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Coordinating Sectoral Policymaking: Searching for Countervailing Mechanisms in the EU Legislative Process

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COORDINATING SECTORAL POLICYMAKING: SEARCHING FOR COUNTERVAILING MECHANISMS IN THE EU LEGISLATIVE PROCESS

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COORDINATING SECTORAL POLICYMAKING: SEARCHING FOR COUNTERVAILING MECHANISMS IN THE EU LEGISLATIVE PROCESS

Abstract

In contrast to parliamentary systems, the Council of Ministers, the main legislative body of the European Union, consists of different formations in which national ministers with similar sectoral portfolios participate. This decision-making structure has led to a 'loss of coherence'. In this paper I analyze several ways to strengthen policy coordination in the Union, including current coordination by the General Affairs Council and further involvement of the European Council. The analysis shows that *ex ante*-coordination, which is possible when drafting a proposal (for instance, in the case of Coreper) is more effective than *ex post*-coordination. In addition, imposing a *hierarchical* structure in which the European Council may review policy initiatives is also rather effective. However, this arrangement raises the question whether such a structure is suitable for a democratic system in which Parliament is not the principal decision-making body.

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Introduction

The Council of the European Union—or the Council of Ministers as it was initially called—has developed into a broad range of different Council formations. When the European Community was established, the Foreign Affairs ministers of the member states only attended the Council meetings. But soon these ministers started to invite one or more colleagues in order to assist or replace them (Westlake, 1999: 59). The Transport Council and the Agriculture Council were among the first Council formations to be formed, followed by the Social Affairs Council. The number of different Council formations further increased in the 1970s en 1980s. Helsinki European Council (1999) first discussed this development and decided to limit the

[1]

number of different formations.[2] The amended rules of procedure for the Council that were adopted on 5 June 2000 limited the number of different Councils.[3] Besides the General Affairs Council in which the Foreign Affairs ministers of the member states meet, 15 other Councils were identified that focused on a specific policy sector. The Seville European Council (2002) decided to further reduce the number of Council formations by merging the existing 16 formations into nine new ones (European Council 2002: 23). The new formations include Councils on Economic and Financial Affairs, Justice and Home Affairs, Competitiveness, Agriculture and Fisheries, and Environment.[4] Almost all Council formations are based on policy sectors providing a platform for ministers representing the same policy sector. Depending on the prescribed legislative procedure, these ministers take final decisions on legislative proposals (consultation procedure) or adopt proposals in agreement with the European Parliament (codecision procedure).

Unlike national legislatures in which parliament adopts new laws, the European Union (EU) allows sectoral Council formations to set its policies. The current decision-making structure of the Council has been challenged as part of discussions on institutional reform. In the White Paper on European governance, the European Commission (2001: 29) noted that "[t]he Council of Ministers, in particular the General Affairs Council composed of Ministers for Foreign Affairs, has lost its capacity to give political guidance and arbitrate between sectoral interests", and concluded that there is a need to improve policy coordination. The member states as well as Union's High Representative for the Common Foreign and Security Policy (Solana, 2002) also expressed their concerns.

In this paper I will address these concerns and analyze the sectoral structure of the Union's decision-making process. More specifically, I aim to explore the ways in which the making of different policies in the EU might be coordinated and how changes in the Union's legislative process could strengthen policy

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[2] See European Council (1999: Annex III).

[3] Council Decision of 5 June 2000 adopting the Council's Rules of Procedure, *Official Journal of the European Communities* L 149, 23.6.2000 (2000/396/EC, ECSC, Euratom). For the list of Council formations see Follow-up to the Helsinki Council Conclusions on 10-11 December 1999: Council formations, *Official Journal of the European Communities* C174/02, 23.6.2000.

coordination.[5] The sectoral structure of the Union's decision-making process has been overlooked by much of the analytical models of EU decision-making.[6] Focusing on the interactions between the member states as part of a single Council, Parliament and the Commission, these models show how changes in the decision-making process may have led to shifts in power between these actors. This literature seems to show that the Union becomes more like a parliamentary system as the power of Parliament has increased, especially under the codecision procedure.[7] However, the question is whether this conclusion is partly the result of the limited focus on the balance of power in the EU. Others suggest a different view of the Union's decision-making process by taking account of the links between the national administrations and the policymaking process in Brussels. They indicate that the Council structure has created a mode of interest representation that 'cuts across the member states' and in which the sectoral ministers and other officials from various member states play an important role in the making of common policy (see, for instance, Christiansen, 2001: 152). In this view, sectoral policymaking becomes an important aspect of the Union's decision-making process, which may even outstrip the traditional national divide between member states. In this paper I follow this perspective and focus on the countervailing mechanisms that are part of the Union's legislative process, which may improve policy coordination within the EU.[8]

The analysis in this paper shows that the General Affairs Council as well as the European Parliament has

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[4] Council Decision of 22 July 2002 adopting the Council's Rules of Procedure (2002/682/EC, Euratom), *Official Journal of the European Communities*, L230/20, 28.8.2002. Annex I of these rules presents the new list of Council formations.

[5] In this paper I focus on *horizontal* coordination, that is, the coordination of policy between different sectors at the EU level. A different perspective would be to concentrate on vertical coordination, that is, the coordination between the EU and the member states with regard to the further development and implementation of policy.

[6] See, for instance, the models proposed by Crombez (1996, 1997), Steunenberg (1994) and Tsebelis (1994). Steunenberg and Selck (2002) presented an overview of the various explanatory models of EU decision making based on the spatial theory of voting and game theory.

[7] See the debate between Crombez (2000b), Steunenberg (2000b), Garrett and Tsebelis (2001), and Corbett (2000, 2001). For the question whether the Union is developing towards a parliamentary system, see also the contributions in Steunenberg and Thomassen (2002).

[8] In another paper I analyzed how policy coordination could be improved by changes in the structure of the Council. These changes included the merger of Council formations, as proposed by the Seville European Council, and the strengthening of the Council Presidency (Steunenberg, 2002). In this paper I will not go into the structure of the Council.

