

Efficiency or credibility? Testing the two logics of delegation to the European Commission

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ABSTRACT This article critically elaborates Majone's argument that there are two logics underlying the delegation of powers to the European Commission: the logic of efficiency and the logic of credibility. It analyses 601 provisions of secondary legislation and suggests a method to distinguish the two rationales. It then correlates executive powers with statutory constraints. A surprising result is that these constraints are more associated, in general, with credibility-based than with efficiency-based delegation; however, statutory constraints that facilitate control by national state actors are more likely to be associated with efficiency-based delegation. The article concludes by emphasizing that different strategies of control are related to different underlying motivations to delegate.

KEY WORDS Bureaucratic autonomy; credibility; delegation; efficiency; European Commission; statutory constraints.

INTRODUCTION

One of the objectives of the Convention on the Future of Europe, established by the Laeken Declaration, is to define 'the exclusive competence of the Union, the competence of the Member States and the shared competence of the Union and the Member States' (European Council 2001). However, a logical step prior to taking such an important decision is to try to understand why institutions enjoy those policy prerogatives. If we have a clear and systematic understanding of the rationale behind institutional choice, we could, probably, inspire better institutional reform.

This article is a small step towards an understanding of why the European Commission enjoys some specific policy prerogatives and the conditions under which this institution exercises those powers. The literature on the Commission is considerable. Leaving aside textbooks, works on its administrative structure and on the preferences and culture of its personnel, scholars focus generally on two types of powers of the Commission. The first one is the legislative power of policy initiation. Academic works evaluate the extent to which the Commission can use the power to propose to obtain its preferred

policy outcome and to direct the process of European integration. Some students emphasize the Commission's successes (e.g. Bulmer 1994; Coleman and Tangermann 1999; Cram 1997; Héritier 1996; Mazey 1995; Peterson 1995; Sandholtz 1993; Schmidt 1998; Thatcher 2001). Others tend to clarify the conditions under which this power is likely to be effective (Garrett and Tsebelis 1996; Pollack 1997, 1998; Schmidt 2000; Tallberg 2002). A second set of works focuses on the executive powers of the Commission, especially in the regulative arena (e.g. Cini 1997; Docksey and Williams 1994; Laffan 1997; Majone 1996).

Systematic testing across policies is still relatively rare, however, probably because we do not have enough theoretical literature to generate good testable hypotheses.¹ One interesting exception is an argument by Giandomenico Majone (2001b) on the rationales for the delegation of executive powers to the Commission. This article uses Majone's contribution as an excuse to extrapolate two testable hypotheses on the correlation between the rationales for the delegation of powers and the establishment of statutory constraints.² The predictions are the following: when exercising powers that are delegated to improve decision-making efficiency, the Commission will be more constrained in general, and more subject to national-specific constraints in particular, than when exercising powers that are delegated to achieve commitment.

The article is structured as follows. The next section reviews Majone's two logics of delegation of executive powers to the Commission (i.e. credibility and efficiency) and suggests two hypotheses. After a description of the data set used for the analysis, the next section suggests a method and a list of examples that can help us to identify the logics of delegation. I then review the statutory constraints imposed on the Commission and assess the validity of the hypotheses. Without giving too much away, the main results are that: (a) both credibility and efficiency explain the delegation of executive powers to the Commission; (b) statutory constraints are more associated, in general, with credibility-based than with efficiency-based delegation; however, (c) statutory constraints that enhance the control of national state actors are more likely to be associated with efficiency-based delegation.

THE TWO LOGICS OF DELEGATION

Majone has argued recently that there are two main rationales for the delegation of executive powers to the European Commission (Majone 2001b).³ First, *delegation takes place because legislators want to take advantage of a reduced workload and agency expertise*. Delegation is motivated by reasons of efficiency in decision-making and it is more likely in informationally intense issue areas. Members of the Council and of the European Parliament, the legislators of the European Union (EU), may wish to reduce their EU legislative workload and free up time for other activities.⁴ If the marginal returns to favoured con-

stituents from alternatives are higher than the marginal returns from enacting specific European policies, legislators will start delegating authority.

The Commission is one of the candidates for delegation. Majone draws from the Anglo-American law of agency and law of trust, and asserts that, in these circumstances, the Commission acts as an agent, rather than as a trustee. In the EU, this type of delegation occurs especially in secondary legislation and it is coupled with the system of control by national representatives termed comitology (Hix 1999: 41–5; Majone 2001b: 104, 114–15; Pollack 1997: 114–16).

