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**Executive and Bureaucratic Politics in the European Union:  
Bureaucratic Preferences, Executive Discretion and Procedural  
Control of the European Commission**

**A dissertation submitted in partial satisfaction of the requirements  
for the Degree of Doctor of Philosophy in Government**

**by**

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## Abstract

The neofunctionalist literature asserts that supranational institutions play a crucial role in shaping the process of European integration. Yet, it is not apparently obvious why institutions with far less capabilities and resources than national ones can be so effective.

The thesis tries to explain this puzzle focusing on the European Commission. It takes up two related questions: Which motives drive this institution? Under which conditions does it reach its objective (and, hence, affect integration)? In other words, the thesis applies domestic theories of bureaucratic and executive politics to the European Union. First, it tests Niskanen's and Dunleavy's hypotheses on bureaucratic preferences on the Union competition and regional policies. It asserts the preeminence of the work-related preferences of the Commission, consisting of managerial discretion and broad scope of functions. Second, it uses a formal model of EU legislative politics and the work of Epstein and O'Halloran and of Gilligan and Krehbiel to quantitatively test the factors that increase the statutory discretion delegated to the Commission. The results show that the uncertainty facing Union legislators about policy actions, policy types and informal decision rules are the most important determinants. Finally, it uses the work of McCubbins and Page to quantitatively test the factors that increase the likelihood and the stringency of procedural controls of the Commission's functions. The results show that unanimity, level of conflict among the Union institutions and uncertainty are key determinants for the establishment of these controls. Level of conflict and uncertainty are also important factors affecting the degree of stringency in control.

In conclusion, the Commission enjoys broader discretion and, hence, affects integration when 1) qualified majority is used in the Council and 2) only the Commission is in charge of implementation. However, we should be cautious about its actual room of maneuver because broader discretion correlates positively with the stringency of control.

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*F.F.*

## Introduction

The study of European integration has generated probably one of the most heated debates about its causes in the political science community. Scholars, however, agree on one point: the European Union<sup>1</sup> represents the most institutionalized system of international governance in modern world politics.

Its resemblance to a modern nation-state, as much as to an international institution, is recognized even by the most rigorous proponent of an intergovernmentalist interpretation of the Union (Moravcsik, 1998: 1, 488). It includes a court, a central bank, a bicameral legislature, a dual executive and a bureaucracy. Students would have branded such a comparison as ideologically motivated and unscientific probably just twenty years ago. Today, the study of its executive, legislative and judicial institutions and politics is one of the most dynamic areas of European studies (cf. Attinà, 1992; Hix, 1999; Wallace and Wallace, 1996). This thesis investigates how executive and bureaucratic politics shape the political system of the European Union.

### **Puzzles of European integration: supranational institutions and trajectories**

In the words of Moravcsik (1998: 1), 'the most fundamental puzzle confronting those who seek to understand European integration [is] to explain why sovereign governments in Europe have chosen repeatedly to coordinate their core economic policies and surrender sovereign prerogatives within an international institution'. As I will analyze in detail in chapter 1, Moravcsik goes on developing and testing one the most rigorous framework to understand the outcome of treaty-amending negotiations of the Union extant.

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<sup>1</sup> Although the focus of the thesis is the European Community pillar, I consistently use the term European Union. However, I retain the reference to its law as EC law.

Yet, does the resolution of this puzzle explain European integration? The neofunctionalist and institutionalist literature on integration answers negatively to this question. Once a Treaty has been signed, integration can follow a multitude of paths, some of which might be unintended. And, even if the majority of these “states of the world” are originally expected by Member States, this literature argues that supranational institutions can play an important role in the selection of the specific ‘equilibrium path’.

Consider the following illustration. Member States agree by Treaty to pool or delegate sovereignty<sup>2</sup> in a subset of policy dimensions  $n \subseteq m$  so that  $T^n$  is the set of expected implementation outcomes and  $T^n \subseteq R^m$ , where  $R^m$  is an  $m$ -dimensional Euclidean space. The dependent variable, namely European integration, is the implemented policy point  $i$ . This outcome is the result of a set of legislative, executive and judicial rules where supranational institutions may play a pivotal role.

Now, the ‘fundamental puzzle’ for Moravcsik is the explanation of the existence and the contour of  $T^n$ . Two assumptions underline this perspective. The first one is that the implemented policy belongs to the set of expected outcomes, namely that  $i \in T^n$ . This is reasonable. As I will argue in chapter 1, the neofunctionalist critique of intergovernmentalism on the basis of some unexpected outcomes whereby  $i \notin T^n$  is not amenable to cumulative and comparative research. The second assumption is that explaining  $T^n$  is more important than explaining the specific equilibrium outcome  $i$  or an ‘equilibrium path’ leading to  $i$ . This assumption is warranted only if  $T^n$  represents a small subset of  $R^m$ , namely if few policy dimensions are pooled or delegated, because the identification of  $i$  could be a rather trivial exercise. However, the agenda of the European Union

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<sup>2</sup> Sovereignty is pooled when Member States agree to decide future matters in some policy areas by voting procedures other than unanimity, it is delegated when supranational actors can take autonomous decisions without a government’s unilateral veto. Pooling and delegation is more likely in those policy areas where it is either too costly or technically impossible to specify all future contingencies involved in legislating or enforcing Treaty provisions (cf. Moravcsik, 1998: 67, 73).

has been expanding to such an extent that it covers, directly or indirectly, almost all policy areas (Hix, 1999: 6; Nugent, 1994: 293; Pollack, 1994). As the agenda expands (i.e. as  $T^n \rightarrow R^m$ ), explaining the role of supranational institutions in shaping the 'equilibrium path' leading to  $i$  is becoming equally, or even relatively more, important. There can be no claim of 'fundamental puzzle' to understand European integration. Consequently, another important question - and the core question of this thesis - is to explain *why apparently weak supranational institutions substantially affect the process of European integration across the multitude of possible trajectories*.

The crucial role played by these institutions is probably one of the most frequent conclusion in the neofunctionalist literature. Yet, it is not apparently obvious why supranational institutions with far less capabilities and resources than national ones can be so effective.<sup>3</sup> Further, saying that they affect the process of integration is essentially linked to questions such as: which motives drive these institutions? Under which conditions do they reach their objectives (and, hence, affect integration)?

The argument applied to the Commission: preferences, delegation and control

This thesis focuses on the European Commission, the executive<sup>4</sup> and bureaucracy of the Union and one of its most important supranational institutions. The short answer to the core question would be that the Commission affects the path of European integration because it can strategically use its formal powers. The Commission has an array of institutional resources at its disposal. Those more relevant for this thesis

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<sup>3</sup> The Commission has a 13,000 staff and manages a budget that is slightly more than 1 percent of the Union's GNP. These figures are comparable to single departments of small or medium states of the Union.

<sup>4</sup> To be more precise, the Commission shares its executive powers with the Council. In broad terms, the Commission is more involved in the operational day-to-day working of the Union while the Council, especially the European Council, deals with more medium-long term and strategic issues (Hix, 1999: 21-55).

are the monopoly of legislative and budgetary initiation. Others include the power to initiate infringement proceedings, to take decisions, to formulate recommendations and to deliver opinions. Further, the Council is under an obligation to delegate to the Commission most of the executive and administrative functions of the Union policies (Art. 202.3 [ex 145] EC).

This answer is however unsatisfactory. Modern political science emphasizes three key variables to explain political outcomes: preferences, institutions and information (e.g. Hinich and Munger, 1997). The behavior of a political actor is informed by its preferences (desires or motivations), by the institutions (i.e. formal or informal rules of the game), by the preferences of other relevant political actors and by the distribution of information across time and actors.

Consider this example. One of the conclusions of chapter 3 is that the Commission has work-related preferences in terms of executive discretion and scope of policy-making functions. Yet, the Commission does not always enjoy broad discretion and, consequently, shape the path of integration according to its desires. Why? One of the reasons is related to the legislative procedures. The Council grants the Commission greater discretion under qualified majority than unanimity, given the Commission's monopoly of legislative initiation. A second reason is related to information. Union legislators grant more discretion to the Commission if they are uncertain about the future optimum course of actions (see chapters 2 and 4).

In conclusion, the core question would remain unanswered if we do not know 1) what the Commission will use its powers for and 2) the conditions that hinder or help the Commission to reach its objectives. To do this, we first have to shift the level of analysis and then answer three interrelated sets of questions.

### *Level of analysis and the preferences of the Commission*

The level of analysis is the daily operation of the Union, instead of the Treaty negotiations. This is not because the Commission is epiphenomenal in the latter circumstances. In chapter 3, for instance, I show that, if the Commission is patient and enjoys an informational advantage, it can substantially affect a policy outcome even in case of unanimity in the Council.<sup>5</sup> This shift is needed because the daily operations of the Union provide an abundance of more fine-grained data about the specific path that European integration is taking and a clearer understanding of how supranational institutions exercise their powers to shape this trajectory.<sup>6</sup>

The first set of questions concern the preferences of the Commission. What does the Commission want? What type of preferences does it hold? Why does it have them? This is a crucial step to assess the role of the Commission. The impact of an actor can only be judged by relating the political outcome to its preferences. Preferences, however, should not be devised *ad hoc*. In case of the Commission, they should be derived from narrowly focused, but more generalizable, theories of bureaucratic preferences.

Chapters 1 and 2 deal in detail with how the general theories of European integration and the more specific work on the Commission have answered these first set of questions. There is a surprising similarity across them. The Commission has been characterized as an institution with a mission, namely furthering integration and expanding the tasks of the Union, or with specific policy preferences (e.g. severity of environmental protection). These works have three shortcomings. First, task-expansion does not guide us in the identification of the Commission's preferences about

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<sup>5</sup> Even Moravcsik (1999) recognizes that this can be the case under specific, though rare, circumstances.

<sup>6</sup> Over the last ten years there has been a gradual shift in academic attention towards this level of analysis (see e.g. Attinà, 1992; Bulmer and Scott, 1994; Cini, 1996; Cram, 1994; Edwards and Spence, 1994; Hix, 1994; 1999; Keohane and Hoffmann, 1991; Majone, 1996; Rhodes and Mazey, 1995; Richardson, 1996; Tsoukalis, 1993; Wallace and Wallace, 1996; Wallace et al., 1979). This is probably another sign of its rising importance to understand European integration.

policy-making functions or when existing policies are being reformed. Second, specific policy preferences are exogenous, cannot be generalized across policy areas and impede comparative analysis. Third, task-expansion is a too broad objective function. New policies might grant very limited powers to the Commission.

This thesis uses more focused theories of executive and bureaucratic politics, namely those derived from the works of Niskanen (1971) and Dunleavy (1985, 1991). This approach renders the study of the Union comparable with other country studies and more amenable to cumulative work. Niskanen emphasizes the predominance of budget-related preferences held by public officials; Dunleavy instead asserts that bureaucrats show predominantly work-related preferences under certain circumstances. Chapter 3 tests these hypotheses on the twenty-year development of the competition and regional policies of the Union. It concludes that the Commission has selective budgetary preferences on some components of its activities and budget. More importantly, it emphasizes that work-related preferences, consisting of managerial discretion and broad scope of functions, emerge as the most persistent over time and across policies.

#### *The delegation of executive discretion to the Commission*

The second set of questions is about the conditions under which the Commission reaches its objectives. Under what circumstances and why is the Commission granted broad executive discretion? How do the legislative procedures, uncertainty and preference distribution affect this delegation? In order to understand why the Commission affects the path of integration, we need to know not only its objectives but also the conditions that hinder or support their achievement. This should help us to answer why the Commission has been more successful in certain circumstances but not in others. My contribution in chapters 2 and 4 build

on theories of executive politics and on the formal literature on the Union legislative politics.

There is considerable disagreement on these issues. For intergovernmentalism, the Commission achieving its objectives is a rare and transient occurrence and the delegation of policy-making functions to this institution rests on the need to bolster the credibility of the commitments undertaken by Member States. This conclusion is correct only if the level of analysis is the Treaty amending negotiations where the Commission has few resources. As already pointed out, this institution enjoys at the operational level formal powers that can substantially affect the trajectory of integration. Further, the literature on executive politics is more detailed about the variables that affect the Commission's executive discretion at this level.

The neofunctionalist writings are much more optimistic, but the conditions are underspecified and rely heavily on unintended consequences. As I analyze in detail in chapter 1, this reliance runs into logical and empirical problems and renders this approach scarcely amenable to comparative and cumulative research. Priority should be given to the predictable components of a political system.

So far the institutionalist literature, based on narrowly focused theories of legislative politics and formal modeling, has provided the most rigorous set of conditions. Three factors are highlighted: decision rules (namely the Union legislative procedures), the distribution of preferences of pivotal actors, and the location of the status quo. In the appendix of chapter 2, I set up a formal model of legislative politics whereby the Commission's utility function is positively correlated with its executive discretion. This model and the more specific literature on executive politics (e.g. Epstein and O'Halloran, 1994; Gilligan and Krehbiel, 1987; McCubbins, 1985) allow me to specify four core factors that increase the Commission's executive discretion. These are 1) the uncertainty facing Union legislators about the optimum policy actions, 2) the convergence of preferences



between the Commission and the pivotal legislator, 3) the use of qualified majority in the Council, and 4) policies that require limited involvement of national administrations. The hypothesis is quantitatively tested on a stratified sample of non-amending legislation in chapter 4. The results show that the best set of circumstances whereby the Commission affects the trajectory of integration is in case of 1) legislators' uncertainty, 2) policy implementation at the Union level and 3) qualified majority in the Council.

### *Control of the Commission's executive functions*

We turn now to issues of institutional choice and to the last set of questions. The literature on executive politics warns us that this is only half of the story. Why would legislators grant unrestrained discretion to their executive agents? Why not setting up administrative procedures to control them? To answer the core question of the thesis we cannot ignore the presence of control committees that oversee, with various procedures, the Commission's implementation of the Union policies. If the Commission is closely watched by the Member States, we need to question the extent to which it is free to pursue its objectives or, at least, we need to gain a more fine-grained view of its role in the process of integration. Chapter 5 uses the relevant literature on executive politics to test the factors that lead to the establishment of these control procedures.

The topic of control committees is mostly ignored by the main theoretical frameworks. There are instead many unrelated studies. These are critically analyzed in chapter 2. With few exceptions, this literature heavily relies on a *sui generis* characterization of the Union that is not amenable to comparative and cumulative research. I will argue that these works can be easily related to the core tenets of executive politics. This literature also regards these committees mainly as arenas producing information to coordinate and standardize implementation across the Member States. Other works acknowledge, but do not test, their control function.

Chapter 5 uses the work of McCubbins (1985) and McCubbins and Page (1987) to identify three factors that lead to the establishment of control procedures and increase the stringency of control. These are 1) the uncertainty facing Union legislators about the optimum policy actions, 2) the level of conflict among legislators and 3) the need for unanimous agreement in the Council of Ministers. Chapter 5 also tests whether executive discretion and the stringency of procedural control are correlated (cf. Bawn, 1997; Epstein and O'Halloran, 1994; McCubbins, 1985). As in chapter 4, the hypotheses are quantitatively tested on a stratified sample of non-amending legislation. The results show that these variables are significant determinants of the establishment and stringency of control procedures. Discretion is also significantly correlated with the stringency of control. Although these results do not negate the informational role of committees, they reassert their control function as a result of substantive issue-specific conflict among the Union legislators.

With respect to the core question of the thesis, the input of the Commission in the process of integration is likely to be greater in case of qualified majority because this rule increases discretion and reduces the likelihood of control. Other favourable circumstances include the Commission being the only institution in charge of implementation and limited conflict across legislators.

I will end however with a cautionary note. As the Commission can use strategically its powers and affect the path of integration, Member States are not less effective strategic actors. If they are disadvantaged by informational asymmetries or bureaucratic shirking, they show significant inventiveness in devising institutions that provide information and control the Commission. The fact that the stringency of control is associated with broader discretion invites caution about the Commission's true autonomy. More focused studies into the effectiveness of these committees are needed.

## The plan of the thesis

Chapter 1 critically reviews the main theoretical frameworks that study the process of European integration, with respect to the set of questions proposed in this introduction. It first emphasizes the middle-range nature of these theories. It also observes that these approaches fall short of either basing the preferences of the Commission on narrowly focused theories of executive politics or specifying the conditions that assist the Commission in reaching its objectives. Chapter 2 reviews the more specific work on the Commission and sets five detailed hypotheses to be tested in the following chapters. The chapter is divided in three main sections. The first one separates the Commission's task-expanding motivations from those that can be more easily related to the literature on bureaucratic preferences. It then uses the work of Niskanen and Dunleavy to devise the first two testable hypotheses on bureaucratic preferences. The second section uses a formal model of the Union legislative politics and the literature on executive politics to specify the third hypothesis on the determinants of the Commission's executive discretion. Finally, the last section critically reviews the work on control committees and uses the literature on executive politics to devise the fourth hypothesis on the determinants of control and the fifth one on the relation between discretion and control. Chapter 3 tests the first two hypotheses using as case studies the twenty-year development of the Union's regional and competition policies. Chapter 4 tests the third hypothesis on a stratified sample of non-amending legislation. It uses bootstrapped regression analysis. The chapter also tests, and rejects, the addition of further explanatory variables. Finally, chapter 5 tests the fourth and fifth hypotheses on a similar sample of legislation. It uses binomial logistic regression, a cumulative logits model and bootstrapped co-graduation tests. The concluding chapter summarizes the hypotheses and the findings, it relates the contribution of the thesis to the specific literature on European

integration and to the general political science literature and, finally, it suggests avenues of further research.

# Chapter 1.

## Theories of European Integration and the Role of the Commission

### Introduction

This chapter reviews the dominant theoretical frameworks that study the European Union. It makes two basic observations. First, none of them are actually theories of European integration. They are middle range theories that analyze some aspects of the political system of the European Union. Second, these frameworks share either one or both of two main shortcomings, with respect to the set of questions listed in the introduction. They do not ground the preferences of the Commission on theories of bureaucratic and executive politics. Or, they do not specify clearly the factors that help the Commission to achieve its objectives. There is also no important study that analyzes committee control from these perspectives. The literature that is more focused on the Commission is critically reviewed in chapter 2. I conclude with comments on how the recognition of these limits can further our understanding of the Union and our dialogue with the political science community at large.

### Liberal intergovernmentalism

#### *The basics of the theory*

Liberal intergovernmentalism is a collection of three theories. It aggregates theories of formation of national preferences<sup>1</sup> with classical theories of bargaining and institutional choice. Its main added value consists of the definition the set of Pareto efficient outcomes that can be reached through international cooperation. This set is a function of the preferences of both societal and state actors.

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<sup>1</sup> These theories of formation of domestic preferences depend on the substantive issue at stake. They include, among others, theories of legitimate socioeconomic redistribution

Liberal intergovernmentalism gives analytical primacy to the preferences of individuals and private groups at the societal level. In areas of commercial liberalization for instance; preferences of industries are function of their competitive positions in domestic and international markets, while, in case of the provision of public goods such as environmental regulation, producers compete for representation with public interest groups or the general public. If societal interests are strong, homogeneous and unified, they reduce the size of the winset<sup>2</sup> and the autonomy of state officials. Governments conform to their preferences. If societal groups are weak, heterogeneous and divided, states are more autonomous and can use international negotiations to pursue their objectives (Moravcsik, 1993: 488-96, 1997: 527-30; Putnam, 1988). For instance, Patterson (1997) shows how the homogeneity and cohesiveness of domestic interests were an obstacle to the 1988 agricultural reform while the weakness of domestic lobbying induced the Member States to agree on far more radical measures in the 1992 negotiations.

Moving from the societal to the state level of analysis, the substantive preferences of public officials are based on the interests of that subset of societal actors that, for various reasons, gain political representation. At this level, liberal intergovernmentalism however shares with the classical realist school of international relations the assumption that states operate in an institutionally sparse world system to protect their sovereignty, security and welfare (Hoffmann, 1966; Moravcsik, 1991: 26-7; Morgenthau, 1967 [1948]). The maximization of welfare and security keeps policymakers in office, and government officials try to pursue such objectives without the sacrifice of national sovereignty. To the extent that

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and regulation, endogenous tariff theory and theories of rent seeking (Moravcsik, 1992, 1993, 1997).

<sup>2</sup> From an intergovernmental perspective, in Treaty-amending negotiations, the set of all possible agreements that the Member States prefer to unilateral or coalitional alternatives (define it  $y$ ) is the winset of  $y$ , written as  $W(y)$ . Larger winsets make agreements more likely, see Putnam (1988) and Shepsle and Weingast (1987).

these goals are incompatible, governments are willing to selectively relinquish a certain degree of sovereignty.<sup>3</sup>

International cooperation arises when security and welfare and, ultimately, popular support cannot be achieved unilaterally. Thus, the rationale for cooperation among states is given by the existence of economic or political-military interdependence across issues that generates negative international policy externalities and leads states to prefer policy coordination to unilateral policies (Moravcsik, 1993: 485, 1998). For Moravcsik (1993: 485), '[n]egative policy externalities occur where the policies of one nation imposes costs on the domestic nationals of another, thereby undermining the policy goals of the second government's policies.' Thus, interdependence of state preferences across issues determines whether international cooperation is Pareto efficient. For instance, the failure of independent economic policies in the late 1970s and early 1980s created pressure for coordinated liberalization which led to the signing of the Single European Act (Moravcsik, 1991). The unfeasibility of independent monetary policies, especially after the completion of the single market programme, led to increasing cooperation first through the European Monetary System, then with the Economic Monetary Union (Moravcsik, 1998; Sandholtz, 1993a).<sup>4</sup>

Finally, the specific outcome from international cooperation is a function of the whole plethora of intervening factors suggested by the Nash solution of classical bargaining theory (e.g. the best alternative, the threat of exclusion or exit and issue linkages) (Binmore, 1987; Harsanyi, 1977; Moravcsik, 1993: 496-507; Raiffa, 1982).

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<sup>3</sup> Consider, for instance, the Member States of NATO that have given up the monopoly of control of armed forces in their territory to ensure protection from external aggression. The Member States of the Union have given up the monopoly of domestic legislation to create a European single market. The argument is taken to a certain extreme by Milward (1992: 2-3) which has argued that the survival of the nation state *per se* was at stake in the 1950s. States' primary goal was then to retain the allegiance and support of their citizens and rescue themselves from collapse after two World Wars.

<sup>4</sup> Some works of Sandholz fall squarely within the intergovernmentalist agenda although he might not consider himself an intergovernmentalist.

Intergovernmentalism however tends to give predominance to shifts in domestic political preferences to explain some important bargaining outcomes. For instance, Moravcsik (1991) stresses how the preference shift in France toward a more liberal economic policy was a key factor in explaining the adoption of the Single European Act. Similarly, Moravcsik and Nicolaïdis (1999) show how the election of a new government in Britain and France explains part of the Treaty of Amsterdam. Finally, Sandholtz (1993a; see also Henning, 1998) asserts that shifts toward macroeconomic discipline at the domestic level, especially in France and Italy, were crucial for the adoption of the EMU.

Hence its real strength relies on theories of national preference formation. Preferences of individuals and groups are based on ideational and commercial factors. Preferences of state officials are based on a subset of societal preferences that gain representation through domestic political institutions. To sum up, intergovernmentalism defines the contour of the winset in the policy space. It does so 1) by identifying the relevant state and societal actors and 2) by mapping their preferences in the policy space. This exercise delineates the policy issues where international cooperation is a Pareto improvement, that is it shows how state preferences are interdependent across policy issues. Intergovernmentalism then uses bargaining theory to identify the equilibrium outcome within the set of Pareto efficient outcomes. However, it adds limited value to bargaining theory per se because it does not add to it further relevant explanatory variables.<sup>5</sup> The empirical works are primarily valuable

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<sup>5</sup> In an interesting twist, one could argue that liberal intergovernmentalism contributes to bargaining theory by better specifying some of the institutional rules that guide international bargaining outcomes. By emphasizing the importance of the preferences of societal actors, liberal intergovernmentalism adds the rules of domestic ratification (see especially Patterson, 1997; Putnam, 1988). The inclusion of new actors (and preferences), whether they be state officials, individuals or private groups, is irrelevant for the central tenets of bargaining theory. Instead, rules shaping the interaction across these actors, within the bargaining game, can have an independent causal effect. Another interesting empirical contribution is the observation that the cost of international negotiations is small relative to their benefits (Moravcsik, 1999: 300-3).



exercises in the identification of the key policy dimensions of bargaining (see for instance Garrett, 1992; Moravcsik, 1991, 1992).

*Liberal intergovernmentalism and theories of institutional choice*

Institutional choice is simply another outcome from interstate negotiation and liberal intergovernmentalism uses rational choice institutionalism (and its applications) to explain the institutional design of the European Union.

Generally, the rules and institutions of the Union are created to provide credibility to the commitments undertaken by the Member States in Treaty negotiations (Moravcsik, 1998: 73-7). More specifically, institutions are designed to provide two benefits: 1) the provision of information and 2) the structuring of outcomes (Hall and Taylor, 1996; Shepsle, 1986a, 1989).

First, institutions create value when information about future contingencies, compliance and the behavior of other actors is imperfect. In the saying of Hayek, 'there would be no need for rules if men knew everything' (1976: 21). Politicians are unaware of future contingencies when they draft Treaties or regulations, so institutions are established for *ex-post* implementation and interpretation (see the theory of contracts, Williamson, 1985). The establishment of agencies helps monitoring compliance, produces informational gains from specialization and reduces transaction costs of international cooperation (Keohane, 1984; see also principal-agent theory, Pratt and Zeckhauser, 1985).

Moravcsik echoes this view:

'Much of the institutional structure of the EC can be readily explained by the functional theory of regimes, which argues that where transaction costs – the costs of identifying issues, negotiating bargains, codifying agreements, and monitoring and enforcing compliance – are significant, international institutions may promote greater co-operation by providing information and reducing uncertainty' (Moravcsik, 1993: 508).

Policy-making functions are delegated to the Commission to solve the uncertainty surrounding the specific details of cooperation (Moravcsik, 1993: 514). The Commission, as the guardian of the Treaty, monitors states' and private actors' compliance so it adds value to cooperation by reducing uncertainty of actors' behavior and of incomplete contracting (Garrett, 1992: 557; Garrett and Weingast, 1993: 197-9; Moravcsik, 1993: 507-14, 1995: 623; Pollack, 1997: 105-7). Further, the Commission's monopoly of legislative initiation generates informational gains from specialization and its independence is valued because capabilities vary considerably across the Member States (Moravcsik, 1993: 507-14; Pollack, 1997: 105-6).<sup>6</sup>

Second, institutions add value by structuring policy outcomes (Shepsle, 1979, 1986a,b; Shepsle and Weingast, 1981). Since equilibria are unstable in an institutionally sparse environment, institutions, such as germaneness rules, structure the choice of the relevant actors and stabilize equilibrium outcomes (McKelvey, 1976; Shepsle, 1979).<sup>7</sup> Similarly institutions provide credibility when policies face problems of temporal inconsistency (Kydlan and Prescott, 1977). Thus, the monopoly of legislative initiation and the regulatory powers of the Commission a) structure outcomes by limiting voting cycles and b) provide intertemporal credibility<sup>8</sup> (Gatsios and Seabright, 1989; Majone, 1996; Moravcsik, 1993: 507-14; Moravcsik and Nicolaïdis, 1999: 76-7; Pollack, 1997: 105-6).

### *The limits of liberal intergovernmentalism and the role of the Commission*

Since the dominant focus of intergovernmentalism lies on the interdependence of state preferences on substantive policy issues, it adds little value to the theories of institutional choice. It still remains

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<sup>6</sup> In his latest contributions, Moravcsik (1998: 487, 1999: 302) downplays the Commission's informational role and stresses the importance of transaction costs of legislation, implementation and enforcement relative to the costs of interstate bargaining.

<sup>7</sup> In an institutionally sparse environment stable equilibria can only be guaranteed by a specific configuration of preferences and they can change for any slight perturbation (Shepsle, 1979: 28).

<sup>8</sup> See, for instance, the policy of controlling state aids and cartels.

institutionally sparse and does not take these theories to their natural consequences.<sup>9</sup>

Intergovernmentalists do not base the Commission's preferences on specific theories of preference formation. These have a simply mission-oriented descriptive value (see more on this below). The Commission reaches its objectives only to the extent that its preferences align with those of the relevant Member States. Its preferences are irrelevant because its actions are largely epiphenomenal (Moravcsik, 1999). This conclusion is generally correct if one agrees that Treaty-amending negotiations are the dominant level of analysis in the study of the politics of the European Union. Here, supranational institutions have limited causal impact because they have few formal powers (Moravcsik, 1991, 1999; Peterson, 1995a). However, this dominance is becoming at least arguable.

In its most succinct formulation, intergovernmentalism encompasses the following sequence:

1) interdependence → 2) negative policy externalities →  
→ 3) national preference formation → 4) intergovernmental bargain →  
→ 5) policy and institutional outcomes → 6) implementation  
(cf. Stone Sweet and Sandholtz, 1997: 302).

In most instances, intergovernmentalism stops the analysis (arbitrarily, but correctly from its perspective) at the fifth step. This is because implementation generally follows the expected track set by the negotiated bargain.

Moravcsik in effect acknowledges that in reality this is more a loop rather than a sequence. He (1998: 473-9) asserts that the timing of major European Treaty amendment negotiations follows or precedes major economic trends. So one could easily argue that interdependence is the *result* of the implementation of previously negotiated institutions and

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<sup>9</sup> The latest contributions that apply agency theory to the Union institutions follow the intergovernmental tradition but it radically changes its perspective. Pollack's (1997) work will be discussed in the next chapter.

policy objectives.<sup>10</sup> If these institutions maintain predominant intergovernmental characteristics, intergovernmentalism is superior and the causal impact of supranational actors is rightly dismissed.

However, once budgetary or legislative procedures require qualified majority in the Council and involve supranational institutions, the intergovernmental sequence is disrupted. To the extent that supranational actors are pivotal in minimum winning coalitions, their preferences enjoy causal primacy. If these outcomes affect the structure of interdependence of state preferences and the specific path of integration, the actions of supranational institutions have at least the same explanatory potential as states' behavior does. Since Treaty negotiations are encroaching upon an increasing set of policies, the specific implementation paths tend to rise exponentially. Thus, Treaty negotiations as the dominant level of analysis is giving way to the specific working of the European Union, namely the implementation stage.

Finally, the argument on information and credibility is too general. We do not know how these, and other, factors determine the exact extent of the Commission's executive discretion.

To conclude, liberal intergovernmentalism does not take the theories of institutional choice to their natural consequences because it downplays the fact that these choices can fundamentally change the nature of a game. Once new supranational actors are established, they develop their own interests and they use their own resources to pursue their objectives (Moe, 1990: 121). Since the Commission has institutional resources at its disposal to affect the process of European Integration over an increasing set of policies, understanding its preferences and the conditions under which it reaches its objectives is as important as understanding the outcome of Treaty negotiations.

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<sup>10</sup> For instance, the Treaty of Rome too can be seen as the result of rising interdependence generated by the GATT agreements.

## Neofunctionalism and its variants

### *The non-state agents of interdependence*

We can analyze neofunctionalism by referring to the sequence we highlighted above. This theoretical perspective focuses on the feedback loop between the implementation of policy and institutional outcomes and interdependence. It considers actors above and below the state as the primary agents of interdependence. The Member States are instead reactive to the demands and structural changes generated by these actors rather than proactive and in control of the integration process.

The works of Haas (1958, 1961, 1964a) and Lindberg and Scheingold (Lindberg, 1963; Lindberg and Scheingold, 1970, 1971) set out the neofunctionalist agenda. For Haas, integration relies on the strategic convergence of interests between national actors and supranational institutions.<sup>11</sup> On the one hand, actors below the state perceive that a supranational strategy is more effective than a national one in pursuing their interests, so they 'adjust their aspirations by turning to supranational means when this course appears profitable' (Haas, 1958: xiv). On the other hand, supranational institutions, with the aim of broadening their sphere of influence, operate as 'agent of integration' (Haas, 1958: 29) by fostering the development of interest groups and playing the role of broker to facilitate supranational decision-making (see also Lindberg and Scheingold, 1970).

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<sup>11</sup> Generally, neofunctionalism 'stresses the instrumental motives of actors ... [it] takes self-interest for granted and relies on it for delineating actor perceptions' (Haas, 1971: 23). However, at least in its initial formulation, it was relatively ambiguous about the ontological basis of actors' behavior. Haas defined political integration as 'the process whereby political actors in several distinct national are *persuaded* to shift their loyalties, expectations and political activities toward a new centre' (Haas, 1958: 16, emphasis added). He envisioned a long term process where 'the end result ... is a new political community, superimposed over the pre-existing ones' (Haas, 1958: 16). This *predominantly sociological* process is usually referred to as 'political spill-over'. In his later work, Haas (1970) recognized the difficulty in measuring this transfer of loyalties and emphasized the importance of delegation of policy-making functions to supranational actors as well as the instrumental rationality of actors in general (cf. Lindberg and Scheingold, 1970).

This strategic convergence can be seen in the early 1980s when a transnational business coalition perceived that the existing national economic policies failed to enhance international competitiveness and promoted the 1992 initiative under the leadership of the Commission (Sandholtz and Zysman, 1989; see also Tranholm-Mikkelsen, 1991). Similarly, Cowles (1995) shows how the European Round Table of Industrialists have been a major policy player in setting the agenda for the single market project and interacting with Commissioners Davignon, Ortoli and, especially, Delors.<sup>12</sup>

Lately, Sweet, Sandholtz and Brunell (Stone Sweet and Brunell, 1998; Stone Sweet and Sandholtz, 1997), relying on both neofunctionalism and Deutsch's (e.g. 1957) transactionalist school<sup>13</sup>, show that the process of European legal integration has been generally driven by transnational activity of non-state actors and the efforts of Union institutions to reduce transaction costs. Transnational exchange demands triadic dispute resolution and the elaboration of legal rules which, if effective, encourage more exchange and further disputes and rules. Further, 'once the causal connections among exchange, triadic dispute resolution, and rules are forged, the legal system will operate according to a self-sustaining and expansionary dynamic' (Stone Sweet and Brunell, 1998: 65).

This literature emphasizes the inability of the Member States in controlling the process of integration. Hence an emerging set of works, which has been loosely labeled *historical institutionalism*, has elaborated the conditions when there are gaps in the Member States' control.

