ECONSTOR

WWW.ECONSTOR.EU

Der Open-Access-Publikationsserver der ZBW – Leibniz-Informationszentrum Wirtschaft
The Open Access Publication Server of the ZBW – Leibniz Information Centre for Economics

Schmidtchen, Dieter; Steunenberg, Bernard

Working Paper

European Policymaking: An Agency-Theoretic Analysis of the Issue

CSLE Discussion Paper, No. 2002-13

Provided in cooperation with:
Universität des Saarlandes (UdS)

ZBW Leibniz-Informationszentrum Wirtschaft
Leibniz Information Centre for Economics

Mitglied der
Leibniz-Gemeinschaft

European Policymaking:

An Agency-Theoretic Analysis of the Issue

Dieter Schmidtchen[*]   Bernard Steunenberg[**]

CSLE – Center for the Study of Law and Economics

Discussion Paper Nr. 2002-13

Abstract

In various European legal acts the Council has delegated power to the Commission to set common policy, conditional on specific procedural requirements, which are commonly known as "comitology". In this paper we analyse whether and how far these implementation procedures help to overcome a dilemma of delegation, which arises if (a) a principal and an agent have conflicting interests and (b) the principal, due to the structure of the principal-agent relationship, cannot perfectly control the agent (structure-induced agent discretion).

[*] Center for the Study of Law and Economics, Universität des Saarlandes, Saarbrücken
[**] Department of Public Administration, Leiden University

I.   *Introduction*

In various European legal acts the Council has delegated power to the Commission to set common policy, conditional on specific procedural requirements, which are commonly known as "comitology". In this paper we analyse whether and how far these implementation procedures help to overcome a dilemma of delegation,[1] which arises if (a) a principal and an agent have conflicting interests and (b) the principal, due to the structure of the principal-agent relationship, cannot perfectly control the agent (structure-induced agent discretion).

As is well known from the principal-agent literature (see Sappington 1991), conflicting interests and information asymmetry allow the agent to choose actions which are inconsistent with the preferences of the principal. However, as is often overlooked, conflicting interests and asymmetric information are sufficient but not necessary conditions for agent discretion. We also have room for agent discretion with perfect and complete information, if the structure of the principal-agent relationship allows the agent to deviate from policies preferred by the principal. This kind of discretion, that has been labelled by Steunenberg (1996) s t r u c t u r e – i n d u c e d   d i s c r e t i o n , can arise, for example, if the legislature has difficulties in deciding collectively on its actions (see also Cooter 2000: 154-161). The legislative process can be hampered by majority rule cycles, which the agent may employ to its advantage (Hill 1985). Furthermore, new legislation can be blocked if political actors do not agree on any deviation from the current agent policy (see Ferejohn and Shipan 1990; Eskridge and Ferejohn 1992). In these cases, it is neither a lack of information nor the unwillingness of the legislature to control

---

[1] According to Lupia/McCubbins a dilemma of delegation arises if a policy making bureaucracy does not have common interests with its principals and possess information about the delegation that their principals lack (see Lupia/McCubbins 1998: 214, 79). As for the latter think of information about cause-effect relations, the details of existing policies and regulations, the pending decision agenda, and the distribution of benefits and costs of agency actions (see McCubbins, Noll, Weingast 1987: 247).

agent decisions, but rather the inability to reach legislative agreement that provides the agent with the opportunity to select a policy that is closer to its ideal point.

The "political control" literature distinguishes two general ways of controlling an agent (see McCubbins, Noll, Weingast 1987: 243): "oversight", which consists of monitoring, researching, and punishing bureaucratic behaviour, and administrative procedures. Due to costs of monitoring, limits to sanctions and political costs of sanctions, monitoring and sanctions do not comprise a perfect solution to the problem of bureaucratic compliance (see McCubbins, Noll, Weingast 1987: 246-253).[2] Administrative procedures "affect the institutional environment in which agencies make decisions and thereby limit an agency's range of feasible policy actions". As McCubbins, Noll, Weingast (1987) mention, "the point of administrative procedures is *not* to preselect specific policy outcomes, but to create a decisionmaking environment that mirrors the political circumstances that gave rise to the establishment of the policy ... If these uses of administrative process are effective, the agency, without any need for input, guidance, or attention from political principals, is directed toward the decisions its principals would make on their own, even if the principals are unaware, ex ante, of what that outcome would be. By structuring the rules of the game for the agency, administrative procedures sequence agency activity, regulate its information collection and dissemination, limit its available choices, and define its strategic advantage." (McCubbins, Noll, Weingast 1987: 255.)[3]

---

[2] McCubbins, Noll, Weingast (1987: 244) mention hearings, investigations, budget reviews, legislative sanctions as means of standard political oversight. According to Lupia/McCubbins (1998: 81-82) the principal has three ways of obtaining information about her agent's actions: " *direct monitoring* of an agent's activities (the principal gathers information herself), attending to the *agent's self-report* of his activities, or attending to *third-party testimony* about the agent's actions."

[3] There is a further advantage mentioned by McCubbins/Noll/Weingast: procedural controls "enable political leaders to assure compliance without specifying, or even necessarily knowing, what substantive outcome is most in their interest." (1987: 244.)

Although oversight plays a role in shaping the relationship between Council and Commission, it is of minor importance compared to procedures. When delegating power to the European Commission the Council typically does this conditional on specific procedural requirements. These procedures are codified in the Council's so called "comitology" decision.[4] In this comitology decision, the Council distinguished three types of procedures: the advisory committee procedure, the management committee procedure, and the regulatory committee procedure. All these procedures have as a common element bodies of representatives or civil servants drawn from the member states. They consult, but also supervise, the Commission's execution of legal acts.

Although advisory committees, management committees and regulatory committees have become an integral part of the European institutional structure, there is surprisingly little research to be found from a rigorous rational choice perspective. The current comitology procedures have been analysed in Steunenberg/Koboldt/Schmidtchen (1996, 1997), using a rational choice approach and, more specifically, the tools of non-cooperative game theory. Institutional reforms regarding the involvement of the European Parliament are dealt with in Steunenberg/Schmidtchen (2000), Steunenberg/Koboldt/Schmidtchen (2000, 1997). However, all these contributions focus on the distribution of power in the European Union (see also Steunenberg/Schmidtchen/Koboldt 1999). Although we strongly draw on the analytical insights derived in these earlier articles the focus has changed from the power issue to the principal-agent problem.

