The Engines of Integration?
Supranational Autonomy and Influence in the European Union

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Abstract

The supranational organizations of the European Community--the Commission, the Court of Justice, and the European Parliament--are often depicted as the engines of the integration process, nudging the member states toward ever-deeper integration. This paper suggests that the role of supranational organizations in the integration process is best understood in terms of principal-agent analysis, which suggests that the autonomy and influence of supranational organizations varies as a function of four key variables: the preferences of member governments, the institutional decision rules governing EC policymaking, the distribution of information between supranational organizations and member governments, and the possibility of transnational coalitions between the organizations and interest groups within the member states. Case studies of the Commission's executive functions in structural policy, competition policy and external trade policy suggest that the Commission can serve, and has served, as the engine of the integration process in these issue-areas, but only within the limits established by the four aforementioned factors, and by its changing relationship with the European Court of Justice.

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The notion that the EC's supranational organizations might act as the "engines" of the integration process is not a new one[1]. Indeed, the phrase derives from the neofunctionalist literature of the 1950s and the early 1960s, which predicted that the EC's supranational organizations--the Commission, the Court of Justice, and the European Parliament--would act as a sort of vanguard, nudging the member governments of the Community towards deeper and deeper integration. Later, however, during the late 1960s and 1970s, intergovernmentalists argued that the member governments of the Community remained very much in control of the process of integration through its intergovernmental bodies, namely the Council of Ministers and the European Council, thereby limiting the ability of supranational organizations to drive forward the integration process. During this period, neofunctionalist predictions about the causal importance of supranational organizations seemed to have been falsified, and students of the EC turned their attention to the process of intergovernmental bargaining in the Council.

Since the relaunching of European integration in the 1980s, however, the debate on the causal role of these organizations has been reopened with regard to all three major EC organizations: the Commission (Sandholtz 1992; Moravcsik 1995); the European Court of Justice (Stein 1981; Weiler 1991; Burley and Mattli 1993; Stone 1995; Alter 1996; and Mattli and Slaughter 1995), and the European Parliament (Tsebelis 1994, 1995; Tsebelis and Kreppel 1995; Stephen 1995; Garrett and Tsebelis 1996). In this paper, I explore the autonomy and the influence of the EC's supranational organizations, and the extent to which they can indeed act as

[1] Throughout this paper, I distinguish between EC <u>institutions</u>, which establish the general decision rules for policymaking and institutional change, and EC supranational <u>organizations</u>, which are collective actors operating within the Community's institutional system. For a good discussion, see North 1990, especially p. 5.

engines of the integration process, focusing in particular on the executive activities of the European Commission. In terms of the larger project of this volume, my primary emphasis is on supranational organizations and the extent to which they can drive the integration process along the continuum between an intergovernmental and a supranational polity. In addition, as we shall see, two of the other aspects of the project's continuum, namely rules and transnational actors, turn out to be important determinants of the autonomy and influence of supranational actors like the Commission.

I begin in the first section with a theoretical discussion of the role of supranational organizations in the integration process, examining both the preferences of supranational organizations, and their autonomy and independent causal influence, which I argue is best understood in terms of principal-agent analysis (for a similar analysis of the Court, see Stone Sweet and Caporaso, this volume). I then generate some basic hypotheses about the variables which may explain variation in the autonomy and influence of supranational agents such as the Commission, Court of Justice and European Parliament. I also discuss the difficulties of empirically testing these hypotheses, arguing that superficial quantitative studies are unlikely to capture the nuances of variation in the autonomy and influence of supranational organizations, and that careful case-study analysis is therefore imperative. In the second, third, and fourth sections of the paper, I turn to the empirical record of the Commission's activities in the areas of structural policy, competition policy, and external trade policy, respectively, in order to illustrate the complex interaction among the Commission and the member governments, as well as with the other supranational organizations and transnational constituencies which establish the context for Commission autonomy and influence. I conclude by arguing that the EC's supranational organizations can serve, and have served, as the engines of the integration process, but only within the limits established by the preferences of the member governments, by the decision rules governing their conduct, by their possession of information, and by their ability to manipulate transnational coalitions. Supranational autonomy and influence, I argue, is not a simple binary matter of "obedient servants" or "runaway Eurocracies," but rather varies along a continuum between the two points, as we shall see below.

Theorizing Supranational Preferences, Autonomy, and Influence

The Preferences of Supranational Organizations

In retrospect, the neofunctionalist concept of the EC's supranational organizations as engines of the integration process relied on two fundamental assumptions. The first of these assumptions concerns the preferences of supranational organizations. As a first approximation of supranational preferences, a number of theorists have adopted the assumption of supranational organizations as "competence-maximizers" which seek to increase both their own competences and more generally the competences of the European Community (Cram 1993; Majone 1994; Pollack 1994); and a similar view of supranational preferences was implicit or explicit in much of the neofunctionalist literature. Ross puts it most succinctly, arguing that supranational organizations like the Delors Commission seek "more Europe" (Ross 1995, p. 14). There are a number of reasons why such organizations might adopt a pro-integration or competence-maximizing agenda, including self-selection of personnel for the European organizations, socialization of members within the organizations, or simply bureaucratic politics. Whatever the source of their pro-integration preferences, however, it seems clear that the Commission, the Court of Justice, and the European Parliament have indeed pursued a broadly pro-integrationist agenda throughout the history of the EC.

As Hix and others point out, however, actor preferences are multi-dimensional, concerning not simply the question of integration but also other dimensions such as environmental protection, consumer protection, and the neoliberalism vs. interventionism cleavage that has characterized much of the Community's history (Hix 1994; Hooghe and Marks 1996). On these issues, the preferences of supranational organizations like the Commission are less consistent and less predictable than along the integration dimension. The reason, as a number of authors point out, is that the Commission itself is not a monolithic actor, but itself a complex "multi-organization," consisting of (a) an essentially political college of Commissioners headed by a President as "first among equals" and (b) an essentially administrative civil service divided up into Directorates-General (DGs) and Services, which possess differing and often contradictory preferences on various issues (Cram 1994; Ross 1995). As we shall see below, for example, the Commission is frequently split between the relatively interventionist Commissioners and DGs responsible for industrial and technology policies, and the more laissez-faire Commissioners and DGs responsible for competition and commercial policy. Under these circumstances, the substantive preferences of the Commission, and of other supranational organizations, is the result of the internal politics of each organization. Hence, theorizing deductively about the preferences of supranational organizations outside the integration dimension is exceedingly difficult, and most case studies have simply treated these preferences as an object of empirical study rather than theoretical prediction, as I will do in the case studies presented below.

Delegation and Agency

The second assumption underlying the concept of supranational organizations as the engines of integration is the claim that supranational organizations are actually autonomous in the pursuit of their preferences, and can exert an independent causal influence on policy outcomes. My central argument in this chapter is that the autonomy and influence of supranational organizations can best be understood in terms of rational choice models of principal-agent interaction.

In the standard principal-agent model of delegation, an actor or set of actors, known as the principals, may choose to delegate certain functions to another actor or actors, known as agents. However, this initial delegation of authority immediately raises a problem for the principals: What if the agent behaves in ways that diverge from the preferences of the principals? Agents might behave in this way, the literature suggests, for two reasons. First, the agent may use its delegated powers to pursue its own preferences at the expense of the principals, a process known as "shirking." Second, the agent may, as a result of the structure of delegation, be subject to perverse incentives to behave in ways contrary to the aims of the principals, a process known as "slippage." Although both shirking and slippage are likely to create losses for the principals, the principal-agent literature in political science has focused primarily on the problem of shirking, which in the case of the EC would consist of pro-integration, competence-maximizing behavior by supranational agents.

Agency shirking is a problem because, and insofar as, an agent has the ability to pursue its own preferences at the expense of those of the principals. In particular, the literature suggests, the agent possesses better information than the principal regarding its area of expertise, its budgetary needs, and its own activities, and this asymmetrical distribution of information may make it difficult for the principals to control agency shirking.

The principals are not, however, helpless in the face of this dilemma. Rather, when delegating authority to an agent, principals can also adopt various administrative and oversight procedures to limit the scope of agency activity and the possibility of agency shirking. Administrative procedures define ex ante the scope of agency activity, the legal instruments available to the agency, and the procedures to be followed by it. Such administrative procedures may be more or less restrictive, and they may be altered in response to shirking or slippage, but only at a cost to the flexibility and comprehensiveness of the agent's activities (McCubbins and Page 1987; McCubbins, Noll and Weingast 1987, 1989). In the case of the EC, both the Commission and the Court of Justice have generally been given a broad mandate, while the European Parliament was restricted to a limited institutional role prior to the Single European Act.

Oversight procedures, on the other hand, allow principals ex post to (a) monitor agency behavior, thereby mitigating the inherently asymmetrical distribution of information in favor of the agent, and (b) influence agency behavior through the application of positive and negative sanctions. With regard to monitoring, for example, McCubbins and Schwartz (1984) suggest that principals may use any one of a number of oversight mechanisms, including the "police-patrol" method of standing oversight committees, and the "fire-alarm" oversight offered by individual constituency complaints and judicial review of agency behavior. As for sanctioning, the literature points out that principals enjoy a formidable array of sanctions, including control over budgets, control over appointments, overriding of agency behavior through new legislation, and revision of the agency's mandate. Through the use of such monitoring and the application of sanctions, much of the literature argues, both shirking and slippage by agents can be minimized, if not eliminated (McCubbins and Page 1987; Kiewiet and McCubbins 1991).

