

## Constitutional Dynamics in the European Union: Success, Failure, and Stability of Institutional Treaty Revisions

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### ABSTRACT

Despite high institutional hurdles for constitutional change, one observes surprisingly many EU treaty revisions. This article takes up the questions of what determines whether a treaty provision is successfully changed and why provisions are renegotiated at subsequent Intergovernmental Conferences. The article presents an institutionalist theory explaining success and renegotiation and tests the theory using all core institutional provisions by means of Qualitative Comparative Analysis. The causal analysis shows that low conflict potential of an issue is sufficient for successfully changing the treaties. Furthermore, high conflict potential of an issue and its fundamental change are sufficient for it to be renegotiated.

### Introduction

Almost 60 years of European Union (EU) history reveal a remarkable evolution of integration, encompassing three distinct developments: first, the number of member states has increased from 6 to 28 (horizontal integration); second, ever more policy competences were shifted to the EU level (sectoral integration); third, the EU evolved from an international regime toward a federal union, and from an intergovernmental, executive-based decision-making structure toward a democratic political system (vertical or institutional integration). All three developments are reflected in the EU's treaties and accession treaties. The enhanced scope of activities is mirrored in newly added articles, chapters, pillars, and a competence catalogue. The institutional change manifests itself in the introduction or fusion of organs and altered decision-making rules.

The treaties serve as the EU constitution. To be altered, the consent of all member states' governments coming together at an Intergovernmental Conference (IGC) is required. In addition, any reform of the European treaties has to be ratified domestically. Due to those high hurdles, institutionalist theories suggest a high stability of constitutional provisions (cf. Scharpf, 1988; Tsebelis, 2002). Yet, in the history of EU integration, six major treaty reforms occurred. At each reform step, numerous provisions were changed. While some

provisions remained stable after being introduced or altered only once, many others were repeatedly amended.

This poses an intriguing puzzle: Why is there so much dynamics, although theories about constitutional change let one to expect high stability? The strong dynamics of EU constitutional development give rise to the following questions:

- What determines whether or not a treaty provision is successfully amended? When and why does one see agreement on change or failure to change a provision?
- What accounts for the stability of agreement on a treaty provision? When and why are issues renegotiated in subsequent treaty reforms?

So far, the empirical literature on European constitutional development tends to neglect the dynamic aspect of the interdependence of changes over time. Empirical research on EU treaty reforms mostly looks at single Intergovernmental Conferences (IGCs). A longitudinal perspective that aims at explaining the constitutional evolution of the EU is rare (e.g., Christiansen, Falkner, & Joergensen, 2002; Christiansen & Reh, 2009). However, the increasing frequency of treaty reforms gives reason to look at them as a continuous process and to systematically analyze their dynamics.

This article presents an institutional theory of EU constitutional change that focuses on the negotiation setting at IGCs and on features of the issues at stake to establish which causal factors lead to a provision being amended or not, and remaining stable or being renegotiated. This theory is empirically evaluated concentrating on changes in the EU's institutional setup. The focus of the analysis is on all fourteen major institutional provisions, namely those concerning the centerpiece of the EU polity: the composition, roles, and interactions of the Council, the Commission and the Parliament. These provisions' history is traced across all treaties since 1958 using Qualitative Comparative Analysis (QCA, Ragin, 1987, 2008) for causal analysis. This method allowed for tracing configurations of conditions leading to a certain outcome and simultaneously accounting for equifinality, i.e., for situations in which various constellations of conditions lead to the same outcome. Moreover, QCA is useful because the number of observations is too large for qualitative analysis, but rather small for a quantitative approach.

The article is organized as follows: First, the state of research on EU treaty reforms is introduced. In the second section, the theoretical argument is developed. Then, after a short introduction to QCA as an analytical approach, the data and operationalization are described. Finally, descriptive findings, the results of the causal analysis and two illustrative cases are presented.

### Research on EU treaty revision and constitutional reform

Four strands of research are relevant in this context: classical theories of European integration, rationalist institutional analyses of European decision-making, theories of constitutional change, and narrative accounts of EU constitutional reforms. Classical integration theories have predominantly dealt with the drivers and actors of European integration. To prove their applicability, supporters of realist and liberal intergovernmentalist, supranationalist, and constructivist integration theories have often used IGCs as empirical evidence (e.g., Christiansen, Joergensen, & Wiener, 2001; Fligstein & Stone Sweet, 2001; Haas, 1968; Moravcsik, 1998; Sandholtz & Stone Sweet, 1998). Typically, however, authors concentrate on single treaty reforms. There is a lack of comparative and dynamic analysis of subsequent treaty reforms. Furthermore, with their focus on drivers and actors, integration theories hardly explain institutional stability.

In contrast, institutional theories of EU decision-making have emphasized constraints for constitutional

change by focusing on the institutional setting. The major insight is that in joint decision-making systems based on unanimity, agreement is unlikely as long as there are actors satisfied with the status quo or unless those are bribed with side-payments (Scharpf, 1988, p. 28). Similarly, Tsebelis argued that policy stability depends on the number and position of veto players (Tsebelis, 2002). While these arguments refer to daily politics, they should be all the more valid for EU constitutional change, which is subject to the requirement of unanimity and domestic ratification.