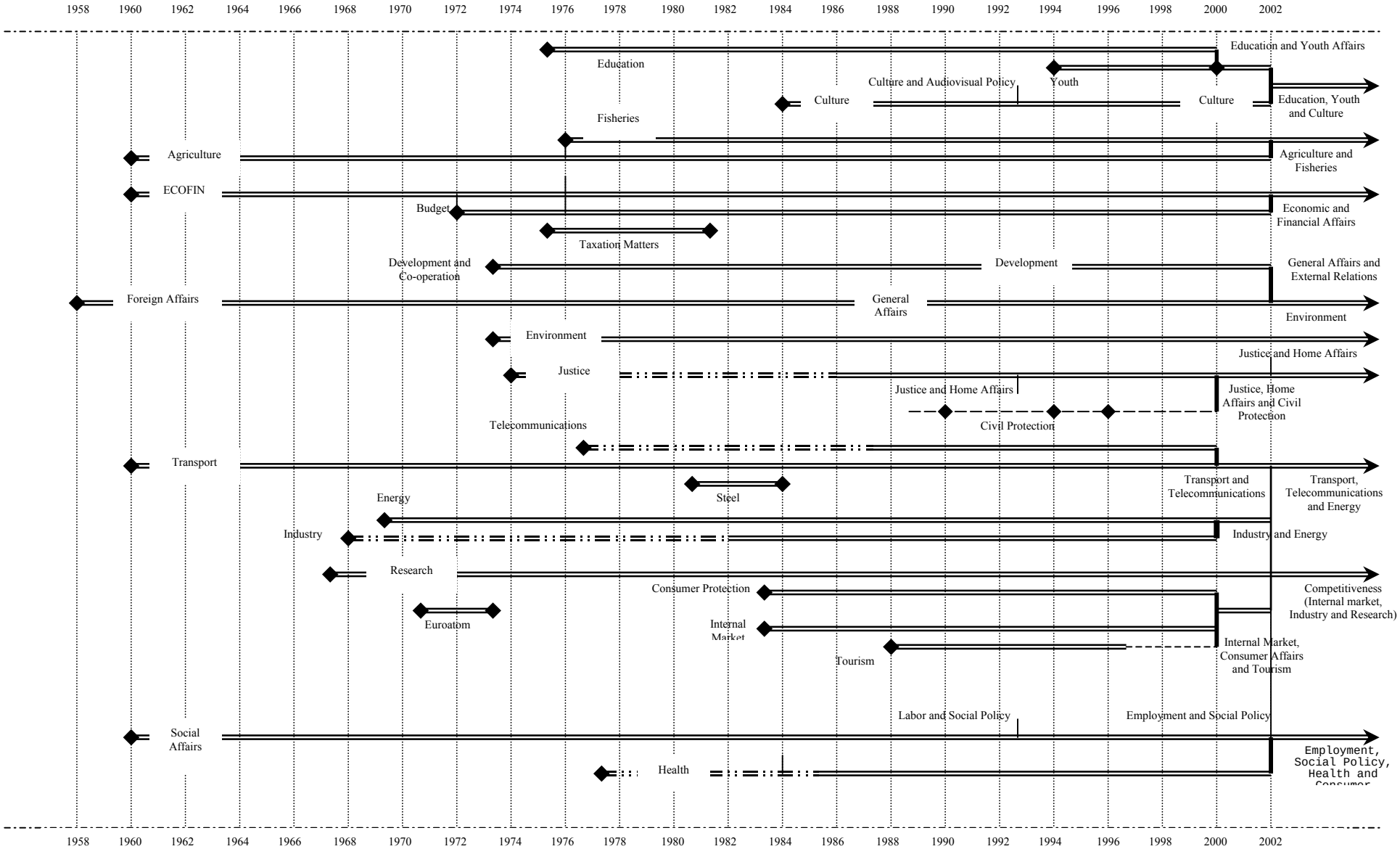
limited coordinating powers. These powers can be labeled *ex post*-coordination, since they involve possible adaptations and changes after a proposal has been drafted. Coreper could play a more effective role since this committee participates in the preparation of various initiatives. In addition, it is a single committee that is not sectorally divided. Finally, I show that the involvement of the European Council, which holds a politically hierarchical position versus the Council formations, might be an actor that could effectively coordinate between different policies. However, this arrangement fits a Union as a confederation of states and not federal or parliamentary model of Europe in which the European Parliament plays a central role in the legislative process.

The paper is structured as follows: After discussing the extent to which sectoral policymaking has developed in the EU, I show why sectoral policymaking might be beneficial to political actors. However, when political actors have a general interest in EU policy and are also concerned by the policies set by other Council formation, sectoral policymaking may have its drawbacks. I analyze several possible ways to counteract the consequences of sectoral decision-making, including coordination by the General Affairs Council, joint-policymaking with the European Parliament, policy preparation by Coreper, and involvement of the European Council. I conclude the paper by discussing the implications of my analysis for the reforms currently discussed in the European Union.

The rise of sectoral policymaking in the European Union

The number of sectoral Council formations has grown over the years. Based on various issues of the Official Bulletin of the European Union, Figure 1 presents the development of different Council formations in the period 1958-2002 based on their meetings. Especially in the 1970s the number of different formations increased. While 8 different Council formations met in the period 1967-71 (the dotted lines in the figure indicate that a Council formation did not meet for some time), 20 formations were active around 1988, and this number further increased to 22 formations in 1996. This development is often related to the increasing volume of the Union's legislative agenda. In their monograph on the Council of Ministers, Fiona Hayes-Renschaw and Helen Wallace indicated that "[i]n practice different specialised formations of the Council

Figure 1: Different Council formations in the period 1958-2002



have emerged in response to the rhythm and volume of business in different policy areas" (1997: 29), which in their view is partly the result of "...changing fashions in public policy and shifting EU priorities" (1997: 33).[9] The meetings of the Internal Market Council, which started in 1983, and the increase in the number of meetings of the Justice and Home Affairs Council from 1992 on illustrate this.

The increase of the number of sectoral Councils has not always been a steady one. Some Council formations were maintained for a number of years and then disappeared or were merged with others. The Civil Protection Council, for instance, only met five times in the period 1987-1996 and then disappeared as a separate Council formation. The Iron and Steel Council only met in the period 1981-84. The Taxation Matters Council was active in the period 1975-1981. Nevertheless, the overall number of different formations grew, and at the beginning of 2000 20 different Council formations were active in the EU. With the introduction of the new Council's rules of procedure in June 2000 the member states officially recognized 16 different Council formations, which meant the first reduction of the number of different formations. The decision of the Seville European Council in 2002 reducing this number to only nine formations, has led to an additional merger of Council formations.[10]

The gradual specialization of Council formations may have reinforced the idea that sectoral minister need to discuss 'their' dossiers at the EU level. In discussing the rise of different Councils, Jan Werts indicates that it "…reflects a tendency by the specialized Ministers to manage by themselves European policy related to their portfolio"(Werts, 1992: 163) This development of specialization in the Union's decision-making process has led to a further fragmentation of EU policymaking. As Hayes-Renschaw and Wallace noted, cross-Council coordination is "very hit-and-miss", while the "...pronounced segmentation of work between policy areas and between Councils impedes coherent decision making and consistent treatment of subjects" (1997: 286). EU policymaking has become very sector oriented, while the link between these sectors and the

[9] See also Westlake (1999: 59) and Nugent (1999: 143) for similar claims.
[10] Interestingly, the Defense ministers regularly meet as part of the Political Security Committee, which is not a formal Council formation and thus not mentioned in the rules of procedure.

subsequent policies they make has not received much attention.

Table 1: The sectoral structure continued:
Commission portfolios and Parliamentary committees

Portfolios of the Commissioners	*Council formations*	*Parliamentary Standing Committees*
1. Agriculture, Rural Development & Fisheries	1. Agriculture	1. Agriculture and Rural Development
	2. Fisheries	2. Fisheries
2. Budget	3. Budget	3. Budgets
		4. Budgetary Control
3. Development & Humanitarian Aid	4. Development	5. Development and Cooperation
4. Economic & Monetary Affairs	5. Economic and Financial Affairs	6. Economic and Monetary Affairs
5. Education & Culture	6. Education and Youth Affairs	7. Culture, Youth, Education, the Media and Sport
	7. Culture	
6. Employment & Social Affairs	8. Employment and Social Policy	8. Employment and Social Affairs
7. Enlargement	9. General Affairs	9. Foreign Affairs, Human Rights, Common Security and Defence Policy
8. External Relations		10. Constitutional Affairs
9. Environment	10. Environment	11. Environment, Public Health and Consumer Policy
10. Health & Consumer Protection	11. Health	
11. Internal Market and Taxation and Customs Union	12. Internal Market, Consumer Affairs and Tourism	12. Legal Affairs and the Internal Market
12. Competition		13. Regional Policy, Transport and Tourism
13. Transport & Energy, and Relations with the European Parliament	13. Transport and Telecommunications	
14. Regional Policy	14. Industry and Energy	
15. Trade		14. Industry, External Trade, Research and Energy
16. Enterprise & Information Society		
17. Research	15. Research	
18. Justice & Home Affairs	16. Justice, Home Affairs and Civil Protection	15. Citizens' Freedoms and Rights, Justice and Home Affairs
19. Administrative Reform		16. Petitions
		17. Women's Rights and Equal Opportunities

Source: Council formations are based on the Follow-up to the Helsinki Council Conclusions on 10-11 December 1999, *Official Journal of the European Communities* C174/02, 23.6.2000; for the portfolios of Commissioners, see http://europa.eu.int/comm/commissioners/index_en.htm (November 2002); for Parliamentary committees, see http://www.europarl.eu.int/committees/home_en.htm#parliamentary (November 2002).

Interestingly, the sectoral division in the organization of the Council is reflected in the structure of the European Commission as well as the European Parliament. Table 1 presents the formation of different portfolios of Commissioners as well as the standing committees of Parliament which discuss policy initiatives proposed in the Union. As this table indicates the sectoral divide is much more widespread in the Union than only the Council. Additionally, also the Commission and Parliament have organized their activities based on similar policy sectors, which may re-enforce the possible fragmentation due to decisions made in the nine different Councils.

What is the attraction?

