

# **The European Commission's Power: Overrated or Justified?**

- First Draft -

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## Abstract

For decades the bureaucratic and legislative power of the European Commission has interested scholars of EU studies. Yet, relatively little data are known about the exact division of power of the European Commission in legislative affairs apart from case studies (Cini, 2000; Schmidt, 2000). This paper presents analyses of qualitative and quantitative data to analyse how powerful some experts consider the Commission to be and to see how influential it actually is. Based on recently collected expert interviews I show that senior EU officials rate the Commission highly against other EU institutions and the member states. I contrast these results with the actual influence of the Commission on the legislative process. Using the data set "Decision Making in the European Union" (Thomson, Stokman, König, & Achen, 2005), which contains data on positions of EU member states and institutions in 60 legislative acts, I show the direct influence which the Commission exerts with its agenda setting and bureaucratic power. Multivariate analyses of 150 negotiation issues between the member states, the European Parliament and the European Commission demonstrate that the influence of the European Commission is overrated because it cannot defend its original proposal as much as intended. The more the Commission takes EU members positions into account, the more success it has in the EU negotiations. Thus, it functions rather as agent dependent on member states than as supranational entrepreneur.

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## Introduction

When the European Council and European Parliament adopted a very business-friendly directive on e-commerce trade in the European internal market in 2000, they had accepted the original proposal of the European Commission nearly in its original content<sup>1</sup>. This proposal protected e-commerce businesses from lawsuits by ensuring that the country of origin principle prevailed which meant that the private law of the country of the provider and not the customer is applied. The regulation guarantees that internet traders do not have to adapt to 15 different private laws but that they have only to apply the law of their country of origin. During the discussion of this directive which was subject to the codecision procedure, the Commission could not only defend the main idea of its original proposal against more consumer protectionist member states such as Denmark and Germany, but it could also convince the European Parliament not to force the Council into the conciliation committee but to accept the proposal after the second reading. Quite contrary to this success story is the discussion about the new services directive currently conducted in Brussels. The liberal directive initiated by the former Commissioner Bolkestein is intended to remove legal obstacles to service providers who want to offer their services abroad. The same idea - “the country of origin principle” – faces now fierce opposition by France and Germany which want to protect their national markets. The new Commissioner for Internal Market has already backed down and announced, that he will reformulate the proposal realising that the current one “will not fly”<sup>2</sup>.

The two accounts illustrate two opinions about the influence of the Commission. In the first case the Commission is said to have used its right of initiative and thus shaped EU legislation significantly. Other success stories report the skilful manipulation of member states’ preferences by the Commission before a law was initiated in order to ensure the passing of a law according to the wishes of the Commission (Schmidt, 2000). By its sole right to initiative the Commission enjoys a substantial amount of influence on European legislation – a commonly accepted fact which is yet not fully explored. The second case illustrates distinctly that the

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<sup>1</sup> Information based on interviews conducted by the author in 2000.

<sup>2</sup> Economist, March 12<sup>th</sup> 2005, p. 36

Commission is dependent on the member states' preferences and has to take them into account in order to realise its policy ideas.

If the Commission is successful, it is not clear why this is the case. One of the reasons could be that the Commission uses its advantage of information and expertise to propose initiatives which can only partly be altered by the EU member states and the European Parliament in the course of the legislative discussions. In these cases, we would expect differences of success between the various directorate-generals according to their expertise. Yet, it could also be that the Commission suggests only proposals which are either requested by the member states<sup>3</sup> and the EP<sup>4</sup> or have already taken possible resistance into account. The following article wants to highlight this assumed power of the European Commission and analyses in which cases the Commission is most successful and what the reasons for a success or failure are. I will discuss how powerful experts from the EU institutions consider the European Commission to be. With the help of the "Decision Making in the European Union" (DEU) data set, I investigate whether the Commission is actually as successful as commonly assumed.

This article presents in its first theoretical part the current state of literature about the influence of the European Commission on European legislation. I draw my hypotheses about the power of the Commission from these considerations and illustrate the opinions about the Commission with expert interviews from a data set about the "Power, Skill and Information" (PSI) of the EU actors which I gathered in 2000-2002. I will analyse how successful the Commission actually is by analysing these hypotheses with the data set from the research project "Decision Making in the European Union" (DEU) which encompasses data on 60 legislative proposals of the last five years. In a last part, I discuss the results and suggest further ideas for analysis in order to shed more light on the most important bureaucracy in the European Union.

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<sup>3</sup> Article 208 Treaty establishing the European Community

<sup>4</sup> Article 192 Treaty establishing the European Community

## Theoretical Background

The European Commission plays a dominant role in the legislation of the European Union by having the right of initiative and thus determining the agenda of the EU<sup>5</sup>. The Commission received the right of initiative from the member states who delegated this task to this unique supranational form of bureaucracy. Several authors such as Kassim and Menon (2003) or Pollack (1997) discuss the delegation relationship between the principals – the EU member states- and its agent – the European Commission and analyse how obedient this agent fulfils its original task.