The second rationale of delegation is to *enhance the credibility of policy commitments* (Majone 2001b: 103; see also Horn 1995: 16–19). This is essentially a distributive argument. Any policy is designed to favour some groups and burden others, but the net benefit flow to the relevant constituents takes place over time and can be disrupted by ex-post legislative and administrative tinkering. A new legislative coalition can amend the law or the executive might undermine the value of the legislation by altering the way the policy is administered or enforced. Legislators can protect the durability of the deal by reducing the scope of delegated authority or by delegating that authority to an independent agent (Horn 1995: 18–19). Epstein and O'Halloran (1999: ch. 6), for instance, show that, in times of divided government, the US Congress delegates less authority to the executive and more often to independent agencies.⁵

In the Union, legislative tinkering is a possibility, but the procedures are not conducive to swift decision-making. High decision thresholds in the Council⁶ and absolute majority requirements for Parliament's decisions are rules strongly biased in favour of the status quo. Since national administrations are in charge of the implementation of many Union policies, it is administrative tinkering that Union legislators most worry about. Council ministers and Members of the European Parliament can restrict national executive action or can rely on the Commission, an executive relatively independent of political pressures, to solve the problem of commitment.

For Majone (2001b: 104, 114–15), the Commission acts as a trustee in this case.⁷ Treaty-based powers of agenda-setting, ensuring compliance with EU law and issuance of decisions and directives, are examples of this logic of delegation to the Commission.

TESTABLE PREDICTIONS

Although the agent–trustee dichotomy does not exist in the political science literature, it is recognized that agencies enjoy different degrees of independence. This feature can be seen as an administrative decision that reflects legislators' need to minimize a combination of decision-making, commitment, agency and uncertainty costs (Horn 1995). Considering independence as a continuum rather than a dichotomy is more accurate. Even central banks, a frequently cited example of trusteeship in Majone, enjoy different degrees of

independence which reflect underlying distributive conflicts between government ministers, party legislators and coalition partners – hence, the related problem of commitment (Bernhard 1998).

If we use the term agent and trustee as the extremes of this continuum, *as far as the processes of selection and sanctioning are concerned*, the Commission is undoubtedly a trustee. Article 211 EC clearly asserts that the Commission must ensure the proper functioning and development of the Common Market and that Treaty provisions are applied. The Commission's members must be completely independent in the performance of their duties and must not take instructions from governments. Governments must respect the principle of independence (Art. 213 EC). It is very hard to discharge a Commissioner of their duties. Compulsory retirement, decided by the Court of Justice, can be only on grounds of serious misconduct or breach of the independence clause (Art. 216 EC). The European Parliament can censure the whole Commission with a two-thirds majority of votes cast, representing an absolute majority of parliamentarians (Art. 201 EC). Finally, note that the powers of the Parliament have increased asymmetrically. It now approves the nominee to the Presidency of the Commission, but the censure procedure has not changed since 1958.⁸

In the empirical section that follows, I shall show that the Commission exercises both agent- and trustee-based powers which, contrary to Majone's (2001b: 104, 114–15) assertion, are delegated both in Treaty provisions and secondary legislation. The reasoning so far implies that the Commission should enjoy different degrees of independence when exercising these powers and provides the basis to two testable hypotheses.

Consider, first, delegation motivated by the problem of commitment. If Union legislators perceive that national administration and enforcement of a European policy could undermine the value of the legislation, they could rely on the Commission implementing the policy and/or they could delegate the Commission specific powers to control national execution. Either way, we should expect the Commission to be relatively independent in the exercise of those powers, or, more specifically, we should expect it to be less subject to national state influences, otherwise the problem of commitment would remain unsolved. When delegating powers to take advantage of reduced workload and agency expertise, Union legislators are faced with a dilemma. They are pressed by more politically valuable alternatives to EU legislative work but they run the risk of considerable agency losses, since they are aware of the difficulty of sanctioning the Commission. This means that delegation will be more circumscribed and more subject to national specific constraints.

The following two hypotheses can then be derived: when exercising powers that are delegated to reduce workload and improve efficiency in decision-making, the Commission will be 1) more constrained in general, and 2) more subject to national-specific constraints in particular, than when exercising powers that are delegated to solve the problem of commitment.