The first step in the analysis is to focus on the possible consequences of sectoral policymaking, that is, for the decisions made by ministers with similar portfolios as part of the same Council formation. These ministers, like any other player, are assumed to have simple Euclidean and separable preferences. Moreover, these preferences are single-peaked, so that each player has a most preferred position, which is called the player's ideal point. Other alternatives in this space are valued according to distance: the farther away an alternative is from the player's ideal point, the less it is preferred.

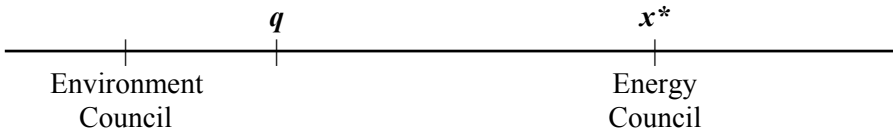
The ministers in the same Council formation share responsibility for a policy area, which is represented by a single dimension. In addition, and to simplify the analysis, I assume that these ministers, for instance, as part of the Industry and Energy Council, have similar preferences.[11] A reason for this is that since they share the same responsibilities in the national political arena, these ministers are faced with similar mechanisms that shape their preferences. These mechanisms could be either 'capture' by special interest groups, or the necessity to deliver on policy promises to this sector as part of political survival. The ideal points of these ministers will be denoted as b. Similarly, the ministers in a second Council formation, for instance, the Environment Council, are responsible for a different policy dimension. The ideal points of these ministers

[11] Of course, this assumption can be relaxed allowing these ministers to have more diverse preferences. At the same time, this will complicate the analysis while the main conclusions of the analysis will not be affected as long as these preferences are found in an area around the ideal position used here.

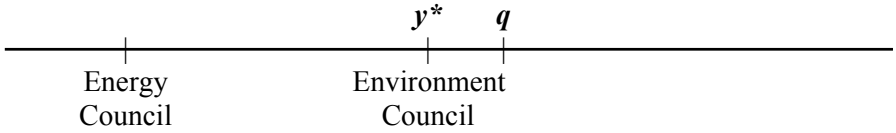
will be denoted as *a*. Finally, the current state of affairs or *status quo*—the policy or situation without a common policy at the beginning of the policymaking process—will be denoted as *q*.

Figure 2: Decision making by two sectoral Council formations

A: policy dimension concerning energy



B: policy dimension concerning the environment

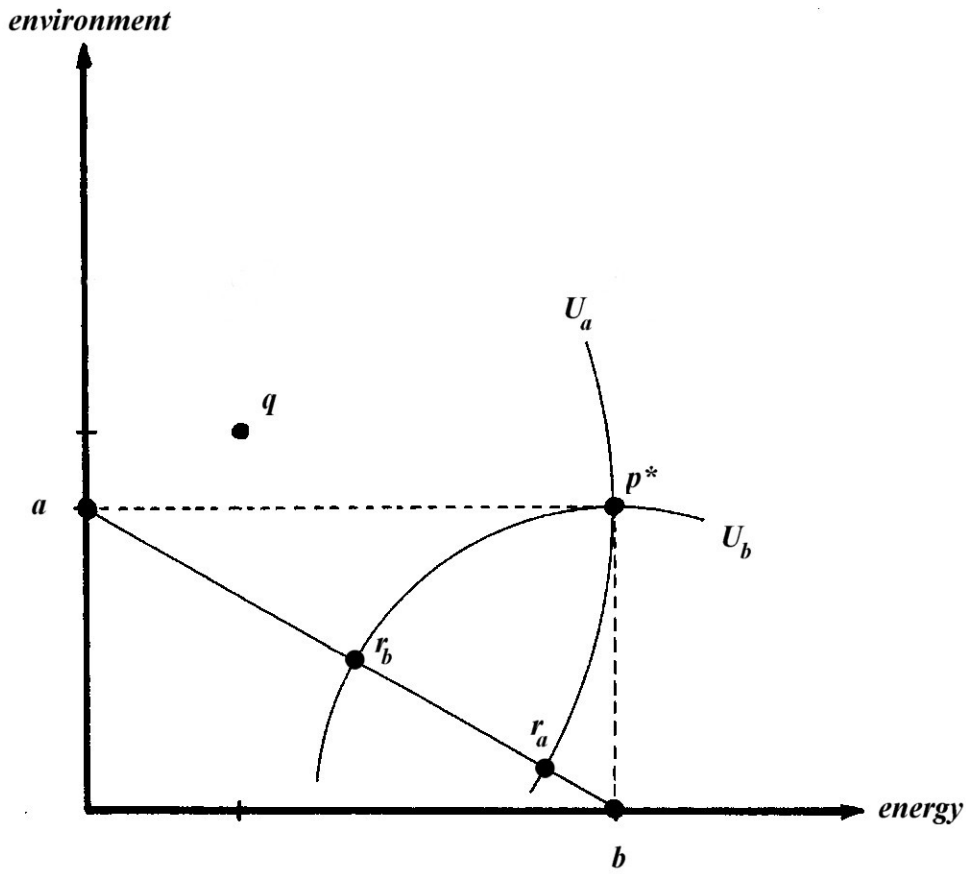


Each of the Council formations has unique (or monopoly) jurisdiction over the making of common policy in some area. When the Commission proposes a new policy in the area of energy, the policy will be submitted to the Industry and Energy Council for approval. Based on the preferences as presented in Figure 2-A, the Energy Council will agree on a new policy *b*. Similarly, the Environment Council, which decides on any initiative in the area of environmental policy, will set a policy *a* (see Figure 2-B). The unintended consequence of these separate decision-making processes is that the resulting EU policy is simply the sum of decisions made by the sectoral Councils. Without any further coordination, the ministers in each of the Council formations, whether it is Industry and Energy or the Environment, are able to reach their most preferred policy along the dimension for which 'their' Council has jurisdiction.

This result differs from the outcome based on decision-making in national cabinets. In cabinet governments, policies are the result of agreement between ministers responsible for *different* policy sectors together with a 'coordinating' prime minister. As a consequence, the resulting policy will reflect these different interests and to a lesser extent the interest of one specific sector. The different ministers have to negotiate a result that is acceptable to all of them, including the prime minister. So a single sectoral minister is not able to stick to his or her most preferred policy, since it will not be feasible (see Steunenberg, 2002:

10-3). However, sectoral decision making at the EU level offers different opportunities. As sectoral ministers are now able to obtain their most preferred result, it is more beneficial than national policymaking. This advantage may explain the popularity of the 'route to Brussels' and the expansion of policymaking at the European level.

Figure 3: Two sectoral Council formations in a two-dimensional policy space



However, sectoral decision-making as described might not be preferred by ministers who have an interest in policies represented by the 'other' dimension of the policy space. As applied to the example in Figure 2, energy ministers might be concerned with environmental policy since high environmental standards may affect the costs to energy producers. At the same time, ministers responsible for the environment may have an interest in energy policy since some productions methods may have a negative impact on the

environment. This problem can be illustrated by taking the two policy dimensions—energy and environment—together in a two-dimensional space. Energy is reflected by the horizontal *x*-axis, while the environment is represented by the vertical *y*-axis in Figure 3. Moreover, the preference orderings for both sectoral Councils are kept the same as in Figures 2-A and B.

The outcome that was the result of uncoordinated sectoral policymaking is presented as p^* in Figure 3. This solution is not preferred by both groups of ministers when they have a preference with regard to the 'other' dimension. Taking simple Euclidean preferences for this space, both groups of ministers prefer a range of policies that are found in the area below p^* where their indifference contours U_a and U_b overlap. When these two Council formations engage in a bargaining process over a new joint policy, the resulting outcome will be found on the section of the contract curve (i.e. the line between the ideal positions *a* en *b*) between the points r_b and r_a. Because such a policy yields a higher utility level to both Council formations, it is Pareto preferred to the sectoral solution p^*.