---

[4] Decision of the Council of July 13, 1987 (Official Journal of the European Union 1987: L 197/33). The draft treaty of Amsterdam (1997) includes a declaration in which the member states call on the Commission to submit to the Council by the end of 1998 a proposal to amend the comitology decision of 1987. On 16 July 1998 the Commission submitted a Proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission, one of the main objectives being to simplify these procedures and reduce the number of possible formulas (see Official Journal 1998, (279/5)).

The paper is organised as follows.[5] In section II we present a simple model of structure-induced agent discretion. In section III we describe policy making in the EU and point to ways in which the Council tries to restrict the discretion of the Commission in implementing European policies. In section IV we analyse the current decision making procedures, using a model in which the Commission may select a policy that is subject to review by a committee of representatives of the member states and the Council. Section V presents a measure of agent discretion. It adresses the ability of the Commission to set a policy according to its own preferences, given a specific procedure and a variety of possible preference constellations. Thus, the better is the outcome of the policy setting game from the perspective of the Commission, the worse is the workability of an implementation procedure in solving the dilemma of delegation. Section VI concludes.

---

[5] The paper is a slightly modified version of a paper entitled "Comitology and the Legislator's Dilemma: On the Architecture of Decisionmaking in the European Union" published in Yearbook for New Political Economy (Jahrbuch für Neue Politische Ökonomie), editors: Holler, M., H. Kliemt, D. Schmidtchen, M.E. Streit, vol. 21, Tübingen 2002.

II.   *Structure-induced agent discretion*

The purpose of this section is to show, how in principle, institutional arrangements like committees matter with regard to decision making by an agent. In order to keep things as simple as possible we assume simple majority voting although it is not part of the comitology procedures. In section IV. dealing with the commission policies under the implementation procedures we introduce the more complicated case of qualified majority voting which characterises the comitology procedures.

A legislature delegates policy making authority to an agent and delegates supervision of the agent to a committee. The committee is assumed to have gate-keeping power: the only way for a policy proposal to come for the legislature is by the committee opening the gate to enable policy change or not. We distinguish two rules, according to what the legislature can do if the committee opens the gate: with a "take-it-or-leave-it"-rule the legislature may vote the agent proposal up or down; under the amendment-rule the legislature may open the floor to amendments to the agent proposal.[6]

Let us first assume that the legislature as well as the committee decides under a simple majority rule. In this case the median's preferences determine the majority's preferences. In fig. 1(it is adopted from Ferejohn/Shipan 1990: 7), assume that A is the ideal point of the agency, the median legislature member is at L, and the median member of the committee is located at C. C(L) stands for the point of indifference to the legislature median position. That is, median member of the Committee prefers a policy of L as much as the alternative policy C(L). Additionally q represents the status quo and C(q) the committees' point of indifference to the status quo.

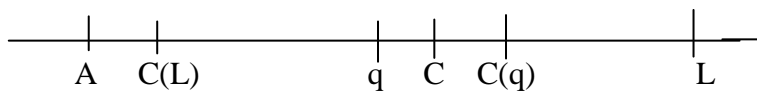A   C(L)   q   C   C(q)   L

Fig. 1: Gate keeping procedure: simple majority

In an amendment-rule committee system the agency would not propose to implement any policy to the left of C(L) since the committee would open the gate and the legislature would amend to be equal to L. If the agency proposed a policy in the interval [C(L), L], the committee would not open the gate since the median committee member would (weakly) prefer such a policy to the outcome of legislature decision-making, i.e. L. Thus, the subgame perfect equilibrium is: the agency proposes $x = C(L)$ and the committee leaves the gate closed. Note that if $C(L) < A$, the agency would choose $x = A$, a policy which prevails. This holds until $A \geq L$. If $A \geq L$ then $x = L$. As a general rule, the agency will choose $x = \max\{A, C(L)\}$ for $A < L$ (see Ferejohn/Shipan 1970: 7).

The dilemma of delegation shows up in the difference $L - x = \max\{A, C(L)\}$. It exists as long as $C < L$. If $C = L$ the agency would choose a proposal $x = L$ and the committee would leave the gate closed. Note that the threat by the committee to open the gate if the agency does not propose a policy $x = C$ is an empty threat. It will never open the gate if $x \neq C$ since opening the gate would lead to L, making the committee worse off.

It is the sequential structure of decision-making which allows the agency to take an action that would not command a majority in the committee or the legislature. Three crucial features of this sequential policy-making under an amendment-rule committee system must be mentioned (see Ferejohn/Shipan 1990: 7, 8, who analyse congressional influence on bureaucracy): "First, at least in settings with complete information, in equilibrium the initial agency policy choice is never overturned." Second, the equilibrium agency proposal depends on the legislature's and

---

[6] Note that these rules differ from the closed-rule and open-rule committee systems which are typical for US-congress (see Shepsle, Bonchek 1997: 117). Whereas US committees have got monopoly proposal power in the

the committee's preferences. The legislature is influential in policy making without taking action. The possibility of Council actions is what matters. Third, holding constant the position of the median member of the committee, the relationship between the preferences of the legislature median and the equilibrium policy choice of the agency will be negative. The further away from the agency's preferred position is L, the better the agency will do in equilibrium (see Ferejohn/Shipan 1990:8).

In a take-it-or-leave-it-rule committee system the dilemma of delegation remains. If $x < q$, the committee would open the gate and the legislature would vote against the proposal leading to maintaining the status quo. If $C(q) \geq x \geq q$, the committee would open the gate and the policy x would be implemented. If $x > C(q)$ the committee is indifferent between opening the gate and leaving it closed, the legislature would accept x; in the latter case, x would be implemented without involvement of the legislature. As is obvious, under this regime the committee median can only realise its ideal point if $x = C$. Since this ideal point is closer to L than C(L), the dilemma of delegation is mitigated.

EU context committees have only the exclusive right to open the gate.

