3. The Commission’s Agenda-Setting Power

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THE COMMISSION’S AGENDA-SETTING POWER

I would often use the word “reasonable” to describe a project or a proposal that seemed to me not only to be consistent with reason, but also to have qualities of moderation in a good sense. “I don’t understand what you’re trying to say,” Hallstein would object. “What does reasonable mean? An idea is rational or it is absurd, there is no intermediate term.”

—Robert Marjolin, French vice president of the Commission, 1958–67

In many ways, the European Commission is a bureaucracy like any other international bureaucracy. Similar to the United Nations or the World Bank, it undertakes tasks that are defined in an international treaty, it is primarily funded by direct financial contributions from the member states, it is staffed by civil servants of many different nationalities, and it usually appoints its political leadership only after a ritualistic wrangling among the member states.

The European Commission is also special in at least two regards. Many view it as the incarnation of the “European idea”: to gradually transcend the nation-state through supranational institutions in order to bring peace to the war-torn continent.¹ The Commission therefore oftentimes attracts idealistic staff members who are strongly committed to integrate ever more policies into this project (Volker Eicher, cited in Christiansen 1997, 83).

A second difference from other international bureaucracies is that the treaties, as Hallstein observes, endow the Commission with a decidedly political role. It does not simply implement what the member states decide. Due to its right to set the legislative agenda, it is deliberately involved in the law-making process.

Why did the member states grant the Commission the exclusive power to set the agenda? The most prominent explanation is that the delegation of these powers to an independent actor represents a strong commitment to integration. There are three aspects to this commitment. First, given that there are always various feasible legislative proposals, an independent agenda setter pledged to observe the treaty will pick the one that promises to implement the treaty in the best possible way. Second, choosing the timing of its submission, the agenda...
setter will wait until the time is ripe for a majority of countries to adopt its preferred proposal. Third, in both cases, the agenda setter has to be immune to ad hoc influence on its decision.

The Commission thus thought of itself, with good reason, as the “motor” of integration that brings forward the implementation of the treaty even in the face of opposing winds from the member states (Hallstein 1962, 21).

As the chapter-opening quote shows, the flip side of this commitment is that a supranational bureaucracy that takes its mandate seriously—that is, that seeks to implement the treaty in the most conscientious way by following, to paraphrase Hallstein, an intrinsic logic (Sachlogik)—may lose touch with political realities. Specifically, it may submit legislative proposals that result in excessive adjustment costs and, as a consequence, stir up excessive distributive conflicts at the domestic level.

The Commission’s motive force was often challenged and sometimes compromised in the course of European integration. Depending on the school of thought, scholars attribute the ups and downs in the Commission’s agenda-setting power to a variety of factors. Some point to the Commission’s political leadership. There is wide agreement, for example, that the Commission had its heyday under the leadership of men like Jacques Delors and Walter Hallstein, and was mostly neglected under less dynamic presidents (for a brief summary, see, e.g., Nugent 1995, 610). Focusing on the appointment of commissioners and the composition of the college, Arndt Wonka and others (Wonka 2008; Hug 2003) have begun to question the idea that the Commission has always sought to achieve high levels of integration. Although these studies identify the Commission’s preferences in very different ways, they nevertheless demonstrate how they may vary over time and across issues.

Students of public management and organizational sociology focus on the Commission’s internal organization and administrative culture. In a brilliant early study of the Commission’s internal organization, for example, David Coombes (1970) points to the difficulty of reconciling its technical, administrative functions with its political leadership role. Other excellent and empirically rich analyses followed that suggest that the Commission’s permanent apparatus is quite complex and its socializing effect on its own civil servants less powerful than one might think (Hooghe 2001, 2005; Egeberg 2006; Trondal 2010).

Pioneered by George Tsebelis and Geoffrey Garrett (1996) and others, a third body of literature uses spatial and formal models to analyze how changes in the legislative procedure affected the Commission’s formal agenda-setting power. Notably, these studies found that the promotion of the European Parliament in the 1990s to the Council’s co-legislator occurred largely at the expense of the Commission’s formal agenda-setting power (Crombez 2000).
In this chapter I argue that, in addition to all these developments, the governments also added less noticeable “emergency brakes” within and around the motor, which allow them to jointly counteract the formal rules when the Commission’s legislative proposal threatens to create intense conflicts in one or more member states. More specifically, the governments adopt practices that sidestep the three aspects of the Commission’s formal agenda-setting power. Our theory expects these practices to emerge in issue areas of high political uncertainty, and their use to stir up disputes between the governments and the Commission, but not among the governments themselves.

The implications of this argument are significant. It casts doubt on the standard assumption of many models of legislative bargaining, namely that the Commission holds invariably strong preferences for high levels of integration (similarly, Hörl, Warntjen, and Wonka 2005). Instead, its proposals are often “softer” than they might be as the member states compel the Commission to avert measures that promise to generate extensive conflicts at the domestic level.

The Commission’s Right to Set the Agenda—Not Quite Exclusive

The Rome Treaty endows the Commission with the exclusive right of initiative and thus with a remarkably powerful and political role in the legislative process. This right implies that it can choose from a wide range of different feasible legislative proposals and, at the same time, selectively bar rival proposals from the agenda. The flip side of this remarkable discretion is that the Commission might actually select a proposal that, although it implements the treaty in the best possible manner, stirs up domestic pressure by inflicting excessive adjustment costs on a single domestic group. To prevent these situations, the governments need to find a way to limit the Commission’s choice. In the following, I focus on practices prior to the preparation of a legislative proposal in order to investigate to what extent these practices curtail the Commission’s actual leeway in agenda setting.


In the first years after its inception under the Treaty of Rome, the Commission made full use of its capacity to choose freely among various feasible legislative proposals. Its discretion to do so was in fact quite broad, because the treaty had, in many issue areas, remained vague about how the governments were supposed to achieve the treaty objectives. Some member states, as well as the Parliament,
occasionally put forth rival proposals for legislation. In 1963, for instance, Germany devised an action plan that was supposed to provide new impetus to the integration process; this was deemed necessary after French president Charles de Gaulle had left the Community stupefied after vetoing the accession of Great Britain. However, the Commission was under no obligation and, in fact, did not heed all these requests for legislative initiatives (Ludlow 2003, 23–24).

This changed fundamentally when the chiefs government, who in contrast to government ministers had no official role in the legislative process, decided to get involved. De Gaulle was especially irritated about the Commission’s decidedly political role. At France’s initiative, the chiefs of government met three times as part of a general effort toward political cooperation in which the Commission would play only a minor role. The so-called Fouchet Plan proposed that the chiefs of government meet three times a year in order to determine the European Community’s broad legislative agenda and to coordinate the member states’ foreign affairs (Fouchet Committee 1962, Articles 5 and 6).

France’s partners were initially divided on this proposal (Silj 1967, 5). The Netherlands, in particular, feared that the creation of an intergovernmental superstructure would undermine the Community Method (Jouve 1967, 286–87). Although the Fouchet Plan ultimately failed, the idea that the chiefs of government would predetermine the Community’s legislative agenda remained a regular point of discussion (Werts 2008, 2–9).

