

A FORMAL MODEL OF DELEGATION IN THE EUROPEAN UNION

Fabio Franchino

ABSTRACT

This article develops a formal model of the politics of delegation in the European Union (EU) incorporating key institutional features: the legislative–executive role of the Commission, the legislative–executive role of the members of the Council of Ministers, the possible implementation of European policies by different national administrations and the variety of EU decision rules. The model generates propositions on how decision rules, policy conflict and the status quo affect the delegation of powers to the Commission and to national authorities. It demonstrates how qualified majority voting and, in some cases, codecision work as a commitment technology by facilitating the adoption of legislation that restrains national authorities, shifts powers from national administrations to the Commission and increases its discretion. More generally, it shows that, first, the negative relation between conflict and discretion may not hold in the case of many administrators and a high threshold for decision-making; and, second, a less demanding bargaining environment in the legislature may work in favor of an administrator with agenda-setting power.

KEY WORDS • commitment • delegation • European Union • legislative procedures

The European Commission and the administrations of the member states are the main implementers of the common policies of the European Union (EU).¹ There are no areas where national authorities have not had, at least at some point in time, some executive role. Their discretion varies considerably. It is more extensive in taxation and environmental policy, more restricted in agriculture, commercial or competition policy. The Commission enjoys issue-specific and more limited executive powers in about 60 percent of the common policies. The cross-policy distribution of these functions is

1. I use the term EU throughout the article but the focus is on the EC pillar of the European Union.

a mirror image of that of national administrations. There are also other interesting patterns of delegation. For instance, when an act is adopted by qualified majority voting instead of unanimity, the likelihood of delegation to the Commission increases by more than 30 percent. Its executive powers also increase significantly (Franchino, 2004).

This article introduces a formal model of the politics of delegation in the EU that helps to explain the cross-policy and cross-institutional distribution of policy powers in this political system. It starts from the premise that, in adopting statutes, EU legislators wish to rely on bureaucratic expertise for policy execution but, at the same time, they are aware that administrators may have their own policy objectives and may not implement those statutes faithfully. A unique feature of the EU is the considerable overlap between executive and legislative functions. In addition to its executive powers, the European Commission plays an important role in the legislative process, while members of the Council of Ministers are not only the most powerful EU legislators but also the key actors in charge of national execution.

Formal works on delegation have predominantly a US focus (Epstein and O'Halloran, 1994, 1999; Krehbiel, 1991; Volden, 2002), so they disregard the incentives of EU legislators and administrators that originate from its institutional structure. So do Huber and Shipan (2002), who have followed the modeling approach of Epstein and O'Halloran to produce a theory of delegation applicable across political systems.

Although the formal literature on the EU legislative procedures is extensive (e.g. Crombez, 1996, 2000; Garrett, 1995; Garrett and Tsebelis, 1996; Steunenberg, 1994; Tsebelis and Garrett, 2000), there are only three formal studies that analyze the processes of delegation. Franchino (2000) follows the lead of the original game-theoretic model of Epstein and O'Halloran (1994) but the analysis is limited only to the delegation of powers to the Commission. The model generates propositions on how decision rules, policy preferences, uncertainty and the status quo affect the degree of executive discretion that is conferred upon this institution. However, it disregards the fact that most EU policies are executed by national administrations. The opportunity for national implementation generates specific incentives for EU legislators, especially for the members of the Council since they usually control their own national authorities. Therefore, the policy authority enjoyed by the Commission is dependent upon the attractiveness of national delegation. Tsebelis and Garrett (2001; see also Bednar et al., 1996: 284) develop a spatial analysis of the EU legislative procedures and derive propositions on the executive discretion of the Commission based on the core of each procedure, namely the set of policies that cannot be overruled by applying a specific procedure: the larger the core is, the greater executive discretion

the administrator enjoys.² Since their work focuses only on the Commission, the criticism that I have mentioned earlier can be leveled against Tsebelis and Garrett too. Furthermore, their model derives propositions on the level of discretion only from the rules of legislative override, disregarding the fact that legislators are likely to anticipate bureaucratic behavior and will establish *ex ante* in the statutes the formal boundaries for Commission implementation. Finally, Dimitrova and Steunenberg (2000) propose a spatial model to explain the granting of exemptions to some member states in EU legislation. They start by assuming that member states face different status quos that may not coincide with their ideal policies. If the intersection of the preferred sets³ of the member states is an empty set, the Council cannot agree on a uniform common policy and will adopt legislative provisions that allow for greater national executive discretion. The choice variable in the Dimitrova and Steunenberg model is dichotomous, i.e. the outcome is legislation either with or without exemptions. My model treats national executive discretion as a continuous variable. This is a more accurate depiction of the reality of legislative design. Moreover, Dimitrova and Steunenberg disregard entirely the role of the Commission, both its power to initiate the legislative process and its role in the implementation of common policies. They also neglect the potential impact that different decision rules have on the granting of exemptions.

The model proposed here generalizes the work of Franchino (2000) by taking into account key legislative and executive features of the EU. It produces propositions on the circumstances under which EU legislators rely on either national authorities or the Commission for the execution of common policies. It considers the effects of legislative procedures, policy preferences and the status quo on the choices of delegation. These results contribute to three sets of academic literature.

First, a common finding in the literature of delegation is that the level of discretion is a negative function of the intensity of policy conflict between legislators and administrators (Epstein and O'Halloran, 1994, 1999; Huber and Shipan, 2002).⁴ I show here that many administrators and a high threshold for decision-making within the legislature may sever this relation. In the EU, where members of the Council are also in charge of national

2. According to Tsebelis and Garrett (2001: 383), the executive discretion of the Commission is greater when new acts are adopted in the Council under unanimity rather than under qualified majority voting. Consequently, the move to majority voting reduces the discretionary authority of the Commission.

3. The preferred set is the set of policies that an actor prefers to the status quo.

4. Recently, Volden (2002) has qualified this result by considering the status quo policy and the possibility of delegation to an agency that is independent from the executive in separation of powers systems.

execution, when the decision rule is unanimity, discretion first diminishes then increases as preferences diverge. Furthermore, in Huber and Shipan (2002: 105–6), the executive is less likely to be constrained when it is more difficult to reach an agreement within the legislature. In the EU, it is generally harder to take unanimous rather than majority decisions in the Council but it is under unanimity that the Commission is more likely to be constrained because it cannot use effectively its power of legislative initiation. A less demanding bargaining environment in the legislature may work in favor of an administrator with agenda-setting power.

Second, an important debate in the EU literature is on the motivations behind institutional choices when the Treaty establishing the EU is modified and on the relative importance of institutional choices and consequences in affecting the process of European integration. For Moravcsik (1998), the shift from unanimity to qualified majority voting in the Council and the delegation of substantive authority to supranational institutions is motivated by the need to bolster the credibility of policy commitments by ‘locking in’ future policy coordination among member states. Tsebelis and Garrett (2001) assert that the study of institutional consequences should inform and be prior to the study of institutional choice. This work shows how the institutional choices with regard to delegation and decision rules should not be treated separately because they are heavily intertwined. The shift from unanimity to majority voting generates specific patterns of delegation. Compared to unanimity, majority voting facilitates the adoption of legislation that restrains national authority, shifts powers from national administrations to the Commission and increases its discretion. These institutional consequences seem to match governments’ motivations for changing decision rules.

Finally, the article contributes to the emerging literature on the impact of European integration on domestic institutions and policies (e.g. Caporaso et al., 2001; Knill and Lehmkuhl, 2002). An important theme of this literature is the identification of the causal path leading to the reform of national institutions and policies and the evaluation as to whether there are European-related independent variables that have explanatory power. This work sheds light on the most intrusive mechanisms of Europeanization by determining the circumstance under which EU legislators choose to impose detailed legal constraints on national authorities and when, instead, they are more likely to allow considerable room for national institutions to adapt. For instance, it suggests that when there is either very high or very low policy conflict within the Council, we should expect moderate or low prescriptive demands on national institutions in case of unanimity. The combination of majority voting or, in some cases, codecision and intense conflict within the Council, which raises concerns about national compliance with

European law, should lead to more prescriptive obligations on national authorities.

