Steering, but not dominating: The Impact of the Council Presidency on EU Legislation

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1. Introduction

The rotating presidency of the European Union's (EU) Council of Ministers is a fascinating feature of the institutional setting of the decision-making process in the Council. Many accounts of the legislative process mention the role of the Presidency and its potential impact on legislative outcomes. Jonas Tallberg (2003; 2004; 2006; this volume) has provided us with the most comprehensive account of the Presidency so far. He argues that the Presidency has certain powers that allow it to influence the agenda and decision outcomes in the Council, subject to some constraints. Firstly, the Presidency enjoys procedural powers which allow it to 'shape' the agenda. Secondly, the Presidency benefits from an informational asymmetry. According to Tallberg, Council members grant these powers to the Presidency because it is in their collective interest as part of a grand bargain. My intention in this chapter is twofold: Firstly, I want to clarify some theoretical issues related to Tallberg's account of the Presidency's influence on EU legislative decision-making. Secondly, I want to firmly ground the analysis in rational choice theory and provide a detailed analysis of the impact of the Presidency's procedural powers on decision outcomes. Note that I restrict myself to the legislative domain, whereas Tallberg covers decision-making in the second and third pillars as well. As will become clear in the remainder, there are a number of conceptual issues involved in accurately predicting the power of the Presidency. Rational choice institutionalism has been very successful in providing us with crucial insights into the workings of politics, not least those of the European Union. It often relies on formal models which has the advantage of forcing scholars to be very explicit about how they believe a certain process works. By necessity, these models are an abstraction of reality. But this allows us to focus on some aspects and study them in detail. However, it is crucial that the reasoning employed does indeed capture the essence of the processes at work. Thus, I will argue that the Council Presidency's procedural prerogatives are best modelled as proposal power not agenda-setting power. Agenda-setting assumes a monopoly of making proposals which the Council Presidency does not possess. Member states are not faced with the stark choice of either agreeing to the Presidency proposal or being left with the status quo, but can make their own proposals. As will become clear in the following, this implies that the influence of the Presidency on decision outcomes in the Council (and subsequently in the legislative proceedings) has been overstated by Tallberg.

I depart from Tallberg's theoretical account in two ways. Firstly, I argue that the Council Presidency has a monopoly on making proposals as implied by agenda-setting power. Secondly, I argue that the powers of the Presidency are not sustained by an implicit deal between successive Presidencies, granting extensive powers to each other while they are taking turns at the helm. Instead member states acquiesce in the leadership role of the Presidency to reap the benefits of more efficient decision-making, which implies limited procedural privileges.

The chapter is structured as follows: In the next section I will argue that member states collectively benefit by institutionalizing some form of leadership. This does not entail, however, giving a free rein to it. Instead, member states will seek to limit the influence of the leadership on legislative outcomes. The third section clarifies the concept of gate-keeping, veto and agenda-setting power in the context of the Council. I will show that these concepts do not accurately reflect the actual powers of the Presidency as set out in the Council's Rules of Procedure. In section four I will explain the concept of proposal power and argue that it is better suited to explain the potential influence of the Presidency on decision outcomes. Drawing upon a comparison with the Speaker of the US House of Representatives, I will demonstrate in section five why the Presidency can not prevent challenges to its procedural privileges by the use of additional powers.

2. Institutional Design: The deliberate limits of the Presidency's Powers

In general, political actors confer authority to an individual to secure the benefits they receive through better coordination, increased production, and the provision of public goods. Hierarchy can be an efficient means to utilize gains of cooperation (Miller 1992: 18). Members of a group grant powers to their leaders to realize the benefits of leadership (Calvert 1992; Miller 1992: 25). Thus,

‘leadership is an institutional arrangement created by a P, or a collection of Ps..., in order to obtain some objective more efficiently, more effectively, or with higher probability than he, or they, could without the coordination and enhanced productivity provided by the leadership institution.’ (Fiorina/Shepsle 1989: 20)