Rationalist institutionalist research on EU treaty reforms mainly focused on treaty negotiations and their results (e.g., Finke, 2013; Finke, König, Proksch, & Tsebelis, 2012). Accordingly, governments' preferences and their respective capabilities are the starting points of analysis. Such formal and quantitative approaches have studied EU treaty reforms from a bargaining perspective (e.g., Finke, 2009; Slapin, 2008). For example, quantitative research has analyzed the influence of domestic ratification hurdles (e.g., Hug & König, 2002; König, Daimer, & Finke, 2008) or the size of member states (Slapin, 2008) on bargaining success at single IGCs. The bulk of existing work in this tradition analyses the distribution of gains from treaty reforms among negotiating actors. Thus, the authors mostly seek to establish who is successful in EU treaty negotiations and focus predominantly on the member states, not on the EU level. In a dynamic perspective, institutional approaches emphasize stability. What they miss is the motives of change. In essence, they derive the degree of conflict from negotiators' preferences. This article does not challenge this approach, but takes a different route to establish why treaty change was possible by determining conflict from the nature of the issues at stake.

Benz develops a theory on the dynamics of change in national constitutions (Behnke & Benz, 2008; Benz, 2007; Benz & Knüpling, 2012). One central argument is that constitutional change generally faces a dilemma: while it is often necessary to adapt a constitution to changing political environments, amendments require supermajorities and agreement of multiple veto players. Hence, there is an inherent gap between the need for and the possibility of reform (Benz, 2007). In addition, as constitutions distribute competences and resources they are prone to producing redistributive conflicts among actors. Actors will not accept to change the status quo if it does not increase their utility (Behnke & Benz, 2008).

Nevertheless, empirically, there is a high degree of change in national constitutions. Besides emphasizing factors that lead to stability, Benz argues, one should

also study the factors that motivate change. If actors are dissatisfied with the allocation of resources and competences, they will seek to change constitutional arrangements (Behnke & Benz, 2008). Benz identifies three motives that may give rise to reforming a constitution: effectiveness, legitimacy and integration (Benz, 2007). Once a constitutional provision has successfully been put on the agenda, it will be negotiated and decided upon by constitutional actors. Any agreement on change, however, will be potentially renegotiated whenever some actors feel uncomfortable with this result, or when a changing world leads to renewed dissatisfaction (Behnke & Benz, 2008). This theory combines an institutionalist framework with a focus on motives and dynamics. However, it has not been applied to the EU.

Finally, qualitative accounts of constitutional reform have tended to concentrate on single or few reform steps rather than capturing reforms as a process or as “constitutional evolution” (e.g., Beach & Christiansen, 2007; Christiansen, Duke, & Kirchner, 2012; Christiansen et al., 2002). Apart from descriptive accounts of single treaty reforms (e.g., Laursen & Vanhoonacker, 1992), qualitative approaches often perceive integration as a path-dependent process where the time before the grand bargains should be taken into account. Hence, supranational actors almost automatically become the prime focus. Consequently, empirical analyses have focused on the influence on the constitutional agenda of the European Parliament (e.g., Beach & Mazzucelli, 2007; Corbett, 1998), the Commission (e.g., Budden, 2002), the Council secretariat (Beach, 2004), the Committee of Permanent Representatives (Reh, 2007) or all of the above players (e.g., Christiansen et al., 2002).

More recently, authors began analyzing EU treaty change in a longitudinal perspective. Christiansen and Reh (2009) understand EU “constitutionalization” as continuous process, where formal treaty change is only one element. Héritier (2007, 2015) and Farrell and Héritier (2005, 2007) analyze how the interpretation of formal rules by supranational institutions may eventually lead to a formalization at the subsequent treaty and thus contribute to an understanding of constitutional dynamics. Similarly, Schimmelfennig, Rittberger, Bürgin, and Schweltnus (2006) ask under which conditions the powers of the European Parliament were extended.

In summary, although the existing literature contributed abundantly to the knowledge about integration history and single treaty reforms, the literature still lacks approaches to the *dynamics* of EU treaty change based on greater numbers. An evolutionary perspective, such as the one of Benz, can be fruitfully applied to the EU’s long series of treaty reforms.

## Theory: EU constitutional reform dynamics

### Assumptions and definitions

In this article an institutionalist perspective on EU treaty reform is applied, which borrows the three step approach from Benz’ constitutional change theory: discontent with the status quo pushes an issue on the constitutional agenda (1), agreements are difficult to find under constraints of unanimity (2) and unsatisfactory compromises or a changing world lead to renegotiation (3). The level of analysis is the EU system as a whole. The focus is placed on properties of the IGC as decision-making body and of the institutional issues on the reform agenda.

The theoretical claim is based on the following assumptions:

First, treaty reforms are negotiated at IGCs with the decisive actors being national governments. IGCs represent a negotiation setting with a consensus rule where each government is a veto player and can prevent agreement. In addition, it may be reasonably assumed that there is potential for joint gains and potential for distributive or normative conflict.

Second, to initiate a treaty reform process, at least one government has to be discontent with the constitutional status quo (Behnke & Benz, 2008; Moravcsik, 1998; Schimmelfennig et al., 2006). There are all kinds of potential motives and triggers: national interests (of an economic, political or other nature), perceived functional needs, or normative beliefs and ideas. However, the motives are not analyzed here, as they cannot be observed directly. Instead, the analysis starts with what one can directly observe, namely which issues governments have been able to push onto the agenda for a particular IGC.

Finally, it can be assumed that governments at the IGC have an independent interest to avoid failure of negotiations. IGCs are costly processes accompanied by high public attention and media coverage. Therefore, although it will not be possible in every instance, governments try to find a solution even for highly conflictive issues, to present a success story to the public.