By initiating legislation the Commission influences content and timing of legislative proposals. Although the Council and the Parliament may assume part of this right of initiative by asking the Commission to propose something specific, the Commission is not forced to follow these suggestions. It is up to the Commission whether to take up these ideas or not, but it generally has the reputation of being very receptive for ideas. This is not surprising because the Commission also has an interest of appearing successful and thus wants to propose laws which have a chance of being passed successfully. I am not aware of a situation in which the Commission did not respond to a demand of the Council or the EP and has been sued because of non-compliance.

I assume that the European Commission as rational actor already anticipates possible resistance of the member states and the EP. Hayes-Renshaw and Wallace (1997:186-88) quote an example in which the Commission sent a communication instead of a fully-fledged proposal to the member states in order to test the opinions of the member states and to avoid proposals which would not find a majority in the Council. Schmidt (2000) illustrates the work of the Commission before it initiates a proposal by pointing out an example where the Commission skilfully manipulated the preferences of some member states in order to gain a necessary majority to support its proposal. Thus it can choose the winning position closest to its own preference.

In a later study, however, Schmidt (2001) demonstrates how the presidency of the Council can assume parts of the right of initiative of the Commission and thus assume power from the Commission. But the literature on the relationship between Council and Commission

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<sup>5</sup> Article 251 und 252 Treaty of the European Communities. For other presentations on the competencies of the Commission see also Nugent (Nugent, 2001a; Stevens & Stevens, 2001) or (Edwards & Spence, 1997).

also stresses the fact that different presidencies may support the success of a Commission proposal. Some skilful Commission officials are said to predict which presidency treats their proposal favourably so that they schedule their proposals accordingly. An example for such behaviour is the telecommunication directive which profited greatly from the Italian, Dutch and Belgium presidency (Fouilleux, De Maillard, & Smith, 2001)

The right of initiative of the Commission is even further strengthened by the fact that a proposal by the Commission can only be altered by a unanimous decision of the Council of Ministers (Schmidt, 2001:126). Using several case studies Schmidt illustrates how the Commission accepts even proposals which were strongly altered by the respective Council presidencies in order to achieve at least a result and to avoid the failure of the law. The strong norm of consensus in the Council<sup>6</sup> weakens the Commission because it cannot seek strategic alliances with the member states closest to the Commission. With this finding she supports her claim to increasingly implement informal norms such as the consensus rule instead of only looking at the formal agenda setting right of the Commission. Hug (2001) criticizes this idea by pointing out that this would come close to ad-hoc assumptions. In his opinion, the lack of agenda influence of the Commission in these cases could also be due to the ignorance of member states' preferences. This informational asymmetry could explain why the Commission did not find enough coalition partners among the EU governments and could not play out its agenda setting power fully. I wonder whether this is actually probable, because the Commission has usually a substantial amount of experience in its cooperation with the member states so that their preferences should not come as a surprise to them.

It is unknown to which extent the original proposals of the Commission get changed by Council and EP. Cini (2000) estimates that up to 80% of the original proposal remain unchanged but this seems to be rather an informed guess than an empirically proven fact. The Commission does not only enjoy the agendasetting power, it can also withdraw a proposal if it has the impression that the idea of original proposal has been seriously distorted. This happened in 1986, when the Commission withdrew its suggestion about the student exchange programme ERASMUS because the member states had changed its content too much (Spence, 1995). This

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<sup>6</sup> Mattila and Lane (2001:40) estimate that still up to 75-80% are decided by unanimity.

possibility of withdrawal bears a convenient threat potential for the Commissioners. In one incident Commissioner Bolkestein threatened to withdraw the law on a common customs tariff when he got the impression that the member states were not sufficiently prepared to protect the systems against fraud. The threat showed its desired effect so that the member states complied and adopted the law with a better protection against fraud<sup>7</sup>.

Hug (Hug, 2003) doubts whether the commonly accepted integrationist preferences of the Commission are as supranational as often claimed. Very often, the Commission is expected to be a preference outlier (Garrett & Tsebelis, 1996; Tsebelis, 1994) but Hug correctly points out that there is little empirical data supporting that view. In view of the fact that the Commission is the agent of the member states and to some extent dependent on them regarding future freedoms and discretion, it is quite logical to assume that the Commission's preferences are not exogenously given but explicable by the preferences of the member states and thus exogenous. Thus, the preferences of the Commission should relate closely to the preferences of their principals (Hug, 2003:55). In his analysis of the position of the Commission in relation to the member states, Hug demonstrates that the Commission position is not as distant or supranational as it is often assumed (Hug, 2003:59) and not at odds with the member states' preferences. Therefore, it would not be surprising if the Commission is not as supranational as often expected.