Leadership represents a solution to coordination problems and reduces the transaction costs of bargaining by providing a focal point and a conduit for group negotiations. Even if all members of a group aspire to the same goal (i.e., have the same payoff-structure), the presence of several potential outcomes implies that to resolve an issue requires a certain effort of coordination (pure problems of coordination, see Calvert (1992: 9 -10)). A leader can offer a short-cut through the potentially protracted process of agreeing upon a specific outcome by providing a focal point on which expectations can converge (Schelling 1960). If the member of the group value outcomes differently, while still benefiting from cooperation (i.e., reaching an agreement), the potential for costly delays increases. Thus, the value of an agreement diminishes because members, while negotiating the specific decision, forego the opportunity of reaching jointly beneficial agreements in other areas. The time spend on hackling over any given dossier could also be used to discuss the next item on the agenda. In

addition, the delay induced by the need to accommodate different positions implies that the bargaining partners can not enjoy the benefits of the agreement (Binmore, Rubinstein et al. 1986). For example, if the member states can not agree on the exact level of subsidies in a given field, there will be none for the time being. If the positions of the member states are not commonly known, the risks of costly delays and bargaining failure increases even more (Sutton 1986: 720; Farrell 1987). To maximize their individual gains, member states will be tempted to misrepresent their preferences, while trying to gain insights into the preferences of others, and try to devise and implement commitment strategies to advance its bargaining position (Luce and Raiffa 1957: 91-2). In this situation,

‘[t]he problem of distributing the gains from efficient cooperation will be so daunting that the bargainers might lose a large amount of the potential gains that ensues. The specter that is raised is one of bargaining failure – the loss of those very efficiency gains that motivate actors to go the bargaining table in the first place.’ (Miller 1992: 49)

In sum, bargaining – even under the best of circumstances – is a costly endeavour. Indeed, the transaction costs incurred by the resources (e.g. time) spent and opportunities lost in bargaining are ‘essentially limitless’ (Miller 1992: 47). Thus, group members have strong incentives to reduce these transaction costs and limit the potential for bargaining failures by creating leadership. This, invariably, includes granting special powers to a member of the group, which can be misused by the leader. As Randall Calvert explains:

‘Because the leader produces group benefits that are degraded when leaders are overthrown or weakened, and because the realization of those benefits requires responsiveness on the part of followers, the leader does indeed have power.’ (Calvert 1992: 19)

In other words, the power of a leader relies on his ability to create value for the group members. Powers are given to a leadership if and insofar as they help the group to achieve goals that they would have been unable to achieve without the coordination of leadership and the enhanced efficiency in decision-making that ensues (Fiorina and Shepsle 1989: 20).

While it is in the interest of group members to grant power to a leader, it is not in their interest to allow the leader to abuse his powers. Thus, group members will strive to limit the powers of the leader as far as possible while still creating efficiency gains. The procedural privileges of a leader can be limited by not vesting absolute powers into his office and limiting the term of office.

This line of reasoning also applies to the Council of Ministers. Member states have an interest in enhancing the productivity of the Council without letting a leadership exploit their privileges in terms of decision outcomes.

The Council has to attend a multitude of legislative proposals. Each proposal raises several issues. The technical and political complexity of the discussions means that the potential for common gains in a given dossier might go unnoticed. In this situation, a central coordination mechanism allows negotiations to focus on a set of particular proposals. Synchronizing the attention given to particular dossiers by the member states and imposing order on the negotiations allows for a more efficient way of conducting legislative decision-making. By creating the office of a Council Presidency and granting it the prerogatives of prioritizing items and making compromise proposals, the member state ensured that they would get the maximum benefit from negotiations.

By limiting the powers the Presidency enjoys a member state is barred from becoming a ‘policy dictator’ during its term in office. The member states could have created a much more powerful Presidency office, e.g. by granting it gate-keeping or agenda-setting power. However, as I will show below, to prevent or limit abuse of presidential powers they choose a limited form of proposal power rather than granting the Presidency more far-reaching formal powers. Furthermore, they abstained from enshrining these powers in the treaties.

Governments do not have to ‘accept the exploitation of the Presidency office in the present because they will get their opportunity in the future’ (Tallberg 2003: 16). The reciprocal acquiescence in the unchecked powers of the Presidency is neither necessary nor sustainable. The institutional setting can empower the Presidency to search for viable compromise proposals and yet constrain its powers to manipulate outcomes. Also, an arrangement where member states hold far-reaching powers during their term in office could not be built on a system of reciprocity (or vote trading). Unless the exchange of votes (here: the acquiescence in the unchecked powers of the Presidency for a limited period) takes place simultaneously, member state governments will be tempted to renege on their promises (Brams 2003: 199-206). Having exploited all other member states to the fullest degree during their term in office, they will be hesitant to allow other member state to exploit them once they are not at the helm anymore. Governments are unlikely to be still in power when their member state takes up the Presidency again. Hence, they can not be punished by other member states for not following through on their promise to accept the unchecked rule of other member states’ during their term in office.