The idea of having regular summits among the chiefs of government was revived toward the end of the 1960s when, after completion of the Customs Union, the legislative agenda opened to other concerns. At first, some governments proposed agendas for issues such as foreign policy or monetary cooperation that the treaty did not explicitly deal with. The responsible ministers commonly discussed these initiatives in so-called extramural meetings, that is, outside the official procedures and, therefore, often without the Commission’s attendance (Mortelmans 1974, 72–74, 88–91). In the meantime, all governments had warmed toward the idea that the chiefs of government could define the Community’s broad legislative agenda and attend directly to some of its current problems. In 1969, in The Hague, the chiefs of government held an “extramural” meeting of their own where they launched a number of new initiatives that would set the Community agenda for the years to come. All member states hailed this summit as a watershed heralding a relaunch of European integration.

In fact, however, it constituted a direct interference in Community affairs by an intergovernmental body that was not provided for in the treaty. Yet since the chiefs of government were also the signatories of the treaty, it was impossible for the Commission to disregard their instructions (Ludlow 2003, 22–24).
Hail to the Chiefs (1970–1986)

The success of the meeting in The Hague triggered a series of nearly annual summits among the chiefs of government (Werts 1992, xvii). The discussions at these meetings did not remain confined to matters that were not covered in the treaty, such as foreign affairs (called “Political Cooperation”) or monetary cooperation, but broached current Community affairs as well.

At their summit in Paris in 1974, the chiefs of government agreed on meeting on a permanent basis at least three times a year. In the format of the “European Council” they declared they would aim to “ensure progress and overall consistency in the activities of the Community” (European Council 1974). Despite some excitement over the impetus that many hoped the European Council would provide (see, e.g., European Commission 1975b, 137; 1976, 19; Noël 1976b, 34), the Commission viewed this rival agenda setter with mixed feelings. The new Commission president, François-Xavier Ortoli, cautioned against it as a potential threat to the Community Method:

[The European Council] represents a change in spirit and content and may, if we are not careful, shake the institutional structures set up by the Treaties to their very foundations.... [Let] us not close our eyes to the danger that force of circumstances, a lack of courage, expediency or confusion as to who is responsible for what, may tempt us to choose the low road of intergovernmental cooperation when we should be striking out on the high road of integration. (European Commission 1975a, ix–xxviii, here xi–xii)

Some small member states remained skeptical, too. In 1975, Jean Dondelinger, at that time Luxembourg’s permanent representative to the European Community, warned of the danger of compromising the Commission’s agenda-setting power:

They [the chiefs of government] constitute a new political authority that threatens to undermine the authority of the Commission, which already faces great difficulties in assuming its role in full, in particular with respect to its right of proposal. (Dondelinger 1975, 43)

Because of this skepticism, the European Council was denied an official mentioning in the treaty. The role of the Commission in relation to the informal European Council comprised of the chiefs of government therefore differed strongly from its ordinary relationship to the official Council of Ministers during legislative process. Although the Commission was free to submit initiatives to the European Council, it no longer enjoyed the exclusive right to do so. Its proposals
to the European Council, in contrast to its legislative proposals, had to compete for attention with initiatives from the member states.

The country in charge of the presidency of the Council of Ministers also chaired the European Council meetings among the chiefs of government and summarized their outcomes in the “Presidency Conclusions.” The outcomes ranged from mere policy statements to detailed instructions and genuine decisions on matters where the Council of Ministers had not been able to reach agreement (Bulmer and Wessels 1987, 104). And although the Presidency Conclusions regarding the discussions at European Council meetings were not legally binding for any of the ordinary EU institutions, they were impossible for the Commission and the Council of Ministers to ignore (Glaesner 1994, 111). In fact, they were treated as binding “framework-laws” (Morgan 1976, 50) to be implemented by the Commission or the Council (Council of the EC 1980, chap. 2). In short, even though the European Council (1974) had promised that their meetings outside the ordinary legislative process would “not in any way affect the rules of the Treaty,” the chiefs of government had de facto come to predetermine the legislative agenda and compromised the Commission’s agenda-setting power.


The Commission had viewed the chiefs of government’s increasing influence on Community matters from outside the official procedures with some mistrust. Unsure how to deal with this new body, the Commission presidents in the 1970s sought, on the one hand, not to legitimize the European Council and, on the other hand, to influence its decisions.

From the mid-1970s on, the Commission presidents began to attend nonrestricted meetings of the European Council that dealt with matters concerning the European Community (Werts 2008, 35–37). But it was not until the presidency of Jacques Delors, who assumed this position in 1985, that the Commission fully acknowledged the European Council as a fact.

Jacques Delors’s presidency is often regarded as the second heyday of the Commission during which it reasserted its power vis-à-vis the governments. In fact, Delors was able to wield influence through and not against the European Council, since the chiefs of governments’ power to predetermine the legislative agenda allowed him to circumvent opposition within his own organization. “The fact that I fully participate in the European Council,” he acknowledged in an interview, “gives me a certain authority over my colleagues, whether they like it or not” (quoted in Endo 1999, 58; Delors 2004, 308; on his leadership, see Ross 1995). It henceforth became practice that the Commission president would introduce most Community matters under discussion in the European Council (Werts 1992, 150).
Because small member states as well as the Commission’s administrative level remained suspicious of this development (Edwards and Spence 1994, 9), Delors tried to convince the skeptics that they were better off accepting this new reality. In a speech before the European Parliament, Delors made the case for acknowledging the European Council’s influence on the agenda:

The Commission has the right of initiative. But the position is different according to whether this right is exercised within a specified institutional framework [the Community Method] or at a more general political level. When we are operating within a specified institutional framework, our duty is to apply whatever has been decided upon solemnly by the European Council or in a modification to the Treaty. …It is all very well to dream about greater powers for the Commission, but that is the framework in which we have to work. (European Parliament 1989)

Thus, at the end of the 1980s it had become an accepted fact that the chiefs of government had become the true agenda setters. An internal, confidential study conducted by the Commission for the years 1991 and 1992, which traced the source of legislative initiatives, comes to the conclusion that only 6 percent of all legislative initiatives submitted in 1991 and 1992 were proper Commission initiatives, which were identified as rather innocuous proposals. One example mentioned in this report is a proposal for the rearrangement of wave bands for transport telematics. Most proper legislative initiatives were, in fact, technical modifications to existing law or transpositions of international legal obligations into EU law. The remaining legislative initiatives originated from the European Council, governmental requests, and international agreements. The author of the internal study concludes that the European Commission duly takes into account requests from other institutions (Commission des Communautés Européennes 1993).

