

The imperfect agenda-setter: Why do legislative proposals fail in the EU decision-making process?

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Abstract

This article analyzes how uncertainty about the location of the pivotal actor influences the outcome of Commission proposals. We argue that the Commission is an imperfect agenda-setter and expect that Commission proposals are more likely to fail when uncertainty increases in the bicameral legislature of the Council and the European Parliament. Considering all legislative acts decided under the co-decision procedure proposed in the period from November 1993 until December 2009, we focus on withdrawal of Commission proposals as failures. In the empirical analysis we distinguish between electoral and procedural uncertainty and provide evidence that both types of uncertainty explain withdrawal of Commission proposals.

Keywords

Agenda-setting, European Union, legislative politics, spatial models, uncertainty

Introduction

The Commission has the exclusive right to propose legislative initiatives in the European Union (EU) in most policy fields. The Commission's monopoly over the agenda is however constrained. Proposals need the support of the national governments represented in the Council of Ministers, and the support of the European Parliament if the bicameral co-decision procedure applies. To understand the implications of the co-decision procedure, scholars have applied spatial models of legislative choice assuming that the Commission knows the preferences of the pivotal actor (e.g. [Crombez, 1996, 1997, 2000](#); [Garrett and Tsebelis, 1996](#); [Steunenberg, 1997](#); [Tsebelis, 2002](#); [Tsebelis and Garrett, 2000](#)). When policy conflict either within the Council, within the European Parliament, or between the two chambers intensifies, these models suggest that the space for accommodation may become too narrow, and the Commission is then supposed to abstain from proposing legislative initiatives ([Steunenberg, 1994](#)). Empirical research generally supports this insight by showing that the size of the core, which limits the space for accommodation, is negatively related to legislative activity (e.g. [Borghetto and Mäder, 2014](#); [Crombez and Hix, 2015](#); [Golub, 2007](#); [Häge and Toshkov, 2011](#); [Hertz and Leuffen, 2011](#); [Klüver and Sagarzazu, 2013](#); [Schulz and König, 2000](#)).¹ Under complete information, the Commission is assumed to know the size of the core, which is typically defined as the set of all policies that, once in place, cannot be changed. While these models have significantly increased our understanding of EU decision-making, one puzzle remains, and that is the failure of Commission proposals. When the as-

sumption of complete information applies, the expectation is that all observable proposals find approval.

However, we observe that proposals sometimes fail and the Commission notifies their withdrawal. In this article, we provide an explanation for such failure by arguing that the Commission is uncertain about the exact position of the pivotal actor when proposing legislative initiatives. Thus, the Commission cannot perfectly foresee the location of the pivotal actor at the time of initiation because events such as a change of preferences by elections or a procedural change of the proposal by treaty amendments occur afterwards. To illustrate this logic, we develop a simple spatial model with the Commission and a pivotal actor who needs to approve the Commission's proposal. Our model relaxes the complete information assumption to specify the conditions under which proposals are likely to fail, and thus withdrawn by the Commission. The main theoretical expectation is that the higher the uncertainty over the position of the pivotal actor, the higher is the probability of failure. In the empirical analysis, we focus on all legislative proposals that were introduced by the Commission in the period between 1 November 1993 and 31 December 2009 and decided under the co-decision procedure. We focus on two potential sources of uncertainty: national elections and procedural changes. We find that withdrawal of proposals is influenced by electoral and procedural changes that introduce a previously unknown pivotal actor. In addition, we find that withdrawals are less likely since the reforms by the Amsterdam Treaty, while other variables, such as amending legislation and the Council presidency by a big member-state turn out being insignificant.

Our analysis contributes to the literature on the European Commission and EU decision-making by investigating failure as an outcome of Commission proposals (e.g. [Bailer, 2014](#); [Coombes, 1970](#); [Kreppel and Oztas, 2016](#); [Nugent, 2001](#); [Osnabrügge, 2015](#); [Schmidt, 2000](#)). Except for [Ponzano et al. \(2012: 39\)](#) who report that most of the withdrawn proposals are “stuck in the decision-making process for a long time, without any prospect of being adopted”, the failure of Commission proposals has received little attention so far. [Schmidt \(2000: 56\)](#) argues that withdrawing a proposal only constitutes a “credible threat” if the Commission can further integrate by other means than standard legislative decision-making (e.g. by using Court rulings). Compared with such a strategic threat, our findings suggest that imperfect agenda-setting is an alternative explanation for proposal failure. Similar to previous models on agenda-setting ([Denzau and Mackay, 1983](#); [Gilligan and Krehbiel, 1989](#); [Kalandrakis, 2006](#)) we follow the rationale of [Romer and Rosenthal \(1978, 1979\)](#) and introduce uncertainty on the location of the pivotal actor in EU decision-making ([Cameron, 2000](#); [McCarty, 1997](#)). In addition to [Saeigh \(2011\)](#), who argues that the proposals of chief executives fail due to uncertainty on the legislators’ positions, we show that this uncertainty can come from elections and procedural changes.