As Moe (1987) points out, however, both administrative and oversight procedures can be quite costly to principals as well as agents, and these difficulties can create some limited room for agency autonomy from principals--indeed, much of principal-agent analysis is given over to the study of when, and under what conditions, agents can acquire such autonomy from, and influence over, their principals. More specifically, I have argued elsewhere (Pollack 1997) that four primary factors or independent variables explain the autonomy and influence of supranational agents like the Commission. The first of these, familiar from Moravcsik's intergovernmentalism, is the distribution of <u>preferences</u> among the member governments and their supranational agents. Put simply, supranational organizations always act within the constraints of member-government preferences, which must be taken into account by such agents in carrying out their delegated powers. As we shall see, however, supranational agents may also exploit weak or conflicting preferences among member governments, to avoid the imposition of sanctions against shirking, and to push through legislative proposals via their agenda setting powers.

Second, the autonomy and influence of supranational organizations depends crucially on the <u>institutional decision rules</u> governing the delegation of powers to a supranational agent, as well as the sanctioning of that agent in the event of shirking. Thus, as we shall see below, EC decision rules establish differing thresholds for the overruling and sanctioning of supranational agents like the Commission, and these decision rules directly affect the autonomy of agents from member governments.

A third factor is the distribution of information, or uncertainty, among the organizations and the member governments, respectively. Put simply, the autonomy of a supranational organization is greatest where information is asymmetrically distributed in favor of the organization, and where the member governments have difficulty monitoring its activities.

Fourth and finally, the influence of supranational agents is greatest where those agents possess clear transnational constituencies of subnational organizations, interest groups, or individuals within the member states, which can act to bypass the member governments, and/or to place pressure directly on them. Indeed, I would argue, all three EC supranational organizations possess such transnational constituencies: interest groups and multinational firms in the case of the Commission, national courts in the case of the European Court of Justice, and national electorates in the case of the European Parliament. In all three of these cases, national constituencies act both as a constraint on the freedom of action of the supranational organizations (the European Court of Justice, for example, must rely on national courts to accept its jurisprudence), but also as a counterbalance to the influence of the member governments (once national courts accept ECJ jurisprudence, the costs of noncompliance for member governments rise considerably). In other words, all three supranational organizations navigate constantly between two sets of constituents: the intergovernmental principals that created them and may still alter their mandates, and the transnational constituencies that act both as constraint and resource in the organizations' efforts to establish their autonomy and strive for "more Europe."

The Perils of Empirical Analysis

Unfortunately, testing such hypotheses empirically is far more difficult than it might appear at first blush, and the principal-agent literature is replete with methodological warnings about the difficulties of distinguishing between obedient servants and runaway bureaucracies. In essence, the problem is that agents such as the Commission may <u>rationally anticipate</u> the reactions of their principals, as well as the possibility of sanctions, and adjust their behavior in order to avoid the costly imposition of sanctions. If this is so, then agency behavior which at first glance seems autonomous may in fact be subtly influenced by the preferences of the principals, <u>even in the absence of any overt sanctions</u>. Indeed, as Weingast and Moran (1983) point out, the more effective the control mechanisms employed by the principal, the less overt sanctioning we should see, since agents rationally anticipate the preferences of the principals and incorporate these preferences into their behavior. In this view, sanctions should take place only rarely, when an agent miscalculates the likely reactions of its principals, or the likelihood of sanctions in response to its actions.

The relevance of these observations becomes clear when we examine the literature on supranational organizations in the European Community. For example, in response to Mattli and Slaughter's (1993) claims that the European Court of Justice has independently fostered the development of a supranational constitution for the EC, Garrett has argued that the Court's independence was only apparent, and that the judges actually rationally anticipated the responses of the most powerful member governments, and adjusted their rulings accordingly. Similarly, analysts have differed in their interpretation of the comitology system of committees overseeing the Commission, and the remarkable rarity of negative opinions by these committees. According to Gerus (1991), for example, the management and regulatory committees for agriculture issued some 1894 opinions on Commission actions during 1990--not a single one of which was negative! At first glance, the remarkably low rate of committee referrals to the Council would seem to suggest that committee oversight is perfunctory, and the Commission largely independent in its actions. However, as Gerus points out, rational anticipation of committee action by the Commission may mean that the Commission is effectively controlled by the member governments, despite the startling rarity of sanctions against it.

The point here is not that the Commission and other supranational organizations enjoy no autonomy from the member governments, but rather that such autonomy cannot be easily ascertained from the apparently independent behavior of supranational organizations, and that quantitative measures of comitology votes or legislative sanctions are unlikely to capture the nuances of agency autonomy from, and influence on, member governments. Instead of focusing on such broad aggregate data, I would argue, testing of the above hypotheses should rely on three particular research strategies. The first of these, and perhaps the most important, is to conduct systematic case studies and engage in careful process-tracing, in order to establish the respective preferences of the member governments and supranational organizations, and the subtle influences that these actors may exert upon each other. Process-tracing may also, as Pierson points out in this volume, reveal the path-dependent effects of early decisions (on the delegation of powers and on administrative and oversight procedures, for example) which become "locked-in" and affect the outcome of later principal-agent interactions.

A second method, recently advocated by Moravcsik (1995) for the study of informal agenda setting, is counter-factual analysis, asking what would likely have happened if the

Commission, the Court, or the Parliament had not behaved as they did in a given case. If it seems likely that a member government, or some interest group, would have stepped in to fill the breach, Moravcsik argues, then the independent causal role of the supranational organization is clearly less significant.

A third and final way to study the nature, and the limits, of supranational agency is to examine cases open conflict between supranational organizations and one or more member governments, which may or may not result in sanctioning of the organization and a change in its behavior. The risk of focusing on such conflicts is that they are, after all, extremely rare, since agents like the Commission typically avoid open conflict with, and sanctioning by, their principals. Despite this risk, focusing on conflicts between member governments and their supranational agents has the advantage of revealing the conflicting preferences among the various actors, and illuminating the conditions under which member governments are able--or unable--to rein in their supranational agents, limiting their autonomy and their influence on policy outcomes. Such incidents of open conflict are, furthermore, hard or critical cases for the principal-agent model presented above, according to which agents like the Commission should enjoy autonomy only within the confines of member-government preferences, and not directly against the member governments. Hence, if we find that agents like the Commission enjoy some independent causal influence in cases of open conflict, it is likely that such agents should enjoy as much or greater influence in other, less high-profile cases where member governments have little information or only weak preferences.

In keeping with these rough guidelines, I devote the rest of this chapter to a preliminary testing and illustration of the above hypotheses, focusing upon the executive actions of the

European Commission in three issue-areas: the administration of the EC's Structural Funds, the conduct of EC competition policy, and the representation of the common EC position in the Community's external trade policy. Within each issue-area, I focus in some detail on a particular instance of conflict between the Commission and the member governments, namely: the RECHAR controversy in the Structural Funds, the use of Article 90 and the debate over the Merger Regulation in competition policy, and the treatment of agriculture in the Uruguay Round of the GATT. The overall research design, therefore, is one of "comparative statics," examining Commission activities across a range of policy areas, in an effort to explain the observed differences among them. In addition, however, I also discuss, albeit briefly, the temporal development of the various policies, and the extent to which Commission influence does, or does not, become institutionalized in each policy area.

In all three areas, I argue, member governments have delegated significant powers to the Commission, which the Commission has exploited to pursue its own preferences for "more Europe." By the same token, however, I shall demonstrate how the Commission's efforts in these areas have been constrained in particular by the preferences of the member governments, by the varying possibilities for sanctioning available to dissatisfied member governments, by the information available to the Commission and the member governments at different points in time, and by the Commission's varying ability to strike up alliances with transnational actors and with other supranational organizations such as the European Court of Justice. I begin with the Commission's high-profile role in the administration of the Structural Funds.

The Commission and Structural Policy

In EC parlance, "structural policy" refers to the administration of the Community's Structural Funds--the European Regional Development Fund, the Social Fund, and the European Agricultural Guidance and Guarantee Fund Guidance Section--created primarily to reduce regional disparities in the Community[2]. In the 1970s and the early 1980s, these Funds were essentially a redistributive share-out, agreed as side-payments in larger intergovernmental bargains, and the Commission's executive role in implementing the Structural Funds was a minor one.

By the mid-1980s, however, the largest contributing member states had become concerned with the efficient expenditure of the increasingly large Structural Funds, especially in the new Southern member states of Greece, Spain, and Portugal, and they began pressing for greater control over, and monitoring of, the use of EC funds. In Kingdon's (1984) terms, these calls for greater control created a "window of opportunity" for a new and more ambitious structural policy, with a greater role for the Commission. And it was in this context that an entrepreneurial Delors Commission seized the initiative, proposing a series of Structural Fund Regulations which simultaneously increased Community monitoring of Fund expenditures to include "value for money," while at the same time substantially increasing the Commission's role in both the planning and implementation of the Funds, which would henceforth take on a genuine Community dimension.

The Commission's reforms, which were adopted with very few amendments by the member governments, were based on four principles: (1) concentration of the Funds' resources

[2] This section draws largely on Pollack 1995.

in the neediest areas; (2) partnership among the Commission, the member governments and regional authorities in the planning and implementation of the Funds; (3) programming, whereby member governments would be required to submit comprehensive development programs for each region, rather than individual development projects as in the past; and (4) additionality, the principle that any Community funds should be additional to, rather than replace, national development funds in a given area.

