INFORMAL GOVERNANCE IN THE EUROPEAN UNION

How Governments Make International Organizations Work

Mareike Kleine

INFORMAL GOVERNANCE IN THE EUROPEAN UNION

INFORMAL GOVERNANCE IN THE EUROPEAN UNION

How Governments Make International Organizations Work

Mareike Kleine

CORNELL UNIVERSITY PRESS ITHACA AND LONDON

First published 2013 by Cornell University Press
Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Kleine, Mareike, author.
Informal governance in the European Union : how governments make international organizations work / Mareike Kleine.
pages cm
Includes bibliographical references and index.
ISBN 978-0-8014-5211-6 (cloth : alk. paper)
1. European Union—Decision making. 2. European Union countries—Politics and government. 3. Decision making—European Union countries. I. Title.
JN30,K547 2013
341.242′2—dc23 2013017591

Cornell University Press strives to use environmentally responsible suppliers and materials to the fullest extent possible in the publishing of its books. Such materials include vegetable-based, low-VOC inks and acid-free papers that are recycled, totally chlorine-free, or partly composed of nonwood fibers. For further information visit our website at www.cornellpress.cornell.edu.

Cloth printing 10 9 8 7 6 5 4 3 2 1

Dem Angedenken meiner lieben Eltern

Contents

Figures

Tables

Preface

Informality might be the rule rather than the exception in politics. Behind the scenes and alongside official procedures seems to be where many important decisions are being made. This has become evident not least during the crisis of the Eurozone. For example, since the EU treaty (Treaty of Lisbon, Article 125) prohibits member states from bailing out countries with excessive debt, the member states agreed first to emergency bailout measures outside the EU's official procedures. Some argue that the European Central Bank transgressed its mandate by announcing its commitment to purchase sovereign debt from troubled Eurozone members in the secondary market. In fact, the list of examples where important decision makers eschewed or bent the formal rules during the current crisis is endless.

But informality is not just a phenomenon of the Eurozone crisis. When I embarked on my doctoral studies in Berlin—the EU was still in good order—I was bothered by the incongruence between theory and reality in the analysis of decision making in the European Union (EU). Those in the policy world who made a living detailing how the EU worked in practice rarely offered an explanation of why this was the case. Yet those in the academic world who offered explanations of the EU's official rules and procedures often seemed to miss how decision making in the EU worked in reality. Indeed, then as now, many scholars ignore actual decision-making practices, even or especially if these do not quite conform to the formal rules, or consider them as negligible or as statistical noise that defies any systematic description and explanation. As a result, we know little about why decision makers sometimes stick to formal rules and at other times seek a way around them. Where and why do these practices of informal governance exist? Why are they more prevalent in some institutional settings and issue areas than in others? Is informal governance a good or a bad thing?

To me, the mystified doctoral student, this discrepancy between formal rules and informal practices was most consequential in the case of the EU's Council presidency, a position held consecutively by each member government for six months. Barely mentioned in the treaties, the Council presidency was an institution that many agreed informally enjoyed substantial authority in the legislative process. Yet most models of legislative bargaining in the EU neglected this institution.

Puzzled and confused, I arrived at Princeton. I thought I was on to something really interesting. I just couldn't explain why. Hoping for an epiphany, I took a couple of classes in different subfields and disciplines. I got even more confused. Hoping for confirmation that I had indeed discovered an important puzzle, I talked to my advisers. "You doctoral students today," Andy Moravcsik exclaimed, "studying these boring tiny instances while there is a whole world of informal practices out there." I was overwhelmed. Wouldn't studying more informal practices only compound my confusion?

I never had an epiphany. I did follow Andy's advice, however, and went to Brussels and searched numerous archives to discover more instances where the EU's formal procedures said one thing and governments did something else. To get a better picture of what was going on, I constructed a stylized model of the EU's legislative process and defined the behavior one would expect from governments and supranational actors if decision making were governed solely by formal rules. I then compared this behavior to the practices on the ground and called the discrepancy "informal governance." The result of this exercise was remarkable. I found a whole web of informal governance around the EU's legislative process. More important, these practices, although stable over time, appeared to vary systematically across issue areas. The Council presidency, which prompted this project, turned out to be just the tip of a massive iceberg of informal governance. As I got a better picture of the patterns of formal and informal governance, the many things I had learned in class and what I knew about the EU slowly fell into place.

The central argument of this book is that informal governance provides added flexibility—a flexibility that states use to resolve potentially disruptive conflicts that their cooperation at the interstate level suddenly stirs up at the domestic level.

The logic is the following. Although it is clear, for example, that an EU-wide regulation of lightbulbs creates not only winners but also losers that have to bear the burden of adjusting to the new law, *who* benefits and who loses, the *extent* of these adjustment costs as well as *when* these costs accrue, is not always entirely predictable. Suddenly confronted with unexpected costs, a domestic group mobilizes against this regulation to an extent that its government is pressured into delaying, obstructing, or even openly defying it. I call this problem political uncertainty.

Political uncertainty is a problem for everyone, because when states defy the law then the very basis of cooperation, namely stable expectations about one another's commitment, seems potentially brittle. To keep this basis for the EU's smooth operation intact, states collectively depart from the rules that allow for imposing costs on one another in order to accommodate governments under exceedingly strong domestic pressure: they concede just enough to restore such

governments' incentive to cooperate. Because it allows for changing the timing, extent, and distribution of adjustment costs, informal governance permits states to manipulate one another's domestic politics of collective action in a way that keeps domestic interests aligned in favor of cooperation. It makes cooperation work.

Although confined to economic integration within the EU, the theory developed in this book sheds important light on current events and other international organizations as well. Consider again the Eurozone crisis. The book is about how frequent disruptions to the domestic politics of collective action lead to the routine use of informal governance through which governments sustain a very high level of cooperation. In the current crisis the Eurozone members are dealing with unprecedented shocks on a massive scale to their highly interdependent economies. However, the challenge that policymakers face in both situations is similar: the defection of one of them, be it in the form of obstruction, delay, outright noncompliance, or exit from the Eurozone, hurts everyone because it undermines the credibility of the institution itself. Accordingly, the Eurozone members are not only concerned about the direct economic consequences of the crisis. They are also concerned that, for example, a Greek exit from the Eurozone or the reintroduction of national currencies in another country will cast doubt on the Eurozone's very stability, damage the euro's credibility, and thus harm all of them (Financial Times 2012b). The EU member governments consequently resort to informal governance practices when sticking to formal procedures would not prevent such scenarios from becoming reality.

Thus, just as the governments in this book depart from formal rules in day-to-day EU politics in order to avert excessive domestic mobilization against EU laws, so leaders in the current crisis use informal governance to prevent crisis-ridden governments from caving in to oppositional domestic forces. The result is a nerve-racking balancing act in which, for example, creditors and EU institutions vociferously insist that debtors follow the rules and duly implement the conditions tied to bailouts; yet there is often no alternative for creditors but to create just enough informal wiggle room regarding the timing and amount of debt payments to prevent the debtor governments from losing important votes and caving in to domestic pressure for exit (Financial Times 2012a).

In light of the scarcity of information, ambiguous statements, and ongoing nature of events, it is too early to make strong claims about the member states' strategies, or to speculate about how and whether the crisis will end. What can be said with some confidence, however, is that in a few years' time, when the dust has settled and documents are released, the EU's monetary union and its crisis will be a fruitful area for research on informal governance.

This book sheds light on other international organizations as well. Especially in the inherently dynamic realm of international trade, any organization with the authority to impose a decision on a member state may generate unexpected costs for, say, American shrimp fishers or German toy companies that suddenly prompt these groups to mobilize against it. As I discuss in the conclusion, this theory might well account for certain informal practices in other international organizations. Furthermore, by arguing that informal governance helps sustain cooperation by making institutions more responsive to those whom they affect most, this theory has some interesting and perhaps counterintuitive implications for normative debates on the democratic deficit in European and global governance.

Therefore, this book speaks not only to students of the EU but also to those interested in international organizations and law, the intersection of domestic and international politics, and normative aspects of European and global governance. I hope to bridge two gaps in current scholarship.

A first gap exists between students of international relations and students of comparative politics. In a world of complex interdependence, in which state borders become more and more porous, the distinction between both subfields has become increasingly anachronistic, especially in Europe, the world's most interdependent region. Paradoxically, the divide seems to be particularly pronounced in EU studies, where a division of labor has evolved between international relations scholars explaining the EU's treaty revisions and comparativists studying the EU's day-to-day politics (Hix and Hoyland 2011, 2; see also Pollack 2005). Thus, the first group is concerned with the endogenous aspect of EU institutions and asks why these institutions exist and take the form they do. The second group then takes EU institutions as exogenous and studies how they constrain individual choices and interaction among the legislative actors. I employ aspects of both approaches to show when, how, and why the member states collectively seize informal control of the EU institutions in order to mitigate their effect on the domestic distribution of the costs and benefits of economic integration. As a result, I hope to demonstrate how theories from both subfields can be usefully combined to shed more light on the complex ways in which domestic and international politics interact.

A second gap exists between scholars who study practices in their institution of choice in minute detail, and those who seek to theorize about the bigger picture. The first group often neglects to justify the significance of their work for broader debates in political science and other fields, while the second group tends to ignore the fact that there are real limits to the applicability of general theories to a specific institution. Regarding the EU, one example mentioned in this book is the effort to identify stable patterns in preferences and coalitions in the few data that

exist on voting in the Council of Ministers, just as scholars try to identify such patterns in other international organizations or national parliaments. Instead, I argue in chapter 4, it is more interesting to ask why there is so little data and why exactly it is so difficult to find any such patterns in the EU context. One should not be afraid that questions like this about the EU's idiosyncrasies separate EU studies from broader debates in political science. In fact, this is how broader debates evolve and general theories are developed. After all, science progresses through the discovery and study of anomalies (Lakatos 1970), not through the replication of existing studies. It requires a back and forth between "soaking and poking" (observing actual practices) and the interpretation of actual practices in light of general theories (Greif 2006, chapter 11). I am sure there will be EU experts who think that this book's bird's-eye view on more than fifty years of EU politics misses important details, while others will be left wondering how the theory might be applied beyond the case of the EU. I hope that, at the very least, this book stimulates further debate about these questions. More than that, I hope that it inspires scholars outside just as much as inside Europe to engage with what is beyond doubt one of the world's most fascinating institutions.

Acknowledgments

I thought about whom to thank in my book's acknowledgment even before I wrote its first sentence. Now that I am finally putting this virtual list into writing I realize that it has become a great deal longer. In writing a book, you accumulate many debts over time.

Andy Moravcsik has been a fantastic mentor throughout the years. Most important, I could always rely on the fact that he would come through for me, even under difficult circumstances, when I really needed his advice and support. Furthermore, while sitting in front of Andy's office waiting for him to show up to our appointment, I realized how very lucky I was to have such a relentless adviser who constantly challenged me to improve what I had written and who believed in my ability to surpass myself. Andy taught me to question conventional wisdom, to be diligent in my argumentation, never to lose sight of the big picture, but also, and perhaps more important, not to take certain things more seriously than they really are. I am lucky to call him my mentor. I am proud to call him my friend.

Writing a book can be nerve-racking and not only for the person writing it. Thomas Risse, my adviser in Berlin, probably incurred the highest toll. Thomas guided me through the stage of early confusion, offered frank feedback on multiple outlines of this project, and endured my stubbornness and occasional impertinence. Nothing I accomplished would have been possible without his long-standing support, from my first undergraduate paper until the defense of my doctoral thesis. For all this, I am truly grateful.

I am also heavily indebted to Bob Keohane. His extraordinary accomplishments as a scholar are widely known, and I am but one of many students to praise his brilliant advice and extraordinary support. However, I believe that Bob has had the greatest impact on my scholarship and on me as a person simply by being a role model as a human being and an academic of integrity. I hope I will be able to follow his stellar example and become such a genuine person devoted to the pure pursuit of knowledge.

Three reviewers for Cornell University Press offered extraordinarily thoughtful and detailed comments. Ironically, the most disapproving among them turned out to be especially helpful, because the review revealed where my argument would be misunderstood or even misconstrued. I would like to thank him or her for the opportunity to make this book more accessible and, hopefully, even more convincing.

Many more people offered invaluable comments and advice over the years. Mark Pollack gave me extremely insightful comments at several stages and on several parts of the manuscript as well as much-appreciated moral support. Jessica Green commented on countless versions of introductions, theory chapters, and case studies. Will Phelan read almost the entire manuscript and offered very detailed and helpful feedback. So did, at various stages of this work, Damian Chalmers, Marco Dani, Jeff Frieden, Todd Hall, Tobias Heider, Barbara Koremenos, Christina Schneider, Duncan Snidal, Randy Stone, Jonas Tallberg, Johannes Urpelainen, and Cornelia Woll.

At Princeton, Sarah Bush, Jeff Colgan, Christina Davis, Tom Hale, Marina Henke, David Hsu, Soo Yeon Kim, Helen Milner, Sophie Meunier, and the participants of the Graduate Research Seminar in International Relations offered excellent feedback on my work. In Berlin, Tanja Börzel, Ingo Peters, Carina Sprungk, and Michael Zürn offered thoughtful advice. Sara Hagemann, Simon Hix, and Helen Wallace at the London School of Economics also had excellent suggestions for various parts of the manuscript. At Harvard, I received feedback, among many others, from Peter Hall, Jane Mansbridge, and Kathleen Thelen. I also thank the audiences of seminars at Cambridge University, Harvard University, the London School of Economics, Oxford University, Princeton University, Temple University, the University of North Carolina at Chapel Hill, the University of Rochester, the University of Toronto, and the Wissenschaftszentrum Berlin for thought-provoking questions.

The following institutions and people offered institutional support: my former colleagues at the Arbeitsstelle für Transnationale Beziehungen, Außen- und Sicherheitspolitik; Matthias Jopp and my former colleagues at the Institut für Europäische Politik; Wolfgang Wessels and his colleagues at the University of Cologne; Paul Magnette at the Institut d'Etudes Européennes at Université Libre de Bruxelles; Trisha Craig and her colleagues at the Minda de Gunzburg Center for European Studies; the Niehaus Center for Globalization and Governance; the staff of archives and libraries in Berlin, Brussels, Harvard, Florence, Koblenz, London, Princeton, and The Hague; and my interview partners in Brussels, Berlin, and other parts of the world. I received financial support from the German Academic Exchange Service, the Berlin Graduate School for Transnational Studies, Princeton University's Graduate School, Harvard's Minda de Gunzburg Center for European Studies, the American Political Science Association, the Suntory and Toyota International Centre for Economics and Related Disciplines at the LSE, and the EU's sixth framework program for research.

Portions of chapters 4, 6, 7, and 8 were previously published in "Knowing Your Limits: Informal Governance and Judgment in the EU," *Review of International Organizations* 8, no. 2 (2013): 245–64, © Springer, reprinted with kind permission from Springer Science+Business Media.

Roger Haydon at Cornell University Press has been extraordinarily helpful and supportive of the book project from the outset. Jan Böckstiegel, Aisling Bolger, Mary Noble, Susan Philand, John Raymond, Susan Specter, and Victoria Volossov offered excellent research assistance and editorial advice.

More important than the intellectual and institutional support is the moral support I received from the wonderful friends I made in Hesse, Berlin, Brussels, Princeton, London, and Cambridge. Above all, my sister Adelheid and my brother Christian always supported my ventures and sought to give me the stability that we had lost so early in our life. Our parents would be very proud. The book is dedicated to their memory.

INFORMAL GOVERNANCE IN THE EUROPEAN UNION

INTRODUCTION

I make my way through the corridors of the Justus Lipsius Building, the monstrous Brussels headquarters of the EU's main decision-making body, the Council of Ministers. Sitting in front of me is a senior Council official, fittingly wearing an elegant, yet inconspicuous, dark gray suit. I make some small talk and ask what he and his colleagues think about the public quarrels between the then French president Nicolas Sarkozy and the German chancellor Angela Merkel. "Quarrels among the heads of state don't affect what we are doing," he dismisses the question with a smile. "In these corridors, it's an unsuspicious regulation of the definition of wine that gives us sleepless nights." Why, I ask, does the Council care so much about such a technicality? Because technicalities, he explains, often really upset some people who then suddenly make a big fuss of it. This is what keeps the Council busy. "There will never be a decision against a government that faces strong problems selling or implementing it at home. In these cases, we always try to find a compromise."

The EU's achievements are beyond doubt.[1] Its member states are far more integrated than just a few decades ago and more so than any other group of sovereign countries in the world. When I was a child and visited my grand aunt in the Netherlands, we would fill up our family car to the roof with tea and coffee to take home, since these products were far more expensive in Germany than just a few miles away across the Dutch border. Today, I can buy tea or coffee anywhere in Europe for nearly the same price. I work abroad and travel within most of Europe without having to show my passport or exchange money. This

personal experience is borne out by hard evidence. Among most EU member states prices for tradable goods have converged to reach a level that is similar to the level of price convergence within the United States (Rogers 2007, 791). This is because the abolition of tariffs and the harmonization of domestic regulations within the EU have made it far easier to trade across borders. Europe has consequently become the world's leading trader. About 40 per cent of all world exports originate from an EU country, two-thirds of which are traded among the EU's member states (World Trade Organization 2011). Not least, the crisis of the Eurozone has made it blatantly obvious that the European economies are deeply interdependent. This depth of economic integration among sovereign countries is unparalleled in world politics.

To explain how Europe has been able to achieve this extraordinary depth of economic integration over more than five decades, many observers point to the EU's formal rules that delegate substantial authority to supranational institutions such as the European Commission, and that permit governments in the EU to act collectively by majority vote. The EU, like other international organizations, is based on international treaties that spell out the objectives and the rules of cooperation. Its ambitious, open-ended goal of genuine economic integration without any barriers to the free circulation of goods, persons, capital, and services, however, demanded a vast stream of further laws. Therefore, unlike most international organizations, at the heart of the EU is a legislative process that is set up to ensure that, in making laws, the member states achieve their ambitious objective. At every stage in this process there is consequently the possibility of imposing a decision on one or more governments and, thus, of advancing economic integration even against the governments' shortsighted interests. To some, these strong supranational features imply that the EU has been "constitutionalized" (Stein 1981; Mancini 1989, 596) and has evolved beyond an ordinary international organization to become more akin to the political systems of its member states (Hix 1994, 12).[2]

If this analysis of the EU is correct, then the chapter-opening anecdote makes little sense. The EU's formal rules permit it to impose an integration-advancing decision on one or more governments that respond to domestic pressure to oppose it. However, it is customary among the member states to refrain from overruling one another in precisely those situations the rules were designed for. There are more examples, described in the remainder of this book, where the treaty says one thing, and governments do the opposite. For example, nearly every textbook tells us that an independent supranational bureaucracy, the European Commission, enjoys a monopoly on setting the legislative agenda so that it may propose legal acts that promise to advance integration in the best possible way. Yet in most cases the Commission is only acting on requests from national leaders, who are therefore the true agenda setters.

It is not only that some governments and supranational institutions occasionally fail to follow the formal rules to the letter. In fact, they have adopted a number of practices that seem to *contradict* the formal rules' very purpose. Moreover, these practices appear to vary systematically across issue areas, yet remain remarkably stable within them regardless of major events. In short, a plethora of informal practices, nowhere mentioned in the treaties, operate parallel to the formal rules and yet differ from them substantially. I will henceforth refer to these practices as *informal governance.*

The EU has achieved a remarkable depth of economic integration. If this is not primarily due to its formal rules, how then has the EU managed to accomplish this? Why do states carefully design formal rules only to depart from them incessantly? What makes the EU work in reality? These are the questions this book seeks to answer. In doing so, it proposes a new way of thinking about international organizations more broadly.

Why Informal Governance? The Argument in Brief

Using the example of the European Union, this book develops a more general theory of informal governance in international organizations. At its core is the argument that practices of informal governance are the result of a norm of discretion among governments that adds flexibility to the formal rules. This norm is an implicit understanding among governments that departures from the rules are necessary when EU-level decisions threaten to stir up potentially disruptive conflicts at the domestic level. Informal governance, therefore, allows the member states to manipulate one another's politics of collective action in such a way that domestic interests remain persistently aligned in favor of integration. Put differently, informal governance sustains the EU's legitimacy by continually re-embedding the EU in the societal interests it is based on. The combination of formal rules and informal governance consequently permits a level of economic integration that the member states would otherwise not be able to maintain.

This argument about the critical importance of informal governance for the functioning of the EU sets this book apart from dominant conceptions that tend to equate the EU solely with its codified rules. Simon Hix (1998, 41), for example, defines the EU as an ordinary political system, the first and foremost characteristics of which "are the formal rules of collective decision-making, the 'government' of the EU." Conceiving of the EU as a highly advanced international organization, Andrew Moravcsik (1998, 1) studies European integration solely by looking at the intergovernmental bargains that result in formal treaty changes. This book, in

contrast, maintains that informal governance is critical for our understanding of the EU and, indeed, of what "makes cooperation work" the moment that hands have been shaken and the official treaties enter into force. In other words, the study of informal governance is not simply a more detailed perspective on *how* the European Union works day to day. Crucially, informal governance is the reason *why* it works and persists at all. The book evaluates this theory throughout the history of EU lawmaking, from the EU's beginnings in the late 1950s until today. The findings also apply to international organizations more broadly.

Why is it necessary to add informal flexibility to the formal rules? Rules enable cooperation when states suspect that a cooperating partner might renege on its pledge to adjust its policy. By constraining the behavior of otherwise opportunistic governments, rules bolster the credibility of commitments to cooperation and thus allow states to form stable expectations about one another's behavior.

However, precisely because states design these rules under conditions of uncertainty, underlying patterns of societal interdependence may change and alter the domestic distribution of the immediate costs and benefits of cooperation in ways that could not have been foreseen. Situations are consequently bound to arise in which following the rules to the letter, even if beneficial for society as a whole, suddenly requires costly adjustments by a single group. Facing excessive adjustment costs, domestic groups have an incentive to overcome initial barriers to mobilization and pressure their government into defying the rule in question in spite of punitive sanctions. The unpredictability of this domestic pressure for protection is one example of what we henceforth refer to as *political uncertainty.*

The chapter-opening example about the regulation of wine is instructive. In response to a diminishing wine consumption in Europe and a surge in imports of wine from North and South America the Commission was tasked to present a proposal on the reform of the common wine market that, among other things, would increase the competitiveness of European producers. According to the formal rules, the Council would, on a proposal from the Commission and after consultation with the European Parliament, adopt the regulation by majority vote. The southern wine-producing states preferred a strict definition that would protect the sector from imports of wine from the Americas that contained artificial by-products. Northern wine-importing states, in contrast, preferred a broader and arguably more consumer-friendly definition that would open the European market for imports.

In 2007, the Commission submitted a proposal that preserved the interests of northern wine-importing countries and, it argued, the European consumer as well. In line with rules by the International Wine Organization, it defined the term "wine" broadly as a product obtained in the Community from harvested grapes. This broad definition nevertheless excluded "Ebbelwoi" (literally "apple wine," also known as Äppler or Stöffsche), a traditional cider-like alcoholic drink

made from apples that is produced in the German State of Hesse. The definition implied that Ebbelwoi makers would have to rename the product, which threatened to damage the drink's recognition value and standing as a cultural asset. In other words, the wine definition threatened to impose unexpected, concentrated adjustment costs on a single domestic group.

The proposal instantaneously prompted the Hessian Ebbelwoi producers to lobby the regional and federal government to fight the Commission proposal tooth and nail. Although this remote and localized adjustment shock seems of little importance to the federal government, domestic politics made it at this point highly susceptible to the Ebbelwoi lobby. The Commission proposal was published during a charged election campaign for the regional Hesse Landtag, which was of great significance to the composition of the Federal Council and, thus, of federal German politics at large. It, therefore, also caused unexpected media coverage, in which all parties outdid one another in complaining about Brussels' "regulatory madness." There were even somewhat serious calls to pull the state of Hesse out of the EU.

When situations like this turn into domestic pressure to defy the law in question, this is bad news not just for the government under pressure or for its most important trading partner. The defiance of an EU law—whether in the form of outright noncompliance, delayed transposition of EU law into national law, or the simple obstruction of cooperation—is detrimental for all cooperating partners at the same time.

Why? Because the defiance of rules, the principal function of which is to substantiate states' beliefs in one another's commitment to cooperation, shatters formerly stable expectations about this ordering function. It diminishes the very value of the institution itself. Not only the potential noncompliers but *all* governments who benefit from the institution's smooth functioning are better off adding situational flexibility to the formal rules—a flexibility that averts domestic conflicts from disrupting cooperation among EU member states.

Political uncertainty consequently generates a demand for an informal norm of discretion that prescribes that governments should be accommodated when they are facing unmanageable domestic pressure to defy the rules. The norm manifests itself in collective departures from the formal rules—that is, in informal governance—as governments accommodate a partner in trouble with a view to reducing the excessive concentration of adjustment costs that stirs up domestic pressure. In our "Ebbelwoi" example, the Council of Ministers refrained from overruling the German delegation and referred the Commission proposal to an informal committee of government representatives, which ultimately accommodated the German complaints without insisting on a quid pro quo. The Ebbelwoi lives on with the name wine.

Situations like this are daily fare in the EU, which raises the question of why the member states don't just legalize the norm or revise the rules to accommodate these situations. Why does the norm of discretion remain implicit? Simply put, the norm of discretion resolves precisely those conflicts that erupt when legal rules and principles reach their limits.

To be sure, just because rules are codified does not mean that actors have to follow them to the letter. Rules may be interpreted broadly and according to a number of different principles (Dworkin 1977, chap. 2). Informal governance as collective departures from what the rules stipulate does not necessarily involve violations of legal rules (Kennedy 2009, 56). However, the rule of law does require that legal principles be applied consistently in the interpretation of legal rules. This is why legalization reaches its limits when dealing with political uncertainty. Because the nature and extent of domestic demands for protection cannot be anticipated and remains ambiguous over time, no legal principle could ever determine when it is justified to accommodate a government that is tempted to defy the law for domestic political reasons. Institutional stability requires ad hoc decisions as to whether an imminent damage to the commitment justifies such concessions. The rule of law does not provide a consistent answer in these moments. The informal norm of discretion, however, mandates a variable, political interpretation of legal rules

Another conundrum follows. If the norm remains implicit and is not interpreted according to legal but according to political standards, where are its limits? The whole point of rules is to stabilize expectations and underwrite commitments, and so departures from these rules might create ambiguity about the rules' scope of application that undermines their very purpose. To resolve this tension between the formal rules' ordering function and informal flexibility, EU member states delegate adjudicatory authority to an entity they can trust. Since the norm of discretion allows for the interpretation of rules according to political rather than legal standards, its use cannot be policed by actors strictly pledged to the rule of law.[3] The book argues that the decision whether formal rules apply or whether informal governance is pertinent rests with a government that, while having an incentive to preserve the institution, has nothing else to gain from accommodating a cooperating partner in trouble. All member states are consequently able to trust its recommendation and add flexibility to the formal rules without undermining the credibility of the commitment that these rules embody.

Against this background, the argument can be made that the EU has been able to achieve and uphold its level of economic integration *not only* because of its intrusive supranational institutions. Crucially, the EU has been able to sustain this level because a norm of discretion adds situational flexibility in the event that

its supranational features cause potentially disruptive conflicts at the domestic level. Formal and informal institutional elements complement each other to underpin a level of economic integration that neither formal rules nor informal norms alone could sustain.[4]

Furthermore, the argument implies that instead of impeding accountability, informal governance serves to include in the political process the voices of those actors who are most affected by a decision at the EU level. It thus mitigates excessive distributive effects that the EU might otherwise cause at the level of its member states. Somewhat counterintuitively, then, the book concludes that informal governance practices in the legislative process improve the EU's legitimacy by making it more responsive to those who are most affected by EU-level decisions.

Contributions to the Literature

In arguing that informal governance renders high levels of cooperation sustainable, this book engages various bodies of literature. It has significant implications for at least two fields in particular: the literature on EU integration and politics, on the one hand, and studies in International Relations on institutional design, delegation, and the nexus between domestic politics and international politics, on the other.

Most immediately, the argument that informal governance allows states to assume collective control of the EU ties the book to a debate in EU studies about the autonomy of supranational institutions. Intergovernmentalists argue that supranational institutions are mere *instruments,* designed by states to help them pursue their common interests. The autonomy of supranational bureaucrats, parliamentarians, and judges reflects, not transcends, member states' preferences (Garrett 1995, 174–76; Moravcsik 1998, 492).

Neofunctionalists, in contrast, regard supranational institutions as largely independent *actors* with substantial freedom to act on their own terms.[5] This school of thought argues that supranational actors constantly exploit unforeseen control gaps in order to enhance their autonomy at the member states' expense (Farrell and Héritier 2007)[6] as evidenced by the surprising rise to power of the European Parliament and the European Court of Justice (Hix 2002; Alter 1998). The next chapter discusses this literature in more detail.

For now, it is sufficient to note that the debate has made little headway because of the difficulty of predicting where unforeseen control gaps might emerge. Scholars in the neofunctionalist tradition tend to cite cases that support the argument that supranational institutions enhance their autonomy, yet

they remain unable to generalize from these examples. Intergovernmentalists point out that supranational activism necessarily remains in the realm of what the member states are willing to tolerate (Caporaso 2007, 394–404; Garrett 1995, 180; Moravcsik 1998, 492), yet they are unable to delineate these limits clearly.

This book, therefore, contributes to this debate between intergovernmentalists and neofunctionalists by formulating testable propositions about the absolute limits of supranational autonomy—that is, about why and how governments assume collective control of their supranational institutions. It argues that this limit is reached when EU-level decisions threaten to stir up excessive domestic opposition against them. Empirically, it demonstrates that tacit governmental control is, in fact, more far-reaching than one might suspect in light of the numerous studies on supranational autonomy.

Consequently, the argument that informal governance is pervasive in EU politics also has significant implications for analyses of the interinstitutional balance of power and the dynamics of decision making within the EU. It implies that its official procedures do not affect lawmaking in the EU in the same way that political systems affect lawmaking in the EU member states, and that decision outcomes cannot be predicted merely from knowledge of those procedures and the legislative actors' preferences. The conclusion elaborates on this topic in more detail.

The theory of informal governance is developed against the background of a burgeoning debate in international political economy, law, and economics about cooperation in a dynamic environment. The dilemma states face is the following: when states have reason to doubt one another's commitment to cooperation, rigid rules are superior to broad discretion in that they enhance the credibility of commitments and, thus, enable states to form stable expectations about one another's future behavior. In times of crisis, however, rigid rules may impede actions that are suddenly necessary in order to sustain cooperation. How, then, do institutions attain the right balance between rigidity and flexibility?

This book extends beyond this literature in three regards. First, where most studies explore how formal flexibility mechanisms might solve the aforementioned dilemma, this book addresses the real crux of the problem, namely how states maintain cooperation in potentially disruptive situations that are simply not predictable in detail and where, therefore, formal flexibility mechanisms turn out to be inadequate. Second, and related, where the rational design literature considers formal and informal rules as substitutes by exploring under what conditions states prefer the one to the other, this book explores the synergies between formal and informal institutional elements in the provision of flexibility.[7] Third, this book focuses on the demand for flexibility in the stage of lawmaking within a set of rigid rules—the EU's legislative procedure—where most studies tend to focus on the stage of enforcement.

Why do so many students of international organization prefer to focus on the formal rules instead of the informal elements of institutions? This tendency is inherent in the rational design research agenda in International Relations and other disciplines, which defines institutions as "*explicit* arrangements negotiated among international actors" (Koremenos, Lipson, and Snidal 2001b, 762, italics added). From this perspective, states are believed to design institutions so as to prepare for future contingencies, just like architects factor the risk of earthquakes into the design of quakeproof buildings. Once an agreement enters into force, its strategic environment—that is, its members' interests in cooperation—is assumed to remain largely stable or vary within known parameters. The institution's quakeproof character implies that it suffices to look at its formal framework in order to understand how this institution works. As a result, formal rules take analytical precedence over those that are implicit. Although informal rules may well emerge when states deliberately leave some aspects of their agreement incomplete, informal institutional elements are, by assumption, of lesser relevance than the institution's formal scaffolding for understanding its purpose and effects. In short, the assumption that an institution's environment is largely static implies that formal rules enjoy analytical priority over informal institutional elements.

This book relaxes this assumption to present a *dynamic* theory of cooperation, in which informal institutional elements gain center stage. Granted, the assumption that states' interests in cooperation are static and their variation by and large predictable may be appropriate in some areas such as security or human rights (Koremenos 2005, 555). In the realm of international economics, however, patterns of economic interdependence are inherently dynamic and difficult to predict due to the development of new technologies, changing consumer preferences, and multiple other shocks in supply and demand. These shocks may translate into unexpected changes in domestic preferences for cooperation that suddenly cut the ground from under the institution. In other words, the real crux of the dilemma between rigidity and flexibility is that precisely where rigid rules are most needed and beneficial, they may be most difficult to sustain in the context of a dynamic environment.

The consequences of viewing institutional environments as inherently dynamic instead of static are significant. Situations are then bound to arise in which states suddenly face incentives to break their commitment in spite of punitive sanctions. In these situations, informal governance helps restore states' interest in adhering to the institution and, therefore, maintaining cooperation in the long run. This implies that formal rules no longer enjoy analytical priority, since the informal norm of discretion is imperative for understanding not just how cooperation works but more fundamentally why cooperation lasts.[8] Accordingly,

formal and informal institutional elements should not be studied independently of each other as, for example, substitutes for certain institutional functions (Abbott and Snidal 2000, 445). They may also *complement* each other to make cooperation work in ways that neither formal rules nor informal norms alone permit.[9]

To link the above discussion to the debate about supranational autonomy in the EU, consider how a dynamic perspective on cooperation alters standard principal-agent analyses of international organization. In this view, governments first strike an agreement on cooperation and subsequently delegate the implementation of the substantive bargain to an international organization. The act of delegation reifies governments and institutions as actors in a principal-agent relationship. This relationship poses many problems, since the agent faces incentives to slack off or to act autonomously and in unintended ways (Hawkins et al. 2006, 9–11).[10] Studies employing the principal-agent approach commonly analyze how the design of control mechanisms such as appointment procedures, budgetary control, and hearings allows the member states (the principals) to keep the international organization (the agent) in check (McCubbins and Schwartz 1984).[11]

A dynamic perspective points to an additional but potentially more severe agency problem that arises when this relationship is placed in a context where the principal's preferences are mutable. In this case, states need not be concerned about the agent overstepping its discretion. On the contrary, situations may suddenly arise where *an agent needs to be prevented from doing exactly what it is supposed to do* when its action otherwise provoke forces that threaten to disrupt cooperation or, conversely, when the agents needs to be pushed to act in situations that are not covered by its mandate. In all these situations, informal governance allows states to control their agent beyond what is officially possible. In the EU, it allows the member states to prevent otherwise autonomous supranational agents from imposing excessive domestic adjustment costs on one another.

How to Identify Informal Governance

If formal rules are an inaccurate description of the real game that actors play, how can we identify the actual rules? How can we evaluate the proposition that the EU's legislative process is governed by a mix of formal rules and an informal norm of discretion when informal institutional elements are by definition difficult to observe?

Because informal elements cannot be directly observed, existing studies on this subject suffer from a potential "selection bias" (King, Keohane, and Verba

1994, 129). If we do not know how to identify informal rules, we cannot know whether a study considers all or merely a small and perhaps biased subset of informal institutional elements. This is a methodological, not a definitional problem. Henry Farrell and Adrienne Héritier (2007, 242n1), for example, define informal rules broadly as rules that are not subject to third-party dispute resolution. Thomas Christiansen and Simona Piattoni (2003, 7) specify informal governance as networks in which voluntary exchange is governed by unwritten rules. Although both projects demonstrate the pervasiveness of informal practices in the EU, they are less useful than they might be because they leave open how informal institutional elements can be identified empirically.

To avoid this potential selection bias, this book bases its analysis on the game-theoretic notion of institutions as equilibria. The principal advantage of this approach is that it allows scholars to trace an institution where all its elements, formal or informal, become visible, namely at the level of behavior (Greif 2006, 358).

Equilibrium is a situation in which no actor would want to change her behavior in interaction with others. In game-theoretic parlance, actors have no incentive to deviate unilaterally from their strategy. For instance, in a country where everyone drives on the left-hand side of the road, no (rational) driver would singlehandedly deviate from this practice. Institutions can be part of these situations: they are in equilibrium when following the rules is each actor's best response to other actors' rule-following behavior. Given what everybody else is doing, no one is better off violating the rules.[12] Thus, regular behavior, or practices, allows us to make inferences about the institution that induces it. The focus on practices consequently enables us to avoid the aforementioned selection bias by mapping the entire universe of practices in the EU, including those that might contradict our theory.

For this purpose, the first section of the book (chapters 2 through 5) constructs a stylized model of the EU's legislative procedure as it is set forth in the Treaty of Rome and subsequent treaty revisions, adds plausible assumptions about actors' preferences and information, and then deduces the practices that the codified legislative procedure can be expected to generate in a stable environment. These rule-following practices are referred to as *formal governance*. *Informal governance* is then defined as systematic collective practices that differ from this standard.

An overview of all practices of formal governance and informal governance within the EU is only the first step to proving the existence of the institutional elements that induce them. The reason is that multiple equilibria and, thus, multiple institutions, rules, and practices can in principle be sustained under a "long shadow of the future." Driving on the left is just as much an equilibrium as driving on the right. If it is possible that one and the same situation results

in different equilibria, each of which is associated with different observable practices, then it is potentially possible that every practice we observe is in fact the result of a different equilibrium other than the one espoused by the theory (Greif 2006, 355–56).[13] This implies that there are, in theory, potential alternative explanations for each and every practice of informal governance that we observe.

To deal with the problem that there are potential alternative explanations for the identified informal governance practices other than the informal norm of discretion, it is, as a next step, necessary to multiply our theory's observable implications (King, Keohane, and Verba 1994, 223–28). Even though different theories might account for one and the same observable practice, it is less likely that more than one theory explains precisely the same *set* of observations. Chapter 1 therefore specifies states' interests in devising an informal norm of discretion, and argues that this norm is associated with two visible practices. The first section of this book, chapters 2 through 5, evaluates the first hypothesis that the informal norm manifests itself in practices of informal governance in issue areas where political uncertainty is high, whereas formal governance prevails in areas of relatively low political uncertainty. However, the norm is prone to abuse insofar as governments might demand accommodation in order to avert strong domestic pressure when, in reality, they are perfectly able to manage this domestic conflict. The second section of this book, chapters 6 through 8, evaluates the second hypothesis that, in response to this problem of moral hazard, governments delegate the authority to adjudicate on ambiguous demands for added discretion to a trustworthy EU member government.

Fortunately, the theorem about multiple equilibria also facilitates the analysis. When one and the same situation may result in entirely different institutional equilibria, it follows that all institutions that exist must be to some extent historically contingent and particular to the specific context in which they emerged (Greif 2006, 353). In other words, all institutions are always to a certain degree unique. This makes it possible to exclude a few alternative explanations by specifying the theory's implications for the particular empirical context to which it is applied. For example, the EU's legislative process is based on an original set of rules that cannot be found in any other international organization or domestic political system. Thus, chapters 2 through 5 specify the first hypothesis about informal governance for the context of the EU's legislative procedure. The chapters define and trace six distinct practices of informal governance that arise in parallel to the EU's peculiar rules on agenda setting, voting, and implementation. Similarly, chapters 6 through 8 specify the second hypothesis about adjudication for the EU's specific context. They argue that although the economic literature proposes a variety of institutional solutions to the problem of moral hazard, some of them are simply impracticable in the EU. The EU member states therefore adapted an

existing formal institution, the Presidency of the Council of the European Union (the Council presidency), so it could wield adjudicatory authority.

Summing up, the fact that informal institutional elements are not directly observable need not prevent us from evaluating our theory empirically. For this purpose, the empirical analysis rests on the game-theoretic notion of institutions as equilibria that allow us to trace institutions, formal or informal, indirectly through the observable, regular practices they generate. The principal advantage of this analytical decision is that it avoids the potential selection bias that plagues existing studies that focus on a mere subset of informal rules, because approaching institutions analytically as equilibria allows for the mapping of the entire universe of formal and informal governance within the EU. Although this approach brings about new obstacles, the book seeks to meet them through the multiplication of testable implications, the specification of these implications within the institutional context of the EU, and their evaluation in light of alternative explanations.

Data on Informal Governance

A set of competing hypotheses tested with an unbiased set of observations is only as convincing as the data used for this purpose. Finding reliable data, however, is particularly challenging in the case of informal governance. First, collective departures from formal rules often remain undocumented, since there are few standards for coding and collecting this information. A good example is the plethora of government expert committees that assist the official institutions in the preparation, negotiation, and implementation of legal acts. Despite several attempts to systematize and record these committees, their number, function, and working methods still remain obscure. Second, some important cases of interest receive little media attention because informal governance effectively depoliticizes decision making that would otherwise generate strong conflict and media interest at the domestic level. As a result, negotiation of individual legal acts—like the wine market directive—can only be documented in cases where governments fail to extinguish the spark of a conflict and put out the fire at a later point.

The scarcity of primary data means we also need to be careful in the use of secondary analyses. The lack of secondary studies about certain practices cannot be interpreted as the absence of informal governance. Some practices might simply be too uncontroversial or obscure to attract scholarly attention. More important, especially in politically contested and emotionally charged issues such as European integration, the scarcity of primary data can lead to the creation and reification of myths in secondary analyses (Lustick 1996, 605).