The article proceeds as follows. The next section describes the structure and the assumptions of the model. Next, I analyze the delegation preferences of the actors, both in general and in a specific circumstance, i.e. when an entirely new EU law is adopted. Then, I derive and compare the equilibria under three legislative procedures and different status quos. The conclusion summarizes the results.

The Structure and the Assumptions of the Model

The model incorporates four key aspects that are specific to the EU. First, the Commission has both a legislative and an executive role. It has the monopoly of legislative initiation, though it does not have the power of gate-keeping, and it can be the administrator of common policies. Second, members of the Council of Ministers act as legislators when they adopt EU laws but they can also be in charge of the national execution of these policies. Third, when a common policy is implemented by member states, European policy-makers care about the measures taken by each national administration, otherwise there would be no reason for adopting an EU law in the first place. This model incorporates each of these measures into the utility functions of the players. Finally, the EU adopts legislation using a variety of decision rules. I consider three legislative procedures: when the Council acts alone and decides by either unanimous or qualified majority⁵ voting and when it codecides with the European Parliament.

Figure 1 illustrates compactly the structure of the model and the sequence of moves. Three games, one for each legislative procedure, are played out at the legislative stage. Each game then proceeds on to a similar executive stage. There are six players. The Commission, the Parliament and the two national administrations are identified as C, PR, A1 and A2, respectively. The Council of Ministers, labeled CM, consists of the governments M and U. A1 and A2 are the national administrations of governments M and U, respectively. The policy space is one-dimensional, $X = \mathfrak{R}^1$. In this space, each actor has an ideal point x_i for $i = m, u, a1, a2, c$ and pr .

I make two important assumptions in terms of distribution of preferences. First, I assume that national administrations have the same preferences as their Council members, namely $x_{a1} = x_m$ and $x_{a2} = x_u$. Almost always,

5. In this procedure, the votes of the member states are weighted. The approval of a measure requires approximately five-sevenths of these votes.

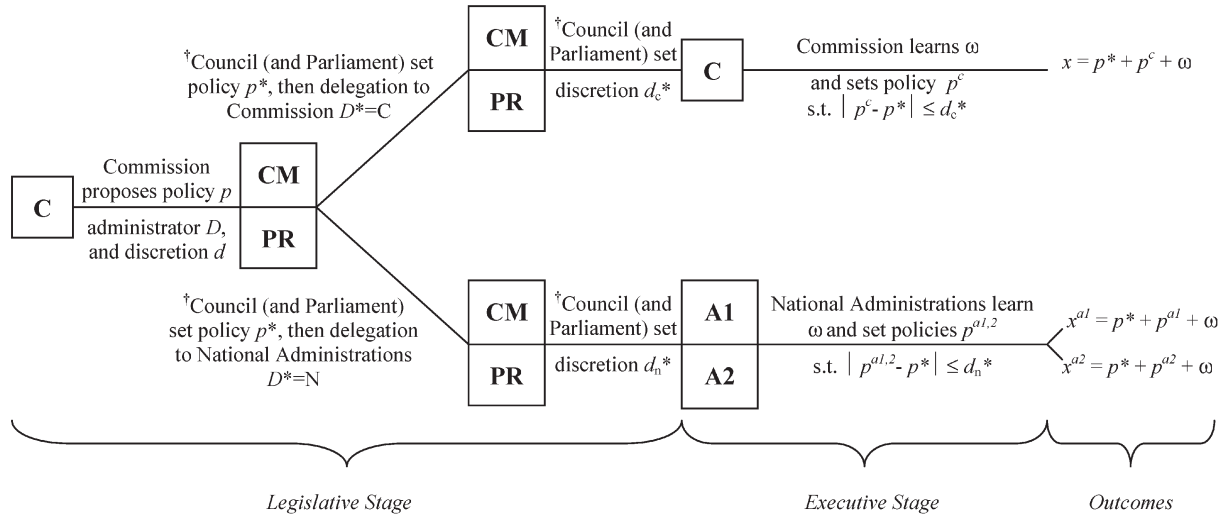


Figure 1. Moves of the Games

Note: The figure compacts three games matching the three EU legislative procedures. At the choice nodes flagged with †, the Council sets [p^* , D^* , d^*] by unanimity, qualified majority voting or in codecision with the Parliament. Each game then proceeds on to similar choice nodes at the executive stage.

this assumption is innocuous because ministers head their national departments and play an important role within national cabinets and legislatures in transposing and executing EU legislation. Moreover, preference would be the same if ministers appoint the top ranks of their departments, as is the case in some European bureaucracies. The second assumption does not affect the generality of the results. I assume that the governments' ideal policies $x_m = 0$ and $x_u \geq 0$. Throughout the article, I refer to actors with positive (negative) ideal points as holding national (supranational) preferences because this is the most established cleavage in the study of EU politics and probably the most relevant when a new EU law is adopted. In this stylized two-country Council, government U holds the most national preferences while government M has an intermediate position.

Each game is played out in three stages. At the legislative stage, the games are similar to some models of EU decision-making (see, especially, Crombez, 1996; Garrett, 1995; Steunenberg, 1994). The Commission makes a proposal and the Council and the Parliament adopt the legislation according to the different procedures of the EU. However, legislators act under uncertainty in this case. Outcomes x reflect both the final policy p that is adopted and a random component ω representing unforeseen contingencies that may have an impact on the policy outcome. Actors hold a prior probabilistic belief that ω is distributed uniformly in the $-R$ and R range. Formally, outcomes $x = p + \omega$, where $f(\omega) \sim U[-R, R]$. A key difference from previous models is that the Commission's proposal consists of three elements. It includes a proposed baseline policy p and an indicator variable $D \in \{C, N\}$ that takes the letter C if the Council and, if involved, the Parliament delegate policy authority to the Commission and N if they rely on national administrations for execution. The third element of the proposal is the degree of discretion d , bounded between zero and R , which measures the latitude enjoyed by the executive actor(s) in the implementation of such policy. Formally, discretion is a segment of the policy line setting the limits of implementation after the legislators have adopted the policy and the contingency is revealed. The legislative stage ends with the Council and, if involved, the Parliament adopting first a baseline policy p^* , then choosing an executive actor D^* and a level of discretion d^* . The baseline policy could be interpreted as the substantive provisions of legislation, whilst the level of discretion could be related to the institutional provisions.

At the executive stage, actors have the opportunity to gather information, to know the exact value of ω and to take fully informed policy measures. This stage consists of two alternative paths of implementation. Depending on the value of D^* , the Commission or the national administrations adopt executive measures on the basis of the equilibrium baseline policy p^* and discretion d^* set by the legislators. Administrators cannot modify the policy in ways that are substantially different from the legislators' intent because they cannot

adopt a measure beyond the discretionary limits. If the Commission does so, the European Court of Justice can overturn its actions by declaring them *ultra vires*. Or, if national administrations do so, their actions will be subject to the infringement procedure and, eventually, a Court's judgement of failure to comply with Treaty obligations and a penalty payment.

In the last stage of the game, the payoffs are realized. Players' utility is a quadratic loss function in the final policy outcome x . This formulation captures the distributive component as actors' utility increases when outcomes are closer to their ideal points. It also considers the informational element as players are willing to accept some policy bias in return of a more certain outcome (Epstein and O'Halloran, 1999: 54). In the case of execution by the Commission, the players' utility is

$$U_i(x) = -(x - x_i)^2$$

where the final policy outcome x is the sum of the equilibrium baseline policy, the revealed state of nature and the measure p^c adopted by the Commission within the set discretionary limits. In the case of national execution, we do not have a single outcome because the policies adopted by national administrations, $p^{a1,2}$, are likely to differ, subject to a common discretionary boundary d^* . However, the actors' utility must take into account the implementation measure of each national administration. Therefore, I consider the payoff in case of national implementation as the sum of the utilities arising from the decisions of each national administration divided by the number of states – two in our case. Formally,

$$U_i(x) = -\frac{1}{2}[(x^{a1} - x_i)^2 + (x^{a2} - x_i)^2] \quad (1)$$

For the governments, this formulation captures the incentives of the members of the Council to delegate to their national administrations with which they share the preference profile. However, part of each government's utility is also a function of the policy choices taken by the national administration of the other government. The incentives for relying on the expertise of their domestic bureaucrats are counterbalanced by the risk of distributive losses originating from biased implementation in other states. For the Commission and Parliament, this utility function gauges the supranational nature of these players.⁶ Finally, the division by the number of states allows comparison with the previous formulation of utility because, when $x^{a1} = x^{a2}$, the formulas are the same.