III. Implementation Procedures

Based on the comitology decision, three main types of implementation procedures can be distinguished. In the *advisory committee procedure*, a committee of representatives gives its opinion on a draft measure of the Commission. The Commission has to take into account this advice and is obliged to inform the committee about the way in which it has affected its final policy choice. This procedure will not be analyzed further in this contribution since it does not grant any decision making power to other players than the Commission.[7]

The second type is the *management committee procedure*.[8] In this procedure the committee of representatives gives an opinion on the Commission proposal, based on qualified majority of its members. If the committee agrees with the Commission proposal or remains divided, the Commission proposal will be implemented. If the committee adopts a different view – which is called a *'negative'* opinion – the Commission reports its proposal to the Council. The Council may only take a decision that deviates from the Commission proposal by qualified majority. If the Council agrees with or does not respond to the proposal, the Commission is allowed to implement its proposal. The architecture and the outcomes of this procedure are presented in fig. 2.

---

[7] In the recently submitted Commission proposal (Official Journal 1998, (279/5)), the advisory procedure is defined in Article 3, which is identical to the procedure described in the 1987 comitology decision.

[8] In the recently submitted Commission proposal (Official Journal 1998, (279/5)), this procedure is defined in Article 4, which drops a variant (a) of the 1987 comitology decision.
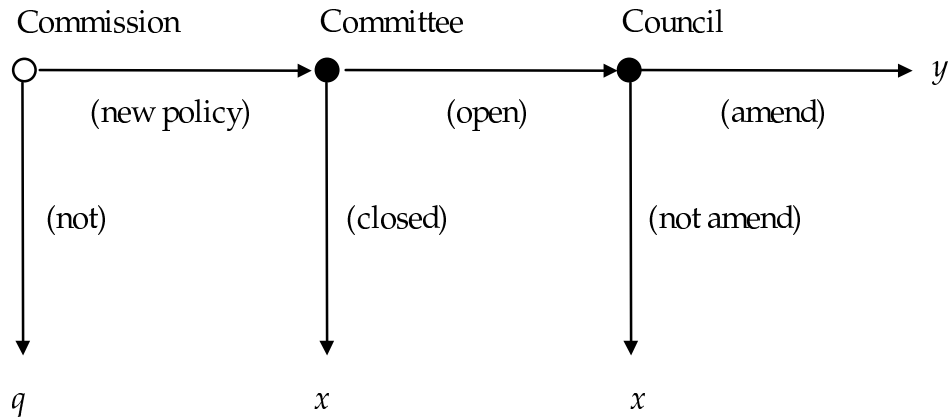
Figure 2. Gatekeeping procedure (management committee)

The third procedure is the *regulatory committee procedure*. In this procedure, the Commission may only implement its proposal when the committee presents a *positive* opinion. This is the main difference from the management committee procedure. If the committee gives a *negative* opinion, or when the committee does not reach a decision, the Commission has to submit its proposal to the Council. A divided committee in this procedure means that the Commission proposal has to be submitted to the Council, which increases the involvement of the Council in the decision making process. With regard to decision making in the Council, two variants of this procedure can be distinguished. In both variants the Council may amend the Commission proposal by qualified majority. In variant (a), which will be called the *amendment procedure*, the Commission proposal will be adopted if the Council does not decide otherwise. A Council decision tht deviates from the Commission proposal has to be based on a qualified majority. In variant (b) the Council may also veto the Commission proposal by simple majority. This variant of the regulatory committee procedure is known as the *contrefilet* procedure. This version will be called the *veto procedure*. The architecture and the outcomes of this procedure are shown in fig. 3.
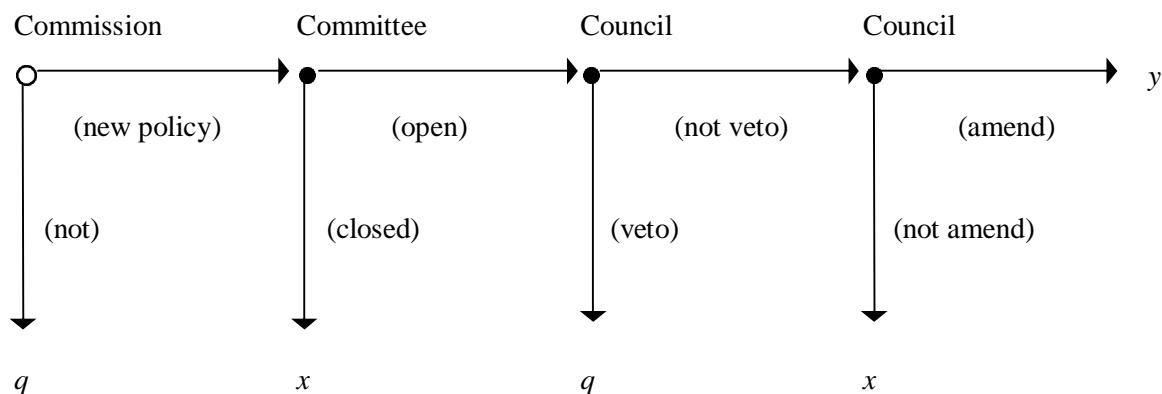
Figure 3. Gatekeeping procedure (regulatory committee)

The main difference between the two variants of the regulatory committee procedure, viz., the amendment and the veto procedure, is the voting procedure.[9] In the amendment procedure the Council can change the Commission proposal only if a qualified majority prefers a different point, including the initial *status quo*. If the Council fails to adopt a different view, the Commission proposal will be implemented. In the veto procedure, the Council is able to reject the Commission proposal by a simple majority in favor of the initial *status quo*. In that case, the Council has to make a comparison between the *status quo post* and the *status quo ante*. If the Council prefers the Commission proposal to the *status quo ante*, it will not use its veto power.

---

[9] In the recently submitted Commission Proposal (Official Journal 1998, (279/5)) both variants are dropped. Article 5, defining the regulatory procedure, now states: "If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it may present a proposal relating to the measures to be taken in accordance with the Treaty."

