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THE POLITICAL SYSTEM OF THE EUROPEAN UNION

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BLOOMSBURY

Chapter 2

Executive Politics

Through a series of treaty reforms over the last seven decades, co-operation between the European national states has changed dramatically. From limited co-operation over coal and steel, EU-wide rules and regulations now cover most policy fields, from drinking water to drones, banking deposits to border controls. We will return to the specifics of how these different EU policies operate in the third part of the book; in this chapter, we present the institutional configuration that is meant to enable the EU to operate across these policy fields, as well as the executive apparatus the EU has in place to carry out its tasks. We also provide an overview of the literature on EU institutional design and EU executive politics. First, though, we discuss some of the general theories of institutional design and executive politics.

Theories of Institutional Design and Executive Politics

In this section we first illustrate how the design of the EU can be understood through the lenses of theories of institutional design before presenting a framework for analysing delegation in institutions.

Theories of Institutional Design

In what is labelled *the fundamental equation of politics*, Plott (1991) summarize the core insight from positive political theory as follows:

Institutions x Preferences = Outcomes

- If preferences change, outcomes may change even if institutions remain constant
- If institutions change, outcomes may change even if preferences remain constant

Actors thus care about institutional design because they care about the outcomes these institutions are expected to produce given the likely preferences of the actors involved. From this it follows that institutional designers care about the rules that structure the process of designing institutions. However, the relative weight of institutions versus preferences in determining outcomes is not given by this equation. In fact, a key theoretical distinction can be made between theories by the relative weight they put on these two factors in determining outcomes.

Classic bargaining theory forms the basis for the liberal intergovernmentalist framework of Moravcsik (1997). The key concept in bargaining theory is the actors' costs of bargaining failure. The less an actor stands to lose from not reaching an agreement, the stronger is her bargaining position. The ability to walk away relatively unharmed empowers. She is thus able to extract more concessions from actors that have more to lose from not reaching an agreement. The classic formulation of bargaining theory is silent with regard to the bargaining protocol. In other words, institutional rules do not feature heavily in these accounts of institutional design. What matters is actors' costs of non-agreement. As such, bargaining theory provides a powerful framework for analysing bargains in institution free settings.

More precisely, predictions may be obtained if the rules (or institutions) that structure bargaining are taken into account. The key features, here, are agenda rules, veto rules and reversion points. Agenda rules relate to who has the power to make proposals, and to whom. Veto rules determine the power to stop proposals. Reversion points determine the outcome in case of non-agreement. The reversion points provide the yardstick against which new proposals are compared. When negotiating institutional rules this yardstick may not always be obvious. In such situations, the ability to impose a focal point, against which new proposals are compared, may be an important source of power. It is also useful to consider whether, and under what conditions, actors can make counter-offers (or amendments) to the proposal on the table. Finally, bargains may occur in a particular sequence that may help or hinder issue-linkage and thereby strengthen some parties over others. Oftentimes, slightly different assumptions regarding any of these features may lead to radically different predictions. Students of bargains

over institutional design should thus be attentive to the way that the assumptions about the institutional rules structuring those bargains may drive their results.

To illustrate these ideas, consider three countries (A, B and C) who are negotiating the formation of a Union comprising an internal market with a common currency and border control, complete with a supranational executive body and formalized decision-rules, and a fourth country (D) outside this group of three. Country A is a landlocked producer of high-end industrial goods. It borders only Countries B and C. It seeks barrier-free access to the markets in Countries B and C. Also, to reach export markets beyond its neighbouring countries, Country A would like to avoid costly border-controls passing through Country B to reach the sea. Country B is a major oil producer with a long coastline. It exports its oil at world prices in the international market. Income from oil is used to subsidize all other parts of the economy. Country B also benefits from being a major port, handling the export and import of the other two countries. It hopes that the union may help the other sectors of the economy to develop. Country C has a sophisticated service economy and is bordering a military powerful, but politically unstable, third country, Country D. Country C would like its service providers to expand its operations beyond its borders, and wants to neutralize the security threat posed by Country D.

From this scenario, it seems that Country B is in the strongest bargaining position as it has very little to lose from continuing the current arrangement. It can, at a political cost, lower the level of subsidies unilaterally. Country A would benefit from removal of trade barriers and border control. If the Union was in place, County A would have no external Union borders to control and a larger home market. If the Union fails to materialize, Country C will not have a market for its service industry to easily expand into. Moreover, Country C would have to shoulder the cost of securing both its own borders and the relationship with Country D. Country C is clearly the country with the highest cost of a non-agreement. As a result, classic bargaining theory suggests that Country B will be best able to get its priorities, while Country C will have to concede the most in order to prevent B from walking away from the negotiations. Nevertheless, as the focus of classic bargaining theory is on the cost of non-agreement, the theory does not provide strong predictions about the specificities of the institutional design beyond the expectation that the institutional arrangements will reflect the balance of power in the negotiations.

In contrast, *institutional rational choice theory* emphasizes the details of institutional arrangements, as such details may determine future policy outcomes. Moreover, when bargaining over institutional arrangements, the institutional rules that guide these bargains matter for the outcome. Also, institutional rational

choice theory conceptualizes preferences in terms of most-preferred policy outcomes (also called ideal policy), relative to the policy that will prevail if there is no agreement. This is called the *status quo* policy or the reversion point. When deciding to support or oppose a change in a policy (or in the institutional rules for adopting a policy) actors compare of the distance between a proposed policy, the *status quo* and their ideal policy. Rational actors prefer outcomes that 'move' a policy closer to their ideal than the *status quo* and oppose outcomes that do the opposite. So, to determine the effect of decision-rules on policy changes, we also need to determine the protocol for making, amending and opposing proposals.

In the example above, we need to identify the policies that would exist if no Union is formed and compare that with the policy outcomes that would emerge under the institutional arrangements of a proposed Union. The same country may prefer institutional arrangements to vary across policy areas. To analyse the creation of Union, scholars in this tradition need to identify ideal points and the *status quo* across all relevant policy areas, then go through the alternative decision procedures to check which are most likely to produce the preferred policies. This allows scholars to arrive at preferences over decision procedures by policy area. The final step for the institutional scholar is to consider the different ways in which countries can negotiate institutional arrangements and analyse how this determines which set of institutional arrangements will be adopted.

Consider again our three countries. Our first task is to identify the ideal points of the countries on the removal of barriers to trade in both goods and services, the operation of the common currency, co-operation over border control and defence. First, consider the removal of barriers to trade. Country A would like to remove all barriers for trade in goods. Country B's oil sector does not require better market access and its subsidized industry may not be competitive, in particular if the subsidies are considered barriers to trade. Country C's focus is on services. C wants its service sector to be able to provide services freely in the whole union. The trade in goods is less of a concern due to the minor role this sector plays in the economy. So, Country A and Country C would, in this policy area, prefer a set of decision rules that enabled major policy change, such as majority rule for adopting a new policy and a supranational secretariat with responsibility for developing policy proposals and monitoring compliance with the new policies. In contrast, Country B would prefer institutional rules less conducive to major policy changes, such as unanimity voting and no supranational secretariat. While all three countries prefer their most preferred type of Union to the *status quo* of no Union, it is not clear whether all prefer any form of Union to no Union. It is also not clear that any pair of countries prefers to form a Union amongst the two alone to

having no Union. Depending on these preferences and the expectations of the preferences of the other countries on these matters, some countries may attempt to take actions to strengthen their bargaining positions.

On this last point, *non-co-operative game theory* has developed a family of signalling games to analyse such actions (for an introduction to political game theory see McCarty and Meirowitz, 2007). If it is well-known that the public in Country B share the government's preference for only a limited Union, Country B may announce that any agreement will be subject to a national referendum. This would tie the government's hands to what it can accept during the negotiations. Because of the preferences of the public, the commitment of the government to the limited Union is credible. Whether this strategy is successful or not depends on how the other countries value a Union without country B to no Union at all. To counter the threat of a referendum, the other countries may propose a more flexible solution, where the majority rule and role of the supranational secretariat vary by policy-area depending on the heterogeneity of countries' preferences in each area (Harstad, 2005, 2006).