THE DATA SET

I have generated, in four steps, a data set of legal provisions conferring executive powers upon the Commission. First, I have created a database of all the directives and regulations cited by fifty-eight books on EU law published between 1958 and 1999 and available from the British Library of Political and Economic Science of the London School of Economics and Political Science. I have only considered the book sections on EU policies, on the budget and on general secondary legislation. Second, the resulting 2,835 directives and regulations have been sorted in descending order by the number of books citing each law.⁹ Third, I have selected the seventy laws that have at least ten citations and contain at least one legal provision that delegates powers to the Commission. Finally, I have retrieved, from this sample, 601 distinct legal provisions conferring powers upon the Commission.¹⁰ These could be considered the most important ones adopted by the Union since 1958.

CREDIBILITY AND EFFICIENCY IN DELEGATION: OPERATIONALIZATION AND DATA ANALYSIS

A certain degree of judgement is unavoidable when separating provisions that delegate powers to enhance the credibility of policy commitments from those that take advantage of reduced workload and agency expertise. Table 1 suggests examples of powers that are delegated according to the two logics and Figure 1 shows the distribution of credibility- and efficiency-based delegation across issue areas in the sampled laws.

Delegation and credibility

The incidence of credibility-based delegation is particularly high in legislation on capital movements, competition (including transport), professional qualifications and credit institutions. In absolute terms, there are also many provisions of commercial and agricultural policy delegating powers following the credibility logic. Only four issue areas and twelve acts contain no provisions of this type.

When delegation is justified by the problem of commitment, we have to refer to the specific policy objectives and ask ourselves: had this power not been conferred upon the Commission, would the objectives of this act be compromised? The Council relies on an institution that is more independent from short-term political pressures than national governments in general, and the Council's ministers in particular, to pursue such objectives in a credible time-consistent way (Kyddland and Prescott 1977; Majone 1996, 2001b: 107–19; Moravcsik 1998). Answering the question posed above is not always straightforward, but the list of examples in Table 1 is illustrative of how we could consider delegation to achieve credibility.

The first example is admittedly very general and can encompass all the subsequent cases. However, here I refer predominantly to objectives such as the

Table 1 Examples of powers delegated following the logics of credibility and efficiency

<i>Credibility</i>	<i>Efficiency</i>
Issuance of decisions and other legal instruments to ensure compliance with EC laws	Adoption of coefficients, scale of premiums, derived prices, intervention centres and related measures
Granting, suspension, reduction, discontinuation and approval of aids and subsidies	Computation and fixing of refunds, quantities, conversion factors, corrective amounts, levies, charges and related measures
Carrying out inspections, investigations and verifications	Specification of legal terms and terminology
Request for information (only if it complements powers to ensure compliance, to carry out investigations or to impose penalties)	Adoption of rules, particulars, criteria, conditions and provisions of implementation
Imposition of sanctions	Technical amendments and adjustments to take into account technical progress
Adoption of transitional, safeguard and protective measures and of measures derogating or exempting from some provisions	Operative management of some measures
Authorization of safeguard, exceptional and other measures of member states	
Negotiation with third countries	

preservation of competition in various sectors, the development of uniform principles for the commercial policy, and the protection from dumping, subsidies and illicit commercial practices. Powers are conferred upon the Commission to ensure compliance with the relevant rules on business practices, mergers, dumping, import and export (e.g. granting block exemptions, giving clearance, assessing complaints, requiring termination of infringements, taking surveillance and similar measures). The Commission is less likely to acquiesce to pressures from powerful domestic, exporting or import-competing companies and to compromise consumers' interests and legislative objectives than re-election seeking ministers. Other provisions that fall into this category include the power to withdraw toy standards that do not satisfy EU safety requirements, to request a European standard and to take measures to ensure compliance with the directives on quality of water, capital movement and on public works. Pressure by powerful groups and incentives to non-compliance of national administrations explain delegation to the Commission.

