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No. 999

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THE EUROPEAN COMMISSION – APPOINTMENT, PREFERENCES, AND INSTITUTIONAL RELATIONS***

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ABSTRACT: The paper analyzes the appointment of the European Commission as a strategic game between members of the EU's Council of Ministers and the European Parliament. The focal equilibrium results in Commissioners that duplicate policy preferences of national Council representatives. Different internal decision rules still prevent the Commission from being a Council clone in aggregate. Rather, it is predicted that Commission policies are on average more in accord with the aggregate position of the Parliament than the Council. A data set covering 66 dossiers with 162 controversial EU legislative proposals passed between 1999 and 2002 is investigated to test this. In fact, the Council is significantly more conservative than Parliament and Commission; the latter two are significantly closer to each other than Council and Commission.

Keywords: European Commission, European integration, power, collective choice

JEL codes: C70, D71, H77

1 Introduction

The European Commission is the chief executive body of the European Union (EU). It also plays a key role in all EU legislation and represents the EU externally, e.g., in the WTO or enlargement negotiations. It is jointly appointed for 5 years by the Council of Ministers composed of the currently 25 national heads of government or state and the European Parliament. The Commission then interacts with both institutions in multiple ways.

Legislative processes of the EU have received considerable analytical attention during the past decade. The literature takes preferences of the respective stake-holders to be either exogenous and independent of each other, or does not explicitly assume preferences at all.¹ As criticized by Hug (2003), any dependency between the Commission's policy ideals and those of Council or Parliament which may be generated by the appointment procedure is thus ignored. A notable exception is Crombez (1997), which like this paper models appointment as a strategic game. Crombez criticizes the common wisdom that the Commission is an independent pro-integrationist actor in the EU and argues that the pre-Nice version of the appointment procedure, in fact, considerably limited the Commission's freedom to promote any independent agenda. The post-Nice version imposes fewer constraints but keeps the fundamental dependency (see Crombez and Hix 2004). This view is criticized by Tsebelis and Garrett (2000). The Commission may be an ally of the Council regarding many traditional left-right issues, but according to Tsebelis and Garrett a series of filters in the nomination process plus self-selection of potential Commission candidates let it take pro-integrationist positions independently of other institutions.²

Here we try to answer two questions: First, what policy positions can we expect a newly appointed Commission to hold given the preferences of members of the Council of Ministers (CM) and European Parliament (EP)? Second, what does this imply for the Commission's later policy relations with CM and EP? To this end, we analyze the Commission's appointment as a stylized extensive game – assuming a non-cooperative game form closely reflecting Art. 214 of the post-Nice version of the EC Treaty. As Crombez (1997) we consider players and candidates with spatial preferences and assume dimension-by-dimension decisions after the appointment.

Our stylized game involves five main stages, some of which allow for an unbounded number of iterations and moves to earlier stages. While this makes the game too complex for fully detailed game-theoretic analysis (specifying the course of action after all possible histories of play), we identify the path of play in the arguably most relevant focal equilibrium. In particular, we show that under several plausible assumptions it results in a Commission that *duplicates the Council* at the individual level. Each head of government or state can propose the national candidate he or she likes best; this candidate will in equilibrium be accepted by other Council members and the Parliament.

¹For some recent contributions see, e.g., Tsebelis (1994), Garrett (1995), Garrett and Tsebelis (1996), Tsebelis and Garrett (1997), Steunenberg and Selck (2002), and Laruelle and Widgrén (1998), Baldwin et al. (2001), Felsenthal and Machover (2004).

²Also see Hix et al. (2004), which we interpret as support of Crombez' view. For general discussions of the Commission's role in the EU see Pollack (1997) and Matlár (1997).

This answers our first question, and one might think that thus the second is trivial. But though the Commission is cloning the Council in the composition of heads of government or state at the individual level, it does not do so in aggregate terms. In particular, CM and Commission use different internal decision quotas. This hands power to individual members of CM and Commission with different interests. While the Council's qualified majority rule makes its collective ideal points on one-dimensional policy issues coincide with those of an issue-specific *conservative* member of CM, the Commission's ideal point corresponds to that of a *moderate* member of CM (relative to the status quo). Assuming identically and independently distributed ideal points for members of CM and EP, it turns out that a priori the Commission will be in several ways closer to Parliament than Council.

This a priori prediction is confirmed by analysis of data gathered by expert interviews on 162 decisions made under the Consultation and Codecision procedures between 1999 and 2002. It is also consistent with an independent empirical study of 73 Codecision cases which arose between 1999 and 2002 by König et al. (2004) and anecdotal evidence reported by Rasmusen (2003).

The remainder of the paper is organized as follows: Section 2 provides some legal and historical background on appointment and work of the Commission. Section 3 introduces our stylized appointment game and derives a solution for it. The latter's a priori implications for institutional relations between Commission, Council, and Parliament are investigated in section 4 and compared with empirical data in section 5. Finally, section 6 concludes.

2 Legal and Historical Background

The Commission³ currently comprises 25 members – one from each EU member state. It unilaterally decides on many day-to-day issues, e.g., in competition policy along the so-called *administrative route*, and makes any first proposal in the EU's various legislative processes (*legislative route*). The Commission has some discretion in selecting between the administrative and legislative routes. Both routes confer great powers to the Commission even though it may be prompted to initiate legislation (i.e., has no gate-keeping power) and CM and EP can change Commission proposals with specified majorities. Commissioners have individual portfolios and thus in practice exert asymmetric influence on EU policy. Formally, however, they act as a team or *college* chaired by its President. If there is no consensus on a given issue in the college, it acts by a *simple majority* of its members (Art. 219, EC Treaty). This and also EP's right to remove a Commission through a motion of censure have been unchanged since the Treaty of Rome in 1957 (then referring to the Assembly).

