

How Publicity Creates Opacity

What Happens When EU Ministers Vote Publicly

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In this chapter, I attempt to assess the effects of publicity on an institution that used to decide behind closed doors – the EU Council of Ministers. This intergovernmental organization passed EU laws behind closed doors until a ruling issued in December 1993 imposed the publication of votes. Empirical investigation reveals that, in some cases, rather than providing citizens with better information on their representatives' voting positions, increased publicity has created an additional incentive for representatives to be seen as in favor of laws passed by the Council. This finding is partly in line with previous research since a similar mechanism has been observed in other institutional settings such as the U.S. Federal Reserve (Meade and Stasavage 2006) and the U.S. Supreme Court (Epstein, Segal, and Spaeth 2001). However, in these two cases, decision makers used to voice their disagreement more frequently when they knew their votes would not be published. On the contrary, in the diplomatic context of the EU Council of Ministers, because of a strong norm of consensus, the actors were reluctant to voice their disagreement even when votes were not published. I argue that publicity can reinforce the actors' reluctance to openly disagree.

A major implication of this finding is that publicity does not guarantee the disclosure of decision makers' positions. It is frequent to assume that behind closed doors, actors hold frank debates and that, to make their positions transparent, it would be enough to unveil their meetings. However, institutional design might fail to increase accountability if it overlooks the fact that even behind closed doors, the actors might attempt to conceal their position, in particular when they negotiate. The case study presented in this chapter sheds further light on the reasons why publicity does not necessarily increase accountability (Hood 2010; Tan 2012).

The chapter is divided into four sections. The first section describes the methodology used to assess the effects of publicity on the representatives'

voting behavior. The second section argues that, in some cases, rather than increasing the Council's accountability, publicity has reinforced the tendency of representatives to conceal their disagreement because they believe that opposition to adopted measures is usually considered as a failure by their domestic audiences. The third section shows that even if this mechanism seems similar to those observed in other settings, the case of the Council is different because even behind closed doors, the actors do not want to reveal their position. The fourth section compares the case of the Council with the cases of the U.S. Federal Reserve and of the U.S. Supreme Court. The conclusion suggests that inadequate publicity rules can be more detrimental to public information than the absence of publicity rules because when publicity rules fail, they might entail the illusion that citizens can monitor their representatives' acts while accountability is in reality not guaranteed.

METHODOLOGY AND DATA

In the Council of the European Union, member states are represented by their ministers who decide on the European Commission's legislative proposals. In a growing number of sectors, the Council co-decides with the European Parliament. The most frequent decision rule has become qualified majority voting, even if unanimity is still used in sectors in which member states remain sovereign. However, when the official decision rule is qualified majority voting, legislative measures are very often adopted without opposition (in about 80 percent of cases in which a vote could be taken; Hayes-Renshaw et al. 2006; Van Aken 2012). When qualified majority voting is the decision rule, votes are allocated to member states in function of their population, and the threshold is quite high (more than 70 percent of the votes).

The Council is divided into ten sectors (Agriculture and Fisheries, Environment, Competitiveness, and so on). Although the votes on the adopted legislative acts have been published since 1994, the openness of the actual sessions varies by sector. This variation allowed me to study the voting practice in function of the degree of publicity. The following analysis proceeds to a synchronic comparison of the two sectors of the Council and to a historical comparison. When the Council co-decides with the European Parliament – as it does in the environment sector – the votes on the legislative acts must be public (Council's Rules of Procedure 2009, article 8). When the European Parliament plays only a consultative role, as it did for most measures in the agriculture sector before the implementation of the Lisbon Treaty in 2010, the entire process takes place behind closed doors. Therefore, I compared the *Environment Council*, which votes in public and publishes its voting results, and the *Agriculture Council*, which until 2009 voted behind closed doors but published its voting results. Furthermore, I made a second comparison between the voting practice before 1994 (that is, when the national representatives voted behind closed doors and did not publish their votes) and after 1994.