Under the 1988 reforms, roughly 90 percent of the Structural Fund budget goes to finance measures proposed by the member governments under the Community Support Frameworks (CSFs) devised in partnership by the member governments, the Commission, and the regional authorities designated by the member governments. The remaining 10 percent of the Funds are allocated to Community Initiatives, which are Community-wide programmes designed by the Commission to focus on a particular problem or type of region. It is these Community Initiatives which provide the Commission with its most important source of power vis-à-vis both the member governments and regional authorities. Put simply, with Community Initiatives the Commission may, with or without the cooperation of regional governments, present member governments with a given sum of Community funding, for a given purpose and on a take-it-or-leave-it basis. In 1989, for example, the Commission created the Envireg program, which directed 500 mecus at Objective 1 regions for environmental protection measures "which had not always received sufficient consideration within the development plans of some Member States" (Commission 1993).

The Commission exploits its new powers: The RECHAR controversy

Between 1988 and 1993, the Commission exercised its new powers vigorously, building strong networks to subnational regions; launching Community Initiatives which reflected the policy agendas of the Commission rather than the member governments; and insisting that all member states satisfy the Funds' criteria for additionality, the principle that all EC funds should be additional to, rather than replacement for, national regional funding. In the most famous case of conflict under the 1988 reforms, the Commission's insistence on additionality in the granting of aid brought it into direct conflict with the British government of Prime Minister John Major. In that case, the Commission designed a Community Initiative program, dubbed RECHAR, the benefits of which would accrue largely to coal-mining regions in Scotland. In order to secure these benefits, however, the UK government would have to accept the Commission's definition of additionality, as laid down in Article 9 of the new Framework Regulation for the Structural Funds. When the UK government refused to do so, Commissioner Bruce Millan froze the UK funds. Finally, in response to pressure from the Commission above and regional governments below, and with a general election looming, Major's government backed down and agreed to the Commission's demands in return for its share of RECHAR funding. For many analysts, this RECHAR incident became emblematic of the Commission's renewed power and influence vis-à-vis even the most powerful member governments (McAleavey 1993; Marks 1993). In the RECHAR case, as in Envireg and other Community Initiatives, member governments complained that the Commission was either interfering in internal affairs or duplicating efforts already underway within the CSFs; but, faced with the possible loss of EC funding, member governments gave in and participated in these programmes on the Commission's terms.

The Commission reigned in: The 1993 Structural Fund Reforms

The Commission's position, however, was fundamentally weakened by the fact that the 1988 Fund Regulations, and hence its own executive powers, were set to expire at the end of 1993, and required a unanimous vote from the member governments for reauthorization. In Scharpf's (1988) terms, the "default condition" for the Commission's powers in the event of no agreement among the member governments was not the status quo but expiration, meaning that a positive decision would be required to reauthorize the Commission's powers under the 1988 Fund Regulations. Under the rules of the Single European Act, moreover, the unanimous agreement of the Council would be required for the most important of the new Fund Regulations. These decision rules considerably strengthened the position of member governments--including but not solely the British government--seeking to clip the Commission's wings by demanding substantial changes in the Fund Regulations. In particular, many member governments had expressed irritation with the Community. Most governments, for example, argued that there were too many CIs, and that each of these individual CIs spread a small amount of EC funding across a wide area, decreasing their effectiveness. The bureaucratic requirements for these initiatives, moreover, remained equally onerous for the member governments regardless of the size of the programmes, with the result that a large proportion of these funds were spent on administration. Most importantly, however,

> ... policy-makers believe strongly that there is too little consultation with Member States regarding the introduction of CIs. Indeed, the negotiation process has been described as a "complete sham" with the predominance of self-interest. Member States say that they are often taken completely by surprise when new CIs are launched. However, Member states and regions have a vested interest in receiving as much EC finance as possible, and it is difficult for them to object constructively to Commission proposals without harming their changes of

> obtaining funding. Policy-makers are frequently under political pressure, especially at regional levels, to apply for and use CI funds regardless of whether the money is limited and the measures are inappropriate or undesirable (Yuill et al. 1993, p. 74).

Thus the member governments, if not the Commission, had a clear incentive to reassert control over this least predictable and controllable aspect of the 1988 reforms.

In response to these concerns, and to the imminent expiration of the 1988 Fund Regulations, the Commission in early 1993 submitted proposals for the new Fund Regulations, which were described by the Commission as largely a continuation of the principles of the 1988 reforms, with several administrative changes to improve the efficiency of the Funds. Put simply, the Commission proposed to retain the four basic principles of the 1988 reforms, while proposing slight changes to each of these. The concentration of the funds on the neediest areas, for example, would be increased, while the "partnership" provisions of the 1988 reforms would be modestly expanded to include consultation of the so-called "social partners" (organized labor and industry), and the programming procedure would be simplified from the byzantine three-step procedure laid down in the 1988 Regulations. The proposed Regulations would also spell out more clearly than the 1988 regulations the precise obligations of the member governments regarding the "additionality" of EC funding. Finally, with regard to the Community Initiatives, the Commission had proposed in its initial communications that 15% of the Funds' resources go to the CIs. In December 1992, however, the Edinburgh European Council indicated that the CIs should comprise between 5% and 10% of the Funds, and the Commission, predictably, proposed the high end of this range, 10% for the CIs from 1994 to 1999. With regard to the working of CIs, the Commission suggested that these would be fewer in number, and organized around a specific set of priorities, in response to member-government concern about excessive dispersion of funds.

The Council clips the Commission's wings

Now, many of these proposals, with the obvious exception of the last, were intended to address the concerns of various member governments with the operation of the 1988 Fund Regulations. In the event, however, these Commission proposals did not go far enough to address the concerns of the member governments--which proceeded to change the substance of the Commission's proposals in several non-trivial ways, so as to respond to concerns about the distribution of funds, efficiency, and member-state control of the Funds' operation. The effect of these changes on the Commission were mixed. For example, the Council actually increased the Commission's role in the monitoring of Fund expenditures, at the insistence of net-contributing member governments concerned about the efficient use of the Funds in the poorer member states; but the Council also decreased the role of the Commission in the designation of eligible areas, and weakened the Commission's proposed language on additionality.

Perhaps most importantly, the Council amended the Commission's provisions regarding the Community Initiatives. Thus, for example, the amount to be devoted to the CIs was reduced from 10% to 9% of the total Structural Fund budget. More importantly, the Council created de novo, in a new Article 29a of the Coordination Regulation, a Management Committee for the Community Initiatives. Under the Management Committee procedure, the Commission would adopt Community Initiatives which would apply immediately, but these initiatives would have to be submitted to the Management Committee, which would approve or reject these by a qualified majority; if this committee rejected the Commission's proposals, the Council could, acting within a month of the committee vote, take a different decision by qualified majority. Predictably, therefore, the Commission openly "deplored" the creation of the new Management Committee (European Report, 17 July 1993; Agence Europe, 15 July 1993). In the event, the new Management Committee approved the Commission's proposals for new CIs, but the existence of such a committee meant that the Commission could stray only so far from the wishes of the member governments without risking having its decision overturned by the Council of Ministers.

As a result of these changes, the Community Initiatives which were adopted for the period 1994-1999 under the new Fund Regulations were subject to an extended consultation with the member governments, the EP, and other interested actors such as regional and local authorities and the social partners. By contrast with the striking independence of the Commission in the selection of the early CIs, the Commission in June of 1993 published a Green Paper on the future of the Community Initiatives, which proposed a trimmed-down series of initiatives concentrated in five priority areas: cross-border and inter-regional cooperation, rural development, outermost regions, employment and vocational training, and adaptation to industrial change. This initial list of objectives and programmes was then modified, however, after consultation with the Member states and the EP, to include new initiatives on fishing (PESCA), on urban problems (URBAN), and--in response to the intergovernmental bargain struck over GATT ratification in December 1993--on a 400 mecu aid programme for the Portuguese textiles industry (Commission 1994a). These revised proposals, for 13 initiatives spread over seven priority areas, were then approved by the new Management Committee, and formally adopted by the Commission in June 1994 (Commission 1994b).

Summing up the Structural Funds case, then, the Commission was able in 1988 to capitalize on widespread member-state concerns about "value for money" to receive significant new powers to draw up Community Initiatives, to play a central role in drawing up Community Support Frameworks with the member governments and the regions concerned, and to police the expenditure and the additionality of EC funds. During the five-year lifespan of the 1988 Fund Regulations, Millan and the Commission used its delegated powers aggressively, funding Community Initiatives in line with the Commission's own policy agenda, and coming into direct conflict with the United Kingdom over the issue of additionality. By 1993, however, the Commission's delegated powers for structural policy were scheduled to expire, and the unanimity voting rule favored reformers like the UK, which successfully insisted on changes to the 1993 Fund Regulations in line with their own preferences.

The story of Commission autonomy and influence does not end with the 1993 reforms, however. As Marks (1996) has pointed out, the 1993 Fund reforms still left the Commission with considerable, and in some cases increased, powers in both the planning and implementation of Community Support Frameworks and Community Initiatives. Principal-agent interaction, therefore, is not a one-shot but an iterated game, in which the Commission exploits loopholes in Council legislation, the Council responds (if possible) by sanctioning the Commission, and the Commission begins the cycle again by making the most of its new mandate. The 1993 Fund reforms are merely the latest cycle in this ongoing principal-agent interaction.