The disadvantages of sectoral policymaking is that the 'other' Council formations, which are not involved in the decision-making process, will be faced with less beneficial outcomes. Since this problem could be mutual, several Council formations could benefit from a change of the current system. The decisions made by the Helsinki European Council (1999) and, more recently, the Seville European Council (2002) indicate that the member states are well aware of the problems related to 'insufficient coordination' between different Council formations. While the Helsinki European Council limited the number of Council formations to 16, the Seville European Council merged these formations into nine new ones. Nevertheless, the ministers who were part of the different formations before the merger are still able to participate as full members of the new formations. This structure improves the coordination between different policies *within* the merged Councils (see Steunenberg, 2002: 13-5), but it does not resolve the inadequate coordination *between* the remaining Council formations. How could the policy coordination between these Councils be improved?

Sectoral policymaking versus coordination: countervailing mechanisms

Other actors in the Union's legislative process could improve intersectoral policy coordination. I will focus on the General Affairs Council, the European Parliament, Coreper, and the European Council, which may countervail the sectorally biased decisions of individual Councils formations.

The General Affairs Council[12]

The important idea behind the formation of different Councils was that the General Affairs Council would coordinate policymaking between various sectoral Councils. However, looking at past performance, most observers are rather skeptical about the coordinating abilities of the General Affairs Council. In an assessment of the Council in 1979 a committee of 'three wise men' indicated that "the General Affairs Council has ceased to be general, either in the sense of directing the work of the separate Councils, or in the sense of providing a forum for the discussion of all new major issues" (Werts, 1992: 162).[13] More recently, Geoffrey Edwards remarked that "[t]he initial idea was that Foreign Ministers in the General Affairs Council would exercise an overall 'control'. It soon proved not to be feasible" (Edwards, 1996: 134).[14]

To assess the coordinating abilities of the General Affairs Council, I propose to use a simple game-theoretical model in which the different players are allowed to make a choice at different stages of the game. The two sectoral Councils that are involved are the Environment Council and the recently formed Transport, Telecommunications and Energy Council, or Energy Council for short. The ministers in these Councils have spatial (two-dimensional) preferences. However, they can only decide on a (one-dimensional) policy for which this Council has jurisdiction. These different policy areas, described by continuous dimensions, are presented by the horizontal and the vertical axis in Figure 4.

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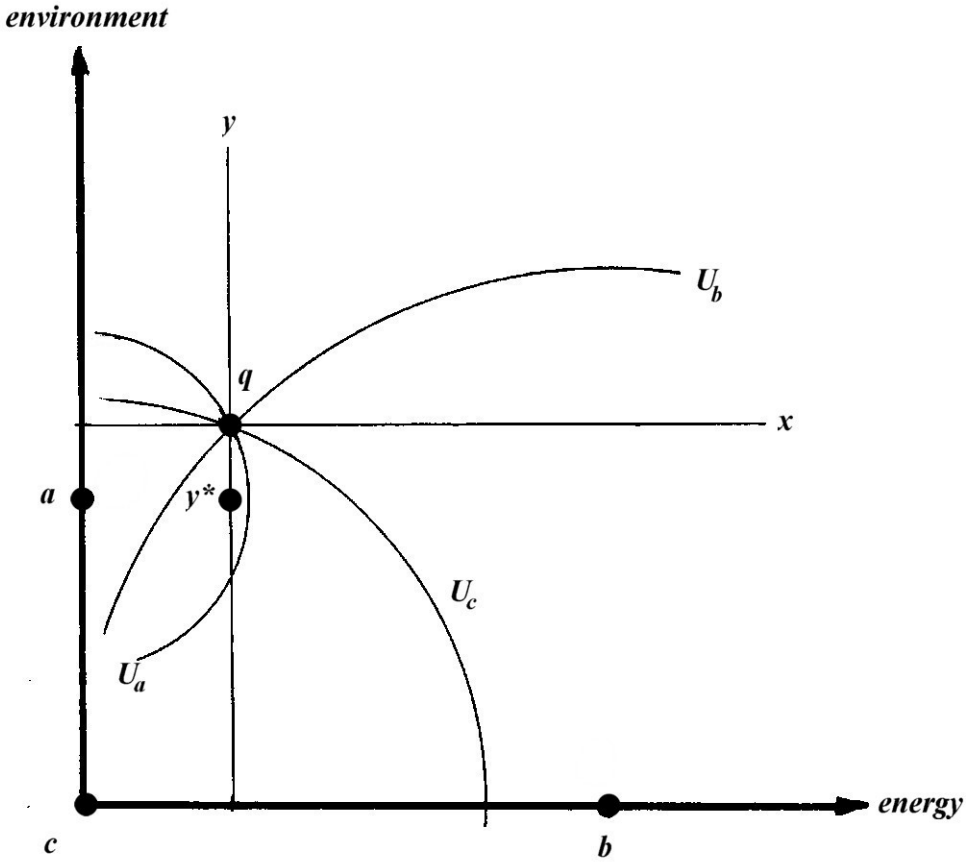
[12] The 2002 Council's rules of procedure renamed the General Affairs Council into the General Affairs and External Relations Council (see note 4). For reasons of convenience I will use the term General Affairs Council, since I focus on the coordinating task of this Council formation.

[13] See for the Conclusions of the 'Three Wise Men', Report on European Institutions, *Official Bulletin of the EC*, 11-1979: 25-8.

[14] See also Westlake (1999: 166, 391-2) and the European Commission (2001: 29).

Figure 4: Decision making by sectoral Council formations coordinated by the General Affairs Council



The structure of the game is as follows: the Environment Council, which consist of ministers with ideal points at *a*, may decide to start a legislative process by making a new proposal. The General Affairs Council, whose foreign ministers have ideal points at *c*, decides whether or not to intervene. If it does, the proposal is sent to the Energy Council, which consists of ministers with ideal points at *b*. The Energy Council can accept or oppose the proposal. In case of opposition, the proposal is referred back to the Environment Council for further discussion, which implies that it cannot (yet) be adopted. In this way the Energy Council can be modeled as a veto player who is able to oppose policy initiatives of the Environment Council. Of course, in a

similar way proposals made by the Energy Council would be subject to a veto of the Environment Council. [15]

The outcome of this process is the new environmental policy y^* as presented in the figure.[16] To the Environment Council this policy is the best possible outcome given the fact that this Council only has jurisdiction over the vertical policy dimension y. The General Affairs Council supports the new policy, since it prefers this policy to the *status quo* (its indifference contour with regard to q is presented by U_c). The Council does not want to reverse the proposal of the Environment Council. As the gatekeeper in this process it will not open its gates and thus will not involve the Energy Council.

A policymaking process by the Energy Council can be approached in a similar way. Based on the same preference configuration as presented in Figure 4 the Energy Council, which is responsible for the horizontal x-dimension, may propose a new policy that would change the current state of affairs expressed by q. However, any proposal to the right of the *status quo* and along the horizontal policy dimension x that would move the energy policy closer to the ideal points of the Energy ministers will not be accepted by the General Affairs and the Environment Councils. If the Energy Council would release a new proposal, the General Affairs Council opens its gate and submits the proposal to the Environment Council. The Environment Council, which only prefers new policies within its indifference contour U_a, opposes the new measure. Based on this opposition, the measure will be referred back to the Energy Council. In that case, and given the fact that there is no support from either the Environment Council or the General Affairs Council for a change, the energy policy remains equivalent to the *status quo*.

The analysis indicates that the General Affairs Council could be approached as a gatekeeper between different Council formations. The moment one of the sectoral Councils releases a new proposal, the General Affairs Council has the opportunity to involve another Council to create opposition to the new policy.

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[15] For this game I assume that players have complete and perfect information. In addition, none of the players prefers its decision to be overturned. This preference can be viewed as imposing some cost on a proposal that is not the final outcome of the decision making process. See Appendix A-1 for the general solution of this game.

[16] This outcome can be characterized as a structure-induced (Nash) equilibrium (Shepsle, 1979; Shepsle and Weingast, 1981), since it is a result of both the structure of the decision-making process and the preferences of the players.

However, as the analysis suggests, the General Affairs Council only intervenes when involvement affects the outcome. In all other circumstances, including cases in which the General Affairs Council prefers the new policy to the current one despite possible opposition, it keeps its gate closed and avoids further discussion. In other words, the General Affairs Council's coordinating role is rather weak, as echoed by the literature on the EU.

