# Knowing Your Limits

# Political Judgment and Authority in the EU and Beyond

Mareike Kleine[1]

**Abstract:**

How do states add flexibility to formal rules without undermining the credibility of the commitment that these rules embody? The dilemma arises when circumstances surrounding "shocks" to domestic demands for cooperation are not perfectly observable, because this ambiguity induces states to demand special protection when they are in fact perfectly able to keep the commitment. Existing studies of formal escape clauses fall short of providing a comprehensive answer to this question, for they neglect that these clauses inadvertently require a great deal of political judgment to be operational in practice. This paper uses the case of the Council Presidency's informal authority in the EU legislative process to propose a more comprehensive solution to the dilemma. The central argument is that states delegate the authority to adjudicate on ambiguous demands for a flexible use of the procedure to a "conservative" (change-aversive) government who, while seeking to provide just enough flexibility to sustain cooperation, can be trusted not to make excessive concessions to a government under domestic pressure. This arrangement induces other actors to increase the level of information about the actual need for flexibility. The argument is tested using a multiple methods and drawing on archival material about informal practices in EU decision-making. The study holds lessons for our understanding of the purview of international law and the information-providing role of institutions more broadly.

[1] I thank Sarah Bush, Peter Hall, Randy Stone, and the participants of the 2011 APSA panel on "Informal International Institutions" for helpful comments on an earlier draft of this paper. I am heavily indebted to Bob Keohane and, in particular, Andy Moravcsik for numerous conversations and valuable advise. Financial support of LSE STICERD and Harvard's Center for European Studies is gratefully acknowledged.

## Introduction

It is common sense that it is sometimes prudent not to apply rules to the letter. Consider the topical example of monetary policy. Formal commitments to a low-inflation policy prevent inflationary bias that emerges when markets anticipate governments' temptation to gain electoral support by stimulating output beyond the natural level. In times of crisis, however, it may be necessary to break this commitment in order to stabilize the economy. In international trade, formal rules that commit opportunistic governments to pursuing a liberal policy allow states to reap joint gains from cooperation. Domestic demand for openness are mutable, however, and so it may suddenly be necessary to authorize temporary protection when a government would otherwise succumb to domestic pressure and thus prompt the unraveling of cooperation. A dilemma arises when these "shocks" are not easily observed, for this ambiguity generates a classical problem of moral hazard. It induces governments to demand flexibility on the grounds that it serves the common good when, in reality, they seek to take advantage of their cooperating partners. Whether or not the states in this situation depart from the commitment, its credibility sustains damage either way. Thus, the question arises how states add flexibility to formal rules without at the same time undermining the credibility of the commitment that these rules embody?

The paper embeds the study of this question in an empirical analysis of informal authority in the European Union (EU). The EU's legislative process commits its member states to advancing economic integration even against their myopic interests. The Council of Ministers is the main intergovernmental bargaining forum in this process. It adopts (today jointly with the European Parliament, EP) the Commission's legislative proposals by a majority vote, and it changes them only if governments unanimously agree on amendments. On paper, the Council Presidency, an office held by each government for six months on a rotating basis, is merely responsible for the "organization and smooth operation of the Council's work".[2] In practice, its tasks go much further than that. During its tenure, the government in office gets to micromanage the legislative agenda, propose and pen changes to the legislative proposal, and decide whether or not to conclude negotiations by calling a majority vote or declaring consensus.[3] The government in charge performs these tasks although it is under no legal obligation to do so. Perhaps even more surprising is the fact that other governments routinely defer to the decisions of their privileged negotiating partner.

The Council Presidency is a complex institution that performs a number of tasks that are particular to the EU. But one of its key functions represents a solution to the aforementioned dilemma between credibility and flexibility that confronts many other international organizations as well. The central argument of this paper is that the Presidency serves a crucial information-providing role due to its authority to adjudicate on ambiguous demands for a flexible use of the procedure. Flexibility is pertinent when an imminent decision threatens to generate unmanageable domestic recalcitrance in one or more member states. Why? Because the defiance of an effective legal act damages the credibility and common value of the commitment to a deep level of economic integration. States therefore have an incentive to accommodate a government that would otherwise succumb to domestic pressure. However, ambiguity about the domestic political situation induces governments to demand flexibility even when they are politically able to put the act through. States consequently demand information about the actual political expediency to defy an effective legal act. They therefore

[2] Declaration on Article 16(9) of the Treaty on European Union (Lisbon) concerning the European Council decision on the exercise of the Presidency.
[3] Hayes-Renshaw, et al. 2006.

delegate the authority to adjudicate on ambiguous demands to a political actor, a government who understands political reasoning and has an incentive to protect the commitment. To prevent collusion, authority is only granted to "conservative" (change-aversive) governments that, under normal circumstances, stand to lose from departing from the letter. The point is not that the Presidency collects information. Rather, its adjudicatory authority induces actors with a stake in the outcome to increase the level information in order to prevent the Presidency from rendering a false judgment. Its authority is therefore functional. Governments defer to the Presidency, because it solves the dilemma between credibility and flexibility and, thus, serves to sustain a level of cooperation that would otherwise be impossible to sustain.

The curious case of the Council Presidency holds several lessons for our understanding of international organization. The paper speaks to the literature in international economics, politics and law that asks how cooperation can be maintained in a dynamic strategic environment. It usually addresses this problem by way of analyzing the rationale behind formal escape clauses, which typically specify conditions that justify temporary defection and, in response to moral hazard, make escape conditional on the payment of a cost. As argued below in more detail, the literature falls short of solving the problem comprehensively. The reason is that these clauses inadvertently require a great deal of *political* judgment to be operational in practice, yet the literature is silent about how this judgment is made. Unsurprisingly, these models also fail to explain actual practices surrounding the provision of flexibility. By showing how political judgment enters collective decisions about the flexible use of rules, the paper therefore seeks to offer a more comprehensive solution to the dilemma between credibility and flexibility.

The paper is more generally related to the literature on the information-providing role of institutions in dynamic strategic settings. The institutionalist literature typically analyzes how institutions enable cooperation by increasing the level of information about actor's (future) *compliant* behavior.[4] The famous Law Merchant, for example, enabled long-distance trade by keeping records of traders' reputations for honoring obligations. This function presupposes a stable strategic setting where honoring obligations is always efficient. In more dynamic settings, however, where institutions may suddenly get out of equilibrium, actors require "extra-model" information – information that allows them to collectively assess the situational need to depart from the letter of the law.[5] Put differently, to sustain cooperation in dynamic settings, formal commitment institutions require political counterparts that elicit information about the situational expediency of the rules.

This is also not the first paper about the Council Presidency. However, few studies have explicitly theorized its informal authority. The most compelling explanation is Tallberg's transaction-cost based theory of leadership. Drawing on negotiation analysis, he regards the Presidency as a functional response to interstate bargaining problems such as unstable agendas and incomplete information.[6] For the context of the EU, Tallberg argues that the Presidency was a stopgap for the Commission whose activism in the late 1960s had compromised its role as an impartial agenda setter and honest broker in negotiations. Other more empirical studies usually seek to assess the Presidency's influence on decision-making. Thomson finds that negotiation outcomes are significantly more favorable to governments that hold the office of

[4] Weingast 2002, 673. The seminal wok in IR is Keohane 1982, 343-351.
[5] Tomz (2007) argues, for example, that creditors seek context-specific information that allows them to assess the circumstances surrounding a default.
[6] Tallberg 2006.

the Presidency at the time of adoption.[7] However, it is unclear whether this correlation is due to enhanced bargaining power or the manipulation of the agenda. Warntjen, for example, finds that the Presidency's preferred legislative dossiers have a high probability of ending up at the top of the legislative agenda.[8] This paper seeks to make sense of these ambiguous findings by way of explaining some of the Presidency's core function in the legislative process.

A test of the theory is intricate for the simple reason that this is a theory about things that are by definition impossible to know in advance and to measure directly. This paper therefore refrains from trying to estimate any direct effects of the Presidency on the level of cooperation or individual outcomes. Instead, we evaluate the theory by tracing the practices that it predicts governments to display in interaction. Specifically, we deduce three implications that can be observed. First, we trace the development of several informal practices over time in order to evaluate whether or not the member state deliberately delegated adjudicatory authority to a political actor. Second, we assess whether Presidency's with a conflict of interests are associated with a longer duration of the legislative process, because these items are kept from the agenda for as long as a more suitable government takes over the helm. Third, and finally, a case study of the negotiation of an individual directive evaluates whether the Presidency's authority indeed depends on its conservatism with regard to the legislative proposal in question.[9] These implications are tested with a mix of qualitative and quantitative methods and on the basis of longitudinal and cross-sectional data

The paper begins by discussing the state of the art and current blind spots of the literature on institutional flexibility. I argue that existing studies neglect the need for political judgment and consequently fail to predict actual behavior in the provision of flexibility. It then explains why the (European) institutions are troubled with a dilemma between credible and flexible rules before it lays out a theory of informal adjudicatory authority in international organizations. After operationalizing this theory for the institutional context of the EU, the subsequent three sections evaluate each of the aforementioned implications. We conclude by discussing how the findings may apply to international organizations more broadly.

