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THE COMMISSION'S EXECUTIVE DISCRETION, INFORMATION AND COMITOLOGY

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ABSTRACT

This article examines the determinants of the European Commission's executive discretion and the impact of comitology when policy authority is delegated by member states and the Parliament (i.e. principals) and all actors are uninformed about future contingencies. In such context, the Commission always prefers complete discretion while principals have to trade off the risk of agency losses against the need to give enough latitude to the Commission to deal with unexpected events. The analysis reveals a general trade-off in the institutional design of the European Union. On the one hand, the Commission can enjoy high and stable discretion, differing across legislative procedures, degree of uncertainty and of preference convergence, because of its monopoly proposal power. On the other hand, comitology procedures impose burdensome constraints on the Commission's autonomy and can be explained as a price for legislative intervention paid by the Commission. Finally, comitology procedures also increase the conflict across principals over the degree of discretion to grant to the Commission because the trade-off between ex ante discretion and ex post control can disappear with multiple principals.

KEY WORDS • agency discretion • agency theory • comitology • European Union • legislative procedures

Introduction

Since the Single European Act came into effect on the first of July 1987 more than 4000 Council directives and regulations have been adopted by the European Union[1] (EU). More than a third of them were not amending previous acts. This legislation has been approved using different procedures, mainly qualified majority (around 57 percent of the acts passed) or consultation (less than 30

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1. Although I use the term European Union throughout the article, the analysis applies to the policies where the Commission has the monopoly of initiation, that is in the European Community pillar of the EU.

percent), but also cooperation (around 10 percent) and assent (about 2 percent). Since the Maastricht Treaty, 49 amending and 30 non-amending directives and regulations have been passed with the new co-decision procedure.[2]

The European Commission has not only been the sole initiator of this legislation but also, as the institution with 'executive vocation' (Lenaerts, 1991: 30), it has been the traditional candidate upon which policy-making functions have been conferred (see Article 155.4 EC). This vocation was strengthened with the introduction by the Single European Act of the third indent of Article 145 according to which the Council of Ministers is under an obligation to delegate executive functions to the Commission[3] (Bradley, 1992: 714–7). Delegation is also likely because neither the Council nor the Parliament have the time or the expertise to micromanage policy decisions.

The adoption of this considerable amount of secondary legislation can be analyzed from the perspective of agency theory whereby principals (i.e. member states and the European Parliament) delegate policy authority to the agent (i.e. the Commission) and design ex post control mechanisms to limit shirking or slippage (Kiewiet and McCubbins, 1991; Milgrom and Roberts, 1992; Pollack, 1997). Delegation implies a certain degree of discretion enjoyed by the agent. McCubbins and Schwartz (1984) define discretion as those actions that no coalition of principals can overturn, and Epstein and O'Halloran (1994) add that principals can set stringent ex ante controls to limit bureaucratic drift in the implementation stage. Steunenberg (1996) usefully differentiates between *structure-induced* discretion and *information-induced* discretion. Structure-induced discretion originates from the institutional structure of the legislative process, for instance the two-level game of domestic ratification of international treaties, and from specific problems entrenched in this process such as voting cycles. Information-induced discretion comprises what is more traditionally seen as the core of agency theory. The asymmetric distribution of information concerning compliance, future contingencies or technicalities induces principals to delegate relevant authoritative functions to the agent.

In this article, I develop a formal model to distill the factors that determine the degree of executive discretion of the Commission. I investigate the ex ante decision by EU principals to delegate policy-making functions to the Commission when all actors are uninformed about future events. The agent has to be flexible enough to meet changing circumstances without imposing too high distributive losses upon principals.

I then use Epstein and O'Halloran's (1994) idea of linking agent's ex ante discretion to ex post control to analyze the impact of implementation procedures (i.e. comitology) on actors' discretion and control preferences. These procedures

2. These data have been collected using the CELEX database.

3. The Council may reserve the right to exercise direct implementing powers itself. This must be justified on clear substantive grounds in the initial act of delegation and limited to specific cases only. The exceptional nature of this reserve safeguards the *effet utile* of Article 145.3 (Bradley, 1992).

play a considerable role in the Union secondary legislation. Dogan (1997: 39) reveals that about 20 percent of Council legislation enacted since 1987 uses committees to control the Commission's activity.

As yet, the formal literature on the European Union has not dealt directly with the issue of agency discretion. Students who have analyzed EU policy-making under different legislative (Crombez, 1996; Garrett, 1995; Moser, 1996; Steunenberg, 1994; Tsebelis, 1994, 1995, 1997) and implementation procedures (Steunenberg et al., 1996a, b) have focused on the distribution of agenda, veto and amendment powers across EU institutions and on the conditions under which these actors can influence policy outcomes. However, they all assume complete and perfect information.

The model I propose considers only one type of information asymmetry, that is, players' inability to predict future contingencies. The informational gains accruing to principals from agency expertise are not modeled, although this could be an interesting future area of research in the formal study of the EU.

The Model: Initial Structure and Assumptions

The model uses the following definitions and assumptions.[4]

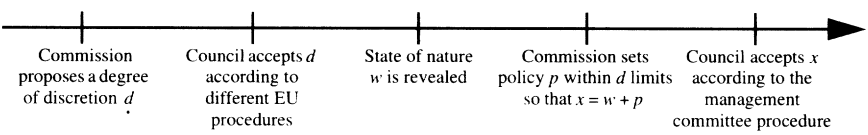
1. Actors are the European Parliament, member states and the Commission. Their ideal points on the policy space are P, G_i for i = a, b, c, and C respectively. For the time being, I ignore the European Parliament, assuming that it behaves like a member state. Its role will be explored in more detail later.
2. The policy space is one-dimensional. 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:

$$U_{G_i}(x) = -(x - G_i)^2 \text{ for the governments and}$$
$$U_C(x) = -(x - C)^2 \text{ for the Commission}$$

4. 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 one-dimensionality (Crombez, 1996; cf. Garrett, 1995; Steunenberg et al., 1996b). 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, n.6; Hammond and Miller, 1985). For McCubbins et al. (1989) and Steunenberg (1996), discretion is referred to those actions that no political coalition can overturn, while here it is defined as an ex ante limit imposed on the agent which may be linked to ex post control mechanisms (see last section of the article).

