

# Measuring treaty change in the European Union

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## 1 Introduction

Intuitively we can assume that any increase in group size will lead to more heterogeneity in preferences. Especially under the condition of unanimity this will then lead to more stable institutional arrangements and rather incremental changes. If this holds true for the European Union we would expect that treaty changes should occur less often as more Members join the Union or changes should at least be more and more incremental with respect to the respective status quo. However, we can observe the coincidence of an increasing pace of treaty change and more and more players joining the game.

In order to assess if this is a true (empirical) puzzle we need to do two things: First we somehow need to measure Member States preferences over integration and second measure the degree of change achieved through treaty reforms. Only then will we be able to see if in fact preferences have become more heterogeneous and treaty change has become more incremental. This paper deals with the measurement of the latter. The question I will attempt to answer here is: What does the European Union do and how does she do it? I seek to make comparable the degree of horizontal and vertical distribution of power agreed upon by the Member States and codified in the various treaty reforms steps from 1958 to date.

The need for a new approach to measuring change comes from some dissatisfaction with existing attempts to measuring treaty change. Many have somehow quantified the degree of integration established in the EU and EC Treaties or used the measures of others to display treaty change (see Lindberg and Scheingold 1970: 67 ff.; Schmitter 1996: 125; Donahue and Pollack 2001: 107; Hooghe and Marks 2001: 187f.; Börzel 2005: 221ff.; Hix 2005: 20; Rittberger and Schimmelfennig 2005: 41; Schmitt 2005: 654). All the above show tables or graphs that are supposed to indicate the evolution of the Union's policy-making competences by somehow defined policy areas. Some come from classical integration theory and seek to test hypotheses; some compare the allocation of competences between different federal entities such as EU/USA. They sometimes simply refer to the "degree of integration", sometimes differentiate between the "level of integration" and the "scope of authority". All use either four or five-point scales to capture the degree of integration. While some rely on expert interviews, some give own estimates from measurement, either based on the treaty text or "projected obligations" from the treaties. While some at least claim that their tables are rather indicative, none of the above authors bothers to give a detailed account as how they proceed in their measurement.<sup>1</sup> Their findings therefore cannot be replicated. It seems thus worth a try to propose a reasonable and transparent way of measuring treaty change in the EU. The task is to propose an operationalisation of the degree of integration which "is

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<sup>1</sup> One noteworthy exemption I will come back to later are (Alesina et al. 2005). Attached find a table with an overview on existing approaches.

achieved when scores meaningfully capture the ideas contained in the corresponding concept” (Adcock and Collier 2001: 530) or, put even more simple, if we in fact measure what we seek to measure (King et al. 1994: 25).

The paper is organized as follows: I will first shortly elaborate on constitutional functions in order to derive the dimensions to be considered when measuring constitutional change in the EU. Thereafter I will present my dataset which includes all provisions in the EU Treaties from the Treaty of Rome to the Lisbon Treaty. Following this I will outline my approach to measuring change in more detail and present some preliminary empirical findings. I will conclude by shortly outlining further research I aim to conduct based on the dataset.

## **2 The EU treaties as a constitution**

### **2.1 What is a constitution?**

There may not be a commonly agreed on definition of what a constitution is as the notion has had different meanings in the course of history and over different political systems (Winterhoff 2006: 50ff.). However, there is some agreement in the literature about constitutional functions: in a rather broad sense, constitutions lay out the basic rules for a society, they are thus “rules on how the bulk of other rules are produced, how they enter into force, how they are implemented and, in case of differences over their interpretation and application, who is empowered to settle a dispute” (Tomuschat 1993: 216). They therefore have primacy over daily politics and in addition usually need super majorities to be changed. We can distinguish two basic functions:

1. In a formal sense, constitutions distribute power. For federal systems we can distinguish two dimensions: a horizontal and a vertical one. The former dimension is about the distribution between the institutions on the federal level. For Germany this would for instance be the relation between the Federal Government (Bundesregierung) and the Federal Parliament (Bundestag). This may include the distribution of power within institutions. The vertical dimension is concerned with the distribution of power between the federal level and the subunits, e.g. the allocation of competences between those two (or more) levels of governance.
2. In a material sense, constitutions may secondly set policy goals, state values and/or contain catalogues of fundamental rights (see e.g. Peters 2001: 79).

### **2.2 Constitutional functions of the EU treaties**

On the semantic level, many have acknowledged the constitutional character of the Treaties. As early as 1986, the European Court of Justice speaks about the treaties as a basic constitutional charter (Les Verts vs. European Parliament 1986: para 23). Likewise, we find early references of the treaties as a constitu-

tion in the literature (Lerche 1971; Lutz 1977; Bieber and Schwarze 1984; Bernhardt 1987). Obviously, the more recent literature mostly agrees on the constitutional character of the EU treaties. The argument still goes that there is a large functional equivalence of nation state constitutions and European primary law (Everling 1995; Zuleeg 2003; Diez-Picazo 2004; Jacqué 2004; Wichard 2004; Häberle 2006).

By applying the above basic notion of a constitution to the EU treaties we will see that in fact, the treaties contain provisions in the mentioned sense:

1. The treaties distribute power in both a horizontal and a vertical dimension. With respect to the distribution of power between and within institutions on the federal level, this includes legislative and non-legislative decision-making procedures. Those determine the role of each actor involved and thus their share of power. Also, majority rules in the Council of Ministers distribute power horizontally among the Member States. Finally for the horizontal dimension, the Commission's right of initiative and the European Court of Justice's right to jurisdiction are an issue of power-sharing at the federal level. The vertical dimension covers the rules that allocate power between the Member States and the EU level.
2. The treaties contain a set of values (see Art. 6 of the Nice EU Treaty and Art. 2 of the Lisbon EU Treaty) and goals (Art.s 2 and 3 of the EEC Treaty of Rome, Art.s 1 and 2 TEU Nice and 3 TEU Lisbon). In addition, since 1992 the treaties included an explicit reference to the Convention on Human Rights (Art. F of the Maastricht EU Treaty and art 6 (2) TEU Nice). The Charter of Fundamental was later included as Part II into the Convention's draft Constitution of 2003. With Lisbon, the latter is not included into the treaties, but "shall have the same legal value as the Treaties." (Art. 6 (1) TEU Lisbon).