This conception of treaty reform negotiations gives rise to two related empirical research questions:

- (1) What determines whether or not an institutional treaty provision is successfully amended?
- (2) What accounts for the stability of an institutional treaty provision?

*Success* (or *failure*) of constitutional change are defined as the ability (or inability) of an IGC to reach agreement on a treaty provision different from the

status quo. An agreement is defined as *stable* if it is not renegotiated at the subsequent treaty negotiations.

### **Explanatory factors**

This negotiation setting implies that three factors may influence success or failure of an issue in constitutional negotiations. Two explanatory factors are associated with the nature of treaty provisions, i.e., their significance and their potential for conflict. The third factor is associated with the IGC as the decision-making body and relates to the size of the body, i.e., the number of governments. Whereas the notions of the number of negotiators and the significance of a provision seem intuitive, the theoretical concept of “conflict potential” needs to be introduced first.

The theoretical claim is coupled with the assumption that all treaty provisions concerned with the core institutional system of the EU can be related to one or more of the following four dimensions with which governments can be satisfied or not:

- (1) *Integration* means European integration, either referring to further enlargement or to the Europeanization of further policies. For example, constitutional actors may be dissatisfied because there is no treaty basis to solve a particular policy problem at the EU level. Otherwise, they may be dissatisfied by the provisions that regulate EU enlargement.
- (2) *Power distribution* includes the distribution of political power among the member states, between governments and supranational institutions, and among the supranational institutions. If governments perceive a treaty provision to be deficient here, they may aim to change it. An example is the distribution of voting weights in the Council of Ministers.
- (3) *Legitimacy* encompasses the dimension of input legitimacy and thus refers to the democratic deficit of the EU. Governments evaluating the current constitution as unsatisfactory might, for example, want to empower the European Parliament.
- (4) *Efficiency* of institutions and rules refers to the problem-solving capacity of the EU institutions. Constitutional actors may consider the time needed for decision-making or for finding problem solutions to be insufficient. This motive might apply to the number of Commissioners or the Council’s majority threshold.

In each of these dimensions governments can have different interests or opinions with respect to a given treaty provision. Accordingly, each dimension carries a certain potential for conflict. The four dimensions might not have the same degree of conflict potential. An issue that solely affects efficiency aspects should create little conflict between member states, as there is a high potential for joint gains. For example, if it touches upon the duration of decision-making processes it should not be controversial because all members usually share an equal interest in prompt decisions. Legitimacy issues, such as enhancing Parliamentary rights, should be equally important for all governments for domestic electoral reasons, but might be more controversial as they are value-laden. Issues of integration will usually be controversial, as shifting more competencies to the EU level or accepting new members is not always in the same interest of member states and touches on their sovereignty. Finally, if an issue is on power distribution among member states, such as the distribution of Council voting weights, this leads one to expect more conflict because this affects the potential of each member state to shape decisions in favor of its own interests and beliefs.

Issues on the agenda for negotiation carry thus different conflict potential, depending on which and how many dimensions of conflict they exhibit. Conflict potential will be especially high if several dimensions of conflict are present.

### **Hypotheses**

Based on these explanatory factors three hypotheses on the first research question of *what determines whether a treaty provision is successfully amended*, are derived. The application of the QCA method on the data requires to phrase the hypotheses in an if-then manner. For parsimony, explicit hypotheses are only formulated for the positive outcomes and not for necessary and sufficient conditions or for configurations of conditions. However, as the argument is also tested for negative outcomes, for necessity and sufficiency and for configurations, some expectations need to be presented for them, too.

The first factor is the conflict potential of an issue. As outlined, conflict potential is treated as the property of a constitutional provision derived from the four dimensions integration, power distribution, legitimacy, and efficiency. It may reasonably be assumed that higher conflict potential implies more difficulty in reaching agreement. Therefore, the first hypothesis states:

**(H1)** *If a constitutional provision exhibits low conflict potential, member states will reach agreement.*

Second, there is a “folk theorem” on the effect of the number of negotiating governments. There is an ongoing debate whether enlargement has led to slowed down decision-making or to gridlock in secondary legislation (Golub, 2007; Hertz & Leuffen, 2011; Junge, König, & Luig, 2014; König, 2008; Parížek, Hosli, & Plechanovová, 2015). The basic conjecture is that more members lead to increased heterogeneity of political goals, preferences and beliefs (cf. Tsebelis, 2002). The greater the heterogeneity, the more difficult it is to reconcile standpoints and to reach agreement.

A different stance is taken here. Although greater numbers might represent greater heterogeneity, it is not necessarily so. Moreover, it seems doubtful whether there is a linear negative correlation with finding agreement. It might be true that the difficulty to reach agreement increases when moving from very low numbers of negotiators to some more. However, this effect will rather move toward a turning point. The situation might even improve with greater numbers, as a restructuring of the negotiation constellation is likely. Some bundling of preferences and standpoints is likely to take place, such that in larger IGC settings a small number of coalitions of governments negotiate over a small number of positions. This reasoning leads to the hypothesis that it is easier to reach agreement with a low or high than with a medium number of member states.