The Commission and Competition Policy

In the area of competition policy, a number of analysts have correctly identified the Commission's powers on antitrust and state aids issues as "the first supranational policy" in the EC[3]. The drafters of the EEC Treaty had foreseen the possibility that certain actions by either private industry or by national governments might distort competition within the common market, and accordingly included in the Treaty a chapter on competition policy (Articles 85-94), which laid down the basic competition rules for the Community, and empowered the Commission to enforce these rules. The rules themselves fall into two broad groups: the first, laid down primarily in Articles 85 and 86 and elaborated in Regulation 17 of 1962, concern anticompetitive practices by firms, such as cartels and abuse of dominant positions, while the second, laid down in Articles 92-94, concern the compatibility of state aids with the common market. In each of these areas, the Commission has acted as the Community's competition authority, supervised only by advisory committees, limiting member governments' ability to overturn the Commission's competition decisions through the comitology process.

During the 1970s, a period of both economic crisis and a sclerotic integration process, the Commission's enforcement of its competition powers is widely considered to have been lax, as the Commission tolerated cartels in sectors such as sugar, steel and shipbuilding, and routinely approved sizable state aids to declining industries. In the 1980s, however, under Competition Commissioners Peter Sutherland and Sir Leon Brittan, the Commission took advantage of the neoliberal preferences of the member governments and the completion of the internal market to make greater use of its existing powers, cracking down on both cartels and anticompetitive

[3] For good general discussions of EC competition policy, see Allen 1983, 1996; Montagnon, ed. 1990; Goyder 1993; and McGowan and Wilks 1995.

practices, imposing larger fines on firms found to be have violated EC rules, and specifying conditions for state aids to industry. We should be cautious, however, about assigning great causal importance to Sutherland's and Brittan's activism in this area. While both Commissioners were indeed determined to apply Community competition rules with renewed vigor, their efforts also coincided with the neoliberal turn toward the market among member governments, making the causal roles of the member governments and the Commission exceedingly difficult to disentangle.

Rather than focusing on the Commission's activities in the traditional areas of competition policy, therefore, I focus on the Commission's recent activities in two new policy areas. During the late 1980s and early 1990s, the Commission aggressively exploited its long-dormant Treaty power to liberalize state monopolies under Article 90, and conducted a long campaign, ultimately successful, to acquire the power to review mergers and acquisitions of Community-level importance. In both of these areas, the Commission has come into conflict with various member governments which have limited its influence, but has nevertheless expanded the scope of Community and Commission competence, and contributed to the completion of the internal market. Let us, very briefly, consider each of these two cases in turn.

Article 90 and national monopolies

The Commission's aggressive use of Article 90 to liberalize the telecommunications sector in the 1990s is one of the most spectacular and conflictual examples of Commission activity in any area of policy, and has been analyzed at some length by many scholars of European integration (Montagnon 1990; Fuchs 1995; Schmidt 1996; Sandholtz in this volume).

Put simply, Article 90 deals with public undertakings, such as state monopolies in telecommunications and energy. Under Article 222 of the Treaty, member states are free to determine the public or private nature of such utilities, and the Commission cannot force member states, for example, to privatize their telecommunications industries. However, at the insistence of Germany and the Benelux countries, which feared possible trade distortions resulting from the extensive public monopolies in France and Italy, the framers of the Treaty inserted Article 90, which allows the Commission to enforce EC competition rules vis-à-vis national monopolies. Furthermore, Article 90(3) contains an extraordinary clause allowing the Commission to issue Directives binding on the member states, without the approval of the Council of Ministers.

Prior to the 1980s, Article 90 had been invoked only rarely by the Commission. In the late 1980s and early 1990s, however, the Commission began to use Article 90 as a key instrument in its drive to liberalize the telecommunications sector in the EC. The Commission's initiative in this regard began in 1987, when it issued a "Green Paper on the Development of a Common Market for Telecommunications Services and Equipment," laying out its plans for the liberalization of the telecommunications sector, and calling for input from both member governments and from interest groups representing the users of telecommunications services, who promptly mobilized in favor of the Commission's actions. In its communication, moreover, the Commission pointed to the 1985 British Telecoms case in the European Court of Justice, in which the Court ruled that telecommunications was a regular economic activity under the Treaty, and that EC competition law was applicable in the telecommunications sector. This and other rulings, according to Schmidt (1996), presented the Commission with a crucial "window of opportunity" to apply the long-dormant provisions of Article 90 to a sector which it was keen to liberalize despite some member-government opposition.

For its first telecoms Directive under Article 90(3), the Commission chose a relatively uncontroversial Directive in terms of substance, much as the European Court of Justice had chosen small and uncontroversial cases to establish major points of European law in the 1960s. This "Terminals Directive," adopted by the Commission without the approval of the Council in May 1988, would liberalize the market for terminal equipment, a move which few member governments opposed and which certain member governments, such as the United Kingdom, strongly supported on substantive grounds. Nevertheless, the Commission's use of Article 90 to adopt liberalizing Directives without the approval of the Council would set a dangerous precedent which could be exploited in the future, and so a number of member governments (France, Italy, Belgium, Germany and Greece) challenged the Directive before the European Court of Justice, arguing that the Commission should have proceeded under Article 100A, with the Council taking the final decision. In early 1991, the Court ruled in favor of the Commission, upholding the Directive and legitimating the Commission's use of Article 90(3) to issue Directives.

Having established with the Terminals Directive its right to issue Directives under Article 90(3), the Commission then turned to the more controversial problem of opening the market for telecommunication services, including data services. Unlike the terminals case, the liberalization of data services was disputed by member governments such as France, which relied on such services to underwrite other telecommunications costs, such as the provision of service to outlying areas. The Commission therefore agreed to negotiate with the Council on a package deal comprising the both the Services Directive adopted under Article 90(3), and a framework

Directive on Open Network Provision which was adopted by the Council. The final version of the Services Directive would open up the market for enhanced telecommunications services, including data transmission, from January 1993. This Directive was again challenged by France, this time with the support of Belgium, France, Italy and Spain, but the European Court once again upheld both the Directive and the Commission's use of Article 90(3). The adoption of telecoms Directives under Article 90(3), moreover, has continued into the 1990s, with new Commission Directives on satellite services and equipment in 1994, the liberalization of cable TV networks in 1995, and the liberalization of mobile communications networks in 1996.

However, as Schmidt (1996) has persuasively argued, the telecommunications case presents a particularly favorable setting for the aggressive use of Article 90, featuring a string of favorable ECJ decisions, strong support among powerful interests within the member states, and a clear preference for liberalization among large member governments such as the UK and Germany. Hence, while the Commission did enjoy extraordinary success with its use of Article 90 in the telecommunications sector, this initial success should not be taken as a sign that the Commission enjoys carte blanche to apply Article 90 in all sectors and regardless of the preferences of member governments. Indeed, as Schmidt demonstrates, the Commission has proceeded much more tentatively in its liberalization of another national monopoly, electricity.

In the case of the electricity sector, the Commission began with a similar approach to the liberalization of the sector, adopting a report on "The Internal Market for Energy," in 1988, and following this up with a number of specific proposals in subsequent years. In contrast to the telecommunications case, however, the Commission could not rely on a clear ECJ ruling that the rules of competition applied to electric utilities. Furthermore, in the electricity case the

Commission faced strong opposition from many of the member governments, from the utilities, and from the European Parliament as well, leading the Commission to withdraw its plans for liberalization of the Community's energy market under Article 90(3). Instead, the Commission proceeded under Article 100A, requiring an agreement within the Council of Ministers, which took years to reach the awkward compromise contained in the final Directive adopted in June of 1996.

In sum, the Commission was able to use its Treaty powers, conflicting preferences among the member governments, and above all the support of interest groups and the European Court of Justice, to force the pace of telecommunications liberalization, which has been more rapid and more far-reaching than would likely have been the case if the various Directives had had to wind their way through tortuous Council bargaining. However, as the electricity case demonstrates, the Commission has been considerably less successful in its application of Article 90 in those areas where it lacked the support of interest groups, member governments, and the Court of Justice. The Commission, therefore, acted "alone" under Article 90 only in the narrow legal sense. More broadly, it relied on the support of a variety of national, transnational and supranational actors in liberalizing the telecommunications sector.

The Adoption of the 1989 Merger Regulation

The adoption of the 1989 Merger Regulation differs in the details from the Commission's use of Article 90, but here once again the Commission was able to achieve a major victory by rallying and relying upon the support of some member governments, a large number of transnational interest groups, and the supranational Court of Justice (Hölzer 1990; Goyder 1993;

Bulmer 1994; Allen 1996). In order to understand the nature of the Commission's victory in this area, it is important to note that the Commission's competition powers under the Treaty of Rome, although far-reaching, did not include the power to vet mergers and acquisitions, even under Article 86 on the abuse of a dominant position. Nevertheless, the absence of any direct control over mergers and acquisitions was seen as a great weakness by the Commission and its Directorate-General IV in charge of competition, and so the Commission decided in the early 1970s to apply Article 86 to prevent a merger which would strengthen the pre-existing dominance of a firm within a particular market.

In its 1972 decision, the Commission prohibited the Continental Can group from acquiring a Dutch packaging company, TDV, arguing that such a merger would increase the already large market share of the Continental Can in the Benelux countries and in Germany, and thus constitute an abuse of the company's dominant position. Continental Can, however, appealed the Commission decision to the European Court of Justice, whose landmark 1973 ruling supported the Commission's interpretation of Article 86, ruling that the Commission could indeed use Article 86 to prevent a firm which already enjoyed a dominant position within a given market from expanding its market share through mergers and acquisitions.

