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# Delegation, Comitology, and the Separation of Powers in the European Union

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## Introduction

In 1988, the European Community (EC)<sup>1</sup> and the People's Republic of China signed an Agreement on Trade in Textile Products, which set quantitative restrictions on Chinese imports into member countries.<sup>2</sup> In 1996, the European Commission (Commission), which oversees and monitors the implementation of the agreement, found that the Chinese authorities had issued export licenses for textile products that exceeded the 1995 quantitative limits agreed upon between the EU and China. As a result, the products sent from China remained blocked on entry at European customs ports. The Chinese authorities admitted that an error had occurred, mostly due to a breakdown of the computer system. But other complicating factors, especially the falsification of export licenses, also hindered the Chinese administration's ability to monitor the granting of export and import authorizations. Under the circumstances, the Chinese authorities requested the application of flexible measures by admitting the 1995 imports and reducing the 1996 quotas by an equal amount.

On 6 March 1996, the Commission called an urgent meeting of the Textile Committee, which is an oversight committee that serves under the auspices of the Council of Ministers (Council).<sup>3</sup> At that meeting, the Commission proposed to accept the Chinese solution of charging the 1995 breaches against the 1996 quotas,

1. We use European Union (EU) hereafter rather than EC, even for events occurring prior to the entry into force of the Treaty on European Union (Maastricht Treaty) on 1 November 1993.

2. The agreement was provisionally applied in the EU by Council Decision 88/658/EEC. Council Regulation 3030/93/EC on Common Rules for Imports of Certain Textile Products from Third Countries (as amended by Council Regulation 3289/94/EC) defines the system for importation into the EU of textile products originating in third countries that are linked to the EU by agreements, protocols, or arrangements, or that are members of the World Trade Organization.

3. The Textile Committee was a Regulatory III(a) Comitology Committee (see Art. 17, Council Regulation 3030/93/EC). We address the differences among the different types of comitology committees and their relation to the Commission and the Council at length later in this article.

and the Textile Committee delivered a favorable opinion on that proposal.<sup>4</sup> The Commission subsequently adopted a decision authorizing the importation of textile products from China in a quantity exceeding its allotted 1995 quota, reducing the corresponding amount of import quantities for 1996. In May of that year, Portugal brought an action for annulment of the Commission's decision before the European Court of Justice (ECJ). It claimed that the Commission did not have the authority to change the quota limits without the Council's assent and had thus violated the Council Regulation. The ECJ concurred and, on 19 November 1998, concluded that the Commission had exceeded its powers under Regulation 3030/93, and annulled the decision.<sup>5</sup>

If not for the intervention of the ECJ, the Commission and the Textile Committee, an example of a so-called "comitology" committee, might well have colluded to set policy against the Council's wishes. This conclusion is somewhat surprising, as it contradicts the textbook view that comitology committees are instruments of the Council used to restrict, not enhance, the Commission's executive powers. Indeed, comitology committees are widely regarded as key actors in the EU's unique system of delegation within the executive branch, but observers are divided as to what impact, if any, they have on policy outcomes. With this article, we seek to sort out this debate and more clearly place comitology committees within the EU's system of governance. We address three key questions: (1) Do comitology committees really exert influence over policy outcomes? (2) If so, under what conditions do they tend to favor the Council or the Commission? and (3) What are the implications of this analysis for accountability and transparency within the EU?

We show that, while the oversight process may force the Commission to moderate its proposals, overall comitology committees move outcomes toward the *Commission's* preferred policies rather than those of the Council. If, as we suggest, the EU governmental process could increase its accountability and legitimacy by moving toward a system of more separate powers—in which the Commission plays the role of the civil service bureaucracy—then comitology committees are a positive force. Indeed, they are a second-best solution, falling short only of complete Commission autonomy in implementing EU law and policies, to the problem of constrained delegation within the EU's multi-headed executive branch.

To explore this assertion, we first review the debate over comitology and detail the technical features of the different committee procedures. In the next section, we describe the model used in our analysis and present our general findings; we follow with possible extensions of the model, and conclude with a brief discussion of the implications of our analysis for delegation in the EU system of separate powers.

4. Belgium, Spain, and Greece expressed reservations because of the "size and repetitive nature of the breaches." Portugal voted against the Commission's proposal "by reason of its opposition in principle to exceptional flexibility measures and of the damage suffered by the Community industry." See EIPA May 2000 p. 50 for an overview.

5. The decision is available as C-159/96, Portuguese Republic v. Commission of the European Communities [1998] ECR I-7379.

## Separate Powers and Comitology

While a fair amount of attention has been devoted to the procedures for passing policy in the EU,<sup>6</sup> less-noticed but equally important are the procedures governing the implementation of these laws. For decades, the EU's three major governing institutions—the Commission, the Council, and the Parliament—have staged a fierce power struggle over questions of competence and influence concerning the implementation of EU acts and policies.

At the heart of the debate is the role of a number of oversight committees established by the Council to evaluate Commission proposals for implementing EU acts: over time this phenomenon has become known as “comitology.” Indeed, the legitimacy of comitology committees has become one of the most contentious issues in the current round of talks regarding EU structural reform. In this next section, we review the literature on constitutional reform in the EU, explain the function of comitology committees, and place the debate over these committees into the larger question of separate powers within the EU's governance structure.

### *Structural Reform in the EU*

The EU has grown in importance by many orders of magnitude since its inception in 1951 as the European Coal and Steel Community, adding to its portfolio: agricultural policy, health, and safety standards, harmonization of trade restrictions, and a host of other policy areas. This augmentation of EU powers has accelerated over the past decade. It began with the signing of the 1992 Maastricht Treaty and has continued with the current expansion to absorb many formerly communist states from Eastern Europe, closer coordination among member states on macroeconomic policy, and the creation of both a single currency and a common European Central Bank.

The EU's increased scope of authority has given rise to demands for greater openness and accountability in an institution often characterized as ponderous, corrupt, and secretive.<sup>7</sup> Critics recently charged, for instance, that the central European government's slow reaction to “mad cow disease” (bovine spongiform encephalopathy or BSE) worsened the severity of the disaster and weakened public confidence in the government's capacity to respond to international emergencies. The publicity surrounding Edith Cresson's removal from the Commission reinforced many observers' view that the top EU institutions are rife with corruption. And the recent Irish rejection of the Nice Treaty, even if only temporary, was fueled

6. Good overviews of the governing system of the EU are available in Keohane and Hoffmann 1991; Kirchner 1992; Hix 1999; and Nugent 1999.

7. See Moravcsik 2001 for an alternative view, arguing that the EU's policy agenda is dominated by issues that are shielded from special interests by delegation to policy experts in many other governmental systems as well.

largely by a public perception of aloofness in the manner by which treaty proponents presented the measure for ratification without justifying its particulars.