To cope with the problems of scarce and unreliable data, the book draws, where possible, on newly collected archival material, which in the EU is available after a blocking period of thirty years.[14] Particularly useful in this regard are the Council of Ministers' internal reviews of their own working methods, in which government representatives and Council officials identify and discuss their practices in light of possible alternatives.

In order to increase the intersubjective validity of these data, the strongest primary source is identified and its content cross-checked with other sources from actors with other viewpoints. For example, reports about informal practices by a Council official are considered more reliable when confirmed by similar statements of Commission officials. Contemporary public lectures, memoirs, and commentaries from politicians and officials are treated with a grain of salt, because they might underplay or exaggerate the presence of informal governance to prove a political point. The adequacy of the data and the uncertainty involved with using them are reported throughout the analysis.

Scope of the Analysis: What Is Left Out

A few caveats are in order about what the book will and can cover. Although the theory claims broad applicability, a more general test of its validity in other international organizations is far beyond the scope of this book. Apart from the fact that empirical testing is a laborious task, a cross-organizational analysis is complicated by the fact that inferences vary with the formal institutional framework under study. The conclusion to this book addresses the issue of generalizability in more detail, arguing that an informal norm of discretion should occur in other international organizations, especially when these institutions are highly legalized, beneficial, and governments are vulnerable to varying domestic pressure. The conclusion also takes up the question of how informal governance relates to power.

Within the European Union, the focus of this book is confined to the making of EU laws within its rigid legislative procedure. It deliberately neglects law enforcement through the European Court of Justice and domestic courts. A critic might argue that this focus exaggerates the significance of informal governance, since the extraordinary strength of the EU's legal system renders noncompliance almost impossible. It is true, as discussed in chapter 2, that the European Court of Justice has the opportunities, means, and motives to act to a large degree independently from the member states (Weiler 1991). Admittedly, a closer look at the enforcement stage could have provided greater insights into the EU's substantive impact on the domestic level. Yet its neglect does not bias my conclusions concerning the existence of an informal norm of discretion.

The EU's legal system is, just like the EU as a whole, based on a delicate consensus among governments about its extraordinary usefulness. A defiance of the European Court of Justice by a member state or a national court would, therefore, have disastrous consequences in that it would cast doubts about the system's effectiveness.[15] Knowing that an effective system is more useful to them than an ineffective one, the member states have added incentives to nip acts of noncompliance in the bud. If anything, the effectiveness of the EU's legal system, therefore, implies that it is even more necessary to exercise flexibility at the stage of lawmaking in order to prevent states from withholding compliance at a later stage. The transposition rate of EU laws into national law, which lies at a remarkably high 99 percent, further testifies to the fact that there is something about the legal acts that makes it so easy for the member states to comply with them.

The book also excludes a few EU policies from the analysis. As Giandomenico Majone (1994) argued so brilliantly, the EU's defining characteristic is its focus on the definition of regulations for its single market. Accordingly, the book primarily deals with so-called regulatory policies, which grew out of the former European Economic Community (EEC) and deal directly with economic integration. These policies include, for example, the realization of the "four freedoms" (the free circulation of goods, capital, services, and labor), the common commercial policy, parts of the common agricultural policy,[16] as well as "flanking policies" regarding competition, the environment, consumer protection, and so forth.

Excluded from the analysis, therefore, are the budgetary process, Justice and Home Affairs, and the Common Foreign and Security Policy, the latter two of which in the early 1990s emerged in parallel to the regulatory policies and outside their legal framework. A pragmatic reason for the exclusion is that these policies are governed by a different set of formal rules and the analysis would have required an entirely different research design. This does not introduce bias, since the theory may not apply to these policies to begin with. As mentioned before, political uncertainty describes situations where the concentration, timing, and extent of domestic adjustment costs cannot be predicted in their entirety. This uncertainty gives rise to the informal norm of discretion, which results in informal governance practices. The book shows how informal governance occurs when there is high political uncertainty, and how it recedes in the background when other variables reduce the amount of political uncertainty. In matters of foreign policy and security, however, domestic preferences are more stable and predictable than those in the economic realm, which is why the rules governing these policies are, by and large, less rigid and therefore less capable of imposing decisions that potentially stir up the domestic conflict.[17] To be sure, this does not imply that these excluded policies are expected to feature formal instead of

informal governance. It means that the theory does not apply in these issue areas and, therefore, makes no predictions to that effect.

Also, the EU's monetary policy, the so-called Economic and Monetary Union (EMU), had to be left out, because its relative novelty makes it impossible to collect archival data about informal practices that would permit an adequate test of the theory. This is unfortunate, because monetary policy is a prime example of the dilemma between rigidity and stability. In normal times, rigid rules about monetary policy are superior to broad discretion, because they prevent the inflationary bias that arises when markets expect governments to abuse their discretion to have a monetary stimulus increase output and employment beyond the natural level (Kydland and Prescott 1977). In times of crisis, however, it may suddenly be necessary to depart from rigid, official commitments in order to stabilize the economy (Lohmann 1992). Unfortunately, the crisis has arrived in recent years in the EU in the form of housing bubbles and unsustainable sovereign debt. It is cold comfort that this policy will therefore become a fruitful ground for future research on informal governance.

Themes and Organization of the Book

The book is written so that both experts as well as people without previous knowledge about the EU can read it. The glossary provides definitions for EU-specific vocabulary. Chapter 1 develops the theory of informal governance in a generalizable manner and distinguishes it from rival theories. It predicts the use of informal governance on the one hand, and adjudicatory authority on the other.

These two hypotheses are considered separately. Chapters 2 to 5 focus on the claim that an informal norm of discretion manifests itself in practices of informal governance, and that these practices vary systematically with the extent of political uncertainty over time and across issue areas. For that purpose, chapter 2 introduces the reader to the EU's official legislative procedure and describes how, in this context, one can discriminate between practices of formal and informal governance. Against this background, it specifies the first hypothesis about informal governance by developing six further testable implications about the presentation of formal and informal governance in the context of this legislative procedure.

The subsequent three chapters trace these implications for agenda setting (chapter 3), voting (chapter 4) and implementation (chapter 5) in EU decision making in four time periods from 1958 until today. The result is what might be called a *large-N qualitative analysis* of more than fifty observations, each of

which is a mini case study about a specific practice of informal governance. For example, the mini case study on voting behavior from 1958 until 1970 constitutes a single observation. This *large-N qualitative approach,* though time consuming, has a major advantage compared to either quantitative analyses or qualitative single case studies. Instead of showing mere correlation, it allows us to focus on the operation of the causal mechanism and consider the context and idiosyncrasies of the case, while still accounting for the big picture of general trends in the full range of cases (Fortna 2004, 54–56). The analysis reveals that, in line with the theory's expectations, informal governance emerged almost immediately after the inception of the Community in all three stages of the legislative procedure, varied largely with the level of political uncertainty across policy areas, and remained remarkably stable thereafter.

Chapters 6 to 8 trace the second hypothesis that the member states delegate the authority to adjudicate on ambiguous demands for informal governance to a trustworthy government. The beginning of chapter 6 specifies this hypothesis again for the specific context of the EU, arguing that the government holding the office of the president of the EU's Council of Ministers is, under certain circumstances, able to wield adjudicatory authority.

The two subsequent chapters trace the testable implications of this argument. Chapter 7 demonstrates that the presidency assumed its adjudicatory authority in close parallel to the emergence of other practices of informal governance. Chapter 8 shows how the presidency allows the member states to discriminate in practice between legitimate and exaggerated demands for flexibility. It does so by taking a closer look at the negotiations of the controversial Working Time Directive, which was marked by ambiguous claims on the part of the British government that it faced unmanageable domestic recalcitrance against this law.

The conclusion to this book summarizes the findings and discusses their implications for the fields of EU studies and international organization. It also explores how the argument that informal governance makes the EU more responsive to varying societal interests sheds new light on normative debates about the EU's democratic deficit, which typically regard the EU as far removed from citizen interests and view the practices of informal governance as depleting the EU's procedural legitimacy.

1

LIBERAL REGIME THEORY

Institutions serve a purpose for their members. To withhold compliance, thus to weaken them, means losing something valuable. Members have an incentive to care about institutional preservation and, as a result, institutions have force.

—Peter Gourevitch

Why do governments carefully design formal rules, and then jointly act in ways that seemingly contradict the rules' purpose? What do practices of informal governance tell us about why and how international organizations work?

In this chapter I present a theory of informal governance. At its core is the argument that uncertainty about future political pressure against cooperation generates a demand for what might be called a norm of discretion among governments. This norm states that governments that face unexpectedly strong domestic pressure for defection ought to be accommodated when their noncompliance threatens to diminish the overall value of the institution. The norm antecedes formal rules in that it adds flexibility to the formal institutional design when member states need to resolve unexpected and potentially disruptive conflicts that their cooperation may suddenly generate at the domestic level. It manifests itself in practices of informal governance as governments collectively circumvent formal rules in order to exercise added discretion.

Because the norm emphasizes what has been called the "liberal" insight in International Relations—that for international institutions to be effective, they constantly have to be reembedded in the interests and values of the member states' societies—it will henceforth be referred to as Liberal Regime Theory.

This chapter introduces the theory in five steps. The first step explains why states choose to cooperate within a formal institutional framework. The second discusses why these formal rules may suddenly prove inadequate and require added situational discretion. The third explains why this situational flexibility is provided by means of informal governance, rather than through formal

mechanisms. The fourth discusses how, given that demands for added flexibility might be ambiguous, the member states delegate the authority to assess whether formal rules or informal governance apply in a specific situation to a trustworthy government. The final step considers alternative views and two rival explanations for informal governance—power-based institutionalism and classical regime theory—and explains how these theories can be tested against each other.

Why States Demand Formal Institutions

In situations of interdependence, where the realization of an actor's interests is dependent on another actor's behavior, institutions can help ensure that actors capture gains from cooperation. A key aspect to understanding how institutions operate is uncertainty about the future. If one suspects a cooperating partner will renege on the promise to reciprocate in the mutual adjustment of policies, cooperation becomes untenable even when keeping your promise today promises great payoffs tomorrow and even more the day after or, in Robert Axelrod's terminology, when cooperation takes place under "a long shadow of the future" (Weingast 2002, 672; Axelrod 1984).

This problem is particularly acute if we allow for state preferences changing over time. Following public choice theory, domestic political support determines the welfare of incumbent politicians. Governments consequently choose the policy that maximizes their political support measured as the weighted sum of electoral support for welfare gains (e.g., lower consumer prices in response to economic liberalization) and rents from interest groups in exchange for protection from change (e.g., protection from more competitive foreign imports) (Grossman and Helpman 1994, 836). Rents in that context are resources spent in order to increase one's share of existing wealth, instead of using these resources to create wealth, and they can range from illegal bribes, campaign contributions, to public endorsements of incumbents or other forms of political support.

The politicians' opportunism subjects a government to constant pressure from various social groups to pursue the policy that most closely matches their diverse interests. The strength and composition of this pressure depends on a variety of factors that affect actors' economic opportunities, the politics of their collective action, and the responsiveness of political institutions to special interests. In any case, its result is *time-inconsistent preferences* as governments respond to changes in public demands for economic integration or special interests' demands for protection from market forces. The fact that governments know that each of them is tempted to give in to varying societal demands renders their pledges to

cooperate with one another dubious. Cooperation becomes untenable and all governments consequently end up worse off.

For governments to reap joint welfare gains under conditions of time-inconsistent preferences, they need to bolster the credibility of their commitments. In other words, for a government to begin making adjustments to cooperation, it needs reassurance that their cooperating partners will stick to their part of the bargain too. They do this by means of formal institutional rules that reduce uncertainty about one another's future behavior. *Precise rules* that specify conduct in contingent situations enable states to discriminate more clearly between what constitutes cooperative behavior and what can be considered a violation of the agreement. These rules lend credence to commitments to cooperate, because they enable the monitoring of compliance and the punishment of defection (Abbott et al. 2000, 412–15). *Rules that delegate authority* to international organizations to make and enforce common policies enhance the credibility of commitments as well. They insulate decision makers from domestic ad hoc pressure (Hawkins et al. 2006, 18–19), and they limit the range of policy instruments available to governments to renege on cooperation.[1] The codification of these rules signals this commitment widely beyond the circle of cooperating governments to markets and third states, which allows these actors to plan ahead and allocate resources more efficiently.[2]

Both types of formal rules—those that specify conduct and those that delegate authority to international organizations—align otherwise time-inconsistent preference *ex ante* in favor of cooperation. Crucially, common knowledge about the rules' effects allows all states to form stable expectations about one another's future behavior and, thus, to engage in cooperation at the outset. Because it removes governments' temptations to defy the rules unilaterally, the institution can be said to be in equilibrium.

Why States Demand Flexibility

Lacking a monopoly of violence, international institutions have to be self-enforcing to be sustainable. An institution's effect therefore has to be such as to constantly reproduce states' interests in adhering to it. Yet exactly because governments are unable to predict what societal groups will want and lobby for in the future, which gives rise to a demand for formal commitment, they are also unable to predict how precisely their institution will affect the future patterns of their societal interdependence.[3] As Ken Shepsle (1989, 141) puts it, "What can be anticipated in advance is that there will be unforeseen contingencies." This gives reason to doubt that international institutions have a

lasting, independent effect on state behavior. Once they are set up, institutions experience changes in their environment that may suddenly alter their effect on the costs and benefits of international cooperation both among and within countries. The reasons for this environmental change are manifold, complex and not predictable in their entirety. They range from technological innovation, shifts in consumer preferences and other shocks to supply and demand, to broader changes in political institutions. Therefore, once an institution has begun operation, situations inevitably arise in which a strict adherence to the formal rules, even if beneficial for the society as a whole, generates a distributional shock in which a segment of society bears much of a country's costs of adjusting to cooperation.

In situations like these, where a domestic group suddenly shoulders the concentrated adjustment costs of economic integration, formal rules fail to reproduce states' interest in adhering to them. The reason lies in the politics of collective action. Groups who incur concentrated losses have political advantages over larger groups with diffuse benefits—like the general public—since the marginal gains from collective action are much higher for members of small groups than for members of large ones (Olson 1965, chaps. 1 and 6). A domestic group that suddenly faces concentrated costs from cooperation therefore unexpectedly overcomes initial barriers to mobilization.

Now, recall that governments are expected to adopt policies that maximize their domestic political support. When groups unexpectedly mobilize to voice their interests in the political arena, they are increasingly able to affect their government's policy toward delaying, obstructing, or even openly withholding compliance with international law or the decisions of international organizations.[4] This problem is henceforth referred to as *political uncertainty* (Downs and Rocke 1995, 130; Rosendorff and Milner 2001, 831; Howse and Teitel 2010, 132–33).[5]

Crucially, political uncertainty is problematic not just because the sudden defiance of a formal commitment means that the defiant government and its cooperating partner forego the potential gains of cooperation.[6] More important than that, an unexpected noncompliance with the formal rules is costly for *all* member states, because unauthorized defection creates doubts about the credibility of states' commitment to cooperation. As established above, it is the credibility of one another's commitment to cooperation that motivates governments to make adjustments to cooperation to begin with. Unauthorized defection consequently sets off a process that all governments would rather avoid: the credibility of mutual commitments sustains damage, the stability of states' expectations about one another's future behavior crumbles, and mutually beneficial cooperation unravels. The institution is no longer in equilibrium, since

governments are increasingly motivated unilaterally to defy the rules. It is worth citing the chapter-opening quote by Peter Gourevitch on this topic at length:

> The power of an institution arises not just, or even principally, from its capacity to use physical force. Rather, it emerges from the benefits members derive from participation in them. Institutions do things for members that they cannot obtain without them. Members acquire incentives to preserve institutions. The test of the power of an institution is thus its utility, not its coercive force. Institutions serve a purpose for their members. To withhold compliance, thus to weaken them, means losing something valuable. Members have an incentive to care about institutional preservation and, as a result, institutions have force. (Gourevitch 1999, 138)

Put differently, because unauthorized defection, be it in the form of delay, obstruction, or outright noncompliance, damages the general value of the institution, all governments have an incentive to prevent it. If all of them attach high value to the international institution, they prefer to add situational flexibility to the formal rules in order to prevent or resolve situations in which governments are tempted to defy an agreement even in the face of punitive sanction. This flexibility allows them to uphold a highly beneficial level of cooperation that they would otherwise not be able to sustain.

Why Flexibility Remains Informal

Why would governments refrain from codifying the use of flexibility in these situations? Some institutions do officially authorize departures from formal rules in the event of unforeseen developments. For example, Article XIX of the General Agreement on Tariffs and Trade (GATT) authorizes temporary protection when "as a result of unforeseen developments" a sudden surge in imports causes or threatens "serious injury to domestic producers." Also, the EU treaties contain a number of derogations on grounds of public morality, public order and safety, and the like (e.g., Article 36, Treaty of Lisbon).

However, none of these formal measures captures the situations that constitute the aforementioned threat to the institution's balance. Such a threat arises not because public goods are in jeopardy, per se, or because domestic groups require temporary protection from exogenous shocks.[7] It is rooted in political factors that are endogenous to the domestic situation (Pelc 2009, 354). Thus, the same import surge can prompt unmanageable political pressure in one country,

while in another country domestic producers adjust to it smoothly. Damage to the institution is imminent—and flexibility, therefore, is pertinent—only in the first scenario.

In short, flexibility is necessary not on grounds of economic efficiency, or equity, or because a public good is considered worth protecting. States find it necessary to provide flexibility when the imminent damage to the value of the international institution is considered more severe than the collective bending of rules for political reasons.

The political roots of political uncertainty explain why governments refrain from codifying the provision of flexibility in these situations. Putting into writing mechanisms that allow for the provision of flexibility for domestic political reasons quite simply contradicts the purpose of the institution's formal rules and, more generally, of the rule of law itself.

Although legal rules may be interpreted broadly and according to a number of different legal principles, the rule of law does require that these legal principles be applied consistently. Accordingly, the rule of law reaches its limits when it comes to the demand for flexibility for domestic political reasons, which are so manifold and peculiar to the domestic situation so that no single legal norm could ever capture them.[8] Similarly, supranational actors that are pledged to the rule of law cannot use their room for maneuver for concessions to governments that are tempted to defy the law for mere domestic political reasons. Even if they had broad discretion, they are required to use it in a consistent manner. The informal norm of discretion, however, allows for a variable, political interpretation of formal rules' applicability.

Moreover, the codification of reasons and situations that justify the suspension of the formal rules might generate the behavior that the formal rules are supposed to prevent in the first place. More so than informal norms, codified rules convey to private actors that they will receive protection in the event that they demand it loudly enough. These actors can consequently be expected to mobilize in anticipation of receiving concessions where they would otherwise have adjusted to cooperation (Goldstein and Martin 2000, 622; Kohler and Moore 2001, 53; Pelc 2010, 636; Sykes 1991, 259).[9]

If formal flexibility mechanisms are inadequate to deal with the problem of political uncertainty, is it possible to provide flexibility tacitly? Let's assume that the conditions that prompt domestic pressure are perfectly obvious to all cooperating actors. In this situation, as discussed above, all governments prefer to prevent a cooperating partner from caving in to unmanageable pressure, even without an explicit quid pro quo, because its unauthorized defection damages the overall value of their institution. Thus, governments have an incentive to

provide flexibility without being legally obliged to do so, because it serves to sustain a level of highly beneficial economic integration that would otherwise prove impossible to uphold (Bagwell and Staiger 1990).[10]

There are a variety of ways to prevent or mitigate a distributional shock that would prompt domestic pressure (Pelc 2011). For example, governments can diffuse adjustment costs that are concentrated on a small group over a larger group (e.g., through compensation), they can diffuse it over time (e.g., by phasing in regulation), or they can delay the occurrence of adjustment costs until they are less politically susceptible to domestic pressure (e.g., until after an election). At any rate, the provision of these various kinds of flexibility will manifest itself in practices of informal governance as governments collectively depart from the formal rules in order to accommodate cooperating partners under strong domestic political pressure.

How Governments Sustain the Norm of Discretion

In reality, the conditions that demand flexibility may not be entirely unequivocal. Emerging under conditions of political uncertainty, the norm of discretion is necessarily vague and requires a great deal of judgment to be operational (Obstfeld 1997). Informality adds ambiguity, since uncodified agreements are more open to misconceptions and reinterpretation than their codified counterparts (Abbott and Snidal 2000, 422). If, moreover, states are not fully informed about one another's domestic situation, they have an incentive to exaggerate the need for informal governance when it benefits them. This causes a classic problem of moral hazard, in that the norm's vagueness and the lack of information might tempt governments to demand flexibility when they are, in fact, perfectly able to keep their commitment.

Consider the example of fire insurance: the outbreak of a fire may be largely uncontrollable, but the probability is somewhat influenced by carelessness and, obviously, arson. If the cause of a fire is difficult to observe, complete coverage then induces the insured to behave more carelessly or, in the extreme case, to set fire to a house in order to receive the insurance sum (Arrow 1963, 961). Similarly, without information about a government's actual temptation to cave in to domestic pressure, governments face an incentive to exploit the norm of discretion by demanding flexibility merely to reap political support at home at the expense of their cooperating partners.

If the informal norm of discretion is prone to abuse, the provision of flexibility through informal governance might, in fact, undermine cooperation. Recall that it is the purpose of formal rules to enhance the credibility of commitments and, thus, to stabilize states' expectations about one another's future

cooperative behavior. Collective departures from formal rules under ambiguous circumstances undermine this very purpose. Doubts about the justification for the use of informal governance in a specific case nurse more general doubts about the credibility of states' commitments to cooperation that gradually erode the stability of their expectations. To resolve this tension between the formal rules' credibility and informal flexibility, governments need to find a way to discriminate between false and legitimate demands for informal governance.

The economic literature suggests two solutions to this problem of moral hazard: incomplete coverage and observation (Shavell 1979). The idea behind incomplete coverage is to make the insured bear a proportion of the costs of the loss in order to prevent abuse of the policy. Medical patients, therefore, are often required to contribute to the treatment of conditions that are partly caused by an unhealthy lifestyle.

The same rationale lies behind suggestions regarding the optimal design of legal escape clauses. George Downs and Peter Rocke (1995, 77), for example, propose to establish sanctions for noncompliance that are "low enough to allow politicians to break the agreement when interest group benefits are great," but also "high enough" to commit states to obey the agreement most of the time.[11] However, this solution seems infeasible for our purposes. By definition, political uncertainty lies beyond what states can know at the time of institutional creation. A preset penalty or level of sanction that, similar to incomplete coverage, is designed to prevent an abuse of the norm will necessarily prove inadequate.

The second solution, observation, seems more promising. The idea here is to collect situational information in order to discriminate between false and legitimate insurance claims. In the case of car insurance, for instance, insurance companies often send experts on-site in order to investigate the cause of an accident. Similarly, Peter Rosendorff (2005, 391) suggests that the World Trade Organization's legal tribunal, the Appellate Body, performs precisely this information-providing role when it assesses the legitimacy of a country's use of the GATT escape clause.[12]

Though appropriate in the particular case of the World Trade Organization (WTO),[13] this legal solution for the problem of moral hazard is once again inadequate for our purposes. Recall that the norm of discretion applies where the rule of law reaches its limits, because it allows for the interpretation of rules according to political rather than legal standards. In other words, governments need to know whether an imminent damage to the institution justifies the accommodation of a government that is prone to defect for domestic political reasons. Institutional actors, like legal bodies that derive their authority from their pledge to enforce the rule of law, would jeopardize their reputation by recommending the use of informal governance.

To sustain the norm of discretion, therefore, governments require a political equivalent to the WTO's Appellate Body to adjudicate on ambiguous demands for flexibility. Its judgment then has to be based on situational information about a particular government's actual temptation to cave in to domestic pressure. By rendering informative judgments about the actual demand for informal governance, such a body enables states to depart from the formal rules without undermining the credibility of the commitment that these rules embody. As a result, formal rules and the informal norm of discretion may complement one another to sustain a level of economic integration that neither formal rules nor the informal norm alone permit.[14]

Testable Implications

So far, we have argued that political uncertainty generates a demand for an informal norm of discretion to add flexibility to the formal rules—a flexibility that serves to resolve potentially disruptive conflicts that cooperation may suddenly generate at the domestic level. Although this norm is invisible by nature, it generates two aspects that can be observed. First, the norm manifests itself in practices of informal governance as governments collectively depart from the formal rules in order to accommodate a government that faces unmanageable domestic pressure. Second, to prevent moral hazard, governments delegate the authority to adjudicate on demands for informal governance to a trustworthy political actor. We can specify these implications and evaluate them in light of rival explanations.

Variation in Informal Governance

If political uncertainty generates a demand for a norm of discretion that manifests itself in practices of informal governance, then these practices will vary systematically with the extent of political uncertainty over time and across issue areas. Thus, governments can be expected to adopt practices of informal governance where political uncertainty is high and, conversely, to follow formal rules more frequently where political uncertainty is low. But under what circumstances is political uncertainty high, and where is it low?

Political uncertainty is not very tractable for two reasons. The first is that when institutions are designed to reduce uncertainty, uncertainty does not materialize in any other way except through the institution itself.[15] This opens the door wide for the *post hoc ergo propter hoc* fallacy, which is to explain the emergence of an institution on the basis of its function, when it actually emerged

for entirely adventitious reasons. The other reason is particular to the problem at hand. Political uncertainty lies by definition beyond what governments know at the time of institutional creation, which means that it is generally difficult to develop an exact measure of political uncertainty.

Since it is impossible to measure political uncertainty directly, we need to find a proxy for this variable that allows the theory to be subjected to a proper test.[16] In our case, a proxy for political uncertainty is available in the form of welfare provisions. Recall that the threat to the commitment occurs when a group experiences unexpected adjustment costs, because these costs induce the group to overcome initial barriers to mobilization and pressure its government for protection. Political uncertainty, therefore, depends also on the determinants of collective action.

As mentioned above, the literature on collective action emphasizes that small groups are more likely to mobilize than large groups, since a member's marginal utility of mobilization is much higher in the former than in the latter case (Olson 1965). Concentrated adjustment costs are therefore more likely to generate domestic recalcitrance than diffuse costs borne by the society as a whole. Welfare provisions, however, comprise publicly funded social insurance such as health or unemployment insurance that disperse unforeseen costs incurred by individuals (e.g., in the event of unemployment, ill health) over a larger group of people (e.g., the taxpayers). It follows that their presence reduces a group's propensity to mobilize in the event of a distributional shock by lowering group members' marginal utility of collective action.[17] Welfare provisions may be used as a proxy for political uncertainty because even though their existence affects the level of political uncertainty across countries or issue areas, they themselves vary largely independently of this variable.[18] All else being equal, political uncertainty and, therefore, the demand for the norm of discretion is consequently relatively lower in the presence of welfare provisions than where welfare provisions are absent. Informal governance will vary accordingly.

The way in which welfare provisions affect the level of political uncertainty is depicted in the following figure. Governments formulate their policy as a weighted sum of electoral support for welfare gains from liberalization and of rents from special interests in return for protection. This equation changes (bottom part of the figure) when a distributional shock upsets the domestic politics of collective action at home. As the left-hand side of the figure shows, formal rules may then suddenly fail to align governments' incentives to stick to their commitment. The result is a demand for an informal norm of discretion that nips situations like this in the bud. The right-hand side shows how welfare provisions buffer the effect of distributional shocks on the politics of collective action at home. The politics of collective action at the domestic level and, thus, future domestic demands for protection are largely predictable.

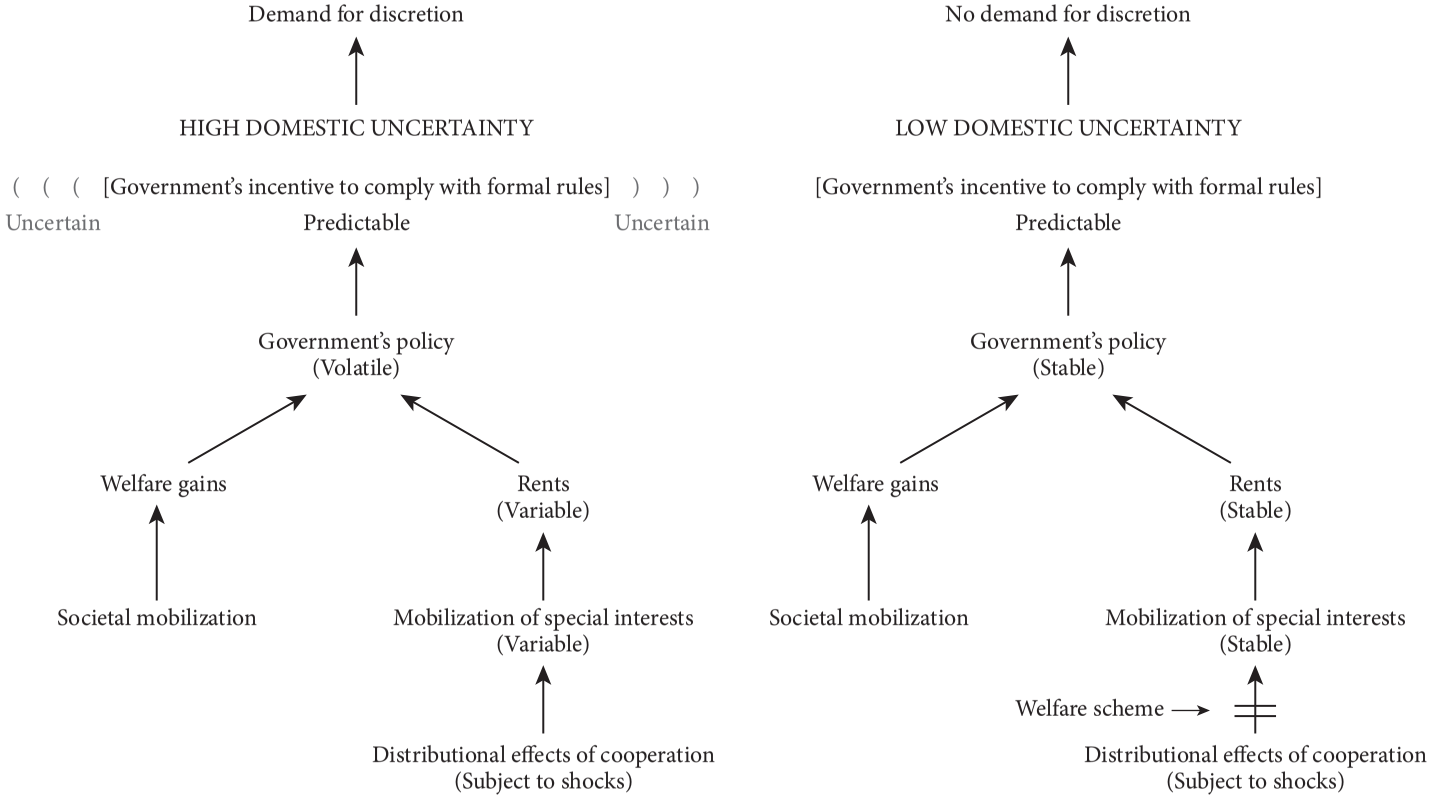

FIGURE 1 Variation in political uncertainty

Chapter 2 specifies this hypothesis for the empirical context of the EU. It argues that political uncertainty must be considered particularly low in the EU's Common Agricultural Policy, which is deliberately designed to protect European farmers from unexpected adjustment costs. The design of this policy makes it easier to predict the timing and extent of farmers' pressure than it is to predict the pressure of relevant groups in any other sector. The demand for the norm of discretion and practices of informal governance vary accordingly.

Coping with Moral Hazard

Since the norm of discretion is vague and prone to abuse, states need to find a way collectively to discriminate between false and legitimate demands for informal governance. As explained above, most conventional solutions to this moral hazard problem, such as penalties or legal adjudication, are inadequate for our purposes. The most promising solution consists of delegating the authority to adjudicate on ambiguous demands for informal governance to a trustworthy political body.

What kind of political body is required to elicit the kind of information that is necessary for governments to discriminate between false and legitimate demands for discretion? Obviously, this arrangement does not work when the political body consists of governments that demand informal governance (the claimants), since their incentive to exaggerate the need for accommodation gives rise to the problem of moral hazard in the first place. For the same reason, adjudicatory authority cannot lie with governments that stand to gain from the accommodation of a cooperating partner, since both governments have an incentive to collude. The delay of an unpopular decision or exemptions for certain sectors, for example, may reduce the domestic pressure on one government and, at the same time, be politically advantageous for other governments as well. In this case, it would be difficult for everyone else to trust the judgment of a government that stands to gain from delaying a decision.

The authority to adjudicate on ambiguous demands for flexibility, therefore, has to lie with a government that does not personally benefit from accommodating its cooperating partner. Its judgment can be trusted, because the only reason for this government to recommend the use of informal governance must be that it seeks to prevent damage to the commitment (Calvert 1985, 552).[19]

The point here is not that this government itself collects information about the domestic pressure that the claimant is facing. Rather, its adjudicatory authority induces other actors with a stake in the outcome to increase the

level of information in order to prevent the adjudicator from rendering a false judgment.[20] This arrangement is consequently able to prevent moral hazard and sustain both the norm of discretion and the institution at large.

Considering the institutional context of the EU, chapter 6 in this book spells out this theory in more detail and argues that the member states adapted the existing institution of the EU Council presidency, a position rotating among member states on a six-month interval, to enable it to perform this adjudicatory function.

Alternative Explanations for Informal Governance

In addition to multiplying the theory's testable implications and specifying them for the institutional context of the EU, the findings can be further corroborated when they are contrasted with the implications of two alternative explanations for informal governance. The first alternative explanation says that informal governance is the result of powerful states unilaterally escaping from their commitment. The second holds that informal governance serves to reduce the relative costs of transaction among states. Finally, I will look at three further perspectives on informal governance that complement rather than contradict these theories.

Power-Based Institutionalism

Randall Stone provides an elegant power-based explanation for practices of informal governance, which emphasizes that institutional design is mainly a matter of balancing power and interests. At its root is the following commitment problem: because large states typically have more viable outside options to institutionalized cooperation that at a given point they may be tempted to exercise, the argument goes, small states offer large states a deal that keeps them on board in the long run.[21] In exchange for more favorable formal voting rights, small states agree to tolerate practices of informal governance through which large states shake off institutional constraints when they consider their vital interests jeopardized. Small states, in turn, set a cost that will be imposed each time the dominant state uses informal governance to override a policy (Stone 2011, 33–34).

What distinguishes the two approaches is an emphasis on different disruptive forces, the relative importance of which varies with the strategic situation. In both cases, power is determined by the countries' asymmetric interdependence (Keohane and Nye 1977, chap. 1). The power-based approach describes

a situation of asymmetric interdependence, in which a large state is less dependent on the cooperation of small states than the other way around. To sustain cooperation, small states therefore accommodate the large one when this state is tempted to pursue its interests outside of the international organization (Voeten 2001). The domestic-politics approach adds institutions to the equation. If the pursuit of one state's interests depends on other states' cooperation, all states have an incentive to sustain their common institution's capacity to induce compliance with its rules. They consequently accommodate a partner whose unauthorized defection threatens to dash beliefs in this effectiveness and, as a result, threatens to trigger the erosion of cooperation. In this situation, power is the capacity to unsettle stable expectations. Thus, informal governance should also occur in situations of symmetry, especially if the institution is very beneficial for all members, and governments are susceptible to changes in domestic pressure.

Chapter 2 discusses how power-based institutionalism applies to the EU's empirical context. This theory expects the small and large member states to strike these deals in issue areas that are predictably of high sensitivity to large states. The chapter argues, in line with EU historiography, that informal governance should occur in the Common Agricultural Policy, which is a policy of predictable sensitivity that has caused almost every major crisis in the history of European integration. With regard to the second hypothesis about adjudication, power-based institutionalism does not expect large states to subject their use of informal governance to the judgment of another government holding the EU Council presidency.

Classical Regime Theory

From the perspective of classical regime theory, institutions enable cooperation by reducing the relative costs of transactions in, for instance, the exchange goods and services or—in the political context—support.[22] Money, for example, massively reduces the costs of exchanges that traders would otherwise incur in a barter economy.

Institutions become inefficient when exogenous factors alter the transaction costs after formal rules have entered into force. In this case, states are expected to restore efficiency by adapting the formal rules through additional informal institutional elements. All states use these elements because they serve to reduce frictions in state interaction that are caused by the use of formal rules.

The main difference between classical regime theory and Liberal Regime Theory is that each theory emphasizes different types of cooperation problems, and

formal or informal institutions. Although the term "transaction costs" is arguably vague (Gilligan 2009, 61), studies that build on this classical approach typically focus on the costs that arise among states at the systemic level. International institutions reduce the costs in state interaction through the centralization of, for example, dispute resolution or the collection of policy-relevant expertise and other types of information (Koremenos, Lipson, and Snidal 2001b, 771–72). Liberal Regime Theory, in contrast, emphasizes solutions to cooperation problems that are rooted in state-society interaction. Rather than centralizing resources, informal governance primarily adds flexibility in order to sustain commitments to cooperation where governments would otherwise respond to domestic pressure to defy cooperation.

A second difference follows. Since informal governance from the perspective of classical regime theory does not suspend commitments, there is no need to avert moral hazard by making its use conditional on the payment of a cost or on adjudication. Informal institutional elements are effective by virtue of their efficiency-enhancing effect.

Applying the theory to the institutional context of the EU, I argue in chapter 2, in line with EU historiography, that the transaction costs in state interaction increased heavily with a leap in day-to-day legislative activity in the late 1960s and the first enlargement of the Community in the early 1970s. To restore the efficiency of decision making, Jonas Tallberg (2006, 4) argues, member states centralized agenda setting and brokerage power in the hands of the Council presidency. Since these developments affected all issue areas in the same way, classical regime theory predicts a significant variation in informal governance over time rather than across issue areas. With regard to the second hypothesis, classical regime theory expects governments holding the presidency to command authority by virtue of its asymmetric control of procedures and information, and not because other governments trust its judgment.

Supranational Autonomy, Experimentation, and Nonstrategic Interaction

Three further explanations might be adduced to account for the phenomenon of informal governance. Historical institutionalism maintains that informal governance is an unintended consequence of cooperation that tends to result in greater supranational autonomy. Another perspective maintains that informal governance reflects constant institutional innovation and experimentation in the search for best practices. Finally, sociological and constructivist approaches

regard informal norms among governments as the result of socialization and deliberation in dense institutional settings. Although these views of informal governance as the outcome of supranational autonomy, experimentation, and nonstrategic interaction greatly contribute to our understanding of policy making in the EU, they often relate to different phenomena and are on closer inspection largely indeterminate.

Historical institutionalism is an umbrella approach for theories that focus on institutional effects that transpire over time (Hall and Taylor 1996, 938–42; Mahoney and Thelan 2010). Based on the premise that modern societies are complex and cooperation among them fraught with uncertainty, it emphasizes that institutions are bound to have effects that were not intended at the time of institutional creation. Furthermore, historical institutionalists tend to be skeptical about states' capacity to respond to these situations. Paul Pierson (1996, 135; 2000, 261), for instance, argues that short time horizons, distributional conflicts or institutional barriers to reform, among other things, make it difficult for governments collectively to reform an institution when it would otherwise produce initially undesired consequences.

Students of the EU subsequently used this insight to make sense of various unforeseen institutional developments. For example, Karen Alter (1998, 139–40; see also Burley and Mattli 1993; Weiler 1991) argues that because judges of the European Court of Justice have longer time horizons than EU governments, they could formulate bold legal doctrines with significant long-term consequences without provoking governments to gang up against them. Simon Hix (2002, 271) argues that the European Parliament advanced to a genuine co-legislator, because it reinterpreted the 1993 Treaty of Maastricht in its favor and threatened to block important legislation unless the member states codified this new interpretation.[23] In this vein, informal governance arises from reinterpretations of formal rules that result in further supranational autonomy. Given that these gaps in the member states' control of supranational actors are unintended and, hence, rather difficult to predict, the most coherent implication one might derive from this perspective is that there will be no systematic patterns in the occurrence of informal governance.

Again on the basis of the premise about the complexity of modern governance, others emphasize that informal governance reflects the willingness of EU bureaucrats and governments to experiment with new procedures and policy instruments. Adrienne Héritier (1999) argues that the Commission frequently adopts innovative strategies of "subterfuge" in instances where following the formal rules would otherwise result in deadlock. Similarly, Charles Sabel and Jonathan Zeitlin (2008, 271–78) describe the EU as an experimentalist architecture

that is characterized by peer review and deliberation about best practices. The constant search for better ways to meet common objectives implies permanent institutional revision, which only creates the impression of informalism.

For sociological institutionalists and constructivist scholars, informal governance reflects the fact that decision makers in the EU transcend a strategic mode of interaction. Conceiving of institutions as social environments instead of mere sets of rules, sociological institutionalists emphasize that governments often develop and follow shared norms and expectations as a result of their socialization into a new institutional context (March and Olsen 1998, 947). Jeffrey Lewis (2005, 939–43; see also Hurd 1999, 380; Wendt 1999, 44) finds that the dense institutional context of the EU's Council of Ministers led government representatives to internalize group norms that have become part of an "expanded conception of the self." Informal norms such as the reflex to adopt decisions by consensus instead of majority voting are not simply grounded in the governments' strategic calculation. They evolve and persist because the actions they suggest are considered appropriate or legitimate.[24] Given that norms evolve in densely institutionalized contexts independently of the interests represented across policies, this approach would not expect any issue-specific systematic variation in patterns of informal governance practices.