Continental Can was a landmark ruling in terms of its expansive reading of the Commission's powers under the Treaty of Rome, but from the Commission's perspective it was not a satisfactory legal basis for exercising control over mergers within the EC, since the impact of the Court's decision was limited to mergers and acquisitions by firms which already enjoyed a dominant position, and not to mergers which would create such a dominant position. The Court's decision, moreover, would give the Commission only post-hoc jurisdiction over mergers, not the prior notification or control of mergers which it sought. In 1973, the Commission therefore proposed to the Council a Merger Regulation that would give the Commission the power to review Community mergers and acquisitions in all cases where the joint turnover of the undertakings concerned exceeded a threshold of one billion units of account (later ecus). Unfortunately for the Commission, the Commission's proposed regulation remained deadlocked in the Council of Ministers for 16 years, stymied by fundamental member-government opposition to any increase in the Commission's supranational powers.

A major step forward was taken, however, with the 1987 Philip Morris ruling of the European Court of Justice. In the Philip Morris case, the Court of Justice ruled that Article 85, which deals with cartels and other anticompetitive practices, could apply to agreements between two or more companies that allowed one of the companies to obtain legal or de facto control over the other. The practical effect of the Court's decision was to provide the Commission with a back-door means of reviewing mergers and acquisitions, and the Commission, which had not sought the Court ruling, responded by successfully applying Article 85 to a number of high-profile mergers, applying conditions to the takeover by British Airways of British Caledonian, and blocking the acquisition of Irish Distillers by GC and C Brands. As a result, the European business community was left uncertain as to its legal responsibilities, which would emerge only in the incremental case law of the Court of Justice, and began lobbying for an EC Merger Regulation which would spell out clearly the powers of the Commission and the responsibilities of business. As Allen (1996) writes:

> From the Commission's perspective the great advantage of this merger regime, using Article 85, was the uncertainty it generated. This served to put pressure on the doubting member states to settle for a better worked-out and potentially more

limited merger regulation. By a combination of luck and skill the Commission had managed to create a problem which the Council felt could be eased only by passing the legislation it had previously refused to consider (p. 171).

In March of 1988, therefore, the Commission introduced a new, amended version of its 1973 proposal for an EC Merger Regulation, which was adopted by the Council in December 1989. Within the Council, negotiations focused on two provisions of the Commission's proposed regulation. The first of these concerned the thresholds above which a merger would become subject to the jurisdiction of the Commission. In this area, the Commission, with the support of some of the smaller member governments, proposed that EC jurisdiction apply in all cases in which the combined world turnover of the undertakings involved was one billion ecus, with a Community turnover of 50 million ecus for each of the undertakings. These thresholds were resisted, however, by Britain, France and Germany, all of which proposed a threshold of 10 billion ecus in joint world turnover. In early 1989, the Commission proposed a compromise proposal, specifying thresholds of five billion ecus in world turnover, and 250 billion ecus in aggregate Community turnover for each company; these thresholds, however, would be subject to later review and amendment by a qualified majority vote in the Council of Ministers. The member governments, including Britain, France and Germany, agreed to this proposal.

The second contentious issue concerned the balancing of competition and other social and industrial-policy criteria, which split the member governments into neoliberal and interventionist camps. The first camp, led by Germany and Great Britain, argued for the criteria to be strictly limited to competitive issues, in line with their own approach to mergers and acquisitions, while the second group, led by France, wanted to include social and industrial policies among the criteria which the Commission could apply in assessing proposed mergers. The Commission's initial draft had included social and industrial policy issues among the criteria to be considered, but the Council's final version was closer to the German and British position, emphasizing the strict application of competition rules. Nevertheless, Article 2(1) of the Regulation does contain a brief reference allowing the Commission to consider in its decisions "development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition" (Goyder 1993, p. 398). How the Commission would interpret and apply these criteria, however, would become clear only after the Merger Regulation had come into effect, in September 1990.

The Merger Regulation Since 1990

A complete discussion of the Commission's implementation of the Merger Regulation is, of course, beyond the scope of this chapter, but a brief discussion is nevertheless in order. Under the 1989 Regulation, the Commission must respond to all prior notifications within one month, at which time it may indicate either that the merger is approved, or that a second-stage investigation is being held into the specifics of the merger. By and large, the Commission has lived up to these deadlines, closing the vast majority of cases within the specified periods (Allen 1996, p. 174).

Despite its procedural promptness, the Commission has nevertheless come under assault for its administration of the Merger Regulation, in particular from Germany, which has a tradition of strict competition enforcement by the Bundeskartellamt (Federal Cartel Office). As Wilks and McGowan (1995) point out in their excellent review, the criticisms have been threefold. First, it is often argued, the Commission's implementation of the Regulation lacks transparency, with the Commission frequently striking up informal agreements with the companies it is regulating. Second, the Commission is often accused of violating the principle of subsidiarity, by refusing to refer competition cases to national competition authorities which request the right to handle specific cases.

Third, and perhaps most importantly, the Bundeskartellamt, supported by the German government, has argued that the Commission's enforcement of the Merger Regulation is excessively lax and "politicized," with the Commission approving mergers which should have been blocked, and improperly applying social and industrial policy criteria to merger decisions. The heart of the problem, in this view, lies in the nature of the Commission's decision-making structure. By and large, DG IV and the Commissioner in charge of competition policy tend to take a hard line on competition policy issues, including mergers as well as state aids and other competition cases. The final decision on mergers cases, however, lies not with DG IV but with the full Commission, where the competition criteria spelled out in the Regulation can be watered down by Commissioners who have either (a) national sympathies for the companies involved, or (b) a functional interest in other policy areas, such as social or industrial policy.

The nature of the problem is illustrated vividly by Ross's (1995) depiction of the Commission's decision to block the merger of the acquisition of the Canadian aircraft manufacturer de Havilland by ATR, a Franco-Italian consortium--the first merger rejected by the Commission under the Merger Regulation. According to Ross, Brittan took a hard line on the de Havilland case, writing to Delors that "we must not allow this merger to proceed," and planning to make the de Havilland merger a test case. Within the full Commission, however, Brittan was opposed by Delors, by the other French and Italian Commissioners, and by Industrial Policy Commissioner Martin Bangemann, who argued that the merger would give European aircraft manufacturers the economies of scale they needed to compete on world markets. Finally, after days of lobbying within the Commission by Brittan and his cabinet, the Commission voted narrowly, by nine votes to seven, to block the de Havilland merger. At the end of the day, the merger had been blocked, leading to tremendous controversy in France and in Italy, but the de Havilland case had made clear how haphazard the Commission's decision-making process was in the area of competition policy, and it provided grist for the mill of the Commission's critics in Germany and elsewhere.

The Future of the Merger Regulation

The years since the de Havilland merger have witnessed a double stalemate, with Germany attempting vainly to create a European Cartel Office (ECO) which would enforce EC merger rules in place of the Commission, while the Commission has attempted, equally vainly, to increase the scope of its competition powers by lowering the thresholds established by the 1989 Regulation. With regard to the former, the Bundeskartellamt, supported by the German Economics Ministry, has pressed for the creation of an ECO independent of the Commission, which would decide merger cases on the basis of narrowly defined competition criteria, thus insulating the decision-making process from the two-fold politicization found in the college of Commissioners. The creation of such a new agency, however, would almost certainly require an amendment to the Treaties, and hence a unanimous agreement from the member governments (Wilks and McGowan 1995). In recent months, the German government has pressed its case for an ECO within the 1996 intergovernmental conference, attracting the support of Italy, but Germany seems unlikely to gain a unanimous consensus in favor of its proposals from other member governments, such as France, which have traditionally been more sympathetic to social and industrial policy concerns (Buckley 1996).

However, while Germany has thus far been unsuccessful in its efforts to transfer the Commission's merger powers to a new ECO, the Commission has been equally unsuccessful in its attempts to expand its powers by lowering the thresholds for Commission jurisdiction. In keeping with the provisions of the Merger Regulation, the Commission proposed in 1989 to lower the thresholds from 5 billion ecus for worldwide turnover and 250 million ecus for Community turnover, to 2 billion and 100 million, respectively. According to the rules laid down in the Regulation, the Commission would require only a qualified majority vote in the Council to approve the new thresholds, an easier target than the unanimous vote required to adopt the initial Merger Regulation. Furthermore, the Commission's proposal was broadly backed by European business, including the peak employers' association UNICE, which was eager to expand the "one-stop shop" provided by the Regulation for European-level mergers (European Report, 29 September 1993). An initial survey of member-government positions, however, revealed fundamental opposition to the Commission's proposal from Germany and the United Kingdom (which found the Commission's enforcement too lax), and from France (which found it too strict), and so in August of 1993 the new Commission Commissioner, Karel van Miert, withdrew the Commission's proposal, bluntly asking, "what is the point of proposing something if you know it won't be accepted?"[4] Instead, Van Miert proposed to continue with the existing thresholds for three more years, and propose new thresholds in the light of experience in

[4] Quoted in International Securities Regulation Report, 10 August 1993. See also Agence Europe, 29 July 1993.

1996.

Accordingly, in January of 1996, the Commission published a Green Paper on the review of the Merger Regulation, renewing its case for a lowering of the thresholds to 2 billion and 100 million ecus, respectively, and this was followed by formal proposals in July. Once again, however, the Commission has encountered entrenched resistance from the member governments, and in particular from Germany, which has linked any lowering of the thresholds to the creation of an independent ECO (Buckley 1996). The result is likely to be a continued stalemate, in which the Commission maintains its powers and discretion in merger control, despite dissatisfaction in Germany and others, but is unable to expand these powers due to the entrenched opposition of several member governments.