One reaction to the need for increased accountability presents itself in the literature on Europe's "democratic deficit;" that is, systemic deficiencies in representation, accountability, transparency, and legitimacy. Early essays on this topic by Helen Wallace and Joseph Weiler emphasized the secretive nature of Council deliberations,<sup>8</sup> and Giandomenico Majone discussed the vulnerability of the Commission to capture by special interests.<sup>9</sup> More recent work has focused on the need for a more substantive role for the European Parliament (Parliament)—the only directly elected branch of the EU government—in policymaking, both in the initial passing of legislation and in the oversight of bureaucratic actors through hearings and censure motions.<sup>10</sup>

Other critics note that, at a more fundamental level, the EU's lack of accountability is due mainly to its lack of a clear separation of powers.<sup>11</sup> Indeed, as we shall show, many procedures involved in passing and implementing policy are labyrinthine. Every actor seems to have a hand in every decision, and the norm of supermajorities (qualified majorities) means that multiple actors will have vetoes over even routine decisions. Hence, as Francesca Bignami and Xenophon Yataganas argue, it becomes difficult for voters to attribute any given outcome to a particular actor, and speedy action is hindered by the necessity of building supermajority coalitions at every stage.<sup>12</sup> Thus a persuasive argument can be made that the EU must more clearly delineate the responsibilities of each institution and insulate its decision-making processes from outside interference.

### *Delegated Powers within the EU Executive*

To understand how comitology committees fit into arguments about separate powers and structural reform, we first review the basics of EU policy implementation. The distribution of governing powers and responsibilities within the EU is significantly different from what we are familiar with in other advanced democracies, largely due to its uniquely supranational structure. First, the job of passing the EU's legislation has traditionally rested entirely in the hands of the Council, which is composed of ministers of the fifteen member states; and the Commission, whose twenty members are appointed by the states, has initiated new legislative and policy measures. Until relatively recently, the Parliament was a mere forum for public discussion without any real power; it was entitled only to comment on proposed EU acts and policies.

8. See Wallace 1993; and Weiler 1996.

9. See Majone 1996 and 1997.

10. See for instance Hix and Lord 1995; and Pollack 1997. Bueno de Mesquita and Stokman 1994; Tsebelis 1994; Garret and Tsebelis 1996; and Crombez 1996 and 1997 present formal models of the role of the Parliament in the EU's policy process.

11. Persson, Roland, and Tabellini 1997 contains a good overview of the literature relating separate powers and political accountability.

12. See Bignami 1999; and Yataganas 2001.

Rather than the traditional separation of powers, with the legislative branch proposing and enacting and the executive implementing laws, the EU has a two-headed executive/legislative branch that divides the responsibility of proposing and passing legislation between its constituent departments.

Second, although the implementation of EU acts falls, according to Articles 202 (ex. Art. 145) and 211 (ex. Art. 155) of the EC Treaty, by and large within the jurisdiction of the Commission, this assignment of responsibilities is subject to a number of restrictions. Article 202 (ex. Art. 145), for instance, requires that the Council formally delegate implementing powers to the Commission, which the Council is normally supposed to do; only in specific cases does it have the right to reserve implementing powers. However, a new sentence added by the 1986 Single European Act allows the Council to “impose certain requirements in respect of the exercise of these [implementing] powers,” and in specific cases, “to exercise directly implementing powers itself.”

This somewhat arcane arrangement for implementing laws has no parallel within national political systems; it is as if the procedures for U.S. Food and Drug Administration rulemaking included members of Congress and congressional committees. The EU practice is based on an inherent tension incorporated into the basic setup of the EU’s governing structure: the quest for a fair balance between the supranational element of the Union, suggesting a more independent role for the Commission in implementing the Union’s legislation, on the one hand, and the member states’ interest in maintaining control over the European policy process on the other.

The implementation of EU legislation is therefore a typical case of a principal-agent relationship: there is a delegation of power from the Council to the Commission because of huge information asymmetries—the Commission is far better-equipped with both financial resources and technical and administrative expertise than the Council.<sup>13</sup> The policy question in this situation would now be: how can the Council as the legislative principal control the Commission as its agent to minimize “bureaucratic drift,” that is, the tendency of bureaucratic agents to follow their own interests rather than those of their legislative principal?

Typical solutions to the problem of bureaucratic drift include legislative vetoes,<sup>14</sup> the authorization and appropriations process,<sup>15</sup> and the selection of top-level bureaucratic personnel.<sup>16</sup> Legislative bodies often limit drift by establishing specialized committees and subcommittees, which work as a sort of fire alarm system. Committee members do not review the bureaucracy’s work on a continuous basis

13. On principal-agent relationships, see Zeckhauser and Pratt 1991; and Milgrom and Roberts 1992. On political delegation and constraints on discretion, see Epstein and O’Halloran 1999.

14. Calvert, Moran, and Weingast 1987.

15. Weingast and Moran 1983.

16. See Calvert, McCubbins, and Weingast 1989; Spulber and Besanko 1992.

but act only on signals from outside actors, such as their constituents, interest groups, or the press.<sup>17</sup>

To square this procedural circle, the Council adopted the latter approach, establishing comitology committees as small groups of experts chosen by the Council to oversee authority delegated to the Commission. These committees are therefore, in Simon Hix's words, the "interface of the EU's dual-executive"<sup>18</sup> and as such occupy a key role in EU policy implementation. As we explain in the following section, these committees can act as a veto on the Commission, rejecting their proposals and allowing the Council to substitute its own implementation provisions under certain circumstances.

### *Comitology Committees and the Separation of Powers*

Similar to the legislative process, EU policy implementation procedures mix the roles of the Commission and Council, blurring the lines of responsibility and moving the process further from a system of separate powers. For a variety of reasons, the Commission and the Parliament have always strongly opposed the Council's practice of setting up comitology committees. They argue that the committee procedures are contrary to the institutional balance of power originally envisaged in the treaties, not only concerning the relation between Council and Commission but also as to the role of the Parliament. Since the Parliament's main supervisory powers exist vis-à-vis the Commission, any infringement of the Commission's responsibilities would at the same time violate the Parliament's right to control.

One crucial question raised by this debate is the extent of the influence exercised by comitology committees over decision making. Neither the Commission nor the Parliament disputes the establishment of committees with a purely advisory function. What they oppose are committee procedures that, they assume, give committees direct influence on policy outcomes. The Council denies this assumption, arguing that according to the design of the procedures—which provide that the issue must be referred to the Council if a committee does not support a Commission proposal—it is exclusively the Council that can directly change or veto the Commission's implementation measures.