A more subtle form of power of the Commission is based on the fact that the Commission is present during all Council negotiations. Although the Commission does not vote, it is sometimes called the "16<sup>th</sup> member state" (Hayes-Renshaw & Wallace, 1997) because of its participation in the negotiations about laws in the first pillar. Its presence gives Commission officials the chance to explain its original intention, to comment possible desires for changes and to change the proposal during the negotiations. But the Council does still enjoy the right to exclude the Commission from the negotiations.<sup>8</sup>

Furthermore, the amount of politicization of a proposal is a factor mentioned when judging the Commission's power is the amount. When analysing the relationship between

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<sup>7</sup> Agence Europe, Bulletin Quotidien, Nr. 7679, 18.3.2000.

<sup>8</sup> Decision of the Council, 31 May 1999, L147/13, Article 4(3).

Council and Commission, Pollack (1997) elaborates the level of contention of a political topic as factor which influences the power of the Commission. The more politicized a topic is, the smaller the influence of the Commission, because the member states have a stronger interest in realising their ideas and to demonstrate their capabilities. Much larger is the Commission when the EU governments consider a topic to be relatively uncontroversial and when the Commission can use its informational advantage fully (Pollack, 1997:123).

Another form of influence of the European Commission apart from initiating proposals is its role in executing laws as agent of the member states. By delegating the execution of the laws to the Commission via the comitology system, the member states save costs and efficiency because an independent implementation office increases the credibility of a political measure (Franchino, 2002). The Commission implements the laws with the help of approximately 400 committees, in which national and Commission officials work together in implementing EU laws. This cooperation offers a possibility to the member states to control the executive functions of the Commission in a form a continuous “police-patrol monitoring” (McCubbins & Schwartz, 1984) and to ensure that the Commission does not extend its powers too much. The power of the Commission varies according to the type of committee. Depending on the question whether it is a consulting, administrative or regulative committee, the Commission has more or less influence during the implementation and the member states vote with unanimity or qualified majority in these committees. Thus, in some cases the choice of committee type is contested between the institutions as in the Eurodac decision. In this debate about a database of fingerprints of asylumseekers, the Commission threatened to take the Council to the European Court of Justice when the Council insisted against the treaty provisions on a type of implementation committee which foresaw unanimity and thus a veto right for each member state<sup>9</sup>.

This is quite a typical behaviour which Franchino (2004) illustrated distinctly in his analysis on EU comitology. He demonstrated that the member states delegate the implementation of laws to national institutions and not to the Commission when they had decided unanimously in the Council or when they concerned specialised topics needing a high

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<sup>9</sup> Information from the interviews carried out to this proposal.

level of specialized and technical knowledge. Unanimity is an indicator that the member states are not yet prepared to transfer competence to the Commission's level. If the Council votes with qualified majority system, it is a sign that the Council is prepared to share its competence with the Commission and to use its supranational management capabilities.

All things considered, the influence of the Commission sinks in the course of a legislative negotiation. The Commission determines schedule and content of a legislative proposal. During the legislative discussions it turns into an actor of second or third order which participates but has no voice.

The power of the Commission has also decreased due to the increased power of the European Parliament. Amongst representatives of formal models, a lively debate developed in the 90s to which extent the introduction of the codecision procedure in the Maastricht Treaty extended the powers of the EP.

A first decline of power was experienced by the Commission after the introduction of the cooperation procedure in the European Single Act in 1986. This new procedure gave the EP the chance to make amendments during the second reading of a law which had to be accepted after confirmation by the Commission by the Council with qualified majority voting or refused by unanimity. Since unanimity is more difficult to achieve than qualified majority, the EP assumes part of the agenda-setting power of the Commission and can determine the content of a proposal to a certain extent. Therefore the EP turned into a "conditional agenda-setter" (Hubschmid & Moser, 1997; Tsebelis, 1994, 1996). The Commission's power has thus been weakened, because it is dependent on the EP when it wants to make amendments after the Council has adopted its common position <sup>10</sup> (Schmidt, 2001:127).

Crombez (1996; 2000) considers this claim about the decreased power of the Commission as exaggerated, because the EP is still dependent on the Commission whether the Commission includes the EP's amendments in the proposal or not. Only after the second reading, the EP sees a chance to have its opinion included (Moser, 1996). Steunenberg (1994) also considers the Commission as the relevant agenda-setter in situations with complete

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<sup>10</sup> The „common position“ is the compromise on which the member states have to agree in the legislative procedure, see article 251 or 252 Treaty of the European Communities.

information. Tsebelis (1996) contradicts them by pointing out the empirical fact that already many EP amendments become accepted after the first reading. A graphical analysis of this discussion demonstrated only small differences in the predictational power of the different models on the power of the institutions in the cooperation procedure (König & Pöter, 2001).