However, I will include the material dimension into my analysis only, where it appears as a matter of vertical distribution of power. The "symbolic" relevance of goals and values will not be considered. This is, because I am foremost interested in constitutional choices by governments which should – being rational actors – not bother about codified values or goals as long as they do not affect the beef, that is, their share of power. Considering e.g. Poland's and Britain's opt-out from the European Convention on the Protection of Human Rights, this may be rooted in domestic politics and be based on a fear of the ECJ interfering with domestic politics. However, this will not be because of the symbolic value of a codified catalogue of human rights on the European level. So the question can be cut down to a matter of competences affecting the vertical dimension.

Following the above, each treaty shall be located in a two-dimensional space. The first dimension is horizontal and includes the distribution of power between the EU institutions. The second dimension is vertical and will include changes in the competences allocated to the EU level. After a short introduction of the dataset I will elaborate on how I will use it to compare the treaties in the above dimensions.

### 3 The data set

To my knowledge, apart from tables of equivalences attached to the EU treaties, there is no dataset that allows for a comparison of treaty provisions from the very origins of the now-EU to date. Starting with the Treaty of Rome (entry into force in 1958), I included the major treaty reforms, which are the Merger Treaty (1967), the Single European Act (1987), the Maastricht (1993), Amsterdam (1999), Nice (2003), and Lisbon (2009) treaties.

The dataset allows to trace the evolution of every single treaty provision in the period covered. How has decision making in a policy field changed over time? What provisions have been introduced through with which treaty? Some examples: Take e.g. art. 49 EEC on the freedom of movement for workers. While in 1958 the decision-making procedure was Consultation with the EESC, the procedure was changed first to Cooperation (SEA), then to Codecision (Maastricht), where it remained to date (Ordinary Legislative Procedure [basically Codecision II] in the Lisbon Treaty). Such examples can be given also for Council majorities: Art. 8a (2) on Union citizenship in Maastricht e.g. provided for the Council majority to be unanimity. This remained even though the procedure was changed to Codecision in Amsterdam. With Nice then, the unanimity requirement throughout the Codecision procedure was relaxed to QM. Or take art. 30 of the 1958 EEC treaty – nothing but the numbering of this provision on the prohibition of quantitative restrictions on imports has changed (in Lisbon it's art. 34). Meanwhile, art. 31 has been removed through the treaty of Amsterdam as it was outdated.

Some additional variables are included in the dataset, such as policy field or if a Commission proposal was necessary for the legislative procedures to be initiated and whether the European Court of Justice may exercise its jurisdiction. I can also see if provisions allow the community institutions to adopt legislative measures or if non-legislative types of actions such as decisions are foreseen. A list of selected variables contained in the dataset is annexed to this paper.

Every single article in each of the treaties is represented as one case. However, oftentimes articles needed to be split up in order to ascertain comparability of treaty provisions over time. This would e.g. be the case when though treaty reform parts of a certain article were moved to another place in the amended treaty or parts of an article were removed while others remained. Articles would also be split up into more provisions when one article contained numerous provisions on Council majorities or on decision-making procedures to be applied.

Obviously, the data set also allows displaying absolute and relative frequencies of the single variables as is e.g. done for council majority requirements for illustrative purposes (see below graph and table).

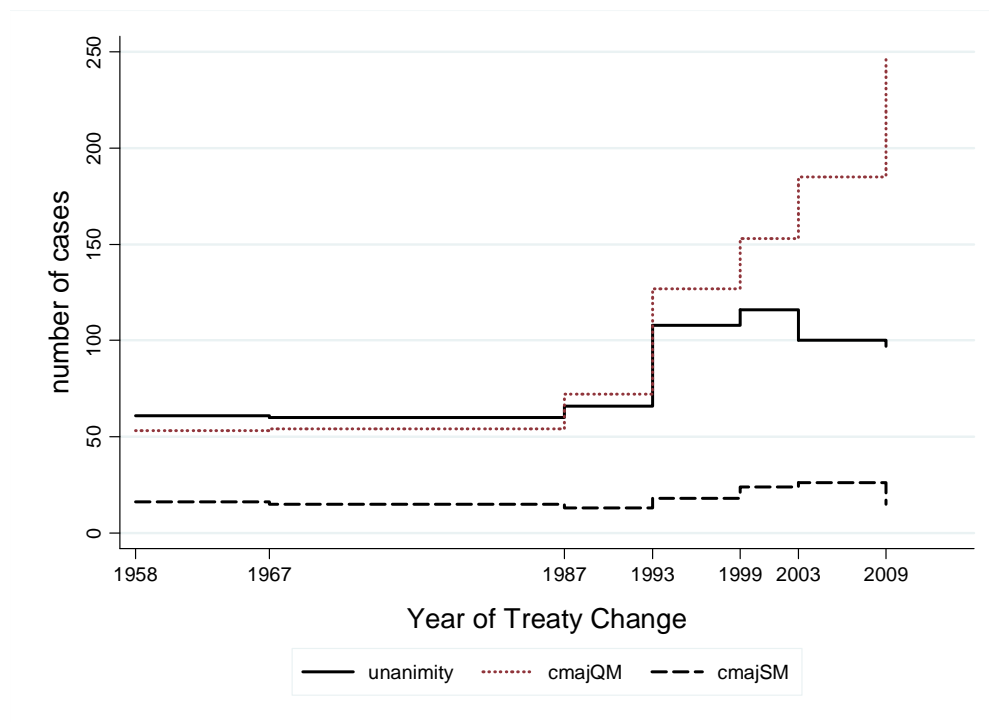


Chart 1: Absolute number of council majority requirements per treaty

We can see from both the graph and the table an ever increased absolute and relative use of QMV as opposed to simple majority and unanimity voting in the Council.