If the Council is right, the entire comitology debate would be academic, especially in light of empirical findings showing that only in two percent of all cases involving comitology committees is a Commission proposal referred to the Council.<sup>19</sup> Interviews with Commission officials dealing with comitology committees, however, indicate that this conclusion might be premature: most of those interviewed perceive that the committees have a considerable impact on the Commis-

17. See Epstein and O'Halloran 1994 and 1995.

18. Hix 1999.

19. European Commission: Report, SEC (89), 1591 final. See also Nugent 1999, 112.

sion's decisions.<sup>20</sup> Moreover, thirty-five percent of non-amending secondary legislation adopted since 1987 contained some form of comitology procedures.<sup>21</sup>

## Comitology Committee Procedures

Before turning to a formal analysis of comitology, we summarize the various procedures under which these committees can operate. Although comitology committees have existed since the mid-1960s, the rules governing their use were only formalized in 1987.<sup>22</sup> The 1987 Decision specified three different types of comitology committee procedures: advisory, management, and regulatory committees, with two variants each for the management and regulatory committee procedures.<sup>23</sup> The three categories provide the Council with an increasing level of control over the implementation process, from the advisory committee procedure (representing the lowest) to the regulatory committee procedure (representing the highest).<sup>24</sup>

The 1999 Comitology Decision revised these procedures.<sup>25</sup> The revision of committee procedures was prompted by the Parliament's complaints that, as co-legislator with the Council, it should have an equal role in policy implementation. As we shall explain, the Parliament's role in implementation decisions was not significantly altered. However, the revisions attempted to strengthen the Commission's hand relative to the Council. To the extent that the Parliament and the Commission, as fellow supranational institutions, are more often than not allies

20. See for instance Institut für Europäische Politik 1989. The results of the study must be interpreted with caution, though, as the authors themselves acknowledge: the number of interviewed officials was relatively small, some of the officials gave contradictory answers, and sometimes it seems unclear whether they actually fully understood the questions. The study also reports that, in a large number of cases, the Commission modifies a proposal after a committee discussion; there is, however, no information about the nature and scope of these modifications.

21. Franchino 1999.

22. The first comitology committees were established in the early 1960s when the Council recognized that it lacked the resources to implement a number of regulations to organize the Common Agricultural Policy. However, it did not want to delegate the implementation power to the Commission without keeping some control. Since this initiative, the total number of comitology committees, with different structures and procedures, has grown exponentially. The Council officially defined the procedures in Council Decision 87/373/EEC of 13 July 1987 (OJ L 197, 18.7.1987, 33–35), which set forth the various means by which the Council can impose restrictions on the Commission's exercise of delegated powers. See also *Modus Vivendi* between the Parliament, the Council, and the Commission of December 1994 (OJ C 43 20.2.1995, 37). Reviews of comitology can be found in Nicoll 1987; Meng 1988; Blumann 1989; Reich 1990; Bradley 1992; Della Cananea 1990; Pedler and Schaefer 1996; and Vos 1997.

23. A fourth variation, the safeguard procedure, also exists. But because it does not require the use of comitology committees, we do not analyze it here.

24. Falke 1996 explains these procedures in detail.

25. The Council Decision 1999/468/EC of 28 June 1999 (OJ L 184, 17.7.1999, 23–26) defined the procedures for the exercise of implementing powers conferred on the Commission.

against the Council, these reforms could also be seen as strengthening the Parliament's hand in the policymaking process.<sup>26</sup>

### *Advisory Committees*

For these committees, under a procedure left unchanged in the 1999 revisions, the Commission submits a draft proposal for an implementing measure to the committee. The committee must then deliver its opinion within a certain time, set by the chair, voting by simple majority. The opinion is then recorded in the minutes. Additionally, each government can ask to report its position in the minutes. The Commission is required to "take the utmost account" of the opinion delivered by the committee, but it is not forced to follow the committee's advice. Nor is there any formal mechanism to refer any disagreement to the Council. But the Commission is required to inform the committee of the manner in which its opinion has been taken into account.<sup>27</sup>

### *Management Committees*

Under this procedure, the Commission submits a proposal to implement an EU law. The committee must then deliver its opinion (positive, negative, or no opinion) within a certain time limit, set by the chair according to the urgency of the matter. Qualified majority voting, according to weighted voting as provided in Art. 205, para. 2 (ex. Art. 148, para.2) delivers the opinion.<sup>28</sup> If the committee's opinion is in favor of the Commission's proposal or there is no opinion, the Commission can adopt and apply its measure.

If the committee delivers a negative opinion, however, the proposal is referred to the Council. The 1987 version of this procedure had two variants, (a) and (b). Under the former, the Council could adopt a different measure with a qualified majority within a one-month period, during which time the Commission could implement its own measure. If the Council did not adopt a different measure within this period, the Commission could continue implementing its own measure. Under variant (b), the Council had three months to adopt a different measure with a qualified majority, during which time the Commission was required to defer application of the measure.

26. See Hix 1999 for analysis of the policy congruence between the Parliament and Commission. We analyze the degree to which these reforms achieved their aims of increasing the Commission's control over policy in the formal model that follows.

27. This parallels most closely the practice of "notice and comment" rulemaking in the United States, under Section 553 of the 1946 Administrative Procedures Act.

28. Under current rules, a qualified majority consists of sixty-two out of eighty-seven total possible votes (or a little more than seventy-one percent). The votes are cast by weighted voting, under the apportionment Belgium: five, Denmark: three, Germany: ten, Greece: five, Spain: eight, France: ten, Ireland: three, Italy: ten, Luxembourg: two, the Netherlands: five, Austria: four, Portugal: five, Finland: three, Sweden: four, and the United Kingdom: ten. Countries are not permitted to split their votes between two proposals.



If the Council did not adopt a different measure within this period, the Commission could implement its original measure.

The basic differences between variants (a) and (b) are the period of time the Council had to adopt a different measure and the effect of the reference to the Council upon the application of the measure: under variant (a) the Commission could voluntarily defer application, while it was required to do so under variant (b). In 1999, these two variants were combined into a single procedure, in which the Commission may now immediately implement its version, and the Council has three months to act, thus strengthening the Commission's prerogatives vis-à-vis the Council.

### *Regulatory Committees*

Under this procedure, the Commission must submit the proposal for an implementing measure. The committee delivers its opinion by a qualified majority vote within a certain period of time, set by the chair according to the urgency of the matter. If the committee's opinion supports the Commission's proposal, the Commission may adopt and apply the measure immediately. If the committee delivers a negative opinion or no opinion, the Commission must send its proposal to the Council, and the Commission cannot apply the measure at this stage.