Tallberg (2003: 16-7) quotes a Commission official who argues that the Presidency hands out ‘bitter bills’ every day. Ordinary Council members ‘suffer for six years’ because they will look forward to their own turn at the helm in the seventh year when they ‘get to bash the others’. However, most governments can not count on still being in office in the seventh year. In an enlarged Union,

furthermore, the period of ‘suffering’ has nearly doubled. The price to pay for being more than *primus inter pares* for six months increases with the number of member states and the length of the interval between holding the Council Presidency. In the club of 27 member states, the policy gains made while being in power would have to be worth more than the policy losses sustained during the rule of the 26 other member states if this grand vote-trading scheme should work.

To ensure efficient negotiations member states will grant the Presidency some procedural prerogatives in legislative decision-making. However, to prevent the abuse of these powers by the Presidency member states will curtail these powers. The powers of the Presidency rest on the acquiescence of the member states and there is a limit to which they will grant them.

3. Institutional Power and the Council Presidency

Veto and agenda-setting power have become prominent concepts in rational choice to analyze the powers an actor can derive from an institutional setting granting him certain privileges. They have been widely used to study legislative behaviour (e.g., Tsebelis 2002; Cox 2006). In the following, I will demonstrate the effect of granting these powers to an actor and discuss if the Council Presidency indeed does hold veto or agenda-setting power. In particular, I will clarify the meaning of the term agenda-setting which has been used with different meanings in the literature on the Council Presidency. I will argue that the member states did not grant as far-reaching and absolute powers as veto or agenda-setting to the Presidency.

An actor has veto power if her consent is necessary for a shift in policy. If an agreement requires unanimity all actors have veto power. Otherwise, the other bargaining parties can overrule an actor who does not have veto power. An important distinction concerns *ex ante* and *ex post* veto power. *Ex ante* veto power, or gate-keeping power, refers to the ability to prevent any new policy from being agreed upon. An agent with gate-keeping power can protect the status quo by not allowing any negotiations on policy alternatives. This is a purely negative power, the gate-keeper does not have any privileges once the gates are opened. In deciding whether or not he should open the gates, the gate-keeper will compare the expected outcome of negotiations to the status quo. He will allow discussions if the expected outcome is better to him than the status quo. In a uni-dimensional space and under majority rule, Black’s (1998 [1958]) Median Voter Theorem makes this comparison a straightforward exercise. The outcome will either be the status quo or the median’s ideal point, depending on which one is preferred by the gate-keeper (Denzau and Mackay 1983). In a multi-dimensional setting and majority rule, however,

only under very rare conditions one outcome can be determined as the outcome of negotiations (Plott 1967; McKelvey 1976). A gate-keeper might be faced with the dilemma of having to decide on whether or not to open the gate without knowing if the outcome of open negotiations will be superior to the status quo (Denzau and Mackay 1983; Shepsle and Weingast 1987). Ex post veto power, in contrast, allows the actor to choose between the outcome of the negotiations and the status quo directly. This ensures that the outcome is either the status quo or a policy that the veto player prefers to the status quo (Shepsle and Weingast 1987: 93; Tsebelis 2002: 19-24). Consider, for example, a legislative proposal on the European wide adoption of a limit on working time. For ease of exposition, imagine that no national regulations on this matter exist at the moment and that the only issue at hand is the limit on working hours (where one extreme, infinity, implies no limit). Thus, the status quo, the policy that would prevail safe a new decision, would be no limit on working time. An actor with ex ante veto power (i.e., gate-keeping power) could prevent any decision on the topic. In other words, a gate-keeper effectively chooses between the status quo and the (anticipated) outcome of the discussions. Ex post veto power would allow an actor to wait until there is a decision (e.g., a limit of 45 hours) and then decide whether or not this is preferable to the status quo (e.g., no limit). This will influence the behaviour of the other actors as they would strive to adopt a decision that will not be vetoed. If a limit of 45 hours would be vetoed but not a limit of 50 hours, they might adopt the latter rather than being stuck with the status quo (no limit) following a veto.

The term ‘agenda-setting’ is ambiguous in political science as it has been used in two fundamentally different meanings.

Following Romer and Rosenthal (1978) formal theorist have used agenda-setting power in situations where an actor has monopoly proposal power (and gate-keeping power)¹. Effectively, he can make a take-it-or-leave-it proposal as the other voters can only decide between adopting or defeating his proposal. The set from which outcomes can be chosen is thus restricted to the status quo and the proposal of the agenda setter. Whereas veto power only delimits the set of possible outcomes to the ones which are preferred by all veto players to the status quo, agenda-setting power yields a unique outcome.