More generally, we believe that a closer inspection of uncertainty is warranted to understand failure and other phenomena of EU decision-making such as legislative duration, amendments, delay, convention of conciliation committees, etc. In this vein, our findings may also contribute to the research on the implications of treaty reforms for EU decision-making, which focuses on the distribution of power

(e.g. Costello and Thomson, 2013; Crombez, 2000; Franchino and Mariotto, 2013; Tsebelis, 1994). Our results indicate that treaty reforms may also reduce uncertainty over the position of the pivotal actor. Specifically, the Amsterdam Treaty introduced the possibility of early agreements which may help to overcome the implications of imperfect agenda-setting under uncertainty.

The co-decision procedure and withdrawals

The empirical focus of this study is the co-decision procedure that has become standard as the Lisbon Treaty came into force in 2009 (Hix and Høyland, 2011: 68-73). In 1993, the Maastricht Treaty set up the bicameral co-decision procedure to strengthen the power of the European Parliament and thus reduce the democratic deficit. Hence, we will limit our empirical analysis to the period between 1993 to 2009. In the following we describe the co-decision procedure, its reform and withdrawals.

Under the first version of the co-decision procedure the Commission proposes legislation, followed by two readings of the European Parliament and the Council, where the national governments are represented. If both institutional actors agree on a text, the proposal is adopted. If the Council does not adopt the Parliament's text in its second reading, a conciliation committee is convened, with an equal number of delegates from the two chambers. The conciliation committee can agree on a joint text to be adopted by the European Parliament and the Council. If the conciliation committee fails to adopt a joint text, the Council can reaffirm its

first reading position by a qualified majority. This position can be rejected by the European Parliament on the basis of an absolute majority of the Members of the European Parliament (Treaty establishing the European Community, Article 189b).²

The Amsterdam Treaty (1999) introduced two important reforms to the co-decision procedure. First, the Council was no longer able to reaffirm its position after the conciliation committee failed to adopt a joint text. According to [Hix and Høyland \(2011: 73\)](#), this reform did not change the bargaining power “as the *de facto* operation of the co-decision ... procedure was without the third reading anyway” (see also [Hix, 2002](#)). Second, the Amsterdam Treaty introduced the possibility of early agreements. An early first reading agreement is possible if the Council adopts the proposal as amended by the European Parliament in the first reading. An early second reading agreement is feasible if the European Parliament adopts in its second reading the Council position (e.g. Treaty on the Functioning of the European Union, Article 294). The early agreements are typically prepared by trilogues, where representatives of the Commission, the European Parliament and the Council meet informally (e.g. [Brandsma, 2015](#); [Hansen, 2014](#); [Reh et al., 2013](#)).

The power of the Commission to withdraw proposals is controversial. According to the 2010 Framework Agreement between the European Parliament and the Commission “the Commission shall proceed with a review of all pending proposals at the beginning of the new Commission’s term of office, in order to politically confirm or withdraw them, taking due account of the views expressed by Parliament”

([European Parliament and European Commission, 2010](#)). Note that Article 293 and its predecessor state that the Commission may only change its proposal “as long as the Council has not acted” (Treaty on the Functioning of the European Union). However, the Commission regards its power to withdraw as a mirror image of its agenda-setting monopoly and its role as guardian of the common interest of the EU ([Advocate General, 2014](#): paragraph 31). Accordingly, the Commission may withdraw legislative proposals that have been changed in their substance by the Council or the European Parliament so that they no longer match the Commission’s original goals. Otherwise, the Council or the European Parliament would be able to adopt a legislative act without a proposal.

The European Court of Justice delivered on 14 April 2015 a judgement confirming the power of the Commission to withdraw a legislative proposal if “an amendment planned by the Parliament and the Council distorts the proposal for a legislative act in a manner which prevents achievement of the objectives pursued by the proposal and which, therefore, deprives it of its *raison d’être*” ([European Court of Justice, 2015](#): paragraph 83). Note that the judgement refers to a scenario where the Council did not yet adopt a common position. To the best of the authors’ knowledge, the Court has not yet clarified whether the Commission can also withdraw after the adoption of the common position in the first reading.

Agenda-setting under uncertainty

In the EU, several procedures exist for decision-making whereby the Commission has an agenda-setting monopoly but needs the approval of the Council and the European Parliament if the co-decision procedure applies. For the analysis of procedures and their changes, spatial models of legislative choice have become a standard, in particular for the study of the introduction and modification of the co-decision procedure (Crombez, 1996; Crombez et al., 2006; Crombez and Hix, 2011, 2015; Moser, 1996; Steunenberg, 1994; Tsebelis, 2002; Tsebelis and Garrett, 2000). Although this literature has stimulated a vivid debate about the modeling of some procedural provisions, such as the conception of the reference point and the role of the conciliation committee, the conventional assumption is that the agenda setter knows the preferences of the pivotal actor whose approval is required (Crombez and Vangerven, 2014).³ We expand on this literature by introducing uncertainty regarding the location of the pivotal actor induced by changes in either preferences or procedures.⁴ In the following we first outline the assumptions and then examine how uncertainty influences the outcome of Commission proposals.