Under variant (a) in the 1987 rules (the so-called "filet-procedure" or "safety net"), the Council had three months to adopt a different measure with a qualified majority; if it did not do so, the Commission could adopt and implement its proposal after these three months.<sup>29</sup> Under variant (b) (the so-called "contre filet-procedure," or "double safety net"), the Council had the additional option of rejecting the Commission's proposal with a simple majority, which would force the Commission to prepare a new proposal and start the ratification process again.

As with the management procedures, the 1999 Decision collapsed these two variants into one. Under the new system, if the comitology committee does not approve of the measure, then the Council can only veto the measure by qualified majority vote, or it can adopt its own version of the measure with a unanimous vote.<sup>30</sup> Although this seems to represent a significant step in the direction of protecting the Commission from Council control, our game-theoretic analysis will show that matters are far from clear in this regard.

The basic difference between the 1987 and 1999 versions, then, is that the process has now been streamlined. With the two variants of the regulatory and management committees collapsed into one, and the Council's ability to delay policy implementation—or, in the case of the regulatory committee, enact its own policy over the

29. See Hofmann and Töller 1998 for a different interpretation of the Regulatory Committee procedure.

30. Although the regulations do not explicitly mention the possibility of unanimously overriding the Commission, this is the default procedure under the EC Treaty. We thank Kieran Bradley for clarifying this point.

Commission's objection—was severely hampered. Interestingly, the 1999 Decision also specified the policy areas appropriate for each type of procedure:

1. Management measures, such as those relating to the application of the common agricultural and common fisheries policies, or to the implementation of programs with substantial budgetary implications, should use the management procedure;
2. Measures of general scope, including measures concerning the protection of the health or safety of humans, animals or plants, should be adopted by use of the regulatory procedure;
3. Where a law stipulates that certain of its non-essential provisions may be adapted or updated by way of implementing procedures, such measures should be adopted by use of the regulatory procedure; and
4. The advisory procedure should be followed in any case in which it is considered to be the most appropriate procedure; it will be used in those cases where it currently applies.

## The Policy Implementation Game

The details of the different regulatory committee procedures make it clear that there is ample scope for strategic action by each player. When a comitology committee votes on a Commission proposal, it does so anticipating the Council's likely response should it have the opportunity to act. And the Commission will likewise strategically formulate its proposal looking ahead to both committee and Council actions. Thus the problem at hand is a good candidate for game-theoretic analysis, in which all these strategic variables can be systematically analyzed and their implications for policy outcomes carefully drawn out.

We proceed in two broad steps. We first develop a basic form of the game that captures the most important features of the comitology committee process. In the next section, we add the possibility of a Council veto over Commission proposals and explicitly compare outcomes under the 1987 and 1999 procedures. We concentrate our analysis on the management and regulatory procedures, since the advisory committee procedure obviously excludes the possibility for the committee to directly influence policy outcomes.

### *Players and Strategies*

The game has three players: the Commission (C), a comitology committee (E), and the Council (M). All players have Euclidean preferences along a one-dimensional policy space  $X = \mathfrak{R}^1$  with ideal points  $x_i$  as represented in Figure 1. For all  $i \in \{C, E, M\}$  and proposals  $x \in X$ ,  $u_i(x) = -(x - x_i)^2$ . For simplicity, assume that all ideal points fall within the  $[0, 100]$  interval, with lower values of  $x$  representing a

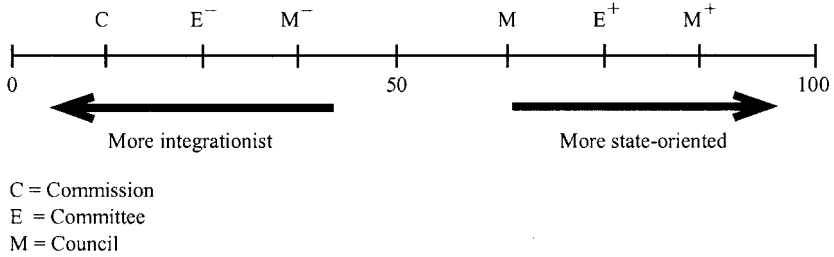


FIGURE 1. Sample arrangement of ideal points and qualified majorities

more integrationist approach with common regulatory standards, and higher values a state-oriented approach that allows individual countries to keep their own, even low-level standards. The Commission is represented by its median voter ideal point  $C$ . We assume the committee and Council have qualified majority points at  $E^-$ ,  $E^+$ ,  $M^-$ , and  $M^+$ , respectively, where, for example, the number of committee voters between 0 and  $E^+$  constitutes a qualified majority, as do the voters between  $E^-$  and 100. Without loss of generality, assume that  $C < M^+$ . The committee will be represented by its pivotal voter, which will be denoted  $E$  in general, under the management committee procedure  $E = E^-$ , and under the regulatory committee procedure  $E = E^+$ .

We assume the players have complete information; that is, the players' preferences, proposals, and votes are common knowledge. The game consists of a single round with the following decision-making sequence: first, the Commission elaborates a proposal  $x$  for an implementing measure, which is then referred to the committee. The committee then votes on the proposal. Under the management committee game, if a qualified majority votes against the proposal, it will be referred to the Council; otherwise, the proposal is implemented. Under the regulatory committee game, the proposal will be implemented only if a qualified majority votes for the proposal; otherwise, the proposal is referred to the Council.

If a measure is referred to the Council, it proceeds under a random recognition bargaining game with the Commission proposal as the initial status quo.<sup>31</sup> Each member is recognized with equal probability and can then either propose a new measure or propose to end the game by moving the previous question. When a vote is taken, the current status quo is defeated only if a qualified majority votes for the alternative. In the regulatory committee game, a member can also propose to veto the Commission's measure and start the game over again. The game continues in this fashion until a motion to end the game passes or the Commission's measure is vetoed. If the Council does not adopt a new measure or veto the current proposal,

31. This is modelled after Baron and Ferejohn 1989. Steunenberg et al. 1996 analyze a similar game to ours, but they assume that the outcome of Council deliberations is to always choose  $M^-$ , independent of the Commission proposal.