**Tinkering with the Motor (1994–1999)**

Because small states and the Commission administration were skeptical, the European Council was denied official status in the 1986 Single European Act. The new Treaty of Maastricht, which a few years later amended the existing treaties and added a new “Treaty on European Union,” codified the role of the European Council only loosely. Article D of the Treaty on European Union stated that the European Council was supposed to “provide the Union with the necessary impetus” and to “define the general political guidelines thereof.”
In practice, the chiefs of government continued to predetermine the legislative agenda by asking the Commission to present or develop proposals for specific legal acts (Werts 2008, 46–47). In addition, they sought to “streamline” the Commission’s legislative program and required its president to present his program of the term to the European Council. As one example of a typical meeting of the chiefs of government, the “Presidency Conclusions” of the Madrid European Council in December 1995 lists conclusions on topics as diverse as Economic and Monetary Union, economic policy, employment, subsidiarity, justice and home affairs, legislative simplification, enlargement, and external relations. In short, the chiefs of government consolidated their role as the principal agenda setters of the European Union.

It should be noted that the Commission’s discretion was also compromised through formal changes to the Community Method. As we shall see in the next chapter, the European Parliament was gradually promoted from a consultative body to a genuine co-legislator. The 1993 Maastricht Treaty introduced the “co-decision procedure,” modified by the follow-up Treaty of Amsterdam, which provided that a conciliation committee consisting of the Parliament and the Council would negotiate a final compromise between both institutions.

In this last stage, however, the conciliation committee was free to introduce and agree on any text even against the Commission’s approval. The Commission consequently lost its monopoly of initiative, which consists of the capacity to select freely among alternative proposals and to bar others from the legislative agenda. It remains an empirical question to what extent this procedural change affected the Commission’s capacity to influence the outcome of the legislative process, but this change nonetheless constituted a major blow to the Commission’s agenda-setting powers. Christophe Crombez gave the gloomiest interpretation (2000, 52), concluding that Commission proposals had become entirely irrelevant under the co-decision procedure.

A Step toward Formalization (2000–2009)
The European Council continually grew in importance. There was hardly any area where it did not define the long-term legislative agenda and decide more specific matters. In addition, the chiefs of government also used this forum to coordinate those policies that were not officially covered in any of the treaties. In 2000, they set themselves the objective of coordinating the reforms of the various European social systems (the “Lisbon agenda”) and, for that purpose, decided to now meet at least four times per year.

As it became more involved, the European Council’s increasing workload in all aspects of European Union matters required a tighter organization. At their summit in Seville in 2002, the chiefs of government therefore came up with
several procedural ground rules. For example, the European Council would henceforth and on the basis of recommendations by the successive Council presidencies adopt a multiannual strategic program (European Council 2002, Annex 2). Furthermore, to guarantee continuity in its work, the Council of Ministers and its staff were more closely involved in both the preparation of the European Council’s agenda and the drafting of its “Presidency Conclusions.” Finally, the European Council was given a permanent seat in Brussels, where most of its meetings have been held since (Magnette and Nicolaidis 2005, 88–89; Werts 2008, 63–64).

However, some countries still felt that the European Council should play an even more significant role in the daily life of the European Union. In the context of the 2002–03 European Convention, which deliberated on a new institutional architecture for the European Union, a joint Franco-German proposal floated the idea of introducing a full-time standing president of the European Council (European Convention 2003). The proposal met with criticism by the self-styled “Friends of the Community Method.” Consisting mostly of representatives of smaller and medium-sized countries, this group feared that a full-time European Council president who for a term of three years chairs and coordinates the work of the chiefs of government would be tempted to direct the work of the Council of Ministers and the Commission (Werts 2008, 153).

The 2009 Lisbon Treaty (Article 15) now acknowledges the European Council as an official institution of the EU, but emphasizes that it “shall not exercise legislative functions” (see also Schoutheete 2003, 474). To assuage the “Friends of the Community Method,” the chiefs of government in 2009 appointed the Belgian Herman Van Rompuy as the first permanent president of the European Council. Due in no small part to the Eurozone crisis, the chiefs of government have met almost every other month since. Ferdinando Riccardi, an editor of the news agency Agence Europe and an unwavering supporter of European integration, remarks in this respect:

The European Council now meets virtually every month. It is true that Van Rompuy convenes special summits to discuss specific issues, but in practice, whenever the European summit gets together, it discusses everything that’s happening across the board. This means that the EU heads of state are directly and permanently involved in European affairs. (Agence Europe 2010)

He notes that this development further compromises the Commission’s right of initiative. “The Commission,” Riccardi concludes, “maintains its fundamental role when the European Council has nothing to say” (Agence Europe 2011).
On paper, the European Commission has the sole right of initiative in the EU’s legislative process. A look beyond the written rules, however, reveals a different reality.

Shortly after the inception of the Treaty of Rome, the chiefs of government became increasingly involved in ordinary Community affairs through regular meetings in the form of the European Council. They frequently announced policy guidelines that were impossible for the Commission to disregard. Since the European Council’s agenda usually touched on a wide range of economic and related policies, this development considerably narrowed the Commission’s official leeway to select freely among various feasible proposals and bar others from the agenda.

The consolidation of the European Council as the European Union’s principal agenda setter was accompanied by strong conflicts among governments, supranational institutions, and small and large member states, as well as within the Commission itself. Although the European Council was gradually anchored in the treaties, its actual role in the legislative process has never been clearly codified.

The Commission’s Independence—Not Quite Absolute

The treaty stipulates that the Commission is independent, and that it neither seeks nor takes instructions from the member states. The reason is that the governments themselves are susceptible to domestic pressure and therefore delegate agenda-setting power to an agent that they can expect to stay on the agreed-upon course to economic integration.

The flip side of an independent and conscientious fulfillment of a mandate, however, can be the loss of a sense for the domestic effects of integration and political realities more broadly. The chapter-opening quote of the conversation between Walter Hallstein, who put great stress on the Commission’s duty to engage in functional reasoning, and French commissioner Robert Marjolin describes this trade-off.

This section therefore focuses on the internal organization of the Commission in order to investigate how and to what extent the Commission was, in fact, able to draw on independent information and ideas when drafting legislative proposals.

Before we proceed, however, a caveat is in order regarding the data used in this section. There are a number of excellent secondary analyses on the Commission’s internal organization (see, e.g., Cini 1996; Coombes 1970; Nugent 2001; Page 1997; Spence and Edwards 2006; Poullet and Deprez 1976). Yet few of them pay attention to the informal practices investigated on the following pages. The reason is not negligence, but rather the fact that numerous
reshuffles of the commissioners’ portfolios and chaotic bookkeeping render reliable information a scarce commodity. The data, therefore, have to be treated with a grain of salt.  


Despite the ambition of becoming a civil service that was fully independent of governmental influence, the Commission failed to conform to this standard from the outset. Describing the development of national “enclaves” within the Commission, Jean Siotis, a close observer of this bureaucracy, noted as early as 1964 that “there exists a discrepancy between the institutional theory of the Communities, and of the EEC in particular, and the administrative practice of the Commission” (Siotis 1964, 242–49; quote, 249).

