negotiations at their level without involvement of the higher levels of the Council more often when a large member state holds the presidency.

From another point of view, small member states may be the most effective when it comes to forging compromises at an early stage of the decision making process. Smaller member states often draw more on the competences of the Council General Secretariat than the larger member states. This may be an advantage as the Council General Secretariat has extensive knowledge about the policy areas, the legislative acts and about the member states' positions (Fouilleux, Maillard & Smith 2007: 114). In addition, smaller member states often have more moderate ambitions regarding the priorities of the presidency. Where large member states often use the presidency to promote their own interests, small member states frequently have to be more modest due to their limited administrative capacity and because it can be risky to go against the large member states (Begtsson, Elgström & Tallberg 2004: 315). However, in Council negotiations the large member states' high level of ambition might result in negative reactions and resistance among the other member states. In other words, it may complicate negotiations and make an early compromise less likely. In sum this points to the expectation that small member states are better at forging compromises

at an early stage of negotiations and that negotiations more often are finalised at working group level when small member states hold the presidency.

In this section I will study which of the two perspectives that is most plausible. Does the extent to which the working groups send legislative acts on for discussion at the higher levels of the Council depend on the size of the member state holding the presidency? If so, do working groups sort out more acts at their level when large or when small member states hold the presidency? The quantitative analysis showed no indication that the extent to which working groups send legislative acts on for discussion at the higher levels of the Council depends on the size of the member state holding the presidency. The working groups sent acts on for discussion in Coreper just as often under small and large presidencies. However, the operationalisation of this variable had some limitations and it is therefore particularly relevant to study it closer in the qualitative study. In the following I will first present the interviewees' more general statements about the role of the presidency. Then I will account for what the interviewees said about whether or not the size of the member state holding the presidency affects the smoothness of negotiations and the extent to which compromises can be reached at working group level.

Overall the interviewees confirmed that the presidency plays a pivotal role in the working groups. The presidency controls the agenda; the presidency decides when maximum consensus is reached and when it is time to draft a compromise text. Many interviewees stated that the success and impact of the presidency depend quite a lot on how well it cooperates with the Commission and with the Council's General Secretariat. Another important factor which impinges on the presidency's success in forging compromises is how well it and the other member states prepare before meetings in the working groups. If some delegations have difficulties with a proposal, then it can be crucial to the progress of negotiations that the presidency holds informal bilateral meetings with these member states in advance of the negotiations in the working group.

The interviewees furthermore described that it to a large extent is up to the presidency to ensure a good and fruitful atmosphere in the working group. An official from the Council's General Secretariat (IP 30) explained that the atmosphere in the working groups varies between positive and accommodating to confrontational. A confrontational atmosphere arises when the presidency is not responsive to the interests of the other member states or if the presidency does not act neutrally but promotes its own interests. A Swedish official from the working group on Social Questions (IP 23) stated that it affects negotiations significantly if the presidency promotes its own

interests and takes up too much speaking time: 'The best presidencies are those that listen carefully, sum up the positions of the member states and bring negotiations forward'. Similarly, many interviewees pointed out that it can generate frustration and irritation if negotiations are either too slow or too hurried.

Another important factor according to many interviewees is whether the presidency is run from the member state's permanent representation in Brussels or from its capital. A Swedish interviewee from the working group on Environment (IP 20) stated that presidencies organised from the capitals are less available between meetings. Furthermore it can be less transparent who is responsible e.g. for certain reports as the relevant persons are placed so far away from Brussels. The Swedish official stated that whether or not the presidency is run from Brussels affects the efficiency of the presidency: 'It is crucial that you as a presidency are available. If you only show up at the actual meetings you are not going to be efficient and then you will be forced to go to Coreper more often and at an earlier stage. That way the presidency can clearly affect the amount of issues sent on from the working groups to Coreper' (IP 20).

The interviewees' responses to whether or not the size of the member state holding the presidency affects the extent to which working groups send legislative acts on for discussion at the higher levels of the Council or finalise negotiations at their level, can be categorised into three almost equally sized groups. Some interviewees find that negotiations in the working group proceeds most smoothly when large member states hold the presidency. The other group of interviewees expressed that working group negotiations are most fruitful when small member states sits in the presidency chair. Interestingly, interviewees from large member states frequently found that large member states are more efficient presidents while interviewees from small member states often expressed that small member states are better at facilitating compromises in the working groups. The third group of interviewees did not find that the size of the presidency has a clear effect on working group decision making.

The first group, who expressed that negotiations proceed most efficiently when large member states hold the presidency, focused on the fact that large member states often have much larger administrative machines to draw on. This makes large member states more effective deal brokers, for example because they can do extensive preparatory work by holding numerous bilateral meetings and visiting the capitals of the other member states. In addition large member states have more muscle to deal with other large member states.

The interviewees that pointed small member states out as the most efficient presidencies stressed that small member states generally function more as neutral compromise facilitators. Some stated that the administrations of the small member states often are less hierarchical, which amongst other things implies that the national capitals are less involved in working group negotiations. Finally, some interviewees pointed out that the fact that smaller member states often draw heavily upon the competences of the Council's General Secretariat is an advantage for the small member states.

As mentioned, about one third of the interviewees did not find that the size of the member states holding the presidency affects the extent to which the working groups finalise negotiations on legislative acts at their level or send issues on for discussion at the higher levels of the Council. These interviewees accentuated that a lot depends on the overall intentions and ambitions of the presidency. Furthermore, personality is a crucial factor in working group negotiations and the president's personality is decisive for how working group negotiations proceed. One thing that was pointed out in this connexion is the president's experience and competences. The British official in the working group on Statistics (IP 17) elaborated: 'The personality of the person running negotiations is crucial. It is really an advantage to use people who have seniority in the group'.

Figure 6.11 shows examples of the interviewees' statements about whether, and in what way, the size of the member state holding the presidency affects the extent of decision making that takes place in the working groups.

Figure 6.11 : Examples of the interviewees' statements about whether or not the size of the member state holding the presidency affects negotiations in the working groups

Negotiations in the working groups proceed most smoothly when <i>large</i> member states hold the presidency:	Negotiations in the working groups proceed most smoothly when <i>small</i> member states hold the presidency:	The size of the member state holding the presidency does <i>not</i> affect working group decision making:
<p>'It is important to be in close contact with the delegations and hold a number of bilateral meetings, visit the capitals and so on. As a small member state you might lack the resources to do this' (German official, Environment – IP 11).</p> <p>'Size influences the manpower that the member states can invest. Furthermore it is probably easier for big member states to cope with other big member states' (German official, Energy – IP 10).</p> <p>'The presidency plays a massive role in working group negotiations. It matters a lot how many resources the member state has and how many resources they put into the presidency' (British official, Technical Harmonisation – IP 15)</p>	<p>'I think in general smaller member states that have less resources, generally are more neutral and function more as a negotiation facilitator' (Official, Council's General Secretariat, Energy – IP 31).</p> <p>'Even though a large member state may be powerful and resourceful, small member states often have more influence and complete more dossiers. Sometimes it may turn out to be a drawback to be a large member state' (Danish official, Land Transport – IP 1)</p> <p>'I think that negotiations run more smoothly when small member states hold the presidency. Large member states are used to being able to influence negotiations and the fact that small member states often have to be more humble often entails that negotiations can proceed less problematically' (Swedish official, Environment – IP 21)</p>	<p>'I think it is difficult to say that one is better than another because it is such a complex cocktail of personal relationships and technical ability to find the good idea at the right moment' (French official, Environment – IP 12).</p> <p>'Size does not matter that much when it comes to the efficiency of the presidency. Much depends on personal relations and the level of ambition' (Official, Council's General Secretariat – IP 35)</p> <p>'I would not say that the size of the member state holding the presidency is the decisive factor. It is more a question of competence' (British official, Public Health – IP 16)</p>

The results of the analysis are not unequivocal. Some interviewees point out that the size of the member state holding the presidency does not affect working group decision making. The rest of the interviewees had diverging perceptions of whether working group negotiations run most smoothly when small or when large member states hold the presidency. Even though the results are not indisputable it must be concluded that the study does not increase our faith in the validity of hypothesis 7: The extent of decision making that takes place in the working groups of the Council of the European Union depends on the size of the member state holding the Council presidency. Furthermore, how the negotiations are perceived may depend on the eyes that see, which was indicated by the fact that small member states apparently are more content with the way small member states run the presidency and that large member states prefer the way large member states run the presidency.

6.7. A review of other factors that according to the interviewees may affect working group decision making

To ensure that I have not overlooked any crucial explanatory variables I asked the interviewees about issues that were not a part of the theoretical framework. More specifically, I asked the interviewees whether the decision making process in the Council working groups is affected by the Council's General Secretariat as its role has been emphasised by, amongst others, Fougère, Maillard & Smith (2007: 112) and by public attention. In addition I finished all the interviews by asking whether there are important explanatory factors affecting working group negotiations which were not covered in the interviews. This question led to some interesting insights and in this section I will present the interviewees' statements about how other factors, not included in the thesis theoretical model, may affect working group decision making.

The role of the Council's General Secretariat in Council negotiations has been accentuated by researchers like Fougère, Maillard & Smith (2007). As already described, the role of the General Secretariat is to assist the Presidency by organizing meetings in the Council and drafting reports and compromise texts. However Fougère, Maillard & Smith point out that the Secretariat under certain circumstances can play a key role in brokering deals during working group meetings (2007: 114). The question is whether the General Secretariat can affect the working groups' ability to reach agreement?

Generally, the interviewees clearly emphasised that the General Secretariat is of great help during working group negotiations. The German official from the working group on Energy called the Secretariat the eternal presidency and emphasised that its knowledge about the legislation and about the member states is crucial in working group negotiations. The interviewees also stated that the role of the Secretariat depends on the size of the member state holding the presidency and that small member states typically use the competences and resources of the Secretariat more than large member states. But even though some interviewees stated that the influence of the Council's General Secretariat is extensive, the interviews did not leave the impression that it can have a decisive influence on whether or not agreement can be reached at working group level.

Another factor which is relevant to control for when studying working group decision making is whether or not public attention to the legislative acts affects the extent of decision making taking place in Council working groups. Are acts more likely to be sent on for discussion at the higher levels of the Council when they are in the public eye? Firstly it is relevant to examine whether this factor has crucial explanatory power in order to ensure that the thesis has not left out central explanatory factors. Secondly, whether or not public attention affects working group decision making sheds light on whether the political level is more involved in Council decision making when legislative acts are in the public eye. 30 of the 36 interviewees found that public attention may affect whether or not negotiations on a legislative act can be finalised in the working groups. However the interviewees stressed that public attention is not something that affects the decision making process directly in the sense that legislative acts automatically are sent on to the higher levels of the Council because of public interest. Instead, public attention to legislative acts affects working group negotiations indirectly as the positions of the member states often are more rigid and as the officials in the working groups therefore have less room of manoeuvre. The German official from the working group on the Environment (IP 11) stated: 'Public attention has an impact on the concrete mandate of the officials. So it is not a direct effect, it is more behind the instructions'. In addition quite a few of the interviewees stated that public attention appears when the legislative acts are important to the member states and when the member states have strong and conflicting interests about the acts. The Czech official from the working group on Energy (IP 19) stated: 'The stronger the member states' interests are, the more political legislative acts become and the more public attention there will be to the decision making process. It is interlinked'. All in all, public attention can impinge on the working group's abilities to reach agreement.

However, as public attention often is a result of the member states' interests in a legislative act and of the implications of a legislative act it is seldom a factor which in itself affects the extent of decision making taking place in Council working groups. Therefore one could argue that the variable is covered in the current study to some extent. Nonetheless it would be an interesting subject for future research studying in which way public attention affects both the national coordination processes prior to negotiations in the European Union and the actual negotiations between the member states.

The thesis has shown that the working groups' ability to reach agreement about the legislative acts is not the only factor affecting whether or not they send legislative acts on for discussion at the higher levels of the Council. More specifically the thesis has shown that the working groups send issues on because they are politically important and that they can avoid sending acts on because the acts are technically complex. In addition 10 interviewees pointed out that some legislative acts are sent on to the higher levels of the Council for symbolic reasons. They explained that the so called false B-points appear from time to time. The Swedish official from the working group on Public Health (IP 27) stated: 'The working party on Public Health is almost always able to go to Coreper without any outstanding issues. The B-points in our area are usually false B-points. These false B-points appear because the presidency has a wish and a need to show what they have been doing during the presidency period'. As described earlier, false B-points are issues that are sent on to the Council of Ministers as B-points when in fact it could have been treated as an A-point because agreement has been reached at the preparatory level. The reason some acts are sent on to the Council of Ministers as false B-points can be, as it appears from the quotation above, that the Council presidency wants to show the public what it has achieved during the presidency. Another explanation behind the false B-points can be that a legislative act is so politically important that it is necessary to give the public impression that it was debated at the level of the ministers. Finally some false B-points appear because member states which lose a negotiation want to show publicly that they did what they could.