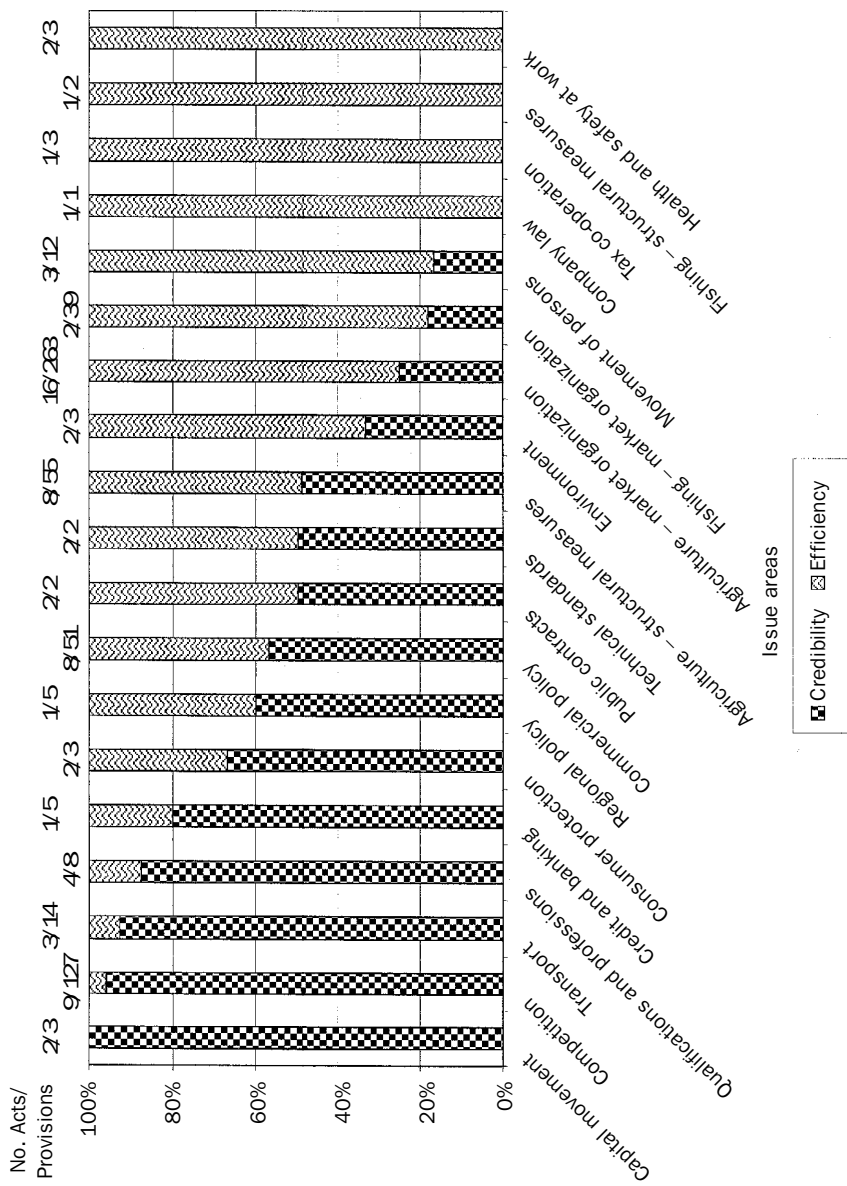


Figure 1 Credibility- and efficiency-based delegation across issue areas

The second example refers predominantly to two types of policies. First, the Council attaches a series of conditions to the granting of Union aid to structural measures in agriculture¹¹ and to regional development projects. For instance, a 1972 directive on the modernization of farms specified the types of farmers entitled to aid and the rules on the approval of development plans and on keeping accounts. The 1975 European Regional Development Fund regulation included rules for the selection of areas and the types of investment entitled to aid. Ensuring compliance with these rules could be exercised by the Council. However, I contend, in these types of distributive policies there are strong incentives for logrolling within the Council (i.e. 'I approve your project if you approve mine'). There is then a clear risk of infringement of the rules and of a suboptimal outcome for all Council members – in terms of misplaced funds or distorted trade. Delegation to the Commission of powers to grant Union funds to national projects and to suspend or reduce aid in case of infringement preserves the original objectives of the measures. The second policy is the control of national aid to domestic sectors. In secondary legislation, this measure is adopted by extending Treaty Articles 87–9 EC to the relevant sectors. In order to preserve the Common Market, national aid that might distort intra-EU trade and competition needs approval. Here too, the decision as to whether aid is compatible with EU law could be left to the Council, but a similar problem of logrolling is likely to emerge, especially if aid benefits powerful domestic constituencies. The electoral connection of ministers affects the credibility of the direct control by the Council and explains the reliance on the Commission.