## Institutional flexibility: State of the art and blind spots

A large and sophisticated literature in international law, politics and economics has addressed the problem of institutional flexibility. It does so primarily by way of analyzing the rationale behind the design of existing formal escape clauses. This section argues that because these models typically rest on implausible assumptions about actors' ability to predict the future demand for flexibility, the institutional solutions they propose are incomplete, if not redundant, and consequently fail to predict actual practice in international organizations.[10]

To better understand the problem, it is useful to take a look at the origins of the debate. The literature has its roots in the field of monetary policy where the debate take place under labels such as "rules versus discretion" or "rigidity versus stability". The dilemma is the following: Because wages are sticky, governments are tempted to use a monetary stimulus to decrease real

[7] Thomson 2008, 611-612.
[8] Warntjen 2007.
[9] Together, these implications multiply the number of observations within the case and consequently permit us to test the theory using the case for which it was developed. King, et al. 1994, 223.
[10] For a similar critique of the state of the art in monetary policy see Svensson 2002, 57.

wages and thereby increase output and employment beyond the natural level. But since wage setters anticipate politicians' "time-inconsistent" preferences and adapt wage contracts accordingly, the effect of this stimulus is ultimately washed out and results in inflation bias.[11] Formal rules that publicly commit governments to a low inflation policy, for example through the delegation of this policy to an independent central bank, are therefore superior to discretionary monetary policy.

The result that rigid rules are superior to discretion presumes that the institution's environment remains largely stable. In times of crisis, however, the commitment to a low-inflation policy might need to broken in order to stabilize the economy. The current financial crisis where central banks massively sought to increase the supply of money in the economy is a case in point. A departure from the commitment would be unproblematic if all actors, private and public, agreed on the need to depart from the rules in this specific situation. If the circumstances that require this kind of flexibility are ambiguous, however, governments have an incentive to demand flexibility merely for personal gains. The credibility of the commitment sustains severe damage as a result. Consider again the current financial crisis. Some argued that the European Central Bank (ECB) betrayed its mandate by intervening in the secondary bond market. Others think that the ECB had no choice but to buy up bonds of beleaguered Eurozone members. The point is that it doesn't matter who is right. The very fact that the reason for this decision remains ambiguous means that the ECB's credibility sustains damage either way.

*The dilemma in international politics*

A similar problem exists in international politics. The analogous time-inconsistency problem, which generates a demand for credible commitments, stems from the fact that opportunistic governments may suddenly renege on their pledge to adjust their policy.[12] Anticipating this problem, states publicly tie their hands in formal international institutions in order to bolster the credibility of their pledge. However, the institutional environment may change in ways that were not foreseen at the point of institutional creation. Situations are then bound to arise where it may suddenly be prudent to depart from the letter of the law.

A burgeoning literature in international economics, law and politics has come to address the multitude of factors that cause such a "commitment shock". One strand of the literature focuses on the systemic factors. Kyle Bagwell and Robert Staiger, for example, argue that exceptionally high trade volumes suddenly induce governments to defect unilaterally from a commitment in order to maintain their terms of trade.[13] Randall Stone argues that dominant states may be tempted to exercise viable outside options to institutionalized cooperation that suddenly open up.[14] Other scholars focus on the vicissitudes of domestic politics that determine governments' policies. Alan Sykes argues that unanticipated changes in domestic economic conditions may suddenly create rewards for opportunistic governments to defect from an agreement.[15] George Downs and David Rocke as well as Peter Rosendorff and Helen Milner add that changing political conditions at the domestic level suddenly alter the influence of special interests on their government.[16] In all these cases, states' incentives to break the commitment are suddenly

[11] Kydland and Prescott 1977.
[12] Grossman and Helpman 1994.
[13] Bagwell and Staiger 1990, 780.
[14] Stone 2011.
[15] Sykes 1991, 279.
[16] Downs and Rocke 1995, 77, Rosendorff and Milner 2001, 832.

stronger than anticipated at the time of institutional creation. The commitment is at risk of getting "out of equilibrium".

It is for several reasons in states' collective interest to provide added flexibility in these situations. First, the design of flexibility mechanisms in anticipation of these problems entices states to agree on a deeper level of cooperation than they would otherwise have attained.[17] Second, the ad-hoc provision of flexibility may prevent situations where unauthorized defection triggers generally costly punishment strategies or even trade wars.[18] Third, and most generally, unauthorized defection is costly for all cooperating states because it undermines the credibility of the commitment that the formal rules embody. It shatters stable expectations about each other's behavior and consequently it diminishes the value that the commitment enables states to generate in normal times.[19]

The literature has proposed a number of institutional mechanisms that add flexibility to formal commitments. Regarding monetary policy, Rogoff suggests appointing a conservative central banker. Placing more weight on stable prices than the society at large, this actor bolsters the commitment to low inflation. Placing *some* weight on stable employment, this actor will nevertheless react swiftly to economic shocks.[20] Similar proposals have been put forward for the realm of international politics, Downs and Rocke propose to establish sanctions for noncompliance that are "high enough" to commit states to obeying the agreement most of the time, yet still "low enough to allow politicians to break the agreement when interest group benefits are great" in order to prevent these situations from escalating in costly trade wars.[21] Rosendorff and Milner argue that states identify the conditions that require flexibility, and make the use of these escape clauses dependent on the payment of an "optimal penalty, one that balances the need for as much cooperation as possible, while allowing for some flexibility in times of domestic political pressure."[22]

*Theoretical and empirical blind spots*

The literature contributes tremendously to our understanding of the sources of institutional instability and the design choices that states face. Yet it falls short of providing a complete solution to the problem and, as a consequence, of explaining how institutions work in reality. The reason is that many of these models are based on implausible assumptions of states' information about the future demand for flexibility at the time of institutional creation.[23] Put simply, if commitments are made under the condition of uncertainty about the future (which is, after all, their principle raison d'être), it is implausible to assume that states are nonetheless able to predict, for example, the optimal level of sanctions that is "low enough" to break a commitment in response to a shock and yet "high enough" to prevent moral hazard.

The fact that flexibility mechanisms are inadvertently designed under conditions of uncertainty implies that they remain incomplete and broad guidelines that require a great deal of judgment to be operational in practice. This judgment is political in nature, because it is no longer guided

[17] Rosendorff and Milner 2001, 832.
[18] Downs and Rocke 1995, 91.
[19] Kleine 2009.
[20] Rogoff 1985, 1187. Modified models consist of conservative bankers in combination with a political counterweight or an escape clause. For a brief summary, see Lohmann 2006, 532-535.
[21] Downs and Rocke 1995, 77.
[22] Rosendorff and Milner 2001, 835.
[23] For a critique of equating calculable risk with genuine uncertainty see Wendt 2001, 1029-1032.

by a legal norm. It therefore needs to be based on situational information about a state's actual temptation to defect from the commitment, or else the commitment still falls prey to moral hazard. If states elicit this kind of information, however, escape clause that are designed to keep the institution in equilibrium become redundant. Recall that moral hazard arises precisely because it is in the collective interest to authorize defection in the event of an actual shock. States would therefore provide flexibility also tacitly, that is, even when they are not legally obliged to, on the condition that they are able to discriminate between legitimate and false demands for flexibility.[24]

If prominent models are based on implausible assumptions about states' ability to design optimal flexibility mechanisms, it is not surprising that there are significnat gaps between some of the models' prescriptions and the behavior that governments display in reality. For example, many studies of flexibility in international trade seek to explain the rationale behind the GATT Article XIX escape clause. This clause authorizes the suspension of legal obligations in the vague event that changing conditions "cause or threaten serious injury to domestic producers". Contrary to what the aforementioned models predict, Pelc finds that member states rarely make the temporary suspension of a states' obligations conditional on the payment of a cost. Instead, they evaluate the reasoning behind the appeal and, if found legitimate, grant temporary defections without an explicit penalty or quid pro quo.[25] Similarly, Kleine shows for the case of the EU that states frequently accommodate governments under sudden, unmanageable pressure for defection without getting anything in return.[26]

In sum, the literature on institutional flexibility points out numerous reasons why it may be prudent to break a commitment, and suggests a number of formal institutional designs that allow states to react flexibly in these situations. Yet the literature falls short of providing a comprehensive solution to the dilemma between credibility and flexibility. The reason is that the use of formal escape in practice will still require a great deal of political judgment. These clauses are furthermore redundant, since states that are able to discriminate between legitimate and false demands would provide flexibility also tacitly. As a result of this shortcoming, the literature also paints a skewed picture of how international organizations work in reality. It seems only logical that the study of the dilemma between credibility and flexibility should be embedded in an analysis of actual practices.[27] The following sections explore how flexibility is provided in the context of the EU.

## Preliminaries: Why (European) institutions require flexibility

Before we proceed to explaining how European governments manage to make political judgment about the flexible use of their legislative process, this section discusses why the EU and other international organizations are troubled by the dilemma between flexibility and credibility to begin with. It is argued that the legislative process constitutes a credible commitment by European governments to pursue time-consistent policies. If applied strictly

[24] This raises the question why governments negotiate escape clauses to begin with. There are two answers to this question. First, some escape clauses authorize defection for other, normative reasons (e.g. protection of the environment, national security). Second, escape clauses may make it easier to ratify a treaty in the event of domestic opposition.
[25] Pelc 2009, 350.
[26] Kleine 2009.
[27] Similarly, Hafner-Buron, et al. 2011.

according to the letter, however, it may suddenly evoke unmanageable domestic recalcitrance that threatens to damage the credibility of the commitment that the rules represent.

*Time-inconsistency and commitments*

Formal commitments are necessary to sustain cooperation when one suspects another actor will renege on the promise to stick to her part of a bargain. Specifically, when their opportunism subjects governments to constant pressure from societal groups to pursue the policy that matches their diverse interests,[28] they bolster the credibility of their commitment by specifying conduct in contingent situations and or delegating authority to make and enforce decisions to international organizations. Since these rules constrain governments' choices *ex ante*, credible commitments enable cooperation as they allow states to form stable expectations about each other's cooperative behavior.