Otherwise, rules regarding the appointment, composition and work of the Commission have been modified many times – and will again after the next EU enlargement or if the

³Particularly in ordinary press coverage, the term “Commission” is used not only for the college of Commissioners but also their about 25,000 staff in the Brussels head offices, the Luxembourg offices and elsewhere (for comparison: the city of Helsinki employs about 39,000 civil servants).

Constitutional Treaty gets ratified. Before 1993, nomination was a purely intergovernmental affair: the Council of Ministers selected the next Commission by unanimous agreement or *commun accord*. The Treaty of Maastricht (Title II, 43.) gave EP the right to be consulted on the governments' nominee for Commission President, and required an explicit vote by EP on the complete college of Commissioners (as a single closed list).

The Treaty of Amsterdam, coming into force in 1999, replaced EP's consultation on the President nomination by a separate formal vote and gave the nominated President a veto on the remaining Commissioners. The Treaty of Nice in 2003 removed the unanimity requirement for CM: the Commission President and later the full college only need to be endorsed by a qualified majority. Moreover, the Nice Treaty changed the composition of the Commission to one Commissioner from each member state – hitherto, large member countries had two Commissioners. And in response to the crisis of the Santer Commission between 1998 and 1999,⁴ individual Commissioners can now be asked to resign by their President. In 2004, the Accession Treaty (or Act Concerning the Conditions of Accession) gave Commission seats to the 10 new EU members, but determined that there shall be less than 27 Commissioners after Bulgaria and Romania join the Union (presumably in 2007 or 2008); the actual number is still to be determined by the Council. The Constitutional Treaty currently seems unlikely to come into force by 2007, but in this event would call for one proper seat for each EU member in the first Commission and thereafter voting Commissioners from only two thirds of the member states with non-voting Commission members from the others on the basis of equal rotation (Art. I-26).⁵

In the following, we focus on current rules for appointment as specified by Art. 214ff of the EC Treaty, last amended by the Treaty of Nice and the Accession Treaty. The provisions leave open a number of details. Where possible, we base our interpretation of the Treaty provisions on what could publicly be observed during recent Commission appointments as well as semi-official sources. The appointment process can broadly be divided into five stages and summarized as follows:

1. CM, meeting in the composition of heads of government or state,⁶ nominates a person it intends to appoint as Commission President by qualified majority.
2. EP either approves the nominated candidate (by absolute majority of votes cast – see Art. 198) or rejects him or her, leading back to stage 1.
3. CM members submit national candidates for the remaining Commission positions, with the exception of the one already providing the nominated President.⁷ The designated President composes a list with one Commissioner from every member

⁴See Topan (2002) for an interesting account.

⁵The European Convention's draft constitution did not have extra provisions for the first post-ratification Commission. In contrast, it was more specific on the selection process for Commissioners (e.g., each country was to submit a list of three candidates including both genders).

⁶Whether an EU member sends its head of state or its head of government is left to its own discretion.

⁷http://europa.eu.int/comm/atwork/basicfacts/index_en.htm (consulted in Dec. 2005) mentions a list of three nominees from each country, but the Treaty is not explicit here.

state from the proposals. This list is either approved by CM by a qualified majority, or stage 3 is repeated.

4. EP either approves the entire nominated Commission by absolute majority or rejects the entire college, leading back to stage 3.⁸
5. CM formally appoints the new Commission by qualified majority.

If during the five years of their appointment, individual Commissioners resign, die, or are retired, then CM decides on a replacement by qualified majority without explicit role for EP or the Commission President (Art. 215). The Commission President can ask individual members of the Commission to resign. The Code of Conduct for Commissioners (2004) obliges them to comply with such a request. In cases of serious misconduct, the Council can apply to the European Court of Justice to compulsorily retire individual Commissioners (Art. 216). Moreover, EP can force the entire college of Commissioners to resign by a two-thirds majority of votes (cast by at least half of all MEPs; Art. 201).⁹

3 Model and Ex Post Analysis

This section constructs a stylized game-theoretic model of the appointment procedure and analyzes it *ex post*, i.e., for arbitrary but given spatial preferences of the involved agents. Section 4 will later investigate the implications of the results from an *ex ante* or *a priori* perspective that averages over all possible ideal point profiles.

3.1 Stylized appointment game

The sequential nature of moves during the appointment process (and also the Commission's business thereafter) suggests a *non-cooperative appointment game in extensive form* which involves Council members, MEPs, and – interim – the designated new Commission President. In the game's description and analysis, one faces a trade-off between formal rigor and the immense complexity that results from the scope for an unbounded number of iterations of and within the described stages 1 and 3. We confine ourselves to a stylized game which, e.g., treats the multilateral negotiations on which country provides the Commission President as a 'black box'. Its sequence of moves is illustrated in figure 1. Taking up Hug's (1997) criticisms of Crombez's model, our game is not ended by a rejection but players can make new proposals. It is also more in line with the Treaty regarding the power of a nominated Commission President than the game in Crombez (1997).

⁸The Treaty is not explicit on what happens if EP has formally rejected the proposed college of Commissioners: is the Council bound by its earlier EP-approved choice of Commission President or may it restart the entire procedure? We assume the former.

⁹The Council can by unanimous agreement alter the number of Members of the Commission (Art. 213). It is not specified whether this could, in theory, be used to effect a reduction of the *current* Commission and lead to the dismissal of current Commissioners.