The following three examples are powers that complement the first two cases. If Union legislators want to make sure that the Commission can exercise its duties in overseeing business practices and in granting and approving aid, they have to delegate the ancillary powers to carry out inspections, request information and sanction infringements.

Delegation in the last three examples could also be explained by the problem of commitment. But, admittedly, the efficiency rationale could play a role here too. Many legislative acts anticipate the possibility of disturbances or exceptional circumstances that might require a temporary alteration to the normal working of a policy. Others allow derogations and similar measures since they acknowledge that different situations within member states call for a certain degree of flexibility. In times of crises, inaction could be very costly. The Commission and national governments are likely to act more swiftly than the Council. This efficiency-based explanation can partially account for the delegation of powers to take these measures. But, in my opinion, precautionary actions also run the risk of seriously jeopardizing policy objectives as they normally imply suspension of some provisions. To avoid this, the Council relies on the Commission to decide upon the necessary measures in case of disturbances of, say, agricultural and fishery markets. Similarly, it is the Commission that decides the suspension of the mechanism for clearance of job vacancies, which was established in the 1960s to facilitate the movement of

workers. These decisions are, generally, exceptional as they modify the basic tenets of a policy and their appropriateness can be open to contention within the Council. The Commission has a clearer stake in preserving the original policy aims and this, in my view, is a more potent rationale for delegation.

The same can be said for when member states take precautionary measures such as in the banking and capital movement directives or when they require derogations from, say, the system of vacancy clearance. National administrations could, for instance, demand proof of qualification in the early directives on the freedom to provide services and of establishment. Now, they can decide not to grant to the applicants the right to choose between an adaptation period and an aptitude test in the general systems for the mutual recognition of diplomas. Provisions requiring assessment and authorization of national measures can also be found in some agricultural legislation. The Commission has been conferred the powers to amend, abolish or authorize these measures, some of which, by their very nature, may derogate from and therefore alter the objectives of EU policies.

I consider the delegation of powers to negotiate trade and related agreements with third countries, the last example, also motivated by reasons of credibility. Undoubtedly, efficiency plays a role here too. A single trade Commissioner is likely to be more effective in negotiation than a collective body such as the Council. But the important aspect in this case, I think, is that delegation to the Commission, through negotiating mandates, pre-empts unilateral national negotiation which may seriously undermine a common commercial policy. Auxiliary powers reinforce this rationale. For instance, the Commission can decide that national governments must suspend decisions on requests for authorizations and on acquisition of holdings by credit institutions of third countries that are negotiating market access with the Commission.

Delegation and efficiency

The last four issue areas on the right side of Figure 1 include provisions that delegate powers according to the efficiency logic. In absolute terms, delegation motivated by efficiency is common in the measures on the organization of fishery and agricultural markets, structural aid, commercial policy and movement of persons. Only one issue and sixteen acts contain no provisions of this type.

In the simplest way, we could consider delegation motivated by efficiency as a default condition. If we answer 'no' to the question mentioned above, the rationale for delegation is a reduction in workload and reliance on bureaucratic expertise. Table 1 lists powers that are likely to be delegated according to this logic. The first three examples are mostly related to the organization of agricultural and fishery markets. The Council takes the most important measures. It sets the target prices for production, marketing and intervention and the threshold prices for each product; it establishes the main guidelines for subsidies and for import and export licences; and it determines the standard

qualities, the main intervention centres and the frontier crossing points. The Commission is delegated all the derived and complementary measures to reduce the Council's workload.

Reasons of efficiency should also explain the delegation of powers to adopt detailed rules, further particulars and criteria. This frequently happens in agricultural and fishery policies, but we can also find it in the regulations on administrative co-operation in the field of indirect taxation, on the valuation of goods for customs purposes, and in directives on animal health. A requirement to adopt implementing provisions is included in competition, commercial, transport and regional policy measures.