6. A similar approach has been used by Lohmann and O'Halloran (1994). These scholars formulate trade policy preferences of the US President as the sum of the preferences of legislators in Congress.

The ensuing sections are organized following the process of backward induction used to solve the games. In the next section, I introduce the strategies of the actors at the executive stage and, based on this information, derive each player's (a) expected utility under both implementation paths and (b) ideal baseline policy, administrator(s) and discretion level for varying preferences of executive actors. Next, I use these utility functions to determine the set of proposals that makes each player at least indifferent to a specific status quo, i.e. when a new EU law is adopted. I then introduce the rules for amendment and adoption of a Commission's proposal and derive the equilibria under each EU legislative procedure. The last section relaxes the assumption about the status quo and provides further results.

The Executive Stage and Delegation Preferences of the Actors

At the executive stage, actor(s) implement the policy p^i that maximizes their utility U_i , given the baseline policy p , the degree of discretion d and the state of Nature ω . In the case of delegation to the Commission ($D = C$), the outcomes depend on the realization of ω as follows.

Range of ω	Outcome x
$-R \leq \omega \leq x_c - p - d_c$	$\omega + p + d_c$
$x_c - p - d_c \leq \omega \leq x_c - p + d_c$	x_c
$x_c - p + d_c \leq \omega \leq R$	$\omega + p - d_c$

Based on this information, we can compute the expected utility of each player from this implementation path. This utility will be the basis on which actors will make their decisions at the legislative stage. The expected utility is

$$\begin{aligned}
 EU_i &= - \int_{-R}^{x_c - p - d_c} (\omega + p + d_c - x_i)^2 \frac{1}{2R} d\omega - \int_{x_c - p - d_c}^{x_c - p + d_c} (x_c - x_i)^2 \frac{1}{2R} d\omega \\
 &\quad - \int_{x_c - p + d_c}^R (\omega + p - d_c - x_i)^2 \frac{1}{2R} d\omega \\
 &= \frac{(d_c - R)^3 - 3R(x_i - p)^2 + 3d_c(p^2 - x_c^2 - 2x_i p + 2x_i x_c)}{3R}
 \end{aligned}$$

$$\text{for } i = m, u, c, \text{ pr} \quad (2)$$

where d_c is the Commission's discretion.

When national administrations are in charge of execution ($D = N$), the outcomes of the executive stage are (assuming $x_{a1} = x_m$ and $x_{a2} = x_u$).

Implementation by national administration A1		Implementation by national administration A2	
Range of ω	Outcome x^{a1}	Range of ω	Outcome x^{a2}
$-R \leq \omega \leq -p - d_n$	$\omega + p + d_n$	$-R \leq \omega \leq x_u - p - d_n$	$\omega + p + d_n$
$-p - d_n \leq \omega \leq -p + d_n$	0	$x_u - p - d_n \leq \omega \leq x_u - p + d_n$	x_u
$-p + d_n \leq \omega \leq R$	$\omega + p - d_n$	$x_u - p + d_n \leq \omega \leq R$	$\omega + p - d_n$

The actors' expected utility becomes

$$\begin{aligned}
 EU_i = & -\frac{1}{2} \int_{-R}^{-p-d_n} (\omega + p + d_n - x_i)^2 \frac{1}{2R} d\omega - \frac{1}{2} \int_{-p-d_n}^{-p+d_n} (-x_i)^2 \frac{1}{2R} d\omega \\
 & - \frac{1}{2} \int_{-p+d_n}^R (\omega + p - d_n - x_i)^2 \frac{1}{2R} d\omega \\
 & - \frac{1}{2} \int_{-R}^{x_u-p-d_n} (\omega + p + d_n - x_i)^2 \frac{1}{2R} d\omega - \frac{1}{2} \int_{x_u-p-d_n}^{x_u-p+d_n} (x_u - x_i)^2 \frac{1}{2R} d\omega \\
 & - \frac{1}{2} \int_{x_u-p+d_n}^R (\omega + p - d_n - x_i)^2 \frac{1}{2R} d\omega = \\
 & \frac{2(d_n - R)^3 - 3R(2x_i^2 + p^2 - 2x_i p) + 3d_n x_u(2x_i - x_u) + 3p(p - 2x_i)(2d_n - R)}{6R} \tag{3}
 \end{aligned}$$

where d_n is national discretion.

We can now compute, for each player, the ideal baseline policy, administrator(s) and discretion level for varying preferences of executive actors. The ideal baseline policy p^* can be calculated by taking the derivative of EU_i with respect to p and setting it equal to zero. For both implementation paths, we have $\partial EU_i / \partial p = 0 \Leftrightarrow p^* = x_i$. The expected utility reaches a maximum when the baseline policy p is equal to the actor's ideal point.

A similar exercise can be conducted with the ideal level of discretion d^* . However, the formulas differ with regard to the implementation paths. In the case of execution by the Commission, we have

$$\begin{aligned}\frac{\partial EU_i}{\partial d_c} &= \frac{(d_c - R)^2 - x_c^2 + p^2 + 2x_i(x_c - p)}{R} \\ &= 0 \Leftrightarrow d_c = R - \sqrt{x_c^2 - p^2 - 2x_i(x_c - p)}\end{aligned}$$

In case of national implementation, the derivative leads to the following result

$$\begin{aligned}\frac{\partial EU_i}{\partial d_n} &= \frac{2d_n^2 - 4Rd_n + 2R^2 + 2p^2 - 4px_i - x_u^2 + 2x_ix_u}{2R} = 0 \Leftrightarrow \\ d_n &= R - \frac{\sqrt{x_u^2 - 2p^2 - 2x_i(x_u - 2p)}}{\sqrt{2}}\end{aligned}$$

In general, for the given preferences of the executive actors, a legislator would like to delegate to them more (less) discretionary authority as the baseline policy moves away from (towards) the legislator's ideal point. Setting the baseline policy and the level of discretion are substitutes. An actor may be willing to make policy concessions in exchange for granting greater discretion to the administrator. She may otherwise agree to give less discretion to the administrator in exchange of defining more on her own terms the policy baseline on which such administrator must act (see also Volden, 2002: 124).

The ideal delegation preferences, or ideal implementation path, are derived by substituting the ideal level of discretion into the expected utility functions and comparing the utilities from the two implementation paths.⁷ They are not a function of the baseline policy and are analyzed hereafter in greater detail for various policy positions of the executive actors.

The European Commission

The Commission's ideal choice is delegation to itself with maximal discretion. When the legislator objects to delegation to the Commission, the choice confronting the Commission is a matter of how much the national administrations should be constrained. The Commission's ideal level of

7. For any given equilibrium p^* , the formal results are: *Commission*: $D = C$ and $d_c = R$ for all x_c and x_u . *Government M*: $D = N$ and $d_n = R - \sqrt{x_u^2 - 2p^{*2}}/\sqrt{2}$ for $x_u < |x_c|\sqrt{2}$, $D = C$ and $d_c = R - \sqrt{x_c^2 - p^{*2}}$ otherwise. *Government U*: $D = N$ and $d_n = R - \sqrt{4x_up^* - x_u^2 - 2p^{*2}}/\sqrt{2}$ for $x_c < x_u - x_u/\sqrt{2}$ or $x_c > x_u + x_u/\sqrt{2}$, $D = C$ and $d_c = R - \sqrt{x_c^2 - p^{*2} - 2x_u(x_c - p^*)}$ otherwise. *Parliament*: $D = N$ and $d_n = R - \sqrt{x_u^2 - 2p^{*2} - 2x_{pr}(x_u - 2p^*)}/\sqrt{2}$ for $x_{pr} < (2x_c^2 - x_u^2)/(4x_c - 2x_u)$ if $x_u < 2x_c$ or $x_{pr} > (2x_c^2 - x_u^2)/(4x_c - 2x_u)$ if $x_u > 2x_c$, $D = C$ and $d_c = R - \sqrt{x_c^2 - p^{*2} - 2x_{pr}(x_c - p^*)}$ otherwise. Note that, since the two variables are substitutes, changes in p^* lead to changes in ideal discretion d but the choice of administrator D is unaffected.