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 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 discretion d. I assume that, if that were not the case (i.e. $|p - w| > d$), p would be struck down by the European Court of Justice and the outcome would 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 1. Here I limit the analysis to the first four moves. The model will then be adjusted to include the last move, in the fifth part of the article. The Commission proposes a degree of discretion $\dot{d}$ 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 $\pm d$.[5]



Note: The first four steps are analyzed in the first part of the article; here the final outcome is $x = w + p$

Figure 1. Sequence of Moves

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 $V(\dot{d})$ relating delegation proposals to voting decisions. $V(\dot{d})$ equals zero if the government votes against the proposed discretion, it equals one 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 $\{\dot{d}, p(d, w)\}$ where $\dot{d}$ is the proposed discretion and p is the implemented policy as a function of the degree of granted discretion d and the state of nature w.

5. One could object that EU legislators could enact new acts for any realization of w, so avoiding the delegation problem. As mentioned above, this is highly unlikely because of the obligation to delegate and the lack of time and expertise to micromanage policy decisions.

The subgame perfect equilibrium[6] used for the results of the model consists of strategies $V(\dot{d})$ for the governments and $\{\dot{d}, p(\cdot)\}$ for the Commission that satisfy the following conditions:[7]

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

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

2. In their delegation decision, 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:

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

where $p(\dot{d}, w)$ and $p(d_{sq}, w)$ are determined in the same way as $p(d, w)$ in point 1.[8]

3. The Commission proposes that degree of discretion that maximizes its expected utility and is accepted by member states. Formally, this implies:

$$\dot{d} \in \text{argmax}_{\dot{d} \in R^1} EU_C(p(d, w))$$

Introductory Results: Deriving Preferences over Discretion

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

Governments' and Commission's Preferences over Discretion

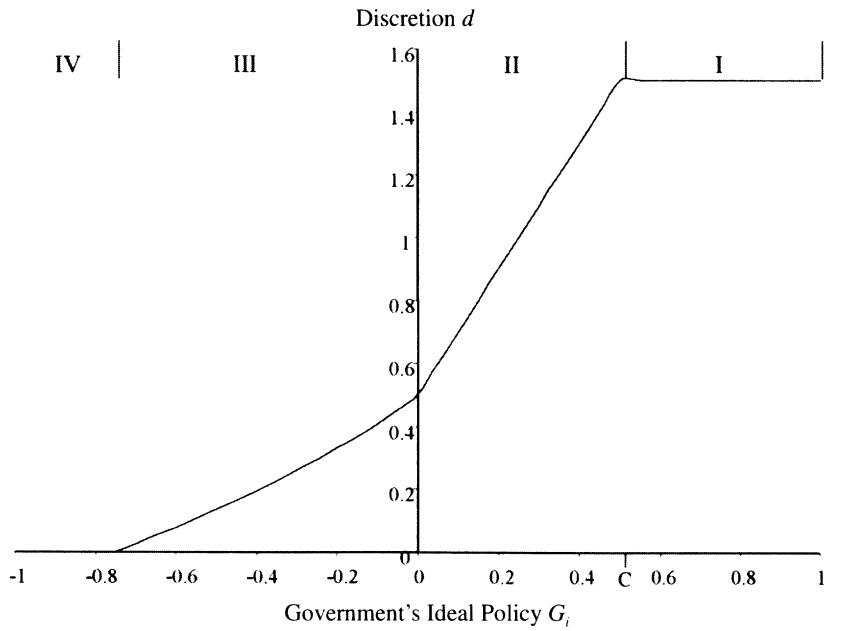
The mathematical proof of actors' preferences over discretion is in Appendix 1. Figure 2 illustrates the optimal degree of discretion as a function of a government's ideal policy, given a Commission's ideal point, $R^+ = 1$ and $R^- = -1$.

The message of Figure 2 is straightforward. The more distant is the ideal point of the government from the Commission's, the less discretion will be delegated to the agent. This is consistent with similar work on discretion preferences with a

6. In steps 2 and 3 the pair of beliefs about w and strategies of each moving player is also sequentially rational, a more general concept of equilibrium than subgame perfection.

7. I do not use asterisks to denote optimal strategies, to simplify the exposition.

8. Note that this condition implies that if a government is indifferent between d and d_{sq}, it votes for $\dot{d}$.



Notes: $C = 0.5$ Ideal policy of the Commission, results are symmetric for $C < 0$; $w \sim U[-1, 1]$

Figure 2. Optimum Discretion as a Function of a Government's Ideal Point

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 are both on the same side of 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 towards 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 $(C^2 - 1)/2C \leq G_i \leq 0$ respectively). Here, discretion gradually diminishes as a function of both C and G_i. It takes the following values: $d = 1 + 2G_i - C$ 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 Commission's ideal policies are at the

opposite of the policy spectrum (i.e. $G_i \leq (C^2 - 1)/2C$) 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.

Preferences and the Discretion Space

From the structure of preferences previously described we can construct a one-dimensional discretion space. This space will take a minimum value of zero (by Assumption 6) 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):

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

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

for the government's and Commission's ideal policy G_i and C respectively. As I have shown in Appendix 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.[9]

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

9. 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 a 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 skewed to the right. 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.

leftward in the discretion space, taking the values from interval II to interval IV shown in Figure 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 discretions of the actors are denoted d_C for the Commission and d_{G_i} for i = a, b, c, for governments. The status quo ante discretion is denoted d_{sq}.
2. Government a (with ideal policies G_a) is the pivotal actor in the Council for an increase in discretion in unanimity. Governments b and c (with ideal policies G_b and G_c) are the pivotal actors, for an increase and a decrease in discretion respectively, in the qualified majority vote.
3. The Commission's ideal policy C is located somewhere in between the governments' ideal policies G_i.[10]
4. The European Parliament is simply another unitary actor, thus Black's median voter theorem applies. Its optimum policy and discretion are denoted P and d_P respectively. The Parliament and member states are in the same situation. They are both principals that delegate authority over a certain policy to the Commission. Their utility functions and indifference curves are also similar and the Parliament's optimum discretion is simply another point on the discretion space.
5. Although the indifference curves over the delegation space are skewed to the right (see note 9), they present the familiar single-peaked Euclidean-like shape that allows us to formulate propositions. The skewness tells us that the principals are biased in favor of delegation. However, I will assume, without loss of generality, that the indifference curves have the traditional circular shape.
6. The conciliation committee in co-decision uses a well-ordered agenda (see later).

In this section, I discuss the equilibrium discretion under the consultation, cooperation, co-decision and assent procedures. The Commission has the monopoly of legislative initiation while the Council and the Parliament have veto and amendment powers differing across procedures. For reasons of space, I will

10. 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). If we relax it, Proposition 2.1 below, instead of 2.2, applies in an empirically unlikely case, that is when the status quo ante discretion is larger than the discretion unanimously preferred by the Council.

not describe these aspects in detail (see, e.g., Nugent, 1994) and, since this analysis partially relies on Crombez (1996, 1997a, 1999), the results are presented in a very concise way. Further, I limit the analysis to non-amending legislation (i.e. $d_{sq} = 0$) while the footnotes deal with amending legislation. I conclude with a proposition summarizing the findings in both cases.