Kingdon (1995) uses the term agenda-setting in a fundamentally different way. Agendas are defined by him as ‘the list of subjects or problems to which [decision-makers] ... are paying some serious attention at any given time.’ (3) An agenda-setter changes this agenda ‘as it highlights its conception and its proposals, and makes attention to subjects that are not among its high priorities much less likely’ (199).

¹ To make things even more complicated there is a further distinction between agenda-setting as the structuring of the overall voting sequence and agenda-setting as making a take-it-or-leave-it proposal. However, if actors are sophisticated and anticipate possibly attempts of manipulation by the agenda-setter, this distinction practically disappears (Shepsle and Weingast 1984). Moser (2000) offers a good introduction to this topic.

Thus, an agenda-setter according to Kingdon changes the salience of an issue and not necessarily the actual outcome. Furthermore, an agenda-setter contributes to the specification of alternatives, narrowing the number of proposals that are seriously considered (Kingdon 1995-1). Kingdon, therefore, primarily refers to the introduction or highlighting of issues and a specification of several policy alternatives, whereas formal theorists are concerned with a single proposal within a given policy space.

A one dimensional spatial model will be helpful to convey the difference in the level of power held by an actor who has veto or agenda-setting power. In a spatial model, policies are represented by points in a policy space with distance denoting the difference between policies². Political actors have an ideal position which is the policy they prefer most. In evaluating policies, actors compare their distance to their ideal position. They would prefer a policy close to their ideal position to one further away (regardless of the direction).

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

Figure 1 shows a one-dimensional policy space with the ideal points of the median voter (M) and the Presidency (P). SQ denotes the location of the status quo, the policy which prevails unless new legislation is enacted. The Presidency is indifferent between P' and SQ as they are equally far away from P. Any policy inside the interval from P' to SQ is closer to the Presidency's ideal position than the status quo. Hence, any point inside this interval would be preferred by the Presidency to the ideal position.

For the sake of simplicity, we will use a scenario in which a decision is made by simple majority in one dimension which allows us to invoke the median voter theorem. According to the median voter theorem, a decision of a majority in a one dimension when no actor has special powers will reflect the preferences of the median voter. Let's contrast this outcome to a situation where the Council Presidency has gate-keeping power. In this case it will compare the eventual decision, that is the median voter's ideal position, to the status quo in order to decide whether or not it should open the gates. In the scenario depicted in Figure 1, the status quo is closer to the Presidency's ideal position than the median voter's position. Hence, the Presidency will use its gate-keeping power and the outcome is the status quo. This demonstrates the essentially negative power of gate-keeping. The Presidency can only prevent the outcome from being worse than the status quo. Furthermore, the Presidency can not collude with the median to choose a policy both would prefer to the status quo. Once the gates are open, gate-keeping power would not ensure that the median voter would keep his part of the deal. (Ex post) Veto power, in contrast, would allow the veto player to choose between a new proposed policy and the status

² For a good introduction to spatial models see Hinich and Munger (1997).

quo. Hence, the outcome would lie in the interval P' to SQ, everything else would make P worse off than the status quo and hence he would exercise his veto power. Agenda-setting power, finally, would allow the Presidency to pick a new policy subject to the support of a majority. In the scenario depicted in Figure 1, any policy in the interval M' to SQ would be preferred by the median voter (and hence a majority) to the status quo. Thus, there is a set of points (P' to SQ) that both, median voter and Presidency, would prefer to the status quo. Indeed, the Presidency would propose its own ideal position, which would be accepted by the median. In general, as this example has shown, institutional powers allow an actor to influence policy outcomes in line with its preferences. If and to what degree it is possible to shift outcomes towards its own ideal position depend on the configuration of preferences, the voting threshold, and the location of the status quo. It has also been demonstrated that different institutional powers have a varying effect on the ability of an actor to bias outcomes in line with his preferences. Thus, to evaluate how much an actor potentially benefits from being in office depends on the exact nature of the powers that an office provides. Furthermore, the effect of these powers varies from issue to issue as it depends on the preference configuration.

The Council Presidency holds neither veto nor agenda-setting power in the formal sense. The member state holding the Presidency enjoys veto power like any other member state if a decision is made by unanimity. But the office of the Presidency does not allow a member state to prevent a proposal from being considered nor does it grant a member state a monopoly on making proposals.