The assumption of time-inconsistent preferences is plausible in the realm of economic integration where patterns of societal interdependence are constantly in flux. It is not surprising that the demand for credible commitments explains large parts of the EU's institutional set up for economic integration.[29] The EU's principal objective is the creation of a Single Market, one in which the circulation of goods, persons, services and capital (four freedoms) is as easy between the member states as within them. Attaining this objective implies a stream of individual decisions to do away with or harmonize diverse domestic regulations that impede trace across countries. To ensure that these individual decisions indeed serve to deepen economic integration, the (today's twenty-seven) member states pooled their sovereignty and delegated authority to supranational institutions.

The commitment to continuous economic integration in the EU takes the form of this stylized legislative process: The Commission, a supranational bureaucracy, is endowed with the exclusive right of initiative. It therefore decides both content and timing of a legislative proposal. After the proposal's official submission, governments are supposed to adopt it – today jointly with the European Parliament[30] – by a qualified majority vote. They may change it only when they are able to attain a consensus. National administrations, the European Commission, or both, then typically implement the legal act. This procedure constitutes an extraordinarily strong commitment to economic integration as it provides several opportunities to impose decisions on one or more recalcitrant governments.

*The origin of shocks and the demand for flexibility*

Lacking a monopoly of violence, international institutions, even the EU, have to be self-enforcing in the sense that they can only persist when they constantly reinforce states' interests in adhering to them. Commitments are therefore only credible and effective when the benefits of defection are lower that the overall benefits of compliance. Precisely because commitments are made under conditions of uncertainty about future patterns of societal interdependence,

[28] Following public choice theory, governments choose the policy that maximizes political support measured as the weighted sum of electoral support for welfare gains and rents in exchange for the protection of special interests. See Grossman and Helpman 1994, 836.
[29] Majone 1994, 90, Moravcsik 1998, 3-4, Pollack 1997, 104.
[30] Although the empowerment of the European Parliament defies the credible commitment perspective, it also never undermined this function.

situations are bound to arise where this equation is suddenly disturbed.[31] In the context of the EU, this is the case when governments suddenly face unmanageable domestic recalcitrance against a legal act. How is that possible? Legal acts that are adopted strictly according to the letter of the law may entail exceedingly concentrated adjustment costs for a specific group. Since in the politics of collective action small groups have advantages over large ones, this group then suddenly overcomes initial barriers to mobilization and exerts pressure on its government to an extent that what not anticipated at the time of institutional creation. Governments consequently succumb to this pressure and defy the legal act even if it is beneficial for the member state as a whole.

The brief example of the EU's wine market directive illustrates this "domestic shock". When the Commission proposed a new regulation of the European wine market, its deliberately strict definition of the term "wine" excluded the "apple wine", a traditional, cider-like beverage in the German region of Hesse. Apple wine pressers feared that if they were to rename their product, it would lose its recognition values. They consequently mobilized to pressure the Hesse and German government to oppose the regulation by all means. Because the proposal was published during a heated campaign for a significant state election in Hesse, politicians were at that point particularly susceptible to this pressure. There were even semi-serious demands to pull the state of Hesse out of the EU.

The sudden political explosiveness of a legal act generates a demand for added flexibility. The reason is that defiance, ranging from the obstruction of a legal act to outright non-compliance, not only generates deadweight loss for most intertwined trading partner. Importantly, defiance inflicts a cost on all member states, because it shatters expectations, damages the credibility of the commitment, and diminishes the value of the institution. All governments are therefore better off preventing or resolving these conflicts by using the rules more flexibly. It allows them to sustain the credibility of their commitment and, as a consequence, the deep level of cooperation among them. As Peter Gourevitch put it succinctly:

> The test of the power of an institution is thus its utility, not its coercive force. Institutions serve a purpose for their members. To withhold compliance, thus to weaken them, means losing something valuable. Members have an incentive to care about institutional preservation and, as a result, institutions have force.[32]

What does it mean to use rules flexibly in the case of the EU's legislative procedure? It simply means that the various formal rules on agenda setting, voting or even implementation are not strictly applied to the letter. This might imply influencing the independent Commission in the preparation of a legislative proposal, to delay a scheduled decision or, what is most common in the EU Council, to refrain from voting and accommodate a government in the minority instead. In the case of the wine market directive, the majority refrained from adopting the Commission's legislative proposal, stalled the decision until the Hessian waves calmed, and then added a derogation that allowed fruit wines to continue to carry their name. All this happened against the explicit recommendation of the Commission against watering the definition further down, and without any quid pro quo for this concession.[33]

[31] Downs and Rocke 1995, chap 4, Kleine 2010, 4, Rosendorff and Milner 2001, 832.
[32] {Gourevitch, 1999 #21486@138-139}.
[33] For a more detailed description see Kleine 2010

## A theory of adjudicatory authority

The previous section argued that the EU's legislative process is bound to evoke domestic recalcitrance that may suddenly become unmanageable and threaten to undermine the commitment that the procedure embodies. But how do governments respond to these situations? How can they add flexibility to the rules without at the same time undermining their credibility? It was argued that models of escape clauses fall short of solving this problem of moral hazard in its entirety, because these clauses necessarily leave much room for political judgment. This section therefore proposes a more complete solution to the dilemma between credibility and flexibility. The core argument is that governments elicit information actual the actual political expediency of defiance by delegating the authority to adjudicate on ambiguous demands for flexibility to a political actor. The subsequent section specifies the theory for the empirical context of the EU.

### *The demand for "extra-model" information*

This defiance of a legal act after its adoption is costly for all member states, because it damages credibility and, therefore, the overall value of the commitment. Let us briefly assume that the conditions that lead a government into defying the legal act were perfectly observable. In this case, it was argued, all governments prefer to prevent this imminent damage to the commitment and to provide unconditional concessions to the government in question. In reality, however, a governments' temptation to succumb to domestic pressure is not easily observed. It requires insider information about political processes and the capacity to understand political reasoning.

This ambiguity creates a classical problem of moral hazard: When there is a collective interest in preserving the institution, and yet there is ambiguity about the actual need to do so, governments will demand concessions on the grounds that they dissuade them from defying the legal act when, in reality, they take advantage of their cooperating partner. If ambiguous demands are satisfied, the formal commitment loses its credibility. If ambiguous demands are left unanswered, however, some governments defy the legislative outcomes, and the commitment sustains damage after all. For states to escape this dilemma, they require "extra-model" information. In other words, states require information not only about whether certain legal conditions are met. They need to know whether the political expediency for a government to defy a legal act after its adoption is too high to expect it to comply.

### *Adjudicatory authority and the provision of "extra-model" information*

It has been suggested that states delegate the task to discriminate between false and legitimate demands for flexibility to a legal body. Rosendorff, for example, argues that the WTO's Dispute Settlement Procedure provides the information that is necessary to enable "efficient breaches" of commitments. Specifically, it "adjudicates on a violation, estimates the damages, and reports a successful completion of the process."[34] Yet this solution is inadequate for the problem at hand. First, governments have an incentive to provide flexibility even without an explicit quid pro quo if defection otherwise significant damages the common value of the

[34] In Rosendorff's (2005, 390) model, the payment of the penalty then acts as a signal of the country's intent to cooperate in the future that preserves the country's reputation as a cooperator in "normal times." The Dispute Settlement Procedure consequently enhances the stability of the institutions by making it more flexible.

commitment.[35] This might explain why so many disputes about rule violations in the WTO are settled at early stages[36] and often without an explicit quid pro quo.[37] Second, and related, the decision to authorize a violation of the letter of the law, or in the case of the EU, the departure from the legislative procedure, is essentially a political judgment. There are no legal norms that could guide a legal body in this kind of judgment.[38]

Judgments about the actual demand for flexibility have to be made by a political actor who is capable of political reasoning and unbound by the letter of the law. However, the authority to make this judgment cannot lie with the government that demands flexibility, since its incentive to exaggerate its temptation to succumb to domestic pressures generates the problem of moral hazard to begin with. For the same reason, the authority cannot lie with a government that, under normal circumstances, stands to gain from the accommodation of a cooperating partner. It would have an incentive to collude with the claimant and recommend excessive concessions.

States can trust the judgment of a government with "conservative" (change-aversive) preferences regarding the issue under dispute. The only reason for it to recommend flexibility is to avert that defection or, in the case of the EU, an imminent defiance of the legal act would inflict damage on the value of the commitment. To be sure, this does not mean that this conservative government itself collects "extra-model" information about the political expediency of defection. This arrangement induces actors with a stake in the outcome to increase the level of this kind of information in order to prevent the adjudicating government from rendering a false and unfavorable judgment. Adjudicating authority is therefore functional. States defer to it because its decisions enable them to solve the dilemma between credibility and flexibility and, thus, to uphold a beneficial level of cooperation that they would otherwise not be able to sustain.