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<sup>12</sup> Neofunctionalist writings abound especially in the study of the European Court of Justice (see, for instance, Alter, 1996; Burley and Mattli, 1993; Stein, 1981; Weiler, 1994; Wincott, 1995).

<sup>13</sup> This school dates back to the work of Deutsch (1964, 1966, 1957). Deutsch focused on how political communities emerge from mutually responsive transactions and from an essentially sociological process of learning. Sweet, Sandholtz and Brunell have re-emphasize the importance of transactions among non-state actors, but with two important differences from Deutsch's work. First, they essentially disregard the sociological aspect of community formation and consider the process of integration as an exercise to reduce transaction costs. Second, they give more emphasis to the role of supranational institutions for dispute resolution and rule-making.

### *Control gaps and bounded rationality*

Pierson (1996) lists four factors that create gaps between the institutional and policy preferences of the Member States and the actual functioning of institutions and policies in the Union.

*Decision rules and supranational institutions.* As mentioned above, supranational institutions could have explanatory potential if they are pivotal actors and in case of qualified majority. The literature will be analyzed in more detail below. What is important to stress here is that governments face high institutional barriers to reassert control. They can amend secondary legislation, but supranational actors could still be pivotal, or they can amend the Treaty. The latter option is unlikely to be successful for two reasons. First, Treaty amendment needs unanimous agreement, so it is likely for governments to find themselves in joint decision traps (Scharpf, 1988). Second, the transaction costs of an intergovernmental conference can easily exceed the benefits of a Treaty amendment (Pierson, 1996: 143).<sup>14</sup>

*Time horizons.* A second element that leads to control gaps is the fact that politicians heavily discount the long-term consequences of their decisions. Pressed by the logic of electoral politics, governments have strong incentives to maximize net benefits in the short-term, so 'the long-term institutional consequences are often the by-products of actions taken for short-term political reasons' (Pierson, 1996: 136). The crucial difference from intergovernmentalism is that governments might take decisions to maximize the domestic political support in the short-term *at the expenses* of their long-term sovereignty. This argument has been mainly applied to Treaty negotiations and the Court.<sup>15</sup>

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<sup>14</sup> See Moravcsik (1999) for a dissenting view.

<sup>15</sup> For instance, Pierson (1996) observes that the refusal of the Major government to sign the Maastricht Social Protocol was guided by short-term political reasons, that is to please the Euro-skeptic minority in his party. However, the much less watered down version that was adopted *because of* the British refusal is a considerable long-term threat to British sovereignty if a Labour government decides to join the Social Chapter. On 'constitutionalization' of the Treaty, Alter (1998) argues that the Court has been able to develop legal doctrine against the interest of the Member States by exploiting the

*Path dependency.* One could argue that a state has always the option of exit from the Union. However, Pierson (1996) observes that this is increasingly costly as integration progresses. Once a new rule has been adopted, individuals are likely to 'develop particular skills, make certain investments, purchase particular goods, or devote time and money to certain organizations. All these decisions generate *sunk costs*. That is to say, they create commitments. In many cases, initial actions push individual behavior onto *paths* that are hard to reverse' (Pierson, 1996: 146, emphasis added).

Over time, sunk costs and path dependence make the option of exit almost implausible. Compare the impact on the Union of the 'empty chair' crisis in the mid 1960s and the BSE crisis in the mid 1990s. A credible threat of exit in the former case seriously slowed down the adoption of new legislation for twenty years. In the latter case, the threat was not even contemplated and the Major government had to resort to milder strategies.

*Bounded rationality and information asymmetry.* The last obstacle to control is based on the bounded nature of the rationality of actors. Their inability to foresee all future circumstances or to appreciate the technicalities of each issue diminishes their control over events and other actors. Neofunctionalism and its central concept of functional spill-over is based on this limited prescience. Haas argued that

'most political actors are incapable of long-range purposive behavior because they stumble from one set of decisions into the next as a result of *not having been able to foresee* many of the implications and consequences of earlier decisions... [a] new central authority may emerge

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different time preferences between political and judicial actors. Politicians prioritize 'the material impact of legal decisions over the long-term effects of ECJ doctrine' (Alter, 1998: 131). So 'the ECJ expanded its jurisdictional authority by establishing legal principles but not applying the principles to the cases at hand' (Alter, 1998: 131). These principles, such as the supremacy of EC law, have serious long-term implications, which are however heavily discounted by governments.



as an *unintended consequence* of incremental earlier steps' (Haas, 1971: 23, emphasis added).

Integration emerges through a process of functional spill-over whereby 'a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which create a further condition and a need for more, and so forth' (Lindberg, 1963: 9). The dynamic between exchange, triadic dispute resolution, and rules that have been identified by Sweet, Sandholtz and Brunell (1998, 1997) relies on a similar expansionary logic that, at the outset, is unforeseen by governments.

Haas cited as example the spill-over from the sectoral common market in the European Coal and Steel Community to the general common market of the European Economic Community (Haas, 1958: 298). Tranholm-Mikkelsen (1991) has observed that the typical measures of negative integration (i.e. elimination of barriers) of the Single Market spilled over measures of positive integration (i.e. the production of new rules as those approximating laws and on the environment) (cf. Pinder, 1968).

### *Neofunctionalism and the role of the Commission*

These works address partially the core of the question in this thesis. Haas assumes that the dominant policy dimension in European politics is characterized by more and less integration and locates the Commission's ideal point in the integrationist end. There is not much of a difference from intergovernmentalism and, similarly, the Commission's preferences remain relatively underspecified. The fact that it is an agent of integration means that the Commission attaches a value to legislative intervention at the European level *per se*, but neofunctionalist writings disregard theories of bureaucratic preferences and behavior. This is inappropriate for three reasons. First, the more-less integration dimension does not guide us in the identification of the Commission's preferences regarding the specific

details of policy instruments. For instance, what institutional design of competition policy does the Commission prefer? How should the regional funds be organized according to the Commission? Second, the dimension becomes irrelevant especially when existing policies are being reformed and it is not anymore a matter of expanding the policy agenda. Third, grounding the analysis of the Commission's behavior in theories of bureaucracy renders the study of the Union comparable with other country studies and more amenable to cumulative work.

The earlier neofunctionalist works on the conditions under which the Commission reaches its objectives still remain underspecified. Their reliance on the functional spill-over from unintended consequences runs into both theoretical and empirical problems.

Theoretically, the dependence on random accidents renders this approach scarcely amenable to comparative and cumulative research. The predictive power of a theory of unintended effects unfolds almost by definition. The *only* phenomenon that it predicts is that actions lead to unintended effects. This is more stating the obvious rather than delineating a theory. The implications of this approach are even direr. It defies the whole purpose of academic research because it does not delineates the causal linkages among dependent and independent variables, apart from saying that they are random. Thus, explanations tend to be circular because the causes of unintended effects are *by definition* unpredictable and empirical researches reach the relatively meager conclusion that *there have been unintended effects from certain actions* (cf. Guay, 1997; Hanson, 1998; Tranholm-Mikkelsen, 1991). Further, if neofunctionalist premises are correct (i.e. the abundance of unintended effects from discrete political choices), one should question why rational actors should even bother to take decisions whose consequences are so unpredictable. Finally, the comparative value of this approach is also limited, apart from asserting that all political systems are subject to random shocks. For cumulative research, one should ask under what conditions the Commission can

exploit unintended consequences to increase the policy agenda of the Union. Haas notes that, for spill-over to take place, tasks assigned to supranational institutions must be 'inherently expansive, thus capable of overcoming the built-in autonomy of functional context and of surviving changes in the policy aims of member states' (Haas, 1961: 376). Interestingly, this is not only an institutionally sparse view of integration but there is also a surprising similarity with Moravcsik's concept of interdependent state preferences. Moreover, Union legislators are likely to design institutions and policy instruments to deal directly with uncertainty and unintended consequences in the manner they prefer. Surely, research priority should be given to the predictable components of a political system, to theories that clearly specify causal linkages and are more amenable to comparative and cumulative research and, finally, to an ontology of human behavior whereby actors exercise rational foresight and deal with uncertainty.

Empirically, some scholars argue that the deterministic nature of further gradual and incremental integration through functional spill-over clashes with a process characterized by fits and starts (Moravcsik, 1993: 476; Schneider, 1996; Schneider and Cederman, 1994). This dynamics is not however an accepted description of integration (cf. Stone Sweet and Brunell, 1998). More importantly, unintended consequences need not always to be at the expenses of governments or lead to supranational solutions. The liberalization of external trade policy in the early 1990s can be understood as an unforeseen consequence of the Single Act, even though the position of the Commission has been sometimes openly protectionist (Hanson, 1998: 73). The spill-over of the Single Market Programme into national defense policies has led to very limited supranational actions (Guay, 1997).

A valuable contribution of earlier neofunctionalist writings is that supranational actors can exploit their expertise vis-à-vis the Member States to obtain what they want. The context where functional spill-over

thrives is economic, social and technical; areas that are nominally apolitical (Haas, 1964b). Thus, it is the asymmetric distribution of information across actors (not about future contingencies) that help the Commission to pursue its objectives. However, the neofunctionalist tradition misses the link with the literature on bureaucratic politics that, not surprisingly, relies heavily on the informational advantage of bureaucrats (see chapter 2).<sup>16</sup> Further, a rigorous emphasis on information asymmetries, and therefore on the fact that actors pursue their goals in the most efficient manner *given costly information* and take decisions under some uncertainty, enables researchers to explain behavior that is traditionally attributed to bounded rationality or limited cognition (Knott and Miller, 1987: 180; Zeckerhauser and Schaefer, 1968). The next chapter will deal in more detail with the latest works that analyzes the informational resources of the Commission.

The works following the neofunctionalist school have predominantly focused on the conditions under which the Commission reaches its goals, rather than on its preferences. The most promising part of this literature has discarded the issue of unintended consequences and focused on decision rules. As we will show in the section below, these works have developed an original and institutionally rich set of hypotheses on the legislative politics of the Union.<sup>17</sup>

Another part of the literature offers some added value but it is institutionally less sophisticated and/or offers minor contributions to classical bargaining theory (cf. Binmore, 1987; Harsanyi, 1977; Raiffa, 1982). In effect, the interactions between supranational and sub-national

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<sup>16</sup> Some of the best neofunctionalist studies on European integration stress the informational advantage of the judges of the Court of Justice. Burley, Mattli and Slaughter (Burley and Mattli, 1993; Mattli and Slaughter, 1995, 1998) studied how the Court used the rule of law as a mask to pursue to constitutionalization of the Treaty of Rome. The Court promoted its political objectives using the technicalities of legal reasoning and the apparent apolitical nature of judicial review and dispute resolution. It managed 'to camouflage controversial political decisions in "technical" legal garb' (Burley and Mattli, 1993: 70).

actors stressed in the earlier works of Haas and his colleagues are strategies to increase the cost of no-agreement. Sweet, Sandholtz and Brunell simply add that this cost is positively related to the transaction costs of transnational exchange. The arguments on time horizons and path dependency stress the well known facts that a relatively more patient actor will get more of what she wants and that the cost of exit forecloses some bargaining outcomes.

To conclude, the neofunctionalist literature and its variants generally stress the role of supranational actors in the politics of the Union. However, apart from a general interest in more integration, it does not clearly specify the preferences of the Commission within the more general literature of bureaucratic and executive politics. This is unfortunate because there is a clear similarity between the two sets of literature on the informational advantage of bureaucrats. For the large part, these works remain also institutionally sparse and introduce standard intervening variables of negotiation (e.g. time horizons, cost of no-agreement and of exist). It is the recognition of this weakness that propelled the development of institutionally sophisticated studies of legislative politics in the Union.

### **Institutionalism and legislative politics**

#### *The diminishing legislative powers of the Commission*

The most developed and rigorous supranational critique of intergovernmentalism consists of the analysis of the conditions under which supranational actors influence legislative outcomes in the Union. The literature predominantly focuses on the formal powers<sup>18</sup> of the

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<sup>17</sup> The insights on European integration have also become substantially different from neofunctionalism.

<sup>18</sup> Formal powers are conferred upon the Commission by the Treaty or by secondary legislation. Informal power (which I will not consider) consists of political entrepreneurship through the persuasive manipulation of information and ideas. Moravcsik (1999) contends that informal supranational entrepreneurship is largely redundant in Treaty amending negotiations (cf. Sandholtz and Zysman, 1989).

Commission, and specifically on the implications of its monopoly power of initiation.<sup>19</sup> This set of work emphasizes the importance of three factors that affect the likelihood of the Commission obtaining its preferred policy: decision rules (namely the Union legislative procedures), the distribution of preferences of pivotal actors, and the location of the status quo.<sup>20</sup>

Crombez (1996, 1997a, 1999) locates the ideal policy of the Commission between those of the Member States. He (1996) observes that the Commission is more likely to obtain its ideal policy under the consultation procedure, followed by cooperation and then assent procedures.<sup>21</sup> However, if the ideal policy of the Parliament is relatively close to the ideal policy of the Commission, there is no difference between the consultation and the cooperation procedures. For instance, Pollack (1994) shows how the Commission has cleverly exploited the legislative and budgetary procedures and the preferences of the Member States and the Parliament to shape the directives of the Single market programme and to direct resources to new areas (e.g. research and development, education and consumer protection). Further, the Commission might also enjoy a negative agenda power, that is 'the ability ... to maintain the status quo even though a qualified majority in the Council prefers to change it' (Crombez, 1996: 213). The Commission refusal to adopt an independent European Cartel Office and to postpone the elimination of duty free shopping are two examples where the Commission prefers, and maintains, the status quo over suggested reforms (see chapter 3).

The Commission has however progressively lost the ability to affect the policy equilibrium under the co-decision procedure. In fact, it may obtain a policy equilibrium that is more distant from its ideal policy than under cooperation. This is because of the conciliation committee's right to agree

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<sup>19</sup> The Commission initiates new legislation, the annual budgetary circle and the multiannual financial perspective.

<sup>20</sup> A fourth variable, namely the number of policy dimensions, has not generated different results as to the power of the Commission. Compare Crombez (1996, 1999) with Tsebelis (1994) and Garrett and Tsebelis (1996).

<sup>21</sup> I will not describe in details these procedures, for a good analysis see Hix (1999).

on a joint text under co-decision (Crombez, 1997a: 113). Finally, the Commission loses completely its agenda setting power under co-decision as amended by the Amsterdam Treaty (Crombez, 1999). Thus, the Union is operating now like a bicameral system where the Commission, like national bureaucracies in parliamentary democracies, drafts the legislation on which the politicians decide (Tsebelis and Money, 1997).

There is a surprising degree of agreement on these results. Steunenberg (1994) focuses more directly on the different configurations of the Commission's policy preferences but he reaches similar conclusions. Garrett and Tsebelis (1996; see also Garrett, 1995; Tsebelis, 1997) assume, similar to the neofunctionalist literature, that the dominant policy dimension in European politics is characterized by more and less integration and locates the Parliament's and the Commission's ideal policies in the integrationist end. Their results do not differ from Crombez's.<sup>22</sup>

#### *Toward a theory of executive and bureaucratic politics in the European Union*

The value added of these works consists predominantly in the rigorous specification of the conditions under which the Commission reaches its goals. However, the preferences of the Commission across policy domains remain poorly specified. The Commission is treated as any other legislator. The location of its preferences in the policy space is either based on empirical descriptive analysis (e.g. Garrett and Tsebelis, 1996) or on the fact that Commissioners are appointed by the Member States (e.g. Crombez, 1996). In this sense, these works share the same drawbacks with the other literatures analyzed above.

However, by showing that the Commission's legislative role is phasing out, they invite us to take the logical step of dealing directly with the

'executive vocation' of the Commission (Lenaerts, 1991: 30).<sup>23</sup> The Commission is the traditional candidate upon which policy-making functions are conferred (see Article 211 [ex 155.4] EC). This vocation was also strengthened with the introduction by the Single European Act of the third indent of Article 202 [ex 145] EC according to which the Council is under an obligation to delegate executive functions to the Commission<sup>24</sup> (Bradley, 1992: 714-7).

In other words, these theories of legislative politics need to be complemented by theories of delegation, bureaucratic preferences and executive behavior, which better qualify the preferences of the Commission across different policy domains and evaluate more appropriately the position of the Commission in the institutional framework of the Union. In a sense, these works ignore the fact that some preferences can be 'institutionally-determined', namely they are functions of the specific institutional location of an actor.

Finally, these works use institutional rules as independent variables; they are theories of structure induced equilibria. However, the executive functions and the bureaucratic structure of the Commission are essentially matter of institutional choice. Only theories of executive and bureaucratic politics can inform us of this choice.

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<sup>22</sup> The literature produces instead different results as to the powers of the Parliament. See Crombez (1996) and Tsebelis (1994) and the debate between Tsebelis and Garrett (Tsebelis, 1996; Tsebelis and Garrett, 1997), Scully (1997a,b) and Moser (1996, 1997).

<sup>23</sup> This is not to say that the Commission's executive functions do not affect legislative production. On the contrary, there are many empirical studies that show how the Commission has used its executive powers to increase the cost of not adopting legislation. For instance, the Commission has increased the cost of no-agreement in the agricultural stabilizers reform package in 1988. It took the Council to court for failing to adopt the 1988 budget of which agricultural reform was a cornerstone (Patterson, 1997). It has also used its executive powers for the same purpose. In the merger control regulation in 1990, the Commission actively pursued a judicial interpretation that applied Article 81 (ex 85) EC of the Treaty to mergers, thus showing how the lack of a regulation considerably increased legal uncertainty surrounding these activities (see chapter 3 and Bulmer, 1994). The possibility of initiating infringement proceedings can also have a substantial impact on the legislative outcome.

<sup>24</sup> The Council may reserve the right to exercise directly implementing powers itself. This must be justified on clear substantive grounds in the initial act of delegation and limited



## Conclusion

The general theoretical perspectives on the European Union are becoming increasingly obsolete. Their added value is essentially middle range. Liberal intergovernmentalism illuminates how national domestic groups form their preferences across issues and gain representation. Its insights can be integrated with theories of legislative politics. Similarly, the emphasis on information of neofunctionalist works can be integrated with theories of legislative politics when Union legislators choose institutions to deal with unforeseen circumstances and information asymmetries.

More importantly, these frameworks deal incompletely with the core question of the thesis: why does the Commission substantially affect the process of European integration across the multitude of possible trajectories? We certainly first need to know the Commission's basic motivations before attempting an answer. None of the main approaches however ground the Commission's preferences on theories of bureaucratic politics. Chapter 2 reviews in detail the academic work that has so far dealt with this issue. These frameworks instead differ widely about the circumstances that support or hinder the Commission's objectives. Intergovernmentalism emphasizes the importance of Treaty amending negotiations vis-à-vis the day-to-day operation of the Union. The result is downplaying any relevant role of the Commission. Yet, the latter level of analysis is becoming relatively more important as policy dimensions are pooled and delegated and the possible trajectories of integration expand. If we want to understand why integration is following specific paths, we need to focus the attention on the daily working of the Union and the causal role of its supranational institutions. The reliance of the neofunctionalist literature on unexpected consequences runs into empirical and logical problems. Neofunctionalism does not clearly explain why, and the conditions under which, the Commission exploits

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to only specific cases. The exceptional nature of this reserve safeguards the *effet utile* of Article 202.3 EC (Bradley, 1992).

unintended effects from previous negotiations (although, its emphasis on information asymmetries sparks interesting parallels with theories of bureaucratic behavior). It also does not explain why Member States would even sign Treaties if their effects were so unpredictable and politically risky. The reliance on unpredictability impedes cumulative and comparative research.

This thesis builds instead on the more rigorous institutionalist work that applies formal theories of legislative politics to the Union and specifies the conditions that favor the Commission. A formal model is developed in the appendix of chapter 2. It differs from the existing contributions in the fact that the Commission's preference is operationalized as executive discretion, not as specific policy preferences. This is in order to focus on its executive role, rather than its legislative one. Finally, the main frameworks neglect the issue, which is object of intense scrutiny in the literature on executive politics, of procedural control.

My contribution remains essentially middle range. This has two benefits. First, a better understanding of executive politics improves our knowledge of the Union as a whole. Second, as mentioned, the use of classical theories of executive politics renders our work comparable and cumulative and fosters our dialogue with the political science community at large, therefore abandoning the *sui generis* paradigm that has plagued the study of the European Union (Hix, 1998).

## Chapter 2.

### Studying the Commission: Preferences, Delegation and Control

#### Introduction

This chapter critically reviews the works on the European Commission, highlights the gaps in the literature and lists the hypotheses that will be tested in the next chapters. As mentioned in the introduction, the thesis will not contribute to the literature that studies the role of the Commission during the Intergovernmental Conferences that amends the Treaty. It will instead analyze the Commission from the perspective of the literature on executive and bureaucratic politics. As delineated, the first logical step is a study of the bureaucratic preferences of the Commission. The second is an analysis of the variables that help the Commission to achieve its goals. The final step consists instead of the analysis of the factors that induce Union legislators to establish mechanisms to oversee the Commission's behavior.

#### The Commission and the Intergovernmental Conferences

In the first thirty years since the establishment of the European Economic Community, the study of the European Commission reflected the ups and downs of the neofunctionalist school. Haas and his colleagues gave a central entrepreneurial role to the Commission, so articles and books flourished in the 1960s. When the predictions of neofunctionalism felt short of empirical validity in the 1970s and in the first half of the 1980s, academic research on this institution almost stalled.<sup>1</sup>

The interest re-emerged in the late 1980s with the work of Sandholtz and Zysman (1989) on the Commission's entrepreneurship in devising the

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<sup>1</sup> The list of 1960s studies is rather long, probably the most relevant works (apart from Haas and his colleagues) include Coombes (1970), Scheinmann (1966), Spinelli (1966) and Yondorf (1965). To my knowledge, sections in the book edited by Wallace et al. (1979) are some of the few contributions in the years that followed.

Single Market Programme. They emphasized its 'leadership in proposing technical measures for the internal market that grabbed the attention of business and government élites' (Sandholtz and Zysman, 1989: 107). They stressed that the Commission's role went beyond that of an international secretariat. The Commission perceived the failure of national strategies of economic growth and the shift in domestic political preferences toward market-oriented policies and formulated proposals that 'transformed this new orientation into policy, and, more importantly, into a policy perspective and direction' (Sandholtz and Zysman, 1989: 113). Cameron (1992) later echoed this view: 'Delors and his Commission did play a major role in the successful completion of the initiative ... they gave a complex, technical, and business-oriented process of market enlargement that was likely to drag on for years the image of a simple and finite adventure in "building Europe"' (Cameron, 1992: 51; see also Tranholm-Mikkelsen, 1991: 10-2).

The political entrepreneurship of the Commission in Intergovernmental Conferences is however a highly contested issue. In his work on five major Treaty-amending negotiations, Moravcsik concludes that 'supranational intervention, far from being a necessary condition for efficient interstate negotiation in the EC, is generally late, redundant, futile and sometimes even counterproductive (Moravcsik, 1999: 269-70; see also Moravcsik, 1998).

As already pointed out, this thesis does not deal directly with this issue because its level of analysis is Union legislation (instead of Treaty amendments) where the Commission enjoys formal legislative powers and has specific bureaucratic preferences. It will however contribute to the debate about the relative importance in the process of integration of Intergovernmental Conferences vis-à-vis the day-to-day implementation of Treaty provisions.

## The Commission's preferences and the expansion of the EU agenda

In concomitance with the raising interest on supranational entrepreneurship, scholars have shifted the level of analysis of the Commission from Intergovernmental Conferences to the bureaucratic and legislative arena.

Majone has been one of the first scholars that analyzed the Commission's bureaucratic behavior from a rational choice perspective (see also Teutemann, 1990). He rejects budget maximization as the Commission's primary objective and asserts that this institution wants to maximize 'its influence as measured by the scope of its competence ... the utility function of the Commission is positively related to the scope rather than the scale of the services provided' (Majone, 1992: 138). Task expansion is the Commission's primary goal (Majone, 1996: 65).

Majone has inspired a considerable amount of empirical research. Cram (1994, 1997) has analyzed agenda expansion in social and technology policy. She concludes that 'much of the activity of the European Commission might well be interpreted as an attempt to expand gradually the scope of Union competence ... acting as a 'purposeful opportunist'' (Cram, 1994: 199; see also Eichener, 1997: 598-9; Mazey, 1995: 591-3, 602-7; Pollack, 1994: 134-8; Sandholtz, 1992; Wendon, 1998). Telecommunications is another sector where the Commission's task expansion strategy has been especially successful. Fuchs notes that the Commission 'operated in the field of telecommunications with the clear intention of further developing its domain, overcoming all resistance, and creating new regulatory and organizational structures' (Fuchs, 1994: 190; see also Esser and Noppe, 1996: 553, 560; Sandholtz, 1993b; Schmidt, 1998: 172-6).<sup>2</sup> In more general terms, Pollack (1994) observes that the Commission's task expansion strategy is especially successful in regulatory policies that are the result of functional spillover from Treaty objectives (e.g. environment and education) and in distributive policies if the Member States are

supportive of a Community Initiative (e.g. technology and telecommunications).

Task-expanding behavior however loses explanatory power once delegation of policy-making authority to the Union has taken place. Moreover, the literature, including Majone, has frequently equated 'scope of competence of the Commission' with 'task expansion of the Union'. This is an unwarranted generalization as new policies of the Union might grant very limited executive discretion to the Commission. For instance, foreign and security policy and justice and home affairs are two new policies included in the Treaty of Maastricht where the role of the Commission is very limited (see e.g. Hayes-Renshaw and Wallace, 1997: ch.1, 3; Hix, 1999: 310-7, 341-7). The Commission can be heavily constrained also within the traditional activities of internal market regulation, as in risk assessment associated with food consumption (Vos, 1999: ch. 3).

The Commission's preferences can then be associated with the whole agenda of the Union, hence reflecting the conflict for tasks across different level of government that is traditionally associated with federal polities. Or, they can be associated with the specific competence of the Commission at European level, hence reflecting the conflict among branches of government that is informed by the well-developed literature on executive and bureaucratic politics. Many scholars tend to elude this analytical distinction and give emphasis to the former type of preferences. This is probably a legacy of neofunctionalism and a result of the empirical relevance of the transfer of policy competence from the Member States to the Union in the 1980s and 1990s. This thesis will instead analyze the Commission's preferences from the latter perspective, as an

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<sup>2</sup> Other works include also industrial defence policy (Guay, 1997: 405, 411-4) competition policy (Bulmer, 1994: 433-6) and regional policy (Smyrl, 1998: 90).

acknowledgment of the fact that the Union is a polity in formation and the Commission a maturing bureaucracy and executive.<sup>3</sup>

### The Commission's bureaucratic preferences

Treating the Commission as a traditional bureaucracy is certainly not novel in the study of the Union. Both Scheinmann (1966) and Coombes (1970) have highlighted the importance of bureaucratic politics in the Union and there is an abundance of works that describe the bureaucratic structure of the Commission (Cini, 1996; Donnelly, 1993; Edwards and Spence, 1994; Peters, 1992: 85-92). Also contributions that have a more analytical cut emphasize the Commission's bureaucratic and executive functions in terms administrative capacity and political leadership (Christiansen, 1996, 1997; Laffan, 1997; Nugent, 1995, 1997).

Few, though, have an explicit rational choice perspective.<sup>4</sup> Peters (1992: 115-21) refers to Allison (1971) and Downs (1967) when he analyzes bureaucratic politics in the Union and he deals, although relatively indirectly, with the Commission's organizational goals (see also, partially, Christiansen, 1996, 1997). His contribution, however, falls short of an empirical test and remains introductory.

There are also some empirical works that consider the Commission's bureaucrats as Downsian zealots that narrowly pursue 'sacred' policies. For instance, differences across Directorates General in the regulation of media ownership reflect how public officials perceive their primary goal as the one of creating a single market, pursuing an industrial policy or guaranteeing plurality (Harcourt, 1998). Similarly, economic cohesion and

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<sup>3</sup> The Commission's preference ordering is likely to be: EU policy close to its preferences, EU policy different from its preferences, no EU policy. Thus, the Commission prefers any policy to no policy. Once ascertained the need of a policy, this thesis studies the Commission's attempts to shape it to its own liking.

<sup>4</sup> There are instead relatively more studies that have a sociological perspective emphasizing the importance of culture, preference formation and socialization, see Cini (1996, 1997), Cram (1998), Edwards and Spence (1994: ch. 1, 3, 7), Esser and Noppe (1996), Harcourt (1998), Mazey and Richardson (1995), Wendon (1998). Empirical works have also studied the preferences of Commissioners and bureaucrats in terms of

competition are other two policy objectives that have been the object of conflict across Directorates (Pollack, 1995: 379; see also Hooghe, 1997; Marks, 1992). However, these explanations of bureaucratic behavior tends to be tautological as bureaucrats pursue programs because they *exogenously* like them (see also critique in chapter 3).

Majone (1992, 1996) bases his observation about the Commission's utility function on Dunleavy's (1985, 1991) critique of Niskanen (1971). For Niskanen, the utility of public officials is correlated with the budget of their bureau, thus they adopt budget-maximizing strategies. Dunleavy conditions budget maximization on agency type and time (as stage of policy development). When conditions do not apply, officials have work-related preferences and adopt bureau-shaping strategies. Since Majone then emphasizes task expansion rather than bureau-shaping, he does not test directly Dunleavy's hypotheses, nor does he test the hypotheses of formal works that relax Niskanenian assumptions and specify the conditions under which bureaucrats reach their objectives. To my knowledge, there are no studies that specifically test the bureau-shaping and budget-maximizing behavior of the Commission. Smith (1998: 69-71; see also Smith, 1996) analyzes how the Commission has enhanced its autonomy to implement state aid policy by broadening the applicability of its regulations and emphasizing transparency in the public sector. However, his focus is on the Commission's ex-post attempts to increase such autonomy not on the Commission's preferences about budgetary appropriations and statutory discretion. Interestingly, empirical studies indicate contrasting behaviors. Pollack (1995: 383) notes the Commission's stronger opposition to the constraints on its executive discretion in regional policy rather than to the reduced budgetary appropriations to Community Initiatives. Conversely, in research policy, the Commission was 'happy to trade larger budgets for R&D for stricter comitology procedures' (Peterson, 1995b: 403).

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balancing European, national and other political pressures (Egeberg, 1996; Hooghe,



To conclude, chapter 3 explicitly tests the hypotheses proposed by Dunleavy and Niskanen.<sup>5</sup> These are as follows:

*Hypothesis 1: Public officials are more likely to have budget-related preferences in the early stages of development of delivery agencies and budget-maximizing strategies tend to focus on the programme and bureau components of the budget.*

*Hypothesis 2: Public officials are more likely to have work-related preferences and employ bureau-shaping strategies in regulatory or control agencies or in other agencies where there has been a substantial budget growth over time.*

The chapter develops also three operative corollaries derived from the literature relaxing Niskanenian assumptions and (partially) that on the Union legislative politics and bargaining theory. It uses as case studies the twenty-year development of the competition and regional policies of the Union.

The results show that 1) agency type is a relevant factor shaping bureaucratic preferences and strategies and 2) budgetary preferences selectively focus on the delivery component of an agency and on the bureau and programme components of the budget. More importantly, the chapter emphasizes that work-related preferences, consisting of innovative work tasks, managerial discretion and broad scope of activities, emerge as the most persistent over time and across policies.

#### **Legislative politics and the Commission's statutory discretion**

Having established the importance of work-related preferences, chapter 4 quantitatively tests the conditions that determine the degree of ex-ante

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1999; Page and Wouters, 1994), however none takes a rational choice perspective.

<sup>5</sup> See chapter 3 for Dunleavy's classification of agency and budget types.

statutory discretion delegated by the Member States and the Parliament to the Commission in secondary legislation. In other words, I test the variables that assist the Commission in the achievement of its objectives. Four factors are selected using theories of executive politics and a formal model developed in the appendix of this chapter.

As discussed in chapter 1, there is an emerging formal literature that rigorously analyzes under which Union legislative procedures the Commission maximizes its utility (e.g. Crombez, 1996, 1997a, 1999). There are also few empirical contributions that test, though not systematically, some of the predictions. Pollack (1994: 131), for instance, has observed how the switch from unanimity to qualified majority in the Council has been a major factor in the adoption of the Internal Market initiative proposed by the Commission.<sup>6</sup> Eichener (1997) stressed how, under co-operation and co-decision, preference convergence between the Parliament and the Commission had led to high regulatory standards for occupational safety and environmental protection. However, as mentioned above, these works see the Commission as primarily mission oriented, pursuing specific policies (e.g. the Single Market) and expanding the agenda of the Union.

Instead, I propose a model that is based on these formal contributions but operationalizes the work-related preferences of the Commission in terms of executive discretion. The model derives, from the institutional framework of the Union, additional factors that affect the ex-ante statutory discretion of the Commission.

#### *The determinants of ex-ante statutory discretion*

First, uncertainty about the choice of the best policy action leads legislators to delegate broader policy-making authority to the bureaucratic agent (Epstein and O'Halloran, 1994; Gilligan and Krehbiel, 1987; McCubbins, 1985). Proposition 2 of the formal model confirms this

relation but only in case of non-amending secondary legislation because of the Commission's monopoly power of initiation.

Second, convergence of pivotal legislator's and agent's preferences increases the scope of delegated authority (Epstein and O'Halloran, 1994, 1996; Gilligan and Krehbiel, 1989). Proposition 2 of the model adds the same condition as above.

Third, according to Proposition 1 the discretion delegated to the Commission is larger in case of qualified majority than unanimity because in the former case the preferences of the pivotal legislator are, on average, closer to those of the Commission.

Fourth, less policy-making functions are generally delegated to the Commission in those types of policies that required extensive involvement of national administrations during implementation.

To conclude, chapter 4 tests the following hypothesis:

*Hypothesis 3: The ex-ante statutory discretion delegated to the Commission in secondary legislation increases with 1) the uncertainty facing Union legislators about the optimum policy actions, 2) the convergence of preferences between the Commission and the pivotal legislator, 3) the use of qualified majority in the Council, and 4) policies that require limited involvement of national administrations.*

The hypothesis is quantitatively tested on a stratified sample of non-amending legislation. The chapter evaluates also the impact of the Parliament in the co-operation procedure and of the opinions issued by the Parliament and the Economic and Social Committee.