It has been argued that the member states holding the Council Presidency enjoys gate-keeping power during its six months in office. In his analysis of the co-decision procedure, Crombez (2000: 45 and 52-3) assumes that the consent of the Council Presidency is necessary before a vote on a proposal can be taken in the Council. More generally, Tallberg argues that

‘the Presidency may exploit its procedural control to *exclude items from the decision agenda* of the Council, whether at working-group, Committee of Permanent Representatives (COREPER), or ministerial level.’ (Tallberg 2003: 12, emphasis in original)

Tallberg frames this as one of three form of agenda exclusion which is defined as ‘the active barring of an issue from the policy agenda’ (2003: 5). Besides excluding an item from the agenda, a Council Presidency can simply ignore a pressing issue or present only unfeasible proposals (Tallberg 2003: 12-3).

The concept of agenda-setting power has been widely used in studies of EU decision-making (Hörl, Warntjen et al. 2005). Different models of the legislative process have assigned agenda-setting power to various actors. In most cases, this means that legislative bodies are characterized as collective agenda

setters. Some models, however, credit individual actors with the de facto power of making ‘take-it-or-leave-it’ proposals. Steunenberg and Dimitrova argue that within the Council ‘the Presidency selects the final policy conditional on the agreement of the other members’ (Steunenberg and Dimitrova 2003: 12). Consequently, their models predicts that the Presidency has a significantly larger influence on policy outcomes than ordinary Council members (Steunenberg and Dimitrova 2003: Table 1). Tallberg claims that the Council Presidency has both agenda-setting power a la Kingdon and in the rational choice tradition. In the vein of Kingdon’s use of the term agenda-setting, Tallberg (2003: 6-8) explains that the Presidency can draw attention to a topic, put forward specific proposals, or adopt new institutional practices to highlight an issue. Furthermore, he argues that as part of its ‘agenda-structuring’ powers the Presidency can decide on what proposals are voted upon in which order (Tallberg 2003: 10). This implies agenda-setting power in the tradition of formal theorists.

The Council Presidency, however, does not have the formal authority to exclude an item from the agenda of a meeting, prevent a vote from being taken, or restrict the proposals on which a vote is being taken to its own. An item is included on a provisional agenda, which also indicates on which item a vote may be taken, if a member states or the Commission request it 16 days prior to a meeting (Art. 3 clause 3 Council’s Rules of Procedure). The final agenda is decided upon by the Council. A vote is initiated by the Presidency or taken upon the request of a member state or the Commission if it has the support of a majority of member states (Article 11 clause 1 Council’s Rules of Procedure). The Council Presidency can ask a member state to put an amendment of the text under discussion in writing before a given date. It can also ask member states with similar or identical positions to agree on a joint proposal (Art. 20 clause 1 Council’s Rules of Procedure). Thus, the Council Presidency is not endowed with the formal power to exclude items from consideration. Any member state (and the Commission) can request an item to be included in the discussion and ask for a vote. In his study of environmental policy under four Council Presidencies, Wurzel (2004: 26) concludes that the Presidencies did not refuse to take up unwanted dossiers if they had already been debated at the ministerial level. The sole exception is the discussion of the end-of-life directive under the German Presidency. If the Council Presidency did have agenda-setting power this would be the norm, not the exception. The Presidency would routinely keep the gates closed on dossiers it does not like to see adopted.

The Council Presidency does not have the formal authority to make ‘take-it-or-leave-it’ proposals or veto power due to its office. All member states can put forward proposals for discussions and request a vote. Furthermore, proposals by Council members other than the Presidency do not have to pass a higher voting threshold, making it more difficult for them to set the agenda. Hence, the Council Presidency does not enjoy agenda-setting power in the sense used in rational choice theory. It does enjoy, however, a prerogative at making proposals. While the Presidency can not prevent other member

states from making proposals, it can use its powers over the procedure to make the first proposal. The consequences of this are captured best by the concept of proposal power.