## Empirical strategy: Adjudicating authority in the context of the EU

For states to add flexibility to their rules without undermining their credibility, they delegate adjudicatory authority to a political actor, who has an incentive to sustain the commitment, but who, in normal times, stands to lose from recommending a rule departure. How can we assess if this theory is correct? A test of the theory is intricate for the simple reason that it is a theory about things that cannot be predicted and that are difficult to observe. The core variables of interest, the "shock" to the commitment and the political expediency of defection, are consequently impossible to measure directly. We therefore employ a different empirical strategy, one that focuses on the behavior that the theory predicts the governments to display in interaction. Specifically, we derive a number of hypotheses about actual practices that

[35] The "efficient breach" literature (e.g. Goetz and Scott 1977) in law and economic points out that it is socially optimal to break a commitment and compensate for damages when a party would incur greater loss by performing under the contract. This study differs from the literature in that cooperating partners sustain damage not only because of foregone gains from trade, but because of the reduced value of the commitment in response to unauthorized defection. All states therefore have an incentive to authorize defection even without compensation.
[36] Busch and Reinhardt 2000-2001.
[37] Pelc 2009.
[38] To be sure, courts develop legal norms through practice. In the WTO, for example, the doctrines of *in dubio mitius* and *non liquet* govern the interpretation of WTO agreements. However, the point of law is to provide legal certainty and, therefore, to interpret agreements in a consistent way – a constraint that inhibits the provision of flexibility in our case.

adjudicatory authority should bring about. To guard against the functionalist fallacy, these are previously unobserved practices, the interpretation of which is contested in the literature.[39]

This section argues that, in the context of the EU, states delegated the authority to adjudicate on ambiguous demands for flexibility to the Council Presidency and subsequently adapted this institution so as to enable it to perform its adjudicatory function. Others disagree. According to classical regime theory, the Presidency is a means for the member states to solve typical interstate bargaining problems. It assumed authority as a stopgap after the Commission's decline in the late 1960s and early 1970s. Since then, governments used this office to manipulate decision-making in their favor. This section describes both theories in more detail and deduces competing testable implications for each of them.

*Testable implications: Adjudicatory authority versus bargaining efficiency*

What would adjudicatory authority look like in the institutional context of the EU? We mentioned before that the EU's legislative procedure commits governments to deepen their economic integration in a stream of individual decisions. As a consequence, the Council adopts close to one hundred directives each year. This renders the aforementioned arrangement cumbersome as it would governments to delegate adjudicatory authority for each and every single act to a different government with conservative preferences regarding the proposal under discussion.

Fortunately, the EU's institutional context suggests a more convenient arrangement. The treaty stipulates that each supranational institution (Council, Commission, EP, Court) be chaired by a President. In the case of the Court and the Commission, these are third actors appointed by the governments. In the Council, each government assumes the office of the Presidency in a specific order for a period of six month. The treaty ascribes it very innocuous tasks. Article 147 of the Treaty of Rome states that the "Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission". For the Council Presidency to fulfill its adjudicatory function, it consequently needs to adopt two sets of practices in parallel to the formal official procedure. First, practices in parallel to formal voting rules that allow the Presidency to elicit information and recommend concessions during Council negotiations. Second, practices in parallel to the agenda setting rules in order to that allow the member states to drop unsuitable legislative dossiers from the agenda for as long as the government in office has an incentive to collude with countries demanding flexibility.

The first hypothesis concerns the emergence of these practices over time. Our theory suggests that the European member states deliberately delegate adjudicatory authority to a political actor, one that is not bound by legal norms and is able to understand political reasoning. We would therefore expect the Council Presidency to adopt the aforementioned practices shortly after the entering into force of the legislative procedure in the early 1960s, and despite the fact that other actors without a direct stake in the negotiation could have performed this function.

> *Hypothesis 1: Informal practices in negotiations and agenda setting emerge in the late 1950s and early 1960s.*

This hypothesis is at odds with a prominent alternative explanation for the Council Presidency. Building on classical regime theory and negotiation analyses, Tallberg argues that the Presidency constitutes a functional response to incomplete information and unstable agendas.

[39] Greif 2006, chap 11.

The problem of incomplete information arises because states have an incentive to withhold private information about her preferences in order to attain a better distributive outcome. The overall efficiency of the outcome suffers as a result.[40] Unstable agendas are a problem in majority-rule systems where it is impossible to secure a stable majority for an issue with multiple dimensions. In the absence of institutions, policies are doomed to cycle around an "empty core". To overcome these typical interstate bargaining problems, states task trusted actors with eliciting private information[41] and barring alternative proposals from the agenda.[42] Ideally, a neutral instead of a political actor performs these functions. According to Tallberg, the Council Presidency therefore adopted these tasks only in the late 1960s and early 1970s after the Commission's extreme activism in this period had compromised its reputation as an honest broker.[43]

> *Alternative explanation 1: Informal practices in agenda setting and negotiations emerge in the late 1960s and early 1970s.*

The second hypothesis concerns the duration of individual negotiations. The legislative process, from the official submission of a Commission proposal until the adoption of a legal act, typically spans over a period of at least two to three semesters, and is consequently presided by at least two successive Presidencies. The theory predicts that legislative dossiers be stalled for at least one term if one (or more) of the governments in office oppose the proposal under discussion. The reason, as mentioned, is that it will otherwise be suspected of colluding with the claimant. The Presidency's stance on an issue should therefore have an effect on the average duration of negotiations.

> *Hypothesis 2: A negative stance of one or more governments in office on a legislative proposal has, all else equal, a positive effect on the duration of negotiations.*

According to Tallberg, the Presidency wields power by virtue of its office, not by virtue of its conservatism. This office provides each government in charge the opportunity to shift decision outcomes closer to their preferred ideal point.[44] At most, this implies the opposite relationship between a conflicted presidency and the duration. In other words, Presidencies should prioritize those issues during their Presidency that they intend to alter substantively. At least, the Presidency's own stance on an issue should have no effect on the average duration of the legislative process.

> *Alternative explanation 2: A negative position of one or more governments in office on a legislative proposal has, all else equal, no or a negative effect on the average duration of negotiations.*

The final hypothesis follows from the previous and concerns governments' behavior in individual negotiations. According to the theory, we would not expect the Presidency to chair negotiations on legislative proposal it opposes. State preferences may change, however, and so a Presidency suddenly may unexpectedly alters its stance on a legislative dossier during its time in office. In that event, its cooperating partners should immediately stop paying deference to the Presidency.

---

[40] In negotiation analysis, the first dimension of negotiations refers to the process of "approaching the Pareto frontier" while the second dimension refers to the "bargaining along the Pareto frontier".
[41] Tallberg 2003, 17.
[42] Tallberg 2004, 1001-1002.
[43] Tallberg 2003, 15, Tallberg 2006, 47.
[44] Tallberg 2006, 31-33.

*Hypothesis 3: Governments pay deference to the Presidency if the government in office holds "conservative" preferences. They deny deference otherwise.*

According to the classical regime theoretic explanation, governments defer to the Council Presidency because it enables them to reach more efficient decision outcomes. It performs this function by virtue of its office, not its preferences. In the event of a sudden preference change on part of the Presidency, its cooperating partner would not stop paying deference.

*Alternative explanation 3: Governments pay deference to the Presidency's judgment regardless of its stance on the issue under negotiation.*

In sum, the theory of adjudicatory authority and its most prominent rival yield three distinct, testable implications about the emergence of informal practices, the duration of individual negotiations, and governments' behavior under a conflicted Presidency. The remainder of the paper puts these implications to a test.

## Empirical test 1: The means to wield adjudicatory authority

The first hypothesis concerns the emergence of practices over time. Our theory expects states to delegate adjudicatory authority to political actor, one who in her judgment is not bound by the letter of the law and who is capable of political reasoning. For the context of the EU, this means that the Presidency should adopt the two sets of informal practices associated with adjudication shortly after the legislative procedure enters into force in 1959. This hypothesis is at odds with a prominent alternative explanation, which regards the Council Presidency as a functional response to classical interstate bargaining problems. In the context of the EU, these problems resurfaced following the demise of the Commission in the late 1960s and early 1970s, at which point the Presidency began to fill the gap that the Commission had left. Drawing on archival material and contemporary secondary analyses, this section evaluates this first testable implication by describing the development of informal practices in agenda setting and Council negotiations over time.

### *Informal practices in intergovernmental negotiations*

Classical regime theory regards the Presidency as a stopgap for the activist Commission. Our theory, in contrast, expects governments deliberately to delegate adjudicatory authority to a political actor. The empirical record largely refutes classical regime theory.

The Treaty of Rome mentions the Council Presidency only briefly by stipulating that the Council meet upon its initiative. To the surprise of all governments, this seemingly innocuous office soon came to play a central role in intergovernmental negotiations through the adoption of three closely related practices in parallel to the formal legislative procedure. As an insider in the legislative process observes in 1961:

> There has been a very interesting development in the first three years of practical application of the Treaty. More frequently the Presidency finds itself released from its task of expressing its national position as a member of the

> Council of Ministers. Instead, it devotes itself to the organization of work and the search for a compromise among governments.[45]

The first of these practices was the establishment of intense contacts with recalcitrant governments that made the Presidency the "hub" of Council negotiations. Reflecting on its 1964 Presidency, the German delegation notes that it was the purpose of these contacts to attain information about "motives and problems of individual delegations."[46] Also the Commission's executive secretary, Emile Noël, underscores the importance of these contacts:

> The chairman has a feeling for unformulated desiderata and requests. He knows where positions are reserved. He knows how to take account of and interpret remarks made in confidence.[47]

The Council Presidency's role as the "hub" in negotiations proved remarkably stable over time. It was further accentuated with the gradual promotion of the European Parliament to the status of a co-legislator. Instead of negotiating face-to-face between members of the European Parliament and the Council in full session, governments today usually rely on the Presidency to conduct negotiations on the Council's behalf.[48]

A second informal practices emerged in close parallel in the early 1960s, namely the preparation of compromise proposals, the so-called "presidency compromises". The term appears in Council documents as early as the early 1960s.[49] Noël explains:

> [The Commission] is more obliged to uphold, even practically on its own, the Simon-pure position, which the Commission has decided is most in accordance with the Community interest... So it is the chair that has the most scope for quietly taking soundings, putting out feelers, and coming forward at the right moment with compromise suggestions – particularly suggestions some distance away from the Commission's original proposal.[50]

A third informal practice in intergovernmental negotiations is the Presidency's prerogative to decide whether and when to conclude negotiations by calling a majority vote or declaring consensus.[51] It emerged in the mid-1960s when the unanimity requirements expired for a number of articles,[52] and became more prominent in the mid-1970s with an increased use of majority voting in the Council. Also the qualitative evidence suggests that it is the function of the Presidency to adjudicate on ambiguous demands for flexibility. The Council's Jurisconsult, Jean-Louis Dewost, explains why:

> [Overruling] a minority is just as reprehensible as insisting on concessions up to the point that it threatens the community interest… Since the normal negotiation process has not allowed [such conflicts] to be prevented, the only alternative to the use of force is arbitration… These rules of the game have led to the development of a decisive role of a new communitarian organ: the

[45] Mégret 1961, 636, 646.
[46] Vertretung der BRD bei der EWG 1965. It was thereby assisted by the Council Secretariat, which gathered intelligence from the members of Permanent representations or in direct consultation in the capitals of other governments.
[47] Noël 1967b, 238 taking account of Noël 1966, 32.
[48] Council of the EU 2000b, 15, Hayes-Renshaw and Wallace 2006, 151, 212.
[49] Vertretung der BRD bei der EWG 1964.
[50] Noël 1967a, 42.
[51] Noël and Étienne 1969, 47.
[52] Torrelli 1969, 91.

> Presidency. It is the Presidency's responsibility to maintain "normal" political relations within the Community, to try to construct compromises between extreme positions, and at the same time to avert conflict.[53]

Also other contemporary reports directly pinpoint the function of this prerogative. An official report on the working of the European institutions describes it as follows:

> Each state must remain the judge of where its important interests lie. Otherwise it could be overruled on an issue which it sincerely considered a major one... The application of these solutions lies in the hands of the Presidency. The Chairman of the Council is best placed to judge whether and when a vote should be called.[54]

In short, the Presidency adopted a number of informal practices in intergovernmental negotiations shortly after the legislative procedure entered into force. Only the Presidency's prerogative to call a vote emerges some years later, but might simply be due to the fact that majority voting was officially introduced only from the mid-1960s on. Contrary to the expectations of classical regime theory, the Presidency's authority does not seem to be the result of the Commission's demise. This, together with the qualitative data about the function of these practices, can be interpreted as evidence that the member states deliberately sought out a political actor who would be able to understand political reasoning.

*Informal practices in agenda setting*

Classical regime theory expects the Presidency to wield authority by virtue of its office and independent of its preferences. The theory of adjudicatory authority, in contrast, argues that the Presidency's authority is dependent on the "conservatism" of the government in office with respect to the legislative dossier under negotiation. It follows that the governments adopt practices in parallel to formal agenda setting rules that allow them to drop unsuitable legislative dossiers until the next government takes over. This practice should develop in parallel to the aforementioned practices in Council negotiations. The empirical record largely corroborates this hypothesis.

As mentioned, the monopoly of legislative initiative lies formally with the Commission with the exclusive right of legislative initiative. Shortly after the Treaty of Rome entered into force, however, the governments refrained from discussing these legislative proposals in the Council. Instead, they passed them for a preliminary evaluation to informal committees of government representatives where they would often linger for an indeterminate period of time.[55] The Council agenda consequently ceased to be determined by the Commission's initiative. As soon as the legislative agenda opened up to new priorities, the Presidency began to fill the gap and manage its specific composition. The member states' permanent representatives in the EU recommended already in 1960 that the "(…) choice of important subjects, which merit discussion in the Council, ought to be conferred to the Presidency…"[56]

The Presidency's micromanagement of the agenda became a generally accepted fact.[57] In recognition of this development, the Council obligated incoming presidencies from 1973

[53] Dewost 1983, 78-79.
[54] Council of the EC 1980.
[55] Sasse 1972, 88.
[56] Conseil de la CEE 1960.
[57] Council of the EC 1980. Dewost 1984, 32.

onwards to publish their work program and timetables for meetings.[58] This work program became the basis for the "state of the Community" address, in which each incoming Council Presidency announced a list of its objectives and priorities to the EP.[59] It managed to retain its influence on the agenda even despite the emergence of rival agenda setter like the European Council. For that purpose, governments establish contacts with the Commission well before their term in order to ensure a timely preparation of preferred issues[60] and other subtle strategies.[61] The Presidency's informal manipulation of the Council agenda has hardly changed since. Asked about what determines its structure, a former Permanent Representative explained succinctly:

> Nobody cares if the Council agenda adequately balances the governments' various interests. It's as simple as that: Governments decide what needs to be decided and the Presidency thinks is important.[62]

Its micromanagement of the agenda provides the Presidency the opportunity to prioritize certain issues and, *ceteris paribus*, let others slide. According to close observers, the Council Presidency usually neglects legislative proposals that it would like to see altered. Proposals that it prefers as is consequently move up. In its reflection on the 1964 Presidency, the German delegation argues that its cooperating partner would not accept anything else. While it is expected to respect other delegation's reservations against a legislative proposal, the demands of the government in office usually go unheeded.[63] Violations of this custom are considered surprising, inappropriate, and are immediately sanctioned. "Attempts like this," an internal report on the conduct of the Presidency emphasizes, "would meet with strong refusal."[64] The Presidency therefore stalls dossiers that it wishes to alter until the next government takes over.[65] Legislative proposals on which the Presidency holds conservative preferences move up as a result.

In sum, contrary to the prediction of classical regime theory, the Council Presidency adopted various informal practices associated with adjudicatory authority in the early 1960s shortly after the legislative procedure entered into force and despite the availability of the Commission for the same function. In line with the expectations of the theory of adjudicatory authority, this suggests that governments deliberately delegated adjudicatory authority to a political actor. This section's description of two sets of informal practices in agenda setting and negotiation also showed that both sets developed in parallel to each other. Corroborating our theory, qualitative evidence provided first evidence that the Presidency sought to manipulate the legislative agenda in order to drop dossiers when its cooperating partners would not trusted its judgment, that is, legislative proposals that the Presidency itself wished to change substantially. The following section investigates this hypothesis in more detail.

---

[58] Amphoux, et al. 1979, 110, de Bassompierre 1988, 24.
[59] Wallace and Edwards 1976, 543, Westlake 1995, 342.
[60] Edwards and Wallace 1978, 82, Wallace 1985, 463.
[61] The Presidency also draws on more subtle strategies. In 1986, a confidential FCO document entitled "Guidance on the Exercise of the Presidency" (cited in Maass 1987, 10) instructed British officials on the respective tactics. Asked about it, a British official defended the document: Everyone in the community uses the kind of maneuvers or procedures… The only surprising thing is that the British put them on paper."
[62] Interview # 3.
[63] Vertretung der BRD bei der EWG 1965. Today, the informal "Presidency Handbook" (Council of the EU 2001) states right at the beginning: "The Presidency must, by definition, be neutral and impartial. It is the moderator for discussions and cannot therefore favor its own preferences or those of a particular member state."
[64] Vertretung der BRD bei der EG 1971.
[65] Wallace and Edwards 1976, 544.

**Empirical test 2: Creating the context for adjudicatory authority**

The previous section demonstrated that the governments adopted a number of practices in parallel of the formal rules that allowed them to manipulate the legislative agenda despite the Commission's formal monopoly of initiative. Qualitative data suggest that the Presidency dropped or stalled legislative proposals it preferred to alter substantively, because demands like this commonly met with strong resistance of its cooperating partner. The theory of adjudicatory authority explains this behavior. It argues that adjudicating authority is dependent on the conservatism of the government in office. If a government itself stands to gain from recommending flexibility, it will be suspected to be colluding with the claimant.

The second hypothesis concerning the individual legislative dossier predicts that it takes on average longer, everything else being equal, to adopt legal acts when one or more governments in office face a conflict of interest. It is at odds with classical regime theory, which argues that the Presidency uses its privileged role in order to manipulate intergovernmental negotiations in its favor. According to this logic, governments in office would not prioritize legislative dossiers they prefer to adopt unaltered. Quite the opposite. Given that they are able to influence negotiations, they must be expected to prioritize proposals they wish to change substantively. If anything, classical regime theory would expect the opposite correlation, namely that negotiations have on average shorter duration, everything else being equal, when the governments in office wish to alter them substantively.

The hypothesis is tested using an original data set of legislative dossiers adopted between 2000 and 2001. This time period was chosen for the practical reason that the Council's electronic register only covers dossiers including agendas and minutes from 2000 on. The data set was narrowed down to Council directives adopted in the second term between the months of July and December of each year. The search in the Eur-Lex database search yields 43 observations. Some Commission proposals go back to 1989 so that the data set includes all possible 15 Council Presidencies.

The central dependent variable is the duration of negotiations (**DURATION**) measured as the number of months from official submission of the Commission proposal until its official adoption. The central independent variable (**PRES**) is a dummy variable measuring whether or not a country holding the office of the Presidency demands substantive changes[66] the legislative proposal under negotiation. Demands like this are registered in the Council minutes. The variable takes on a value of 1 if the documents show evidence for these demands, and 0 otherwise. It is hypothesized that this independent variable is associated with a positive effect on the duration of the legislative process, because legislative dossiers are kept from the agenda for as long as the government in office demands to change it substantively.