A second limitation to the coordinating abilities of the General Affairs Council is that the 'second' Council formation can, at best, 'block' a new initiative. This is a rather limited power. Many alternatives may exist that are slightly more preferred than the *status quo*, but are still quite far away from the policies that Council prefers. As long as a sectoral Council has the authority to decide on an issue, the other formations have limited means to affect the new policy.

Finally, a problem is that the General Affairs Council may not have the political authority to settle disputes between different Council formations. In the national context, the role of the Minister of Foreign Affairs does not usually include responsibility for policy coordination. If the Foreign Affairs Minister takes this responsibility at the EU level, it will easily bring him or her in conflict with 'his' or 'her' national ministers who have their own responsibilities, as well as with the prime minister who traditionally fulfills this coordinating role in national government. Next to its limited abilities, the General Affairs Council might not be in the position to secure sufficient coordination in the EU.

The European Parliament

A second possible coordination mechanism could be found in the European Parliament, which has become an important actor in the legislative process. The so-called codecision procedure, introduced by the Maastricht Treaty (1992), gives Parliament far-reaching powers in the decision-making process. Not only can Parliament block Council decision making under codecision, the procedure also institutionalizes bargaining between the Council and Parliament on proposals. The Treaty of Amsterdam (1997), and later the Nice Treaty (2000), extended the scope for codecision so that this procedure has become the most common one used in the Union. As a co-legislator in the Union, Parliament could try to change legislation that is

proposed by one of the Council formations and balance it with other concerns than the ones represented by the sectoral Councils.

Parliament's coordinating abilities are restricted. First, and in contrast to its national counterparts in the member states, the European Parliament does not have the power to initiate legislation. This decision-making right is reserved for the European Commission. This implies that Parliament depends on the Commission concerning the timing and drafting of a proposal. Besides the opportunity to delay the submission of a proposal, this decision-making power also allows the Commission (in negotiations with Coreper) to determine the relevant issues, or in terms of this paper, the policy dimensions that are part of the proposal. In other words, the Commission is able to determine whether a proposal refers to the environmental dimension as presented in Figure 4, the energy dimension, or both. Parliament does not have this ability. Secondly, as indicated in Table 1, the internal structure of the European Parliament is also based on sectoral division of labor. Although I will not develop this point further, it will have an impact on the decision-making process within Parliament and its ability to raise a strong voice against Council proposals that are too much colored by sectoral interests.[17]

Parliament's role in the decision-making process, and its ability to coordinate policy, can be represented by a game that resembles some of the models developed so far on EU legislative decision-making. In this model, and after the release of a policy initiative, Parliament has the possibility to bargain on the proposal with the sectoral Council involved.[18] When both agree, the proposal is adopted. The outcome of this procedure and the possible impact of Parliament can be illustrated with the preference configuration and *status quo* point as presented in Figure 5. The figure is similar to the one used to assess the impact of the General Affairs Council.

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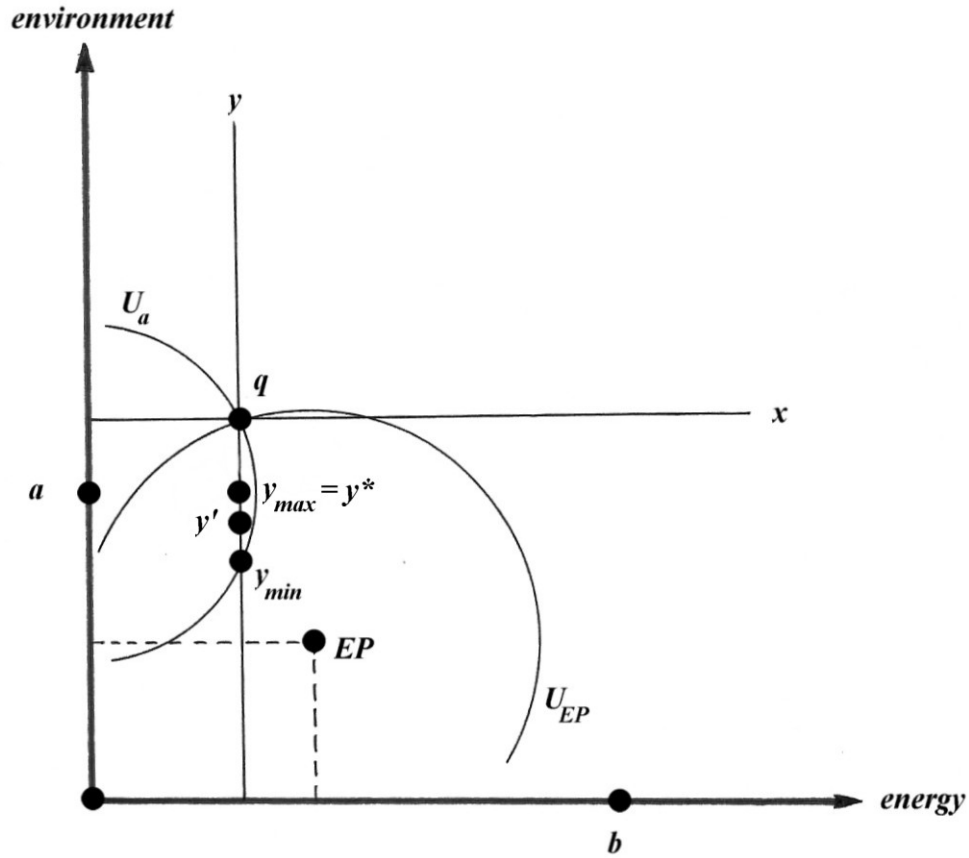
[17] One way of approaching this is by assuming that Parliament (or its members) has 'extreme' preferences with regard to policy issues. In view of the results presented in Appendix A-2, these preferences are then restricted to specific parts of the policy space so that no longer all possible outcomes are feasible.

[18] See also Tsebelis and Garrett (2000). Their bargaining model differs from the models in which political actors choose their strategies sequentially. See Steunenberg (1994, 2000a), Garrett (1995) and Crombez (1997, 2000a) for sequential models of codecision. König and Pöter (2001) present some empirical evidence.

Figure 5: Decision making by sectoral Council formations and the European Parliament



When the Environment Council proposes a new policy, the outcome will now be found between y_{max} and y_{min} along the y-dimension that intersects the *status quo*. The points in this interval form the 'negotiation set', that is, the set of new policies that are both feasible and Pareto optimal for the members of the two decision-making bodies. Applying the Nash bargaining solution, both actors select a policy y' that maximizes the joint utility over all values in the negotiation set.[19] This policy is equivalent to y' in Figure 5 when the Environment Council and Parliament value a unit-distance change away from their ideal points in the same way.

The new policy based on Parliament's involvement hardly differs from policy y^* that resulted from the previous analysis with the General Affairs Council. This is partly a consequence of Parliament's preferences versus the Environmental Council and the location of the *status quo*. If Parliament had more 'extreme' preferences on environmental issues (which can be associated with a change along the vertical dimension away from the origin), it could have blocked decision making by rejecting any change away from the *status quo*. A second and more important observation is that Parliament's involvement does not lead to a 'two-dimensional' change of policy. As illustrated in Figure 5, policymaking is still restricted to the environmental dimension. Parliament's involvement does not create the opportunity to expand the policy space to include the other policy dimension. Parliament is able to amend or reject a legislative proposal, but it cannot reformulate the proposal. It is not able to include new policy dimensions that are part of the jurisdiction of another sectoral Council.[20] Based on the analysis, Parliament's position can be characterized as having the possibility of *ex post*-coordination, which is bound to the decision-making process as already initiated.

Coreper

A third coordination mechanism is the Committee of Permanent Representatives (Coreper). All Commission proposals have to pass Coreper before they are submitted to one of the various Council formations.[21] The permanent representatives negotiate at an early stage the proposals the Commission wants to propose. According to Martin Westlake, "…these diplomats wield considerable de facto executive and legislative power" (1999: 276) and are, in practice, able to "…fulfill a number of complementary functions which could be summarized as information, co-ordination, interpretation, negotiation and defence" (Westlake, 1999:

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[19] See Appendix A-2 for further details. See Calvert, McCubbins and Weingast (1989: 608-9) for a justification of the Nash bargaining model in the otherwise noncooperative context of this paper.