A first discrepancy between an ideal-typical civil service and reality was the Commission’s dependence on governmental expertise. The root of the problem was an inefficient use of resources, rooted in the fact that the Commission’s civil service (the “services”) was not entirely based on a system of competitive examination of merit. Instead, recruitment and promotions, especially at senior levels, had to maintain an overall national, regional, and political balance (Siotis 1964, 248). The highest posts thus remained reserved for candidates on the basis of nationality or party affiliation (Coombes 1968, 20–22; 1970, 131; Wallace 1973, 57; Clark 1967, 67).

Anticipating that this proportional representation would become an obstacle to competitive recruitment, Hallstein initially hired expansively and far beyond the Commission’s actual need (Noël 1992, 152–53). Yet this effort was largely undone between 1965 and 1967 when the Commission was merged with the administrations of Euratom and the European Coal and Steel Community (Coombes 1970, 265–66; Cini 1996, 56).

Although their structure was heavily in flux in the first decade, the services gradually differentiated functionally into several departments, the so-called Directorate Generals. Most Directorate Generals faced strong difficulties channeling their resources into the preparation of quality legislative proposals. The development of the Directorate General for Agriculture was in stark contrast to this trend; it grew enormously relative to other Directorate Generals and became henceforth known as the “Agricultural Empire.” It never suffered any shortfall in staff or financial resources and increasingly insulated itself from the rest of the Commission by establishing its own expert services such as a legal service and a directorate for external relations (Poullet and Deprez 1976, 41).

Because of the shortfall in expertise for the preparation of quality legislative proposals, the Commission adopted the custom of consulting groups of
experts from national administrations or the private sector (Lindberg 1963, 57–62; Scheinman 1966, 758–62). The number of these groups proliferated from the mid-1960s onward (Institut für Europäische Politik 1989, 43; Maurer, Mittag, and Wessels 2000, 34–40) to the point that the number of government experts who were actively involved in the preparation of Commission proposals massively exceeded the Commission’s own permanent staff. According to a contemporary study, the Commission staff in 1969 numbered five thousand (including translators) while the number of government experts consulted for the preparation of proposals exceeded ten thousand (Poullet and Deprez 1976, 28, 117).

Importantly, although the Commission was not legally bound to heed the governments’ advice, it had no influence on who was delegated to these government expert groups. Because the governments usually sent the very same officials who would also negotiate the legislative proposal in the Council of Ministers and oversee its implementation, it became increasingly difficult to distinguish between mere consultation of government experts and genuine prenegotiation. Emile Noël, the Commission’s executive secretary, complained:

> There is a great temptation for the Commission’s services to try to work out compromise formulae at this stage, even though the national experts consulted take part in these debates as independent persons…. Often the same national experts, returning from the Council groups duly armed with instructions, reopen the question of the compromise and the whole discussion has to start again. (Noël 1973, 127)

The second factor that compromised the Commission’s independence, in addition to its reliance on government expertise, was the member states’ interference in internal Commission politics. Once again, this was possible because of a departure from merit-based hiring and promotion.

On top of the Commission’s administrative level, the services, was a political level composed of the president and a college of commissioners, each of whom was appointed by the member states and responsible for a specific portfolio. Following the French model, the commissioners established personal offices, the original function of which was to prepare decisions in the college of commissioners (Krenzler 1974). But these offices, the cabinets, quickly assumed additional tasks. Composed mainly of fellow countrymen, they served as a transmission belt between the commissioner and her home country, and the member states themselves did not shy away from using these ties to raise objections to legislative proposals in the making.

The cabinets thus permitted the commissioner, to whom they were directly responsible, to intervene in the work of the Commission services (Coombes
1970, 255). For example, in an internal meeting of undersecretaries in the late 1960s, the German economics ministry observed that other countries made much better use of their contacts with commissioners, and urged that Germany follow suit in order to be able to voice specific concerns about Commission initiatives (Bundesministerium für Wirtschaft 1967). Fearing a degradation of the Commission’s supranational character and of the collaboration between the college and civil servants, Hallstein was keen to keep the cabinets’ size as small as possible. A member of the Hallstein Commission explains:

The President [Hallstein] was categorically opposed to the numerous cabinets: he said he did not want the Commissioners to become “mediatized” by their immediate collaborators. Beyond doubt, he also considered that because everyone seemed to quietly agree that cabinet members ought to be of the same nationality as the Commissioner, their excessive multiplication risked creating an internal nationalism within the cabinet. (Lemaignen 1964, 49–50)

Nevertheless, the commissioners found various ways to work around the president’s order. The size and influence of the cabinets consequently grew considerably toward the end of the 1960s (Bitsch 2007, 200; Ritchie 1992, 104).

Government Experts All over the Place (1970–1986)

The Commission continued to diverge in practice from the ideal-typical independent civil service. In reaction to growing complaints about the poor quality of its legislative proposals (Weinstock 1981, 50; Sasse 1975, 162–63), the Commission appointed an independent review body, the Spierenburg Group, to suggest internal reforms. The chiefs of government for their part commissioned the “Three Wise Men” (Barend Biesheuvel, Edmund Dell, and Robert Marjolin) to consider adjustments to the Community institutions in general. Both groups highlighted the fact that the Commission often failed to assert its independence and that it faced difficulties preparing quality legislative proposals.

First, the reports acknowledged that the Commission lacked the human resources necessary to come up with fully independent proposals. Although the Commission’s permanent staff increased in absolute numbers in the 1970s, the growth was much lower than that of other EU institutions and concerned mostly staff occupied with technical tasks and translation (Strasser 1979, 322). The Spierenburg Report notes:

The total number of Commission employees is smaller than is generally realized. Excluding staff paid from research appropriations, it amounts
to 8,300 officials, of whom some 40% are directly or indirectly concerned with linguistic work. Taken as a whole, these numbers do not seem excessive when compared with national central administrations. (European Communities 1979, n. 11)

In fact, the Commission was, up to that time, in absolute numbers not larger than the municipal administration of Madrid, and the average Commission Directorate General (a staff of 230 in 1979) was usually the same size or smaller than its counterpart in the average national administration (Henig 1980, 41, 44). By far the largest number of staff (640 in the late 1970s), three times as many as in the next policy area, were employed in the “Agricultural Empire” (European Communities 1980; Willis 1982, 9), which continued to enjoy a special and independent status that gained it “a reputation for separateness” (Harris, Swinbank, and Wilkinson 1983, 16).