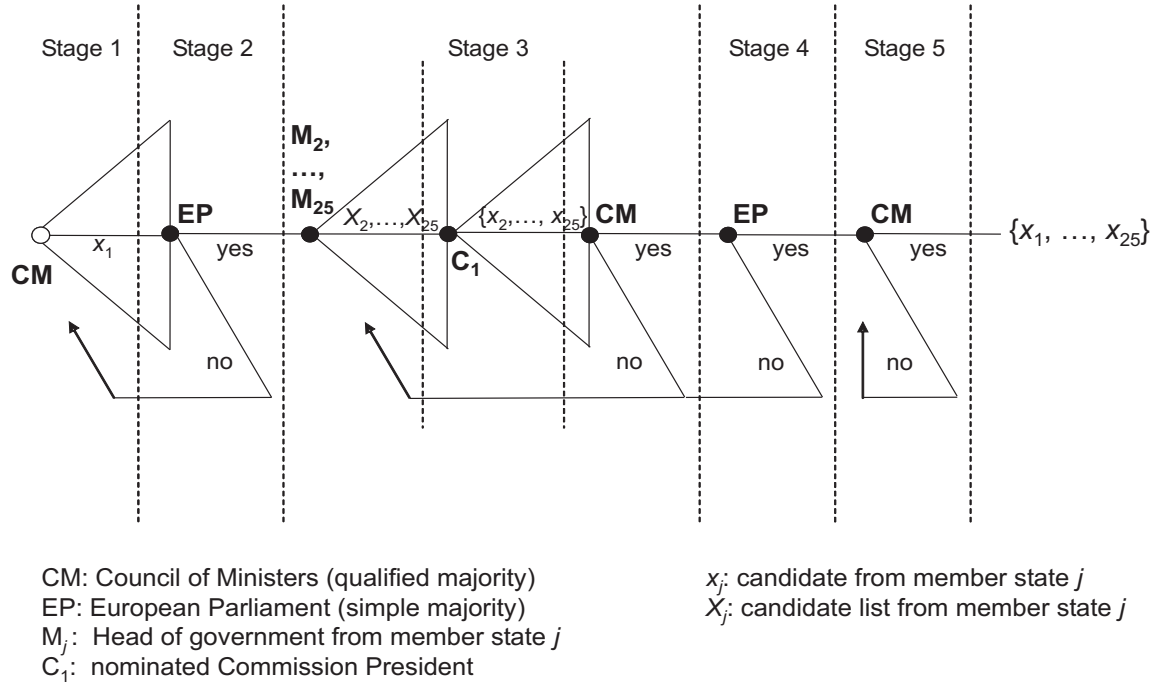


Figure 1: Stylized appointment game tree

Analysis of our stylized game tree requires a number of assumptions about players' preferences and their respective sets of feasible actions. Not all of them are equally compelling but in our view represent a reasonable compromise between realism and analytical tractability:

- (POL) Potential candidates differ regarding their policy preferences, not their competence.
- (SPA) All players have spatial preferences, characterized by an individual ideal point λ in the convex policy space $X \subset \mathbb{R}^k$ and the utility function

$$u(x; \lambda) = -d_1(x, \lambda) = -\sum_{i=1}^k |x_i - \lambda_i|,$$

and time preferences characterized by a common discount factor $\delta \in (0, 1)$. Preferences are common knowledge.

- (ABU) Suitable candidates for a Commission job are abundant for any position $\lambda \in X$.
- (DIM) The legislative *status quo* $q \in X$ can only be changed dimension-by-dimension (or issue-by-issue). All k issues randomly arrive on the post-appointment agenda with equal probability, which w.l.o.g. is taken to be 1.

- (IND) With an interim probability $p > 0$ that is independent of the appointed Commission and constant across issues, post-appointment legislative decisions either implement the Commission's ideal policy x_i^C or are (locally) insensitive to it.¹⁰
- (MED) The Commission's policy position is decided by a simple majority of its members (Art. 219) and corresponds to the position of the median Commissioner in the respective dimension.
- (LAM) The old Commission becomes a 'lame duck' when the appointment process starts; keeping it forever is the worst outcome for CM and EP.

These assumptions imply (see Appendix for a proof):

Lemma 1 *All MEPs and members of CM seek to install a Commission whose dimension-by-dimension median position is as close to their respective own position as possible.*

3.2 Analysis of the appointment game

Delay at *stage 5* brings no advantage to Council members. In particular, the stationarity of preferences formalized by (SPA) implies that any interest in delaying the decision by one period must persist in the subsequent period, i.e., would necessarily translate into a preference for perpetual delay. (LAM) rules this out. So every member of CM has at least a weak preference for appointing the nominees. Anticipating that a qualified majority of other CM members will vote for the appointment (or a blocking minority against), an individual Council member actually is indifferent. However, we will throughout the analysis break such ties in favor of the candidate(s). So CM appoints the nominated Commission unanimously.

At *stage 4*, each MEP will vote for CM's proposal if this gives no less utility than continuation of the game at stage 3. In particular, after a rejection by EP the nominated Commission President and CM make another proposal which could be the *same* as the rejected one (possibly involving new faces, but with the same preferences). This means that a coalition comprising the nominated President and (a qualified majority of) CM plays a *monopolistic-offer bargaining game* with EP or, more precisely, the MEP singled out to receive the median utility from the offer.

This bargaining game – essentially an iterated version of the so-called *ultimatum game* – in abstract terms involves two players, 1 and 2, who interact as follows:

1. Player 1 offers a share $y \in [0, 1]$ of a possible joint surplus to player 2.

¹⁰The former in particular refers to the administrative route, but also the Consultation procedure: its outcome predicted by game-theoretic analysis is either x_i^C , the policy closest to x_i^C which makes the pivotal Council member indifferent to the status quo, some policy that the Council unanimously agrees without Commission influence, or simply the status quo. In contrast, x_i^C plays no role under the Codecision procedure; its predicted outcome is determined primarily by CM (see Napel and Widgrén 2006). See Napel and Widgrén (2004) on outcome sensitivity and decision power more generally.

2. Player 2 accepts or rejects y .

3. If player 2 accepts, payoffs are $(1 - y, y)$. Otherwise, the game moves back to 1. with next stage's payoffs discounted by factor $\delta \in (0, 1)$.

It is a subgame perfect equilibrium for player 1 to propose $y = 0$ after any history of play and for player 2 to accept any offer $y \geq 0$. Using arguments similar to Rubinstein (1982), one can show that immediate agreement on $y = 0$ is, in fact, the *unique* subgame perfect equilibrium outcome (see, e.g., Muthoo 1999, sec. 7.2.2).