Delegation

The institutional arrangements and membership of the institutions will guide day-to-day policy-making in a union. In the classic constitutional framework, the legislature decides, the executive enacts and the judiciary adjudicates. However, modern executives, or governments, do more than simply implement law. Their powers are twofold: political and administrative. Governments use their political power of leadership to steer the society through proposals for policy and legislation, and use their administrative powers to implement law, distribute public revenues, and pass secondary and tertiary rules and regulations.

Some systems concentrate these powers in the hands of one set of office holders. Other systems, like the EU, divide these tasks between different actors and bodies. Political scientists often use the 'principal–agent' framework to study delegation of responsibilities to multiple executive actors. In this framework, a principal, the initial holder of executive power, decides to delegate certain powers to an agent who is responsible for carrying out a particular task.

When delegating power, the key challenge for the principal is to ensure that the agent is executing the task in a neutral fashion. However, agents have their own interests and policy preferences. First, the agent may be targeted by groups lobbying on behalf of segments of the society affected by the task. If the costs and benefits arising from the task are unevenly distributed, interests that stand to gain or lose may either attempt to 'capture' the agent (Lowi, 1969), or make the

agent dependent on their information, or tempt the agent with inducements (such as well-paid jobs in the industry after retirement). Second, agencies may want to increase their own influence over the policy process. According to classical rational choice theory, public officials want to maximize their budget (Niskanan, 1971). Larger budgets allow officials to increase their salaries, employ more staff and raise their profile. Government agencies compete for limited public resources. They hence overestimate budgetary needs and spend as much as possible. The result is growing demands by bureaucrats for public resources. Third, bureaucrats may be more interested in maximizing their independence from their principals and their ability to shape policy rather than maximize the budget (Dunleavy, 1991). All this means that agents may wish to diverge, or 'drift', from the principals' original policy intention. It is hence essential to understand the principal's ability and willingness to limit this 'policy drift'.

The principal has two means of controlling how the agent executes a task: selection and control. When selecting an agent, the principal often has to make a choice between an agent with similar preferences to the principal and an agent who is highly competent to carry out the task. One problem the principal faces is that the agent may be able to shift policy away from the principal's most-preferred policy (ideal point) towards the agent's own most-preferred policy. Another problem is that the agent may not be sufficiently competent to execute the task in line with the request of the principal (Huber and McCarty, 2004). In an ideal scenario, both of these problems can be solved by selecting a competent agent whose ideal point is identical to that of the principal. In practice, an agent with such characteristics may be difficult to find.

The decision to delegate is often made by a collective body whose actors do not have identical ideal points. Depending on the decision rule (see Chapter 3), all or a particular subset of actors need to agree upon a policy and the level of delegation. This phenomenon is illustrated in Figure 2.1, which shows a two-dimensional policy space in which there are three governments with 'ideal points' at A, B and C. The Commission's ideal policy preference lies outside the 'core' of governmental preferences (depicted by the triangle). The governments and the Commission will each try to secure a policy that is as close as possible to its ideal point. The governments agree on a piece of legislation at position X. The Commission is responsible for implementing this legislation, and during the implementation the Commission is able to shape the final outcome; moving the policy away from X towards its ideal policy preference. In fact, the Commission can move the final policy as far as position Y. Governments A and B prefer this policy to the original deal because Y is closer to their ideal preferences than X. If the Commission implements policy Y, governments A and B have no incentive

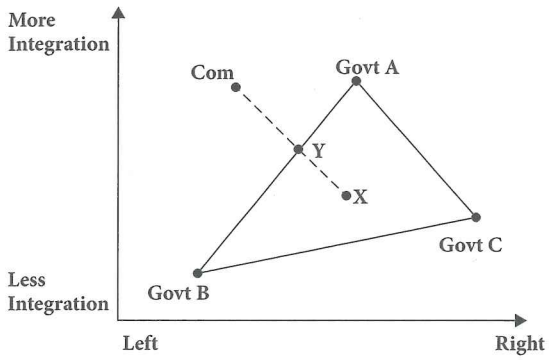

Figure 2.1 Policy drift by the European Commission

to introduce new legislation to overrule the Commission, and will oppose any attempt by government C to take such action. However, governments A and B will block any moves further towards the Commission's ideal point, as any policy in this direction would be less attractive to these two governments than position Y. Hence, the Commission has discretion to change the original policy outcome, but within the constraints of the preferences of the governments.

Predicting this dynamic, the principals can try to limit the expected policy drift. When controlling the agent, the principal can employ monitoring devices or constrain the possibility for drift by specifying the delegated task. Monitoring devices may include employing another agent to control or monitor the actions of the first agent in executing the task. Alternatively, the principal can rely on affected parties, such as interest groups and private citizens, to report such drift. The former approach to control is sometimes referred to as 'police-patrol', while the latter approach is sometimes referred to as 'fire-alarm' (McCubbins and Schwartz, 1984). By specifying the delegated task, the principal can limit the scope for policy drift. The principal can design rules and procedures to minimize agent's discretion (Moe, 1989; Kiewiet and McCubbins, 1991; Horn, 1995). Careful delegation thus implies striking the optimal balance between the cost of policy drift and the costs of constraining and controlling the agent (Weingast and Moran, 1983).

The result of such controls is a restriction of the ability of an agent to diverge from the original policy intention. This is illustrated in Figure 2.2. As in Figure 2.1, the governments agree on a piece of legislation at point X, but to limit the ability of the Commission to change the policy outcome, government C, who has most to lose from potential policy drift, forces the other governments to introduce a set of procedures that define exactly how the Commission should go about its job. The result is some drift towards the Commission's ideal point, but only to Z instead of Y.

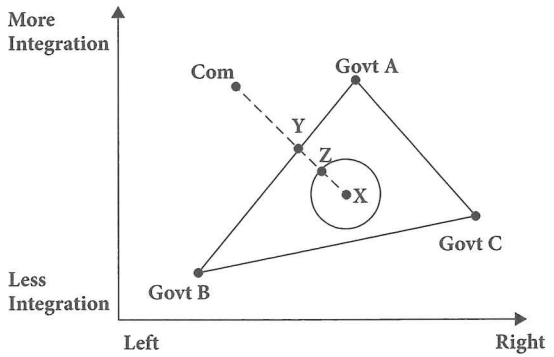

Figure 2.2 Controlling policy drift by restricting discretion

It can also be the case that the agent has access to information which is not available to the principals. This asymmetry is a central feature in recent models of delegation (Epstein and O'Halloran, 1999; Huber and Shipan, 2002). In these models, the agent can use this information-asymmetry to move the policy towards her ideal point when implementing the law, while the principal can limit this possibility by specifying how the law shall be implemented. Once the principal has chosen the policy and the limits for policy drift, the agent decides whether to implement the law or risk punishment for failing to do so.

Franchino (2007) amends this framework to apply to the dual executive nature of the EU. His central premise is that EU legislators can rely on two agents to implement EU legislation: the Commission and the national administrations. When deciding whether to delegate to the Commission or to national administrations, EU governments trade the risk that the Commission may drift away from the agreed policy against the risk that national bureaucracies may implement the legislation differently. The choice facing the governments is then between a common policy which differs from the policy agreed by the governments and a variation in how EU policies will be implemented in each member state. How the governments decide the balance on this trade-off depends on the complexity of the policy issue as well as the divergence in the policy preferences of the governments. The more complex a policy issue is, the more the governments are likely to favour delegation to national bureaucracies, because they tend to have more administrative resources than the Commission. The more divergent the policy preferences of the governments, the more the governments are concerned that delegation to the Commission will lead to policy drift. Furthermore, if a policy issue is decided by unanimity (such as taxation), governments prefer to delegate to their national administrations, knowing that once a decision has been made it will be difficult to change. On the other hand, if a policy issue is decided by a

qualified majority (such as many of the rules in the single market), governments will be willing to delegate to the Commission, knowing that they will be able to reform the legislation if the Commission changes the policy too much beyond their original intention.