Actors

The relevant actors are the agenda-setting Commission and the most distant pivotal decision-maker in the Council or the European Parliament whose support is necessary for making policy (Crombez, 1996, 2000; Moser, 1996; Tsebelis, 1994, 2002). The pivotal actor is not equal to the entire institution, but refers to a member-

state in the Council or a specific Member of the European Parliament (Crombez and Hix, 2015). For simplicity, we take the policy space to be the real line, \mathbb{R} . The players have to agree on a proposal to replace a commonly known status quo, denoted by $q \in \mathbb{R}$. All actors have Euclidean preferences. The Commission's ideal policy is denoted by c , also commonly known, and p denotes the pivotal actor's ideal policy, known only to the pivotal actor. Ultimately, each player wants to put in place policies that are as close to their ideal policies as possible.⁵

As in existing literature, we define the core to be the set of all policies, which once in place, cannot be changed. This means that the core corresponds to the gridlock interval between the two ideal policies p and c . If q falls in this interval, it cannot be overturned in favor of another policy. Because p is unknown when the Commission makes its proposal, the gridlock interval is also undetermined at that time of initiation. The Commission is therefore an imperfect agenda-setter. Because the Commission does not know the exact location of the pivotal actor at the time of initiation, it holds a prior over p . The prior is a probability distribution F over all possible values that p can have, where \underline{p} and \bar{p} are the lowest and the highest positions the pivotal actor can take. In short, $[\underline{p}, \bar{p}]$ is the support of F . We assume that the support is sufficiently wide to include both c and q : $\underline{p} < c, q < \bar{p}$.⁶

The game proceeds according to the following sequence.

1. The Commission makes its proposal, which we denote by x_c .
2. Events such as elections, treaty reforms etc., occur and the value of p is realized.
3. The pivotal actor votes on x_c and decides whether or not to adopt it.

Our equilibrium concept is that of Bayesian Nash, and x_c^* denotes the equilib-

rium Commission proposal. Without loss of generality, we focus on the case where q lies to the left of the Commission's ideal policy: $\underline{p} < q < c < \bar{p}$. Therefore, the gridlock interval is $[p, c]$ if $p < c$, and $[c, p]$ otherwise. Note that the alignment $\underline{p} < c < q < \bar{p}$, which flips the locations of c and q , can be studied similarly.

Uncertainty

Measuring the degree of uncertainty and its impact on the outcome of Commission proposals is not straightforward. This is primarily because we need to define a measure of the level of uncertainty. To this end, we propose the following conceptualization: the uncertainty over the pivotal actor increases if it can take values further away from the Commission's ideal policy and on the opposite side of the status quo. The intuition is that the Commission is more uncertain the larger the interval in which the pivotal actor can fall, especially if it takes a value which puts the pivot's policy stance at a far extreme.

If the status quo is below (above) the Commission's ideal policy, $q < c$ ($q > c$), there is more uncertainty as the values p can decrease (increase) further below (above) q . In both cases, the support of the distribution expands to the detriment of the Commission. Specifically, suppose we have $\underline{p} < q < c < \bar{p}$ and want to alter the level of uncertainty. This means, we fix the functional form of F , the locations of c and q , and move only the location of \underline{p} . There is higher uncertainty under the prior $F([\underline{p}^0, \bar{p}])$ than there is under $F([\underline{p}^1, \bar{p}])$, where $\underline{p}^0 < \underline{p}^1$.

Equilibrium

The game can be solved by using backward induction. The Council and the European Parliament act on the proposal only after all their members are chosen, i.e. the pivotal actor's ideal policy is identified. In game theoretic terms, the pivotal actor's preference can be viewed as the "type" of the pivotal actor. However, a considerable number of events can occur after the Commission submits its proposal and before the pivotal actor approves it. Because the Commission initiates without knowing the pivot's type, it chooses x_c to minimize its expected ideological loss:

$$\text{probability of not approval} \times (q - c)^2 + \text{probability of approval} \times (x_c - c)^2 \quad (1)$$

We have yet to formalize the probabilities of not approval and approval. These probabilities depend on the distribution of p . The pivotal actor whose ideal policy is p , compares the Commission proposal x_c with q , and approves x_c if it is closer to its ideal policy p than q is, i.e. $|x_c - p| \leq |q - p|$. The probability of adoption is then given by the probability of this event. The choice of the proposal x_c , therefore, not only determines the ideological loss from its approval but also the probability of approval. To calculate this probability, the Commission has to entertain two possibilities:

- (i) $\underline{p} < p < q$: The pivotal actor falls to the left of status quo and, therefore, q falls into the gridlock interval. This is the scenario where the Commission cannot change the status quo without suffering further ideological loss.

- (ii) $q < p < \bar{p}$: The pivotal actor falls between the status quo and the Commission's ideal policy, leaving the status quo outside the gridlock interval. In this case, the actors can strictly improve upon q by choosing a policy between their ideal policies. That is, both players can come to a compromise that benefits each other more than the status quo.