In other Directorate Generals, however, the Commission consequently continued to rely on government expertise in the preparation of its legislative proposals. The available data are to be taken with a grain of salt, because neither the Commission nor other institutions kept official records of these expert committees. The various existing sources suggest, however, that the number of governmental experts that the Commission consulted in the preparation of proposals was at least twice as large as the Commission’s permanent staff (Rometsch 1999, 329–31). In addition, the Commission also began to host senior officials, who were loaned to the Commission from national administrations for up to three years but remained paid by their employer (Spence 1994, 73). To be sure, these numbers need not imply that the Commission’s independence was compromised. However, these government experts were still largely identical with the government representatives who would later negotiate the same proposal in the Council of Ministers (Amphoux et al. 1979, 347). Both the Spierenburg Group (European Communities 1979, n. 27) and the Three Wise Men cautioned against this erosion of the Commission’s independence. The Three Wise Men explicitly demanded that

the Commission must frame its proposal in a more independent manner....It is sensible and sometimes essential for the Commission’s departments to consult national and other experts on the purely technical background to a proposal. But they should not, as so often happens now, be drawn into negotiating with them to find a supposedly acceptable form of the measure. (Council of the EC 1980, chap. 4)

Although the college decided in the early 1970s to restrict the number of cabinet members, the commissioners did not adhere to their own rule (Endo 1999,
The cabinets grew dramatically, from an average of four members in the late 1960s to fourteen members by the mid-1970s (Michelmann 1978, 495; see also Poullet and Deprez 1976, 53), and increasingly became a channel for the member states to raise objections against proposals in the making, and for the commissioners to subsequently intervene in the work of the services. The Spierenburg Report in particular pointed to the resulting frictions between the cabinets and the services:

Some aspects of [the cabinets’] operation are starting to cause difficulties and are even threatening to disrupt, quite substantially, the smooth running of Commission Services: Cabinets “shielding” their Member States from their Services, Chefs de cabinets usurping the responsibilities of the Directors-General, meetings of the Chefs de cabinets (and indeed of junior Cabinet staff) questioning proposals without consulting the officials responsible for them, interference in appointment procedures with undue weight being given to nationality factors, and so on. (European Communities 1979, 56; Cini 1996, 111–15)


The presidency of Jacques Delors from 1985 until 1995 is often hailed as the second heyday of the Commission. The objective of establishing a genuine Internal Market, to which the member states committed themselves in 1986 with the Single European Act, brought new impetus to the legislative process. Helped by many dedicated people around him (Ross 1994; Cini 1996, 183–87), Delors exerted personal leadership that also allowed him to unite the Commission behind this common cause. Ironically, these years only served to aggravate the deeper structural problems that we identified before. The Commission became increasingly dependent on government expertise, frictions between the college and the services intensified, and the cabinet system got out of control.

In 1985, the Commission’s White Paper (the “Cockfield Paper”) identified more than three hundred measures that needed to be adopted in order to complete the Single Market. However, few, if any, provisions were made to increase the Commission’s human resources in order to match this workload. “Commission services,” one official explains, “were faced with the choice between simply not doing the work, or finding other means to secure the necessary staff” (Spence 1994, 72). To draw another comparison to a European city: employing about twelve thousand permanent officials (excluding translators) in 1993, the Commission was smaller in size than the staff of the Edinburgh city government (McGowan and Wilks 1995, 154).
Furthermore, the Commission was unable to channel its existing staff resources to where they were needed. Agriculture thus remained the largest policy-related Directorate General with 826 staff members, while that responsible for the Internal Market employed only 430 staff members (Page 1997, 32). In hindsight, Delors’s chef de cabinet, Pascal Lamy acknowledges: “[We] should have changed the structure of the institution, but we thought it wasn’t a priority. The problem is that officials spend too much time managing tasks and not enough time with the tasks themselves” (quoted in Grant 1994, 114).

Against this background, the Commission had no other choice but to intensify its reliance on government experts in the preparation of legislative proposals, whose numbers rose dramatically from 1987 onward (Commission des Communautés Européennes 1988, 3). The European Parliament’s Committee on Institutional Affairs heavily criticized this development, which it said compromised the Commission’s independence:

[Where] there are too many national experts in a given sector, they can actually jeopardize the independence of the Commission. More serious still is the case of experts, consulted during the process of drawing up legislative initiatives, who are at the same time Council experts or, worse still, who subsequently participate in the decisions of the Council. In such cases, there can be no doubt that the independence of the Commission is seriously jeopardized. (European Parliament 1993, 8)

The same committee also worried about the fact that the Commission borrowed a large number of seconded experts from national administrations; their numbers increased sixfold between 1987 and 1993, and sometimes exceeded the number of Community officials in a department (Page 1997, 59). Most alarmingly, in the view of the European Parliament, these experts were primarily assigned to departments involved in drawing up legislative proposals (European Parliament 1993).

In addition to the increasing dependence on external governmental expertise, the cabinet system grew massively in these years. For Delors, it was a means to make an end run around a slow bureaucracy, and the members of his cabinet, headed by Pascal Lamy, were considered particularly patronizing, even brutal, toward other commissioners and the Commission services (Ross 1995, 63–68).

Other commissioners reacted to this by strengthening their own cabinets’ power over the services. As one senior official explained, “Certainly, cabinets are far more powerful now, and that is certainly a consequence of Delors. His own cabinet is very active, and other cabinets are responding” (Peterson 1999, 56). The total number of official personal staff exceeded three hundred in 1989—that
is, eighteen members per commissioner on average. Official quotas were often circumvented through the hiring of additional members financed by national governments or political sources (Ludlow 1991, 93).

According to a close observer of the Delors presidency, George Ross (1995, 161), the cabinet system got completely out of control. The result was increasing frictions within the college of commissioners, on the one hand, and between the college and the services, on the other hand. An internal report in 1991 notes ever-increasing interference by cabinets into the work and tasks that are incumbent on the services (Commission des Communautés Européennes 1991b, 4). Another internal report about the Commission’s efficiency drawn up by the services points to the cabinets’ increasing meddling with the Directorate Generals’ work, and demands “first of all, to improve the connection [embrayage] between the institution’s political and the administrative level, and in this context to limit the excessive interference of the member states” (Commission Européenne 1994, 36).

**Paralysis (1994–1999)**

The objective of establishing a Single Market had only concealed the Commission’s deeper structural problems. Once the goal was reached in 1992, these problems resurfaced and were aggravated in response to new challenges.

First, the Commission’s resources remained tied up due to a number of new challenges. After the fall of the Berlin Wall, it gradually transpired that the Commission would have to prepare the accession of more than ten Central and Eastern European countries to the EU. Also, the Treaty of Maastricht had created new EU competences in the areas of foreign and security policy and justice and home affairs policies. Although most of these policies were not (yet) subject to the Community Method, they nevertheless absorbed some of the Commission’s capacities.

Second, various incidents of mismanagement and nepotism under Delors’s and, subsequently Jacques Santer’s, presidencies put the Commission under increased public scrutiny. Given its workload and the inefficient distribution of staff across departments, the Commission continued to rely heavily on government expert groups for the preparation of legislative proposals. Also, the number of seconded experts remained high, at 750 in 1999, so that approximately 8 percent of the most senior ranks in the Commission were staffed with temporary agents (European Communities 1999, 136–39).