Consultation. When the status quo discretion is zero, the equilibrium discretion in this procedure is $2d_{G_b}$.[11]

Co-operation. Using Proposition 3 in Crombez (1996: 218), which demonstrates how Parliament's amendment power does not affect the equilibrium policy, the equilibrium discretion in this procedure is a function of d_P. When the status quo is zero, it equals $2d_{G_a}$ for $d_P < d_{G_a}$ and $\min[2d_P, 2d_{G_b}]$ otherwise.[12]

Co-decision. I examine this procedure as last amended by the Treaty of Amsterdam. Since the outcome is a function of the ideal discretion of the proposer of the joint text in the conciliation committee[13] (Crombez, 1999; cf. Crombez, 1997a), I assume that the committee uses a well-ordered agenda.[14] For the purpose of this analysis, a conciliation text[15] exists when $2d_{G_b} > d_{G_c}$, that is, when the preferences of the two pivotal governments in qualified majority are relatively close.

When status quo discretion is zero, the equilibrium is a function of Parliament's optimum discretion d_P. There are two sets of results. When $d_P < d_{G_b}$, the equilibrium is $\min[d_{G_c}, 2d_P]$. When $d_P > d_{G_b}$, the equilibrium is

11. When $d_{G_b} > d_{sq} > 0$, the equilibrium discretion equals $2d_{G_b} - d_{sq}$. When $d_{sq} > d_{G_b}$, the Commission and the pivotal government b have conflicting preferences. The Commission does not initiate legislation and the status quo prevails.

12. For $d_{sq} < d_{G_a}$, the first equilibrium is $2d_{G_a} - d_{sq}$. When $d_{sq} > d_{G_a}$, the status quo prevails because the Commission and the pivotal government a have conflicting preferences. The second equilibrium is $\min[2d_P - d_{sq}, 2d_{G_b} - d_{sq}]$ for $d_{sq} < \min[d_P, d_{G_b}]$. When $d_P > d_{sq} > d_{G_b}$, the status quo prevails because of conflicting preferences between the Parliament and the pivotal government b. For $d_{sq} > \max[d_P, d_{G_b}]$, status quo prevails because the Commission has conflicting preferences with both the Parliament and government b.

13. A conciliation committee is convened in this procedure if the Council does not approve Parliament's amendments.

14. I borrow the concept of well-ordered agenda from Steunenberg et al. (1996a: n.9). It means that all proposed amendments put forward in the committee are collected and ordered according to their deviation from the Commission's proposed discretion $\dot{d}$. Each amendment is then compared to $\dot{d}$ in a binary vote starting from the most distant one. The only implication of this assumption is that a proposal of the Commission belonging to the set of successful joint texts cannot be amended (cf. the CD set in Crombez, 1997a, 1999).

15. I call it conciliation text because the Commission cannot successfully propose $2d_{G_b}$ to the conciliation committee when the Parliament is not pivotal.

$\min\{2d_{G_b}, \max[d_{G_c}, d_P]\}$.[16] The outcome d_{G_c} is due to the presence of a conciliation text.

Assent. The equilibrium discretion in this procedure, when the status quo is zero, is $\min[2d_P, 2d_{G_a}]$.[17]

To conclude, the legislative procedures are important structural determinants of the degree of discretion delegated to the Commission but under one specific condition: when the legislation to be approved does not amend previous acts. Technically, this is when the status quo ante discretion is (or is close to) zero. When the legislation is amending, the procedures lose explanatory power.

Our first proposition is, then, as follows (for proof see Appendix 2):

PROPOSITION 1:

1. *For most values of governments' optimum discretion, in non-amending secondary legislation, the equilibrium discretion conferred upon the Commission is largest under consultation, smallest under assent, and, if the Parliament is pivotal and there is a conciliation text, it takes an intermediate level under cooperation, followed by an equal or lower level under co-decision;*[18] and
2. *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 EU. For a given degree of uncertainty and distribution of preferences, Proposition 1 sets the conditions under which such structure determines the Commission's executive discretion. In the section below I analyze other implications of this proposition.

16. When the Parliament is pivotal (i.e. $d_P < d_{G_b}$) and there is no conciliation text (i.e. $2d_{G_b} < d_{G_c}$), the equilibrium is $2d_P - d_{sq}$ for $d_{sq} < d_P$ and d_{sq} otherwise. If there is a conciliation text (i.e. $2d_{G_b} > d_{G_c}$), the equilibrium is $\min[d_{G_c}, 2d_P - d_{sq}]$ for $d_{sq} < 2d_P$, d_{sq} otherwise. When the government b is pivotal (i.e. $d_P > d_{G_b}$) and there is no conciliation text (i.e. $2d_{G_b} < d_{G_c}$), the equilibrium is $2d_{G_b} - d_{sq}$ for $d_{sq} < d_{G_b}$ and d_{sq} otherwise. If there is a conciliation text (i.e. $2d_{G_b} > d_{G_c}$), the equilibrium is $\max[d_{G_c}, d_P]$ for $d_{sq} < 2d_{G_b} - (\max[d_{G_c}, d_P])$, $2d_{G_b} - d_{sq}$ for $2d_{G_b} - (\max[d_{G_c}, d_P]) < d_{sq} < d_{G_b}$, and d_{sq} for $d_{sq} > d_{G_b}$.

17. For $d_{sq} < \min[d_P, d_{G_a}]$, the equilibrium discretion is $\min[2d_P - d_{sq}, 2d_{G_a} - d_{sq}]$. When $d_{sq} > \min[d_P, d_{G_a}]$, the status quo prevails because either the Parliament or a unanimous Council does not prefer a discretion larger than d_{sq}.

18. There is only one exception in co-decision where, under a rather extreme preference configuration, discretion can be lower than assent. Under similar circumstances, discretion under assent could equal discretion under consultation (see Appendix 2 for both cases). Anyway, we should expect, ceteris paribus, statistically significant differences of discretion across procedures under the conditions specified here.

Preference Distribution and Uncertainty as Determinants of Discretion

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

Preference distribution. Discretion might change if an actor's ideal policy shifted 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 Appendix 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 a restriction, we can analyze the effect of a change in uncertainty. This is part of what Steunenberg (1996) refers to as information-induced discretion.

In Appendix 3, I show that, if the negative and positive boundaries of w increase by the same amount,[19] the relative position of principals' 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 affect discretion in amending legislation because the equilibrium outcome remains the status quo.