Reviewing the scenarios (i) and (ii) informs us if the status quo q falls into the gridlock interval or not. When it lies in the interval, it cannot be changed and any Commission attempt to overhaul q , is bound to fail. The probability with which the pivotal actor takes a value such that the status quo falls into the gridlock interval is equal to the probability that p is below q : $F(q)$. We can also restate $F(q)$ as the probability of the status quo being in the interval. This probability is exogenously determined by the distribution of the pivotal actor values, and cannot be influenced by the Commission's proposal. Most importantly, it sets a lower bound on the probability with which the pivotal actor is not going to approve a Commission proposal. We record this observation in the following result.

Proposition 1: *No Commission proposal is approved when q falls into the gridlock interval. The probability of this event is $F(q)$.*

The result above only approximates an upper bound for the probability of approval: $1 - F(q)$. Even when the status quo is outside the interval, there is no guarantee that the pivotal actor approves the Commission's proposal. The pivotal actor does not approve the Commission's proposal whenever the status quo is closer to the pivotal actor than the proposal. The next section expands on this point while characterizing the Commission's proposal.⁷

Proposal choice and comparative statics

First, observe that any Commission proposal lies somewhere between its ideal point and the status quo: $x_c \in [q, c]$. We can easily establish this through iterated elimination of strictly dominated proposals. The Commission would not make a proposal below q because q is a better alternative for both. The Commission's proposal would not exceed c either: Indeed, c is the best proposal the Commission can offer to a pivotal actor whose position is higher than the Commission's, i.e. $p > c$. When $p < c$, the Commission would be strictly better off by making a proposal below c . This is because, for any proposal above the Commission's ideal policy c ($c + a, a > 0$) there is a symmetric proposal below c ($c - a$) that yields the same ideological loss for the Commission but stands a higher chance of approval.

As stated earlier, the pivotal actor will approve x_c only if the proposal is closer to its ideal policy than the status quo. Moreover, the Commission prefers to bring x_c to be as close to c as possible. Formally, these correspond to $x_c - p \leq p - q$ and by rewriting it, we derive the inequality $\frac{x_c + q}{2} \leq p$. The probability of the event $\frac{x_c + q}{2} \leq p$ is given by $1 - F(\frac{x_c + q}{2})$. This is the probability with which the Commission's proposal will be approved; with the residual probability $F(\frac{x_c + q}{2})$ it will be rejected as it is. The Commission faces the following trade-off. If the policy it proposes approaches the status quo, there is a higher probability of approval but the Commission is worse off if it is approved. As it proposes a policy closer to its ideal policy, there is a lower probability of approval but the Commission is better off in case of approval. The Commission resolves this trade-off by choosing its policy x_c optimally, that is, by minimizing its ideological loss.

The formal statement of the Commission’s objective and its solution can be found in the Online Appendix. We need to know the exact probability distribution and it has to be tractable for us to derive a closed-form solution for x_c^* . To be able to derive comparative statics, we impose some restrictions and arrive at a parametric solution, i.e. obtain x_c^* in terms of c , q , \underline{p} , and \bar{p} . We plug in values for these parameters to get an exact number for x_c^* . Moreover, in the absence of further information on F , comparing the probabilities of approval under different levels of uncertainty is fairly difficult. Once we constrain ourselves to the case of uniform priors, we find that the Commission’s optimal proposal is unaffected by the level of uncertainty but has lower chances of success as uncertainty increases (the Online Appendix contains its proof). This happens due to the particular properties of the uniform distribution. As uncertainty increases, there is a lower probability of the status quo being in the gridlock interval. However, at the same time, the probability of failure also increases because it is more likely that the pivotal actor is closer to the status quo than it is to the Commission proposal.

Proposition 2: *Suppose that the Commission’s prior over the pivotal actor values is characterized by a uniform distribution. Holding all else constant, the Commission’s proposal remains unchanged as the uncertainty around the pivotal actor increases. However, the higher (lower) the uncertainty, the lower (higher) is the probability that the pivotal actor approves the Commission proposal. This results from the increased likelihood that the pivotal actor is closer to the status quo than to the Commission proposal.*

Figure 1 illustrates the intuition of Proposition 2. Figure 1(a) illustrates a

scenario where the uncertainty is lower than in Figure 1(b) because $\underline{p}^0 < \underline{p}^1$. The shaded area marks $F(q)$, which is equal to the probability with which the pivotal actor takes a value such that the status quo falls into the gridlock interval. In other words, $F(q)$ is the lower bound for the probability of failure. As Figure 1 shows, the probability of failure is larger in the scenario with high than in the scenario with low uncertainty.

(a) Low uncertainty



(b) High uncertainty



Figure 1. The spatial model with uncertainty.

Note: The figure illustrates the intuition behind Proposition 2 and refers to the alignment $\underline{p} < q < c < \bar{p}$. The shaded area is equal to $F(q)$.

The main theoretical expectation is that more uncertainty increases the probability of failure, i.e. invoking the withdrawal of the proposal. Note that the

direction and size of potential core changes are related to the value of \underline{p} . Given a status quo, larger increases of the core are more likely the smaller the value of \underline{p} .