4. The Effect of the Presidency's Proposal Power

The power to propose refers to the disproportionate payoff the actor making the first proposal can achieve even if he does not enjoy gate-keeping power, i.e. the power to keep a proposal off the agenda, for the whole bargaining process. This captures the situation of the Council Presidency more accurately than veto or agenda-setting power. After the Presidency has made a first 'compromise' proposal other member states are free to present alternative texts. As explained above, the Council Presidency does not have a formal power of either barring items from the decision-making process or limiting votes to its own proposal. The Council Presidency, however, does have the prerogative to make the first proposal. It can also call immediately call for a vote to be taken. If its proposal does not attract a sufficient majority, another member state can request a vote for a different proposal. Arguably, the Presidency may delay this by moving to the next item on the schedule. However, the Presidency cannot hold off a vote indefinitely as implied by veto and agenda-setting power. Instead, other member states can force a vote on an alternative proposal during the term in office of the Presidency. If another proposal is not discussed in the same meeting, it can be scheduled in a few weeks time.

While proposal power still gives the Presidency a procedural advantage with positive distributional consequences, these are not as stark as they would if the Presidency would enjoy agenda-setting power. The member states deliberately curtailed the powers of the Presidency by granting it proposal but not agenda-setting power.

Baron and Ferejohn (1989; 1989) capture the advantage the first-mover enjoys by recognizing the importance of asymmetric probabilities of recognition. The strength of proposal power depends on the voting threshold as the first-mover in effect receives the benefits which otherwise would have gone to the outvoted members. If actors can not be certain that they will be recognized to make a proposal, the first-mover can be beneficial even if amendments (i.e., counter-proposals) are possible (Baron and Ferejohn 1989: 363; Baron and Ferejohn 1989: 1197), although the benefits of the first-mover are diminished.

The agenda-setting power discussed so far crucially depends on its inclusion of gate-keeping power: proposals are considered under a closed rule, i.e. they cannot be amended, and the agenda-setter has a monopoly on making proposals (Baron and Ferejohn 1989: 346-7, 353-4; Moser 2000: 28-32). Baron and Ferejohn argue that in a distributive setting the actor who has the right to make the first proposal benefits disproportionately even under an open rule where amendments are possible. In their model no

actor has a monopoly on making proposals, as an agenda-setter would have. Instead, a proposer is recognized randomly to make a proposal to the decision-making body. If this proposal fails to win a sufficient majority, another member (also selected randomly) will make a proposal. We can also think about intermediate scenarios where the first proposer gets to make proposals for a number (but not all) of the voting rounds. The crucial difference to agenda-setting models is the possibility of several competing proposals being made during the decision-making process. Agenda-setting power implies that all the other actors get to choose between the proposal of the agenda-setter and the status quo, i.e. the result of no change in policy. The agenda-setter only has to make a sufficient majority better off than the status quo to ensure passage of his proposal. Because there are no alternative proposals on the horizon the other actors would have to accept this. In contrast, with proposal power legislators compare the initial proposal to future proposals by other (randomly selected) members. The initial proposal has to make them better off than they are by voting against the proposal and continuing the decision-making process in which they might be selected to make their own proposal. However, future proposals might be even worse than the proposal by the first mover. An agenda-setter derives power from the certainty of the other members that the only possibility for policy change lies in the proposal of the agenda-setter. The first mover derives proposal power from the uncertainty of other members of whether or not they will benefit from future proposals. A simple example might make this difference clearer. Consider a council of 7 members who have to decide how to structure a spending programme on regional infrastructure. They can spend 70 million Euro in regional infrastructure projects, each worth at least 1 million Euro. If they cannot reach agreement, there will be no spending programme and hence nobody receives extra funding for infrastructure. For the ease of exposition, let us assume that they can only consider two proposals (as there is other pressing business to attend to) and 5 votes are needed to reach agreement. An agenda-setter has a monopoly on making proposals, hence the situation is the same in both rounds with the agenda-setter making a proposal to the other council members. His proposal needs to attract four votes (besides his own) to be adopted. Hence, he has to make four council members better off than the status quo. He would do so by proposing the minimum amount of spending for their regions (i.e., 1 million) for four council members, keeping the remaining 66 million for his region and leaving two council members without any funding. Contrast this to the situation with a random selection of the proposer, rather than a monopoly. In the last round, the above scenario prevails. As there are no further proposals to be discussed, members have to compare the proposal to the status quo (i.e., no extra funding). Whoever is selected to make the proposal reaps 66 million Euro for his domestic constituency. The strategic considerations in the first round, however, change drastically if there is no monopoly on making proposals by an agenda-setter. All council members (except the current proposer) can be randomly selected to make the second proposal. Instead of comparing the offer of the first mover to the status quo, council members will consider the possibility of gaining more in the

second round. Random selection gives them a $1/6$ probability of being recognized in the second round and receiving 66 million. The expected value of rejecting the initial proposal and going into the second round is the probability of recognition times the value of being recognized, i.e. 11 million Euro in this example. The proposal in the first round has to offer four members at least 11 million Euro to get passed, otherwise it would be worthwhile for members to gamble on being recognized in the second round. This results in 26 million Euro for the first mover, 44 million to 'buy out' enough members to form a sufficient majority and again no funding to two outvoted members. The first mover with proposal power still fares better than receiving an equal share of 10 million, but not as good as an council member with agenda-setting powers.