This equilibrium prediction may seem somewhat extreme in practice – EP might, e.g., extract at least some appointment rent by threatening a damaging media campaign if the proposal is too CM-biased.¹¹ Keeping things simple, we will nevertheless use it. It then follows that EP will accept any Commission that is better than a perpetual lame duck at stage 4, i.e., the nominated President and (a qualified majority of) CM get whatever candidates they agree on in the previous stage.

During *stage 3* the respective heads of government or state propose national candidates to their fellow Council members and the nominated President. This can be viewed as 24 monopolistic-offer bargaining games with heads of government or state as proposers. The responders – the respective 24 other heads and the nominated President – can only delay an agreement but not make any counter-proposals.¹² Moreover, it is generally incredible for the nominated President to threaten to ask undesired Commission members to resign later: first, even though Art. 215 is not explicit on this, it seems that the respective head of government or state would be the one to propose a new candidate. Second, a qualified majority of CM has to agree on the replacement before a resigned Commissioner actually leaves the college; however, without great coincidence or coordinated collusion, there is a majority against replacements affecting the median positions of the Commission. So, in effect, heads of government or state face no constraints in selecting ‘their’ national Commissioner due to (LAM). Hence, the Maastricht reform of Commission appointment did not really make a difference for the political composition of the Commission. And since EP’s passage of a motion of censure simply restarts the CM-dominated appointment procedure, this instrument of parliamentary power also remains blunt; it can bring about new faces but not different policies (unless composition of CM has changed).

In what we refer to as the *truth-telling equilibrium* every country j will then nominate a Commission member with ideal point $\gamma^j = \mu^j$, i.e., a person duplicating the respective head of government or state’s preferences. This is not the only equilibrium of the subgame starting in stage 3, but clearly the *focal* one since all other equilibria are either outcome-

¹¹The prediction also rests on the assumption of complete information. Temporary impasses such as during the Barroso Commission’s nomination, when the original Italian and Latvian nominees were replaced after their parliamentary interviews, indicate that CM has in fact only *incomplete information* about MEPs’ median reservation utility.

¹²Credible threats to reject a bad offer and then to respond with a counter-offer, i.e., to turn the table, drive the more symmetric outcome in Rubinstein’s (1982) bargaining game. – Note that it does not matter if Council members and nominated President accept or reject the entire list or individual candidates as long as rejected candidates can be proposed again (or new faces that are policy-wise equivalent).

equivalent (heads of government or state misrepresent their ideal point in dimensions in which they are not decisive in the college anyway) or involve *collusion* between some Council members against others. Such equilibria can be described as follows: a dimension- i misrepresentation of country j 's ideal point by Δx_i has an effect if that member j is the unique median on issue i . In this case, j is actually hurt by its own misrepresentation – but 12 others are benefitting from it. For high enough dimensionality of the policy space it is then possible to build a ‘cartel’ of, say, 23 members who each misrepresent their issue-specific ideal points in such a way that the two ‘outsiders’ are always amongst the 13 losers. This implies that ‘insiders’ win more often than they lose and, in summary, benefit from the deal. Whilst such options may be good to exist in principle (think of national elections producing a rogue head of government who can thus be kept in check),¹³ their exercise is surely in violation with the EU's *principle of equality* (see Art. 4 of the Accession Treaty). Moreover, it requires coordination and potential punishment of free-riders. Truth-telling, in contrast, constitutes an equitable equilibrium in simple, frugal, and transparent strategies.

Analogous reasoning applies to *stages 2 and 1*. By (MED) there is no special benefit from providing the Commission President in our stylized game. CM can hence select an arbitrary country j to nominate the President, e.g., one for which a particularly high-profile candidate attractive to the respective national government is available. Anticipating truth-telling equilibrium strategies of the other Council members, country j 's representative will optimally propose a candidate with $\gamma^j = \mu^j$, who is then endorsed by CM and approved by EP. In summary, we predict that in equilibrium $\gamma^k = \mu^k$ for $k = 1, \dots, 25$, i.e., every Commissioner replicates the respective national Council member's own preferences.

It is not hard to think of real-world counter-examples. For instance, the former social democratic Finnish finance minister E. Liikanen was selected to be Finland's first Commissioner in 1994 by a center-right coalition, joining a left-wing German trade union representative, M. Wulf-Matthies, appointed by right-wing chancellor Kohl. More recently, former German chancellor Schröder suggested a Commission job for his key opponent in the 2002 national elections (and at the time possibly again in 2006). Other examples could be added.¹⁴ But recall that heads of government or state in the truth-telling equilibrium *strictly* prefer to not misrepresent their preferences only if they are CM's issue-specific median. Truth-telling is a focal strategy but real politics offers interesting alternatives for breaking ties.

¹³Collusion against only one member would be a credible punishment but is not strictly profitable: any one-dimensional manipulation of a small given size Δx results in a total welfare loss of Δu because 12 members gain Δu and 13 members lose Δu . Manipulating in such a way that one member loses in all, say r , manipulated dimensions implies a utility loss of $r \Delta u$ for this member. This is equal to the total change in welfare, so other members cannot all be better off; but they may have the same utility as before.

¹⁴See MacMullen (1997) for a comprehensive account of Commissioners' characteristics, dating back to Jean Monnet. Tsebelis and Garrett (2000) hold that Commissioners' appointments are primarily merit-based, with national governments generally seeking to send important and independent personalities to Brussels. The authors do not go into any details, however.

4 A priori Implications for Institutional Relations

Above analysis implies that heads of government or state can propose and with EP's help approve the Commissioners they like best: clones of themselves. This prompts several questions. Why would the European Union need a clone of the Council? Is legislation according to the Consultation procedure just about rubber-stamping or, rather, writing down Council policy? The answer to the latter question is "no", even if one takes preferences of Commissioners to perfectly coincide with those of the heads of government or state who selected them. One practical reason is that the Council typically does not meet in the composition of heads of government or state, but rather of specialist ministers with possibly incongruent interests.¹⁵ In our view the main reason, however, are different internal rules for reaching decisions and thereby for aggregating preferences. Even if Commissioners *individually* duplicate CM members, the Commission in aggregate need not and typically will not.