Because the three perspectives on informal governance as supranational autonomy, experimentation, or nonstrategic interaction rarely specify scope conditions and testable propositions, it is often difficult to evaluate them against rival theories and generalize from their findings. Where a perspective does make a prediction about informal governance patterns, they are at a first glance not borne out by evidence. I therefore decided to refrain from a systematic evaluation of these three approaches. Nevertheless, each chapter in the empirical analysis of this study will report to what extent the observed practices of informal governance can be considered consistent with any of these alternative views.

Formal institutions are necessary for states to reap gains from cooperation. By reducing uncertainty about the credibility of states' commitments, formal rules enable cooperation by allowing states and private actors to form stable expectations about each other's future behavior. Yet precisely because we cannot know what the future holds, institutions are bound to face situations where formal rules fail to reproduce states' interest in adhering to them. Specifically, following the letter of the law, even if it is beneficial for a society as a whole, may generate concentrated adjustment costs for a domestic group that induce it to pressure its government into defection. Since noncompliance not only generates deadweight costs but, more important, undermines the credibility of mutual commitments to cooperation, all governments have an incentive to prevent it.

TABLE 1 Summary of general hypotheses

	THEORY		
IMPLICATION	**LIBERAL REGIME**	**POWER-BASED INSTITUTIONALISM**	**CLASSICAL REGIME**
INFORMAL GOVERNANCE	Informal governance arises where political uncertainty is high.	Informal governance emerges in areas of predictable sensitivity to large states.	Informal governance arises where transaction costs rise *ex post*.
ADJUDICATORY AUTHORITY	The authority to adjudicate on ambiguous demands for discretion lies with a trustworthy political body.	The authority to invoke informal governance lies, after the payment of a cost, with the dominant state.	There is no final authority to decide on the use of informal governance.

Uncertainty about future domestic demands for protection consequently generates a demand for a norm of discretion, which states that governments should accommodate cooperating partners when they are tempted to defy the letter of the law. The norm adds situational flexibility to the formal institutional design—a flexibility that allows the member states to resolve unexpected and potentially disruptive conflicts at the domestic level that a uniform application of legal norms may generate. It consequently affords governments the ability to permanently align domestic interests in favor of cooperation.

The theory has two implications that can be observed. First, the norm manifests itself in practices of informal governance in parallel to formal rules as governments collectively exercise discretion. Second, because the norm is prone to abuse by its members, the authority to adjudicate whether informal flexibility is pertinent or formal rules apply is delegated to a political body that has no incentive to collude with the claimant. These hypotheses and its rival explanations are summarized in the following table. The remainder of this study specifies and evaluates them for the empirical context of the EU.

2

FORMAL AND INFORMAL GOVERNANCE IN THE EUROPEAN UNION

[Tacit understandings] are hard to identify with confidence. By their very nature, implicit agreements leave little trace.

—Charles Lipson

Uncertainty about domestic demands for cooperation—political uncertainty—leads to the emergence of an informal norm of discretion that adds situational flexibility to the formal institutional design, to enable governments to resolve potentially disruptive conflicts at the domestic level. The purpose of this and the following three chapters is to show that, therefore, this informal norm varies systematically with the extent of political uncertainty.

Informal institutional elements are, as the chapter-opening quote suggests, difficult to identify with confidence. How, then, do we trace the informal norm of discretion in the context of the European Union? The previous chapters argued that any institutional element, formal or informal, is visible at the level of behavior. The informal norm of discretion consequently manifests itself in practices informal governance—namely, departures from the kind of behavior we would expect to observe under formal rules. In the context of the EU, this implies departures from the behavior we would expect to observe if the legislative game were exclusively governed by the treaty rules. The first section of this chapter therefore briefly describes the EU's origins and objectives, and identifies three stages of decision making—agenda setting, voting, and implementation—as the key elements of its legislative procedure, the so-called Community Method.

Drawing on prominent formal analyses of these rules, and using plausible assumptions about the legislative actors' preferences and information, the second section constructs a stylized model of the Community Method

in equilibrium. On the basis of this model, it is possible to deduce a set of ideal-typical practices of *formal governance*—namely, practices that actors would adopt in agenda setting, voting, and implementation if the legislative game were solely dictated by formal rules. According to our theory, however, governments collectively depart from the formal rules in order to exercise tacit discretion. Our legislative actors should therefore feature practices of *informal governance,* or collective practices that differ from the standard of formal governance.

Given these definitions of what formal and informal governance mean in the context of the EU's Community Method, the third section specifies the predictions of Liberal Regime Theory and its rivals regarding the variation of informal governance over time, the variation of informal governance across issue areas, and the emergence of conflicts among the legislative actors. This set of competing predictions sets the stage for the empirical analysis in the following three chapters, which contrast the previously defined practices of formal governance in agenda setting (chapter 3), voting (chapter 4), and implementation (chapter 5) to the practices we observe in reality.

The Origins and Objectives of the Community Method

The roots of today's twenty-eight member-state European Union lie in the European Economic Community, which France, Germany, Italy, and the Benelux countries established with the 1957 Treaty of Rome.[1] At its core was the objective of establishing a common market that consisted of policies governing agriculture, transport, and competition, and the free circulation of goods, capital, services, and labor (the "four freedoms").

The commitment was taken a step further with the 1987 Single European Act, which amended the Treaty of Rome with a pledge by the now twelve member states to establish a single market, an area in which the free circulation of the four factors of production would be as easy among the member states as within them.[2]

The EU's expansion to other policy areas notwithstanding, the pursuit of deep market integration has always been the EU's core objective. Its implementation promised to subject governments to ad hoc societal pressures for and against the project, because it required the removal (by means of elimination or harmonization) of deeply entrenched nontariff trade impediments, such as incompatible domestic regulations, subsidies, and taxes.

Since the Treaty of Rome and all subsequent treaties amending this treaty remained imprecise about how to achieve the objective of deep economic integration, its realization necessitated a series of future individual decisions. In light of the fact that the removal of the various nontariff barriers was certain to generate conflicts within and among the member states, the formal rules entailed several ways to bolster the credibility of the member states' commitments in the event of changing ("time-inconsistent") domestic preferences and interest group pressure. The EU governments delegated extraordinary rule-making and implementation power to supranational institutions that were insulated from ad hoc pressure, and they pooled their sovereignty by surrendering their national vetoes on individual decisions.

The result is an original legislative procedure, the so-called Community Method, which brings together government ministers (the Council), an independent bureaucracy (the Commission), and the European Parliament. The European Court of Justice is supposed to enforce these rules and the secondary legislation made within them. Today, the Community Method governs almost invariably all policies that relate to economic integration. It produces various types of EU laws, the most important of which are directives (to be implemented through national law) and regulations (which do not require any implementing measures).

The Community Method is depicted in the following figure:

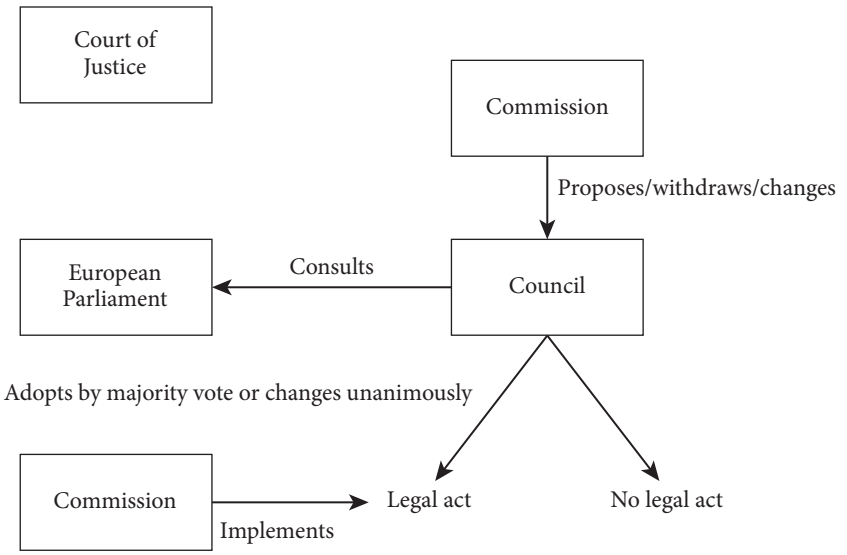

FIGURE 2 The Community Method (1957)

A number of formal changes have shaped the scope and workings of the legislative process over the years. One of the first important formal changes was the extension of the use of majority voting in the Council through the Single European Act (1987) to cover important aspects of the internal market. The Maastricht Treaty on European Union (1993), negotiated right after German unification and during the first Yugoslav Wars, launched the Economic and Monetary Union and added two intergovernmental policies—Common Foreign and Security Policy and Justice and Home Affairs—outside the existing European Community procedures.

Arguably, one of the most significant changes came with the treaties of Amsterdam (1999) and Nice (2003), which promoted the European Parliament to a co-legislator and prepared the institutional framework for the accession of a dozen and more new member states. The most recent treaty, the Lisbon Treaty (2009), sought to simplify the EU's institutional structure and inter alia provided for a uniform application of the Community Method (today known as the Ordinary Legislative Procedure) to almost all policy areas. None of these changes undermined the fact that the legislative process commits the member states to continual economic integration, since each stage has always entailed the possibility of imposing an outcome on one or more recalcitrant states.

Formal Agenda-Setting Rules

The Commission initiates the legislative procedure with a proposal for a legal act. Its *exclusive right of initiative* on matters covered by the treaty (Article 149, Treaty of Rome)[3] and those intended to realize its objectives (Article 235) gave the Commission an essentially political and extraordinarily strong role. The Commission is able to choose one among many feasible proposals for a legal act and, except where the treaty specifies a deadline, it is entirely free to determine the timing of its submission. It can therefore bar proposals from the agenda that are less suited to achieve the objective of deep economic integration.

Furthermore, it can publish proposals when the constellation of government preferences favors their immediate adoption, and it can change or withdraw them when this constellation becomes less favorable. The Commission was, from the outset, aware of its power. Walter Hallstein, the first president of the Commission, remarks:

> [A Commission proposal] is an eminently political act. For one, it is political because the Commission may choose among different feasible solutions. Considering what a majority under the terms of the treaty can just accept, it chooses in complete independence a solution that best

> approximates the Community interest. It is also a political act because the Commission determines the point of time of a decision: What was unthinkable yesterday might suddenly be possible today. (Hallstein 1965)

In performing its "eminently political" role, the Commission is supposed to be completely independent and "neither seek nor take instructions from any government" (Article 157). For that purpose, it is endowed with an administrative apparatus of permanent civil servants, headed by a Commission president and a college of at least one commissioner per member state. Commission officials hoped this independent supranational bureaucracy would acquire unrivaled expertise on Community matters that would also boost the Commission's "informal" agenda-setting power as, according to Hallstein, the "persuasiveness of a proposal [stems from the] quality of its rationale" (cited in Oppermann 1979, 441–46).[4]

Formal Voting Rules

After official submission, the Council decides whether to adopt the Commission proposal or change it through amendments. Formal voting rules strongly privilege the first option and thus greatly augment the Commission's agenda-setting power.

Whereas a *qualified majority vote* (entailing additional criteria beyond a mere majority of member states) is sufficient for immediate adoption of a legal act, the Council needs to attain *unanimity* in order to alter the legislative proposal against the will of the Commission (Article 148).[5] This is an extraordinarily restrictive rule for the amendment of proposals, one that represents an even greater protection for the agenda setter's proposal than that provided for most U.S. congressional legislation (Pollack 2003b, 85).

A European Parliamentary Assembly (renamed the European Parliament), which initially consisted of delegates of national parliaments, was to be consulted before adoption (Article 137).[6] Since 1979, EU citizens directly elect its members, who organize themselves in loose Europe-wide party groups. Gradually, the European Parliament has been promoted to co-legislator status, with formal veto power over Council decisions, and its legislative power has been extended to more and more policy areas.

These formal rules enhance the credibility of mutual commitments in various ways. First, governments can overrule one or more states that are reluctant to deepen economic integration. Second, the rules bolster the Commission's agenda-setting power, since it is able to disregard the opinions of a recalcitrant minority of states in drawing up its legislative proposals.

The involvement and gradual empowerment of the European Parliament arguably defies this functional explanation of the Community's institutional

design. Its promotion is probably best explained as an attempt to remedy the "democratic deficit" of the European Union (Rittberger 2005, 4–7). Yet this need not concern us at this point, since the European Parliament's formal powers in combination with its preference for deeper integration never undermined the legislative procedure's function as a commitment to the Community's objectives.

Formal Implementation Rules

In addition to the Commission's political role in the preparation and negotiation of legislation, it was also slated for the management of EU policies (Article 155). For a few policies, such as competition, the common commercial policy, transport, and agriculture, the Treaty of Rome directly conferred executive powers on the Commission. In other areas, the Council retained the option to delegate the implementation to the Commission or other actors with various degrees of discretion.

This ambiguity regarding the identity of the implementing actor turned out to be a constant source of tension between the institutions and was aggravated through the Single European Act, which stipulated (Article 145) that the Council shall "confer on the Commission . . . powers for the implementation of the rules which the Council lays down" and, in the same breath, stated that the "Council may also reserve the right . . . to exercise directly implementing powers itself." However, the Treaty of Rome provided no means for the Council to withdraw or change effective measures. Only the Single European Act codified without specifying established law that the Council may "impose certain requirements in respect of the exercise of these powers."

It is hardly possible to formulate laws in such a way that they can be applied without ambiguity, and this ambiguity provides ample opportunities for governments to manipulate the implementation of policies in order to cater to powerful domestic interests. The delegation of implementation to an agent that is shielded from ad hoc influence therefore bolsters the credibility of governments' pledges, by preventing a false or uneven application of policies on the ground.

Enforcement

A Court of Justice was supposed to ensure that, in the interpretation and application of the treaty, "the law is observed" (Article 164).[7] Regarding the enforcement of secondary law, this initially implied that the European Court of Justice, similar to other international tribunals, resolved disputes about the interpretation of EU law and adjudicated on the legality of infringement proceedings (Commission actions against a member state it considers to be failing to fulfill its obligations

under EU rules). In that respect, Articles 169 and 170 stated that if the Commission or a member state believes another member state has failed to implement EU law, the matter is brought before the Court of Justice after the Commission has issued a reasoned opinion on it. It was not until 1993 that the member states sought to give this procedure more teeth. The new Article 143 of the Treaty of Maastricht allowed the Commission to take noncompliant states back to the Court to have them fined (Chalmers, Davies, and Monti 2010, chap. 8).

In addition to these provisions on centralized monitoring and enforcement, a second, more decentralized way developed on the basis of two landmark judgments (Weiler 1991). The doctrine of direct effect, introduced in 1963, stated that clear and precise Community norms must be regarded as the law of the land in their sphere of application (European Court of Justice 1963). This implied that Community law immediately bestows rights and obligations on individual citizens, and thus when a country fails to bestow these rights, individuals can seek to invoke them before national courts. The Court complemented direct effect in 1964 with the doctrine of supremacy, which stated that Community law trumps conflicting national law whether enacted before or after this norm was established (European Court of Justice 1964). In other words, national legislatures cannot enact laws that contradict a Community norm and must repeal those already passed.

Together, these rulings enabled individuals to bring their government before national courts if it failed to transpose EU law or enacted conflicting law. The European Court of Justice itself is able to shape these decisions, since Article 177 of the Rome Treaty permits national courts to request a preliminary Court ruling when confronted with questions about Community law (Chalmers, Davies, and Monti 2010, chap. 7). The effectiveness of this original procedure consequently depends on a variety of factors, primarily the willingness of individuals to litigate the rights under EU law, of national courts to refer cases to the European Court of Justice, and of the governments to comply with a judgment.[8]

Nonetheless, the decentralized enforcement of EU law enhanced the credibility of states' commitment to economic integration compared to other international organizations. This has been cited as the reason why the member states were ultimately willing to accept the doctrines on which this system builds (Garrett 1995, 176).

Formal and Informal Governance in Lawmaking

Now that we have described the formal rules on the making and enforcement of EU law, and the ways they serve to bolster the credibility of states' commitment to economic integration, we are a step closer to defining the practices of formal and informal governance in lawmaking in this institutional context.

Recall that a set of rules can be said to be in equilibrium when no actor has an incentive to deviate from his or her rule-following behavior. In equilibrium, the rules of the Community Method will therefore induce a number of observable, regular practices of formal governance in the stages of agenda setting, voting, and implementation. Informal governance refers to collective practices that differ from this standard. Formal and informal governance, then, constitute the two endpoints of a continuous dependent variable that measures the regularity with which the legislative actors depart from formal rules.

What practices actors adopt also depends on what actors want and what actors know when they interact with one another. We can make two empirically plausible assumptions about actors' preferences and information. First, and in line with the bulk of the literature in EU studies, it is assumed that the predominant policy dimension represents the depth of integration where the status quo is shallow economic integration (e.g., conflicting domestic regulations).[9] The treaty itself aims to change the status quo through the deepening of economic integration. The European Parliament and the Commission, which are pledged to help attain this objective, consequently favor deeper integration than the Council.

Second, we assume that the three institutional actors (Council, Commission, European Parliament) are well informed about one another's preferences. In game-theoretical parlance, the legislative actors have nearly complete information about one another's location on the policy scale. Although less common in international bargaining, the assumption of nearly complete information is plausible and often used in the context of the EU, where the main institutional actors are, in fact, composed of many interconnected individual actors. An example is the members of the European Parliament, all of whom have to agree (often in public) on a common position before entering the next stage of the legislative process (Garrett and Tsebelis 1996, 280).[10]

Formal and Informal Governance in Agenda Setting

The first set of formal rules on agenda setting endows the Commission with an exclusive right of initiative. These rules allow for the selection of one out of many feasible legislative proposals while keeping rival proposals from the agenda. These rules permit an optimal implementation of the treaty's objectives if (a) the Commission's monopoly of initiative in fact remains unrivaled, (b) the Commission's independence is not compromised, and (c) the constellation of state preferences at the time of decision is conducive to the adoption of progressive acts.

What practices do these three aspects imply for the EU's legislative actors? The first aspect of agenda setting, the monopoly of initiative, is particularly important when there is the possibility that rival coalitions might repeal an effective policy through new legislation. It is a well-known result in legislative studies that when a policy with multiple dimensions is to be adopted by majority voting, it generates more than one winning coalition and thereby many potential outcomes. Policies are consequently inherently unstable, since an alternative majority can always overturn them through new legislation (McKelvey 1976). Equally important in our case is the possibility that governments, which are under varying pressures from domestic groups, will change their preferences over time and form alternative majority coalitions to replace existing legislation. The Commission's monopoly of initiative therefore stabilizes EU policies, because it enables the Commission to bar rival policy initiatives from the legislative agenda.[11]

The rules imply that we should observe the Commission selectively withholding governmental initiatives from the agenda. Why? Even though the Commission has the monopoly of initiative, governments under domestic pressure will still suggest alternatives in order to signal their effort to the pressuring groups. Of these various initiatives, we can expect the Commission to endorse only those that promise an optimal implementation of the treaty objectives.

Thus, *formal governance* in agenda setting can be defined as a practice by which the Commission selectively bars some governmental initiatives from the legislative agenda. Conversely, *informal governance* is a practice where the Commission customarily endorses governmental proposals. Whether the Commission endorses governmental initiatives selectively or as a matter of course should be indicated by the sequence of moves before the official submission of a proposal.

The monopoly of initiative results in an optimal implementation of the treaty only if the agenda setter, in contrast to governments, does not behave opportunistically. For that purpose, it needs to be immune to private or governmental ad hoc pressure from within or outside. The Commission was well aware of this responsibility. As Jean Monnet, the spiritual father of the Community Method and first president of the High Authority (the Commission's predecessor), explained:

> The independence of the Authority vis-à-vis governments and the sectional interests concerned is a precondition for the emergence of a common point of view which could be taken neither by governments nor by private interests. It is clear that to entrust the Authority to a Committee of governmental delegates or to a Council made up of representatives of governments, employers and workers, would amount to returning to our present methods, those very methods which do not enable us to settle our problems. (Monnet 1950)

The second aspect of agenda setting, the independence from ad hoc pressure, implies that the Commission should not have to rely on the information and ideas of rival actors to be able to come up with quality legislative proposals.[12] This need not imply that the Commission's expertise is superior to everyone else's. However, the Commission needs to be free to decide whom to ask for policy-relevant expertise, and it should be able to draw on a capable administration in order to process this information.

In short, *formal governance* is a practice by which the Commission draws on independent expertise and a capable administration. *Informal governance* is a practice that compromises this precondition for the Commission's independence. Whether the Commission is sufficiently equipped to remain independent should be reflected in its internal organization.

The final aspect of agenda setting concerns timing. Since government preferences may change over time, there are times that are more or less conducive to the advancement of economic integration. John Kingdon (1995, 203) refers to favorable times as "policy windows," that is, "opportunities for advocates to push their pet solutions." The delegation of the power over timing to the Commission therefore enhances states' commitment to pursuing economic integration, since its capacity to change, withdraw, and resubmit legislative proposals also allows it to await circumstances that are most favorable to attaining this objective.

Why is this important for our case? The control of the timing of a decision not only allows waiting for a favorable constellation of preferences among governments. It may also affect the constellation of domestic interests when, for example, the delay of a decision mitigates the concentration of adjustment costs by giving domestic groups more time to adjust. It may also make a difference regarding a government's susceptibility to domestic pressure (e.g., before an election). In short, to exercise informal discretion, governments need to be able to control the timing of a decision.

Formal governance can hence be considered a practice where the Commission's publication of a proposal results in its swift adoption, while *informal governance* is a practice whereby governments control the time span between the publication and the adoption of a proposal. The duration of moves in-between the submission of a proposal and the conclusion of negotiations indicates this control of time.

Formal and Informal Governance in Voting

The second set of formal rules concerns the adoption or amendment of legislative proposals by the Council and, more recently, the European Parliament. The rules

stipulate that governments adopt the Commission proposal with a qualified majority. They can change it only when they are able to attain unanimous support for the amendment. In other words, it is much easier for governments to adopt the Commission's legislative proposal than to change it. This rule on majority decision making commits governments to advancing economic integration, because it allows a majority to impose outcomes on more conservative governments. What practices do these rules imply for the legislative actors?

One might argue that majority voting provides the opportunity for political exchange over time or across jurisdictions. In other words, a majority can spare minorities that feel intensely about an issue in exchange for political support on an issue they strongly care about. The result of this hypothetical "vote trade" would be a unanimous agreement on both issues.

However, vote trading of this sort is difficult to enforce in practice, particularly in the context of the EU. Precisely because governments are opportunistic, which is why majority voting at the EU level is necessary in the first place, they will find it difficult to trust others to stick to their part of the deal at a later point in time. The exchange of support across policy areas seems improbable too (Weingast and Marshall 1988, 135).[13] Recall that changes to a Commission proposal require unanimity in the Council. Political exchanges across jurisdiction are therefore only possible when there happen to be opportunities to reciprocate political support on another issue to all governments that are necessary to build a unanimous vote. Unsurprisingly, empirical examples of vote trading across jurisdictions in the EU are rare (Mattila and Lane 2001, 46–48).

Given that vote trading across policy areas and over time is unlikely to take place in the EU, the voting rules can be expected to induce majorities to call votes in order to capture their gains. These votes should also take place openly, since this allows the minority to blame the outcome on "Brussels" in order to escape a domestic backlash.[14] *Formal governance* is therefore a practice where governments cast votes frequently and openly, while *informal governance* is a practice where governments collectively refrain from voting in order to accommodate a government in the minority. This should be reflected in qualitative and quantitative Council voting data.

The second feature of this stage is the involvement of the European Parliament in decision making on a wide variety of issues. Members of the European Parliament have a strong incentive to bring deliberations out into the open to gain the electoral support of their constituencies and, more generally, to justify their existence. *Formal governance* can therefore be considered a practice by which the European Parliament avails itself of opportunities to have public debates. Public debates, however, may jeopardize the provision of flexibility, since they may raise concerns among various domestic groups that the accommodation of a government ultimately takes place at their expense. *Informal governance* can therefore

be regarded as a practice by which legislative actors avoid publicity in decision making. These practices should be reflected in the actual use of plenum debates.

Formal and Informal Governance in Implementation

The formal rules regarding the implementation of legal acts are more ambiguous than those of the previous two stages. Initially, the treaty in a few areas directly conferred implementation power on the Commission. The treaty was more ambiguous in the remaining areas, where the Council was free to delegate this task also to national administrations. Various treaty changes and case law did little to clarify the ambivalence about the identity and discretion of implementing actors. What practices do these ambiguous rules imply for the legislative and implementing actors?

Modern societies cannot function without bureaucracies. The complexity of issues and the time and resources needed to address them leave legislative actors no choice but to delegate some responsibility to an agent. Once they delegate, however, they face a potential loss of control over the issue they have delegated (Huber and Shipan 2008). The act of delegation, therefore, usually entails two decisions, first a decision about the identity of the agent, and second about the agent's discretion, that is, her room for maneuver, which is a function of various control mechanisms (McCubbins, Noll, and Weingast 1989). Although national administrations have extensive expertise about implementation obstacles in their own country, they tend to be less insulated from political influence from within the member state. There is, therefore, the risk that decentralized implementation results in disparate sets of policies that defy the purpose of an EU-wide law. Conversely, pledged to the rule of law, the Commission is primarily concerned about the timely and consistent implementation of legal acts across countries.

According to Fabio Franchino (2007, chaps. 4 and 7), both the Commission and the European Parliament favor centralized implementation and, in addition, ample discretion for the Commission. The same research shows that the Council prefers centralized implementation when it adopts a legal act by majority voting instead of a consensus, since a majority vote makes it more likely that those that have been overruled will defect (Franchino 2007, 174).

Since formal governance implies the frequent recourse to majority voting in the previous, legislative, stage, *formal governance* in the implementation stage must be considered a practice by which governments frequently centralize implementation powers in the hands of the Commission and provide it with broad discretion.

However, the Commission is less familiar than its member-state governments with local implementation obstacles. Centralized implementation therefore

harbors the risk of generating distributive shocks at the local level, in which case governments will seek to flexibly restrict the discretion of the Commission. Furthermore, if consensus decision making instead of voting prevailed in the previous stage, there is less risk that governments will purposefully fail to implement the legal act. As a result, the member states will be more relaxed about leaving implementation up to national administrations instead of delegating it to the Commission. Thus, *informal governance* in implementation denotes decentralized implementation and, where the treaty provides for centralized implementation, the flexible restriction of the Commission's discretion (Franchino 2007, 167, 175). This should be indicated in data on the implementing agent chosen by the Council and its discretion before and after delegation.

We have seen that the Community Method in equilibrium generates six practices of formal governance. Informal governance is defined as the mirror image of formal governance: collective practices that differ from this standard. Formal and

TABLE 2 Indicators and data for informal and formal governance

STAGE	FORMAL GOVERNANCE	INFORMAL GOVERNANCE	TYPE OF DATA
AGENDA SETTING	The Commission selectively bars governmental initiatives from the agenda.	The Commission generally endorses governmental proposals.	Sequence of moves before the official submission of a proposal.
	The Commission draws on independent policy expertise.	The independence of the expertise the Commission draws on is compromised.	The Commission's internal organization.
	The Commission controls the timing of decision making.	Governments have collective control of the timing.	Duration of moves between official submission and adoption of a legislative proposal.
VOTING	Voting takes place frequently and openly.	Governments refrain from voting.	Voting data.
	Parliament brings decision making out in the open.	The legislative actors eschew publicity in decision making.	Data on public parliamentary contestation of the Council.
IMPLEMENTATION	The Council delegates implementation powers and wide discretion to the Commission.	Governments delegate to national administrations and narrow the Commission's discretion.	Identity and discretion of implementing agent.

informal governance constitute the two endpoints of a continuous dependent variable. These practices and the indicators used to identify them are summarized in the following table.

By specifying what formal and informal governance means in the context of the EU's Community Method, this section multiplied the number of observations for our empirical analysis. Instead of merely predicting collective departures from the formal legislative procedure, Liberal Regime Theory and its rivals now have to make specific predictions about informal governance practices in agenda setting, voting, and implementation.

The number of observations is further multiplied by splitting the domain up into five different time periods separated by treaty revisions.[15] For our purposes, these periods can be considered semi-independent observations, because each treaty revision provided the opportunity to codify the practices of informal governance that emerged in the meantime (King, Keohane, and Verba 1994, 221–23). In fact, almost every single treaty revision since the Treaty of Rome specifically envisaged the simplification of decision making through the formalization and consolidation of rules (De Witte 2002).

With a focus on six different practices of formal and informal governance in two types of issue areas in five time periods, the result of the multiplication exercise is a *large-N* data set of more than fifty observations, all of which constitute qualitative mini case studies of decision-making practices in a certain time period.

Testable Implications and Alternative Explanations

Having defined the meaning of formal and informal governance in the context of the EU's Community Method, we are now able to proceed to specifying the testable implications of Liberal Regime Theory and its rivals. To repeat, the theory argues that governments depart from formal rules in order to resolve conflicts at the domestic level. For power-based institutionalism, informal governance is a means for dominant states to escape formal commitments when their vital interests are at stake. For classical regime theorists, informal governance results from states' attempts to reduce increased transaction costs.

Liberal Regime Theory

According to Liberal Regime Theory, informal governance serves to resolve potentially disruptive conflicts that states' cooperation may generate at the

domestic level. We referred to the propensity for such unexpected domestic pressure for defection as *political uncertainty*. The theory expects practices of formal and informal governance to vary systematically with the extent of political uncertainty. But how does political uncertainty vary in the context of the European Union?

As argued in the previous chapter, it is impossible to measure political uncertainty directly, let alone to quantify it. If governments cannot specify future domestic pressure at the point of institutional creation, it seems implausible that scholars would be able to do so.

However, drawing on insights from collective action theory, we argued that welfare provisions that provide social security serve as an arguably crude proxy for this variable. Since political uncertainty refers to situations in which governments are facing unexpectedly strong pressure from a domestic group to defy a legal act, it follows that one important determinant of this pressure is a group's propensity to mobilize in response to imminent adjustment costs. This propensity is itself a function of the presence or absence of welfare provisions: by dispersing unexpected costs over a larger group, these measures lower the group members' marginal utility of mobilization. If we keep other factors constant, such as the size of the distributional shock a group is facing and governments' susceptibility to domestic pressure, welfare provisions independently reduce the propensity for unexpected domestic pressure for defection. Political uncertainty is therefore high in the absence, and low in the presence, of welfare provisions.

The fact that welfare provisions affect political uncertainty implies that informal governance can be expected to vary systematically across issue areas in the EU. Although most policies at the EU level increasingly subject national markets to Europe-wide competition, the Common Agricultural Policy, by comparison, stands out as an issue area that by means of high external tariffs, fixed and guaranteed prices, and direct subsidies deliberately protects European farmers from the structural pressures of the global economy.

According to the Treaty of Rome, one of the principal objectives of the Common Agricultural Policy was "to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture" (Article 39 (1b) Treaty of Rome). Continuing existing national policies at the EU level, the member states subsequently agreed on a Europe-wide market organization that, by means of fixed and guaranteed prices, provided a higher and secure income for a specific segment of society, the European farmers.

The establishment of the Common Agricultural Policy, as Elmar Rieger (2005, 161) remarks, consequently reflected "defensive, basically anti-market, national strategies of economic modernization, attaching small farmers' loyalty to rebuilding democracies, with welfare-functions transferred to the European

level." Although the Common Agricultural Policy occasionally affects groups other than farmers (for instance the apple wine producers mentioned in the introductory example), it does, more than other policies, absorb potential shocks to the farmers' livelihood that would suddenly stir up this sector's domestic politics of collective action.

To be clear, this is not to argue that farmers never mobilize against this policy. On the contrary, they protest vociferously when changes to the agricultural policy affect their subsistence. The principal point is that this mobilization is rarely unexpected. It is, on average, more *predictable* than the domestic pressure in other sectors and, therefore, manageable in the framework of the formal rules.

Because agriculture is a quite technical field that has attracted little political science research, it is worth elaborating on this point in a bit more detail. A critic might argue that the Common Agricultural Policy has undergone substantive reforms in the last two decades, in response to spiraling costs and the dumping of excessive production ("milk lakes") in the 1980s, the Bovine Spongiform Encephalopathy (BSE) crisis ("mad cow disease") in the 1990s, pressure to comply with the rules of the General Agreement on Tariffs and Trade (GATT), and the accession of more than ten rural Eastern European countries in the 2000s.[16]

Though it is true that various reforms removed or replaced some of the shock absorbers that European farmers historically enjoyed, it should be noted that the reform of the Common Agricultural Policy nevertheless kept intact the safety-net function of this policy. After an interim period where direct income support served as a compensation for reduced fixed prices, the system now aims at stabilizing income independent of production. The Common Agricultural Policy therefore still entails aspects of social security that to some extent protect the rural sector from the competitive forces of the market, which distinguishes it qualitatively from all other economic policies in the EU that do not envisage this kind of protection (Garzon 2006, 180–81).[17]

Applied to the empirical context of the EU, Liberal Regime Theory therefore generates three specific implications that can be tested. First, informal governance in agenda setting, voting, and implementation is most pronounced in most EU policies where political uncertainty is high, while formal governance dominates in the Common Agricultural Policy, a policy of comparatively low political uncertainty. Second, since the market-creating policies of the EU have always been qualitatively distinct from the Common Agricultural Policy, the difference between agricultural and nonagricultural policies across the spectrum of economic policies can also be expected to remain stable over time. Finally, since the theory expects all governments to prefer the mix of formal and informal governance to a purely formal setup, the use of informal governance should

create conflicts between institutional actors and the national governments, but not among the governments themselves.

Power-Based Institutionalism

Power-based institutionalism argues that it is difficult for large states to commit to cooperation, since they are more likely than small states to face opportunities to pursue their interests outside of a formal institutional framework. Anticipating this challenge to the institution, small states offer to acquiesce to large states' informally assuming control of the international organization on important matters in exchange for more favorable formal voting rights on less sensitive issues (Stone 2011, 14).

Thus, two criteria must be met for informal governance to arise. First, the patterns of interdependence among the member states are highly asymmetric—that is, some small states are far more dependent on the cooperation of a larger state than the other way around. Second, a policy area that fulfills the first criterion must be of predictable sensitivity for the large state.

What policy areas in the European Union can we expect small and large states to strike a deal about informal governance? There are various policy areas in which asymmetries among the member states are more pronounced than elsewhere. For example, the United Kingdom with London as one of the world's largest financial centers can be considered powerful in the trade of financial products. On matters of monetary policy, Germany is beyond doubt the most powerful state in the Eurozone. France with its powerful agricultural sector has dominated intra-European trade in a wide variety of agricultural products.[18] Among these issue areas, there is one where individual decisions have been predictably sensitive from the outset of European integration. The Common Agricultural Policy was, from the outset, of particular significance to France, which is home to a powerful farm lobby.

Asserting that the Common Agricultural Policy, relative to other policy areas that are dominated by a large state, is certain to be of special importance to France is admittedly a crude measure of a policy's sensitivity. Yet it is entirely in line with the historiography of the EU. Some students of European integration contend that agriculture stands out as the single most important determinant of French EU policy (Moravcsik 2000a, 2000b). But one does not have to go as far as that in order to acknowledge the fact that agriculture has always been of predictable sensitivity to France and spawned most major intergovernmental disputes from the beginning of European integration until today.[19] As we shall see in chapters 3 and 4, it was, after all, a proposal for the extension of majority voting to agricultural issues that in 1965 prompted French president Charles De

Gaulle to threaten to renege on France's commitment and withdraw from the Communities (Teasdale 1993, 567–68).

Also, applying power-based institutionalism to the EU, Stone argues that the "veto culture" that supposedly resulted from this crisis in the Common Agricultural Policy "suited powerful countries, because it channeled decision making into informal intergovernmental bargaining, where they could most easily exercise their leverage" (Stone 2011, 105; Golub 2006, 280–82).

In sum, applied to the EU's empirical context, power-based institutionalism generates several implications that can be tested. First, informal governance arises in issue areas that are of predictable sensitivity to a large state. There is only one issue area that appears to meet these criteria, and this issue area is agriculture. It is here that power-based institutionalism would expect France to strike a deal with smaller member states on the use of informal governance. Formal governance should be more pronounced in the remaining issue areas. Thus, power-based institutionalism, compared to Liberal Regime Theory, predicts the opposite issue-specific variation in informal governance.

Second, the issue-specific variation in informal governance varies, if at all, only slightly over time. Although historians argue that the veto culture in the Council subsided with the conclusion of the Single European Act and as other agrarian-oriented countries acceded to the EU, the Common Agricultural Policy has remained a highly sensitive policy area for France. Informal governance should therefore remain more pronounced on agricultural matters than anywhere else.

Finally, the use of informal governance should provoke disputes between small and large states about its legitimacy. Formed under the condition of uncertainty, the precise boundary between formal rules and informal governance necessarily remains vague and difficult to ascertain. Consequently, there will be ambiguous situations in which the use of informal governance is fraught with tension between large and small states.

Classical Regime Theory

For classical regime theory, institutions enable cooperation by reducing the relative costs of transactions. Institutions become inefficient when exogenous factors alter the transaction costs after formal rules have entered into force. In this case, states are expected to restore efficiency by adapting the formal rules through additional informal institutional elements. All states use these elements because they serve to reduce frictions in state interaction that are caused by the use of formal rules. Accordingly, classical regime theory predicts that informal governance varies systematically with the rise of transaction costs in legislative interaction.

But what are transaction costs in the context of the Community Method, and where did they rise after the formal rules had entered into effect?

Two factors, in particular, may strain legislative institutions and generate a demand for informal rules to restore the efficiency of decision making. First, the addition of new policies eats up decision-making time and results in legislative bottlenecks (Cox 2008, 143). Second, the addition of new actors increases the complexity of decision making (Cox and McCubbins 2001, 27; Winham 1977). In line with this theory, it has been argued that transaction costs in EU legislation rose markedly with a leap in legislative activity and the accession of new countries in consecutive rounds of enlargement.

Applying classical regime theory to the EU, Jonas Tallberg (2006, 59) argues that the complexity of the decision-making environment increased heavily in response to an expansion of Council business and an increased number of bargaining partners. In fact, as we shall see in more detail in chapter 4, the Council's legislative activity leaped dramatically in nearly all issue areas in the ten-year period from the mid-1960s until the mid-1970s. The number of actors increased for the first time in 1973 when the United Kingdom, Ireland, and Denmark acceded to the then European Community. A southern enlargement took place between 1981 and 1986 with the accession of Greece, Portugal and Spain. These countries were followed by Sweden, Finland, and Austria in 1995. The "big bang" enlargement with the accession of twelve Eastern and South European countries took place between 2004 and 2007.

TABLE 3 Summary of specific hypotheses about informal governance

	THEORY		
IMPLICATION	**LIBERAL REGIME**	**POWER-BASED INSTITUTIONALISM**	**CLASSICAL REGIME**
ISSUE-SPECIFIC VARIATION	Formal governance in issue areas of low political uncertainty. Informal governance where political uncertainty is relatively higher.	Informal governance in issue areas of predictable sensitivity to large states. Formal governance in less sensitive areas.	Informal governance across the board.
VARIATION OVER TIME	None	None	Informal governance in response to increasing legislative activity and enlargement.
CONFLICTS	Between supranational actors and the member states.	Between large and small member states.	None

In the context of the European Union, classical regime theory therefore expects practices of informal governance to vary over time rather than across issue areas. Specifically, the theory predicts the emergence of informal governance from the mid-1960s until the first enlargement in 1973. Further informal practices can be expected to arise with further accession rounds. Since they enhance the general efficiency of decision making, the adoption of these practices should not lead to any major conflicts among states or between states and institutional actors.

A Look Ahead to Subsequent Chapters

The following three chapters test these different predictions regarding the variation of informal governance over time, the variation of informal governance across issue areas, and the emergence of conflicts by contrasting the aforementioned six practices of formal governance in agenda setting (chapter 3), voting (chapter 4), and implementation (chapter 5) to the practices we observe in reality. The focus is on decision making in issue areas that deal with economic integration from 1958 until the entering into force of the Lisbon Treaty in 2009.

To foreshadow the findings: the look beyond the treaty rules demonstrates that the formal legislative procedure is surrounded by practices of informal governance, most of which, in fact, constitute elusive "emergency brakes" through which the governments collectively mitigate the formal rules' effects at the domestic level.