In sum, the degree of autonomy that executive agents are given by their principals depends on the nature of the tasks in question, the institutional rules under which they operate, the degree of policy disagreement between the principals, as well as the amount of information the principals have on the likely actions of the agents (Tsebelis, 1999, 2002). All these elements are central to the relationship between the Council and the Commission in the EU (Moravcsik, 1999; Tallberg, 2000; Pollack, 2003; Franchino, 2004).

The Member States: Executive Power, Delegation and Discretion

This section does three things. First, we discuss how the member states have made certain trade-offs in Intergovernmental Conferences. Second, we discuss political leadership in the EU and member states' choices of whether to delegate power to the Commission or national administrations. Third, we explain the pattern of implementation and transposition of EU legislation.

Delegation and Intergovernmental Conferences

The signing of treaties and their subsequent reform are the result of careful bargaining and agreement between the member state governments in Intergovernmental Conferences (IGCs) (Moravcsik, 1998; Christiansen and Reh, 2009). The requirement of unanimity in IGCs tends to produce 'lowest common denominator' treaty bargains. However, the process of European integration has been able to proceed because different governments have placed different emphasis on different issues, and hence have been prepared to 'lose' on some issues in return for 'winning' on the issues that are more important to their national interests. The resulting 'package deals' have gradually added new competences to the EU and delegated increasing executive powers to the Commission (Christiansen et al., 2002; Greve and Jørgensen, 2002). In line with the delegation framework presented above, the tasks facing the governments in IGCs are to decide which tasks to delegate to a common agent and to strike a balance between the need to ensure that a common policy is implemented across the EU while limiting the scope for policy drift. Throughout the history of EU integration, governments have struck this balance differently across policies

and time, depending on the bundle of issues that were on the negotiating table (Moravcsik, 1993, 1998).

The Treaty of Paris (signed in 1951 and entered into force in 1952), which established the European Coal and Steel Community (ECSC), was at its heart a deal between France and Germany. In return for lifting discriminatory rules on German industry, France sought a framework for planned production and distribution in its own coal and steel industry. To secure these aims, the member state governments delegated certain powers to a new supranational body: the High Authority, the precursor of the Commission. Robert Schuman and Jean Monnet were the brains behind this idea. The common production and distribution of coal and steel could have been governed through meetings of ministers of the member governments, but Schuman and Monnet argued that such intergovernmental arenas would suffer from procrastination, indecision and disagreement, as each government would defend its own interests. Consequently, they proposed that decision-making efficiency could best be guaranteed by delegating the responsibility for generating policy ideas and for the day-to-day management of policy to a supranational body (Haas, 1958: 451–85; Monnet, 1978). This combination of intergovernmental decision-making with policy initiation and management by a supranational executive – the so-called 'Monnet method' – provided the model for future treaties (Rittberger, 2001; Parsons, 2002).

The Treaty of Rome (signed in 1957 and entered into force in 1958) established the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). In the EEC, the central bargain this time was between the German goal of a common market and the French goal of protection for agricultural products, through the Common Agricultural Policy (CAP) (Lindberg, 1963). Again, to achieve these aims the EEC treaty delegated policy initiation in the common market and administration of the CAP to the Commission. A further innovation of the Treaty of Rome was a legislative procedure – known as the consultation procedure – that made it easier for the Council to accept a Commission proposal than to overturn it. This rule allowed the new supranational executive significant 'agenda-setting' powers in the establishment of rules governing the common market (see Chapter 3). In other words, the governments allowed the Commission a somewhat broader scope for policy drift in order to enable more common policies.

The package in the Single European Act (SEA) (signed in 1986 and entered into force in 1987) centred on the economic goal of establishing a 'single market' by 31 December 1992 in return for new social and environmental 'flanking policies' (Hoffmann, 1989; Moravcsik, 1991; Garrett, 1992; Budden, 2002). The Commission played an important leadership role in setting the agenda for the SEA, by detailing

how the single market could be achieved and by preparing the treaty reforms (Sandholtz and Zysman, 1989; Dehousse and Majone, 1994; Christiansen et al., 2002). The reward was new responsibilities for the Commission: to initiate a large body of legislation to establish the single market; to propose and implement common environmental, health and safety, and social standards; to prepare a reform of the structural funds; and to draft a plan for economic and monetary union (EMU). Moreover, to enable the single market programme to be completed by the 1992 deadline, the decision-making rules of the European Community (EC) were amended to strengthen the agenda-setting powers of the Commission: through more qualified-majority voting in the Council and a new legislative procedure, the co-operation procedure. Finally, the SEA introduced provisions for intergovernmental co-operation in foreign policy, known as European Political Co-operation (EPC), but in this area the member state governments decided that executive authority should be held by the Council. This substantive increase in policies and the discretion delegated to the Commission came as a result of the failure to create a functioning common market with the earlier arrangements, and the perceived competitive disadvantage by the early 1980s of the European economies vis-à-vis the United States and Japan. The governments were hence re-evaluating their trade-off between the need to establish credible common policies and the risk of increased policy drift. The governments needed not only a new initiative, but also a scapegoat for unpopular, but required, policy reforms.

The Treaty on European Union (the Maastricht Treaty, agreed in 1991 and entered into force in 1993) institutionalized the Commission-brokered plan for EMU. In return, more funds were promised for cohesion policies, EU social policy was strengthened, new health, education, transport and consumer protection policies were added, and EU 'citizenship' was established (Sandholtz, 1992; Moravcsik, 1993; Falkner, 2002). The Commission was again delegated the responsibility of initiating legislation and managing these policies. However, the Council refused to delegate executive powers to the Commission in two new 'pillars' that were separate from the main European Communities (EC) pillar: the 'second pillar', on a common foreign and security policy (CFSP), which replaced EPC; and the 'third pillar', on justice and home affairs (JHA), which aimed to achieve the free movement of persons in the EU and a set of flanking policies related to that goal. The Maastricht Treaty also introduced a new legislative procedure, the co-decision procedure, which weakened the agenda-setting powers of the Commission (see Chapter 3).

The main policy innovation in the Amsterdam Treaty (signed in 1997 and entered into force in 1999) was the transfer of the provisions for establishing the free movement of persons to the EC part of the EU treaty (McDonagh, 1998;

Moravcsik and Nicolaidis, 1998). The member state governments accepted that the JHA provisions in the Maastricht Treaty had not been effective, partly due to the lack of political leadership. To solve this, the governments again agreed to delegate policy initiation in this area to the Commission (while allowing policies also to be initiated by the governments). However, similar arguments about the lack of development of CFSP did not result in new Commission powers in this field. Instead, the governments delegated responsibility for policy ideas and the monitoring of CFSP issues to a new 'task force' located in the Council secretariat.

The Nice Treaty (signed in 2001 and entered into force in 2003) was mainly aimed at reforming the EU institutions in preparation for the accession of Central, Eastern and Southern European countries (Galloway, 2001). Nevertheless, there were some policy changes, particularly in the area of defence policy. Defence was formally established as an EU competence for the first time, as an integral part of the provisions on a European Security and Defence Policy (ESDP). As with the CFSP provisions, policy initiation, agenda-setting, decision-making and implementation in the area of defence were kept well away from the Commission.

Finally, the Lisbon Treaty (signed in 2007 and entered into force 2010) formalized the allocation of policy competences between the member states and the EU in a 'catalogue of competences'. The Lisbon Treaty also reformed the decision-making rules within and between the governments and the Commission: such as the weighting of votes in the Council, and two new leadership offices (a permanent president of the European Council and a High Representative for Foreign and Security Policy). And, the Lisbon Treaty extended the use of the co-decision procedure, now called the 'ordinary legislative procedure', to all major policies that governed the free movement of goods, services, capital and labour in the EU.