Treaty	1958 Rome		1967 Merger Treaty		1987 SEA		1993 Maastricht		1999 Amsterdam		2003 Nice		2007 Lisbon	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
unanimity	63	46,9	60	46,5	66	43,7	108	42,7	116	39,6	100	32,1	97	27,0
<b>QMV</b>	<b>53</b>	<b>40,8</b>	<b>54</b>	<b>41,9</b>	<b>72</b>	<b>47,7</b>	<b>127</b>	<b>50,2</b>	<b>153</b>	<b>52,2</b>	<b>185</b>	<b>59,6</b>	<b>247</b>	<b>68,8</b>
simple maj.	16	12,3	15	11,6	13	8,6	18	7,1	24	8,2	26	8,3	15	4,2
total	130	100	129	100	151	100	253	100	293	100	311	100	359	100

Table 1: Absolute and relative number of council majority requirements per treaty

#### 4 Measuring the degree of integration

The data set allows not only tracing the evolution of individual provisions or for calculating frequencies: In order to measure the degree of integration I can now combine the information contained in the data set to a horizontal scale and a measurement of vertical integration. The below table gives an overview of what I will describe in detail in the following.

Dimension	General definition	Measurement unit
Horizontal	Distribution of power... ... between and within institutions on the federal level	Decision-making procedures Council majorities COM's right of initiative ECJ jurisdiction
Vertical	... between the federal level und the sub-units	Number of articles in the EU treaties

Table 2: *Measuring treaty change, overview*

## 4.1 Horizontal dimension

The basic idea for the measurement of the horizontal dimension is to create a scale by combing information from the four following variables: (A) decision-making procedures, (B) council majorities, (C) the Commission's right of initiative and (D) the European Court of Justice's right of jurisdiction. I will describe those now and then explain how I built my horizontal scale.

- (A) The treaties contain diverse decision-making procedures and other forms of actions. Most prominent are legislative procedures, e.g. those with which directives and regulations are adopted and in which the most prominent players are the Council, the European Parliament and the European Commission: The Consultation procedure (CON), the Cooperation procedure (COOP), Codecision I and II (COD I / II, Ordinary legislative procedure (OLP) with the Lisbon Treaty) and the Assent procedure (ASS). In addition, the Council and the Commission are both entitled in certain cases to adopt directives without any other institution being involved. The non-legislative forms of action include Parliament, Commission or Council decisions or recommendations. Altogether 13 distinct decision-making provisions can be identified.
- (B) There are six types of Council majorities in the treaties. Those are: simple majority, qualified majority, unanimity, 3/5, 4/5, and 2/3 majorities, where the fractions may refer to the number of Member States or the number of votes in the Council.
- (C) The Commission's right of initiative implies that the any legislative decision can only be taken once the European Commission has made a proposal (cf. art. 250 TEC Nice). Even though, both the Council (art. 208 TEC Nice) and the European Parliament (art. 192 TEC) may request the Commission to make a proposal within the realm of the TEU and TEC (Council) respectively within the realm of the TEC (European Parliament): the Commission still enjoys the highest possible degree of discretion as what to propose in the case the two institutions request it to act (Kluth 2002: 1914; Wichard 2002: 1959). Thus, from the Council's perspective, the right of initiative is an important factor in shifting power away from the Member States towards a supranational actor. The commission's right of initiative is included dichotomously (yes/no)
- (D) Finally, the European Court of Justice's right of jurisdiction is included. Even though e.g. the functioning of a common market can hardly be imagined without such an institution: giving



the ECJ the right to rule on the compatibility of secondary law with the treaties and (albeit indirectly) of national law with the treaties or secondary EU law seems quite a restriction to Member States power. This variable is also included in a rather general manner: The ECJ may either have full or partial (JHA and CFSP) jurisdiction.

With 13 possible decision-making provisions, three Council majority types (simple majority, QMV, unanimity), the Commission's right of initiative (yes / no) and the ECJ's involvement (full / partial) there are 106 possible combinations.<sup>2</sup> Of those theoretically possible permutations, 47 actually appear in the treaties over time.

The task was then to first somehow rank the empirically observed permutations on a scale in order to secondly be able to calculate scores for each treaty. Those scores should then allow for a comparison of the degree of horizontal integration over time in different policy areas or for the treaty reform steps as a whole. For the ranking I will look at things from the Member States' perspective. I proceed as follows: First, I ranked the four variables I want to include in the score with respect to the degree of horizontal distribution of power. I then ranked the variables internally using the same criterion. Below find the ranking scheme which I will explain now.

A: Procedures	B: Council majorities	C: COM proposal	D: ECJ jurisdiction
A <sub>1</sub> Council decisions / recommend.	B <sub>1</sub> unanimity	C <sub>1</sub> no	D <sub>1</sub> partial
	B <sub>1</sub> unanimity	C <sub>1</sub> no	D <sub>2</sub> full
	B <sub>1</sub> unanimity	C <sub>2</sub> yes	D <sub>1</sub> partial
	B <sub>1</sub> unanimity	C <sub>2</sub> yes	D <sub>2</sub> full
A <sub>1</sub> Council decisions / recommend.	B <sub>2</sub> qmv	C <sub>1</sub> no	D <sub>1</sub> partial
...	...	...	...
A <sub>5</sub> EP/COM decisions	-	-	D <sub>2</sub> full

Table 3: Ranking scheme (for the complete empirical ranking see the annex)

The first criterion for the ranking of permutations is procedures. All procedures differ with respect to the power distributed to the different players and the degree to which supranational actors are involved in decision-making procedures. This goes from purely intergovernmental Council Decisions (no supranational actors involved) on the one extreme over the various legislative procedures to the European Parliament and the Commission deciding autonomously at the other extreme. In terms of degree of horizontal integration this is considered the most important criterion, as here the Member States agreed to give power to players that can act autonomously and which cannot be controlled. I combined the above mentioned 13 procedural provisions into five groups:

<sup>2</sup> The theoretically possible permutations are NOT  $13 \text{ (decision-making provisions)} \times 3 \text{ (Council majorities)} \times 2 \text{ (COM yes / no)} \times 2 \text{ (ECJ full/partial)} = 156$ , as when e.g. the EP or the COM act, no Council majorities apply or the question of the COM's right of initiative is irrelevant.

