
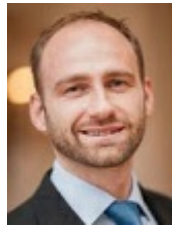


A dearth of legislative vetoes: Why the Council and Parliament have been reluctant to veto Commission legislation

 blogs.lse.ac.uk/europpblog/2016/10/25/a-dearth-of-legislative-vetoes/

25/10/2016

Several reforms have taken place at the EU level to try and address the criticism that EU decision-making suffers from a democratic deficit. Drawing on recent research, [Michael Kaeding](#) and [Kevin M. Stack](#) assess one such reform: the provision of powers for the Council of the European Union and the European Parliament to veto so called 'secondary legislation' put forward by the European Commission. They find that the use of these veto powers has been extremely limited, although this does not necessarily mean the reforms have been ineffective, but rather that they may have impacted on the bargaining dynamics of informal negotiations between the institutions.



The Eurosceptics' mantra on the European Union is that its institutional structure is undemocratic and unaccountable. In an effort to address claims of a 'democratic deficit', the European Parliament, representing European citizens, and the Council of the EU, representing member states, has gained new powers of oversight over the Commission's regulatory activities during the past decade.

While the Commission remains the initiator of legislation, the Parliament and Council now have the right to lodge objections to its administrative acts, through so-called *legislative vetoes*. Under certain conditions and within set timeframes, they can now vote to override the Commission's secondary legislation before it becomes law.

Nearly a decade has passed since these new rights were created, but how have these veto rights, which hold the promise of making the Commission more accountable to representative bodies, been used? Have these reforms been effective in modifying the power balance between the Commission and the representative institutions of the Union?

Delegation and oversight

A critical trend in contemporary government is the increasing role of the executive as the main source of legislation. Legislatures have many incentives to delegate their power to executive and administrative bodies. With increasing technical complexity, they may simply not have the knowledge or time necessary to settle on the specifics in a given area. Or with political divisions in a legislature, it may not be possible to achieve agreement. The net result is that in many systems, executive and administrative bodies are now the main source of legislative acts, whether through secondary legislation, administrative rules, or delegated acts.

To retain some measure of formal control over the legislation produced by executives and administrative bodies, legislatures in Europe have included provisions which allow them to repeal administrative acts via a veto. These vetoes are typically structured so that a majority of the legislature, or even a majority of one house of the legislature, can disapprove the administrative measure and prevent it from becoming law. This combination of delegation of legislative power with veto provisions means that legislators spend more time on oversight of executive activity – ensuring that regulations comply with the laws they are intended to implement and address constituent interests.

These issues of delegation and oversight have particular relevance in the EU context. Until 2006, the Council of the European Union and the European Parliament did not have veto powers over the Commission's secondary legislation. This fuelled criticism of an alleged democratic deficit, and ultimately the adoption of formal veto rights for the Council and the Parliament: first in 2006, with the creation of the so-called 'regulatory procedure with scrutiny' (RPS), and then in 2009 with provisions on so-called 'delegated acts', as part of the Lisbon treaty (Art. 290 TFEU). Under the Lisbon treaty, the Parliament and Council can include a veto provision in their legislation which allows them to block subsequent secondary legislation drafted by the Commission. To exercise a veto requires either a qualified majority vote in the Council or an absolute majority vote in Parliament.

Unexploited power?

In [a recent study](#), we sought to assess the extent to which the European Parliament and the Council have used their veto powers. We counted both successful and unsuccessful attempts to put a veto to a vote in the Council and in Parliament.

We found that while the Council and Parliament have increasingly included veto provisions in EU law, the actual exercise of veto rights has been extremely low, for both of the procedures mentioned above (regulatory procedure with scrutiny and delegated acts), and by both the Council and the Parliament. Between 2006 and 2016, the Parliament vetoed only eight RPS measures and five delegated acts, which amounted to less than 0.8% of its files, while the Council issued only 14 vetoes (12 RPS and 2 delegated acts), a meagre 0.2% of all cases brought to its attention by the Commission.

With no significant difference between the two institutions and between the two procedures, it could seem that these institutional reforms are an empty shell that has had no visible effect on the legislative process: how is it that the institutions that have been so insistent in demanding these new prerogatives seem now to ignore them? Have institutional reforms been ineffective in shifting the balance of power towards representation and accountability?