A similar rationale should explain provisions requiring the Commission to adopt technical amendments to the specific measures at hand. Examples include directives on credit institutions, on the award of public works contracts and on the recognition of diplomas. The Commission is asked to adjust the minimum amount of foreseeable market capitalization in the directives on the admission of securities to the stock exchange. It is asked to adapt to technical progress the directives on the quality of water, on the type-approval of motor vehicles, and on the health and safety of workers at work. Finally, the management of the machinery for clearance of job vacancies, of the monetary compensatory amounts in agriculture and of the statistical nomenclature of the common customs tariff is conferred upon the Commission and should also be motivated by reasons of efficiency.

Delegation in the Treaty and in secondary legislation

From the analysis so far, it is apparent that powers are not delegated in secondary legislation for efficiency reasons alone, as claimed by Majone. Moreover, some powers delegated by Treaty provisions follow the efficiency rationale. For instance, Article 22 (now repealed) of the original Treaty of Rome asked the Commission to determine the extent to which customs duties of a fiscal nature are to be taken into account for calculating the common customs duty. Article 91.2 (repealed) asks it to lay down rules on re-import.¹² This is because the risk of tinkering and the information intensity of an issue are not related to a specific instrument, namely Treaty provision or secondary legislation.

STATUTORY CONSTRAINTS ON EXECUTIVE ACTION

The exercise of delegated powers is normally subject to constraints. Epstein and O'Halloran (1999: 99–106) identify fourteen categories of procedural constraints that the Congress imposes on the American executive. The Council too uses constraints to limit the Commission's executive action. The following seven are similar to those used in the American context and do not need

additional comments:¹³ *Time Limits, Spending Limits, Reporting Requirements, Consultation Requirements*,¹⁴ *Public Hearings, Rule-making Requirements, and Exemptions*.

The next three categories of constraints are instead more specific to the EU. They include procedures that, collectively, are part of the comitology system of procedural control. *Committee Control* identifies whether a management or regulatory committee of member state representatives oversees the Commission in the exercise of its delegated powers. It can be divided into two subgroups of, of course, a) *Management* and b) *Regulatory Committee Control*. *Member State Control* includes procedures whereby a Commission action requires prior consent or request by a member state or its authorities. It also comprises a procedure in the 1968 anti-dumping regulation whereby a member state can object to a Commission's rejection of a complaint. Objection leads to a Union-level examination. *Council Control* refers to procedures where the Council is directly involved in controlling the Commission's decisions. It can be subdivided into four classes according to a) the decision rule of the Council (qualified majority voting or unanimity) and b) the bias and timing of control. The most stringent variant (*High Council Control*) comprises prior Council unanimous approval of a Commission action. This can be found when the Commission requires a mandate from the Council to carry out international negotiations on maritime transport and on industrial concentrations. The least stringent procedure (*Low Council Control*) imposes the need of a unanimous Council to overrule or pre-empt a Commission action. Article 88.2 EC, for instance, asserts that, on application by a member state, the Council may unanimously decide on the compatibility of a state aid prior to a Commission decision on the matter.

Procedures where the Council acts by qualified majority are somewhere in between in terms of stringency (*Medium Council Control*). Those that require prior Council approval or where measures, when referred to the Council, are either suspended until Council action or, if immediately applicable, are revoked in the case of Council inaction after a set time period are relatively more stringent (e.g. variant b of the safeguard procedure). These can be found in many commercial and competition policy measures. Procedures whereby actions are or may be referred to the Council, prior to becoming effective or with suspension of their effects, and where the default condition in the case of Council inaction is the measure taken by the Commission, are relatively less stringent (e.g. variant a of the safeguard procedure). Commission measures protecting agricultural markets from disturbances or illicit business practices can, if referred, be amended or repealed by the Council. Similarly, a Council direct action, after a Commission decision is in force, is relatively less stringent because the effects of the measure are deployed in the mean time. For instance, the Council may revoke a Commission provisional anti-dumping duty, but after it has been enforced. I nonetheless have included these procedures in the same category without further discrimination.

ANALYSIS OF RESULTS

Following the rules explained above, each provision has been coded 1 if efficiency is the rationale for delegating powers, 0 if credibility explains delegation. Similarly, if a constraint has been associated to a provision, this has been recorded with the value of 1, 0 otherwise.¹⁵ Table 2 shows the Pearson's correlation coefficients with their significance levels. There are ten categories of constraints. The second row lists the three constraints that are national-specific because control is exercised by the Council, a member state or one of its representatives.¹⁶ The five constraints at the right side of the second row are subdivisions of Committee and Council Control.