Data and measures

Before entering into the analysis of failure in the event of the withdrawal of proposals, we present our legislative data and our measures for uncertainty and control variables. The Online Appendix includes a table with descriptive statistics of all variables used in the analysis.

Legislative data

We use legislative data from PreLex as extracted by Häge (2011). We consider all legislative acts decided under the co-decision procedure that were proposed in the period from 1 November 1993 and 31 December 2009.⁸ We focus on the period until 2009 to avoid right-censoring. If we take a later date, our sample will have more pending legislation.

Table 1 summarizes the data. In our period of analysis, the Commission formally introduced 1215 proposals, where 136 proposals were withdrawn. 1079 (89%) of the proposals were approved, suggesting that the Commission is able to anticipate the outcome of most proposals at the time of initiation. However, the proposals considerably differ the time spent in the legislature. Proposals that are withdrawn take systematically longer than adopted proposals. To measure the duration we use the signature date to capture the date of adoption.

Table 1. Legislative data.

Year	Proposals	Adoptions	Withdrawals	Share of Withdrawals
1993	7	6	1	0.14
1994	36	30	6	0.17
1995	36	30	6	0.17
1996	43	35	8	0.19
1997	46	33	13	0.28
1998	75	63	12	0.16
1999	41	39	2	0.05
2000	90	85	5	0.06
2001	84	77	7	0.08
2002	74	72	2	0.03
2003	115	106	9	0.08
2004	74	66	8	0.11
2005	89	72	17	0.19
2006	113	108	5	0.04
2007	102	96	6	0.06
2008	122	106	16	0.13
2009	68	55	13	0.19
Total	1215	1079	136	

Note: The table summarizes the number of legislative proposals (Proposals). For all proposals given a year the table also lists the number of adoptions (Adoptions) and number of withdrawals (Withdrawals) and the share of withdrawals.

As a descriptive analysis, Figure 2 illustrates a boxplot of the duration by outcome. The duration refers to the period between the formal initiation and adoption or withdrawal as outcomes. Unsurprisingly, the median numbers of days are longest for the cases with withdrawals, where the median number of days between proposal and withdrawal is 2136. The cases with withdrawals typically take longer

than adopted legislation because the decision to formally withdraw may occur years after the actual failure. The median number for days for the approved legislation is 568.

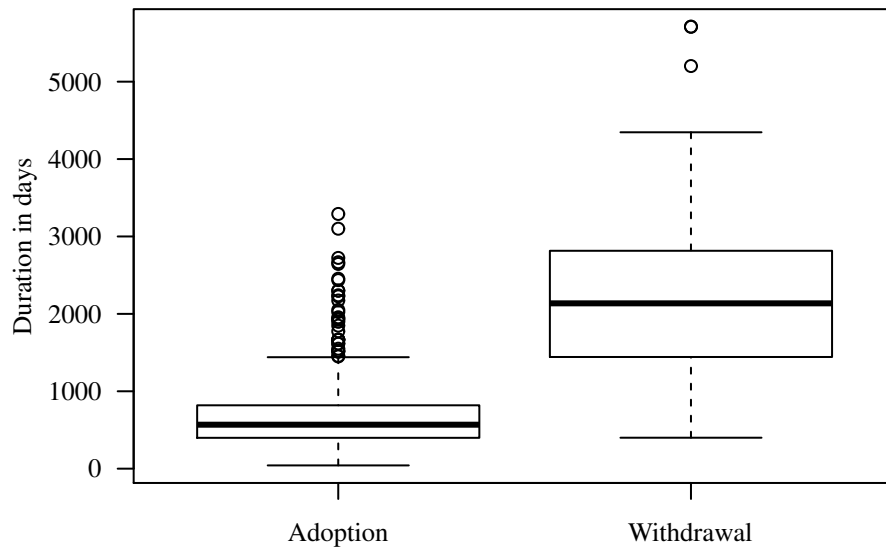


Figure 2. Box plot of legislative duration by outcome.

Explanatory and control variables

We are interested in the implications of imperfect agenda-setting and therefore we measure uncertainty over the location of the pivotal actor as follows. As illustrated, proposals that are withdrawn take much longer than proposals that are approved.

This creates an endogeneity problem because proposals that are withdrawn will *ceteris paribus* always have a higher probability of experiencing electoral and procedural changes that can increase uncertainty. Furthermore, to investigate the Commission’s decision to either withdraw or proceed with its proposal, we would ideally like to use information about the Commission’s assessment of the chances that a proposal will be adopted. Unfortunately, such a direct measure is currently out of reach, primarily because the Commission does not systematically report on the difficulties, which arise after the initiation of proposals. We therefore employ an alternative strategy that focuses on the pattern of changes that proposals experience over time in different policy areas.