The final factor which according to the interviewees may impinge on working group negotiations and the extent of decision making taking place at this level is the personalities of the officials sitting around the negotiation table. 11 interviewees drew attention to this factor stating that the smoothness of negotiations depends a lot on the working group members' personalities, willingness to compromise, competences, networking skills, experience and so on. In addition, the chemistry between the people in the group can be decisive for how negotiations proceed. The personality factor was

amongst others emphasised by one a Swedish interviewee in the working group on Environment (IP 23): 'The personality of the people in the group is much more important than you would think. You expect negotiations to depend on the instructions of the officials or on the conflicts between the member states. But a negotiator with substantial routine can be extremely helpful in paving the way for compromises as he or she knows the dossiers and the interest configurations among the member states so well'. Another interviewee described that it may have extensive implications for working group negotiations when the composition of the groups changes: 'I think much depends on the persons around the negotiation table. How things are presented and said matters a great deal and it can have a profound impact on negotiations when a member state sends a new person to negotiate in the working group' (Swedish official, Public Health – IP 27). The fact that the personality of the people negotiating in the working groups can be such a decisive factor determining whether or not agreement about the legislative acts can be reached at working group level says something about how desultory the decision making process can also be. Although this variable is difficult to study and to control for, it is important to bear it in mind when studying negotiation processes in institutions such as the Council working groups.

6.8. Summary and discussion

This chapter presented the qualitative analysis of working group decision making. A central question has been whether the qualitative analysis underpins the results of the quantitative analysis or whether observing working group decision making from another angle provides a different picture of working group decision making. The qualitative analysis was based on interviews with working group members from 8 working groups. The selection procedure entailed that I have spoken to 36 officials from working groups which seldom send legislative acts on for II/B-point discussions at the higher levels of the Council and officials from working groups which often involve the higher levels of the Council in the negotiation process.

The interviews did not only provide insights about the research question of the thesis, but also more general insights about working group decision making. For example the interviewees described the working groups as a decision making arena with strong norms and expectations to how negotiations should proceed and to how officials should act. Furthermore many interviewees emphasised that working group negotiations depend a lot on the personalities, skills and experience of the officials around the negotiation table.

Generally the interviews left the impression that working group decision making is even more extensive than indicated in the quantitative analysis. The quantitative study showed that the working groups solved 33.2 pct. of the 259 legislative acts included in the study. However, as the quantitative study only enabled me to observe whether or not the working groups sent outstanding issues on for discussion at the higher levels of the Council, the study did not provide information about how much of the content of the individual legislative acts was sorted out at working group level. For this reason I asked the interviewees to assess this issue and the result was striking. A large number of the interviewees stated that 70-99 pct. of the content of the legislative acts are usually solved at working group level. Now, this result should be taken with a grain of salt as many interviewees found it difficult to give a clear answer to the question. Nevertheless, once again it is substantiated that the Council working groups are an extremely important decision making arena in the EU's decision making process.

The interviews increased our confidence in the hypothesis that the extent of working group decision making varies across policy areas (hypothesis 1). The interviewees from the different working groups had varying perceptions of the extent of decision making taking place in their working group. Furthermore the interviews underpinned the theoretical expectations that the extent of working group decision making varies across policy areas because the implications of the legislative acts are more far reaching in some policy areas than in others, because the technical complexity of the legislation varies across policy areas and because the interest configurations and interest intensity among the member states and other actors influenced by EU legislation vary across policy areas.

Much of the literature about Council working groups has studied whether working group members working in the EU over time gradually become more oriented towards the EU level and towards finding common solutions at the EU level (Beyers 1998; Egeberg 1999; Trondal & Veggeland 2003; Trondal 2000, 2002; Egeberg, Shaefer & Trondal 2003; Beyers & Trondal 2004; Beyers 1998, 2005). Although previous research has shown that socialisation at EU level seldom happens at the expense of the officials' loyalty to their home affiliation I found it relevant to examine whether the level of socialisation among the working group members affects the working groups' ability to reach agreement. The interviews showed that this is the case, as the majority of the interviewees stated that working group negotiations proceed more smoothly when the officials around the table are in close contact with the EU system. An interesting question is whether this result indicates that the neo functionalist theory can explain why national officials in the EU some-

times are able to reach agreement and other times not. I will return to this discussion in the Conclusion (Chapter 7).

Moving on to the issue-specific variables, the interviews confirmed the solid result from the quantitative study which clearly showed that the amount of working group decision making depends on the extent to which the member states and institutions involved in the decision making process have strong and conflicting interests about the legislative acts. The interviewees stated that legislative acts with wide-ranging consequences for the member states' self-government or economies entail conflicting interests among the member states and makes it harder to compromise at working group level. Furthermore the interview persons confirmed the theoretical expectation that the Commission and the European Parliament are central decision making players whose positions the working groups have to take into account. They also confirmed that working group negotiations can become entangled if the positions of the Commission and the European Parliament are far away from the member states' positions. All in all, the fact that the level of conflict among the member states and institutions involved in the decision making process is apparent in Council working groups and affects the extent of working group decision making may be interpreted as a support to intergovernmental theory. The wider implications of the results will be discussed more closely in the conclusion (Chapter 7).

The theoretical framework applied delegation theory to provide theoretical expectations to the circumstances under which the officials in the working groups are delegated more or less discretionary power from their national administrations to make compromises with the other member states in the working groups. Delegation theory expects politicians to delegate less autonomy in financial issue areas. Based on delegation theory I proposed that the economic implications of the legislative acts impinge on the extent of working group decision making. The vast majority of the interviewees substantiated that the economic impact of the legislative acts is a central issue in Council negotiations and that legislative acts implying extensive economic consequences for the member states more often are sent on for discussion at the higher levels of the Council. Interestingly, the economic conflict seems to have dissimilar substance within different policy areas. More specifically, within Land Transport, Technical Harmonisation and Environment the member states' concerns seem to be the legislative acts' implications for the industries and companies. Within the working groups on Statistics, Social Questions and Public Health the member states' concerns appear to be the legislation's implications for public spending.

The quantitative analysis showed no support to the second hypothesis based on delegation theory, which expects working group decision making to depend on the technical complexity of the legislative acts. The theoretical rationale was that the more technically complex the legislative acts are, the more discretionary power the officials in the working groups will have and the easier it will be for working groups to reach agreement at their level without discussion at the higher levels of the Council. The result of the qualitative analysis differs from the result of the quantitative analysis as it indicates that working group officials do have more decision capacity when the legislative acts are technically complex and that working groups therefore more often reach agreement at their level when dealing with technically complex acts. Interestingly, the interviewees furthermore stated that it can cause negative reactions at the Coreper level if the working groups send outstanding issues on to Coreper which are too technically complex. Although the interviews left the impression that the legislative acts' technical complexity affects working group decision making it should be pointed out that technical complexity seemed to be a less important consideration in the working group on Environment. The three interviewees rejecting that technical complexity affects working group decision making came from this group and quite a few interviewees from the group stated that Coreper has no problems handling technically complex acts within the policy area. In sum, the qualitative analysis increased our confidence in the validity of the hypothesis that working group decision making is more extensive when dealing with technically complex acts. This result emphasize the advantage of applying a mixed method design as the hypothesis would have been rejected if I only had applied a quantitative research design.

Neither the quantitative nor the qualitative study indicates that the extent of working group decision making depends on the size of the member state holding the presidency. All interviewees stressed that the presidency plays a central role in the decision making process of working groups and that the presidency can affect whether or not issues are sent on for II/B-point discussions at the higher levels of the Council. However, one third of the interviewees stated that working group negotiations run most smoothly when large member states hold the presidency, one third stated that small member states are better at ensuring compromises among the member states, and one third stated that the size of the member state holding the presidency does not affect working group decision making. Based on that, I have to conclude that the size of the member state holding the presidency does not seem to have an unambiguous effect on working group decision making.

Instead the interviewees stressed that the skills and personality of the president is a vital factor influencing working group decision making.

The main results of the qualitative analysis can be summarized as follows:

- The Council working groups are crucial decision makers in the EU system as they finalize negotiations on up to 70-99 pct. of the content of the legislative acts.
- The extent of working group decision making varies across policy areas.
- The working group members' level of contact to the EU may affect the working groups' ability to reach agreement.
- Working groups more often send legislative acts on for II/B-point discussion at the higher levels of the Council when the member states, the Commission and the European Parliament have strong and conflicting interests about the acts.
- Legislative acts implying financial consequences for the member states are more often hard to reach agreement about at working group level and are therefore often sent on for II/B-point discussion at the higher levels of the Council.
- Working group decision making is more extensive when dealing with technically complex acts
- The size of the member states holding the presidency does not affect the extent of working group decision making.

Chapter 7

Conclusion

This thesis has shown that the decision making process in the most important institution in the European Union, the Council of Ministers, can differ significantly from case to case. The thesis started by describing two totally different examples of how Council decision making can proceed. In the first case the legislative act was discussed several times at all levels of the Council's hierarchy: the working groups, Coreper and the Council of Ministers. Clearly the member states had a hard time reaching agreement about the act. In the second case, the Council working group quickly reached an agreement and forwarded the legislative act to the Council of Ministers for formal adoption without further discussion. A closer look at the two legislative cases reveals that the first was a part of the most extensive environmental legislative package yet⁴⁸ (Selin 2007: 64; Lahl & Hawxell 2006: 7115) and concerned registration, evaluation, authorisation and restriction of chemicals (REACH). It was a piece of legislation which made industry responsible for assessing and managing the risks posed by chemicals and providing appropriate safety information to users. In other words the legislation introduced reverse burden of proof so that industry is responsible for proving that its products are safe. It is not unlikely that the reason it was so hard to reach agreement about the act was the extensiveness of the act and its wide-ranging implications for the chemical industries and for member states with large chemical industries. In contrast, the second case, concerning harmonisation of provisions for placing on the market and supervision of explosives for civil use, was not expected to have extensive financial or administrative consequences for the member states or their industries.⁴⁹ The purpose of the act was to harmonise the usage and safety provisions for pyrotechnic articles. All in all, the scope of consequences for the member states and the level of politicisation seem to explain why the two acts were handled so differently by the Council.

Whether Council decisions are made by national officials in the Council working groups, or by the ministers in the Council, is not unimportant. Based on previous studies addressing the democratic legitimacy of Council decision making (Grønbech-Jensen 1998, Heritier 2003, Føllesdal & Hix 2006) I have put forth that it is crucial for this legitimacy that the ministers in the

⁴⁸ Com 2003 (644).

⁴⁹ Com 2005 (457).

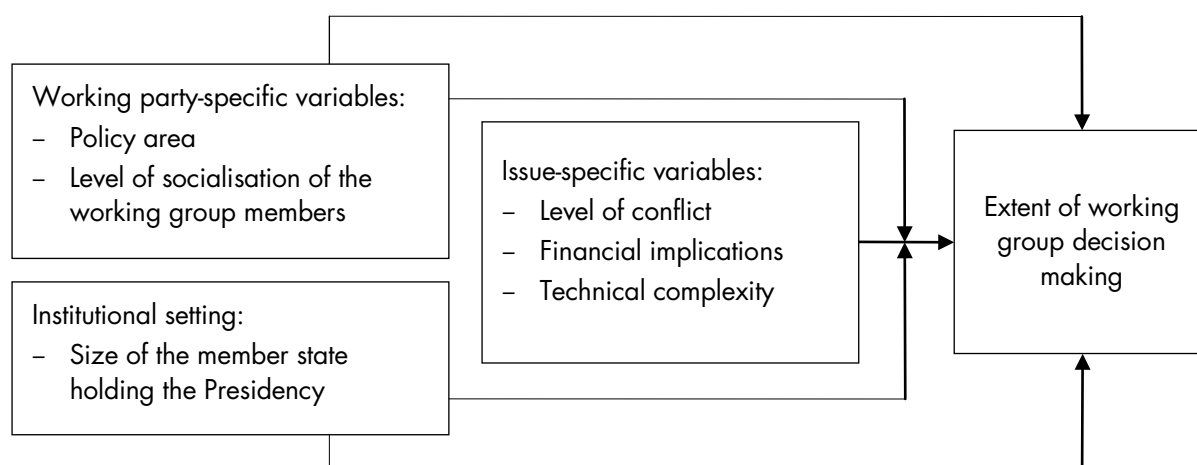
Council can be held accountable for their decisions and that it is possible for the public clearly to identify the decision makers. Now, one could argue that it would be less aggravating for the democratic legitimacy of the Council's decision making process if the Council working groups focus on technical and non-political issues and send important political issues on for discussion at the higher levels of the Council. However, to date we know little about how much the Council working groups actually decide and about which types of issues and legislative acts the working groups normally sort out at their level and what they send on for II/B-point discussions at the higher levels of the Council. To my knowledge previous studies either focus on the amount of decision making taking place in the Council of Ministers compared to the preparatory level in the Council (Hayes Renshaw 2002, Hayes Renshaw, Van Aken & Wallace 2006, Häge 2007a, 2007b, 2008b) or on the extent of working group decision making within specific policy areas (Van Schendelen 1996, Andersen & Rasmussen, Gomez and Peterson 2001), or they shed light on the role of the working groups within a very limited period of time (Häge 2008a). This lack of knowledge about working group decision making is surprising, considering how much the role of the working groups has been emphasised in the literature. The thesis has shed light on this gap in our empirical knowledge by asking:

How much decision making takes place in the working groups of the Council of the European Union? What explains variations in the extent to which the working groups reach agreement at their level or send acts on for II/B-point discussions at the higher levels of the Council?