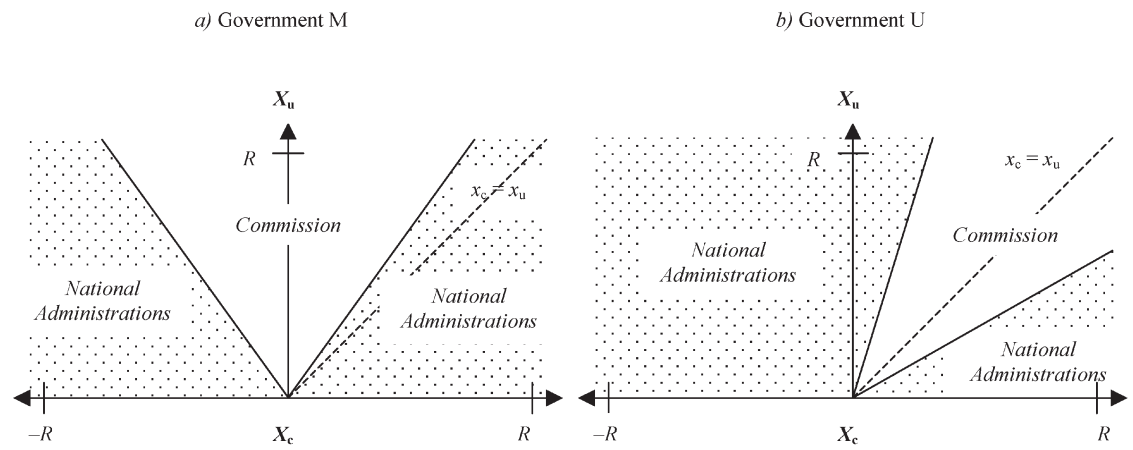


Figure 2. Delegation Preferences of Governments

national discretion diminishes as the policy conflict between the Commission and government U increases.

The Governments

Figure 2 shows the delegation preferences of governments in Cartesian planes. The vertical axis represents government U's ideal points, which take only positive values. Policy conflict within the Council, measured by the distance between x_u and x_m , increases as we move upwards. The horizontal axis represents the ideal points of the Commission. A supranational Commission has negative values, namely its preferences are closer to government M than to government U. A national Commission has instead positive ideal points and may have preferences closer to government U. The Commission has the same preferences of government U along the broken 45-degree line extending from the origin.

The areas where the governments prefer to rely on either the Commission or national administrations for policy execution are labeled accordingly. Figure 2A shows the structure of the delegation preferences of government M. It is symmetric across the vertical axis. This state prefers delegation to the Commission when $x_u > |x_c|\sqrt{2}$. Two considerations are in order. First, there is a relatively strong bias in favor of delegation to national administrations. The area where this is the ideal implementation path is 40 percent larger than the area where delegation to the Commission is preferred. Second, government M is more likely to prefer delegation to the Commission as policy conflict within the Council increases. Instead, it prefers relying on national authorities as conflict with the Commission increases. However, the policy bias in case of national execution should be at least 40 percent greater than the bias in the case of Commission implementation to justify delegation to the EU executive. Government M prefers to take most of the implementing decisions within the Council in the top left- and right-hand corners of Figure 2 where it cannot trust for execution both the Commission and national administrations.

Figure 2B shows the delegation preferences of government U. Since the states' utility functions are similar, the structure resembles that for government M, with one notable difference. Government U objects entirely to delegation to a supranational Commission, so the bias in favor of national execution is stronger. The area of national delegation is more than three times larger than that of Commission execution.

The European Parliament

The rationale for the delegation preferences of the Parliament is similar to the previous cases but, since we also have to take into account the policy

preference of the Parliament, planes, instead of lines, separate the areas of delegation. The delegation preferences are motivated by the policy distance between the Parliament's ideal point and, on the one side, the ideal policy of the Commission and, on the other side, that of the governments.

Obviously, the Parliament has the same delegation preferences of government M when $x_{pr} = 0$. There are other two scenarios to analyze. The first one is when the Parliament and the Commission have both either national or supranational preferences. In these circumstances, the Parliament has a strong bias in favor of execution by the Commission because implementation by a single institution generates less distributive losses than execution by two national authorities with different preferences. The second scenario is when the preferences of the Commission and the Parliament are on the opposite side of the policy spectrum. In most circumstances, a supranational (national) Parliament objects to delegation to a national (supranational) Commission.⁸

Preferred Proposals and Delegation Preferences in the Case of a New EU Law

At the legislative stage, a proposal becomes law only if the legislators with veto power under a relevant procedure are at least indifferent to the status quo. It is therefore necessary, using the expected utility functions, to establish each player's preferred-to-status-quo set of proposals. Where necessary, expected utilities can also be used to determine the ranking within this set.

I use the status quo when a new EU law is adopted. This situation is common in many significant EU statutes and provides an important positional advantage to the states. The restriction will be relaxed later. This status quo comprises of the existing national laws and maximal discretion for the governments. Formally, this means $D^0 = N$, $d_n^0 = R$ and the players' expected utility in equation 3 takes the following formulation⁹

$$EU_i^0 = -\frac{x_u^2 + 2x_i^2 - 2x_u x_i}{2} \quad \text{for } i = m, u, c, pr \quad (4)$$

The set of preferred proposals is derived by identifying the circumstances under which a player's expected utility in equations 2 and 3 is equal to

8. Needless to say, the Parliament is more likely to prefer Commission (national) delegation as policy conflict with the governments (Commission) increases. It prefers in-house decisions in the case of intense conflict with both administrators.

9. The baseline policy p disappears from equation 4 because, with maximal discretion, the states can shift any realization of state of nature. The utility is a function of only the preference bias of national administrations.

or greater than the status quo utility of equation 4. It is then possible to determine the conditions under which an actor prefers to restrict national executive discretion or to delegate powers to the Commission and how much discretion to confer upon it. This is the focus of this section. The formal results are available from the author.

The European Commission

The Commission prefers delegation to itself than the status quo for the large majority of combinations of x_u and x_c , if its discretion d is not too low. It is willing to accept even lower discretion as conflict between the Commission and government U increases or as the Commission gains policy concessions (i.e. p approaches x_c). The second best option is to restrict national discretion but the preferences of a supranational and a national Commission differ considerably. In the former case, the Commission supports constraining national authority in the large majority of cases and for most values of discretion. In the case of a national Commission, the status quo is preferred if x_c is relatively close to x_u . Nevertheless, when the Commission wants a new law, it prefers executing the policy rather than relying on member states for any given combination of x_u , x_c and d .

The Governments

Since a government's utility depends also on the measures implemented by the other state, the expected utility from the status quo is a negative function of the intensity of conflict within the Council ($EU_{mu}^0 = -x_u^2/2$). Two indifference planes, illustrated in Figure 3, allow us to identify government M's preferred set of proposals for combinations of x_u , x_c and d , given $R = 1$ and $p^* = .25$. Plane A maps the combinations of x_u , x_c and d where government M is indifferent between the status quo and a proposal with lower national discretion. For instance, for $x_u = 0.8$ and $x_c = -0.8$, this government is indifferent between the status quo and a proposal of national execution with $d = 0.12$. In other words, any proposal that decreases national discretion to any value higher than 0.12 is preferred to the status quo (ideal discretion $d_n^* = 0.49$). Plane B maps the combinations of x_u , x_c and d where government M is indifferent between the status quo and a proposal of Commission execution. At $x_u = 0.8$ and $x_c = -0.6$ for instance, the status quo and a proposal for Commission execution with either $d = 0.13$ or $d = 0.86$ generate the same utility. Any proposal with Commission discretion between 0.13 and 0.86 yields a higher utility than the status quo (ideal discretion $d_n^* = 0.45$).