- A<sub>1</sub> (no supranational involvement): Council Decisions and Council Recommendations
- A<sub>2</sub> (supranational consultation): Consultation procedure
- A<sub>3</sub> (conditional supranational veto power): Cooperation procedure
- A<sub>4</sub> (full supranational veto power): Assent, Codecision I / II, Ordinary legislative procedure
- A<sub>5</sub> (autonomous supranational decision-making): EP or Commission decision / recommendation, COM directive

There is a vast literature on theoretical and/or de-facto influence especially in legislative decision-making (see e.g.: Tsebelis 1994; Garrett and Tsebelis 1997; Holzinger 1997; Golub 1999; Tsebelis and Garrett 2000; Garrett and Tsebelis 2001; König and Pöter 2001; Tsebelis et al. 2001; Tsebelis 2002: 252-82; Selck and Steunenberg 2004; Selck 2006; Golub 2007; Golub and Steunenberg 2007; König 2008). While both theoretical and empirical findings are interesting, we can hardly imagine Member States having – prior to their institutional choice – such in-depth insight as is provided by the (partly contradictory) scientific findings. I therefore strive not to rank procedures according to theoretical or de-facto influence certain actors have, but according to what should be governments' *beliefs* about the power distributive consequences of the different procedures (when they agreed on those procedures and their respective scope of application).<sup>3</sup>

The second most important criterion is the extent to which member states are willing to reduce their veto power in Council by agreeing to QMV or simple majority voting. Those shall be ranked ordinally with the less players needed for a decision, the more horizontal distribution of power. For the sake of simplicity I have here only included the three major modes which are simple majority, qualified majority, and unanimity. Those make up a total of 98,3% of all decisions (total n=1654) in all treaties, so the omitted majority requirements should not influence the analysis too much.<sup>4</sup> The argument for considering the shift to majority voting not quite as important as the first criterion is that even without an individual veto right Member States still take part in Council deliberations. By that, they may still influence outcomes (even if they are outvoted in the end) and negotiate package deals. But, once power is delegated to other institutions, there remains less influence.

Lastly, the Commission's right of initiative and the ECJ's involvement are considered as equally important in terms of horizontal integration. For the internal ranking of the variable, obviously, no Commission and Court involvement stand for less horizontal distribution of power than if they were involved.

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<sup>3</sup> So far, these are the beliefs I think rational governments *should* have. I yet need to go in detail by conducting document analyses here.

<sup>4</sup> This is especially true as the omitted types not included are more or less evenly distributed over the different reform steps.

Following the above scheme I classified and then ranked the 47 observed permutations. This gave me a scale ranging from 1-25. The annex contains a list of the ordinaly ranked permutations.

I then used the dataset to investigate which and how many of the ranked permutations appear in the each of the treaties. As the scale is only ordinal, I could only calculate scores for both single policy areas and for the whole treaties. The degree of change is then calculated by the simple formula

$$\text{medianscore}_t - \text{medianscore}_{t-1},$$

where t is the treaty of interest and t-1 the former treaty.

Surprisingly, we find only two switches in the median score and also observe only limited variance when looking at mean values. The below table gives the scores for the treaties from 1958 to 2009. Also, the largest increase occurs with 25 Members at the negotiation table.

Treaty	1958 Rome	1967 Merger Treaty	1987 SEA	1993 Maastricht	1999 Amsterdam	2003 Nice	2007 Lisbon
Median score	11	11	13	13	13	13	19
change	-	0	2	0	0	0	6
$\bar{X}$ (SD)	13,87 (9,62)	13,85 (9,69)	14,12 (9,21)	14,48 (9,01)	14,68 (9,01)	14,77 (8,98)	15,54 (8,96)
n	219	216	242	379	409	430	481

Table 4: Median and average horizontal scores for each treaty

The annex contains a more detailed list that differentiates between policy areas.

## 4.2 Vertical dimension

Comparing the amount of competences at the national level and the EU level is a true problem. To do so we would need a catalogue that aggregates state functions for all Members from which we could then subtract whatever competence has been transferred to the supranational level through a reform step. This seems a hardly achievable task. Still, the scores criticized in the introduction imply such an idea by stating what competences are at the national / EU level. However, we hardly learn anything about how the measurement goes.

I therefore will employ a relative measure with the Rome treaty from 1958 as a starting point. I will assume that this early treaty represents the lowest degree of vertical integration in all policy areas. Following Alesina et al. (2005), I then assume that an increase in number of Treaty articles in the respective

policy fields can be used as a rough indicator for an increase of policy competences at the EU level.<sup>5</sup> This is especially true as only one single Treaty article limits the EU's competences (and that in a quite general manner): Art. 5 TEC Nice on the principles of subsidiarity and the limitation of the EU's actions to competences in fact listed in the Treaties ["begrenzte Einzelfallermächtigung"]. All others positively describe the Union's respectively the Communities' competences or are institutional provisions.<sup>6</sup>

There appears a practical problem with the above: While an increasing number of provisions certainly lead to more power on the EU level, a repealed provision cannot be equated with less power on the EU level. This is e.g. true for provisions which have simply been abolished after the policy goal has been achieved (see e.g. transitional provisions on the elimination of customs duties (art.s 13-17) and the common customs tariff (art.s 18-29) in the Treaty of Rome). Those provisions were abolished with the Amsterdam treaty but did not result in a reduction of power allocated to the supranational level. Thus, the data set needs to be modified: In those cases where the number of articles decreased but the amount of competences has not been reduced, the number of articles prior to the reduction of articles is used to measure the vertical distribution of power. The table below indicates the number of articles per treaty. In brackets are the de facto numbers of articles while the non-bracketed numbers contain the theoretical number considering the deletion of some provisions. Again, the degree of change is calculated by subtracting the number of articles from the form treaty from those of the following one:

$$\sum_{articles_t} - \sum_{articles_{t-1}}$$

Treaty	1958 Rome	1967 Merger Treaty	1987 SEA	1993 Maastricht	1999 Amsterdam	2003 Nice	2007 Lisbon
Number of articles	247	254	281	377	415 (363)	420 (380)	451 (410)
change n	-	+ 7	+ 27	+ 96	+ 38	+ 5	+ 31
change %	-	+ 2,8	+ 10,6	+ 34,2	+ 10,1	+ 1,2	+ 12,1

Table 5: Number of treaty articles and vertical degree of change

The annex contains a more detailed table that indicates the number of articles per policy area.