In the theoretical framework I proposed that the extent of working group decision making depends on both working group-specific and issue-specific variables, as well as on the presidency of the Council of the European Union. Drawing on e.g. literature about the lines of conflict in the EU and on Wilson's theory about the effect of diverging interest configurations, I put forth that the extent of decision making taking place in the working group varies across policy areas and working groups. Secondly, drawing on the socialisation thesis of neofunctionalistic theory, I expected the level of socialisation among working group members to impinge on the working groups' ability to reach agreement at their level. In order to formulate expectations to what types of legislative acts that can be expected to be finalised at working group level and which legislative acts that are likely to be sent on to the higher levels of the Council, I draw on literature about the lines of conflict among the EU's member states, expecting that the extent to which working groups finalise negotiations about the legislative acts depends on the degree to which the

member states and institutions involved in the decision making process have conflicting interests. In addition, I apply delegation theory anticipating that working group decision making depends on the room of manoeuvre delegated to working group participants from their national authorities (Bawn 1995; Epstein & O'Halloran 1994; 1996; 1999; Huber & Shirpan 2000; Bendor et al. 2001). According to this perspective the level of delegation, and thereby the level of decision making capacity of the working group members, depends on the technical complexity of the legislative acts and on whether or not the legislative acts have economic consequences for the member states. Based on literature about the presidency of the Council of the European Union my final theoretical proposition was that the extent of decision making taking place in Council working groups depends on the size of the member state holding the presidency. The proposed theoretical model follows below (Figure 7.1).

Figure 7.1: The theoretical model:



The research question and the 7 theoretical hypotheses are examined through a combination of a quantitative and a qualitative study. The quantitative study is based on a dataset including 259 directives and regulations adopted by the co-decision and the consultation procedure between 2005 and 2009. For each legislative act I observed whether or not, and how many times, the working groups asked Coreper to discuss outstanding issues. Additionally I observed whether or not the legislative acts were discussed as B-points at the level of the Council of Ministers at any point during the decision making processes. The dataset enabled be to study both whether a II-point discussion in Coreper and a B-point discussion in the Council of Ministers took place during the decision making process, or whether negotiations about the legislative acts were finalised at working group level thereby leav-

ing the working groups as de facto decision makers. The collected dataset is to my knowledge the first of its kind and gave me the opportunity to shed light on working group decision making in a new and ground-breaking way.

The quantitative study was supplemented by a qualitative study based on interviews with 36 officials from 8 working groups and from different member states. The 8 working groups were selected applying a 'diverse' case selection strategy ensuring variation on relevant variables (Gerring 2007: 97). Most importantly the interviewees came from working groups which often send legislative acts on for further II/B-point discussions at the higher levels of the Council (e.g. working party on Land Transport, working party on Environment) and from working groups that in most cases reach agreement at their level without discussion in Coreper and/or the Council of Ministers (working group on Statistics, working group on Technical harmonisation). From each working group I interviewed representatives from minimum 3 member states and one representative from the Council's General Secretariat. The selection of interviewees was conducted to ensure representation by an official from a small member state, a large member state and representation by an official with recent experience with holding the presidency. The interviews were extremely informative and provided broad insights about working group decision making. Not only were the interviews valuable in addressing the plausibility of the thesis' hypotheses, they also provided thick explanations to the mechanisms behind the variables affecting working group decision making.

7.1. The results of the analysis

The two analyses provided some highly interesting results about Council decision making. Some results corresponded to what was expected in the theoretical framework; others were more surprising. First of all, the analysis showed that the Council working groups are central decision making bodies in the Council of Ministers and in the European Union as such. The quantitative study revealed that the working groups reached agreement and finalised negotiations at their level in 33.2 pct. of the legislative cases included in this study. In other words, the final decision about 33.2 pct. of all directives and regulations adopted by consultation or co-decision from 2005 to 2009 were de facto taken by the Council working groups. This result corresponds relatively well to the results of Häges study from 2008, which showed that 31 pct. of the legislative acts were discussed solely by working groups without involvement of the higher levels of the Council (2008a: 554). However it is a clear modification of the role of the working groups when comparing with

the frequently cited estimate put forth by Hayes-Renshaw and Wallace that working groups solve around 70 pct. of the legislative acts (1997: 40).

The quantitative analysis did not only shed light on whether or not the legislative acts were sent on from working groups to Coreper and/or Council for a II/B-point discussion, it also shed light on how many times the legislative acts were sent on to the higher levels. The study of this variable showed that in half of the cases where the working groups sent outstanding issues on to Coreper during the decision making process, they did so more than one time. Similarly, in the cases where a B-point discussion took place at some point during the decision making process (52.9 pct. of the cases) the acts were discussed as B-points more than once in the majority of cases (34.5 pct.). The thesis thus offers empirical evidence that legislative acts are frequently sent back and forth between the different levels of the Council's decision making hierarchy, gradually reaching a common position.

The interviews emphasize the importance of the Council working groups even further as many interviewees stated that working groups finalise negotiations about 70-99 pct. of the content of the legislative acts leaving only few, however politically important, issues for discussion at the higher levels of the Council. In other words the general impression of the amount of decision making taking place in the Council working groups was somehow strengthened on the basis of the interviews. That being said, the interviewees generally found it difficult to clearly assess the amount of decision making taking place in Council working groups as it varies from case to case. Some interviewees found the question so difficult to answer that they did not want to provide an estimate. Nevertheless it can be concluded that both the quantitative and the qualitative study clearly showed that Council working groups are extremely important decision making arenas, which stresses the importance of examining the decision making processes in this institution.

Bearing in mind the importance of the Council working groups also emphasises the importance of increasing our knowledge about the circumstances under which the working groups finalise negotiations at their level and when they typically send legislative acts on for discussion at the higher levels of the Council. In accordance with the theoretical expectations of the thesis, the extent of decision making appears to vary significantly between policy areas. More specifically the working groups within General Affairs had the highest rate of decision making as they sent outstanding issues on to Coreper and the Council of Ministers in only 19.4 pct. of the legislative cases included in the study. The opposite pattern was found within Transport/Telecommunications/ Energy, Employment/Social/Policy/Consumer Affairs and Environment, where outstanding issues were sent on from the

working groups for discussion in Coreper and the Council in 80 to almost 90 pct. of the cases. Additionally the study showed that legislative acts were discussed at the higher levels of the Council more than one time in more cases within Transport/Telecommunications/ Energy, Employment/Social/ Policy/Consumer Affairs and Environment than in other policy areas. The underlying reasoning behind the hypothesis that the extent of working group decision making varies across policy areas was based on three elements. First of all, the amount of working group decision making was expected to depend on the EU's competences vis-à-vis the member states, predicting that working groups are more likely to reach agreement at their level within policy areas where the EU's competences vis-à-vis the member states are less far-reaching. Secondly the theoretical framework expected working group decision making to vary from policy area to policy area due to the varying financial implications and technical complexity of the legislation within the different policy areas. Finally, working group decision making was expected to differ across policy areas as a result of the varying interest configurations among the actors affected by the legislation within the different policy fields. For example, it is probable that it is harder to reach agreement about legislative acts at an early stage of the decision making process within policy areas where strong interests are at stake among companies and industries in the member states. The results of the quantitative analysis first of all showed that the number of legislative cases implying a high level of conflict between the member states and institutions involved in the decision making process was higher within some policy areas than in others. For example the number of legislative acts which resulted in conflicting interests was high within policy areas such as Environment, Transport and Social Policy. These were also some of the areas where a large number of legislative acts were sent on for II/B-point discussions at the higher levels of the Council. This indicates that the general level of conflicting interests may be one explanation for why the extent of working group decision making varies across policy areas.

The interviewees' statements generally confirmed that the working groups' ability to reach agreement varies across policy areas and their explanations for the variations in the extent of working group decision making generally increased our confidence in the explanations behind the proposed hypothesis. For example the interviewees from the working groups on Environment, Land Transport and Energy emphasised that legislation within their fields have extensive implications for the member states and for the member states' industries, which may explain why it is often necessary to send legislative acts for discussion in Coreper and the Council of Ministers within these

areas. The interviewees from the working group on Technical Harmonisation focused on the technical complexity of the legislation within their policy areas and put forth that this may explain why negotiations about legislative acts more often are sorted out at working group level in this policy area.

In addition to substantiating the thesis' theoretical explanations, the interviewees offered unexpected explanations for the extent of decision making taking place in their working group. For example, the working group on Statistics seldom sends issues on for discussion because they do not want political interference in the legislation within their field. The interviewees from this group explained that legislation about statistics should remain as independent as possible and that it is important to ensure that politicians do not set their fingerprints on how statistics are performed. Also interesting was the indication that whether or not working groups send legislative acts on for discussion in Coreper may depend on the relationship between the ministry handling the legislative act and the foreign ministry. One interviewee from the working group on Financial Affairs stated that the relationship between the member states' ministry of finance and foreign ministry is often marked by competition, implying that the working group on Financial Affairs is reluctant to send legislative acts on for discussion in Coreper, which consists of ambassadors from the member states' foreign ministries. Finally, the interviewees pointed out that working group decision making is affected by whether the working group refers to Coreper I or II. Some of the interviewees stated that Coreper I generally is more willing than Coreper II to discuss community legislation and that this may affect the working groups' propensity to send acts on to Coreper. In sum, the results stress the relevance of digging further into these variations across policy areas with regard to how the decision making processes proceed and with regard to the considerations and factors at stake in the decision making processes.

The thesis not only showed that the extent of decision making taking place in Council working groups varies across policy areas, it also demonstrated that working group decision making may depend on the level of socialisation among the working group members. Drawing on the socialisation thesis stemming from neofunctionalism it was expected that the working group members' level of contact to the EU system affects their orientation towards the EU level. More specifically, working group members in close contact with the EU system were presumed to be more supranationalistic and more focused on finding common solutions at EU level. The thesis proposed a new way of operationalising the socialisation thesis assuming that the level of socialisation in Council working groups depends on whether working groups consist of national experts based in the member states' capi-

tals or attachés based in the member states' permanent representations in Brussels. Attachés based in Brussels were expected to be more supranationalistic due to their closer contact to the EU system. As it was considered too resource demanding to map the composition of all working groups, the socialisation variable was only studied in the qualitative analysis. The analysis clearly showed that the level of socialisation among working group members may impinge on the smoothness of working group negotiations and on the working groups' abilities to reach agreement. The interviewees expressed that attachés are far more oriented towards finding common solutions at EU level and better able to follow the logic of give and take during negotiations. Experts are, according to the interviewees, more focused on getting technical details right and less focused on reaching a compromise. All in all this fits well with the neofunctionalistic predictions about the socialisation effect in the EU and one could argue that the finding that working group negotiations are affected by the level of socialisation, and thereby the supranational orientation of the people negotiating, supports the neofunctionalist perspective on EU decision making. As accounted for in the theoretical framework, literature on EU integration has, since Haas' seminal work from 1958, questioned to what extent, under which conditions and through which processes officials and politicians in the member states shift their allegiances toward the European Union (Beyers 2005: 899). This study indicates that the socialisation thesis has some explanatory power. However it should be pointed out that the analysis of the socialisation variable possibly implies a limitation as I mostly interviewed attachés and only three experts. This may entail bias in the interviewees' responses, as attachés may prefer to negotiate with other attachés, and experts may prefer to negotiate with other experts. This was further emphasised by the fact that the three interviewed experts from the working group on Statistics found that negotiations are smoother when the people around the negotiation table are experts. Furthermore it is relevant to question what lies behind the different compositions of the working groups. Why do experts speak in some working groups while attachés speak in others? Does this depend on the nature of the policy areas, traditions or on other factors? To date we know little about why working groups are organised differently and what these differences imply for the decision making processes. Without doubt further research on these questions would be highly relevant.

Moving on to the issue-specific variables, the analysis showed that the intergovernmental perspective on EU decision making has some explanatory power as well. The theoretical framework proposed that the extent of decision making taking place in Council working groups depends on the intensity

of the member states' interests and more specifically on the extent to which the member states and institutions involved in the decision making process have conflicting interests. An intergovernmental perspective would clearly predict that this is the case and would expect working group negotiations to be fully dependent on the instructions given to working group officials by their national officials. In other words working group negotiations would be envisaged solely as scenes for the clash of nationally defined priorities. The theoretical framework not only expected working group negotiations to depend on the level of conflicting interests among the member states, but also that the positions of the European Parliament and of the Commission can affect working group negotiations. More specifically, the thesis predicted that the more conflicting the interests of the member states, the Commission and the Parliament are, the harder it will be to compromise at working group level. In accordance with the theoretical expectations, the analysis clearly showed that the extent to which the member states and institutions involved in the decision making process have conflicting interests affects the extent of working group decision making. The quantitative study showed that working group agreement could be reached far more often when the level of conflicting interests was low. In fact, 85.7 pct. of the legislative cases with a low level of conflict were sorted out at working group level without II/B-point discussions at the higher levels of the Council. In contrast, 87.9 pct. of the legislative cases with a high level of conflict were sent on for II/B-point discussions at the higher levels of the Council. A logistic regression of the theoretical model as a whole furthermore demonstrated that the effect of the level of conflict was strong even when controlling for the other variables included in the study. The quantitative study not only looked at whether or not the working group sent legislative acts on for discussion in Coreper it also studied how many times the single legislative acts were sent on from the working groups to Coreper. Interestingly a closer study of this variable showed that 46.6 pct. of the legislative cases with a high level of conflict were discussed more than one time at the higher levels of the Council during the decision making procedure. This indicates that the procedure where acts are sent back and forth between the different levels of the Council decision making hierarchy is more common when the level of conflict is high. The interviews generally underpinned the strong result of the quantitative study. A majority of the interviewees pointed out that issues sent on from working groups to the higher levels of the Council typically are politically important and conflictual and that especially legislative acts implying extensive economic consequences or reduction in the national sovereignty cause conflicts among the member states. In addition the interviews increased the confidence in

the validity of the theoretical prediction that working group negotiations are affected by the positions of the European Parliament and the Commission. We can all in all conclude that the analysis of this hypothesis indicates that although the intergovernmental theory is the antithesis to the socialisation thesis of neofunctionalistic theory, the intergovernmentalistic approach is useful for studying EU decision making as well.