**(H2)** *If the number of negotiating countries is either low or high, member states will reach agreement.*

The third factor influencing the chances to reach agreement is the significance of envisaged changes. For some issues, only small adaptations or incremental changes are proposed, whereas for others, changes imply fundamental restructuring of the EU’s institutional system. For example, the empowerment of the European Parliament through co-decision was surely a fundamental reform. In contrast, the adaptation of the member states’ votes, keeping the same weights, in response to enlargements is considered to be incremental. The idea that fundamental change makes agreement more difficult is captured in hypothesis H3.

**(H3)** *If a constitutional provision discussed implies only incremental change, member states will reach agreement.*

In general, necessary conditions are unlikely to be observed. However, it might be supposed that presence of fundamental change might come close to a necessary condition for non-agreement because failure seems unlikely to occur for marginal changes.

As regards sufficiency, each condition should independently contribute to, but not necessarily be sufficient for the outcome. The effects of combinations might add up to sufficiency, however. As governments are presumably interested in avoiding failure, more than high conflict potential must be present to sufficiently explain non-agreement. Thus, a combination with fundamental change and medium number of member states can be expected.

Regarding the second research question, *what accounts for the stability of a treaty provision*, the same factors are resorted to, however, based on slightly different causal reasoning. First, one can expect the conflict potential of an issue to influence agreement stability. The argument is that negotiating conflict-laden issues takes time. However, there is a fixed end to IGC negotiations. Thus, some of the conflict-laden issues might not be ripe for decision when the IGC must finish. Solutions found will then leave particular governments unsatisfied. These issues are typically discussed again at the next IGC. For example, it was impossible to reach a new weighted voting scheme at the Nice IGC. The topic was, therefore, postponed to the European Convention. Therefore, a mindful expectation would be that issues with high conflict potential will be renegotiated more often, whereas low conflict potential allows finding stable solutions.

**(H4)** *If a constitutional provision has low conflict potential, the agreement on that provision will remain stable.*

Second, a factor that should influence agreement stability is the presence of new member states at an IGC. Newly admitted member states have not taken part in preceding constitutional negotiations. New governments may be expected to bring in novel ideas for change. They are also more likely to dispute earlier agreements as they did not participate in their creation. Therefore, a reasonable hypothesis is to expect that treaty revisions after enlargement rounds experience more renegotiations of agreements.

**(H5)** *If no enlargement took place before a treaty reform, the agreements of the last treaty revision will remain stable.*

Finally, the significance of the proposed change is expected to affect the agreement stability. Arguably, incremental changes are often of a technical nature and will thus be fixed once at an IGC and then be kept. In contrast, for fundamental change there is a greater chance that some party is dissatisfied with the last compromise and will re-open negotiations.

**(H6)** *If a constitutional provision includes only incremental change, the agreement on that provision will remain stable.*

One should not expect to find necessary conditions for the stability of provisions or their renegotiations, even less so than for finding agreement. The only candidate for being a necessary condition for renegotiation might be fundamental change. As to sufficiency, it can be assumed that each condition independently contributes but need not be sufficient as such. The stability is the “default case” for which several (combinations of) factors mentioned in the hypotheses might be sufficient. However, for non-stability it seems that only a combination of two or three conditions (high conflict, enlargement, fundamental change) can be sufficient to cause renegotiation, as it needs extra forces to revoke a previous IGC agreement.

### **Method of analysis, data, and operationalization**

In the following, these explanatory factors are tested on the major institutional rules concerning the composition, roles and interactions of the Council, the Commission and the Parliament. Therefore, the QCA method is briefly introduced as it still has rarely been used in European integration research (a notable exception is Schimmelfennig et al., 2006). Second, the data and the operationalization of outcome variables and causal conditions are introduced.

### **Qualitative comparative analysis**

QCA as method of causal explanation is chosen for several reasons. First, QCA can account for complex conjunctural causality. As mentioned, the explanatory factors might have independent and additive effects on the outcome; however, they also might only produce the outcome in combination. Second, QCA can indicate equifinality, i.e., situations in which different causal paths can alternatively explain the same outcome. Third, this article’s objective lies in learning whether the presence of the outcome (agreement, stability) and

its absence (non-agreement, non-stability) are symmetrically explained by the presence or absence of the explanatory conditions or whether one could find asymmetric causation. Finally, QCA is suitable for an intermediate number of observations.

QCA was introduced and further developed by Ragin (e.g., 1987, 2008). While QCA has foundations in a deterministic conception of causality and captures more than one possible causal pathway to an observed outcome, the overall goal is to shed light on different constellations of conditions explaining observed outcomes (Ragin & Rihoux 2009). For crisp-set QCA conditions and outcomes are coded binarily (0 for the absence and 1 for the presence of a condition), for the fuzzy-set version they are coded continuously. Moreover, crisp-set QCA is preferable because the data is best coded dichotomously.

QCA distinguishes necessary and sufficient conditions. A causal condition is *necessary* if in all instances the outcome is present, the condition is also present. A causal condition is *sufficient* if in all instances the condition is present, the outcome is also present. A strict conception of sufficiency and necessity requires that all cases fit the causal pathway. However, because deterministic relations are uncommon in social science, QCA employs sufficiency and necessity benchmarks of “consistency” and “coverage” to assess the quality of the results. *Consistency* is the percentage of observations that are consistent with the solution formula. The solution formula describes the combination of conditions that lead to a given outcome. Put simply, consistency measures how good the explanation is. The threshold for acceptable consistency is usually required to be at least 0.9 for necessary, and 0.75 for sufficient conditions (Schneider & Wagemann, 2010, 2012). *Coverage* is the percentage of observations displaying the outcomes that the solution formula explains (Ragin, 2008).