[20] See in this respect also the germaneness rule, which does not allow Parliament to bring in another issue that is not related to the proposal (see, for instance, Tsebelis and Kalandrakis, 2002: 197). In the context of this paper, this rule is often interpreted as not being able to add a new dimension to a proposal. See, for instance, Hix (1999: 58) and Rasmussen (2000: 4) for this interpretation.

[21] There are a few exceptions here. First, there is the Special Committee for Agriculture that acts as a specialized Coreper and deals directly with the Council. Second, Coreper II, composed of the permanent representatives themselves, works mainly for the Foreign Affairs ministers and the Economic and Financial Affairs Council (see Westlake, 1999: 278).

281). In addition, if the permanent representatives reach agreement, the Council will adopt the proposal without further discussion.

An importance difference with Council formations is that Coreper is able to discuss all aspects of policy proposals. Its scope is not limited to one or more dimensions, but covers all possible dimensions that might be part of a Commission proposal. In this way, the committee is in a position to make a more 'balanced' choice that accounts for the different dimensions of a policy problem. In terms of the example presented earlier, Coreper is able to make a choice about both policy dimensions—energy and the environment—while the two Council formations are restricted to the one or the other.

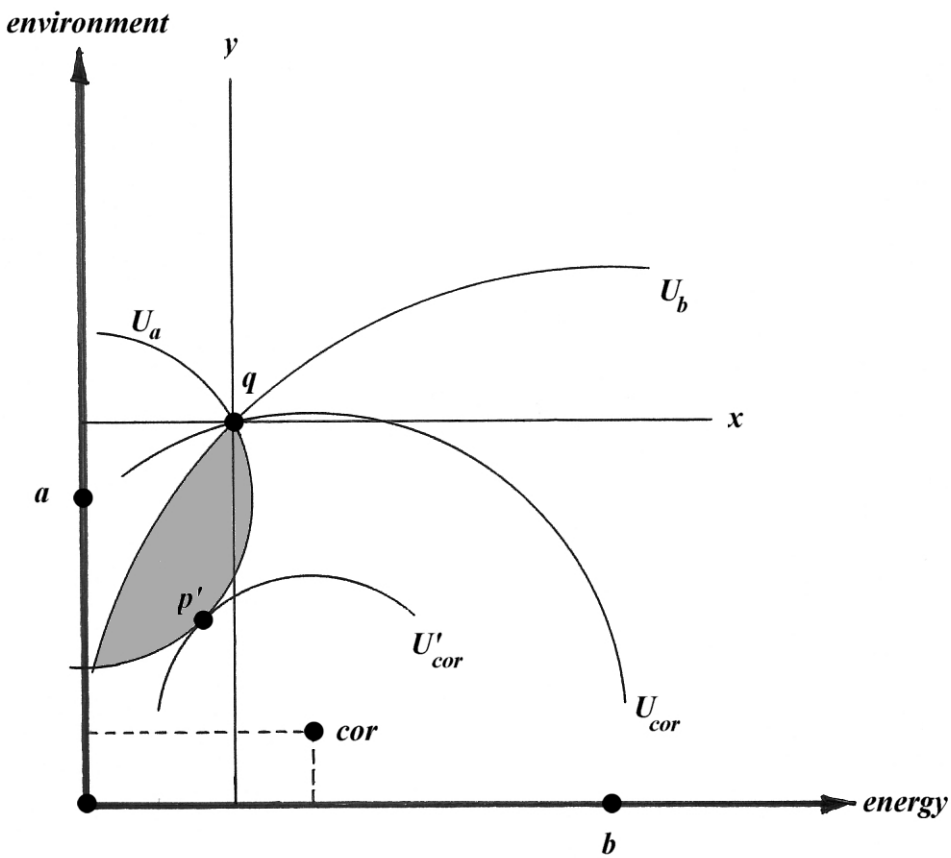
Coreper's preparatory role in the policymaking process can be approached in the following way: based on an initiative of the Commission, Coreper proposes a new policy based on the agreement of its members.[22] In the next stage, this policy is submitted to both the Energy and the Environment Council in order to have agreement on each aspect of the proposal. At this point the procedure could be that one of these formations has to approve the proposal, while the other has the possibility to object to the policy, or that both Councils have to agree when a policy is divided into two separate proposals. Whether Council formations are able to approve or reject a proposal is not relevant to the analysis, since these decision-making rights boil down to a veto of each of these formations. The process can now be represented by a two-stage game in which Coreper proposes a new (two-dimensional) policy that, in the second stage, has to be approved (not vetoed) by both Council formations.

The outcome of this process can be illustrated with the preferences as presented in Figure 6. Coreper, denoted as *cor*, is assumed to have a 'moderate' preference as the committee is composed of members who have to represent various national interests and not only the interests of specific policy sectors. Its ideal point is located in the area between both Council formations. The two Council formations—Environment and Energy—are at the same positions as before. The possibility of a veto implies that both Council formations

[22] The interaction between the Commission and Coreper can be approached as a bargaining problem. To keep my analysis as simple as possible, I will disregard this feature and focus on the consequences of Coreper's involvement for the coordination of policy.

only accept proposals that are found in the intersection of their win sets. The grey area in the figure indicates this intersection. Based on the preferences of the permanent representatives policy, p' is Coreper's best choice: this policy is closest to the preferences of the permanent members and located in the win sets of both Council formations.[23] Policy p' will be accepted by the Environmental and Energy Councils and forms the equilibrium outcome.

Figure 6: Decision making by sectoral Council formations coordinated by Coreper



[23] See Appendix A-3 for further details.

The analysis leads to several observations. First, the outcome differs from the one derived for the decision-making process in which the Council formations decide on 'their' policy dimension only. In comparison to the outcome y^* that was produced by the game with the General Affairs Council, the new solution is shifted towards Coreper's most preferred policy. If sectoral preferences affect Coreper's preferences less, its involvement improves coordination and leads to more 'balanced' policies. A second observation relates to the fact that the analysis thus far is based on homogeneous preferences. The ideal points of the permanent members are represented by only one position (i.e. the position *cor*). However, it is more likely that these members hold different views, which could be the result of differences in the extent to which member states depend on specific policy sectors. In those circumstances, Coreper's involvement will become less effective. If the committee may not be able to reach agreement[24], the policy is submitted to the Council, which then has to make a decision. Despite these limitations, the analysis indicates that Coreper, in contrast to the European Parliament, is able to engage in *ex ante*-coordination by affecting the drafting of a new policy proposal.

The European Council

The last possibility I would like to discuss is the role of the European Council—the meeting of European heads of state or government—in coordinating EU policy. This role was extensively discussed at the Helsinki European Council (1999), which approved 'operational recommendations' on working methods that aimed to improve policy coordination (European Council, 1999: conclusion 20). The gist of these recommendations is to define '...a single chain of coordination capable of ensuring that Union action is consistent with the will of its political leaders. This chain of command starts in the Member States themselves with effective interdepartmental coordination and arbitration, and extends through Coreper, the General Affairs Council to the European Council.'[25] So, from the perspective of the member states, the

[24] Technically, this situation occurs when the current state of affairs or *status quo* is found in the unanimity set of the committee members.