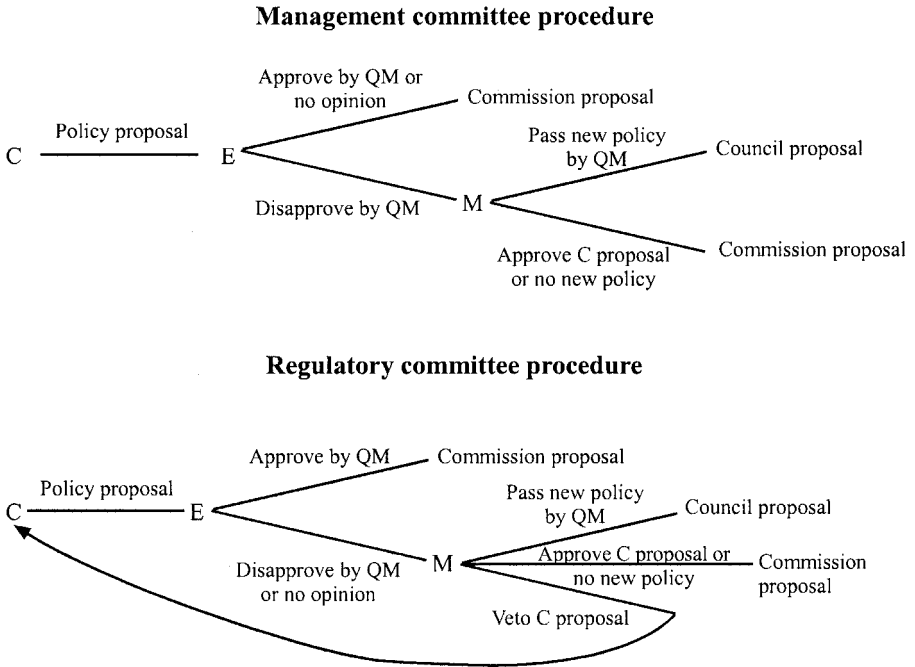


FIGURE 2. Game trees for management and regulatory committee procedures

the Commission’s measure will prevail. Figure 2 depicts the decision sequence with all possible outcomes.

The strategies available to each player are as follows. For the Commission, a strategy is a proposal  $x \in X$ . For a committee member, a strategy is a function  $r: X \rightarrow [0,1]$ , where  $r_j(x)$  is the probability that committee member  $j$  votes in favor of proposed policy  $x$ . For the Council members, strategies are a bit more complicated. Let  $H_t$  denote the set of all histories of the game that could arise up to time  $t$ . Then Council member  $i$ ’s strategy consists of a function  $s_{it}: H_t \rightarrow X$  if that member is called upon to make a proposal at time  $t$ ;  $s_{it}: H_t \rightarrow \{X, PQ\}$  if a member can either make a new proposal or move the previous question; and  $s_{it}: H_t \rightarrow \{yes, no\}$  if a vote is taken at time  $t$ . If the regulatory committee game is being played, then a proposer may also propose a veto of the Commission measure or move. The equilibrium concept used is subgame perfect, where players use only stationary and weakly undominated strategies.

*General Solution*

The game is solved using backward induction. Note that if the committee did not exist and Commission proposals were referred directly to the Council, the Commission would propose  $M^-$  whenever  $C \leq M^-$  and propose  $C$  otherwise.

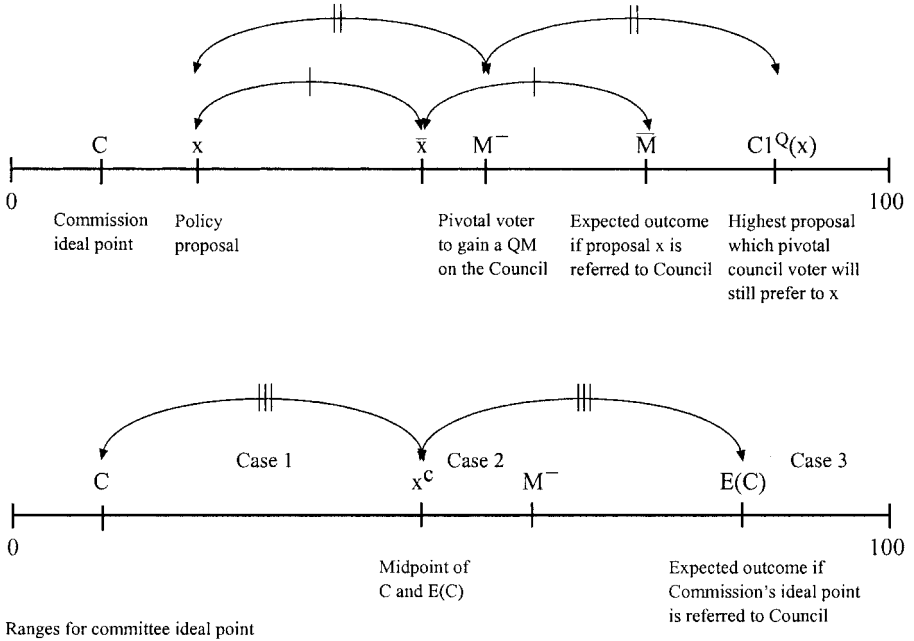


FIGURE 3. Key points in equilibrium analysis

Assume then that the Commission proposal falls outside of  $[M^-, M^+]$ , and Council member  $i$  is recognized to make a proposal. Then it makes no sense for  $i$  to propose any alternative outside of  $[M^-, M^+]$ , as this cannot be the final outcome even if it is preferred to the current status quo. Rather, member  $i$  will prefer to offer the closest policy to the ideal point that is within the range  $[M^-, M^+]$  and can defeat the present status quo. To be precise, assume the status quo  $x$  is less than  $M^-$ , in which case the point  $M^- + (M^- - x) = (2M^- - x) \equiv \hat{x}$  represents the mirror image of  $x$  on the other side of  $M^-$ , as Figure 3 shows. Then member  $i$  will propose the most-preferred alternative within the range  $[M^-, \hat{x}]$ , which we term:

$$y_i^*(x) = \operatorname{argmax}_{y \in [M^-, \hat{x}]} u_i(y). \tag{1}$$

Now go back one step to the committee stage. The pivotal player on the committee must decide whether or not to send the Commission proposal  $x$  to the Council. We know that if  $x \in [M^-, M^+]$ , then  $x$  will be the final outcome, and there is no reason to involve the Council, so assume again that  $x < M^-$ . Then, given the equilibrium Council strategies above, the expected outcome given a distribution of Council ideal points  $f(i)$  and proposal  $x$  is:

$$\begin{aligned} \bar{M} &= \int_0^{100} y_i^*(x)f(i)di & (2) \\ &= \int_0^{M^-} M^-f(i)di + \int_{M^-}^{M^{Q(x)}} if(i)di + \int_{\hat{x}}^{100} \hat{x}(x)f(i)di, \end{aligned}$$

which, if we let  $f(i)$  be uniform, simplifies to

$$\bar{M} = \frac{3(M^-)^2 + 2\hat{x} - \hat{x}M^- - \hat{x}^2}{2}. \tag{3}$$

Figure 3 illustrates this point. Note that when  $x = M^-$ ,  $\bar{M} = M^-$  as well. Furthermore, it is easy to show that if  $\bar{x}$  is the midpoint  $\frac{x + \bar{M}}{2}$ , then  $\frac{d\bar{x}}{dx} > 0$ , meaning that as  $x$  falls below  $M^-$ , so does the point of indifference between  $x$  and  $\bar{M}$ . Then the pivotal voter on the committee with ideal point  $E$  will rationally approve any proposal that is preferred to  $\bar{M}$ , so that  $|E - x| \leq |E - \bar{M}|$ ; if  $E$  is to the left of  $\bar{x}$  the committee votes for  $x$ , otherwise it will refer the matter to the Council. In other words, the committee will let the Commission proposal stand if the pivotal voter prefers that proposal [ $x$ ] to what the Council would be expected to pass, if given the opportunity  $[\bar{M}]$ .

