# Government-Opposition in the EU:

# Implications of EU Treaty Reforms

# for Commission Preferences and EU Policies

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**Abstract**

This paper looks at the reform of the Commission appointment and legislative processes in the European Union (EU), and their impact on Commission preferences and EU policies. We present a game-theoretical analysis and apply it to the appointment of the most recent Commissions and their legislative programmes. A key result is that the policy consequences of the legislative reforms can only be understood if they are considered in combination with the reforms of the selection of the Commission. Essentially, now that the same majority in the Council and Parliament can 'elect' the Commission and then enact the Commission's legislative proposals, a particular policy coalition may be able to 'govern' the EU for a period, against the opposing interests of some member states and MEPs.

In this paper we study twenty-five years of reforms of the Commission appointment and legislative processes in the European Union (EU), and the impact of these reforms on the Commission's preferences and EU policies.[1] In particular, we raise two questions. Can the Commission be controlled by a particular 'governing coalition' in the EU Council and European Parliament? And, if so, could this coalition, via the Commission, get its preferred policies approved in the legislative process?

In the next section we present a brief overview of the principal reforms of the Commission appointment and legislative processes and the questions they raise regarding the Commission's preferences and EU policies. The third section presents a game-theoretical analysis of Commission appointment and EU legislation. In the fourth section, we apply this analysis to the appointment of the Prodi and Barroso Commissions and their legislative programmes. These two Commissions were appointed under different rules and in contrasting political situations. The fifth section presents the conclusions.

We find that reforms of the Commission appointment and legislative processes during the 1990s have weakened the Commission and brought EU policies closer to the member states and Members of the European Parliament (MEPs) who favour policy change. The reforms have also increased the possibility that status quo minded member states and MEPs will find themselves isolated in the appointment and legislative processes. Essentially, there could be geunine 'government and opposition' at the EU level: with a particular policy coalition able to govern across the Commission, the Council and the European Parliament, against an opposing set of interests in these three institutions. This might increase the legitimacy of the EU, but might also undermine support for the EU in the member states who find themselve in 'opposition' in a particular period.

Table 1 presents a summary of the Commission appointment and policy-making processes and their evolution over time, focusing on the reforms that are relevant for the purposes of this paper. The appointment process was altered by the Maastricht, Amsterdam and Nice Treaties, whereas the legislative process changed dramatically after the Single European Act (SEA) and the Maastricht Treaty. We can thus distinguish five time periods: (1) the pre-SEA period, (2) the SEA period, (3) the Maastricht period, (4) the Amsterdam period, and (5) the Nice period.

--- Table 1 about here ---

Prior to the SEA the Commission was appointed by common accord of the member states. That is, unanimity was required in the Council for the choice of Commission President and for the approval of the College of Commissioners as a whole. In practice, other than the President, the members of the Commission were (and still are) chosen by each of the governments. The five largest member states chose two Commssioners each, and the other member states chose one Commissioner each. The Commission's legislative proposals were introduced under the consultation procedure. They required unanimous Council approval, and could only be amended by a unanimous Council.

The SEA did not change the appointment procedure, but changed the legislative procedures, so that approval of Commission proposals became easier. Proposals no longer needed unanimous Council approval for adoption. A qualified majority was sufficient.[2]

The Maastricht Treaty altered both the appointment and legislative processes. The changes increased the Parliament's involvement in the procedures. Under the Maastricht

Treaty the member states first nominated the Commission President (hereafter referred to as the President, and assumed to be male, as has been the case thus far) by unanimity. Subsequently the Commission was appointed by the Parliament and a unanimous Council. The Santer Commission was appointed under this procedure. Maastricht also introduced a new legislative procedure, codecision, which gave the Parliament a veto right and the right to amend Commission proposals together with a qualified majority in the Council.

The Amsterdam Treaty granted the Parliament a veto right for the nomination of the President and gave the President a veto right for the appointment of the other Commissioners. Amsterdam also widened the use of codecision. The Prodi Commission was the only Commission to be appointed and then operate under these procedures.

The Nice Treaty relaxed the decision rule for Commission appointments in the Council: it required a qualified majority rather than unanimity. The Nice-based appointment process is not significantly altered by the Lisbon Treaty – although the number of Commissioners was reduced.[3] Nice also further widened the use of codecision, as does the Lisbon Treaty. The Barroso Commission was the first to be appointed and operate under the Nice rules.

A THEORETICAL ANALYSIS OF APPOINTMENT AND POLICY MAKING

*The Model*

To study the appointment and legislative processes we use spatial models that have been developed in the literature and extensions thereof. In spatial models alternative EU policies are represented by points in an *n*-dimensional policy space. Each dimension corresponds to a specific policy issue that arises during the Commission's term. EU policy making can then be

thought of as choosing a point in the policy space. Political actors are considered to have Euclidean preferences. That is, they have ideal policies and prefer policies that are closer to rather than farther away from their ideal policies. Thus, they can also be represented by points in the policy space.

The member states and MEPs first appoint a Commission, and then set EU policies on the $n$ policy issues together with the Commission. We assume that the EU considers the $n$ policy issues it is facing sequentially, and refer to an $n$-dimensional policy as a legislative programme.[4]

Spatial models have become a standard approach to study the EU legislative process. Crombez, Moser, Steunenberg and Tsebelis, amongst others, present spatial models of EU policy making.[5] We follow Crombez's approach. Since the member states, the MEPs and the Commissioners have Euclidean preferences, their preferences over a policy issue are independent of the EU policies on other issues. Member state $k$'s utility, for example, decreases as the EU policy on dimension $i$ moves farther away from its ideal policy on dimension $i$, whatever the EU policies on the other dimensions. As a result, EU policy making on dimension $i$ can be studied as if it were the only relevant dimension.

The Parliament and the Commission use simple majority voting rules, and there are no restrictions on amendments.[6] As a consequence, the analysis of policy making on dimension $i$ can be simplified by focusing on the ideal policies of the median Commissioner and the median MEP on dimension $i$.[7] In the legislative process the Commission and the Parliament can thus be treated as actors with ideal policies equal to their medians' ideal policies on dimension $i$.