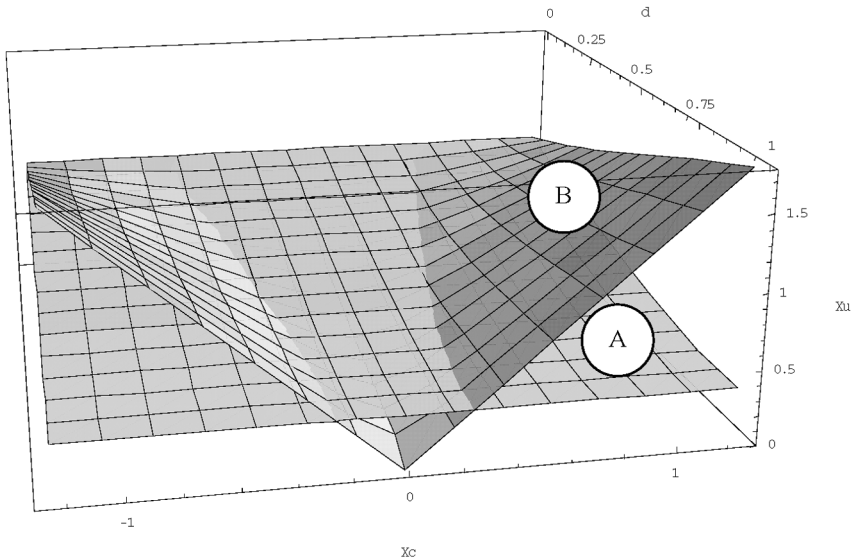


Figure 3. Delegation Preferences of Government M in Case of a New Law

Note: I assume $R = 1$ and $p^* = 0.25$.

The combination of planes A and B produces four areas with distinctly different delegation preferences of government M. First, government M prefers the status quo in the area below the indifference planes where the conflict within the Council is limited both in absolute terms and relative to that between government M and the Commission. Second, the area above plane A and below plane B shows the combinations of x_u and x_c where government M is *only* willing to restrict national administrations and the range of discretion levels that it is willing to accept. The lower boundary of this range is determined only by plane A when conflict within the Council is lower or marginally higher than that between M and the Commission. For instance, a line traced in Figure 3 along the discretion axis and at $x_u = -x_c = 0.6$ intersects only plane A at $d = 0.41$, the lower boundary where M is indifferent to the status quo. As conflict within the Council intensifies (i.e. x_u increases), the range first increases because government M supports even more restriction of national authority but then it shrinks because there are also levels of Commission discretion that makes this state at least as well off as the status quo. If, say, x_u shifts to 0.8, a line traced along the discretion axis will intersect plane B at $d = 0.86$ and $d = 0.13$ and plane A at $d = 0.12$. Government M is *only* willing to restrict national administrations for $0.86 < d < 1$ or $0.12 < d < 0.13$.

Third, the area above the two planes shows the combination of x_u , x_c and the range of d levels for which government M would *also* delegate powers to the Commission. For example, we have seen that, at $x_u = 0.8$ and $x_c = -0.6$, government M prefers either Commission execution or restriction of national discretion to the status quo when d ranges between 0.86 and 0.13 (although we know from note 7 that the ideal choice is the latter option). The range widens as $|x_c|$ decreases and the government's ideal choice may become Commission implementation. Finally, in the triangular area below plane A and above plane B, government M and the Commission have similar policy preferences. Although the state objects to any restriction of national discretion, it prefers delegation to the Commission to the status quo, as long as the discretion level is not too small.

The delegation preferences of government U differ from those of government M in three important aspects. First, government U prefers the status quo to any executive role of a supranational Commission. If both the Commission and the baseline policy are supranational, it objects also to any restriction of national discretion. Second, government U supports the constraining of national authorities, up to some values of d , only if there is moderate conflict within the Council and the baseline policy is positive. For example, for $R = 1$ and $p^* = 0.25$, this government supports less than maximal national discretion only if $0.15 < x_u < 0.85$. Notably, the status quo is preferred if policy conflict in the Council is *either* very low *or* very high. Finally, this state would delegate powers only to a Commission with national preferences that are relatively close to x_u and as long as d is not too low.

The European Parliament

The Parliament accepts restraining national administrations under the same conditions as the Commission does. It prefers delegation to the Commission in circumstances that are similar to those analyzed in the previous section on the ideal delegation preferences. The only difference is that those conditions are less stringent here because the term of comparison is the status quo rather than the Parliament's ideal level of national discretion.

Equilibria in the Case of a New EU Law

After having identified each player's expected utility under both implementation paths, ideal baseline policy, administrator, level of discretion and set of proposals preferred to the status quo, I now introduce the rules for amendment and adoption of a Commission's proposal required under each EU

legislative procedure. These rules, together with the actors' policy preferences, are the main features driving the results of the model. The equilibrium under each decision-making mechanism is the proposal that *maximizes the Commission's expected utility, makes the veto player(s) at least indifferent to the status quo and cannot be amended*.

I assume that decisions at the legislative stage are taken sequentially. The setting of the policy precedes the conferral of discretionary authority to an administrator. Equilibria are then presented for a given baseline policy p^* . I leave to further work the exploration of the coupling of policy and discretion decisions in the EU context.¹⁰ The complete equilibrium results of the three procedures are available from the author. I proceed in this section by first providing a comprehensive exposition of the results under the unanimity voting procedure. I then move on to qualified majority voting and to co-decision where I focus only on the differences from the preceding procedure.

Unanimity

Under this procedure, the proposal of the Commission and amendments to this proposal must be approved by all the governments. Any member state can introduce amendments.

For this and the next procedure, I assume that the proposals of a supranational Commission belong to the core of unanimity and, hence, cannot be amended. This assumption is introduced in order to approximate the reality of EU decision-making as much as possible. Most formal models limit the analysis to key states within the Council (e.g. Crombez, 1996; Garrett, 1995; Steunenberg, 1994), instead of considering all 15 (now 25) governments. In unanimity, the two important states are those with the most national and the most supranational preferences because their positions determine the unanimity core to which a Commission's proposal must belong to become law. For simplicity and tractability, I have considered only government U, with the most national preference, and government M with an intermediate position. Hence, I have disregarded the most supranational government. The assumption is then equivalent to the introduction of a supranational state that shares the Commission's preferences and would veto amendments to its proposals.

10. Following Volden's (2002) application to the US system, the main import from simultaneous discretion and policy decisions is that a veto player, such as a pivotal government or the Parliament, can secure a discretion level closer to its ideal if the status quo policy is proximal to its ideal policy. An agenda-setter, such as the Commission, can secure a discretion level closer to its ideal in the other circumstances. The overall findings of the model are not expected to change.

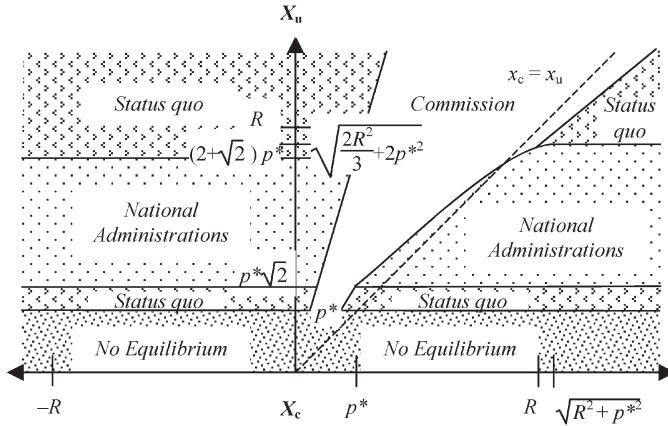


Figure 4. Delegation Equilibria with Unanimity and a New Law

Note: Delegation equilibria with $D^0 = N$ and $d^0 = R$, assuming $p^* = R/4$.