The results show that uncertainty and policy types are the most significant factors affecting the Commission's ex-ante discretion while informal decision rules play also a relevant role.

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<sup>6</sup> On how the shift from unanimity to qualified majority has impacted outcomes of

## Control of the Commission's executive functions

The literature on executive politics stresses that delegation is invariably linked with control. Legislators delegate policy-making functions to the administrative agent and establish control mechanisms to oversee its activities.

Chapter 5 focuses on questions of Commission accountability and mechanisms of Member States control, with particular emphasis on committee control. This is a system of control, termed comitology, whereby representatives of the Member States directly oversee, using various procedures, the implementation of the responsibilities delegated to the Commission.

Although no scholar entirely subscribes to one view, the literature offers two broad reasons to explain the establishment of these committees. First, committees provide information to coordinate, detail and standardize implementation across the Member States. For Hayes-Renshaw and Wallace (1997: 182), comitology 'is a rather normal tool of the policy maker and policy implementer, namely the convening of groups through which the Commission discusses ... the progress of policy implementation'. For Wessels (1998: 217), comitology allows close co-operation between the Member States and the Union institutions. It serves 'especially to ensure joint management' (see also Siedentopf and Ziller, 1988). For Joerges and Neyer (1997a: 295), these committees are set up for 'the transposition of general normative commitments into concrete decisional practices'. The proposals discussed are 'the result of *extensive consultations* with individual national administrators and independent experts [and] the effectiveness of any measure adopted depends on member states transposing the measure adequately into their national legal systems *without leaving too many opportunities for evasion*' (Joerges and Neyer, 1997b: 618, emphasis added). These committees are fora that generate trust across the Member States and use scientific

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international negotiations see Jupille (1999).

discourse to assess policy uncertainty (e.g. risk associated with food consumption) (Joerges and Neyer, 1997a: 295, 1997b: 619; Vos, 1997: 227, 1999: 136-8).

Operationally, the atmosphere is business like and centered on problem solving, there are few referrals and the agenda is dominated by the Commission. Therefore, comitology is a non-hierarchical form of governance (Institut für Europäische Politik, 1989; Joerges and Neyer, 1997a: 279; Wessels, 1998: 228). Some authors also prospect for the possibility of national delegates being captured by the Commission for its own policy goals, therefore emphasizing processes of socialization, persuasion and preference formation (Joerges and Neyer, 1997b: 618-20; van Schendelen, 1996).

We can reinterpret this literature more analytically by relating it to the core tenets of executive politics. When they refer to 'concrete decisional practices' or to the 'progress of policy implementation', these contributions recognize that Treaty provisions and secondary legislation are incomplete contracts that do not specify how states should behave under all possible circumstances. Similarly, when they refer to the generation of trust and to 'joint management', they acknowledge that cooperative ventures are riddled by problems of 1) incomplete information about defection and 2) multiple equilibria that cannot be distinguished in Paretian terms (Garrett and Weingast, 1993: 178-81).<sup>7</sup> Hence, institutions (i.e. comitology) provide information that limits the adverse effects of these problems. They reduce uncertainty by 1) producing detailed rules, 2) signaling defection and 3) coordinating equilibrium selection. The second function, which is more a controlling one, is however greatly underrated in the literature (but see Vos, 1999).

Although chapter 5 will not negate the informational value of comitology, it will show that the likelihood of establishing some form of procedural

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<sup>7</sup> On incomplete information, incomplete contracts and multiple equilibria see also Kreps (1990), Milgrom, North and Weingast (1990), Milgrom and Roberts (1990) and Williamson (1975, 1985).

control and the stringency of such control are also a function of the level of conflict among Union legislators when they adopt the relevant secondary legislation. Their apparently innocuous operation cannot cover the fact that issue-specific tensions, which the Commission cannot disregard, have been at the source of their establishment. Neither will I take issue with the capture hypothesis because the chapter focuses on the Union legislators' decision to establish these committees rather than on the outcomes of their deliberations.

The second rationale for the establishment of these committees emphasizes the control function. For Docksey and Williams (1994: 121), 'comitology constitutes an institutional compromise between the need of effective Community decision-making and Member States' desire to preserve national influence'. For Vos (1997: 214-5), comitology has been set up 'in response to the dual need for flexible means effectively to carry out ever-increasing Community activities, and to ensure the continuing presence of the Member States within the Community decision-making process'. For Pollack (1997: 114), comitology is the most intrusive form of oversight of the Commission's executive powers (see more in the section below). These works are less concerned with the operational aspects and focus primarily on the inter-institutional balance and conflict on comitology, especially between the Council and the Parliament (Bradley, 1992, 1997; Vos, 1997).

More analytically, these authors emphasize the committees' control function over the implementation activity of the Commission. Comitology represents institutional arrangements that structurally induce equilibrium outcomes (Shepsle, 1979, 1989: 136) and limit the Commission's freedom to implement its ideal policies.<sup>8</sup> By assessing these constraints on the Commission's executive discretion, formal works have evaluated the pattern of preferment of the Council, the Commission and the Parliament

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<sup>8</sup> The literature on the control of the bureaucracy is vast, some of the most important contributions include Banks (1992), Bawn (1995), Calvert, McCubbins and Weingast (1989), McCubbins and Schwartz (1984), Weingast and Moran (1983).

toward the different control procedures (Franchino, 2000; Steunenberg, 1996; Steunenberg et al., 1996)

Chapter 5 will highlight that the general inter-institutional focus of these works only partially captures the issue of comitology. The establishment of control procedures is also the result of substantive issue-specific conflict among the Union institutions.

To sum up, this literature has three main weaknesses. First, it predominantly emphasizes the informational role of comitology (cf. Hayes-Renshaw and Wallace, 1997; Joerges and Neyer, 1997a,b; Wessels, 1998). Second, it does not test its control function (cf. Bradley, 1997; Franchino, 2000; Steunenberg et al., 1996; Vos, 1997); the only exception being Vos (1999) who however limits her analysis to a case study of the foodstuffs sector. Thirdly, with few exceptions, the literature heavily relies on a *sui generis* characterization of the Union that is not amenable to comparative and cumulative research (see Joerges and Neyer's (1997a,b) deliberative supranationalism and Wessels' (1998) fusion theory). Instead, these works can be easily related to the core tenets of executive and bureaucratic politics, as I have shown in this section.

Thus, chapter 5 will take issue with the contributions emphasizing the informational role of comitology by reasserting the control function. It also limits the analysis to one theoretical framework, namely agency theory, therefore rejecting the *sui generis* paradigm.

#### *The determinants of procedural control and correlation with ex-ante discretion*

First, as uncertainty about the choice of the best policy action leads legislators to delegate broader discretion, it also leads them to establish more confining procedures (McCubbins, 1985; McCubbins and Page, 1987).

Second, the level of conflict among legislators has a similar impact on the establishment of control procedures (McCubbins, 1985; McCubbins and Page, 1987).

Third, the need of unanimous agreement in the Council of Ministers should have a similar impact as unanimity measures the intensity of conflict at the level of the policy area and as result of decision rules.

Finally, chapter 5 also tests whether executive discretion and the stringency of procedural control are correlated (Bawn, 1997; Epstein and O'Halloran, 1994; McCubbins, 1985; McCubbins and Page, 1987).

To conclude, chapter 5 tests two hypotheses:

*Hypothesis 4: The likelihood of establishing control procedures and the stringency of control are positively correlated with 1) the uncertainty facing Union legislators about the optimum policy actions, 2) the level of conflict among legislators and 3) the need for unanimous agreement in the Council of Ministers.*

*Hypothesis 5: Ex-ante statutory discretion is positively correlated with the stringency of procedural control.*

The results show that unanimity, level of conflict among the Union institutions and uncertainty are key determinants for the establishment of procedural control of the Commission's implementation activities. Level of conflict and uncertainty are also important factors affecting the degree of stringency in control. Finally, discretion is significantly correlated with the stringency of control.



## APPENDIX

### The model: initial structure and assumptions

The model uses the following definitions and assumptions.<sup>9</sup> 1) Actors are the Member States and the Commission. Their ideal points on the policy space are  $G_i$  for  $i = a, b$  and  $C$  respectively. I will not consider the European Parliament in this appendix, its role is assessed more generally in Franchino (2000). 2) The policy space is unidimensional. It is represented by the real line  $R^1$  ranging from its minimum  $R^-$  to its maximum  $R^+$  and crossing the value of zero. Initially, I will set  $R^- = -1$  and  $R^+ = 1$ . This assumption will be relaxed later. 3) Actors have Euclidean preferences over the policy space. Their utility functions are quadratic in the final policy outcome  $x$ :

$$U_{G_i}(x) = -(x - G_i)^2 \quad \text{for the Governments and}$$

$$U_C(x) = -(x - C)^2 \quad \text{for the Commission.}$$

4) Outcomes  $x$  depend on both the Commission's implemented policy  $p$  and the state of Nature  $w$  so that  $x = p + w$ , where  $w$  is the future state of Nature that the Member States cannot anticipate when they delegate policy authority to the Commission and it is the outcome in case there is no delegation. 5) Future states of Nature  $w$  are uniformly distributed in the range  $R^-$  to  $R^+$ , that is  $w \sim U[R^-, R^+]$ . Actors' expected utility  $EU$  is based on this prior distribution. 6) The degree of discretion  $d$  is a segment of the policy space. It limits the set of policies that the Commission can implement such that  $p \in [-d, d]$  and  $d \geq 0$ . The Commission can implement a policy  $p$  whose distance from the state of Nature  $w$  is not greater than

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<sup>9</sup> Some of these assumptions are not innocuous although they have been used in formal works on EU institutions. Germaneness rules and the lack of omnibus legislation in the EU can justify unidimensionality (cf. Crombez, 1996; Garrett, 1995; Steunenberg et al., 1996). This also improves tractability, especially when information is incomplete, and allows us to focus on the determinants of executive discretion (Epstein and O'Halloran, 1994: fn.6; Hammond and Miller, 1985). For McCubbins, Noll and Weingast (1989) and Steunenberg (1996), discretion is referred to those actions that no political coalition can

discretion  $d$ . I assume that, if that was not the case (i.e.  $|p-w| > d$ ),  $p$  will be struck down by the European Court of Justice and the outcome will remain  $w$ . 7) Finally, preferences, utility functions, the structure of the game and the probability distribution of  $w$  are common knowledge.

The sequence of moves is depicted in Figure A2.1. The Commission proposes a degree of discretion  $d$  that has to be approved by the Council of Ministers according to the relevant legislative procedure. After the state of Nature  $w$  is revealed to all actors, the Commission sets the policy  $p$  within the discretionary limits  $\pm d$ .<sup>10</sup>

< FIGURE A2.1 HERE >

The strategic options available for each Member State are very simple. It either rejects or accepts the discretion proposed by the Commission. Its strategy is a function  $V(d)$  relating delegation proposals to voting decisions.  $V(d)$  equals 0 if the Government vote against the proposed discretion, it equals 1 if it supports it. The Commission has to take two decisions in two nodes of the game. First, it has to propose a degree of discretion that is acceptable to the pivotal Government in the relevant legislative procedure. Second, it sets the policy within these discretionary limits. Thus, its strategy is a pair  $\{d, p(d,w)\}$  where  $d$  is the proposed discretion and  $p$  is the implemented policy as a function of the degree of discretion granted  $d$  and the state of Nature  $w$ .

The subgame perfect equilibrium<sup>11</sup> used for the results of the model consists of strategies  $V(d)$  for the Governments and  $\{d, p(\cdot)\}$  for the

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overturn, while here it is defined as an ex-ante limit imposed on the agent. Note that I disregard the issue of credible commitment (cf. Majone, 1996: Ch. 4; Rogoff, 1985).

<sup>10</sup> One could object that EU legislators could enact new acts for any realization of  $w$ , so avoiding the delegation problem. This is highly unlikely because 1) the Council is under an obligation to delegate executive functions to the Commission according to Article 202.3 (ex 145) EC and 2) the Council lacks time and expertise to micromanage policy decision.

<sup>11</sup> In steps 2 and 3 below the pair of belief about  $w$  and strategies of each moving player is also sequentially rational, a more general concept of equilibrium than subgame perfection.

Commission that satisfy the following conditions:<sup>12</sup>

1) The implemented policy  $p$  maximizes the Commission's utility given the degree of discretion granted  $d$  and the state of Nature  $w$ . Formally, let the set of available policies to implement  $Y$  determine the function  $\delta(d,w)=\{Y \in \mathbb{R}^1 \text{ such that } |Y-w| \leq d\}$ , the condition becomes:

$$p(d,w) \in \operatorname{argmax}_{p \in \delta(d,w)} U_C(p+w).$$

2) In their delegation decision, the Member States want to maximize their expected utility  $EU$  after the state of Nature is revealed and the Commission sets the policy. Their expectation is taken with respect to the prior distribution of  $w$ . They will vote only for the degree of discretion that at least equals the expected utility attained in the status quo ante discretion  $d_{sq}$ . Formally, the condition is:

$$V(d)=1 \text{ iff } EU_{Gi}(p(d,w)) \geq EU_{Gi}(p(d_{sq},w)) \text{ otherwise } V(d)=0 \forall i,$$

where  $p(d,w)$  and  $p(d_{sq},w)$  are determined in the same way as  $p(d,w)$  in point 1.<sup>13</sup>

3) The Commission proposes that degree of discretion that maximizes its expected utility and is accepted by the Member States. Formally, this implies:  $d \in \operatorname{argmax}_{d \in \mathbb{R}^1} EU_C(p(d,w))$ .

### **Introductory results: deriving preferences over discretion**

In this section I derive, from the conditions listed above, the preferences over the discretion of legislators and the agent and, after combining the results, I set the scene for the next section.

#### *The Governments' and the Commission's preferences over discretion*

The mathematical proof of actors' preferences over discretion is in Proof 1. Figure A2.2 illustrates the optimal degree of discretion as a function of a Government's ideal policy, given a Commission's ideal point,  $R^+=1$  and  $R^-=-1$ .

<sup>12</sup> I do not use asterisks to denote optimal strategies to simplify the exposition.

<sup>13</sup> Notice that this condition implies that if a Government is indifferent between  $d$  and  $d_{sq}$ , it votes for  $d$ .

< FIGURE A2.2 HERE >

The message of Figure A2.2 is straightforward. The more distant the ideal point of the Government is from the Commission's, the less discretion will be delegated to the agent. This is coherent with similar work on discretion preferences with a single principal (Calvert et al., 1989; Epstein and O'Halloran, 1994; Lohmann and O'Halloran, 1994).

There are four sets of values that  $d$  can take to maximize the expected utility of a Government. If a Member State's ideal policy is more extreme than the Commission's but they both are on the same side on the policy spectrum, the Commission's activity always benefits the Member State. Discretion is therefore full. For any value that the state of Nature takes the agent can implement a policy  $p$  so that it reaches its optimum point  $C$ . In interval I,  $G_i$  is to the right of  $C$  and they are both greater than zero (i.e.  $G_i \geq C \geq 0$ ) and the optimum discretion is  $d = 1 + C$ . As preferences diverge and the Member State's ideal policy moves toward the other side of the spectrum, discretion decreases because the Commission will implement a policy far from the Member State's optimum, reducing its utility. In intervals II and III, the Government's ideal policy is moving away from the Commission's (i.e.  $C \geq G_i \geq 0$  and  $\frac{C^2-1}{2C} \leq G_i \leq 0$  respectively). Here, discretion gradually diminishes as a function of both  $C$  and  $G_i$ . It takes the following values:  $d = 1 + 2 G_i - C$  in interval II and  $d = 1 - \sqrt{C^2 - 2G_iC}$  in interval III. Finally, the two actors' preferences may diverge so much that the Member State could prefer facing the vagaries of the states of Nature rather than delegating authority to an agent to adjust them. This is the case of interval IV. Here the Government's and the Commission's ideal policies are at the opposite of the policy spectrum (i.e.  $G_i \leq \frac{C^2-1}{2C}$ ) and there is no delegation.

The Commission always prefers full discretion, that is for any  $C$  the discretion that maximizes the Commission's utility is  $d = 1 + |C|$ . When

discretion takes this value, the agent can implement a policy  $p$  to adjust any state of Nature across the policy space and reach its optimum policy  $C$ . This is consistent with bureau-shaping behavior whereby the Commission's utility function is positively correlated with its executive discretion.

### *Preferences and the discretion space*

From the structure of preferences described above we can construct a one-dimensional discretion space. This space will take a minimum value of zero (by assumption 6 above) and a maximum value of  $1+|C|$  (full discretion). Actors' expected utility takes the following functional form across this discretion space ( $f(w)$  is the probability density function of  $w$ ):

$$EU_{G_i} = \int_{-1}^C U_{G_i}(\min[w+d-G_i, C-G_i])f(w)dw + \int_C^1 U_{G_i}(\max[w-d-G_i, C-G_i])f(w)dw$$

$$EU_C = \int_{-1}^C U_C(\min[w+d-C, 0])f(w)dw + \int_C^1 U_C(\max[w-d-C, 0])f(w)dw$$

for the Government's and the Commission's ideal policy  $G_i$  and  $C$  respectively. As I have shown in Proof 1, the expected utility can take sets of different values according to the location of  $G_i$  relative to  $C$  and the value  $d$ . It is possible to show that actors have rightward skewed single-peaked preferences over this discretion space.<sup>14</sup>

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<sup>14</sup> A way to show this is to design a map of indifference curves with a given Governmental preference  $G_i$  (an example is available from the author). It is possible to plot the map on a chart with, for instance, the X-axis being the discretion  $d$  and the Y-axis the Commission's ideal policy  $C$ . Each curve would represent the combination of discretion and the Commission's ideal policy that provides the same amount of expected utility to a Government. This map of indifference curves has an Euclidean-like shape whereby the expected utility increases the more we move toward the optimum point and, for a given  $C$ , preferences over discretion are single-peaked and rightward skewed. In general, given a certain location of Governmental preferences  $G_i=v$ , the optimum point is  $C=v$ ,  $d=1+|v|$ . Clearly, the interests of a Government are best protected when the Member State and the Commission have similar preferences, in which case discretion is full.

Finally, actors' preferences over discretion are endogenously determined in this model. The optimum discretion of the Commission will always be located on the point of full discretion whatever the value  $C$  takes. The optimum discretion of the different Governments is a function of their preferred policies  $G_i$ . There are two cases. If, for example,  $G_i > C > 0$  the ideal discretion is full and equals the Commission's. While if  $G_i < C$ , the ideal discretion diminishes and moves leftward in the discretion space, taking the values from interval II to IV shown in Figure A2.2. The reasoning is symmetric for negative values of  $C$ . As we will see, there is no need to set a specific preference configuration for our conclusions.

### **Equilibrium discretion under EU legislative procedures**

In this section I use the following definitions and assumptions. 1) The optimum discretion of the actors are denoted  $d_c$  for the Commission and  $d_{G_i}$  for  $i = a, b$  for Governments. The status quo ante discretion is denoted  $d_{sq}$ . 2) Governments  $a$  and  $b$  (with ideal policies  $G_a$  and  $G_b$ ) are the pivotal actors in the Council for an increase in discretion in unanimity and in qualified majority respectively. 3) The Commission's ideal policy  $C$  is located somewhere in between the Governments' ideal policies  $G_i$ .<sup>15</sup> 4) Although the indifference curves over the delegation space are rightward skewed (see fn. 14), they present the familiar single peaked Euclidean-like shape that allows us to formulate propositions. The skewness tells us that legislators are biased in favor of delegation. However, I will assume, without loss of generality, that indifference curves have the traditional circular shape.

In this section, I discuss the equilibrium discretion under qualified majority (or consultation) and unanimity. The other procedures (i.e. cooperation, co-decision and assent) are analyzed in details in Franchino

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<sup>15</sup> This assumption can be justified on the basis that the Commission is appointed by the Member States, so it is unlikely that its preferences are more extreme than those of the Governments (see e.g. Crombez, 1997b). See Franchino (2000) for more details on the implications of this assumptions.

(2000). The Commission has the monopoly of legislative initiation while the Council has veto and amendment powers differing across procedures. For reasons of space, I will not describe these aspects in details (see e.g. Hix, 1999; Nugent, 1994) and, given the fact that this analysis partially relies on Crombez (1996), results are presented in a very concise way.

*Qualified majority.* When the status quo discretion is zero, the equilibrium discretion in this procedure is  $2d_{Gb}$ . When  $d_{Gb} > d_{sq} > 0$ , the equilibrium discretion equals  $2d_{Gb} - d_{sq}$ . When  $d_{sq} > d_{Gb}$ , the Commission and the pivotal Government *b* have conflicting preferences. The Commission does not initiate legislation and the status quo prevails.

*Unanimity.* The equilibrium discretion in this procedure, when the status quo is zero, is  $2d_{Ga}$ . For  $d_{Ga} > d_{sq} > 0$ , the equilibrium discretion is  $2d_{Ga} - d_{sq}$ . When  $d_{sq} > d_{Ga}$ , the status quo prevails because a unanimous Council does not prefer a discretion larger than  $d_{sq}$  and the Commission refrains from initiating a proposal.

Our first proposition is, then, as follows (see Proof 2)

#### PROPOSITION 1

for most values of the Governments' optimum discretion, in non-amending secondary legislation, the equilibrium discretion conferred upon the Commission is larger under qualified majority than under unanimity.<sup>16</sup> The legislative procedures do not affect the degree of discretion in amending secondary legislation if the status quo discretion is sufficiently large.

Referring to Steunenberg's (1996) idea of structure-induced discretion, part of the discretion that is conferred upon the Commission is then a function of the structure of the legislative process of the Union. For a given degree of uncertainty and distribution of preferences, Proposition 1

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<sup>16</sup> Under relatively extreme circumstances, discretion under unanimity could equal discretion under qualified majority (see Proof 2). Anyway, we should expect, *ceteris paribus*, statistically significant differences of discretion across the two procedures under the conditions specified here.

sets the conditions under which such structure determines the Commission's executive discretion.

### **Preference distribution and uncertainty as determinants of discretion**

We have discussed discretion as function of the status quo and the legislative procedures, to complete the picture we briefly turn here to other two determinants of discretion.

*Preference distribution.* Discretion might change if an actor's ideal policy shifts as a result of, for instance, the appointment of a new Commissioner or a new Government. It is straightforward to see that a shift of the Commission's ideal policy toward the ideal policy of the pivotal actor in a procedure increases the equilibrium discretion in that procedure. In non-amending legislation, this convergence can directly or indirectly affect the degree of discretion. Whilst it does not affect discretion in amending legislation if the status quo is large enough (see Proof 3).

*Uncertainty.* Uncertainty can be operationalized in this model as the range of values that the state of Nature  $w$  can take. So far, we have assumed that this range is limited to  $[-1,1]$  (i.e.  $R^+=1$  and  $R^-=-1$  from assumption 1). If we eliminate such restriction, we can analyze the effect of a change in uncertainty. This is partially what is referred by Steunenberg (1996) as information-induced discretion.

In Proof 3, I show that, if the negative and positive boundaries of  $w$  increase of the same amount,<sup>17</sup> the relative position of legislators' preferences in the discretion space remains unchanged and the equilibria of the legislative procedures are determined in the same way. However, the absolute value of discretion is positively related to the degree of uncertainty in non-amending legislation. Whilst uncertainty does not

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<sup>17</sup> If the change in uncertainty is asymmetric (i.e.  $\Delta R \neq \Delta R^+$ ), discretion increases if the distribution of states of Nature is skewed in favor of the pivotal legislator (a proof is available from the author). This result is less relevant for the purposes of the chapter, see also Epstein and O'Halloran (1994).



affect discretion in amending legislation because the equilibrium outcome remains the status quo.

There are then other two independent variables affecting the executive discretion of the Commission, that is preference distribution and uncertainty.

The second proposition is as follows (see Proof 3)

**PROPOSITION 2**

for any legislative procedure, in non-amending legislation, equilibrium discretion conferred upon the Commission is a positive function of the convergence between the Commission's and the pivotal legislator's preferences and of the degree of uncertainty. Preference convergence and uncertainty do not affect the degree of discretion in amending secondary legislation if the status quo discretion is sufficiently large.

**PROOF 1**

*Proof of the Governments' and the Commission's preferences over discretion*

Outcomes for  $w \sim U[-1, 1]$  are as follows (cf. Epstein and O'Halloran, 1994; Romer and Rosenthal, 1978):

Range of $w$	Outcome with discretion
$-1 \leq w \leq C$	$\min [w + d, C]$
$C \leq w \leq 1$	$\max [w - d, C]$

A Government will set the degree of discretion  $d$  to maximize the expected utility:

$$EU_{G_i} = \int_{-1}^C U_{G_i}(\min[w+d-G_i, C-G_i])f(w)dw + \int_C^1 U_{G_i}(\max[w-d-G_i, C-G_i])f(w)dw$$

In order to analyze in detail this integral, it is necessary to consider four cases. First, we should compute the expected utility in case the Government decides not to delegate authority to the agent. This participation threshold is the result the following integral whereby all

outcomes equal w:

$$EU_{Gi} = - \int_{-1}^1 (w - G_i)^2 f(w) dw = -\frac{1}{3} - G_i^2 \equiv EU_0$$

Results in the following cases are acceptable only if the expected utility from discretion is higher than this participation threshold. The cases are<sup>18</sup>:

Case 1:  $d \geq 1 + C$  and  $d \geq 1 - C$

$$EU_{Gi} = - \int_{-1}^1 (C - G_i)^2 f(w) dw = -C^2 - G_i^2 + 2G_i C \equiv EU_f$$

This is the utility in case the agent has full discretion over the policy space, Governments would agree to impose discretionary limits only in case the expected utility is equal to or greater than  $EU_f$ . Further,  $EU_f > EU_0$  for  $G_i > \frac{3C^2 - 1}{6C}$ .

Case 2:  $d \geq 1 + C$  and  $d \leq 1 - C$

This case is inconsistent for  $C > 0$  while case 3 is inconsistent for  $C < 0$ . The two cases are symmetrical, so I will consider only case 3.

Case 3:  $d \leq 1 + C$  and  $d \geq 1 - C$

$$EU_{Gi} = - \int_{-1}^{C-d} (w + d - G_i)^2 f(w) dw - \int_{C-d}^1 (C - G_i)^2 f(w) dw$$

The Member State will choose the degree of discretion that maximizes the expected utility. The derivative for  $d$  is

$$\frac{\partial EU_{Gi}}{\partial d} = \frac{d^2}{2} - d - G_i d + \frac{1}{2} + G_i - \frac{C^2}{2} + G_i C$$

It equals zero for  $d^+ = 1 + 2G_i - C$  and  $d^- = 1 + C$

Consistency check for  $d^+$ :

$$d \leq 1 + C \Rightarrow 1 + 2G_i - C \leq 1 + C \Rightarrow G_i \leq C$$

$$d \geq 1 - C \Rightarrow 1 + 2G_i - C \geq 1 - C \Rightarrow G_i \geq 0$$

Consistency check for  $d^-$ :

$$d \leq 1 + C \Rightarrow 1 + C \leq 1 + C$$

$$d \geq 1 - C \Rightarrow 1 + C \geq 1 - C \Rightarrow C \geq 0$$

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<sup>18</sup> I use the signs plus and minus to distinguish different solutions of  $d$  within a case, while  $EU_d$  is the expected utility in the specific case for a discretion value  $d$ .

The solution for this case is:

$d = 1 + 2G_i - C$  for  $C \geq G_i \geq 0$  because  $EU_{d^+} > EU_{d^-} = EU_f$  and  $EU_{d^+} > EU_0$ .

Case 4:  $d \leq 1 + C$  and  $d \leq 1 - C$

$$EU_{G_i} = - \int_{-1}^{C-d} (w+d-G_i)^2 f(w)dw - \int_{C-d}^{C+d} (C-G_i)^2 f(w)dw - \int_{C+d}^1 (w-d-G_i)^2 f(w)dw$$

$$\frac{\partial EU_{G_i}}{\partial d} = \frac{d^2}{2} - d + \frac{1}{2} - \frac{C^2}{2} + G_i C$$

The derivative is zero for  $d^+ = 1 + \sqrt{C^2 - 2G_i C}$  and  $d^- = 1 - \sqrt{C^2 - 2G_i C}$

$d$  can be determined either for  $C > 2G_i$  and  $C > 0$  or for  $C < 2G_i$  and  $C < 0$ .

Results are symmetrical, so I will consider only the former constraints.

Consistency check for  $d^+$ :

$$d \leq 1 - C \quad \Rightarrow \quad 1 + \sqrt{C^2 - 2G_i C} \leq 1 - C \quad \Rightarrow \quad \sqrt{C^2 - 2G_i C} \leq -C$$

$d^+$  is inconsistent, such disequation never applies for  $C > 0$ .

Consistency check for  $d^-$ :

$$d \leq 1 + C \quad \Rightarrow \quad 1 - \sqrt{C^2 - 2G_i C} \leq 1 + C \quad \Rightarrow \quad -\sqrt{C^2 - 2G_i C} \leq C$$

$$d \leq 1 - C \quad \Rightarrow \quad 1 - \sqrt{C^2 - 2G_i C} \leq 1 - C \quad \Rightarrow \quad G_i \leq 0$$

$d^-$  is consistent with the assumptions, however it is positive only when  $G_i$

$\geq \frac{C^2 - 1}{2C}$ . The solution is:

$d = 1 - \sqrt{C^2 - 2G_i C}$  for  $\frac{C^2 - 1}{2C} \leq G_i \leq 0$  because  $EU_{d^+} > EU_f$  and  $EU_{d^+} > EU_0$

$d = 0$  for  $G_i \leq \frac{C^2 - 1}{2C}$  because  $EU_0 > EU_f$

Finally, combining the results in the four cases for  $C \geq 0$ , we have:  $d = 1 +$

$C$  for  $G_i \geq C \geq 0$ ,  $d = 1 + 2G_i - C$  for  $C \geq G_i \geq 0$ ,  $d = 1 - \sqrt{C^2 - 2G_i C}$  for  $\frac{C^2 - 1}{2C} \leq$

$G_i \leq 0$  and  $d = 0$  for  $G_i \leq \frac{C^2 - 1}{2C}$ .

The same procedure applies for the Commission maximizing its expected utility  $EU_C$  (see text). The solution is straightforward. QED

## PROOF 2

### *Proof of proposition 1*

For  $d_{sq}=0$ , equilibrium discretion in qualified majority and unanimity respectively is  $2d_{Gb}>2d_{Ga}$ . For  $d_{Ga}>d_{sq}>0$ , it is  $2d_{Gb}-d_{sq}>2d_{Ga}-d_{sq}$ . For  $d_{Gb}>d_{sq}>d_{Ga}$ , it is  $2d_{Gb}-d_{sq}>d_{sq}$ . Finally, equilibrium discretion is  $d_{sq}$  in both procedures if  $d_{sq}>d_{Gb}$ . These relations apply also if the optimum discretion of the pivotal legislator is greater than  $\frac{1}{2}(1+|C|)$ .

If  $d_{Ga}>\frac{1}{2}(1+|C|)$  and  $d_{Gb}>\frac{1}{2}(1+|C|)$  and, of course, if  $d_{Ga}=d_{Gb}$ , discretion under unanimity equals discretion under qualified majority. QED

## PROOF 3

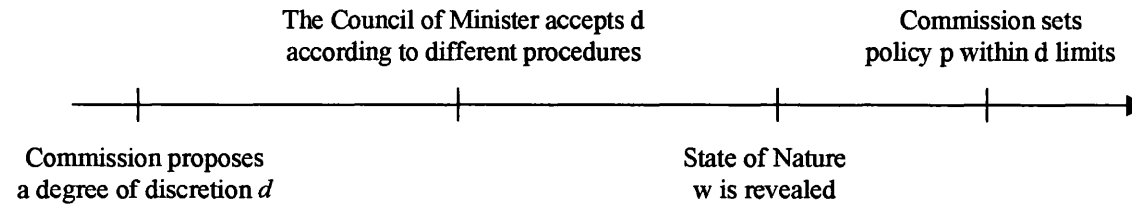
### *Proof of proposition 2*

If  $\Delta R^+ = \Delta R^-$ , we can analyze the impact of uncertainty considering  $R^+ = -R^-$ . Let  $V$  and  $dv$  be the ideal policy and ideal discretion of the pivotal legislator in a procedure. In non-amending legislation (i.e.  $d_{sq} = 0$ ), the equilibria are<sup>19</sup>  $d = R + C$  in interval I of Figure A2.2,  $d = 2(R + 2V - C)$  in interval II and  $d = 2(R - \sqrt{C^2 - 2VC})$  in interval III. Discretion is a positive function of the convergence between  $V$  and  $C$  and the degree of uncertainty  $R$ . In interval IV, there is no discretion but, as either  $C$  approaches  $V$  or  $R$  increases, discretion will take a positive value when  $C > V - \sqrt{V^2 + R}$  (i.e. we move to interval III). For small values of the status quo (i.e.  $d_{sq} < dv$ ), the same reasoning applies, we have only to subtract  $d_{sq}$  from the equilibrium discretion in interval II and III. For larger values of the status quo (i.e.  $d_{sq} > dv$ ), the equilibrium is the status quo. A convergence of preferences or an increase in uncertainty do not affect discretion. QED

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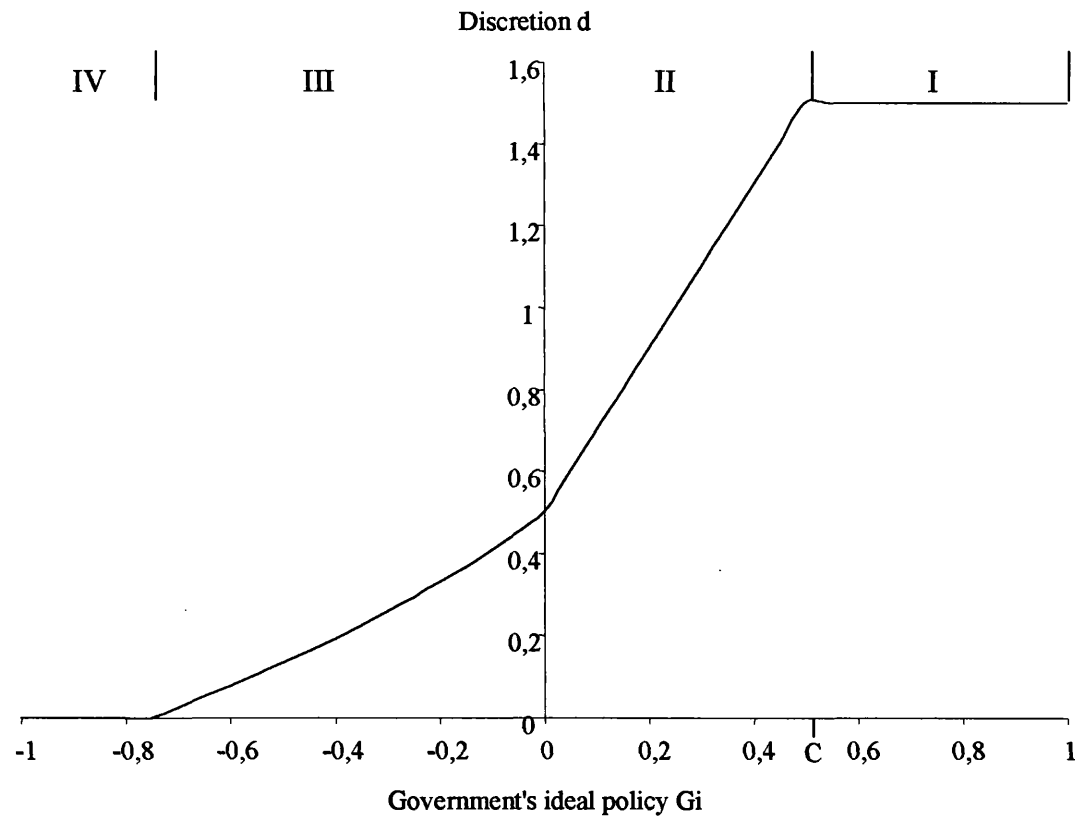
<sup>19</sup> For clarity, I omit  $+$  in  $R^+$ .