### 4.3 Summary of empirical findings

Having calculated the horizontal and vertical distribution of power over all treaty reform steps allows us to place the treaties in a two-dimensional space as is done below.

<sup>5</sup> Alesina et al. (2005) go further by adding the number of secondary legislative acts in the respective policy fields and court rulings in the policies under investigation. For my research, however, only the first score is of interest, as I am foremost interested in the constitutional choices of the Member States at IGCs, not in legislative policy-making.

<sup>6</sup> The latter should also be excluded from the analysis. This yet needs to be done.

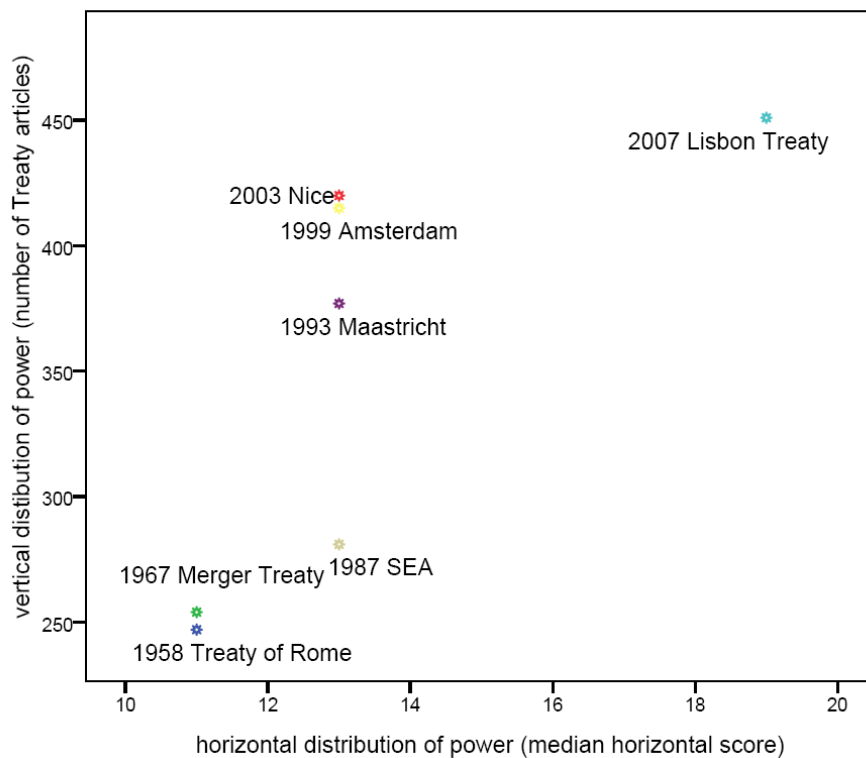


Chart 2: Placement of the Treaties in a two-dimensional space

Also from the graphical display we can clearly identify the reform step that has brought about the largest increase in vertical distribution of power compared to the previous treaty (Single European Act to Maastricht). This is hardly surprising as in Maastricht the European Union was founded and competences in the areas of foreign policy (CFSP) and justice and home affairs (JHA) given to the European level. The biggest step in term of vertical horizontal distribution is clearly from Nice to Lisbon.

One could expect that in both dimensions, integration should be hampered by more players (EU members) joining the game. The logic here is that with more players the likelihood of more heterogeneous positions over integration should increase. Under the condition of unanimity this would then lead to a more stable status quo and more incremental change. The general picture is however, that there seems to be no relation between an increase in players (i.e. EU Members) and the degree to which horizontal and vertical integration are increasing. There are small and rather big reform steps both with both a small and a highly increased number of EU members.

## 5 Conclusion

After shortly elaborating on the EU treaties as a constitution I presented my dataset and explained my approach to making comparable the degree of distribution of power. I then presented some preliminary findings.

Some caveats apply: Obviously, especially the vertical measure is not yet very well developed and is only an extremely rough indicator. I therefore strive to add more qualitative information on the content of the articles added or removed from the treaties. Also, questions remain with respect to the horizontal measure. One might as well argue that council majorities (especially shifts from unanimity to QMV which implies that single member states give up the possibility of an individual veto) are more important than a change in procedure. I here seek to refine my measurement by conducting document analyses. But, even with the alternative horizontal measure I tried, the general horizontal direction remains and variance does not increase.

Once the measurement is more finely grained I would be able to test classical integration theory hypothesis in detail. However, this is not my major interest. I rather aim to link the party political composition of the European Council (IV) to the outcomes of the intergovernmental bargains (DV). The analysis shall cover the whole time span from 1958 to 2008. Considering the fact that unanimity is necessary for any change of the constitutional status quo I seek to explain the puzzle why the pace of treaty change has not decelerated even though more and more players entered the European Union.

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## 7 Annex

### Literature Treaty change

author(s)	measurement approach	unit of analysis	scale	dimension(s)	comment on measurement	references
Lindberg/Scheingold 1970	own estimates	treaty text + projections from treaty obligations	1-5	vertical	"Answers .... will be crude" (p. 65)	-
Schmitter 1996	Lindberg/Scheingold 1970 + expert estimates	treaty text + projections for 2001	1-5	vertical		Lindberg/Scheingold 1970
Hooghe/Marks 2001	see above + own estimates	treaty text	1-5	vertical	"is disputable" (p. xi)	Lindberg/Scheingold 1970, Schmitter 1996
Donahue/Pollack 2001	reproduces Schmitter 1996	treaty text	1-5	vertical	-	Schmitter 1996
Alesina 2005	quantitative	treaty text + policy output + ECJ rulings	[normalized to 1]	vertical		-
Hix 2005	? Somehow merges findings from the authors listed in "references"	?	1-4	vertical	„tables are largely impressionist“ (p. 19)	Schmitter 1996 Donahue/Pollack 2001 Alesina et al. 2002 (=2005)
Börzel 2005	own estimates	treaty text	1-5	vertical	tries to overcome the risk of doing only "impressionist" work (Hix 2004 (sic!)) by not relying on secondary sources, aims to secure "intercoder reliability" (p. 200)	-
	scales based on Scharpf (2001, 2003)	treaty text	1-5	horizontal		
Rittberger/Schimmelpfennig 2005	? Somehow merge findings from the authors listed in "references" and "modify"	?	1-4	vertical		Hix 2005 Donahue/Pollack 2001
Schmitt 2005	reproduces data from the authors listed in "references"	treaty text	1-5	vertical		Lindberg/Scheingold 1970 Schmitter 1994 (sic!), Hooghe/Marks 2001