My study relies on three types of data. First, I had access to Council minutes for the period prior to 1994. I systematically read the minutes of the Council sessions and its main preparatory committee (the Committee of Permanent Representatives [Coreper]) for the years 1988, 1989, and 1992. I also consulted the minutes published on the Council's website since 1999. Secondly, I used voting statistics. For the period prior to 1994, I did my own calculations on the basis of the Council's minutes. For the period after 1994, several studies offer statistics, and I occasionally made my own statistics on the basis of the public minutes. Finally, I conducted seventy semi-structured interviews between 2006 and 2012. They lasted on average one hour and a half. The sample of interviewees include individuals who worked at the Council before 1994 and/or right after 1994; EU civil servants who contributed to draft the transparency rules; and national representatives and members of the Council General Secretariat who worked in the Council at the time of the interviews. I interviewed several national representatives and members of the Secretariat who worked in the Committee of Permanent Representatives, which negotiates the bulk of the legislation for the ministers and is not sectorized. I also interviewed several members of the Agriculture Council and of the Environment Council in order to assess the effects of publicity in these two different settings.

THE EXTERNAL AUDIENCE: PUBLICITY AS AN INCENTIVE TO AGREE

Voting records for the 1994–2012 period show that, on average, member states vote against adopted acts in only 20 percent of the cases.¹ In this section, I argue that this low rate of opposition is partly due to the reluctance of ministers to be seen as opposed. The publicity of the votes generally deters the ministers from voting against adopted measures or abstaining (when qualified majority is the rule, an abstention is equal to a negative vote).

Every semester, a different member state of the EU holds the presidency of the Council. The presidency leads the negotiations and aims at passing as many laws as possible during this semester. For this reason, as soon as it deems that there is a qualified majority of votes in favor of a given measure, it usually states that the measure can be adopted. However, one can be puzzled by the fact that even if the presidency does not generally aim to get everybody on board, measures that could be passed by a qualified majority vote are adopted without opposition in about 80 percent of cases. According to my interviews, the fact that votes are published partly explains this high rate of general agreement. In a nutshell, even if ministers are not satisfied with adopted

¹ No data on rejected acts are published because when the presidency of the Council deems that a measure is not supported by a sufficient number of participants, it does not open voting procedures. Instead, it negotiates with member states until it reaches qualified majority, or it just waits for more favorable times.

measures, they usually avoid voting against once they know that they cannot block the adoption anymore because they believe that the journalists and the domestic constituency interpret negative votes as failures in the negotiations.²

We have first to clarify why the public votes of ministers can differ from the position they have taken behind closed doors. Measures are usually unofficially adopted by the preparatory committees of the Council (the Special Committee for Agriculture [SCA] and the Committee of Permanent Representatives [Coreper]), who meet behind closed doors. However, ministers must ratify the measures because their representatives in the committees do not have the right to vote. After the presidency of the Coreper or of the SCA has unofficially stated that a measure can be adopted, it informs the permanent representatives of the date on which the measure will be officially adopted by the ministers. National representatives who want to vote against the measure or abstain have to register their votes before this date. According to an unofficial norm, delegations have to inform the Coreper or SCA presidency that they intend to vote against a measure or abstain *before* the presidency announces that it can be adopted. However, a delegation can always join the majority even if it informed the presidency that it would vote against a measure. The norm of non-withdrawal originates in the fact that a reversal could generate a blocking minority, which would compel the presidency to launch an additional round of negotiations. The parties leading the negotiations (Presidency, Secretariat, and Commission members) want to avoid unexpected rejections of measures during Council sessions, which would lower the legislative productivity. Moreover, ministers come to Brussels only to ratify measures on which the preparatory committees have already found an agreement. If a measure was unexpectedly rejected during a Council session, they would likely deem that the preparatory work was inefficient.

Actually, national representatives who are unsatisfied with an adopted measure generally avoid publicly voting against because they deem that publishing a negative vote would be a strategic and political mistake. One might object that negative votes and abstentions can be useful tools for ministers to communicate with lobbies or their electorate or to escape responsibility for an unpopular decision. Such strategies have been analyzed in recent studies (Hayes-Renshaw, Van Aken, and Wallace, 2006), but the interviews show that such votes are exceptions to the rule of joining the majority.

In 1996, a member of the Council Secretariat noted:

ministers often face domestic political costs for being seen to be defeated in the Council. Since voting can now occur unless a consensus is reached, there is a strong incentive for countries with less than a blocking minority at their disposal to fall in behind the majority view before the final text is adopted. Member states which have failed in their negotiating strategy and know they are going to be outvoted often join the majority position at the last moment to avoid the embarrassment of defeat. The increasing

² A more detailed analysis is provided in Novak (2013).

openness of the Council as an institution also promotes such behaviour. Whereas previously the positions of member states in QMV votes were kept secret, since December 1993 it has been the norm to publish formal (but not informal) votes of the Council in the EC pillar. (Teasdale 1996: 106)