In other words, the development of the EU treaties is a story of selective delegation of political and administrative powers by the governments to the Commission. Treaty reform is a blunt instrument. When signing treaties, governments cannot predict the precise implications of treaty provisions and new decision-making rules, or exactly how the Commission will behave when granted new powers. For example, few member states were able to perfectly foresee the precise implications of the new decision-making rules in the Treaty of Rome and the Single European Act (Tsebelis and Kreppel, 1998). Moreover, once certain powers have been delegated through this mechanism, they may be difficult to overturn in subsequent treaty reforms as at least one member state may benefit from Commission discretion. This, Pierson (1996) argues, leads to long-term 'unintended consequences' of delegation by the member states and policy drift by the Commission.

However, the history of EU treaty reform suggests that the member state governments are able to rein in the Commission as their evaluation of the trade-off between the need for common policies versus the risk of policy drift changes. With the extensive delegation of agenda-setting to the Commission in the Single European Act, the member states experienced the day-to-day implications of these powers in the construction of the single market. As a result, in the Maastricht, Amsterdam, Nice and Lisbon treaties the governments were more reluctant to hand over agenda-setting in new or highly sensitive policy areas, and in several areas reformed the legislative procedures to restrict the agenda-setting powers of the Commission where policy initiative had already been delegated to the Commission.

There are several possible explanations of the outcomes of IGCs. First, one approach is to assume that all member states have equal voting power in IGCs (Brams and Affuso, 1985; Hosli, 1995; Widgrén, 1994; 1995). A second approach is to assume that only the big member states matter, and hence focus on the preferences of Germany, France and the UK (Moravcsik, 1998). A third approach, building on the two-level games framework (Putnam, 1988), emphasizes how expected difficulties in the national ratification process bind the hands of some governments to a larger extent than other governments (König and Hug, 2000; Hug and König, 2002). Fourth, spatial models of negotiations suggest that the relative positions of the actors vis-à-vis the existing institutional and policy set-up (*status quo*) determine who wins and loses in treaty negotiations (König and Slapin, 2004). Because the *status quo* (the outcome if there is no new agreement) is the existing treaty, actors located closer to the *status quo* tend to win more often in IGC bargains than actors who would like more radical policy or institutional change. Slapin (2006, 2011) tested these alternative theories of bargaining in IGCs on data from the Amsterdam treaty negotiations. He found that all actors are not equally able to 'win', but not only the bigger member states matter. Instead, proximity to the *status quo* and domestic ratification constraints of certain governments best explain the outcomes in the Amsterdam Treaty.

Finke et al. (2012) study the negotiations that led to the Lisbon Treaty. They highlight the ability of the constitutional convention president to manipulate the reference point for the discussion of proposed reforms as well as flexibility in interpreting whether there was a consensus at the convention in favour of particular proposals. In particular, they highlight that it is hard to see why some of the member states that benefitted the most from the Nice decision rules, such as Poland, were made better off by the Lisbon Treaty. This suggests that while the formal decision rule may be unanimity for treaty changes, the de facto rule implemented by the convention is more akin to an, unspecified, oversized

majority rule. Moreover, they also demonstrate how timing is of the essence when announcing a referendum on EU treaties. The shadow of the referendums during the negotiations empowered a member state. However, if exiting the Union is not an attractive option for a member, then a negative referendum in that member state is unlikely to result in anything beyond cosmetic changes to the treaties.

Finally, integration has gone hand in hand with further differentiation, as some member states have found themselves unable or unwilling to block others' efforts of furthering integration in a policy field, and exiting the union altogether has until recently been considered too unattractive. Moreover, with enlargement, existing member states that stand to lose out have been able to impose time-limited differentiation upon new members, for example in access to the common labour market, redistributive policies and border control (Winzen and Schimmelfennig, 2016). Furthermore, differentiation creates pressure for institutional changes that may facilitate further integration amongst a subset of members (Kelemen et al., 2014). As a result, integrationist member states may be reluctant to push differentiation as this puts the goal of a united, integrated, Europe at risk, while lagging member states may fear being left behind, thus becoming second-tier members of the Union (Jensen and Slapin, 2012). A two-track Union may indeed leave more member states discontented (Hvidsten and Hovi, 2015). Finally, Brexit opens up new possibilities for further treaty reform, as several of the articles in the Lisbon Treaty will have to be revised (Fabbrini, 2017), plus the UK leaving the Union removes one of the member states (and a larger member state at that) that was closest to the *status quo* on several policies and institutional reform issues.

Political Leadership and Delegation

The treaties provide the general framework for the division of power and policy competencies in the EU (see Chapter 1). Basically, the European Council (the heads of government) sets the guidelines and objectives for the Commission and monitors how the Commission implements these guidelines. The European Council also executes CFSP and macro-economic policies, agrees to the multi-annual budgetary framework and can adopt new policy competencies for the EU. The medium-term political leadership of the EU lies in the hands of the European Council in general and the president of the European Council in particular. Meeting at least six times a year, the European Council provides guidance for the work of the meetings of the Council (of ministers) and invites the Commission to develop policy initiatives in particular areas and monitors the domestic polices of the member states.

The Lisbon Treaty created a separation between the Presidency of the Council and the president of the European Council. While the Presidency of the Council rotates between the members states on a six-monthly basis, and whose role is mainly legislative (see Chapter 3), the European Council elects its president for a renewable two-and-a-half-year term. The first European Council president, elected in December 2009, was Herman Van Rompuy, a former prime minister of Belgium. It was not clear at that time whether the president was meant to be the main chief-executive of the EU or a silent consensus broker, operating behind the scenes at European Council gatherings. Some of the early candidates for the post such as former British Prime Minister Tony Blair and former Swedish Foreign Minister Carl Bildt would have been suitable for the former type of role; the choice of Van Rompuy indicated that some governments preferred the president to take the latter role. The role of consensus broker as the dominant role for the president of the European Council continued with the subsequent appointments of Donald Tusk and Charles Michel.

In other words, it is likely that the role of the president of the European Council will continue to be mainly political rather than administrative: focusing on resolving high-profile political disputes amongst the heads of government, rather than getting involved in day-to-day management of the relationship between the governments and the Commission. In contrast, the Presidency of the Council (of ministers) will continue to play both a political and an administrative role. The member state holding the rotating Council Presidency is responsible for ensuring the smooth running of Council meetings, and providing a six-monthly work-programme, within a trio system (van Gruisen et al., 2019).

The next chapter focuses in detail on how the legislative process works. From the point of view of executive politics, though, one of the key issues when legislating is who should be responsible for implementing policy: the Commission or national administrations. Delegation to national administrations benefits individual member states as it allows for control over how legislation is implemented in their own country and allows them to rely on the policy-competencies of their national bureaucracies. However, if member states would like to see common EU legislation, the reliance on national bureaucracies increases the risk that a member state will see that it is in its interests to not implement the legislation properly if there is a cost involved. This may be the case for several member states, which leads to a classic co-ordination problem, where no member state implements the legislation and nobody reaps the benefit of a common policy. This co-ordination problem can be solved by delegating more power over the implementation process to the Commission, as the Commission would like to see legislation implemented equally in all member states. A similar justification

for involving the Commission in implementation is that, although all member states prefer to implement the legislation, they differ in their preferences over how to implement the legislation.

Transposition of EU Legislation

The member states are responsible for transposing EU directives into national law by a certain deadline and in compliance with the adopted statutes. The Commission may take non-complying member states to the CJEU for infringement (see Chapter 4). For member states to comply with EU law they need to have the bureaucratic capacity to implement the legislation in a timely and correct manner (Börzel, 2000). However, despite their comparatively weak administrations, the new member states from Central and Eastern Europe have largely been able to incorporate the full body of EU law into national legislation (Toshkov, 2007). It is, hence, not obvious that it is the capacity of national administrations that is the key factor in explaining varying transposition rates between member states. Across all member states, new EU legislation is more likely to be delayed than legislation which amends existing directives or regulations. Also, deadlines for implementation have a positive effect as it focuses the attention of the national administrations. Policy complexity, however, tends to delay transposition (Luetgert and Dannwolf, 2009).