**Figure A2.1. Sequence of moves**



*Note:* Final outcome  $x = w + p$

**Figure A2.2. Optimum discretion as a function of a Government's ideal point**



*Notes:*

$C = 0,5$  Ideal policy of the Commission, results are symmetric for  $C < 0$

$w \sim U[-1,1]$

## Chapter 3.

### The Bureaucratic Preferences and Strategies of the Commission: Choosing Budget and Bureau

#### Introduction

In order to answer why the Commission affects the path of integration, we first need to investigate its motivations. The aim of this chapter is to test the budget- and work-related preferences and strategies of the Commission and its officials across the twenty-year development of the Union regional and competition policies.

The chapter is divided into two main sections. First, it specifies two hypotheses derived from the works of Niskanen (1971, 1973, 1975) and Dunleavy (1985, 1986, 1989a,b, 1991) on the conditions under which public officials have budget- and work-related preferences and strategies. Since preferences are revealed strategically, as function of the likelihood of reaching bureaucratic objectives, the chapter uses theories of bargaining and agenda setting and the literature relaxing Niskanenian assumptions to develop three operative corollaries.

The second section tests these hypotheses on the initial attempts of the Commission's bureaucrats in shaping the regional and competition bureaus and on the later defense of their prerogatives. The hypothesis on budgetary preferences is tested reclassifying the 1980-98 budgets.

The conclusion emphasizes 1) the selective nature of budgetary preferences in terms of both functions and budget components and 2) the persistence of work-related preferences and bureau-shaping strategies across the twenty-year period. It also delineates the conditions that favor public officials in the pursuit of their objectives and relates the results to the literature on bureaucratic behavior and on European integration.

## The preferences of public officials

### *Budget-related utility*

Niskanen's (1971) work breaks away from the Weberian tradition that sees bureaucrats as specialized actors implementing policies impersonally, routinely and efficiently. He conceives officials as essentially self-interested, pursuing their objectives via the manipulation of information on policy choices and production functions. The preferences and motivations that direct bureaucrats' objectives are 'salary, perquisites of the office, public reputation, power, patronage, output of the bureau, ease of making changes, and ease of managing the bureau' (Niskanen, 1971: 38). For Niskanen *budget maximization* is an adequate approximation for bureaucratic behavior because 'all of these variables except the last two ... are a positive monotonic function of the total *budget* of the bureau during the bureaucrat's tenure in office' (Niskanen, 1971: 38). He later fine-tuned the argument by suggesting that the object of maximization is the portion of the budget whose allocation is at the discretion of the officials (Niskanen, 1975).

However, the empirical evidence of budget maximizing behavior is still contradictory. Some studies observe how officials systematically prefer larger budgets (Blais and Dion, 1991; Leloup and Moreland, 1978), others stress that results are also consistent with the maximization of other components of the utility function (Orzechowski, 1977). Further, budget maximization is not correlated with the bureaucrats' salary (Hood et al., 1984; Peters, 1989, 1991). More damaging is the evidence of bureaucrats' acceptance of budget cuts, privatization and deinstitutionalization (Dunleavy, 1986, 1991: 210-48; Dunsire et al., 1989).

Doubts about the success of the budget-maximizing hypothesis has diverted the attention to the factors that hinder or enhance this behavior. Dunleavy (1985, 1991: 174-209) introduces two intervening variables<sup>1</sup> (agency type and time - as stage of policy development -) that better

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<sup>1</sup> A third one, rank, is not subject to test in this chapter.



qualify the relation between the budget and the other components of bureaucrats' utility function. He contends that the production function of each agency determines the overall size of the budget, the proportions of the budget components and the preferences of the bureau members. His analysis starts with a classification of agencies by 1) the type of budget they manage and 2) the type of activity they perform (Dunleavy, 1985, 1989a).

An agency budget is made up of three components.<sup>2</sup> The *programme budget* consists of all expenditure over which an agency exercises supervision and control, even if large parts of it are passed on to other public sector agencies for final implementation. The *bureau budget* consists of those parts of the programme budget for which the agency is solely responsible to the governmental sponsor. The *core budget* consists of all those parts of the bureau budget that are spent on maintaining agency operations, but excluding those that are transferred to clients, citizens or private firms.

The activities of agencies can be classified into at least five types. We need to consider only three for our purposes.<sup>3</sup> A *delivery agency* directly undertakes the production of goods and services. These agencies are likely to manage large programme budgets, with the bureau and core budgets taking up a large proportion. A *control agency* allocates budgets to and supervises the activities of other sector organizations with few or no responsibilities for implementation. It, too, has a large programme budget, but the bureau and core budgets are a small share of it. Finally, a *regulatory agency* controls the operations of other agencies, private sector

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<sup>2</sup> The introduction of a fourth component (i.e. super-program budget) to apply his theory to the British administrative system (Dunleavy, 1991: 182) is not relevant for the institutional framework of the Union and for the purposes of our chapter.

<sup>3</sup> The remaining two are contracts and transfer agencies (Dunleavy, 1985: 310). In later works Dunleavy (1991: 183-8) considers also taxing, trading and servicing agencies. Some of these types do not exist at the EU level; other types have budgetary preferences similar to those analyzed in this chapter. Those selected are a fair representation of the EU administrative structure.

firms or the public. The programme budget is small with a large part of it consisting of bureau and core budgets.

Agency type and time determine bureaucrats' budgetary utility as follows. First, public officials are more likely to have intense budgetary preferences when the overall size of their agency's budget is large, and when bureau and core budgets are a large proportion of the programme budget. Delivery agencies are more budget maximizers than control and regulatory agencies. Second, similar to Niskanen's concept of discretionary budget, the utilities of top officials are more associated with the programme and bureau budget than the core budget (Dunleavy, 1985: 307-9). *Ceteris paribus*, enlarging the programme budget is a useful tool to build up slack resources to cope with crises and to increase patronage powers. Increasing bureau budgets creates slack resources too, but at the same time it boosts prestige and improves relations with 'clients' and other organizations (Dunleavy, 1985: 308). Finally, bureaucrats have a diminishing marginal utility in budgetary increments because budgetary growth runs into diseconomies of scale (due to the increasing cost of making changes and of managing the bureau) and increases the risks of cuts and transfers of functions (Dunleavy, 1991: 166-7, 195-7). When the costs from a budget increment outweigh the benefits, the budget has reached an optimal size (Dunleavy, 1985: 315-20).

To sum up,

*Hypothesis 1: public officials are more likely to have budget-related preferences in the early stages of development of delivery agencies and budget-maximizing strategies tend to focus on the programme and bureau components of the budget.*

#### *Work-related utility*

A second contribution from Dunleavy is the reformulation of 1) the bureaucratic preferences when the two above mentioned variables reduce

the role of the budgetary component of bureaucrats' utility function and 2) the strategies adopted by bureaucrats in pursuit of the new objectives.

For officials operating in regulatory or control agencies or in other agencies where there has been substantial budget growth over time, work-related components of the utility function predominate over the pecuniary ones, especially for top ranks. These *bureau-shaping bureaucrats*,<sup>4</sup> similar to Downsian advocates,

'do not value routine, conflictual work in large organizations staffed mainly by non-élite personnel, exposed to public criticism and risks from mistakes and situated a long way from political power centres. Instead, they value individually innovative work with a developmental rhythm, a broad scope of concerns, low exposure to public criticism, collegial and élite work units, restricted hierarchy, congenial personal relations, high-status organizational and social contacts especially professional ones, and proximity to political power centres' (Dunleavy, 1991: 237).

Officials in these agencies prefer innovative, strategic and policy-related work. Thus, they will try to shape the work-related characteristics of their bureau. The budgetary strategy is secondary and complementary to the bureau-shaping one. Typical bureau-shaping strategies consist of internal reorganizations, transformation of work practices, redefinition of relationships with external partners, competition for policy scope with other bureaus, load-shedding, hiving-off and contracting out (Dunleavy, 1991: 203-4). The aim is to shape their agency to conform to their élite

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<sup>4</sup> Another alternative to the budget maximizing type is the *mission oriented bureaucrat* (Bendor et al., 1987; Calvert et al., 1989; Halperin, 1974; Hill, 1985; Huntington, 1961). This public official is a zealot, in Downsian terms, that narrowly pursues specific (sacred) policies and seeks power and influence to shape programs of action to their own liking. The problem with this approach is its applicability across policy domains for comparative analysis. Mission orientation risks becoming a narrow and *ad hoc* explanation of bureaucratic behavior that limits generalization. Explanation tends also to be tautological as bureaucrats pursue programs because they *exogenously* like them. The same applies to the literature on regulatory capture of public officials (Becker, 1983; Peltzman, 1976; Stigler, 1971), since it simply adds that the content of these sacred policies is shaped by interest groups.

policy-making ideal consisting of innovative work tasks, long time horizons, managerial discretion and broad scope of activities.

We have then,

*Hypothesis 2: public officials are more likely to have work-related preferences and employ bureau-shaping strategies in regulatory or control agencies or in other agencies where there has been a substantial budget growth over time.*

**The Commission's strategic behavior: searching, initiating, designing and bargaining**

Preferences are revealed by the behavior of an actor rather than by interviews. In the latter case there is no incentive of truthful revelation. Also, preferences are revealed strategically as a function of the likelihood of achieving desired goals. For instance, a Niskanenian public official always succeeds in maximizing her budget because 1) she enjoys an informational advantage about the bureaus' true production function and 2) she can make a take-it-or-leave-it offer to the politicians (Bendor, 1990: 374). Both assumptions have been relaxed and there is now a substantial body of literature on the factors determining a successful pursuit of bureaucratic objectives.

The bureaucratic preferences of the Commission are revealed by its search, initiation, design and bargaining behavior. Although the focus of the chapter is not on the policy outcomes, we need some operative corollaries, related to the policy outcomes, that inform us on the behavior of the Commission that maximizes the probability of its achieving its objectives.<sup>5</sup>

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Finally, agency models of organization applied to public bureaucracies characterize public officials as risk-avoiding and effort-minimizing actors (e.g. Horn, 1995; Moe, 1984). This is the falsifying benchmark of budget-maximizing and bureau-shaping behavior.

<sup>5</sup> These behavioral patterns are not intrinsically linked to an underlying bureaucratic type. An effort-minimizing official searches, designs, initiates and bargains differently from a bureau-shaping or budget-maximizing one. The conditions operate as incentives for the disclosure of the true bureaucratic nature.

### *Search behavior*

Given their superior knowledge about specific policies, bureaucrats are frequently charged with designing alternatives. Hence, they are likely to exploit this informational advantage and bias their search in pursuit of their own objectives. The Commission's officials are in an even more privileged position because the Treaty has assigned to them the monopoly of legislative initiation.

The first step of a search strategy is the selection of a policy proposal. Such a proposal is likely to be based on ideas that provide the best guides on how to achieve budget-maximizing or bureau-shaping objectives. Bureaucratic motivations bias the search for ideas and public officials will try to rig the agenda by incorporating them into policy proposals and by revealing information strategically (Bendor et al., 1987).

Scholars have considered three factors that affect bureaucrats' opportunities to bias the search and rig the agenda. First, Bendor, Taylor and Van Gaalen (1987: 887) assert that mission-oriented bureaucrats are more likely to bias the search than budget-oriented ones. If the bureaucrat is budget-oriented, the politician can design a budget scheme that ensures unbiased search. Second, asymmetry in the distribution of information across bureaucrats, governmental sponsors and private actors is positively correlated with the search bias. The reasoning is as follows. If the cost for politicians and interest groups to retrieve information about bureaucratic behavior or alternative policy proposals is high relative to its perceived benefit, there will be poor auditing and outside competition. This is the case, for instance, of policies that are either very complex, or at their early stages of development. Poor auditing and competition will provide the bureau with an informational advantage. The bureau can then bias its search to design the policy that maximizes its utility (Banks, 1989; Banks and Weingast, 1992; Bendor et al., 1987: 880-2). Third, if the legislators are relatively more impatient than the public officials, the bureau will bias its search. In this case politicians are willing to pay the cost of a biased

proposal to reap the benefits of a prompt decision (Bendor et al., 1987: 878).

Summing up,

*Corollary 1: public officials are more likely to reach their objectives if a) they have work-related preferences, b) they enjoy ideational or informational advantages as a result of poor auditing and competition and c) they are relatively more patient than legislators.*

#### *Initiation, design and bargaining behavior*

The Commission is required to make a proposal if the Council or the Parliament request one. Therefore, it does not have a gate-keeping power. In other cases, legislative acts contain a revision clause and an expiration date that creates a default condition of no legislation. However, the Commission will initiate a proposal on its own initiative if it prefers legislative reform to the status quo or the default condition (Romer and Rosenthal, 1978).

Once there has been initiation, budgetary and legislative rules determine the minimum winning coalition. The proposal will be designed in such a way to gain support from the pivotal legislator in the coalition whose budget-related or work-related preferences are closest to the Commission's (Crombez, 1996; Ordeshook and Schwartz, 1987). The impact of different rules is not considered in this chapter because the issues studied in the empirical section required unanimity in the Council.

Traditional bargaining theory stipulates two other relevant factors that shape the set of possible equilibrium outcomes (Harsanyi, 1977; Raiffa, 1982). Coalition members can adopt strategies to 1) link differences in preference intensities across issues and 2) increase the cost of no-agreement for pivotal actors.

If the Commission prefers the status quo or default condition to new legislation, it will have no incentive to initiate a reform. Here, it is likely to adopt relatively marginal measures to please pivotal legislators so that to

avoid initiation and reform. In this case, the Commission might enjoy a negative agenda power, that is 'the ability of the Commission to maintain the status quo even though a qualified majority in the Council prefers to change it' (Crombez, 1996: 213).

Concluding,

*Corollary 2: if the Commission prefers legislative reform to the status quo or default condition, it will design a proposal that reflects its relevant budget- or work-related preferences and elicits support from the pivotal legislators. It will also adopt measures to increase the cost of no-agreement and link issues to ease compromise.*

Moreover,

*Corollary 3: if the Commission prefers the status quo or default condition to legislative reform, it will adopt marginal measures to please pivotal legislators in order to avoid initiation and reform.*

### Research design and methodology

The two hypotheses are tested across the twenty-year development of the competition and regional policies of the European Union. Corollaries are used as both indicators of the Commission's preferences and to assess policy outcomes. Outcomes inform the Commission's preferences and behavior. For instance, if the outcome is a budget increase, we should expect a diminishing marginal utility from further budget increments and a relatively more important utility contribution from the work-related components.

The research design is guided by the principle of 'most different systems' (Przeworski and Teune, 1970: 34-9) to have variability across independent and (some) intervening variables (i.e. coalition and time preferences, information asymmetry, default condition and issue linkages). It also allows us to 'control' for other factors (e.g. decision rules, the Commission's personnel policy, economic cycle, general international

setting, public support). The two policy areas have also been chosen because they are relatively well known and representative of EU policies.

## Competition policy

### *The Directorate on competition and the hypotheses*

In Dunleavy's terms, the Directorate General (DGIV) on competition is a typical regulatory agency. It has powers to investigate and sanction restrictive practices and abuses of dominant positions by public and private undertakings (Arts. 37, 85-6, 89-90 EC, Regulation 17/62). It is also in charge of monitoring the systems of state aid operating within the Member States (Arts. 92-4 EC).

The Directorate budget has barely exceeded 0.001 percent of the Union budget over the last twenty years. The programme, bureau and core components coincide. Public officials in the DGIV probably approximate most the ideal of a bureau-shaping bureaucrat. We should expect work-related utilities to dominate budget-related ones. Issues about innovation, time horizons, managerial discretion, scope of concern should predominate over budgetary ones (hypothesis 2). The search, initiation, design and bargaining behavior of the DGIV staff and of the Commissioner should be directed predominantly towards shaping and defending the boundaries and scope of their work.

These hypotheses are tested on two issues that have been object of debate in the last two decades: merger control in the eighties and the European Cartel Office proposal in the nineties.

### *Pursuing the ideal competition bureau: the merger control regulation*

*Search.* We need to take a small step backwards to the seventies to see how the Commission's officials came to realize the need to expand the scope of their actions to include the regulation of mergers. As early as June 1971, during a parliamentary debate on competition rules,<sup>6</sup> the competition

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<sup>6</sup> European Parliament Resolution, OJ C 66, 1-7-1971, p.11.



Commissioner reversed an earlier decision and expressed his intention to propose a regulation for the control of mergers. Although the Court of Justice ruled in favor of the Commission on the applicability of Article 82 (ex 86) EC to mergers,<sup>7</sup> the scope and the instruments of this article were considered insufficient. The scope was limited because the article applies only if the merger strengthens an existing dominant position and if there has been an abuse of such position. The instruments were limited because the Commission could only react *a fortiori*, rather than prevent mergers.

In order to prepare the ground for the new legislation, the Directorate launched a study on concentration, with the aim of describing the level and development of mergers, and assessing the effects of market concentration (Commission of the EC, 1972: 158). The aim was clearly to raise awareness among the Member States to the risks of uncontrolled merger activity distorting competition, with the consequential failure to pursue one of the objectives of the Union as laid down in Article 3g EC.

*Design.* The first legislative proposal to control mergers is dated July 1973.<sup>8</sup> We need to analyze this because it has been the subject of negotiation throughout most of the eighties. The proposal relied, to a certain extent, on Regulation 17/62 implementing Articles 81-2 (ex 85-6) EC, but the Commission took the opportunity to extend its influence further. Under the proposed Articles 3 and 7 the Commission could issue decisions to forestall, suspend or terminate concentrations, to re-establish conditions of effective competition, and to declare concentrations compatible with the common market. Fines and periodic penalty payments were generally higher than those in Regulation 17 (Arts. 10, 12-14). The Commission could also, but at its own discretion, delegate investigations to the competent authorities of the Member States (Art. 11). The scope of the regulation was defined by a turnover criterion, which mirrored the one in Regulation 17, and by a slightly higher market share criterion (Art. 1). The

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<sup>7</sup> See the *Continental Can Case* 6/72 (European Court Reports, 1973).

<sup>8</sup> See OJ C 92, 31-10-1973, p. 1.

important issue of prior notification, which would have considerably increased the efficacy of controlling mergers, was also limited in its scope by a turnover criterion (Art. 4).

The bureau-shaping strategy of the Directorate is clear in this first proposal. Its ambitious provisions were also sign that officials were counting on the fact that a merger regulation was absent in most of the Member States and that, at least relative to the eighties, there was limited debate on the issue.

*Bargaining.* In the early eighties, the prospects for adoption were slim. Results from the study on concentration were not promising. It showed that from 1973 to 1981, there were no takeovers or mergers of international relevance in the Union (Commission of the EC, 1979: 179, 1982: 160, 1983b: 158). Publication stopped in 1983. Instead, the Directorate adopted another informational strategy and tried to increase the cost of no-agreement. It published the result of the scrutiny of mergers for their compatibility with Article 82 EC with the aim of showing the inadequacy of the current provisions and the legal uncertainty that they generated (Commission of the EC, 1979: 103-6). However, this scrutiny covered too limited a number of cases to shape company behavior.

Notwithstanding these impediments, the initial proposal was amended in 1982, 1984 and 1986.<sup>9</sup> The amendments showed the price in terms of scope and discretion that the Commission would have to pay for legislative intervention. First, the turnover criterion determining the scope of the legislation was raised, first to 500, then to 750 million ECUs (Art. 1 of 1982 and 1984 amendments). Second, an advisory committee of Member States' representatives had clearer powers of delay and influence over the Commission's decisions (Art. 19 of 1982 amendment).

The final round of the negotiation took place in the late eighties. Outside competition had increased as both Germany and Britain had by then well-oiled domestic merger regimes. However, two further developments

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<sup>9</sup> See OJ C 36, 12-2-1982, p. 3, OJ C 51, 23-2-1984, p. 8, and OJ C 324, 17-12-1986, p. 5.

increased the cost of no-agreement, especially for these two pivotal Member States.<sup>10</sup> First, the number of Union and international mergers and acquisitions started to increase considerably. It rose from 81 and 39 respectively in 1984-5, to 206 and 160 in 1987-88 (Commission of the EC, 1985: 211, 1989b: 234). In the year of adoption 1989, 225 mergers and 76 minority holding acquisitions took place amongst firms from different Member States, and 89 mergers and 46 acquisitions which impacted on the Union market involved third countries' firms (Commission of the EC, 1990a: 214). Industries were anticipating the impact of the Single Market Programme and restructuring. British companies, especially, were the target of acquisitions by American and Japanese corporations, while German and French companies were mainly active in the intra-European market (Tsoukalis, 1993: 104-5). The linkage between the maintenance of a competitive single market and the need to control merger activities grew stronger. In its reports, the Commission stressed the predominance of very large mergers and the risk that such concentration would pose to competition. Second, in November 1987, the European Court of Justice ruled that Article 81 EC could be applied to the acquisition of a shareholding where the investing company gained legal or *de facto* control of the other company and such control led to anticompetitive consequences.<sup>11</sup> The effect of this judgement was to create legal uncertainty with regards to the type of agreement to be notified, and the impact in cases of the Commission's prohibition. The Commission seized the opportunity to increase the cost of no-agreement by actively pursuing the Court's line and encouraging legal uncertainty.<sup>12</sup> Companies started to notify mergers to the Commission even if there were no clear rules requiring them to do so (Bulmer, 1994: 431).

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<sup>10</sup> The legislation needed unanimous approval in the Council of Ministers as from Art.308 (ex 235) EC.

<sup>11</sup> *BAT and Reynolds* Joined Cases 142 and 156/84 (European Court Reports, 1987).

<sup>12</sup> See for instance the *British Airways/British Caledonian* case and the *Carnaud/Schmalbach* case where the Commission prohibited a majority holding acquisition but allowed the full merger.

*Outcome.* It was now clear that the lack of a regulation could jeopardize the working of the Single Market. However, the further limited scope and efficacy of the merger control bureau reflected the preferences of Britain and Germany and the tougher outside competition. The turnover threshold for the applicability of the legislation rose, first to 1000 million, then finally, to 5000 million ECUs. The scope was further limited by the need of at least two companies having more than 250 million turnover each (up from 100 million) and a geographical criterion (Art. 1 of May 1998 proposal and adopted regulation<sup>13</sup>). Fines and penalty payments were also lowered from the 1988 proposal.

*Latest developments.* Since the adoption, the competition Commissioner and his staff have managed to both defend their competencies and to further shape their bureau by exploiting some provisions in the regulation. Under the adopted legislation, the Commission may investigate below-threshold mergers if so requested by a Member State (Art. 22), whereas National authorities may only investigate Union-dimension mergers if so allowed by the Commission (Art. 9). This system has been used strategically. First, the exceptional nature and the strict application of the referral of Union dimension mergers to national authorities were clearly signaled by the Commission (Commission of the EC, 1991: 35, 1993: 24; Van Miert, 1995: 2). Up to 1997, there has been some partial referrals, but only one case has been referred in its entirety<sup>14</sup> (Commission of the EC, 1997b). Second, requests from the Member States for Union investigation below the threshold (one in 1993 and two in 1997) gave the Commission the opportunity to extend the scope of the legislation. In November 1996, an amendment was proposed which considered mergers of Union dimension those with an aggregate turnover exceeding 2500 million ECUs and which fulfilled additional turnover criteria in at least three Member States. This amendment was adopted in June 1997 to the applause of the

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<sup>13</sup> See OJ C 130, 19-5-1988, p. 4, and OJ L 257, 21-9-1990, p. 13.

<sup>14</sup> This was the *SEHB/VIAG/PE-BEWAG* Case.

competition Commissioner.<sup>15</sup> Finally, the Commission used case law to extend the reach of the regulation to prevent the creation or strengthening of oligopolistic dominance, especially duopoly, and dominance at world level<sup>16</sup> (Commission of the EC, 1993: 23, 1997b: 64, 1998b: 63-4).

*Defending the competition bureau: the European Cartel Office proposal*

*The attack on the Commission's prerogatives.* The nineties saw the most assiduous, persistent and widespread attack on the competition prerogatives of the Commission. It involved public officials, businesses, lawyers and opinion leaders especially in Britain and Germany, but the debate spread also to France and Italy.

There were two thrusts of criticism. The radicals advocated the establishment of a European Cartel Office (ECO), independent of the Commission. The idea was first proposed in a book edited by Peter Montagnon, the world trade editor of the *Financial Times*, and Heinrich Holzer (1990) of the German BDI employers' association.<sup>17</sup>

Pressure started to build when the Commission controversially permitted Air France to acquire UTA and Air Inter, and KLM to take control of Transavia, while vetoing the Aerospatiale/Alenia takeover of De Havilland (*Airline Business*, Editorial, 1 November 1991). In 1994, when the Commission failed to back a proposal by Van Miert to block a three-way steel tube merger, a leading article in the *Financial Times* observed that 'the case for an independent European cartel office now seems unanswerable' (*Financial Times*, leading article, 28 January 1994: 53). A second article later suggested that even responsibilities for state aid control should be hived-off (*Financial Times*, leading article, 19 October 1994: 60).

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<sup>15</sup> See Council Regulation 1310/97, OJ L 180, 9-7-1997, p. 1 and Van Miert (1997b).

<sup>16</sup> See cases *Nestlé/Perrier*, *Gencor/Lonrho* and *Boeing/McDonnell Douglas*.

<sup>17</sup> Some of these ideas can however be traced back to late 1960s German proposals. I thank Giandomenico Majone for pointing this out to me.

Support for this reform came from predictable vested interests, such as Rolf Geberth, director of the German Federal Ministry of Economics (Tieman, 1992), Dieter Wolf, president of the German Federal Cartel Office (*Commission Press Releases*, 19 December 1994: 1) and the German Federation of Chambers of Commerce (*Reuter News Service*, 21 July 1995). Also, and less predictably, in 1996 Giuliano Amato, president of the Italian Cartel Office, lent his support (*Commission Press Releases*, 30 April 1996: 19).

Students of the Union competition policy predicted the establishment of an independent agency as the likely result of the 1996 Intergovernmental Conference (IGC), especially after Germany signaled her intention of putting forward just such a proposal<sup>18</sup> (Allen, 1996b; Wilks and McGown, 1995).

The German initiative was radical, reflecting the seriousness of the situation. The rules on competition were the subject of negotiation in an IGC for the first time since the Treaty of Rome (Van Miert, 1997a). The proposal consisted of transferring the Commission's executive powers under Articles 81-2 EC and, together with the merger control regulation, to an independent ECO. The Commission would retain legislative powers (i.e. the issuance of guidelines, notices and directives) and could overrule office decisions if such a move was deemed to be in the public interest. Johannes Ludewig, state secretary at the German Federal Economics Ministry, observed that this reform would improve the efficiency and transparency of the Union competition policy and limit the 'politicization' of decisions (*Financial Times*, 23 June 1995: 50). This proposal required an enabling provision to be inserted into the Treaty in order to empower the Council to create the agency.

The second, and more moderate, thrust came when Sidney Lipworth, head of the British Monopolies and Mergers Commission, expressed his

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<sup>18</sup> The intention was first signaled in a governmental document on 'Securing Germany's future as an economic location', Rexrodt Report (*Reuter News Service*, 26 August 1993).

concerns about the accumulation of powers and lack of transparency within the system.<sup>19</sup> He criticized the fact that competition decisions were taken by the College of Commissioners. He suggested the creation of a tribunal, independent of the Commission, to carry out investigation and adjudication. This idea was watered further by the EC Select Committee of the House of Lords (1993) that recommended some procedural changes concerning the right of defense and to be heard and the speed of decision-making.

*The Commission's reaction.* The reaction of the competition Commissioner and DGIV officials was in line with hypothesis 2 and corollary 3. First, they conceded those (British) proposals that threatened their prerogatives and discretion the least. Second, they fiercely attacked the most radical (German) proposals that would weaken their power and limit their scope of action more seriously.

The Commission's public officials warmly welcomed the report of the House of Lords. Claus-Dieter Ehlermann, Director-General for competition, observed: 'I find the Report both helpful and constructive. Indeed, almost without exception the recommendations mirror my aspirations regarding procedure' (1994: 2). The role of deciding on complaints, request of information and granting extensions of time for reply from the parties was conferred to the Hearing Officer in the Directorate-General. Other measures to more efficiently use resources were undertaken (e.g. a wider use of comfort letters, liaison with national courts, internal deadlines, see Ehlermann, 1994: 5-6).

The reaction to the German and the other, more radical, criticisms matched the severity of the attack. Competition Commissioner Van Miert bluntly replied: 'on behalf of the Commission. I say we are going to fight this idea' (*Reuter News Service*, 3 June 1996: 53). Ehlermann (1993, 1995) first seemed to toy with the concept, but then convincingly rejected it. He

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<sup>19</sup> He observed that the Commission 'is simultaneously detective, prosecutor, judge and executioner' (quoted in Tieman, 1992: 41).

defended the current system, pointing out the drawbacks and risks of creating an independent agency. These include changes to the substantive competition law, longer proceedings and inefficiencies. Ehlermann (1995: 480) clearly opposed the Directorate's loss of influence and power vis-à-vis both the agency and the other Commission Directorates. Contrarily, he suggested that the competition Commissioner should be given additional powers, and that the Treaty should be amended in such a way that the College of Commissioners could delegate more authority to a single Commissioner. He also dismissed as 'totally unrealistic' the idea of delegating the control of state aid to such an agency (*Reuter News Service*, 18 January 1995: 40).

Van Miert was even more sanguine in defending its prerogatives. He reiterated Ehlermann's analysis, stressing that competition policy must remain closely interlinked with other common policies and that the Commission, given its legitimacy and accountability, was the appropriate authority to execute such policy (*Europe Info Service*, 1 June 1996: 157; Van Miert, 1996). He also rejected the (minimal) IGC proposal to add a provision in the Treaty to enable the future establishment of the agency on grounds that it would increase political interference in the current system (Van Miert, 1996). He accused Germany of relying too heavily on government subsidies and of interfering with the Commission decision-making process, his aim being to de-legitimize the German proposal (*Reuter News Service*, 20 November 1995: 27; Van Miert, 1998). On state aid, he warned that 'any attempt to dilute the Commission's sole competence to control the award for state aids would meet with very stiff resistance from the Commission' (*Europe Info Service*, 13 May 1995: 67).

*IGC Outcome.* The IGC was a success for the Directorate (see Van Miert, 1997a). The threat of an independent agency was avoided and the new Treaty amendment did not contain enabling provisions. In line with bureau-shaping behavior and with corollary 3, the Commissioner and his staff, preferring the status quo, were unwilling to initiate a reform. They



adopted marginal measures to please the (mostly British) calls for transparency and efficiency, thus frustrating the formation of a large coalition that would have supported a more radical reform.

## Regional policy

### *The Directorate on regional policy and the hypotheses*

In the early eighties the Directorate on regional policy (DGXVI) was a mixed control/delivery agency. The predominant activity was control, but neither function was well developed. The main instrument at its disposal was the European Regional Development Fund (ERDF) established in 1975.<sup>20</sup> The Directorate's task was to allocate, according to national quotas, the resources of the fund to regions and areas established by the Member States (Arts. 2-3). Following a national request, and after its approval by a fund management committee, the Commission decided on the amount of fund assistance (Arts. 5, 7, 11, 12). Resources were very limited (1.2 billion unit of account in 1980, 0.05% of the Union GDP, Commission of the EC, 1981: 147). The only real control power vested in the Directorate was the discretion to carry out on-the-spot checks and to sanction errors or irregularities (Art. 9).

The Directorate also had some delivery functions. The 1979 amendment to the ERDF regulation<sup>21</sup> allocated 5 percent of the fund to specific Union regional development measures outside the areas designated by the Member States (Arts. 2, 3). In coordination with the Member States, the Commission could propose and partially implement, measures unanimously approved by the Council and financed jointly by the Union and the Member States concerned (Art. 13).

Yet, this Directorate was in charge of the second largest budget item of the Union, although in the early eighties this was less than 10 percent of the whole budget. In 1980 the bureau and core components of its budget were

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<sup>20</sup> See OJ L 073, 21-3-1975, p. 1.

<sup>21</sup> See OJ L 035, 9-2-1979, p. 1.

respectively less than two and five percent of the programme budget. We should expect that both budget- and work-related utilities are relevant for this agency. The budget-maximizing strategy should predominate in the early stages of policy development and focus on the programme and bureau components of the budget (hypothesis 1). If budget growth takes place, the requests for budget increments should diminish over time as the marginal utility diminishes. Hypothesis 1 is tested by reclassifying the 1980-98 draft and final budgets.