According to delegation literature the level of delegation is negatively related to the level of economic implications of legislation (Epstein & O'Halloran 1999: 216). Based on this perspective the theoretical framework expected that the level of delegation from the member states' national authorities to the officials in the working groups depends on the extent to which the legislative acts have financial consequences for the member states. Furthermore it was expected that the more limited the room of manoeuvre of working group participants is, the harder it will be to reach agreement at working group level. As it was not possible to uncover a suitable indication of the legislative act's financial implications, the variable was only studied in the qualitative analysis. The interviews clearly indicated that the economic impact of the legislative acts affects the working groups' ability to reach agreement. Many interviewees stated that the economic impact of EU legislation is one of the most important issues in negotiations between the member states. However, the relative focus on the legislative act's financial impact seemed more pronounced in some policy areas than in others. Considerations about the legislative acts' financial implications seemed to be weightier in the working groups on Land Transport, Energy, Technical Harmonisation, Environment and Statistics than in the working groups on Social Questions, Financial Services and Public Health. Furthermore the interviews indicated that the focal point of the debate on financial implications differs between policy areas. In some areas, the financial question seemed to centre on potential implications for the member states' industries (Land Transport, Energy, Technical Harmonisation and Environment), in others the central issue seemed to be potential implications for public spending in other policy areas (Statistics, Social Questions and Public Health).

Delegation theory not only expects the level of delegation to depend on the economic consequences of the legislative acts, it also predicts that the level of delegation depends on the issue complexity (Bawn: 1995: 71; Epstein & O'Halloran: 1999: 197; Bendor, Glazer and Hammond: 2001: 248). Based on delegation theory the thesis put forth that the extent of working group decision making depends on the technical complexity of the legislative acts; the more technically complex the acts are, the more decision making capacity is delegated to working group members and the more likely

working group agreement becomes. The quantitative analysis showed no sign that the legislative acts' technical complexity affects the extent of decision making taking place in the Council working groups. This was surprising and it is difficult to say whether this result was due to misleading indicators of technical complexity. In any case the qualitative analysis yielded a totally different result. 83 pct. of the interviewees stated that the technical complexity of the legislative acts impinges on whether or not the working groups send the acts on for II/B-point discussions at the higher levels of the Council. Their main explanation for why technically complex issues are attempted finalised at working group level is that Coreper lacks the theoretical expertise to handle them. As emphasised by one interviewee, the value added of Coreper is its ability to strike wide-ranging horizontal deals. Furthermore, the interviewees explained that it may even cause negative reactions in Coreper if the working groups send on technically complex acts, which could have been sorted out at working group level. Also here did the analysis indicate that the weightiness of considerations about technical complexity varies across policy areas. For example the interviewees in Environment put less emphasis on this variable than the interviewees from Technical Harmonisation. In sum, the qualitative study stresses the necessity of continued focus on the technical complexity of legislation as a factor which may explain the decision making process in the Council working group. Moreover, the fact that the quantitative and the qualitative analyses reaches conflicting conclusions about whether or not the legislative acts' technical complexity affects the extent of working group decision making demonstrate the fruitfulness of applying a mixed method design. It shows that applying two research approaches reduces the risk of drawing false conclusions. I will discuss the experience with applying a mixed method design more thoroughly in Section 7.7.

The analysis of the present thesis has shown that the Council presidency plays a central role in the decision making process of the Council working group. As we already know, the presidency organises the meetings in the working groups, steers the decision making process in the working groups and decides whether or not and at which point the legislative acts should be sent on for discussion at the higher levels of the Council. Bearing in mind the central role of the presidency it is reasonable to presume that the presidency has an important influence on the extent of decision making taking place in Council working groups. Although the qualitative study clearly showed that this was the case, it provided no support to the hypothesis that the extent of decision making taking place in Council working groups depends on the size of the member state holding the presidency. One third of the interviewees

underpinned the theoretical argument that large member states, due to their resource advantage as presidents are better at paving the way for a compromise at an early stage of the decision making process. Just as many interviewees supported the opposing perspective, which expected that small member states are better at ensuring compromises at working group level. These interviewees expressed that small member states more often act more as a neutral leader which, combined with the fact that small member states often draw much upon the competences of the Council's General Secretariat, ensure that working group negotiations can proceed more smoothly. It was impossible to conclude anything general about whether working group decision making is more extensive under one of the two types of presidencies. This lack of a clear result was further emphasised by the fact that the last third of the interviewees stated that the size of the member state holding the presidency is not a decisive factor for the extent of decision making taking place in Council working groups. The quantitative study did not support the hypothesis that the size of member state holding the presidency affects the extent of decision making taking place in Council working groups either. More specifically, the quantitative analysis did not show any sign that the extent to which working groups send legislative acts on for discussion at the higher levels of the Council varies according to the size of the member states holding the presidency. The interviewees' descriptions of the role of the Council presidency in working group decision making indicated that the crucial factor for working groups' ability to reach agreement was not so much the size of the member state holding the presidency but more the qualifications, responsiveness and personality of the president. Additionally, judged by the interviews it appears to be crucial for the smoothness of working group negotiations whether the presidencies are run from the member states' permanent representations in Brussels or from the member states' capitals. According to the interviewees presidencies run from Brussels are more in touch with the member states' positions and the status of negotiations and this may have crucial implications for the smoothness of working group negotiations.

In conclusion, the Council's decision making process and the extent of decision making taking place at the lowest level of the Council decision making hierarchy, the Council working groups, depend on working group-specific variables such as policy area and level of socialisation among working group members. Furthermore, whether or not agreement can be reached at working group level seems to depend on the legislative act on the table. The thesis has shown that legislative acts entailing conflicting interests among the member states and institutions involved in the decision

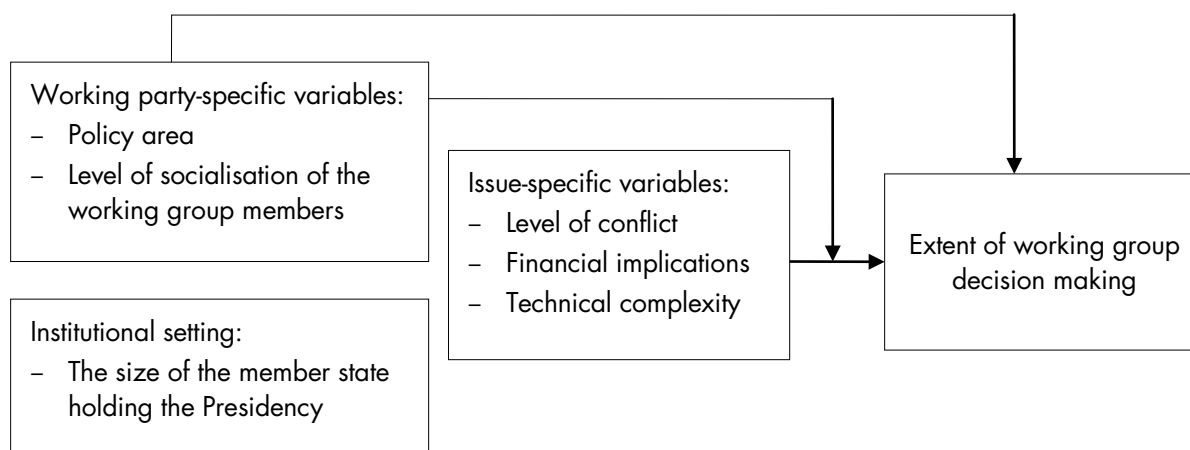
making process, and legislative acts implying financial consequences for the member states, more often are sent on for II/B-point discussions at the higher levels of the Council. On the contrary, the technical complexity of the legislative acts may reduce the working groups' inclination to send the acts on for discussion in Coreper and the Council of Ministers. Table 7.1 compares the results of the two analyses and whether or not they supported the 7 hypotheses.

Table 7.1: Comparison of the results of the quantitative and qualitative analysis

Hypothesis	Quantitative analysis	Qualitative analysis
Hypothesis 1: The extent of decision making taking place in Council working groups varies across policy areas	Support	Support
Hypothesis 2: The more contact the members of the Council working groups have had to the European level, the more consensus seeking they will be, and the greater the decision making capacity the working groups will have	Not studied	Support
Hypothesis 3: The working groups are more likely to reach agreement at their level under the consultation procedure than under the co-decision procedure	No support	Not studied
Hypothesis 4: Legislative acts marked by a high level of conflict between the member states, the European Parliament and the Commission of the European Union are more often sent on from the working groups for a II/B-point discussion at the higher levels in the Council hierarchy than acts marked by more consensus	Support	Support
Hypothesis 5: Legislative acts sent on from the working groups for discussion in Coreper and the Council of Ministers often have financial implications	Not studied	Support
Hypothesis 6: The more technically complex the legislative acts are, the less likely the working groups are to send the dossiers on for discussion in Coreper and the Council of Ministers	No support	Support
Hypothesis 7: The extent to which the working groups send legislative acts on for discussion in Coreper and the Council of Ministers depends on the size of the member state holding the presidency	No support	No support

The summary of the results of the two analyses implies that it is relevant to revise the proposed theoretical model study (see Figure 7.1).

Figure 7.2: Revised theoretical model



A qualitative research design can be an eye opener because it draws attention to explanatory factors that are not incorporated in the theoretical expectations of a study. This was very much the case in the present study which pointed to numerous unforeseen factors that may impinge on the extent of decision making taking place in Council working groups. First of all quite a few interviewees emphasised that it is important to bear in mind that working group negotiations, and the working groups' ability to reach agreement at their level, depend a lot on the people around the table. They described that the progress of negotiations rests upon the working group member's personalities, skills, experience, willingness to compromise and so on. Public attention is another factor that may affect whether or not the working groups are able to compromise at their level. According to the interviewees, public attention to a legislative act often entails that working group officials are given less room of manoeuvre by their national administrations, which makes it more difficult to reach a compromise at working group level. Finally the analysis found empirical evidence that the Council decision making process in some cases may be marked by symbolic policy. As accounted for in Chapter 4, outlining the method, legislative acts are sometimes discussed as B-points in the Council of Ministers for other reasons than the fact that the preparatory bodies cannot reach agreement. Such items are described internally as *false B-points* and are intended to give the public impression of a *B point* that ministers are actively debating because of its importance etc. when in fact it could have been treated as an *A-point* because a compromise has already been reached in Coreper and the working groups. The quantitative analysis indicated the appearance of false B-points as some acts were sent on from working groups to the Council of Ministers without discussion in Coreper. In addition quite a few interviewees expressed that

false B-points sometimes appear and that symbolic policy in certain cases can explain whether or not legislative acts are sent on from the Council working groups for discussion at the higher levels of the Council.

7.2. The limitations of the thesis' results

The present study has yielded many highly interesting and groundbreaking insights about working group decision making. However, due to certain limitations in the analysis, further research on Council working group decision making is required. In this section I will briefly address the relevant limitations and point to subjects for future research.

First of all it is important to bear in mind that the quantitative analysis of the present study is based on a specific population of legislative acts. This study has focused on domestic day to day legislation adopted by the community method. In the data selection process an important criterion was to ensure that the cases were relevant for addressing working group decision making. This implied that external policy decisions regulating external relations were omitted from the study as well as non-legislative acts, initiatives put forth by member states and acts regulating internal administrative and budgetary EU matters. Furthermore, only directives and regulations were included in the study whereas decisions, resolutions and communications were excluded. Finally the thesis only includes acts adopted by the consultation and the co-decision procedure, excluding acts adopted by the assent and cooperation procedure.

Although the data selection was based on reasonable criteria, and although the study arguably focuses on the most important legislative acts, the data selection and exclusion of certain acts constrain the generalisability of the results to all types of Council acts. In addition, it cannot be ruled out that the pattern would have looked different if the data selection had proceeded in another way. For example it would be interesting to study how Council decision making proceeds for other types of legislative acts like decisions. All in all a relevant path for future research would be to analyse Council working groups in an expanded sample of legislative cases.

Another limitation is of course that the qualitative study only covers eight working groups and therefore may overlook relevant explanatory factors. For example it would be interesting to examine the working groups in agriculture, which do not refer to Coreper but to the Special Committee on Agriculture (SCA), and study whether different considerations are at stake in this area. In conclusion, it would be highly relevant to conduct interviews with

representatives from more working groups in order to get the full understanding of Council and working group decision making.