Finally, we can describe the Commission’s optimal strategy. Taking into account the actions of the committee and the Council, the Commission will offer the policy that is closest to its ideal point yet will not induce the committee to refer the bill to the Council.<sup>32</sup> Specifically, there are three cases to consider. First, define

$$x^C = \frac{C + E(C)}{2}, \tag{4}$$

so that  $x^C$  lies midway between the Commission’s ideal point and the expected outcome if a status quo of  $C$  were referred to the Council, as the bottom half of Figure 3 shows. If the pivotal committee voter had an ideal point of  $x^C$ , she would be just indifferent between accepting a proposal embodying the Commission’s ideal point and referring that proposal to the Council. Then there are three possibilities to consider in the analysis: (1)  $E \leq x^C$ , (2)  $x^C \leq E \leq M^-$ , or (3)  $M^- \leq E$ .

In case (1), the committee’s preferences are relatively similar to those of the Commission. This indicates that the Commission can implement its ideal point,

32. This is the typical outcome in situations with the possibility of an *ex post* veto; see for instance Romer and Rosenthal 1978; Ferejohn and Shipan 1990; and Epstein and O’Halloran 1994.

confident that the committee will not refer the matter to the Council. In case (3), the pivotal committee voter is even less integrationist than the Council. Here, the Commission is best off proposing  $M^-$ , as any proposal less than  $M^-$  will be referred to the Council, with an expected policy outcome of  $\overline{M} > M^-$ . Case (2) represents an intermediate outcome, in which the Commission will offer a proposal that makes the committee just indifferent between referring the matter to the Council or not. We label this proposal as:

$$X^E: \frac{x^E + E(x^E)}{2} = E. \tag{5}$$

These findings are summarized in:

PROPOSITION 1: Let  $y_i^*(x)$ ,  $\overline{M}$ ,  $x^C$ , and  $x^E$  be as defined in equations (1), (3), (4), and (5) above, and let  $x_i$  be the ideal point of Council member  $i$ . Then equilibrium strategies for all three players are given by:

1.  $x = \begin{cases} C & \text{if } C \geq M^- \text{ or } (C \leq M^- \text{ and } E \leq x^C), \\ x^E & \text{if } C \leq M^- \text{ and } x_C \leq E \leq M^-, \\ M^- & \text{if } C \leq M^- \text{ and } E \geq M^-; \end{cases}$
2.  $r^*(x) = 1$  if  $|E - x| \leq |E - \overline{M}|$ , and 0 otherwise;
3.  $s_i^*(x) = y_i^*(x)$  whenever member  $i$  is proposing;
4.  $s_i^*(x; y) = \text{yes}$  if  $|x_i - x| \leq |x_i - y|$ , whenever member  $i$  is voting between  $x$  and  $y$ .

## Results and Extensions

### *The Impact of Committees on Policy*

Table 1 summarizes the equilibrium stated in Proposition 1. The first column gives the preferences of the relevant players, with four cases to consider. The second through fourth columns show, respectively, the equilibrium outcomes of the game if the Commission could act unilaterally, if the Commission were subject only to Council oversight, and if the Commission were subject to oversight by both the Council and a comitology committee. The fifth column shows the equilibrium decision by the committee on whether or not to refer the proposal to the Council, and the last two columns show the changes to the Commission proposal due to Council and committee oversight, respectively. A negative sign in these columns means that the outcome moves away from the Commission’s ideal point, while a positive sign means that outcomes move toward the Commission’s preferred policy.

In the first case, the Commission is able to enact its ideal point and neither Council nor committee oversight affects policy. This happens because the Commission is relatively moderate, and no qualified majority on the Council can

TABLE 1. Comparison of outcomes

Preferences	Outcomes			Refer?	Impact	
	C only	C and M	C, M, and E		M	E
1. $C \geq M^-$	C	C	C	No	0	0
2. $C \leq M^-$						
(a) $E \geq M^-$	C	$M^-$	$M^-$	No	—	0
(b) $x^C \leq E \leq M^-$	C	$M^-$	$x^E$	No	—	+
(c) $E \leq x^C$	C	$M^-$	C	No	—	+

overturn the Commission proposal. Preferences are basically aligned, and the Commission reaps benefits from having the first mover advantage, coupled with the supermajority requirement for the Council to overturn its proposal.

In the second case, both oversight bodies have relatively similar preferences, and so the Commission must accommodate the Council by setting policy at  $M^-$ . This impact is entirely due to the Council’s ability to change the Commission’s proposal: the comitology committee has no extra effect on outcomes.

In the last two equilibria, the pivotal voter on the committee has preferences near those of the Commission, so they in effect conspire to set policy nearer the Commission’s ideal point rather than send the proposal to the Council. If the Commission were subject only to Council oversight, even by a qualified majority, it would be forced to moderate its proposal to get Council approval. The effect of committee oversight in this case is to shield the Commission from the Council’s watchful eye, allowing a proposal to go through that the Council might strenuously object to, much as in the Chinese textile case we cited at the beginning of this article.

As the game is actually played, no measure is ever referred to the Council. So we see here that the committee system can change policy decisions via the law of anticipated reactions, even if the possibility of striking down Commission regulations is never used.<sup>33</sup> The committee may thus exercise power over the Commission by the threat of referring a proposal to the Council, thereby forcing the Commission to accommodate the committee’s preferences to avoid an even more unfavorable policy outcome.

The central conclusion, as the last column of Table 1 shows, is striking: relative to Council oversight alone, the committee procedures, if they have any effect at all, *move outcomes closer to the Commission’s ideal point*. If the Council were directly overseeing the Commission, then implementation proposals would have to appease

33. This is a common theme in the U.S. politics literature on bureaucratic oversight. See McCubbins and Schwartz 1984; Calvert, Moran, and Weingast 1987; and Epstein and O’Halloran 1995.



the Council's preferences, lest they be struck down or modified. But the comitology committee can prevent the Council from ever acting directly on the proposal, thus allowing for the possibility of the committee and Commission jointly agreeing on an implementation measure that the Council would never approve, given the chance.