The Commission itself noted in a white paper about the Commission’s internal organization that in some departments, “the reliance on non-permanent staff is unacceptably high [and] cannot be justified” (European Commission 2000).
The European Parliament also strongly criticized the Commission’s reliance on government experts. One report on “the independence of members of the Community institutions” notes that “[its] legislation drafting powers are exercised under the necessity to draw support from the Council of Ministers, i.e. national civil servants and experts preparing the work of the Council” (European Parliament 1994, 5). Another report cautions against the widespread use of seconding personnel from national administrations, and warned that this practice “poses a number of risks, above all that of possible conflict of interests, with such officials retaining too close a link with certain national or sectoral interests” (European Parliament 1999b, 18).

The Santer Commission drafted several reports on the reform of the Commission, none of which had a significant impact on its internal organization (Cini 2000; Kassim 2008). Ultimately, these reform attempts were overtaken by events when several instances of fraud came to light.

The system of cabinets, which had proliferated under the presidency of Jacques Delors, suddenly came under close scrutiny. The French commissioner, Edith Cresson, a former prime minister, had employed her dentist and personal friend initially as a personal scientific advisor. When this and similar cases became public, the Commission set up a task force and the European Parliament set up a Committee of Independent Experts to inquire into the cause of the Commission’s mismanagement. The latter, in particular, saw a clear link between the lack of clarity regarding the rules and criteria for the appointment of individuals to cabinets. More generally, this committee cautioned against the threat the system posed to the Commission’s independence:

> It is unacceptable that cabinets—which are involved in policy making in the Commission—should be composed exclusively or predominantly of persons of the same nationality as the commissioner. That would put the Community character of the commissioner’s work too much at risk. [This concerns] not only appointments but also all other areas of decision making, most particularly where financial incentives or subsidies are involved. Commissioners who, in the exercise of their office, use undue influence to favour their national interests should be deemed in serious breach of their obligation of independence. (Committee of Independent Experts 1999b, 117; see also Peterson 1999, 56)

The report consequently demanded clearer rules and criteria for the appointment of individuals to the cabinets as well as limits on the cabinets’ size and quotas to ensure their multinational character (Committee of Independent Experts 1999a, 23).
A Fresh Start or Business as Usual? (2000–Present)

Following the forced resignation of the Santer Commission in 1999 and another financial scandal in the EU’s statistical office, the incoming Commission under President Romano Prodi made internal reform a priority. Neil Kinnock, the vice president of the Commission, was put in charge of administrative reforms following the recommendations of the Committee of Independent Experts. In early 2000, a white paper titled “Reforming the Commission” mapped a number of actions that were supposed to enhance the Commission’s independence, accountability, efficiency and transparency (European Commission 2000, 7; see also Kassim 2004a, 44–54). It found the Commission’s dependence on temporary staff unjustifiable, and recommended that temporary experts seconded by national administrations “always work under the guidance of permanent officials and they should not account for more than a small minority of overall staff” (European Commission 2000, 37).

However, the reforms of the personnel policy met with strong resistance by the unions that represent EU staff. Although they accounted for more than a third of the Committee of Independent Experts’ recommendations, the personnel reform proposals were significantly watered down (Kassim 2008, 660; 2004a, 52–54). It is hence not surprising that ten years later, the proportion of temporary staff in senior ranks remains largely unchanged at approximately 8 percent of total staff. However, because the Commission had to absorb the influx of new commissioners and civil servants from the new member states (Peterson 2008, 769–71), it might still take some time for the Kinnock reforms to make a noticeable impact on the Commission’s dependence on government experts. Scholarly assessment of the reform remains mixed, with some hailing the changes in personnel policy and financial management as a “historic achievement” (Kassim 2004b, 39), and others concluding that the promise of reform was not kept (Schön-Quinlivan 2011, 121).

At the same time, the number of expert groups consulted in the preparation of legislative proposals increased radically. Gornitzka and Sverdrup (2008, 733, 743) find that the gradual growth in expert groups since the beginning of European integration was replaced by a dramatic increase of more than 40 percent since the year 2000. Although data are still to be treated with a grain of salt, since it is difficult to identify and delineate these groups, they identify more than twelve hundred expert groups, three-quarters of which are informal.

Unfortunately, the existing data do not discriminate between groups consisting primarily of government experts, experts from sectoral interests, or scientific
experts. According to an independent study in 2008, government representa-
tives make up at least two-thirds of all experts (Euobserver 2008). Another study
conducted on behalf of the Swedish Ministry of Finance notes that government
experts are not regarded as being truly independent. Since there is usually a sub-
stantial overlap in terms of participants, and in some cases even a perfect match
between the expert groups and the government representatives in the Council
and in the implementation stage, these representatives usually advocate their
governments’ opinion (Larsson 2003, 78).

Prodi had more success reforming the cabinets. To reduce national influences
on the college of commissioners, each of them was supposed to include staff from
at least three nationalities comprising no more than six senior members (Agence
Europe 1999c; Prodi 1999; see also Stevens and Stevens 2001, 85; Peterson 2004,
25). His successor, José Manuel Barroso, decreed that at least three members had
to be recruited from the services (Peterson 2010, 5).

Although the cabinets certainly became more multinational at the core (Egeberg
and Heskestad 2010, 780), the actual effects of these changes were mixed. Commis-
sioners once again found various ways around the rules. John Peterson notes that
there is currently considerable ambiguity with respect to the role of personal advis-
sors, who are not official members of the cabinet (Peterson 2010, 2, n2). Although
the number of cabinet members has gone down officially, the commissioners
clearly get additional personal help. “By a liberal account,” he notes, “most cabinets
could be viewed as having at least 17 members.” Recently, a former member of one
of these cabinets describes their role as gatekeepers and transmission belts:

A member of cabinet has to be a kind of internal spy. To do this job, he
has to know what is going on in the DG—and this is not always straight-
forward…. As soon as a draft reaches the political level—in other words,
the level of cabinets—national interests come more strongly into play.
During my studies, I had been taught that a Commissioner works for
the greater good of all Europeans. Like many things taught at school,
this is not entirely true…. [All] too often national preoccupations are
introduced into the debate via the backdoor of the Commissioner’s
cabinet. (Eppink 2007, 115–16, 199)

There is little evidence that the cabinets have lost their functions as trans-
mision belts between national interests and the Commission. This became
apparent when the looming accession of new member states from Central
and Eastern Europe to the EU led to calls to reduce the Commission’s size by
relinquishing the member states’ right to nominate a Commissioner. Small and
medium-sized countries were vehemently opposed to the idea of having to give
up “their” commissioner. Although proponents of a smaller college argued that
having a commissioner did not matter, since the Commission was supposed to be independent anyway, these countries emphasized the importance of having a point of contact in order to make the Commission consider their national circumstances. “What is important,” the Austrian foreign minister explained, “is that there is somebody within [the Commission who] understands the situation, the problems and sensitivities at home” (Agence Europe 2001). This statement ties in with recent research that finds that the commissioner’s nationality is a strong predictor of the policy position of the Commission as a whole. Furthermore, there is no great difference among the member states in this respect (Thomson 2008a, 183, 186).