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

The second proposition is as follows (for proof see Appendix 3):

PROPOSITION 2.

1. *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 principal's preferences and of the degree of uncertainty;* and

19. 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 principal (a proof is available from the author). This result is less relevant for the purposes of the article; see also Epstein and O'Halloran (1994).

2. *preference convergence and uncertainty do not affect the degree of discretion in amending secondary legislation if the status quo discretion is sufficiently large.*

The results from Propositions 1 and 2 are partially consistent with similar studies on American institutions (Epstein and O'Halloran, 1994; McCubbins and Page, 1987; O'Halloran, 1994). However, part of this literature suggests that an increase in conflict of interests leads the Congress to delegate more authority (and more confining procedures) to the agencies (McCubbins and Page, 1987: 418–19). This model does not support such a proposition. An increased conflict between principals is likely to increase the difference in discretion across procedures but it is the shift of preferences of the pivotal principal relative to the Commission's that affects the absolute degree of discretion in any procedure. Such conclusions are more in line with O'Halloran (1994) where increased divergence between the principal and the agent decreases discretion. In the next section I will extend the analysis to the effect of ex post control on discretion.

There are two other important differences from the agency literature on American institutions. They are both linked to the monopoly proposal power of the Commission. First, for the same degree of uncertainty and preference distribution (and assuming Euclidean preferences) we should generally expect a higher degree of discretion delegated to the Commission than to American agencies. In non-amending legislation (or for small status quo values), the Commission can propose the largest discretion that makes the pivotal player indifferent while the US Congress will always delegate its optimum discretion. If the status quo were higher than the optimum discretion of the pivotal principal, the Congress would reduce discretion, while discretion would remain the same in the EU because the Commission refrains from proposing new legislation.[20] This result is also consistent with Steunenberg's (1996) analysis of agent discretion under different policy games. He shows that discretion is largest in those games where a gatekeeper is involved, while veto games lead to lower levels of discretion. The EU legislative process is similar to a gatekeeping game where the agent also has monopoly initiation power. The American process is similar to a veto game where the Congress has both agenda-setting and veto powers. The second difference is that we should expect more stability in the EU than in the USA. Preference convergence and uncertainty are determinants of discretion for any value of the status quo in the USA (cf. Epstein and O'Halloran, 1994; O'Halloran, 1994). In the EU, these determinants (including the procedures) lose

20. Denote d_{EU} and d_{US} the optimum discretion of the pivotal actor in an EU procedure and of the US Congress respectively. Assume $d_{EU} = d_{US}$, the equilibrium discretion in the US is d_{US} (and is a function of uncertainty and of the optimum policy of the agent, see e.g. Epstein and O'Halloran, 1994; O'Halloran, 1994) while, for small values of the status quo (i.e. for $d_{sq} < d_{EU}$), the equilibrium in the EU is $2d_{EU} - d_{sq}$ and for $d_{sq} > d_{EU}$ the equilibrium is d_{sq}. In both cases, it is higher than d_{US}. An exception is when the outcome is either d_{G_c} or d_P in co-decision, here the equilibrium is the same.

explanatory power when the status quo discretion is large. The status quo prevails in the EU when the Commission and the pivotal principal have conflicting preferences over discretion. This is especially true if the Commission's and the pivotal principal's preferences diverge and if uncertainty decreases, while preference convergence or increase in uncertainty are ineffectual if the conflict pertains (i.e. when the status quo discretion is larger than the pivotal principal's optimum discretion).

The Impact of Comitology on Discretion and Actors' Preferences

The final section of this article analyzes the link between discretion and ex post control in the EU. A positive relation between the scope of regulatory authority delegated to the agent and strictness of implementing procedures has been suggested in two propositions by McCubbins and Page (1987: 416–18) and the empirical work of McCubbins et al. (1987, 1989) on US institutions generally confirms them.

In their formal model, Epstein and O'Halloran (1994) show that, if the principal has an ex post veto, the agent's discretion reaches a constant value (termed 'discretionary floor'), instead of decreasing monotonically, as the agent's and principal's preferences diverge. This is possible for two reasons: (1) the principal's utility is always larger in the case of ongoing control; and (2), as preferences diverge, the agent too prefers the principal to have an ex post veto. At this stage the discretionary floor sets in because the agent trades the ex post veto for more ex ante discretion.

In this section, I show that this structure of preferences and the possibility of trading control for discretion do not apply in the case of multiple principals. In the EU there is a series of committees of national experts (i.e. comitology) to oversee the Commission's execution of policy decisions. Council Decision 87/373/EEC has introduced four main types of procedures for the operation of these implementation committees. I will only consider two of them in this section and leave the others for further study.

The model so far is equivalent to the case in which control over the Commission's implementation measures is carried out according to the advisory committee procedure. Here the Commission has to take into account the committee's opinion but no real ex post control is granted to other actors. This case of no control will be compared with the situation when the management committee procedure is in place. According to this procedure, a qualified majority of the committee can reject the Commission's implementation measure, which is then reported back to the Council of Ministers. The Council has to approve a different policy by qualified majority, otherwise the Commission's proposal is implemented. The committee of national representatives acts as a

gatekeeper since it decides whether the proposal has to go back to the Council for further approval.[21]

Adjusting the Model

In order to carry out our analysis, the model needs to be slightly modified. We consider the final fifth step of the sequence of moves depicted in Figure 1. After the Commission implements policy p within the discretionary limits $\pm d$ to obtain the outcome $x = p + w$, the Council accepts this outcome according to the management committee procedure. While the discretion preference of, and the strategic options available to, the Commission are unchanged, each government has to decide at the end of the game whether to accept the outcome x or modify it according to the management committee procedure. Here I use the following notations and assumptions:

1. Governments r and l with ideal policies G_r and G_l are pivotal for, respectively, a rightward and a leftward move in the policy space in the management committee procedure qualified majority and d_m is the optimum discretion when this procedure is in place.
2. Since members of the committee are civil servants appointed by member states from national administrations, I assume that their preferences are the same as those of their country of origin. This helps me to focus on the effects of implementation control on discretion without unnecessarily complicating the picture.
3. The Council uses a well-ordered agenda. This practically implies that if outcome x is to the right of the ideal policy of the pivotal government for a move to the left, the outcome of the implementation game is the ideal point of this government.[22]

In this well-ordered implementation agenda, each member state accepts the last item on the agenda only if it gives at least the same utility of x. Denoting this item as z and $V(z)$ the voting strategy of a government in this last stage, the formal condition is:

$$V(z) = 1 \text{ iff } U_{G_i}(z) \geq U_{G_i}(p + w), \text{ otherwise } V(z) = 0 \ \forall i$$

Finally, given Assumption 2, the following analysis can be applied also to the

21. There are two variants of this procedure that differ on whether the Commission can implement the policy before or after Council discussion. Since I have not considered impatience in this model, this difference is irrelevant for our purposes. Note also that the Parliament has no role in comitology, so I will not consider it in the game.