Since inherently controversial proposals will in any case be more difficult to conclude than consensual legislative proposal, I create another dichotomous control variable to capture the existence of conflict per se (**CONFLICT**). Conflict was measured in a similar way as the independent variable, namely by registering the existence or non-existence of opposing demands to change the legislative proposal. The variable has a value of 1 if such a conflict can be detected in the minutes, and 0 otherwise. This is an arguably crude measure of conflict. Yet

[66] This excludes demands to alter the translation of a legal act.

it is more accurate than existing ones[67] where conflict is equivalent to the distance of stated positions on a continuum defined by the two most distant stated positions regarding a legislative proposal. Normalized on a scale from 0 to 100, this measure inflates unsubstantial disputes and, conversely, discounts substantial controversies.[68]

The duration of negotiations may also be influenced by the formal voting rule, because governments can indefinitely block decisions under unanimity. If majority voting applies, however, governments have the opportunity to impose the legislative proposal on a recalcitrant minority. I therefore added a control for the underlying voting rule (**MAJORITY**). This variable has a value of 1 if the legal base of the dossier provides for qualified majority voting, and 0 otherwise. Another factor that may increase the duration of negotiations is parliamentary participation in decision-making. **EPINVOLVE** is a dummy variable measuring whether or not the legal basis provides for Parliament's participation in decision-making. It takes a value of 1 if it participates, and 0 otherwise. Assuming that minor Parliamentary involvement need not increase the duration of decision-making per se, another dichotomous variable was created that measured the scope of involvement (**EPSTRONG**). If the legal basis provides for a marginal involvement in the so-called consultation procedure (Parliament gives an opition), the variable takes a value of 0. If the Parliament is strongly involved in the so-called codecision procedure (where it may veto a decision), the variable has a value of 1.[69]

The regression discerns a relationship between the duration of negotiations and a conflicted Presidency. The models do a good job, explaining more than 60 per cent of the variation, despite the small number of observations. In both models, the **PRES** variable is correctly signed and significant at the 1 per cent level. The results also show that strong Parliamentary involvement on average increases the duration of negotiations. This is not surprising given that parliamentary involvement requires governments to conduct additional negotiations.[70] Also of little surprise is the finding that majority voting decreases the duration in cases of strong parliamentary involvement. The existence of conflict slightly increases the duration of negotiations. But the effect is not statistically significant.

Table about here

The correlation between the Presidency's conflict of interest and the duration of negotiations can be interpreted as evidence that governments stall these dossiers at least for as long as the conflicted government chairs over the negotiations. This finding cannot be explained by classical regime theory, which would have expected the opposite correlation or no correlation at all.

**Empirical test 3: The limits of adjudicatory authority**

The previous sections provided evidence that adjudicatory is deliberately delegated to a political actor, who is not bound by legal norms and is capable of understanding political

[67] Thomson and Stokman 2006, 36-40.
[68] See Bueno de Mesquita (2004, 134-135) for a related critique of the data.
[69] The basic equation for the first model estimating the relationship between a conflicted Presidency and the duration of negotiations with parliamentary involvement is: $DURATION = \beta_0 + \beta_1\ PRES + \beta_2\ CONFLICT + \beta_3\ MAJORITY + \beta_4\ EPINVOLVE + \varepsilon$. The equation for the second model including a variable for the strength of parliamentary involvement is: $DURATION = \beta_0 + \beta_1\ PRES + \beta_2\ CONFLICT + \beta_3\ MAJORITY + \beta_4\ EPSTRONG + \varepsilon$.
[70] McElroy 2006, Schulz and König 2000.

reasoning. In addition, qualitative and quantitative evidence suggest that its authority depends on this actor's conservatism towards the legislative proposal in question, or else it is suspicious of colluding with the claimant. For the same reason, the third, and final, hypothesis expects member states to defy the Presidency's judgment when the government in office demands changes to the legislative dossier under negotiation. This prediction is again at odds with classical regime theory, which expects the Presidency to wield authority by virtue of its office, not its position towards a proposal. Governments should therefore continue to defer to the Presidency in the event that it suddenly changes its stance on the legislative proposal.

The negotiation of the so-called End-of-Life-Vehicles (ELV) directive constitutes a kind of natural experiment for this proposition, because the newly elected red-green German government suddenly changed its position during its term to strongly oppose the Commission proposal under negotiation. The Commission officially submitted its proposal for the ELV directive in July 1997. The draft directive stipulated take back and recycling duties for the automobile industry. Initially, only Spain and the UK voiced opposition while the majority of governments, including Germany, Sweden, Denmark, and Austria, supported the Commission proposal.[71] In line with our theory, negotiations in the Council substructure and with the EP did not make much progress under the conflicted UK Presidency in the first half of 1998. The Austrian Presidency consequently inherited responsibility to find an agreement among the member states and announced its determination to adopt a common standpoint (a common position vis-à-vis Parliament) by December 1998.[72] Under its chairmanship, the Council substructure quickly prepared a compromise text that all delegations were willing to accept.[73] The Council declared that it expected the adoption of the Council's position in March during the German Presidency.[74] The German Minister for the environment, Jürgen Trittin (Alliance '90/ The Greens), announced that the adoption of this directive would be a key policy goal for Germany's term in office.[75] Shortly before the meeting in March, the German delegation announced that it felt confident of concluding the negotiations.[76]

Surprisingly, the German Chancellor, Gerhard Schröder (Social Democratic Party of Germany, SPD), suddenly decided to revoke Germany's support for the proposal. The reason was a direct intervention by the chairman of Volkswagen, Ferdinand Piëch, who complained about the extensive adjustment costs the German automobile industry would face because of the directive. Schröder subsequently invoked his prerogative as Chancellor to define the policy guidelines and instructed his coalition partner Trittin to postpone the scheduled decision and reopen the negotiations.[77] Trittin's colleagues in the Council of Ministers heavily criticized this decision during a lively informal discussion at lunch.[78] Trittin subsequently announced, contrary to Schröder, that the German delegation would no longer seek to alter the text or postpone the decision.[79]

The UK and Spain, who also opposed the directive, were subsequently rumored to have contacted the German chancellery in order to fathom the possibility of forming a blocking minority against the Commission proposal to reject the directive in its entirety. Other

[71] Agence Europe 1999e.
[72] European Voice 1998.
[73] Council of the EU 1998.
[74] Agence Europe 1998a, Agence Europe 1998b.
[75] European Voice 1999c.
[76] Agence Europe 1999d.
[77] On the conflict within the German delegation see Wurzel 2000.
[78] Agence Europe 1999c.
[79] Frankfurter Allgemeine Zeitung 1999b.

delegations reacted strongly to this rumor, which they regarded as an abuse of the Presidency's power. They consequently reminded the German delegation of the conditionality of its authority. If the German Presidency indeed decided to call a vote that would block the proposal, they threatened they would overturn the Presidency's decision that, after all, merely rested upon an informal custom.[80]

In light of this tense situation, the German delegation decided to avoid further discussions by listing the ELV directive as the 10th item of an already loaded agenda.[81] Furious demands on the part of the Commission, Finland, Sweden, Denmark and Austria to discuss the Presidency's conduct on this matter were "rowdily brushed off." Trittin then decided to discuss the dossier in a strongly restricted session.[82] In this session, he demanded concessions for the German car industry and announced his intention to call a vote against the directive. Because one television camera was still recording sound, the *European Voice* was able to report the highlights of exchanges between the Ministers:

> Fascinated journalists gathered round the screen as Trittin harangued ministers for refusing to accept his new 'compromise' proposal… 'What are you doing trying to talk us into a compromise when you are the problem?' asked the Austrian Environment Minister, Martin Bartenstein. Denmark's Sven Auken was almost screaming with anger and France's Dominique Voynet boomed: 'We cannot leave this room to tell the press and the public that we have dropped our trousers for the car industry!'… The only support for Trittin's trousers came from the UK's Michael Meacher, who announced he was not performing a U-turn but had been told to reverse his stance by Premier Tony Blair under pressure from Schröder.[83]

After this heavy dispute, the Council noted the impossibility of securing at this point a qualified majority in favor of the text and decided to pass the issue for further discussion on to the Finnish Presidency.[84] The incoming Finnish Presidency vowed to push for a swift agreement on the dossier despite German intransigence on the issue.[85] Since it was obvious from its U-turn that the German delegation strongly exaggerated the unmanageability of its domestic recalcitrance, it took only three more weeks of deliberations for the Council substructure to form a qualified majority in favor of the proposal and against a recalcitrant German delegation.[86] The Ministers, in turn, decided to avoid a debate on the issue and adopted the common position by means of a written procedure.[87] It was adopted as a so-called A-item without debate at the following Council at the end of June.[88]

German car manufacturers subsequently turned to the European Parliament for support,[89] which in its final vote indeed tabled various amendments that were intended to lower carmakers' expected costs.[90] The Council largely stood to its common position,[91] and also the Commission

---

[80] Agence Europe 1999e.
[81] taz 1999.
[82] Die Welt 1999a, Frankfurter Allgemeine Zeitung 1999a.
[83] http://www.europeanvoice.com/article/imported/car-recycling-backdown-skids-into-tv-trouble/38971.aspx, accessed 14 May 2011.
[84] Agence Europe 1999b.
[85] European Voice 1999a.
[86] Die Welt 1999b.
[87] Agence Europe 1999a, Die Welt 1999c.
[88] Council of the EU 1999.
[89] Agence Europe 2000b, European Voice 1999b.
[90] Financial Times 1999.

declared that it did not approve of Parliament's amendments.[92] Council and Parliament consequently convened a conciliation committee that modified the Council's decision only slightly.[93]

The case of the ELV directive demonstrated that he Presidency's authority depends on its conservatism regarding the legislative dossier under negotiation. As soon as the inexperienced German Presidency attempted to abuse its Presidency prerogatives for personal gains, it met with very strong resistance from its cooperating partner. In line with our theory, the member states clearly agreed that the government in charge is not in a position to preside negotiations when it itself opposes the legislative proposal. The negotiation was quickly resumed as soon as the subsequent Finnish Presidency picked it up. Contrary to the expectations of classical regime theory, the German Presidency was not able to influence the negotiation by virtue of its office.