QCA is subject to an ongoing methodological debate. For example, critics point to lacking robustness of results, or they emphasize the advantages of purely quantitative methods over QCA (e.g., Hug, 2013; Lucas & Sztatowski, 2014; Skaaning, 2011). All of these criticisms are met with rebuttals, which acknowledge weaknesses and propose solutions within the QCA framework (Ragin & Rihoux, 2004; Schneider & Rohlfing, 2014; Thiem, 2014; Vaisey, 2014). While critical, the debate helps further refining QCA as the method of inquiry by checking for robustness (Grauvogel & Von Soest, 2014; Marx, 2010). While being aware of these criticisms, opting for QCA seems still advisable because of its advantages outlined before. Nevertheless, the analysis is complemented by some robustness checks.

## Data

The newly compiled dataset traces all major, i.e., a total of fourteen, constitutional provisions since the 1958 Treaty of Rome over the six major treaty reforms up to the 2009 Lisbon Treaty. These include amongst others the appointment procedure of the Commission or the introduction and amendment of legislative procedures. Provisions amended by accession treaties are also included in the dataset: those comprise the composition of the Commission and the European Parliament, the Council presidency, the allocation of votes and the majority thresholds in the Council of Ministers (see Table 1).

The dataset contains the information by which IGC a provision was first introduced, when it was on the agenda of subsequent IGCs and whether it was altered. This information was collected from official negotiation documents and presidency conclusions. Each institutional provision constitutes a case. As each provision is observed at each major treaty, the dataset resembles a time series cross-section in structure. As not each provision was already introduced with the Treaty of Rome, the dataset has a total of 74 observations instead of 98 (14 times 7).

## Calibration of the outcome variables: agreement and stable agreement

Hypotheses 1 to 3 seek to explain under which conditions an agreement on change can be achieved, whereas Hypotheses 4 to 6 serve to explain under which conditions a previous agreement is not renegotiated. This requires operationalizing two distinct outcome variables: “agreement” and “stability of an agreement”. A negotiation outcome is coded as agreement (1) when the status quo was substantially changed. A *substantial* alternation is one that touches the relationship between the governments or the institutions and is not a mere change in wording for symbolic or administrative reasons. If a provision was not changed, the authors checked whether it was on the agenda. If the issue was indeed on the agenda and governments failed to agree, it is coded as non-agreement (0). Regarding the stability of an agreement, an agreement is coded as stable (1) if governments did not renegotiate this provision at the subsequent IGC. Accordingly, it is coded as non-stable (0) if the issue was put on the agenda of the next IGC.

## Calibration of causal conditions

All conditions are treated as crisp-sets, whereby a condition is either present (1) or absent (0). For some conditions (enlargement or no enlargement) this is quite

intuitive, others might also be coded as fuzzy-sets as they come in degrees (number of member states, conflict potential, fundamental, or incremental). However, either the conditions do not show much variation empirically (number of member states is either 6, 12, 15, or 27 as there are no new treaties during the 9 and 28 member phases) or dichotomous coding is theoretically more convincing as compared to an index or scale (conflict potential).

## Conflict potential

The first causal condition is described by the four dimensions introduced earlier. To judge if an issue shows one or more of these conflict dimensions, the IGC documents delivered by member states and presidency were screened. These documents outline the problems that the envisaged treaty reform should have solved. Most issues exhibit more than one dimension of conflict. The presented theory suggests *high* conflict potential (1) only if at least three of the dimension are present in an issue (implying that at least one of the most conflictive dimensions, integration or power, is part of the problem), while the presence of only one or two dimensions is considered *low* conflict potential (0). As any kind of aggregation is disputable, the authors refrain from developing a complex index.

## Number of member states

As outlined in the theory section a negative effect of a medium number of member states on the chances to find agreement is expected. The number of member states is coded (1) for the low number of six member states at the Merger Treaty and for the high number of 27 member states at the Lisbon Treaty, whereas the presence of 12 or 15 member states at each IGC in between is coded (0).

## Significance of change

If a treaty provision was changed only incrementally it is coded (0), if it was changed fundamentally it is coded (1). Fundamental change requires meeting at least one of the following criteria: a provision was newly introduced; provision change was accompanied by a change in practice and was not merely an adaptation of the treaty text to established practice; participation of additional institutional actors in legislative decision-making was introduced; decision-making powers were shifted between institutions or between member states. If none of these criteria are met, the change is considered incremental.

## Enlargement

Enlargements need to be considered for agreement stability. The condition is coded (1) if an enlargement round had taken place in-between the preceding treaty and the treaty reform of interest and (0) otherwise.

## Findings

### Descriptive results

Of the 14 provisions, 9 issues were introduced with the Treaty of Rome (1958), 1 with the Single European Act (1987), 3 at Maastricht (1993), and 1 at Amsterdam (1999)—and potentially changed afterwards. Table 1 gives the numbers and share of actual changes. Altogether, in 44.6 percent of the observations, provisions were changed. Furthermore, Table 1 shows which provisions have been changed more often and which remained rather stable. The values range from five changes (i.e., appointment of the Commission) to one (i.e., censure of the Commission and Commission's term of office).