Interestingly, my investigation conducted more than ten years after this statement confirmed this tendency. Several EU officials employed at the Council Secretariat, who have usually attended negotiations in the Council for decades, observed that national representatives who are on the verge of being outvoted tend to rally to the majority to avoid being seen as defeated. According to a member of the Secretariat,

the minority quickly rallies the majority at the last minute because they do not want to appear as losers. . . . Voting against is a political act and one should think a lot before voting against. . . . most of the time one gives up, it is useless to vote against. . . and on top of that, the votes are publicly displayed with green, red and yellow arrows! Member states do not want to be seen in a minority position. And after the Council, they have to do a press conference! For sure, the big proportion of decisions made without opposition is partly due to the fact that the minority joins the majority at the last moment. (December 2007)

National representatives assume a negativity bias of the journalists and the public at large (Kahneman and Tversky 1984); they expect that the journalists and the public in their home country will perceive negative votes or abstentions as evidence of failure in the negotiation process and for this reason will pay more attention to these votes than to the absence of opposition. National representatives also want to avoid the possibility that their political opponents will use their negative vote against them. A representative of a member state X explained that such votes trigger media attention while journalists usually overlook measures adopted without opposition:

When we are isolated, we prefer not to express our opposition because the journalists in X would make big titles with it – “X voted against in the Council” – without reporting that on twenty points, X got what it wanted, focussing only on the negative vote. (October 2007)

The problem here is not to know whether this belief shared by national representatives is justified, but to clarify how decision makers react to publicity. However, let us note that in a study of the press officers in the Council, Laursen (2012: 10) reported that when debates are held behind closed doors, journalists urge press officers to reveal conflicts whereas press officers are instructed not to disclose this kind of information (see also Curtin and Meijer 2006: 118).

Even representatives of member states that are among the more frequent naysayers, partly due to parliamentary mandates, such as Denmark and Sweden (for voting statistics by country, see Van Aken 2012), confess that negative votes and abstentions represent a costly form of dissent. Moreover, some

delegations systematically avoid negative votes and abstentions. For instance, for several years, the French delegation received the instruction not to vote against measures. The Spanish delegation also avoids voting against adopted measures as a matter of principle. Finally, representatives of small member states vote against the majority only in extreme cases – that is, if a directive gives rise to a domestic crisis. They usually think that going along with the majority is the best strategy because they do not have much voting weight. By adopting this strategy, representatives of small member states expect that the presidency of the Council and/or the European Commission will be more likely to take into account their difficulties in future negotiations. They also argue that the domestic constituency could interpret a negative vote or an abstention as an inability of the representatives to defend the national interest. Therefore, the empirical investigation shows that public votes do not necessarily reflect real disagreements – which led a former Permanent Representative to describe public votes as “window dressing” (July 2010) and that EU ministers avoid publicly dissenting because they expect domestic costs if they are seen as opposing adopted legislation. This mechanism seems close to the one observed in the case of the U.S. Supreme Court and of the Federal Reserve’s Federal Open Market Committee (FOMC). However, I argue in the next section that the case of the Council differs because publicity has not led to a decrease of dissent. Even when votes were not published, ministers were reluctant to be seen by their peers as opposed to adopted acts. Even before 1994, negative votes and abstentions were rarely reported on the Council and Coreper minutes. The publication of votes only reinforced an existing habit.

THE INTERNAL AUDIENCE: THE NATIONAL REPRESENTATIVES’ RELUCTANCE TO DISSENT BEHIND CLOSED DOORS

As already mentioned, in the Council of the European Union, most decisions are actually unofficially made by preparatory committees. The ministers usually come to Brussels or Luxembourg only to ratify measures for which their representatives in the committees have already found an agreement behind closed doors. The Coreper and the SCA members are used to work together on a daily basis and usually hold their function for several years, which means that the shadow of the future plays a strong role in the negotiation process. These committees are often described as clubs of diplomats. In this context, the actors have developed peculiar decisional practices that have astonishingly persisted over the years. In spite of the different enlargements that brought new member states’ representatives in the committees and in the Council, the descriptions given by former members of the Coreper in the 1980s and in the 1990s were astonishingly close to the descriptions provided by persons who were members of the committees and/or of the Council at the time of the interview.