## Conclusion

This paper asked how states add flexibility to formal rules without this flexibility undermining the credibility of the commitment that these rules embody? Existing studies, which address this question primarily by way of analyzing the design of legal escape clauses, neglect these clauses require a great deal of political judgment to be operational in practice. Unsurprisingly, they also fail to predict the practices surrounding the actual provision of flexibility in international organizations. Conversely, this paper embedded the study of the question in an analysis of actual practices, namely the curious case of EU Council Presidency's informal authority in the legislative process. The core argument is that it provides a crucial information-providing role. To elicit information about the demand for flexibility, states delegate the authority to adjudicate on ambiguous demands for flexibility to a political actor, one who understands political reasoning and is not bound by any legal norms. Its authority depends on this actor's conservatism (change aversion) regarding legal act under negotiation, because else it will be suspected of colluding with the country demanding flexibility. The Presidency's authority is therefore functional. Governments defer to the Presidency because it serves to uphold a level of economic integration that would otherwise be impossible to sustain.

Since it is a theory about the things that are impossible to know and difficult to measure directly, its test was necessarily intricate and partly based on circumstantial evidence. Instead of trying to estimate the Presidency's direct effect on negotiation outcomes, we sought to evaluate the theory primarily by tracing various practices that this institution can be expected to generate. It yielded three distinct implications that were evaluated in light of the alternative explanation that the Presidency serves to overcome typical interstate bargaining problems. First, we traced the evolution of adjudicatory practices over time in order to show that the member states deliberately delegated authority to a political actor. Contrary to classical regime theory, which regards the Presidency as a stopgap for the Commission, we showed that the Presidency assumed its adjudicatory function long before the Commission lost its reputation as an honest broker. Second, the regression analysis revealed a positive and statistically significant effect of the Presidency's negative stance on the length of the negotiation of a legal act. This was interpreted as evidence that legislative dossiers are kept off the agenda for as long as an unsuitable government holds the office that is suspected of colluding with claimants. Third, and

[91] Council of the EU 2000a.
[92] European Voice 1999d.
[93] Agence Europe 2000a.

finally, a case study of the End-of-Life-Vehicle directive confirmed the third hypothesis that governments stop paying deference to the Presidency in the event that it suddenly changes its stance from supporting to opposing the legislative proposal under discussion.

The Council Presidency is in some ways particular to the EU's institutional settings. While international organizations usually commit states to upholding a given level of cooperation, the EU's legislative process commits its member states constantly to deepen their level of economic integration through a stream of individual decisions. The provision of flexibility therefore not only involves the authorization of temporary defection, but also the negotiation of laws that will be defied if adopted strictly according to the letter. Still, the problem of moral hazard is precisely the same. In each case, states need to elicit political information about the actual expediency of the rules – information that allows them to provide an optimal level of flexibility without this flexibility undermining the credibility of the commitment. Another way in which the EU differs from other international organization is that the formal institutional framework already provided for a government to play a more prominent role. All that was left to do for the member states was to adapt this office so that it could perform its adjudicatory function. In the meantime, accession of twenty-one new member states has made it increasingly difficult for the rotating Presidency's to perform its original representative function. Yet we can think of functional equivalents for this institution. All that is required for this function is one or more political actors, who have an incentive to sustain the commitment, but who are not suspicious of recommending excessive concessions to a claimant.

The Council Presidency therefore represents a solution to the dilemma between credibility and flexibility that confronts many other international organizations as well. The case consequently holds broader lessons for our understanding of other international organizations and the information-providing role of institutions more broadly. It was argued that for any commitment institution to persist in a dynamic environment, it needs a political counterpart that enables collective political judgments about the actual demand for flexibility. Instead of increasing the level of information about compliant behavior, as equilibrium models suggest, this counterpart elicits "extra-model" information about the political expediency of compliance in a specific situation. This implies, more broadly, that in order to understand why institutions persist in dynamic strategic contexts, we need to go beyond the analysis of legal frameworks to study the practices that surround the use of formal rules in practice.

We can think of applications of this theory to other international organizations as well as to domestic commitment institutions like central banks. For example, it has been noted that many disputes in the World Trade Organization, which commits the member states to an open trade policy, are in fact resolved informally before they reach the judicial panel. Our theory suggests that these disputes are resolved because, in contrast to a judicial body, the parties to the conflict are willing to authorize rule violation on political grounds. Accordingly, we should observe a central role of political actors in these informal negotiations. This is precisely what can be observed: Third parties play a very active role in these negotiations.[94] It would be interesting to investigate what kind of information these parties bring to the deliberations, and how these actors arrive at a collective judgment about the legitimacy of a temporary breach of the commitment. The theory developed here may also shed new light on the role of political presidencies in international organizations such as the G8, WTO, Mercosur or the UN Security Council, and why they are far more common in international forums than supranational ones.

[94] Busch and Reinhardt 2006, Busch and Pelc 2010.

**Literature**


Agence Europe. 1998a. EU/Environment. 23 December 1998.
———. 1998b. Environment. 19 December 1998.
———. 1999a. EU/Environment (4 August).
———. 1999b. EU/Environment (26 June).
———. 1999c. EU/Environment (12 March).
———. 1999d. EU/Environment (11 March 1999).
———. 1999e. EU/Environment (25 June).
———. 2000a. EU/Environment (26 May).
———. 2000b. EP/Environment/Industry (4 February).
Amphoux, Jean, Jean-Louis Dewost, Jean-Victor Louis, Jacques Mégret, Jean Verges, Daniel Vignes, and Michel Waelbroek. 1979. *Le Droit de la Communauté Économique Européenne. Commentaire du Traité et des Textes pris pour son Application*. Vol. 9. Bruxelles: Editions de l'Université de Bruxelles.
Bagwell, Kyle, and Robert W. Staiger. 1990. A Theory of Managed Trade. *American Economic Review* 80 (4): 779-795.
Bueno de Mesquita, Bruce. 2004. Decision-Making Models, Rigor and New Puzzles. *European Union Politics* 5 (1): 125-138.
Busch, Marc L., and Eric Reinhardt. 2000-2001. Bargaining in the Shadow of the Law: Early settlement in GATT/WTO Disputes. *Fordham International Law Journal* 24: 158-172.
———. 2006. Three's A Crowd: Third Parties and WTO Dispute Settlement *World Politics* 58 (3): 446-77.
Busch, Marc L., and Krzysztof J. Pelc. 2010. The Politics of Judicial Economy at the World Trade Organziation. *International Organization* 64 (1): 257-79.
Conseil de la CEE. 1960. Note: Mesure a prendre pour une meilleur organisation des travaux des Conseils. Bruxelles, 27 juin 1960, CM2. R/1266/60.
Council of the EC. 1980. Report on European Institutions. Presented by the Committee of Three to the European Council (October 1979). Available from <http://www.ena.lu>. Accessed 17 January 2009.
Council of the EU. 1998. *Report from the Permanent Representatives Committee to Council. Proposal for a Council Directive on end-of-life vehicles (17 December 1998).* 14271/98 (LIMITE).
———. 1999. 2200th Council meeting (General Affairs). 10390/99 (Presse 243). Brussels, 29 July 1999. .
———. 2000a. 2251st Council meeting (Justice and Home Affairs). 7100/00 (Presse 81). Brussels, 27 March 2000.
———. 2000b. Report by the Presidency and the General Secretariat of the Council to the European Council on making the co-decision procedure more effective. Brussels, 28 Novermber 2000. 13316/1/00 REV 1 LIMITE.
———. 2001. Council Guide: Presidency Handbook (Internal Document). General Secretariat: DG F - Information, Transparency and Public Relations.
de Bassompierre, Guy. 1988. *Changing the Guard in Brussels. An Insider's View of the EC Presidency*. New York: Praeger.
Dewost, Jean-Louis. 1983. Situations conflictuelle et leurs solutions possibles dans la Communauté Européenne. *Objectif Europe* (21-22): 74-81.
———. 1984. La Présidence dans le cadre institutionel des Communautés Européennes. *Revue Du Marché Commun* (273): 31-34.
Die Welt. 1999a. Altauto-Verodnung droht zu kippen (25. Juni).