The Lisbon Treaty’s provisions regarding the reduction of the college were scrapped in order to assuage the people of Ireland after their initial rejection of the treaty in a referendum.

For the Commission to perform its agenda-setting function, it has to be entirely independent from the member states. In reality, however, the Commission has not always been able to live up to this standard. Unable to channel its resources to where they were needed, the Commission saw its services become, in many areas, dependent on the governments’ ideas and information. It consulted expert groups, which usually consisted of exactly the same government experts who would later also negotiate and implement the decision they had helped prepare. In addition, the Commission often staffed especially senior ranks with seconded experts from national administrations. Finally, the commissioners surrounded themselves with personal advisers, most of whom were fellow countrymen with close ties to their home country and a feeling for national sensitivities.

A number of reforms in recent years may have done away in particular with the role of cabinets as transmission belts between the Commission and national administrations, although it is still too early to assess their impact. The development of these practices often created strong conflicts between member states and the Commission and, more strongly, between the Commission’s political and administrative level. The Commission services are especially critical of the reliance on government expertise, while their proponents often argue that it is necessary to instill a sense of domestic political reality into the Commission.

The Power of Timing—Losing the Beat

The treaty rules permit the Commission to delay the submission of a legislative proposal and to withdraw it at any time to await “policy windows,” that is, situations where the constellation of preferences is more favorable to the adoption
of its preferred policy. These might be situations where conflicts among governments induce a knife-edge majority to impose the most integrationist outcome on other countries.

As the quote by Hallstein at the beginning of this chapter suggests, the Commission indeed expected to make full use of this aspect of agenda setting. However, the flip side of its control over timing is that it submits the proposal in a situation in which a government is very susceptible to domestic pressure or the majority in the Council faces difficulties accommodating a government under pressure.

Thus, to be able to exercise discretion, the governments have to find a way to collectively determine the timing of a decision. In the following sections, therefore, we focus on the practices between the submission of a legislative proposal and its actual adoption.

**Governments Set the Pace (1958–1969)**

A strong norm existed from the outset for the Commission to consult government experts during the preparation of a proposal and to keep the governments’ permanent representatives in Brussels updated about the proposal’s publication (Vertretung der BRD bei der EWG 1964b; Noël 1967a, 31).

In the early 1960s, when the Commission occasionally tried to circumvent this convention through advance publication, the governments immediately punished these attempts (Alting von Geusau 1966, 238). In 1960, for instance, Hallstein leaked a proposal on the acceleration of the completion of the customs union to the press and encouraged the European Parliament to debate it even before the governments had had the chance to discuss it (Räte der Europäischen Gemeinschaften 1960). All governments in the Council immediately rebuked the Commission and advised responsible civil servants to be more cautious, especially in their contacts with “community-skeptical” groups, that is, domestic groups opposed to economic integration (Rat der EWG 1960a, 24–27; Auswärtiges Amt 1960).

Another infringement of the norm in 1965 triggered the so-called empty-chair crisis. In response to a Commission proposal on the financing of the Common Agricultural Policy, De Gaulle decided to withdraw senior French representatives from the institutions, which resulted in the lack of a quorum and blocked the legislative process for half a year. Although he knew it would hit a raw nerve with France, Hallstein had deliberately aired the proposal without prior consultation of the Council. This course of action not only infuriated the French president but it was widely regarded as a clear “breach of etiquette” (von der Groeben 1985, 185; see also Camps 1966, 48–49; Lambert 1966, 198; Newhouse 1967, 84)—a violation of an established norm in decision making that upset not only the French delegation (Marjolin 1989, 349).
The so-called Luxembourg compromise, an unofficial understanding among the member states that resolved the crisis in 1966, notes the governments’ agreement on the significance of the norm of consultation:

Before adopting any particularly important proposal, it is desirable that the Commission should take up the appropriate contacts with the Governments of the Member States. … Proposals and any other official acts which the Commission submits to the Council and to the member States are not to be made public until the recipients have had formal notice of them and are in possession of the text. (European Communities 1966)

At the same time, the governments began to pass on legislative proposals to preparatory groups of government experts in a rapidly growing Council substructure before discussing them at the level of the Council of Ministers. The cumulative effect of all these practices was a decoupling of the official submission of a legislative proposal from its adoption in the Council. By keeping proposals in the Council’s substructure, the governments were now able to defer discussions and a decision on a legal act until domestic shock waves calmed down. The Commission was well aware of the effect of these practices and its consequent loss of this aspect of agenda-setting power. Christoph Sasse, a chef de cabinet in the Commission, describes it as follows:

Constitutional reality diverged [from the treaties. The Commission] still prepares proposals with [the] help of governmental experts; yet, if and when the Council deals with them … [it] lies only to a very little extent in the Commission’s sphere of influence. The work rhythm is thus not dependent on the Commission’s splendid programs. It depends on the progress made by national bureaucracies and the permanent representatives. (Sasse 1972, 88)

In other words, the member states had gained discretion in determining the timing of a decision. The Commission, in turn, was no longer able to await policy windows for the adoption of its legislative proposal.

The Court Turns the Tide (1970–1986)

The situation changed rapidly in 1980 when the European Court of Justice suddenly brought the European Parliament into this play. The Council gradually felt obliged over the course of the 1970s to consult with Parliament on “very important” problems that were not related to any compulsory expenses (Jacobs, Corbett, and Shackleton 1992, 179). This excluded primarily agricultural matters
that were usually tied to precommitted funds (Jacobs and Corbett 1990, 162–65). In 1973, the Council had pledged “except in cases of urgency” not to examine a proposal of the Commission on which the Parliament has been consulted until the opinion of the Parliament has been received, provided that such opinions are given by an appropriate date” (quoted in Jacobs, Corbett, and Shackleton 1992, 179, italics added). Parliamentary hearings subsequently became more frequent, particularly after the introduction of direct elections to the European Parliament in 1979 (Nord and Taylor 1979, 419; Wallace 1979, 439).

At one point, however, the Council failed to consult with Parliament on a supposedly urgent decision on an isoglucose (high-fructose corn syrup) production quota. The Parliament took legal action and the Court, in its controversial Isoglucose judgment, annulled the corresponding legal act for infringement of essential procedural requirements (European Court of Justice 1980). In other words, the Court found that the Council was not supposed to adopt a legal act until the European Parliament had formed an opinion on it. The ruling consequently turned what had emerged as an informal complaisance, the consultation of the European Parliament, into a right for the Parliament to veto decisions by delaying them indefinitely.