Several political factors also play a role. Zhelyazkova and Torenvlied (2009) find, for example, that policy conflict within the Council may speed up the transposition process while more freedom to set domestic rules (discretion) slows down the transposition process. On the other hand, König and Luetgert (2009) find that conflict in the Council increases the chance of infringement notification against a member state. Meanwhile, divergent policy preferences between parties in a coalition government in a member state further delay the transposition of directives (Toshkov, 2008; König and Luetgert, 2009).

The choice of monitoring strategy adopted at the national level also matters. In social policy, for example, Jensen (2007) finds that oversight procedures that concentrate power in the hands of the national bureaucracy (a police patrol mechanism) strengthen the ability of member states to solve infringement-cases. He also suggests that member states that reduce their reliance on interest-group participation (a fire alarm mechanism) can improve their ability to solve infringement-cases. However, because reliance on interest group participation is less costly than building up the capacity of national administrations, member states may prefer to risk reduced ability to solve their infringement-cases.

When evaluating the total evidence from the compliance literature, Angelova et al. (2012) find strong support for the idea that the similarity between existing national legislation and EU legislation facilitates compliance. This is the 'goodness-of-fit' argument. They also find across-the-board support for the fact that tighter institutional decision-making constraints at the national level decrease the level of compliance. In contrast, neither the policy preferences nor administrative capacity of member states finds robust support across quantitative and qualitative studies. They do, however, warn that neither individual studies nor the literature as a whole provides a representative coverage of neither the member states nor the policy areas of the EU.

The findings in this earlier literature on EU policy implementation can be summarized as follows: when deciding how and when to implement a directive, the member state governments weigh the cost associated with correct implementation against the costs associated with failure or delays in the implementation process. As the member states would in principle like to see EU law not only correctly implemented but also similar across all the other member states, they have delegated oversight powers to the Commission.

More recent studies have departed from this essentially decision-theoretic view, instead focusing on the strategic interaction between the Commission and the member states, and the agencies in charge of the actual implementation. For example, Dimitrova and Steunenberg (2017) set out compliance as a three-level game, where differences between national political and administrative agencies in charge of the actual implementation may result in rather large differences in the actual policies being implemented across member states. Moreover, König and Mäder (2014) develop and estimate a compliance game with the Commission and member states as actors. Their theoretical results, supported by empirical evidence, demonstrate that the Commission may refrain from enforcing member state compliance if the probability of success is low or the cost of sanctions is high. This may result in a compliance deficit, even if the Commission is successful when it actually acts against non-complying member states. Fjelstul and Carrubba (2018) also develop and test a formal model of compliance; their results suggest that although the Commission may not be able to prevent non-compliance, it seems to be able to manage compliance with political realistic constraints. Also, both Zhelyazkova and Yordanova (2015) and König and Mäder (2013) highlight the risk that early transposition notice can be used strategically to win time or facilitate only partial compliance with EU legislation. In contrast, van Voorst and Mastenbroek (2017) find that the need for enforcement, more than strategic considerations, guides the use of ex-post legislative evaluations.

Nevertheless, the executive role of the Commission is not limited to monitoring compliance. The next section explains the broader role of the Commission in the executive politics of the EU.

Government by the Commission

The Commission has several responsibilities:

- to propose policy ideas for the medium-term development of the EU;
- to initiate legislation and arbitrate in the legislative process;
- to represent the EU in bilateral and multilateral trade negotiations;
- to issue rules and regulations, for example on competition policy;
- to manage the EU budget; and
- to scrutinize the implementation of the primary treaty articles and secondary legislation.

To carry out these responsibilities the Commission is organized much like a domestic government: with a core executive (the College of Commissioners) focusing on the political tasks; a bureaucracy (the directorates-general) undertaking legislative drafting, administrative work and some regulatory tasks; and a network of quasi-autonomous agencies undertaking a variety of monitoring and regulatory tasks. The EU has established over fifty agencies whose competencies range from financial services to food safety, from energy regulation to border control (fifty-two as of January 2022). The delegation of these tasks to the Commission and then on again to agencies has led to a de-politicization of many of these policy areas and an extension of the autonomy of the public officials working in these agencies (cf. Majone, 1996, Egeberg and Trondal, 2017). Moreover, Migliorati (2020), studying the choice to rely on EU agencies in secondary EU law, shows that the Council and the Parliament become more likely to employ an agency as the complexity of the policy increases, while the competencies of the Commission only initially increase the likelihood of agency involvement (see also Migliorati 2021).

A Cabinet: The EU Core Executive

Following the Nice Treaty all member states now have only one commissioner each. The College of Commissioners meets at least once a week. The president of the Commission chairs the meetings. As far as possible, College decisions are by consensus, but any commissioner may request a vote. When votes are taken,

decisions require an absolute majority of commissioners, with the Commission president casting the deciding vote in the event of a tie. This absolute majority rule means that abstentions and absentees are equivalent to negative votes. Voting is usually by show of hands (so not by secret ballot). The results of votes are confidential, but how each commissioner has voted is recorded in the College minutes, and on high-profile issues this information is often leaked to the press from somewhere in the Commission bureaucracy. Nonetheless, the commissioners are bound by the principle of 'collective responsibility', which is a key norm in most 'cabinet government' systems. This principle means that even if a commissioner was in a losing minority in a vote, he or she must represent the majority view to the outside world.

The political leadership of the Commission operates along the lines of cabinet government in several other ways. The first is the allocation of a portfolio to each commissioner. The most high-profile portfolios are given to the Commission vice-presidents and those who were commissioners in previous administrations. In the Barroso II Commission, for example, those commissioners who were in the previous Barroso administration all held key portfolios. With the Junker Commission the distinction between the vice-presidents and the other Commissioners became clearer. With the von der Leyen Commission, yet another layer was introduced in the hierarchy, as Frans Timmermans, Margrethe Vestager and Valdis Dombrovskis were appointed executive vice-presidents. As a result, there are now three layers of commissioners below the Commission president (von der Leyen), executive vice-presidents (Timmermans, Vestager and Dombrovskis), vice-presidents (Borrel Fontelles (also High Representative), Sefcovic, Jourová, Suica and Schinas), and Commissioners (Hahn, Gabriel, Schmit, Gentiloni, Wojciechowski, Breton, Ferreira, Kyriakides, Reynders, Dalli, Johansson, Lenarcic and Valean). Nevertheless, any commissioner is capable of making a name for him- or herself through hard work and skilful manipulation of the media.

The Commission president is in effect the 'first among equals' (Bagehot, 1987 [1867]). The president sets the overall policy agenda of the Commission by preparing the annual work programme, sets the weekly agenda and chairs the meetings of the College, and is in charge of the Secretariat General, which oversees the work of the directorates general. The president also decides which commissioner gets which portfolio, in consultation with the individual commissioners and the governments that nominated them. In practice, the member state governments hold agenda-setting power in this relationship as they are responsible for nominating their commissioners in the first place. Nevertheless, the Commission president can exert some pressure on national governments to

propose more high-profile and competent figures (and sometimes more pro-European figures). The president can also ask individual commissioners to resign if they prove to be corrupt or incompetent.

A further aspect of cabinet government is the system of commissioners' *cabinets*. The *cabinet* system was imported from the French government system, although it exists in most collective-government systems. The *cabinets* have four main functions: to serve as political antennae and filters for party and interest-group demands; as policy advisors of civil servants in the directorates-general; as mechanisms for inter-commissioner co-ordination and dispute resolution; and as supervisors and controllers of the work of the directorates-general responsible to the Commission (Donnelly and Ritchie, 1997). The *chef des cabinets* meet together every week to prepare the agenda for the weekly meeting of the College of Commissioners. They try to resolve most of the items on the weekly agenda, leaving only the more controversial and political decisions to their political masters. The *cabinets* used to be hand-picked fellow-nationals of the commissioners. This is no longer the case, as the majority members of the *cabinets* are no longer the same nationality as their commissioner (Egeberg and Heskestad, 2010).