The increase of power of the EP after the introduction of the codecision procedure instilled an even more intensive debate. The codecision procedure introduced the veto right of the EP after the third reading and a conciliation committee after the second reading in case the Council and the EP do not agree<sup>11</sup> (Crombez, 1996; Rittberger, 2000). Moser (2000) explained that this procedure meant a power increase for the EP in contrast to the Commission because the commission had to accept the amendments of the EP even if they were not according to their wishes. Furthermore, the Commission is more limited in tabling its proposals as it has to suggest laws which are more attractive than the status quo not only in the eyes of the Council but also in the eyes of the European Parliament (Crombez et al., 2000).

Doubts about this increase of power of the EP were raised by pointing out that the EP very rarely makes a proposal fail therefore the pivot player of the Council and not the EP determines the outcome (Garrett & Tsebelis, 1996). Tsebelis (2000) even declares that the EP had even more power under the cooperation procedure than under the codecision procedure because it could at least set the agenda in the former. These statements were strongly challenged by Crombez (2000), Moser (2000), practitioners from the EP (Corbett, 2000) as well as the actual policy of the EP which wants to extend the codecision procedure to more legislative areas: these attempts contradict the claim that codecision is not beneficial for the EP<sup>12</sup>. Several case studies about the codecision procedure also demonstrate the increased influence of the EP in codecision (Earnshaw & Judge, 1993; Judge, 1994). Steunenberg and Selck (2005) show that a model with the EP as agenda setter which motivates the Council to a certain law delivers the best predictions. In consequence, I follow that the power increase of the EP is not only demonstrated with case studies and anecdotes but also with theoretical and formal analyses.

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<sup>11</sup> Artikel 251.5 EGV.

<sup>12</sup> Report on the draft Treaty establishing a Constitution for Europe and the European Parliament's Opinion on the convening of the Intergovernmental Conference(IGC), A5-299/2003.

Another change to the codecision procedure which meant a power loss to the Commission was introduced in the Treaty of Amsterdam 1994: In the original version of the codecision procedure the Council and the EP could vote whether to accept the new “common text” of the conciliation procedure or whether to return to the common position of the Council which the EP had formerly refused. Thus, the decision of both institutions was between more or less legislation. The procedure was changed in Amsterdam to the extent, that the Council and the EP can now decide after the conciliation procedure whether to accept the “common draft” of the conciliation procedure or whether to cause the law to fail. Thus, the two institutions choose between a compromise of the conciliation committee or the status quo, between legislation or no legislation. This means a weakening of the influence of the Commission (Crombez et al., 2000) because the chance increased that EP and Council return to the status quo and block a proposal completely. Especially because the EP is said to accept something rather than nothing, the probability was quite high that the EP would at least accept the “common position” of the Council under the original codecision procedure. This had meant for the Commission that it could at least realise a part of its proposal under the old codecision procedure and that the new codecision procedure decreased its influence on the legislation (Kasack, 2004).

The abbreviated overview of the current research on the Commission illustrated that there are still research gaps concerning the influence of the Commission. It is not yet distinct to which extent the Commission is a preference outlier, which factors influence its success and very few studies measure these competing hypotheses on the influence of this supranational agent. In the following part, I will introduce the data with which I am going to measure the Commission’s power.

## The data

To illustrate and test the hypotheses above I will use two data sets which were collected for the research project “Decision Making in the European Union”<sup>13</sup>. The first data set on estimates of

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<sup>13</sup> Participants of the project were Prof Frans N. Stokman, Dr. Robert Thomson, Javier Arregui (Rijksuniversiteit Groningen), Prof. Bernard Steunenberg, Torsten Selck (Universiteit Leiden), Prof. Ad van Deemen, Vincent Boekhoorn (Katholieke Universiteit Nijmegen), Prof. Madeleine Hösli (Universiteit Leiden), Prof. Gerald Schneider, Prof. Thomas König, Tanja Cornelius (October 1999-June 2000), Stefanie Bailer (University of Konstanz), Prof. Mika Widgrén, Antti Pajala (University of Turku), Prof. Chris Achen (University of Michigan, Ann Arbor).

“Power, Skill and Information” (PSI) of EU institutions and member states was collected by Robert Thomas, Javier Arregui (both at that time Rijksuniversiteit Groningen) and me. By interviewing officials from Commission, Council and the EP we wanted to enquire whether long-serving officials have a different opinion on the power of the institutions than formal analyses and political scientists. Our definition of power included not only formal powers but also informal power so that we asked our experts the following question:

“Within the policy domain (specify domain) subject to (type of legislative procedure), the different stakeholders have different capabilities or amounts of potential to influence decision outcomes. This ability is based on a number of different resources: for example, the formal authority to take decisions, financial resources, information, access to other important stakeholders, leadership of a large number of people etc. Please indicate the capabilities of each stakeholder on a scale from 0 to 100.”

In sum, we interviewed 21 experts; most of them were chosen because of their long-standing experience in the negotiations between the institutions<sup>14</sup>. As the interviewees could give estimates for several policy domains and different legislative procedures, we gathered 36 estimates from the 21 experts. After a careful consideration of the data we removed the respective statistical extreme values<sup>15</sup>, leading to the power values for the institutions according to procedures as shown in the analysis section.