22. Denote by x the outcome after the Commission's implementation, for $x < G_r$ or $x > G_l$, the equilibrium outcome is, respectively, G_r and G_l in the management committee procedure. See note 14 for a definition of well-ordered agenda.

first variants of the regulatory and safeguard committee procedures. I will however only refer to the management committee procedure in the text.[23]

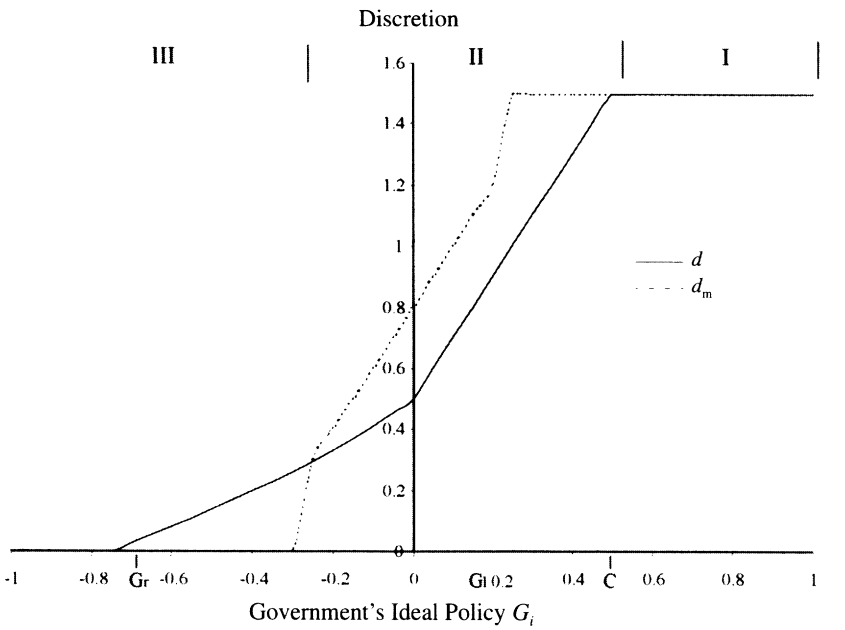
The Impact of the Management Committee Procedure on Principals

Are member states and the Parliament always in favor of the establishment of ex post control procedures? Although the Council barely informs us about the debate on implementation committees, the behavior of the Parliament can illuminate at least some aspects. Earnshaw and Judge (1996: 116) stress how the conciliation committee of the co-decision procedure has been convened in several cases over the question of comitology. Fitzmaurice (1988: 394; see also Bradley, 1997) notes that the '[c]hoice of the type of Committee (comitology) to be involved in management functions (delegated legislation) is also contentious. Parliament, usually, but not always, seeks maximum delegation to the Commission and therefore dislikes any committee except consultative committees'. Also Dogan (1997) stresses the permissive attitude of the Parliament toward control. One reason could be the fact that the Parliament has no role in the implementation procedures. However, had the Parliament a role in implementation, it might still object to control. Why does this principal oppose ex post control, contrary to what Epstein and O'Halloran (1994) suggest?

When there are many principals controlling the agent, some of them might dislike control and the trade-off between control and discretion can disappear. In conferring discretion upon the Commission, a member state has also to take into account the preferences of the pivotal actors in the implementation phase where ex post control takes place. If control takes the form of a management committee procedure, the optimum degree of discretion and the expected utility for any government is a function of the ideal policies of the Commission and of pivotal governments r and l.

Figure 3 exemplifies the conditions under which the trade-off is in place or

23. The key difference between the management and regulatory (variant a) committee procedure is the gatekeeping role of national expert. The committee decides by qualified majority whether *not* to submit the policy to the Council; the moves are then similar. Given the preference configuration of Assumption 2, the decision to submit the measure to the Council is irrelevant. Denote by x the final outcome, for $x < G_r$ or $x > G_l$, a qualified majority in both the management and the regulatory committee will submit the measure to the Council. The measure will then be amended in the Council by the same qualified majority. For $G_r < x < G_l$, the committee (and the Council) is divided: x is the outcome in the management committee because the measure will not be submitted to the Council but x is also the outcome in the regulatory committee because, even if the measure is submitted to the Council, there is not a qualified majority to modify it. The safeguard committee procedures do not require the establishment of a committee of national experts. The Council is immediately involved and can modify or confirm the measure by qualified majority; in variant (a) the other moves are then similar to the two procedures above. Therefore, only a qualified majority in the Council can modify x. A divided Council cannot modify x, so outcomes are the same. Notice that the different equilibrium between the management and the regulatory (a) committee procedures in Steunenberg et al. (1996b) is based on the different preference structure between governments and their national experts.



Notes: C = 0.5 Ideal policy of the Commission; G_l = 0.2 and G_r = –0.7 Ideal policies of governments l and r respectively; and $w \sim U[-1, 1]$

Figure 3. Comparison of Optimum Discretion With and Without Management Committee and Extreme Commission

disappears (proof of the case in Figure 3 and of the other cases is in Appendix 4). The full line d shows the optimal degree of discretion as function of a government's ideal policy in case of no control. It is the same as in Figure 2, with a given Commission's ideal point C equal to 0.5. The dotted line d_m is the optimum discretion when a management committee procedure is in place and the governments' ideal policies G_l and G_r equal 0.2 and –0.7 respectively. This is the case where the Commission's ideal policy is more extreme than a pivotal government's. However, the three intervals that we consider in this figure apply also for a moderate Commission (i.e. when $G_l > C > G_r$). The conditions are only slightly more complex but the message is the same (see Appendix 4b).