7.3. What does the thesis imply for the debate on European integration?

This thesis not only sheds light on the decision making process in the Council of the European Union and on the role of the Council working groups. It also provides insights about the explanatory power of different perspectives on EU integration. More specifically, the thesis sheds light on whether the intergovernmental perspective on European integration or the socialisation thesis of neofunctionalist theory best describes EU decision making. According to the intergovernmental point of view EU integration is driven by the interests of the member states (Hoffmann 1966; Taylor 1982; Moracsik 1991, 1993, 1998). Applying this perspective one would expect working group decision making to be reflected by the member states' interests and envisage working group decision making as scenes for the clash of nationally defined interests. Opposed to this approach is the socialisation thesis which stems from Ernst Haas' work from 1968. According to this perspective, member state officials in close contact with the EU system shift their loyalties and become more oriented towards the EU level. The large research field investigating the socialisation thesis tests the claim that intensive and sustained participation in supranational organisations will result in supranational allegiances among the participants (Beyers 1998; Egeberg 1999, 2002; Trondal & Veggeland 2003; Trondal 2000, 2002; Egeberg, Shaefer & Trondal 2003; Beyers & Trondal 2004; Beyers 1998, 2005). However, to my knowledge only Häge (2008b) has studied what variations in the level of socialisation among EU officials may imply for EU decision making. The present thesis proposed that working groups composed by officials in close contact with the EU system (*attachés*) more often finalise negotiations at working group level than working groups composed by experts based in the member states.

The thesis supports both the intergovernmental perspective on EU decision making and the socialisation thesis proposed by neofunctionalist Ernst Haas. On the one hand the analysis showed that the level of conflict among the member states affects the decision making process in the Council working groups making it more difficult to find a common solution at this level. On the other hand the analysis showed that working group negotiations and the working groups' ability to reach agreement depend on the level of socialisation among the people around the table. In sum, the analysis indicates that

both intergovernmental theory and the neofunctionalist socialisation thesis can contribute to our understanding of EU decision making.

7.4. The democratic legitimacy of EU decision making – what are the implications of the present study?

EU decision making has often been criticised for lacking democratic legitimacy. Part of this criticism has been directed at the decision making of the Council of Ministers of the European Union which is why the present study contributes by informing the debate on the democratic legitimacy of EU decision making (Curtin 1996; Føllesdal & Koslowski 1997; Vos 1997; Grønbech-Jensen 1998; Lord 1998; Eriksen & Fossum 2000; Moravcsik 2002; Rhinard 2002; Héritier 2003; Føllesdal & Hix 2006; Naurin 2006; Häge 2007a, 2007b, 2008a, 2008b). The decision making of the Council of the European Union has more specifically been criticized for lacking transparency and it has been put forth that it is difficult for the public to identify the decision makers. As accounted for in the introduction, literature discussing the democratic legitimacy of Council decision making has stated that this legitimacy depends on the transparency of the decision making process and on whether or not the public would be able to identify the decision makers. One could question whether this is the case when decisions *de facto* are reached at working group level. Not only is it impossible to observe how negotiations proceed, including who the winners and losers are, it is also difficult to observe whether decisions actually are made at working group level or at Coreper level. Secondly there is the question of accountability. Is the public actually able to hold the ministers in the Council accountable for their decisions and is the accountability entangled if decisions are made by officials in the Council working groups? According to Naurin, the public in any case only has little possibility to punish decision making by the Council of Ministers (2007c: 2-3). The only punishing mechanism is national elections, and as EU matters seldom constitute more than a minor ingredient of the national elections, the public's ability to hold the ministers accountable for decisions made in the Council of Ministers is limited. One could argue, on the one hand, that the already limited accountability of the Council of Ministers is reduced even further if a large amount of decision making takes place in the Council working groups.

On the other hand, it is important to bear in mind that the officials in the working groups negotiate on the basis of instructions from their national ad-

ministrations and that they are obliged to report back how negotiations proceed. In other words, the national administrations and ministries may have control with what is going on in the working groups and may have an influence on how much decision making should take place at this level. And even though the Council of Ministers does not discuss the A-points, it is still the ministers who make the final decision. With regard to the transparency of the decision making process one could question whether greater openness would have a destabilising effect and harm the efficiency of Council decision making. Many decisions are based on horse trading and give and take, and the question is what more transparency would entail for this practice. As Fouilleux, Maillard and Smith point out, during such negotiations between member states some secrecy is inevitable (2007:116).

The study showed that the working groups finalised negotiations on 33.2 pct. of the legislative acts included in the analysis. This result stresses the importance of the working groups in Council decision making, especially since many interviewees stated that 70-99 percent of the content of the legislative acts are sorted out in the working groups. However, as pointed out in the introduction, the democratic legitimacy of Council decision making depends on the circumstances under which decisions are made at working group level. One could argue that a large amount of working group decision making would be less problematic for the democratic legitimacy of Council decision making if working groups focus on the technical details and send the more political and conflictual issues on for discussion at the higher levels of the Council hierarchy. From this point of view, the results indicate that the democratic legitimacy of Council decision making is not in a bad state. First off all, this study has shown that working group decision making appears to be most extensive when the working groups deal with technically complex issues. Although the quantitative analysis did not support the hypothesis that the extent to which the working groups send acts on for discussion at the higher levels of the Council depends on the technical complexity, the interviewees confirmed that the working groups typically focus on the technical acts and the technical details in the acts, leaving political issues for discussion at the higher levels of the Council. Furthermore, the quantitative study clearly showed that legislative acts implying a high level of conflict between the member states and institutions involved in the decision making process more often are sent on for discussion at the higher levels of the Council compared to non-conflictual acts. As it is likely that these conflictual acts also are the more politically important acts, this finding reduces the concern about the central role played by the Council working groups.

7.5. Applying delegation theory – challenges for future researchers

The study examined whether delegation theory can contribute to explain the extent of decision making taking place in the Council working groups. Drawing on delegation theory (Bawn: 1995: 71; Epstein & O'Halloran: 1999: 197; Bendor, Glazer and Hammond: 2001: 248), the thesis put forth that the level of delegation from national authorities to working group members not only affects the decision making capacity of the working group members but also the extent to which the working groups are able to reach agreement at their level. It was expected that national authorities delegate less authority when legislative acts imply financial consequences and more authority when legislative acts are technically complex. The analysis indicated that delegation theory can explain working group decision making as the interviewees confirmed that both the financial consequences and the technical complexity of the legislative acts can affect working group negotiations.

As pointed out earlier, a more precise analysis of the plausibility of the predictions of delegation theory would be to go further into the circumstances under which more or less autonomy is delegated to working group members. When do national authorities leave extensive room of manoeuvre for their representative negotiating in the working groups and when do they keep a close eye on their representative? An interesting subject for future research would be what different coordination processes in the member states and different ways of instructing the working group members imply for their role during working group negotiations and for the decision making process in the working groups. We know from previous literature that the different member states have different coordination processes (Kassim, Peters & Wright 2000, 2001; Fougère, Maillard & Smith 2007) and as mentioned in the literature review (Chapter 2), amongst others Beyers and Trondal have found that variations in national coordination processes can affect the role perceptions of committee members in the EU (Trondal & Beyers 2004: 938). However our knowledge about what variations in national coordination process entails for the role of national officials in Council working groups and for working group decision making is limited and would be a highly relevant subject for future research.

7.6. Applying mixed methods – what have we learned?

In addition to contributing to several strands of theoretical literature and debates the thesis also provides experience with applying a mixed method design. As accounted for in Chapter 4 (Method) the value of combining two research methods has been debated. On the one hand it has been argued that combining qualitative and a quantitative data can benefit an analysis because it increases the amount of data used to investigate a theory or a hypothesis and because it can shed light on the robustness and validity of the results (King, Keohane & Verba 1994). On the other hand, some researchers have articulated scepticism, pointing out that the conceptualisation of the research topic risks being stretched as two methods never can observe the exact same research object (Rholfing 2008, Ahram 2008). This was also a challenge in the present study as the quantitative study analysed how legislative acts were handled in the internal decision making process of the Council of the European Union, whereas the interviews concerned general tendencies in working group decision making rather than specific legislative acts.

Nevertheless, applying a mixed method design turned out to be very rewarding. The quantitative analysis provided hard evidence of the extent to which working groups sent legislative acts on for debate at the higher levels of the Council in the selected cases. Furthermore it provided insights about whether the proposed explanatory variables seemed to cause the expected variations in the extent of decision making taking place in Council working groups. In addition, the qualitative study shed light on the validity of the results of the quantitative study. Interestingly, the qualitative study reached a different conclusion about one of the variables, namely the effect of the legislative acts' technical complexity. Whereas the quantitative study showed no sign that technical complexity impinges on the extent of decision making taking place in the Council working groups, the qualitative study questioned the validity of this result as it showed that technical complexity does affect the working groups' inclination to send acts on to the higher levels of the Council. This mixed result clearly emphasises the value of applying more than one research method.

In addition to examining the validity of the results of the quantitative study, the qualitative study provided thick and clarifying descriptions of the tendencies found in the two analyses. For example, it shed light on potential explanations for why working group decision making varies across policy

areas and it enabled me to investigate not only whether the interviewees' statements confirmed the proposed hypotheses, but also whether the interviewees confirmed the theoretical reasoning behind the hypotheses.

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Appendix A

List of Council working groups

February 2011

General affairs

1. Working Party on General Affairs
2. High-Level Working Group on Asylum and Migration
3. Horizontal Working Party on Drugs 2
4. Working Party on Structural Measures
5. Working Party on Outermost Regions
6. Working Party on Atomic Questions
7. Working Party on Statistics
8. Working Party on Information
9. Coordination Committee for CIS
10. Working Party on Codification of Legislation
11. Working Party of Legal/Linguistic Experts
12. Working Party on the Court of Justice
13. Working Party on the Staff Regulations
14. Working Party on New Buildings
15. Ad hoc Working Party on the follow-up to the Council conclusions on Cyprus of 26 April 2004
16. Ad hoc Working Party on the Cooperation and Verification Mechanism for Bulgaria and Romania
17. Working Party on Enlargement and Countries Negotiating Accession to the EU
18. Ad hoc Working Party on Drafting the Accession Treaty with Croatia
19. Working Party on E-Law

Foreign affairs

1. Working Party of Foreign Relations Counsellors - Sanctions
2. Working Party on Public International Law - International Criminal Court
3. Working Party on the Law of the Sea
4. United Nations Working Party
5. Working Party on OSCE and the Council of Europe
6. Working Party on Human Rights
7. Working Party on Transatlantic Relations
8. Working Party on Eastern Europe and Central Asia
9. Working Party on EFTA 2
10. Working Party on the Western Balkans Region
11. Ad hoc Working Party on the Middle East Peace Process
12. Middle East/Gulf Working Party

13. Mashreq/Maghreb Working Party
14. Africa Working Party
15. ACP Working Party
16. Asia-Oceania Working Party
17. Working Party on Latin America
18. Working Party on Terrorism (International Aspects)
19. Working Party on Non-Proliferation
20. Working Party on Conventional Arms Exports
21. Working Party on Global Disarmament and Arms Control
22. Working Party on Dual-Use Goods
23. Working Party on European Arms Policy
24. Politico-Military Group
25. Military Committee Working Group (EUMCWG)
26. Working Party on Trade Questions
27. Working Party on the Generalised System of Preferences
28. Working Party on Development Cooperation
29. Working Party on Preparation for International Development Conferences
30. Working Party on Humanitarian Aid and Food Aid
31. Working Party on Commodities
32. Working Party on Consular Affairs
33. Working Party on CFSP Administrative Affairs and Protocol
34. Nicolaidis Group
35. Working Party on the application of specific measures to combat terrorism

Economic and financial affairs

1. Working Party on Own Resources
2. Working Party of Financial Counsellors
3. Working Party on Financial Services (Deposit guarantee schemes, Investor compensation schemes, Transport of euro cash, Short selling, OTC derivatives, Financial conglomerates, SEPA, Omnibus 2)
4. Working Party on Tax Questions (Indirect Taxation (VAT, Excise duties, Energy taxation), Direct Taxation (including Taxation of Savings, Interest and Royalties))
5. Code of Conduct Group (Business Taxation)
6. High Level Working Party
7. Budget Committee
8. Working Party on Combating Fraud
9. Working Party on Insurance
10. Ad-hoc Working Party on Economic Governance
11. Export Credits Group

Justice and home affairs

1. Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)
2. Working Party on Integration, Migration and Expulsion
3. Visa Working Party
4. Asylum Working Party
5. Working Party on Frontiers
6. Working Party on Civil Law Matters
7. Working Party on Terrorism
8. Customs Cooperation Working Party
9. Working Party on Cooperation in Criminal Matters
10. Working Party on Substantive Criminal Law
11. Working Party on Civil Protection
12. Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons
13. Working Group on Information Exchange and Data Protection
14. JAI-RELEX Working Party
15. CATS
16. Law Enforcement Working Party
17. Working Party for Schengen Matters
18. Working Party on General Matters including Evaluation