Thus, while the Commission had lost its capacity to await policy windows, both the Council and the European Parliament had gained discretion in timing decisions for that purpose. This also had implications for the bargaining power of both institutions in the event that one was less patient than the other. As a consequence, the judgment resulted in arduous maneuvering regarding the precise sequence of moves in decision making. The European Parliament changed its internal practices to be able to reconsider and delay amendments to the Commission’s legislative proposal (Judge and Earnshaw 2008, 39–40). In response, the Council ever more frequently took decisions “in principle” and “subject to Parliament’s opinion,” in order not to provide the European Parliament any pretense for withholding its opinion on this decision (Jacobs and Corbett 1990, 165–66). The Parliament complained that if “there is to be a genuine dialogue and if Parliament’s opinion is to be taken into consideration, the Council must stop adopting acts ‘subject to Parliament’s opinion,’ since this renders the opinion a mere formality (European Parliament 1988, 15). For the time being, this change in practice gave the Council the upper hand in determining the timing of a decision, since it avoided giving the European Parliament a reason to delay the legislative process.

Starting the Countdown (1987–1993)

This tit-for-tat between the Council and the European Parliament was brought to a halt for some time when the Single European Act codified the sequence of
moves that had emerged by introducing a second stage to the legislative procedure.

The first stage remained as before: the Commission made a proposal, Parliament rendered its opinion (first reading), and the Council made the final decision. But now this last decision turned into a preliminary Council position, which initiated the second stage with a similar sequence. Importantly, the treaty now stipulated that this second stage should be concluded within a three-month timeframe (Corbett 1998, 263).

This new procedure changed the bargaining power of each institution. Since the last stage was supposed to be concluded within a specific time frame, Parliament’s veto by delay was turned into a veto by rejection. This seemed a bad deal for the Parliament: its threat to reject a decision was less viable than its threat to delay it, because it was unlikely to reject a law that was going to enhance economic integration in its entirety.13

More relevant for the present purpose, however, is the fact that the procedure strengthened the Council’s capacity to determine the timing of a decision, since it decided when to initiate the second stage and start the three-month countdown with the adoption of its preliminary decision (Bieber, Pantalis, and Schoo 1986, 779).

**Giving the Beat (1994–Present)**

To recap, the Council’s control of the timing of a decision was based on the fact that it decoupled the submission of a proposal from its adoption by passing legislative proposals to a large informal Council substructure where they would sometimes linger for years. When the European Parliament emerged in the picture, the member states recovered their control of the timing of a decision by subjecting Parliament’s internal decision-making process to a clear timeframe.

In 1993, the Treaty of Maastricht introduced a new legislative procedure (“co-decision I”) with yet another stage—the conciliation stage—added to the process, the conclusion of which was once again subject to a three-month time limit (Bieber 1995, 62). In 1999, the Treaty of Amsterdam, however, scrapped some steps in this quite complicated procedure and had the new “co-decision II” procedure end with a less intricate conciliation procedure to be concluded within the previous time limit. This legislative procedure has gradually been extended to almost all policies that deal with economic integration and, with the entering into force of the Lisbon Treaty, even to most agricultural matters.

Although the co-decision procedure endowed Parliament with more bargaining power vis-à-vis the Council, it consolidated the Council’s control of the
timing of a decision. First, the Parliament’s internal decision-making process remained subject to a clear timeframe. Second, in the event that a conciliation committee is convened between Parliament and Council, the Commission loses its capacity to withdraw the proposal from the legislative process. As a result, the Council is in full control of the timing of a decision, because it initiates the legislative process as a whole and it starts the countdown to each deadline within the procedure.

In sum, the treaty rules initially allowed the Commission to await “policy windows” for the adoption of its preferred proposals. In fact, as the quotes by Hallstein at the beginning of this chapter and Sasse in this section suggest, the Commission initially expected to make full use of this power. However, the governments adopted a number of practices that decoupled the stages of agenda setting and decision making. In particular, the practice of passing legislative proposals to the Council substructure before discussing them at the level of the Council of Ministers allowed the member states to put off domestically controversial proposals for years. The governments also managed to defend their control of the timing of a decision against the European Parliament as it started to get involved in the legislative game. These practices invariably brought about strong conflicts between the governments, on the one side, and supranational institutions, on the other side.

**Agenda Setting in the European Union, 1958–2009**

Due to its exclusive right to set the agenda, the European Commission plays a decidedly powerful and political role in the EU’s legislative process. There are three aspects to this power: the capacity to select proposals and, by implication, bar rival ones from the agenda; the capacity to await situations that are conducive to the adoption of this proposal; and the Commission’s immunity to ad hoc influence. Because its agenda-setting power turned the Commission into the motor of integration, it represented a very strong commitment on the part of the member states to economic integration.

If we look beyond these treaty rules to actual practices, however, we see that the agenda-setting process is littered with practices of informal governance that seem to act as “brakes” to the Commission motor. This finding stands in striking contrast to standard agenda-setting models, which assume that the Commission holds invariably strong preferences for high levels of integration. It implies that before a proposal is submitted to the Council, the member states frequently
compel the Commission to take those edges off it that promise to generate extensive conflicts at the domestic level.

First, the Commission was less and less able to bar alternative proposals from the legislative agenda. This became most apparent in the late 1960s with the emergence of the European Council, which began to preset the legislative agenda in ways that were impossible for the Commission to ignore.

Second, the Commission was not entirely immune to ad hoc governmental influence. Since it was, for various reasons, difficult to channel resources into the preparation of quality legislative proposals, the Commission became increasingly dependent on governmental expertise and seconded government officials. In addition, it was also difficult to fight off national influence on internal politics, particularly within the college and via the cabinets system.

Third, the Commission gradually lost the capacity to await windows of opportunity for the adoption of its most-preferred proposals. Because governments refused to discuss proposals before their experts had had a look at them, the legislative process became, in fact, determined by the work rhythm of government experts in a massive Council substructure. When the European Parliament suddenly entered the legislative game, the governments were quick to adopt practices that would deprive it of this newly gained power.

These practices are not random. The table below visualizes the three practices of informal governance in regulatory issue areas and agriculture during the five different time periods. Each cell constitutes an individual observation where either formal or informal governance prevailed.

The table suggests that informal governance varies systematically both over time and across issue areas. In contrast to the expectations of classical regime theory, which expects informal governance to arise in response to enhanced legislative activity and the accession of new states to the EU, the practices vary mostly across issue areas and are remarkably stable over time. Contradicting power-based institutionalism, formal governance prevails on agricultural matters, which are of predictable sensitivity to a large member state. According to Liberal Regime Theory, this is because domestic pressure is easier to predict in this than in other issue areas, and it is therefore also more easily dealt with in the context of existing formal rules. Another piece of evidence that corroborates our theory is that the emergence and use of most of the practices of informal governance generated conflicts mainly between the governments and the supranational institutions, not among the governments themselves.

However, there are also clear limits to Liberal Regime Theory’s explanatory power. The European Council, for example, intervened in all issue areas regardless of their political uncertainty. The emergence and use of this informal institution
also sparked strong conflicts, especially between large and small member states. Finally, its role in legislation was, albeit ambiguously, codified in the most recent Lisbon Treaty.

In addition, Parliament’s capacity in the 1980s to delay decisions defies our predictions. This, and the European Council cannot, or cannot solely, be explained in terms of a demand for situational flexibility in order to deal with political uncertainty. Other explanations will be more fruitful to make sense of these observations.

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