Bureau-shaping behavior should focus on the control and innovative activities of the Directorate. We should expect the Directorate to search for policy options that 1) enhance the developmental character of the policy, 2) extend the time horizon and 3) increase managerial discretion and operational scope (hypothesis 2). Hypothesis 2 is tested against three issues: the 1984 reform and the Integrated Mediterranean Programmes (IMPs) first, then the 1993 reform.

#### *Budgetary preferences in regional policy*

Although the financial transfers of the Union primarily serve as side-payments to further the process of European integration (Allen, 1996a; Carrubba, 1997), the Commission's budgetary preferences are revealed by the fact that it devises the medium-term financial perspectives and initiates the annual budgetary circle. From hypothesis 1, we should expect greater budgetary demands, year on year, in the early stages of policy development. These increases should be focused on the programme and bureau components of the budget.

< FIGURE 3.1 HERE >

Figure 3.1 confirms both predictions. The increases in the draft programme budgets over the final budgets of the previous years throughout the eighties have been, on average, 51 percent, a figure that fell to 17 percent

in the first eight years of the nineties. As predicted by Dunleavy, the marginal utility from budget increments shows clear signs of deterioration. For the 2000-2006 financial perspective, the Commission has proposed to freeze spending on structural operations at 0.46 percent of GDP. The resources allocated amount to 247bn ECU over seven years,<sup>22</sup> an annual decrease of 2.4 percent (Commission of the EC, 1999: 349). This statistic is startling considering that more than 7bn ECU of the whole package is made available as pre-accession funding for Eastern European applicant countries. Enlargement has not been used as an excuse to increase the budget.

The bureau component of the budget has followed a more sinuous course. In the first half of the eighties, the Commission demanded substantial budgetary increases to finance innovative Union measures and integrated operations. After consolidation in the late eighties, it launched another series of budgetary demands in the early nineties to finance Community Initiatives. Consolidation followed again.

The Commission's budgetary strategy has especially focused on the bureau component of the regional policy budget. The share of bureau over programme budget has increased from more than 6 percent in the early eighties to about 13 percent in the early nineties, reaching a peak of 18 percent in 1996 and 1997. The share of core over programme budget has instead decreased over the period from less than 1 percent in the early eighties to 0.3 percent in the late nineties. The average increase of the draft core budget over the previous year allocation has been a half and a sixth of those of the programme and bureau budget respectively.

*Pursuing the ideal regional policy bureau: the 1984 reform and the IMPs.*

*Search.* The search strategy explored two routes. The first involved the financing of studies to evaluate the regional impact of Union policies and the implementation of regional policy. Under Article 10, the Directorate

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<sup>22</sup> About half of the whole package is earmarked for the ERDF.

was allowed to use fund resources to finance such studies and it seized the opportunity. Of the seven studies ordered in 1980, three explored the regional impact of agriculture, trade and fisheries, two studied feasibility and the remaining two looked at the distributive impact of the Iberian enlargement on the Mediterranean regions (Commission of the EC, 1981: 145). In the second route, the Directorate took advantage of the non-quota section giving them room for innovative work focusing on multiannual development programmes, rather than national projects. Here, they injected a developmental rhythm in the policy area.

The studies rigged the agenda by strategically documenting 1) the worsening of regional disparities, 2) the structural underemployment of some areas, and 3) the regional impact of some Union policies and of the enlargements. For instance, the regressive dynamics of the agricultural policy penalizing Mediterranean products led to the design of the Integrated Mediterranean Programmes (IMPs) (Commission of the EC, 1980). The search for a (biased) solution was based on pilot projects that emphasized integrated multiannual programmes. The intention was to put on the agenda problems generated by Union policies and to propose innovative and, preferably, Commission-led solutions.

*Design.* The aim of the 1981 ERDF proposal<sup>23</sup> was to loosen the Member States' grip over the policy. First, the Directorate wanted to build cases for Union programmes and innovative approaches on the basis of 1) stronger coordination of national regional policies (Arts. 1-2) and 2) exchange of information about results of states' regional policies and of Union financed projects (Art. 26). Second, the proposal foresaw a gradual shift of financing from individual projects to innovative multiannual programmes in the quota section (Arts. 7-11). Further, it introduced the more lenient management committee procedure, in place of unanimity, for the adoption of programmes in the non-quota section (Art. 27). Third, the proposal stressed that fund resources should be additional to national aids in order

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<sup>23</sup> See OJ C 336, 23-12-1981, p. 60.

to avoid simple replacement of national investment plans (Art. 12). Fourth, all the innovative provisions of the policy were to be allocated more resources [i.e. multiannual programmes (Art. 11), Union programmes of the non-quota section (Art. 4), and other innovative measures (Arts. 17, 29)].

The first two IMPs proposals, concomitant with the ERDF proposal, were similarly ambitious.<sup>24</sup> The programmes, proposed by the states but approved by the Commission, were integrated, multiannual and *could* have involved subnational authorities (Arts. 1-4 of the 1984 proposal). There were no quotas.

Bureau-shaping preferences are clear in these proposals. These reforms would have substantially increased the Commission's managerial discretion and lengthened the policy time horizon. They contained several provisions to enhance innovative work and broaden the scope of concerns. Innovative Commission-led measures received preferential treatment both financially and procedurally. As Mawson et al. (1985: 40-1) put it, 'the Commission regarded itself as being in the forefront of developing new approaches to regional development'. The Directorate also had a clear informational advantage in documenting disparities as no other institutions had the incentive to disprove the data and auditing of pilot projects was costly and unsystematic.

*Bargaining.* The ERDF proposal generated bitter confrontation in the Council of Ministers. The bone of contention was the financial provisions, both in terms of distribution across the Member States, between projects and programmes, and between quota and non-quota sections (Commission of the EC, 1983a: 139-40). The Commission was in a relatively weak position. The veto players were those north European Member States who opposed the Commission's discretion and would lose most from the proposal tabled. As the legal validity of the fund would end in 1985 in the case of no agreement, these states could afford to be more

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<sup>24</sup> See OJ C 251, 19-9-1983, p. 1, and OJ C 280, 19-10-1984, p. 1.

patient. Being net contributors, the default condition (i.e. no fund) was preferred to the policy proposed. The Commission, preferring any policy to no policy, accommodated most of their requests in a completely revised proposal in 1983.

Similarly, the IMPs proposals received a rather cold welcome from the Member States. However, their introduction allowed a compromise in the negotiations for the Iberian enlargement. Since 1982, the Greek government had been demanding 1) a special status in the application of Union rules on state aid and competition, and 2) a substantial increase in financial aid. In 1983, Richard Burke, the Commissioner in charge of the issue, struck a deal with the Greek premier Andreas Papandreu. His financial demands were linked to the Union programmes, rather than the ERDF projects. In exchange, Greece was granted a lengthening of the time period to implement the *acquis communautaire* (*Financial Times*, 6 May 1983: 2).

Greece credibly threatened in 1984 that it would veto the enlargement if the Council did not approve the IMPs (*Financial Times*, 28 September 1984: 3). January 1986 was considered the non-deferrable date for enlargement. Thus, when in January 1985 the Council asked Jacques Delors to draw up a new IMPs proposal, the Commission was placed in a highly advantageous position vis-à-vis very impatient Member States.

*Outcome.* The new ERDF regulation<sup>25</sup> of June 1984 predominantly defeated a Commission that had to please relatively more patient pivotal Member States and had no ways to increase the cost of no-agreement or to link issues (corollaries 1 and 2). The reform contained guaranteed lower limits of flexible 'quantitative guidelines', but the difference from the quota system was minimal.

However, the bureau-shaping strategy of the Commission had some success, especially in those issues where it enjoyed an informational

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<sup>25</sup> See revised proposal in OJ C 360, 31-12-1983, p.1, and Council Regulation 1787/84 in OJ L 169, 28-6-1984, p. 1.

advantage (corollary 1). Despite the financial resources and assistance levels of programmes and innovative measures being reduced and more conditions being attached (Arts. 5-7, 9, 11, 16, 24), the integrated developmental operations gained legal status (Art. 34) and two procedural improvements allowed the Commission slightly more room of maneuver (Arts. 7, 40).<sup>26</sup>

The IMPs regulation<sup>27</sup> was a success. It consisted of 1) the clear introduction in the *acqui* of the innovative integrated approach based on multiannual programmes without national quotas (except for Greece), 2) the limitation of control of the Commission's powers to a 'reinforced' advisory committee (Art. 7) and 3) the involvement of subnational authorities in the design and implementation of the programmes (Arts. 5, 9).

Smyrl (1998) maintains that this result stemmed from the Commission's persuading of the Greek government. Instead, I contend that this was the outcome of 1) an accurate search strategy that manipulated ideas and information whose validity was difficult to disprove because of there being few competing sources and limited auditing and 2) a shrewd bargaining strategy that exploited issue linkages and time preferences.

### *Defending the regional policy bureau: the 1993 reform*

*The attack on the Commission's prerogatives.* In the 1988 reform, the core principles of the early 1980s proposals and of the IMPs regulation were reorganized and extended to the three Union structural funds.<sup>28</sup> By the late 80s, the operation of the policy has been called into question by almost

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<sup>26</sup> These were 1) qualified majority to adopt Union programmes (Art. 7) and 2) the more lenient version *a* of the management committee procedure (Art. 40).

<sup>27</sup> See proposal in OJ C 179, 17-7-1985, p. 5, and Council Regulation 2088/85 in OJ L 197, 27-7-1985, p. 1.

<sup>28</sup> For details see Allen (1996a), the other two funds were the Guidance Section of the European Agricultural Guidance and Guarantee Fund and the European Social Fund. The new functions of the Directorate were 1) the joint selection with the Council of the regions eligible for aid, according to five priority objectives, 2) the design of Community Support Frameworks and operational programs on submission of regional development plans by the Member States, and 3) a stronger monitoring and coordinating role.

every institution of the Union. Now an important policy and budget item, the perceived benefit from verifying the Commission's information increased relatively to the cost of auditing (Banks, 1989). The Court of Auditors began to pay increasingly more attention to the Commission's initiative and started to question more consistently the substantive efficacy of the most innovative measures such as the integrated approach (Court of Auditors, 1988). The Parliament and the Member States voiced a number of complaints about the efficiency of the policy and the prerogatives of the Commission (Yuill et al., 1993). The process of design and adoption of development plans, Community Support Frameworks and operational programs was considered too onerous. Both the Parliament and some Member States called for a more effective ex-ante and ex-post monitoring. Two complaints were directed at the Commission's prerogatives. First, the process of selecting regions eligible for aid was criticized for lack of coordination with competition policy (see also Assemblée Nationale, 1993). Second, the management of Community Initiatives was criticized for being ineffective, inefficient and, critically, for lacking consultation with the Member States (Pollack, 1995; Yuill et al., 1993). Clearly, the Commission had lost its informational advantage in regional policy.

*Initiation and Design.* Unlike the case of the Cartel Office, the Commission had little option other than to initiate reform because regional policy regulations had expiration dates that made the Commission relatively worse off with the default condition. However, it was content with the shape of the regional policy bureau. Therefore, in line with corollary 2, the set of proposals of March 1993 was primarily an exercise in fine-tuning and incorporated the less radical criticisms (see Commission of the EC, 1989a: 9, 1990b: 27-9).

In the proposal on the tasks of the funds,<sup>29</sup> there were provisions for 1) streamlining the adoption procedure for regional development plans and operational programmes and 2) specifying the information included in the

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<sup>29</sup> See proposal in OJ C 118, 28-4-1993, p. 21.



plans to facilitate ex-ante assessment (Arts. 8-9, 11). Similarly, the implementing legislation<sup>30</sup> contained provisions to 1) streamline the approval of operational programmes and support frameworks (Arts. 5, 10), 2) improve the assessment and monitoring (Arts. 8, 23, 25-6) and 3) reinforce the consultation and information exchange in the management of Community Initiatives (Arts. 30- 1). The time span and the eligibility thresholds of projects were also increased to improve efficiency (Arts. 6, 8, 16). However, the Commission's prerogatives remained largely untouched.

*Bargaining and outcome.* Practically all the Member States considered the new oversight and assessment provisions insufficient (*Agence Europe*, 23 June 1993; *Financial Times*, 2 July 1993: 2) and the Parliament tabled many amendments to increase its own supervisory role.<sup>31</sup> The Commission was disadvantaged by the default condition and could not increase the cost of no-agreement. In line with corollary 2, its bureau-shaping strategy had to concede the pivotal legislators' demands to limit the Commission's informational advantage and managerial discretion.

In the adopted regulations,<sup>32</sup> the general reporting requirements to the Parliament were reinforced (Art. 16 tasks, Art. 31 coordination). Specific informational requirements on the implementation of operations (Art. 6 tasks, Arts. 10, 11, 23, 32 coordination regulation) and on the selection of areas eligible for aid (Art. 9, 11a tasks) were also inserted. Managerial discretion was further limited. The role of the Member States in selecting the areas eligible for aid was strengthened (Art. 9, 11a tasks). Further conditions were added to Union assistance (Art. 13 tasks) and to the role of the monitoring committee (Art. 25 coordination). The more restrictive management committee procedure to control Community Initiatives was introduced (Art. 17 tasks). Finally, the Member States linked the EMU

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<sup>30</sup> See proposal in OJ C 118, 28-4-1993, p. 33.

<sup>31</sup> See amendments 4, 8 and 11 to Regulation 2081/93 and amendments 6, 10, 13, 15, 19, 26 to Regulation 2082/93.

fiscal constraints to a loosening of the additionality criterion (Art. 9 coordination). This time issue-linking operated to the Commission's disadvantage.

*Latest developments.* Notwithstanding this setback, the Directorate's bureau-shaping strategy persists. The proposal<sup>33</sup> for the 1999 reform contains a new Chapter IV on innovative measures and technical assistance to preserve the developmental rhythm of the policy. It also contains the first attempt of strategic 'hiving-off' of routine functions. Within the context of partnership, it delegates the more routine programming and monitoring activities to the Member States and other regional and social partners, whilst at the same time strengthening the Commission's role in strategic programming (Arts.15-18 and Title IV).

Similarly, in the attempt to maintain an ideational advantage, the Directorate has 1) set up new initiatives to assist small and medium-sized enterprises in the regions (e.g. Europarnetariat and Euroleader, Commission of the EC, 1994c: 166), 2) developed new policy ideas, such as spatial development planning (Commission of the EC, 1994b, 1998a: 139) and 3) explored linkages with other policies (e.g. territorial pacts for employment and communications on the relationship between cohesion, culture, environment and information society, Commission of the EC, 1997a, 1998a: 139).

## Conclusion

This chapter has used regional and competition policy to assess the budget- and work-related preferences and strategies of the Commission and its Directorates as functions of agency type and time. It has also tested three corollaries on the conditions that help the Commission's bureaucrats to reach their goals.

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<sup>32</sup> See Council Regulations 2081/93 on the tasks of the funds, 2082/93 on the coordination and 2083/93 on the ERDF in OJ L 193, 31-7-1993, p.5, 20 and 34 respectively.

<sup>33</sup> See the Web Site of DGXVI for the new proposals.

The results suggest the following:

a) Agency type is a relevant factor in shaping bureaucratic preferences and strategies. As predicted, bureau-shaping strategies dominate in pure regulatory agencies (e.g. DGIV), while mixed control/delivery agencies (e.g. DGXVI) show a mixture of budget- and bureau-related preferences.

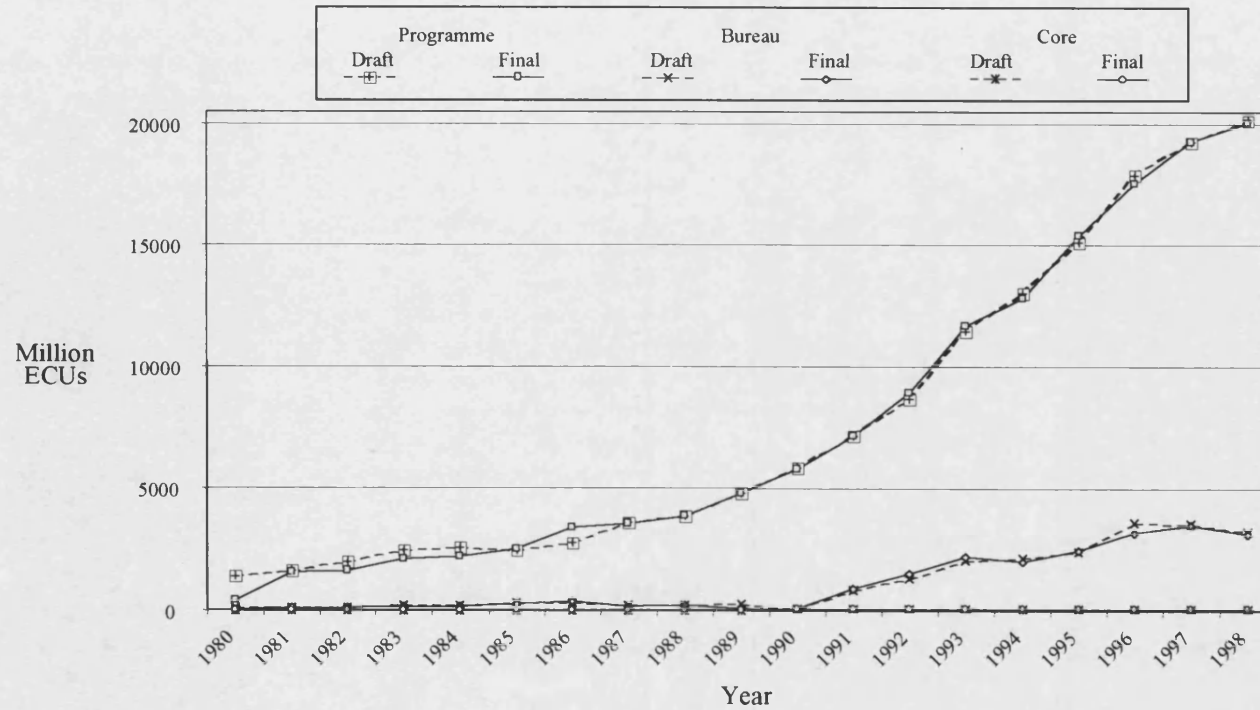
b) Also as predicted, budgetary preferences selectively focus both on the delivery component of the agency and on the bureau and programme components of the budget. They are more intense at the early stages of development of a policy. This suggests that 1) the marginal utility from budgetary increments decreases with budget growth and 2) agencies reach an optimum budget size. There is however no sign of budget-related preferences dominating work-related ones in these early days. Instead, work-related preferences persist over time.

c) The type of preferences held by officials does not appear to affect the likelihood of reaching bureaucratic objectives. Whilst the combination of long time horizons and informational advantages substantially increase this probability (compare IMPs, merger control, the 1984 and 1993 reforms). Also, bureaucrats keep pursuing bureau-shaping strategies to maintain an ideational and informational advantage.

d) Finally, the Commission's bureaucrats do not anticipate perfectly the preferences of Union legislators even after twenty years of policy history (which makes preference revelation more truthful) and only later adapt proposals to the preferences of pivotal legislators. Apart from information incompleteness, this can be a sign that officials hope to rely on measures that increase the cost of no-agreement and link issues (see IMPs and merger regulation). Both are however double-edged measures. Expiration clauses make no-agreement more unpalatable and issue linking could work to bureaucrats' disadvantage (see the 1984 and 1993 reforms). Defending the bureau's prerogatives is easier when the bureau is better off with the status quo (compare ECO and the 1993 reform).

This chapter leads us to two general observations. First, the domestic focus of the literature on the bureaucracy can be successfully shifted to the European level. Future research should compare how different institutional frameworks affect the probability of bureaucrats reaching their objectives. Second, this literature adds value to the institutionalist school of European integration by better specifying bureaucratic preferences and using bargaining theory to explain outcomes. The bureaucratic supranational input into the process of integration is contingent upon a set of favorable conditions but it is neither rare nor easy to 'roll back'.

**Figure 3.1.** Programme, bureau and core budgets of the Directorate on regional policy



*Note:* Programme budget includes all items committed to DGXVI. Bureau budget includes core budget, ERDF Community Initiatives, Special Community Measures, anti-fraud funds, innovative measures (e.g. BICs, integrated operations), studies, IMPs (preparation and technical assistance), preparation and assessment of CSFs. Core budget includes salaries, other personnel costs, equipment and running costs, accommodation costs.

*Source:* SYSPER-Carières database; *Bulletin of the European Communities*, annual; *Budget of the European Communities*, Official Journal Series L, annual

## Chapter 4.

### The Commission's Statutory Discretion:

#### Uncertainty, Preferences, Decision Rules and Policy Types

##### Introduction

Chapter 3 has concluded that the Commission has persistently shown work-related preferences across the twenty-year development of the competition and regional policy. But, this is only the first step to answer the core question of the thesis. We need to know not only the Commission's objectives but also the conditions that hinder or support their achievement.

This chapter uses theories of executive and bureaucratic politics and the model developed in chapter 2 to quantitatively test the factors that affect the degree of ex-ante statutory discretion delegated by the Member States and the Parliament to the Commission in secondary legislation. It suggests that this discretion increases with 1) the uncertainty facing Union legislators about optimum policies, 2) the convergence of preferences between the Commission and the pivotal legislator, 3) the use of qualified majority in the Council, and 4) policies that require limited involvement of national administrations (i.e. policy type).

The chapter is organized in five parts. First, I discuss the differences between delegation of policy-making functions by Treaty provision and by secondary legislation and the rationales for delegation. In the second and third part I describe the operationalization of statutory discretion and of the independent variables. Results are analyzed in the fourth section after presenting the methodology. The last section tests the impact of the Parliament in the cooperation procedure and of the opinions issued by the Parliament and the Economic and Social Commission.

The chapter concludes that uncertainty and policy type are the most important explanatory variables of the Commission's statutory discretion. Informal decision rules play also a relevant role. Preference distribution,

the Parliament's role in the cooperation procedure and opinions are instead substantively insignificant.

### The delegation of policy-making functions to the Commission

#### *Delegation by Treaty provision and by secondary legislation*

Much of the literature on European integration, including the grand theories of intergovernmentalism and neofunctionalism, deals with the transfer of policy-making functions from the Member States to the EU institutions. Being it the result of Intergovernmental Conferences or political entrepreneurship of supranational institutions, the dependent variable is the vertical shift of policy authority to a higher tier of government.

The main focus of this chapter is the delegation of policy-making functions by secondary legislation from the legislative to the administrative branch of the Union, namely from the Council of Ministers and the Parliament to the Commission. The dependent variable is the horizontal shift of policy authority across branches of government that is informed by theories of executive and bureaucratic politics. Horizontal and vertical shifts are not always easily separable as the delegation of functions to the Commission via a new Treaty provision falls under both categories. However, the horizontal logic is relevant also in this case because the decision is still one of delegation from Union legislators (the Member States) to a supranational bureaucracy.

Delegation by secondary legislation differs from that by a new Treaty provision in at least three aspects: relevant dimension of conflict, decision rules and complexity. First, the debate in Intergovernmental Conferences is more on whether to have a common policy rather than on the substantive details of the policy. Second, delegation by secondary legislation can be by qualified majority and the Parliament can be a pivotal legislator while Treaty reform is only by unanimous Member States

agreement. Finally, the technical complexity increases in secondary legislation.

Treaty delegation is certainly a precondition of secondary law delegation because the Union cannot operate without a Treaty base. There are however differences that allow us to treat the two decisions separately.

### *Delegation and the literature on executive politics*

The literature on executive politics identifies various rationales for the delegation of functions to a bureaucratic agent.<sup>1</sup> Many of these insights characterize also Keohane's (1984) functional theory of international regimes, although his emphasis is on vertical delegation. For our purposes we need to examine only two of such rationales. For a more extensive overview see Pollack (1997: 102-7).

First, a supranational agent is likely to be in charge of monitoring compliance of Treaty obligations by the Member States. This is an essential function that lowers the transaction costs of international cooperation with the result of overcoming one of the many obstacles to collective action. As a bare minimum, the agent can act as a secretariat that circulates information and ensures coordination amongst states and then let sanctioning to take place in a decentralized fashion.<sup>2</sup> However, if this monitoring is insufficient because of, for instance, the complexity or incompleteness of treaty obligations, supranational agents might be asked to give unbiased recommendations and to actively oversee and sanction the Member States' behavior. These functions are generally specified in Article 226 (ex 169) EC, according to which the Commission operate as the guardian of the Treaty and can initiate legal proceedings against non-compliant states. However, monitoring functions are explicitly conferred

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<sup>1</sup> The most recent contributions include Epstein and O'Halloran (1999), Horn (1995), Kiewiet and McCubbins (1991). For delegation within legislatures see Shepsle (1979) and Weingast and Marshall (1988).

<sup>2</sup> See Keohane (1984) and Milgrom, North and Weingast (1990) on decentralized sanctioning.



in secondary legislation in some cases as in more than 15 percent of the legislative acts sampled for this chapter.

The second rationale for delegation is related to the fact that Treaty provisions and secondary legislation are incomplete contracts that do not specify how actors should behave under all possible circumstances (Milgrom and Roberts, 1990; Williamson, 1985). At a minimum, the Commission might be responsible for specifying conditions attached to certain Union acts, such as safeguard measures in commercial policy. However, secondary legislation might confer upon the Commission more extensive regulatory and administrative functions that extend also to the financial management of Union programmes.

The gains accruing to Union legislators from delegation are of two types. First, there are informational gains as agent's specialization leads to technically sounder decisions (Bawn, 1995; Gilligan and Krehbiel, 1987; McCubbins, 1985). Second, there might be credibility gains as an independent supranational agent has less incentive than a given state to concede to pressures from politically powerful national groups (Gatsios and Seabright, 1989; Majone, 1996: ch. 4). The Commission has been delegated these functions in about half of the legislative acts sampled for this chapter.

#### **The dependent variable: ex-ante statutory discretion**

I have generated eight categories of activities that the Member States and the Parliament delegate to the Commission as suggested by the functional theory of regimes and the literature on executive and bureaucratic politics. I have then created an index of executive discretion from this list.

In categories 1 to 3 the Commission acts as an international secretariat that circulates information and ensures coordination amongst states. Categories 4 and 5 are a reinforcement of its monitoring role. Finally, the last three groups of activities are more easily associated with the conventional administrative role of bureaucracies. The Commission

carries out the traditional regulatory, administrative (categories 6-7) and redistributive (category 8) functions.<sup>3</sup> Below I describe in more detail these activities and provide examples from actual legislation.

*1-2) Receiving/providing information from/to the Member States and other institutions.* The Commission can be simply the depositary of information when the Member States and other institutions must notify it of, for example, the adoption of specific national laws or administrative acts. Conversely, the Commission is the provider of information when it must give notice of its activities to the other Union institutions or to the public at large. The large majority of Union legislation provides for this exchange of information, except in the simplest acts such as agricultural price-fixing legislation and commercial policy legislation suspending import levies or setting tariff quotas.

*3) Ensuring coordination and consultation amongst the Member States.* Some legislation contains a general provision for the Commission to be consulted about certain administrative acts taken by national administrations or for the Commission to consult interest groups and other bodies. A typical example is when a regulation provides for the administration of tariff quotas. Here, there is frequently a general call for coordination between the Commission and national administrations and for the Commission to ensure cooperation amongst the Member States.

*4) Giving opinions and recommendations.* The Commission might be formally asked to give an opinion or recommendation on a certain matter. For example, some directives on the approximation of laws ask for the Commission's opinion when a Member State temporarily suspends or restricts their application for health and safety reasons. In this case the Commission produces a formal, but not legally binding, act and national

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<sup>3</sup> Categories 6, 7 and 8 are based on the works of Majone (1996) and (more loosely) of Pollack (1994). Majone (p. 54), borrowing from Wicksell (1967 [1896]), uses a functional classification of policies (stabilization, regulation and redistribution). Categories 6-7 and category 8 overlap with the latter two. Pollack uses Lowi's (1964) classification of regulatory, distributive and redistributive policy types to explain task expansion in the Union. Categories 6-7 are similar to the first one, category 8 to the last two.

courts must refer to the European Court of Justice questions concerning its interpretation (Weatherill and Beaumont, 1995: 139).

5) *Monitoring, examining, reviewing and investigating.* These are more intrusive monitoring and controlling functions, common in environmental legislation but also in transport, agriculture, commercial policy and approximation of laws. An example is Regulation 1602/92 temporarily derogating from implementation of some anti-dumping measures. The Commission is requested to monitor and periodically review the import into the Canary Islands of products that are exempted from anti-dumping duties. A second example is Directive 271/91 on urban waste-water treatment where the Commission has to monitor the Member States compliance and examine whether the technical difficulties encountered in the implementation warrant an extension of the compliance period.

6) *Taking decisions.* The Commission could be asked to take legally binding decisions on matters such as safeguard measures in commercial policy and the suspension of financial support in environmental or transport programmes. Decisions also include authorizations to the Member States to perform certain activities, such as the use of statistical units for the analysis of the production system in the Union (Regulation 696/93).

7) *Administering, implementing and regulating.* The Commission could be directly involved in the administration of a certain policy and have regulatory powers to specify principles and criteria. Legislative acts that delegate this type of activity include Council regulations providing for the administration of tariff quotas under Articles 28 or 113 (EC) and for the establishment of support systems for farmers. Power to make regulations is conferred on the Commission especially in Council directives on the freedom of movement and approximation of laws, but also in import regulations of, for instance, wild species.

8) *Managing and financing programmes.* Finally, the Commission could be granted the power to directly manage the allocation of financial

resources of action programmes. The Commission is first asked to select projects pursuing the programme objectives (e.g. the protection of the environment in coastal areas as in Regulation 3908/91, or the development of transport infrastructure as in Regulation 3359/90). Then, it has to decide the form of financing (e.g. capital grants, interest rebates or repayable advances). These activities are also delegated by a large set of legislation establishing support systems for farmers.

An index of ex-ante statutory discretion is then created from this classification. A sample of directives and regulations (see appendix) has been checked against this set of activities and a value of 1 has been assigned to the act for each function that is clearly conferred on the Commission.<sup>4</sup> The sum of these values is a measure of the degree of discretion the Commission enjoys in implementing the legislation. This index ranges from minimum of zero (no discretion) to maximum of eight (extensive discretion). In other words, I have used the observable variable, number of delegated activities, to measure the latent variable, degree of executive discretion.<sup>5</sup>

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<sup>4</sup> Only the part that includes the articles of the legislation has been considered for this purpose. Recitals, tables and annexes have been disregarded.

<sup>5</sup> There are two problems with this procedure. The first concerns whether the number of delegated activities actually measures the degree of executive discretion. One could object that the delegation of such activities is frequently accompanied by a list of implementation criteria that limits the room of manoeuvre of the Commission. This is certainly correct, but a measure of the stringency of these criteria as an intervening variable fails the test of cross-policy comparability mainly because of the technical complexity of secondary legislation. Is, for instance, a criterion that sets the quantities of head of bovine quotas stricter than a purity criterion of foodstuffs flavourings? It is my opinion that researcher's measurement bias plays a too great a role here to assure objectivity. Moreover, the effect of these criteria on discretion loses at least some of its significance if we see EU laws as incomplete contracts that do not specify what each institution is to do in all possible circumstances. To solve this contractual incompleteness, legislators rely on 'relational contracts' (Milgrom and Roberts, 1992; see also Majone, 1996) where they specify only general goals and establish ex-post control procedures, while specific criteria tend to play a lesser role. In fact, a long list of criteria can easily present inherent contradictions (see e.g. Article 33 [ex 39] EC) and then impose no effective control on the empowered institution, especially in highly complex policy environment. Here, it is more likely to have general objectives (e.g. price stability in monetary policy) and either control mechanisms such as implementation committees or

**The independent variables: uncertainty, preferences, decision rules and policy types**

The literature on executive politics suggests two factors that explain the ex-ante scope of activity of an agent, namely uncertainty and distribution of preferences. Their relevance has also been proven in the formal model in the appendix of chapter 2. Such model adds a third variable, namely decision rules, and I will include a fourth one derived for the institutional framework of the Union, namely policy types. Below I discuss the relation that these variables bear upon executive discretion and their operationalization.

### *Uncertainty and information asymmetries*

All things equal, the scope of delegated authority is broader if uncertainty about the choice of the best policy alternative is high because of the complexity of the issue and the lack of information. As McCubbins and Page (1987: 417) put it, 'with little or no information with which to

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an institutional framework where reputational factors are effective constraints on behavior (on reputation see Kreps, 1990; on control mechanisms see e.g. Moe, 1987).

A second possible objection to the construction of this index is that the different activities should be weighted for the degree of discretion they bestow upon the Commission. If in one regulation the Commission is asked to provide information on a certain matter while in a second regulation it is asked to regulate the matter, surely more discretionary authority has been delegated in the latter case. Although it raises the issue of appropriate weighting, this is another correct point but it turned out to be of less relevance empirically. To test this, I have assigned an increasing value from one to eight starting from the top activity listed above and computed a weighted index of discretion in a similar way. I then applied the statistical analysis described below and found no appreciable difference in the results of the study. This is because a law that delegates *only* regulatory powers (and for that matter, activities at the bottom of the list) is a very rare occurrence. Normally the act asks the Commission also to collect and provide information from and to the Member States and, probably, to give opinions (that is, activities at the top of the list). Hence, there is not substantial difference between the two indexes. For instance, Council Directive 92/80/EEC on the approximation of taxes on manufactured tobacco requires the Commission to simply receive and provide information. This makes a discretion index of two and a weighted index of three. A regulation providing for the administration of tariff quotas (e.g. Regulation 786/88) delegates administrative functions but asks also for the exchange of information. In this case, the discretion index would be four and the weighted one nine. Both indexes gauge the actual difference in discretion. Since this is the way the index is constructed and laws are drafted, I have decided not to use weights rather than assigning arbitrary ones. Weights, without a specific justification, may introduce a bias by making inappropriate assumptions.

evaluate the possible alternatives, and with conceivably large political risks associated with uncertain choices, legislators would prefer to delegate an increasingly large domain of alternative regulatory targets to the agency'. Legislators need to reduce the information asymmetry that they face about their optimum policy (or even about their ultimate interest), so they delegate policy-making functions to allow better information to be obtained about policy options (Gilligan and Krehbiel, 1987; McCubbins, 1985). Put simply, the sequence is as follows: higher policy complexity → larger information asymmetries facing legislators → higher uncertainty about optimum policies → broader ex-ante executive discretion delegated to the agent (cf. Epstein and O'Halloran, 1994). Proposition 2 in the formal model in chapter 2 confirms this relation.