The Council is not represented as a unitary actor because it uses qualified majority voting (QMV) in the adoption of legislation. Nonetheless, the analysis of policy making on dimension $i$ can be simplified by focusing on the member states that are pivotal under the

qualified majority rule. Under the qualified majority rule, 255 votes out of a total of 345 are needed to defeat the status quo. The member state $a^i$ that is pivotal for a rightward move on dimension $i$ thus has an ideal policy to the left of the member state with the median vote. In particular, member state $a^i$ is the member state with the 91st vote (from the left). Member state $a^i$ and the member states to its right then have at least 255 votes, and the member states to its right do not constitute a qualified majority without member state $a^i$. Similarly, the member state $b^i$ that is pivotal for a move to the left is the member state with the 255th vote. Since approval by a qualified majority is the minimum requirement for the adoption of legislation, we focus on $n$ dimensions on which a qualified majority agrees on the need and direction of policy change.

The appointment process has received only scant attention in the theoretical literature. To our knowledge, Crombez presents the only formal model of Commission appointment.[8] Hug finds empirical support for the conclusions of the model.[9] According to Crombez, what matters in the appointment process is the selection of the median Commissioner on each dimension, because in the legislative process the Commission acts as if its ideal policy on an issue were equal to the median Commissioner's ideal policy on that issue.

We use a simplified version the Crombez model of Commission appointment. A member state is selected to propose a dimension-by-dimension Commission median, which then requires the approval of the Council and the Parliament. The dimension-by-dimension median may or may not be the President. The President could use his increasingly important role in the appointment process to compose a Commission that closely reflects his preferences, to make sure that he is the median Commissioner on each dimension.[10]

The model incorporates complete and perfect information. We use the subgame perfect Nash equilibrium concept.

*The Legislative Process*

As mentioned above there have been two major reforms of the legislative process. The SEA established QMV and Maastricht introduced codecision.

Prior to the SEA the Commission needed the approval of all member states for the adoption of its proposals. As a result on any policy issue, the most 'conservative' member state, that is, the member state closest to the status quo, was pivotal in the Council. Its support was the hardest to obtain and its preferences thus determined EU policies. It only approved policies it preferred to the status quo. The Commission then considered the policies the most conservative member state preferred to the status quo and proposed the policy it preferred most from among those policies. The Commission thus had limited 'agenda-setting powers' before the SEA. That is, its ability to move EU policy toward its own ideal policy by formulating policy proposals was restricted. Only conservative Commissions could get the approval for their ideal policies. Only limited legislative programmes could be adopted.

Moreover, a unanimous Council could amend Commission proposals. As a result a Commission that was more conservative than all countries could at best obtain the ideal policy of the most conservative member state. Similarly, a Commission that was more 'progressive' (further from the status quo) than all countries could at best obtain the ideal policy of the most progressive member state. In what follows we will ignore the Council's right to unanimously amend Commission proposals, as it is unlikely that the Commission is left (right) of all member states on any given issue.

After the SEA's introduction of QMV the Commission no longer needed the support of all member states for adoption of its proposals. For any policy issue it could focus on the member states that were pivotal for a qualified majority. Proposals needed their approval for adoption. The pivotal member states approved policies they preferred to the status quo. The

8

Commission thus considered the policies they preferred to the status quo and proposed the policy it preferred the most from among those policies.

The SEA thus increased the set of policies that the Commission could successfully propose. The Commission could continue to propose the same policies it would have proposed before the SEA, because policies preferred by all were obviously preferred by a qualified majority. Commissions that preferred more progressive policies than the most status quo-minded member state was willing to accept, however, could obtain policies that were closer to their ideal than they could before the SEA. Thus, the SEA increased the agenda-setting powers of the Commission. For all possible configurations of preferences policy was at least as close to the Commission's ideal policy after the SEA than it was before. The Commission could successfully propose more progressive legislative programmes.

Maastricht introduced codecision and successive treaty reforms have since widened its application. Under codecision Commission proposals require Parliament approval in addition to approval by a qualified majority in the Council. If the Parliament is more conservative than the pivotal member state, the introduction of codecision thus reduces the set of policies the Commission can successfully propose on any policy issue. If the Parliament is more progressive, however, as is often assumed, its veto right does not affect policy.

Moreover, the Parliament and a qualified majority in the Council can amend Commission proposals under codecision. This also reduces the set of policies the Commission can successfully propose. Commissions that are more conservative (progressive) than the Parliament and the more conservative (progressive) pivotal member state for QMV cannot obtain their own ideal policy. As a result, whereas the SEA increased the Commission's agenda-setting powers, Maastricht and subsequent treaty reforms have reduced it.

Whether the Commission became more powerful after Maastricht than it had been before the SEA, depends on the configuration of preferences. Codecision led to more progressive policies, if, as is often assumed, the Parliament was progressive. Conservative Commissions would then become less powerful, because they could no longer keep policies close to the status quo. Progressive Commissions would become more powerful, because they no longer needed to obtain unanimity in the Council for their proposals.

**Proposition 1** *The two major reforms of the legislative process have had opposite effects on the ability of the Commission to secure its prefered policies: the SEA increased it, whereas the Maastricht Treaty reduced it. But, whether the Commission is more powerful today than it was prior to the SEA depends on the configuration of preferences. Under a 'progressive' Parliament, a 'conservative' Commission was more powerful before the Single European Act, whereas a progressive Commission is more powerful today.*

*Commission Appointment*

The appointment process underwent two major reforms. Maastricht gave the Parliament a veto right, and Nice no longer requires unanimity in the Council: a qualified majority now suffices.[11]

Prior to Maastricht the appointment of a Commission required unanimity in the Council. Since member states cared about policies, they looked ahead when appointing a Commission and considered the legislative programme the Commission would realise. Only Commissions that would realise legislative programmes preferred to the status quo by all member states could get appointed. Before the SEA the Commission could successfully propose conservative legislative programmes only. As a result only conservative Commissions could be appointed and successfully propose their ideal programmes. After the

SEA, Commissions could successfully propose more progressive legislative programmes. More progressive Commissions could then be appointed and successfully propose their ideal policies.