IV. Commission Policies under the Implementation Procedures

1. Assumptions

To analyse different implementing procedures we use a simple game theoretical model that gives a stylised representation of the complex interactions in the actual decision making process. In the model we distinguish three types of players, that is, the members of the Council of Ministers, the members of the committee of state representatives and the Commission, which will be regarded as a unitary actor. These players decide on a policy issue that can be represented with a single policy dimension. This dimension may, for example, represent regulation on telecommunication, different levels of integration of the internal market, or consumer protection. Players are assumed to have single-peaked preferences, which have two important properties. First, each player prefers one policy to all other possible policies as the outcome of the decision making process. This most preferred policy is represented with a player's *ideal point* on the policy dimension. Second, a player's preference for alternative policies depends on their distance from his or her ideal point. The farther away an alternative is from a player's ideal point, the less preferred this alternative is. In addition, we assume these preferences satisfy the single-crossing property, that is, preference for some alternative between two different players is determined by distance, too.[10]

We assume that decisions are made sequentially. The sequence is based on the existing procedures that specify the order in which players are allowed to make a move. Players are assumed to have complete and perfect information. This assumption implies that the preferences of players, the structure of the game, and the fact that players behave in a rational way are assumed to be common knowledge, while only one player is allowed to make a move

---

[10] See Enelow/Hinich (1984: 8-13) for an introduction to the spatial theory of voting that is used.

at every stage of the game. The characterisation of agent discretion in this paper differs from the literature that explores bureaucratic discretion based on informational advantages (see Niskanen 1971; Breton and Wintrobe 1975; Miller and Moe 1983) or uncertainty about agent preferences (Calvert, McCubbins and Weingast 1989). In this paper agent discretion is based on the structure of the principal-agent relationship. This is not to say that information asymmetry is not an important source of discretion. The point is that the agent has an additional opportunity to deviate from the policies preferred by the legislature. Since we are interested in analysing structure-induced discretion, policymaking will be analysed in an environment of complete and perfect information.[11] Second, we assume that none of the players prefers its decision to be overturned. This preference can be viewed as imposing some cost on a proposal that is not the final outcome of the decision making process. These costs are assumed to reduce the final payoff to a player. The Commission has an important "first mover" advantage by making the initial policy proposal. This proposal has to be regarded as the new common policy, unless the Council is able to force the Commission to change its position by introducing a new bill. Commission discretion is approached as a set of potential policies that can be selected by the Commission without triggering an overturn by the Council. As the Commission is allowed to make the first move, it will select its best policy such that the Council cannot pass a bill that will change this choice. All implementation games that are considered in this paper have a

---

[11] It is an open question whether these assumptions describe a worst case scenario from the point of view of the principal. With complete and perfect information the agent as well as the supervisor will never commit an error. The agent maximizes its pay offs given the knowledge of the preferences of the other players and the institutional structure of decisionmaking. With incomplete information regarding the preferences of the principal and the supervisor the agent might be more cautious in approaching its maximum in order to avoid decisions which are overridden later on. How this affects the principals pay off needs further analysis. In the spatial voting literature it is assumed that all points in the policy space can be implemented. As for the feasibility of a specific policy, the Commission has an informational advantage. The Commission can argue that the ideal point of the Council Median cannot be implemented, because there is no policy available to reach it. This represents a case of

unique, subgame-perfect Nash equilibrium, which we take to define the outcome of the game. The equilibrium has two important properties: First, the agent selects a policy that will be accepted by the supervisor. The principal therefore does not introduce a new bill, so in equilibrium no action of the Council will be observed. Second, the public policy that will be implemented in equilibrium is not only a result of the preferences of the Commission, but it also reflects the constraints generated by the preferences of the supervisor and the Council. The Commission anticipates all future courses of action and chooses a policy that will not be reversed in a subsequent stage of the game.

2. Qualified majority voting

In the implementing procedures applied in the EU the committee of representatives and the Council have to decide by qualified majority. Under qualified majority rule each voter may cast a specific number of votes, and a special majority is required to adopt a proposal.[12] This voting rule may lead to some complications, which can be illustrated by a five-member Council, shown in Figure 4, in which, L_i denotes the ideal point of Council member i. Furthermore, $L_i(x)$ stands for this member's point of indifference to the Commission policy x. That is, Council member i prefers the current policy, x, as much as the alternative policy $L_i(x)$. Note that Council

---

information induced agent discretion. The Council knows that the policy is closer to the Commission's ideal point than to its median member but it may not be able to do much about it.

[12] See Article 148(2) EC, which specifies this rule for decision making in the Council. From January 1995, and after the recent enlargement of the Union, this qualified majority rule implies that proposals need to be adopted with a 62/87 majority (71.3% of the votes). Thus 26 votes in the Council were sufficient to block a proposal. However, as a result of pressure from Spain and the United Kingdom, a compromise was reached at the European Council meeting held in Ioannina, Greece, in March 1994, to the effect that 23-25 opposing votes would ensure the continued discussion in the Council for a "reasonable" period until a consensus was obtained. This agreement implies that, in fact, a 65/87 majority (74.7% of the votes) is needed for Council approval.

member *i* strictly prefers to the current policy all alternative policies that are found *between* the Commission policy, *x*, and its point of indifference, $L_i(x)$.

Now assume, for simplicity, that Council members have equivalent vote shares. Then, in a five member Council, as illustrated in the figure, four members need to be in favour in order to adopt a new policy by a qualified majority of about 75% of the votes. In that case, Council members 2 and 4 are pivotal, since they find the ideal points of four Council members to their right or left, including their own vote. These two players will be called *decisive qualified majority* members, since their support is necessary and sufficient to form a qualified majority in the Council.[13]
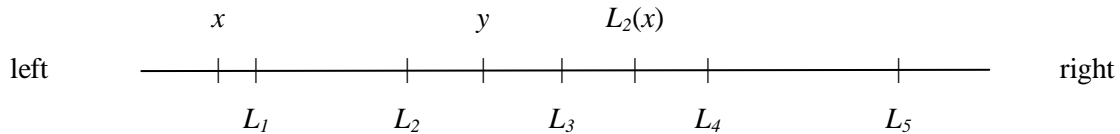

Figure 4. Qualified majority voting in a five member Council: amendments

If the Commission policy, *x*, is found to the left of the ideal point of member 2, as in Figure 2, a qualified majority (i.e., members 2, 3, 4 and 5) strictly prefers an alternative proposal, *y*, to the current policy, *x*. Only member 1 prefers the Commission policy to the alternative, so it will vote against *y*. Consequently, if the Council is restricted to choice between *x* and *y*, it selects the alternative policy, *y*. However, under the current comitology procedures, the Council may amend the Commission proposal. All Council members are allowed to propose an alternative to

---

[13] For simplicity, in this paper we assume a five-member Council, and later on, a five-member committee of national representatives. However, this (limited) number of Council or committee members does not affect our results, since decisive qualified majority members can be defined for any number of members.

the Commission policy, x. Using a well-ordered agenda,[14] the Council will then decide on a new policy that is equivalent to member 2's ideal point, L_2.[15]