Formal governance in agenda setting is defined as practices by which the Commission selectively bars rival legislative proposals from the agenda, draws on independent policy expertise, and controls the timing of decision making. However, a look at the development of practices in agenda setting in chapter 3 reveals that the member states quickly diverged from these practices to obtain collective control of the legislative agenda. The Commission was less and less able to bar alternatives to its legislative proposals from the agenda, especially because the European Council, an institution consisting of the heads of state and government (chiefs of government) that existed outside the formal treaty framework, preset this agenda in ways that were impossible for the Commission to ignore. Also, the Commission was not entirely immune to ad hoc governmental influence. In fact, it became increasingly dependent on governmental expertise, and it also struggled to fight off national influence on internal politics. Finally, the Commission gradually lost the capacity to await situations that were conducive to the adoption of its preferred proposals. Because governments refused to discuss proposals officially before their experts had had a look at them, the legislative

TABLE 4 Formal and informal governance in EU lawmaking

	DIMENSION											
	LOW POLITICAL UNCERTAINTY						HIGH POLITICAL UNCERTAINTY					
TIME PERIOD	Proposal	Expertise	Timing	Voting	Parliament	Implementation	Proposal	Expertise	Timing	Voting	Parliament	Implementation
1958–1969	Formal	Formal	Formal	Formal	N/A	Formal	Formal	Informal	Informal	Informal	N/A	Informal
1970–1986	Informal	Formal	Formal	Formal	N/A	Formal	Informal	Informal	Formal	Informal	Informal	Informal
1987–1993	Informal	Formal	Formal	Formal	N/A	Formal	Informal	Informal	Informal	Informal	Informal	Formal
1994–2000	Informal	Formal	Formal	Formal	N/A	Informal	Informal	Informal	Informal	Informal	Formal	Formal
2001–2009	Informal	Formal	Formal	Formal	N/A	Informal	Informal	Informal	Informal	Informal	Informal	Formal

process became, in fact, determined by the work rhythm of government experts in a massive informal Council substructure.

Formal governance in voting is defined as practices by which the Council votes frequently, and the European Parliament brings negotiations out into the open. Chapter 4 shows that actual practices again diverge from this standard. Despite an increase in the use of majority voting over time, it turns out that it has always been the norm among the governments to refrain from voting and to collectively accommodate a government that would otherwise face strong conflict at home and succumb to domestic pressure to defy the law in question. This consensus norm led to the development of a large Council substructure of preparatory groups, which consisted of government experts with specific knowledge about sensitivities on the ground. Furthermore, as soon as the European Parliament was promoted to a more serious legislative actor that was able to contest the Council in public, it was implicated in informal governance even despite its members' incentives to publicly contest the Council.

Finally, formal governance in implementation was defined as practices by which the Council delegates implementing powers and wide discretion to the Commission. In actuality, however, the Council established an informal and highly elusive system of committees composed of government officials, the *comitology,* which afforded the member states the flexibility to determine the scope of delegation and the Commission's discretion.

Importantly, these practices are not random. The table below visualizes the six practices of formal and informal governance in agenda setting, voting, and implementation, as they emerged over the course of the past fifty-plus years in the European Union's economic issue areas. It distinguishes between issue areas of low political uncertainty, which we said holds true for the Common Agricultural Policy, and issue areas of high political uncertainty, a category that comprises all policies that grew out of the former European Economic Community and deal directly with economic integration. Each cell constitutes an individual observation of the prevalence of either formal or informal governance. Because the European Parliament was excluded from decision making on the Common Agricultural Policy, and only gradually gained power in other economic issue areas, some of these observations are dropped from the analysis.

The table suggests that informal governance varies systematically both over time and across issue areas. In contrast to the expectations of classical regime theory, which predicts informal governance would emerge across the board and vary over time in response to enhanced legislative activity and the accession of new member states, we can see that most of the practices are, in fact, remarkably stable over time. Formal governance is most notable in the predictably sensitive Common Agricultural Policy—an observation that runs counter

to power-based institutionalism, which regards informal governance as a means for large states to eschew formal commitments in areas that are of particular importance to them.

In line with Liberal Regime Theory, informal governance appears to be most pronounced in issue areas where it is, in fact, difficult to predict where excessive adjustment costs might suddenly stir up pressure against EU legislation. Once these informal practices have emerged, they rarely disappear again. In the Common Agricultural Policy, however, where the timing and extent of domestic pressure against EU measures are far more predictable than anywhere else, formal rules are much more readily applied.

As we shall see, another piece of evidence in support of Liberal Regime Theory is the fact that most of the time the emergence and use of informal governance spurs conflicts between the governments, on one side, and supranational actors, on the other side. Power-based institutionalism, in contrast, would have expected far more conflict between large and small member states, whereas classical regime theory did not expect informal governance to be particularly contentious.

3

THE COMMISSION'S AGENDA-SETTING POWER

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

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

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

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

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

Why did the member states grant the Commission the exclusive power to set the agenda? The most prominent explanation is that the delegation of these powers to an independent actor represents a strong commitment to integration. There are three aspects to this commitment. First, given that there are always various feasible legislative proposals, an independent agenda setter pledged to observe the treaty will pick the one that promises to implement the treaty in the best possible way. Second, choosing the timing of its submission, the agenda

setter will wait until the time is ripe for a majority of countries to adopt its preferred proposal. Third, in both cases, the agenda setter has to be immune to ad hoc influence on its decision.

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

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

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

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

Pioneered by George Tsebelis and Geoffrey Garrett (1996) and others, a third body of literature uses spatial and formal models to analyze how changes in the legislative procedure affected the Commission's formal agenda-setting power. Notably, these studies found that the promotion of the European Parliament in the 1990s to the Council's co-legislator occurred largely at the expense of the Commission's formal agenda-setting power (Crombez 2000).

In this chapter I argue that, in addition to all these developments, the governments also added less noticeable "emergency brakes" within and around the motor, which allow them to jointly counteract the formal rules when the Commission's legislative proposal threatens to create intense conflicts in one or more member states. More specifically, the governments adopt practices that sidestep the three aspects of the Commission's formal agenda-setting power. Our theory expects these practices to emerge in issue areas of high political uncertainty, and their use to stir up disputes between the governments and the Commission, but not among the governments themselves.

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

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

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

The Commission Is Put in Its Place (1958–1969)

In the first years after its inception under the Treaty of Rome, the Commission made full use of its capacity to choose freely among various feasible legislative proposals. Its discretion to do so was in fact quite broad, because the treaty had, in many issue areas, remained vague about how the governments were supposed to achieve the treaty objectives. Some member states, as well as the Parliament,

occasionally put forth rival proposals for legislation. In 1963, for instance, Germany devised an action plan that was supposed to provide new impetus to the integration process; this was deemed necessary after French president Charles de Gaulle had left the Community stupefied after vetoing the accession of Great Britain. However, the Commission was under no obligation and, in fact, did not heed all these requests for legislative initiatives (Ludlow 2003, 23–24).

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

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

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

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

Hail to the Chiefs (1970–1986)

The success of the meeting in The Hague triggered a series of nearly annual summits among the chiefs of government (Werts 1992, xvii).[2] The discussions at these meetings did not remain confined to matters that were not covered in the treaty, such as foreign affairs (called "Political Cooperation") or monetary cooperation, but broached current Community affairs as well.

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

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

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

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

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

to the European Council, in contrast to its legislative proposals, had to compete for attention with initiatives from the member states.

The country in charge of the presidency of the Council of Ministers also chaired the European Council meetings among the chiefs of government and summarized their outcomes in the "Presidency Conclusions." The outcomes ranged from mere policy statements to detailed instructions and genuine decisions on matters where the Council of Ministers had not been able to reach agreement (Bulmer and Wessels 1987, 104).[3] And although the Presidency Conclusions regarding the discussions at European Council meetings were not legally binding for any of the ordinary EU institutions, they were impossible for the Commission and the Council of Ministers to ignore (Glaesner 1994, 111). In fact, they were treated as binding "framework-laws" (Morgan 1976, 50) to be implemented by the Commission or the Council (Council of the EC 1980, chap. 2). In short, even though the European Council (1974) had promised that their meetings outside the ordinary legislative process would "not in any way affect the rules of the Treaty," the chiefs of government had de facto come to predetermine the legislative agenda and compromised the Commission's agenda-setting power.

Accepting the Reality (1987–1993)

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

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

Jacques Delors's presidency is often regarded as the second heyday of the Commission during which it reasserted its power vis-à-vis the governments. In fact, Delors was able to wield influence through and not against the European Council, since the chiefs of governments' power to predetermine the legislative agenda allowed him to circumvent opposition within his own organization. "The fact that I fully participate in the European Council," he acknowledged in an interview, "gives me a certain authority over my colleagues, whether they like it or not" (quoted in Endo 1999, 58; Delors 2004, 308; on his leadership, see Ross 1995). It henceforth became practice that the Commission president would introduce most Community matters under discussion in the European Council (Werts 1992, 150).

Because small member states as well as the Commission's administrative level remained suspicious of this development (Edwards and Spence 1994, 9), Delors tried to convince the skeptics that they were better off accepting this new reality. In a speech before the European Parliament, Delors made the case for acknowledging the European Council's influence on the agenda:

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

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

Tinkering with the Motor (1994–1999)

Because small states and the Commission administration were skeptical, the European Council was denied official status in the 1986 Single European Act. The new Treaty of Maastricht, which a few years later amended the existing treaties and added a new "Treaty on European Union," codified the role of the European Council only loosely. Article D of the Treaty on European Union stated that the European Council was supposed to "provide the Union with the necessary impetus" and to "define the general political guidelines thereof."

In practice, the chiefs of government continued to predetermine the legislative agenda by asking the Commission to present or develop proposals for specific legal acts (Werts 2008, 46–47). In addition, they sought to "streamline" the Commission's legislative program and required its president to present his program of the term to the European Council. As one example of a typical meeting of the chiefs of government, the "Presidency Conclusions" of the Madrid European Council in December 1995 lists conclusions on topics as diverse as Economic and Monetary Union, economic policy, employment, subsidiarity, justice and home affairs, legislative simplification, enlargement, and external relations. In short, the chiefs of government consolidated their role as the principal agenda setters of the European Union.

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

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

A Step toward Formalization (2000–2009)

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

As it became more involved, the European Council's increasing workload in all aspects of European Union matters required a tighter organization. At their summit in Seville in 2002, the chiefs of government therefore came up with

several procedural ground rules. For example, the European Council would henceforth and on the basis of recommendations by the successive Council presidencies adopt a multiannual strategic program (European Council 2002, Annex 2). Furthermore, to guarantee continuity in its work, the Council of Ministers and its staff were more closely involved in both the preparation of the European Council's agenda and the drafting of its "Presidency Conclusions." Finally, the European Council was given a permanent seat in Brussels, where most of its meetings have been held since (Magnette and Nicolaidis 2005, 88–89; Werts 2008, 63–64).

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

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

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

He notes that this development further compromises the Commission's right of initiative. "The Commission," Riccardi concludes, "maintains its fundamental role when the European Council has nothing to say" (Agence Europe 2011).

On paper, the European Commission has the sole right of initiative in the EU's legislative process. A look beyond the written rules, however, reveals a different reality.

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

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

The Commission's Independence—Not Quite Absolute

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

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

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

Before we proceed, however, a caveat is in order regarding the data used in this section. There are a number of excellent secondary analyses on the Commission's internal organization (see, e.g., Cini 1996; Coombes 1970; Nugent 2001; Page 1997; Spence and Edwards 2006; Poullet and Deprez 1976). Yet few of them pay attention to the informal practices investigated on the following pages. The reason is not negligence, but rather the fact that numerous

reshuffles of the commissioners' portfolios and chaotic bookkeeping render reliable information a scarce commodity. The data, therefore, have to be treated with a grain of salt.[4]

A European Civil Service? (1958–1969)

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

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

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

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

Because of the shortfall in expertise for the preparation of quality legislative proposals, the Commission adopted the custom of consulting groups of

experts from national administrations or the private sector (Lindberg 1963, 57–62; Scheinman 1966, 758–62). The number of these groups proliferated from the mid-1960s onward (Institut für Europäische Politik 1989, 43; Maurer, Mittag, and Wessels 2000, 34–40)[5] to the point that the number of government experts who were actively involved in the preparation of Commission proposals massively exceeded the Commission's own permanent staff. According to a contemporary study, the Commission staff in 1969 numbered five thousand (including translators) while the number of government experts consulted for the preparation of proposals exceeded ten thousand (Poullet and Deprez 1976, 28, 117).

Importantly, although the Commission was not legally bound to heed the governments' advice, it had no influence on who was delegated to these government expert groups. Because the governments usually sent the very same officials who would also negotiate the legislative proposal in the Council of Ministers and oversee its implementation, it became increasingly difficult to distinguish between mere consultation of government experts and genuine prenegotiation. Emile Noël, the Commission's executive secretary, complained:[6]

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

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

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

The cabinets thus permitted the commissioner, to whom they were directly responsible, to intervene in the work of the Commission services (Coombes

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

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

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

Government Experts All over the Place (1970–1986)

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

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

> The total number of Commission employees is smaller than is generally realized. Excluding staff paid from research appropriations, it amounts

> to 8,300 officials, of whom some 40% are directly or indirectly concerned with linguistic work. Taken as a whole, these numbers do not seem excessive when compared with national central administrations. (European Communities 1979, n. 11)

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

In other Directorate Generals, however, the Commission consequently continued to rely on government expertise in the preparation of its legislative proposals. The available data are to be taken with a grain of salt, because neither the Commission nor other institutions kept official records of these expert committees. The various existing sources suggest, however, that the number of governmental experts that the Commission consulted in the preparation of proposals was at least twice as large as the Commission's permanent staff (Rometsch 1999, 329–31).[7] In addition, the Commission also began to host senior officials, who were loaned to the Commission from national administrations for up to three years but remained paid by their employer (Spence 1994, 73). To be sure, these numbers need not imply that the Commission's independence was compromised. However, these government experts were still largely identical with the government representatives who would later negotiate the same proposal in the Council of Ministers (Amphoux et al. 1979, 347). Both the Spierenburg Group (European Communities 1979, n. 27) and the Three Wise Men cautioned against this erosion of the Commission's independence. The Three Wise Men explicitly demanded that

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

Although the college decided in the early 1970s to restrict the number of cabinet members, the commissioners did not adhere to their own rule (Endo 1999,

44). The cabinets grew dramatically, from an average of four members in the late 1960s to fourteen members by the mid-1970s (Michelmann 1978, 495; see also Poullet and Deprez 1976, 53), and increasingly became a channel for the member states to raise objections against proposals in the making, and for the commissioners to subsequently intervene in the work of the services. The Spierenburg Report in particular pointed to the resulting frictions between the cabinets and the services:

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

A Common Cause and Growing Frictions (1987–1993)

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

In 1985, the Commission's White Paper (the "Cockfield Paper") identified more than three hundred measures that needed to be adopted in order to complete the Single Market. However, few, if any, provisions were made to increase the Commission's human resources in order to match this workload. "Commission services," one official explains, "were faced with the choice between simply not doing the work, or finding other means to secure the necessary staff" (Spence 1994, 72). To draw another comparison to a European city: employing about twelve thousand permanent officials (excluding translators) in 1993, the Commission was smaller in size than the staff of the Edinburgh city government (McGowan and Wilks 1995, 154).

Furthermore, the Commission was unable to channel its existing staff resources to where they were needed. Agriculture thus remained the largest policy-related Directorate General with 826 staff members, while that responsible for the Internal Market employed only 430 staff members (Page 1997, 32). In hindsight, Delors's *chef de cabinet,* Pascal Lamy acknowledges: "[We] should have changed the structure of the institution, but we thought it wasn't a priority. The problem is that officials spend too much time managing tasks and not enough time with the tasks themselves" (quoted in Grant 1994, 114).

Against this background, the Commission had no other choice but to intensify its reliance on government experts in the preparation of legislative proposals, whose numbers rose dramatically from 1987 onward (Commission des Communautés Européennes 1988, 3).[8] The European Parliament's Committee on Institutional Affairs heavily criticized this development, which it said compromised the Commission's independence:

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

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

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

Other commissioners reacted to this by strengthening their own cabinets' power over the services. As one senior official explained, "Certainly, *cabinets* are far more powerful now, and that is certainly a consequence of Delors. His own *cabinet* is very active, and other *cabinets* are responding" (Peterson 1999, 56). The total number of official personal staff exceeded three hundred in 1989—that

is, eighteen members per commissioner on average. Official quotas were often circumvented through the hiring of additional members financed by national governments or political sources (Ludlow 1991, 93).

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

Paralysis (1994–1999)

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

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

Second, various incidents of mismanagement and nepotism under Delors's and, subsequently Jacques Santer's, presidencies put the Commission under increased public scrutiny. Given its workload and the inefficient distribution of staff across departments,[9] the Commission continued to rely heavily on government expert groups for the preparation of legislative proposals.[10] Also, the number of seconded experts remained high, at 750 in 1999, so that approximately 8 percent of the most senior ranks in the Commission were staffed with temporary agents (European Communities 1999, 136–39).

The Commission itself noted in a white paper about the Commission's internal organization that in some departments, "the reliance on non-permanent staff is unacceptably high [and] cannot be justified" (European Commission 2000).

The European Parliament also strongly criticized the Commission's reliance on government experts. One report on "the independence of members of the Community institutions" notes that "[its] legislation drafting powers are exercised under the necessity to draw support from the Council of Ministers, i.e. national civil servants and experts preparing the work of the Council" (European Parliament 1994, 5). Another report cautions against the widespread use of seconding personnel from national administrations, and warned that this practice "poses a number of risks, above all that of possible conflict of interests, with such officials retaining too close a link with certain national or sectoral interests" (European Parliament 1999b, 18).

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

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

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

The report consequently demanded clearer rules and criteria for the appointment of individuals to the cabinets as well as limits on the cabinets' size and quotas to ensure their multinational character (Committee of Independent Experts 1999a, 23).

A Fresh Start or Business as Usual? (2000–Present)

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

However, the reforms of the personnel policy met with strong resistance by the unions that represent EU staff. Although they accounted for more than a third of the Committee of Independent Experts' recommendations, the personnel reform proposals were significantly watered down (Kassim 2008, 660; 2004a, 52–54). It is hence not surprising that ten years later, the proportion of temporary staff in senior ranks remains largely unchanged at approximately 8 percent of total staff.[11] However, because the Commission had to absorb the influx of new commissioners and civil servants from the new member states (Peterson 2008, 769–71), it might still take some time for the Kinnock reforms to make a noticeable impact on the Commission's dependence on government experts. Scholarly assessment of the reform remains mixed, with some hailing the changes in personnel policy and financial management as a "historic achievement" (Kassim 2004b, 39), and others concluding that the promise of reform was not kept (Schön-Quinlivan 2011, 121).

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

Unfortunately, the existing data do not discriminate between groups consisting primarily of government experts, experts from sectoral interests, or scientific

experts. According to an independent study in 2008, government representatives make up at least two-thirds of all experts (Euobserver 2008). Another study conducted on behalf of the Swedish Ministry of Finance notes that government experts are not regarded as being truly independent. Since there is usually a substantial overlap in terms of participants, and in some cases even a perfect match between the expert groups and the government representatives in the Council and in the implementation stage, these representatives usually advocate their governments' opinion (Larsson 2003, 78).

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

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

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

There is little evidence that the cabinets have lost their functions as transmission belts between national interests and the Commission. This became apparent when the looming accession of new member states from Central and Eastern Europe to the EU led to calls to reduce the Commission's size by relinquishing the member states' right to nominate a Commissioner. Small and medium-sized countries were vehemently opposed to the idea of having to give up "their" commissioner. Although proponents of a smaller college argued that

having a commissioner did not matter, since the Commission was supposed to be independent anyway, these countries emphasized the importance of having a point of contact in order to make the Commission consider their national circumstances. "What is important," the Austrian foreign minister explained, "is that there is somebody within [the Commission who] understands the situation, the problems and sensitivities at home" (Agence Europe 2001). This statement ties in with recent research that finds that the commissioner's nationality is a strong predictor of the policy position of the Commission as a whole. Furthermore, there is no great difference among the member states in this respect (Thomson 2008a, 183, 186).

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

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

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

The Power of Timing—Losing the Beat

The treaty rules permit the Commission to delay the submission of a legislative proposal and to withdraw it at any time to await "policy windows," that is, situations where the constellation of preferences is more favorable to the adoption

of its preferred policy. These might be situations where conflicts among governments induce a knife-edge majority to impose the most integrationist outcome on other countries.

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

Thus, to be able to exercise discretion, the governments have to find a way to collectively determine the timing of a decision.[12] In the following sections, therefore, we focus on the practices between the submission of a legislative proposal and its actual adoption.

Governments Set the Pace (1958–1969)

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

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

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

The so-called Luxembourg compromise, an unofficial understanding among the member states that resolved the crisis in 1966, notes the governments' agreement on the significance of the norm of consultation:

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

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

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

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

The Court Turns the Tide (1970–1986)

The situation changed rapidly in 1980 when the European Court of Justice suddenly brought the European Parliament into this play. The Council gradually felt obliged over the course of the 1970s to consult with Parliament on "very important" problems that were not related to any compulsory expenses (Jacobs, Corbett, and Shackleton 1992, 179). This excluded primarily agricultural matters

that were usually tied to precommitted funds (Jacobs and Corbett 1990, 162–65). In 1973, the Council had pledged "*except in cases of urgency* not to examine a proposal of the Commission on which the Parliament has been consulted until the opinion of the Parliament has been received, provided that such opinions are given by an appropriate date" (quoted in Jacobs, Corbett, and Shackleton 1992, 179, italics added). Parliamentary hearings subsequently became more frequent, particularly after the introduction of direct elections to the European Parliament in 1979 (Nord and Taylor 1979, 419; Wallace 1979, 439).

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

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

Starting the Countdown (1987–1993)

This tit-for-tat between the Council and the European Parliament was brought to a halt for some time when the Single European Act codified the sequence of

moves that had emerged by introducing a second stage to the legislative procedure.

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

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

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

Giving the Beat (1994–Present)

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

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

Although the co-decision procedure endowed Parliament with more bargaining power vis-à-vis the Council, it consolidated the Council's control of the

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

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

Agenda Setting in the European Union, 1958–2009

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

If we look beyond these treaty rules to actual practices, however, we see that the agenda-setting process is littered with practices of informal governance that seem to act as "brakes" to the Commission motor. This finding stands in striking contrast to standard agenda-setting models, which assume that the Commission holds invariably strong preferences for high levels of integration. It implies that before a proposal is submitted to the Council, the member states frequently

compel the Commission to take those edges off it that promise to generate extensive conflicts at the domestic level.

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

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

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

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

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

However, there are also clear limits to Liberal Regime Theory's explanatory power. The European Council, for example, intervened in all issue areas regardless of their political uncertainty. The emergence and use of this informal institution

TABLE 5 Formal and informal governance in agenda setting

	DIMENSION					
	LOW POLITICAL UNCERTAINTY			HIGH POLITICAL UNCERTAINTY		
TIME PERIOD	PROPOSALS	EXPERTISE	TIMING	PROPOSAL	EXPERTISE	TIMING
1958–1969	Formal	Formal	Formal	Formal	Informal	Informal
1970–1986	Informal	Formal	Formal	Informal	Informal	Formal
1987–1993	Informal	Formal	Formal	Informal	Informal	Informal
1994–2000	Informal	Formal	Formal	Informal	Informal	Informal
2001–2009	Informal	Formal	Formal	Informal	Informal	Informal

also sparked strong conflicts, especially between large and small member states. Finally, its role in legislation was, albeit ambiguously, codified in the most recent Lisbon Treaty.

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

4

DECISION MAKING IN THE COUNCIL AND THE PARLIAMENT

There will never be a decision against a government that faces strong problems selling or implementing it at home. In these cases, we always try to find a compromise.

—Interview with a Council official, January 2008

After the Commission has officially submitted its proposal for a legislative act, the Council of Ministers and today also the European Parliament have to decide whether they want to adopt or change it. In a sense, this procedure is not very different from the decision-making procedures in other international organizations. In the United Nations, for example, the members of the Security Council take votes on official proposals for a resolution.

But there are also some notable differences with the way other international organizations typically work. The first is that the voting rules in the Council strongly privilege the adoption of the Commission's legislative proposal over its amendment, since it is easier for the ministers to find a majority who endorses it than to agree unanimously on changes. As Mark Pollack (2003b, 85) notes, these rules provide greater protection for the agenda setter's proposal than in most U.S. congressional legislation.

The second, more recent difference is the involvement of the European Parliament in the legislative process. To be sure, there are other international parliaments such as NATO's Parliamentary Assembly or the United Nation's General Assembly. The European Parliament, however, is now far stronger than these assemblies and, at least officially, on a par with the Council of Ministers.

Why did the member states cede their national vetoes and make it so difficult for themselves to alter the Commission's legislative proposals? The reason is that surrendering the right to veto individual decisions constitutes a strong commitment to cooperation, since the member states accept that economic integration

might necessitate that they be overruled on individual decisions. The rules, in other words, allow them to demonstrate their determination to attain this objective even against the myopic interests of one or the other governments under domestic pressure for protection. Although the European Parliament's empowerment does not undermine the commitment function of the voting rules, it cannot be explained in these terms and is probably better understood as an attempt to attenuate the European Union's perceived "democratic deficit."

Initial studies of Council decision making and the European Parliament were mostly descriptive and remarkably knowledgeable in nature.[1] The past two decades, however, have witnessed an explosion of formal and quantitative analyses. Facilitated by the off-the-shelf availability of models of legislative bargaining, changes to the EU's legislative procedures, and an increasing availability of decision-making data, more and more scholars have approached everyday EU politics similar to the way scholars study decision making in the U.S. Congress.

A first line of research sought to explore the ability of individual governments to influence Council decisions. Several scholars (see, e.g., Hosli 1993) computed power indexes, which represented the proportion of all possible winning coalitions to which an individual government is pivotal. Interested in the efficiency of the legislative process, scholars such as Jonathan Golub (1999) and Thomas König (2007) have investigated the determinants of decision-making speed in the Council. Christophe Crombez (1996) and Bernard Steunenberg (1996), among others, have pioneered formal models to investigate the effect of legislative procedures, information, and power on the substance of legislative bargaining between the Council and the Parliament. Although tests of these formal models are highly intricate, a group of scholars sought to meet the challenge and evaluated the models' empirical implications with a newly collected data set of various Council decisions. Although the results still have to be taken with a grain of salt (Bueno de Mesquita 2004), this project found that so-called procedural models that emphasize the power of formal rules fare worse than models that give more weight to informal bargaining among the member states (Achen 2006b). Corroborating this book's argument, Chris Achen concludes, "However decision-making is carried out, it does not seem well described solely by the formal rules. Informal norms and procedures appear to play a more central role." (Achen 2006a, 295)

A formidable challenge that empirical tests of theoretical models of decision making face is that we know little about what the member states and other legislative actors want. More recently, studies have therefore turned to the analysis of preferences and cleavages within the Council and the European Parliament. Simon Hix and colleagues (2007) show that Left-Right cleavages have become increasingly noticeable in the European Parliament. Analyzing speeches, Sven-Oliver Proksch and Jonathan Slapin (2010) contend that national divisions and party positions

toward deeper EU integration are the most important dimensions of parliamentary speeches. Depending on data and time period, students of the Council find all kinds of cleavages or coalitions along redistributive dimensions (Zimmer, Schneider, and Dobbins 2005), between regions (Mattila 2009), or about regulatory solutions (Thomson 2009; Thomson, Boerefijn, and Stokman 2004).

Interestingly, and again corroborating this book's argument, the most consistent finding of these studies seems to be that states' preferences are quite difficult to predict (Thomson 2011, 134). In contrast to the existing literature, which continues to search the data for stable preference patterns, this chapter takes the contingency of preferences as its starting point. It argues that precisely because domestic preferences are difficult to predict, governments frequently need to mitigate the rules' effects when a decision threatens to stir up strong distributive conflict at the domestic level. To be sure, this argument does not imply that voting rules and the rules governing decision making between Council and Parliament are not effective. It is precisely because they are so effective that they also harbor the potential of imposing excessive adjustment costs onto an individual group. To prevent governments from defying the implementation of EU law in these situations, the member states use informal governance in order to relieve these governments of excessive domestic pressure. Specifically, the governments refrain from voting against a cooperating partner under intense domestic pressure. Instead, they seek to find a consensus that accommodates this troubled government. At the same time, they seek to implicate the Parliament in these practices.

Liberal Regime Theory predicts that these practices of informal governance emerge especially in issue areas where the formation of domestic pressure is difficult to predict, while formal governance should be more noticeable in issue areas such as agriculture where domestic pressure is easier to predict. Given that the member states agree on the necessity of informal governance, its emergence and use is expected to generate conflicts between the governments and supranational institutions, rather than among the governments themselves. Let us now take a look beyond the treaty rules at actual decision-making practices.

The Council of Ministers—the Consensus Machine

The voting rules in the Council facilitate economic integration even against the myopic interests of one or more member states, since it is easier to adopt the Commission's legislative proposal by a majority vote than to attain a consensus for its amendment. The flip side of these rules is that it is also easy to impose a legal act on one or more governments in the minority even if this act threatens

to create strong domestic conflicts in these countries. To prevent these situations, governments need to refrain from voting and attain the consensus that is necessary to collectively accommodate the government in difficulty. In the following, we therefore focus on the member states' voting practices in order to investigate to what extent and why majorities in the Council restrain themselves from overruling other governments.

Before we proceed, however, a few caveats are in order regarding the data. Since there are no official voting records available for the time between 1958 and 1990, a large part of the analysis draws on semiofficial data from Council or national archives. However, these reports often code votes differently. In some data sets, for example, an abstention counts as a disagreement with the majority, whereas in other data sets a disagreement is an explicit negative vote. Where possible, this information is therefore complemented with qualitative data such as contemporary personal reports by ambassadors and other officials.

The Emergence of the Consensus Machine (1958–1969)

Shortly after the Treaty of Rome had come into force, the Council of Ministers made a habit of referring the Commission's legislative proposals immediately to their experts for further study, instead of dealing with them officially. This practice permitted control over the timing of a decision, and it also allowed government experts to prepare the Council meetings in such a way that the ministers could concentrate their discussion on the proposal's most important aspects.

The Council therefore recommended in 1960 that the ministries at home give their experts much more flexible instructions for the preparatory meetings (Conseil de la CEE 1960b; Rat der EWG 1960a).[2] It subsequently developed a large intergovernmental substructure throughout the 1960s with the ministers at the top, an ambassadorial Comité des Représentants Permanents (COREPER, or Committee of Permanent Representatives) in-between, and permanent and ad hoc working groups of government experts at the bottom. The working groups typically comprised the very same experts who had already advised the Commission in the preparation of its legislative proposal (Lindberg 1963, 53–65; Houben 1964, 97–100; Noël 1963; Alting von Geusau 1966, 235–40).

The various layers in the Council substructure sought to prepare decisions on legislative proposals in a way that the next higher level was willing to accept a number of preliminary decisions without further discussion (COREPER 1962; van der Meulen 1966). The permanent representatives hardly ever discussed items on which the working groups had reached a consensual decision ("Roman I-Points"), while they dealt in depth with items that had not been resolved by

the government experts ("Roman II-Points") (Virally, Gerbet, and Salmon 1971, 651–53, 702–4). Similarly, all decisions on which the COREPER reached a consensus appeared as one single item ("A-Points") on the Council's agenda. The Council of Ministers then typically adopted all A-Points en bloc without any further debate. Issues that the permanent representatives had not been able to resolve ("B-Points") were discussed in the Council of Ministers and then usually referred back to COREPER or the working groups with further instructions (Noël 1967b, 248).

The fact that the Council substructure served as a kind of "consensus machinery" is evidenced by the fact that the proportion of consensual A-Points relative to contentious B-points in the Council climbed dramatically when the number of working group sessions increased threefold over the course of the 1960s.[3] As Emile Noël, the Commission's first executive secretary, describes it: "True, the Commission proposal will always remain in the Council's files and the Commission will be able to uphold it before the Ministers, but this prerogative can be rather theoretical if an agreement on quite different lines has already emerged before the Council session" (Noël 1967b, 244).

Because this decision-making practice supposedly ran counter to the spirit of the treaty and the Community Method, the Commission eyed the development of the Council substructure with great suspicion. Walter Hallstein, the Commission's first president, was particularly critical of the involvement of government experts and the Permanent Representatives in decision making:

> The first danger is that the responsibilities, which the Treaty unequivocally confers to the Ministers, slip to functionaries to whom they do not belong.... The second danger is that... there is a reallocation of powers to the detriment of the supranational element. As a result of a newly developing habitude we run the risk that an administration develops within COREPER that assumes tasks that—according to the Treaty—belong to the supranational organ, that is, to the Commission. (quoted in Virally, Gerbet, and Salmon 1971, 712)

Other commissioners joined in these complaints, saying that Council of Ministers had shifted their responsibilities to an unaccountable Areopagus (council of senior public officials) of government experts that rivaled the staff of the Commission (Lemaignen 1964, 85).[4] The Commission, therefore, initially refused to send its own senior officials to meetings within the Council substructure (Rat der EWG 1962). But when the Commission realized that this strategy did not prevent the Council substructure from making decisions, it gradually established contacts with COREPER (Noël and Étienne 1971, 433; Houben 1964, 104–7).

As the Council decentralized its powers to the substructure, it also became more differentiated horizontally. In addition to meeting in different ministerial formations, the ministers of agriculture decided to sideline the Council substructure by establishing their own Special Committee for Agriculture that reported directly to them, thus bypassing COREPER (Rat der EWG 1960b).[5] The practices of this Special Committee and agricultural working groups differed substantially from other issue areas. The government experts responsible for agricultural matters did not adopt the "Roman-I-Point" procedure, and the representatives in the Special Committee agreed on far fewer consensual A-Points than their counterparts in COREPER. As a result, most legislative proposals on agricultural matters ascended quickly through the Council substructure to be discussed and decided by the ministers themselves.[6] Thus, just as the Directorate General for Agriculture developed into a self-contained "Agricultural Empire" within the Commission, those government experts responsible for agricultural matters also secluded themselves from the rest of the Council substructure.

The Council substructure was conducive to consensus decision making. Not only were the government experts not authorized to vote but the informality of the discussions allowed governments to be more flexible. As Joseph van der Meulen, Belgium's permanent representative in the 1960s, explained:

> The advantages of COREPER become most apparent when tensions arise in the Council of Ministers.…These conversations [among the Permanent Representatives] would at a higher level give the impression that one is not pressing hard enough and not willing to succeed. (van der Meulen 1966, 25)

As a result, the Council virtually never made use of majority voting, despite the fact that, by the year 1965, eighty-eight treaty provisions were subject to this voting rule (Bundesministerium für Landwirtschaft 1965; Ophüls 1966, 193; Torrelli 1969, 94–96). As the German Ministry for the Economy noted,

> More often than not you can hear the global assertion that the Council of Ministers decides by unanimity, and that majority voting is only going to be introduced in 1966. This is incorrect. There are plenty of decisions that are already subject to majority voting. (Bundesministerium für Wirtschaft 1965)

However, despite the fact that majority voting was permitted in a number of cases, in the Community's first eight years the Council adopted only four to ten decisions, out of more than five hundred, against a minority (Vertretung der BRD bei der EWG 1965a). Observers of the Council spoke accordingly of a *horror majoritatis* (horror of majority) governing decision making in the Council in the first half of the decade (Houben 1964, 112–15).

Given that consensus decision making had always been the norm in the Council, the member states were taken by surprise when in 1965 a Commission proposal suddenly brought about a principled debate about majority voting. The debate was triggered when Commission president Hallstein violated an informal norm by announcing that he had placed a legislative proposal on agricultural finances before the European Parliament without consulting the governments in advance. This proposal sought to play off the member states' interests by linking agricultural matters with budgetary matters as well as with a proposal to empower the European Parliament. The French president, Charles De Gaulle, was furious about this obvious ruse on the part of the Commission and decided to escalate the conflict by demanding the reintroduction of national vetoes when a country considered its "very important interests" to be at stake. To demonstrate his resolve, De Gaulle boycotted decision making by withdrawing all senior French representatives from the Council.

The other member states were baffled. In secret deliberations after the French withdrew, they considered De Gaulle's public onslaught on majority voting as a pseudo debate on an abstract problem ("*plus théorique que réel*") (Représentation Permanente de la Belgique 1966b). In an internal debate that ultimately led to the resolution of the conflict, the German Foreign Ministry notes with bemusement:

> The rule has always been in practice that decisions are unanimous even in cases where the treaty provides for majority voting. We simply usually negotiate until we have reached consensus. (Auswärtiges Amt 1965, 2; see also Alting von Geusau 1964, 190; Pryce 1962, 35)

Importantly, all governments were, in principle, in complete agreement that majority voting should never be used against a country's important interests. The main points of controversy concerned the codification of this informal norm and the definition of very important interests. France insisted that the authority to determine whether important interests were at stake lay with the respective government. The other member states resisted this proposal on the grounds that it was simply impossible to define this term in advance. As the German Foreign Ministry put it:

> The term "vital interests" of a member state cannot be put in legal terms. Nor is it possible to list a number of situations in which the vital interests of a state can be considered in jeopardy. [A mere declaration of government] without any vindication or acknowledgement by the other council members would in fact lead to the abdication of the principle of majority voting. (Auswärtiges Amt 1965, 4)

France's partners therefore argued that the decision to determine whether very important interests were at stake had to be a collective one (Représentation Permanente de la Belgique 1966a). The Dutch foreign minister, Joseph Luns,

also strongly cautioned against the demand to codify the French proposal, because he believed it would encourage even stronger domestic demands to defy the rules:

> [The] French formula places governments in a thorny position at the domestic level. We will consequently face strong difficulties resisting all kinds of pressure, which will not fail to demand a veto on this and that national interest, no matter how unimportant. (quoted in Représentation Permanente de la Belgique 1966a)

The member states ultimately agreed to disagree. The Luxembourg Compromise, which concluded this "empty-chair crisis," consequently produced a very ambiguous extralegal declaration, which states that while France insisted that the Council decide by unanimity in the event that a member state claimed that its vital interests were at stake, the other member states declared that they were prepared to search for a consensus only within a reasonable time period. The document acknowledges this contradiction by stating that the "six delegations note that there is a divergence of views on what should be done in the event of a failure to reach complete agreement" (European Communities 1966).

Given that consensus decision making had been the norm all along, the Luxembourg Compromise did not trigger any change in existing practices. Even so, a number of contemporary sources suggest that voting always remained an option after the Luxembourg Compromise. The Commission's director general at the time, Christoph Sasse, remarked: "It is entirely wrong to think that the Luxembourg compromise had ousted the possibility of majority voting from the delegations' minds. They are fully aware of the legal provisions" (Sasse 1975, 143).

In fact, other contemporary sources suggest that some majority votes still took place in practice.[7] Emile Noël (1968) remarked that majority voting continued on questions of "average importance," and considered it imprudent to vote on matters that aroused public interest (Noël 1973, 133–34; see also Amphoux et al. 1979, 123). These sources also agree that the votes that did occur were predominantly taken on agricultural and related budgetary matters (Streinz 1984, 52–73; Lahr 1983, 229; Sasse 1975, 136; Noël 1976a, 41; Ungerer 1989, 98).

Keeping the Machine Running (1970–1986)

The conclusion of the Luxembourg Compromise in 1966 coincided with a dramatic leap in the Council's legislative activity in the second half of the 1960s. As figure 3 shows, the number of adopted legal acts increased fourfold between 1965 and 1970, and almost doubled over the course of the 1970s. The result of this sudden growth was a bottleneck in decision making.

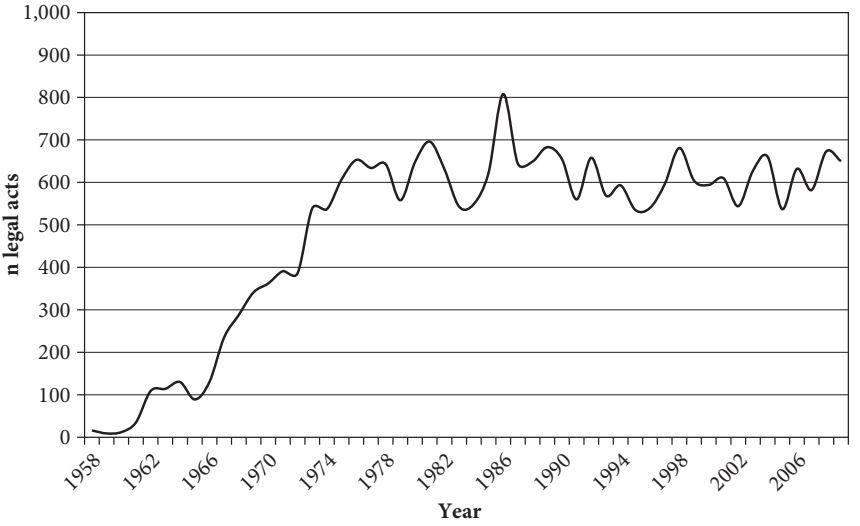

FIGURE 3 Council legal acts 1958–2009. Data drawn from the Euro-Lex database on January 22, 2009. The data exclude international agreements.

This bottleneck, in combination with the upcoming accession of Great Britain and Denmark to the European Community in 1973, raised concerns about an imminent blockage of decision making (European Communities 1972a). In early 1970, the Commission president, Jean Rey, called on the member states to renounce the Luxembourg Compromise and apply the official voting rules more rigorously (Conseil des CE 1970, 3).