The most striking enduring habit of these committees is that they do not vote openly but permanently check through bilateral talks whether there exists a blocking minority or not. The national representatives are aware of the fact that qualified majority is the rule and that they could be outvoted; they build blocking minorities in order to compel the presidency to redraft the Commission proposals to reflect their preferences. At each stage of the decision-making process, the presidency, the Commission, and the Secretariat attempt to identify blocking minorities and eliminate them. Given that QMV is in fact used, it is all the more puzzling to hear interviewees state that the presidency never opens voting procedures and that national delegations and the Commission never ask for a vote even if the internal rules allow them to do so (Council's Rules of Procedure 2009, article 11). An interviewee who served as a Permanent Representative from 1987 to 2001 (an exceptional longevity) reports that he only saw once the presidency of the Coreper asking national representatives to vote sequentially by saying "yes" or "no" during a plenary session (July 2010).

The case of the Council is interesting because this institution operates neither with public votes nor with secret votes. The vote is implemented thanks to a *third method*: voting positions are communicated through bilateral talks between the Council presidency and the national representatives. During the committee meetings, permanent representatives tend to state unclear positions in order to have room to maneuver. When they plan to register a negative vote or an abstention, they inform the presidency during a bilateral meeting. It is mostly on the basis of these bilateral talks that, during Coreper or CSA meetings, the presidency is able to state that qualified majority is reached in favor of a given measure and that it can be adopted. When the presidency and the Secretariat are not sure whether a delegation agrees with a given measure but deem that it is not explicitly opposed to it, they count the delegation as supporting the measure (Council Secretariat 2003; 2005).

I argue that the actors favor the use of this voting method (neither public nor secret vote) because it avoids the costs entailed by explicit vote. In a nutshell, actors generally consider that voicing one's opposition during plenary sessions and revealing the identity of opponents entail more costs than benefits. But their use of this voting method is not prompted by the consideration of the public's perception as commonly conceived; empirical investigation shows that the actors communicate their voting positions through bilateral talks because they do not want to make them explicit in front of their peers – or, to put in other words, in front of an internal audience that one should distinguish from the public audience.

This voting method has emerged in the 1980s and is a deeply rooted practice across Council sectors. Following theories according to which publicity deters opponents from voicing their disagreement, one would expect more open voting procedures during the plenary sessions of the Council before 1994 and of the Agriculture Council before 2009 – that is, when measures were adopted *behind closed doors*. However, archival research and interviews show that in these

TABLE 7.1. *Absence of Formal Voting Regardless of the Degree of Publicity*

Publicity level	Before 1994: No publicity	Agriculture Council, 1994–2009: Legislative adoption behind closed doors. Publication of voting results	Councils co-deciding with the EP: Public ratification by the ministers following an unofficial “political agreement” by the Coreper behind closed doors. Publication of voting results
(Non)Voting Practice	Adoption of legislative acts by the presidency’s oral statement of QM without formal voting procedure.	Adoption of legislative acts by the presidency’s oral statement of QM without formal voting procedure.	Adoption of legislative acts by the presidency’s oral statement of QM without formal voting procedure.

circumstances, formal votes were extremely rare even if the actors attempted to build blocking minorities or to determine whether such blocking minorities existed. Furthermore, even when the vote on a measure must be public because the Council co-decides with the European Parliament, the Coreper presidency is used to stating behind closed doors that the measure can be adopted and to avoiding asking the representatives to vote formally (for instance by raising their hands or by a roll call). Since votes must be public, when ministers officially adopt measures during a public session of the Council, the presidency reads the list of texts to be adopted while the abstentions and negative votes are displayed on a big screen. But as mentioned in the previous section, these votes are preregistered after an agreement has been reached behind closed doors.

Therefore, contrary to the theory according to which publicity diminishes the incentives to make one’s opposition explicit, the level of publicity does not seem to influence the voting method, as shown in the Table 7.1.

The absence of formal voting, therefore, is a practice *anterior to the publication of votes*. It has endured even if the rule of qualified majority voting has substituted for the rule of unanimity in an increased number of legislative sectors. To explain this phenomenon, we will distinguish the *internal audience* from the *external audience*. Too often, studies that compare voting behavior in function of the institutional setting – that is, public vs. behind closed doors meetings – overlook the fact that even behind closed doors, the actors of the decision-making process have to face an internal audience. Because they consider this internal audience’s perception, the members of the Council favor the

voting method based on bilateral talks described earlier in the chapter. In what follows I provide two types of evidence.