The main effect of ex post control is the restriction of the set of final policy outcomes. In Epstein and O'Halloran (1994) the principal is willing to delegate more discretion because the ex post veto impedes the agent shifting the state of nature away from their ideal policy. Here committee control has also a moderating effect; it limits the set of outcomes to the segment between G_r and G_l. A government delegates more or less discretion to the Commission depending on (1) whether this restriction is beneficial or costly and (2) the Commission's policy bias (i.e. the distance between C and G_i). In interval I,

discretion under no control is the same as discretion under control (i.e. $d = d_m$). When G_i is to the right of C, governments will grant full discretion to the Commission in both cases. However, as opposed to Epstein and O'Halloran, these governments are disadvantaged by the moderating effect of the management committee. For instance, when the state of nature is between G_1 and 1, the outcome of the implementation game is G_1; without control the outcome would be C, hence closer to G_i. For governments with preferences close to the Commission's, a management committee presents a danger of an even more negative payoff than the case of no control does. In interval II, where G_i is between C and $(G_1 + G_r)/2$, optimum discretion is a function of the distance between G_i and G_1 and it is always greater than in the case of no control (i.e. $d_m > d$). Here there is a control–discretion trade-off but for two different reasons. Governments with preferences close to the Commission's (i.e. $G_i > (G_1 + C)/2$) still object to ex post control and, if the committee is in place, they grant more discretion. They increase the Commission's leeway to offset the restriction in policy choices operated by the committee. The other governments (i.e. $G_i < (G_1 + C)/2$) trade discretion for control as expected. As in Epstein and O'Halloran (see also Calvert et al., 1989; Lohmann and O'Halloran, 1994), they allow the agent more room for maneuver to redress very negative realizations of the state of nature, such as those to the left of G_r. The committee instead reduces agency losses by moderating the Commission's biased implementation when preferences conflict. If, for instance, $G_i = 0$ and the state of nature falls to the right of G_i, the Commission can only shift the policy up to G_1. Finally, in interval III this control–discretion trade-off disappears again. Ex post control leads to less ex ante discretion and there is no discretionary floor. When G_i is to the left of $(G_1 + G_r)/2$, optimum discretion is lower than in the case of no control (i.e. $d_m \leq d$). This is the exact opposite of what McCubbins and Page[24] (1987) and Epstein and O'Halloran predict. When there is legislative production,[25] the moderating role of the committee is beneficial for these governments. For instance, the outcome is G_1 for any realization of the state of nature to the right of G_1, while losses arising from the Commission's biased implementation are large because they can occur in the now rather large segment between G_i and G_1 where the Commission would shift the outcome away from their ideal policies. Hence these governments want committee control and a very restricted Commission. In a sense, they substitute the Commission by the committee in implementation.

To conclude, the management committee procedure works by favoring governments with preferences moderately distant from the Commission's. Its moderating effect reduces agency losses, so governments can increase agency flexibility. For governments with preferences close to the Commission's, this

24. However, as McCubbins and Page suggest, an increase in conflict among principals might lead to control as it is more likely for a pivotal government to be in this interval.

25. See comments in Appendix 4 and n.31 in case of no legislation.

committee generates disutility because it consistently shifts the policy away from their ideal points. For governments with extreme preferences opposite to the Commission, it is only an opportunity to limit agency losses. Conflict across principals over the degree of discretion to delegate to the Commission is likely to increase with ex post control. Some member states will prefer more discretion, some less. The proposition is then (see Appendix 4 for proof):

PROPOSITION 3.

1. *With multiple principals, the trade-off between implementation control and discretion can disappear as those principals whose preferences are close to the agent's prefer broad discretion and no control*[26] *and those whose preferences are far from the agent's prefer limited discretion and control;* and
2. *implementation control in the form of a management committee increases the conflict across principals over the degree of discretion to delegate to the Commission.*

This result does not change Propositions 1 and 2 because they still revolve around the pivotal actors and the Commission still prefers full discretion. The only probable effect is an increased difference in discretion across procedures. Now we can explain the apparently contradictory opposition of the Parliament toward implementation committees.[27] The closer its preferences are to the Commission's, the stronger is its opposition to control, especially if both have extreme preferences, because the committee generates disutility for the Parliament. We should also probably expect stronger opposition as the procedures become more confining if their negative effect is reinforced.

The Impact of the Management Committee Procedure on the Commission

Dogan (1997) highlights several proposals with restrictive ex post control put forward by the Commission itself. He explains this behavior as a price to be paid (to the Council) for legislative intervention of the EU. The alternative explanation, as suggested by Epstein and O'Halloran, would be the Commission trading control for discretion with the pivotal principal. It seems that Dogan is correct.

With multiple principals and management committee control, the opportunity for trade does not exist. There are two necessary conditions for trade to take place (cf. Epstein and O'Halloran, 1994). First, the pivotal principal must be

26. This is especially true as agent's preferences become extreme. For a moderate principal close to the Commission, the principal is indifferent between control and no control (or weakly prefers no control, see Appendix 4b).

27. The Parliament has not been considered in the earlier game because it has no role in the committee but the analysis of Figure 3 can be adapted to it, as simply another principal, by substituting P for G_t.

willing to grant more discretion under committee control. Second, the Commission's utility with control and additional discretion should exceed its utility without control. In Appendix 5, I show that the first condition is never respected under management committee control. Thus, unlike the findings of Epstein and O'Halloran, the Commission is never better off with a management committee and will not trade ex ante discretion for committee control. The Commission's proposals with stringent ex post control procedures could instead be explained if the Commission values legislative intervention per se. In Appendix 5, I show that the Commission should be more willing to pay a price for legislative intervention by accepting ex post control when it has moderate preferences because it too would benefit from the moderating impact of the committee. We conclude with this proposition (see Appendix 5 for proof):

PROPOSITION 4.

1. *There is no opportunity to trade control for discretion because the Commission is always worse off with a management committee;* and
2. *if the Commission values legislative intervention* per se, *the trade between legislation and committee control is more likely to take place with a moderate Commission.*

An agent controlled by many principals is more restrained than one controlled by a single principal. In our case, there is no possibility of trading control for discretion. Instead, the trade between legislative intervention and ex post control is more likely with a moderate Commission because, on the one hand, the Commission minimizes the cost of control and, on the other hand, the pivotal principal sees the committee as an efficient substitute for the Commission. This can apply for more restrictive comitology procedures if the benefit of intervention balances the cost of substitution for the Commission and the cost of intervention balances the benefit of substitution for the pivotal principal.

Discussion and Conclusion

This article has examined the degree of executive discretion the Commission enjoys when policy authority is delegated by principals (i.e. member states and the Parliament) and all actors are uninformed about future contingencies. In such context, the Commission always prefers full discretion while principals have to trade off the risk of agency losses against the need to give enough latitude to the Commission to deal with unexpected events.

The first part of the article has shown that the autonomy of the Commission is a function of three variables. First, the EU legislative process *structurally* induces different degrees of discretion, from consultation granting the largest amount, assent the smallest, and cooperation and co-decision an intermediate level. Second and third, preference convergence and uncertainty are also

positively related to discretion. This part illustrates a rather rosy picture for the Commission. Thanks to its monopoly proposal power, it can obtain higher and more stable discretion than, for example, American agencies. When uncertainty decreases or conflict with principals increases, it can maintain the status quo by refraining from initiating new legislation. This is why these three factors lose explanatory power if the status quo discretion is sufficiently large.