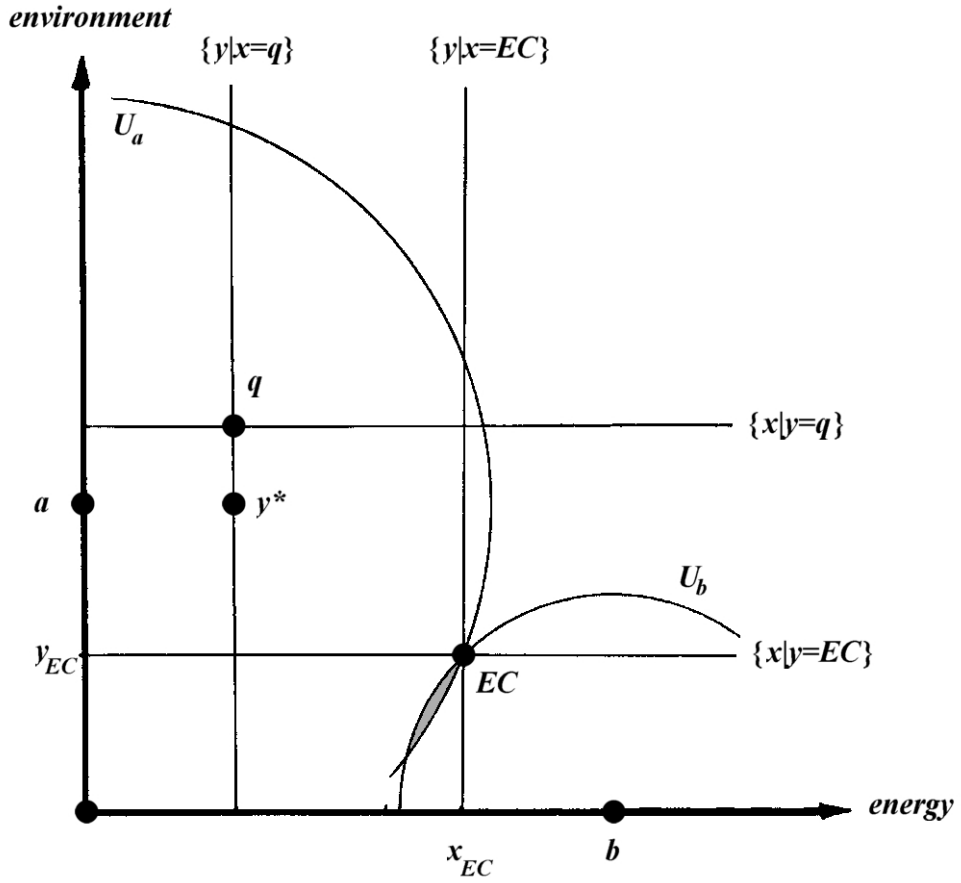
[25] See European Council (1999: Annex III) on 'An Effective Council for an Enlarged Union: Guidelines for reform and operational recommendations'.

European Council is the last link in the Union's decision-making process that could secure the coordination of common policy.

Based on the views expressed by the member states at the Helsinki European Council, the Council could, first of all, decide on issues that have not been resolved by the General Affairs Council. When Council formations disagree on policy, and the General Affairs Council is not able to reach a solution, the issue can be brought before the European Council. Secondly, the Council discusses and decides on policy issues that have substantial political importance. Although the European Council does not have a formal position in most of the Union's legislative procedures, these 'informal accords', which are often based on a proposal made by the Commission, play an important role and bind the subsequent decision making by the Council formations. An example is the agreement on combating 'mad cow' disease in the United Kingdom during the BSE-crisis. After months of conflict, the Florence European Council (1996) finally settled the matter by reaching agreement on a Commission proposal for selective culling of British herds.

The European Council's coordinating role can be analyzed using the following sequential game, again using the environment-energy space as before. The Environment Council formation initiates a policymaking process by proposing a new policy y. In the next stage, this policy is submitted to the Energy Council, which has to agree with the proposal. If the Energy Council opposes the proposal, decision making shifts to the European Council. In the last stage, the European Council decides on a new policy p that includes both dimensions of the policy space. This game can be resolved using backward induction. Starting from the policy the European Council would make, the other actors determine their actions, which implies that the European Council's preferred policy now forms the point of departure for possible deviations. When the Environment Council is able to formulate an alternative policy along the y-dimension that is supported by the Energy Council, this new policy could be selected. If this is not possible, the Environment Council is induced to select the policy the European Council will set.

Figure 7: Decision making by sectoral Council formations and the European Council



These dynamics can be illustrated with the preference configuration and *status quo* as presented in Figure 7. Since the European Council will set a new policy at their ideal position *EC*, the Environment Council, which is located at *a*, has to determine whether alternatives exist that are in the win set for the two Council formations based on the new reversion point *EC and* along the *y*-dimension that intersects *EC.* As such points do not exist, the Environment Council proposes $y'' = EC$ as its new policy.[26] Similarly, if the Energy Council initiates a proposal—which it would do given the fact that it prefers several alternatives including the European Council's most preferred position to the *status quo*—the new policy will be $x'' = EC$. Of course, the fact that both Council formations cannot deviate from the policy preferred by the European

Council depends on the preference configuration used in the figure. If the European Council had a less moderate preference for both dimensions, so that its ideal position was similar to *q* or any other point further away from the origin, the Council formations would have been able to set an alternative policy that differed from the European Council's most preferred position.

The analysis shows, first of all, that the ability to make a decision over several dimensions allows the European Council to coordinate policy and to make a decision that is based on all relevant aspects of a policy problem. Secondly, and due to its political importance, the European Council's preference forms the starting point for the decision-making process in the Council formations. In this respect, a legislative process with European Council coordination is a two-level game in which the European Council supercedes policymaking by the sectoral Councils. The European Council's coordinating role can be best approached as a *hierarchical* one, since its decision takes precedence over the decisions of the lower level sectoral Councils.

Conclusions

The sectoral structure of the Council of Ministers has led to a 'loss of coherence' according to observers, or in terms of the analysis presented here, to policies that only reflect the interests of these ministers. By restricting decision making to the same sectoral ministers, the resulting policy does not account for other interests that might be relevant to the problems to which these policies are targeted. In this paper I analyzed several mechanisms to counteract the consequences of sectoral decision-making. These possibilities include the coordination by the General Affairs Council, joint policymaking with the European Parliament, the preparation of policy initiatives by Coreper, and the involvement of the European Council.

The analysis shows that *ex ante*-coordination, which is possible during the stage of the drafting a proposal, is more effective than *ex post*-coordination. Ex-ante coordination allows political actors to affect the various issues that are part of a proposal, or, in terms of the analysis here, the dimensionality of the policy proposal. This possibility provides the actor who is engaged in ex-ante coordination with the

[26] See Appendix A-4 for further details. See also note 15 for additional assumptions that are used in order to solve this sequential game.

opportunity to include all dimensions in a proposal that are regarded as relevant. The Committee of Permanent Representatives (Coreper) has this possibility, since it negotiates at an early phase with Commission on the proposals the Commission wishes to release. The European Parliament, on the other hand, only has the possibility of ex-post coordinating power. Parliament does not have a say in the drafting of a proposal, and it is confronted with proposals as they are submitted to the Council. The best Parliament can do is amend existing proposals so that they reflect less the sectoral interests in different Council formations and more the interests of the members in Parliament.

An alternative mechanism discussed in this paper is *hierarchical* coordination, which occurs when the European Council is included in the analysis. The European Council has a different political status than the different Council formations and is able to arbitrate between Councils in case of conflict, or decide informally on matters of high political interest. The possibility of hierarchical policy coordination is, in principle, rather effective since the European Council is not limited to a specific policy jurisdiction and can decide on all possible dimensions that are part of a policy.

At the same time, there are a number of drawbacks to the European Council's coordinating role. First, substantial policy coordination Council will burden the agenda of the European Council, leaving less time for other and perhaps politically more important issues. Second, the involvement of the European Council as a 'higher' political authority may lead to an erosion of procedural legitimacy in the Union, as it affects the legislative process in which Parliament is involved. Deal-making among the heads of state and government is not compatible with a democratic process in which decisions are made based on the legislative procedures as specified by the treaties. In this respect, hierarchical coordination by a political actor other than Parliament seems to be inconsistent with the aim of establishing the Union as a democratic political system.

A different line of reform is a further merger of the various Council formations as proposed by the Seville European Council. However, as shown in another paper (Steunenberg, 2002), this requires a more radical reorganization of the Council structure than restricting the number of different Council formations to nine.

Although the last merger can be regarded as an improvement, it still allows several Council formations to continue that set policies independently of others.

Unfortunately, the discussion on EU policy coordination seems to suffer from the same problems as EU policymaking. Different possible solutions are discussed, while none of these solutions seem to fully resolve the problem of fragmentation and 'a loss of coherence'. The analysis here points to possible improvements, but does not suggest 'one' solution. More involvement by the European Parliament or the European Council may help, but will not fully compensate for the problems that are caused by the sectoral division between Council formations. The underlying problem is that the discussion on policy coordination could be related to two different models of legislative policymaking in the EU, which have become more apparent over the last decade and are at odds with each other.