In particular, the *simple majority rule* applied by the Commission makes its median in any given dimension the focal prediction for the corresponding aggregate policy position (see (MED)). By the previous section's analysis, the Commission's ideal policy therefore can be expected to coincide with the issue-specific *Council median*. However, this will very rarely coincide with the aggregate position of CM. Latter position is determined by a rather complex *qualified majority rule*: supporters of a Council motion regarding carbon emission levels, the speed of electricity deregulation, or the fat contents of chocolate etc. have to constitute a majority in three ways. In particular, there have to be at least 232 votes out of 321 ($\approx 72.2\%$) in favor of a proposal.¹⁶

It suffices to consider an unweighted 72% rule (18 out of 25 equal votes) as a first approximation of the Council's internal decision rule in order to see the conflict between issue-specific preferences of CM and Commission, contrasted by comparatively similar interests of EP and Commission. Given ordered ideal points $\mu_i^{(1)} \leq \mu_i^{(2)} \leq \dots \leq \mu_i^{(25)}$ of CM's members on issue i and an issue-specific status quo $q_i \in [0, 1]$, CM's aggregate position is restricted to

$$x_i^{CM} \in \begin{cases} \left[\mu_i^{(8)}, \min(2\mu_i^{(8)} - q, \mu_i^{(18)}) \right] & \text{if } q < \mu_i^{(8)} \\ \{q\} & \text{if } \mu_i^{(8)} \leq q \leq \mu_i^{(18)} \\ \left[\max(2\mu_i^{(18)} - q, \mu_i^{(8)}), \mu_i^{(18)} \right] & \text{if } q > \mu_i^{(18)}. \end{cases} \quad (1)$$

Only positions x_i^{CM} satisfying (1) would be supported by a qualified Council majority and could not be successfully replaced by another internal policy proposal.

Similarly, denoting the issue-specific ordered ideal points of the currently 732 MEP by

¹⁵See Henning (2004) for an investigation of systematic differences between the position of, e.g., national ministers of agriculture and their superiors.

¹⁶We refer to the Treaty of Nice as amended by the Accession Treaty for details. 'Yes'-votes also have to represent 62% of total EU population and a simple majority of member states.

$\pi_i^{(1)} \leq \dots \leq \pi_i^{(732)}$, the possible aggregate position of Parliament must be

$$x_i^{EP} \in \begin{cases} \left[\pi_i^{(366)}, \min(2\pi_i^{(366)} - q, \pi_i^{(367)}) \right] & \text{if } q < \pi_i^{(366)} \\ \{q\} & \text{if } \pi_i^{(366)} \leq q \leq \pi_i^{(367)} \\ \left[\max(2\pi_i^{(367)} - q, \pi_i^{(366)}), \pi_i^{(367)} \right] & \text{if } q > \pi_i^{(367)}. \end{cases} \quad (2)$$

The issue-specific position of the Commission is simply

$$x_i^C = \gamma_i^{(m)} = \mu_i^{(13)}. \quad (3)$$

Any continuous a priori distribution of the ideal points of members of CM and EP implies with (3) that the Commission's a priori *propensity for change* is

$$\Pr(\gamma_i^{(13)} \neq q_i) = 1.$$

If, as a benchmark case, we assume that issue-specific ideal points of Council members and Parliament as well as the status quo are a priori independently and uniformly distributed on $[0, 1]$, we can compute CM's a priori propensity for change as

$$1 - \Pr(\pi_i^{(8)} \leq q \leq \pi_i^{(18)}) = 1 - (18/26 - 8/26) \approx 0.6154$$

in comparison to

$$1 - \Pr(\pi_i^{(366)} \leq q \leq \pi_i^{(367)}) = 1 - (367/733 - 366/733) \approx 0.9987.$$

for EP. So the analysis predicts that the Commission is the European Union's most dynamic player, the Council its most conservative institution, and the Parliament somewhere in between. EP and Commission are much more likely to agree on a need for change than CM and Commission are.

When CM and Commission do agree on change, their preference dependence lets them automatically agree on the direction. This is not the case for EP and Commission. However, the former almost always want to go quite different distances, in contrast to often similar ideal points of EP and Commission. Average distances between the Commission's, EP's, and CM's aggregate policy positions can therefore show greater similarity between Commission and EP than between Commission and CM. For illustration, take the Parliament's position to be $\pi_i^{(366)}$. This results in only little loss of precision relative to (2) because of the small distance between $\pi_i^{(366)}$ and $\pi_i^{(367)}$ (in expectation $1/377 \approx 0.001$). One can then calculate¹⁷

$$\mathbf{E}(|x_i^{EP} - x_i^C|) = \mathbf{E}(|\pi_i^{(366)} - \mu_i^{(13)}|) \approx 0.07885$$

as average distance between EP and Commission.

¹⁷ $\pi_i^{(366)}$ and $\mu_i^{(13)}$ are beta distributed with parameters (366, 367) and (13, 13), respectively.

Avoiding a more complex while still ad hoc model of intra-Council bargaining (e.g., in the spirit of Baron and Ferejohn 1989 and Banks and Duggan 2000), assume that the Council’s actual policy position, x_i^{CM} , for given realizations of $\mu_i^{(8)}$ and $\mu_i^{(18)}$ is a priori uniformly distributed on the respective interval of stable CM positions defined by (1) (if it is not q).¹⁸ The necessary case distinctions make it practical to use an approximation via Monte Carlo simulation. One obtains¹⁹

$$\mathbf{E}(|x_i^{CM} - x_i^C|) \approx 0.1197,$$

i.e., CM and Commission are on average farther apart than Commission and EP. This finding is somewhat sensitive to distributional assumptions²⁰ and possibly also the approximation of CM’s weighted voting rule. Still, it is a very robust conclusion that CM and Commission will a priori rarely hold especially similar positions.