### Variable list (selection)

Variable	Label
year	Year of Treaty revision
refNUMBER	Running reference number
treatyNAME	Treaty Name – string
dateSTART	Entry into force of treaty/treaty amendments
dateEND	Expiry date old treaty
numberMS	Number of Member States in the respective period
treaty	Location of provision: Union or Community Treaty
originalART	Original article number in Treaty
policyAREA	Policy area from the Treaty chapters
policyAREAcoun	Number of articles per policy area
legis	Legislative and non-legislative type of action
judREVIEW	Judicial Review by ECJ
proc	Decision-making Procedure
comPROP	Community action only after Commission proposal?
cmaj	Council Majority
provINTrep	Introduced or repealed provision

## Horizontal Scale: ranked permutations

running number of permutation	Ordinal rank	A	Procedure	B	Council majority	C	COM right of initiative	D	Judicial review
1	1	A <sub>1</sub>	ACouncil Decision	B <sub>1</sub>	Unanimity	C <sub>1</sub>	no	D <sub>1</sub>	partial
2		A <sub>1</sub>	Council Decision	B <sub>1</sub>	Unanimity	C <sub>2</sub>	yes	D <sub>1</sub>	partial
3	2	A <sub>1</sub>	Council Decision	B <sub>1</sub>	Unanimity	C <sub>1</sub>	no	D <sub>2</sub>	full
4		A <sub>1</sub>	Council Recommendation	B <sub>1</sub>	Unanimity	-		D <sub>2</sub>	full
5	3	A <sub>1</sub>	Council Decision	B <sub>1</sub>	Unanimity	C <sub>2</sub>	yes	D <sub>2</sub>	full
6	4	A <sub>1</sub>	Council Decision	B <sub>2</sub>	QMV	C <sub>1</sub>	no	D <sub>1</sub>	partial
7		A <sub>1</sub>	Council Decision	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>1</sub>	partial
8	5	A <sub>1</sub>	Council Decision	B <sub>2</sub>	QMV	C <sub>1</sub>	no	D <sub>2</sub>	full
9		A <sub>1</sub>	Council Recommendation	B <sub>2</sub>	QMV	-		D <sub>2</sub>	full
10	6	A <sub>1</sub>	Council Decision	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>2</sub>	full
11	7	A <sub>1</sub>	Council Decision	B <sub>3</sub>	SM	C <sub>1</sub>	no	D <sub>1</sub>	partial
12		A <sub>1</sub>	Council Decision	B <sub>3</sub>	SM	C <sub>2</sub>	yes	D <sub>2</sub>	full
13	8	A <sub>1</sub>	Council Decision	B <sub>3</sub>	SM	C <sub>1</sub>	no	D <sub>2</sub>	full
14		A <sub>1</sub>	Council Recommendation	B <sub>3</sub>	SM	-		D <sub>2</sub>	full
15	9	A <sub>2</sub>	Consultation	B <sub>1</sub>	Unanimity	C <sub>1</sub>	no	D <sub>1</sub>	partial
16		A <sub>2</sub>	Consultation	B <sub>1</sub>	Unanimity	C <sub>2</sub>	yes	D <sub>1</sub>	partial
17	10	A <sub>2</sub>	Consultation	B <sub>1</sub>	Unanimity	C <sub>1</sub>	no	D <sub>2</sub>	full
18		A <sub>2</sub>	Consultation	B <sub>1</sub>	Unanimity	C <sub>2</sub>	yes	D <sub>2</sub>	full
19		A <sub>2</sub>	Consultation	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>1</sub>	partial
20	12	A <sub>2</sub>	Consultation	B <sub>2</sub>	QMV	C <sub>1</sub>	no	D <sub>2</sub>	full
21		A <sub>2</sub>	Consultation	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>2</sub>	full
22	14	A <sub>2</sub>	Consultation	B <sub>3</sub>	SM	C <sub>2</sub>	yes	D <sub>2</sub>	full
23		A <sub>2</sub>	Consultation	B <sub>3</sub>	SM	C <sub>1</sub>	no	D <sub>2</sub>	full
24	16	A <sub>3</sub>	Cooperation	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>1</sub>	partial
25		A <sub>3</sub>	Cooperation	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>2</sub>	full
26	18	A <sub>4</sub>	Assent	B <sub>1</sub>	Unanimity	C <sub>1</sub>	no	D <sub>1</sub>	partial
27	19	A <sub>4</sub>	Assent	B <sub>1</sub>	Unanimity	C <sub>2</sub>	yes	D <sub>1</sub>	partial