I measure the success of the Commission using the data set “Decision Making in the European Union” (DEU). The DEU data set includes detailed information on 66 legislative proposals by the European Commission. In order to be considered for inclusion, a legislative project needed to raise at least a minimum level of controversy. The selection criterion was whether *Agence Europe*, a daily comprehensive news service reporting about European Union activities, mentioned a proposal and whether an EU expert confirmed that the proposal raised a minimum level of controversy. The temporal domain of the study is limited insofar as the Council had to discuss a proposal within the period from January 1999 to December 2000. The legislative proposals that were selected were either subject to the consultation or the co-decision

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<sup>14</sup> For a more extensive discussion see Thomson (2002).

<sup>15</sup> We excluded extreme values for the following categories (justification in brackets): 3 values for the Commission under consultation (very low values in comparison to the other values), 2 values for the Council under consultation (extremely low values in comparison to the others), 2 values for the EP under consultation (inconsistent justification for estimates), one value for the Commission under codecision (very low values in comparison to the others).

procedure; both procedures can require unanimity or qualified majority as voting threshold in the Council of Ministers.

The DEU research team conducted expert interviews on the proposals between early 2000 and early 2002. DEU researchers interviewed more than 150 experts; the average length of an interview session was 100 minutes. Interviews were only conducted with experts who had a chance to witness the whole bargaining process between and within the diverse legislative bodies of the EU. Experts were typically officials from the European Commission, the Council of Ministers or the Permanent Representations of the Member States in Brussels. The experts provided the interviewing Ph. D. students with detailed information based on their memory or notes. The first task in the interviews was that an expert identified the controversial issues within a proposal. Based on this, they had to indicate the position the decisive actors (member states, the Commission, and the European Parliament) held shortly before the common position was adopted in the Council. Our experts had to locate the two EU actors holding the two most extreme positions on the two end points 0 and 100 of our dimension to represent the stakeholders' opinions on that issue. Intermediate positions taken up by the remaining EU actors represent less extreme positions or compromise solutions achieved in the negotiation. Especially in the cases where qualitative and not numerical issues were negotiated, we relied on our interviewees' expertise to identify the political distances of the negotiating parties. The majority of issues (109 of 162) reflect a ranked ordering of policy positions, 33 of the issues are dichotomous where the EU actors only hold extreme positions, and in 20 cases the measurement is on a scale level indicating that all points on the dimension have a substantive meaning, e. g. financial transfers to a certain EU programme. We also asked for the position of the reference point which describes the point prevailing if the negotiators do not find an agreement, as well as the location of the final outcome. The final outcome and the predictions are also located on the preference scale. Other questions pertained to the salience attributed to the contested issues, which we defined as the importance actors attach to the negotiation issues. We used this measure of salience as operationalization of the time preference of an actor towards an issue. The time preference mirrors the evaluation of a negotiation situation which is related to the concept of salience used in bargaining models by Bueno de Mesquita and Stokman (1994). The measure of salience includes the notion of urgency and relevance, and thus we consider it as an indirect indicator for the time preference of negotiators. Outcomes were predicted on the preference scale.

In order to measure the influence of the various directorates-general, I inserted additional information about the responsible DG. The Directorates-General were attributed to the proposals according to the Prelex Database ([www.europa.eu.int/prelex](http://www.europa.eu.int/prelex)), which indicates the primarily responsible DG for a legislative proposal. This method bears the problem that the naming system of the Commission and to some extent the structure of the Commission changed in September 1999 when the new Prodi Commission took up work and Romano Prodi announced that he did not intend to learn these numbers and support such a system for insiders (Nugent, 2001b). In some cases, the DGs were still named after the old number numeration system before the Prodi Commission, in these cases I changed them into the easier and current naming system which indicates the main policy domain of the DG. In some cases this was not easily possible because also the structure of the DGs changed. The reform of the Commission in 1999 also encompassed the creation of a new Health and Consumer Protection DG out of the previous DG XXIV (Consumer Policy and Consumer Health Protection) and some parts of other DGs such as Employment, Agriculture and Environment (Nugent, 2001b:138) and the creation of a new DG Enterprise comprising the former DG III (Industry) , XIII (Telecommunications, Information Market and Exploitation of Research) and DG XXIII (Enterprise Policy, Distributive Trades, Tourism and Cooperatives). If a completely new DG was created and if the proposal had been fully debated under the auspices of the “old DG”, I counted the DG as a separate case.

## Analysis

The following tables portray the descriptive analyses of the numerical expert estimates about the power of the institutions and give a first image about the power of the Commission in contrast to the Council and the European Parliament. Quite extraordinary is the dominant position of the European Parliament in the codecision procedure and the emphasis of the Council in both procedures. The power of the Commission is nearly unchanged in both procedures thus not indicating a power loss for the Commission after the introduction of the codecision procedure.