Table 2 gives the number and percentage of changes for each of the seven treaties. There is great variation across treaties. Whereas the Single European Act changed only 10 percent of the provisions under scrutiny, for Lisbon this figure amounts to 85.6 percent. This corresponds to the general perception that the Treaty of Lisbon introduced major institutional reforms. There is quite some change in the Maastricht and Nice treaties while Amsterdam led to less institutional change. The Amsterdam and Nice treaties were supposed to prepare the Union for the Eastern enlargement. It is well known that many issues could not be solved at the Amsterdam IGC and were postponed to Nice as “leftovers”. As governments could still not agree upon many of the proposed adaptations, the issues were again tabled within the constitutional process.

When turning to the assessment of agreements or non-agreements on constitutional changes at IGCs, the number of observations is different. There are 26 observations for which no change has taken place because they had not been on the agenda. Thus, these observations cannot be judged as agreement or non-agreement

and are removed from the analysis. Of the remaining 48 observations, 33 are agreements (cf. Table 4). For agreement stability, the number of observations decreases further by 12, as for the Lisbon Treaty it cannot yet be judged whether issues are stable or not (right-censored data). Table 8 shows that 25 of 36 provisions are renegotiated at the subsequent reform, i.e., there is a high degree of non-stable agreements. This might provide a first explanation of why the frequency of treaty reforms increased over the last decades. Governments seemingly could not fully agree on disputed issues and thus prepare a follow-up IGC at which certain provisions are renegotiated.

### Causal analysis

First, the existence of necessary conditions for the first outcome, agreement or non-agreement, is studied before turning to sufficient conditions. Consistency and coverage values for necessary conditions are presented in Table 3. The values for all conditions fail to meet the thresholds for a necessary condition for agreement (with a value of 0.78, low conflict potential comes closest). For non-agreement however, with 0.93 fundamental change meets the usually recommended threshold of at least 0.9 (Schneider & Wagemann, 2012). Admittedly, other authors recommend higher thresholds such as 0.95 or even 1.0 (e.g., Maggetti & Levi-Faur, 2013). Although the results do not strictly show necessity, they come close to it. This is in line with the expectation that fundamental change might be a precondition for negotiation failure.

Turning to the analysis of sufficient conditions, the truth table presents the eight possible different combinations of causal conditions and the number of observations associated with each configuration and outcome (Table 4). The table highlights limited

**Table 1.** List of covered provisions and changes per provision.

No.	Provision	Introduction	Provision altered	Provision not altered	% changes
1	Appointment of Commission	1958	5	1	83.3
2	Budget procedure	1958	2	4	33.3
3	Censure of Commission	1958	1	5	16.6
4	Majority threshold Council	1958	2	4	33.3
5	Rotation presidency Council of Ministers	1958	3	3	50.0
6	Size and composition of Commission	1958	3	3	50.0
7	Size and composition of Parliament <sup>a</sup>	1958	2	4	33.3
8	Term of office Commission	1958	2	4	33.3
9	Voting weights Council	1958	2	4	33.3
10	Cooperation procedure	1987	2	3	40.0
11	Co-decision procedure	1993	2	2	50.0
12	Consultation and assent procedure <sup>b</sup>	1993	2	2	50.0
13	Rotation presidency European Council	1993	2	2	50.0
14	Maximum size of European Parliament	1999	3	0	100.0
	Total	–	33	41	44.6

<sup>a</sup>This refers to the absolute number of seats and their allocation to member states.

<sup>b</sup>The consultation and assent procedures had existed as early as 1958 but were only codified at Maastricht formally (article 138b para 1 TEC).

**Table 2.** Changes per treaty reform.

No.	Treaty reform	No. of potential changes	No. of changes	No. of no changes	% changes
1	Treaty of Rome 1958	9 <sup>a</sup>	0	0	–
2	Merger Treaty 1967	9	3	6	33.3
3	Single European Act 1987	10	1	9	10.0
4	Treaty of Maastricht 1993	13	7	6	53.8
5	Treaty of Amsterdam 1999	14	4	10	28.6
6	Treaty of Nice 2003	14	6	8	42.9
7	Treaty of Lisbon 2009	14	12	2	85.7
	Total	–	33	41	44.6

<sup>a</sup>Treaty of Rome provides starting point.

empirical diversity (logical remainders) for two configurations. In fact, in 16 out of 48 observations in the first row, all three conditions are present with their negative value. This causal pathway leads to agreement in four and to non-agreement in twelve observations. The other five configurations include 29 agreement cases and exhibit low conflict potential for 26 of them.

The truth table algorithm of the fsQCA 2.5 software provides a solution path for each outcome. This results in a single solution formula, which facilitates interpretation (Table 5). Low conflict potential produces the outcome agreement independently. This solution is highly consistent (0.93) and covers a high number of observations (0.79). Neither any other condition nor any combination of conditions is sufficient for the outcome. This provides support for hypothesis 1—but not for hypotheses 2 and 3.

For the outcome non-agreement the calculation results in a different solution which contains the negated causal conditions: high conflict potential together with a medium number of member states and fundamental change lead to non-agreement (Table 6). This formula achieves a consistency of 0.75 and a coverage value of 0.80—just reaching the acceptability threshold. This implies that for non-agreement a combination of all three conditions has to be present. This is in line with the conjunctural causal expectation. Causation is thus not symmetrical.

One caveat applies to the causal condition “number of member states”. The authors assumed a u-shaped relationship with low and high numbers of governments furthering agreement—against the common wisdom of more member states causing deadlock. The

results actually show that a high number of member states also support the agreement. This might be traced back to the fact, however, that the provisions negotiated during the Lisbon IGC, which were agreed upon by a particularly high number of governments, had already been subject to bargaining in the Constitutional Convention and the Constitutional Treaty. The Convention method might have been more efficient in finding agreements and the result might thus be the consequence of a historical specificity, the exceptional Convention decision-making process.