First recall that we have hypothesized that, when exercising powers which are delegated to improve efficiency, the Commission will be 1) more constrained in general, and 2) more subject to national-specific constraints in particular, than when exercising powers delegated to secure a credible commitment.

The results are surprising in some respects. More constraints are associated with credibility-based than with efficiency-based delegation. The following are significantly correlated with credibility (in diminishing order of correlation strength): Consultation Requirements, Council Control, Public Hearing, Exemptions and Time Limits. Only Committee Control and Rule-making Requirements are correlated with efficiency-based delegation, at the nominal level of significance. Efficiency-based delegation and Committee Control are then correlated, as asserted by Majone (2001b: 104, 114–15), but the first hypothesis is clearly disconfirmed. At least on a general level, we cannot say that the Commission is more independent when it exercises powers to enhance the credibility of policy objectives. This is surprising because independence should be the source of credible action.

However, as acknowledged by our second prediction, constraints impinge differently on credibility. Pollack (2002: 210), for instance, warns against giving the same weight to different control mechanisms. If a specific group or interest is exempt from a measure, this does not imply that implementing actions lose credibility. An obligation to hold a public hearing or to consult another institution may restrict bureaucratic autonomy only slightly. On the other hand, if a measure of the Commission needs the approval of the Council or a committee, the independence of this institution from national interests is seriously compromised. The top row in Table 2 lists constraints that do not jeopardize credibility. The requirement to report to, consult or hear states and national interests is too mild to endanger it. The three constraints and their subdivisions in the second row do instead affect it.

The second hypothesis is, however, only partially confirmed. Management and Regulatory Committee Control are significantly correlated with efficiency-based delegation, as expected. However, different from the predictions, Council Control is correlated with credibility-based delegation. Low control is only a very partial disconfirmation because the decision threshold (i.e. unanimity to

Table 2 Pearson correlations between delegating provisions and constraints

	Time Limits	Spending Limits	Reporting Requirements	Consultation Requirements	Public Hearing	Rule-making Requirements	Exemptions
Delegating provision	-0.123*	-0.063	-0.029	-0.504*	-0.400*	0.253*	-0.382*
	Committee Control	Member State Control	Council Control	Committee Management	Committee Regulatory	Low	Council Control
Delegating provision	0.697*	0.028	-0.425*	0.623*	0.185*	-0.300*	Medium -0.265* High -0.074

Notes: Efficiency-based delegation = 1; Credibility-based delegation = 0. n = 601; * correlation is significant at the 0.01 level (two-tailed).

overrule a Commission action) barely endangers credibility. But the significant correlation between the medium level of control (i.e. qualified majority in the Council) and credibility-based delegation is a clear rejection of the hypothesis. This is likely to reflect the fact that, as explained above, the delegation of some powers is justified by a mixture of credibility and efficiency.

I have also carried out a factor analysis to detect underlying dimensions in the distribution of these constraints.¹⁷ Some constraints have no salient loading. Others load on only one factor and no other constraint loads on it.¹⁸ The remaining categories can be broadly divided into two groups or clusters that are used alternatively. The first group includes Committee Control and Rule-making Requirements. Committee Control has salient loading on at least three factors and it is the core to the first cluster (the Management and Regulatory Committees are used alternatively). These are constraints mostly used on efficiency-based delegation. The second group includes Consultation Requirements, Public Hearing, Exemptions and Low Council Control, mostly used for credibility-based delegation.

In conclusion, the predicted general association between constraints and the logics of delegation is rejected. But we can say that some constraints are more likely to be used when one of the two logics prevails. Efficiency-based delegation is generally linked to committee control. The national representatives who sit in these committees provide, on the one hand, policy-relevant expertise and, on the other hand, direct national control of bureaucratic decisions, thus minimizing the risk of supranational agency losses.¹⁹ In practice, then, ministers delegate to their own representatives in Brussels. Too many constraints may limit the gains from expertise.

Credibility-based delegation is normally related to milder national-specific constraints, as expected. Delegation occurs here because legislators demand bureaucratic execution that is independent from national pressures. Relying on committee control would defy this purpose. Nevertheless, the risk of agency drift remains. Legislators then rely on those statutory constraints that minimize this risk without jeopardizing the independence of bureaucratic action.