A different situation occurs when the Commission policy is found between member 2 and member 4 as illustrated in Figure 5. Now the Commission policy, x, divides the members of the Council. Members 1 and 2 prefer a policy change to the left, while members 3, 4 and 5 prefer a change to the right. However, neither of them is able to propose a new policy that is supported by four members. In other words, no qualified majority can be formed against the Commission proposal. Consequently, the Council is not able to adopt a new policy, and the Commission can implement its proposal.
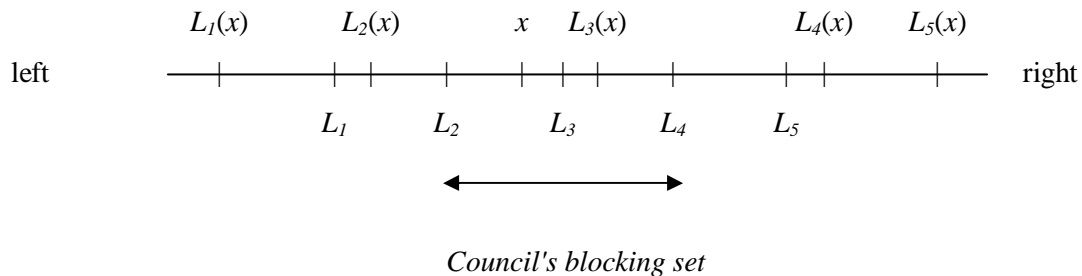

Figure 5. Qualified majority voting in a five member Council: no amendments

This result indicates that when the Commission selects a policy between the ideal points of the decisive qualified majority members 2 and 4, the Council is not able to amend it to another point. These proposals form what we call the "blocking" set of Council decision making, since the Council cannot form a qualified majority against such a proposal. Commission proposals that are located in this interval are invulnerable to amendments.

---

[14] We assume that the Council uses a well-ordered agenda in the following sense: first, all proposed amendments are collected and ordered according to their deviation from the initial proposal; second, each amendment is compared with the initial proposal in a binary vote starting with the amendment that deviates most from the initial proposal.

[15] A similar conclusion can be derived for a current policy to the right of member 4 in Figure 4. The Council will then select an alternative policy that is equivalent to the ideal point of member 4, L_4.

The committee of representatives which, like the Council, also decides by qualified majority, acts as a *gatekeeper* in most comitology procedures.[16] It decides whether the Council has to be involved in the decision making process. If the committee "opens" its gates, the Council may amend the initial proposal. If, however, the committee keeps its gates "closed" and decides to accept the Commission proposal, the Council cannot impose its preference on the Commission policy. In other words, the committee can only choose between the initial proposal, x, by keeping its gates closed, and the amended proposal, y, which it can expect to result from opening its gates. As for the Council, proposals may exist that divide the committee of representatives, that is, a qualified majority of committee members will prefer neither the initial proposal, x, nor the amended policy, y.

3. Modelling the implementation procedures

The implementation procedures can be modelled as sequential games in which the Commission moves first (see Steunenberg, Koboldt and Schmidtchen, 1996). In these games, the Commission proposes a draft measure or new policy, which has to be considered by a committee of national representatives in the second stage. This committee considers the Commission proposal, and it may decide by qualified majority whether or not to support the Commission. When it disagrees with the Commission, or, depending on the procedure involved, when it cannot form an opinion on the proposal, the committee has to submit the proposal to the Council. The Council, in the last stage of the game, may decide to reject the proposal by simple majority (veto version of the regulatory committee procedure), or propose amendments to the proposal by qualified majority (management committee procedure and the amendment version of the regulatory committee procedure).

---

[16] See Ferejohn and Shipan (1990: 6-8), Steunenberg (1996: 321-323)and Steunenberg (1992, 1994) for analyses of the role of gatekeepers in policy making processes in which an agent may set a policy that will be implemented
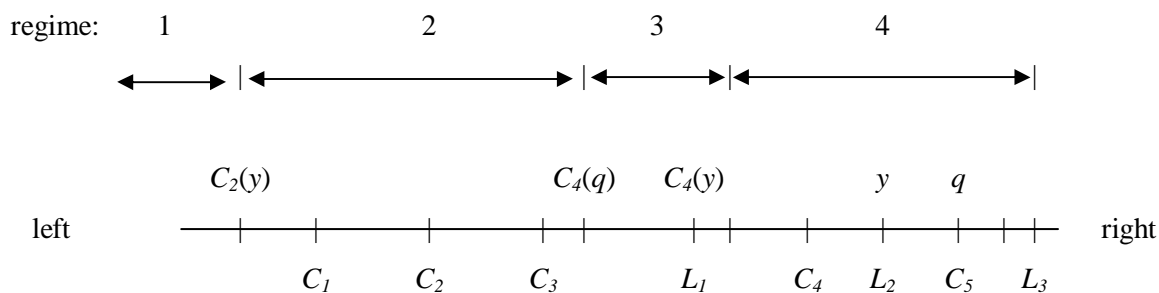
regime:　　　1　　　　　　2　　　　　3　　　　　4

$C_2(y)$　　　　　　　　　$C_4(q)$　$C_4(y)$　　　　y　　q

left ──┼───┼────┼────┼──┼────┼─┼────┼────┼──┼┼─ right

　　　　C_1　　C_2　　C_3　　L_1　　C_4　L_2　C_5　L_3

Figure 6. Implementing procedures: different regimes for Commission preferences

Knowing the responses of the other players, the Commission selects its best policy such that it does not trigger Council involvement. In order to demonstrate the *differences* in outcomes between the different implementing procedures we use a specific preference configuration, which is presented in Figure 6. Other preferences that differ from this configuration are possible, of course, but may lead to equilibrium outcomes that are less diverse between these procedures.[17] Most committee members are assumed to have more progressive preferences than their ministers in the Council, while the preference of the Commission is varied along the segment of the policy dimension that is found to the left of the median Council member, L_3.[18] The *status quo ante*, which plays a role in the veto version of the regulatory committee procedure, will be denoted as *q*. This policy, which is the initial policy before the Commission has made its proposal, is assumed to be located between L_2 and L_3.

Based on points that are critical for the outcome under some procedure, we distinguish four different intervals or regimes for Commission preferences in the figure. Regime 1, for example, includes Commission preferences to the left of committee member 2's indifference point to *y*.