In sum, the record of Commission autonomy and influence in the case of competition policy, as in the case of structural policy, is mixed. On the one hand, the Commission succeeded, through its use of strong Treaty powers and transnational support, in pushing through the liberalization of telecommunications and the Merger Regulation, more rapidly and more thoroughly than the member governments would likely have done in the absence of Commission initiatives. On the other hand, we have also seen clear limits to the Commission's ability to overcome determined resistance among the member governments. In the case of national monopolies, for example, the Commission was unwilling to force through the liberalization of energy markets under Article 90(3) in the face of opposition from both member governments and transnational interest groups, and without the explicit support of the ECJ. Similarly, in the area of merger control, the Commission enjoyed a triumph with the adoption of the Merger Regulation in 1989, but has since been unsuccessful in its attempt to have the thresholds of the

Regulation lowered in the face of firm opposition from the member governments.

The Commission and External Trade Policy

The Commission's delegated authority in the area of external trade policy constitutes, alongside competition policy, some of its oldest and most important powers, specified directly in the body of the 1957 EEC Treaty. Under Article 113 of the Treaty, the Community possess exclusive competence in the area of commercial policy, and the Commission is designated as the sole and exclusive negotiator for the Community for all international trade negotiations, at which the member governments are forbidden to negotiate independently with third parties. The Commission, however, is not given a free hand to negotiate whatever agreements it likes at the international level. Rather, the Commission begins the process by proposing a negotiating mandate to the member governments, who may amend and adopt the Commission's mandate within the so-called "Article 113 Committee," a committee of senior national officials who approve, by a qualified majority, the Commission's negotiating mandate. The Article 113 Committee also monitors the Commission's conduct of the negotiations, and may, in response to a request from the Commission, amend the Commission's negotiating mandate, again by qualified majority. Furthermore, the final agreement negotiated by the Commission must be ratified by the General Affairs Council on behalf of the member states, imposing a final check on the Commission's negotiating authority (Woolcock and Hodges 1996).

In theoretical terms, the Commission's role in external trade policy is closely analogous to the position of the chief negotiator in Putnam's two-level games model (Putnam 1988; Evans, Jacobson and Putnam, eds., 1993). In Putnam's model, all international negotiations take place simultaneously at two levels: At the international level, or Level 1, chief negotiators bargain with their foreign counterparts in an effort to reach a mutually beneficial agreement. At the domestic level, or Level 2, the same chief negotiator engages in bargaining with her domestic constituencies, or principals, who must ultimately ratify the contents of any agreement struck at Level 1.

Perhaps most importantly for our purposes, Putnam examines the role of the chief negotiator, whose preferences (like those of any agent) may diverge from those of her domestic principals, and who may be able to influence the substance of an agreement by virtue of her dual role at both the international and the domestic bargaining tables. More specifically, a chief negotiator may employ international pressures, and her own strategic position at both boards, to manipulate her own domestic constituencies. A chief negotiator may, for example, be eager to effect some domestic policies or reforms, but be unable to do so because of resistance from a coalition of domestic interests. In a two-level negotiation, however, the chief negotiator may plausibly argue to her own domestic constituents that her preferred policies are in fact necessary in order to reach agreement at the international level, and must therefore be accepted in order to enjoy the benefits of the overall agreement. The chief negotiator's domestic position may be further strengthened if, as in the case of the United States' "fast track" authority, the resulting international agreement must be ratified according to a straight up-or-down vote, thus providing the chief negotiator with formal agenda setting power and increasing the likelihood of ratification at the domestic level. In sum, the chief negotiator's central position at both the international and the domestic tables may strengthen her bargaining leverage at both tables simultaneously.

In his liberal intergovernmentalism model, Moravcsik (1994) has adapted Putnam's two-level games approach to the study of the European Community, in which EC member governments act as chief negotiators between their domestic polities and parliaments on the one hand, and their fellow member governments on the other hand. According to Moravcsik, this privileged position has allowed member governments to increase their own autonomy vis-à-vis their domestic constituencies, by concentrating resources--initiative, information, institutions, and ideas--in the hands of the member governments negotiating in Brussels. In Moravcsik's model, national parliaments and other domestic constituencies are simply left to rubber-stamp the decisions taken by member governments in Council, and the net effect of the Community's two-level game has been to strengthen, rather than weaken, the member governments of the EC.

Applying Putnam's model to the external relations of the Community, however, reveals that EC trade negotiations are not a two-level but a three-level game: At Level 1, the Commission negotiates with representatives of the United States and other trading partners, in order to reach international trade agreements. These agreements must then be ratified at Level 2, representing the intergovernmental Article 113 Committee and the Council of Ministers. Finally, at Level 3, national governments seek domestic ratification of decisions taken at Community level (see e.g. Dusek 1995; Pan 1996).

In this three-level game, the Commission as chief negotiator should theoretically enjoy many of the advantages of Putnam's COG, manipulating and misrepresenting its own win-set to increase its bargaining leverage at the international level, and using external pressures to increase its "domestic" bargaining leverage vis-à-vis both the member governments at Level 2 and national interest groups at Level 3. The possibilities of the Commission's role as COG in external trade policy, and its limits, are well illustrated by the negotiation of the Uruguay Round and its most contentious element, agriculture.

The Uruguay Round, the CAP, and the Commission

Convened in 1986 in the Uruguayan capital of Punta del Este, the Uruguay Round of the GATT was to address a number of new issues in the area of international trade, including most notably trade in services, trade-related intellectual property issues (or TRIPs), trade-related investment issues (or TRIMs), and the creation of a new World Trading Organization to encompass the existing GATT. In each of these areas, the Uruguay Round attempted to establish rules for issues which had previously been outside the domain of multilateral international trade negotiations. Indeed, both services and TRIPs involved areas of so-called "mixed competence", for which the member states agreed to negotiate with one voice, and appointed the Commission as their sole negotiator, but without prejudice to the ultimate distribution of competences between the member states and the Community (Woolcock and Hodges 1996; Sbragia in this volume).

Undoubtedly the most difficult issue, however, and one in which the Community had clear and exclusive competence as a result of the Common Agricultural Policy, was agriculture[5]. Agriculture had been included in previous rounds of the GATT, but various exemptions to

[5] The account of the Uruguay Round negotiations and the 1992 CAP reform presented here is necessarily brief, focusing primarily on the role of the Commission. For more complete discussions, see the excellent account by Eric Pan (which also applies a three-level analysis to the negotiations), and the accounts by Ross 1995; Woolcock and Hodges 1996; Stewart 1993; and Preeg 1995.

GATT rules meant that states were in effect free to adopt national (or Community) systems for subsidizing and protecting national production, and for export subsidies as well. By the late 1980s, however, the Reagan Administration was determined to secure a substantial reduction in agricultural subsidies, especially in the EC, where both subsidies and exports had grown rapidly in the course of the previous decade. Indeed, it was largely American concerns about agricultural subsidies which led the Reagan administration to press in 1985 for the opening of the Uruguay Round.

Not surprisingly, the initial US and EC negotiating positions were far apart. For its part, the Reagan administration put forward a radical proposal, often called the "zero option," calling for the complete elimination of agricultural subsidies by the year 2000. To the Commission and the member governments of the Community, on the other hand, such an approach was anathema, as it would threaten the fundamental principles of the Common Agricultural Policy. The Uruguay Round therefore presented the Delors Commission with both challenges and opportunities. One the one hand, as chief negotiator for the Community, the Commission would face the challenge of reconciling the far-reaching demands of the United States and other states at the international level with the entrenched resistance to any reform of the CAP among EC farmers and among their representatives in the Council of Agriculture Ministers and the Article 113 Committee. On the other hand, as Putnam points out, the Commission's presence at both negotiating tables (the EC and the international) also provided it with the possibility of using external pressure to strengthen its negotiating position internally, and vice-versa. The Commission, and in particular President Jacques Delors and Agriculture Commissioner Ray MacSharry, therefore established a dual strategy, with two central goals. First, Delors and

MacSharry would design and steer through the Council a far-reaching reform of the bankrupted CAP, designed to make the CAP sustainable through the long term and avoiding any possible bankruptcy or renationalization of the system, while at the same time making the CAP compatible with the minimum demands of the Community's trading partners. Second, and equally importantly, the Commission would present the newly reformed CAP to its trading partners as the Community's bottom-line offer, beyond which the Commission could argue that its hands were tied. Ross (1995), although eschewing the language of two-level games, nevertheless sums up the Commission strategy perfectly in his account of the actions of Delors cabinet official, Jean-Luc Lamarty:

> Once on the table, Jean-Luc thought, the reform would almost certainly grant the Commission more maneuvering room on the Uruguay Round front, both internally and externally. The fact that CAP reform was in progress would set limits on external pressures while the need for CAP reform to succeed in the Uruguay Round would work internally (p. 113).

This is indeed what took place, but the process was to take several years, leading to open conflicts between the Commission and the United States, the Commission and the EC member governments, and within the Commission itself.

Internal Bargaining: The 1992 CAP reform

The long-stalemated negotiations on agriculture between the US and the EC had made clear, at least to the Commission, the need for substantial CAP reform in order to unblock the GATT negotiations, providing the Commission with a strong external incentive to press for CAP reform. In addition, however, the CAP in the early 1990s faced an internal crisis, with rising stocks of agricultural surplus and a spiraling budget which, according to Commission estimates, was expected to increase by some 30 percent in 1991. Such expenditures would, if left unchecked, lead to the breaching of the Community's agricultural guidelines established by the European Council in 1988, and could well create pressures for the renationalization of agricultural policy in the Community. Fearing the collapse and possible renationalization of the CAP, Directorate-General VI (Agriculture) began work in late 1990 on a series of proposals for a radical reform of the CAP designed to bring spending under control (Agra Europe, 15 February 1991). In February 1991, after an extended "seminar" and debate, the full Commission approved a general communication to the Council on the need for reform, followed in August by a detailed reform plan, often referred to as the MacSharry reforms.