We address this endogeneity problem by focusing on the number of elections and the procedural changes that occurred in the period between initiation and the median duration of approved proposals. More specifically, we calculate the median duration of proposals introduced within a given year and approved. This procedure identifies a point in time at which each Commission proposal is typically approved or not. Measuring the expected duration for every year is reasonable as the legislative programming of the Commission is planned on a yearly basis (Osnabrügge, 2015). Figure 3 summarizes the duration by year. The figure shows that the median duration of approved proposals decreases after the Amsterdam Treaty came into force in 1999. Two outliers are the years 2004 and 2005 which could be related to Eastern enlargement. Our data confirms the conclusion of Bølstad and Cross (2016) that the Amsterdam Treaty reduced the duration of decision-making.

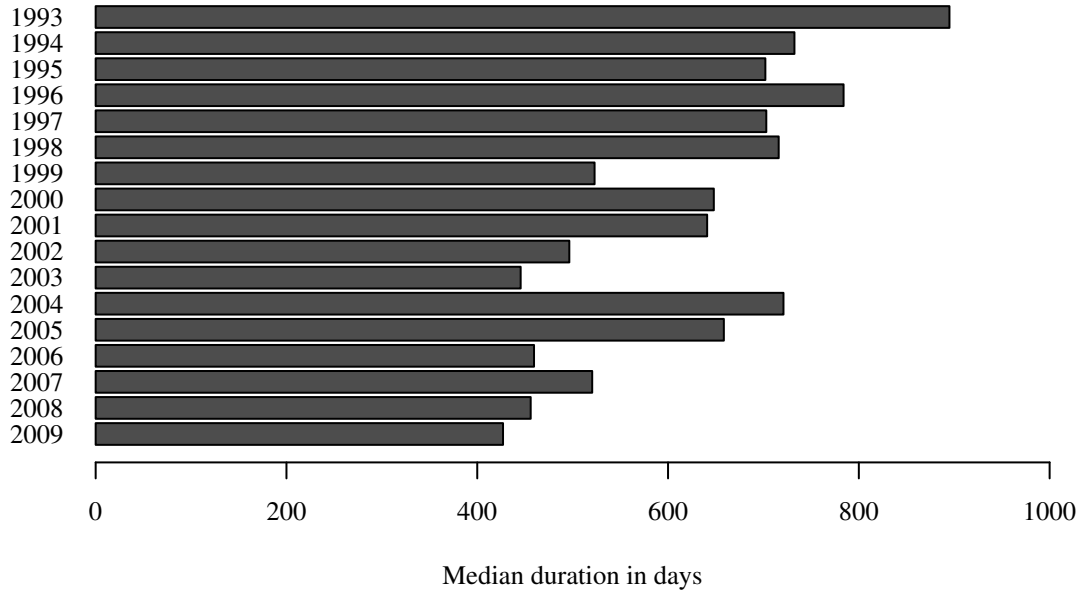


Figure 3. Expected duration.

Note: The figure illustrates the median duration by the proposal year taking into account adopted proposals.

We distinguish between electoral and procedural change that can increase uncertainty by changing the pivotal actor's position. For investigating the Commission's assessment of electoral change we use two different measures. First, we take the number of elections that occurred in the large member-states within the median duration (see also [Kleine and Thomson, 2014](#)): France, Germany, Italy and United Kingdom. Taking the total number of elections would be problematic for the period of our study as the number of elections rises due to enlargement from

15 to 27 countries while uncertainty does not necessarily increase proportionally. Apart from their higher voting weights, the main advantage of focusing on the big member-states is simplicity (see also [König et al., 2013](#)), and we use the ParlGov dataset to identify the number of elections ([Döring and Manow, 2012](#)).

Second, we use the measures of the risk of gridlock from the study of [Junge et al. \(2015\)](#), which provides area-specific estimates for two-dimensional policy spaces with annual variation over time ([König and Luig, 2012](#)). The risk of gridlock is calculated from information on the size of the area-specific core over the last three years and the occurrence of voting rules and legislative procedures given different types of legislation (regulation, decision, directive and others).⁹ We expect that the risk of gridlock in the year of median duration is positively related to electoral uncertainty. If the risk of gridlock increases, the interval of potential pivotal actors tends to be larger.

Concerning procedural change, we examine whether the transfer of a proposal into the co-decision procedure affects the decision of the Commission to withdraw the proposal. Note that we only consider procedural changes that occurred within the median duration. We include cases that changed from agreement (1), assent (2), consultation (25) and cooperation procedure (45) to the co-decision procedure. This means that the European Parliament may have become a previously unknown pivotal actor. To measure procedural uncertainty we generate a variable that is equal to 1 if a procedure changed within the median duration, and 0 otherwise.

We also consider amended legislation. Because amended legislation may allow the Commission to better infer the location of the status quo, the information

deficit might be smaller. Hence, we include a variable equal to 1 if the legislation is amended and 0 otherwise. Note that amended legislation reduces information deficits rather at the time of initiation about the pivotal actor. Whether a proposal is transferred afterwards into co-decision or whether national elections change the location of the pivotal actor remains unknown for amended legislation too.