---

unless other players are able to agree on another alternative.

[17] See Steunenberg, Koboldt and Schmidtchen (1996) for more general results, which do not depend on a specific configuration of player preferences.

[18] This restriction does not affect our conclusions. The interested reader can easily derive the results for the symmetric case of Commission preferences to the right of the median Council member.

Then, under the management committee procedure, the optimal policy to the Commission is $C_2(y)$, which leads to an indecisive committee. Keeping its gates closed, the Commission can implement its proposal. For the amendment and the veto version of the regulatory committee procedure, these optimal proposals are $C_4(y)$ and $C_4(q)$, respectively. A qualified majority of committee members will only support these policies, which are (weakly) prefered to the policy the Council will select in the last stage of the game.[19] The equilibrium policies for the four different regimes are presented in Table 1, where A denotes an outcome that is equivalent to the ideal point of the Commission.

	regime 1	regime 2	regime 3	regime 4
1. management committee procedure	$C_2(y)$	A	A	A
2. regulatory committee procedure: amendment	$C_4(y)$	$C_4(y)$	$C_4(y)$	A
3. regulatory committee procedure: veto	$C_4(q)$	$C_4(q)$	A	A

Key to the table: A is the ideal point of the Commission; y is the Council proposal, which is equivalent to the ideal point of Council member 2 in Figure 7; q is the *status quo ante*; $C_2(y)$ is the indifference point to y for committee member 2; $C_4(..)$ is the indifference point to y or q for committee member 4. The results presented in this table are based on the propositions presented in Steunenberg, Koboldt and Schmidtchen (1996).

Table 1. Comparative analysis: outcomes for the implementing procedures

Two important observations can be based on these results. First, the Commission is the least restricted in selecting a new Community policy under the management committee procedure. It may successfully select any new policy between $C_2(y)$ and L_3 in Figure 6 without any interference from the Council. In other words, having a preference for a policy that is found in

---

[19] Note that when the Commission proposes a policy that is found in the Council's blocking set, that is, the set of policies between L_2 and L_3 in Figure 6, the Council will not act and therefore accepts the Commission proposal. Knowing this, the committee will not open its gates and present a "positive" opinion on the Commission policy.

regime 2, 3, or 4, the Commission is able to implement a new policy that is equivalent to its own ideal point. Under the regulatory committee procedure, this set of feasible policies is reduced to points between $C_4(y)$ and L_3 for the amendment version (i.e. regime 4), or $C_4(q)$ and L_3 for the veto version (i.e., regimes 3 and 4). The reason for this is that under the management committee procedure an indecisive committee may keep its gates closed, while under the regulatory committee procedure it is induced to submit the Commission proposal to the Council. Only when a qualified majority of committee members prefers the Commission proposal to the Council alternative, is it able to present a "positive" opinion, which allows the Commission to implement its policy.

Second, both versions of the regulatory committee procedure lead to different results.[20] The veto version allows the Commission to successfully propose a new policy that is equivalent to its own ideal point under regimes 3 and 4, while the amendment version restricts this ability of the Commission to regime 4 only. In other words, and using the preference configuration in Figure 6, the additional veto power of the Council under the *contrefilet* procedure increases the set of proposals that is open to the Commission.[21] This is a result of the policy the Council will select in the last stage of the game. In the figure, a majority of Council members prefers the *status quo ante*, q, to the alternative Council policy, y. So, under the veto version, the Council will not amend but will consider vetoing the Commission proposal, when it is allowed to make its move. Knowing this, the committee will present a "positive" opinion on those Commission proposals that are (weakly) prefered to the *status quo ante*. This allows the Commission to select any initial policy up to committee member 4's point of indifference, $C_4(q)$. For the

---

[20] This is not always the case. The amendment and the veto version of the regulatory committee procedure do not differ if the *status quo ante*, q, is found to the left of the ideal point of Council member 2. Then, the Council will not use its veto power, since a qualified majority (and thus also a simple majority) of its members prefers the amended policy, y, to the *status quo ante*, q.

[21] Note that the opposite is true for a configuration where committee member 4 has an ideal point to the right of Council member 2 such that $C_4(q)$ is found to the right of L_2.

amendment version, where no veto is available, the Council will either select y or "accept" the Commission proposal.

V.   *Measuring agent discretion*

The discretion of the Commission in the implementation game to set new policies that coincide with its own preferences is affected by the rules of the decision making game as well as by the preferences of the other players. The discretion of the Commission can be associated with how close the outcomes of a given procedure come to the Commission's ideal point, given different constellations of preferences. Clearly, a player is worse off the further away the outcome of the implementation game is from its ideal point. Since implementation procedures are used for a multitude of decisions about topics on which player preferences may vary, we need to take account of these different configurations in order to show how the implementation procedures influence agent-discretion of the Commission. In this analysis, in which player preferences will be varied, we consider the mean distance between the outcomes and the ideal point of the Commission as a proxy for the Commission's discretion.

We also calculate the mean distance between the outcomes and the ideal point of the Council. This mean distance is considered to be a proxy for the legislator's dilemma. The smaller this distance the less severe is the legislator's dilemma. Since the European Parliament is also legislator, we additionally calculate a mean distance for the Parliament based on the ideal point of the median member of the Parliament.

In order to calculate the mean distance between the outcomes and the ideal points of the players under different procedures we make the following simplifying assumptions. First, we assume that the ideal points of the players and the *status quo ante* are distributed at equal distances along the policy dimension, and the minimum distance between two possible ideal points is the same for all configurations. This minimum distance is denoted as δ. Second, the ideal points of all decisive players (i.e., the median and decisive Council member, the Commission, the decisive members of the committee of representatives, and the median representative in

Parliament) may, but need not, differ from each other and may, but need not, differ from the *status quo ante*. Finally, we concentrate on configurations in which the ideal point of the Commission and the *status quo ante* are found to the left of the median Council member, L_3. We have used this kind of preference in the various figures in the paper. Moreover, without this restriction, the number of possible configurations would increase, while the mean distance remains the same. The outcomes that will be found for preferences to the right of the median Council member just mirror the outcomes for preferences to the left of this player. We assume that the preference configurations to which we restrict our analysis are equiprobable.