By requiring Parliamentary approval for the appointment of the Commission Maastricht restricted the set of Commissions that could be appointed. If the Parliament was progressive, however, this extra restriction had no impact on Commission preferences.

Maastricht's introduction of codecision, by contrast, led to more progressive legislative programmes. Only progressive Commissions could thus successfully propose their own ideal policies. Conservative Commissions could no longer make sure that status-quo oriented programmes would be implemented, because their proposals could be amended by the Parliament and a qualified majority. As a result the member states could no longer commit themselves to a limited programme, preferred to the status quo by all member states, when they appointed a Commission. In the past they could appoint a conservative Commission, and such a Commission would successfully implement a limited programme in line with its own preferences.

As a result of the Maastricht reforms it thus became more difficult to appoint a Commission, but easier to approve progressive legislative programmes. Maastricht raised the possibility that a member state be isolated and prefer the status quo to the legislative programme. As a result of codecision member states that preferred limited programmes could find themselves frequently outvoted in the legislative process. This could lead conservative member states to criticize run-away Commissions for implementing policies that go too far. The above analysis shows, however, that the use of codecision rather than run-away Commissions are responsible for this evolution.

What could a member state close to the status quo do to prevent ending up in the opposition throughout the Commission's term? It could seek the appointment of a

11

Commission that was too disorganised to put legislative proposals together, a Commission that stuck to the status quo even though it wanted to move away from it. Alternatively it could try to reduce the dimensionality of the policy space. That is, it could try to appoint a Commission with a limited programme and restrict the Commission's attention to issues on which the member state preferred change. Short of having no Commission at all, these could be the only ways for the member state to prevent that policy move too far away from the status quo and its ideal policy.

It could be argued that the United Kingdom government followed exactly this strategy in the appointment of the Santer and Prodi Commissions. John Major vetoed a Dehaene Commission in 1994, on the grounds that Dehaene was too 'integrationist'. In 1999 Tony Blair encouraged the other member states to accept Romano Prodi, with a limited policy agenda for the EU.

However, the Nice Treaty limits the ability of conservative member states to pursue such a strategy, by removing the veto from the appointment of the Commission. The Commission will no doubt continue to be adopted by 'consensus' in the Council. However, knowing that the Treaty allows for QMV to be used, a consensus would be constructed 'in the shadow of a vote', with the more conservative member states forced to go along with the choice of a majority. In this situation, a member state may end up in an 'opposition' position during the Commission's term, having lost on the appointment of the Commission, and then also losing in the implementation of the Commission's legislative programme. In contrast, a particular qualified majority of member states could be in a 'governing' position for a Commission's term, being able both to appoint the Commission as well as implement its legislative programme.

It could be argued that this is exactly what happened with the appointment of the Barroso Commission. This time, France and Germany were the most conservative member

states, in terms of their opposition to the liberalisation of domestic labour markets and industrial sectors. However, the centre-right majority in the Council, backed this time by Tony Blair, was able to pick a centre-right Commission President and College of Commissioners, and to have this Commission accepted by a centre-right majority in the Parliament.

**Proposition 2** *The reforms of the appointment and legislative processes could lead to the appointment of more progressive Commissions and the adoption of more progressive policies. This raises the prospect of the political isolation of conservative member states and party groups in the Parliament, and the emergence of 'governing' and 'opposition' forces at the EU level.*

COMMISSION APPOINTMENT AND POLICY MAKING IN PRACTICE

We illustrate the intuitions of the model with 'real world' configurations of the ideal policies of the member states' governments, the Parliament and the Commission at two different points in time: (1) July 1999, when the Prodi Commission was appointed; and (2) June 2004, when the Barroso Commission was to be appointed.

To measure where the actors are located in EU politics we use data from two prominent 'expert judgments' data-collection projects: a survey by John Huber and Ronald Inglehart in 1993, who considered a 'left-right' scale; and a set of surveys by Gary Marks, Leonard Ray and Carole Wilson in 1999 and 2001, who studied a 'European integration' scale.[12] In both projects, political scientists in each member state were asked to place the

parties in their member state on the policy dimension under consideration.[13]  The ideal policy

of a party was then assumed to be the average score for that party given by the experts.[14]

From these national parties' scores, we calculate the policy locations of the actors the

left-right and anti-pro EU dimensions.  The position of each government is calculated as the

average position of the parties in government, weighted by the parties' shares of cabinet seats.

The ideal policy of the Parliament is calculated by focusing on the median party group on

both dimensions.  Each MEP is considered to have the same ideal policy as her national party,

and each party group is considered to have the same ideal policy as the median MEP's

national party in the group.  Similarly, we assume that each Commissioner has the same

policy position as his national party and focus on the median Commissioner.  However,

because there was an even number of Commissioners (twenty) in the periods we are studying,

we take the half-way point between the tenth and eleventh Commissioners on each dimension

to be the position of the Commission.

We do not assume that all policy issues in the EU are determined by actors' positions

on these two dimensions.  All we assume is that actors' preferences on the left-right and anti-

pro EU dimensions are reasonably approximations of the positions actors take on most of the

important issues in EU politics.  We also do not assume that each minister in the Council,

Commissioner or MEP will always have the same policy preference as her national party.

Rather, what we assume is that because national parties are the key aggregate actors in

European politics (who choose ministers and Commissioners and candidates in European

elections) that an actor is likely to take positions that are not too distant from the policy

preferences of her national party.  These assumptions are consistent with empirical studies of

voting in the Council and European Parliament, which find, first, that these two dimensions

capture a large proportion of the variance in voting patterns in these two institutions and,

second, that national party policy positions on thes two dimensions are good predictors' of

ministers and MEPs voting decisions.[15]  In other words, this sort of empirical analysis is not

an exact science, but is a reasonable approximation of how actors are likely to line up on the

key issues on the EU policy agenda.