This may explain why the EU has a role for Commissioners who clone national Council members: At the intuitive level the *same players* sit in CM and Commission. But internal rules allocate decision power to a *different member* in each institution. Its simple majority rule lets the Commission speak for an issue-specific moderate member state. In contrast, CM speaks for a conservative one. One could say that the Commission protects member states against excessive Council inertia; while the Council provides a safeguard against the dynamism of simple majority rule in EP and Commission.

5 Empirical analysis

Above predictions regarding the distinct degrees of conservatism of Council, Parliament, and Commission and average distances between their policy positions are derived entirely a priori. We made preference assumptions that were unrelated to any empirical observations and interpreted Treaty provisions in a stylized and legalistic way, especially regarding the use of simple majority rule by the Commission. In this section we confront the predictions with data.

Quantitative information on stake-holders’ preferences in EU legislation is still rather scarce. König, Hörl, and Pohlmeier (2004) analyze data on 73 cases that reached the conciliation stage of the Codecision procedure between May 1999 and July 2002. According to the experts interviewed for their study, the Commission’s support for EP on a [0,100]-scale on which 0 denotes maximal support was 50 or less in 64 cases, in contrast to similar support for CM in only 39 cases. This relative closeness of Commission and EP is supported by anecdotal evidence. In her analysis of the Codecision procedure, Rasmusen (2003, sect. 5.2) quotes, for instance, an interviewed MEP as saying “. . . the Commission expects that the

¹⁸If one *always* identifies the Council with $\mu_i^{(8)}$ (or, equivalently, always with $\mu_i^{(18)}$), it is straightforward to compute $\mathbf{E}(|x_i^{CM} - x_i^C|) = \mathbf{E}(\mu_i^{(13)}) - \mathbf{E}(\mu_i^{(8)}) = \frac{13}{26} - \frac{8}{26} \approx 0.1923 > \mathbf{E}(|x_i^{EP} - x_i^C|)$.

¹⁹One also obtains $\mathbf{E}(|x_i^{CM} - x_i^{EP}|) \approx 0.1248$.

²⁰For example, if one models the *entire* Parliament as a unitary actor with uniformly distributed ideal point, one obtains $\mathbf{E}(|x_i^{EP} - x_i^C|) = \mathbf{E}(|\pi_i - \mu_i^{(13)}|) \approx 0.2593 > 0.1197$.

Parliament will help it to get more [than the original proposal] . . . ” and a Commissioner as noting “Often we can use the parliamentarians to pass certain messages, because they have a right to say what they like . . . there is a very good co-operation.”

In the following, we analyze a unique data set covering 66 multi-issue legislative proposals that were made before or in 2000 and concluded between May 1999 and February 2002. The data was collected by an international group of researchers.²¹ Reports in *Agence Europe*, the main independent daily news service on EU affairs, were used to select issues of general political importance and with at least a minimum level of controversy. Then, interviews with altogether 125 experts were carried out. Most of these were affiliated with the permanent representations of the member states in Brussels. These experts were usually desk officers responsible for representing their state in Council negotiations. Others were affiliated with the Commission, European Parliament, Council Secretariat and interest groups. These experts provided estimates on actors’ policy positions on a $[-100, 100]$ -scale, the status quo point, issue salience, and actual outcome on a total of 162 controversial issues. The corresponding dossiers cover a wide range of policy domains: the internal market, agriculture, fisheries, ECOFIN, justice and home affairs, general, culture, development, employment, energy, industry, social affairs and transport. Specific examples are a directive on the manufacture, presentation and sale of tobacco products, a directive on company law concerning takeover bids, and a regulation on the common organization of the market in milk and milk products.

We deduced the Council’s aggregate position from the estimated policy positions of its 15 members plus the pre-Nice weight assignment and decision quota. 15 issues had to be removed because too many preference values were missing. Of the remaining 147 issues, 83 had been decided using the Consultation procedure and 64 using the Codecision procedure. When we tested for differences in the degree of conservatism, accurate information on the status quo was needed. This led to the exclusion of another 34 issues, with 56 of the remaining issues pertaining to Codecision and 57 to Consultation.²²

The ideal points attributed to the three institutions fail to be approximately normally distributed, so that we cannot perform a paired *t*-test. We recurred to non-parametric statistical methods, in particular the *Wilcoxon signed-ranks test* (see Wilcoxon 1945 or, e.g., Siegel and Castellan 1988 for a textbook presentation). This test disregards the level of, say, the Commission’s conservatism as picked up by its distance to the status quo, $|x_i^C - q_i|$, and similarly the Council’s conservatism but assumes that there is information in the sign and magnitude of the *difference* between these two status quo distances for any given issue *i*.²³

We first considered the following three null hypotheses:

²¹For details see Thompson, Stokman, Achen, and König (2005, eds.) and the special issue of *European Union Politics* 5(1), 2004.

²²When testing hypothesis 4 below, CM’s pivot for these 34 issues was deduced using the modal status quo in the data, $q = 0$.

²³The related *Fisher sign test* only exploits the sign. The corresponding *p*-values are only slightly larger for our data.

Hypothesis 1 *Conservatism of CM (= inverse of distance between issue-specific status quo and ideal point of CM) is not greater than that of EP,²⁴ i.e.,*

$$H_0: |x_i^{CM} - q_i| \geq |x_i^{EP} - q_i|.$$

Hypothesis 2 *Conservatism of CM is not greater than that of the Commission, i.e.,*

$$H_0: |x_i^{CM} - q_i| \geq |x_i^C - q_i|.$$

Hypothesis 3 *Conservatism of EP is not greater than that of the Commission, i.e.,*

$$H_0: |x_i^{EP} - q_i| \geq |x_i^C - q_i|.$$

The first three diagrams in figure 2 illustrate the empirical cumulative distribution functions of the respective two distance variables.²⁵ Table 1 provides some descriptive statistics and the test results. The Wilcoxon test statistic Z_w asymptotically has a standard normal distribution, i.e., we can for instance reject the first null hypothesis with 97.5%-confidence if $Z_w < -1.96$, and then conclude that, in fact, $|x_i^{CM} - q_i| < |x_i^{EP} - q_i|$. It turns out that

1. CM is significantly more conservative than EP,
2. CM is significantly more conservative than the Commission, and
3. Commission and EP do not exhibit any significant difference in their conservatism.²⁶

These results are very much in accord with our predictions. A high number of ties between EP and the pivotal Council member is, however, worth noting. It indicates that our a priori assumption of independent ideal points with an identical continuous distribution is a major idealization.