In general, a first mover benefits from the number of rounds in which he can make proposals, the impatience of other council members, a low voting threshold, and their discontent with the status quo. The power of an actor diminishes the more his prerogatives depart from a monopoly of making proposals. The more council members value an early decision, the more concessions they would make towards the first mover. Also, the more member can be outvoted, the better for the proposer. In the example above, five out of seven votes were necessary. The first mover had to 'buy out' four other council members by including spending in their regions in his proposal. If the decision had been made by simply majority, this would have dropped to three other members. Conversely, unanimity rule would have guaranteed (*ceteris paribus*) an equal distribution of the spending. The more voters can be ignored, the better for a council member putting together a winning proposal. The last point is more complex. The Baron/Ferejohn model was developed for distributive 'pork barrel' politics, such as spending programmes. Some of its assumption do not hold for the case of regulatory politics. In a distributive setting, a proposal can freely hand out specific benefits to other actors. A proposal might give some benefits to one group of actors and withhold any benefit from others. In the example above, two council members did not receive any spending and the smallest number of council members was included in the spending proposal with the minimum amount to get their agreement. In a regulatory setting, a proposer is more constrained. Consequently, the effect of proposal power in a regulatory setting is limited compared to the distributive context. Firstly, an increase in the value of the status quo decreases proposal power (Banks and Duggan 2006: 62). Council members might be quite content with the status quo and would need a stronger incentive to agree to a new policy proposal. Secondly, the choice of coalition partners is constrained by the distribution of preferences. In the extreme case there might not even be a sufficient majority in favour of a change of the status quo. Even if there is, the proposer still faces limited options compared to a distributive setting. He can only seek the support of other actors with similar preferences. In the case of (qualified) majority rule with weighted votes, this could mean that more member states need to be included to get a sufficient number of votes. Consider a scenario in

which the member states are divided along the line of their population size and Luxembourg holds the Presidency. When big and smaller member states have diametrically opposed interests, Luxembourg has to build a larger coalition to pass the voting threshold than would be the case if all big member states would have interests similar to the one of Luxembourg.

The power to propose when (qualified) majority voting applies grants the first-mover disproportionate benefits legislative decision-making. The degree to which this holds true is limited in regulatory politics by the necessity to include a sufficient majority and the inability to select its member freely. Both agenda-setting power and proposal power require the proposer to take the preferences of at least a majority into account. However, an agenda-setter can put the stark choice to other members of accepting his proposal or being stuck with the status quo. Proposal power, on the other hand, offers the possibility of more attractive alternatives in the future which forces the initial proposer to make more concessions. The Council Presidency can not preclude alternative proposals from the discussion, but it can make the first proposal. Hence it has proposal power, not the stronger agenda-setting power.

5. The Importance of Flanking Powers for Challengeable Privileges

As has become apparent in the preceding section, the Council Presidency does have a procedural advantage in legislative decision-making. However, the formal powers of the Presidency are curtailed. Even without an absolute power such as agenda-setting enshrined in the legal text governing the decision-making procedure, the Presidency can take on a comparable influence if its proposals would never be challenged. The member states do not have an interest to grant this *de facto* power informally. Nevertheless, the Presidency might assume a more powerful role if it had other ways of influencing the member states and preventing them from challenging its proposals. ‘Flanking’ powers would enhance the value of challengeable procedural privileges by ensuring that challenges do not occur. This argument has been made by Cox and McCubbins (1993) with respect to the Speaker of the US House of Representatives. It will be instructive to see how the institutional foundations of powers of the Speaker compare to the Council Presidency. Both leadership offices can not prevent a vote from taking place under all circumstances, their scheduling decision can be bypassed. The Speaker of the House, however, enjoys a number of powers that he can use to deter members of the House from trying to act contrary to his wishes. In addition, members of the House might find it difficult to override the Speaker’s decision because of the transaction costs and collective action dilemma involved. These points do not apply to the Council Presidency which hence has to rely on the procedural powers regarding the legislative schedule alone when trying to influence legislative outcomes.