Given these simplifying assumptions, the number of feasible preference constellations (including a possible *status quo ante* point) is finite. This number depends on the length of the interval over which the ideal points are distributed. In our computations, we use an interval of length 7δ, which implies that the number of possible values an ideal point may take is 8. The mean or expected distances between outcomes and the ideal points of the Commission, the Council and the median member of Parliament are summarised in Table 2.

mean distance for: procedure:	Commission	Council	median member of Parliament
1. management committee procedure	0.29	2.46	2.58
2. regulatory committee procedure: amendment	0.71	2.17	2.36
3. regulatory committee procedure: veto	1.01	1.87	2.23

Table 2. Mean distance between equilibrium policies and the ideal points of the Commission and the median representatives in Parliament and Council

The indices in the table show how the Commission, the Council, and the Parliament are affected by the implementing procedures.[22] Focusing on the Commission first, the three comitology procedures appear to convey a different amount of discretion to the Commission. The mean distance between the outcomes of the implementation games and the preferred policy of the Commission is smallest in the management committee procedure and largest in the regulatory committee veto procedure. Based on expected distances, the Commission prefers the management committee procedure to the regulatory committee procedure, and the amendment version of the latter procedure to the veto version. The favourable effect of the veto version for the Commission, which we observed in Section IV, depends on the specific preference configuration depicted in Figure 6. On average, the veto version of the regulatory committee procedure leads to a larger distance between the equilibrium policy and the Commission's ideal point, which indicates that this procedure reduces Commission discretion the most.

The difference in Commission discretion between the management procedure and the amendment version of the regulatory committee procedure results from the fact that both procedures differ with respect to the consequences of an undecided committee. Whereas, in the management committee procedure, a qualified majority is required to open the gates, in the regulatory committee procedure the committee must be able to form a qualified majority to keep the gates closed. The difference in Commission discretion between the veto version and the amendment version of the regulatory committee procedure results from the fact that the commission is restricted in the veto version by the possibility that the Council may veto the Commission proposal in favour of the *status quo ante*.

As the figures for the Council show, the Council is confronted with a legislator's dilemma. This dilemma is less serious in the veto version of the regulatory procedure – but it exists! – and is

---

[22] We want to stress that neither the absolute nor the relative change in the respective figures should be generalised, because the figures are highly sensitive to the assumption about the probability of different preference

largest in the management procedure. Given these results, the Council's preference over different procedures can be written as: (management committee) p (regulatory committee: amendment) p (regulatory committee: veto). However, it would be a mistake to conclude that the Council will always choose the regulatory committee. This procedure involves higher opportunity costs than the others, and one would expect this procedure being chosen in very sensitive policy areas.

The Commission's 1994 Annual Report of Activities describes the activities of about 400 different committees that prepared more than 4,000 opinions covering almost all areas in the Union's budget. The activities of these committees cost about 18 million ECU, or on average 42,400 ECU per committee. The largest proportion of the committees specified in this report are advisory committees. They comprise about 42 % of the total number of committees; 17 % of the committees are management committees, and 20 % are regulatory committees. Mixed cases exist, too (European Parliament 1995b: 9). In another report the Commission indicates that in about 30 cases the Commission has had to follow a version of the regulatory committee procedure in which the Council can block its decision. However, this rarely occurs. Over the last three years there have been only six cases where the Commission decision was referred back to the Council, and no cases are known in which no decision was taken (European Commission 1995: 22).

While the European Parliament currently plays an important role in the European legislative process, it is not yet formally involved in the decision making process on the implementation of measures. It is only the Council which has the exclusive power to intervene at the implementation stage. However there is an agreement that the Parliament shall receive agendas for committee meetings, draft measures submitted to the committees, and the results of voting;

---

constellations. Thus we want to consider only implications drawn from the *direction* of change.

it shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken (see Official Journal 1998, C 279/5).

Even if Parliament is not involved in the game, it is better off under the regulatory committee procedures, among which the veto version is better for the Parliament. This is based on the condition that both the Commission and Parliament have more progressive preferences concerning European integration than the Council; that is, both are found to the left of the median Council member.[23] Under this condition, we expect the Parliament to rank the three comitology procedures opposite to the Commission. It prefers the veto version of the regulatory committee procedure to the amendment version, and the amendment version to the management committee procedure. The figures show that the legislator's dilemma is more serious for the European Parliament in comparison to the Council. That is the reason why the Parliament has always been interested in gaining a foothold in the implementation process.[24]

From the analysis of the implementation procedures we can derive the following general results:

- A procedure requiring a qualified majority in the committee to open the gates restricts agent discretion to a lesser degree than a rule requiring a qualified majority to keep the gates closed.

- Adding a new outcome option in form of the status quo ante restricts the agent more than the possibility of an amendment to the Commission proposal (= status quo post).

- Combining the amendment and veto version of the regulatory procedure by introducing an additional player, for example the European Parliament, reduce agent discretion the most (see Steunenberg/Schmidtchen 2000).

---

[23] See also Garrett (1992) and Tsebelis (1994: 132), who assume that the Commission and most members of Parliament are more pro integration than Council members on a policy dimension that presents positions towards European integration.

[24] See Steunenberg/Schmidtchen 2000, where alternative procedures with parliamentary involvement are analysed.

What has not been shown in the paper is the following.

- If a committee can decide by simple majority whether or not a Commission proposal has to be considered by the Council before it can be implemented, Commission discretion is less than in the management procedure and has the some level as in the regulatory amendment procedure.

Why should the Council delegate policy-making authority to the Commission, or confer monitoring authority on a committee, if it risks ending up with a policy not in accordance with its ideal position? The reason for delegating policy-making authority is to achieve efficiency gains that otherwise would not be available; the Council simply does not have the competence and the time to take the correct policy-decision. The same argument holds for the delegation of monitoring power. The difference $L - x$ measures the agency costs (= costs of delegation) which have to be balanced against the benefits of delegation.

A last question remains to be answered: Why does the Council permit the committee median, C, to be different from L? There are several possible explanations for committee outliers (see also Ferejohn/Shipan 1990: 9). First, it is not the Council delegating some of its members monitoring power. Rather, each government decides independently about whom to send off into a committee. Second, a state belonging to a minority in the Council might attempt to implement its favoured policy by influencing the median position in the committee. Third, a principal might delegate power in order to solve a self-commitment problem. Fourth, the committee is captured by the agency. The latter (and its clients) work to shift committee preferences over policy "in a manner sympathetic to the agency" (Ferejohn/Shipan 1990: 9). Fifth, the Council may find perfect compliance to be excessively costly. Imperfect compliance of a committee is another cost of delegation to be balanced against the benefits derived from saving the costs of monitoring and sanctions.