Agriculture/fisheries

1. High Level Group on Agriculture
2. Working Party on Agricultural Structures and Rural Development (Agriculture and Environment, Rural Development, Agricultural Structures, Aegean Islands)
3. Working Party on Horizontal Agricultural Questions (Simplification of the CAP, Strengthening of Controls)
4. Working Party on the Promotion of Agricultural Products
5. Working Party on Genetic Resources in Agriculture
6. Working Party on Foodstuff Quality (Organic Farming, Geographical Indications and Designations of Origin, Certificates of Specific Character)
7. Working Party on Animal Products (Beef and Veal, Sheepmeat and Goatmeat, Piguineat, Eggs and Poultry, Milk and Milk Products, Beekeeping and Honey)
8. Working Party on Arable Crops (Cereals, Oilseeds, Rice, Protein Crops, Dried Fodder, Seeds)
9. Working Party on Sugar and Isoglucose
10. Working Party on Fruit and Vegetables (Bananas, Fresh Fruit and Vegetables, Processed Fruit and Vegetables, Potatoes)
11. Working Party on Olive Oil
12. Working Party on Wines and Alcohol (Wines, Aromatised Wines, Spirit drinks, Alcohol, OIV)
13. Working Party on Special Plant Products (Floriculture, Hops, Tobacco, Textile Fibres)

14. Working Party on Products not listed in Annex I
15. Working Party on Financial Agricultural Questions (Agri-monetary questions, AGRIFIN)
16. Working Party on Forestry
17. Working Party on Agricultural Questions (Labelling of Processed Agricultural Products, Feedingstuffs, Seeds and Propagating Material, Harmful Organisms, Pesticide Residues, Pesticides/Plant Protection Products, Plant Breeder Rights, GMO)
18. Working Party of Chief Plant Health Officers
19. Working Party on Plant Health (Protection and Inspection, Propagating and Planting Materials, Roosendaal Group)
20. Working Party of Chief Veterinary Officers
21. Working Party of Veterinary Experts (Public Health, Animal Health, Animal Welfare, Animal Husbandry, Fishery Products, Potsdam Group)
22. Coordination Working Party (FAO, OECD)
23. Codex Alimentarius Working Party
24. Working Party on External Fisheries Policy
25. Working Party on Internal Fisheries Policy
26. Working Party of Directors-General of Fisheries Departments
27. Ad hoc Working Party on Genetically Modified Organisms

Competitiveness (Internal Market, Industry, Research and Space)

1. Working Party on Competitiveness and Growth
2. Working Party on Public Procurement
3. Working Party on Intellectual Property (Patents, Copyright, Design, Trademarks)
4. Working Party on Company Law
5. Working Party on Establishment and Services
6. Working Party on Technical Harmonisation (Standardisation, Motor Vehicles, Machinery, Construction products, Dangerous substances)
7. Working Party on Customs Union (Customs Legislation and Policy, Common Customs Tariff)
8. Working Party on Competition
9. Working Party on Research
10. Joint Working Party on Research/Atomic Questions
11. ERAC
12. Working Party on Space

Transport/telecommunications/energy

1. Working Party on Land Transport
2. Working Party on Shipping
3. Working Party on Aviation
4. Working Party on Transport - Intermodal Questions and Networks
5. Working Party on Telecommunications and Information Society

6. Working Party on Postal Services
7. Working Party on Energy

Employment/social policy, health and consumer affairs

1. Working Party on Social Questions
2. Working Party on Public Health
3. Working Party on Consumer Protection and Information
4. Working Party on Pharmaceuticals and Medical Devices
5. Working Party on Foodstuffs

Environment

1. Working Party on the Environment
2. Working Party on International Environment Issues

Education, youth, culture and sport

1. Education Committee
2. Working Party on Youth
3. Committee on Cultural Affairs
4. Audiovisual Working Party
5. Working Party on Sport

Appendix B

Code book

Acts to be included in the dataset:

- Directives and regulations (not decisions, resolutions and communications) adopted by the co decision and consultation procedure.
- New legislation and partly amending legislation

Procedure:

Step 1:

The starting point of the coding process is to find the above mentioned adopted acts in Prelex. Prelex is a database that gives insight in the inter-institutional decision making process. It follows the major stages of the decision making process from the adoption of the proposal by the Commission to the final adoption of the legislative act.

The above mentioned acts are found by searching for all acts adopted by co decision within a certain period of time:

- Write COD under 'Series'
- Choose 'Signature by EP and Council' under 'Event'
- Choose time period under 'Between': e.g. 01/01/2009 – 31/12/2009
- Select cases by the wording of the legislative proposals (cases concerning external relations, fishery opportunities in third countries and cases concerning internal administrative, budgetary and institutional matters in the EU should not be included).

Acts adopted in the period of 2005-2009 will be included in the dataset.

Link: http://ec.europa.eu/prelex/rech_simple.cfm?CL=en

Step 2:

When all the variables that is related to the act in question (that appears in Prelex and Eurlex) are coded, then open the Council's Public Register. This database provides access to documents stemming from the internal decision making process in the Council. Amongst other things the documents that the Council working groups send on to the Coreper are available here (Progress reports, reports, notes, I-item notes a.s.o.). Search by the inter-institutional decision making code (appears in Prelex). Open all the pdf-files related to the act in question. A thorough description of how the dependent variable of the project is coded follows in the end of this codebook.

Link:

http://register.consilium.europa.eu/servlet/driver?page=Advanced&typ=&lang=EN&fc=REGAISEN&srm=25&md=100&ssf=DATE_DOCUMENT+DESC&cmsid=639

Variables:

1. Name of act:

Variable name: name

Explanation: Full name of legislative act

Type: String

Values: -

Source: Eurlex

2. COM number:

Variable name: comnumb

Explanation: COM number – including year

Type: String

Values: -

Source: Prelex

3. Inter-institutional decision making code:

Variable name: intcod

Explanation: the inter-institutional decision making code

Type: String

Values: 0=Codecision, 1=Consultation

Source: Prelex

4. Responsible DG in the Commission:

Variable name: Resp_DG

Explanation: Responsible Directorate-General in the Commission

Type: Numeric

Values:

1. Agriculture and Rural Development
2. Competition
3. Economic and Financial Affairs
4. Education and Culture
5. Employment, Social Affairs and Equal Opportunities
6. Energy and Transport
7. Enterprise and Industry
8. Environment
9. Enlargement
10. Maritime Affairs and Fisheries
11. Health and Consumers
12. Information Society and Media
13. Internal Market and Services
14. Justice, Freedom and Security
15. Regional Policy

16. Research
17. Taxation and Customs Union
18. Development
19. External Relations
20. Trade
21. Humanitarian Aid department (ECHO)
22. EuropeAid - Co-operation Office
23. Directorate-General for Budget
24. Internal Audit Service
25. Communication

Source: Prelex

5. Date of adoption of proposal and final adaption:

Variable name: Date_1

Explanation: Date of first Commission proposal

Type: Date

Values: -

Source: Prelex (in the left side under 'Events')

Variable name: Date_2

Explanation: Date of final adaption of the legislative act

Type: Date

Values: -

Source: Prelex (in the left side under 'Events')

6. A or B item on Council agenda

Variable name: AB1

Explanation: A or B item on Council agenda at first treatment.

Type: Numeric

Values: 0=A / 1=B / -99=Missing

Source: Prelex

Variable name: AB2

Explanation: A or B item on Council agenda at second treatment.

Type: Numeric

Values: 0=A / 1=B / -99=Missing

Source: Prelex

AB3 / AB4 / AB5 / AB6... a.s.o.

7. Eurlex Directory Code

Variable name: Code_1

Explanation: First mentioned code in Eurlex directory

Type: String

Values: -

Source: Eurlex (direct link in Prelex under 'Numero Celex' in the bottom for the page (In Eurlex: look under 'Classifications' / 'Directory Code' in bibliographic notice)).

Variable name: Code_2

Explanation: Second mentioned code in Eurlex directory

Type: String

Values: -

Source: Eurlex (direct link in Prelex under 'Numero Celex' in the bottom for the side (In Eurlex: look under 'Classifications' / 'Directory Code' in bibliographic notice)).

Code_3, Code_4, Code_5, Code_6, Code_7... a.s.o.

8. Subject of act

Variable name: Subject

Explanation: Subject matter of legislative act

Type: String

Values: -

Source: Eurlex (direct link in Prelex under 'Numero Celex' in the bottom for the side (In Eurlex: look under 'Classifications' / 'Subject matter' in bibliographic notice)).

9. Type of act

Variable name: Act-type

Explanation: Type of act

Type: Numeric

Values: 0=Regulation / 1=Directive

Source: Name of act

10. Preparatory documents

Variable name: Prep_doc

Type: Numeric

Values: 0=No / 1=Yes

Explanation: Do recitals or provisions refer to a preparatory document? (e.g. a preparatory report, an action plan etc.).

Source: The final adopted act (link to pdf-file via Eurlex bibliographic notice).

Instruction: Read the recitals of each regulation/directive and search for the words; 'program', 'report', 'plan', 'communication' in the whole document. It should be checked whether these words refer to some sort of preparatory work.

11. Preparatory committee

Variable name: Prep_com

Explanation: Do recitals or provisions refer to a preparatory committee?

Type: Numeric

Values: 0=No / 1=Yes

Source: The final adopted act (link to pdf-file via Eurlex bibliographic notice).

Instruction: Read the recitals of each regulation/directive and search for the words; 'committee' and 'expert' in the whole document. It should be checked whether these words refer to a committee that has conducted some sort of preparatory work.

12. Annex to act

Variable name: Annex

Explanation: Does the act contain one or more annexes with a clear technical content?

Type: Numeric

Values: 0=No / 1=Yes

Source: The individual act (link to pdf document via Eurlex bibliographic notice).

Instruction: Search for the word 'annex' in each regulation/directive (pdf-document). It should be checked whether the word really refers to a annex to the act and whether the annex contains technical details.

13. New or partly amending act:

Variable name: New_partlyamending

Explanation: New legislation or new and partly amending legislation

Type: Numeric

Values: 0 = New legislation / 1 = partly amending legislation

Source: Eurlex: Title of act

14. Number of treatments by the European Parliament

Variable name: EP_treatments

Explanation: Number of treatments by the European Parliament

Type: Numeric

Values:

1. No EP readings
2. 1 EP reading
3. 2 EP readings
4. 3 EP readings

Source: Prelex

15. Number of amendments from the European Parliament

Variable name: EP_amendments1

Explanation: Number of amendments from the European Parliament in first reading (indicates level of politicisation on EU level).

Type: Numeric

Values: -

Source: Prelex

Variable name: EP_amendments1_categorized

Explanation: Number of amendments from the European Parliament in first reading (categorized variable)

Type: Numeric

Values:

1. 0 EP amendments
2. 1-19 EP amendments
3. 20-39 EP amendments
4. 40-59 EP amendments
5. 60-79 EP amendments
6. 80-99 EP amendments
7. 100 - 199 EP amendments
8. 200 + EP amendments

Source: Prelex

Variable name: EP_amendments2

Explanation: Number of amendments from the European Parliament in second reading.

Type: Numeric

Values: -

Source: Prelex

Variable name: EP_amendments3

Explanation: Number of amendments from the European Parliament in third reading.

Type: Numeric

Values: -

Source: Prelex

16. Commissions reaction to EP amendments

Variable name: Comreact1

Explanation: Commissions reaction to EP amendments (1st treatment)

Type: Numeric

Values:

1. Full acceptance
2. Partial acceptance
3. No acceptance

Source: Prelex

Variable name: Comreact2

Explanation: Commissions reaction to EP amendments (2nd treatment)

Type: Numeric

Values:

1. Full acceptance
2. Partial acceptance
3. No acceptance

Source: Prelex

Variable name: Comreact3

Explanation: Commissions reaction to EP amendments (3rd treatment)

Type: Numeric

Values:

1. Full acceptance
2. Partial acceptance
3. No acceptance

Source: Prelex

17. Number of amended proposals from the Commission

Variable name: Comamend

Explanation: Number of amended proposals from the Commission

Type: Numeric

Values: -

Source: Prelex

18. Working group

Variable name: WG

Explanation: The full name of the working group that has handled and prepared the legislative act.

Type: String

Values: -

Source: Reports, notes, progress reports produced by the working groups the presidency or the General Secretariat

Variable name: WG2

Explanation: The full name of the second mentioned working group that has handled and prepared the legislative act (some legislative acts are being discussed by more than one working group).

Type: String

Values: -

Source: Reports, notes, progress reports produced by the working groups the presidency or the General Secretariat

Variable name: WG3

Explanation: The full name of the third mentioned working group that has handled and prepared the legislative act.

Type: String

Values: -

Source: Reports, notes, progress reports produced by the working groups the presidency or the General Secretariat

Variable name: WG_categorized

Explanation: Categories of the first mentioned working groups.