Table 1. Power estimates for the institutions in the consultation procedure<sup>16</sup>.

Actor	N	Mean	Standard Deviation	Standardised Value <sup>17</sup>
Commission	15	91.33	16.5	93
Council	16	98.06	4.19	100
EP	16	27.15	17.76	28

Table 2 Power estimates for the institutions in the consultation procedure<sup>18</sup>.

Actor	N	Mean	Standard Deviation	Standardised Values
Commission	17	84.66	22.58	95
Council	17	89.25	15.55	100
EP	17	77.53	21.06	87

Interestingly, the experts did not distinguish their power estimates according to voting procedure (unanimity or qualified majority voting), obviously this question does not seem to influence the distribution of power between the institutions in their opinion. The security about the power of the Council seems to be most distinct, because the standard deviation is lowest. More insecure are the experts when it comes to the Commission and the Council.

In both procedures, the Commission has received an amazingly high value of 93 and 95 points in comparison with the Council. Considering that the Commission's influence depends mostly on its agendasetting right and taking into account that it loses influence in the course of a legislative debate, even more so during the codecision procedure, the high values for the Commission amaze. I will look into more detail in the justifications of the experts why this is the case.

During the interviews about the power of the EU institutions, my interview partners justified their usually high numerical estimates for the European Commission by especially

<sup>16</sup> These data are also presented in (Thomson & Stokman, 2005), chapter 2 of the edited volume of the research project (Thomson et al., 2005)

<sup>17</sup> In order to compare the estimates on their original scale, we rescaled the results that the highest value is set to 100 and the other institutions receive the respective values.

<sup>18</sup> These data are also presented in the chapter 2 of the edited volume of the research project (Thomson et al., 2005)

mentioning the right of initiative called by one expert “a key role” [4]<sup>19</sup>. A typical comment outlining the traditional source of influence for the Commission was: “[the] Commission has an amazing amount of power since they give the orientation with their suggestions. Strangely enough, the member states do not seem to be able to make compromise suggestions so that they have to rely on the better suggestions of the COM.” [5]. In the opinion of a director within the Commission, the member states are generally interested in promoting the internal market, a general desire which gives relatively large leeway and thus influence to the European Commission [1]. He outlined this claim by stating: “When the Commission suggests a proposal on the liberalisation of European electricity market, it is highly improbable that there will be no liberalisation whatsoever, so that at least 50% of the intended objectives of the Commission will prevail” [1].

Several of my interview partners also pointed out the system that the Commission does not initiate proposals regardless of the opinions of the member states. The Commission also asks for the opinions of the EU governments before drafting proposals; thus the proposals already reflect opinions of the states and industry. Especially the pharmaceutical industry is said to have a great influence when it comes to proposing legislation. According to this long-standing expert within the Commission, 30% of COM proposals are an application of international treaties’ obligations, 20% are suggested by member states and economic actors, 15-20% are implementations and updates of already existing legislature or treaty obligations – such as agricultural prices, whereas only 5-10% are originally new legislative acts [1]. All in all, this specific expert estimated that around 90% of new proposals are already influenced by the member states. Another interview partner pointed out that the Commission is often forced by the member states in package deals to initiate a certain point of legislation: “At least in every Council session, there is one such point on the agenda.” [4]. Another expert working in the DG Agriculture in the European Commission also stressed the importance of the right of initiative and then suspected that the Commission is sometimes deliberately asking for more that it actually wants as in the case of the Agenda 2000 [2].

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<sup>19</sup> The numbers in brackets are identification numbers for the different interview partners who wanted to stay anonymous.

The expertise of the Commission is not always regarded as an advantage as one expert of the Commission pointed out. According to his view the Commission “partly unskilful since they demonstrate too much expert interest.” [3]. This indicates that national interests of the member states weigh heavier than pure expertise. However, an interview partner from the Council considered the expertise of the Commission as its main and most important asset [8].

Matching the theoretical consideration about the shift of power after codecision, one of my interview partners also felt that the codecision shifted power away from the Commission: “In the course of the co-decision procedure it becomes more a sort of honest broker, that is a sort of role change. Later on in the course of the co-decision procedure, the power shifts toward the Council and the EP, so that Council and EP have 75% of the power together, and the COM only 25%.” [4].

Several interviewees mentioned a recent power loss of the Commission. One interview partner stressed the fact that the power struggle between the Commission and the EP during the Santer Commission crisis in 1999 [4]. During this crisis of mismanagement the Commission lost credibility and has to “make more concessions today” [4]. One of his colleagues also described the development that the EP has gained power at the costs of the Commission for example during the BSE crisis as well as during the mismanagement crisis of the Commission [7].