Consequently, in addition to the maximization of the Commission’s expected utility, a proposal is an equilibrium if it makes both governments at least indifferent to the status quo and there are no other proposals that both states prefer to the proposal of a national Commission. Figure 4 illustrates the equilibrium outcomes with regard to the administrator(s) in charge of implementation, for different combinations of x_u and x_c and a given equilibrium baseline policy (i.e. $p^* = R/4$). Before I proceed, it must be noted that using a given p^* restricts our analysis to only a subset of values of x_u . A baseline policy cannot be in equilibrium if it is greater than x_u because both governments would prefer a more supranational policy in this circumstance.¹¹ In Figure 4, this applies for the area where $x_u < R/4$, which I have labeled no equilibrium.

The remaining areas are labeled *status quo* if there is no new EU legislation, *national administrations* if a new EU law has restricted the discretion of national authorities and *Commission* if a new EU law has delegated powers to this institution. I analyze the figure moving from the left to the right. The left-hand half depicts the equilibrium with a supranational Commission. Since government U objects to any delegation to this Commission, the only option open to this institution is to propose a restriction of national authority. National discretion is maximal and the status quo is preserved at either high or low conflict within the Council. A limitation of discretion is

11. Government U would reject any change of the status quo in case of a supranational baseline policy.

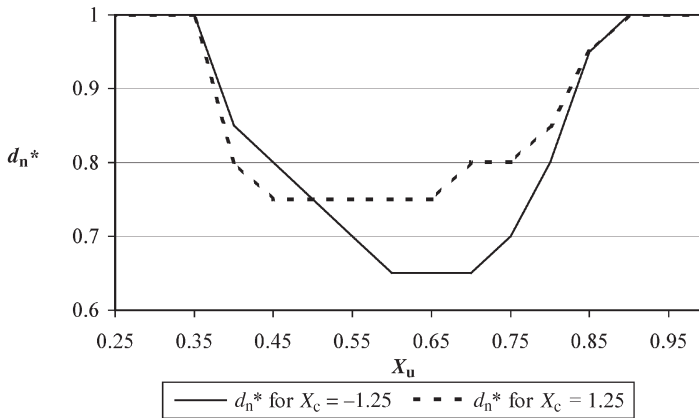


Figure 5. Equilibrium National Discretion with Unanimity and a New Law

Note: Discretion equilibria with $D^0 = N$ and $d^0 = R$, assuming $R = 1$ and $p^* = 0.25$.

accepted by both governments only at an intermediate level of conflict. The exact level of this discretion is the one that is most preferred by the Commission and makes both states at least indifferent to the status quo discretion. Differing from most results in the literature on delegation, an increase in policy conflict between legislators and administrators may lead to a higher level of discretion. This result is illustrated in Figure 5 for both a national and a supranational Commission. The difference between the two curves is due to the Commission's proposal power. This outcome originates from the executive-legislative role of the members of the Council, this specific status quo and, more importantly, the unanimity rule.

The right-hand half of Figure 4 illustrates the equilibrium with a national Commission. When the preferences of this institution are in between those of the states (i.e. to the left of the broken line), the left-hand equilibria are initially carried through for low values of x_c but then both governments agree to confer powers to the Commission. The Commission's discretion is the highest value that cannot be reduced by a unanimous Council. A Commission with moderate national preferences reduces the implementation bias of the status quo and it is beneficial to both states.¹² As the preference of the Commission increases (i.e. moving to the right of the broken line), government M starts objecting to delegation to this institution for any value of discretion. It prefers the status quo for low conflict in the Council,

12. Note that the area of Commission delegation is likely to shrink further if we consider that a state with supranational preferences may object to delegation to a Commission with strongly national preferences.

while it agrees with government U to reduce national discretionary authority at higher conflict. The equilibrium level of national discretion is the one that is most preferred by the Commission and that cannot be altered by the states. An increase in conflict within the Council could lead to higher discretion also in this case, as illustrated in Figure 5. Finally, in the top right-hand corner of Figure 4, there are some values of Commission's discretion that government M prefers to the status quo. However, the Commission and government U prefer the status quo to execution by the Commission with limited discretion. Hence, there is no new legislation.

Two propositions summarize the original findings of this section.

PROPOSITION 1a: Given an equilibrium policy, in case of unanimity voting, a new law restricting national authority is adopted only if there is an intermediate level of conflict within the Council. The Commission is delegated powers only if its preferences are in between those of the governments.

PROPOSITION 1b: Given an equilibrium policy, in case of unanimity voting and a new law, the equilibrium level of national discretion first decreases then increases as conflict within the Council increases.

Majority Voting

In this procedure, the proposal of the Commission must be approved by the pivotal government under qualified majority voting while amendments to this proposal require unanimity. I consider government M such a pivotal state. Therefore, a Commission's proposal must make only government M at least indifferent to the status quo to be an equilibrium. This is the only condition that differs from the unanimity case.

Figure 6 illustrates the delegation equilibrium under this procedure. In addition to the case of $x_u < p$, there is another set of circumstances of *no equilibrium*. This is when the preferences of the Commission are closer to the preferences of government M (hence, closer to zero) than the baseline policy (i.e. for $p < [>]0$ and $p < [>]x_c$). This policy cannot be an equilibrium in majority voting because a shift toward zero would be beneficial to both the Commission and government M. Figure 6 therefore depicts the delegation outcomes with a given negative baseline policy (i.e. $p^* = -R/4$) for a supranational Commission and the outcomes with a given positive baseline policy (i.e. $p^* = R/4$) for a national Commission.

The most interesting results are in the left-hand half of the figure. For low values of x_u , the cost due to national implementation bias is negligible and both governments are happy with the status quo. As conflict within the Council increases, government M prefers to restrain national administrations to limit the distributive loss of national execution. Initially, this state prefers

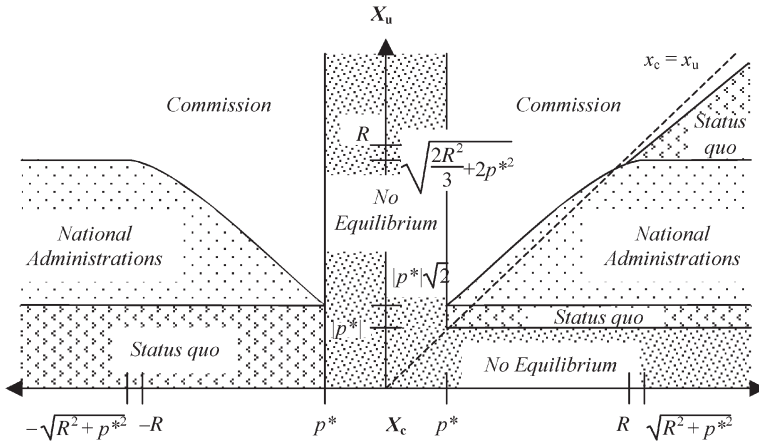


Figure 6. Delegation Equilibria with Majority Voting and a New Law

Note: Delegation equilibria with $D^0 = N$ and $d^0 = R$ and assuming $p^* = -R/4$ for $x_c < 0$, $p^* = R/4$ for $x_c > 0$.

the status quo than delegating powers to the Commission, for any level of discretion. Therefore, since the Commission’s ideal level of national discretion is lower than government M’s for any equilibrium policy and preference configuration, the Commission proposes national implementation with the lowest level of discretion that makes government M at least indifferent to the status quo. With further increases in conflict within the Council, there are levels of Commission’s discretion that government M prefers to the status quo. The Commission will then propose itself as the administrator with the highest degree of discretion that makes state M at least indifferent to the status quo. This discretion diminishes as x_c decreases. Most implementing decisions are taken within the Council in the upper-left-hand corner of the figure, the area of strongest conflict between legislators and administrators.

The results in case of a national Commission in the right-hand half of Figure 6 resemble the outcomes from unanimity in Figure 4 (and the equilibrium baseline policy is the same). The process is the same as that for the left-hand section of Figure 6 in the area of Commission execution. It is similar to that in Figure 4 for the areas of status quo and national implementation.