This counterintuitive result is typical of hierarchical oversight games; the middle layer of oversight can often mitigate the impact of the outer layer, allowing the agent to choose whom to accommodate. Paradoxically, more oversight means less control. Thus the Commission, and by extension the Parliament, might actually welcome the presence of comitology committees in the policymaking process, as they give the Commission more leverage in its bargaining vis-à-vis the Council. We summarize this finding as follows.

*COROLLARY 1: Let  $\Gamma_E$  be the game analyzed in Proposition 1 with a comitology committee, and let  $\Gamma_M$  be the same game with direct Council oversight and no committee. Further, let  $x^*(\Gamma; C, E, M, \bar{M})$  be the equilibrium outcome to game  $\Gamma$  given player ideal points  $C, E$ , and  $M$  and expected Council outcome  $\bar{M}$ . Then*

$$x^*(\Gamma_E; C, E, M, \bar{M}) \leq x^*(\Gamma_M; C, E, M, \bar{M})$$

*for all  $C, E$ , and  $M \in \mathbb{R}^1$  and all  $\bar{M} \in [M^-, M^+]$ . So the Commission is weakly better off with a comitology committee than without.*

### *Management Versus Regulatory Committees*

The results so far indicate that if comitology committees have any impact on policy, they allow the Commission to move outcomes closer to its ideal point. This general finding encompasses all varieties of committee procedures, since the exact values of  $E$  and  $M$  were left open in the statement of Proposition 1.

Recall, though, that the management and regulatory procedures have different standards for referring matters to the Council; in the management procedure, the pivotal committee actor is  $E^-$ , and in the regulatory game it is  $E^+$ . The regulatory game also includes the possibility of a Council veto; we examine the impact of this procedure in the following subsection. We now examine the impact of changing the committee's ideal point on policy outcomes; that is, how do equilibrium proposals react to more integrationist or more nationalist committees?

The answer this time is more intuitive: the more state-oriented (less integrationist) the committee, the more constrained is the Commission in promulgating regulations. The logic is that the Commission is helped in its struggle with the Council only to the degree that it can find common cause with the comitology committee. As the preferences of the committee and the Commission become more dissimilar, this possibility becomes less likely. So the conventional wisdom accords with the findings of our formal model in this instance: regulatory committees are more constraining than are management committees. We summarize this finding in:

COROLLARY 2: Let  $x^*(\Gamma_E; C, E, M, \bar{M})$  be as defined in Corollary 1. Then

$$E_1 > E_2 \text{ f } x^*(\Gamma_E; C, E_1, M, \bar{M}) \geq x^*(\Gamma_E; C, E_2, M, \bar{M}),$$

so that the Commission weakly prefers a more integrationist committee, and prefers management to regulatory committees.

*Council Vetoes*

We next discuss the possibility of the Council using its veto power in the regulatory committee procedure. It would seem that the power to reject a Commission proposal, rather than only being able to pass a new policy, would increase the Council’s power at the Commission’s expense. But by carefully examining the logic of policymaking under delegation, we show that just the opposite is true: vetoes strengthen the Commission’s hand due to the presence of the comitology committees.

To see why, solve the game again by backward induction, but allow for the possibility of a Council veto. Say that a Commission proposal  $x$ , lying outside the range  $[M^-, M^+]$ , is referred to the Council. In equilibrium, it may be that a majority would never veto this proposal, in which case veto power makes no difference in the final outcome. But assume for the moment that if a Council member who was quite opposed to  $x$ , say a member with an ideal point near 100, were recognized, she would propose a veto and half the Council would support her.

When could such a set of strategies be part of an equilibrium? Assuming stationarity, the Commission and committee will take the same actions the next period as they did in the present period, and the proposal referred to the Council will remain unchanged. Therefore, the Council would exercise its veto if half of its members prefer a new draw of a proposer to the one that was selected this round. For example, given that players with ideal points  $50 < M^+$  and above will veto if given a chance, the expected outcome from the Council’s deliberations is:

$$\bar{M} = \int_0^{M^-} M^- f(i) di + \int_{M^-}^{50} (x_i + \delta_i) f(i) di, \tag{6}$$

where the  $\delta_i$  terms are non-negative shift parameters used to induce certain members not to invoke the veto. Comparing this expression term by term with its counterpart in the previous section in equation (2), it is clear that the veto can only increase the expected outcome from Council action as Figure 4 shows, where  $E_{NV}(x)$  stands for the expected Council outcome without a veto, and  $E_V(x)$  is the expected outcome with a veto.

This is the catalyst of a chain reaction. If the committee was indifferent between the original proposal  $x$  and  $E_{NV}(x)$ , then it will now strictly prefer the Commission

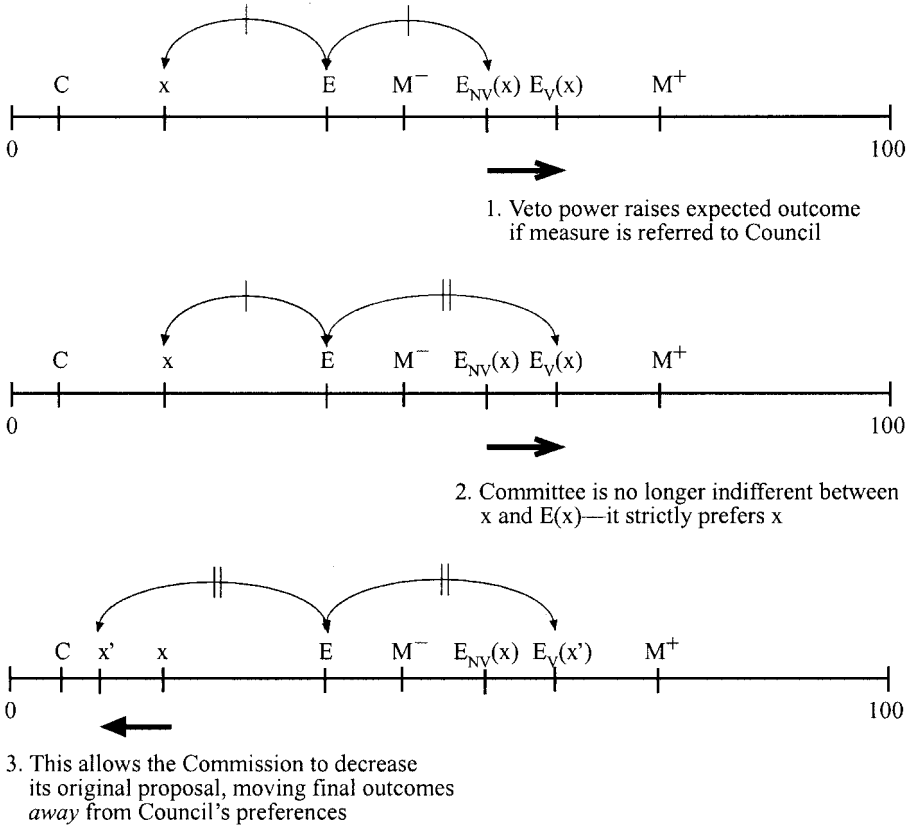


FIGURE 4. Change in equilibrium with Council veto

proposal  $x$  to  $E_V(x)$ . And then the Commission will lower its proposal to  $x'$ , so that the committee is again indifferent between the proposal  $x'$  and  $E_V(x)'$ .