*Operationalization.* The operationalization of uncertainty (and of the other independent variables) can be less than ideal, especially if the researcher does not want to forgo quantitative analysis and needs variables that assure objective cross-policy and cross-issue comparability.

As discussed, the delegation of policy-making functions broadens with the complexity of an issue. In commercial policy for instance, it is relatively easier for a Member State to discern the costs and benefits accruing to it when it has to set import duties or agricultural prices, as compared to when it has to establish an anti-dumping regime or a support system for farmers. The complexity in managing the latter issues increases the uncertainty about policy developments and requires broader delegation of executive functions. The legislators' uncertainty that is related to regulatory complexity is, in turn, related to specific issues within a policy rather than to the policy as a whole. This means that we need to focus the operationalization to the characteristics of the specific act of secondary legislation. To my knowledge, the literature does not provide a helpful guide, so I have based my selection on the observation of the acts of the sample. These range from relatively simple legislation such as setting duties, prices and import quotas to more complex acts on import

surveillance or technical directives on environmental policies. It seems that the length of the legislative act is positively related to the complexity of (hence to the uncertainty arising from) the policy issue. The word count of the legislation setting duties and quotas amounts to less than one hundred words, while acts on import surveillance and other technical directives may require from five hundred to over a thousand words. Hence, I contend that an acceptable way to quantitatively operationalize uncertainty (UNCE) is to use the word count of the specific legislation.<sup>6</sup> To conclude, we should expect an increase in the length of the legal text to increase the ex-ante executive discretion of the Commission.

#### *Distribution of preferences*

All else equal, the scope of delegated authority is broader if the preferences of the pivotal legislator and of the agent converge (Epstein and O'Halloran, 1994, 1996; Gilligan and Krehbiel, 1989). This is also confirmed by Proposition 2 in the formal model in chapter 2. If a principal delegates authority to an agent with similar preferences, the agent will enjoy broad executive discretion because there would be no shirking. On the contrary, conflicting interests lead the principal to reduce the agent's room of maneuver. In short, convergence of preferences leads to broader ex-ante discretion.

*Operationalization.* Measuring distance of policy preferences among actors in all procedures, years and policy areas is a task that is seriously jeopardized by the lack of objective and comparable data across these

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<sup>6</sup> The part of the legislative act, which is counted for the number of words, covers the text from the first article to the name of the President of the Council of Ministers included. Annexes, tables and recitals are excluded. An objection to this operationalization could be that word count is more a proxy for the substantive involvement in a policy. However, there is no contradiction. The more a politician wants to intervene in a policy issue, the more she is likely to regulate all the different aspects of the issue, the more complex becomes the management of the policy, the stronger the need of delegation. Krehbiel's (1991) operationalization (the number of laws cited in a given act) cannot be used because non-amending EU legislation cites few laws even in informationally intense issue areas.

three dimensions.<sup>7</sup> There is however a survey published annually in the Eurobarometer on the general public attitude toward the EU that can be used for our purposes. Citizens of all Member States are asked, generally twice a year, the following question: "Generally speaking, do you think that (your country's) membership of the European Community (Common Market) is a good thing, a bad thing, or neither good nor bad?" (Commission of the EC, 1994a). I have derived from this survey a measure of convergence of governmental preferences toward the Commission's as follows

$$PREF_y = \text{mean} (w_i * \text{support}_i) \text{ for } i = 1 \dots 12 \text{ and } y = 1987 \dots 1993,$$

where  $\text{support}_i$  is the percentage of those who answered that EU membership is good for them in country  $i$  and year  $y$ , while  $w_i$  is the voting weight as in Article 205 (ex 148) EC. I imply that this support can be interpreted as a convergence toward the Commission's preferences. The higher the mean, the higher the support for EU level activities, the more policymaking functions are delegated to the Commission. The weights measure the relative importance of the countries in the decision making process. In other words, they measure the relative probability of each country to be the pivotal actor.

In the period under study, this index has fluctuated considerably (data are available from the author). In the years up to 1992, popular support for EU level activities increased by approximately 14 percent. The index increased from 401 in 1987, to 413 in 1989, reaching its maximum of 456 in 1991. This increase was linked to the Single Market initiative, although there was still

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<sup>7</sup> For instance, Eurobarometer surveys of the Commission do sometimes focus on public opinion attitudes toward certain policies such as agriculture, the single market or monetary union. However, they are not comparable because of the different questions being asked and they are discontinued throughout the period under analysis. Opinions and statements issued by various institutions provide valuable information about the interinstitutional dynamics of legislative policymaking, but the Member States' officials seldom make their concern public and opinions are issued by less relevant institutions in the decision-making process such as the Economic and Social Committee.



rather limited response in traditionally laggard states such as Great Britain and Denmark (Commission of the EC, 1994a). The crisis of the European Monetary System was instead the culprit of the subsequent fall, in total by more than 15 percent, to 403 in 1992 and to its minimum of 386 in 1993.

I acknowledge that this is a less than perfect measure of preference convergence. For instance, it disregards policy areas and assumes an efficient mechanism of transmission of preferences from citizens to state officials.<sup>8</sup> I can only urge researchers to develop statistics about the Member States' revealed preferences in a similar way as, for instance, the ADA liberal support scores of the US Senate.

### *Legislative procedures*

Following Proposition 1 of the formal model, we should expect the ex-ante executive discretion of the Commission to be larger under qualified majority than under unanimity (*ceteris paribus*). The gist of the Proposition is essentially related to the distribution of preferences of Union legislators and of the Commission. The preferences of the pivotal Member State under qualified majority are, *on average*, closer to the preferences of the Commission than in case of unanimity. This means that, *on average*, we should expect more ex-ante discretion from an act adopted under qualified majority than from one adopted under unanimity.<sup>9</sup>

*Operationalization.* I have used a dichotomous variable PROC taking the value of 0 for unanimity and 1 for qualified majority vote. However, the fact that the Treaty provides for qualified majority does not necessarily mean that the Council operates accordingly. In the period under study, analysts have repeatedly noted the use of unanimity in the Common

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<sup>8</sup> I thank an anonymous referee from European Integration online Papers, Francesca Longo and Claudio Radaelli for pointing this out.

<sup>9</sup> A related argument is that the permanence of unanimity in the Treaty is a sign of unwillingness of the Member States to delegate policy-making functions to the Commission. Qualified majority has been introduced in areas where the Commission's involvement is tolerated (e.g. for the free provision of services and the liberalization of capital movements). Where it is not the case (e.g. in social security and tax harmonization), unanimity still applies.

Agricultural Policy, even if the relevant Treaty articles assign qualified majority voting (see Fennel, 1987: 73; Keeler, 1996: 136; Patterson, 1997: 144; Peterson, 1989: 468; Runge and von Witzke, 1987; Scharpf, 1988: 251, 257; for an opposing view see Wallace, 1989: 200).<sup>10</sup> Accordingly, I will compare two models. Model 1 operationalizes decision rules as laid down by the Treaty; model 2 considers instead the informal use of unanimity in agriculture.

### *Policy types and legislative instruments*

Although the Council is under an obligation to delegate most of the executive functions to the Commission (Art. 202.3 [ex 145] EC), policies differ in the distribution of functions between the Commission and national administrations. In some cases the Commission is the main administrator, as in the management of quotas, or policy-making functions are replicated at the European level and there is a clear-cut criterion defining the policy scope, as in the merger regulation 4064/89. In other cases, implementation requires the extensive involvement of national administrations as in directive 88/609/EEC on pollutants emissions, while the Commission is mainly relegated to a supervisory role. The implication is that the ex-ante executive discretion of the Commission (as related to the number of policy-making functions exercised) is negatively correlated with the policies that require extensive involvement of national administrations.

*Operationalization.* Generally speaking, the two most important legislative instruments of the Union, regulations and directives, mirror the distribution of policy-making functions between the European and national levels. Regulations are directly applicable in their entirety in all Member States. They are used predominantly for policies administered

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<sup>10</sup> Unanimity in agriculture seems also to withstand Legro's (1997: 34) criteria of robustness of norms more than in other EU policies. It was a clear rule, it was long-standing (since, at least, the Luxembourg Compromise of 1966, many new policy areas

directly by the Commission. National administrators are either marginally involved or perform similar functions at a lower lever of governance. Directives are not directly applicable and are binding on the Member States as to the result to be achieved. A Member State can choose the form and method of implementation in its national system. Directives are used in policies where national administrations perform the main policy-making functions, while the Commission supervises implementation.

The legislative instrument, as an operationalization of these policy types, has an independent effect on the Commission's ex-ante executive discretion. Regulations are for policies where discretionary powers are relatively extensive, while directives for policies with functions delegated to national administrations at the expense of the Commission. A dummy variable TYPE taking the value of 0 for directives and 1 for regulations should hence have a relevant positive effect on ex-ante statutory discretion.

### Models, population and methodology

The main hypothesis is:

*Hypothesis 3: The ex-ante statutory discretion delegated to the Commission in secondary legislation increases with 1) the uncertainty facing Union legislators about optimum policies, 2) the convergence of preferences between the Commission and the pivotal legislator, 3) the use of qualified majority in the Council, and 4) policies that require limited involvement of national administrations.*

The general model with the expected signs is:

$$\text{DISCR} = \alpha + \beta_1 \text{UNCE} + \beta_2 \text{PREF} + \beta_3 \text{PROC} + \beta_4 \text{TYPE} + e$$

(+)
(+)
(+)
(+)

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were only inserted in the 1986 Single European Act) and there was a general acceptance of its use by the Member States (see Swinbank, 1989: 309).

The extent of ex-ante statutory discretion (DISCR) delegated to the Commission in secondary legislation is a positive function of degree of uncertainty (UNCE), preference convergence (PREF), legislative procedure (PROC) and policy type (TYPE). The residual  $\epsilon$  illustrates that the model is probabilistic, not deterministic.

Models 1 and 2 have been tested on a stratified sample of non-amending secondary legislation approved between the first of July 1987 and the first of November 1993. A search in the CELEX database and in the EU Official Journal has generated a population of 1033 directives and regulations (see appendix for details). Figure 4.1 shows the legislative production in different policy areas and according to the three main legislative procedures: unanimity, qualified majority and cooperation.

< FIGURE 4.1 HERE >

Unsurprisingly, the large majority of non-amending legislation has been in the areas of customs union, agriculture and commercial policy. However, important legislation has also been produced in the areas of environment, transport and, especially, approximation of laws. Qualified majority has been the predominant procedural rule although, as discussed, it might not be the Council's norm in some policies.

The legislation is non-amending for two reasons. First, the two propositions in the appendix of chapter 2 formally prove that legislative procedures, preferences and uncertainty do not affect the degree of ex-ante discretion in amending secondary legislation. Second, we need to control for the position of the status quo ante. The impact of the independent variables on executive discretion should be measured for a given level of discretion ex-ante. I would contend that an appropriate and efficient control strategy is the selecting of only the first legislative act in a policy issue. In this case, there is no discretion ex-ante.

The standard procedure would be to run an ordinary least squared (OLS) regression and compare the statistical results of the two models. However, this type of parametric inference requires a set of assumptions to ensure that regression coefficients are the best linear and unbiased estimators.<sup>11</sup> More specifically for our case, OLS inferential statements assume that the random error in the model is normally distributed. If that was not the case, 'our confidence intervals and hypothesis tests could have a greater than nominal probability of error. Bootstrapping may be a way of overcoming this problem' (Mooney and Duval, 1993: 55).

In our context, while the traditional assumptions of linearity, homoscedasticity and low collinearity are generally satisfied,<sup>12</sup> the error structure of the model is not normal. A Jarque-Bera omnibus test for normality has rejected the null hypothesis that the distribution of residuals is normal. This is probably because the dependent variable is bounded by zero and has a bimodal distribution.<sup>13</sup> As suggested by Mooney and Duval, I have used bootstrapping to solve this problem (see appendix).

### Analysis of the results

The results are shown in Table 4.1. The first column lists the mean bootstrapped values of the regression coefficients. The other columns show the endpoints of the confidence intervals of the null hypothesis calculated using different techniques (see appendix). A coefficient outside

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<sup>11</sup> There might also be the risk of a measurement error with OLS because executive discretion (DISCR) is an ordinal index. However, this is likely to affect only the residuals of the equation and bootstrapping (see below) has been specifically adopted in this case in order to deal with the distribution of the error structure.

<sup>12</sup> There is no evidence of heteroscedasticity, while there is a certain degree of collinearity between legislative procedure (PROC) and policy type (TYPE) and between preference convergence (PREF) and uncertainty (UNCE). The condition index is however well below 30 in both cases, so it is not a serious problem.

<sup>13</sup> I have carried out one-sided Jarque-Bera tests using the GAUSS code suggested by Mooney (1997). The null hypothesis of normality has been rejected at 5 per cent significance level for model 1 and at 10 per cent for model 2. The dependent variable distribution approximates a highly right skewed Pareto distribution [Par(0,0.1)] mixed with a Chi squared distribution [ $\chi^2(4)$ ] at a factor of 0.7.

these endpoint values is significantly different from zero at 95 percent level of confidence.

< TABLE 4.1 HERE >

The results show that model 2 is the most accurate. It explains, on average, about 53 percent of the variation in ex-ante statutory discretion compared to 45 percent of model 1. This difference is statistically relevant because we can reject at 95 percent confidence level the null hypothesis that a  $R^2$  of .53 is generated by model 1.<sup>14</sup> We should also point out that a large portion of the variance still remains unexplained, thus inviting researchers to put forward better specified models.

Results also indicate that uncertainty (UNCE) is consistently the most important variable exerting a strong influence on ex-ante discretion. *Ceteris paribus*, an increase in length of five hundred words from an act suspending import levies to one setting up the administration of a tariff quota leads to an increase of the discretion index by more than one point. Moving from tariff quota legislation (approximately 700 words) to acts on environmental policy or on the approximation of technical standards (approximately 3000 words) increases the discretion index by almost five points. The more technical the policy issue, the more uncertain the legislators about the optimum policy action, the more functions will be delegated to the Commission.

Policy type (TYPE) is another important determinant. All else equal, the use of regulations rather than directives increases the discretion index by one point. The executive discretion of the Commission is constrained when national administrations play an important role in the

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<sup>14</sup> Note that this test is different from the standard F-test on model specification because the operationalization of PROC differs in the two cases.

implementation of a policy. Conversely, the Commission enjoys more ex-ante discretion when execution is limited to the EU level.

The substantive and statistical significance of the index of preference convergence (PREF) tells us different stories. The regressor of this index is significantly different from zero according to all methods. Its substantive significance is however rather limited. An increase from its lowest value of 386 in 1993 to its highest of 456 in 1991 barely increases the discretion index by half a point (*ceteris paribus*).

Finally, the Commission's executive discretion is likely to be larger under qualified majority rather than under unanimity only if we take into account the norm of using unanimity in agriculture. The legislative procedure (PROC) in model 1 is significantly different from zero according to almost all methods of computation. Substantively, however, the use of qualified majority instead of unanimity increase the discretion index by only a tenth of a point.

In model 2 the legislative procedure is substantially and statistically significant. *Ceteris paribus*, unanimity decreases the index of discretion by more than one point. When unanimity is (formally or informally) needed to approve a Union act, less policy-making functions are delegated to the Commission because the preferences of the pivotal legislator are, on average, farther away from those of the Commission than in case of qualified majority.<sup>15</sup>

### **The role of the European Parliament in the cooperation procedure**

Does the Parliament have an impact in the cooperation procedure on the ex-ante statutory discretion delegated to the Commission? Tsebelis (1994)

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<sup>15</sup> This result also confirms that clear, long-standing and agreed upon norms have explanatory power. The critical reader may point out that the re-coding of legislative procedure (PROC) to account for informal behavior could have merely increased its variance and, consequently, its significance. I have re-coded in a similar way all the other policy areas in the sample, even though there is less evidence of long-standing and concordant use of unanimity. Legislative procedure is not substantively significant in these tests.

asserts that the Parliament enjoys a conditional agenda setting power in cooperation. His result differs from those of Crombez (1996) and Steunenberg (1994), that deny the existence of such power, because he uses a multidimensional policy space. I (2000) show that the Parliament is pivotal in three procedures but only to the extent of reducing the equilibrium discretion.

There are however no acts approved under co-decision or assent in the sample and there are no parliamentary amendments that cut back functions conferred on the Commission in the sampled legislation approved under cooperation. We should therefore expect no impact on the discretion delegated to the Commission.

#### *Operationalization and results*

The role of the Parliament is first operationalized by converting legislative procedure (PROC) into a multichotomous variable taking the value of 2 for legislation approved under cooperation.<sup>16</sup> The results of this test are shown in the upper part of Table 4.2 (model 3); they take as benchmark for comparison model 2 because of its higher explanatory power. Unfortunately, the model explains a lower percentage of the variance of the dependent variable and we can only just reject the null hypothesis that it can be randomly generated from model 2.

The improvement in explanatory power of policy type (TYPE) and uncertainty (UNCE) is generally at the expense of the importance of convergence of preferences (PREF) and legislative procedure (PROC) as collinearity diagnostics has already told us. *Ceteris paribus*, the use of regulations increases the discretion index by one and an half point and an increase of one thousand words leads to a rise of the index by more than two points. Convergence of preferences is still substantively insignificant.

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<sup>16</sup> In this way we test whether the Parliament has a positive effect on discretion. Alternatively, I have tested a model with legislative procedure (PROC) taking the value of 0 for cooperation, 1 for unanimity and 2 for qualified majority to see whether the



Most importantly, a unit increase of the new variant of legislative procedure causes a rise of the discretion index by less than 0.8 (*ceteris paribus*). This value is lower than in the model without the Parliament. Before stating that this institution has a substantive effect on executive discretion, we need to run a second test because the conversion of legislative procedure into a multichotomous variable could have increased the measurement error of its regressor.

< TABLE 4.2 HERE >

The second operationalization consists in adding a dummy cooperation variable (PARL) to model 2. This new variable takes the value of 1 when the Parliament's vote is needed to adopt legislation under the cooperation procedure. The new model 3 becomes:

$$\text{DISCR} = \alpha + \beta_1 \text{UNCE} + \beta_2 \text{PREF} + \beta_3 \text{PROC} + \beta_4 \text{TYPE} + \beta_5 \text{PARL} + e$$

(+)            (+)            (+)            (+)            (+)

The inclusion of the new variable is not statistically relevant. With an  $F_{(1,94)}$  statistics of 1.28 we cannot reject the null hypothesis of significantly improved explanatory power. Moreover, the cooperation variable has practically no substantive meaning. All else equal, it determines less than a fifth of a point of executive discretion (its mean bootstrapped regression coefficient is 0.19).

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Parliament has a negative effect on discretion. Its explanatory power is even lower than the one of model 1.

### The impact of parliamentary and ESC opinions

Do the opinions issued by the European Parliament and the Economic and Social Committee (ESC) have an impact on the ex-ante statutory discretion delegated to the Commission? Formal theorists disregard the role of opinions because they are not legally binding and the institutions issuing them have no real power in affecting the equilibrium outcome (cf. Crombez, 1996; Steunenberg, 1994; Tsebelis, 1994). Actors do not condition their strategies on the signals sent with the opinions especially when the sender has no role in determining the final payoffs of the game.<sup>17</sup> Consequently, we should expect no significant impact.

### *Operationalization and results*

I have added to model 2 two dummies for when the Parliament and the ESC have issued opinions. The new model 4, then, is:

$$\text{DISCR} = \alpha + \beta_1 \text{UNCE} + \beta_2 \text{PREF} + \beta_3 \text{PROC} + \beta_4 \text{TYPE} + \beta_5 \text{EPO} + \beta_6 \text{ESCO},$$

(+)

where Parliament opinion (EPO) and ESC opinion (ESCO) take the value of 1 when an opinion is issued by the Parliament and the Committee respectively. The lower part of Table 4.2 shows the results; they also take model 2 as benchmark for comparison.

The inclusion of opinions does not relevantly improve the explanatory power of the model. We cannot reject the null hypothesis that the new model can be randomly generated from model 2. This is because the adjusted  $R^2$  (.5493) falls within the 95 percent confidence intervals of the  $R^2$  of model 2. This is according to all three methods of computation of the intervals. Also the F-test on variable addition ( $F_{(2,93)} = 0.07$ ) fails to reject the null hypothesis. The substantive and statistical significance of the original

four variables (PREF, PROC, TYPE and UNCE) is not affected by the introduction of the opinion of the Parliament and the Committee. The new variables (EPO and ESCO), while significantly different from zero, have a very marginal effect on executive discretion. *Ceteris paribus*, they determine around a fifth of a point of the discretion index each.

## Conclusion

The chapter has shown that the Commission enjoys broader ex-ante statutory discretion in case of policy uncertainty, of qualified majority and for some policy types (the impact of decision rules is however more debatable). When Member States are uncertain about the best course of action that protects their interest, they delegate more policy-making functions to the Commission to reap the informational benefits of delegation. Further, the less levels of bureaucratic governance are involved, the more discretion the top tier (i.e. the Commission) enjoys.

The evidence from the other variables is relatively less convincing. The impact that the distribution of preferences has on the Commission's discretion seems marginal, although this has probably more to do with the operationalization of the variable. We need a more accurate issue-specific quantification than what has been the case in this chapter. We have however some indirect confirmation of the importance of preferences. The formal or informal use of unanimity diminishes ex-ante discretion relative to qualified majority. The pivotal legislator under unanimity tends to restrain more the Commission than under qualified majority because its preferences are likely to be more distant from those of the Commission. The equilibrium discretion is however structurally rather than preference induced. This result highlights also the need to develop a better understanding by the rational choice literature of the causal relevance of norms.

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<sup>17</sup> This is the so-called babbling equilibrium in signaling games. Opinions can, on the contrary, enhance coordination if actors' moves are interdependent (e.g. in cooperation)

Being there no clear evidence of parliamentary opposition to delegation, variables on parliamentary role do not have explanatory power and models incorporating parliamentary preferences have lower coefficients of determination. We can also reject the idea that opinions have an effect on delegated powers.

These results have broader implications. First, the literature on executive politics provides valuable insights on the factors that affect the room of policy maneuver of an agent and can be successfully extended to the European Union. Second, formalization helps us to clearly distill the factors that affect executive discretion of the Commission. More work is needed both in the operationalization of variables for quantitative analysis and in the development of formal modeling relaxing my assumptions. Finally, for European integration scholars, the process of integration is ultimately driven by the implementation of the policies of the Union. The literature on executive politics helps us identifying the conditions under which the supranational bureaucratic input (or drift) into such process is greater. Thus far, such conditions are 1) high policy uncertainty, 2) the Commission only is in charge of implementation and 3) the legal act of delegation is approved by qualified majority. However, Union legislators can set control procedures to oversee the Commission's behavior. It is this decision that will be the focus of chapter 5.

## APPENDIX

### Population characteristics

The population includes 1033 non-amending directives and regulations based on a Treaty article. Those acts that are based on a prior directive or regulation are not included because it is unclear whether they are amending. Directives and regulations amending decisions, protocols and conventions have been included if they have a Treaty base. I have disregarded decisions because of their administrative and addressee-related nature, and opinions and recommendations because they are not legally binding. The 25 acts (i.e. less than 2.5 percent) that have more than one Treaty base have been assigned first to the more stringent procedure then to the policy so that to ensure the widest distribution across policies and procedures. This is in order to maximize the efficiency of the sampling strategy (see below).

The CELEX database and the Official Journal have been the main sources used. Unfortunately, both are slightly deficient. CELEX has some regulations whose reference cannot be found in the Official Journal. Given the legal requirements of publication, this seems to be a flaw of the database. Conversely, there is not a requirement of publication of directives in the Official Journal, which is then incomplete in this respect.

### Sampling strategy

A sampling procedure needs to trade off feasibility and representation. A feasible sample minimizes sampling costs and analytical complexity. A representative sample mirrors the key characteristics of the population and minimizes the sampling error.

The population shows highly skewed frequency distributions across two key variables of policy area and legislative procedure. Around 70 percent of the acts are approved in the agricultural and commercial fields and by qualified majority (see Figure 4.1). A simple random sample could easily under-represent a policy area or a legislative procedure. For instance, in a

simple random sample with repetition of 100 cases drawn by the author, only one regulation has been approved under unanimity and five directives were approved using cooperation. Both procedures were heavily underrepresented. Conversely, customs union, agricultural and commercial legislation amounted to slightly more than 85 percent.

In order to decrease such sampling error without increasing the sample size, I have instead drawn a stratified random sample of 100 cases. Each stratum is characterized by a different Treaty base and legislative procedure to ensure internal homogeneity and external heterogeneity. The sample size of each stratum is proportional to the stratum population. This procedure is termed stratified random sampling with proportional allocation or constant sampling fraction. In this way, first and second order probabilities of inclusion of a case in a stratum equal simple random sampling probabilities and variance and total formulae are similar. There is no need to modify values of observations (Frosini et al., 1994: 87-8). Further, bootstrapping (see below) obviates eventual problems of probability distribution. Although only simple random sampling generates samples with independently and identically distributed cases, this proportionate stratified sampling improves representation without complicating too much the analysis (Frosini et al., 1994: 41-5).

### **Bootstrapping**

Bootstrapping is a computationally intensive non-parametric approach to statistical inference. It is of particular utility in our case when traditional distributional assumptions of parametric inference are violated (Mooney and Duval, 1993; Mooney and Krause, 1997). Moreover, bootstrapping allows the researcher to make clearer inferential statements about the goodness-of-fit of the models because it constructs an estimate of the sampling distribution of statistics with weak statistical theory such as the adjusted  $R^2$ .

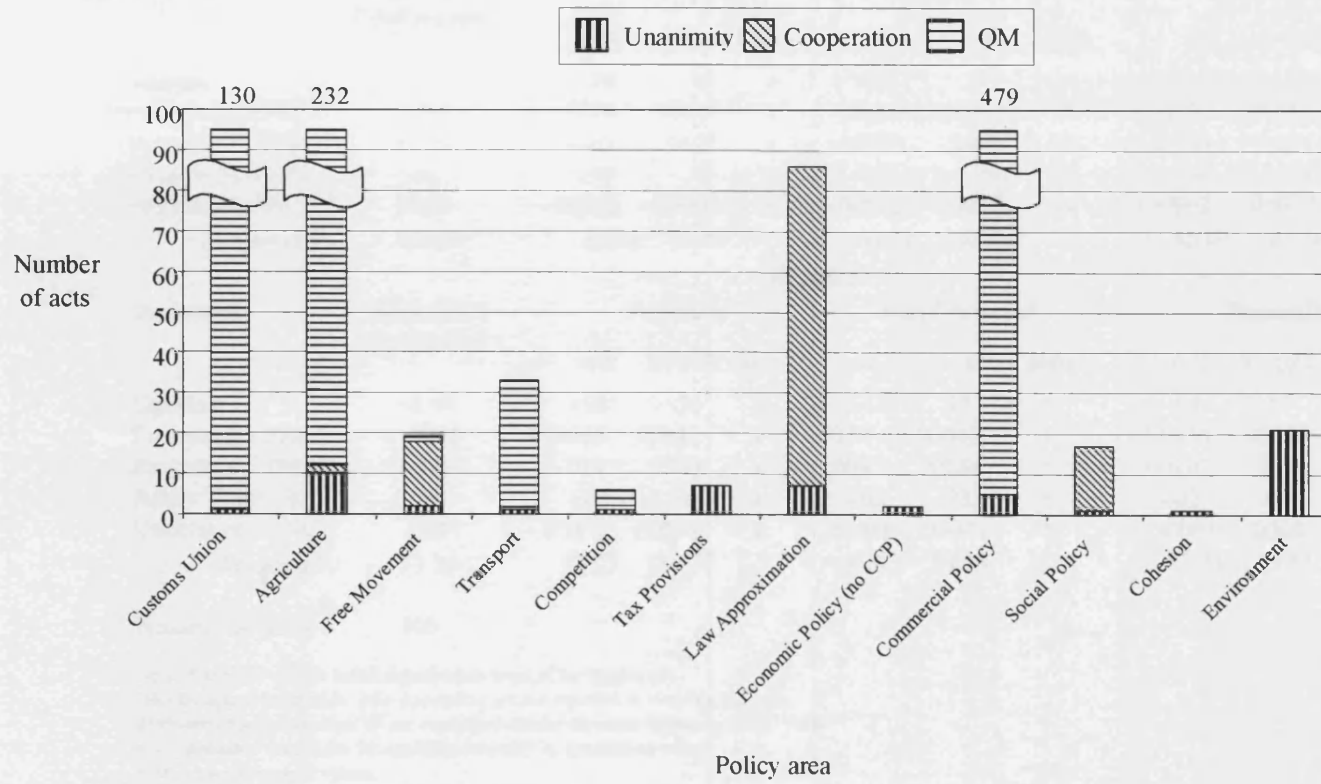
In regression models, its basic procedure is to take 1000 re-samples with replacement of the residuals of the original regression model, to calculate the bootstrapped dependent variables, regression coefficients and  $R^2$  and to develop bootstrap confidence intervals. Statisticians point out that this is the most appropriate procedure to bootstrap a regression model. An alternative could be to resample cases of data but this ignores the error structure of the model (Mooney and Duval, 1993: 17).

Since bootstrapping is primarily a tool for inferential statistics, I have used as point estimator of the population variables the mean bootstrapped values. This is based on principles similar to those of the estimates of the jackknife technique (Mooney and Duval, 1993: 22-7). To test whether these observed values were in the critical region, I have computed the  $\alpha/2$  and  $1-\alpha/2$  double-tailed endpoints of the null hypothesis (e.g.  $\beta=0$  for regressors). The techniques used to compute the confidence intervals were the percentile, bias corrected and percentile-t ones. I have disregarded the normal approximation method because it fails to use the entire bootstrapped estimate of the sampling distribution and requires parametric assumptions about the empirical probability distribution. Further, normal approximation is probably also less appropriate in case of regression coefficients because they are likely to have a  $t$ -distribution. Statisticians tend to agree that the BC and percentile-t methods are the most accurate while the percentile method assumes an unbiased bootstrapped estimate of the sampling distribution (see Mooney and Duval, 1993: 33-42).

I have also computed the 'bootstrapped t(or z)-statistics' using the standard error estimated with the bootstrapped sampling distribution (Mooney and Duval, 1993: 35). I have developed my own GAUSS code to carry out the computations, for alternatives see Mooney (1994a,b).

Contact the author for more details on operationalization, statistics, population and sampling strategy used in chapters 4 and 5.

**Figure 4.1.** Non-amending secondary legislation 1987-93





**Table 4.1. Regression coefficients and 95 % endpoints of the null hypothesis ( $\beta = 0$ ) of models 1 and 2**

Model 1										
Parameter	Regression Coefficients <sup>b</sup>	Percentile			Bias Corrected			Percentile-t <sup>c</sup>		
		$\alpha/2$	1 - $\alpha/2$	sign.	$\alpha/2$	1 - $\alpha/2$	sign.	$\alpha/2$	1 - $\alpha/2$	sign.
Constant	-1.07	-.18	.18	*	-.17	.19	*	-.18	.19	*
Preference PREF	.0031	-.00034	.00059	*	-.00039	.00043	*	-.00039	.00057	*
Procedure PROC	.1073	-.0565	.0401	*	-.0476	.0486	*	-.0569	.044	*
Policy Type TYPE	.96	-.04	.04	*	-.03	.04	*	-.04	.04	*
Uncertainty UNCE	.0021	-.00002	.00001	*	-.00002	.00001	*	-.00002	.00002	*
Adjusted R <sup>2</sup>	45.09 <sup>b</sup>	44.70	45.58		44.72	45.64		45.03	45.16	
Model 2										
Parameter	Regression Coefficients <sup>b</sup>	Percentile			Bias Corrected			Percentile-t <sup>c</sup>		
		$\alpha/2$	1 - $\alpha/2$	sign.	$\alpha/2$	1 - $\alpha/2$	sign.	$\alpha/2$	1 - $\alpha/2$	sign.
Constant	-2.46	-.08	.16	*	-.11	.15	*	-.09	.17	*
Preference PREF	.0045	-.00036	.00045	*	-.0037	.00042	*	-.00035	.00046	*
Procedure PROC	1.1395	-.011	.0166	*	-.0087	.0184	*	-.0101	.0171	*
Policy Type TYPE	.94	-.02	.03	*	-.02	.03	*	-.02	.03	*
Uncertainty UNCE	.0021	-.00001	.00001	*	-.00001	.00001	*	-.00001	.00002	*
Adjusted R <sup>2</sup>	53.29 <sup>b</sup>	52.95	53.70		53.03	53.78		53.24	53.33	

Number of cases 100

Note: \*  $\alpha \leq .05$  double tailed significance level of the regressors.

<sup>a</sup> 'Bootstrapped t-statistics' (see Appendix) are not reported to simplify the table.