28		A <sub>4</sub>	Assent	B <sub>1</sub>	Unanimity	C <sub>1</sub>	no	D <sub>2</sub>	full
29		A <sub>4</sub>	Assent	B <sub>1</sub>	Unanimity	C <sub>2</sub>	yes	D <sub>2</sub>	full
30	20	A <sub>4</sub>	COD I	B <sub>1</sub>	Unanimity	C <sub>2</sub>	yes	D <sub>2</sub>	full
31		A <sub>4</sub>	COD II	B <sub>1</sub>	Unanimity	C <sub>2</sub>	yes	D <sub>2</sub>	full
32	21	A <sub>4</sub>	Assent	B <sub>2</sub>	QMV	C <sub>1</sub>	no	D <sub>1</sub>	partial
33		A <sub>4</sub>	Assent	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>1</sub>	partial
34	22	A <sub>4</sub>	Assent	B <sub>2</sub>	QMV	C <sub>1</sub>	no	D <sub>2</sub>	full
35		A <sub>4</sub>	COD II	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>1</sub>	partial
36		A <sub>4</sub>	Assent	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>2</sub>	full
37	23	A <sub>4</sub>	COD I	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>2</sub>	full
38		A <sub>4</sub>	COD II	B <sub>2</sub>	QMV	C <sub>2</sub>	yes	D <sub>2</sub>	full
39		A <sub>5</sub>	Commission Decision	-		-		D <sub>1</sub>	partial
40	24	A <sub>5</sub>	Commission Recommendation	-		-		D <sub>1</sub>	partial
41		A <sub>5</sub>	European Parliament Decision	-		-		D <sub>1</sub>	partial
42		A <sub>5</sub>	European Parliament Recom.	-		-		D <sub>1</sub>	partial
43		A <sub>5</sub>	Commission Directive	-		-		D <sub>2</sub>	full
44		A <sub>5</sub>	Commission Decision	-		-		D <sub>2</sub>	full
45	25	A <sub>5</sub>	Commission Recommendation	-		-		D <sub>2</sub>	full
46		A <sub>5</sub>	European Parliament Decision	-		-		D <sub>2</sub>	full
47		A <sub>5</sub>	European Parliament Recom.	-		-		D <sub>2</sub>	full

## Horizontal distribution of power: Which permutations in which treaties?

Treaty		1958 Rome	1967 Merger Treaty	1987 SEA	1993 Maastricht	1999 Amsterdam	2003 Nice	2007 Lisbon
		n	n	n	n	n	n	n
Horizontal score	1	1	1	1	13	14	18	15
	2	29	30	28	32	37	28	25
	3	15	15	11	10	5	4	6
	4	3	3	3	5	14	19	19
	5	12	12	14	25	31	40	55
	6	24	24	28	35	18	18	23
	7	1	1	1	1	4	4	1
	8	12	10	10	16	18	18	11
	9	0	0	0	0	0	0	3
	10	3	2	3	3	13	12	19
	11	13	12	20	38	33	28	16
	12	1	1	1	1	1	5	7
	13	13	14	17	24	30	33	27
	14	2	2	1	0	0	1	0
	15	1	1	1	1	2	3	3
	16	0	0	0	1	0	0	0
	17	0	0	9	20	5	5	0
	18	0	0	1	0	0	0	1
	19	0	0	2	2	3	2	10
	20	0	0	0	9	10	6	2
	21	0	0	0	1	1	1	1
	22	0	0	0	1	11	12	28
	23	0	0	0	12	40	50	84
	24	7	7	7	13	15	18	9
	25	82	81	84	116	104	105	116
n		219	216	242	379	409	430	481

## Horizontal distribution of power by policy areas

Policy areas from the Treaty chapters	1958 Rome		1967 Merger Treaty		1987 SEA		1993 Maastricht		1999 Amsterdam		2003 Nice		2007 Lisbon							
	n	md	n	md	n	md	n	md	n	md	n	md	n	md						
1 Principles and final provisions (incl. closer cooperation)	16	9,00	15	8,00	↓	15	11,00	↑	16	12,00	↑	28	13,00	↑	26	13,00	=	42	17,00	↑
of which legislative	4	9,00	3	10,00	↑	4	10,50	↑	4	10,50	=	9	11,00	↑	9	11,00	=		15,00	↑
2 Citizenship and non-discrimination	1	13,00	1	13,00	=	1	17,00	↑	6	14,00	↓	7	11,00	↓	8	17,00	↑	11	19,00	↑
of which legislative	1	10,00	1	10,00	=	1	13,00	↑	5	8,00	↓	6	8,00	=	7	8,00	=	10	15,00	↑
3 Internal market - general	3	3,00	3	3,00	=	4	4,50	↑	4	4,50	=	1	6,00	↑	1	6,00	=	2	14,50	↑
of which legislative																		1	19,00	-
4 Free movement of goods (incl. customs cooperation)	28	25,00	28	25,00	=	27	25,00	=	27	25,00	=	2	14,50	↓	2	14,50	=	2	14,50	=
of which legislative	4	12,50	4	12,50	=	4	12,50	=	4	12,50	=	1	19,00	↑	1	19,00	=	1	19,00	=
5 Agriculture	11	13,00	11	13,00	=	11	13,00	=	11	13,00	=	5	13,00	=	5	13,00	=	6	23,00	↑
of which legislative	4	10,00	4	10,00	=	4	10,00	=	4	10,00	=	3	10,00	=	3	10,00	=	3	19,00	↑
6 Free movement of persons, services and capital	23	13,00	23	13,00	=	23	13,00	=	28	12,00	↓	17	20,00	↑	17	20,00	=	18	23,00	↑
of which legislative	13	8,00	13	8,00	=	13	10,00	↑	15	10,00	=	11	19,00	↑	11	19,00	=	13	19,00	=
7 Justice and home Affairs (incl. visas, asylum, immigr.)									8	2,00	-	33	10,00	↑	36	10,00	=	38	22,00	↑
of which legislative												19	7,00	-	20	9,00	↑	35	18,00	↑
8 Transport	10	13,00	10	13,00	=	12	13,00	=	12	17,00	↑	12	23,00	↑	12	23,00	=	10	23,00	=
of which legislative	3	10,00	3	10,00	=	5	10,00	=	6	11,50	↑	6	14,50	↑	6	14,50	=	4	19,00	↑
9 Competition, taxation and approximation of laws	25	25,00	25	25,00	=	31	17,00	↓	33	13,00	↓	24	24,00	↑	24	24,00	=	27	23,00	↓
of which legislative	11	8,00	11	8,00	=	14	8,00	=	15	8,00	=	11	10,00	↑	11	10,00	=	13	10,00	=
10 Economic and monetary policy	12	15,50	12	15,50	=	12	15,50	=	55	13,00	↓	55	13,00	=	54	13,00	=	53	13,00	=
of which legislative	3	5,00	3	5,00	=	3	5,00	=	28	10,00	↑	27	10,00	↑	27	10,00	=	24	10,00	=
11 Employment												10	14,00	-	10	14,00	=	10	14,00	=
of which legislative												3	11,00	-	3	11,00	=	3	11,00	=
12 Social policy	8	13,50	8	13,50	=	9	14,00	↑	8	17,00	↑	23	23,00	↑	25	23,00	↑	25	23,00	↑
of which legislative	5	9,00	5	9,00	=	6	9,50	↑	5	13,00	↑	15	19,00	↑	17	19,00	↑	17	19,00	↑
13 Culture									2	11,50	-	2	11,50	=	2	11,50	=	2	14,50	↑
of which legislative									1	16,00	-	1	16,00	=	1	16,00	=	1	19,00	↑