The first piece of evidence is based on a comparison between the period anterior to 1994 – that is when votes were not published at all – and the period starting in 1994, when the publication of votes became compulsory. In order to facilitate the adoption of directives shaping the Common Market, the main realization of the EU so far, the governments of member states agreed to give up their right to veto and to substitute qualified majority voting for unanimity in a number of sectors. This institutional change was ratified with the Single European Act in 1986. Complying with the Treaty's provisions, the presidency of the Council started opening voting procedures when the rule was qualified majority voting. However, this practice had highly negative effects on the working relations of Council's members. In particular, being outvoted was considered as humiliating. Therefore, the presidency started referring to QMV in a more "sophisticated" way, as one former Permanent Representative put it (July 2010). Instead of asking the Council members to vote by roll call or by raising their hand, the presidency only noted orally that there was a qualified majority in favour of a proposal. For this reason, the national representatives who were in the minority could remain silent. According to our interviewee, "the presidency avoided to refer to the majority because it did not want the minority to feel embarrassed . . . the presidency avoided to explicitly outvote." This phenomenon was described by the Council presidency in 1990:

The difficulty in providing statistics (on votes in the Council) is related to the way in which votes are taken in the Council. On many occasions, when a Member State sees that a vote will not be to its advantage, it joins the consensus rather than ask for a vote which would not alter the situation. Consequently, even if records were available, I am convinced that they would not be especially reliable. (quoted by Bieber 1992: 57)

For this reason, a former official of the Council Secretariat stated that counting votes on the basis of the minutes prior to 1994 did "not make sense" (May 2010), while the Permanent Representative quoted above claimed that "the minutes do not mean anything because the minority used to keep silent." This is because the Council and committee members used the voting method based on bilateral talks; during plenary sessions, the presidency only orally stated qualified majority without opening voting procedures. Therefore, the few votes reported on the minutes did not accurately reflect the positions of member states and the level of disagreement or dissatisfaction with adopted measures. This finding also shows how our case differs from the cases studied by Stasavage and Meade and Epstein and al (see above and following section). Contrary to them, we do not have reliable minutes that would allow us to compare the rate of dissent before and after the publication of votes. However, interviews with members of the Council before the publication of votes became compulsory – and in particular with a former member of the Council Legal Service – reveal that minutes provide us with few information on votes because

the voting intentions and positions were not made explicit during the plenary sessions.

Surprisingly, interviews with Council members in the 2000s show that their decisional practices are very similar to the practices of their predecessors. Two habits in particular – not opening a voting procedure and keeping silent when one is defeated – have emerged in the 1980s and have endured since then. They can be considered as norms because those who do not comply with them risk being ostracized. For instance, right after the 2004 enlargement, the Polish delegation often threatened to vote against measures. Most of our interviewees referred to this behavior, suggesting that it was atypical and detrimental to the negotiation process and a form of “suicide” of the Polish representatives (January 2008). When Sweden joined the EU in 1995, its representatives also voted against measures more often than the other delegations did – a case that has been kept in the annals of the Council – before learning the famous “norm of consensus” that representatives have to follow if they do not want to marginalize themselves and be ignored by the presidency and the Commission. For instance, a representative quoted the case of a delegation quibbling over a measure during a Coreper session, even though the presidency had already stated that it could be adopted. According to our interviewee, the presidency simply “ignored” this delegation (October 2007).

Secondly, the study of the Agriculture Council, which operates behind closed doors, helped me establish that the actors avoid formal vote during plenary sessions and favor the voting method based on bilateral talks because they prefer not to take explicitly position in front of their colleagues. The Agriculture Council has the reputation of voting more often than the other councils. Its members decide upon measures behind closed doors, but the voting results are published and show the highest rate of public opposition at the Council (about 35 percent). Nonetheless, during plenary sessions held behind closed doors, formal voting is rarely used and delegations do not explicitly state their voting positions. Therefore, there is a discrepancy between the absence of formal votes behind closed doors and the rather high rate of dissent shown by the public voting records. An anecdote will tell more clearly how the reluctance to be seen as opposed by one’s peers explains this discrepancy. After a natural disaster in Romania, the Council decided to allow the Romanian government to grant financial aid to farmers. A minister intended to abstain (which, when QMV is the rule, amounts to casting a negative vote) but did not want to appear as abstaining during the Council session. For this reason, his advisor informed a Secretariat official that even if the minister would not say anything during the plenary session, he would register an abstention after the session. To address his domestic audience – or “external audience” – the minister had to make public his abstention after the session but he did not want to be seen as opposed by his peers or by the internal audience. This second comparison confirms the reluctance to be seen as opposed by one’s peers originating in the apprehension of ostracization and/or humiliation. This apprehension is a strong incentive in

the preparatory committees because it results of both strategic considerations; the representatives think of the future negotiations with the same colleagues – and emotions – such as the embarrassment of opposing one's peers or the humiliation of being seen as defeated.