Paradoxically, this new policy  $x'$  is closer to the Commission's ideal point and further from the Council's. Figure 4 illustrates this logic.<sup>34</sup> Of course, the adjustments shown in the figure do not happen sequentially—in equilibrium the Commission will simply propose  $x'$ , which will not be referred by the committee to the Council. This leads to:

34. As the figure shows, two circumstances must hold for the veto to have any impact on policy: the Council would veto the current proposal, and the players' preferences correspond to case (2b) in Table 1, where the Committee is just indifferent between referring the Commission's proposal to the Council or not.

COROLLARY 3: Let  $x^*(\Gamma_E; C, E, M, \bar{M})$  be as defined in Corollary 1. Then

$$\bar{M}_1 > \bar{M}_2 \text{ f } x^*(\Gamma_E; C, E, M, \bar{M}_1) \geq x^*(\Gamma_E; C, E, M, \bar{M}_2),$$

so if the Council veto affects equilibrium policy, it will move outcomes away from those preferred by Council members.

This is another example of an actor's power working against the actor—the Council's power to veto a proposal means that actual outcomes move further from the median Council member's ideal point. This counterintuitive result is partly due to the Commission's monopoly agenda-setting power, and partly due to the fact that the Council does not oversee the Commission directly, but rather works through intermediary comitology committees. Thus attempts to exercise greater control over the Commission through vetoes may boomerang, strengthening the alliance between the Commission and the committee, who act in concert to the Council's detriment.

### *The Impact of the 1999 Reforms*

Relative to these results, what changes should the 1999 reforms—known as "Comitology II"—have on outcomes? Whose hand would be strengthened? Recall that these reforms came at the behest of Parliament, which was agitating for a more direct role in the policy process or, at the least, more insulation for the Commission from outside interference.

The advisory committee procedures were left basically unchanged in the 1999 reforms; as before, no body has a real check on the Commission's implementing powers. And the management committee procedures were changed only to allow immediate Commission implementation and give the Council three months to formulate a counterproposal should a qualified majority of the committee vote against the proffered implementing procedures. Although these changes may work to the Commission's advantage, since the sequence of proposals and votes remains the same as before, they will have no impact on the results presented in Proposition 1.

This leaves the regulatory committees, in which the rules were changed from a qualified majority override and simple majority veto, to unanimous override and qualified majority veto. Both possible Council actions became harder to implement; surely this should work to the Commission's advantage.

Such was apparently the logic of those who devised the new procedures, but our model shows that the answer may be just the opposite. After the arguments of the previous section, the reason for this should be clear: the new regulatory committee procedures will lower both  $M$ , the ideal point of the pivotal Council voter, and  $\bar{M}$ , the expected outcome should a proposal ever be referred to the Council. These changes work in opposite directions. First, as Table 1 shows, lowering  $M$  means that the Commission may be able to move outcomes closer to, or even exactly to, its ideal point without the worry of a Council override, and this is beneficial from the Commission's point of view. But second, as we saw in the previous subsection,

lowering  $\overline{M}$  works against the Commission, giving it less common ground with the committee and therefore giving it less leeway in setting implementing procedures. By weakening its veto powers, the Council actually increases its leverage over policy, making it less attractive for the committee to throw its lot in with the Commission. Thus the overall impact of the reforms is ambiguous; they may help the Commission in certain cases and hinder it in others. Once again, the value of formal modeling is apparent; results that seem obvious turn out to be far from straightforward.

## Discussion

Our formal model of comitology demonstrates that the oversight process has a significant impact on policy outcomes by forcing the Commission to modify its proposals. Commission members will rationally anticipate the actions of both the committee and the Council, and they may strategically scale back their recommendations to avoid being overturned by the Council. In equilibrium, though, the Commission's proposal will never be overturned or even referred to the Council, which corresponds to the empirical observation that Commission proposals rarely reach the Council.

On the other hand, the dynamics of this process have been misunderstood, insofar as comitology committees have been accused of subverting the Commission's policies. In fact, relative to a situation where Commission proposals are referred directly to the Council with no intervening committees, the comitology committees move outcomes closer to the *Commission's* (more integrationist) preferences, and away from the Council's. Thus we show that the committees are an instrument of greater, rather than less, integration in the EU.

Similarly, we found that vetoes would restrain the Commission if the comitology committees were not present. But given the current institutional arrangement, the veto will only make committees more reluctant to refer proposals to the Council, thus strengthening the Commission's hand in the policy bargaining game.

Two possible extensions of our model suggest themselves as topics for future investigation. First, the makeup of the comitology committees is taken as a given here, but could instead be modeled as a noncooperative game among the member states. Some anecdotal evidence exists suggesting that such strategic appointments do take place; for instance, the current coalition Austrian government contains both pro- and anti-nuclear factions, but its relevant comitology committee contingents were selected to have only clear anti-nuclear representatives. Second, the assumption of complete information might be relaxed to emphasize the signaling role of comitology committees. Some EU officials, for example, have claimed that in practice the Commission tries to secure a unanimous committee vote in favor of its

proposal; this may be the equivalent of bipartisan support in U.S. congressional committees.<sup>35</sup>

Even though our analysis indicates that comitology committees strengthen the separation of powers in the EU, the nagging questions of accountability and legitimacy remain. Whatever impact the committees have on policy, their status as unelected officials inserted into the decision-making process casts a cloud over the policies that emerge from that process. In areas such as environmental and health protection or consumer safety, the Commission is entrusted with the adjustment of emission standards or with the setting of testing requirements for possibly harmful substances, but this rule-making power is usually subject to a committee procedure. In the case of the BSE crisis, for example, who exactly was responsible for the, as some claim, too-hesitant initial measures undertaken by the Community: the Commission or the comitology committees involved in the process?

Finding meaningful alternatives to the current comitology system, in particular with respect to risk regulation, is certainly no easy task. The most obvious solution is to shift all implementation power to the Commission, greatly strengthening the democratic legitimacy of the process. Another avenue worth considering might be the establishment of independent agencies for the most crucial areas, such as environmental protection, health, and consumer safety. These independent agencies would combine a high level of technical expertise with procedures that allow for widespread public participation, oversight by elected officials, and accountability of the agency to its original mandate.

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35. See, for example, the analysis in Epstein 1998.

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