However, his plea met with a cool reception from the member states (Auswärtiges Amt 1970, 2). The German foreign minister, Walter Scheel, agreed in principle with Rey on the importance of majority voting. However, he also emphasized the necessity of the norm of consensus decision making in parallel to formal voting rules. For Scheel, it was not the compromise per se, but rather its ambiguity that allowed the member states to provide an optimal level of situational flexibility in every situation:

> Still, we found a felicitous solution in 1966 [the Luxembourg Compromise], a formula that is just vague enough as to enable the Community to make important progress. This delicate equilibrium would not have been reached by a simple Council decision. We therefore need to continue to strive for solutions that are acceptable to all of us. (Conseil des CE 1970, 7)

When complaints about the increasing legislative backlog grew louder and louder (Bieber and Palmer 1975, 311), the member states began to look for ways to make the decision-making process more efficient (European

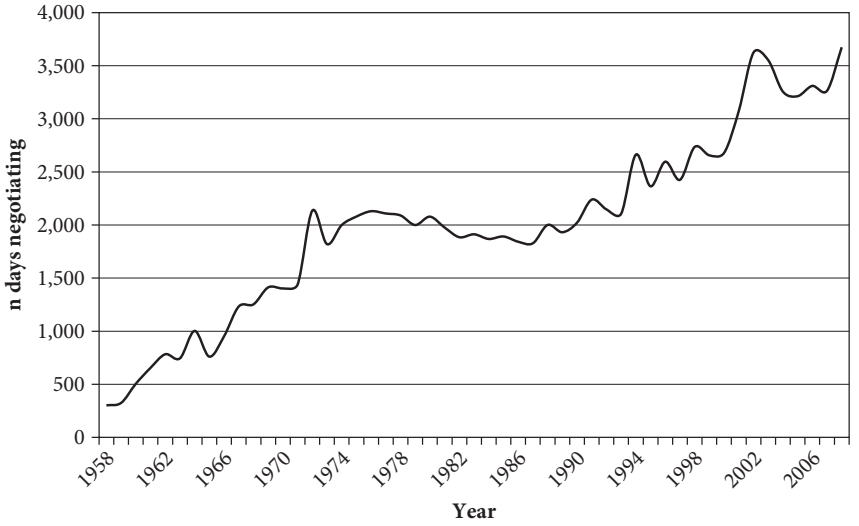

FIGURE 4 Involvement of government experts in Council working groups 1958–2008. Data drawn from Euro-Lex.

Communities 1972b). They also called on the national administrations to give government experts more flexible instructions to make even more preliminary decisions in the Council substructure (Rat der EG 1974b, 1974a; Council of the EC 1974). As figure 4 shows, the involvement of government experts consequently rose steeply in the late 1960s and early 1970s.

At the same time as the Council substructure sought to increase its efficiency, we can also observe a gradual change in the ministers' voting behavior. First, individual governments increasingly abstained from decisions in order to enable the remaining member states to attain a unanimous agreement on amendments to the Commission's legislative proposal (Henig 1973, 133; Rat der EG 1973; Noël 1976a, 41). Second, the member states increasingly had explicit recourse to majority decisions toward the end of the decade. In 1976, the Commission noted that a number of decisions were taken by majority vote in the Council that year, either because some Member States did not insist on pressing their views or because the Council formally recorded a majority vote (European Commission 1977, 34; European Communities 1977, 10; 1978).

A year later, the Commission observed that majority voting had become "standard practice" (European Commission 1978, 23). Several contemporary practitioners saw an even greater acceptance of majority decisions again from the early 1980s on (Noël 1985). Jean-Louis Dewost, the Council's juris consult (official legal adviser), states: "We have moved from a few isolated votes each year

to about ten in 1980, twenty-odd in 1982, about forty in 1984 and again in 1985, and almost eighty in 1986" (Dewost 1987, 168).

The use of majority voting is most notable in the Agricultural Council. On one occasion in the early 1980s where prices for several agricultural goods were being determined, the member states openly overruled the British delegation despite its demand to be spared (Campbell 1986, 937–8; Teasdale 1993, 571; Swinbank 1989, 310). In fact, the available data show that votes in general were largely confined to agricultural matters.[8]

Channeling the Momentum (1987–1993)

In the 1970s and early 1980s, Council decision making was cranked up through a reinforcement of the Council substructure and a greater use of abstentions and majority voting. The lubricated machinery gained full momentum with the entering into force of the Single European Act in 1987, which extended majority voting to measures concerning the achievement of the Internal Market, most importantly to Article 100a on the approximation of domestic laws, regulations, and other national provisions.[9]

Contrary to the conventional wisdom that the Single European Act instigated a more frequent use of majority voting (Garrett and Tsebelis 1996, 281–83), the data show that voting peaked in 1987 and subsequently declined for the rest of the decade to early 1980s levels. Whereas in 1987 15 percent of all decisions were adopted by majority voting, the ratio fell to 12 percent and 9 percent in 1988 and 1989, respectively.[10] In other words, the search for consensus remained a strong norm among governments despite the more frequent use of voting. The director general for competition at the time, Claus-Dieter Ehlermann (1990, 1104; Dashwood 1992, 79), confirms that the Single European Act did not result in a spectacular increase in the number of majority votes. Jean-Louis Dewost explains why:

> It is the governments to which citizens and affected firms turn, and it is the governments that will have to face their reactions—politically or, in extreme cases, to maintain the public order. This explains why it is implicitly acknowledged by all actors of the Community game that it is necessary to strive for a *reasonable consensus* on sensitive issues. (Dewost 1987, 174, italics in the original)

New Rules, New Players, Same Game (1994–Present)

Although they extended the scope of majority voting and provided for more transparency in decision making, neither the 1993 Treaty on European Union, nor the 1997 Treaty of Amsterdam, nor the 2001 Nice Treaty, nor the accession

of new member states changed the fact that consensus decision making remained a very strong norm in the Council. According to data collected by Dorothee Heisenberg (2005, 72), the governments used majority voting in only 19 percent of the cases where they could have called a vote between 1994 and 2001. Data collected by Mikko Mattila (2009, 844) and a study by Robert Thomson (2011) suggest that this pattern has not changed since. In the postenlargement period from 2004 until the end of 2006, the governments overruled a minority in only about 10 percent of all cases. When this happens, the minority usually consists of isolated governments or quite small coalitions (Mattila and Lane 2001, 44).[11]

The few data that differentiate among issue areas suggest that majority voting is still largely confined to agricultural matters where approximately every third legal act is taken against explicit dissent.[12] Hayes-Renshaw and colleagues conclude that some 25 percent of the decisions agreed under majority voting in 1994 were explicitly contested through negative votes and abstentions. "Of these, almost half were on agriculture and fisheries, with a further quarter on internal market issues, and the remainder thinly spread across other areas" (Hayes-Renshaw, Van Aken, and Wallace 2006, 165). They find the same pattern for the period between 1998 and 2004 (Hayes-Renshaw, Van Aken, and Wallace 2006, 171). Similarly, Mattila and Lane (2001, 42) find for the period 1995–98 that negative voting (explicit voting against a legal act) is most routinized on agricultural issues (28 percent), followed by 21 percent in the internal market, 18 percent in transport, with the rest, again, thinly spread across other areas.

This formal governance practice in the Common Agricultural Policy is reflected in considerably less decentralization within the Council. Whereas most ministers rely on government experts to prepare their decisions,[13] the ministers for agriculture still make far less use of the Council substructure than their colleagues. Since the agricultural working groups have little discretion and the next highest level, the Special Committee for Agriculture, rarely reaches consensual agreements (Culley 2004, 204), most legislative proposals swiftly ascend to the level of the Council of Ministers, who are quick to take a vote (interview with a member of the German Permanent Representation, the term for the national embassies to the EU, Brussels, February 2008). Similarly, a Council official responsible for agriculture notes that "characteristically, the [government representatives] don't get flexibility in the interest of getting something settled before Council; this is a big difference with my colleagues in COREPER" (quoted in Lewis 1998, 134).

The treaty rules make it much easier for governments to adopt a Commission proposal with a majority than to change it unanimously. A closer look at actual

voting practices reveals, however, that governments rarely ever vote at all. In fact, some variation over time notwithstanding, consensus decision making has always been a strong norm in the Council in almost all issue areas except for agriculture.

For the most part, the search for consensus agreements to change the Commission's proposals takes place in the Council substructure, which consists of thousands of government experts with specific knowledge about the sensitivities at home. A former permanent representative underscores the importance of domestic sensitivities in a private conversation:

> Usually, there are only two or three delegations left that have difficulties with a proposal. They worry that a decision will lead some of their people to believe that "Europe isn't that great after all." We therefore always try to take the edges off a proposal. (interview in Brussels, February 2008)

Although the member states sometimes disagree about the norm's interpretation in specific cases, there is little indication that any of them contests its raison d'être in principle.

The European Parliament—an Unlikely Accomplice

Initially, the Treaty of Rome merely required the Council to consult the European Parliament on a few rather minor issues. Over time, however, the Parliament massively gained in power in response to a combination of its informal twisting of the arms of the Council, the European Court of Justice's very favorable interpretation of the rules, and the deliberate extension of Parliament's influence on the part of the member states. Today, it acts as a co-legislator on formally equal footing with the Council, and the legislative procedure provides the Parliament with ample opportunities to challenge its counterpart in public.

The flip side of its empowerment, however, is that Parliament's incentive to demonstrate its significance may jeopardize the accommodation of another government by bringing it to the attention of domestic opponents. Liberal Regime Theory therefore expects the governments to eschew public debates of sensitive issues in the Parliament where possible. This section therefore focuses on the actual use of parliamentary debates in order to show how the governments implicate the European Parliament into their practices of informal governance.

Benign Neglect (1958–1969)

The Treaty of Rome granted very little legislative power to the European Parliament; the member states were supposed to consult it on a few decisions, but they were under no obligation to heed its demands. However, the Council gradually gave in to parliamentary pressure to extend consultation to "very important" problems even if the treaty did not oblige it to do so. Toward the end of the 1960s, it also committed itself to consult Parliament on nonlegislative texts and to give reasons for departing from the Parliament's opinions (Jacobs, Corbett, and Shackleton 1992, 179; European Parliament 2009b, 162–63).

Still, the European Parliament's consultative function was largely a charade in that it did not precipitate much open deliberation, due to the Council's influence on the Commission and the norm of consensus decision making. Thus, whenever the European Parliament was given the opportunity to voice its opinion, it was confronted with laborious consensus decisions that the governments were not going to open up anyway. Frustrated, it therefore demanded a clearer distinction between the stages of agenda setting and decision making in order to provide it real opportunities for a public contestation of the Council. A member of the European Parliament complained in 1964 that

> the Council has tried to create a back and forth with the Commission, thereby suggesting modifications to the text [the legislative proposal] even before Parliament has had the chance to deliberate on it. [This exercise of influence] is illicit and undue, since decisions are made despite the fact that the Treaty prescribes prior consultation of the opinion of another institution [the European Parliament]. (quoted in Alting von Geusau 1964, 138–39)

More Influence, Little Publicity (1970–1986)

In 1970, after a lengthy campaign by the Parliament, the member states decided to give it a greater say on budgetary matters. Specifically, they granted it the right to modify "noncompulsory" expenditures up to a certain limit. Although noncompulsory expenditures did not include agricultural spending and made up only a small fraction of the budget (Fitzmaurice 1978, 217; Westlake 1994a, 121–34, 264),[14] the member states soon recognized that Parliament could use its new powers to extract concessions on other issues. To avert such situations, they decided to extend parliamentary consultation even into areas where the treaty did not specifically make provisions for it. Three years after extending Parliament's budgetary rights, the Council therefore promised to consult Parliament within one week of receiving the Commission proposal, while the Commission,

for its part, pledged to explain its opinions in Parliament's plenary session (Corbett 1998, 114–15).

In 1975, a "conciliation procedure" was set up as a forum to iron out controversies with the European Parliament on matters with "appreciable financial implications" (European Communities 1975).[15] Thus, Parliament was gradually given more and more opportunities to make its voice heard. However, there was not much it could do in the event that the Council decided not to listen to it. Its consultation was still largely symbolic.

The European Court of Justice's *Isoglucose* ruling in 1980 that legally obliged the Council to consult the European Parliament changed the situation dramatically by turning what seemed to be a mere complaisance into a real obligation. The Court argued that the European Parliament was supposed to serve as a transmission belt between the European Community and its citizens:

> Although limited, [parliamentary participation in decision making] reflects at Community level the fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly. (European Court of Justice 1980)

However, the European Parliament's newly gained power to veto Council decisions by indefinitely withholding its opinion did not create more opportunities for public contestation. On the contrary, the Council's positions on which it consulted Parliament became ever more vague so as not to give it anything to contest and, thus, any pretext to postpone the delivery of its opinion. The European Parliament was furious about the Council's ruse, which it regarded as a "breach in spirit and probably of the letter of the *Isoglucose* principle" (Westlake 1994a, 136–37; Jacobs, Corbett, and Shackleton 1992, 182).

The situation changed only slightly with the first direct elections to the European Parliament in 1979. Whereas the members of the European Parliament had previously been mere delegates from the various national parliaments, they were now full-time members chosen in Europe-wide elections. Although the number of public hearings and question times leaped due to its increased presence, the Parliament remained largely unnoticed. Richard Corbett, a member of the European Parliament, observes:

> In terms of public visibility, Parliament remained stranded in a perceived secondary role. Even where its influence may have been great, it was Council that adopted the legislation and it was within Council (or the European Council) that the major political deals were made. Not surprisingly, media coverage of the Parliament declined. (Corbett 1998, 123, 124–25)

Nudged into Informality (1987–1993)

The Single European Act introduced a new two-stage legislative procedure, the cooperation procedure, which supplemented consultation in the important area of the Internal Market (Earnshaw and Judge 1995). The second reading now allowed the European Parliament to reject the Council's position, and the member states could override this veto only when they were able to attain a consensus.

Although this procedure provided another opportunity for the Parliament to make its voice heard in public, it actually resulted in even greater informality. Why? Since Parliament's threat to veto a legislative act was hardly viable—it usually preferred any kind of integration to the less integrated status quo (Jacobs, Corbett, and Shackleton 1992, 185)[16]—a more promising way for it to influence decisions was through informal contacts with the Commission. Parliament then used these contacts in order to persuade the Commission to include its amendments in the legislative proposal, from which they could only be scrapped by a unanimous Council decision (Westlake 1994b, 38; Fitzmaurice 1988, 391). The Council, however, remained largely unreceptive to Parliament's attempts to establish informal contacts (Jacobs, Corbett, and Shackleton 1992, 190).

Instead of leading to greater public contestation, the introduction of the cooperation procedure consequently led to an intensification of informal contacts between the Commission and Parliament prior to the submission of the legislative proposal (Westlake 1994a, 141–43). A member of the European Parliament explains:

> The theoretical model, which says that the Commission proposes and Parliament discusses and amends, seems to me to be absolutely defective—because a lot of parliamentary influence is actually exercised before the Commission proposal appears. (European Parliament 1995, 12)

It simply made more sense for the European Parliament to concentrate its efforts on persuading the Commission to its views during the drafting stage, which itself encouraged contacts between Commission officials and parliamentarians during the preparation of its proposal (Corbett 1998, 270). Thus, although the second reading provided another opportunity to gain visibility through public contestation, the European Parliament clearly focused its attention on the first reading as well as the "preformal stage" before the official submission of the proposal (Earnshaw and Judge 1997, 549–52).

Skipping Steps (1994–Present)

The Treaty of Maastricht in 1992 introduced a new legislative procedure, the "co-decision 1" procedure, which was supposed to strengthen Parliament's

bargaining power vis-à-vis the Council.[17] As three well-known experts on the European Parliament note, simplicity is not the essence of this procedure (Jacobs, Corbett, and Shackleton 1992, 192). For our purposes, it suffices to note two alterations to the cooperation procedure. First, co-decision endowed Parliament with a final veto over Council decisions, and it set up a conciliation committee in the event that both institutions failed to reach an agreement in the previous readings (Shackleton 2000, 326). Second, the co-decision procedure deprived the Commission of its right to withdraw the legislative proposal in the event that the Council and the Parliament entered conciliation.

There is considerable academic discussion about whether these changes enhanced or decreased the European Parliament's bargaining power (Tsebelis 1994, 1996; Moser 1996; Crombez, Steunenberg, and Corbett 2000). There is general agreement, however, that they substantially weakened the Commission's agenda-setting power, since the Parliament and the Council can agree on a joint text regardless of the Commission's approval (Crombez 1997, 113).

How did these changes affect publicity about the EU's decision making? On the one hand, they intensified informal contacts between the Commission and the European Parliament in the preformal stage, since the Commission was now more susceptible to parliamentary requests to include amendments to the legislative proposal.[18] On the other hand, the European Parliament used its newly gained power to contest the Council in public when the Council remained reluctant to establish direct contacts with the European Parliament.[19] Between 1993 and 1999, around 40 percent of all legislative proposals subject to the co-decision 1 procedure went through all of the readings to end up in the conciliation committee. Since there was no official option to conclude the procedure after the first reading, all acts were openly discussed in at least two readings (European Parliament 1999a).

None of the legislative actors was particularly happy with the co-decision I procedure, since it was complex, lengthy, and required a high degree of coordination between and within the institutions (European Parliament 1996a).

In addition, although the European Parliament's veto power formally placed it on par with the Council, its threat to use it to reject new legislation was largely deemed unviable (Jacobs, Corbett, and Shackleton 1992, 191). Aware of this weakness, the European Parliament therefore changed its internal rules in order to commit itself to using the veto even if it preferred the piece of legislation under discussion to no legislation at all (Nicoll 1994, 410). The credibility of its veto threat consequently increased substantially when the Parliament in fact exercised it in 1994 (Hix 2002, 274).

Acknowledging this new situation, the member states, in the 1999 Treaty of Amsterdam, replaced the legislative procedure with "co-decision 2," which simplified the existing rules and allowed for an early conclusion of the procedure.

As soon as the Council realized that the Parliament had to be taken more seriously, it established informal contacts among a reduced number of participants, joined by the Commission, early on in the legislative process prior to the start of official negotiations (European Parliament 1999b, 333–36; Shackleton 2000). The vast majority of these contacts developed between Parliament and the chairmen of Council Working Groups or the Deputy Permanent Representative (Farrell and Héritier 2004, 1198). These informal meetings, which would become known as *trilogues*, serve a similar function as the Council substructure in that they facilitate preliminary agreements between both institutions that can then be officially adopted without further discussion (Shackleton and Raunio 2003, 177).

Thus, just as the Working Groups and COREPER reduce conflicts in the Council of Ministers by assisting it in its search for consensual decisions, the trilogues enable Council and Parliament to reach agreements without going through all stages of public contestation. As a consequence, the number of early agreements, which are concluded after extensive informal consultations between the legislative actors, increased steadily. In 1999, when the modified co-decision procedure entered into force, only 13 percent of all legislative acts were concluded early in the first reading (see figure 5). By the end of the legislative period in 2004, the ratio was already 41 percent. In 2009, the final year of Parliament's sixth legislature, 80 percent of all legislative acts subject to co-decision were concluded early in the first reading (European Parliament 2009a).

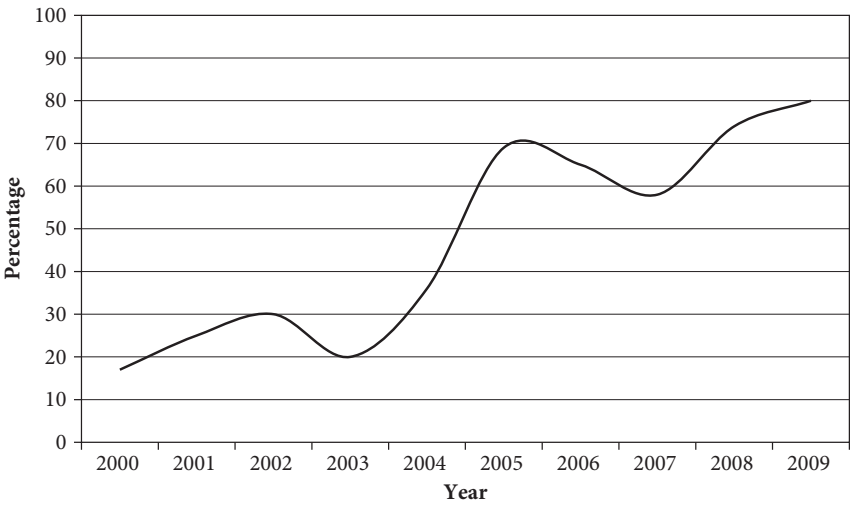

FIGURE 5 Percentage of early agreements. European Parliament 2009b, 10.

As more and more legal acts were adopted during the early stages of the procedure, trilogues became a "major factor in the equation" (Council of the EU 2000). Despite this dramatic shift toward early conclusion, the average total length of co-decision procedures decreased only very modestly from an average of 22 months between 1999 and 2004 to 20.7 months in the following five-year term (European Parliament 2009a, 13).

By its own assessment, the more notable effect of Parliament's implication in the Council's informal governance has not been higher efficiency but its lower public visibility. Members of small party groups in the Parliament, in particular, have criticized the trilogue system for undermining the European Parliament's function as a transmission belt between the public and politicians. A report on the co-decision 2 procedure demands that "there must be scope for the wider public to follow the legislative procedure" (European Parliament 2004).[20] A 2008 internal report is even more explicit:

> [Serious] concerns have been expressed, within Parliament and beyond, about the potential lack of transparency and democratic legitimacy inherent in the informal first reading negotiations.... [This practice goes] at the expense of an open political debate within and between the Institutions, with the involvement of the public.... [This] certainly does not increase Parliament's visibility in the public and the media, who are looking for political confrontation along clear political lines and not for a flat, "technocratic" debate where the representatives of the three Institutions congratulate each other on the "good work" done. (European Parliament 2008, 26)

The Council, however, defends this informal practice on grounds of its flexibility. In the words of a Council official (quoted in Farrell and Héritier 2004, 1199), "[informal *trilogues*] make it possible to speak more frankly and to explain what the underlying reasons are. You also can say: here is a real problem—we cannot go further on this, please recognize this."

Summary

The official legislative procedures provide ample opportunities for the European Parliament to contest Council decisions in public. In reality, however, the members of the European Parliament rarely make use of this opportunity. As soon as the Parliament gained influence, it became implicated in the Council's practices of informal governance.

Just as the Council substructure reduces the need for discussion at the level of the ministers, the informal *trilogue* system facilitates early agreements that can be adopted without having to go through all the steps of the legislative procedure. This practice seems to have increased the efficiency of decision making within

the Parliament and, to a lesser extent, between the Council and the Parliament. But it also makes the European Parliament forgo opportunities to contest the Council in public. This is why this practice has met with much criticism from smaller party groups in the Parliament that are quite often shut out of the trialogue system, whereas the member states approve of its efficiency and flexibility.

Decision Making in the European Union, 1958–2009

The voting rules in the Council permit a majority of countries to impose a decision on one or more recalcitrant governments. And because it is easier to scrape together a majority than to change a legislative proposal unanimously, the same rules also strongly boost the Commission's agenda-setting power. Together, these rules represent a very strong commitment on the part of the member states to economic integration. A closer look beyond the treaty rules reveals, however, that governments rarely make use of these rules. The decision-making stage is once again littered with practices of informal governance that seem to run contrary to the rules' actual purpose.

First, despite their increasing recourse to majority voting over time, it has always been the norm among the governments to refrain from voting and collectively accommodate a government that would otherwise face strong conflict at home and succumb to domestic pressure to defy the law in question. This consensus norm led to the development of a large Council substructure of preparatory groups, which consisted of government experts with specific knowledge about sensitivities on the ground. Second, as soon as the European Parliament was promoted to a more serious legislative actor, it was implicated in informal governance even despite its members' incentives to contest the Council in public.

As with the practices in agenda setting, the table below shows that informal governance does not occur at random. The cells depict observations of the prevalence of either formal or informal governance. Since it was for a long time excluded from decision making, some observations regarding the European Parliament are excluded from the analysis. In line with the predictions of Liberal Regime Theory, the table shows that governments made consistently more use of informal governance in issue areas where domestic pressure is, in fact, difficult to predict, while they had far more recourse to majority voting on the Common Agricultural Policy, where farmers' pressure is easier to anticipate and manage within the formal institutional framework. The theory is further corroborated by the fact that all governments were in principle in full agreement over the need for a norm of consensus in the Council, whereas the Commission viewed this practice with far more suspicion.

TABLE 6 Formal and informal governance in decision making

	DIMENSION			
	LOW POLITICAL UNCERTAINTY		HIGH POLITICAL UNCERTAINTY	
TIME PERIOD	VOTING	PARLIAMENT	VOTING	PARLIAMENT
1958–1969	Formal	N/A	Informal	N/A
1970–1986	Formal	N/A	Informal	Informal
1987–1993	Formal	N/A	Informal	Informal
1994–2000	Formal	N/A	Informal	Formal
2001–2009	Formal	N/A	Informal	Informal

The European Parliament's practices of informal governance are more difficult to interpret. Given that its empowerment does not necessarily constitute a commitment to economic integration, its exclusion from decision making in the early years and on agricultural matters neither confirms nor disconfirms any theory. The fact that it used its opportunity to publicly contest the Council in the early 1990s even contradicts Liberal Regime Theory, since this contestation can potentially thwart the accommodation of a government under pressure.

As soon as the Parliament gained in power, the member states adopted a number of practices that limited its opportunity to contest Council decisions in public. The *trilogue* system, in particular, implicates the European Parliament in the informal norms and practices that apply in the Council and its substructure. To some extent, this development seems to be due to the need to increase the efficiency of decision making. Yet its informal character also provides for more flexibility and limits publicity about decision making. Accordingly, and in line with Liberal Regime Theory, the development and use of the system generates more conflict within the European Parliament and between Parliament and the Council than among the member states.

5

THE IMPLEMENTATION OF EU POLICIES

"Comitology" is established Community shorthand for the system . . . whereby the Member States can exercise some control over implementing powers delegated to the Commission by the Council. The fact that these committees exist is fairly well-established. But who sits on them, when they meet, how they work and what they decide is something of a mystery . . .

—House of Lords, Select Committee on the European Union, 1999

Given the vast array of legislative proposals, the complexity of many issues, and the scarcity of resources and time, it seems impossible for legislative actors to formulate laws in a way that lets the laws always be applied without ambiguity. Legislative actors usually have no choice but to delegate the making of secondary rules to a bureaucracy.

The Treaty of Rome envisaged this bureaucracy to be the European Commission. Article 155 states that the Commission should "have its own power of decision and participate in the shaping of measures." In some areas, the Treaty of Rome conferred implementing powers automatically on the Commission. The rules were more ambiguous in other areas where the treaty left it up to the Council and, later on, the European Parliament to decide how and by whom the legal act was supposed to be implemented. Once delegated, however, the treaty provided for no means to revert powers to the member states.

Why on so many issues did the Treaty of Rome delegate substantial powers to the Commission and give it ample discretion to implement EU policies? After all, national authorities can draw on extensive local knowledge to apply legal acts on the ground. The reason is that the centralization of implementing powers in the hands of an independent bureaucracy constitutes a credible commitment to economic integration where governments might otherwise cave in to domestic pressure to renege on the agreement. Pledged to the rule of law, the Commission's

primary concern is supposed to be the timely and consistent implementation of the EU's legal acts, whereas implementation by national administrations, which are more susceptible to government's ad hoc pressure, may result in disparate sets of national policies that defy the purpose of an EU policy.

The political science literature typically explores the factors that determine the choice of the implementing agent and its discretion. Fabio Franchino, among others, investigates under what circumstances the Council and Parliament delegate implementing powers to the Commission, to national administrations, or to both (Franchino 2007). Introducing the American literature on bureaucratic discretion to EU studies, Mark Pollack (1997, 2003b) brilliantly explores why and to what effect governments establish *ex ante* and *ex post* control mechanisms to keep the Commission and other supranational agents in check.

Of particular interest in that regard has been the development and use of *comitology,* which we will see is an opaque web of informal governmental committees that oversee the Commission's implementing actions. There has been some debate about the function of comitology. Instead of viewing comitology as a mechanism to control the Commission, as Pollack suggests, Christian Joerges and Jürgen Neyer (1997, 294; cf. Pollack 2003a) argue that these committees are better perceived as an instance of "deliberative supranationalism," a decision-making mode that is characterized by collective problem-solving rather than strategic bargaining among states. Finally, given that the ambiguous treaty rules incited intense conflicts among the legislative actors, there is also an extensive legal literature on the rights and obligations of each actor in the area of implementation (Bergström 2005).

All these analyses highlight important aspects of the implementation of EU legislation. What has been overlooked, however, is the important function that comitology and other implementation practices play in the provision of flexibility. This chapter argues that the implementation of EU policies is characterized by informal governance practices that function like an emergency brake when central implementing measures trigger strong conflicts at the domestic level. Precisely because the member states remove the Commission from the national level in order to bolster their commitment to economic integration, this central bureaucracy may become oblivious to the political sensitivities on the ground.

To gain situational flexibility in the implementation of policies, Liberal Regime Theory expects governments to adopt practices of informal governance in areas of high political uncertainty. The emergence and use of these practices is expected to generate strong conflicts between the member states and supranational actors, rather than among the member states themselves. Thus, in addition to preventing the Commission from overstepping its discretion, as the

literature on bureaucratic discretion suggests, I argue that some of the informal governance practices in the implementation of EU policies also serve to prevent the Commission from doing precisely what it is supposed to do when its action would otherwise stir up strong domestic conflict.

Before we proceed to our empirical analysis, two caveats are in order. First, in comparison to the previous stages, the treaty rules regarding the implementation of EU policies are very ambiguous and have been changed, challenged, and reinterpreted over and over again. As a result, the definition of formal and informal governance is sometimes ambiguous and changes over time. Second, it is difficult to attain reliable and systematic data about the variation in informal governance. As the quote above suggests, it is doubtful that any of the legislative actors has always had a complete overview, especially of the comitology system of oversight committees.

Implementation on an Elusive Leash

In some issue areas, such as agriculture, competition, the common commercial policy, and transport, the Treaty of Rome automatically centralized implementing powers in the hands of the Commission. In other issue areas, it was more ambiguous whether the Council was supposed to centralize these powers or delegate them to national administrations. Once delegated to either national administrations or the Commission, the Treaty of Rome provided no means to revert implementing powers to the Council. Given that Council majorities need to be concerned about minorities' willingness to implement an act, a practice of formal governance that we can expect on the basis of these rules is the centralization of implementing powers in the Commission's hands. Conversely, the delegation of implementing powers to national administrations is considered an informal governance practice that is less conducive to the timely and consistent implementation of EU policies.

Applying the Leash (1958–1969)

One of the European Community's first policies to become operative was the customs union, which replaced the tariffs between the member states with one common external tariff for imports from third countries. In this area, the treaty automatically gave the Commission the authority to negotiate tariffs with third countries. At the same time, however, Article 113 of the Rome Treaty provided for a committee (unimaginatively called the "Article 113-committee") "to assist the Commission in this task." By the early 1960s, it was agreed that the Article 113-committee would work under the auspices of the Council, not the Commission, and be composed of governmental trade officials (Johnson 1998, 16–17).

When, over the course of the 1960s, the Commission assumed more and more responsibility in other issue areas as well (Noël 1963, 16), the Article 113-committee became a model for those policies where the treaty did not provide for a formal mechanism to limit the Commission's discretion. All governments except the Dutch delegation felt that the Commission's discretion under the treaty rules was too extensive. To dispel these concerns, the Commission therefore proposed in 1961 to set up a committee, similar to the Article 113-committee, to consult with it on important agricultural matters. The Council, however, went beyond the Commission's proposal and set up a considerably more restrictive "management committee procedure" (*comités de gestion*), according to which the Commission was to submit all its implementing decisions to government experts (Bergström and Héritier 2007, 172–79), a majority of whom would be able to refer implementing measures back to the Council for review.[1]

Crucially, the establishment of this procedure implied that the implementing power was only conditionally delegated to the Commission even if the treaty conferred it automatically. In other words, the Commission's authority could potentially revert to the governments and its decisions could be altered, whether they concerned technical matters or aspects of political significance (Bertram 1968, 247). Complaints by the Commission and the Parliament that this informal practice violated the formal rules as it deprived the Commission of the "authority vested in it by the treaty" went unheeded (Rat der EWG 1963, 180).

The management committee outlined above was mostly used in the Common Agricultural Policy, but similar formulae were repeated in other issue areas as well. A less restrictive "advisory committee procedure" was invented for the European Community's competition policy—another area where the treaty envisaged the Commission as the sole implementing authority. Although France demanded to copy the aforementioned Article 113-committee for the competition policy, the German delegation successfully insisted on giving the Commission much wider discretion (Gerber 1994, 105–7; Hambloch 2002, 892). In 1962 "Regulation 17," which specified the content of the competition policy, merely obliged the Commission to consult with the governmental advisory committees before the adoption of implementing measures (Council of the EC 1962; Wigger 2008, 147–50; Goyder and Albors-Llorens 2009, 50; on advisory committees, see, e.g., van Gerven 1974; Graupner 1973).

A far more restrictive version, the "regulatory committee," was used mainly for the remaining common market policies where the Treaty of Rome had left it up to the Council to delegate implementing powers to the Commission or to national authorities, or both. According to this procedure, when the Commission was in charge of implementation, it was only permitted to adopt measures that had previously been approved by the regulatory committee or, if the

committee disapproved, by the Council within a given period of time (Bergström and Héritier 2007, 179–85).

Absent a legal classification, a broad informal distinction emerged over the course of the 1960s among three main types of committees, going from least to most restrictive: advisory committees, mainly used in the competition policy, consulted with the Commission; management committees, mainly used in the Common Agricultural Policy, could block implementing measures; and regulatory committees, used in most other areas, had to approve the Commission's measures before they would become effective (Ayral 1975).

This system of informal governmental oversight committees, whose number increased fivefold in this first decade, to forty-nine management and regulatory committees by 1969 (Institut für Europäische Politik 1989, 43), would soon become known as comitology (an EU neologism meaning "the study of committees") (Schindler 1971, 184).

The Commission heavily criticized the proliferation of comitology on the grounds that it undermined the institutional balance of powers as it was envisaged in the Treaty of Rome. The European Parliament, for its part, complained that the Council had usurped the Parliament's official responsibility to control the Commission in the performance of its tasks (Lassalle 1968, 406). Since the treaty did not make an official distinction between legislation and implementation, the European Parliament also worried that the Council might deprive it of its consultative legislative function by delegating politically significant decisions to the Commission and the comitology committees surrounding it (Bradley 1997, 231–33). These fundamental points of criticism would give rise to major disputes between the institutions over the next forty years.

Legal Uncertainty and Conflict (1970–1986)

The Council's legislative activity expanded dramatically toward the end of the 1960s and in the early 1970s. The resulting legislative backlog gave rise to calls for a more frequent and extensive delegation of implementing powers to the Commission (Répresentation Permanente de la Belgique 1973). At the 1974 European Council, the chiefs of government demanded that their ministers make use "of the provisions of the Treaty of Rome whereby the powers of implementation and management arising out of Community rules may be conferred on the Commission" (European Council 1974, 8). On the European Council's request, the Three Wise Men drafted a report on the functioning of the institutions, in which they agree with the chiefs of government that the Council "is simply trying to do too much.... The Council attempts to take far too many decisions which are of a minor, technical or recurrent nature" (Council of the EC 1980).

However, the Council of Ministers showed reluctance to delegate implementing powers and typically limited the implementing actors' discretion by detailing the exact execution of policies in the original legislative act. However, when the Council did delegate implementing power to the Commission, it was generally to be controlled by one of the comitology committees. The number of these committees consequently quadrupled from around fifty in 1970 to 218 in 1986, two-fifths of which were of the most restrictive regulatory type and used for common market matters (Institut für Europäische Politik 1989, 43–45), while less restrictive management committees dominated the implementation of the Common Agricultural Policy. At the same time, the variety of these committees also proliferated. At one point, the European Parliament identified no fewer than thirty-one different comitology procedures (Spence and Edwards 2006, 241).

The Commission continued to view the Council's reluctance to delegate, as well as the system of governmental committees, with great suspicion. In 1970, a case brought before the European Court of Justice questioned the legality of an implementing measure adopted under a management committee procedure. The plaintiff alleged that these committees violated official procedures and constituted a direct interference in the Commission's treaty-based right of implementation, thus distorting the original institutional balance of power. In its *Köster* ruling, however, the Court found the Court's practice of delegating and scrutinizing implementation actions through comitology was consistent with the treaty. Because the treaty authorized but did not oblige the Council to confer powers on the Commission, the Court argued that it was permissible for the member states to subject the Commission to additional control as long as these committees did not engage in "essential" legislation (European Court of Justice 1970; see also Schindler 1971).

Thus, the Court sided with the Council, but acknowledged that a distinction had to be drawn between legislation (on essential matters) and implementation (of nonessential matters), and that the Commission and comitology only possessed rule-making authority in the latter case. Yet the Court refused in this and related decisions (Bradley 1992, 700–702, 709–11) to draw this distinction itself. In fact, it gave the term implementation a very broad meaning, describing it as measures, "however important they may be," that implement those essential elements laid down in the basic act of the treaty (European Court of Justice 1969). The Court thus left it up to the Council to determine what it considered essential because, in the words of an expert, this distinction between the essential and nonessential parts of legislation was a political judgment that the Court was reluctant to make. Instead of clarifying the situation, the Court thus created new ambiguity that provided the Council ample flexibility to decide who and to what

extent politically sensitive matters were going to be implemented (Türk 2009, 55; Lenaerts and Verhoeven 2000, 661–62, 652).

The lack of legal clarity regarding the scope of delegation and the use of comitology worried the European Parliament, which thought that the comitology had become "to some extent autonomous and no longer fully under the Commission's supervision" (European Parliament 1983). The Parliament was especially critical that there were no ground rules to determine the scope of delegation (i.e., the political importance of implementing measures) and the choice of the comitology procedure (i.e., the Commission's discretion). This situation not only provided the Council ample flexibility to delimit the Commission's discretion at will. By delegating the implementation of politically sensitive matters to the Commission and comitology, the Council could also at any time limit Parliament's participation in legislation on essential matters. A rapporteur on this matter complained:

> How can the Council explain the contradiction in its argument that [it requires comitology because] its final decision on matters of vital interests to the Member States is essential, while maintaining that participation by Parliament [in comitology] is superfluous since only "technical implementing provisions" are involved? . . . Either the interests involved are really vital, in which case the issue is so important that this Parliament must be consulted on them, or they are in reality technical questions; then it is not necessary for the Council to reserve the decision for itself as it has frequently done in the past. (European Parliament 1975, 103–4)

To press for greater legal clarity, the European Parliament therefore threatened to freeze a part of the Commission's funds unless the member states came up with ground rules for the use of the various types of comitology committees (Bergström and Héritier 2007, 191–92). It became more adamant in its demands when it became apparent in the mid-1980s that the Commission was slated to play an essential role in the implementation of the Single Market. In 1986, it noted again that the ambiguity of the comitology system allowed the member states to retain power especially on politically sensitive matters (European Parliament 1986, 19).

The revision of the Treaty of Rome through the 1986 Single European Act therefore seemed a welcome opportunity to resolve the legal ambiguity surrounding the scope of delegation and the choice of comitology procedures. In fact, its supplement to Article 145, which specified the Council's rights and obligations, now seemed to oblige the Council to confer power of implementation to the Commission rather than to national administrations. It stated that the Council shall "confer on the Commission, in the acts the Council adopts, pow-

ers for the implementation of the rules which the Council lay down," and that only in "specific cases" did it reserve the right "to exercise directly implementing powers itself."[2]

At the same time, however, the treaty put comitology on a legal footing by providing the Council the possibility of "impos[ing] certain requirements in respect of the exercise of these powers." The member states also refrained from making a clear distinction between legislation and implementation in the new treaty. As a result, the Single European Act largely codified existing practice by which the Council flexibly defined the scope of legislation and implementation as well as the Commission's discretion on a case-by-case basis.[3]

For the Commission, this meant that it was still not able to control which type of comitology committee would oversee its actions. For Parliament, it implied that the Council still deprived it of its task to control the executive and—where the delegated power was, in fact, politically sensitive—of its newly gained right to participate in essential legislation.

Formalized Ambiguity (1987–1993)

Although the Single European Act had legalized the comitology system, it did little to settle the conflict between the institutions as it remained ambiguous about the scope of delegations and the conditions of comitology's use. The Commission and Parliament therefore continued to push for further formal specification of the ground rules. The Commission submitted a proposal for a Council regulation that suggested a simplified comitology structure and, more important, defined the principles and rules for the Council's use of this system (Commission of the European Communities 1986). However, the Council in its 1987 Comitology Decision departed substantially from the Commission's proposal (Meng 1988, 214–20; Ehlermann 1988) and refused to specify criteria for the scope of implementation and the use of the various comitology procedures (Council of the EC 1987; Dehousse 1989, 125–28; Bluman 1989, 68–70). According to a legal expert,

> a unanimous Council was keen to preserve the flexible nature of implementing powers, to establish any boundaries only on a case-by-case basis, and to avoid, therefore, any type of general definition or "principles" similar to those found in national constitutions (restricting the scope of implementing powers a national parliament may delegate to a Government). (Bergström 2005, 198)[4]

In fact, the decision did little to change existing practices and continued to keep the Commission "at the national leash" (Meng 1988, 219). In its aftermath, Parliament and the Commission complained that the Council still reserved implementing powers for its national administrations[5] and that when

it delegated powers to the Commission, it still made excessive use of the most restrictive regulatory committees, especially in relation to the implementation of the Single Market (Commission des Communautés Européennes 1991a, 11).