We control for the Amsterdam Treaty when a proposal was introduced after the Treaty’s coming into force in 1999. The Amsterdam Treaty introduced the possibility of early agreements in the co-decision procedure. The early agreements are often decided in trilogue meetings, which can potentially be related to our measures of uncertainty and the probability of failure. Furthermore, we control for the size of the country holding the Council Presidency as larger member-states are potentially “able to push through more legislation during their period at the helm of the Council than smaller states” (Crombez and Hix, 2015: 15). In addition, larger countries holding the Council Presidency have more administrative resources which may help to coordinate the positions of actors and reduce uncertainty. This variable is 1 if one of the larger member-states holds the Council presidency, i.e. France, Germany, Italy or the United Kingdom.

Finally, we control for the electoral cycle with a variable that goes from 1 to 10, where each value captures a six-month period in the electoral cycle. The variable is equal to 1 when the proposal was introduced in the half-year after a European Parliament election. We expect that a negative effect on withdrawal at the beginning of the legislative term for two reasons. First, at the beginning legislators have to handle organizational tasks, such as appointing committee chairs, which make

it more difficult to adopt a proposal. Second, the audience costs might be lower at the beginning of the term when proposals fail.

Results

The empirical analysis concentrates on outcomes of Commission proposals distinguishing between approval and withdrawal. The dependent variable is equal to 1 if the proposal has been withdrawn, and 0 if it was approved. To avoid multicollinearity we estimate two models, with different specifications of preference change by electoral uncertainty. The first model considers the number of elections and the second the risk of gridlock. These variables focus on preference change during the expected duration of proposals, which is equal to the median duration of adopted proposals introduced in a given year.

We apply a logistic regression model and refer to the logit coefficient and the first differences for interpreting the results ([R Core Team, 2007](#)). Using the first difference, we point to the difference in expected values conditional on two values. In case the explanatory variable is continuous, we estimate the first difference for the effect of the 80th percentile versus the 20th percentile. If the explanatory variable is a dummy, we compare the values 1 and 0.

Table 2 lists the findings on Commission withdrawals. The number of elections, the risk of gridlock and procedural changes increase the probability of failure. Furthermore, the effect of the Amsterdam Treaty is statistically significant. In contrast, we do not find a statistically significant effect for amending legislation, the

European Parliament cycle, big states holding the Council Presidency, and directives. Regarding the strength of the effect, procedural changes and the Amsterdam Treaty have the strongest effect, followed by the risk of gridlock and the number of elections. If a proposal is affected by a procedural change, the probability of failure increases by about 14 percent. Increasing the number of elections from 1 to 2, raises the probability of failure by about 3 percent. The risk of gridlock exhibits a first difference of 0.097. If the number of elections and the risk of gridlock increase more substantially, these effects are stronger.

We conduct a number of robustness tests. First, we run the regression models taking into account only the variables measuring uncertainty (number of elections, risk of gridlock, procedural change, amending legislation). Regarding our measures of uncertainty we also run the analysis with the risk of gridlock at the year of proposal. In both tests our results remain robust. To examine the variable on the number of elections, we drop elections from single countries. We find that the variable is statistical significant if the German elections are included. Furthermore, we use an alternative specification of election cycle variable. Instead of the categorical variable on election cycle, we include a linear trend variable. Again, we find that the results are robust. We provide additional information on the robustness tests in the Online Appendix.

A more substantive concern about procedural change is that these withdrawals could be unrelated to the position of the pivotal actor. Because some treaty reforms change substantially the legal basis and the procedure, the Commission could be required to withdraw the proposal and (potentially) re-introduce it. We check this

Table 2. Analysis of withdrawals using logistic regression models.

	Model 1		Model 2	
	Coefficient	First Difference	Coefficient	First Difference
Intercept	-2.277*** (0.440)		-2.619*** (0.396)	
Number of elections	0.283*** (0.107)	0.026		
Risk of gridlock			0.267*** (0.058)	0.097
Procedural change	1.042*** (0.325)	0.140	0.891*** (0.317)	0.113
Amending legislation	-0.265 (0.199)		-0.233 (0.200)	
Amsterdam Treaty	-0.550** (0.222)	-0.058	-1.269*** (0.265)	-0.152
European Parliament cycle	0.035 (0.038)		-0.022 (0.033)	
Big state presidency	-0.083 (0.206)		-0.140 (0.207)	
Directive	-0.003 (0.192)		0.019 (0.193)	
N	1215		1215	
AIC	835		819	

Note: Dependent variable: withdrawal 1, otherwise 0; logistic regression. * $p \leq 0.10$, ** $p \leq 0.05$, *** $p \leq 0.01$.

possibility by identifying on the basis of official documents all proposals withdrawn for legal reasons after the coming into force of a treaty.¹⁰ We find that proposals withdrawn for legal reasons are not in our sample because they are withdrawn before the procedure changed to co-decision.

In conclusion, our results suggest that uncertainty induced by preference and procedural change influence the outcome of Commission proposals. In particular, the effect of procedural change is strong and robust, while the Amsterdam Treaty introduced early agreements which may help to overcome the implications of imperfect agenda-setting under uncertainty.