The interview results illustrate distinctively how high the power of the Commission is considered to be. In the following descriptive analyses I will portray, whether the assumed power actually translates into success. Based on the data of the DEU data set, I calculated the success of the EU actors in the 60 legislative proposals contained in the data. I define the distance of an actor’s ideal position to the outcome defines negotiation success. I rescaled this measure so that a higher score indicates more success; this measure has been used before and is called value score (Hösli, 2000). I use this measure of success because it shows a direct and insightful way the extent to which an actor could move an outcome towards its preferred position.

The list of gain according the EU actor in table 3 demonstrates that the Commission is obviously not capable of translating its means into bargaining success. Only the Netherlands and France share a similarly low figure of negotiation success. When looking at table A1 in the appendix, we see that the sort of legislative and voting procedure determines only slightly the success of the Commission. As expected from the discussion of the formal models on the power changes after the codecision procedure, the success of the Commission is smaller in codecision, obviously it has to share power with the European Parliament. The form of voting procedure

influences the success only to a small extent and rather in the unexpected direction. Voting according to qualified majority voting grants the possibility to the Commission to form strategic alliances in order to gain necessary coalitions for its proposals, but this does not have an influence on the success of the Commission. Another reason for this small difference could be the effective consensus norm in the Council which reduces the actual use of qualified majority voting to a small number of cases.

Table 3 Negotiation Success According to Actors<sup>20</sup>

EU Actor	Average Gain in Negotiation	Standard deviation	N
Sweden	72.99	29.02	163
Finland	72.98	28.24	163
Austria	70.54	30.97	163
Denmark	70.06	30.04	163
Ireland	69.60	29.71	163
UK	68.11	30.37	163
Luxembourg	67.72	31.30	163
Germany	66.31	31.86	163
Portugal	65.85	31.74	163
Belgium	65.63	33.09	163
Greece	65.52	31.96	163
EP	65.36	35.30	163
Spain	64.79	33.00	163
Italy	64.30	33.67	163
Commission	64.09	34.44	163
Netherlands	63.69	31.68	163
France	62.19	32.73	163
Total	67.04	31.83	2771

<sup>20</sup> These data are partly published in Bailer (2004) which analyses into more detail the success factors for the member states.

Obviously the legislative procedures do not matter too much. Another factor which could influence the varying influence of this supranational bureaucracy could be the differing qualities of the its DGs which have to get informed about possible preferences of the member states or current policies in the European Union. Therefore, I will test in the following multivariate analysis whether the respective numbers of staff in the responsible DGs influence the success of the Commission. In a second model, I will test whether the level of contestation matters and decreases the chances for the Commission. The third model shows the effect of procedural constraints and a fourth model illustrates the effect of all independent variables.

Table 4 Influence on the Success of the European Commission

	DG model	Saliency model	Procedure model	Full model
Staff 2002	0.01*			0.01
	(0.00)			(0.01)
Budget 2002	-0.00			-0.00
	(0.00)			(0.00)
Length		-0.01***		-0.01**
		(0.01)		(0.01)
Saliency		-0.02		0.02
		(0.17)		(0.19)
QMV			0.05	-0.65
			(6.00)	(7.09)
Codecision			-5.72	-5.01
			(5.73)	(6.35)
Constant	56.60***	74.25***	67.60***	69.19***
	(4.57)	(10.64)	(5.48)	(14.25)
Observations	150	160	163	147
Adjusted R-squared	0.02	0.04	-0.01	0.04

Obviously, the number of staff as well as the length of a proposal have an impact on the success of the Commission. The higher the number of staff the more successful the Commission. More people in a general-directorate mean more expertise to draft proposals, more resources to collect information about the possible impediments and resistance of the EU governments. The average

length of a Commission proposal in days is a proxy for its contestedness and resistance by the member states. Alternative measures such as the average salience of the member states and the Commission regarding a negotiation topic or the level of disagreement of a proposal have not shown a significant effect on the success. The longer a proposal is discussed, the smaller is the influence of the Commission. Several proposals such as the takeover directive or the chocolate directive where the member states were strongly opposed and either handed the proposal back to the Commission or protracted the negotiations considerably, indicate that the Commission's power decreases during the course of negotiations. This proves to some extent Pollack's claim that the Commission's power decreases when the level of contestation of a proposal increases. The legislative procedures do not influence the success of the Commission to a considerable extent which might be another indicator that the Commission's power is not so much present in the course of legislative negotiations but only in the early initiation period.

Apart from these static bureaucratic resources, the legislative procedures or the contestation of policy proposals, the behaviour of the Commission - or the respective DGs being responsible for the proposals - might vary and explain the relatively low success of the Commission. Some DGs might be more prone to making bold proposals hoping to draw the status quo at least a bit towards its desired – more pro-integrationist direction. Other DGs might work in policy areas in which they either have no information deficits or have long-standing and close working relationships with the EU member states and therefore know where to place their proposals and are thus more successful. Table 5 shows the average success and average distance of each DG from the median as well as the reference point.