We finally tested the following null hypothesis:

Hypothesis 4 *Closeness between CM and the Commission (= inverse of distance between issue-specific ideal points) is not smaller than that between EP and Commission, i.e.,*

$$H_0: |x_i^{CM} - x_i^C| \leq |x_i^{EP} - x_i^C|.$$

As indicated in table 1, this hypothesis can be rejected, and we conclude

²⁴The comparisons refer to *first degree stochastic dominance*, i.e., more formally we assume comparability based on figure 2 and test $H_0: F_{|X^{CM}-Q|}(y) \leq F_{|X^{EP}-Q|}(y)$ for all y vs. $H_1: F_{|X^{CM}-Q|}(y) \geq F_{|X^{EP}-Q|}(y)$ with strict inequality for at least some y .

²⁵Theoretically, the $[-100, 100]$ -scale would have allowed for distances ranging from 0 to 200. For most issues the status quo point was in fact $q = 0$ and all actors' ideal points lay in the interval $[0, 100]$. For the remaining issues, *distances* between Council pivot, EP, and Commission turned out to range only between 0 and 100, too.

²⁶This is confirmed by testing $H'_0: |x_i^{EP} - q_i| \leq |x_i^C - q_i|$.

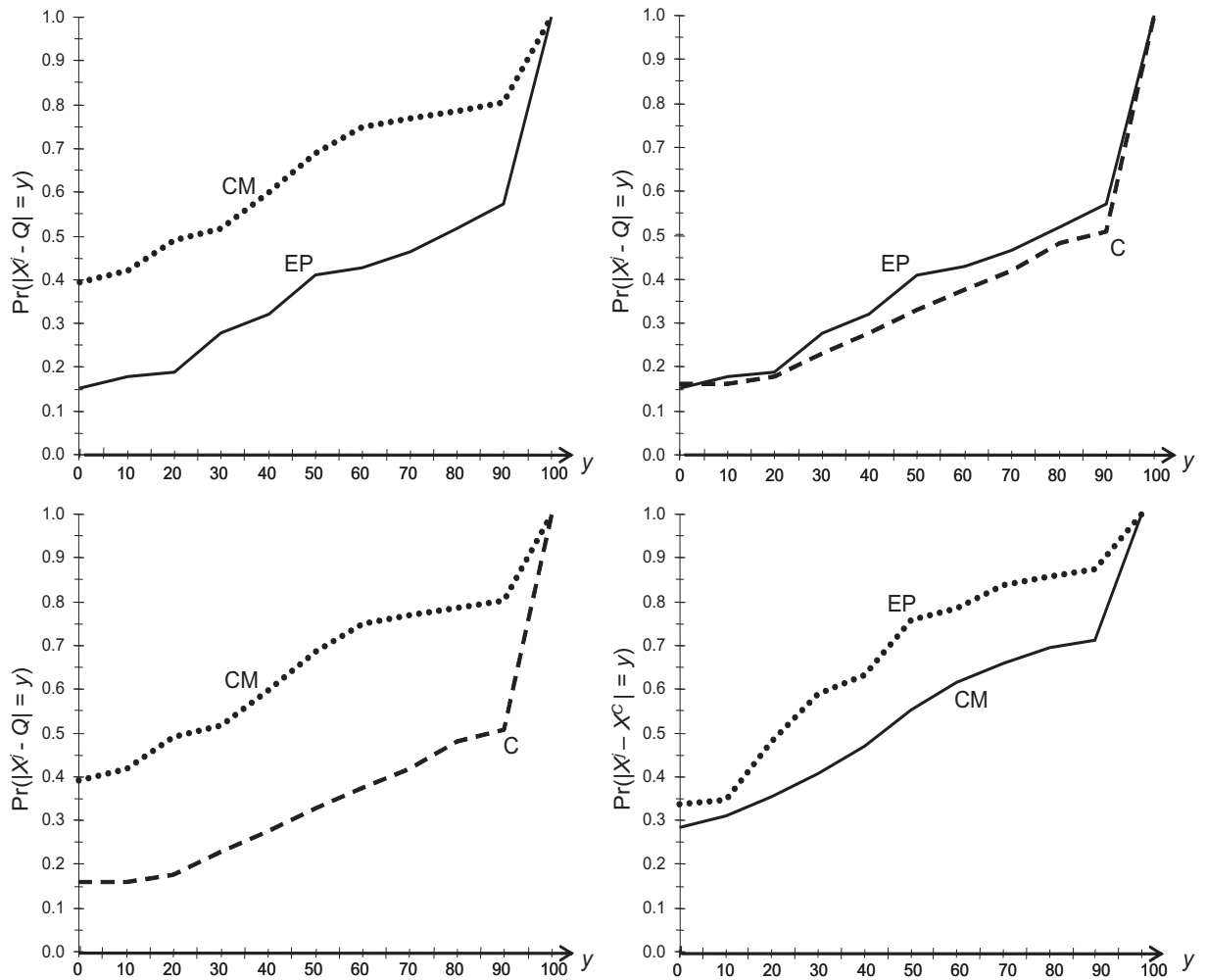


Figure 2: C.d.f. of EP's, CM's and Commission's distance to status quo and of EP's and CM's distance to Commission