14 Public health								3	23,00	-	3	23,00	=	3	23,00	=	4	23,00	=	
of which legislative								1	19,00	-	1	19,00	=	1	19,00	=	2	19,00	=	
15 Consumer protection								1	23,00	-	1	23,00	=	1	23,00	=	1	23,00	=	
of which legislative								1	19,00	-	1	19,00	=	1	19,00	=	1	19,00	=	
16 Trans-European networks								2	20,00	-	1	23,00	↑	1	23,00	↑	1	23,00	↑	
of which legislative								2	16,00	-	1	19,00	↑	1	19,00	=	1	19,00	=	
17 Industry								2	18,00	-	2	18,00	=	2	24,00	↑	2	24,00	↑	
of which legislative								1	8,00	-	1	8,00	=	1	19,00	↑	1	19,00	=	
18 Economic and Social Cohesion					2	14,00	-	6	20,00	↑	6	20,00	=	7	23,00	↑	7	23,00	=	
of which legislative					2	10,50	-	5	16,00	↑	5	16,00	=	6	19,00	↑	6	19,00	=	
19 Research and technological development					10	13,00	-	11	17,00	↑	11	23,00	=	11	23,00	=	13	23,00	=	
of which legislative					9	10,00	-	9	13,00	=	9	19,00	↑	9	19,00	=	11	19,00	=	
20 Environment					1	11,00	-	8	11,00	=	8	11,00	=	8	11,00	=	11	23,00	↑	
of which legislative					1	8,00	-	8	8,00	=	8	8,00	=	8	8,00	=	11	19,00	↑	
21 External action (incl. development and cooperation)	15	10,00	15	10,00	=	15	18,00	↑	36	5,00	↓	48	4,00	↓	61	4,00	=	62	4,00	=
of which legislative	4	3,50	4	3,50	=	4	3,50	=	5	9,00	↑	5	9,00	=	7	9,00	=	10	17,50	↑
22 Association of the overseas countries and territories	3	2,00	3	2,00	=	3	2,00	=	3	2,00	=	3	2,00	=	3	2,00	=	4	11,00	↑
of which legislative																		2	8,00	↓
23 Institutional provisions	48	8,00	46	8,00	=	50	8,00	=	72	10,50	↑	80	15,00	↑	84	15,50	↑	91	23,00	↑
of which legislative					4	7,50	-	6	7,50	=	7	8,00	↑	9	9,00	↑	11	19,00	↑	
24 Financial provisions	16	8,50	16	8,50	=	16	8,50	=	25	25,00	↑	27	25,00	=	27	25,00	=	34	25,00	=
of which legislative	2	5,00	2	5,00	=	2	5,00	=	4	8,00	↑	5	8,00	=	5	10,00	=	7	18,00	↑
25 Energy																		2	16,50	-
of which legislative																		2	13,00	-
26 Tourism																		1	23,00	-
of which legislative																		1	19,00	-
27 Civil protection																		1	23,00	-
of which legislative																		1	19,00	-
28 Administrative cooperation																		1	23,00	-
of which legislative																		1	19,00	-
Total	219	11,00	216	11,00	=	242	13,00	↑	379	13,00	=	409	13,00	=	430	13,00	=	481	19,00	↑
of which legislative	54	8,00	53	8,00	=	76	8,00	=	129	10,00	↑	155	10,00	=	164	10,00	=	206	18,00	↑

## Vertical distribution of power

Policy areas from the Treaty chapters, # of articles (with the original number of articles in brackets)	1958 Rome	1967 Merger Treaty	1987 SEA	1993 Maastricht	1999 Amsterdam	2003 Nice	2007 Lisbon
1 Principles and final provisions (incl. closer cooperation)	38	38	38	55	55	60	67
2 Citizenship and non-discrimination	1	1	1	7	8	8	9
3 Internal market - general	1	1	4	4	4 (3)	4 (3)	4 (3)
4 Free movement of goods (incl. customs cooperation)	29	29	29	29	29 (10)	29 (10)	29 (9)
5 Agriculture	10	10	10	10	10 (7)	10 (7)	10 (7)
6 Free movement of persons, services and capital	26	26	26	34	34 (22)	34 (22)	34 (22)
7 Justice and home Affairs (incl. visas, asylum, immigration)				10	23	25	23
8 Transport	11	11	11	11	11	11	11
9 Competition, taxation and approximation of laws	18	18	20	22	22(17)	22 (17)	22 (18)
10 Economic and monetary policy	8	8	9	28	26	27	29
11 Employment					6	6	7
12 Social policy	12	12	14	13	15	15	16
13 Culture				1	1	1	1
14 Public health				1	1	1	1
15 Consumer protection				1	1	1	2
16 Trans-European networks				3	3	3	3
17 Industry				1	1	1	1
18 Economic and Social Cohesion	2	2	8	8	8 (7)	8	8 (7)
19 Research and technological development			11	11	11	11	12
20 Environment			3	3	4	4	5
21 External action (incl. development and cooperation with third-countries and commercial pol.	11	12	12	27	33	38	43



22 Association of the overseas countries and territories	7	7	7	8	8	8	8
23 Institutional provisions	64	69	67	77	77	80	87
24 Financial provisions	9	10	11	13	13	13	15
25 Energy							1
26 Tourism							1
27 Civil protection							1
28 Administrative cooperation							1
Total	247	254	281	377	415 (363)	420 (380)	451 (410)