Turning to the second outcome variable, agreement stability, the necessary conditions are again analyzed first (Table 7). None of the conditions reaches the 0.90 threshold—neither for stable agreement, nor for non-stable agreement. Although low conflict potential achieves a value of 0.82 for stable agreement and fundamental change 0.84 for renegotiation, one cannot take them as necessary conditions for these two outcomes.

The truth table for analysis of sufficient conditions (Table 8) shows again two logical remainders. Table 8 shows 11 cases of stable agreement and 25 non-stable ones. Most configurations lead to stable agreement for some observations and to renegotiation for others. There is nevertheless some evidence in rows 1 through 3 (which contain two-thirds of observations) that the causal pathways including fundamental change and high conflict potential lead to non-stable agreements.

The analysis for the outcome stable agreement achieves less clear results (Table 9). The solution path consists of a combination of all three conditions: low conflict potential, incremental change and low or high

**Table 3.** Analysis of necessary conditions for achieving agreement or non-agreement.

Condition	Agreement		Non-agreement	
	Consistency	Coverage	Consistency	Coverage
Low conflict potential	0.787879	0.928571	0.133333	0.071429
High conflict potential	0.212121	0.350000	0.866667	0.650000
Low or high number of member states	0.454545	0.882353	0.133333	0.117647
Medium number of member states	0.545455	0.580645	0.866667	0.419355
Incremental change	0.363636	0.923077	0.066667	0.076923
Fundamental change	0.636364	0.600000	0.933333	0.400000

**Table 4.** Truth table for achieving agreement or non-agreement.

	Conflict potential	Number of member states	Significance of change	Agreement	Non-agreement	Raw/PRI/SYM consistency agreement	N
1	1	0	1	4	12	0.25	16
2	0	0	1	9		1.00	9
3	0	1	0	7		1.00	7
4	0	1	1	5	1	0.83	6
5	0	0	0	5	1	0.83	6
6	1	1	1	3	1	0.75	4
7	1	1	0	log remain	log remain		0
8	1	0	0	log remain	log remain		0
				33	15		48

number of negotiating governments. The consistency of the solution (0.58), however, is far from being satisfactory. Moreover, coverage is also low, with less than 40 percent. This does not lend support to the hypotheses 4, 5, and 6. No condition individually and—moreover—no combination of them are sufficient for the stability of a treaty provision.

For non-stable agreement, however, Table 10 shows a sufficient combination of conditions. If an issue exhibits high conflict potential and simultaneously fundamental change this seems to be sufficient for renegotiation. The consistency of this solution is high (0.88) and coverage satisfying (0.60). The conjunctural expectation that renegotiation requires a combination of at least two causal factors receives support. No condition has an independent effect on the outcome, however.

### Robustness of results

In his response to critique that QCA cannot distinguish between real and random data, Marx (2010) developed benchmarks for the relationship between conditions

and observations based on simulation experiments. To trust the model not to produce a “random” result, the proportion of conditions to observations should be below 0.33 for three conditions, as in the models here. This threshold is easily met, as for the first model the proportion is 0.06 and for the second it is 0.08. In addition, to avoid drawing conclusions from rows which include only one case possibly subject to measurement error, the frequency cutoff for agreement/non-agreement is set at four and for stability/non-stable agreement at two and thus beyond recommended levels (Skaaning, 2011, p. 402). Higher frequency thresholds of three and four for stable agreement and non-stable agreement produce identical results.

As a further robustness check logit regressions for both models are computed. For the dependent variable agreement, conflict and number of member states have a positive, while significance has a negative effect on agreement. Only conflict is significant, however. That is, if conflict is low, agreement is more likely. This corroborates the findings from the QCA. For the dependent variable stable agreement the logit

**Table 5.** Complex/intermediate solution for agreement<sup>a</sup>.

consistency cutoff: 0.833333	raw coverage	unique coverage	consistency
low_CP	0.787879	0.787879	0.928571
solution coverage: 0.787879			
solution consistency: 0.928571			

<sup>a</sup>Complex, intermediate and parsimonious solutions are identical.

**Table 6.** Complex/intermediate solution for non-agreement<sup>a</sup>.

frequency cutoff: 4.000000	raw coverage	unique coverage	consistency
consistency cutoff: 0.750000			
high_CP * medium_MS * fund_CH	0.800000	0.800000	0.750000
solution coverage: 0.800000			
solution consistency: 0.750000			

<sup>a</sup>Complex and intermediate solutions are identical; parsimonious solution omits fund\_CH.

**Table 7.** Analysis of necessary conditions for stable or non-stable agreement.

Condition	Stable agreement		Non-stable agreement	
	Consistency	Coverage	Consistency	Coverage
Low conflict potential	0.818182	0.473684	0.400000	0.526316
High conflict potential	0.181818	0.117647	0.600000	0.882353
No enlargement before IGC	0.727273	0.347826	0.600000	0.652174
Enlargement before IGC	0.272727	0.230769	0.400000	0.769231
Incremental change	0.454545	0.555556	0.160000	0.444444
Fundamental change	0.545455	0.222222	0.840000	0.777778

**Table 8.** Truth table for achieving stable agreement or non-stable agreement.

	Conflict potential	Enlargement before IGC	Significance of change	Stable agreement	Non-stable agreement	Raw/PRI/SYM consistency stable agreement	N
1	1	0	1	1	8	0.11	9
2	1	1	1	1	7	0.13	8
3	0	0	1	3	4	0.43	7
4	0	0	0	4	3	0.57	7
5	0	1	1	1	2	0.33	3
6	0	1	0	1	1	0.50	2
7	1	1	0	log remain	log remain		0
8	1	0	0	log remain	log remain		0
				11	25		36

regression produces no significant results. Again, this mirrors the QCA analysis in which no solution term with acceptable values for the stable agreement was found.