Figure 1 shows the positions of the actors on these two dimensions in July 1999.  The

Figure accords roughly with what one might intuitively predict.  The electoral success of

Socialist parties in the mid 1990s is reflected in the make-up of the Council, with the centre-

right led Luxembourg, Spanish and Irish governments at the right end of the left-right

dimension, and the Socialist French, Swedish and Italian governments at the left end of the

dimension.  Either Portugal or Italy, who are located in the same position, is pivotal under

QMV for a move to the right.  A coalition of member states on the right has at least 63 votes

with either Portugal or Italy, but falls below the 62-vote threshold, which was required for a

qualified majority at that time, without either of those two member states.  Due to the high

threshold, rightward moves thus need the support of one of these left of centre governments.

Similarly, Greece is pivotal under QMV for leftward moves.


----- Figure 1 about here -----


The Commission, which was appointed in 1999, when a majority of EU member states

had centre-left governments, is located on the left.  In contrast to the Council and the

Commission, the victory of centre-right parties in the 1999 European elections – a reflection

of the fact that these elections are usually mid-term contests, which meant that the governing

Socialist parties did badly in these elections – means that the median MEP's party group in

the Parliament is on the centre- right. In other words, in terms of the left-right dimension of

policy-making, with a centre-left majority in the Council and Commission opposed by a

centre-right majority in the Parliament, July 1999 marked the start of a period of 'divided government' in the EU.

The Figure also shows the status quo, which is assumed to be on the left, for simplicity. This assumption is also a reasonable approximation of reality on many issues on the current EU agenda, such as microeconomic reforms, where the status quo represents the social market/welfare state consensus in post-war politics in Western Europe.

The picture is not quite the same on the European integration dimension. As one would expect, the Danish, Swedish and British governments are at the anti-integration end of the dimension, whereas the Portuguese and Greek governments are at the pro-integration end. France is the pivotal member state under QMV for moves toward more integration, whereas Spain is pivotal for moves in the opposite direction. The two supranational institutions – the Commission and the Parliament – are towards the pro-integration end of the dimension. However, the EU institutions are not at the pro-integration extreme, as some formal models of EU policy making assume.[16]

Figure 2 shows the actors' positions in a two-dimensional, left-right and anti-pro EU, policy space in July 1999. The immediate inference from this picture is that because the governments are the agenda-setter in the appointment of the Commission, and because European Parliament elections are protest elections against these governments, there is considerable distance between the positions of the Commission, which is composed of nominees from national governments, and the Parliament.


----- Figure 2 about here -----


This line-up of preferences in 1999 leads to particular EU policies. In Figure 1, under the consultation procedure, the set $CS^{LR}$ of successful proposals on the left-right dimension is

16

the set of policies that the pivotal member state (Italy or Portugal) prefers to the status quo. This set contains all policies that are closer to this member state's ideal policy than the status quo. Similarly, the set $CS^{AP}$ of successful proposals on the anti-pro EU dimension is the set of policies France prefers to the status quo. On both dimensions the equilibrium policies are equal to the Commission's ideal policies, because the pivotal member states prefer them to the status quo. The corresponding set $CS$ of successful programmes is shown in Figure 2 – the large rectangle. This is the set of policies that are preferred to the status quo on economic policy by Italy and Portugal and on EU integration by France. The Commission can successfully propose any policy in this rectangle. With the line-up of preferences in Figure 2, the Commission can successfully proposes its ideal.

Under the codecision procedure, the pivotal member state, Italy or Portugal, prefers a policy to the left of the Parliament. Thus, a proposal that is approved by this member state is also approved by the Parliament. However, the Parliament and a qualified majority in the Council amend the Commission proposal if it is to the left of Italy and Portugal. If the proposal is to the right of these member states, by contrast, and belongs to the set $CS^{LR}$, it cannot be amended, because the Parliament prefers policies to the right of it, but no qualified majority prefers such policies. The set $CD^{LR}$ is thus the set of policies between the ideal policy of Italy and Portugal and the policy that makes them indifferent to the status quo, the rightmost policy in the set $CS^{LR}$. The Commission successfully proposes its ideal policy.

On the anti-pro integration dimension in Figure 1, the Parliament and a qualified majority amend the Commission proposal if it is left of France or right of Spain, Finland and the Parliament itself. The set $CD^{AP}$ is thus the set of policies between France and the Parliament. Again, the Commission successfully proposes its own ideal policy.

In two dimensions, in Figure 2, the set $CD$ is the darkest shaded rectangle. Proposals left of Italy and Portugal are unsuccessful, because the Parliament and these pivotal member

17

states prefer to move farther to the right. Similarly, proposals below France are unsuccessful, because the Parliament and the pivotal member state want to move further on integration. Proposals right of the policy that makes Italy and Portugal indifferent to the status quo on economic policy are unsuccessful, because these member states prefer the status quo on economic policy. Proposals above Spain, Finland and the Parliament are unsuccessful, because the pivotal member states and the Parliament want to move less far on integration. The remaining policies satisfy the above conditions and thus constitute the set *CD*.

Figure 2 illustrates the impact of successive legislative reforms on EU policy. It shows that the Maastricht reform of the legislative process reduced the set of successful programmes: the set *CD* is a subset of the set *CS*. Only progressive programmes could be adopted after Maastricht. The light-shaded set *UN* would have been the set of successful programmes prior to the SEA. It is also a subset of the set *CS*, but consists of conservative programmes. It is limited by what is acceptable to the most conservative member state on each dimension: to France on the left-right dimension and to Denmark on the anti-pro EU dimension. The Prodi Commisssion was able to get its own ideal policy, whether consultation or codecision was used, whereas EU policy would have been in the upper right corner of the set *UN* under the pre-SEA rules.

Figure 2 also illustrates the appointment process. The set *APU* is the set of Commissions that could be appointed with the 1999 configuration of preferences in the Council and Parliament. It is bound by the indifference curves of the most conservative member states: Denmark, Sweden and France. All member states and the Parliament prefer the policies in the set *APU* to the status quo.[17]

Suppose consultation is used in the legislative process. Commissions in the set $CS \cap APU$ can then be appointed and successfully propose their own ideal policies. If codecision is used, this holds for progressive Commissions in the set $CD \cap APU$ only.