Type: Numeric

Source: Reports, notes, progress reports produced by the working groups the presidency or the General Secretariat

Values:

1. Working Party on the Environment
2. Working Party Technical Harmonisation
3. ACP Working Party
4. Working Party on Land Transport
5. Working Party on Transport - Intermodal Questions and Networks
6. Working Party on Frontiers Mixed Committee
7. Working Party on the Protection of Individuals
8. Working Party on Aviation
9. Social Questions Working Party
10. Working Party on Financial Services
11. Working Party on Energy
12. Working Party on Intellectual Property
13. The Structural Actions Working Party
14. Working Party on Statistics
15. Committee on Foreign Affairs.
16. Horizontal Working Party on Drugs
17. Working Party on Competitiveness and Growth
18. Working Party on Pharmaceuticals and Medical Devices
19. CODEV Working Party
20. Schengen Acquis Working Party
21. Research Working Party
22. Ad-hoc Working Party on 'Chemicals'
23. Committee on Civil Law Matters
24. Working Party on Foodstuffs
25. Working Party of Veterinary Experts
26. Working Party on Telecommunications and Information Society
27. Working Party on Company Law (Shareholders' Rights)
28. Budget Committee.
29. Working Party on Substantive Criminal Law

30. Customs Union (Legislation and Policy) Working Party
31. Ad-Hoc Working Party on EIT
32. Visa Working Party
33. Working Party on Migration and Expulsion
34. Working Party on Agricultural Questions (Pesticides/Plant Protection Products)
35. Shipping Working Party
36. Working party on Wines and Alcohol
37. Working Party Legal Procurement
38. Consultative Working Party of Legal Service
39. Working Party on Consumer Protection and Information
40. Working Party on Development Cooperation
41. Financial Councillors Working Party
42. Working Party on Sugar and Isogl
43. Working Party 'Establishment and Services'
44. Working Party on Internal Fisheries Policy
45. Working Party on Financial Agricultural Questions
46. Working Party on Agricultural Structures and Rural Development
47. Working Party on Arable Crops (Seeds)
48. Asylum Working Party
49. Working Party on Special Plant Products and Textile Fibres
50. The Outermost Regions Working Party
51. Working Party on Tax Questions
52. Working Party on Horizontal Agricultural Questions
53. Working Party on the Generalized System of Preferences
54. Working Party on Atomic Questions
55. Working Party on Fruit and Vegetables
56. Working Party on Animal Products

Link: List of preparatory bodies in the Council:

<http://register.consilium.europa.eu/pdf/en/09/st11/st11602.en09.pdf>

19. Policy area of WG

Variable name: Pol_area_WG

Explanation: Policy area of the working group according to the List of Council Preparatory Bodies

Type: Numeric

Source: of preparatory bodies in the Council:

<http://register.consilium.europa.eu/pdf/en/09/st11/st11602.en09.pdf>

Values:

1. General Affairs
2. External Relations/Security and Defense/Development
3. Economic and Financial Affairs
4. Justice and Home Affairs

5. Agriculture and Fisheries
6. Competitiveness (Internal Market, Industry, Research).
7. Transport/Telecommunications/Energy
8. Employment/Social Policy/Health and Consumer Affairs
9. Environment
10. Education/Youth/Culture

20. Involvement of attaché group?:

Variable name: Attache

Explanation: Has the attaché group handled/discussed the legislative act?

Type: Numeric

Values: 0 = Yes / 1 = No

Source: The Council's Public Register

21. Working group decision making: involvement/ no involvement of Coreper:

The dependent variable of the study is the extent to which the Council working parties involve the Coreper in the decision making process. This appears in the documents sent on to Coreper from the working groups / the presidency or the Council secretariat (Reports, notes and I-item notes). The documents appears in the Council's Public Register when searching by the inter-institutional decision making code. Below it is explained more thoroughly how this variable is observed in practice.

Variable name: decnon1

Explanation: Working group involvement of Coreper in the decision making process

Type: Numeric

Values: 0=I-item/ 1=II-item/ 2=Informing Coreper / -99=Missing

Source: Reports, notes and I-item notes produced by the working groups the presidency or General Secretariat addressed to the Committee of Permanent Representatives (Coreper)

Variable name: decnon2

Explanation: Working group involvement of Coreper in the decision making process

Type: Numeric

Values: 0=I-item/ 1=II-item/ 2=Informing Coreper / -99=Missing

Source: Reports, notes and I-item notes produced by the working groups the presidency or the General Secretariat addressed to the Committee of Permanent Representatives (Coreper)

decnon3 / decnon4 / decnon5/ decnon6 / decnon7...a.s.o.

Variable name: inv_noninv_Coreper

Explanation: Involvement or no involvement of Coreper in the decision making process in the Working Group?

Type: Numeric

Values: 0=No involvement of Coreper / 1=Involvement of Coreper

Instruction:

I-item notes:

Should be coded as I-item

Reports and notes:

Go through documents and search for the words 'Committee' and 'Coreper'. If Coreper is mentioned then read more closely whether the working party wants Coreper to discuss/ deal with the legislative act in question. It should be distinguished between formulations where the working group just informs the Coreper or requires that it confirms an agreement and formulations where it is clear that the working group want Coreper to solve outstanding issues a.s.o. Below follows some examples on what should be coded as involvement and what should be coded as no involvement of Coreper.

1. Formulations that exemplify involvement of Coreper:

'The Permanent Representatives Committee is invited to address the outstanding issue'

'Coreper is invited to examine and reach an agreement on the texts in...'

'The working party would like the Permanent Representatives Committee to examine the opt-out question further'

'Coreper is invited to solve the remaining outstanding issues'

2. Formulations that exemplify situations where the working parties only inform Coreper and/or wants it to confirm a settled compromise:

'The Permanent Representatives Committee is invited to indicate whether they can accept the new compromise proposals'

'The Permanent Representatives Committee is invited to confirm that on the basis of the attached text an agreement can be reached'

'Coreper is invited to take note of the state of play'

Appendix C

Interview Questions – Officials

Background	<p>For how long have you had your current position?</p> <p>Have you participated in other working groups?</p> <p>Could you give a short description on the working group you follow (the policy area, the legislative legislative acts that you handle)?</p>
Description of the decision making processes in the working group	<p>How does a meeting in your working group normally proceed?</p> <p>Are there any fixed routines?</p> <p>How often do you meet? Do you meet regularly?</p> <p>Who participates in the working group? Is it the same persons every time or does the composition vary?</p> <p>Who speaks? The attachés or the experts?</p> <p>If experience with proceedings in other groups: Does the meetings in the working groups vary from group to group? If so: In what way?</p> <p>When you receive a proposal from the Commission; how does the negotiation process in the working groups proceed?</p> <p>Is it the Presidency or the General Secretariat who chairs the meetings?</p> <p>Who decides when agreement is reached and/or when a legislative act is ready to be sent on for discussion at the higher levels in the Council's hierarchy?</p>
Explanations to the decision making process? Is there a general pattern?	<p>How is the general ability of the working group to reach agreement?</p> <p>Why are you not always able to establish a compromise?</p> <p>When do you typically send a legislative legislative act on for discussion in Coreper or the Council of Ministers?</p> <p>Would you say that that the legislative acts that are sent on to Coreper and the Council of Ministers share any common characteristics?</p> <p>As far as you can see: are there any dynamics or factors that influence the working groups' ability to reach agreement?</p> <p>Do possible financial consequences of the legislative acts influence the negotiations?</p> <p>What about the European Parliament's interest in the legislative acts – does this affect the decision making processes in the working group?</p>

	Can the Commission have an influence on whether or not the working party is able to reach agreement?
	Does the composition of the working group have an influence on how the negotiations proceed (attachés vs. officials from the national ministries)? Does it matter who the speaker is?
Other reasons than negotiation blockage?	Does the working group ever send a legislative act on for discussion in Coreper or the Council of Ministers for other reasons than negotiation blockage?
The effect of:	Are there legislative acts which are more suited to be discussed either by the working groups, the Coreper or the Council of Ministers?
– Political content	If so: In what way?
– Politicization	Are legislative acts with political implications handled differently than other legislative acts?
– Technical complexity	If so: In what way?
	If a legislative act gets public attention and becomes political; will this affect how the legislative act is being dealt with in the Council?
	If so: In what way?
	Does the technical complexity of the legislative acts discussed have an effect on the working group's inclination to send them on for discussion in Coreper or the Council of Ministers?
	If so: In what way?
Interaction between the working group, Coreper and the Council of Ministers	How is the interaction between the national representative, the ambassador and the minister?
	Do the ambassador or the minister ever involve in the decision making process in the working group?
	Have you ever received an indication from the ambassador or the minister that he/she wants a legislative act to be discussed in Coreper or the Council of Ministers?
	Is it a general ambition in the working group to finalize discussions on the legislative acts or as many aspects of the legislative acts as possible?
	If so: Why?

The Presidency /
General secretariat

You said earlier that it is the Presidency / general secretariat that chairs the meetings in your working group:

Do the Presidency / general secretariat affect the smoothness of the negotiations in the working group and its possibilities to establish compromises?

If so: In what way?

Does it matter who holds the presidency? If so: In what way?

Does the size of the member state holding the presidency affect the presidency's role?

Can the General Secretariat affect the negotiations and play a role in preparing a compromise? If so: in what way?

Introduction to my results

One of the limitations of my quantitative study is that I am only able to observe whether or not the working parties ask Coreper to discuss outstanding issues and not the substance or importance of what Coreper is asked to discuss. If you were to give a percentage on how much of the single legislative acts that is finalized in the working parties, what would you say?

As a part of my project I have conducted a quantitative study of 251 regulations and directives adopted by co decision in the period 2005-2009. For each legislative act I have coded the number of times that the working groups invite Coreper to solve outstanding issues. The analysis shows that the working party on... is one of the groups that involve the higher levels in the Council's hierarchy the most / the least.

Does this surprise you?

Do you have any suggestions to what the explanations behind this result might be?

Other things?

Is there anything we have not talked about which you think is important for the decision making processes in the working groups and the Council as such?

Appendix D

Interview Questions – General Secretariat

Background	<p>For how long have you had your current position?</p> <p>Which working groups have you participated in?</p> <p>Could you give a short description on the working group you follow (the policy area, the legislative legislative acts that is handled in the group)</p>
Description of the decision making processes in the working group	<p>How does a meeting in the working group normally proceed?</p> <ul style="list-style-type: none"> – Are there any fixed routines? – How often does the working group meet? Does it meet regularly? – Who participates in the working group? Is it the same persons every time or does the composition vary? – If experience with proceedings in other groups: Does meetings proceed differently from group to group? If so: In what way? <p>When you receive a proposal from the Commission; how does the negotiation process in the working groups proceed?</p> <p>Is it the Presidency or the General Secretariat who chairs the meetings?</p> <p>Who decides when agreement is reached and/or when a legislative act is ready to be sent on for discussion at the higher levels in the Council's hierarchy?</p> <p>Could you give a description of your role in the working party?</p>
Explanations to the decision making process? Is there a general pattern?	<p>How is the general ability of the working group to reach agreement?</p> <p>Why is the working group not always able to establish a compromise?</p> <p>When does the working group typically send a legislative legislative act on for discussion in Coreper or the Council of Ministers?</p> <p>Would you say that that the legislative acts that are sent on to Coreper and the Council of Ministers share any common characteristics?</p> <p>As far as you can see: are there any dynamics or factors that influence the working groups' ability to reach agreement?</p> <p>Do possible financial consequences of the legislative acts influence the negotiations?</p> <p>What about the European Parliament's interest in the legislative acts – does it affect the decision making processes in the working group?</p> <p>Does the composition of the working group have an influence on how the negotiations proceed (attachés vs. officials from the national ministries)? Does it matter who the speaker is?</p>

Other reasons than negotiation blockage?	Does the working group ever send a legislative act on for discussion in Coreper or the Council of Ministers for other reasons than negotiation blockage?
The effect of:	Are there legislative acts which are more suited to be discussed either by the working groups, the Coreper or the Council of Ministers?
– Political content	If so: In what way?
– Politicization	Are legislative acts with political implications handled differently than other legislative acts?
– Technical complexity	If so: In what way?
	If a legislative act gets public attention and becomes political; will this affect how the legislative act is being dealt with in the Council?
	Does the technical complexity of the legislative acts discussed have an effect on the working group's inclination to send them on for discussion in Coreper or the Council of Ministers?
	If so: In what way?
Interaction between the working group, Coreper and the Council of Ministers	Do the ambassadors in Coreper or the ministers in the Council ever indicate that they would like to discuss a legislative act?
	Do you perceive it as a general ambition in the working groups to finalize discussions on the legislative acts, or as many aspects of the legislative acts, as possible?
	If so: Why?
The Presidency/General secretariat	Does the Presidency affect the smoothness of the negotiations in the working group and its possibilities to establish compromises?
	If so: In what way?
	Does it matter who holds the presidency? If so: In what way?
	Does the size of the member state holding the presidency affect the presidency's role?
	Can you affect negotiations and play a role in preparing a compromise? If so: In what way?
Differences between groups:	Are there any clear differences in the decision making processes in the working groups that you have participated in?
	– Differences in to which extent they involve the higher levels in the Council hierarchy in the decision making process?
	– Differences in the circumstances under which Coreper and the Council is invited to discuss legislative acts?
	– Different traditions?
	– Different dynamics?
	– Differences in the role played by the presidency and by you?

Introduction to my
results

As a part of my project I have conducted a quantitative study of 251 regulations and directives adopted by co decision in the period 2005-2009. For each legislative act I have coded the number of times that the working groups invite Coreper to solve outstanding issues. The analysis shows that the working party on... is one of the groups that involve the higher levels in the Council's hierarchy the most / the least.

Does this surprise you?

Do you have any suggestions to what the explanations to this might be?