The equilibrium level of discretion follows the standard result in the literature, while the original findings can be summarized in this single proposition.

PROPOSITION 2: *Given an equilibrium policy, in case of majority voting and a supranational Commission, a new law restricting national authority is more likely as conflict between the Commission and the pivotal government*

M increases, whereas the likelihood of delegation to the Commission increases as conflict within the Council increases.

Codecision

The key element of the codecision procedure is that an absolute majority in the Parliament and a qualified majority in the Council can agree on a joint text in a conciliation committee. In codecision I, adopted at Maastricht, the Council can reaffirm its common position in case of disagreement with the Parliament. The Parliament must reject this position by absolute majority to prevent it becoming law. This third reading is repealed in the Amsterdam version of codecision, so-called codecision II.

There is a debate in the literature¹³ on the role exercised by the Commission and on the equilibrium outcomes but there is as yet no empirical study shedding some light on the disagreements. Therefore, I simply assume that in codecision the proposal of the Commission and amendments to this proposal must be approved by both government M and the Parliament. Two conditions for equilibrium differ from the unanimity case: *a Commission's proposal must make both government M and the Parliament at least indifferent to the status quo and there must be no other proposals that both government M and the Parliament prefer to the Commission's proposal.* The Commission may have some leeway by exploiting conflict between government M and the Parliament and choosing the most preferred proposal that belongs to the intersection of the codecision winset¹⁴ and core. It may take advantage of

13. There are two views (disagreements due to different assumptions about preference configurations and locations of the status quo disappear if we run comparative statics). Steunenberg (1994) and Crombez (1997) have similar predictions for codecision I. The outcome is the preferred policy of the Commission that belongs to the codecision I winset *and* to its core. Garrett and Tsebelis (1996; see also Garrett, 1995; Tsebelis and Garrett, 2000) instead assert that the third reading of codecision I has transferred agenda-setting power from the Commission to the Council's member that is pivotal under majority voting. This government could make a take-it-or-leave-it offer to the Parliament and obtain its best policy within the Parliament's preferred set. Although scholars are more cautious in formulating precise equilibrium predictions, there is also a minor disagreement in codecision II. Crombez (2000) claims that the Commission has no legislative role. Tsebelis and Garrett (2000: fn.7) instead contend that this institution could still have some leeway in choosing a proposal which belongs to the codecision II winset *and* to its core. Interestingly, this is the same prediction of Steunenberg (1994) and Crombez (1997) for codecision I. Along similar lines, Hix (2002) argues that the Parliament inserted in its Rules of Procedure the threat of rejecting any proposal that failed conciliation, making codecision I operating *de facto* as codecision II. In a classic case of strategic reputation building in bargaining, the rejected Open Network Provision draft directive gave credibility to such a threat by showing that the Parliament was ready to forego short-term policy losses to obtain long-term institutional gains.

14. This is the set of policies formed by the intersection of the preferred sets of the Parliament and of government M.

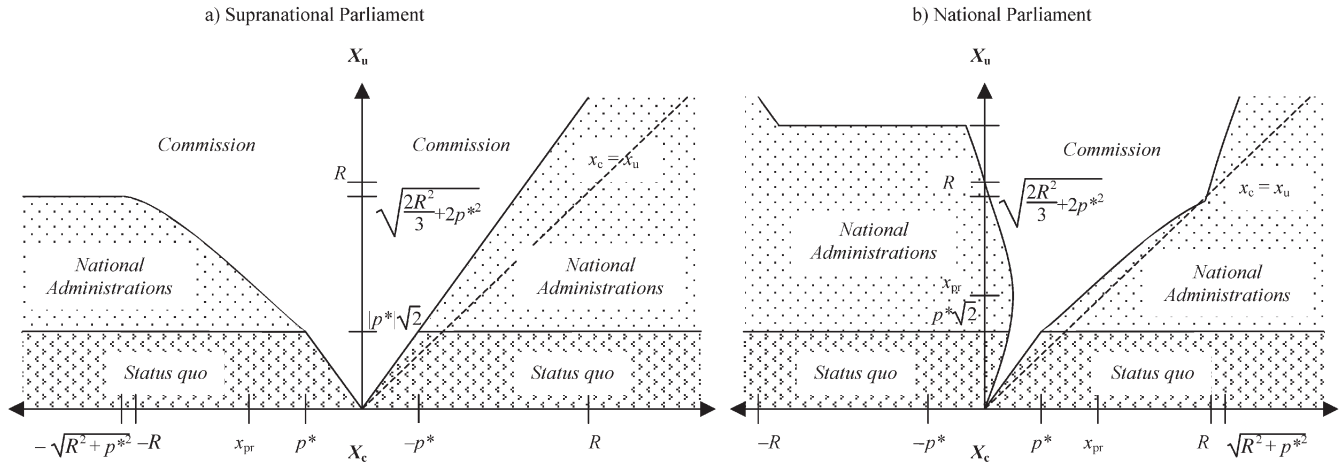


Figure 7. Delegation Equilibria with Codecision and a New Law

Note: Delegation equilibria with $D^0 = N$ and $d^0 = R$, assuming $p^* = -R/4$ and $x_{pr} = -R/2$ for section *a* and $p^* = R/4$ and $x_{pr} = R/2$ for section *b*.

differences between the Parliament and government M on the actor to whom to confer powers or on the level of discretion.

Figure 7 shows the delegation results under codecision for given baseline policy equilibria and parliamentary preferences. A baseline policy cannot be an equilibrium in codecision if it does not share the same half of the policy space with the Parliament's ideal policy (e.g. a national policy and a supranational Parliament) or if the absolute value of the policy is greater than the Parliament's ideal policy (i.e. $|p| > |x_{pr}|$). Both government M and the Parliament would approve a shift toward zero in these cases. Accordingly, an equilibrium baseline policy can only fall within the ideal policies of government M and the Parliament and Figure 7 illustrates the only two possible combinations of a supranational and a national Parliament.

The delegation outcomes in codecision resemble those of the unanimity procedure when the Parliament shares policy preferences more with government U than with government M (i.e. if $x_{pr} - x_u < x_{pr} - x_m$). They are similar to those in qualified majority voting in the opposite circumstance. There are several differences and the strategic interactions leading to these results are not the same. I review them briefly here. I make no reference to the equilibrium level of discretion because it confirms the standard result in the literature.

With regard to the status quo, government M prefers it to any alternative in case of low policy conflict in the Council and a Commission with preferences relatively more extreme than those of government U.¹⁵ When the preferences of the Commission and of the Parliament are both supranational, the results follow closely, with a minor exception,¹⁶ the majority voting case (compare the left-hand half of Figures 6 and 7A). In the case of a national Commission in Figure 7A, the Parliament and government M prefer to limit national authority than delegating power to the Commission up to a level of Council conflict that is marginally higher than the conflict with the Commission. Beyond this level, these two actors agree to delegate powers to the Commission.

Figure 7B illustrates the case of a national Parliament. The results follow closely the case of unanimity of Figure 4 when $x_{pr} \cong x_u$. In the case of a supranational Commission, the two legislators agree to limit discretion of national authorities as conflict in the Council increases. This Commission may be able to overcome parliamentary objection and obtain powers only

15. The area of the status quo is potentially greater in case of a national Parliament (Figure 7B) as this institution might prefer it to any other option.

16. As x_c approaches zero, the Parliament's ideal level of Commission discretion is lower than government M's. Thus, the Commission must make the Parliament, rather than state M, at least indifferent to the status quo.

at very high level of conflict between states. In the case of a national Commission, this institution is granted executive powers when it has moderate preferences, namely as x_c increases from zero and approaches p^* , because it reduces the implementation bias of the status quo for both the Parliament and government M. As its preferences move away from the baseline policy toward the right-hand end of Figure 7B, the equilibrium resembles the results from the unanimity procedure (compare the right-hand end of Figures 4 and 7B), with the caveat of substituting the Parliament for government U. The only notable difference is the top right-hand corner of Figure 7B where government U and the Commission have similar extreme preferences. Here, the Parliament and state M agree to restrain national authorities against the wishes of both the Commission and government U.¹⁷

We can summarize the original finding of this section in a statement that is similar to Proposition 2, though this is not limited to a supranational Commission.