Figure 2 thus shows that the Maastricht reform of the legislative process reduced the set of Commissions that could be appointed and successfully propose their own ideal policies. In Figure 2 the Prodi Commission is on the limits of that set. The Prodi Commission was thus as progressive a Commission as all member states could accept. Under the pre-SEA rules only conservative Commissions in the set *UN* could have gone through the appointment process and obtained their ideal policies.

The configuration of ideal points in June 2004 in Figure 3 shows what happens with a centre-right majority in both the Council and the Parliament. The Figure illustrates that with 'unified government' in the EU dominated by the centre-right, a more rightwing and less integrationist Barroso Commission is appointed and is able to secure its ideal policies.[18]


----- Figure 3 about here -----


Figure 3 also illustrates the impact of the Nice reform of the appointment process. Under the pre-Nice rules only Commissions in the set *APU* could have been appointed. The set *APU* is bound by the indifference curves of Italy and Sweden. Under the Nice rules, however, all Commissions in the set *APQ* can be appointed. This set is bound by the indifference curves of Finland, the United Kingdom, Italy and Germany. It includes all Commissions in the set *CS*. The Nice reform thus opens the door for the appointment of Commissions that move policies farther away from the status quo than the most conservative member states are willing to accept. Conservative member states can then be isolated in the appointment and legislative processes. The Barroso Commission may in fact be outside of the set *APU*.

CONCLUSIONS

Our analysis suggests that the combined reforms of the Commission appointment and legislative procedures are likely to produce Commissions and EU policies that are closer to the member states and MEPs who want policy change (such as economic reform). The consecutive reforms of the appointment and legislative processes have rendered the Commission more responsive to these actors.

Nevertheless, there is a trade-off. The EU institutional reforms have raised the possibility that member states who are opposed to radical policy change via the EU will find themselves isolated in the appointment and legislative processes and prefer the status quo to the Commission's legislative programme. Put another way, the introduction of a qualified majority in the Council for both appointing the Commission and enacting the Commission's legislative proposals could produce a 'government-opposition' split in the EU: where a particular coalition of forces in the Council and Parliament could push through a particular policy agenda, against the policies either of the less pro-integration states, such as the UK and Denmark, or against the member states with more highly regulated labour markets, such as Germany and France.

More generally, any majoritarian system of electing the executive will produce a government that is most responsive to the actors who are pivotal in the construction of the winning majority: such as the median voters in a presidential election, or the median legislator in a parliamentary system. Also, if the executive holds agenda-setting powers, and the legislation can be adopted by the same majority that picks the executive, then the pivotal actors can usually secure the policies they desire.

The consequences of genuine government-opposition politics in the EU are uncertain. On the one hand, a clearly identifiable 'governing coalition', with an identifable set of

policies in the EU, might increase the legitimacy of the EU, as EU voters become aware of who is responsible for the success or failure of these policies.  On the other hand, if citizens in particular member states (such as Denmark) or from particular political traditions expect that they are unlikely to be on the governing side at the EU level for some time, then citizens in these states or voters for these parties are likely to become increasingly anti-European in their sentiments.

For example, at the moment, voters and parties on the centre-left tend to be slightly more pro-European than voters and parties on the centre-right.  But, if a centre-right Commission, backed by powerful centre-right forces in the Council and Parliament, is able to push through a free market liberalisation legislative package, then voters and parties on the left might start to demand that the powers of the EU and the Commission be reigned in – as they did in the 1970s.

**Table 1: Major Reforms of the Commission Appointment and Legislative Processes.**

| | | Pre-SEA 1958-1987 | SEA 1987-1993 | Maastricht 1993-1999 | Amsterdam 1999-2003 | Nice 2003-… |
|---|---|---|---|---|---|---|
| **Commission** | Nomination-President | | | UN | UN and P | QM and P |
| | Appointment-Commission | UN | | UN, P | UN, P and Pres | QM, P and Pres |
| **Legislation** | Consultation-Approval | UN | QM | | | |
| | Consultation-Amendment | UN | | | | |
| | Codecision-Approval | | | QM and P | | |
| | Codecision-Amendment | | | UN, or QM and P | | |

**Key:**

SEA= Single European Act      QM= a qualified majority in the Council      Pres= Commission President

UN= a unanimous Council      P= Parliament

FIGURE 1: *Policy Positions and Policy Making, July 1999*

A) Left-Right.