The U.S. experience with the legislative veto

Previous research on legislative-executive relations provides some insight. In the U.S., the legislative veto was in place for nearly 50 years but rarely invoked. (The legislative veto was declared contrary to the U.S. Constitution by the U.S. Supreme Court in 1983.) The literature on the U.S. experience points to two main reasons that induce the legislature to make sparing use of its veto rights.

First, representatives in a parliament may regard veto procedures against an administrative measure as costly, time-consuming and complex manoeuvres: consensus has to be built on several levels (sub-committee, committee and plenary) and MPs have to be convinced that a particular issue is more deserving than the profusion of proposals

competing for a place on the legislative agenda. Second, and most importantly, the administration and administrative agencies will often be unwilling to spur conflict with legislative bodies, and will tend to try and negotiate with its members rather than risk a public confrontation or even the political fiasco of a formal veto of their work.

These two principles of political economy — the administration's aversion to institutional conflict, and the high costs of collective action for legislatures on often technical administrative measures — suggest that the primary effect of giving veto rights to a legislature is not the actual exercise of these rights, but rather a change in the informal negotiating dynamics between institutions. The legislature, or even its individual members, will have greater informal authority to request modifications in administrative measures when they can threaten formal vetoes. Thus one of the most important impacts of a legislative veto right may be how it alters informal negotiations between the legislative bodies and the administrative agency proposing the secondary legislation.

Veto rights in the European context

This logic drawn from observations of the U.S. applies particularly well to the EU context, which is also a system of separated powers. First, the costs of collective action in the European Parliament are especially high. A veto procedure can be blocked in several ways at the committee level and in the setting of the legislative agenda. Both veto procedures tend also to be technical and demand significant investment to be understood; the tight timing requirements to override Commission drafts further raise the costs of collective action.

Second, the Commission's interest in avoiding open institutional confrontation is particularly pressing in view of its attenuated democratic legitimacy. With the European Parliament disinclined to engage in complex veto procedures and the Commission notoriously averse to prompting public conflict with the Parliament, the Commission will tend to anticipate the Parliament's demands or accommodate them.

An avenue for critical research on legislative vetoes in EU governance

Veto rights, while seldom formally exercised by legislatures, may have highly significant effects on the balance of power during informal negotiations between institutions – ultimately, they alter the bargaining power of the players. Both sides will be more prone to negotiating and compromising on specific policy matters at the committee level or before, rather than prompting direct confrontation on the floor.

Yet these negotiations often happen behind closed doors and off the record. Our conclusions thus prompt an ambitious and critical research agenda: how does legislative bargaining between the Council, Parliament and Commission work? To what extent do the Parliament and Council exercise their new latent powers over the Commission, and how did recent institutional changes alter their respective bargaining power? And more generally, does the increased significance of informal bargaining in the legislative process enhance democratic accountability? Or, conversely, does it make it easier for interest groups to extract concessions from the executive through lobbying legislators behind the scenes?

For more information on the study, see the authors' article in the [Journal of Common Market Studies](#)

[Please read our comments policy before commenting.](#)

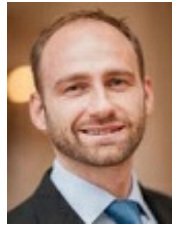
Note: This article gives the views of the authors, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics. Featured image credit: [Cédric Puisney](#) (CC BY 2.0).

Shortened URL for this post: <http://bit.ly/2eBuDNo>

About the authors

Michael Kaeding – *University of Duisburg-Essen*

[Michael Kaeding](#) is Professor of European Integration and European Union Politics and ad personam Jean Monnet Chair at the Institute for Political Science at the University of Duisburg-Essen, Chairman of TEPSA (Trans European Policy Studies Association), Visiting Professor at the College of Europe (CoE) in Bruges, and Visiting Fellow at the European Institute of Public Administration (EIPA). In addition, he is associated editor of the Journal of European Integration and author of articles and books on topics such as the social selectivity in voter turnout across multi-level systems, European elections, the micromanagement of EU institutions, delegated and implementing acts, and the implementation of EU rules, norms and values across Europe.



Kevin M. Stack – *Vanderbilt Law School*

[Kevin M. Stack](#) is Professor of Law at Vanderbilt University. He writes on public law, with a focus on administrative law, regulation, separation of powers, and comparative administrative law. He is a co-author of *The Regulatory State* (with Lisa Bressman and Edward Rubin). His recent publications address the interpretation of administrative regulations, administrative soft law, legislative oversight of regulations, and the rule-of-law demands on administrative governance.



-