Appendix E

Table E.1: Number of times the single legislative acts were sent on for a II-point discussion in Coreper within the different policy areas

Policy area**	Number of times the acts were sent on from the Council working groups for a II-point discussion in Coreper*:							Total
	.00	1.00	2.00	3.00	4.00	5.00	6.00	
General Affairs	25 80.6%	2 6.5%	3 9.7%	1 3.2%	0 0%	0 0%	0 0%	31 100%
Justice and Home Affairs	8 40%	7 35%	3 15%	0 0%	1 5%	0 0%	1 5%	20 100%
Agriculture and Fisheries	25 51%	15 30.6%	3 6.1%	5 10.2%	1 2%	0 0%	0 0%	49 100%
Competitiveness (Internal Market, Industry, Research)	11 35.5%	12 38.7%	4 12.9%	4 12.9%	0 0%	0 0%	0 0%	31 100%
Transport/Telecommunications/Energy	10 20.8%	19 39.6%	8 16.7%	5 10.4%	3 6.3%	0 0%	3 6.3%	48 100%
Employment/Social Policy/Health and Consumer Affairs	5 23.8%	8 38.1%	5 23.8%	1 4.8%	1 4.8%	1 4.8%	0 .0%	21 100%
Environment	6 20.7%	6 20.7%	8 27.6%	3 10.3%	1 3.4%	3 10.3%	2 6.9%	29 100%
Others	12 63.2%	4 21%	3 15.8%	0 0%	0 0%	0 0%	0 0%	19 100%
Total	102 41.1%	73 29.4%	37 14.9%	19 7.7%	7 2.8%	4 1.6%	6 2.4%	248*** 100%

*The variable covers how many times the single legislative acts included in the current study were sent on to Coreper for a II-point discussion in Coreper.

**The applied indicator of policy area is the organizational placement of the working group that handled the legislative case.

*** Missing values: 11 (4.2%): In 11 of the selected cases of the current study it was not possible to observe either whether the legislative act was sent on as a II-point to Coreper or which working group that dealt with the act, handled in the decision making process in the Council.

Appendix F

Table F.1: Analysis of whether Council decision making varies according to the type of legislation being discussed

	Working group decision	II/B-point discussion in Coreper/Council	Total
Directive	24.5 % (24)	75.5% (74)	100% (98)
Regulation	38.8 % (59)	61.2 % (93)	100% (152)
Total	33.2% (83)	66.8% (167)	100% (250*)

*Missing values: 9 (3.5%).

Gamma: -0.32 (Sig: 0.015)

Table F.2: Analysis of whether the level of conflict varies according to the type of legislation being discussed

	Directive	Regulation	Total
No conflict	50 % (15)	50 % (15)	100% (30)
Medium conflict	43.8 % (49)	56.3 % (63)	100% (112)
High level of conflict	33.3 % (39)	66.7 % (78)	100% (117)
Total	39.8% (103)	60.2% (156)	100% (259)

Gamma: 0.222 (Sig: 0.042)

English Summary

Chapter 1:

The decision making process in the Council of Ministers of the European Union can vary considerably from case to case. In some cases acts are discussed at all levels of the Council's hierarchy: the Council working groups, Coreper and the Council of Ministers. In other cases negotiations about the legislative acts are finalized at the lowest level of the Council's hierarchy; the Council working groups and are adopted by the ministers without further discussion.

This thesis studies the Council working groups and questions how much decision making takes place at this level and what explains variations in the extent to which working groups reach agreement at their level or send acts on for further discussion at the higher levels of the Council. These questions are of great importance for getting a fuller understanding of Council decision making. Furthermore they shed light on the democratic legitimacy of Council decision making.

Chapter 2:

Chapter 2 reviews existing literature about Council decision making and literature which can contribute with ideas about what explains variations in the extent of working group decision making. The chapter reviews literature about decision making in the Council of Ministers, the lines of conflict in the Council Ministers, the negotiation climate in the Council working groups and literature about the socialization effect of sustained participation in EU institutions.

Chapter 3

Drawing on insights from previous literature and relevant theoretical perspectives, Chapter 3 presents the theoretical framework of the thesis. The explanatory variables were divided into three types: (1) working group-specific variables expecting working group decision making to vary across policy areas and according to the working group members' level of contact to the EU system; (2) issue-specific variables expecting working group decision making to depend on the level of conflict over the legislative act on the table as well as on the legislative acts' financial implications and technical complexity; (3) variables related to the institutional setting of the working

group expecting that the extent of working group decision making depends on the size of the member state holding the presidency.

Chapter 4:

Chapter 4 describes the research design, a mixed method design combining a qualitative and a quantitative research approach. The quantitative study analyses how 259 directives and regulations adopted by co-decision or consultation in the period 2005-2009 were handled in the Council's decision making machinery. The quantitative study was supplemented by a qualitative study based on interviews with 36 working group members from 8 working groups. The argument is that the advantage of applying two methods is that it sheds light on the robustness and validity of the results.

Chapter 5:

Chapter 5 presents the results of the quantitative analysis. The thesis finds that Council working groups finalised negotiations on 33.2 pct. of the acts included in the study. However, the extent of working group decision making varies across policy areas. Most decision making takes place in working groups in General Affairs whereas working groups in e.g. Environment, Land Transport, Social Policy, Health and Consumer Affairs send acts on for discussion at the higher levels of the Council in the majority of cases. The analysis furthermore found that working group decision making is affected by the level of conflict between the member states in the Council, the European Parliament and the Commission. In contrast, working group decision making does not seem to depend on the technical complexity of the legislative acts or on the size of the member state holding the presidency.

Chapter 6:

The qualitative analysis in Chapter 6 substantiated that Council working groups are highly important decision making arenas as up to 70-99 pct. of the content of the legislative acts are sorted out at working group level according to the interviewees. The interviews also confirmed that the extent of working group decision making varies across policy areas as the interviewees' estimates of the extent of working group decision making varied between 50-100 pct.

The interviewees generally confirmed that the decision making process can depend on the working group members' level of contact to the EU as officials in close contact with the EU system (attachés) often are more compromise seeking than officials based in the member states (experts). Accord-

ing to the interviewees the extent of working group decision making also depends on the legislative act on the table and that conflictual issues and acts implying financial consequences for the member states often require a II/B-point discussion at the higher levels of the Council. In contrast, working groups often strive to finalise negotiations on technically complex acts. This result contradicts the finding of the quantitative analysis which demonstrates the advantage of applying a mixed method design. Finally the qualitative study confirmed the result of the quantitative study that the extent of working group decision making does not depend on the size of the member state holding the presidency.

Chapter 7:

In addition to summing up the results of the thesis, the conclusion discusses its contributions. Not only has the thesis provided new insights about Council decision making, it has also shed light on the debate on the democratic legitimacy of EU decision making as well as on the debate on the usefulness of a mixed method design. First and foremost the thesis argued that the democratic legitimacy of Council decision making not only depends on the extent of decision making taking place in Council working groups but also on which types of decisions are made at this level. The analysis showed that the working groups typically focus on technically complex issues and send conflictual and political issues on for debate at the higher levels of the Council. This finding reduces the concern with the democratic legitimacy of Council decision making. Applying a mixed method design, the thesis has also contributed with new experiences with using two research methods. The thesis has clearly shown that a mixed method design can shed light on the robustness of the results and prevent the researcher from drawing false conclusions.

Kapitel 1:

Når EU's ministerråd behandler Kommissionens lovgivningsforslag, varierer beslutningsprocessen betragtelig fra sag til sag. Nogle retsakter bliver diskuteret på alle niveauer i Rådets hierarki: arbejdsgrupperne, Coreper og Ministerrådet; andre retsakter bliver færdigforhandlet allerede på arbejdsgruppeniveau og sendt videre til blåstempling i Ministerrådet. Selv om det ikke er irrelevant på hvilket niveau i Rådet beslutninger bliver truffet, er vores viden herom meget begrænset. Denne afhandling ser nærmere på Rådets arbejdsgrupper og undersøger, hvor meget der bliver besluttet på dette niveau, samt hvad der forklarer forskelle i, hvorvidt arbejdsgrupperne når til enighed på deres niveau eller sender sager til yderligere diskussion i Coreper og Ministerrådet.

Kapitel 2:

Kapitel 2 gennemgår eksisterende litteratur om Rådets beslutningsproces samt litteratur, som kan bidrage med ideer til, hvad der kan forklare forskelle i, hvor meget der bliver besluttet i Rådets arbejdsgrupper. Kapitlet gennemgår litteratur om Ministerrådets beslutningsproces, om konfliktlinjerne i Ministerrådet, om forhandlingsklimaet i Rådets arbejdsgrupper og endelig litteratur om socialiseringseffekten af langvarig deltagelse i EU's institutioner.

Kapitel 3:

På baggrund af eksisterende litteratur og relevante teoretiske perspektiver præsenterer kapitel 3 afhandlingens teoretiske ramme. Forklaringsfaktorerne blev inddelt i tre kategorier (1) arbejdsgruppespecifikke faktorer, (2) sagspecifikke faktorer, og (3) faktorer relateret til den arbejdsgruppens institutionelle setting. De syv fremsatte hypoteser forventer, at mængden af beslutninger der bliver truffet af Rådets arbejdsgrupper afhænger af policy område, arbejdsgruppemedlemmernes kontakt til EU, den inter institutionelle beslutningsprocedure, graden af konflikt, sagernes finansielle implikationer og tekniske kompleksitet og af om det er et stort eller lille medlemsland der sidder i Rådets formandsstol.

Kapitel 4:

Kapitel 4 præsenterer afhandlingens forskningsdesign, som kombinerer kvantitativ og kvalitativ metode i et 'mixed method design'. Designet har blandt andet den fordel, at resultaternes robusthed og validitet belyses. Det kvantitative studie analyserer, hvordan 259 direktiver og forordninger vedtaget ved den fælles beslutningsprocedure og høringsproceduren i perioden 2005-2009 blev håndteret i Rådets beslutningsproces. Den kvantitative analyse blev fulgt op af en kvalitativ analyse baseret på interviews med 36 arbejdsgruppemedlemmer fra 8 udvalgte arbejdsgrupper, der blandt andet varierer i forhold til, hvor ofte de sender sager til yderligere diskussion i Coreper og Ministerrådet.

Kapitel 5:

Afhandlingens kvantitative analyse (kapitel 5) finder, at 32,2 pct. af de undersøgte sager blev afsluttet af arbejdsgrupperne. Imidlertid varierer det både mellem sagområder, arbejdsgrupper og sager, hvor meget der beslutes på arbejdsgruppeniveau. For eksempel viser afhandlingen, at arbejdsgrupper inden for generelle anliggender afslutter de fleste sager på deres niveau og sender dem videre til blåstempling i Ministerrådet, hvorimod arbejdsgrupper inden for blandt andet miljø, landtransport, socialpolitik m.m. oftest sender sager til yderligere diskussion i Coreper og Ministerrådet. Afhandlingen finder også, at arbejdsgruppernes muligheder for at afslutte forhandlinger på deres niveau påvirkes af graden af konflikt mellem medlemsstaterne i Rådet, Europa-Parlamentet og Kommissionen. Modsat var der ingen tegn på, at sagernes tekniske kompleksitet eller formandskabslandets størrelse påvirker, hvor meget der afsluttes i Rådets arbejdsgrupper.

Kapitel 6:

Den kvalitative analyse i kapitel 6 underbygger, at Rådets arbejdsgrupper er centrale beslutningstagere i Rådets beslutningsproces, da interviewpersonerne vurderede, at op til 70-99 pct. af sagernes indhold bliver færdigforhandlet i arbejdsgrupperne. Ligeledes bekræftede interviewpersonerne, at arbejdsgruppernes rolle varierer mellem områder, da deres vurderinger af, hvor meget der bliver besluttet i arbejdsgruppen, varierede mellem 50-100 pct. Interviewpersonerne understøttede også afhandlingens socialiseringsteori og gav udtryk for, at arbejdsgruppemedlemmernes grad af kontakt til EU kan påvirke deres kompromisvillighed og dermed arbejdsgruppernes mulighed for at nå til enighed.

Hvor meget der bliver besluttet på arbejdsgruppeniveau afhænger ifølge interviewpersonerne også af den retsakt, der er til diskussion. Mere specifikt understøttede interviewpersonerne teserne om, at arbejdsgruppernes muligheder for at nå til enighed afhænger af graden af konflikt mellem medlemsstaterne, Europa-Parlamentet og Kommissionen samt af, hvorvidt retsakterne medfører finansielle byrder for medlemsstaterne. Modsat den kvantitative analyse viste den kvalitative analyse tydeligt, at sagernes tekniske kompleksitet reducerer arbejdsgruppernes vilje til at sende sager videre til Coreper og Ministerrådet, blandt andet fordi dette kan give negative reaktioner i Coreper. De modsatrettede resultater i den kvalitative og den kvantitative analyse demonstrerer fordelene ved at kombinere to forskningsmetoder, da det reducerer risikoen for at drage fejlagtige konklusioner.

Kapitel 7:

Ud over at sammenfatte afhandlingens resultater diskuterer konklusionen i kapitel 7 afhandlingens bidrag. Afhandlingen har nemlig ikke kun bidraget med ny indsigt i Rådets beslutningsproces; den bidrager også til at belyse beslutningsprocessens demokratiske legitimitet. Afhandlingen argumenterer for, at den demokratiske legitimitet ikke kun afhænger af, hvor meget der bliver besluttet på arbejdsgruppeniveau, men også af, hvilken type sager arbejdsgrupperne færdigbehandler. Analysen viste, at arbejdsgrupperne typisk fokuserer på teknisk komplekse sager og sender konfliktfyldte og politiske sager til yderligere diskussion i Coreper og Ministerrådet. Alt i alt reducerer dette bekymringen ved, at mange sager afsluttes af embedsmænd i arbejdsgrupperne og ikke de facto diskuteres af medlemsstaternes ministre i Ministerrådet.