B) Anti-Pro EU.
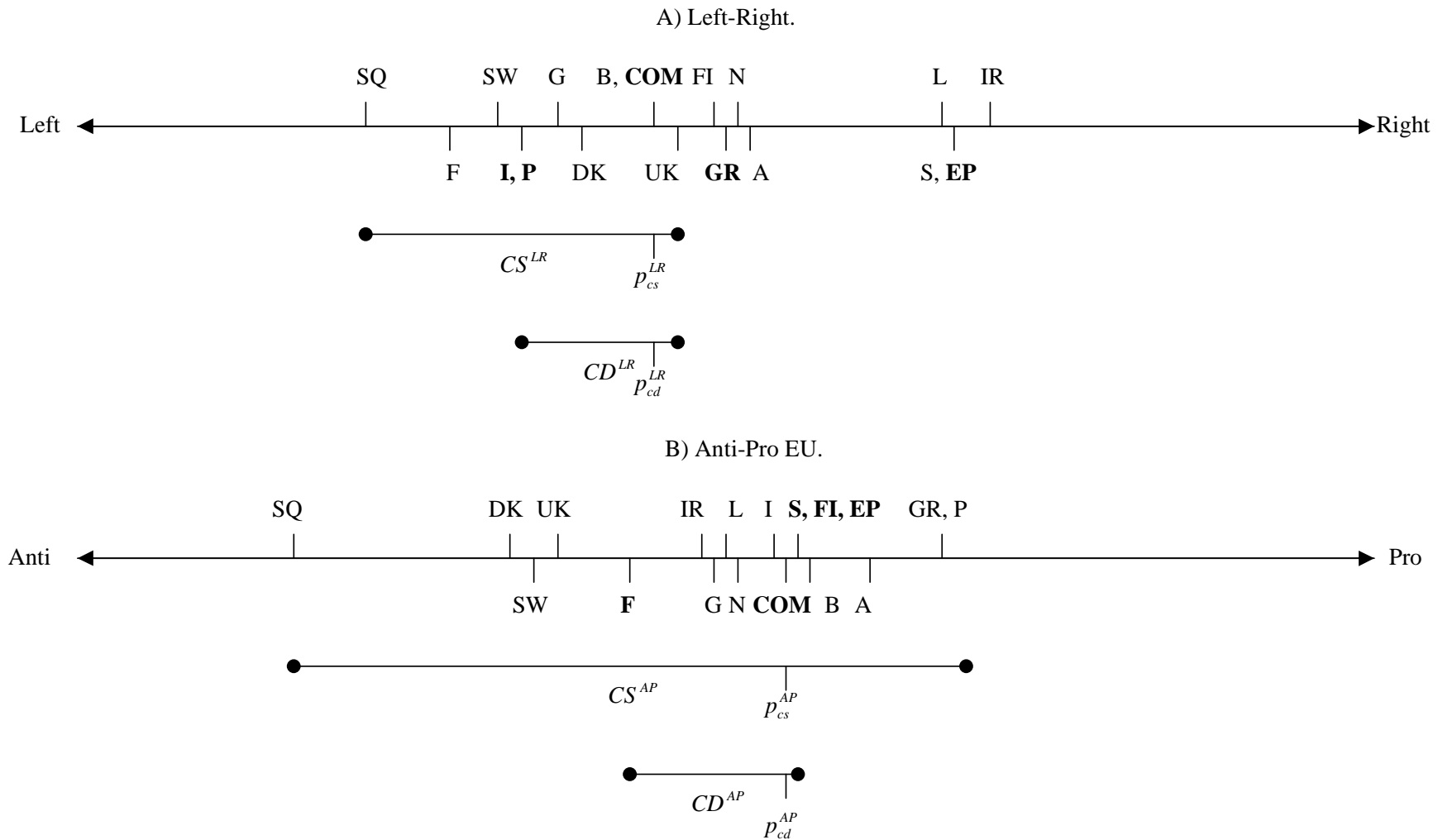


Key: A = Austria, B = Belgium, COM = Commission, DK= Denmark, EP = European Parliament, FI = Finland, F = France, G = Germany, GR = Greece, IR = Ireland, I = Italy, L = Luxembourg, N = Netherlands, P = Portugal, S = Spain, SW = Sweden, UK = United Kingdom; SQ = Status Quo; $CS^{LR}, CS^{AP}$ = Sets of Successful Proposals under Consultation; $CD^{LR}, CD^{AP}$ = Sets of Successful Proposals under Codecision; $p_{cs}^{LR}, p_{cs}^{AP}$ = EU Policies under Consultation; $p_{cd}^{LR}, p_{cd}^{LR}$ = EU Policies under Codecision.