PROPOSITION 3: Given an equilibrium policy, in case of codecision, a new law restricting national authority is more likely as conflict between, on the one side, the Commission and, on the other side, the pivotal government M or/and the Parliament increases, whereas the likelihood of delegation to the Commission increases as conflict within the Council increases.

We can now assess the interaction between rules and delegation in achieving credibility. The key difference between unanimity and majority voting is the greater likelihood of delegation to a supranational Commission. Depending on the preferences of the Parliament, codecision could simply be considered, with a minor exception,¹⁸ as a variant of the first two procedures. These considerations lead us to the following proposition.

PROPOSITION 4: In the case of a new law, a shift from unanimity to majority voting facilitates the delegation of powers to a supranational Commission as conflict within the Council increases.

As conflict within the Council intensifies, ministers may become increasingly concerned about whether national administrators would implement EU law faithfully. Hence, majority voting provides them with the option

17. As in majority voting and a supranational Commission, most implementing decisions are taken in-house in the upper-left- and right-hand corners of both Figures 7A and 7B, the areas of strongest conflict between legislators and administrators.

18. A national Commission cannot collude any longer with government U to avoid a restriction in national authority (compare the upper right-hand corners of Figures 4 and 6 with those in Figure 7).

of delegating powers to a supranational Commission to secure credible implementation. Credibility is also achieved in codecision when this procedure produces outcomes similar to majority voting.

Amending Legislation

In this section, I relax the assumption about the status quo and investigate how the relevant features of an EU law (i.e. the choice of executive actors and the levels of discretion) are likely to be amended under each procedure.

Consider the case of unanimity and when states have agreed to restrict their own national authorities. The possibility of amendments differs depending on whether there is moderate ($x_u < 2p^*$) or high ($x_u > 2p^*$) conflict within the Council. In the former case, governments reduce (increase) national executive authority as conflict within the Council increases (decreases). Beyond the threshold of $2p^*$, states disagree on the direction of the shift in national discretion and there is no amendment. The transfer of powers from national administrations to the Commission is possible only when the preferences of the Commission are in between those of the governments (see Figure 4). As long as its preferences remain within this range, its discretion is not reduced¹⁹ and can be increased. A reduction in the Commission's discretion or, even, a transfer of its powers back to national administrations can occur in the case of a considerable leftward or rightward shift of its policy preferences.

In the case of majority voting and a national Commission, changes to national and the Commission's discretion take place mostly under the same conditions as in the case of unanimity. For a supranational Commission, further reductions in national authority or delegation of powers to the Commission are likely to occur if policy conflict in the Council increases. Both government M and the Commission approve these changes. When the Commission is in charge of execution, it can gain discretion as x_c and x_m converge. Importantly, however, policy convergence in the Council leads to increases in national discretion or transfer of powers from the Commission back to national administrations only if the Council acts unanimously because these amendments are not supported by the Commission. Unanimity is also needed for decreases in Commission's discretion when the preferences of this institution become more supranational.

19. This is because at least one of the two states prefers maximal discretion for the Commission (government M for $x_c < p^*$, government U for $x_u > x_c > p^*$). The Commission relies on this state to avoid any restriction of authority. This can happen in codecision too, with the caveat of substituting x_{pr} for x_u .

Majority voting facilitates certain types of amendment, so it generates a dynamic in the amendment process that is clearly different from unanimity. The finding is summarized in the following proposition.

PROPOSITION 5: Compared to unanimity, majority voting facilitates the adoption of amending legislation that restrains national authority further, shifts powers from national administrations to a supranational Commission and increases the discretion of a supranational Commission.

If, for deliberate or accidental reasons, the national application of a new EU law is incomplete, ministers can secure policy commitments and protect the durability of the legislative deal more effectively with majority voting because this rule facilitates the reduction of the scope of national authority and the delegation of that authority to a supranational Commission.

In codecision, both the Parliament and government M must agree a change in the level of discretion or a shift of power between administrators. If x_u (x_c) moves away from *both* x_m and x_{pr} , the equilibrium level of national (Commission's) discretion diminishes and the likelihood of delegation to the Commission (national administrations) increases. We have the opposite outcomes in the case of shifts in preferences toward *both* x_m and x_{pr} and gridlock if the shift is toward x_{pr} and away from x_m , or vice versa.

The dynamics of amendment process is a reinforced variant of that of majority voting when the Parliament and the Commission have relatively similar and supranational preferences because the Council can no longer increase national discretion, transfer powers from the Commission back to national administrations or decrease Commission's discretion with a unanimous vote. Nevertheless, a national Parliament can work at the expenses of the supranational Commission by achieving exactly those outcomes. The finding is summarized in the following proposition.

PROPOSITION 6: Codecision generates a similar amending dynamics of that of majority voting when the Commission and the Parliament have similar, supranational preferences. In the case of a national Parliament, codecision inverses such dynamics by facilitating increases in national discretion, transfer of power from a supranational Commission to national administrations and decreases in the discretion of a supranational Commission.

Conclusion

This article examines how the legislative procedures and the possibility of relying on both the Commission and national administrations for the execution of common policies shape the delegation decisions in the EU. Building

upon existing formal analyses of delegation and of EU decision-making, it incorporates decisions regarding policy, administrator and discretion into a single model.

The model simplifies the state of affairs in the EU, especially with regard to the composition of the Council. But the propositions are unaltered for any given number of states. Equations 1 and 3 change accordingly with the inclusion of a new government. The utility of relying on national administrations *relative to* Commission delegation and the ideal level of national discretion vary as a function of the interaction between the number of states and the preferences of each additional state. For instance, an actor's utility from national delegation and its ideal national discretion increase in the case of enlargement to a state that shares this actor's policy preferences. If this actor is pivotal in a procedure, enlargement changes the threshold of Council conflict at which national discretion is restricted and powers are delegated to the Commission. Importantly, however, changes in policy conflict have still the same consequences with the new government, hence propositions are unaffected.

Another simplification is the sharp choice between the Commission and national administrations. Most EU legislation requires both national authorities and the Commission to take executive measures. It is, nevertheless, possible to produce measures that gauge the relative importance of the two administrators (see Franchino, 2004).

In conclusion, three main findings emerge from this exercise. First, the procedures generate systematically different delegation outcomes. Results bring to light the processes through which majority voting achieves credibility of commitment in the EU. As opposed to unanimity, qualified majority voting facilitates the restriction of national executive authority, the delegation of powers to and an increase in the discretion of a Commission with supranational preferences. Codecision operates like majority voting when the Parliament shares supranational preferences with the Commission, while it produces outcomes similar to unanimity when the Parliament has national preferences.

Second, the model reveals the trade-off facing especially the members of the Council when they have to decide whether to rely on their own administrations or the Commission for policy implementation. Delegation outcomes are a function of conflict both between the Commission and the legislators and among member states. Since delegation to the Commission is also dependent upon the possibility of national implementation, it may occur less frequently than is usually assumed. Moreover, in one circumstance, many administrators and a high threshold for decision-making within the legislature may sever the negative relation between discretion and policy conflict (cf. Epstein and O'Halloran, 1994, 1999). When member states have

to decide unanimously to restrict national authority, they may adopt higher levels of discretion as conflict intensifies.

Finally, contrary to other findings (cf. Huber and Shipan, 2002: 105–6, 148), a less demanding bargaining environment in the legislature may work in favor of an administrator with agenda-setting power. The Commission is more likely to be delegated powers in majority voting where it can use more effectively its power of legislative initiation to reach a favorable outcome.

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FABIO FRANCHINO is Lecturer of Political Science at the School of Public Policy, University College London. His publications and research interests cover EU politics and policy, executive and bureaucratic politics, rational choice analysis and formal modeling. ADDRESS: School of Public Policy, University College London, 29/30 Tavistock Square, London WC1H 9QU, United Kingdom [email: f.franchino@ucl.ac.uk].