———. 1999b. Auto-Lobbyist Schröder ist erneut gescheitert (24. Juli).
———. 1999c. Bittere Niederlage für die deutsche Industrie: Finnland erzwingt Altauto-Kompromiss (24. Juli).
Downs, George W., and David M. Rocke. 1995. *Optimal Imperfection? Domestic Uncertainty and Institutions in International Relations*. Princeton, N.J.: Princeton University Press.
Edwards, Geoffrey, and Helen Wallace. 1978. *Die Präsidentschaft im Ministerrat. Eine zentrale Rolle im Entscheidungsprozeß von EWG und EPZ*. Bonn: Europa Union Verlag.
European Voice. 1998. The car is the star in Austria's plans (28 May).
———. 1999a. Finns vow to push for deal on car recycling (1 July).
———. 1999b. Fate of EU car recycling plan hangs in the balance (27 January).
———. 1999c. Germany to back down over car recycling rules (17 June).
———. 1999d. Clash looms over end-of-life vehicles rule (4 May).
Financial Times. 1999. European car producers face big clean-up bill (4 February).
Frankfurter Allgemeine Zeitung. 1999a. Deutschland verhindert Altauto-Regelung (25 Juni).
———. 1999b. Möglicherweise Rückzieher im Streit über die Altauto-Richtlinie. 23. Juni 1999.
Goetz, Charles J., and Robert E. Scott. 1977. Liquidated Damages, Penalties and the Just Compensation Principle: Some Notes on an Enforcement Model and a Theory of Efficient Breach. *Columbia Law Review* 77 (4): 554-594.
Greif, Avner. 2006. *Institutions and the Path to the Modern Economy. Lessons from Medieval Trade*. Cambridge, Mass.: Cambridge University Press.
Grossman, Gene M., and Elhanan Helpman. 1994. Protection for Sale. *American Economic Review* 84 (4): 833-850.
Hafner-Buron, Emilie M., Laurence R. Helfer, and Christopher J. Fariss. 2011. Emergency and Escape: Explaining Derogations from Human Rights Treaties. *International Organization* 65 (3): 673-707.
Hayes-Renshaw, Fiona, and Helen Wallace. 2006. *The Council of Ministers*. 2nd ed. Houndmills: Palgrave Macmillan.
Hayes-Renshaw, Fiona, Wim Van Aken, and Helen Wallace. 2006. When and Why the EU Council of Ministers Votes Explicitly. *Journal of Common Market Studies* 44 (1): 161-94.
Keohane, Robert O. 1982. The Demand for International Regimes. *International Organization* 36 (2): 325-355.
King, Gary, Robert O. Keohane, and Sidney Verba. 1994. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton: Princeton University Press.
Kleine, Mareike. 2009. All Roads Lead Away From Rome. A Liberal Theory of International Regimes. Ph.D. dissertation. Freie Universität Berlin.
———. 2010. Making Cooperation Work: Informal Governance in the EU and Beyond. Paper for delivery at the 2010 Annual Meeting of the American Political Science Association, September 2-5.
Kydland, Finn E., and Edward C. Prescott. 1977. Rules Rather than Discretion: The Inconsistency of Optimal Plans. *Journal of Political Economy* 85 (3): 473-492.
Lohmann, Susanne. 2006. The Non-Politics of Monetary Policy. In *The Oxford Handbook of Political Economy*, edited by Barry R. Weingast and Donald Wittman, 523-544. Oxford: Oxford University Press.
Maass, Peter. 1987. U.K. Told Officials How to Manipulate Presidency. International Herald Tribune, February 16, 1987.

Majone, Giandomenico. 1994. The Rise of the Regulatory State in Europe. *West European Politics* 17 (3): 77-101.
McElroy, Gail. 2006. Legislative Politics. In *Handbook of European Union Politics*, edited by Knud Erik Jorgensen, Mark A. Pollack and Ben Rosamond. London: SAGE.
Mégret, Jean. 1961. Les Conseils des Communautées Européennes. *Annuaire Francais de Droit International* 7: 632-667.
Moravcsik, Andrew. 1998. *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*. Ithaca: Cornell University Press.
Noël, Emile. 1966. Le Comité des Représentants Permanents. Paper presented at the Institut D'Etudes Européennes, 19 April 1966, Université Libre de Bruxelles.
———. 1967a. Der Ausschuss der Ständigen Vertreter. *Europarecht* (1): 24-54.
———. 1967b. The Committee of Permanent Representatives. *Journal of Common Market Studies* 5 (3): 219-251.
Noël, Emile, and Henri Étienne. 1969. Quelques aspects des rapports et de la collaboration entre le Conseil et la Commission In *La décision dans les Communautés Européenes*, edited by Pierre Gerbet and Daniel Pepy. Bruxelles: Université Libre de Bruxelles.
Pelc, Krzysztof J. 2009. Seeking Escape: The Use of Escape Clauses in International Trade Agreements. *International Studies Quarterly* 53 (2): 349-368.
Pollack, Mark A. 1997. Delegation, agency and agenda setting in the European Community. *International Organization* 51 (1): 99-134.
Rogoff, Kenneth. 1985. The Optimal Degree of Commitment to an Intermediate Monetary Target. *The Quarterly Journal of Economics* 100 (4): 1169-1189.
Rosendorff, B. Peter. 2005. Stability and Rigidity: Politics and Design of the WTO's Dispute Settlement Procedure. *American Political Science Review* 99 (3): 389-400.
Rosendorff, B. Peter, and Helen V. Milner. 2001. The Optimal Design of International Trade Institutions: Uncertainty and Escape. *International Organization* 55 (4): 829-857.
Sasse, Christoph. 1972. Die Zukunft der Verfassung der Europäischen Gemeinschaft. Überlegungen zu einigen Reformkonzepten. *Europa-Archiv* 27 (3): 87-100.
Schulz, Heiner, and Thomas König. 2000. Institutional Reform and Decision-Making Efficiency in the European Union. *American Journal of Political Science* 44 (4): 653-666.
Stone, Randall. 2011. *Controlling Institutions. International Organizations and the Global Economy*. Cambridge: Cambridge University Press.
Svensson, Lars E.O. 2002. What is wrong with Taylor rules? Using judgment in monetary policy through targeting rules. NBER Working Paper 9421.
Sykes, Alan O. 1991. Protectionism as a "Safeguard": A Positive Analysis of the GATT "Escape Clause" with Normative Speculations. *University of Chicago Law Review* 58 (1): 255-305.
Tallberg, Jonas. 2003. The agenda-shaping powers of the EU Council Presidency. *Journal of European Public Policy* 10 (1): 1-19.
———. 2004. The Power of the Presidency: Brokerage, Efficiency, and Distribution in EU Negotiations. *Journal of Common Market Studies* 42 (5): 999-1022.
———. 2006. *Leadership and Negotiation in the European Union*. Cambridge: Cambridge University Press.
taz. 1999. Alles tanzt nach Schröders Hupe. 26. Juni 1999.
Thomson, Robert. 2008. The Council Presidency in the European Union: Responsibility with Power. *Journal of Common Market Studies* 46 (3): 593-617.
Thomson, Robert, and Frans N. Stokman. 2006. Research Design: measuring actors' positions, saliences and capabilities. In *The European Union Decides*, edited by Robert Thomson,

Frans N. Stokman, Christopher H. Achen and Thomas König, 25-53. Cambridge: Cambridge University Press.
Tomz, Michael. 2007. *Reputation and International Cooperation. Sovereign Debt across Three Centuries*. Princeton: Princeton University Press.
Torrelli, Maurice. 1969. L'application de la règle de la majorité au Conseil de ministres. In *La décision dans les Communautés Européennes*, edited by Pierre Gerbet and Daniel Pepy, 83-97. Bruxelles: Université Libre de Bruxelles.
Vertretung der BRD bei der EG. 1971. *Bericht über die 5. deutsche Präsidentschaft (4 February 1971)*. AV Neues Amt, Band 7407.
Vertretung der BRD bei der EWG. 1964. *Note an die Herren Vorsitzenden der Arbeitsgruppen des Rates (25 June)*. AV Neues Amt, Band 7406.
———. 1965. Konzept: Bericht über die dritte deutsche Präsidentschaft (1. Juli bis 31. Dezember 1964). Brüssel, den 18. Januar 1965. AV, Neues Amt, Band 7406.
Wallace, Helen. 1985. Negotiation and Coalition Formation in the European Community. *Government and Opposition*: 453-472.
Wallace, Helen, and Geoffrey Edwards. 1976. European Community: The Evolving Role of the Presidency of the Council. *International Affairs* 52 (4): 535-550.
Warntjen, Andreas. 2007. Steering the Union. The Impact of the EU Presidency on Legislative Activity in the Council. *Journal of Common Market Studies* 45 (5): 1135-1157.
Weingast, Barry R. 2002. Rational-Choice Institutionalism. In *Political Science: The State of the Discipline*, edited by Ira Katznelson and Helen V. Milner, 660-692. New York: Norton.
Wendt, Alexander. 2001. Driving with the Rearview Mirror: On the Rational Science of Institutional Design. *International Organization* 55 (4): 1019-1049.
Westlake, Martin. 1995. *The Council of the European Union*. London: Cartermill Publishing.
Wurzel, Rüdiger K. W. 2000. Flying into Unexpected Turbulence: The German EU Presidency in the Environmental Field. *German Politics* 9 (3): 23-42.

**Duration of negotiations**

| | Model 1 | Model 2 |
|---|---|---|
| pres | 37.0209***<br>(6.677) | 38.6998***<br>(6.136) |
| conflict | 7.3042<br>(5.246) | 7.2156<br>(4.848) |
| majority | -4.9544<br>(6.873) | -12 9259*<br>(6.846) |
| epinvolve | 14.3327<br>(10.345) | |
| epstrong | | 13.4183***<br>(4.572) |
| _cons | 9.8023<br>(12.102) | 21.1332***<br>(6.030) |
| Number of obs | 43 | 43 |
| Adj R-squared | 0.5842 | 0.6427 |
| * 0.10, ** 0.05, *** 0.01 significance | | |