Table 5 Success, Distance to Reference Point and Median according to DG with more than 8 issues<sup>21</sup>

	Success	Distance to Reference Point	Distance to Median	n
DG Education and Culture	75	62.5	23.33	9
DG Fisheries	69.38	83.33	38.73	13
DG Agriculture	63.29	47.89	35.7	35

<sup>21</sup> See table A2 in the appendix for the DGs with fewer than 8 issues.

DG Health, Consumer Protection	62	58.46	16.57	14
DG Energy and Transport	58.9	76.11	34.2	10
DG Internal Market	58.12	79.47	36.5	17
DG Taxation and Customs Union	49.09	80	41.82	11
DG Justice and Home Affairs	48	64.29	50.67	15
Total	64.09	65.95	32.13	

Table 5 shows distinct differences in gain between the DGs. Whereas traditionally integrated policy areas such as Fisheries and Agriculture have high success factors, policy fields such as Justice and Home Affairs which are only since recently under Community legislation have distinctly lower results. The two DGs treating agriculture and fisheries policy might profit from the long-standing experience and the fact that the member states do not contest the competence of the Commission in this field anymore. This might be different in the area of Justice and Home Affairs in which national ministries and governments still guard their competencies.

The two measures distance to median and distance to reference point are hardly related (Pearson correlation coefficient 0.09). Whereas some DGs seem to make bold proposals relatively far away from the status quo such as the DG Fisheries and DG Taxation, they are at the same time not very far from the opinion median of the member states as in the DG Fisheries and Internal Market. Relatively careful proposals are made by DG Agriculture, Health and Consumer Protection, as well as Justice and Home Affairs. DG Justice and Home Affairs also shows a very low negotiation success which might be due to not very bold proposals and an inability to estimate the opinion median of the member states.

Table 6 Influence of Distance to Median and Reference point on Success

Distance to Median of EU governments and EP	-0.29*** (0.08)
Distance to Reference Point	-0.06 (0.07)
Constant	76.20*** (5.88)
Observations	125

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Adjusted R-squared

0.10

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The regression analysis which tests the influence of these two positional measures on the success demonstrates the theoretical considerations that a Commission proposal not too far from the status quo and close to the opinion median carries the highest chances of being successful. The closer the Commission to the opinion median of the member states (and the EP in case of codecision proposals), the higher the success. Similarly, the Commission rather suffers from making too bold and extreme suggestions to the member states, because a large distance from the status quo diminishes the chances to gain in the negotiations with the EU member states and the EP.

## Conclusion

The analyses presented in this draft are a first analysis of more work to come on the success and negotiation of the Commission. In my future research I will continue by looking at further specifications of policy areas in order to find out more why the DGs are motivated to make more or less extreme proposals and why some DGs are better able to find out the opinion median of the member states than others.

Yet, I can already state after these first analyses that the Commission's power is to some extent overrated. As Hug (2003) correctly pointed out, the Commission is an agent dependent on its principals and its preferences are not exogenous but influenced by the EU member states. With the analyses above I can demonstrate that the position of the Commission and therefore its success are not so much determined by its desire to move the status quo in a pro-integrationist direction but by its ability to find out the opinion median of the EU governments. These DGs which are able to do this are also more successful.

## Appendix

Table A1: Negotiation Success of the European Commission according to Procedure

Gain	Codecision	Consultation	
QMV	61.36	68.97	63.67
	(78)	(34)	(112)
Unanimity	63.82	66	65.01
	(23)	(28)	(51)
	61.92	67.63	64.09
	(101)	(62)	(163)

Figures in Brackets indicate the number of issues.

Table A2: Success and Distance to Reference Point and Median according to DG, DGs with fewer than 6 issues

	Success	n	Distance to Reference Point	Distance to Median
DG Enterprise	100	1	100	0
DG External Relation	93	5	0	1
DG Environment	85	2	50	0
DG Enlargement	80	5	100	0
Industry	77.5	4	40	47.5
Secretariat-General	75	4	66.66	21.25
DG Employment, Social Affairs	73.25	4	78.75	13
DG Industry(old)	72.25	4	50	66.5
DG External Relations, DG Development	66.5	2	85	31
DG Budget	50	1	30	30
DG Budget, DG Education and Culture	50	1	100	0
Telecommunications, InformationMarket	40	3	73.33	65
DG Competition	90	3	0	16.67

Table A3: Distance of EU Actor to Reference Point

Member State	Mean Distance to Reference Point	Standard Deviation	n
EP	67.41	39.59	101
Commission	65.95	39.16	125
France	56.42	42.10	125
Italy	54.77	42.27	121
Greece	52.42	40.74	112
Finland	52.13	40.05	117
Belgium	52.05	41.20	120
Portugal	50.75	41.73	118
Denmark	50.34	38.78	118
Spain	50.26	41.66	125
UK	50.00	39.25	124
Ireland	49.41	39.90	115
Sweden	49.38	39.95	120
Luxembourg	49.17	40.82	103
Netherlands	48.45	39.50	122
Austria	48.11	40.27	104
Total	52.58	40.74	1995

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