Finally, it is not straightforward to relate a power to a single rationale in some circumstances. In the section on operationalization, we admitted that probably both logics were at work in the case of the power to adopt or authorize safeguard measures or to negotiate with third countries. As it emerged in the statistical analysis, the use of specific procedural constraints cannot be predicted in this grey area.

CONCLUSION

There are certainly different forces and rationales at play that motivate the executive powers of the Commission. Most of the time, it is relatively straightforward to detect which is the prevailing one, when reading the provisions of secondary legislation. These rationales, however, do not seem to imply different degrees of bureaucratic independence *per se*. When credibility

is the main determinant of delegation, the implication is that Union legislators tend to prefer those types of statutory constraints that do not jeopardize credibility, but Commission action is still delimited accurately. When efficiency explains delegation, excessive deck-stacking would be counterproductive²⁰ as the informational gains of delegation would be lost. However, efficiency guides the choice of constraints. For instance, national representatives in comitology committees provide both oversight and expertise. Admittedly, statutory constraints impose different degrees of control and an appropriate measure of stringency ought to be developed in future research.

The work has dealt with the competence of only one of the institutions of the Union, but this is central to the objectives of the Convention on the Future of Europe. It does not provide indications of the policy areas that are best dealt with at Union level but it suggests that, once Union legislators have set policy objectives, if they care about informed and credible implementation, they will still have to rely on this institution, as they have done so since its establishment.

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NOTES

- 1 This is changing. Compare the different predictions with regard to the Commission's executive discretion of Tsebelis and Garrett (2001), Tsebelis and Yataganas (2001), and Franchino (2000a).
- 2 The implication is that the development of the hypotheses is my responsibility, not Majone's.
- 3 This argument is not entirely new. The importance of the credibility rationale has been already recognized in earlier works. See Majone (1996) and Moravcsik (1998); see also Majone (2000, 2001a, forthcoming).
- 4 On their activities see Bowler and Farrell (1993), Norris and Franklin (1997) and Hix (1999: 63–75). I refer to the European Union throughout the article, though the data set comprises only acts adopted within the European Community pillar of the Treaty.
- 5 The commitment/distributive argument is also used in studies of legislative organization, e.g. Weingast and Marshall (1988), and policy-making, such as Kydland and Prescott (1977).

- 6 The main decision rules are unanimity or a qualified majority representing more than 70 per cent of Council votes.
- 7 A trusteeship characterizes a fiduciary relation between a settlor and a trustee, where the latter manages a property for a beneficiary that can be the settlor himself (Majone 2001b: 113). A classical example is the delegation of monetary policy to independent central banks to pursue a policy of price stability.
- 8 For an analysis of these developments, see Hix (2002).
- 9 See Franchino (2001a) for further detail on the first two phases.
- 10 Recitals and appendices have been disregarded for this purpose.
- 11 Note that I do not consider the guarantee funds in support of the common agricultural policy because these complement the setting of agricultural prices. Delegation is better explained by reasons of efficiency in this case.
- 12 It could be argued that the following articles also delegate powers according to this logic: numbers 33.2, 45.2, 124, 205, 208, 229, 246.3 (Treaty of Rome numbering).
- 13 For a more general treatment, see Franchino (2001a, 2001b).
- 14 It includes the *advisory committee procedure*, namely consultation with advisory committees.
- 15 In some cases, a provision exempts an entire class of interests from the impact of the measure at hand. In others, there is a requirement to produce a report about the implementation of the whole policy. These constraints cannot be associated with a specific delegating provision; they have then been assigned to all the provisions in the act at hand.
- 16 Consultation and Reporting Requirements have a national content too because they provide for consultation of and reporting to national or nationally based institutions. They are, however, relatively milder.
- 17 The analysis with ten (thirteen) constraints has produced four (six) factors with an eigenvalue greater than 1. Observations are with respect to the structure matrix after an oblique rotation (extraction using maximum likelihood, rotations using the *oblimin* method with Kaiser normalization). They are all available from the author.
- 18 Time Limits, Spending Limits, Reporting Requirements and High Council Control have no salient loadings. Member State Control and Medium Council Control load on only one factor, no other constraint loads on it.
- 19 On the informational and oversight function of these committees, see Franchino (2000b).
- 20 See the seminal contributions of McCubbins *et al.* (1987, 1989) on political actors stacking the deck in favour of politically relevant constituents.

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