In the second part of the article, the picture is seriously tarnished by the introduction of the management committee procedure to control the Commission's implementation measures. Epstein and O'Halloran (1994) show that an agent's utility can be higher when a principal has an ex post veto because the agent trades control for discretion. Introducing the management committee does not change these results but it never increases the Commission's utility either. An agent controlled by many principals has less room for maneuver than one controlled by a single principal. The Commission cannot trade ex post control by a management committee for additional discretion because the pivotal actor is never willing to increase discretion. If the Commission values legislative intervention per se, it has to pay a price for it by proposing to the pivotal principal ex post control procedures.

Summarizing the two sections of the article, there seems to be a more general trade-off in the design of EU institutions. On the one hand, the monopoly proposal power is a powerful resource for the Commission. It leads to high and stable degrees of discretion. On the other hand, implementation committees are equally powerful mechanisms of control, especially because used by many principals. They are also likely to be traded for legislative intervention if the Commission attaches a value to it. Comitology balances the Commission's initiation power and its bias for legislative intervention. A reform towards less restrictive committee procedures should probably be linked to a reform of the legislative prerogatives of the Commission such as the conferral of the power of initiation upon the Council of Ministers and the Parliament.

APPENDIX 1

Proof of Governments' and 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:

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

In order to analyze this integral in detail, it is necessary to consider four cases. First, we should compute the expected utility in the case in which the government decides not to delegate authority to the agent. This participation threshold results in the following integral whereby all outcomes equal w:

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

Results in the following cases are acceptable only if the expected utility from discretion is higher that this participation threshold. The cases are:[28]

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

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

This is the utility in the case in which the agent has full discretion over the policy space; governments would agree to impose discretionary limits only if the expected utility is equal to or greater than EU_{f}. Further, $EU_{\mathrm{f}} > EU_0$ for $G_i > (3C^2 - 1)/6C$.

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 $d \geq 1 - C$.

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

The member state will choose the degree of discretion that maximizes the expected utility. The derivative for d is

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

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^-:

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

28. I use the plus and minus signs 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 $d \leq 1 - C$.

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

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

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

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^+:

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

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

Consistency check for d^-:

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

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

d^- is consistent with the assumptions; however it is positive only when $G_i \geq (C^2 - 1)/2C$. The solution is:

$d = 1 - \sqrt{C^2 - 2G_iC}$ for $(C^2 - 1)/2C \leq G_i \leq 0$ because $EU_{d^-} > EU_f$ and $EU_{d^-} > EU_0$

$d = 0$ for $G_i \leq (C^2 - 1)/2C$ because $EU_0 > EU_f$

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

$$d = 1 + C \text{ for } G_i \geq C \geq 0;$$

$$d = 1 + 2G_i - C \text{ for } C \geq G_i \geq 0;$$

$$d = 1 - \sqrt{C^2 - 2G_iC} \text{ for } (C^2 - 1)/2C \leq G_i \leq 0;$$

$$\text{and } d = 0 \text{ for } G_i \leq (C^2 - 1)/2C$$

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

APPENDIX 2

Proof of Proposition 1

Part 1. For d_{sq}=0, equilibrium discretion in consultation, cooperation, co-decision (conciliation text values and relations in parentheses) and assent respectively, is

$$2d_{G_b} > 2d_{G_a} > 2d_P \ (> d_{G_c} >) = 2d_P \qquad \text{for } d_P < d_{G_a},$$

$$2d_{G_b} > 2d_P = 2d_P \ (> d_{G_c} >) > 2d_{G_a} \qquad \text{for } d_{G_b} > d_P > d_{G_a} \text{ and}$$

$$2d_{G_b} = 2d_{G_b} = 2d_{G_b} \ (> \max[d_P, d_{G_c}] >) > 2d_{G_a} \qquad \text{for } d_P > d_{G_b}.$$

Although we have to substitute the sign of disequality by the sign of equality in some cases, these relations also apply for $d_{sq} < d_{G_b}$ and if the optimum discretion of the pivotal player is greater than $(1 + |C|)/2$. If $d_{G_a} > (1 + |C|)/2$ and $d_{G_b} > (1 + |C|)/2$, discretion under assent equals discretion under consultation. Proposition 1.1 does not hold with co-decision in one rather extreme situation: when a conciliation text (if it exists) leads to an equilibrium discretion lower than in assent. This can happen when either $2d_{G_a} > \max[d_P, d_{G_c}]$ or $d_{G_c} < \min[2d_P, 2d_{G_a}]$ depending on whether the Parliament or government c is the pivotal actor in co-decision.

Part 2. From footnotes 11–12 and 16–17, it is straightforward to see that equilibrium discretion is d_{sq} for $\forall d_{G_i}$ and $\forall d_P$ if $d_{sq} > d_{G_b}$ in any procedure. ❐

APPENDIX 3

Proof of Proposition 2

If $\Delta R^+ = \Delta R^-$, we can analyze the impact of uncertainty considering $R^+ = -R^-$. Let V and d_V be the ideal policy and ideal discretion of the pivotal principal in a procedure. In non-amending legislation (i.e. $d_{sq} = 0$), the equilibria are[29] $d = R + C$ in interval I of Figure 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. $d_{sq} < d_V$), the same reasoning applies: we have only to subtract d_{sq} from the equilibrium discretion in intervals II and III. For larger values of the status quo (i.e. $d_{sq} > d_V$), the equilibrium is the status quo. A convergence of preferences or an increase in uncertainty do not affect discretion. ❐

APPENDIX 4

Proof of Proposition 3

To prove Proposition 3 we need to find the optimal discretion for different values of C and G_i under the management committee procedure and compare it with the optimal discretion and the expected utility in case of no control from Appendix 1.

4.a Member States' Optimum Discretion and Commission with Extreme Preferences

We first consider when C is more extreme than a pivotal government, that is $C > G_l > G_r$ (results are symmetrical for $G_l > G_r > C$). Outcomes with management committee control are: G_r for $-1 \le w \le G_r - d_m$; $w + d_m$ for $G_r - d_m \le w \le G_l - d_m$; and G_l for $w \ge G_l - d_m$.