Although the member states retained flexible control over the implementation of the Single Market, they lost flexible control over one of its aspects: the competition policy. Recall that in the early 1960s the Council had decided to give the Commission ample discretion in this policy and merely obliged it to consult with advisory committees. Until the early 1980s, the Commission had used its authority primarily in the area of trade-distorting restrictions in vertical relationships between firms ("vertical restrictions"), while it had paid far less attention to other aspects of competition policy such as merger control, antitrust, and state aid. However, the renewed commitment to the Single Market that the Single European Act represented resulted in a leap in Europe-wide mergers and acquisitions (increasing sixfold between 1982 and 1990) and suddenly pushed the EU's competition policy in all its aspects to center stage (McGowan and Wilks 1995, 152; McGowan and Cini 1999, 179–80). In this context, the Commission began to use its wide discretion to shift the focus from traditional concerns with private conduct toward the sensitive issue of government interference with the competitive process (Gerber 1994, 137–41)—a development that in the years to come would fuel more general criticism of excessive centralization and bureaucracy at the EU level (Neven, Nuttal, and Seabright 1993, 218; similarly, Goyder 1993, 508).

Order and Scatter (1994–1999)

The Treaty of Maastricht did nothing to resolve the ambiguity surrounding the comitology system. This situation remained unacceptable for the European Parliament. In a modus vivendi concluded in December 1994, the Council and the Commission agreed to a more extensive exchange of information with the Parliament (European Parliament 1996, 2). But for Parliament, which the Maastricht treaty had just been promoted to a genuine co-legislator, the modus vivendi was merely one step in the right direction. It felt that the Council continued to take advantage of the system's ambiguity by delegating rule-making power on essential matters in order to exclude the Parliament from legislation on politically sensitive questions. It therefore pressed for a clear distinction between legislative and implementing matters and, in the case of implementing matters, for criteria regarding the choice of the committee procedure (Bergström and Héritier 2007, 210, 217).

Most member states, in contrast, preferred to retain the flexibility on politically sensitive matters that the ambiguity of the situation provided. The House

of Lords' Select Committee on the European Communities shared the Council's skepticism about formulating legal delegation criteria:

> Any criteria must be generally acceptable, readily understandable and workable…They must not be too prescriptive, and they should permit differences of policy…As mentioned, one of the key interests to be protected is that of the Member States. There will remain matters on which there are sensitivities, at least until the Commission has shown itself capable of exercising the powers in question completely. (House of Lords 1999, part 4, no. 164)

According to the Select Committee, it was unlikely that the criteria required could be accurately and concisely translated into formal rules. Therefore, some sort of guidelines should be agreed on in a political rather than a legal text (House of Lords 1999, part 4, no. 165).

Given the member states' reluctance to give up their flexibility, they did not use the opportunity at the 1996 Intergovernmental Conference on the Treaty of Amsterdam to rid the treaty of its legal ambiguity. The conference merely charged the Commission with formulating a proposal for amending the 1987 Comitology Decision. The new 1999 Comitology Decision revised the existing system in several ways, most notably by introducing criteria for the use of each comitology procedure and providing for a limited involvement of the European Parliament in scrutinizing the implementation of acts adopted under the co-decision procedure.

Overall, however, the 1999 Comitology Decision did little to limit the Council's extensive freedom of choice (Lenaerts and Verhoeven 2000, 671). Allaying fears that the new criteria might become a new cause for litigation, the decision explicitly states that these were "of a nonbinding nature." The Commission also committed itself in an official declaration to search for balanced implementing measures in "particularly sensitive sectors" (European Commission 1999a).

As Parliament built up pressure for a formal systematization of comitology, the member states increasingly resorted to an alternative way of implementing policies. In 1993, they established eight "European agencies,"[6] and, by the end of 1999, eleven agencies were in operation, most of which dealt with narrow cross-sectional topics within the broader fields of regulation and social policy. There were, for example, an agency for the evaluation of medicinal products and a center for the development of vocational training. Created on a case-by-case basis through an ordinary Council regulation, the agencies were governed by a management board mainly composed of member states' representatives and operated largely independently of other supranational institutions (Kreher 1997, 227).

The Commission usually had organizational or budgetary responsibility for these agencies. Their principal function was the collection, management, and dissemination of information about the procedures and progress of the implementation of EU policies by national administrations (Majone 1997, 271–72; see also Chiti 2000, 342).

The European Parliament viewed this development with suspicion and demanded formal and transparent procedures to improve the monitoring and control of these agencies (Kelemen 2002, 104–5). The Commission initially welcomed their establishment insofar as the agencies relieved its workload. However, just as the European Parliament had come to demand clear criteria for the use of comitology, the Commission also became increasingly concerned about the lack of criteria for the creation of these agencies.

The Commission became more wary about the establishment of independent agencies when this idea became popular in the competition policy where the Commission had come under increasing fire for its overly aggressive implementation (Gerber 2007–08). Germany floated the idea of delegating the Commission's responsibility for this policy to a European cartel office similar to the German Federal Cartel Office (Bundeskartellamt) (Ehlermann 1995, 474–75). Other member states and employers' associations partly echoed Germany's criticism of the Commission (*Financial Times* 1994; see also Wilks and McGowan 1995, 265; House of Lords 1993, 35–50), but were more lukewarm about the idea of centralizing authority in the hands of an agency on the German model (McGowan and Wilks 1995, 162–64). Alternative proposals for reform suggested the decentralization of implementation with a view to enhancing the competition policy's "accountability, flexibility and sensitivity" (Wilks 1996, 167). Overburdened by the competition policy's complex procedures, the Commission agreed on the need for reform (Forrester 2000, 1036). It reacted to the growing criticism by publishing a white paper on this topic. Hailed by its former directorate general, Claus-Dieter Ehlermann (2000, 1239), as the "most important policy paper the Commission has ever published in the more than forty years of EC competition policy," the paper proposed a substantial decentralization of the competition policy to national authorities and courts (European Commission 1999b, 5).

Formalization and Fragmentation (2000–2009)

After the Treaty of Amsterdam further strengthened the Parliament's role as a co-legislator, it pressed even more adamantly for a greater formalization and involvement in comitology. It did so first in the context of financial services. In

the early 2000s, the member states decided to give new impetus to legislation in this area and tasked a committee chaired by Alexandre Lamfalussy to make policy suggestions. This committee proposed to tackle the challenge in a two-step process starting with the formulation of regulatory principles through the normal legislative procedure and, in a second step, technical measures to be decided through a comitology procedure.

Though the Commission and the member states welcomed Lamfalussy's proposal, the European Parliament was more skeptical and successfully pressed for three changes to the proposed procedure: the inclusion of sunset clauses to all delegating acts, that more comprehensive information be provided to the Parliament, and the opportunity for Parliament to react to the Commission's draft implementing measures (Blom-Hansen 2011, 350–51). Parliament subsequently succeeded in extending the use of this new procedure and establishing criteria for its use. Initially, it had hoped to accomplish this with the ongoing treaty revision through the 2002–04 Constitutional Convention (Bergström and Héritier 2007, 220–23). When the product of this Convention, the Constitutional Treaty, failed, however, it decided to resort to more confrontational means by threatening the Council with withholding funding for comitology committees as well as its agreement to extend sunset clauses for the financial services measures (Blom-Hansen 2011, 358). In response to this threat, the Council agreed to extend this new comitology procedure to provide for greater parliamentary involvement in areas that were subject to co-decision ("regulatory procedure with scrutiny") (Council of the EU 2006). The Council also specified that "measures of general scope" ought to be subject to this new procedure (Blom-Hansen 2011, 359).

At the same time that the Council agreed on greater parliamentary involvement in comitology, the member states also delimited the gray zone between legislation and implementation that provided the Council so much flexibility. Following the ill-fated Constitutional Treaty, the Lisbon Treaty introduced a hierarchy between so-called legislative, delegated, and implementing acts. Legislative acts are supposed to contain essential, nondelegatable elements such as the objectives, content, scope, and duration of delegated powers. By implication, delegated and implementing acts are not supposed to alter these essential elements. At the time of writing, however, it is still unclear whether these new treaty rules succeeded in clarifying the distinction between legislation and implementation.[7]

Whilst the comitology system was being formalized, the member states increasingly had recourse to agencies. Another fourteen agencies were established in diverse fields such as defense (e.g., the European Defence Agency), transport (e.g., European Railway Agency), and on very specific regulatory issues

(e.g., the European Food Safety Agency). Both Parliament and the Commission eyed the agencies' popularity with increasing suspicion. In its White Paper on European Governance, the Commission stressed that the agencies should not be established in policy areas where the treaty gave it exclusive authority (European Commission 2001, 24; Commission of the European Communities 2002, 5–6; European Commission 2005). Repeating arguments about comitology, on numerous occasions it demanded the establishment of clear criteria for the agencies' creation, arguing for example in 2008 that

> the diverse role of agencies fuels concerns that they might stray into areas more properly the domain of the policy-making branches of the EU. The responsibilities of the other institutions toward agencies, and of the Commission in particular, suffer from the lack of a clear framework and defined lines of responsibility. (European Commission 2008, 6)

This complaint was echoed by the European Parliament, which furthermore demanded that the creation of agencies be subject to the co-decision procedure. The Council, however, rejected the Commission's proposal for an interinstitutional agreement on clear criteria for the creation of agencies (Andoura and Timmerman 2008, 25). The debate was still ongoing at the time of writing.

In the meantime, national authorities became available as a new potential implementing actor alongside the Commission due to the "revolutionary" (McGowan 2005, 987) reforms that followed the Commission's white paper on the competition policy. Some argue they entail a dispersion of power and authority to the member states and national competition authorities (Forrester 2000, 1040), while others assert that they served to augment the Commission's power (Riley 2003, 671–72). For our purposes, the important fact is that the involvement of national authorities supposedly made the implementation of the competition policy far more flexible than the previous, highly formalized system (Cengiz 2010, 662–67). The reform envisaged that member states would be primarily responsible for the application of EU competition law, and the Commission would take enforcement action only under limited circumstances (Gerber 2007–08, 1242). To guarantee a consistent Europe-wide application despite this decentralization, the national authorities were supposed to exchange information within the so-called European Competition Network. This informal network decides which national jurisdiction has responsibility for each case. Customarily, the national authority that opens a case typically continues to handle it, and only when more than three countries are affected does the case go to the Commission (Wilks 2007, 441).

Implementation in the European Union, 1958–2009

The original Treaty of Rome centralized implementing powers for many policies in the hands of the Commission. On the remaining issues, the Council could confer powers to the Commission on a case-by-case basis. Once the Commission was delegated implementing powers, there were no legal means for the member states to alter the Commission's measures.

If we take a look beyond these initial formal rules, however, we see that much of the implementation of EU policies takes place within an ambiguous legal space or outside the treaty rules. These practices commonly afford the member states collectively a great deal of flexibility to determine the Commission's discretion on a case-by-case basis. For the European Parliament, on the other hand, these practices usually implied a curtailment of its legislative power and its capacity to control the Commission in its executive function.

This great legal ambiguity—and the real loss in power it implied, especially for the European Parliament—meant that the treaty rules have constantly been subject to legal challenges, revision, and reinterpretation. Although this makes it difficult to clearly discriminate between practices of formal and informal governance, a few trends become apparent. First, the Council managed for most of the time to attain flexible control of the scope of delegation (through the ambiguous distinction between legislation and implementation) and the Commission's discretion (by specifying implementing actions in the parent legal act and subjecting the Commission to the comitology scrutiny). This flexibility afforded the Council the opportunity to retain much leeway in the implementation of politically sensitive matters. Second, as soon as the European Parliament from the 1990s on successfully pushed for a clear delineation of the scope of delegation and a greater systematization of comitology in order to reduce the member states' flexibility, the Council increasingly had recourse to alternative forms of implementation. Thus, it created more and more agencies and, in the case of the competition policy, involved national authorities to a greater extent in the process.

As the table below visualizes, however, the empirical record supports Liberal Regime Theory only in part, and only ambiguously so. In line with the theory's expectation, the Common Agricultural Policy is once again an outlier in these broader trends because the Council subjected the Commission in this area to the less intrusive management comitology committees, whereas most other economic policies with a higher degree of political uncertainty featured the restrictive regulatory comitology procedure.

TABLE 7 Formal and informal governance in implementation

	LOW POLITICAL UNCERTAINTY	HIGH POLITICAL UNCERTAINTY
1958–1969	Formal	Informal
1970–1986	Formal	Informal
1987–1993	Formal	Formal
1994–2000	Informal	Formal
2001–2009	Informal	Formal

A second piece of evidence that corroborates Liberal Regime Theory is the fact that—most of the time—conflicts over the rules took place between the member states on one side and the supranational actors on the opposite side. The European Parliament skillfully fought the member states for legal rules that provided greater voice in the delegation of implementation and the scrutiny of the Commission. The Commission, for its part, almost always demanded rules that provided it with the widest possible discretion. The member states, in turn, typically resisted rule changes that would reduce their flexibility to determine the scope of delegation and the Commission's discretion, and only gave in when the Parliament strong-armed it into giving it more power.

This evidence notwithstanding, table 7 makes apparent that there are limits to Liberal Regime Theory's explanatory power and no straightforward patterns in the emergence of informal governance. The member states codified the comitology system, and they ultimately agreed to a legal distinction between legislation and implementation, which strongly curtailed their ability to flexibly alter measures that threaten to generate strong conflict at the domestic level. These developments are probably best explained by the European Parliament's capacity to twist the Council's arm. And although it seems likely that the increasing formalization of comitology led the Council to search for alternative implementation methods, it is nevertheless an open question whether agencies and national administrations are good substitutes for the flexibility the Council used to have in the early days of comitology.

Thus, contrary to our theory's predictions, the final three observations in areas of high political uncertainty feature formal rather than informal governance. In addition, the Common Agricultural Policy is an outlier only during the first three decades of the Community's existence, that is, until the Commission starts to make full use of its discretion in the competition policy. As a result, the empirical evidence is only straightforward for the first two decades of the European Community and ambiguous afterwards.

6

KNOWING THE LIMITS

It seems impossible to define "vital interests" in legal terms or to list a number of cases in which the vital interests of a state would be considered in jeopardy . . . . So who decides whether a member state's vital interests are at stake? I'm not sure there is a solution to this problem.

—A senior official in the German Foreign Ministry, January 1965

The EU legislative process is governed by a norm of discretion, which prescribes that governments facing unmanageable domestic pressure ought to be accommodated. The norm of discretion manifests itself in collective informal governance practices at every step of the EU's legislative procedure. However, the norm's precise boundaries are vague; they are also prone to abuse when it is difficult to verify that legitimate demands are being made for the use of informal governance. This means that the actual use of informal governance is fraught with difficulties, since the governments are bound to disagree about its necessity. Disagreements about the necessity of informal governance, however, cast more general doubts about the credibility of one another's actual commitment to cooperation. There is, consequently, a tension between formal rules and informal governance, since doubts about the legitimacy of the latter erode the effectiveness of the former.

The chapter-opening quote by a senior official in the German Foreign Ministry demonstrates that the member states have been remarkably aware of this problem from the outset. The note was written in the context of the 1965 "empty chair crisis" following De Gaulle's demand to codify the right of a national veto in situations where "vital interests" are at stake. Although consensus decision making had been the norm in the Council from the outset, since all member states agreed about the necessity to refrain from majority voting for political reasons, France's cooperating partners feared that the legalization of this norm would in fact undermine the commitment that the formal voting rules represented. The German official goes on to explain:

> Although majority voting is legally justified, its actual use has to be a political decision. No state should be overruled if this puts its vital interests in jeopardy…However, if we refrained from voting each time a member state declares its vital interests to be at stake without having to justify this assertion or obtain the other member states' approval, this would in fact result in the abdication of the principle of majority voting. (Auswärtiges Amt 1965)

To resolve the tension between formal commitments and informal flexibility, the member states have had to find a way to determine in each situation whether formal rules apply or whether informal governance is pertinent. The purpose of this and the following two chapters is to show how the EU member states manage this problem.

The central argument in this chapter is that states meet this challenge by delegating this decision to a trustworthy actor who elicits information about the actual demand for informal governance in each situation. This argument is developed in six steps. As a first step, we explain how the informal norm of discretion brings about a demand for additional institutions to cope with the classical problem of moral hazard. Drawing on the economic literature on insurance markets, the second step discusses several solutions for the problem such as penalties and investigation. The third step argues that the solutions that are commonly invoked in the rational institutional design and international law literature are, in fact, ill suited for the problem at hand. The fourth step develops this insight further: we argue that, in order to guarantee that a sufficient level of discretion is granted, governments delegate the authority to adjudicate the use of informal governance to another member government that is biased against the demand for accommodation. The fifth section specifies this hypothesis in the empirical context of the EU, arguing that the member states holding the EU's Council presidency may under certain circumstances wield adjudicatory authority, and explains how this hypothesis can be tested against rival theories. This exercise sets the stage for the empirical analysis, which traces the theories' predictions regarding the development of the Council presidency's adjudicatory practices and prerogatives (chapter 7) and its role in the negotiation of the EU's Working Time Directive (chapter 8). This chapter concludes with a look ahead to the findings of this empirical analysis.

Informal Discretion, Ambiguity, and Moral Hazard

Informal governance adds flexibility to otherwise rigid formal rules where governments might face excessive domestic pressure to defy their commitment. Let

us assume for one moment that all member governments are perfectly able to observe the nature and extent of the domestic pressure on their cooperating partner. In this situation, all states have an incentive to accommodate this government even without an explicit quid pro quo, because they all want to prevent this government from defying its commitment in order to uphold the highly beneficial level of integration among them.

Yet these conditions do not hold in reality. In some situations, it may be obvious to all governments that informal governance is necessary. Borderline cases, however, are bound to generate conflicts among governments. The problem is aggravated when the governments, as they usually are, are better informed about their own domestic situation than their cooperating partners, since this informational advantage creates incentives to abuse the norm. To once again draw a comparison between the norm of discretion and car insurance: the probability of car accidents is not entirely beyond our control, but it is to some extent influenced by our driving behavior. Comprehensive coverage for accidents may then induce me to drive more recklessly or to fake an accident in order to claim the full insurance sum. The informal norm of discretion, just like car insurance, may also induce behavior that undermines the very purpose of the norm in that governments have an incentive to exaggerate the domestic pressure they are under in order to, for example, protect special interests or manipulate the terms of trade in their favor (Feenstra and Lewis 1991, 1288; Goldstein and Martin 2000, 621). Put differently, the informal norm of discretion creates a classical problem of moral hazard.

This problem casts doubt on the feasibility of informal governance in practice. If states are aware of the fact that the norm of discretion is prone to abuse, then the credibility of the formal commitment that this norm is supposed to protect sustains damage after all. It consequently creates a demand for additional institutions that allow the governments to collectively discriminate between false or exaggerated and legitimate demands for informal governance.

Alternative Solutions for Problems of Moral Hazard

How can states resolve the problem of moral hazard? The economic literature on insurance offers two suggestions (Shavell 1979), both of which have found their way into the literature on institutional design.

Coinsurance, or incomplete coverage, prevents moral hazard by making the insured bear some costs of a claim. Making the driver share the costs of an accident, for instance, induces him to drive less recklessly. Accordingly, making a

government pay a penalty for the use of informal governance should induce it to be less susceptible to domestic pressure for defection. This solution underpins a number of formal models on flexibility mechanisms in trade agreements. For example, George Downs and David Rocke (1995, 77) argue that sanctions in response to defection have to be low enough to allow politicians, in response to domestic pressure, to break the agreement from time to time, but still just high enough to prevent states from caving in to domestic pressure all the time. Peter Rosendorff and Helen Milner (2001, 835), among others, argue that coinsurance is the rationale behind the design of escape clauses. For example, Article XIX of the General Agreement on Tariffs and Trade authorizes temporary protection in the event that import surges threaten to cause serious damage to an industry. In order to discourage overuse of this escape clause, governments must pay a penalty for invoking it. Similarly, Randall Stone (2011, 35) argues that large states pay a fixed cost to the small states when taking informal unilateral control of an international organization—a cost that prevents the large state from using informal governance excessively.

Another commonly invoked solution for the problem of moral hazard is *observation,* which prevents the abuse of insurance by using situational information to determine whether an event is covered by an insurance policy. In the case of car insurance, for instance, companies often pay experts to gather information about the actual cause and severity of an accident. Competition and certification schemes are supposed to prevent conflicts of interest and induce the expert to report truthfully. In international politics, this translates into third-party adjudication about the legitimacy of demands for flexibility. According to B. Peter Rosendorff, this rationale underpins the GATT Dispute Settlement Procedure. This procedure delegates to a panel the task of adjudicating on rule violations and setting a level of sanctions, the payment of which permits the violator to signal its willingness to stick to its commitment in normal times:

> The institution then serves a crucial information-providing role. It establishes the facts, adjudicates on a violation, estimates the damages, and reports a successful completion of the process. It is this informational role of the DSP [Dispute Settlement Procedure] that determines its effectiveness in the world trading system. (Rosendorff 2005, 391)

Moral Hazard Solutions and Political Uncertainty

How adequate are these solutions for the problem of moral hazard in the context of an informal norm of discretion? Coinsurance on the basis of a preset penalty

is in fact inadequate for our purposes. Insurance companies usually know quite well how, for example, full coverage will affect their clients' driving behavior. However, political uncertainty, against which states "insure" themselves through the norm of discretion, lies by definition beyond the realm of things that states know when designing institutions. They are consequently unable to determine the optimal size of a preset penalty that would discourage the abuse of the norm. If states nevertheless made the use of informal governance conditional on the payment of such a penalty, this would lead to several economic inefficiencies[1] and generate intense conflict about the legitimacy of informal governance in practice. Unsurprisingly, states often invoke escape clauses without requiring the beneficiary to pay a penalty for using them (Pelc 2009). Similarly, there is little evidence that the United States pays any kind of costs when it makes use of informal governance in the International Monetary Fund. In fact, Stone (2011, 217) shows that United States does abuse informal governance, and that these practices have weakened the IMF.

Observation seems a more promising candidate than coinsurance. However, not all actors are equally adequate for this purpose in the context of the norm of discretion. Recall that the norm of discretion remains deliberately informal, since the accommodation of excessive domestic pressure per se seems to betray the institution's purpose. Consequently, institutional actors such as courts and bureaucracies that are pledged to upholding the rule of law cannot adjudicate on the use of informal governance. Although legal bodies are often given broad discretion in the interpretation of rules, the rule of law requires these bodies to do so in a consistent manner. Yet, as the chapter-opening quote notes, this is not possible in the case of political uncertainty. Institutional actors that derive their authority from their pledge to enforce the rule of law would consequently jeopardize their reputation if they were to recommend the use of informal governance. This is, after all, a political decision that needs to be made by political actors.

Final Adjudicatory Authority

If coinsurance in the form of preset penalties is inadequate, and observation in the form of third-party adjudication also seems ill suited for our purposes, how do governments elicit the information that is necessary to determine whether formal rules apply or whether informal governance is pertinent? In principle, the governments themselves are best placed to assess whether imminent damage to the commitment justifies the use of informal governance. However, decisions to accommodate a cooperating partner through informal governance may also have nonnegligible distributional effects that create conflicts of interest.

Thus, the authority to decide the use of informal governance cannot lie with the government (the claimant) that says it is facing excessive domestic pressure, since its incentives to exaggerate the case for its personal benefit gives rise to the problem of moral hazard to begin with. In formal language, one would say that if the claimant's ideal point is located far away from the law in question, it has no incentive to report truthfully the actual pressure it is facing at home. For the same reason, the authority to decide on the use of informal governance also cannot lie with a government with a similar ideal point that would personally gain from the accommodation of another government, because it has an incentive to collude with the claimant and recommend the use of informal governance in order to change the law in question even if it is not necessary.

However, states can trust the judgment of a government that does not personally gain from recommending concessions to the claimants. If the claimant opposes the law in question, whereas the adjudicating government supports it, then the only reason for the latter to recommend the accommodation of the former through informal governance is to prevent a costly disruption of the international organization. Again in a more formal language, one would say that the adjudicating government's ideal point is located close to the law in question, but far away from the claimant. In this situation, the adjudicating government's bias against the claimant makes its judgment about the need to move closer to the claimant trustworthy in the eyes of other member states (Calvert 1985, 552).[2]

Interestingly, for the adjudicating government to make an informed decision, it need not actively collect information about the claimant's motives. Since there are various ways to provide flexibility, all of which have different distributional consequences (Pelc 2011), its authority alone induces actors with a stake in the outcome to increase the level of available information about the situation in order to prevent a false, unfavorable judgment (Dai 2002, 413–15; McCubbins and Schwartz 1984).

Testable Implications and Alternative Explanations

The theory of informal governance elucidated above is more explicit than other theories about the source of final authority over the use of the norm of discretion. This section therefore draws on existing studies in the tradition of power-based institutionalism and classical regime theory, and then seeks to derive testable implications of our theory and rival theories about this authority in the EU context.

Liberal Regime Theory

What would an arrangement for fair adjudication of a claim for informal governance look like in the institutional context of the EU?

There are, in principle, two ways to accomplish the delegation of adjudicatory authority to a member government that is biased against the claimant. One is the delegation of adjudicatory authority on each issue under negotiation to a government that supports the legislative proposal in question and is, therefore, biased against claimants that demand to change this proposal through informal governance. One might object that the member states cannot know one another's preferences at the beginning of a negotiation. In the EU, however, the broad contours of states' preferences in the Council of Ministers are common knowledge, even if they are usually better informed about their susceptibility to domestic interests than about another government's breaking point.[3] Yet this solution seems impractical in light of the fact that the EU adopts hundreds of legal acts each year; it would be quite cumbersome to choose a different suitable adjudicator for each and every legal dossier under discussion.

A second solution seems more appropriate for the specific context of the EU. The treaty envisages that the country holding the presidency of the Council of Ministers, which is an office rotating on a six-month basis among governments, convenes and organizes Council meetings. Thus, the member states could also just delegate adjudicatory authority to the Council presidency. To make sure they can trust the presidency's judgment, they would have to compel the government in office to drop those legislative proposals from the legislative agenda that it opposes and keep those that it endorses on the agenda. If this was not the case and the government holding the presidency recommended the use of informal governance in the case of a legislative proposal it opposes, other member states would not be able to trust and defer to its judgment.

Two testable implications follow. First, because the norm of discretion gives rise to a demand for adjudication, the informal governance practices that we have described coevolve with adjudication practices and prerogatives on the part of the Council presidency. Second, because other member states will only trust the judgment of a government that is not suspected of colluding with the claimant, they defer to the presidency only when the government in office is biased against the claimant. Ceteris paribus, they defy the presidency's judgment when the government in office and the claimant share similar preferences. Anticipating this reaction, the government in office will keep legislative proposals like this off the agenda, even if the claimant's demands are justified.

Power-Based Institutionalism

Conceiving of informal governance as a means for powerful states to eschew formal rules in issue areas that are particularly sensitive, a power-based theory of informal governance would not expect dominant states to make their use of informal governance dependent on the judgment of another government. In Stone's model of informal governance, for example, it is the dominant state that, after the payment of a fixed cost, decides to take informal control of an institution when urgent strategic objectives override its long-term interest in the institution (Stone 2011, 35).

The model implies that an existing institution like the Council presidency will wield informal authority only when a dominant state assumes this office. Accordingly, there is no intrinsic connection between the practices of informal governance and the Council presidency's informal authority. Nor can we expect dominant states to pay deference to the adverse judgment of a small state holding the presidency.

Classical Regime Theory

For classical regime theory, informal governance is the result of uncodified institutions that states design to reduce the relative costs of transactions among them. In a brilliant book, Jonas Tallberg (2006, 3) interpreted the emergence of the Council presidency along these lines. In his view, multilateral decision making among governments in the Council is fraught with various problems that bring about a demand for leadership. For example, when agendas are "unstable, overcrowded, or underdeveloped" (Tallberg 2006, 21), states delegate agenda-management power to the presidency. In addition, when governments lack complete information about one another's preferences on an issue, they delegate to the presidency the task of brokering among them (Tallberg 2006, 24–27).[4] In other words, the presidency is vested with a number of procedural prerogatives that allow it to raise the overall efficiency of negotiations in the Council. It therefore wields authority by virtue of its office, not its power or its stance on an issue, and may well use it in order to manipulate the agenda and decisions in its favor (Tallberg 2006, 31–33).

This implies that the presidency's practices and prerogatives emerge systematically with increasingly intense bargaining problems, and not with political uncertainty. Therefore, according to Tallberg, the presidency gained in prominence in response to the sudden leap in legislative activity and the accession of three more members to the EU from the late 1960s onward. Furthermore, since the presidency enjoys authority by virtue of its office, other governments, small and large, generally pay deference to its decisions.

TABLE 8 Summary of specific hypotheses about adjudication

	THEORY		
IMPLICATION	LIBERAL REGIME	POWER-BASED INSTITUTIONALISM	CLASSICAL REGIME
PRESIDENCY PREROGATIVES	Emerges systematically in parallel to other practices of informal governance.	Emerges independently of other practices of informal governance.	In response to an increase in the complexity of decision making.
ADJUDICATORY AUTHORITY	The presidency wields authority when it is biased against the claimant. Member states deny deference when this is not the case.	Powerful states wield authority, but do not pay deference to unfavorable judgments by small-state presidencies.	All governments in charge wield authority by virtue of the office.

A Look Ahead to Subsequent Chapters

The following two chapters trace the theories' implications using various qualitative data. Altogether, the collective evidence of chapters 7 and 8 provide strong support for Liberal Regime Theory's second hypothesis concerning adjudication on informal governance.

Drawing on archival material and practitioner reports, chapter 7 evaluates the claim that the development of informal governance that we have described is directly related to the development of adjudicatory practices on the part of the presidency. Thus, it shows that the member states' practice of consensus decision making went hand in hand with the presidency's prerogatives to call a vote in the event that a government's demands for accommodation were found unjustified. Similarly, the practice of sending the Commission's proposals straight to the informal Council substructure before discussing them officially among ministers afforded the Council presidency the ability to restructure the legislative agenda according to new priorities. A mini case study on the negotiation of the End-of-Life Vehicles Directive between 1997 and 2000 that tackles the problem of automotive waste indicates that other member states typically compel the government holding the presidency to drop legislative proposals from the agenda when they cannot trust its judgment.

Chapter 8 presents a case study of the negotiation of the Working Time Directive from 1991 until 1993 under six different presidencies. This study assesses in depth the conditions under which other governments defer to the presidency's judgments on the use of informal governance and formal voting rules. In this

case, a legislative proposal on the Europe-wide mandatory regulation of working time threatened to impose excessive adjustment costs on British employers. The proposal immediately caused strong resistance from numerous domestic groups, causing the UK government to appeal to its cooperating partners to refrain from majority voting and to alleviate British adjustment costs. However, the legitimacy of the UK government's demand to be accommodated through informal governance was dubious. It consequently took six successive presidencies to determine whether they should call a majority vote on the proposal or alternatively include the UK in formulating a consensus around a modified proposal. The analysis shows that governments holding the presidencies enjoy adjudicatory authority only when it is biased against a claimant—that is, its authority is critically dependent on its trustworthiness, not the office itself or power asymmetries.

In sum, the following chapters suggest that the Council presidency serves to resolve the tension between formal and informal institutional elements that builds up when there remain doubts about the legitimate use of informal governance. By rendering informed judgments about the true demand for informal governance, the member states are able to add situational flexibility to the formal rules without necessarily undermining the credibility of the commitment that these rules embody.

7

THE COUNCIL PRESIDENCY AS AN ADJUDICATOR

[Overruling] a minority is just as reprehensible as insisting on accommodation up to the point that it threatens the community interest. . . . Since the normal negotiation process has not allowed [such conflicts] to be prevented, the only alternative to having recourse to force is arbitration. . . . These rules of the game have led to the development of a decisive role of a new communitarian organ: the Presidency. It is the Presidency's responsibility to maintain "normal" political relations within the Community, to try to construct compromises between extreme positions, and at the same time to avert conflict.

—Jean Louis Dewost, juris consult of the Council of Ministers

Barely mentioned in the original Rome Treaty or the Council's internal Rules of Procedure (Conseil de la CEE 1958), the Council presidency, rotating every six months among governments, surprisingly assumed important responsibilities in agenda setting and intergovernmental negotiations in the Council.

Some of the Council presidency's tasks are certainly particular to the European Union, and some of its aspects might be in urgent need of reform. Yet one of its principal functions presents a solution to a more general cooperation problem, which has so far been underappreciated in the literature (Kleine 2013). This chapter argues that the Council presidency serves a crucial information-providing role through its authority to adjudicate demands for informal governance. In other words, it serves to elicit the information that is needed for the governments to discriminate between false and legitimate demands for informal governance. The presidency's adjudicatory authority is the direct result of an informal norm of discretion and other informal governance practices that surround the EU's entire legislative process. This implies that it should assume its adjudicatory responsibilities in close parallel to the practices we have previously described.

Other theories disagree. Initial studies regarded the presidency as a stopgap by default, rather than by design, for sundry tasks that popped up and the Commission failed to assume (Kirchner 1992, 71). Power-based institutionalism does not expect dominant states to subject their use of informal governance to the judgment of the government holding the presidency. There is consequently no reason to expect any direct relation between the presidency's informal authority and other informal governance practices. Studies in the tradition of classical regime theory view the presidency as a functional solution to prominent intergovernmental bargaining problems. It follows that the presidency assumes more and more responsibility in response to the increasing complexity in decision making in the late 1960s and early 1970s, following De Gaulle's threat to withdraw from the European Union during the "empty-chair crisis," the Council's increasing legislative activity, and the Community's first enlargement in 1973.

These different explanations of the rationale for the presidency's authority in decision making are now evaluated by tracing the informal evolution of this office. Drawing mainly on new archival material and reports of contemporary practitioners, this chapter demonstrates that the governments in charge of the presidency adopted a number of practices in agenda setting and negotiation as a direct result of the governments' informal practices in agenda setting and voting. Other factors, such as the Council's growing workload and the accession of new states to the EU, the variables stressed by classical regime theory, merely accentuate what had already become standard practice.

The Presidency in the Council

As early as 1961, Jean Megret, a close contemporary commentator on EU decision-making practices, observed:

> There has been a very interesting development in the first three years of practical application of the Treaty. More frequently the Presidency finds itself released from its task of expressing its national position as a member of the Council of Ministers. Instead, it devotes itself to the organization of work and the search for a compromise among governments. (Megret 1961, 636, 646)

Specifically, the presidency's authority was based on three practices: intense contacts especially with recalcitrant delegations; the preparation of compromise proposals among the member states; and the prerogative to call votes or declare consensus.

The presidency adopted the first practice, the establishment of intense contacts with recalcitrant governments, as a direct result of the norm of consensus

decision making almost immediately after the Treaty of Rome became effective. In an analysis of the German 1964 presidency, for example, the permanent representative emphasizes that these contacts were invaluable for attaining information about the "motives and problems of individual delegations" (Vertretung der BRD bei der EWG 1965b). It was thereby assisted by the Council Secretariat, which gathered intelligence from the member states' permanent representatives or in direct consultation in the capitals of other governments (Wallace 1985b, 16).[1] Emile Noël, the Commission's executive secretary, also underscores the importance of contacts between the Council presidency and individual delegations: "The chairman has a feeling for unformulated desiderata and requests. He knows where positions are reserved. He knows how to take account of and interpret remarks made in confidence" (Noël 1967b, 238; 1966, 32).[2]

The Council presidency's central role in intergovernmental negotiations was accentuated even more in recent years by the gradual promotion of the European Parliament to the status of a co-legislator. Instead of face-to-face negotiations among members of the European Parliament and the Council in full session, the governments relied on the presidency to establish contacts with the Parliament in informal trilogue meetings and to conduct negotiations on the Council's behalf (Hayes-Renshaw and Wallace 2006, 151, 212; Council of the EU 2000, 15).

The Council's norm of consensus decision making directly led to a second practice by the Council presidency: the preparation of compromise proposals, which soon became known as "presidency compromises." The term appears in Council documents as early as the first years of the 1960s. For example, in preparation for the third German presidency in 1964, the permanent representative advised the chairmen of the various Council working groups to prepare possible presidency compromises prior to group meetings (Vertretung der BRD bei der EWG 1964a). By the late 1960s, the presidency compromise had become a fact of Community life (van Rijn 1972, 652; Sasse 1975, 143–47; Dewost 1987, 174).

The Commission played an important, yet a secondary, role in this process. Although the Council presidency understood the scope for changes, the Commission felt more obliged to defend its original legislative proposal. As Emile Noël and Henri Etienne explain:

> [The Commission] is more obliged to uphold, even practically on its own, the Simon-pure position, which the Commission has decided is most in accordance with the Community interest.... So it is the chair [the Council presidency] that has the most scope for quietly taking soundings, putting out feelers, and coming forward at the right moment with compromise suggestions—particularly suggestions some distance away from the Commission's original proposal. (Noël and Etienne 1971, 438)

The member states gradually had more frequent recourse to majority voting from the mid-1970s on. In the absence of a norm of discretion, we would expect the presidency's role in the search for a consensus to fade away with this development. However, just the reverse is true. In line with Liberal Regime Theory, the more frequent use of majority voting in the Council only increased the demand for an adjudicator to determine whether the formal voting rules applied or informal governance was demanded.

The gradual shift to more frequent majority voting consequently served to accentuate even more the third informal practice: the presidency's prerogative to call votes.[3] As Noël and Etienne explained at the end of the 1960s:

> When there has been a vote, this is because the Council Presidency, after consultation of the Commission, judged that the negotiations had been sufficiently stretched to the effect that the law of majority voting can be rightfully used to provoke hesitant partners to rally round an agreement. (Noël and Etienne 1969, 47)

The Three Wise Men in 1979 approved of this unwritten law that the authority to determine whether and when to invoke formal voting rules rests with the Council presidency:

> Each state must remain the judge of where its important interests lie. Otherwise it could be overruled on an issue which it sincerely considered a major one. It is only when all states feel sure that this will not happen that they will all be willing to follow normal voting procedures.... The application of these solutions lies in the hands of the Presidency. The Chairman of the Council is best placed to judge whether and when a vote should be called. (Council of the EC 1980)

The fact that in mid-1980s, when the number of majority votes peaked, the Commission found it necessary to complain about the presidency's dominant role further testifies to the fact that the presidency's authority increased with a growing need to adjudicate whether formal voting or informal consensus decision making was needed:

> The practices once begun tend to go on: multiplication of the compromises made by the Presidency on all sorts of subjects, thus supplanting Commission proposals, undue resort to bilateral talks, national glorification of the "Presidency of the Community," although this is a new office with no legal basis. (Noël 1985, 150)

The chapter-opening quote by Jean-Louis Dewost directly pinpoints, in line with Liberal Regime Theory, why the presidency assumed its adjudicatory

function. For him, the presidency serves to prevent disruptive conflicts by determining whether a minority ought to be overruled or accommodated. The presidency's three practices of intense contacts with recalcitrant delegations, the preparation of compromises, and the prerogative to call votes have hardly altered over time. Neither the empowerment of the European Parliament nor the establishment of a permanent president of the European Council alongside the rotating presidency of the Council of Ministers changed the fact that the authority to adjudicate on ambiguous demands for added discretion rests with the government that holds the Council presidency.

The Presidency and the Agenda

At the same time that the Council presidency adopted a number of new prerogatives in intergovernmental negotiations, it also assumed new responsibilities in the micromanagement of the legislative agenda. As before, this authority was a direct result of informal governance practices in the decision-making stage.

The Treaty of Rome endowed the Commission with the exclusive right of initiative. This monopoly allowed the supranational bureaucracy to submit proposals for legal acts when it considered the circumstances for their adoption to be favorable. However, instead of discussing them at the level of the Council of Ministers, the governments began from the early 1960s onward to pass Commission proposals on a regular basis to the ever-growing Council substructure of government representatives in working groups and committees.

This practice broke the link between the Commission's agenda-setting activity and the composition of the Council's legislative activity. In other words, the Council agenda ceased to be determined by the Commission's timing of legislative proposals, and this in turn afforded the governments the opportunity to structure the Council agenda according to new priorities.

As soon as the Council agenda opened up for new priorities in the early 1960s, the presidency began to play an increasingly important role in determining the specific composition of the Council agenda. Reflecting on its working methods, the Council's Committee of Permanent Representatives (COREPER) recommended in 1960 that the "choice of important subjects, which merit discussion in the Council, ought to be conferred to the Presidency" (Conseil de la CEE 1960). The Council presidency subsequently outgrew its modest official role as a mere organizer of meetings to become the informal driving force behind intergovernmental negotiations in the Council. For example, recapitulating the role of the presidency, the Belgian permanent representative, Joseph van der Meulen, explained in 1966 that the "presidency is . . . anything but mere decoration":

> Not only does it maintain the good order of negotiations. It prepares…the work program for the Working Groups with a view to keeping up a progressive examination of all questions. All these Working Groups in fact constitute a considerable machinery that risks becoming paralyzed were it not for the vigilant attention of the President. (van der Meulen 1966, 12; see also Wallace and Edwards 1976, 540)

In short, the governments' practice of passing the Commission's legislative proposals to the Council substructure deprived the Commission of its influence on the Council's legislative activity and allowed the member states to structure the Council agenda according to new priorities. The Council presidency immediately assumed this responsibility and consequently gained the opportunity to prioritize agenda items and, ceteris paribus, let others slide. The Commission official and close observer Thomas van Rijn noted:

> This task [of organizing meetings] gives the Presidency great influence, and it is here that different national characteristics become apparent. It permits putting strong emphasis on certain problems while waiting for others to become "ripe." The very fact that one country occupies the presidency for six months at all levels allows initiatives to be taken and other issues to be concluded as soon as possible. (van Rijn 1972, 653; see also Noël 1967b, 237)

In recognition of this development, the Council obligated incoming presidencies from 1973 onward to publish their work program and timetables for meetings (de Bassompierre 1988, 24; Amphoux et al. 1979, 110). This work program became the basis for the semiannual State of the Community address, in which each incoming Council presidency announced a list of its objectives and priorities to the European Parliament (Wallace and Edwards 1976, 543; Westlake 1995, 342). In their report on the European institutions, the Three Wise Men recommend strengthening the presidency's agenda-setting function even further (Council of the EC 1980). Jean-Louis Dewost concurs in 1984:

> [The] Presidency has assumed [a] delicate role: the generation of political impetus through the revitalization of forgotten dossiers and the provision of new topics that hopefully mobilize political energy.…The Presidencies announce programs and present themselves as real motors for the Community, hoping to impose their national interests at the Community level. (Dewost 1984, 32; see also Wallace 1985b, 5)

How did the presidency use its influence over the agenda? According to close observers, the government holding the Council presidency usually neglects leg-

islative proposals that are controversial and that it would like to see changed substantially in Council negotiations (interview in Brussels, January 2007). But it does not do this on its own initiative. Rather, corroborating Liberal Regime Theory, the government in charge neglects legislative proposals that it wishes to change because other governments in the Council would cold-shoulder self-serving demands from the presidency. In 1964, the German permanent representative reflected on his experiences during the German presidency, noting that in general the "chairman has to contain himself in his demands for consideration of specific national interests" (Vertretung der BRD bei der EWG 1965b). Violations of this custom were considered inappropriate and strongly discouraged. "Attempts like this," emphasized another internal report on the conduct of the presidency, "would meet with strong refusal" (Vertretung der BRD bei der EG 1971; Elgström 2003, 47).