VI. Conclusion

Political theory holds that policy decisions in a representative democracy are responsive to the interests of citizens. A lot of institutional safeguards such as elections create incentive structures for elected representatives to respond to the interests and preferences of the citizenship. But policy making requires delegation of authority to unelected bureaucrats. How can elected political officials assure that bureaucracies do what political officials want them to do in order to retain and secure office?

We have analysed several policy making procedures, which are commonly known as "comitology". Our main findings are that the three comitology procedures differ as for their contribution to overcome the dilemma of delegation. The advisory committee procedure does not restrict the Commission in the slightest way. Both the management and the regulatory procedure impose some restrictions on the Commission, with the regulatory procedure being most restrictive.

We used a three-tier description of the architecture of decisionmaking in the European Union. In fact the European architecture is much more complex. The European Parliament and the Council can be either principals or agents. Both serve as agents as far as the people are concerned; both are principals with respect to the European Commission. Thus, we have actually a higher-order vertical structure, forming a network of overlapping or nested principal/agent relationships (Tirole 1986: 181). Also, horizontal elements can be superimposed on the vertical structure (see Tirole 1986). For example, the Commission can be monitored by several supervisors. There may also be repercussions from the implementation stage to the legislative stage of decision making which we neglected as well as correlation between the preferences of the different players. For example, if most members of Parliament and the Commission have similar preferences, Parliament may benefit from those procedures which

restrict the Commission least. In selecting a policy that is close to its ideal point, the Commission will also set a policy that is in line with the preferences of Parliament.

Our paper analyses the principal-agent relationship in a constitutional law and economics context (see Schmidtchen/Cooter 1997), which requires a focus on procedures (institutions) as a means for inducing agent compliance. We did not analyse methods of monitoring and punishing the Commission. In fact, we have in Europe a mix of both measures. Whether it is an optimal mix remains to be analysed.

References

Breton, A./R. Wintrobe (1975), The Equilibrium Size of a Budget-Maximizing Bureau: A Note on Niskanen's Theory of Bureaucracy, in: *Journal of Political Economy* 83: 195-207.

Calvert, R.L./M.D. McCubbins/B.R. Weingast (1989), A Theory of Political Control and Agency Discretion, in: *American Journal of Political Science* 33: 588-611.

Cooter, R. (2000), *The Strategic Constitution*, Princeton [Princeton University Press].

Eskridge, W.N./J. Ferejohn (1992), Making the Deal Stick: Enforcing the Original Constitutional Structure of Lawmaking in the Modern Regulatory State, in: *Journal of Law, Economics, and Organization* 8: 165-189.

Garrett, G. (1992), International Cooperation and institutional choice: The European Community's internal market, in: *International Organization*, 46: 533-560.

Hill, J.S. (1985), Why So Much Stability? The Impact of Agency Determined Stability, in: *Public Choice* 46: 275-287.

Lupia, A./M. McCubbins (1998), *The Democratic Dilemma*, Camb. (Cambridge University Press).

Miller, G./T. Moe (1983), Bureaucrats, Legislators, and the Size of Government, in: *American Political Science Review* 77: 297-322.

Niskanen, W.A (1971), *Bureaucracy and Representative Government*, Chicago: Aldine-Atherton.

Official Journal 1998, (279/5).

Sappington, D. (1991), Incentives in Principal-Agent Relationships, in: *Journal of Economic Perspectives*, Vol. 5, No. 2 Spring: 45-66.

Schmidtchen, D., B. Steunenberg (2002): Comitology and the Legislator's Dilemma: On the Architecture of Decisionmaking in the European Union, in: *Jahrbuch für Neue Politische Ökonomie (Yearbook for New Political Economy),* editors: Holler, M., H. Kliemt, D. Schmidtchen, M.E. Streit, Vol. 21, Tübingen [Mohr Siebeck].

Spitzer, M.L. (1990), Extensions of Ferejohn and Shipan's Model of Administrative Agency Behavior, in: *Journal of Law, Economics, and Organization* 6 (Special Issue): 29-43.

Steunenberg, B. (1992), Congress, bureaucracy, and regulatory policymaking, in: *Journal of Law, Economics, and Organization* 8: 673-694.

Steunenberg, B. (1994), Regulatory Policymaking in a Parliamentary Setting, in: Herder-Dorneich, Ph./K.E. Schenk/D. Schmidtchen (eds.): *Yearbook of New Political Economy*, Vol. 13: 36-57, Tübingen [Mohr Siebeck].

Steunenberg, B. (1996), Agent discretion, regulatory policymaking, and different institutional arrangements, in: *Public Choice* 86:309-339.

Steunenberg, B./Chr. Koboldt/D. Schmidtchen (1996), Policy Making, Comitology and the Balance of Power in the European Union, in: *International Review of Law and Economics* 16: 329-344.

Steunenberg, B./Chr. Koboldt/D. Schmidtchen (1997), *Comitology and the Balance of Power in the European Union*: A Game Theoretic Approach, in: Schmidtchen, D./R. Cooter (eds.): *Constitutional Law and Economics of the European Union*, Edward Elgar: 37-66.

Steunenberg, B./Chr. Koboldt/D. Schmidtchen (2000), *Beyond Comitology: European Policymaking with Parliamentary Involvement*, in: Moser, P./G. Schneider/G. Kirchgässner (eds.): *Decision Rules in the European Union. A Rational Choice Perspective* (Macmillan Press): 72-98.

Steunenberg, B./ D. Schmidtchen/Chr. Koboldt(1999), Strategic Power in the European Union. Evaluating the Distribution of Power in Policy Games, in: *Journal of Theoretical Politics* 11(3): 339-366.

Steunenberg, B./D. Schmidtchen (2001), Strategic Power in Policy Games, forthcoming *Yearbook of New Political Economy*, Vol. 20, Tübingen [Mohr Siebeck].

Tirole, J. (1986), Hierarchies and Bureaucracies: On the Role of Collusion in Organizations, in: *The Journal of Law, Economics, and Organization*, Vol. 2, No. 2: 181-214.

Tsebelis, G. (1994), The power of the European Parliament as a conditional agenda setter, in: *American Political Science Review*, 88: 128-142.