Gary Cox and Matthew McCubbins (1993: 235) argue that the scheduling power gives the Speaker of the House a de facto veto power over legislation. In order to be adopted into law, a proposal has to be voted upon. The Speaker of the House decides on the scheduling of votes. By not scheduling a vote for a particular bill, he can effectively veto legislation. This implies that only legislation will pass that the Speaker prefers to the status quo, otherwise he would refuse to schedule a vote. The decision of the Speaker not to schedule a bill for floor consideration and thus preventing it from becoming law can be circumvented, however. The Rules of Procedure of the House of Representatives do not grant the Speaker an absolute gate-keeping power, bills can be called up for floor consideration without the approval of the Speaker. Thus, the ex ante veto power of the Speaker is challengeable, in particular by members of the important Rules Committee. The Speaker, however, has an important say in the appointments to the Rules Committee. Through his control of the Rules Committee via the appointment process the Speaker has considerable influence on which bill is being advanced to the floor and can impede legislation which he opposes, particularly if this conforms to the majority party line. Cox and McCubbins (1993: 238-9) argue that the degree to which this departure from an unchallengeable scheduling (and veto) power is relevant depends on the difficulties of organizing an override and the potential for retaliation. The higher the transaction costs of organizing a sufficient majority are, the stronger is the scheduling power of the Speaker. The floor also needs to overcome a collective action problem as the organization of the override represents a public good. Both of these factors are related to the absolute size of the majority that is necessary to overturn the Speaker's decision. The Speaker's scheduling power might also be unchallenged because he holds additional powers (e.g., nomination to important committees) that he can use to retaliate against members of a majority overriding his schedule (Smith, Roberts et al. 2006: 180-195). The more powers the Speakers enjoys, the more secure is his scheduling power.

While the Speaker of the House has considerable additional powers besides his influence on the legislative process, the Council Presidency can not grant or withhold prestigious and influential positions. The Council members (i.e., ministers of the member states) do not serve at the pleasure of the Presidency. The deck is also not heavily stacked in favour of the Presidency in structural terms when compared to the Speaker. Sounding out a dozen or so of colleagues on a proposal that probably has already been discussed repeatedly in working groups should not present an insurmountable obstacle. If there is a sufficient majority in the Council to pass a proposal, then it is very likely that one member state will find it to be in its best interest to take on the transaction costs of preparing a vote as a political entrepreneur. Hence, unlike the Speaker, the Presidency can not back up its scheduling decisions with the threat of retaliation or rely on the inability of member states to override its decisions. This comparison carries an important lesson. The Presidency can only exercise its procedural power with

regard to the legislative schedule to the extent it has been granted by the other member states. No additional powers reinforce the procedural privileges of the Presidency.

6. Conclusion

The Council Presidency has substantial leeway in setting the priorities of legislative work, but only limited formal powers which would increase its bargaining power. The Presidency does have a louder voice than other member states during its term in office. It can not, however, prevent member states from making their positions known and pressing for alternative proposals.

It is in the interest of member states to grant the Presidency the ability of steering the legislative agenda and that it might have a notable impact on what kind of issues are resolved in the Council. However, the member states will seek to curtail the distributional consequences of the office of the Presidency. Indeed, the Presidency does not enjoy an absolute power such an unchallengeable veto or a monopoly on the making of proposals. Instead it has a prerogative on presenting a proposal. Other member states can make alternative proposals. In addition, the time during which a member states enjoys the privileges of being at the helm is limited. Furthermore, the Presidency does not enjoy additional powers that would back up its procedural privileges.

This institutional design allows the Council members collectively to benefit from the leadership of the Council and the member states holding the Presidency to benefit from the possibility of realizing its legislative priorities without blatantly overriding the concerns of other member states. It is not the result of a grand bargain, in which member states in turn enjoy extraordinary powers, but represents the attempt of the Council to reap the benefits of leadership without allowing its abuses.

Despite the increased transparency of Council bargaining and recent advances in the scholarship on the Council, understanding the effect of the institutional setting and negotiation dynamics inside it is still a challenge. Future research will shed more light on how the office of the Presidency, the voting threshold, and the division-of-labour interact in shaping legislative decision-making in the Council.

Figure 1: The Effect of Institutional Power

<u>P has</u>	<u>Outcome</u>
No special power	M
Gate-keeping power	SQ
Veto power	(SQ, P')
Agenda-setting power	P

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