Hypothesis 1	$n = 113$
Parliament is more conservative than Council	4
Council is more conservative than Parliament	56
Ties	53
Z_w	-6.219^{***}
Asymptotic p -value (one-tailed)	.000
Hypothesis 2	$n = 113$
Commission is more conservative than Council	24
Council is more conservative than Commission	73
Ties	16
Z_w	-4.412^{***}
Asymptotic p -value (one-tailed)	.000
Hypothesis 3	$n = 113$
Commission is more conservative than Parliament	46
Parliament is more conservative than Commission	49
Ties	18
Z_w	0.704
Asymptotic p -value (one-tailed)	.241
Hypothesis 4	$n = 147$
Commission is closer to Council	37
Commission is closer to Parliament	61
Ties	49
Z_w	-2.774^{**}
Asymptotic p -value (one-tailed)	.003

Table 1: Tests of hypotheses 1–4 (**/***: significant at 99%/99.9%)

4. EP and the Commission are significantly closer than CM and the Commission.

As mentioned, the data set contains issues from both main EU decision procedures. They differ in particular regarding EP's role: the Parliament has neither veto power nor any binding say under the Consultation procedure, while it has both under the Codecision procedure specified in Art. 251.²⁷ The Consultation procedure pertains particularly to common agricultural policy, but also competition, taxation and approximation of laws. Restricting attention to it, hypotheses 1, 2 and 4 were rejected at the same levels of significance as before, while hypothesis 3 could again not be rejected.

The Codecision procedure is most widely used for regulations and directives concerning the internal market, but also transport, public health, education and research, the environment, and the Regional Development Fund. Restricting attention to it we could reject hypothesis 1 at the old 99.9%-level of significance and hypothesis 2 at 90% ($Z_w = -1.557^*$, asympt. $p = 0.060$). In contrast to the pooled data, hypothesis 4 cannot be rejected for Codecision alone ($Z_w = -1.247$, asympt. $p = 0.106$). However, hypothesis 3 can be rejected for only Codecision issues at the 90%-level ($Z_w = -1.407^*$, asympt. $p = 0.080$), i.e., EP is significantly more conservative than the Commission in the corresponding policy dimensions. This may in particular reflect EP's reluctance to liberalize the internal market.

6 Concluding Remarks

There exist other possible reasons for the dissimilarity of Commission and Council preferences and greater similarity of Commission and Parliament which shows up in our data. One suspect is the *Thomas-Beckett effect* (see, e.g., Hillman 2003, sec. 3.3.4), named after the close friend of English king Henry II who was appointed by Henry as archbishop of Canterbury but then sided with the church in Rome, actually becoming Henry's key opponent. Commissioners might similarly take up their job with national government-biased preferences and, say, scepticism towards "an ever closer union among the peoples of Europe" (Treaty of Rome, preamble), but then their opinions quickly converge to a federalist 'Brussels consensus' shared with a majority of MEPs. Related albeit inconclusive evidence is surveyed by Egeberg (1999).

Alternatively, Pollack (1997) explains the Commission's independence of Council interests by its informational advantages. It is an agent endowed with agenda-setting and decision powers by its principals, CM and EP, which is allowing for a great degree of self-motivated political entrepreneurship. Moreover, as pointed out by Dowding (2000), Commission and EP conserve the political map of Europe at particular points of time, which have been synchronized since 1994.²⁸ Uncoordinated elections of national governments in contrast result in an ever-changing CM and thus could explain divergence between

²⁷Even under the Codecision procedure EP is significantly less powerful than CM (see Napel and Widgrén 2006).

²⁸The Treaty is not explicit here but http://europa.eu.int/institutions/comm/index_en.htm (consulted in Dec. 2005) holds that "A new Commission is appointed every five years, within six months of the elections

CM's and the Commission's preferences (likely to be increasing with the latter's time in office). Yet another view is that the Commission can develop better relations and trust with EP given that both are (at least partially) Brussels-based and share about 4.5 years of their respective service (see, e.g., Topan 2002).

Future work based on more extensive data – ideally allowing a distinction between periods of small and great Council turnover – may be able to discriminate between these different theories. This paper has primarily addressed the question of which preferences we would a priori expect to be represented in the Commission and what this implies for average EU decision making. Our strategic analysis reveals, first, strong Council domination of the Commission's appointment but, second, divergence of interests later on. The former is driven by the Council's monopoly over proposing candidates and the assumed undesirability of having an EU without functioning executive at all. Our argument for the latter follows straightforwardly from internal voting rules. It complements other explanations of the empirical observations.

In concluding, we should note that the rules for the Commission's appointment and its later work are not exogenous but decided *by the Council*. Whether intentionally or not, it has given the Parliament a formally important role which, however, our strategic analysis predicts to translate into only symbolic influence.

Appendix

Proof of Lemma 1:

Given (potential) Commissioners with ideal points $\gamma^1, \dots, \gamma^{25}$ denote their dimension- i median ideal point by $\gamma_i^{(m)}$. (SPA), (DIM), (IND) and (MED) then imply that the expected utility to a player with ideal point λ from appointing a Commission $\Gamma = (\gamma^1, \dots, \gamma^{25})$ is

$$\tilde{U}(\Gamma; \lambda) = - \sum_{i=1}^k \left(p \cdot |\lambda_i - \gamma_i^{(m)}| + \bar{U}_i(\lambda) \right)$$

where $\bar{U}_i(\lambda)$ is a constant unaffected by the selected Commission. Since p is assumed to be independent of Γ and λ is fixed, any given agent's maximization of $\tilde{U}(\cdot)$ is equivalent to maximization of

$$U(\Gamma; \lambda) = - \sum_{i=1}^k |\lambda_i - \gamma_i^{(m)}| = u(\gamma^{(m)}; \lambda).$$

■

to the European Parliament" – implicitly ruling out prolonged periods of impasse in the appointment process. If a Commission is replaced as the result of a motion of censure, the new Commission's term expires at the date originally set for the resigned one (Art. 201).

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