FIGURE 2: *Policy Making and Commission Appointment Under Divided Government, July 1999*
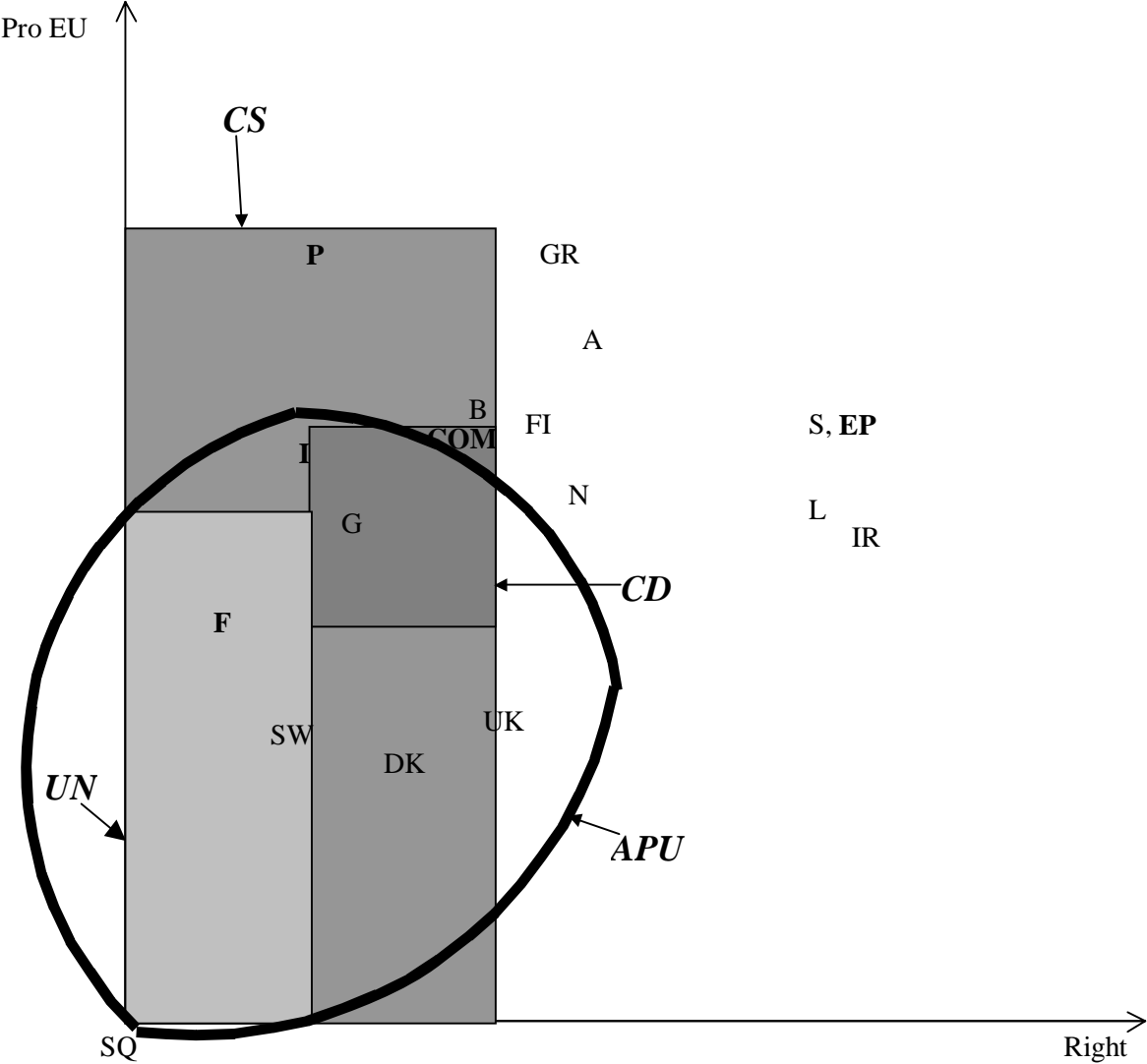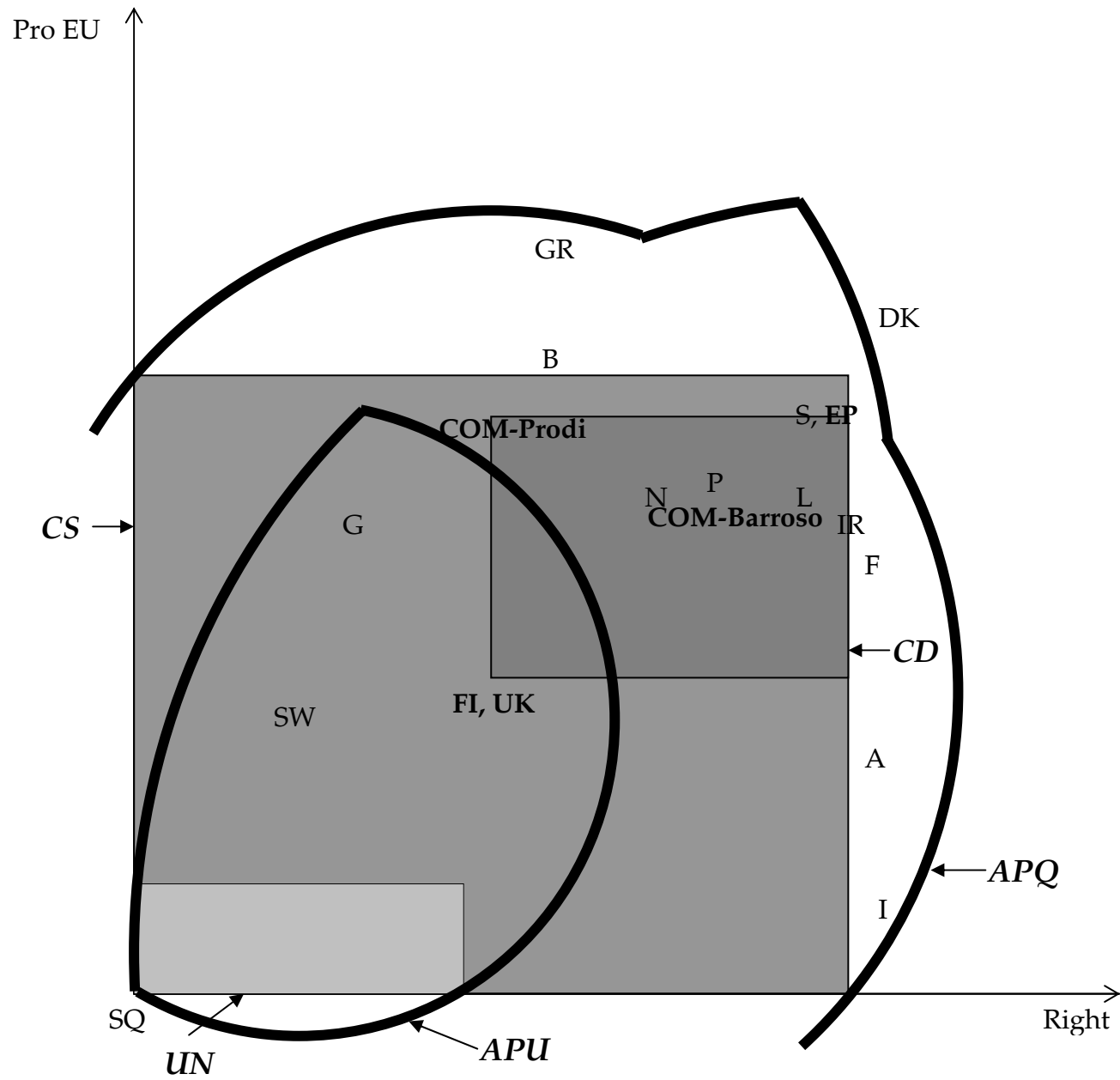
FIGURE 3: *Policy Making and Commission Appointment in Unified Government, June 2004*

[1] There have been four major Treaty reforms since the 1980s: (1) the Single European Act, which was agreed in December 1985, signed in February 1986, and entered into force in July 1987; (2) the Maastricht Treaty, which was agreed in December 1991, signed in February 1992, and entered into force in November 1993; (3) the Amsterdam Treaty, which was agreed in June 1997, signed in October 1997, and entered into force in May 1999; and (4) the Nice Treaty, which was agreed in December 2000, signed in February 2001, and entered into force in February 2003. Ratification of the Treaty of Lisbon (2007) is currently stalled.

[2] A qualified majority currently consists of 255 out of 345 votes. The member states receive votes based on population, with the largest states getting 29 votes and the smallest having three.

[3] The Lisbon Treaty requires that the Council take into account the Parliament elections when proposing a President, but it does not specify how the Council should do this.