The example of the End of Life Vehicles (ELV) Directive is instructive. The Commission proposal, submitted in 1997, stipulated take-back and recycling duties for the automobile industry. Initially, only Spain and the United Kingdom under pressure from their automobile industries voiced opposition while the majority of governments, including Germany, Sweden, Denmark, and Austria, supported the Commission proposal (Agence Europe 1999a). The negotiations did not make much progress during the first half of 1998 under the British presidency, which opposed the directive in its current form. The Austrian presidency consequently inherited responsibility for finding an agreement among the member states and announced its determination to adopt a common standpoint by December 1998 (*European Voice* 1998). Under its chairmanship, the permanent representatives swiftly prepared a compromise text that all delegations were willing to accept (Council of the EU 1998). The incoming German presidency, led by the newly elected "red-green" coalition of the Social Democratic and Green parties, announced that the adoption of this directive would be a key policy goal for Germany's term in charge of the Council business (*European Voice* 1999d).

Suddenly, and to everyone's surprise, the German chancellor, Gerhard Schröder of the Social Democratic Party (SPD), decided to revoke the German delegation's support for the compromise. The reason was a direct intervention by the chief executive of Volkswagen, Ferdinand Piëch, who had complained about the extensive adjustment costs the German automobile industry was going to face. Schröder invoked his prerogative as chancellor to define the German policy guidelines and instructed his minister for the environment, Jürgen Trittin of the Green Party (Bündnis 90/Die Grünen [Alliance 90/The Greens]), who chaired the Council of Environmental Ministers, to use his prerogatives as Council president in order to postpone the scheduled decision in order to reopen negotiations and then garner a blocking minority to reject the proposal (Wurzel 2000).

Other delegations reacted strongly to this rumor, which they regarded as an abuse of the presidency's power, and reminded the German presidency that its prerogative to call a vote was not a codified right. If the German presidency called a vote to block the proposal, they threatened they would for the first time in the history of European integration overturn the presidency's procedural decision, which according to the Council's rules of procedure was possible with a simple majority (Agence Europe 1999a).

Trittin then decided to discuss the dossier in a Council session strictly closed to the public (*Frankfurter Allgemeine Zeitung* 1999; *Die Welt* 1999a). In this session, he once again demanded concessions for the German car industry. Because one television camera was still recording sound, the *European Voice* was able to report the highlights of exchanges among the Ministers:

> Fascinated journalists gathered round the screen as Trittin harangued ministers for refusing to accept his new "compromise" proposal. . . . "What are you doing trying to talk us into a compromise when you are the problem?" asked the Austrian Environment Minister, Martin Bartenstein. Denmark's Sven Auken was almost screaming with anger and France's Dominique Voynet boomed: "We cannot leave this room to tell the press and the public that we have dropped our trousers for the car industry!" . . . The only support for Trittin's trousers came from the UK's Michael Meacher, who announced he was not performing a U-turn but had been told to reverse his stance by Premier Tony Blair under pressure from Schröder. (*European Voice* 1999a)

The Council then noted the impossibility of adopting the text and decided to pass on the issue for further discussion to the subsequent Finnish presidency (Agence Europe 1999b). Since it was obvious from its U-turn that the domestic pressure on the German government was far from unmanageable and that it could very well afford having its automobile industry adjust to the EU directive, it took only three more weeks of deliberations under the Finnish presidency to form a qualified majority in favor of the proposal and against a recalcitrant German delegation in the minority (*Die Welt* 1999b).[4]

Given this strong reaction to self-serving demands to make changes to the Commission proposals, presidencies that are more experienced than the German presidency back in 1998 typically stall these dossiers until the next government takes over and it can speak more freely. Two close observers of this office, Helen Wallace and Geoffrey Edwards, also note that the "only strategy left to the chair is to block such issues by keeping them off the agenda or by delaying their discussion in a committee" (Wallace and Edwards 1976, 544; see also Wallace 1985b, 16–17; Elgström 2003, 50).

As a result, Council agendas developed a bias in favor of legislative proposals that the government holding the presidency does not wish to change substantially. Other governments fully accepted the presidency's influence on the Council agenda. Asked about the importance of an adequate balance of interests on the agenda, a former permanent representative explained succinctly:

> Nobody cares if the Council agenda adequately balances the governments' various interests. It's simply like that: Governments decide what needs to be decided and what the Presidency thinks is important. (interview in Brussels, February 2008)

The presidency managed to retain its influence on the micromanagement of the agenda despite the emergence onstage of rival agenda setters such as the European Council. For example, upcoming presidencies established contacts with the Commission well before their term in order to ensure a timely preparation of the legislative proposals it wished to discuss during its term (Edwards and Wallace 1978, 82; Wallace 1985a, 463). The presidency also invented more subtle strategies. In 1986, a confidential document (cited in Maass 1987, 10) entitled "Guidance on the Exercise of the Presidency" instructed British officials: "[The] simplest device will be for the chairman to let the delegation ramble on." The document added that the chairman can delay matters by setting a meeting for a month later, then canceling it "because another group needs the meeting room allocated for the next session, and so on." Asked about this document, a British official shrugged it off, arguing that "everyone in the community uses the kind of maneuvers or procedures that were mentioned in the paper.... The only surprising thing is that the British put them on paper" (see also Thalmann 1987, 72; and Dewost 1976, 3; 1984, 32).

In addition, the establishment of a permanent president for the European Council (currently Hermann van Rompuy from 2009 to 2014) as well as for the Foreign Affairs Council (currently Catherine Ashton) did not change the fact that the rotating presidency micromanages the legislative agenda for the Council of Ministers. New rules of procedure for the European Council envisage that its president will coordinate with the member state holding the six-month Council presidency on dates for summits by the chiefs of governments (Council of the EU 2009, Article 2).

Despite this phenomenal rise in importance, it is noteworthy that the Council presidency's role in the setting of the Council agenda has hardly ever been formalized in the treaties. In 1988, the Council of Ministers decided that each presidency should present a more comprehensive work program for its six-month period. In 1993, this procedure was integrated into the Council's internal Rules of Procedure (Tallberg 2006, 50). Despite long debates about the inefficiency of

the rotating presidency's influence on the Council's legislative agenda in today's twenty-seven member European Union, the practices described above have hardly changed since.

Mentioned only in passing in treaties, the office of the Council presidency underwent a surprising development over time. The government in office serves as the "hub" in intergovernmental negotiations, suggests compromises among its cooperating partners, decides whether to call a vote or declare a consensus, and micromanages the Council's legislative agenda.

In line with the predictions of Liberal Regime Theory, the Council presidency assumed all these responsibilities as a direct consequence of other practices of informal governance in agenda setting and decision making. Thus, the norm among governments to search for a consensus in the event that a government faces unmanageable domestic recalcitrance created a demand for a government to assess the legitimacy of this claim. In addition, the member governments' practice of passing legislative proposals to the Council substructure of working groups and committees deprived the Commission of its direct influence on the legislative agenda and opened up the opportunity for the presidency to structure it according to new priorities.

The chapter has asked the question of why the member states defer to another government. The deference to a cooperating partner is not self-evident, since the government holding the presidency might use its procedural prerogatives for national gain and at the expense of other member nations. This is why, as we have seen in this chapter, the government usually faces much headwind when it personally stands to gain from changes to the legislative proposal under negotiation. The following chapter seeks to demonstrate that the presidency wields authority only when it is biased against governments that demand accommodation and, therefore, that other member states can trust its judgment about the actual need for informal governance.

8

ADJUDICATORY AUTHORITY IN PRACTICE

"Up Yours Delors"

—Front page headline, *The Sun,* November 1, 1990

Making full use of its procedural powers, the European Commission under the presidency of Jacques Delors in 1990 submitted a proposal for a directive on the Europe-wide regulation of working time for a large variety of sectors. This proposal was well received by trade unions and most member states, which already had equivalent domestic regulations in place. In the United Kingdom, however, where workers worked the longest hours, the proposal immediately generated strong domestic opposition from employers as well as from Euroskeptics in the ruling Conservative Party, who regarded this proposal as only the beginning of a stream of "socialist" interventions. All other member states felt it was necessary to accommodate the British government in this situation to calm the domestic waves. The problem, however, was that the British government was so ambiguous in its complaints that it was difficult for the other member states to assess which, and how many, concessions were, in fact, required.

The case of the Working Time Directive illustrates the need to determine the boundaries between formal rules and informal governance in the event of ambiguous demands for accommodation. Because the norm of discretion is vague and the conditions that give rise to domestic pressure not always perfectly observable for outsiders, governments have an incentive to abuse the norm and demand more concessions than are truly necessary to render domestic pressure manageable again. The member states therefore delegate the authority to adjudicate on ambiguous demands to a government whose judgment they can trust. Specifically, they delegate adjudicatory authority to a government that is biased against the claimant, since the only reason for it to recommend informal governance even though it has nothing to gain from these special concessions

must be that it seeks to avert damage to the institution. In the context of the European Union, member states invest the Council presidency with a number of procedural prerogatives and thwart attempts to chair negotiations when it has an incentive to collude with the government demanding to change the legislative proposal through informal governance.

Existing empirical studies of the Council presidency and its influence on negotiations partly support the claim that the government in office needs to be biased in order to wield adjudicatory authority in the Council. Many excellent qualitative studies point to the existence of a norm that says that the presidency should be neutral during Council negotiations (Edwards and Wallace 1977, 42; Bunse 2009, 43–48; Dewost 1984). Unfortunately, they usually fail to specify what it means to be neutral—that is, if it implies disinterest, fair-balanced brokering, or the absence of demands to amend the legislative proposal under discussion (Elgström 2003, 38). More recently, a number of quantitative studies have begun to examine the presidency's influence on Council negotiations. In separate analyses, Robert Thomson and Andreas Warntjen find that holding the presidency during the final stages of negotiations has a positive and statistically significant effect on a government's influence on the final outcome (Thomson 2008b, 611–12; Warntjen 2008, 332; see also Schalk et al. 2006). Warntjen (2007) also finds evidence for a presidency influence on the Council agenda. These studies, too, are fraught with difficulties, since the influence they identify depends on the counterfactual outcome (i.e., the outcome that would have occurred if no or a different government had not held the office) that the models assume. Furthermore, these studies beg the questions of why the member states would agree to an arrangement that gives one of them a competitive edge in Council negotiations to begin with.

Rather than being concerned with influence on outcomes, this chapter is interested in the presidency's authority in adjudicating demands for accommodation. Authority, in this sense, is the presidency's ability to demand deference from other governments, not to assert national interests. It argues that without the office of the Council presidency, the member states would likely adopt the wrong level of informal governance. Since they care about using the right level of informal governance, and consider a biased presidency's judgment informative in that regard, the member states defer to its judgment in the form of the presidency compromise.

To show that the Council presidency wields adjudicatory authority in the Council, this chapter focuses on the behavior of the member states and the six governments holding the presidency during the negotiation of the Working Time Directive. Liberal Regime Theory expects presidencies that are biased against the United Kingdom to be active adjudicators and render judgments on the use of informal governance to which all other member states defer. Conversely, presidencies that have an incentive to collude with the United Kingdom can

be expected to stall the negotiation or render judgments on the use of informal governance that their cooperating partners pay no deference to. Power-based theories, in contrast, would not expect small states in charge of the presidency to wield authority in decisions over the use of informal governance or, for that matter, for large states to defer to a decision that goes against their interests. Classical regime theory would expect all presidencies to wield authority by virtue of the office, regardless of power asymmetries or their stance on the legislative proposal.

There are two reasons, one methodological and one practical, for taking a closer look at the Working Time Directive in particular. The methodological reason is that because the conflict took a very long time to resolve, the case enables us to apply the different predictions about the presidency's authority to six successive governments in office that held different preferences on the Commission's legislative proposal. The practical reason has to do with the availability of data. Because it serves to prevent conflicts, informal governance is rarely newsworthy and, because it is a departure from official procedures, often remains unrecorded. Due to the fact that an overconfident Commission eschewed informal constraints on its agenda-setting power to submit a highly contentious proposal, the Working Time Directive is an unusually well-documented case that is commonly cited to exemplify the Commission's formal agenda-setting power (Pollack 2003b, chap. 6).

It should be mentioned that it is not always possible to distinguish between adjudication and other negotiation dynamics. Since there are various ways to mitigate domestic pressure through flexibility (Pelc 2011), all of which have different distributional consequences, the presidency is subject to pressure from various governments and other actors as to whether and how to accommodate the claimant. The following study seeks to reduce these uncertainties using primary "behind-the-scenes" data in various languages, and counterfactual reasoning.

Agenda Setting: Making Full Use of Formal Rules

Under the premise of implementing the treaty's provisions on social policy, the Commission in 1990 submitted a proposal for a directive on the Europe-wide regulation of working time.[1] The preparation of the proposal had been highly contentious even within the Commission with a rift running along both national and ideological lines (Brittan 2000, 49; similarly, *Economist* 1990). The final vote in the college of commissioners was contested, with six out of the seventeen commissioners openly opposing the draft directive (*Independent* 1990).

The legislative proposal was contentious for several reasons. First, the proposal's legal base was disputed. It could have been based on Article 100a (2) of

the Single European Act, which covered provisions "relating to the rights and interests of employed persons," but that would have required unanimity in the Council. Instead, the Directorate General for Employment and Social Affairs under the Greek commissioner, Vasso Papandreou, based the proposal on Article 118a, which covered health and safety provisions, and only required a qualified majority for adoption in the Council.

Second, the Commission, in drafting the proposal, failed to consult the Council's standing expert group, the Advisory Committee on Safety, Hygiene, and Health Protection at Work. This was considered a breach with custom, because the group, which consists of representatives from the member states, trade unions, and employers' organizations, had been envisaged to assist the Commission in the preparation and implementation of legislation in this field (*Financial Times* 1991g).

Third, more contentious than these procedural issues was the content of the proposal. The draft Working Time Directive provided for regulations on minimum daily, weekly, and yearly rest periods as well as on night and shift work, and it also proposed a centralized statutory regulation even though these aspects were in most countries subject to sectoral collective bargains between the social partners (Falkner et al. 2005, 100). Thus, while redundant in many member states with similar or even more stringent collective or statutory regulation in force, this proposal promised to require adjustments in other countries, particularly in the United Kingdom and Ireland, which had no regulations at all (Gray 1998).

Decision Making: Cutting through Ambiguity

Although the proposal was contested on some procedural grounds, the Commission had not violated the treaty, but simply ignored existing customs and made full use of its formal agenda-setting powers: it had independently drafted a legislative proposal, published it without consulting the member states, and tailored it in a way that a majority of the Council could adopt it.

While the agenda-setting stage featured practices of formal governance, the following negotiation stage was rife with practices of informal governance, by which the member states sought to calm the domestic recalcitrance the proposal had caused. Despite the quick emergence of a qualified majority in favor of the proposal, the Council refrained from overruling the British government, referred the negotiations to the Council substructure, stalled it various times, and sought to build a consensus by making a number of unilateral concessions to the British government. Before that, however, the member states had to determine the legitimacy of the British demands for accommodation.

Wait and See (the Luxembourg and Dutch Presidencies)

The most contentious part of the Commission proposal was a cap on weekly working time. Richer countries with strong regulation in place preferred a cap at a low level, because they were concerned about being undercut by poorer states with weak regulations (*Europolitique* 1991d). France therefore demanded that weekly working time be capped at a maximum of forty-eight hours (Lewis 1998, 371). Poorer member states, such as Greece, Portugal, Spain, and Ireland, had more general reservations about the Commission's social program (*Guardian* 1991c; *Independent* 1991). However, the most fundamental and hostile resistance came from the United Kingdom (*Europolitique* 1991b, 1991c), which had no statutory regulations on weekly working time. Accordingly, nearly 42 percent of British men worked more than forty-eight hours a week, compared with slightly more than 23 percent of men in the European Union as a whole (*Financial Times* 1991f). The directive, therefore, promised to cause massive adjustment costs in the United Kingdom.

Unsurprisingly, the Commission proposal immediately took on a very visible profile in British politics when it was published. While the trade unions and the Labour Party welcomed the proposal, British employers universally lined up against the Working Time Directive, arguing that they would face adjustment costs in the billions (*Financial Times* 1990). In addition, Euroskeptic backbenchers within the Conservative Party suspected that the directive constituted precedence for Europe-wide social regulation on a massive scale (Forster 1998, 352). The domestic pressure on the British government to defy any such regulation grew ever stronger and threatened to become truly unmanageable. However, the cacophony of voices against the directive made it difficult to ascertain the real dimensions of the domestic conflict.

Against this backdrop, Luxembourg was the first country to preside over the negotiation of the Commission proposal. The country was in favor of the Working Time Directive and had committed itself to adopting it by the end of its time in office (Agence Europe 1991). After Jean-Claude Juncker, the president of the Council of Ministers, announced that he was prepared to call a vote to adopt the directive even against the fierce British opposition (*Europolitique* 1991a), British employment secretary Michael Howard signaled a more conciliatory approach (Forster 1999, 85). The British government promised it would accept help from the Council in evaluating the actual costs of the Working Time Directive for British business (*Financial Times Business Information* 1991; *Financial Times* 1991e). In this light, the Luxembourg presidency referred the Commission proposal for a closer assessment to the working groups and committees of government experts in the Council's informal substructure.

The domestic pressure in the United Kingdom against the Working Time Directive mounted when Germany, under pressure from its own churches and trade unions, demanded the inclusion of a clause to make Sunday a compulsory day off. Although the Dutch presidency, which was largely in favor of the Commission proposal, was quick to dilute this amendment (*Financial Times* 1991a; *Economist* 1991b), it prompted fierce reactions, particularly from the British tabloid press quoted at the beginning of this chapter (*Economist* 1991a; *Guardian* 1991b; *Times* 1991d; *Financial Times* 1991d). The domestic pressure on the British government intensified even further in October and November 1991, when plans were made to include the Social Charter (a Europe-wide agreement between the social partners) as a chapter in the Treaty of Maastricht, which was then under negotiation in an intergovernmental conference (Forster 1998, 352). This prompted Howard to renounce his earlier conciliatory position and, adding fuel to the fire, to issue a report that underscored the massive scale of domestic adjustment costs, claiming that the Working Time Directive in its present form was going to cost £5 billion a year and ruin much of British business (*Financial Times* 1991a, 1991d).

Although the Dutch delegation had initially committed to concluding negotiations by the end of its term in December 1991 (*Financial Times* 1991c; *NRC Handelsblad* 1991; Van Beuge 1993, 26), it decided to refrain from bringing the proposal to a vote and overruling the British delegation when the pressure within the United Kingdom against the directive escalated (*Guardian* 1991d; *Financial Times* 1991b; *Sunday Times* 1991b). Since the Dutch presidency was to be followed by Portuguese and British presidencies—which were, respectively, skeptical of and entirely opposed to the directive—the Commission proposal was considered shelved for at least a year. After this year, it was thought, the conditions for the adoption of the Commission proposal in its present form would be more favorable: the controversial Commissioner Papandreou would have bowed out of office, the British Parliament would have ratified the Maastricht Treaty, and the British people could potentially have elected a more pro-European Labour party that was less susceptible to pressure by British business (*Times* 1991b, 1991c).

Ambiguous Adjudication (the Portuguese and British Presidencies)

To everyone's surprise, the Portuguese presidency continued with the negotiations even though it had been expected to shelve the proposal during its term. But it was furious that the United Kingdom, which had spearheaded the opposition against including the Social Charter in the treaty, had unilaterally secured

an opt-out from the Social Charter at the intergovernmental conference on the Maastricht Treaty instead of helping Portugal to water it down. Portuguese officials thought out loud about bringing the Working Time Directive to a Council vote in order to have it imposed on the United Kingdom in revenge (*Guardian* 1991a). British officials, however, thought that the Portuguese presidency, which, in fact, had opposed the proposal in its original form, would instead use its time in office to dilute the Working Time Directive considerably (*Sunday Times* 1991a; *Times* 1991a). In other words, Portugal's motivation, and whether it was going to advance the proposal or collude with the British government to dilute it, remained unclear. Consequently, its authority was widely questioned by other delegations.

Although the British general elections in April 1992 did not bring about the change in government that the proponents of the Working Time Directive had hoped for, they nevertheless seemed to turn the tide in favor of a swifter adoption. A reshuffling of the British cabinet brought Gillian Shephard into the position of employment secretary; she had a reputation for being more liberal and conciliatory than her Thatcherite predecessor (*Financial Times* 1992b). In that situation, Germany insisted that the Portuguese presidency rethink its plans to have the British government overruled in the Council in order to ascertain the possibilities for consensus (*Financial Times* 1992e; Press Association 1992). Instead of softening its stance, however, the British government became even more opposed to the Working Time Directive and considerably upset its cooperating partners.

This new opposition was triggered when in June 1992 the initial rejection of the Maastricht Treaty in a Danish referendum fueled Euroskeptic opposition by a handful of backbenchers in the House of Commons (Lamont 1999, 199).[2] The Portuguese presidency subsequently announced its willingness to make significant concessions to the British delegation. It suggested making the forty-eight-hour limit optional, including derogations for several industries, and providing the British with a ten-year grace period for the implementation of this directive (*Financial Times* 1992a, 1992c; *Times* 1992; *European Report* 1992b; *Financial Times* 1992f; Reuters 1992a). Upset by the failure of its conciliatory effort, the German government declared it was now prepared to vote for the Portuguese proposal in the Council even against the opposition of the United Kingdom (*Independent* 1992). France, however, found that the Portuguese presidency's compromise went too far in its effort to accommodate the British delegation. By raising a technical disagreement with Germany (*Guardian* 1992; *Financial Times* 1992d; *Europolitique* 1992), France managed to put off further negotiations in the Council and send the dossier back to the Council substructure.

As expected, the British government, which took over the presidency after Portugal, shelved the working directive during its term. The issue was only raised once over a working lunch, but simply to note that no progress was possible under the British presidency (*European Report* 1992a; Reuters 1992b). One might argue that the United Kingdom ignored the proposal not because other governments would not have trusted its judgment, but merely in order to stall the inevitable adoption of an unwanted legal act. However, as discussed below, the legislative text was not yet set in stone.

Accommodation (the Danish Presidency)

Denmark, which was in favor of the Portuguese compromise, immediately announced it was going to revive negotiations on the directive during its presidency (*Europolitique* 1993a). At an informal exchange of views in April 1993, ministers agreed that Denmark would begin to organize bilateral contacts with concerned delegations in order to be prepared to adopt the proposal after the ratification of the Maastricht Treaty (*Europolitique* 1993b). Immediately thereafter, the directive was indeed scheduled for adoption in June.

Shortly before this meeting, Euroskeptics within the Conservative Party demanded that the British government defy the directive outright if it was adopted (*Guardian* 1993b; *Independent* 1993a). In response, the Danish presidency decided that the Council's patience had been tested long enough and threatened to call a vote (*International Herald Tribune* 1993; *Sunday Times* 1993). The British government seemed satisfied with the concessions it had received and announced its willingness to enable a unanimous vote in the Council by abstaining from the decision (*Financial Times* 1993a). The Danish presidency subsequently proposed a compromise that, by and large, resembled the text previously proposed by the Portuguese presidency (*Guardian* 1993d). This time, however, all governments including France accepted the presidency compromise and adopted it as a common position with the United Kingdom abstaining. All that remained to be done for the directive to become EU law was for the European Parliament to voice its opinion and for the Council to adopt a final position.

Despite its abstention in the Council, the British government publicly announced its complete opposition to the proposal (*Daily Mail* 1993; *European Report* 1993a; *Financial Times* 1993c; *Guardian* 1993a). Prime Minister John Major openly accused the Commission of "muddle-headed meddling" (*Economist* 1993) and singled out the Working Time Directive as a prime example (*Times* 1993a; *Guardian* 1993c). Other member states considered Major's behavior a "misuse of goodwill" (Lewis 1998, 364) and tried to convince the British government to stop its inflammation of public anger, arguing that the United Kingdom had received adequate concessions (*Times* 1993b). They argued that

Britain would have ten years to implement the voluntary forty-eight-hour working week, and that many sectors—such as transport workers, those at sea, and junior doctors—remained exempt (*Independent* 1993b).

Sticking Together (the Belgian Presidency)

The European Parliament, dominated by a large socialist majority, was furious about the ample derogations in the directive and proposed a number of amendments to scrap them (*Herald* 1993a). The Commission agreed with the Parliament and endorsed most of the amendments changing the directive back to its original form. A qualified majority in the Council would have sufficed to adopt this new text, while the member states needed unanimity to reinstate the concessions to the British delegation against the will of the Commission (*Herald* 1993b; *Scotsman* 1993). In other words, a single member state would have sufficed to block a renewed accommodation of the United Kingdom.

And yet, the Council decided to stick to the concessions it had made. At the meeting of the Social Affairs Council in November, the Belgian presidency—which had favored the initial Commission initiative—proposed a compromise that scrapped most of the Parliament's contentious amendments and largely resembled the proposal that Portugal had presented a year and a half previously (*European Report* 1993c; *Financial Times* 1993b). Although some member states silently believed that Belgium was wasting an opportunity to get back at the United Kingdom for their ingratitude, they nonetheless deferred to the presidency's decision uncomplainingly (*European Report* 1993b). Thus, after three years of arduous negotiations, the Council definitively and unanimously adopted the Working Time Directive with the United Kingdom abstaining (Council of the EU 1993).[3]

The Working Time Directive was again brought back into the limelight after the European Court of Justice ruled in the so-called *SIMAP* case that on-call duty counted toward total working time (European Court of Justice 2000). Three years later, in its *Jaeger* judgment, the court ruled further that on-call duty in a hospital counted as working time even when the worker was allowed to rest when the services were not needed (European Court of Justice 2003). Meanwhile, the Working Time Directive was amended several times to extend its provisions to sectors that had been previously excluded.[4] Clearly, the Working Time Directive had some dramatic consequences that the member states did not foresee when they adopted it in 1993. Yet this need not concern us here.

Important for our purpose is that the case of the Working Time Directive illustrates how the informal norm of discretion operates in practice and how the member states determine the boundary between formal rules and informal

governance. The situation arose not because the Commission transgressed its mandate, but because it made full use of its formal power. In fact, it did precisely what standard agenda-setting models expect it to do: capitalize on conflicts among governments, and publish proposals that a majority in the Council could easily adopt.

However, the implementation of treaty objectives according to the book can quickly, as in this case, stir up unmanageable domestic recalcitrance that prompts a government to defy an imminent law. In the case of the Working Time Directive, the publication of the legislative proposal immediately generated strong resistance, in particular within the United Kingdom. British employers' associations feared excessive adjustment costs from the directive. The influential British Euroskeptics suspected that the Working Time Directive was only the beginning of a series of social regulations that would be imposed on the United Kingdom.

All member states agreed that it was necessary to accommodate the British government without any explicit quid pro quo in order to avert disruptions to the EU's smooth operation. This is, among other things, exemplified by the fact that the Council unanimously scrapped a number of amendments even though they were angered by the British government's actions and could have blamed the Parliament for the withdrawal of concessions. The final outcome thus included several derogations that were tailored to quell the British employers' recalcitrance.

In light of the cacophony of recalcitrant voices in the United Kingdom, however, the principal difficulty for the Council was to assess the type and severity of pressure on the British government. Hence, it was up to the six successive Council presidencies to determine the actual need for informal governance.

Contrary to the tenets of classical regime theory, the presidencies did not enjoy authority by virtue of their control of procedural prerogatives. Instead, and in line with our expectations, governments in charge of the presidency wielded authority only when they had nothing to gain from making concessions to the British government so that the judgment of the presidency could consequently be trusted. For example, instead of using its procedural power to manipulate the negotiations in its favor, as classical regime theory would have expected, the British government decided to shelve the dossier for the duration of its presidency. Critics might argue that the British government stalled negotiations simply to delay the adoption of an unwanted legal act. Though this might make sense toward the end of Council negotiations, it cannot explain why Britain ignored the proposal during its term even though there was still some room to negotiate changes to the proposal. The only plausible explanation seems to be that the British government expected other governments to thwart any attempt to use the presidential prerogatives to manipulate the negotiations in its favor. Similarly, the Portuguese presidency,

whose stance on the directive was ambiguous throughout its term, was unable to impose its authority. Instead, Germany did not go along with a proposed vote, while France refused to accept Portugal's presidency compromise.

Contrary to power-based institutionalism, the presidencies' authority did not depend on power asymmetries. Thus, two large and powerful states, Germany and France, accepted small Belgium's recommendation to reinstate the concessions to the United Kingdom. They consequently refrained from blocking the consensus that was necessary to reinstate these concessions despite the fact that they had previously rejected a similar compromise proposal from the less credible Portuguese presidency.

CONCLUSION AND EXTENSION

Why do governments carefully design formal rules only to depart from them repeatedly? What makes the EU and other international organizations work in reality?

The central argument of this book is that informal governance is critical for understanding not just how institutions work day to day, but, crucially, why they work and persist at all. Informal governance is the result of an informal norm of discretion among governments that prescribes that governments facing unmanageable domestic pressure to defy the rules should be accommodated. The resulting practices of informal governance, therefore, add a flexibility to the formal rules that permits the member states to keep the EU embedded in the societal interests it is based on.

Formal rules bolster states' commitments to cooperation by signaling their willingness to pursue the EU treaty's objective of deep economic integration. However, the patterns of societal interdependence that underpin the European institutions inevitably change in ways that were not foreseen. Situations are bound to arise where following the rules, although beneficial for a country as a whole, imposes concentrated adjustment costs on a group at the domestic level. A group thus affected will then mobilize against cooperation and pressure its government to renege on its commitment. We referred to this problem as *political uncertainty.*

Crucially, the defiance of an institutionalized commitment, whether in the form of obstruction or outright defection, harms all governments at once, even those whose interest groups are not suffering, because it creates doubts about the

commitment's credibility and, therefore, about one another's future cooperative behavior. For this reason, all governments prefer rules with added flexibility that avert the possibility of their institution's sustaining damage.

Political uncertainty, therefore, gives rise to an informal norm of discretion that prescribes that governments under unmanageable domestic pressure ought to be accommodated. It manifests itself in informal governance as states collectively depart from the rules in order to exercise discretion. However, the norm is vague and prone to abuse when the conditions that justify the accommodation of another government are not easily observable. Departures from what the rules stipulate, therefore, risk undermining the rules' credibility when there remain doubts about the legitimacy of the use of informal governance. To resolve this tension between formal commitments and informal flexibility, the member states consequently delegate the decision to adjudicate on demands for the accommodation of domestic pressures to a trustworthy government.

As a result, formal and informal institutional elements complement each other and sustain a deep level of integration that neither formal rules nor informal norms alone permit. This implies substantively that the European Union has been able to achieve and maintain the depth of economic integration *not only* because of its intrusive supranational institutions *but also* because informal governance allows the member states to flexibly tailor the costs of economic integration to what the domestic level is capable of bearing. Because the theory emphasizes what has been called the "liberal" insight in International Relations—that for international institutions to be effective, they constantly have to be reembedded in the changing interests and values of their members—we referred to it as *Liberal Regime Theory.*

Four tasks remain for this concluding chapter. The first is to summarize and evaluate the empirical evidence for and against Liberal Regime Theory and its main rivals. The second is to evaluate the theory's implications for the scholarship on European integration. The third task is to discuss the implications of this theory for the study of international organization more broadly. Finally, we finish by discussing the normative implications of our findings for European and global governance.

Summary and Discussion of the Findings

Although informal in nature, the norm of discretion has two distinct implications that can be observed. First, informal governance practices vary systematically over time and across issue areas with the extent of political uncertainty. Second, states delegate the authority to adjudicate on ambiguous demands for discretion

to a trustworthy political body. We then specified these general predictions for the context of EU decision making, multiplied their testable implications, and evaluated them in light of rival theories.

The evidence presented in this book largely confirms Liberal Regime Theory. Chapters 2 through 5 demonstrated that informal governance is not just random but varies systematically with the extent of political uncertainty across issue areas. Thus, informal governance is less notable in an issue area with exceptionally low political uncertainty—namely, the Common Agricultural Policy, which is deliberately designed to protect farmers from excessive adjustments. Since this exceptional level of protection makes the timing and extent of domestic pressure far more predictable than elsewhere, there is less demand for flexibility and, thus, less informal governance. In all other issue areas of economic integration, member states adopt practices that allow them to flexibly gain collective control of the agenda, accommodate governments facing excessive political pressure at home, and control the implementation of legal acts. As expected, the emergence and use of these practices is most often accompanied by conflicts between supranational actors, on one side, and the member states, on the other side, rather than among the member states themselves.

Chapters 6 through 8 evaluated the second hypothesis, which states that governments delegate the authority to adjudicate on ambiguous demands for discretion to a trustworthy agent. Applied to the context of the European Union, we expected that governments would delegate this task to the country holding the Council presidency and then compel it to drop legislative dossiers from the Council's agenda where this government's judgment cannot be trusted.

Once again, the findings largely support Liberal Regime Theory. We first demonstrated that the country holding the Council presidency is invested with several adjudicatory prerogatives as a direct result of the informal governance practices described earlier in the book. The negotiation of the Working Time Directive then illustrated how governments in charge of the presidency assess ambiguous demands for discretion. In this case, the member states were, in principle, ready to accommodate the British government when a Commission proposal threatened to impose high adjustment costs on British employers. Yet the cacophony of recalcitrant voices in the United Kingdom made it difficult to determine whether and to what extent special accommodation was necessary. As predicted, the member states refused to defer to the Portuguese presidency's assessment of the matter, because this government shared some of Britain's views and, therefore, faced an incentive to exaggerate its need for accommodation. Countries holding the presidency with no such conflict of interest, however, faced no difficulty in wielding adjudicatory authority in the Council. In short, the collective evidence suggests that the European member states have found a way to add flexibility to

the formal rules without undermining the credibility of the commitment that these rules embody.

To be sure, Liberal Regime Theory is not deterministic, and there are various phenomena that are difficult to square with its predictions. First of all, only a few observations concerning the implementation of EU laws, discussed in chapter 5, corroborate the theory. Contrary to the expectations of Liberal Regime Theory, the comitology system, which initially allowed the Council to flexibly determine the scope of delegation and the Commission's discretion, was increasingly codified to the extent that the member states started looking for other, more flexible ways to implement EU policies through agencies or national administrations. By distinguishing more clearly between legislation and implementation, this codification curtailed the member states' ability to flexibly alter measures that threaten to breed strong conflict at the domestic level. These developments are probably best explained by the European Parliament's capacity to twist the Council's arm by withholding their agreement to parts of the budget or to the extension of important EU laws.

In fact, the European Parliament quite often frustrated the member states' attempts to gain flexibility. This was most obviously the case in the implementation of policies, but it also occasionally managed to seize control of the timing of decisions as well of the Council's attempt to reduce the salience of an issue. Given that the recent Lisbon Treaty extended parliamentary involvement in legislation, the European Parliament is likely to continue to challenge the member states' quest for informal flexibility.

Finally, the evidence regarding the European Council is more in line with the predictions of Classical Regime Theory instead of Liberal Regime Theory. Although this extralegal institution allowed the chiefs of government to narrow the Commission's discretion by presetting the legislative agenda, they did so across the board and not, as predicted by Liberal Regime Theory, only in issue areas of high political uncertainty.

All things considered, however, the theory performs well. The member states' drive for informal flexibility in areas of political uncertainty turns out to be a very important factor in the EU's institutional development through the years.

Implications for the Study of European Integration

The book's findings have a number of implications for the study of European integration. As mentioned in the introduction, this book contributes to a debate between intergovernmentalists and neofunctionalists about supranational

autonomy. This debate has gone around in circles. Scholars in the neofunctionalist tradition, which sees supranational actors as the driving force behind continuous integration, cite various examples from the history of European integration, such as the rise in power of the European Court of Justice and the European Parliament, to demonstrate that supranational actors exploit control gaps to enhance their autonomy at the member states' expense. Intergovernmentalists, in turn, point to the fact that, given that the member states are the masters of the treaty, there are ultimately limits to supranational autonomy. Yet, while neofunctionalists have had difficulties generalizing from these cases, intergovernmentalists have failed to clearly specify where the limits of supranational autonomy lie.

This book seeks to reinvigorate the debate by providing a testable argument about the absolute limits of supranational autonomy. The member states assume collective informal control of the organization when supranational action threatens to generate unmanageable domestic pressure for the defiance of economic integration, which would ultimately prove disruptive for the EU as such. In testing this argument, this book demonstrates the pervasive nature of informal governance practices, most of which grant the member states far more collective control of the legislative process than the treaty provisions alone.

Against this backdrop, it seems necessary to reevaluate what we know about the EU's formal institutional development. The member states' institutional choices in the various treaty revisions can be properly understood only against the background of the existing mix of formal rules and informal governance. Thus, it seems probable that some member states were willing to extend the use of majority voting knowing that they would not be brought into situations in which EU laws would generate domestic conflicts. Similarly, some states' support of the European Parliament's empowerment may be due in part to its readiness to participate in informal trilogues with the Council and the Commission.

The insight about the pervasiveness of informal governance also has implications for debates about legislative bargaining in the EU. A large number of studies of EU politics approach the EU as a political system similar to that of its member states—namely, based on a stable set of formal rules that are constant constraints on the legislative actors' interaction. On that basis, so-called procedural models investigate how these rules affect who gets what out of the legislative bargaining. For that purpose, these models assume that the legislative actors consider only one another's actions and what they can achieve *within* these procedures. By implication, they ignore that each actor could, in principle, take actions *outside* the procedures by obstructing, delaying, or openly defying a decision, and that these actors, therefore, care about how such outside actions affect the value of their institution. Consequently, if we allow for the EU's legislative actors to take actions outside the formal rules, decision outcomes can no longer be predicted

merely from knowledge of those procedures and the legislative actors' preferences (similarly, McKeown 2009, 288). The analogy of the EU as a political system ceases to be useful in the analysis of EU politics.

The book's argument about the problem of political uncertainty points exactly to the limits of this analogy. The member states deal with the repercussions of political uncertainty by assuming informal control of the EU institutions in order to prevent the formal rules from creating disturbances in the domestic politics of collective action. Thus, to understand EU politics, it is necessary to look beyond official procedures to the member states' incentives to mitigate their effects on the domestic level. This argument is in line with the results of empirical tests of various formal models of legislative bargaining, in which procedural models perform quite poorly. The results suggest, as Chris Achen concludes, that "[however] decision-making is carried out, it does not seem well described solely by the formal rules. Informal norms and procedures appear to play a more central role" (Achen 2006a, 295; see also Steuenberg 2000, 370).

Against this backdrop, it is easy to see why, despite all progress in the field, the scholarship has such a hard time detecting traces of stable patterns in preference, cleavages, and coalitions within the Council and the European Parliament. This book takes the difficulty of predicting preferences as its starting point, arguing that, in a dynamic environment like this, situations are bound to arise where economic integration generates potentially disruptive conflicts at the domestic level. In order to relieve a government from unmanageable domestic pressure against the EU, the member states mitigate the formal rules' effect through informal governance. To be perfectly clear, this does not imply that these rules are not effective. On the contrary: precisely because the formal rules are so effective, they also harbor the potential of concentrating the necessary adjustments on a single group. And precisely because the rules' effectiveness is so beneficial to all the member states, they have an incentive to prevent one another from withholding compliance with them.

Having said that, this book does not pretend to be the final word on the topic of informal governance. I probably have only scratched the surface. Since the lack of systematic data is endemic to the study of informal governance, new material and refined measures of the variables of interest promise to offer further important insights. For example, a closer look at the Commission reveals that national influences on its internal politics are more important than one might have expected. This finding casts doubt on some prominent models of agenda setting, which assume that the Commission holds invariably strong preferences for high levels of integration (Garrett and Tsebelis 1996, 280). It seems fruitful to relax this assumption to investigate further the conditions under which the Commission acts independently of the member states, reacts

to national ad hoc influences of individual member states, or is responsive to collective demands on the part of the Council. As discussed below, research like this also promises to shed new light on debates about the so-called democratic deficit of the EU.