Endpoints for the adjusted R<sup>2</sup> are computed around the mean bootstrapped R<sup>2</sup> value

<sup>a</sup> It substitutes unanimity for qualified majority in agricultural policy

<sup>b</sup> Mean bootstrapped values

<sup>c</sup> This interval has been computed taking 50 resamples per each resample

**Table 4.2.** Regression coefficients and 95 % endpoints of the null hypothesis ( $\beta = 0$ ) of models 3 and 4

Model 3										
Parameter	Regression Coefficients <sup>a</sup>	Percentile			Bias Corrected			Percentile-t <sup>b</sup>		
		$\alpha/2$	1 - $\alpha/2$	sign.	$\alpha/2$	1 - $\alpha/2$	sign.	$\alpha/2$	1 - $\alpha/2$	sign.
Constant	-2.39	-.06	.07	*	-.06	.07	*	-.05	.07	*
Preference PREF	.0013	-.00005	.00005	*	-.00006	.00005	*	-.00005	.00006	*
Procedure PROC	.79	-.02	.01	*	-.01	.02	*	-.02	.02	*
Policy Type TYPE	1.44	-.02	.03	*	-.02	.04	*	-.02	.03	*
Uncertainty UNCE	.0022	-.00002	.00002	*	-.00001	.00002	*	-.00002	.00002	*
Adjusted R <sup>2</sup>	54.40 <sup>a</sup>									
Model 4										
Parameter	Regression Coefficients <sup>a</sup>	Percentile			Bias Corrected			Percentile-t <sup>b</sup>		
		$\alpha/2$	1 - $\alpha/2$	sign.	$\alpha/2$	1 - $\alpha/2$	sign.	$\alpha/2$	1 - $\alpha/2$	sign.
Constant	-1.91	-.04	.07	*	-.04	.08	*	-.04	.07	*
Preference PREF	.00136	-.00003	.00004	*	-.00003	.00004	*	-.00003	.00005	*
Procedure PROC	.91	-.03	.02	*	-.02	.02	*	-.03	.02	*
Policy Type TYPE	.93	-.03	.03	*	-.02	.05	*	-.03	.04	*
Uncertainty UNCE	.0021	-.00002	.00002	*	-.00001	.00002	*	-.00002	.00002	*
EP opinion EPO	-.21	-.03	.03	*	-.03	.03	*	-.03	.03	*
ECS opinion ESCO	.20	-.02	.03	*	-.02	.03	*	-.03	.03	*
Adjusted R <sup>2</sup>	54.93 <sup>a</sup>									

Number of cases 100

Note: \*  $\alpha \leq .05$  double tailed significance level of the regressors.

<sup>a</sup> 'Bootstrapped t-statistics' (see Appendix) are not reported to simplify the table.

Endpoints for the adjusted R<sup>2</sup> are computed around the mean bootstrapped R<sup>2</sup> value

<sup>a</sup> Mean bootstrapped values

<sup>b</sup> This interval has been computed taking 50 resamples per each resample

## Chapter 5.

### Control of the Commission's Executive Functions: Uncertainty, Conflict and Decision Rules

#### Introduction

Chapter 4 has analyzed the factors that lead Union legislators to delegate policy-making functions to the Commission. However, the literature on executive politics stresses the link between delegation and control, and some studies, as analyzed in chapter 2, emphasizes the importance of control committees in the Union. This is a system of control, termed *comitology*, whereby representatives of the Member States directly oversee, using various procedures, the implementation of the responsibilities delegated to the Commission. We need to assess the importance of these committees if we want to gain a more fine-grained view of the Commission's role in the process of integration.

Hence, this chapter focuses on issues of Commission accountability and mechanisms of Member States control. It uses theories of executive politics to quantitatively test the factors that determine the likelihood of establishing control procedures and the stringency of such control. These are 1) the uncertainty facing legislators about the optimum policy actions, 2) the level of conflict among legislators and 3) the need of unanimous agreement in the Council of Ministers. It also examines the correlation between control stringency and executive discretion.

The chapter is divided in four sections. In the first one, I apply the control side of agency theory to the activities of the Commission. This part relies on Kiewiet and McCubbins' (1991) work on delegation in the US Congress and Pollack's (1997) application to the Union institutions. In the second section, I describe the committee system and analyze the incidence of control procedures across policy areas. Finally, I test a hypothesis about the determinants of legislators' control of executive functions as suggested by McCubbins and Page (1987; see also McCubbins, 1985) and the

correlation between discretion and control in the third and fourth parts of the chapter (after explaining operationalization and methodology).

The results show that 1) unanimity, level of conflict among the Union institutions and uncertainty are key determinants for the establishment of procedural control of the Commission's implementation activities, 2) level of conflict and uncertainty are also important factors affecting the degree of stringency in control and 3) ex-ante statutory discretion is positively correlated with procedural control.

The conclusion relates these results to those in chapter 4, to the European integration literature in general and, more specifically, to the literature on political control of the bureaucracy.

#### **Accountability and control of the Commission: theory and practice**

The reasons for delegating policy-making responsibilities to an agent have been discussed in chapter 4. Delegation however creates a control problem for legislators because

'there is always some conflict between the interests of those who delegate authority (principals) and the agents to whom they delegate it. Agents behave opportunistically, pursuing their own interest subject only to the constraints imposed by the relationship with the principal. The opportunism that generates agency losses is a ubiquitous feature of the human experience' (Kiewiet and McCubbins, 1991: 5).

The cost of this opportunism, termed shirking or bureaucratic drift, is coupled with a second process, known as slippage, when the agency design itself is an incentive for the agent to behave in ways that are costly for the principals (McCubbins and Page, 1987: 411). In the institutional framework of the Union, agency losses can be generated not only when the Commission's preferences differ from the Member States' or the Parliament's (shirking) but also because the Commission has the monopoly of legislative initiation that can be used to pursue its interest (slippage).

Kiewiet and McCubbins (1991) list four classes of measures that principals can adopt to contain these potential losses. First, principals determine the *ex-ante design of the agency* (i.e. scope and domain of regulatory targets, legal instruments and administrative procedures). In case of the Union, the scope of functions delegated to the Commission by the Treaty has been relatively broad. The Commission has to ensure the proper functioning of the common market and the application of Treaty provisions (Art. 211 [ex 155] EC). The Council is under an obligation to delegate most of the executive functions to the Commission (Art. 202.3 [ex 145] EC), which also enjoys a relatively broad range of instruments such the power to initiate legislation and infringement proceedings. Only in the Maastricht Treaty the Commission's powers have been heavily curtailed in the new fields of foreign and security policy and justice and home affairs.

Second, principals can control the agent using *screening and selection mechanisms*. This concerns with the appointment procedures and the signaling process to avoid adverse selection and to eliminate information asymmetries about abilities and preferences that exist between potential principals and agents. According to Article 214 (ex 158) EC, the possibility of selecting their preferred agents varies across the Member States and the Parliament. The latter is more likely to affect the nomination of the President rather than that of a single Commissioner. Commission members must comply with general requirements of competence and independence (Art. 213 [ex 157] EC), but these barely control their preferences. The Commission is effectively in office for five years because censure and dismissal are costly and scarcely credible sanctioning mechanisms.<sup>1</sup> Each Member State can only use, at the end of the term,

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<sup>1</sup> The Court will dismiss a Commissioner only if she no longer fulfills the conditions required for holding the post and in case of serious misconduct (Art. 216 [ex 160] EC). The Parliament has to approve a motion to censure the whole Commission (Art. 201 [ex 144] EC). The collective resignation of Commissioners in March 1999 shows that 1) the Council is unlikely to use Article 216 to refer Commissioners to the Court for misconduct, 2) the threat of parliamentary censure is credible only if the Commission (mis)behaves in such a way that the cost of lost credibility exceeds other costs for the Parliament and 3)

their reappointment power of one or two commissioners and (shared with the Parliament) of the President.

Third, principals can monitor and influence agent's behavior ex-post by establishing *monitoring and reporting requirements*. Union legislators have inserted similar requirements and provisions for policy assessment in the majority of primary and secondary legislation. In the legislation analyzed for this chapter, about 60 percent of the sampled acts require some sort of exchange of information between the Commission and other actors. The problem with reporting is that the agent is tempted to reveal information strategically so that his or her activity is seen under a favorable light by the principals. McCubbins and Schwartz (1984) point out that principals might want to offset this problem by supplementing reporting requirements with three *oversight mechanisms*. These are 'fire-alarms', institutional checks and 'police-patrols'. 'Fire-alarms' operate via the establishment of rules and procedures that enable third parties to monitor and redress administrative decisions. Institutional checks rely on third parties that are explicitly established by the principals (Kiewiet and McCubbins, 1991: 34). Pollack (1997: 116) observes that 'almost every EC institution besides the Commission plays a role in monitoring and checking the Commission's behavior'. These include the Court of Justice (Arts. 230-2 [ex 173-5] EC), the Court of Auditors (Art. 248 [ex 188c] EC) and the Ombudsman (EP decision, 9 March 1994). 'Fire-alarm' oversight can be enacted by natural and legal persons via both the Court (Arts. 230,241 [ex 173,184] EC) and the Ombudsman.

However, the majority of the Commission's acts are likely to be administratively sound. The great bulk of the Commission's legitimate areas of intervention has a regulatory character and financial considerations play a considerably lesser role. Decentralized control is likely to be biased in favor of resourceful groups; furthermore the Court

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the procedure has a very limited scope, it is similar to the presidential impeachment in the US Congress rather than to a parliamentary vote of no confidence.

has radically restricted the circumstances under which individuals can proceed against Union actions (Burley and Mattli, 1993: 62).

Facing an agency with a broad mandate and limited or ineffective control mechanisms, the Member States have to resort to a much more intrusive and costly oversight that directly focuses on the regulatory activity of the Commission. The next sections of the chapter focus on the more direct 'police-patrol' oversight that takes the form of comitology in the Union (Pollack, 1997: 114-6)

## Control procedures in the European Union

### *Origin and operation of comitology*

Control of the Commission's delegated activities by committees has been essentially carried out since the establishment of the Union. Initially, though, it was on a rather *ad-hoc* basis and generally predominant in the agricultural policy. The first price support policies and legislation of Union preference also established the first oversight committees in the form of a management committee procedure. As the areas of intervention of Union legislation expanded, so did the variety of control procedures (Bradley, 1992; Demmke et al., 1996; Vos, 1997). It was however the Single Market initiative that gave the impetus to the Council to reorganize the procedures.

Council Decision 87/373/EEC rationalized this system of control and specified four main types of committee procedures: advisory, management, regulatory and safeguard. The total number of distinct procedures amounts to seven since the latter three each have two variants. With two exceptions that we will see below, the control of the Commission's implementing legislation is two-tiered: the relevant committee oversees the act in question first, then it might refer it to the Council of Ministers. Committees are composed of permanent representatives of the Member States, usually officials from national technical ministries (Docksey and Williams, 1994: 121-5). They are chaired

by a senior Commission official who controls the agenda, submits the implementing measures for consideration and sets deadlines. The chairperson has no vote in the deliberation of the committee.

< TABLE 5.1 HERE >

The procedures can be arrayed along three dimensions with respect to the role that the Council plays in controlling the Commission's activities (see Table 5.1). These are 1) the decision rule in the committee to refer measures to the Council, 2) the timing of Council control and 3) the default condition if the Council does not act. This classification will be used in the following sections to develop an index of stringency of implementation control.

In the advisory committee procedure I, national experts issue an opinion before the Commission implements the measure. The Commission is requested to take the utmost account of such opinion but, if it chooses to disregard it, there is no referral to the Council. There are other ways the Member States use to influence the Commission's activity such as forcing a vote or requesting to have their minority position recorded. However, this procedure provides the Commission with the greatest autonomy and the Member States' influence over its decision-making powers is relatively limited. For this procedure only, the dimensions in Table 5.1 are with reference to the role of the committee.

In the following four procedures, national experts act as gatekeepers. In the management committee procedures IIa and IIb, the committee decides by qualified majority whether or not to submit the draft measure to the Council. In case of inaction or favorable opinion, the Commission may adopt the measure with immediate effect. If the committee decides to refer the measure to the Council, there are two procedural variants that differ on the timing of Council control. In variant a, the Council deliberates after the measure is applied, although the Commission may decide to defer



implementation for a maximum period of one month. In variant b, Council control takes place before adoption because the Commission must defer implementation for a maximum of three months. In both variants, if the Council does not act the default is the measure proposed by the Commission.

In the regulatory committee procedures IIIa and IIIb, the committee decides by qualified majority whether *not* to submit the implementing act to the Council. If such majority is not reached or the committee does not deliver an opinion, the measure is deferred and submitted to the Council. The two variants that follow differ with regard to the default condition. In variant a, if the Council does not act the proposed measure shall be adopted by the Commission. In variant b, inaction leads to a similar outcome only if a simple majority in the Council does not object. In such case, the status quo ante prevails.

Finally, the safeguard committee procedures IVa and IVb do not require the establishment of a committee of national experts. The Commission must notify directly the Council prior to the adoption of a safeguard measure and any Member State may refer the Commission's decision to the Council. The Council can revoke, modify or confirm the measure within a set time limit. Similarly to the regulatory procedures, the two variants differ with regard to the default condition. In variant a, if the Council does not act the proposed measure is adopted by the Commission. In variant b, inaction revokes the measure. Secondary legislation may amend these procedural requirements especially with respect to variant a. Frequently, enabling legislation provides for Council control to take place after the Commission adopts the implementing measure.

#### *Comitology and common policies: descriptive statistics*

As mentioned in chapter 2, there are few studies on the incidence of comitology in the Union policies. To my knowledge, the report by the Institut für Europäische Politik (1989), the book edited by Pedler and

Schaefer (1996) and an article by Dogan (1997) are the first quantitative works that have been carried out in this field. In this section I compare Dogan's results with those that emerge from my data set. This comparison is partial because the criteria of data selection differ,<sup>2</sup> nonetheless it provides interesting confirming and disconfirming evidence, at least on a descriptive basis. More rigorous inferential analysis will follow.

Dogan observes that comitology procedures have been used in about 20 percent of all Council legislation enacted since 1987 and points out a consistent longitudinal trend towards more control. He found out high incidence in company law, financial services, justice and home affairs, veterinary control, followed by customs, transport, health, food and development aid, while lower incidence in welfare, regional and competition policy, industrial adjustment, education and employment, taxation and procurement.

Figure 5.1 shows the incidence of comitology procedures in the different common policies in non-amending secondary legislation adopted since 1987.

<FIGURE 5.1 HERE>

More than 30 percent of this legislation has some sort of procedural control, lending some credit to the thesis of increasing use of comitology. In some policy areas there are too few new legislative acts, thus making interpretation inadvisable.<sup>3</sup> By contrast, in four areas more than 50 percent of new legislation has comitology procedures. These are social policy, environment, approximation of laws and transport. Further, these areas also show a higher incidence of more restrictive procedures, 100, 60, 57 and 79 percent respectively of all procedures are of the most restrictive

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<sup>2</sup> Dogan's data set includes all legislation enacted from 1987 until 1995 (4601 acts), see appendix for my data set.

<sup>3</sup> These are areas where less than 20 new acts have been adopted, that is competition, tax provisions, economic policy, euro networks, cohesion and development.

types (i.e. regulatory and safeguard). At least for non-amending legislation, this seems to disconfirm Dogan's (1997: 41) conclusion that high level of comitology is associated with low levels of restrictive comitology. In effect, in areas where the incidence of control is medium (agriculture and free movement) or low (commercial policy and customs unions), the percentage of restrictive procedures are also relatively low (28, 50, 33 and 30 percent respectively). The fact that Dogan focuses on longitudinal trends probably explains this discrepancy. However, the sectoral patterns that he has identified are confirmed, with social policy and customs union the only exceptions probably due to the different classifications used. Environment, approximation of laws, transport, agriculture and free movement are the areas where committee control is used more extensively.

#### **Procedural control of the Commission: hypothesis and independent variables**

##### *The determinants of control*

McCubbins and Page (1987; see also McCubbins, 1985) formulate two general factors that explain the establishment of control procedures, namely uncertainty and level of conflict. Uncertainty affects the distribution of information at the expenses of legislators who find it difficult to discern the optimum policy actions and, probably, also their ultimate interests. Uncertainty increases the need for information and also the cost to retrieve and process it. In these circumstances the legislators would prefer to delegate regulatory choices and instruments to the agent, with the attached information costs, and 'sit back in an oversight role awaiting clarification of the issue' (McCubbins and Page, 1987: 417). The procedural requirements then become more restrictive for two reasons. First, the need for legislative control increases as scope and instruments delegated to the agent broaden. Second, the political risks attached to different regulatory alternatives increase with uncertainty. It is less clear

which policy strategy is the most appropriate and the preservation of the status quo becomes relatively more important. Thus, the legislators establish more stringent procedures to make this choice more difficult.

Increased conflict among legislators leads also to more confining procedures. McCubbins and Page's line of reasoning is as follows. Conflict makes it harder for a decisive coalition of legislators to narrow down the range of policy making functions to be delegated to the agent because the exclusion of some issues may lead to the break down of the coalition. Controversial aspects about implementation are hence deferred after the writing of the legislation and the agent's mandate remains rather large. There is then incentive to control agent's behavior ex-post. Further, the political risks of taking alternative decisions increase with the level of conflict, therefore generating more need to direct the agent through procedural requirements.

To sum up, McCubbins and Page emphasize how implementation procedures 1) provide information to legislators in case of policy uncertainty and 2) control agent's behavior when conflict among legislators produces a large mandate.

### *Operationalization*

*Uncertainty.* The operationalization of uncertainty is the same as in chapter 4. A legislator is uncertain about an optimum policy action especially when she deals with a very complex issue. Or, alternatively, the complexity increases legislator's uncertainty about the policy that best serves her interests. Uncertainty and complexity are, in turn, related to specific issues within a policy rather than to the policy as a whole. Hence, they are operationalized using the word count of the specific act of secondary legislation. We should expect an increase in the length of the legal text to increase the likelihood of having some sort of procedural control as well as to increase the stringency of control.

*Level of conflict.* Of the three institutions involved in the legislative process of the Union, one would like to measure the level of conflict within the most powerful one, the Council. An appropriate operationalization could have been the number of amendments proposed and rejected by the Member States. Rejection is a sign of a conflict that cannot be accommodated within the Council. Unfortunately, the secrecy surrounding the activity of this institution severely limits data availability. Press releases or insider views provide more information than the Official Journal. However, these data are unsystematic and inadequate for quantitative analysis. Instead, it is possible to quantify the level of conflict among institutions.

I have used the number of amendments that the Council approves over the Commission's proposals as a measure of the level of conflict between the Council and the Commission.<sup>4</sup> In formulating their hypotheses, McCubbins and Page disregard the role and the preferences of the agent because of the flexibility with which American legislators can establish and dismantle agencies and because the latter have no legislative role. Since the EC pillar of the European Union confers to the agent (i.e. the Commission) the monopoly of initiation power, this inter-institutional dimension of conflict has to be considered. Further, recent works have shown that conflict between the legislative and the executive branch of government increases the political control of the agency (Epstein and O'Halloran, 1996; Huber et al., 1998; Lohmann and O'Halloran, 1994).

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<sup>4</sup> The number of adopted amendments has been computed by comparing the final act published in the Official Journal with the Commission's initial or revised proposal. Parliamentary amendments that have been adopted by the Council have not been included; the role of the Parliament will be discussed in more details below. Council amendments that have been adopted in revised proposals have been included. Amendments can be classified into four categories: 1) spelling or grammar, 2) substantive, 3) related to policy-making functions, and 4) related to procedural requirements. Substantive amendments concern the change of technical details such as the number of tons in a tariff quota or the selection criteria for the structural funds. The third type of amendments concerns the delegation of policy-making functions to the Commission (e.g. provision of information or regulation), while the last is about the establishment of, for example, control procedures. I have disregarded the first type of

The operationalization is based on the assumption that the Commission correctly anticipates states' preferences but it will not include in the act provisions of which it disapproves. It will be the Council's turn either to directly insert amendments or to demand amendments to be inserted in a revised proposal. The more conflicting the policy preferences between the pivotal Member State and the Commission, the larger the number of amendments the state will insert in the Commission's proposal. An increase of this number, as a measure of increased conflict, should increase the likelihood and stringency of control. There are on average two Council amendments per act in the sampled legislation, but the variance (twelve) is relatively large. This is because the Council has introduced more than ten amendments in a few cases.

The level of conflict between the Parliament on the one side and the Commission and the Council on the other is measured by the number of rejected parliamentary amendments. There is no need to assume the Parliament's perfect anticipation of other institutions' preferences for this variable. However, even in case of perfect information, failed amendments might be made for purposes of position taking and to signal disagreement (Tsebelis and Kalandrakis, 1999). The relevance of this variable has been tested on a subset of cases where the Treaty provides for either a parliamentary opinion or a vote. About 45 percent of the sampled legislation fall under this category. The more conflicting the policy preferences between the Parliament, the Commission and the Council, the larger the number of parliamentary amendments that the Commission and the Council will reject, the more likely the legislation will contain control procedures. Note that this implies that the Parliament should also be interested in some form of procedural control especially if controversial aspects of the legislation have been deferred and remain at the Commission's discretion. This however does not mean that legislators

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amendments to compute this variable. As for the other types, they are qualitatively different but relevant to measure the level of conflict.

have the same preferences on the type of procedural control. Empirical studies emphasize the strong opposition of the Parliament to restrictive control procedures (Bradley, 1997; Dogan, 1997), probably because it is not involved in such committees. Thus, it is not appropriate to predict a specific direction of effect for a high level of stringency of control.<sup>5</sup> On average, less than two parliamentary amendments per act have been rejected in the sampled legislation, but the variance (fourteen) is even larger than that of Council amendments.

*Legislative procedures.* A third categorical variable, namely legislative procedures, has also been used in the analysis. This is coded as a dummy variable using qualified majority as the reference category, while unanimity and the procedures where there is a parliamentary vote (i.e. cooperation and co-decision) are the comparing categories. Although Dogan (1997) observes that there is a positive correlation between control procedures and qualified majority, my contention is that we should expect unanimity to be positively related to control and control stringency. This is because, following McCubbins and Page's argument, unanimity is more related to conflict than qualified majority, for two reasons. First, the permanence of unanimity in the Treaty is a sign of conflict among the Member States about the substantive content of common policies.<sup>6</sup> In the Single European Act for example, the Member States switched from unanimity to qualified majority in those less controversial policy areas where they expected to benefit from future substantive decisions. Examples include Articles 16.3 and 16.4 SEA amending Articles 49 (ex 59) and 70.1 (now repealed) EC. These articles introduced qualified majority for the free provision of services and of establishment of third country

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<sup>5</sup> The Parliament might want control if a rejected substantive amendment gives too much discretion to the Commission but a rejected control amendment is certainly a sign that the Parliament wants less control. However, this is less of a problem in our sample since only 1 percent of the rejected parliamentary amendments is about control procedures.

<sup>6</sup> Note that *substantive* policy differences generate agreement between states about the permanence of unanimity or, if an act is approved, limited delegation and procedural control.

nationals and for the liberalization of capital movements. Conversely, unanimity still remains in contentious areas such as social security (Art. 42 [ex 51] EC), harmonization of tax provisions (Art. 93 [ex 99] EC) and the general rules of the Structural Funds (Art. 161 [ex 130d] EC). Second, the preferences of the pivotal Member State under unanimity are, *on average*, more distant from the preferences of the Commission and other legislators than in case of qualified majority (cf. Crombez, 1996: 221). This means that, *on average*, we should expect more conflict from an act adopted under unanimity than from one adopted under qualified majority. Coalitions formed under qualified majority are generally more cohesive so the adopted legislation shows lower levels of conflict. Even in contentious areas such as agriculture, regulations setting guidance prices are on average less controversial than those reforming the Structural Funds. To conclude, the amendment variables described earlier measure the intensity of conflict at the level of the specific policy instrument, while this procedural variable measures the intensity of conflict at the level of the policy area and as result of decision rules.

When the Parliament is involved in a legislative procedure, we cannot predict, in principle, a clear direction of its impact on control because it depends on its preferences *vis-à-vis* the other Union institutions and on whether the resources provided by the procedures allow it to affect the policy outcome. The issue will be dealt in greater details in the section below.

Alternative methods of operationalization have also been used<sup>7</sup> but those selected have a relatively clear theoretical basis, allow analytical

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<sup>7</sup> These include number of the Commission's proposals, number of changes and of pages in the Commission's proposals, number of months passed between the initial proposal and the publication of the act in the Official Journal, number of pages of parliamentary amendments, number of specific comments and of pages in European and Social Committee and Committee of the Regions opinions. Some these variables have been dropped because theoretically less relevant (e.g. ESC opinions), other because they do not allow a clear analytical separation between conflict and uncertainty (e.g. longer time of adoption may be due either to the complexity of the measure or to the conflict between



separation between level of conflict and uncertainty and minimize, though insufficiently, the problem of collinearity.

### Analysis of results

The hypothesis is as follows

*Hypothesis 4: The likelihood of establishing control procedures and the stringency of control<sup>8</sup> are positively correlated with 1) the uncertainty facing Union legislators about the optimum policy actions, 2) the level of conflict among legislators and 3) the need for unanimous agreement in the Council of Ministers.*

It has been tested on a stratified sample of non-amending secondary legislation passed between the first of July 1987 and the first of October 1998 (see appendix for more details). The legislation is non-amending for the similar reasons explained in chapter 4. Here too we need to control for the position of the status quo ante. The impact of conflict and uncertainty on the odds of procedural control should be measured for a given level of control ex-ante. Thus, there is no control ex-ante if we select only the first legislative act in a policy issue.

I employ two complementary strategies to test the hypothesis. The first consists of running a series of binomial logistic regressions to compute the odds that a specific procedure is introduced in an act, using as baseline the cases where there are no control procedures. The second develops an index of stringency of implementation control from the committee procedures and employs cumulative logits to estimate a general model of procedural control of the Commission.

Although I consider the selected measures of conflict and uncertainty the most appropriate to test the hypotheses, problems of collinearity are still present. There seems to be a positive association between uncertainty and

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legislators), and others (e.g. number of proposals, number of pages in opinions) because of strong multicollinearity.

the level of conflict among legislators.<sup>9</sup> A way to deal with this problem is to estimate models that include different independent variables. Table 5.2 shows the coefficients in a series of binomial regressions in two models. The first focuses mainly on the level of conflict, operationalized with legislative procedures and number of Council amendments. The second retains the procedural variable and substitutes Council amendments with uncertainty.

< TABLE 5.2 HERE >

Interpreting the models with the advisory procedure is inadvisable. The improvement over the model fit with only the constant term is not significant. The models with the safeguard procedure should be interpreted with caution because the introduction of the procedural variable does not significantly increase the fit (the Goodness-of-Fit Hosmer-Lemeshow statistic provides similar results). There are two reasons for these results. First, there are few cases with safeguard and advisory procedures in the sample. Second, since Member States exercise very limited control through the advisory procedure, independent variables have less explanatory power in this case. The models perform better for the management and regulatory procedures. The variables significantly increase the model fit and more than 90 percent of cases are correctly predicted.

Level of conflict, operationalized as number of Council amendments, is consistently the most significant determinant in affecting the probability of some kind of procedural control. When the number of Council amendments increases from zero to two, the odds of procedural control

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<sup>8</sup> Stringency of control is operationalized and analyzed in the section below.

<sup>9</sup> Pearson's correlation coefficient between uncertainty and Council amendments is .67 (significant at 5 percent). It drops to .45, but it is still significant, if we eliminate five extreme cases. A similar result applies to the other models discussed in the chapter. Conversely, plots and casewise listing of residuals have shown no evidence of heteroscedasticity.

increases, on average, by a factor of two (*ceteris paribus*). That is, the probability of procedural control increases by more than two percent (more than four in case of the regulatory procedure). If we move along the whole spectrum of values that this variable takes, it is almost certain that we will have some sort of procedural control. With an increase from zero to 16, we have an increase of a hefty 93 percent in the probability of having a regulatory committee, 84 percent a safeguard and 66 percent a management committee.<sup>10</sup>

The model incorporating uncertainty performs well; though somewhat less convincingly, at least in term of statistical significance. When the length of the act increases by five hundred words (say, from an act setting a customs tariff to one administering a quota), the odds of procedural control increases by a factor of three (*ceteris paribus*). The probability that there will be some sort of procedural control increases by more than three percent (almost five in case of the regulatory procedure). If there is a need to adopt complex environmental legislation (say, with an increase of two thousand words), the probability of having control to no control increases by 22 percent for the management committee, 66 for regulatory and 75 for safeguard.<sup>11</sup>

Finally, at least for the management procedure and, partially, for the regulatory one, the proposition that unanimity leads to more control seems validated. *Ceteris paribus*, the use of unanimity compared to qualified majority increases by more than 40 percent the chance of procedural control in the form of a management committee (more than twenty percent for regulatory).<sup>12</sup> More difficult to interpret is the result

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<sup>10</sup> These are estimated probabilities using as baseline no control, that is they reflect the odds as the ratio of probability of the existence of the specific type of committee control to the probability that there will be no control. Moving from 0 to 16, the odds are 61 for management, 665 for regulatory and 290 for safeguard.

<sup>11</sup> With an increase of two thousand words, the odds are 11 for management, 81 for regulatory and 330 for safeguard.

<sup>12</sup> This result is also confirmed if we use a dichotomous variable for qualified majority and unanimity, leaving aside the role of the Parliament. For the management committee,

from the second variable of legislative procedures. Although only for the regulatory committee, the presence of a parliamentary vote increases the probability of this type of control by more than 35 compared to qualified majority (*ceteris paribus*). This result seems to be at odds with the empirical evidence on the control preferences of the Parliament (Bradley, 1992, 1997; Dogan, 1997). However, this is not necessarily the case. There is evidence demonstrating that the relation between control and parliamentary vote is spurious because this institution votes on legislation where the average word count and number of Council amendments are more than double the respective averages, in the subset of cases used for this regression.<sup>13</sup>

In effect, the hypothesis is validated if we look at the subset of cases where the Treaty provides for a parliamentary opinion or vote. Table 5.3 shows the coefficients of the binomial regressions for the management and regulatory committees. Here, the number of rejected parliamentary amendments substitutes, as a measure of the level of conflict, Council amendments. While the procedural variable is a dummy taking 1 for unanimity and 0 for qualified majority.

<TABLE 5.3 HERE>

The model performs well too. The log-likelihood and the goodness-of-fit ratios show significant improvement of the model fit. Further, 79 and 93 percent of the cases are correctly predicted.

At least for the management committee, unanimity still remains a relevant determinant of control. *Ceteris paribus*, it increases the chance of the

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the coefficients for unanimity are 2.9491 and 3.0428 for models 1 and 2 respectively. Both are significant at 5 percent level.

<sup>13</sup> The correlation coefficients between Parliament and level of conflict and between Parliament and uncertainty are .35 and .30, both significant at 1 percent. To confirm this spurious relation, Dogan (1997) observes that 50 percent of all legislation enacted under co-operation and co-decision have committee control but the Parliament still objects to it. Same considerations apply for the analysis of the models in Table 5.4.

establishment of a management committee, compared to qualified majority, by more than 45 percent. The variable measuring the level of conflict between the Parliament and the other Union institutions performs well, especially in case of the regulatory committee. *Ceteris paribus*, an increase of two rejected parliamentary amendments increases the probability of management control by 2 percent and the probability of regulatory control by 14 percent. An increase across the whole range of values for this variable (i.e. from zero to 20) improves the chance of management and regulatory control by 77 and 85 percent respectively.

To conclude, the relation between conflict and control is confirmed. Any type of operationalization we have used (procedural, Council and Parliament amendments) substantially increases the chance of some sort of procedural control in the majority of models studied. Uncertainty also has a relevant impact on control, though somewhat less convincingly. As a matter of fact, if we substitute uncertainty for Parliament conflict in Table 5.3, this variable is statistically relevant only for the management committee. Thus, the constraining function of comitology is at least as important as the informational one.

So far we used the cases where there is no control as the baseline category and formulated statements in comparison with this category. We cannot say, for instance, that an increase of conflict and uncertainty leads to an increase in the stringency of control. However, since the dependent variable can be operationalized as an ordinal index it is possible to test whether there is a monotonically positive relation between control stringency on the one side and conflict and uncertainty on the other.

### **Stringency of procedural control: operationalization and results**

#### *Operationalization*

An index of stringency of implementation control has been created according to two criteria of diminishing importance: 1) rank of political

actors exercising control and 2) decision rule for referral to the Council.<sup>14</sup> First, the higher the rank of the political actor exercising control, the more constrained is the Commission. An implementation measure that has to be approved by the Council, without the intercession of a committee of national experts, becomes politically more visible. It is more likely to be put under scrutiny by the actors involved. Consequently the Commission is more careful in exercising its delegated powers. In a sense, I assume that visibility decreases the Commission's autonomy in implementation. It is for this reason that I assign to the advisory committee procedure a higher value than that in the case of no control, reserving the highest value for the safeguard committee procedure. For the latter case, this can also be justified by the different nature of the game. The traditional gatekeeping role played by the national experts is absent in safeguard procedures. Steunenberg (1996) has shown that the discretion enjoyed by the agent is largest when a gatekeeper is involved in the game, as opposed to when only veto players are present.

The second criterion to generate the stringency index is the decision rule used in the committee to refer the measure to the Council (see second column in Table 5.1). The more demanding this rule, the less likely a measure is referred to the Council, and the less likely is to become visible and to be scrutinized strictly by ministers. For this reason, control by the management committee is less stringent than control by the regulatory committee because in the former a qualified majority is needed for referral to the Council, while in the latter, a blocking minority suffices. Similarly, there is no possibility of referral in the advisory committee, so very limited procedural control is granted to other actors. The advisory committee procedure is the least strict.

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<sup>14</sup> A more sophisticated index that differentiates among procedural variants using the other two criteria (i.e. timing of control and default condition in case of Council inaction, the last two columns in Table 5.1) has also been used. I have kept the simpler version because it produces similar results.

Following these criteria, the index takes the value of one if a legislative act contains no implementation procedures, two if there is an advisory committee procedure, three, four and five for the management, regulatory and safeguard procedures respectively. The degree of autonomy enjoyed by the Commission is inversely related to this index.

### *Methodology and results*

As suggested by Agresti (1990), I have employed a cumulative logit model that uses ordered dependent variables (control stringency) and forms logits of cumulative probabilities (see appendix for more details). Table 5.4 illustrates the results for the three models including a) the level of conflict with the Council, b) uncertainty and c) the level of conflict with the Parliament (in the subset of cases where there is a parliamentary vote or opinion). The models have been separated for problems of collinearity. The coefficients determine the cumulative probability of increasing stringency of procedural control in the  $J - 1$  categories of the index ( $J$  is number of ordered categories).

< TABLE 5.4 HERE >

The models perform well in terms of goodness-of-fit, likelihood ratio and percentage of cases correctly predicted (between 84 and 90 percent). Only the last step of the models, which measure the cumulative probability of safeguard control over the other types of control procedure, does not significantly improve the model fit. This is due to the limited number of cases in the sample and to the fact that safeguard procedures are predominantly used in specific circumstances, such as market disruptions and health and safety risks, that may make them independent from conflict and uncertainty.