[4] The EU uses strict germaneness rules and adopts no omnibus legislation. As a result legislative proposals in the EU involve fewer issues than in the United States. We recognize that even then vote trading over different policy issues is possible, but do not consider it in this model. For logrolling models of EU policy-making see: Bruce Bueno de Mesquita and Frans Stokman, eds, *European Community Decision Making: Models, Applications and Comparisons* (New Haven: Yale University Press, 1994); Christophe Crombez, 'Spatial Models of Logrolling in the European Union', *European Journal of Political Economy*, 16 (2000), 707-37; and Thomas König, 'Logrolling in European Politics', unpublished mimeo, 2002.

[5] Christophe Crombez, 'Legislative Procedures in the European Community', *British Journal of Political Science*, 26 (1996), 199-228; Christophe Crombez, 'The Codecision Procedure in the European Union', *Legislative Studies Quarterly*, 22 (1997), 97-119; Christophe Crombez, 'The Treaty of Amsterdam and the Codecision Procedure', in Gerald Schneider and Mark Aspinwall, eds, *The Rules of Integration: Institutional Approaches to the Study of Europe* (Manchester: Manchester University Press, 2001), pp. 101-22; Peter Moser, 'A Theory of the Conditional Influence of the European Parliament in the Co-operation Procedure', *Public Choice*, 91 (1997), 333-50; Bernard Steunenberg, 'Decision Making Under Different Institutional Arrangements: Legislation by the European Community', *Journal of Institutional and Theoretical Economics*, 150 (1994), 642-69; and George Tsebelis, 'The Power of the European Parliament as a Conditional Agenda Setter', *American Political Science Review*, 88 (1994), 128-42.

[6] Formally, under the codecision procedure, the Parliament can accept legislation proposed by the Commission by a simple majority, propose amendments to legislation in the first reading by a simple majority, propose amendments in the second reading by an 'absolute majority of component members' (in other words, 393 of the 785 MEPs), and adopt a joint text (from the Conciliation Committee) in the third reading by a simple majority. Empirical research shows that voting behaviour and coalition formation in the Parliament is not systematically different under the simple majority and absolute majority rules. See Simon Hix, 'Legislative Behaviour and Party Competition in the European Parliament: An Application of Nominate to the EU', *Journal of Common Market Studies*, 39 (2001), 663-88.

[7] Suppose the status quo is to the right (left) of the median Commissioner's ideal policy on dimension $i$. The median Commissioner and all Commissioners on his left (right) then want a move to the left (right). As a result, any policy is defeated in the Commission by policies that are closer to the median Commissioner's ideal policy. In other words Black's median voter theorem applies. See, Duncan Black, *The Theory of Committees and Elections* (London: Cambridge University Press. 1958). A similar reasoning applies to the Parliament.

[8] Christophe Crombez, 'Policy-making and Commission Appointment in the European Union', *Aussenwirtschaft*, 52 (1997), 63-82.

[9] Simon Hug, 'Endogenous Preferences and Delegation in the European Union', *Comparative Political Studies,* 36 (2003), 41-74.

[10] Obviously the President, the MEPs and the member states do not have perfect information on the potential Commissioners' preferences. Furthermore, the President may in reality not have as much power in the appointment process as the treaties suggest. For these reasons, the Commission's median on a dimension may divert from the President's position.

[11] As mentioned above, Maastricht gave the Parliament a veto right for the appointment of the Commission as a whole, but it was not until Amsterdam that the Parliament obtained a veto right for the nomination of the President. What matters when setting policy on a given issue is the dimension-by-dimension median Commissioner though, as mentioned above. As a result the Maastricht reform is the important one. Amsterdam also gave the President the right to veto the Commission as a whole, but we can ignore that since the member states and the Parliament would not nominate a President who would veto the Commission they want to appoint.

[12] John Huber and Ronald Inglehart, 'Expert Interpretations of Party Space and Party Locations in 42 Societies', *Party Politics*, 1 (1995), 73-111; and Gary Marks, Carole Wilson and Leonard Ray, 'National Political Parties and European Integration', *American Journal of Political Science*, 46 (2002), 585-594.

[13] Expert judgments are one of several ways of locating parties on policy scales. Other ways include content analysis of parties' manifestos or public opinion surveys of parties' supporters. The expert judgments and party manifestos methods are more widely used as independent measures of party locations than the mass opinion method. But, we decided to use the expert judgments rather than the party manifestos method because such a small proportional of national party manifestos is dedicated to the issue of European integration. See Ian Budge, Hans-Dieter Klingemann, Andrea Volkens, Judith Bara, and Eric Tanenbaum, *Mapping Policy Preferences: Estimates for Parties, Electors, and Governments, 1945-1998* (Oxford: Oxford University Press, 2001).

[14] At this point, September 2008, the data analysis for 2004 considers the fifteen 'old' member states only. Prior to January 2009 the analysis will be extended to include the ten member states that entered the EU in 2004. We do not expect this to affect our conclusions.

[15] Miko Mattila and Jan-Eric Lane, 'Why Unanimity in the Council? A Roll Call Analysis of Council Voting', *European Union Politics*, 2 (2001), 31-52; Simon Hix, 'Legislative Behaviour and Party Competition in European Parliament: An Application of Nominate to the EU', *Journal of Common Market Studies* 39 (2001), 663-688; Abdul Noury, 'Ideology, Nationality and Euro-Parliamentarians', *European Union Politics*, 3 (2002), 33-58; and Miko Mattila, 'Contested Decisions: Empirical Analysis of Voting in the EU Council of Ministers', *European Journal of Political Research* 43 (2004), 29-50.

[16] For example, Tsebelis, 'The Power of the European Parliament as a Conditional Agenda Setter'.

[17] In Figures 2 and 3 the Parliament is represented as a unitary actor for simplicity. The Parliament considers more than one dimension when it votes on the President. More accurate Figures would thus show the ideal policies of all MEPs and the set of policies that have majority support in the Parliament. Such Figures would be too complicated, however.

[18] In Figure 3 we indicate the location of Barroso himself, pending the data analysis referred to in footnote 14.