Although the EU treaty proclaims that the members of the Commission shall serve the general interest of the Community and be completely independent, the Commission is a political body, occupied by actors with backgrounds in national politics. As discussed above, the member states care about two main issues when delegating to the Commission: the gap between the preferences of the Commission and the governments, and the competency of the Commission. Much of the literature on EU politics assumes preference-divergence between the governments and the Commission, and that the Commissioners prefer more integration than the member states. However, from a principal-agent perspective, it is puzzling that the member states would select a Commission with outlying preferences (Crombez, 1997; Hug, 2003, Crombez and Hix, 2011). Commissioners tend to have previously held political positions in parties that are in government at the time of their appointment to the Commission (Wonka, 2007). This suggests a high level of preference-similarity between the governments and the Commission, at least when the Commission is first appointed, and on average the policy preferences of the Commission are not likely to be different to the policy preferences of the EU governments (at least at the time when a Commission is first appointed, before national elections lead to changes of national governments) (Thomason, 2008).

Nevertheless, when choosing Commissions, governments also care about their political competency and have tended to care more about the competency

of prospective Commissioners as the powers of the Commission have increased (Döring, 2007). Put another way, political has-beens with little to offer are now rarely appointed as Commissioners. Also, the allocation of portfolios within the Commission suggests that more experienced and politically moderate Commissioners tend to obtain better policy portfolios (Franchino, 2009). With the Junker Commission, the hierarchy under the Commission president further cemented with the distinction between ordinary Commissioners and vice-presidents of the Commission. The un-equalness of the Commissioners became even clearer in the von der Leyen Commission, as the executive vice-president layer was introduced.

Comitology: Interface of the EU Dual Executive

The Commission is in charge of implementing EU legislation in co-operation with a committee of representatives from the member states. The set of procedures that regulates this co-operation is called 'comitology'. The comitology committee offers an opinion on the proposal by the Commission for how to implement the legislation, *the implementing acts* (Article 291). The implementing acts specify how, often highly technical aspects of, the legislation should be implemented. Moreover, adopted acts need to supplement or make adjustments in order to take technical or scientific progress into account. Therefore, the Commission may, via *delegated acts* (Article 290), amend a specific aspect of legislation, for example by changing how something is defined. However, there are strict limitations to the Commissions power to adopt delegated acts.

- the delegated act cannot change the essential elements of the existing basic act;
- the basic legislative act must have defined the objectives, content, scope and duration of the delegation of power; and
- the European Parliament and the Council may revoke the delegation or raise objections to the delegated act.

A delegated act can only enter into force if neither the Council nor the Parliament has objected within a set date. Moreover, either the Council or the Parliament can revoke the delegation.

The comitology system was established by a Council decision in July 1987 and reformed by Council decisions in June 1999, July 2006 and December 2010. In 2017, the Commission proposed to reform the system again, but as of May 2021, no common accord between the Commission, the Parliament and

the Council had been reached. The 2010 reform provided a substantive simplification of the procedure, offering two different procedures to be used for the adoption of implementation measures: the examination and the advisory procedure. The examination procedure is used for measures of general scope and for measures with potential significant impact. The advisory procedure is generally used for all other implementation acts. While both procedures require a committee of member state representatives to provide a formal opinion on the basis of a Commission proposal, they differ in the decision procedure and to what extent the committee's opinion is binding for the Commission.

In the examination procedure, if a proposal is adopted by a qualified majority, the Commission must adopt it. If a qualified majority vote against a proposed measure, then the Commission cannot adopt it. If there is neither a qualified majority in favour nor against, the Commission must propose an amended version to the Committee, or it can appeal the decision to an appeal committee consisting of higher level member state representatives. In contrast, in the advisory procedure the Commission decides on its own but must 'take the utmost account' of the committee's opinion.

The European Parliament has been critical of comitology (Corbett et al., 1995: 253; Bradley, 1997; Hix, 2000). After the establishment of the system, the European Parliament argued that the system lacked transparency, due to the secretive nature of committee proceedings. It also argued that by allowing the member state governments to scrutinize the executive powers of the Commission, the comitology system undermined the principle of the separation of powers between the legislative authority of the EU (the Council and the European Parliament) and the executive implementation authority (the Commission). Moreover, the Parliament was critical of the fact that the procedures only allowed for issues to be referred back to one part of the EU legislature (the Council), rather than to both the Council and the European Parliament. Both the 2006 and 2010 reforms were meant to address this. The latter reform went the furthest. With this reform, both the Council and Parliament have equal right to information, and if a Commission measure relates to a piece of legislation passed under the ordinary legislative procedure, the Council and Parliament can object to the proposed implementation act if it expands the powers granted to the Commission under the original legislation. The Commission must then review its proposed act, but is free to decide whether to maintain, amend or withdraw it.

Some researchers argue that the comitology system enables Commission and national experts to work together to solve policy issues in a non-hierarchical and deliberative policy style (e.g. Joerges and Neyer, 1997). However, the involvement of scientific experts and private interests in the process of policy implementation and regulation is a common feature of most public administration systems. And, on high-profile policy issues, conflicts do arise between the Commission and the national experts, and between experts from different member states.

Administrative Accountability: Parliamentary Scrutiny and Transparency

The administrative and regulatory tasks of the Commission and the Council are subject to parliamentary scrutiny in much the same way as domestic bureaucracies and regulatory agencies are (Rhinard, 2002). First, the president of the Commission presents the Commission's annual work programme to the European Parliament. Second, commissioners and Commission officials regularly give evidence to European Parliament committees, and certain European Parliament committees have introduced a 'question time' for the commissioner responsible for the policy areas they oversee. Third, the president-in-office of the Council (the head of government of the member state holding the six-monthly rotating presidency) presents the Council's six-monthly work programme to the European Parliament. Finally, government ministers from the member state that holds the Council Presidency often appear before European Parliament committees, and the president of the ECB and the heads of the EU agencies appear before the European Parliament committees on a regular basis. Also, while the president of the European Council is not accountable to the European Parliament, he does appear before the MEPs to report on European Council meetings.

The European Parliament has a highly developed system of presenting oral and written questions to the Council and the Commission (Raunio, 1996). As in national parliaments, these questions enable MEPs to gain information, force the executive to make a formal statement about a specific action, defend their constituencies' interests and inform the Commission and Council of problems with which they might be unfamiliar. The full texts of the questions and the answers by the institutions are published in the EU *Official Journal.* Proksch and Slapin (2011) show that MEPs from parties in opposition at the national level are more actively using questions to scrutinize the Commission and the Council.

Unlike most national governments, however, there are no formal rules governing individual responsibility for Commissioners. Individual commissioners are often blamed for inconsistencies in a directorate general in their charge, or for lack of action in a policy area they cover, but no procedure exists for forcing individual commissioners to resign. Also, the Commission has not developed a

culture in which a commissioner or a senior official would resign out of a sense of obligation, and the European Parliament does not have the right to censure individual commissioners. Nonetheless, a precedent was set in January 1999, when the European Parliament held separate votes of no-confidence in two commissioners: Edith Cresson and Manuel Marin, who were in charge of administrative divisions where fraud and nepotism had been alleged. Although these motions would have no legal force, considerable pressure to resign was put on the two commissioners by the media and several governments if the European Parliament passed the motions by a simple majority. In the event, the motions were defeated.

Despite the above, since the early 1990s the Commission has been eager to promote transparency in its administrative operations. First, the Commission publishes its annual work programme in October instead of January, which allows the European Parliament and Council time to debate the draft before the final adoption of the full legislative programme in January. Second, in the initiation of legislation the Commission makes use of green and white papers, public hearings, information seminars and consultation exercises. Third, the Commission's code of conduct commits it to make internal documents public, with the exception of minutes of its meetings, briefing notes, the personal opinions of its officials and documents containing information that might damage public or private interests. Finally, the Commission submits draft legislation to national parliaments so that their committees on EU affairs can scrutinize the legislation before their government ministers address it in the Council.