Concluding remarks

Our analysis shows that most Commission proposals are approved, while a few others are withdrawn. Theoretically, we concentrate on the foresight of the Commission as agenda-setter and examine whether imperfect foresight exists about the pivotal actor's position due to uncertainty induced by national elections and procedural changes. The main prediction is that an increase in uncertainty raises the Commission proposal's risk of failure. Because there is a time lag between proposal initiation and approval when the position of the pivotal actor can change, we introduce a model that specifies the conditions under which a proposal fails to find approval. If uncertainty is high, the pivotal actor's ideal policy is more likely to be closer to the status quo than to the Commission proposal. Hence, the model predicts that uncertainty is positively related to the probability of failure.

In the empirical application, we focus on the co-decision procedure that sets up a bicameral procedure in EU decision-making. We find that procedural changes have a strong effect on the probability of withdrawal. When a proposal changed from agreement, assent, consultation and cooperation procedure to the co-decision procedure, which means that the European Parliament may have become a previously unknown pivotal actor, the probability of withdrawal significantly increases. The number of national elections and the risk of gridlock are positively related to the probability of withdrawal. The effect of amending legislation is not statistically significant. Furthermore, our study provides evidence that the Amsterdam Treaty reduced the number of withdrawals.

Although we are only able to indirectly measure the reasons for imperfect agenda-setting by national elections and procedural changes, we believe that introducing uncertainty into the analysis of Commission proposals may provide further insights into other phenomena, such as duration, amendments, delay, etc. For EU decision-making, our results suggest that the Amsterdam Treaty, which introduced the possibility of early agreements, may decrease uncertainty by reducing the duration of EU decision-making. If EU decision-making takes less time, the probability that an external shock changes the position of the pivotal actor decreases. Although the number of member-states increased from 15 to 27, we find that the probability of withdrawal shrinks after the Amsterdam Treaty reforms came into force.

We are confident that future research on imperfect agenda-setting will provide new measures of uncertainty and examine other sources of uncertainty. For

example, another source might be intra-Commission decision-making because administrative staff and procedures can influence the level of information ([Hartlapp et al., 2014](#); [Kassim et al., 2013](#)). Our model on imperfect agenda-setting may also stimulate research on decision-making in other political systems where the agenda-setter needs the support of additional veto players who may change their positional stance during the decision-making process. In Europe, this is very likely in political systems such as the Netherlands and Switzerland where legislative proposals do not lapse after a legislative term and only die if they are rejected ([Döring, 1995](#): 242). Further applications include political systems such as those in Germany and Austria ([Fortunato et al., 2013](#)), where elections in the federal states can change the composition of the second chamber after a proposal has been formally initiated.

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Notes

1. The win-set is an alternative measure of policy conflict (Drüner et al., 2016).
2. The official treaties can be found on the EUR-Lex webpage: <http://eur-lex.europa.eu/collection/eu-law/treaties.html> (accessed: 5 August 2016).
3. Note that Tsebelis and Garrett argue that they only assume complete information for the last stage of decision-making (e.g. Garrett and Tsebelis, 1996: 280). However, in their studies of EU decision-making uncertainty is neither formally modeled nor measured (e.g. Tsebelis, 1994, 2002; Tsebelis and Garrett, 2000). Moser (1996: 837) uses a complete information model to criticize Tsebelis (1994), but he argues that position changes are one explanation for successful European Parliament amendments (see also Tsebelis, 1996).
4. An alternative would consist in referring to the bargaining literature. We have decided to use a spatial model for three reasons. First, spatial models are the workhorse models in agenda-setting. Hence, using a spatial model allows us to use well-established analytical tools (Romer and Rosenthal, 1978, 1979). Second, testing bargaining models typically requires other variables that we do not have (e.g. discount factor, salience). Third, some bargaining models such as the compromise model cannot predict failure (Thomson et al., 2006).
5. One potential extension of the model is to allow for multidimensional policy spaces. The predictions of the model remain unchanged if we assume that the dimensions are independent. This means that the Commission's proposal on one dimension has no bearing on the others. We can consider each policy in isolation, i.e. as though we are operating in the single-dimensional case for each.
6. The logic behind this assumption stems from the requirement that the Commission's proposal has to be approved by the pivotal actor. Hence, it seems reasonable to position the status quo and the Commission not too far away from the pivotal actor.
7. Note that Proposition 1 is in line with a scenario where a blocking minority in the Council and not the entire legislative body opposes a Commission proposal because we focus on the pivotal actor (e.g. a member-state in the Council or a Member of the European Parliament) and not the entire legislative body.
8. We drop 16 cases where information on the date of withdrawal or signature was missing. Note that we use the procedure code to identify whether a proposal was decided under the co-decision procedure.
9. To link the legislative proposals to the policy areas, we use information on the leading Directorate-General.
10. Commission of the European Communities. 1999. *Commission Communication to the European Parliament and the Council. Effects of the entry into force of the Amsterdam Treaty on the current legislative procedures*. SEC(1999)581; Commission of the European Communities. 2003. *Communication from the Commission to the European Parliament and the Council. Effects of the entry into force of the Nice Treaty on the current legislative procedures*. COM(2003)61; European Commission. 2009. *Communication from the Commission to the European Parliament and the Council. Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures*. COM(2009)665.

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