COMPARISON

Therefore, the consideration of the internal audience leads national representatives to avoid voicing their disagreement behind closed doors when they cannot block the adoption of a measure. Besides, the consideration of the external audience leads ministers to avoid registering public negative votes or abstentions against adopted measures. In particular, empirical research shows how the expected loss aversion and negativity bias of the public collide with the requirement of publicity. The institutional structure of the Council is such that publicity can lead ministers to display voting positions that aim to avoid blame rather than to account for the position they defended behind closed doors.

Now, we would like to compare the mechanism at work in the Council with the mechanism evidenced in the cases of the Federal Reserve's FOMC and of the U.S. Supreme Court. Meade and Stasavage (2006) showed that before votes began to be published (that is, before 1994), the members of the FOMC used to oppose more frequently. By comparing the records of the FOMC sessions before 1993 and the public votes after 1993, they were able to establish that the level of dissent greatly diminished. According to them, this phenomenon is likely to occur in a group of experts because they care for their reputation. Officials are reluctant to express opinions that differ from the opinion of the most recognized of their peer because if they publicly oppose and are finally proven to be wrong, they might face higher costs than if they remain silent while the opinion of the most senior expert is wrong.

The study of the U.S. Supreme Court shows that the high rate of public consensus in this institution in the nineteenth century did not result from the fact that judges often reached general agreement behind closed doors (Epstein et al. 2001). It originated in a norm of consensus that led the judges to display public unanimity in spite of internal disagreements behind closed doors. While the study of the FOMC argues that the effect of the publicity is linked to the fact that the decision makers are experts who care for their reputation, the study of the Supreme Court does not explain why there existed a norm of consensus in the nineteenth century. However, both studies show that conflicts behind closed doors can be not reflected by public votes because decision makers do not want to appear as opposed publicly.

The Council case offers an interesting variation: Publicity creates an additional incentive for decision makers to hide their disagreement, but even before the publication of votes starting in 1994, the decision makers tended to hide their disagreement. The social characteristics of the group partly explain this behavior since decisions were made by diplomats who were reluctant to utter

their disagreement. This reluctance has been observed in other international organizations in which member states are represented by diplomats. In the Council, it parallels the fact that ministers expect to be punished for publicly opposing passed legislation. The incentives not to appear as a dissenter are thus double: the fear of being ostracized by one's peers and the fear of being blamed by the media and the domestic constituency. The diplomats' fear of being ostracized thus combines with ministers' fear of public blame, a fear that is taken into account by the diplomats themselves when they negotiate for their ministers.

This comparison leads me to point to an important point that, to my knowledge, is overlooked by the study of the effects of publicity: Designers of transparency rules usually assume that behind closed doors, debates are frank and that to increase transparency, one would only need to unveil meetings held behind closed doors. The case of the Council shows that it is not necessarily the case and that institutional designers have failed to make transparent its activities. The case of the Council is discouraging from this point of view since transparency fails for two reasons: it is applied to a context in which decision makers are not even transparent to each others and in which decision makers believe that dissenting is interpreted as a failure by the public.

CONCLUSION

The case of the Council contributes to deepen our understanding of the mechanism by which publicity deters opponents from voicing their disagreement. It also enriches our analysis of the relationship between accountability and transparency. The publication of votes – which was supposed to increase the accountability of ministers – actually became an additional incentive for opponents to silence themselves and join the majority. An additional unexpected effect of publicity (explored in Novak 2013) is that the actors might use publicity rules as a strategic tool to put pressure on the minority and to twist the decision-making process in their favored direction.

This study shows that the rules of transparency may not be relevant in specific institutional settings. In the case of the Council of the European Union, there is an obvious contradiction between the diplomatic habits, in particular the absence of a formal vote during committee sessions, and the obligation to publish votes. The policy of transparency that has been developed since the early 1990s has not put an end to the norm of joining the majority when one is defeated. Forcing the publication of votes in an institutional setting that relies on diplomatic practices can have deleterious effects on accountability: In some cases, the publication of votes might operate as a window-dressing device, prompting the public belief that ministers are accountable since they publish their votes, while real monitoring of the decision makers' stances is not possible. In this respect, the Council's case offers a challenge for institutional designers that, to my knowledge, has not been solved yet.

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