Officially the Council supports greater openness in EU decision-making. However, both the Commission and the European Parliament have accused the Council of hypocrisy. First, the majority of member states (and thus the Council) have opposed the Commission's efforts to allow public access to EU documents – many member state governments are keen to prevent private interests and the media from learning more about what they sign up to in the EU legislative and executive processes. Second, the Council has proved reluctant to expose itself to public scrutiny. The EU treaty specifies that:

> the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.

However, this has allowed the Council to remain secretive about matters that come under its executive capacity and also to define for itself when it is 'acting as a legislature'. The Lisbon Treaty changed this slightly, by defining that the Council acts as a legislature under the ordinary legislative procedure, and so requiring the Council to be more open in its legislative activities.

The activities of the governments in the Council are also scrutinized by their national parliaments (Norton, 1996; Bergman, 1997; Raunio, 1999; Saalfeld, 2000). In every national parliament this is primarily conducted by a special EU affairs committee, which receives drafts of legislative initiatives by the Commission, and usually asks national government officials and ministers involved in EU affairs to give evidence and answer questions. Some national parliaments are more effective than others in this role. For example, the EU affairs committee in the Danish *Folketing*, which was set up in 1972, issues voting instructions to Danish government ministers prior to meetings of the Council. The extent of national parliament involvement in the transposition of EU legislation is a function of preference-divergence in a national cabinet and the power of the national parliament vis-à-vis the government in a member state (Franchino and Høyland, 2009). In general, member states with single-party majority governments (as in France and Greece) tend to have national parliaments that are less involved in EU affairs, whereas member states with minority or coalition governments (as in Scandinavia and the Benelux countries) tend to have national parliaments that are more involved in EU affairs.

As European integration has progressed, and governments have delegated more powers to the EU institutions, several scholars have detected a decline in the ability of national parliaments to scrutinize the executive branch of their national governments effectively (e.g. Andersen and Burns, 1996). For example, Moravcsik (1993: 515) argues:

> by according governmental policy initiatives greater domestic legitimacy and by granting greater domestic agenda-setting power … the institutional structure of the EC strengthens the initiative and influence of national governments by insulating the policy process and generating domestic agenda-setting power for national politicians. National governments are able to take initiatives and reach bargains in Council negotiations with relatively little constraints.

However, since the mid-1990s national parliaments have fought to retrieve at least some of the powers they have lost to the executive as a result of EU integration (Raunio and Hix, 2000). By 1995 all the national parliaments had set up EU affairs committees to scrutinize their governments' activities at the EU level, and developed procedures requiring ministers and national bureaucracies to provide detailed information on new EU legislation and how EU decisions would be implemented in the domestic arena. Furthermore, the Lisbon Treaty established

an early warning system whereby national parliaments were given six weeks to offer a reasoned opinion on whether a Commission proposal violates the subsidiarity and proportionality principles (the subsidiarity principle means that decisions should be made at the lowest possible level, and the proportionality principle means that the EU may only act to the extent that is needed to achieve its objectives and not further). If one-third of the national parliaments considers a Commission proposal to be in violation of subsidiarity or proportionality, the Commission has to review the proposal. However, having conducted the review, the Commission is free to amend, redraw or leave the proposal unchanged. It is thus not clear that this new measure will involve the national parliaments in any meaningful way (Cooper, 2006). In fact, Finke and Herbel (2015) find that political parties in national parliaments scrutinize EU policy proposals in order both to shift domestic constraints strategically, if such shifts can be credible communicated at the EU level, and, by opposition parties, to influence the position of the government directly.

Political Accountability: Selection and Censure of the Commission

In the collective exercise of political leadership in the Council the member state governments can claim legitimacy via national general elections (see Chapter 7). However, the legitimacy of the political leadership role of the Commission is more problematic. Until 1994 the president of the Commission was chosen by a collective agreement among the heads of government in the European Council. The Commission president was regarded as one post in a package deal between governments on the heads of a number of international agencies, such as the secretaries-general of the World Trade Organization and the North Atlantic Treaty Organization. This was more akin to selecting the head of an international organization than to choosing the 'first among equals' in a political cabinet.

However, the Maastricht Treaty introduced a new investiture procedure, whereby the term of office of the Commission was aligned with the term of the European Parliament. Also, the European Parliament would now be consulted on the member state governments' nominee for Commission president, and the members of the full Commission would be subject to a vote of approval by the European Parliament. However the European Parliament interpreted 'consulted' as the right to vote on the nominee for Commission president (Hix, 2002a). Consequently in July 1994, in the first ever Commission president investiture vote in the European Parliament, Jacques Santer was approved by the European

Parliament as Commission president by a margin of only twelve votes (Hix and Lord, 1995). In addition, following the nomination of the individual commissioners, the European Parliament introduced Commissioner hearings, where the nominees had to give evidence to the European Parliament committee covering their portfolios (consciously modelled on US Senate hearings of the nominees for the US president's cabinet) (Westlake, 1998). Finally, once the committee hearings were complete, the European Parliament took a second vote on the Commission as a whole. The Amsterdam Treaty reformed the procedure, to formally institutionalize the European Parliament's power to veto the nominated Commission president and team of commissioners.

Subsequently, the Nice Treaty introduced qualified-majority voting in the European Council for the nomination of the Commission president and the commission as a whole. The Lisbon Treaty only slightly amended this combination of qualified-majority voting in the European Council and veto by the European Parliament, by requiring that the European Council 'take account' of the European Parliament election results when nominating a Commission president.

Despite the fact that the European Parliament cannot formally veto individual commissioners, the Parliament has used its role in the Commission investiture procedure to extract concessions from the governments. In particular, in October 2004, the European Parliament refused to back the investiture of Barroso's first Commission, after the European Parliament's Civil Liberties committee had issued a negative opinion on the appointment of the Italian politician Rocco Buttiglione as the Commission Justice, Freedom and Security. The socialist, liberal, radical left and green MEPs objected to Buttiglione's views on gender equality and the rights of homosexuals, which were particularly relevant because his portfolio included EU equality provisions. The Italian government initially refused to withdraw Buttiglione, but after the Parliament refused to back the Commission as a whole, Barroso was able to persuade the Italian Prime Minister Berlusconi to nominate Franco Frattini instead. Then in 2009, Bulgaria's nominated candidate, Rumiana Jeleva, was withdrawn after a heavy criticism from a number of MEPs about her alleged connections to organized crime in Bulgaria.

In 2014, Slovenia's Prime Minister Alenka Bratusek, having lost in the national polls, used her final days to put forward herself for a post in the Commission. Junker nominated her for nothing less than the post of vice-president with the responsibility for Energy. After a poor performance in the European Parliament confirmation hearing, Junker was forced to have a meeting with leaders of the European Parliament political groups, which resulted in Junker nominating Violeta Bulc, a career entrepreneur who just had become minister in Slovakia, instead.

In 2019, it was not only the Commission-designates, but also the policy priorities that generated opposition. For the portfolio-title 'Protection our European way of life' did not sit well with the Socialists and Democrats, the second-largest parliamentary group. Moreover, the Hungarian nominee for the Commissioner for European neighbourhood policy and enlargement, Laszlo Trocsanyi, was a former justice minister who had overseen the decline of rule of law. He faced opposition from the Socialists, Greens and the Liberals. A majority of the members of the Committee on Legal Affairs concluded that Trocsanyi was unable to fill the position due to potential conflict of interests, leading von der Leyen to ask Orbán to propose a different candidate instead. Orbán proposed Oliver Várhelyi for the post. The nomination was greeted by long-standing Orbán allies and decried by observers and enlargement experts. He needed two rounds of hearings to be approved.