29. For clarity, I omit $^+$ in R^+.

A government will set the degree of discretion d_m to maximize the expected utility:

$$EU_{G_i} = \int_{-1}^{(G_r - d_m)} U_{G_i}(G_r - G_i)^2 f(w)\mathrm{d}w + \int_{(G_r - d_m)}^{(G_l - d_m)} U_{G_i}(w + d_m - G_i)^2 f(w)\mathrm{d}w + \int_{(G_l - d_m)}^{1} U_{G_i}(G_l - G_i)^2 f(w)\mathrm{d}w$$

We proceed as in Appendix 1. Here there are three cases (i.e. $d_m \leq 1 + G_r$; $1 + G_l \geq d_m \geq 1 + G_r$; $d_m \geq 1 + G_l$) that have this solution: $d_m = 0$ for $G_i < (G_r + G_l)/2$, $d_m = 1 + 2G_i - G_l$ for $G_l > G_i > (G_r + G_l)/2$ and $d_m = 1 + C$ for $G_i > G_l$.[30]

To see whether a principal delegates more discretion when there is committee control, we have to systematically compare these values of d_m with those of d in Appendix 1 for all combinations of C, G_i, G_l and G_r. The solution is fairly straightforward. With control, governments prefer the same degree of discretion (i.e. $d_m = d$, interval I of Figure 3) for $G_i > G_l$, more discretion (i.e. $d_m > d$, interval II) when $G_l > G_i > (G_r + G_l)/2$, less discretion (i.e. $d_m \leq d$, interval III) for $G_i < (G_r + G_l)/2$. In interval I of Figure 3, the government's expected utility in case of no control is $EU_d = -C^2 - G_i^2 + 2G_i C$, while in case of control it is $EU_{d_m} = -G_l^2 - G_i^2 + 2G_i G_l$, $EU_d > EU_{d_m}$ for $\forall C$ and $\forall G_i$. So there is not a control–discretion trade-off. In interval II, $EU_d < EU_{d_m}$ for $G_i < (C + G_l)/2$, while $EU_d > EU_{d_m}$ for $G_i > (C + G_l)/2$. In both cases there is trade-off. In interval III, $EU_d < EU_{d_m}$ for $\forall C$ and $\forall G_i$ and the trade-off disappears.[31]

4.b Member States' Optimum Discretion and Commission with Moderate Preferences

When C is between the two pivotal governments, i.e. $G_l > C > G_r$, outcomes are (results are for $G_l > |G_r|$ and symmetric for the opposite): G_r for $-1 \leq w \leq G_r - d_m$; $\min[w + d_m, C]$ for $G_r - d_m \leq w \leq C$; $\max[w - d_m, C]$ for $C \leq w \leq G_l + d_m$; and G_l for $G_l + d_m \leq w \leq 1$. There are nine cases to check and the solution has to be systematically compared with the one in Appendix 1 leading to these results (in brackets preference toward management committee control): (a) for $-G_r > C > 0$ there is trade-off and $d_m > d$, if either $G_r < G_i < 0$ (control), or $G_i < (G_r - 1)/2$ (no control); (b) there is no trade-off, discretion is broad and $d_m = d$, either for $-G_r > C > 0$ and $G_i > 0$, or for $G_l > C > -G_r$ and $G_i > (C + G_r)/2$, or for $C < 0$ and $G_i < 0$ (indifferent in all three cases); (c) there is no trade-off, discretion is limited and $d_m \leq d$, either for $-G_r > C > 0$ and $(G_r - 1)/2 < G_i \leq G_r$, or for $G_l > C > -G_r$ and $G_i < (C + G_r)/2$ or for $C < 0$ and $G_i > 0$ (control in all three cases).

It is straightforward to see that the management committee has increased the distance (hence the conflict) between principals' optimum degrees of discretion. ❐

30. In this interval, the principals are actually indifferent between $1 + C$ and $1 + G_l$. Both values imply full discretion since any w to the right of G_l is shifted to G_l by the committee. I have chosen the former because the Commission always prefers the largest discretion possible. Results are not affected.

31. It is also possible that a government dislikes granting both discretion to the Commission and ex post control to the committee in this interval (i.e. when $d_m = d = 0$ and $EU_{d_m} < -1/3 - G_i^2 \equiv EU_0$ from Appendix 1). This, however, does not tell us much about control and discretion. If the pivotal actor had this utility, there would be no legislation. The same applies for Section b of the Appendix.

APPENDIX 5

Proof of Proposition 4

Part 1. The first necessary condition for trading discretion for control is that the pivotal principal in a legislative procedure grants more discretion with committee control. When $G_l > |G_r|$, government r, pivotal in the committee for a rightward move on the policy space, is pivotal for an increase in discretion in consultation (that is, governments b and r coincide) under three conditions: (a) for $C > G_l > G_r$, (b) for $G_l > C > G_r$ and $C > 0$, (c) for $G_l > G_r > C > 0$. Substituting G_r for G_i in the solution of Appendices 4a and 4b, it is straightforward to see that discretion with control never exceeds discretion without. The same applies to pivotal actors in other legislative procedures, since, for them, $d_V \leq d_{G_b}$. Government l substitutes for government r when conditions do not apply but with the same result. The pivotal actor in any legislative procedure is never willing to grant more discretion to the Commission when there is committee control, so the Commission is never better off with the management committee control.

Part 2. The trade between legislative intervention and committee control takes place under two conditions. First, the pivotal principal must strongly prefer control. This is always true as it can be checked, when $G_b = G_r$, by substituting G_r (or values of pivotal principals in other legislative procedures, for all of which the ideal policy is to the left of G_b) for G_i in the results of Appendix 4. Second, the negative impact of committee control on the Commission is minimized. This can be measured indirectly by the effect that the committee per se (i.e. for $d_m = 0$) has on the expected utility of the Commission, taking as a benchmark the Commission's expected utility in case of no legislation. In the latter case, the Commission's utility is

$$EU_C = EU_0 \equiv -\int_{-1}^{1} (w - C)^2 f(w)\mathrm{d}w = -\frac{1}{3} - C^2$$

(from Appendix 1), with management committee control and $d_m = 0$, the utility is

$$EU_m = -\int_{-1}^{G_r} (G_r - C)^2 f(w)\mathrm{d}w - \int_{G_r}^{G_l} (w - C)^2 f(w)\mathrm{d}w - \int_{G_l}^{1} (G_l - C)^2 f(w)\mathrm{d}w$$

$$= \frac{1}{3} G_l^3 - \frac{1}{3} G_r^3 - \frac{1}{2} G_l^2 (C + 1) + \frac{1}{2} G_r^2 (C - 1) + G_r C + G_l C - C^2 .$$

For $G_l > C > G_r$, $EU_m > EU_0$, for $C > G_l > G_r$, $EU_m < EU_0$ as $C \to 1$, $G_l \to -1$ and $G_r \to -1$.

The committee has some value per se when the Commission has moderate preferences.❐

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