In response to the crisis, MacSharry proposed a sweeping set of reforms, the heart of which consisted of a shift from price support to direct payments to farmers. More specifically, the prices of a number of agricultural products would be cut severely, most notably for wheat, which would be cut by some 35% to a target price of 100 ecus per ton, near world market levels. Farmers would then be compensated for their loss of income through a system of direct payments linked to the total acreage of each farm. Finally, compensation would be "modulated," so that small farmers would receive greater compensation than large farms, and in all cases compensation would be linked to a commitment to set aside acreage to avoid overproduction in the future. Although the Commission plan would not save money in the short term, and indeed might lead to a slight increase in agricultural spending to finance direct payments to farmers, in the long term the plan would reduce the CAP's incentive to overproduce, and hence the CAP's persistent pressures on the EC budget (Swinbank 1993). A final consideration, unspoken but implicit in the Commission's proposals, was that the proposed reforms would bring EC agricultural prices closer into line with world prices, and thereby reduce the trade-distorting effects of the CAP and the need for export subsidies which were the most sensitive issue in the GATT negotiations. In short, MacSharry's proposed reforms would increase the flexibility of the Commission's negotiating mandate, while at the same time drawing a clear and conspicuous bottom line beyond which the Community could refuse to go.

In Kingdon's (1984) terms, the stalled Uruguay Round negotiations and the budgetary pressures in early 1991 provided the Commission an important "window of opportunity" to press for a far-reaching reform of the CAP, which had been rejected or watered down by a coalition of farm lobbies and agriculture ministers in previous years. Nevertheless, MacSharry's proposals faced unanimous opposition among both the agriculture ministers and EC farm groups when he introduced them to Council in February 1991, and passage was by no means assured. Some member governments, such as Great Britain, Denmark and the Netherlands, supported MacSharry's case for CAP reform, but opposed his plans for modulated payments, which they argued would benefit inefficient small farmers at the expense of the larger and more efficient British, Danish and Dutch farmers. At the other extreme, France initially resisted the move from price support to direct payments, while Germany fought for price cuts considerably less draconian than the 35 percent cut in wheat prices sought by MacSharry. Community farm groups, finally, joined the agriculture ministers in their hostility to MacSharry's proposals, which they argued would decrease farm incomes and were being proposed only in response to bullying from the United States.

The twin pressures of the Uruguay Round and the budget, however, eventually led the member governments to support the broad lines of MacSharry's proposals, although several specific provisions of the plan were altered in Council bargaining during the first half of 1992. More specifically, in order to reach agreement, the Portuguese Presidency of the Council proposed a series of compromises in the Commission proposal, including the abandonment of the Commission's proposed modulation scheme to benefit small and medium-sized farmers, which MacSharry reluctantly accepted. More contentious, however, was the Presidency's proposed compromise on the cuts in the price of wheat, which were the linchpin of MacSharry's reform proposals. Whereas MacSharry had proposed a 35 percent cut in the price of wheat, the Portuguese proposed a compromise cut of 27 percent, largely to appeal to Germany, a high-cost producer. MacSharry, however, reportedly dug in his heels and refused to agree to such a cut, which would lead to continuing overproduction and sabotage the Commission's negotiating position within the GATT. Instead, he persuaded the Portuguese to propose a new price of 110 ecus, "a 29 per cent cut close to the 30 per cent the Commission had always set out to achieve, with a 1 per cent psychological sweetener to enable Germany to feel it was in the '20s'" (Gardner 1992a). The Germans accepted the proposal and the Council, after more than a year of bargaining, adopted the most radical reform of the CAP since the policy's inception in the 1960s. The Commission had compromised on modulation and on wheat prices, but the central, radical element of the Commission's reform--the shift from price support to direct payments--remained intact in the final Council bargain, leading one of the Commissioner's aides to label the reforms "son of MacSharry, definitely." (Gardner 1992b). Remarkably, the member governments had adopted in its essentials a reform plan which they, together with the EC's farmers, had been unanimous in rejecting only 18 months earlier.

External Bargaining: Negotiating Blair House

Having secured the passage of CAP reform, MacSharry and the Commission returned to the agriculture negotiations with the United States, armed with the MacSharry reforms as the Community's new bottom-line negotiating position. The Uruguay Round negotiations were further complicated, however, by the emergence of a new agricultural dispute between the EC and the United States, involving EC subsidies to Community oilseeds producers. Under a 1962 GATT agreement, the EC had agreed to grant US oilseeds duty-free status, yet beginning in the 1970s the Community offered subsidies to European oilseeds processing, contributing to a significant decline in the US share in the European oilseeds market. The US government accordingly took the oilseeds dispute to a GATT arbitration panel, which ruled in 1990 and again in 1992 that the EC subsidies were illegal, and in April 1992 the US announced its intention to impose punitive tariffs on $1 billion worth of EC agricultural imports. Thus, while technically distinct from the Uruguay Round talks, the oilseeds dispute became linked for bargaining purposes with the outcome of the Uruguay Round, and led to hard bargaining between American and EC negotiators in October and November of 1992.

These negotiations led to conflict within the Commission when, on the eve of the US Presidential elections in early November, MacSharry and Trade Commissioner Frans Andriessen traveled to Chicago, along with British Agriculture Minister John Gummer as president-in-office of the Council, for last-minute talks with US Trade Representative Carla Hills and Agriculture Secretary Edward Madigan. In Chicago, MacSharry and Andriessen came close to reaching a global agreement with Hills and Madigan on the oilseeds dispute as well as the outstanding Uruguay Round issues of internal supports and export subsidies, when Commission President

Jacques Delors again raised the issue of the Commission's negotiating mandate. As Ross (1995) tells the story,

> Delors, with the French at his back... telephoned MacSharry to warn him that the proposed deal went beyond CAP reform and the Commission's negotiating mandate. Delors also announced that he would oppose the deal in the Commission and was confident of winning, and that were the deal to go forward, it would be vetoed by at least two member states. MacSharry promptly resigned from his role as oilseeds negotiator and, with Andriessen, went back to Brussels to confront the Commission President, with whom neither was on cordial terms.... Delors was outvoted in the Commission on the issue of the negotiating mandate (pp. 211-12).

On November 10th, five days after handing in his resignation, MacSharry therefore returned as the Commission's chief negotiator on agricultural issues, and resumed the agricultural negotiations with the lame-duck but activist team of Hills and Madigan.

Finally, on 20 November, the Commission and the Americans, meeting at Blair House in Washington, D.C., signed the so-called Blair House "Pre-Agreement," resolving both the oilseeds dispute and the Uruguay Round agricultural issues. On oilseeds, the Community agreed to curtail domestic production by 10-15 percent in terms of acreage, responding to a key US demand. The Uruguay Round portion of the deal contained agreements on both internal supports and export subsidies, where the volume of exports receiving subsidies would be cut by 21 percent, rather than the 24 percent demanded by the Americans or the 18 percent offered by the EC. The Commission, finally, also obtained a so-called "peace clause," under which the United States agreed not to challenge EC agricultural subsidies for a period of six years (Preeg 1995, pp. 144-47).

Reneging, renegotiating, and wrapping up: From Blair House to Marrakesh

At Blair House, the Commission had reached the long-sought-after agreement on agricultural issues with Washington, thereby clearing the way for the conclusion of the Uruguay Round, which would follow roughly a year later in December 1993. It had done so, however, by agreeing to a package which had not been explicitly approved by the member governments, raising the problem of ratification by the Council. In particular, the Blair House agreement came under persistent attack from France, where farmers burned US flags in the streets of Paris and Agriculture Minister Jean-Pierre Soisson argued that the Commission had exceeded its mandate, negotiating an agreement with the United States which went beyond the CAP reforms agreed to in May.

The British and Danish Presidencies avoided putting the Blair House agreement to an immediate vote in the Council, which in any case could be taken by qualified majority vote over French objections, but successive French governments carried on a year-long assault against the agreement even so, demanding a renegotiation of the Uruguay Round provisions of Blair House. Such a renegotiation was resisted, however, by the new Trade Commissioner, Sir Leon Brittan, and by a majority of the member governments, which were concerned about re-opening the difficult and delicate package agreed to at Blair House.

The French position, however, was strengthened by two factors. First, the member governments agreed in the autumn of 1993 to ratify the final Uruguay Round package by consensus, and not by qualified majority vote as specified in Article 113, thus giving France a potential veto over the results of the Round. In fact, however, French Prime Minister EdouardBalladur preferred not to veto the overall results of the Round, from which France stood to benefit, and he still hoped to force a renegotiation of Blair House prior to the final vote on the

Uruguay Round. Second, and more importantly, Balladur prevailed on German Chancellor Helmut Kohl at their 28 August summit meeting to support the French position in the interests of the wider Franco-German relationship. This German change of position was crucial, and in September the Council of Ministers instructed Brittan to ask for "amplifications or additions" to the Blair House agreement with Washington.

Against this European background, the Clinton Administration, eager to reach agreement before the expiration of the US "fast-track" authority, agreed to a series of "clarifications" of the Blair House agreement at a meeting in Brussels on 1-3 December 1993, which went a considerable way toward responding to French demands (for details see Preeg 1995, pp. 163-67). With the agricultural issue out of the way, the contracting parties of the GATT completed the final package of the Uruguay Round negotiations on 15 December 1993, and, in a complex intergovernmental bargain involving side-payments to France and Portugal, the Council of Ministers unanimously approved the outcome of the negotiations on the following day (Devuyst 1995). Formal signing of the Final Act took place on 15 April 1994, in Marrakesh.