Regarding the removal of the Commission, since the Treaty of Rome the European Parliament has had the right to censure the Commission as a whole by a 'double majority': an absolute majority of MEPs plus two-thirds of the votes cast. Motions of censure have been proposed on several occasions, but none has been carried. The European Parliament tends to fear that throwing out the Commission would backfire, as governments and the public would accuse the European Parliament of acting irresponsibly. Also, before the Lisbon Treaty changes to the investiture procedure there was nothing to prevent governments from reappointing the same commissioners. Above all, the double-majority in practice means that a very broad political coalition is required to censure the Commission. This means that the European Parliament's right of censure is more like the right of the US Congress to impeach the US president than the right of a domestic parliament in Europe to withdraw majority support for a government, and therefore it can only be exercised in extreme circumstances – in instances of what the US constitution calls 'high crimes and misdemeanours'.

However, in 1998 and 1999 the European Parliament became more confident about using the threat of censure. In 1998, with widespread public disapproval of the Commission's handling of the BSE (bovine spongiform encephalopathy) crisis, the European Parliament successfully threatened censure to force the Commission to reorganize its handling of food safety issues. In January 1999 the European Parliament demanded that the Commission respond to the high-profile allegations of financial mismanagement, nepotism and cover-up (the Commission had sacked an official who had leaked a report on fraud and financial mismanagement). On the eve of the censure vote, Commission President Santer promised that an independent committee would be set up to investigate the allegations, and that there would be a fundamental administrative reform of the Commission, including a new code of conduct, rules governing the

appointment and work of the cabinets, and restrictions on 'parachuting' political appointees into top administrative jobs. As a result, the censure motion was narrowly defeated, with 232 MEPs in favour of censure and 293 opposed (mostly from the Party of European Socialists and European People's Party).

In a separate motion passed in January 1999, however, the European Parliament put the Commission on probation until the committee of independent experts set up by the European Parliament reported on the allegations of fraud, corruption and nepotism. When the highly critical report was published in March 1999, a new motion of censure was tabled. On Sunday 14 March, the day before the vote, Pauline Green, the leader of the largest political group (the Party of European Socialists), informed Jacques Santer that because the majority in her group would be voting for censure, the motion would probably be carried. Santer promptly called an emergency meeting of the commissioners, who agreed they should resign *en masse*. Hence, one can reasonably claim that the European Parliament did in fact censure the Commission in March 1999, even though a vote was never taken – in much the same way as President Nixon was forced to resign in 1974 after a committee of the US House of Representatives had issued an opinion, and before an actual impeachment vote in either the House or the Senate was taken.

Because of the effective censure of the Santer Commission by the European Parliament, the incoming Prodi Commission was much more sensitive to Parliament's concerns. For example, during their committee hearings, the prospective commissioners showed more respect for the opinions and questions of the MEPs than several of the members of the previous Commission had in their hearings. Also, during the debate on the investiture of the next commission, Romano Prodi promised to sack individual commissioners if the Parliament could prove allegations of corruption or gross incompetence. This effectively gave the Parliament the right to censure individual commissioners. However, counterintuitively, this could limit the influence of the European Parliament over the Commission as a whole, as it might undermine the norm of collective responsibility in the Commission – a key weapon of any parliament over a government.

Consequently, the procedures for selecting and deselecting the Commission have become a hybrid mix of the parliamentary and presidential models. The Maastricht and Amsterdam Treaties injected an element of parliamentary government by requiring the Commission be supported by a majority in the European Parliament before taking office, and the right of censure allows the European Parliament to withdraw this support. Also, the introduction of qualified-majority voting in the European Council for nominating the Commission means that the same bicameral majority is now required for electing the executive and passing

the legislative initiatives of the executive. Hence, there is a fusion of the executive and legislative majorities, as in a parliamentary system.

However, in the process of selecting the Commission president, the member state governments are the equivalent of a presidential electoral college, over which the European Parliament can only exercise a veto. The European Parliament cannot propose its own candidate. And, once invested, the Commission does not really require a working majority in the European Parliament. The right of censure is only a 'safety valve', to be released in the event of a serious political or administrative failure by the Commission.

This design reflects a conscious effort by the member state governments to maintain their grip on who holds executive office at the European level. The European Parliament has gained a limited role in the investiture procedure because the governments had to address the 'democratic deficit' (see Chapter 6). During the Convention on the Future of Europe, which eventually led to the Lisbon Treaty, a variety of alternative models were proposed. These included a classic parliamentary model, with a contest for the Commission president in European Parliament elections and the translation of the electoral majority in the European Parliament into the formation of the Commission; and a presidential model, with some form of direct or indirect election of the Commission president. However, neither model was acceptable to the member state governments, which perceived that the value of the benefits of any alternative (democratic) model of electing the Commission would be considerably lower than the potential costs: the loss of their power to choose the members of the other branch of the EU executive and the likely politicization of the Commission.

Conclusion: Politics of a Dual Executive

The power to set the policy agenda and implement EU policies is shared between the EU governments in the Council and European Council and the Commission. Put simply, the governments set the long- and medium-term agendas by reforming the EU treaty and delegating political and administrative tasks to the Commission. In the areas where executive powers have been delegated, the Commission has a significant political leadership role and is responsible for distributing the EU budget, monitoring policy implementation by the member states and making rules and regulations.

If solely in charge of implementation, member states may renege in the future on their current promises to implement some policies, especially if these are costly to powerful domestic groups. A way to deal with this problem of credible commitment is to delegate policy prerogatives to the Commission. Delegation

modifies the distribution of policy-making powers in favour of supranational institutions that care about effective and homogeneous policy implementation across the EU.

Hence, the member state governments have delegated powers to the Commission to reduce transaction costs and produce policy credibility. However, they have been selective in this delegation. For example, they have limited the discretionary power of the Commission to certain regulatory matters, such as competition and agricultural policies. They have also retained control of key executive powers, such as treaty reform, policy-making under CFSP, front-line implementation of EU legislation, long-term agenda-setting and the co-ordination of national macro-economic policies. In addition, the governments have limited the Commission's discretion through the comitology system and retain their monopoly over the nomination of the Commission president and the selection of the commissioners.

Meanwhile, the Commission has developed many of the characteristics of a supranational 'government'. At the political level, the College of Commissioners operates along the lines of cabinet government, with collective responsibility and the Commission president as the first-among-equals. Also, the commissioners are partisan career politicians and pursue their own political objectives in the EU policy process. At the administrative level, the Commission directorates-general are quasi ministries and many of the directorates-general have direct regulatory powers. Also, like national administrations, each service in this Euro-bureaucracy has its own institutional interests, policy objectives and supporting societal interest groups. As a result, the Commission has powerful incentives and significant political and administrative resources to pursue an agenda independently from the member state governments.

The member state governments have tried to tilt the balance of power in this dual-executive relationship back to themselves. For example, following the activism of Delors, the governments have been careful to choose Commission presidents (Santer, Prodi, Barroso, Junker, and von der Leyen) who they feel were more sensitive to member state interests. Moreover, the governments have tried to use the European Council to set the medium- and short-term policy agenda, and thereby take away some of the Commission's policy-initiation power. Finally, since the resignation of the Santer Commission, the Commission administration has gone through a period of self-investigation and internal reform, which has bred further insecurity *vis-à-vis* the governments.

The result is a system with strengths and weaknesses. The main strength is that the dual character of the EU executive facilitates extensive deliberation and compromise in the adoption and implementation of EU policies. This is

a significant achievement for a continental-scale and multi-national political system, and it reduces the likelihood of system breakdown. However, there are two important weaknesses. First, the flip-side of compromise is a lack of overall political leadership and dual-executive systems tend to be characterized by policy stability. Second, and linked to this issue, there is the problem of democratic accountability. There is no single 'chief executive' whom the European public can 'throw out'. The consequence is a political system that seems remote to most European citizens, as we discuss in Chapter 5.