The first model is the traditional 'community method' in which EU policy is the result of the interactions between the member states and the Commission. In this model, Coreper, the General Affairs Council and eventually the European Council have a function in the coordination of common policy. This process is hierarchical and forms, as expressed by the member states, 'one chain of command' (European Council, 1999: Annex III). *Hierarchical coordination* fits the Union as *confederation* in which the member states and thus the European Council is the most important political body.[27] In a confederation legislative decision making may, for instance, follow the consultation procedure in which the Council makes the final decision. However, it does not fit a second model of decision making in the Union, which was gradually introduced starting in the 1980s.

The second model is the 'parliamentary method' in which EU policy is the result of interactions between the Council and Parliament. Policy coordination is now a function of the Council *and* Parliament, and it is no longer part of a 'chain of command'. In this model, each institution is responsible for the coordination of EU policy and possesses the legislative means to achieve this. In the case of Parliament this would, for instance, imply that the Commission no longer keeps its monopoly power on legislative initiatives. Parliament should

[27] See Mueller (2002: 41-6) for the distinction between confederation and federation.

also be able to initiate new legislative proposals so that it is no longer restricted to framing by the Commission. Policy coordination in this model is a *non-hierarchical* process, which fits the Union as *federation* in which the member states no longer are the most important actors. Legislative decision making may now be the result of codecision, or an amended version of this procedure, in which Parliament and the Council are at equal footing.

The need for cohesion and coordination of policy thus requires a broader discussion on the 'institutional structure' of the EU. If the member states, or the European Convention for that matter, prefer to maintain the 'community method', policy coordination can only be improved by reinforcing the 'chain of command' between the Union's traditional institutions. That would require substantial effort, especially from the side of the European Council, when the member states are not yet prepared to further merge the existing sectoral Council formations. An alternative way would be to follow the 'parliamentary method' and focus on the possible coordinating role of Parliament in this process. However, in order to be able to coordinate policy, the European Parliament needs to have full legislative power, next to the Council, which is not restricted by the Commission. As indicated in this paper, Parliament's current position is not sufficient to take up this task. The question is whether the member states, as well as the Commission, are prepared to provide Parliament with these powers. If they are not, the current way of allowing Parliament to participate in the legislative process, while maintaining the 'community method' as much as possible, will not resolve the problem of policy coordination.

Appendix

Let a be a player who has simple Euclidean and separable preferences for the outcome space R × R, which are defined by a utility function $U_a(i)$. Let q be the current state of affairs, $q \in$ R × R. $P_a(q)$, or simply P_a, is the preference set of player a with regard to a point q**,** that is, $P_a = \{i \mid U_a(i) > U_a(q)\}$. Let $W_M = 1\ P_i$ be the win set of the group of ministers, $i \in M$, with regard to q and based on unanimity rule. A Council formation can be represented by a group of ministers, $a \in A \subset N$, responsible for a policy dimension $y \in Y\ \phi$ R. Moreover, to simplify the argument, I assume that $U_i = U_j$ for all members $i, j \in A$, so that $W_A = P_a$. A second Council formation can be defined as $B \subset N$, $B \cap A = \varnothing$, which is responsible for a policy dimension $x \in X\ \phi$ R. In the case of General Affairs Council, C, the European Parliament, EP, Coreper, cor, and the European

Council, *EC*, I also assume equivalent ideal points for all the members of the same decision-making body.

A-1. Policymaking with the General Affairs Council

The structure of the game is that: (1) Council formation A initiates a policymaking process by proposing a new policy $y \in Y$, $Y = \{y | x = q\}$; (2) the proposal is subject to submission to Council B by the General Affairs Council; and (3) if submitted, Council B decides whether or not it will veto the proposal. If vetoed, the proposal is rejected. Otherwise, it becomes common policy. Applying backward induction, Council B only accepts a proposal if $y \in W_B(q)$. Otherwise Council B decides for q by using its veto. The General Affairs Council submits the proposal to Council B, when it prefers the outcome reached by Council B to the proposal made by Council A, that is,

- if $y \notin W_C(q)$ and $y \notin W_A(q)$, the General Affairs Council submits the proposal to Council B;
- if $y \in W_C(q)$ or $y \in W_A(q)$, the General Affairs Council will not submit the proposal to Council B.

Knowing this, Council A proposes the policy

$$y^* = \begin{cases} \max(U_a(y) | \, y \in W_A(q) \cap W_B(q) \cup W_A(q) \cap W_C(q)) & \text{when } W_A(q) \cap W_B(q) \neq \varnothing \text{ or } W_A(q) \cap W_C(q) \neq \varnothing; \\ q & \text{when } W_A(q) \cap W_B(q) = \varnothing \text{ or } W_A(q) \cap W_C(q) = \varnothing; \end{cases}$$

which is the equilibrium solution for policy dimension y. Similarly, one can derive the equilibrium solution for the second and independent policy dimension $X = \{x | \, y = q\}$.

A-2. Policymaking with the European Parliament

In this game one of the Council formations bargains with Parliament (denoted as *EP*) on a new policy $y \in Y$. If $W_A(q) \cap W_{EP}(q) = \varnothing$ no agreement can be reached and the policy remains the status quo. If $W_A(q) \cap W_{EP}(q) \neq \varnothing$, agreement is possible when policies exist that are on the line Y and Pareto optimal. Define $Z = \{z \in Y | \, z \in W_A(q) \cap W_{EP}(q) \text{ and } W_A(z) \cap W_{EP}(z) = \varnothing\}$. Applying the Nash bargaining solution, Parliament and the Council select the following policy:

$$y' = \begin{cases} \max(U_a(z) \times U_{EP}(z)) & \text{when } Z \neq \varnothing; \\ q & \text{when } Z = \varnothing; \end{cases}$$

which is the equilibrium solution for policy dimension y. Similarly, one can derive the equilibrium solution for dimension X.

A-3. Policymaking with Coreper

The structure of the game is that: (1) Coreper proposes a new policy, and (2) both Councils have to agree on the new policy. If one of the Councils disagrees, the proposal is rejected. Applying backward induction, Council A only accepts a proposal $p \in \mathrm{R} \times \mathrm{R}$ if $p \in W_A(q)$. Similarly, Council B only accepts a proposal if $p \in W_B(q)$. Knowing this, the committee of permanent representatives, *cor*, proposes the policy

$$p' = \begin{cases} \max(U_{cor}(p) \mid p \in W_{cor}(q) \cap W_A(q) \cap W_B(q)) & \text{when } W_{cor}(q) \cap W_A(q) \cap W_B(q) \neq \varnothing; \\ q & \text{when } W_{cor}(q) \cap W_A(q) \cap W_B(q) = \varnothing; \end{cases}$$

which is the two-dimensional equilibrium outcome.

A-4. Policymaking with the European Council

The structure of the game is that: (1) Council formation A initiates a policymaking process by proposing a new policy y that is submitted to Council B; (2) Council B decides whether or not it agrees with the proposal; if this Council disagrees with the proposal, the making of a new policy is submitted to the European Council; and, (3) the European Council decides on a policy p, which includes both dimensions of the policy space. Applying backward induction, the European Council chooses its most preferred policy $p_{EC} = (x_{EC}, y_{EC})$ in the last stage. Knowing this, Council B only accepts a proposal when $y \in W_B(p_{EC})$, otherwise this Council will use its veto and requests a decision from the European Council. Based on these considerations, Council A proposes the policy $y \in Y$, $Y = \{y \mid x = x_{EC}\}$:

$$y'' = \begin{cases} \max(U_a(y) \mid y \in W_A(p_{EC}) \cap W_B(p_{EC})) & \text{when } W_A(p_{EC}) \cap W_B(p_{EC}) \neq \varnothing; \\ q & \text{when } W_A(p_{EC}) \cap W_B(p_{EC}) = \varnothing; \end{cases}$$

which is the equilibrium solution for policy dimension y. Similarly, one can derive the solution for dimension X.

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