### Case evidence

Two examples serve to illustrate the viability of the approach presented. First, the appointment procedure of the European Commission was subject to negotiations at each IGC and the status quo has been altered quite frequently, while it has only once been highly contested. With the Merger Treaty, the initial Commissions of the founding treaties were merged into one. At the 1987 SEA IGC, the Dutch Government claimed a stronger role for the European Parliament in the Commission's appointment (European Council, 1985). This was strongly opposed by the UK government (Ad hoc Committee for Institutional Affairs, 1985) which prevented a change of the status quo. Only with the Maastricht IGC, the Parliament was to be consulted on the Commission's president. At the Amsterdam IGC, the Parliament was further strengthened as its assent was now required for the Commission's president to come to office. With the Nice IGC, the requirement of consent between governments in the nomination of the president was decreased to qualified majority. Finally, the Lisbon Treaty stipulates that the results of the EP elections be taken into account when nominating a Commission president. Two motivations seem to have guided this process: enhance efficiency (Merger and Nice) or/and enhance legitimacy by strengthening the role of the Parliament

(all others). Conflict potential was thus low in most instances, while change was fundamental except for the Merger and Amsterdam Treaties. The only failure took place in 1987 when a medium number of member states negotiated and conflict potential was high. It seems, the proposal at the SEA "wanted too much" and failed, while similar goals were achieved in successive smaller steps thereafter.

Second, the size and composition of the European Commission has been a highly contested issue in many negotiations (cf. Dinan, 2007; Gray & Stubb, 2001). This is due the continuous enlargement rounds that made the issue prone to getting on the agenda of each IGC. The topic was on the agenda six times but three times a solution could not be agreed upon. The major struggle between an adequate representation of member states in the Commission and its ability to work efficiently was only formally solved with the Nice Treaty: member states agreed that the number of Commissioners should not be fixed in the treaty, but could be changed by consent of all member states. In addition, a rotation system was supposed to be set up that would allow to reduce the number of Commissioners (interestingly, however, such rotation system has not been set up to date; each member state is still represented in the Commission). The issue touches on aspects of efficiency, power shifts among the members and legitimacy, although not all dimensions were present in each discussed proposal. In the cases of high conflict potential, a medium number of member states and fundamental change proposed, the negotiations resulted in failure (SEA, Maastricht, Amsterdam), while low conflict, a low-or-high number of members and/or incremental change (Merger, Lisbon) have led to agreement. There is

**Table 9.** Complex/intermediate solution for stable agreement<sup>a</sup>.

frequency cutoff: 2.000000	raw coverage	unique coverage	consistency
consistency cutoff: 0.571429			
low_CP * no enlargement before IGC * inc_CH	0.363636	0.363636	0.571429
solution coverage: 0.363636			
solution consistency: 0.571429			

<sup>a</sup>Complex and intermediate solutions are identical; parsimonious solution omits low\_CP.

**Table 10.** Complex/intermediate solution for non-stable agreement<sup>a</sup>.

frequency cutoff: 2.000000	raw coverage	unique coverage	consistency
consistency cutoff: 0.875000			
high_CP * fund_CH	0.600000	0.600000	0.882353
solution coverage: 0.600000			
solution consistency: 0.882353			

<sup>a</sup>Complex and intermediate solutions are identical; parsimonious solution omits fund\_CH.

only one contradictory observation: at the Nice negotiations the coding combines high conflict potential, medium number of members and fundamental change. However, full consistency of one case with the conjunctural hypotheses would be a surprise, as the QCA results already indicate.

## Conclusion

This article studied EU constitutional dynamics from the Treaty of Rome to the Lisbon Treaty.

Based on a new dataset including all changes of these provisions across six treaty reforms for the major institutional rules governing the EU polity, the article examined success and stability of attempted constitutional reform. The theoretical claims were evaluated using crisp-set QCA.

The descriptive results reveal that treaty provisions were changed frequently. These changes vary across the treaty reform steps from only a few in the Single European Act to a high number in the Lisbon Treaty. Governments were mostly successful in changing the status quo and failed only in 15 out of 48 instances. However, many issues were renegotiated at the subsequent treaty reform.

With respect to the first research question—what determines whether an institutional treaty provision is successfully amended—the findings suggest that the condition of low conflict potential of a treaty provision is individually sufficient to achieve agreement. In contrast, the failure of negotiations requires the combination of three conditions, high conflict potential, medium number of governments and intended fundamental change, to be present. That is, several factors uncondusive to an agreement have to add up before negotiators capitulate.

As to the second question—what accounts for agreement stability on an institutional provision—the findings support the conclusion that none of the three conditions, low conflict potential, no enlargement and incremental change are sufficient for stability, neither individually nor in combination. However, high conflict potential and fundamental change produce the non-stable outcome in conjunction.

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