In a postscript to the Round, however, a dispute arose regarding the respective competences of the Commission and the member states in the ratification of the Final Act. The member governments had agreed to allow the Commission to act as the exclusive EC negotiator during the Round, but without prejudice to the final distribution of competence between the two levels. As ratification approached, the member governments insisted on the right to ratify individually the sections of the Round dealing with new trade issues such as services and intellectual property, while the Commission argued that the entire agreement should be ratified by the Community under Article 113 of the Treaty. Concerned about the considerable difficulties that such individual ratifications might pose in future trade negotiations, the Commission appealed the question of competence to the European Court of Justice.

Rather suprisingly given our assumptions about the integrationist preferences of supranational organizations, the Court in November 1994 handed down a decision which largely supported the position of the member governments. While the Community did indeed possess exclusive competence to negotiate on trade in goods as well as on non-tariff barriers to such trade, the Court held that in the areas of services and intellectual property rights, the Community and the member states were jointly competent to negotiate agreements with third parties. The Court acknowledged in its ruling that such mixed competence would create problems in future trade negotiations, but held that the problem was to be resolved between the Commission and the Council. This adverse ruling has led Ludlow, among others, to conclude that the Court is now under pressure from the member states "to act as a restraint on the central institutions as much as, if not more than, a catalyst of their advance" (quoted in Devuyst, p. 462). Regardless of the Court's motives in this particular ruling, it is worth noting that the Santer Commission has, in its proposals to the 1996 intergovernmental conference to revise the Maastricht Treaty, proposed modifying Article 113 to give the Community exclusive competence to negotiate in the areas of services and intellectual property, although it is as yet unclear whether the Commission will be able to overcome the resistance of sovereignty-conscious member governments (Barber 1996).

Summing up this section, then, the case of the Uruguay Round agriculture negotiations presents yet another mixed picture of Commission influence. On the one hand, I have argued that the Commission was both purposeful and successful in harnessing external US pressures and internal budgetary pressures to produce and steer through the Council a reform of the CAP more rapid and more far-reaching than the Council would likely have adopted in the absence of Commission entrepreneurship. On the other hand, it must also be admitted that the Commission was less successful in securing member-state ratification of its GATT negotiations at Level 1, and in particular of the Blair House agreement, on which the Commission was forced into an embarrassing involuntary defection. In order to understand the Commission's lack of success in this area, consider the four factors mentioned in the introduction as the determinants of the Commission's autonomy and influence: preferences, decision rules, information, and transnational coalitions. In the case of the Uruguay Round agriculture negotiations, all four of these factors worked against the Commission's efforts to shape an agreement with the United States on agriculture: the preferences of the member states, and in particular of France, were clear and intensely opposed to any major agricultural concessions; the decision rule for ratification of the final agreement, although legally QMV, was in practice unanimity, providing France with an effective veto over the Blair House agreement; with regard to information, the member states monitored Commission behavior closely through the Article 113 committee, providing the Commission with few informational advantages over recalcitrant member governments; and finally, the transnational coalition of agricultural interests was largely against any further concessions to the United States on agriculture, and opposed rather than supported the Commission vis-à-vis the member states. In the absence of these four factors, the Commission's delegated powers as the Community's chief negotiator were insufficient to enable it to push through its preferences on agriculture in the GATT negotiations.

Finally, however, it should be pointed out that the agriculture case is not necessarily typical of Community trade policy as a whole. Because of the high political salience of agriculture within the member states (including, but not only, France), member governments provided the Commission with a narrow and detailed negotiating mandate, monitored the Commission closely through the Article 113 Committee, and were willing to risk a breakdown in the Round in order to respond to domestic pressures from politically powerful farmers. It seems likely that in other areas of less political salience, the Commission is granted greater discretion in defining the Community's negotiating position, and that ratification in the Council is less problematic than in the case of Blair House.

Conclusions

In this chapter, I have theorized the Commission's role in the European Union in terms of a principal-agent relationship between the Commission on the one hand, and the member governments on the other hand, and I have briefly examined the Commission's executive powers in the areas of structural policy, competition policy, and external trade policy in order to shed light upon the workings of this principal-agent interaction. The findings of these brief case studies are suggestive rather than definitive, but they do provide some preliminary support for the hypotheses presented above, and suggest further avenues for empirical research. For the sake of brevity, I focus here on four conclusions.

First, the three cases examined above suggest that the Commission does indeed have independent preferences, and is in fact a competence-maximizer along the lines suggested by Majone, Cram and others. Across all of the areas surveyed, the Commission has attempted, in some cases successfully, to increase both EC and Commission competence in the planning and administration of the Structural Funds; in the establishment of Community-wide criteria for cartels, concentrations, state aids, and, especially, mergers; in the aggressive use of Article 90 to liberalize telecommunications in the post-1992 internal market; and in the Commission's claim to exclusive Community competence to negotiate on the member states' behalf in the new areas of services and intellectual property rights. Along the integrative dimension, therefore, the Commission's preferences have largely conformed to the predictions of neofunctionalist and institutionalist theorists.

Along other dimensions, on the other hand, and particularly along the left-right split mentioned earlier, the Commission has often been internally divided, and its preferences have been less predictable. In trade, for example, Commissioners were openly divided on agriculture, with MacSharry more willing than Delors to make concessions to the United States. Similarly, in the area of competition policy the Commission has been split between neoliberals such as Leon Brittan who advocate the strict competition criteria championed by DG IV, and other Commissioners like Delors who have been willing to weigh competition criteria against other, social and industrial policy criteria.

Second, all three cases suggest that the Commission enjoys considerable autonomy and influence in its implementation of Community policies. In structural policy, for example, the Commission successfully set the agenda for major 1988 reforms which increased its own powers, and it was subsequently able to build direct networks with subnational governments, and stand up to powerful member governments like the United Kingdom on the issue of additionality, at least in the short term. Similarly, in the area of competition policy, the Commission was able, with the support of the Court of Justice, to apply Article 90 to the liberalization of the telecommunications sector, and to secure its long-sought goal of jurisdiction over European-level mergers and acquisitions. In the case of external trade policy, finally, Delors and MacSharry were able to exploit the external pressures from the United States and other EC trading partners to push through the Council a far-reaching reform of the Common Agricultural Policy, despite the initial resistance of all of the major EC farm groups and the Council of Agriculture Ministers.

Third, however, the cases examined above suggest that the Commission's ability to act on these preferences, and to press for "more Europe," should not be overstated, and varies widely across issue-areas and over time as a function of the preferences of the member governments, the rules governing the sanctioning or overruling of the Commission, the information available to both the Commission and the member governments, and the Commission's ability to strike up alliances with important transnational actors. In the case of the Structural Funds, for example, the Commission exploited member-government concerns about efficiency, and its asymmetrical access to information, to press for important new powers in the administration of the Funds--powers which it then used aggressively to pursue a Commission policy directly at odds with the concerns of the various member governments, including the UK. By 1993, however, the Commission's informational advantage had dissipated, and the decision rules favored those member governments seeking a revision of the Commission's powers. The resulting 1993 Fund Regulations did not remove all Commission discretion, but the ability of the Commission to move aggressively, and against the preferences of the member governments, had been substantially curtailed.

In the competition policy cases examined above, by contrast, the Commission's powers were laid down in Article 90 of the Treaty and in the 1989 Merger Regulation, respectively. In both cases, therefore, the "default condition" for the Commission's delegated powers was the status-quo, thus protecting the Commission from any member-government efforts to roll back its powers. Commission's powers were enshrined in the Treaties, making it more difficult for member governments to sanction Commission behavior of which they disapproved. Nevertheless, a lack of member-government and interest-group support has led the Commission to resist using Article 90 to liberalize the energy sector, and the determined opposition of the UK and Germany has thus far prevented the Commission from mustering a qualified majority in the Council in order to lower the thresholds under the Merger Regulation.

Finally, in the area of trade, the Commission was generally unable to translate its role as chief negotiator into leverage vis-à-vis member governments such as France on the substance of the Uruguay Round agreement. Facing strong member-state preferences, a demanding de facto consensus rule for ratification, close monitoring from the Article 113 committee, and intense opposition from agricultural lobbies, the Commission was forced to back down on the Blair House agreement in 1992-93. Once again, the agriculture negotiations of the GATT were an unusually controversial issue in EC trade policy, and are not necessarily representative of the Commission's influence in trade policy more generally. Nevertheless, these cases suggest that the Commission's formal Treaty powers are not sufficient to predict or explain actual Commission autonomy and influence, and that we need to look as well at preferences, decision rules, information, and the availability of transnational coalitions in any given case.

A fourth conclusion which emerges from the case studies presented above is that the Commission's autonomy and influence also depends crucially on its rather complex relationship with the European Court of Justice. The Commission and the Court are, in Martin Westlake's

(1994) fortuitous phrase, both "partners and rivals" in the policy process. On the one hand, the Court shares with the Commission a broad or teleological reading of the Treaties, and a longstanding preference for deeper integration, which has led the Court to support the Commission's efforts to expand Community competence, as in the cases of merger control and telecommunications deregulation discussed above. On the other hand, however, the Court has also sought to defend the overall "institutional balance" among the various EC institutions, and to ensure that the Commission carries out its functions in a clear and transparent manner, and so the Court has often ruled against the Commission in the area of competition policy, and in the Commission's bid for greater negotiation powers in external trade policy. The Commission and the Court may, therefore, be the engines of integration, but as we have seen, the two engines do not always pull in the same direction.

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