Step 1 of the models predicts the formation of any control committee, disregarding the type of control. I will interpret this step conjointly with

the others because there is not much difference. The most important discrepancy between these models and the previous ones is that unanimity loses a certain degree of statistical significance for the benefit of conflict and uncertainty, which are significant at 1 percent confidence level in almost all steps. Substantively, unanimity still tends to increase, *ceteris paribus*, the chance of increasing control by more than 40 percent but this is limited to lower degrees of control stringency. At step 3 of the models, this value is insignificant.

The level of conflict, in the form of Council amendments, and uncertainty perform statistically and substantively better than in Table 5.2, especially for medium to low variations. *Ceteris paribus*, an increase of two Council amendments increases the chance of more confining control by more than 7 percent (more than 4 in step 3) and an increase of five hundred words augments it by 8 percent (more than 6 in step 3). Two rejected parliamentary amendments lead to an almost 15 percent increase in the probability of stricter control (more than 6 in step 3). Given the Parliament's aversion to very restrictive procedures, the lower significance of the coefficient at step 3 can be a sign that the acceptance of parliamentary amendments is traded for stricter control.

A way to interpret these results more generally could be as follows. Unanimity increases the chance of some sort of procedural control. Thus, it more likely determines *whether* there will be control. The level of conflict and uncertainty are more important determinants of *how much* control there should be, since they show a clearer monotonically positive relation with stringency of control. Taken separately, the impact of conflict and uncertainty is confirmed. The likelihood that a restrictive committee is preferred to a permissive one increases as either uncertainty of, or the level of conflict among, Union legislators deepens. To the extent that unanimity measures conflict, the stringency of procedural control is positively correlated to the level of conflict *and* uncertainty. Again, this



conclusion reinforces the control function of comitology vis-à-vis the mere informational one.

#### **A final test: ex-ante discretion and procedural control**

The instruments of political control of the bureaucracy are numerous. They include political appointments, changing budgets, ex-ante statutory control and ex-post monitoring. They vary in term of efficacy and cost. Little we know however about the interaction between these tools and how different institutional contexts affect the choice of instruments of control.<sup>15</sup>

The literature does however suggest that ex-ante statutory constraint and ex-post control are substitutes. The assertion emerges from the works of McCubbins and Page, but it has been better formalised by Bawn (1997; see also Epstein and O'Halloran, 1994). Whatever the institutional and political factors that induce politicians to choose different levels of statutory control and ex-post oversight, the two choices are related. For Bawn (1997: 112), 'an increase in any exogenous factor that increases marginal benefits of oversight or a decrease in any exogenous factor that decreases marginal costs of oversight will lead to a lower ideal level of statutory control' and viceversa. I (2000) suggest that the institutional framework of the Union leads to extensive ex-ante discretion and stringent control procedures because of the monopoly power of legislative initiation of the Commission.

To sum up, this section tests the following hypothesis:

*Hypothesis 5: Ex-ante statutory discretion is positively correlated with the stringency of procedural control.*

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<sup>15</sup> Exceptions include Wood and Waterman (1991) that compared the efficacy of the different instruments and Spulber and Besanko (1992) that formally analyse the interaction between appointment, statutory constraints and oversight. However, both focus on the American institutional system. The first attempts to extend the analysis outside the US are by Huber and Shipan (forthcoming) and by Huber and Shipan and Pfahler (1998).

### *Analysis of results*

We use the operationalization of stringency of control developed in this chapter and that of ex-ante statutory discretion developed in chapter 4. I have run both Spearman and Kendall bootstrapped rank correlation tests<sup>16</sup> and results are shown in Table 5.5.

They confirm the positive correlation between the degree of ex-ante executive discretion and the severity of procedural control. Both statistics convincingly reject the null hypothesis of no correlation. The Kendall S has no substantive meaning, while the Spearman test shows a strong increasing monotonic relation between discretion and control. The mean bootstrapped value of  $r_s$  is 0.99, in case of perfect relation  $r_s$  equals one.

< TABLE 5.5 HERE >

To conclude, the substitution effect suggested by Bawn is confirmed. When the Member States decide to delegate extensive statutory autonomy to the Commission, they also establish rather confining procedures of oversight.

### **Conclusion**

As reviewed in chapter 2, the majority of the studies on the subject supports the thesis that comitology committees are established to reduce the uncertainty facing Union legislators. This chapter partially confirms it. Committees provide information with the production of detailed rules and the coordination of equilibrium selection. They essentially perform an efficiency-enhancing role by reducing the many information asymmetries that legislators encounter when drafting legislation.

However, this seems to be a prevailing view in some cases. In its report on the comitology system, the Institut für Europäische Politik observes that 'Commission officials generally do not think that their committee

significantly reduced the Commission's freedom, and even less that it has been set up to assure the member states' control' (quoted from Majone, 1996: 73). Joerges and Neyer (1997a: 279) add that 'the agenda of committees is dominated by the Commission. Its room for maneuver is by no means substantially constrained by the shadow of majority voting which the Council included in its legislative acts'. If committees are operationally innocuous, why is it that more conflictual policy issues are invariably linked to their establishment? Although we cannot incorporate the level of conflict based on amendments and uncertainty in the same model, to the extent that unanimity measures conflict we have certainly to reject the hypothesis that they perform only an informational role. Moreover, the level of conflict seems to have a clearer impact than uncertainty on the likelihood of establishing some sort of procedural control. Thus, these committees are also established to structurally induce specific policy outcomes and, as a result, to constrain the Commission's executive discretion. The few referrals are probably a sign of the Commission's ability to anticipate the Member States' preferences. Further, the preference of the Union institutions towards these procedures is not only the result of the general inter-institutional balance, but also of the substantive issue-specific conflict among legislators.

These results have other three broader implications. First, the general factors that affect the control of bureaucrats by legislators do not differ across political systems. The conflict of interest between the Council and the Commission (i.e. Council amendments) increases the likelihood of establishing control procedures in the Union. Similarly, Epstein and O'Halloran (1996; see also Lohmann and O'Halloran, 1994) show how the US Congress increases administrative control of the executive branch during times of divided government. An interesting area of future research is to study how the institutional framework of the Union affects the choice of instruments for controlling the bureaucracy (e.g. ex-ante

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<sup>16</sup> See appendix to chapter 4 for details on bootstrapping.

statutory control vs. ex-post oversight, see Bawn, 1997; Franchino, 2000; Huber et al., 1998) and the trade-off between political control and informational gains of delegation (Bawn, 1995).

Second, for European integration scholars, this study suggests that, if the Member States are disadvantaged by informational asymmetries or bureaucratic shirking, they show significant inventiveness in devising institutions that provide information and control the Commission. Although this chapter does not address the effectiveness of these committees, states seem well equipped to deal with uncertainty and unforeseen circumstances and to control the execution of Union policies, particularly where the national representatives are perfect agents of their governments.

Finally, under which conditions should we expect greater supranational bureaucratic input (or drift) into the process of integration? Combining the results of chapter 4 and 5, the use of qualified majority seems to be the most favourable factor, especially if only the Commission is in charge of implementation, because it increases ex-ante statutory discretion and reduces the likelihood of procedural control. Policy uncertainty increases both discretion and the likelihood of control. Preference convergence decreases the likelihood of control but does not affect discretion. However, the fact that the stringency of control is associated with broader discretion invites a note of caution about the existence of a Commission-led bureaucratic drift.

## APPENDIX

### Population and sample characteristics

The population extends that of chapter 4 to all non-amending secondary legislation based on a Treaty article and adopted between July 1987 and September 1998 (1372 regulations and directives). The sample includes 1 case with the advisory procedure, 7 with management, 18 with regulatory and 3 with safeguard (a Z-test rejects the hypothesis of a significant difference between sample and population proportions). See the appendix in chapter 4 for comments on sources and sampling strategy.

### The cumulative logit model

The cumulative logit model is a special case of the multinomial logit model. It has been used because stringency of control is an ordinal variable. The model allows us to incorporate the ordering of this variable in the construction of the logits, which are formed by cumulative probabilities. From Agresti (1990: 321), the cumulative logits are defined as

$$L_j = \log \left( \frac{\pi_1(x) + \dots + \pi_j(x)}{\pi_{j+1}(x) + \dots + \pi_J(x)} \right) \quad \text{for } j = 1, \dots, J-1,$$

where  $J$  is the number of categories of the ordinal variable (5 in our case) and  $\pi_j$  is the probability at value  $x$  of the independent variables that a case is from the  $j$ th category. Logits of conditional probabilities are generated computing  $J-1$  ordinary binomial regressions, re-coding cases for increasing values of the ordinal index. The likelihood-ratio and goodness-of-fit of the model has been computed by summing up the ratios of each binomial regression. This separate fitting of the model can be less efficient than simultaneous fitting, however Begg and Gray (1984) observe that inefficiency is reduced if there is a natural baseline category or if the number of cases in such category is large. The cumulative logit starts with no control as the baseline category, which fits both conditions. Thus the inefficiency of the estimators is limited.

Alternative methods to incorporate ordinal response variables are the continuation-ratio and adjacent-categories logit models (Agresti, 1990: 318-21). Although their results are similar, they perform slightly worse than the cumulative logit because, while cumulative logits uses all J categories, these models exclude, at a certain point, the baseline or other categories. An alternative functional form to the logit, multinomial probit, requires the assumption of a normal distribution of the cumulative density function, which in our case is not warranted (Lawrence and Arshadi, 1995; Schonhardt-Bailey, 1998). Finally, the assumption of multinomial logit models about the independence of irrelevant alternatives<sup>17</sup> is appropriate in cumulative logit models for ordinal responses because the logistic regressions estimate the probability of choice between more or less strictness of control, which is independent from other alternatives.

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<sup>17</sup> The independence of irrelevant alternatives assumes that each alternative is independent from alternatives rather than the reference category, otherwise we might risk to over- or underestimate probabilities (McFadden, 1984).

**Table 5.1. Dimensions of Council control in the comitology procedures**

<i>Dimensions Procedures</i>	<i>Referral rule</i>	<i>Timing of control</i>	<i>Default condition</i>
<i>Advisory</i>	No referral, committee opinion only	Before Commission's measure <sup>a</sup>	Commission's measure <sup>a</sup>
<i>Management variant a</i>	Qualified majority	After Commission's measure <sup>b</sup>	Commission's measure
<i>Management variant b</i>		Before Commission's measure	
<i>Regulatory variant a</i>	Blocking minority	Before Commission's measure	Commission's measure
<i>Regulatory variant b</i>			Commission's measure (simple majority can reinstate status quo ante)
<i>Safeguard variant a</i>	No committee, always referral	Before Commission's measure <sup>c</sup>	Commission's measure
<i>Safeguard variant b</i>			Status quo ante

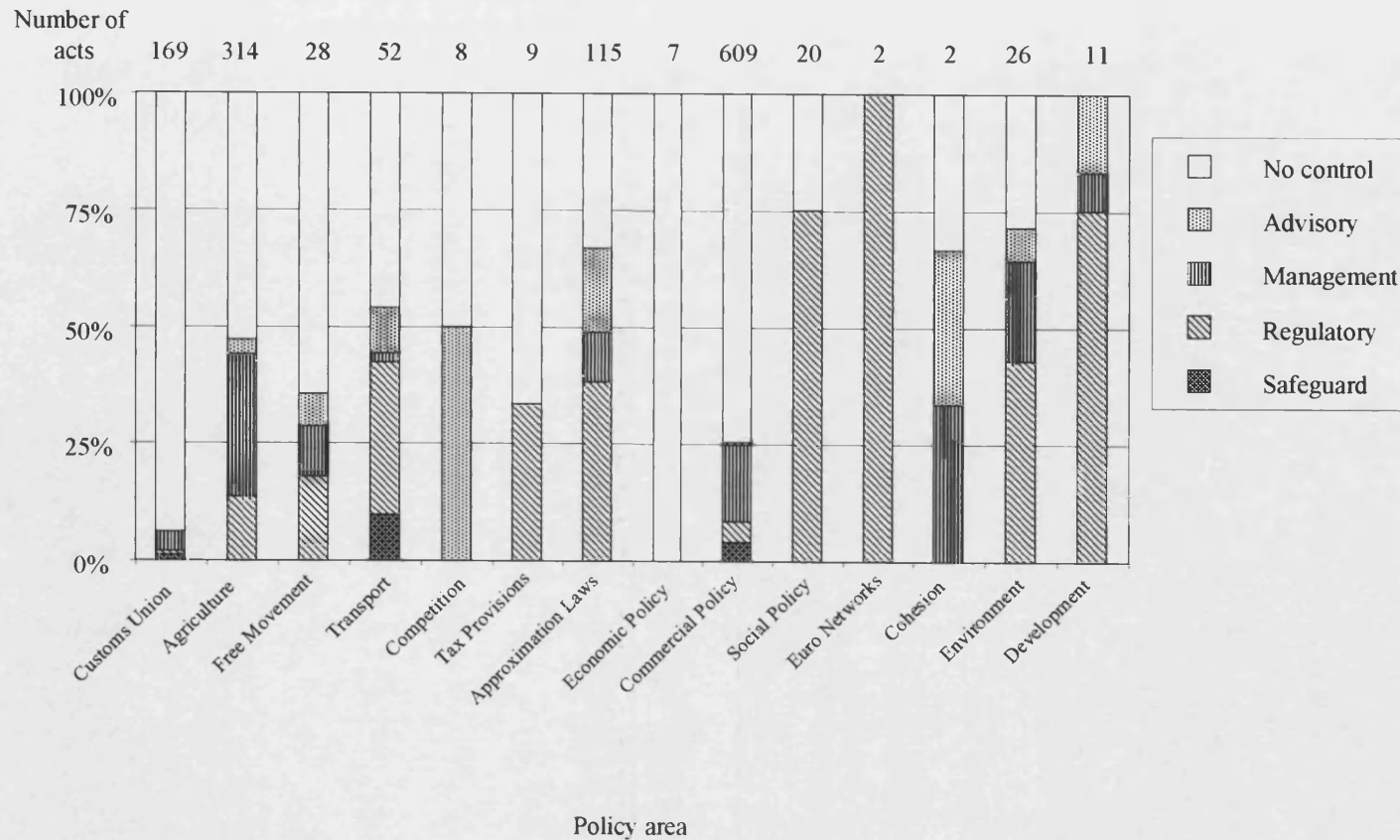
*Notes:* The Council adopts, amends or rejects the Commission's measure by qualified majority, rejection is by simple majority in regulatory variant b.

<sup>a</sup> Timing of committee control and default in case of committee inaction

<sup>b</sup> The Commission may defer the application of a measure until the Council decides.

<sup>c</sup> For safeguard variant a, secondary legislation may specify control to take place after adoption

**Figure 5.1.** Incidence of comitology procedures in non-amending legislation, 1987-98



Notes: The total number of acts is 1372. Less than 3 percent (i.e. 41 acts) has two types of procedural control. Both have been accounted for, so this figure slightly overestimates the incidence of control.  
 Source: CELEX database and Official Journal of the European Communities.



**Table 5.2. Binomial logistic regressions for the comitology procedures and for the two hypotheses**

Variables	Advisory		Management		Regulatory		Safeguard	
	Model 1	Model 2	Model 1	Model 2	Model 1	Model 2	Model 1	Model 2
Constant	-4.5196	-4.4456	-3.3018	-3.4850	-3.2814	-3.6423	-3.8209	-4.6373
Legislative procedure								
Unanimity	-5.2997 (-.09)	-4.3037 (-.07)	3.1572 <sup>b</sup> (2.32)	3.2458 <sup>b</sup> (2.35)	2.0530 (1.50)	2.5105 <sup>c</sup> (1.87)	-6.4447 (-.06)	-6.7317 (-.07)
Parliament	- <sup>d</sup>	- <sup>d</sup>	1.7192 (1.25)	1.7084 (1.25)	2.8988 <sup>a</sup> (2.98)	3.2239 <sup>a</sup> (3.34)	-6.9879 (.10)	-7.8351 (-.12)
Conflict	.5389 (.70)	-	.2566 <sup>b</sup> (2.11)	-	.4062 <sup>a</sup> (3.48)	-	.3543 <sup>b</sup> (2.32)	-
Uncertainty	-	.0007 (.21)	-	.0012 <sup>c</sup> (2.00)	-	.0022 <sup>a</sup> (3.14)	-	.0029 <sup>c</sup> (1.93)
Number of cases <sup>e</sup>	72	72	78	78	89	89	74	74
Degrees of freedom	69	69	75	75	86	86	71	71
Log-likelihood ratio	10.27	10.32	34.26	34.88	44.56	47.18	20.01	21.18
Goodness-of-fit	54.56	64.45	72.62	82.28	91.71	98.06	71.51	73.66
% Correctly predicted	98.51	98.51	93.53	93.59	92.13	92.13	97.30	95.95

Notes: t-ratios in brackets

<sup>a</sup> p ≤ .01, two-tailed test

<sup>b</sup> p ≤ .05, two-tailed test

<sup>c</sup> p ≤ .10, two-tailed test

<sup>d</sup> There are no cases in the sample where the Parliament is involved

<sup>e</sup> This value sums up the number of cases without control and of those with the relevant control procedure (see Appendix)

**Table 5.3.** Binomial logistic regressions with parliamentary conflict for the management and regulatory procedures

Variables	Management	Regulatory
Constant	-3.3622	-1.7500
Legislative procedure		
Unanimity	3.3757 <sup>b</sup> (2.02)	1.6290 (1.12)
Conflict with Parliament	.2393 <sup>c</sup> (1.86)	.4113 <sup>a</sup> (2.69)
Number of cases	27	38
Degrees of freedom	24	35
Log-likelihood ratio	12.69	35.34
Goodness-of-fit	32.65	39.16
% Correctly predicted	92.59	78.95

*Notes:*

Subset of 44 cases where parliamentary opinion or vote is requested  
(6 with management, 17 with regulatory control)

t-ratios in brackets

<sup>a</sup>  $p \leq .01$ , two-tailed test

<sup>b</sup>  $p \leq .05$ , two-tailed test

<sup>c</sup>  $p \leq .10$ , two-tailed test

**Table 5.4. Cumulative logit model of procedural control stringency**

Variables	Increasing stringency of ex post control <sup>d</sup>					
	(1)	(2)	(3)	(4)		
<i>Model a</i>						
Constant	-2.2048	-2.3392	-2.7920	-3.7132		
Legislative procedure					Number of cases	100
Unanimity	2.2512 <sup>c</sup> (1.87)	2.3481 <sup>c</sup> (1.95)	1.1600 (1.18)	-7.4547 (-11)	Degrees of freedom	388
Parliament	2.3866 <sup>a</sup> (2.68)	2.4891 <sup>a</sup> (2.78)	2.5090 <sup>a</sup> (2.09)	-7.2683 (-15)	Log-likelihood ratio	237.72
Conflict	.3315 <sup>a</sup> (3.47)	.3407 <sup>a</sup> (3.54)	.3030 <sup>a</sup> (3.67)	.1596 (1.49)	Goodness-of-fit	372.51
					% Correctly predicted	90.25
<i>Model b</i>	<hr/>					
Constant	-2.4580	-2.5940	-2.7998	-3.5785		
Legislative procedure					Number of cases	100
Unanimity	2.5552 <sup>b</sup> (2.13)	2.6517 <sup>b</sup> (2.20)	1.3203 (1.33)	-7.3407 (-11)	Degrees of freedom	388
Parliament	2.5758 <sup>a</sup> (2.94)	2.6733 <sup>a</sup> (3.04)	2.6301 <sup>a</sup> (3.31)	-7.1879 (-15)	Log-likelihood ratio	253.63
Uncertainty	.0017 <sup>a</sup> (2.83)	.0017 <sup>a</sup> (2.83)	.0013 <sup>a</sup> (3.25)	.0005 (.71)	Goodness-of-fit	378.33
					% Correctly predicted	89.25
<i>Model c</i> <sup>e</sup>	<hr/>					
Constant	-1.3247	-1.5319	-1.2228	-3.8621		
Legislative procedure					Number of cases	44
Unanimity	1.9558 (1.53)	2.1459 <sup>c</sup> (1.66)	.2441 (.24)	-6.7763 (-10)	Degrees of freedom	164
Conflict with Parliament	.3709 <sup>a</sup> (2.58)	.3947 <sup>a</sup> (2.68)	.1687 <sup>b</sup> (2.19)	.0629 (.38)	Log-likelihood ratio	145.67
					Goodness-of-fit	171.02
					% Correctly predicted	83.52

Notes: t-ratios in brackets

<sup>a</sup> p ≤ .01, two-tailed test

<sup>b</sup> p ≤ .05, two-tailed test

<sup>c</sup> p ≤ .10, two-tailed test

<sup>d</sup> Single digits in brackets stand for the J-1 cumulative logits measuring increasing stringency (see Appendix)

<sup>e</sup> Subset of cases where parliamentary opinion or vote is requested

**Table 5.5.** Rank correlation tests between ex-ante discretion and procedural control and 95 percent endpoints of the null hypothesis

Test	Statistics <sup>a</sup>	Percentile			Bias Corrected			Percentile-t <sup>b</sup>		
		$\alpha/2$	$1 - \alpha/2$	sign.	$\alpha/2$	$1 - \alpha/2$	sign.	$\alpha/2$	$1 - \alpha/2$	sign.
Spearman $r_s$	.99	-.00005	.00003	*	-.00005	.00003	*	-.00005	.00004	*
Kendall S	605.4	-23.4	22.6	*	-36.4	16.6	*	-25.1	22.7	*

Number of cases 100

Note: \*  $\alpha \leq .05$  double tailed significance level of the statistics.

<sup>a</sup> 'Bootstrapped z-statistics' for co-graduation are computed using the standard error estimated with the bootstrapped sampling distribution (see Mooney and Duval, 1993:35).

They are not reported to simplify the table but they are available from the author.

<sup>a</sup> Mean bootstrapped values

<sup>b</sup> This interval has been computed taking 50 resamples per each resample

## Conclusion

The Commission can affect the trajectory of European integration because it can strategically use its formal powers, especially the monopoly of legislative initiation, to pursue its objective, namely broad executive discretion. This outcome is more likely 1) when qualified majority is used in the Council and 2) when only the Commission is in charge of implementation. There are three other relevant factors. First, the Commission has used informational advantages and a longer time horizon than that of Union legislators to reach its objectives. Second, if Union legislators are uncertain about the optimum course of policy actions, they tend to delegate broader discretion, but also to establish stricter procedural control. Third, limited conflict amongst legislators decreases the likelihood of procedural control. However, a final caveat about the actual degree of executive discretion of the Commission is advisable because broader discretion correlates positively with the stringency of control.

In this conclusion, I summarize the hypotheses, the findings and the problems I have encountered whilst applying theories of bureaucratic and executive politics to the European Union. I also consider the challenges facing those scholars interested in pursuing this research strategy. I conclude by suggesting how this thesis has contributed to the European Union and the more general political science literature.

### **The preferences of the Commission: the preeminence of bureau-shaping**

The rational choice literature makes different assumptions about what drives bureaucratic behavior. Chapter 3 tests and compares two of such strands of literature. The classical work of Niskanen (1971) about budget-maximizing bureaucrats is compared with Dunleavy's (1985, 1991) contribution. This suggests that budget-maximization is more likely in delivery agencies at the early stages of development and focuses on the

programme and bureau components of the agency budget. In other types of agencies, such as regulatory or control ones, bureaucrats hold bureau-shaping preferences that consist of innovative work tasks, managerial discretion and broad scope of activities.

Bureaucratic preferences of the Commission are tested across the twenty-year development of the competition and regional policies of the Union. Agency type and stage of development have been found as being relevant factors guiding bureaucratic preferences. Budgetary preferences selectively focus both on the delivery component of the agency and on the bureau and programme components of the budget. They are also more intense at the early stages of development. However, there is no sign of budget-related preferences dominating work-related ones. The latter are present in both agencies and tend to persist over time. Circumstances that facilitate the pursuit of the Commission's objectives include longer time horizons, informational advantages and the strategic use of its executive instruments.

The case study approach has the obvious problem of generalization. Do these results apply to all policies and administrative departments of the European Union? This should be an area of interesting future research. The research design also needs improving. We need to focus more of our attention on those cases where bureaucratic motivations are clearly mutually exclusive in order to assess the Commission's true underlying preferences. And, we need to fine-tune our understanding of the specific circumstances that are favorable for the Commission. For instance, the impact of information asymmetries needs to be controlled for time horizons and cost of no-agreement to assess its true relevance. As I have found out, these exercises are rigged by problems of scarcity of clear and well-controlled empirical examples. Nevertheless, they are stimulating challenges for the academic community.

### **The facilitating factors: uncertainty, decision rules and policy types**

Legislators delegate policy-making functions to their agents for informational and credibility reasons. For instance, monitoring compliance is an especially important activity delegated to the Commission. Although these are the underlying reasons, there are more factors that determine the exact extent of the executive discretion delegated to the Commission. I have used the literature on executive politics and a formal model of the Union legislative politics to enlist four variables that shape discretion. In his seminal work, McCubbins (1985) suggests that the uncertainty facing legislators about policy actions is an important determinant. The formal model limits this relation to cases of non-amending legislation because of the Commission's monopoly power of initiation. A similar limitation applies to the second facilitating factor, namely the convergence of preferences between the pivotal legislator and the agent. This variable has been originally suggested by Gilligan and Krehbiel (1989). The legislative procedures of the Union also play a role. Proposition 1 of the formal model suggests that the discretion delegated to the Commission is larger in case of qualified majority than unanimity. The chapter considers other institutional and procedural variables, such as the role of the Parliament in the co-operation procedure and of the opinions issued by the Parliament and the Economic and Social Committee. Finally, I add a fourth variable. Some types of Union policies require extensive involvement of national administrations during implementation. In these cases, as in federal states, the top bureaucratic tier of government is relatively more constrained in implementation.

I have used statistical analysis to assess the significance of these variables in chapter 4. I have applied bootstrapped regression analysis to a stratified sample of non-amending legislation. Legislators' uncertainty and policy types are significant determinants of the Commission's executive discretion. The impact of formal decision rules is debatable, but formal or

informal unanimity diminishes discretion relative to qualified majority. Finally, other variables do not play a significant role.

Statistical analysis is certainly not immune to problems. The operationalization of discretion, uncertainty and preference distribution is open to debate. A more condensed operationalization of the discretion variable and an alternative approach to uncertainty would be welcome. The poor performance of the preference variable is of concern, given its primacy in formal modeling. In this case, a detailed and issue-specific data set about the preferences of legislators would be of great support for fine-grained quantitative analyses of the Union legislative politics.<sup>1</sup> This would also help increasing the sample size and probably avoid the use of demanding, though rigorous, bootstrapping procedures. Finally, the Parliament is the emerging legislative institution in the Union. Its role in the different legislative procedures needs more detailed and rigorous investigation. The analysis should also be extended to amending legislation.

We have hence a methodological, an empirical and an analytical challenge ahead. I reserve further comments on formal modeling and decision rules to the section below.

#### **The constraining factors: the committee procedures**

When they delegate, legislators create to themselves a control problem. They need to minimize the losses arising from opportunistic behavior of the administrative agent. A common theme in the literature on legislative politics is the design of administrative procedures to control implementation.

Union legislators face similar problems and find similar solutions. They have designed a system of control procedures, named comitology, that oversee the implementation of the Union policies by the Commission. Two

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<sup>1</sup> This has already been done with respect to the EU voters (Commission of the EC, 1996) and party system (Hix and Lord, 1997).



factors lead to the establishment of these procedures and increase the stringency of control. McCubbins (1985) and McCubbins and Page (1987) suggest uncertainty of and level of conflict among legislators. I have added a procedural variable, namely unanimity in the Council, as another measure of conflict. Chapter 5 tests also whether there is positive correlation between executive discretion and the stringency of procedural control, as suggested by Bawn (1997).

Statistical analysis has been employed also in this case, using a similar sample and techniques such logistic regression and co-graduation tests. Uncertainty, conflict and unanimity rule are significant factors for the establishment of control procedures. Conflict and uncertainty are also relevant variables determining the degree of control stringency. The literature on these committees emphasizes their role as arenas producing information to coordinate and standardize implementation. These results reassert their control function, since procedures are established also as a result of substantive issue-specific conflict among legislators. Finally, discretion is significantly correlated with the stringency of control.

Operationalization has probably caused the problems of collinearity that I encountered in this chapter. Improvement on this front is needed. The conflict variable relies on assumptions about perfect anticipation of preferences by the Commission that is not always warranted empirically. Although it may be a very difficult task, amendments should be divided between those related to conflict and those to information asymmetry. As mentioned above, the role of the Parliament in the different legislative procedures needs more attention, especially with reference to its impact on the establishment of control procedures. Others variables, such as whether the legislative act in question distributes financial funds, might be of relevance too but need theoretical grounding. A last challenge is a controlled qualitative analysis of these committees to assess the relative importance of their informational and constraining functions.

## The contribution to the study of the European Union

In this thesis I have argued that the *intergovernmentalist* focus on Treaty-amending negotiations provides a partial view of European integration. The process is ultimately driven by the implementation of the Union policies. As the policy space expands, integration can follow many trajectories and supranational institutions can play an important part. Analyzing why they play this role, their preferences and the conditions facilitating the achievement of their objectives is a primary task for students of the European Union.

This study also contributes to a more fine-grained understanding of the delegation of policy-making functions to the Commission. It has provided a detailed and theoretically grounded list of the variables that affect the Commission's executive discretion at the operational level. The underlying motives for delegation, namely information and credibility, are not negated. Increased uncertainty remains a key factor leading to broader discretion. I have no knowledge however that this has been empirically demonstrated in a quantitative analysis and applied to the operational level of the Union. The impact of decision rules is a consequence of Treaty negotiations. The maintenance of unanimity in some policies means that Member States want limited legislative and executive intervention. Again, this has not been shown either formally or (with its limits) empirically. Level of implementation is an additional interesting factor that is not mentioned by the intergovernmentalist literature. An extension of the formal model (Franchino, 2000) provides hypotheses about amending legislation whose test should further our understanding of delegation.

The second argument of the thesis is the abandonment of the *neofunctionalist* emphasis on unintended consequences and a reevaluation of its (unnoticed) link to bureaucratic politics and information asymmetries. Certainly, the Commission is 'the engine of integration' as neofunctionalists broadly put it. Its tendency to enlarge the Union agenda is not in question. However, we should not ignore the fact

that this institution holds a complex set of preferences whose theoretical foundations vary. Some are substantive, others are related to the level of government, and still others are related to the bureaus' functions and budgets. This thesis has used theories of bureaucratic behavior to analyze the latter two types of preferences. The exercise adds rigor to the analysis of the Commission. It is more detailed about the circumstances under which the Commission is likely to hold certain types of preferences. For instance, chapter 3 highlights the importance of agency type, the composition of the bureau budget and the stage of policy development. The combination of these factors with facilitating variables (e.g. information asymmetry and long time horizons) explains why some policies were designed in a certain way. The study of the Commission's aggregate behavior is a difficult task. Nevertheless, the disaggregation into component parts helps the analysis of this complex institution.

I have not concealed my appreciation for the formal models of the Union legislative politics, the so-called *institutionalist* literature. My thesis has built on these models by formalizing the Commission's executive preferences and deriving testable propositions. This is a first small step toward a better understanding of the Union executive politics and, ultimately, of European integration. The core of the argument integrates the conditions facilitating bureaucratic drift (i.e. uncertainty, qualified majority and Union-level implementation) with those increasing the likelihood of procedural control (i.e. uncertainty, conflict and unanimity). It is across this complicated set of variables that integration proceeds and the kernel of the Union executive politics operates. My contribution consists in the identification and testing of these conditions. In the process, I have reasserted the control function of comitology against a literature predominantly emphasizing its informational role. I have also highlighted the correlation between discretion and control.

### The contribution to political science

This thesis should be seen as an encouragement and an invitation. The encouragement goes to EU students to abandon a sterile *sui generis* characterization of the Union. This is not only because the best work that has been produced in the last years has done so, but also because they are likely to be surprised by the explanatory power of classical political science theories. Similar applications to other international institutions should also be encouraged. The invitation goes to non-EU specialists to consider the Union as a valuable area for extending comparative analysis and carrying out cumulative research.

Whether analyzed from a comparative politics or international relations perspective, the Union should be no different. The same methods and theories can be applied. Chapter 3 has extended the domestic focus of the literature on bureaucratic preferences to the Union. Similar variables, such as information asymmetry and time horizons, operate in a similar way. These results are comparable with work on national administrations and open to advances in the study of bureaucracies. Students interested in how different institutions assist bureaucrats in reaching their objectives should consider the Union as a candidate of comparative analysis. Further, officials in other international institutions might show a similar pattern of behavior. Chapters 4 and 5 have extended to the Commission the executive politics literature on the factors that determine the discretion and control of an administrative agent. Uncertainty, preferences and decision rules are relevant also at the Union level. Comparativists that study how institutions affect the choice of instruments for controlling the bureaucracy and the trade-off between control and informational gains of delegation should consider the Union as a potential case study. This work could also be extended to other international institutions to the extent that they have been delegated policy-making functions.

The thesis has also shown formal modeling as a way to rigorously distill the relations between dependent and independent variables. If

appropriately designed, models do not lack empirical validity. Further, the rejection of other institutional and procedural variables in chapter 4 suggests that models do focus on the essence of political processes. Certainly, more work is needed both formally (by relaxing their assumptions) and empirically to test their validity. Further, the significance of informal decision rules, as shown in chapter 4, invites formal theorists to take a closer look at the causal relevance of norms.

In sum, this thesis has contributed to political science by extending the national focus of theories of bureaucratic and executive politics to the European Union. The central tenets of those theories apply also to an institutionalized system of international governance that lacks the classical features of statehood. There is ample room for further research by applying this analysis to other international institutions or employing other theories to understand these institutions, and by extending the set of case studies for national comparativists. The thesis has also shown that formal modeling, used with the necessary caveats and motivated by empirical inquiry, is a powerful instrument for political research.

The European Union can have a direct or indirect impact on the livelihood of almost 400 million people, and beyond. The Commission, as its bureaucratic and executive branch, is at its center. These institutions deserve unbiased, systematic and structured analysis that goes beyond short-term political rhetoric. Political science offers an array of theories and instruments to carry out such a demanding task. By doing so, we can further our understanding of this complex political system, expand the reach of political science and try to answer, with due caution, normative questions surrounding its role and existence.

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