For reasons of scope and feasibility, this book also confined its focus to the lawmaking stage, thus neglecting the enforcement of EU laws through the European Court of Justice and domestic courts. As argued in the introduction, the fact that the EU's legal system is based on a general consensus on its extraordinary usefulness, and not on a central monopoly of violence, makes it even more necessary for the member states to sustain this belief and eliminate any reason for noncompliance at the earlier stage, when laws are being made. Still, the practices surrounding the EU's legal system are another promising path of research, not the least because some of the European Court's judgments that curtailed the power of trade unions or opened collective goods such as the national education system to other EU citizens have been highly controversial and raised doubts about this system's democratic legitimacy (Scharpf 1999, 61).

Implications for the Study of International Organizations

The theory of informal governance is not limited to the European Union. Certainly, the European Union is an international organization unlike any other. There is hardly another organization in the world with an equally rigid legislative process and legal system. However, these are differences in degree, not nature. The European Union, just like any other international organization, is based on a set of international treaties. It can persist only when the effects of EU laws constantly regenerate the member states' interests in adhering to them. This book, therefore, proposes a new way of thinking about how international organizations work and why they persist in a dynamic environment.

Three aspects of Liberal Regime Theory determine its generalizability: patterns of interdependence, rigid formal institutions, and governments' vulnerability to domestic pressure.

The situation described in this book is one of high interdependence where all states depend on one another's cooperation in the pursuit of their interests. Their cooperation, however, depends on the EU's capacity to induce compliance with its rules. Consequently, all member states have a strong incentive to prevent one another from weakening this capacity by withholding compliance. If the gains that the institution helps states to reap were negligible, they would not be ready to accommodate one another in order to maintain the institution's strength.

A first empirical proposition that follows is that, everything else being equal, high interdependence that entails great benefits from cooperation is conducive to the development of a norm of discretion among the members of an international organization.

This discussion about patterns of interdependence raises the question of how the theory relates to power. One might object that the member states' interdependence in the EU is not very symmetric in the sense that small states are more dependent on the cooperation of large states than the other way round. In monetary policy, for example, most Eurozone members depend far more on Germany's willingness to participate in the system than Germany depends on the participation of others in the Eurozone. Under these circumstances, Randy Stone (2011, 118–20) argues, Germany as the dominant state with viable outside options to the Eurozone may use informal governance procedures to assume control of this policy. This is certainly true in monetary policy, but less so in other issue areas. In most other policy areas, especially those related to the Single Market, staying outside is not a viable option for any member state, not even for Germany, and the threat to leave the Single Market is hardly viable. Put differently, political uncertainty in situations characterized by asymmetric interdependence stems from the uncertainty about a large state's true commitment to an international organization. In situations characterized by more symmetric interdependence, however, political uncertainty stems from uncertainty about each state's vulnerability to domestic pressure. In both cases, states will use informal governance in order to accommodate the disruptive force before it damages their cooperation.

Political uncertainty is consequently the second aspect that defines Liberal Regime Theory. As we defined it, political uncertainty, which gives rise to the norm of discretion, describes the unpredictability of governments' time-inconsistent preferences. For example, the "apple wine" case in the introduction to this book illustrated how a localized distributional shock in a remote German region suddenly turned into excessive domestic pressure to defy an imminent EU law. Because it is determined by groups' capacity for collective action as well as governments' susceptibility to domestic pressure, factors that alter these variables and consequently reduce political uncertainty, everything else being equal, should also alter the demand for a norm of discretion. This book took advantage of the fact that the Common Agricultural Policy to some extent operates like social insurance mechanisms: it shelters farmers from unexpected adjustment costs and consequently reduces this group's incentives to mobilize in response to a distributional shock. It seems worthwhile to assess whether member states with generous welfare systems, all else being equal, are less likely to be accommodated through informal governance than those without.

The third and final aspect that determines Liberal Regime Theory's generalizability is institutional rigidity. Recall that in the case under study, rigid rules enable a level of economic integration that bestows tremendous benefits on the member states so that all of them have an incentive to preserve the rules' effectiveness. An empirical proposition that follows is that a strengthening of formal commitments, everything else being equal, increases the value of the institution and, therefore, the demand for a norm of discretion that protects it. One case in point is arguably the Dispute Settlement Understanding of the World Trade Organization. It has undeniably more teeth than its predecessor, yet about two-thirds of all initiated disputes are settled informally "out of court" (Busch and Reinhardt 2000–2001). From the perspective of Liberal Regime Theory, this informal governance is due to an implicit understanding among governments that it is in everyone's long-term interest to accommodate a member under intense pressure for protection where a panel, bound by the principles of legal reasoning, is unable to authorize such concessions for domestic political reasons.

In addition to predicting patterns of informal governance, the theory also offered insights about how states determine the limits of their formal commitments. To determine whether formal rules apply or whether informal governance is pertinent in a specific situation, the member states delegate the authority to adjudicate on demands for informal governance to a government they can all trust (Kleine 2013). This second implication of Liberal Regime theory sheds new light on the information-providing role of institutions. Students of (international) cooperation typically analyze whether and how institutions enable cooperation by increasing the level of information about actors' prospective or current *rule-following* behavior (Weingast 2002, 673; Keohane 1984).[1] In more dynamic settings, however, where it is sometimes necessary to depart from the official procedures in order to sustain cooperation, actors also require "extra-model" information (Svensson 2002, 23) that permits them to assess whether a *rule departure* is justified in a specific context. Yet how states elicit that kind of contextual information is a question that has so far received surprisingly little attention (Tomz 2007, 30; Pelc 2009, 350). Against this background, it would be interesting to investigate the role of rotating presidencies in other international forums, such as the G-20 or the United Nations Security Council, looking at whether and how they determine and signal the need to accommodate a particular state through informal governance.

More generally, this book has sought to go beyond the static character of many institutional analyses to offer a dynamic theory of cooperation, which takes as its starting point that the societal patterns that underpin an institution often change in unpredictable ways. For an institution to remain effective under these conditions, states constantly have to adapt it to its changing environment.

Consider how a dynamic perspective reveals a new layer of delegation problems. In the standard view, the act of delegation defines states and international organizations as parties in a principal-agent relationship. The major problem is then for the principal to prevent the agent from transgressing its preset discretion. However, if we consider the environment of this relationship to be inherently dynamic, there emerges another, potentially more severe problem. Rather than preventing a "runaway" international organization from overstepping its discretion, there will be situations in which states need to prevent the organization from doing exactly what it is supposed to do. In other words, states need to make international organizations *responsive* to their changing collective interest without compromising the organizations' credibility. This brings us to the book's normative implications.

Normative Implications for European and Global Governance

The informal governance practices described in this book may confirm some suspicions that European integration, and global governance more broadly, are secretive and elitist projects. Governments adhere to norms that are not put into writing, and unelected officials prepare decisions in informal committees that accompany every stage of the EU's legislative process. International organizations, skeptics charge, exclude the public and lack the transparency necessary to hold decision makers accountable. Similar charges can be heard in the very advanced debate about Europe's "democratic deficit." Somewhat counterintuitively, this book argues that informal governance, on the contrary, enhances the EU's legitimacy by incorporating important interests into the legislative process that would otherwise be ignored.

Let us briefly review the state of the debate. At least since the rejection of the Treaty of Maastricht in a Danish referendum in 1992, it has become a commonplace to say that the European Union suffers from a "democratic deficit"—a term that has become a placeholder for a variety of factors that alienate citizens from EU politics.

In a widely cited article, Andrew Moravcsik defends the EU's "democratic deficit" as necessary for the EU to work. If judged according to reasonable standards for democratic governance, and not abstract normative criteria, he maintains, the EU is not less democratic than its member states (Moravcsik 2002, 605). Yes, the member states deliberately remove decisions from participation by delegating decisions to nonmajoritarian institutions. However, there is nothing special

about this. The delegation of authority to unelected bureaucrats is a common practice in member states as well, because it facilitates the production of public goods by enabling governments to commit credibly to a certain policy and to elicit policy-relevant expertise (similarly, Majone 1994). According to Moravcsik, the member states delegated authority to the EU in precisely those areas where citizens want the EU to have authority and where many advanced industrialized states, including the EU member states, typically insulate decision making from direct political contestation anyway (Moravcsik 2002, 613).

Andreas Follesdal and Simon Hix disagree. The European Union, they surmise, could still be more legitimate and efficient if it allowed for more democratic contestation. According to them, the lack of contestation is, therefore, the root of the "democratic deficit." In domestic political systems, elections provide opportunities for the public to signal their preferences to politicians, and to oust politicians from office who do not act in the public interest (Fearon 1999). The election mechanism renders politics more representative of the general public, since it allows citizens to signal their will, and a responsive government will implement their instructions to generate outcomes that are closer to what the public wants (Manin, Przeworski, and Stokes 1999, 10–12). Against this backdrop, Follesdal and Hix argue that more opportunities for political contestation at the EU level promise to draw citizens' attention to the EU's hidden distributive effects and, as a consequence, make currently apathetic voters aware of the EU's significance for their everyday life. Having come to this realization, citizens will form meaningful views about the EU's general direction, to which politicians will become more sensitive (Follesdal and Hix 2006, 546). Put differently, democratic contestation promises to make the EU more *responsive* to, and therefore more representative of, citizens' interests (Hix 2008, chap. 3).

The main bone of contention between Moravcsik, on one side, and Follesdal and Hix, on the other side, concerns the question whether the EU meets the conditions for meaningful participation in democratic contestation (Moravcsik 2008). The EU, Moravcsik contends, deals mainly with issue areas such as consumer protection and environmental regulation that are plainly boring in the eyes of the public. In these issue areas of low saliency citizens are rationally ignorant, which means that they cannot be expected to make the effort to reach an informed decision and deliberate in a meaningful way (Moravcsik 2002, 615). Follesdal and Hix, however, find that there is nothing inherently "boring" about EU politics. Its low saliency in the eyes of EU citizens is merely a function of the EU's political process that denies citizens the opportunity to become interested in these matters.

I agree with Follesdal and Hix that responsiveness is a key issue in the debate about the EU's democratic deficit. For international institutions to remain

legitimate they constantly have to be reembedded in its context, which consists of the interests and values of the member states' societies; thus, when an institution's context changes, the institution has, to some extent, to adapt with it. I also agree that the low saliency is largely the result of the EU's political process, especially its informal governance, which effectively depoliticizes EU politics when it threatens to generate strong distributive conflicts at home.

I disagree, however, with the diagnosis of the EU's democratic deficit and Hix and Follesdal's remedy for it. Even if Hix and Follesdal were correct in their analysis and the EU lacked responsiveness, it is not guaranteed that democratic contestation would render the EU or any other international organization more responsive. Democratic elections put a majority in power and, conversely, skew politics for the duration of a legislative period systematically against a minority of the population. In national political systems based on a thick common identity and a central monopoly of force, minorities accept this temporary bias knowing that they might get the chance to wield power after the next election. In the EU, however, it is far-fetched to believe that a substantial part of the population would put up with an EU that is systematically biased against it, even if the next election might turn this bias in their favor. Is it conceivable that, for example, a British Conservative government would continually defer to the decisions of a socialist EU leadership? Would it not systematically obstruct decisions and compliance with EU laws, if not leave the European Union completely? In other words, instead of making it more responsive, democratic contestation is likely to render the EU inherently unstable.

Yet, and more important for the purpose of this book, I disagree with the diagnosis and contend that the EU is already far more responsive than Follesdal and Hix suggest it is. Recall that the member states collectively accommodate governments that are under intense pressure by domestic groups facing immense adjustment costs from economic integration. This implies that, while the EU's legislative process commits its member states to the deepening of economic integration, informal governance brings into the EU's legislative process those who are most immediately affected by EU politics. The EU is therefore responsive to important voices that would otherwise be ignored. Thus, the argument can be made that informal governance has so far allowed the EU to maintain a level of legitimacy that is necessary for it to continue to exist.

Notes

INTRODUCTION

1. To avoid confusion, the terms "European Union" (EU) and "European Community" or "European Communities" (EC) will be used interchangeably. Strictly speaking, however, the three European Communities used to be legally separate entities with a shared set of supranational institutions, while the EU used to be a legal umbrella that encompassed both the supranational EC and other "intergovernmental" policies, namely Justice and Home Affairs and the Common Foreign and Security Policy. The Treaty of Lisbon merged all supranational and intergovernmental policies in a single entity, the EU.

2. On constitutionalism beyond the state, see also, e.g., Maduro 2003, 81–86, and Dunoff and Trachtman 2009, 10.

3. Maduro (2009, 367) describes the difficulties of a court's adjudicatory role in a pluralist legal order.

4. To be perfectly clear, this is not to say that economic integration in Europe does not generate any structural changes and distributive conflicts. The argument implies, however, that EU governments seek to minimize the concentration of adjustment costs from structural changes at the domestic level to avert conflicts that would otherwise prove disruptive for the remarkable level of economic integration among them. The norm of discretion is therefore similar to what Ruggie (1982, 399), drawing on Polanyi (1944), called *embedded liberalism,* the essence of which is "to devise a form of multilateralism that is compatible with the requirements of domestic stability. Presumably, then, governments so committed would seek to encourage an international division of labor which, while multilateral in form and reflecting *some* notion of comparative advantage (and therefore gains from trade), also promised to minimize socially disruptive domestic adjustment costs as well as any national economic and political vulnerabilities that might accrue from international functional differentiation."

5. This accumulation of autonomy was initially regarded as a quasi-automatic process of spillover, where integration in one field generates a demand for further centralization in another (Haas 1961, 368).

6. Pollack (1997, 110) argues that supranational agents' autonomy is a function of the effectiveness of member states' control mechanisms. The literature is too vast to be cited in extenso. For a recent review, see, e.g., Sandholtz and Stone Sweet 2012.

7. It thus sympathizes with a pluralist view of international law that emphasizes the empirical and normative limits of legal supremacy. See, e.g., Krisch 2010 and, for an overview, Michaels 2009.

8. This book therefore goes back to the original definition of regimes as explicit and implicit norms and rules that govern interaction (Krasner 1982, 185). Norms are standards of behavior defined in terms of rights and obligations. Rules are specific proscriptions and prescriptions of actions.

9. Helmke and Levitsky (2004) provide a good overview of the various roles of informal institutions.

10. The most prominent of these agency problems are shirking, which occurs when an agent minimizes her effort, and slippage, which refers to situations in which the agent shifts a policy away from the principal's ideal point.

11. For an application of the principal-agent approach to European studies, see Pollack 2003b.

12. An institution in the functional sense is Pareto-improving: it is an equilibrium for which there is a possible counterfactual situation that leaves at least one actor worse off, and no actor better off. Thus, all institutions are equilibria, but not all equilibria are necessarily institutions.

13. This problem is also referred to as "equifinality" (King, Keohane, and Verba 1994, 87).

14. Alas, recent regulations to improve the transparency of decision making in the EU did not result in a greater availability of information, since intergovernmental debates about sensitive issues now often take place over lunch where no minutes are taken.

15. The open and hotly debated empirical question is therefore not whether but rather to what extent the various ways of withholding compliance constrain both the making and the enforcement of EU law. See Carrubba, Gabel, and Hankla 2008, 439. Legal scholars have long realized that the ECJ's threat of enforcement is not absolute. As Alec Stone Sweet and Thomas Brunell (2010, 29) remark: "Every scholar in the field assumes that the Court pays attention to the legal positions of the [member states], and everyone agrees that the Court cares about compliance with its rulings." See also Stone Sweet and Brunell 2012; cf. Carrubba, Gabel, and Hankla 2012.

16. The Common Agricultural Policy is also an expenditure policy. Regulatory policies are listed in part III of the Treaty on the Functioning of the European Union.

17. Other policies excluded for this reason are employment; the Social Fund; education and vocational training; youth and sports; culture; research, technology, development, and space; tourism; civil protection; and administrative cooperation.

CHAPTER 1

1. Defection is more costly when these policy instruments are not perfect substitutes (Copeland 1990, 86).

2. Thus, it would not make sense for governments to keep an agreement to themselves on, for example, the liberalization of state-owned industries, since the codification of this agreement can be expected to encourage investment in this sector (Maggi and Rodriguez-Clare 1998, 576–77). Mitra (2002) argues that inefficiencies arise from fixed lobbying costs. On the signaling function of institutions, see also Mansfield, Milner, and Rosendorff 2002, 480; and Thompson 2006.

3. I therefore use the term "uncertainty" instead of "risk". Uncertainty is the possibility that a strategy yields more than two outcomes. Economists, therefore, draw a distinction between predictable risk and (Knightian) uncertainty. For a discussion of the relevance of this literature in International Relations, see Wendt 2001, 1029–32.

4. Given that there are countless ways to influence trade flows across borders, there are also multiple obvious and hidden ways for governments to cater to these demands. See, e.g., Kono 2006, 370.

5. On systemic uncertainty, focusing on shocks to the distribution of gains between states, see Koremenos 2005, 550.

6. The "efficient breach" literature (e.g., Posner 2002; Goetz and Scott 1977) in law and economics points out that it is socially efficient to break a commitment and compensate for damages when a party would incur greater losses from performing under the contract. This study differs from the literature in that cooperating partners sustain damage not only because of forgone gains from trade or injury to domestic industries. It's important to note that all governments face costs when unauthorized noncompliance reduces the value of the institution. All of them, therefore, have an incentive to authorize defection even without compensation.

7. For a general discussion of the limits of legal authority, see Raz 1979, 31–32.

8. To be sure, courts develop legal norms through practice. In the WTO, for example, the doctrines of *in dubio mitius* and *non liquet* govern the interpretation of WTO arrangements. However, the point of law is to provide legal certainty and, therefore, to interpret legal norms in a consistent way. This inhibits the optimal provision of flexibility in our case.

9. To be sure, the resulting practices of informal governance will not remain undetected. Yet their purpose will not be obvious to private actors. Informal governance, therefore, still conveys less information beyond the realm of cooperating governments than codified rules.

10. The theory does not address the question of whether governments adopt informal governance practices deliberately. In fact, in the case under study, some practices were explicitly adopted to make the rules more flexible, while other practices had emerged before for other, adventitious reasons and subsequently acquired an additional purpose. My goal is not to provide a theory of institutional design, but rather to explicate their flexible adaptation to a dynamic environment. More relevant than their origin is, therefore, the fact that informal governance practices persist because they help states solve cooperation problems.

11. Similarly, Rosendorff and Milner (2001, 835) argue that the authorization of defection is made conditional on the payment of an "optimal penalty, one that balances the need for as much cooperation as possible, while allowing for some flexibility in times of domestic political pressure."

12. In this model, the payment of a penalty acts as a signal of the country's intent to cooperate in the future. This information preserves the country's reputation as a cooperator "in normal times". The Dispute Settlement Procedure consequently enhances the stability of the institution by making it more flexible.

13. But see the critique in Pelc 2009.

14. Helmke and Levitsky (2004, 729) refer to this relationship between formal an informal rules as "accommodating."

15. Koremenos (2005, 555) codes all trade agreements as issue areas of high uncertainty. However, her substantive interest lies in uncertainty about the systemic distribution of risk. Political uncertainty, however, is about the domestic politics of collective action and, therefore, has to take domestic institutions into account.

16. Ideally, this proxy covaries with political uncertainty (and thus reflects the value of this variable) but is itself exogenous to the norm of discretion. Quantitative studies refer to such proxies as "instrumental variables." For an innovative example, see, e.g., Acemoglu, Johnson, and Robinson 2001, 1370.

17. This argument draws on the so-called compensation hypothesis (Cameron 1978, 1249–51; Katzenstein 1985, chap. 2; for empirical evaluations, see, e.g., Rodrik 1998, 998; Kim 2007, 193–210; Mukherjee and Singer 2010), which states that welfare provisions enable economic openness because they compensate for short-term dislocation and thus reduce domestic opposition to trade.

18. One might object that welfare provisions are themselves endogenous to an issue area's inherent political uncertainty, in which case the existence of welfare provisions would indicate a high instead of a low level of political uncertainty. However, the origin of welfare provisions usually lies in factors other than a country's move toward greater openness. As I will argue in chapter 2, there is little variation across the EU member states in the level of protection provided by the Common Agricultural Policy. For a discussion of endogeneity problems in the study of flexibility see Kucik and Reinhardt 2008.

19. Similar models exist for decision making in the U.S. Congress (Krehbiel 1991), conflict mediation (Kydd 2003), and international organizations (Fang and Stone 2012).

20. Dai (2002) develops a model in which international institutions elicit information by providing incentives for noncompliance victims to do the job for them. The same logic can be expected to hold for public or private "compliance victims" that face concentrated adjustment costs.

21. Since large states usually command a higher GDP, the terms "large," "powerful," and "dominant" are used interchangeably.

22. In the political context, transactions can refer to exchange of support (monetary, political, and so forth) among private or public actors. The seminal application in International Relations is Keohane 1984; see also Koremenos, Lipson, and Snidal 2001a; and Hawkins et al. 2006.

23. Henry Farrell and Adrienne Héritier (2007, 232) condense these insights into a theory of informal, "interstitial" change, in which they explore under what circumstances supranational actors assert a reinterpretation of the treaty in their favor.

24. Constructivists rightly point out that this perspective omits the actual process of norm formation. Thomas Risse (2000, 6), among others, argues that informal norms develop as a result of deliberation, that is, processes in which actors seek to attain a Habermasian reasoned consensus on an ambiguous issue that is consistent with the idea of a common good (Joerges and Neyer 1997; Risse and Kleine 2010).

CHAPTER 2

1. In 1965, it was institutionally merged with the European Coal and Steel Community and Euratom (the European Atomic Energy Community) to form the European Community (EC).

2. The concepts common market, single market, and internal market are used interchangeably in this book as well as in the EU. See Gormley 2002, 519.

3. If not otherwise noted, all references to treaty articles refer to the Treaty of Rome, which established the European Economic Community. It is available at http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf.

4. This "persuasiveness" is often referred to as "informal agenda setting" (Pollack 1997, 124–28). Neofunctionalists (Haas 1963, 65) emphasize the crucial role of the Commission and other supranational institutions in the centralized provision of independent, technocratic expertise in managing European economies.

5. Majority voting was introduced stepwise until 1970 and then gradually extended to cover ever more articles. A majority vote has to be "qualified" in the sense that it has to pass several majority thresholds. Under the current system, a qualified majority vote comprises (1) the majority of countries (50 %); (2) the majority of proportional voting weights (74%); and (3) the majority of the population (62%). From 2014 on, a qualified majority vote comprises (1) the majority of countries (55%); (2) the majority of the population (65%).

6. On some matters, the Council is also supposed to consult the Economic and Social Committee as well as the Committee of Regions.

7. Today, the Court of Justice comprises three individual courts: the Court of Justice proper, the General Court (formerly the Court of First Instance), and the Civil Service Tribunal.

8. According to Garrett and colleagues (1998, 151), the European Court of Justice consequently has to strike a delicate balance between a uniform legal interpretation of the law and the seeking of continuous support of the member states and national courts for this legal system. As discussed in the introduction to this book, the extent to which these aspects constrain lawmaking and Court judgments is an empirical question.

9. The literature is too vast to be cited in extenso. See e.g. the discussion in Pollack 2003b, 35–39, n14. Simon Hix and colleagues (2007, chap. 3) argued that the left-right dimension has become increasingly important in the European Parliament. It should be noted that policy dimensions is an abstract concept that is not the same as cleavages

or conflict lines, which describe the differences in actors' revealed preferences (i.e., their actual positions).

10. Evans (1993) finds there is generally little evidence for incomplete information in two-level game situations.

11. Shepsle (1979) develops a formal model of a "structure-induced equilibrium" under conditions of collectively intransitive preferences.

12. This ties the argument to the informational literature on the organization of the U.S. Congress, the empirical implication of which is that committees are structured to increase the availability of policy-relevant expertise. The seminal work is Krehbiel 1991.

13. Weingast and Marshall (1988) argue that the demand for the enforcement of political transactions explains why Congress is organized like a firm rather than a market. Specifically, they argue that the demand gives rise to committees and their rights to set the congressional agenda. In the EU, however, there is no institutional structure that would serve a similar function. It is therefore unlikely that the trading of votes can be enforced and, thus, that the trade can take place.

14. As David Mayhew argues for the U.S. Congress: "We can all point to a good many instances in which congressmen seem to have gotten into trouble for being on the *wrong* side in a roll call vote, but who can think of one where a member got into trouble for being on the *losing* side?" (Mayhew 1974, 118).

15. The domains are as follows: the first (transitional) period spans from the inception of the European Economic Community in 1958 to 1969, the year in which transitional provisions in the Treaty of Rome became fully effective. The time period also included the Merger Treaty of 1965, which merged the institutions of the then three communities. The 1987 Single European Act marks the end of the second time period. A third period reaches until the entering into force of the Treaty of Maastricht in 1993. The fourth period spans from the Treaty of Maastricht to the Treaty of Amsterdam and the 2001 Intergovernmental Conference on the Treaty of Nice, both of which prepared the Community Method for the looming "big bang enlargement." The final period focuses on the years from the Nice Treaty until the entering into force of the currently effective Lisbon Treaty in 2009.

16. The literature on the Common Agricultural Policy is too vast to cite in detail. For a good analysis of the obstacles to reform, see, e.g., Patterson 1997 and Keeler 1996.

17. Another argument against using the Common Agricultural Policy as a proxy for political uncertainty is that the unpredictability of weather, crop failure, and world prices makes agriculture an inherently risky issue area that requires protection to enable investments. But this is only partly true. It is a well-established fact that the level of protection in industrialized countries goes far beyond what can be considered efficient. In fact, the level of protection is inversely correlated to the size of the sector, which suggests that this level primarily depends on farmers' capacity for collective action (Olson 1985, 933). In other words, the costs of protection in the agricultural sector in the EU and elsewhere are clearly economically inefficient and outweigh the benefits to the society as a whole. For a good review of the political economy literature and a test of its propositions, see Thies and Porche 2007.

18. It is notoriously difficult to measure the importance of the agricultural sector for the economy, since many other foodstuff sectors (sectors processing food, restaurants, retailers, and so forth) indirectly depend on it. According to recent statistics, France's agricultural sector is still the most productive within the EU. Furthermore, the share of agriculture in the GDP of France is higher than in other large, industrialized member states. See European Commission 2012, 50, 57, and 59.

19. One might mention the 1965 "empty chair crisis" cited below, during which Charles De Gaulle withdrew French officials from the EU institutions; the French vetoes of British accession in the 1960s; the budget crisis of the 1980s; the BSE ("mad cow disease") crisis in the 1990s; and the disputes related to Eastern enlargement in the 2000s.

CHAPTER 3

1. This idea builds on very early functionalist writings (Mitrany 1943) as well as the so-called Schuman Plan (Schuman 1950) to integrate the European nation-states in the strategically important coal and steel industries.

2. On the evolution of the European Council in the 1970s and '80s, see, e.g., Morgan 1976, Johnston 1994, and Bulmer and Wessels 1987.

3. The 1977 London Declaration acknowledged the European Council's broad scope. It states that it "will sometimes need…to settle issues outstanding from discussions at lower levels" (Conseil Européen 1977).

4. For example, the Commission kept few records of the consultation of government experts. The situation is, as the Commission (2000, 16) itself observes, confusing and opaque. It is consequently difficult to distinguish clearly between governmental and nongovernmental experts, or experts involved in the drafting of proposals and the implementation of decisions. See Rometsch 1999, 321–31. There are also few data on the reliance on government expertise across issue areas, given that the Directorate Generals were regularly restructured to fit the portfolios of a growing number of Commissioners.

5. According to Leon Lindberg (1963, 56), 117 such expert groups already existed in 1960.

6. Lindberg (1963, 284) welcomed this practice as a form of "informal co-optation" while authors such as Miriam Camps (1958, 4) and David Coombes (1970, 95) regarded this practice as a threat to the Commission's independence.

7. Wessels (1990, 233) reports the consultation of 10,381 government experts in 1975 and 15,652 in 1985 for the preparation of Commission proposals. Other unofficial sources exceed these numbers (Azzi 1982, 100; Pag 1987, 471; and Erhardt 1983, 61).

8. Another official report (Hay 1989, 28) counts 150 expert group meetings per week in 1989. Four years later, the Commission (Commission des Communautés Européennes 1992) discovered no less than 635 different expert groups.

9. Some departments, such as Agriculture and, increasingly so, Competition and Enlargement, were less constrained than others. On the Directorate General for Agriculture, see Swinbank 1997, 70.

10. The data do not distinguish between government and scientific experts, and not all experts are actually registered with the Commission.

11. It is difficult to compare the numbers to previous years, since the staff grades have been changed. The numbers here refer to the three highest grades, A16-A14. See European Union 2011, 1222.

12. Few studies have so far theorized change in the power over the timing of a proposal, which is probably due to the fact that few models allow for preferences changing over time. On the basis of the assumption that time is a scarce resource, more attention has been paid to the power to delay a decision (Kardasheva 2009).

13. On its end, the Parliament could choose to accept the Council's common position, propose amendments (conditional on the Commission's endorsement), or reject it. A unanimous Council could still change and adopt the proposal even against Parliament's will (Dehousse 1989, 123). The Parliament recognized this loss, noting that the capacity to delay is an important weapon where an urgent matter is concerned but Parliament cannot use it during the second reading since it must then meet a three-month deadline (European Parliament 1988, 15).

CHAPTER 4

1. For a good introduction to practices in the Council, see, e.g., Hayes-Renshaw and Wallace 2006; and Westlake and Galloway 2004; for the European Parliament, see Corbett,

Jacobs, and Shackleton 2005; and Judge and Earnshaw 2008. Jeffrey Lewis (2005, 943) argues that the norms in the Council are the result of processes of socialization, to which dense institutional settings such as the Council are particularly conducive.

2. For an early description of this practice, see Noël 1963, 21; and Bähr 1963, 92–100. COREPER was divided into two parts with equal rights.

3. The B/A ratio fell dramatically during the decade from about 1.4/1 in 1964 to 0.6/1 in 1969 (data drawn from the Council of Minister's archives [CM2]).

4. The German term *Ständige Vertreter* (permanent representative) was perverted into *Ständiger Verräter* (permanent traitor [of the treaty's spirit]). See Bähr 1963, 64.

5. COREPER did not discuss agriculture unless it strongly affected other policies (Neville-Rolfe 1984, 208).

6. Own data on A and B points drawn from CM2 archives.

7. For example, Luns (quoted in Kranz 1982, 418) admitted to the European Parliament that "we nonetheless [despite the empty chair crisis] took numerous votes." According to an unofficial statistic (Torrelli 1969, 86), majority decisions were taken in 10 percent of the cases formally subject to majority voting. However, De Ruyt (1989, 116) speaks of only six to ten majority decisions between 1966 and 1974.

8. Dewost (1980b, 293) acknowledges that the observed trend mainly took place in the Common Agricultural Policy and the Common Fisheries Policy, and to some extent in the Common Commercial Policy (Ungerer 1989, 98). Because the Common Fisheries Policy is partly funded through the Common Agricultural Policy, the Council often discusses both policies together.

9. The Single European Act also added several escape clauses to guarantee that governments' interests would be adequately protected (Dehousse 1989, 118–21). At the same time, the Council began in December 1989 to asterisk those items on the agenda for which the treaty provided majority voting (Westlake 1995, 134).

10. For example, data provided by the German permanent representative (Ungerer 1989, 98; European Communities 1988) at the time show that the total number of majority decisions in fact fell from ninety-six in 1987 to seventy-eight in 1988 to sixty-one in 1989 (Engel and Borrmann 1991, 147). Data for the years 1990–1992 are unfortunately not available.

11. However, Mattila (2009, 846) finds that this might have changed with the accession of the new member states in 2004.

12. Discriminating between policy areas is extremely difficult, because it is quite normal for the Council to rubber-stamp decisions that are entirely foreign to its specific jurisdiction if an agreement on this matter has already been reached in the Council substructure. Thus, the Council of Ministers of Transport would adopt as an A-point a legal act on the environment that technically belongs to the jurisdiction of Ministers of the Environment.

13. In fact, the member states established yet another layer of government experts. The so-called Antici Group coordinates meetings of the European Council and the Permanent Representatives. The Mertens Group coordinates meetings of the deputy permanent representatives (Westlake 1995, 293; de Zwaan 1995, 100).

14. Compulsory aspects mainly concerned agriculture spending and financial obligations to third countries, which accounted for about 80 percent of the budget. The European Parliament's power over the compulsory aspects of the budget was minimal: it suggested modifications to a Commission proposal, which the Council could easily scrap by a qualified majority. For noncompulsory expenditure, Parliament could reject the budget in toto, in which case a version of the previous budget would come into effect and the procedure would start all over again.

15. The seeds for this development had been sown with the establishment of the EU's system of "own resources" (consisting of tariff revenues and member state contributions) and, with the 1970 Treaty of Luxembourg and the 1975 Treaty of Brussels, an increase of Parliament's budgetary powers (Jacobs, Corbett, and Shackleton 1992, chap. 12).

16. The European Parliament has made limited use of its prerogative to reject proposals. It has succeeded in doing so in only seven cases. See European Parliament 2009b, 165.

17. This is one of the reasons why its actual implications for the interinstitutional balance of power have been subject to hot academic disputes. See the debate in Tsebelis 1994; Garrett, Tsebelis, and Corbett 2001; and Crombez, Steunenberg, and Corbett 2000.

18. Parliament also changed its internal rules of procedure in 1994 so as "to bring additional pressure to bear on the Commission to accept parliamentary amendments" (Westlake 1994b, 93–94; see also Judge and Earnshaw 2008, 48).

19. As a member of the European Parliament explains, "In theory the Council is meant to wait for the European Parliament's opinion in the first reading before working on its common position. In practice, the Council working groups tend to operate in parallel with—but separately from—the European Parliament, and much of the detailed work has often been carried out before the European Parliament has completed its first reading" (European Parliament 1998).

20. Similarly, two close observers of the European Parliament, Michael Shackleton and Tapio Raunio (2003, 185), warn that "if trilogues become generalized as the normal way of doing legislative business, it would be difficult not to conclude that Parliament was becoming something akin to [a member state], accepting the kinds of norms and rules that apply in the Council."

CHPATER 5

1. The Council could then change the Commission's decision again by a qualified majority. On the origins and decision-making practices of these committees, see Nielsen 1971, 551–53.

2. This interpretation is contested. See Kortenberg 1998, 319.

3. The Court defined the terms "implementation" and "specific cases" very broadly in Case 16/88, *Commission v Council* (Spence and Edwards 2006, 251).

4. This flexible interpretation of the treaty was sanctioned by further Court judgments (Türk 2009, 56).

5. See, e.g., Franchino 2007. The Commission's discretion decreased substantially in subsequent years (Engel and Borrmann 1991, 138; Dogan 1997, 39–40). The Court confirmed the legality of these practices in a number of judgments. For example, when Parliament asked the Court for annulment of the *Comitology* decision on the grounds that it was incompatible with the spirit of the Single European Act, the European Court of Justice (1988) held that Parliament's appeal was inadmissible; the Court did not address the substance of the complaint. In 1989, the Commission challenged a Council regulation on the grounds that it provided for a regulatory committee in an area where the Commission held exclusive powers. The European Court of Justice (1989), however, again found in favor of the Council in this question (Bradley 1992, 712).

6. European Environment Agency, European Training Foundation, European Monitoring Center of Drugs and Drug Addiction, European Agency for the Evaluation of Medicinal Products, Office for Harmonization in the Internal Market, Translation Center of the Bodies of the European Union, the Community Plant Variety Office, European Foundation for the Improvement of Living and Working Conditions, the European Center for the Development of Vocational Training.

7. As a legal scholar put it, the "opaqueness of EU law has been deliberately taken to a new level in order to make an abstract theoretical point of typology to press the EU into a state-like federal model" (Hofmann 2009, 499).

CHAPTER 6

1. The penalty would still induce private actors to spend resources on lobbying (Mitra 2002) and to mobilize for defection where they would otherwise have invested in adjustments

to economic change (Staiger and Tabellini 1987, 824; Kohler and Moore 2001, 53; Maggi and Rodriguez-Clare 1998; Goldstein and Martin 2000, 622; Pelc 2010, 636; Sykes 1991, 259).

2. Similar models exist for decision making in the U.S. Congress (Krehbiel 1991), conflict mediation (Kydd 2003), and international organizations (Fang and Stone 2012).

3. Although less common in international bargaining, the assumption of nearly complete information is a plausible standard assumption in the context of the EU (see, e.g., Garrett and Tsebelis 1996, 280).

4. Tallberg's theory begs one important question, namely why governments delegate these tasks to a cooperating partner rather than to an institutional actor when this government must be expected to exploit its privileged position for its own advantage. He speculates that the empty chair crisis, which affected the Commission's status in decision making, worked against the Commission and in favor of the Council presidency as the member states' preferred mediator (Tallberg 2006, 58).

CHAPTER 7

1. See also Edwards and Wallace 1978, 59; and Wallace and Edwards 1976, 537. On the relationship between the Council Secretariat and the presidency, see Ludlow 1995, 149–56.

2. See also Wallace 1985b, 16: "Chairmen need to be familiar with the detailed postures of each government and thus to spend a considerable amount of time identifying the reasoning behind publicly enunciated positions. This may require either spending time in advance of meetings gathering intelligence from the members of Permanent Representations, from the Commission and the Council Secretariat, or direct consultations in the capital of other governments to clear the ground for the final stage of negotiations."

3. In 1975, for instance, this unspoken law led the Irish Council president, Garrett Fitzgerald, to announce that he would use this prerogative to break with the Council's practice of consensus-seeking. The attempt failed, however, and was not repeated by his Italian successor. See Fitzgerald 1991, 147–48; and Agence Europe 1975.

4. German car manufacturers initially found support for their opposition to the directive from the two largest groups within the European Parliament, the conservative European People's Party and parts of the Party of European Socialists (Agence Europe 2000a; *European Voice* 1999c). In its final vote, Parliament added various amendments that were intended to lower carmakers' expected costs (*Financial Times* 1999). The Council largely stood by its common position, and the Commission declared that it did not approve of Parliament's amendments (*European Voice* 1999b). Council and Parliament found an agreement in a conciliation committee, which modified the original text (Agence Europe 2000b). The Council approved the final directive at its meeting in July 2000.

CHAPTER 8

1. The draft Working Time Directive can be considered a proper Commission initiative. At the Strasbourg summit in December 1989, all member states except the United Kingdom accepted the Social Charter as a nonbinding declaration, and the European Council (1989) vaguely called "upon the Council to deliberate upon the Commission's proposals in the light of the social dimension of the internal market."

2. The revolt was prominently backed by former prime minister Margaret Thatcher, who had opposed the Maastricht Treaty all along on the grounds that it supposedly transformed the EC into a centralized, socialist megastate.

3. After the Working Time Directive's adoption, the United Kingdom brought an action against the Council before the European Court of Justice that challenged the legal base of the directive, pleaded that the directive disregarded the principle of proportionality, and argued that it had no objective connection with its purported aims of improving safety. It also complained that the Commission's neglect of the governmental advisory

Committee on Safety, Hygiene and Health constituted a procedural defect serious enough to render the directive null and void (European Court of Justice 1996; Gray 1998, 344–56). However, the Court ruled that the Working Time Directive was valid and merely scrapped the Sunday clause on the grounds that there was no obvious connection between workers' health and safety and being given Sunday as a day off.

4. In 2004, the Commission submitted a proposal for a new directive to amend the current rules in light of recent developments and the judgments. The Council and the European Parliament, however, were unable to reach an agreement (European Communities 2000a, consolidated in European Communities 2000b). At the time of writing, the directive was still under review at the Commission.

CONCLUSION AND EXTENSION

1. The famous Law Merchant (a private judge that adjudicated commercial disputes in the Middle Ages), for example, enabled long-distance trade by keeping records of traders' reputation for honoring their obligations (Milgrom, North, and Weingast 1990, 3).

Glossary of Institutions, Treaties, and Procedures

Agencies Bodies set up by the European Union to carry out specific technical, scientific, or administrative tasks. Although some existed in the 1970s, agencies became especially popular in the 1990s as an alternative way of implementing EU policies.

Cabinets Personal offices of the commissioners that give political guidance and communicate with the Commission administration. Today, only three out of six members of a cabinet can be of the same nationality as the commissioner.

Chiefs of government The heads of state and government (prime ministers and presidents) of the member states who meet periodically as the European Council to set the direction of the European Union.

Co-decision procedure (Ordinary Legislative Procedure) Created by the Treaty of Maastricht, the first version of the co-decision procedure was meant to enhance the European Parliament's power by giving it veto over the Council's decisions. Because it was quite complicated, the Treaty of Amsterdam simplified this procedure ("co-decision 2") and extended its application to more policy areas in the treaty. The Treaty of Lisbon increased its application even further and renamed it the "Ordinary Legislative Procedure."

Comitology A process in which the Commission, before taking implementing actions, has to consult with representatives of the member states through committees. Depending on the procedures, the committees' advice can be more or less binding.

Community Method The European Union's generic way of decision making. This legislative procedure is initiated by a proposal for a legislative act from the Commission. After official submission, the Council and the European Parliament may jointly adopt or amend it. Legal acts are typically implemented by the European Commission, national administrations, or both.

Consultation procedure Initially, the predominant legislative procedure, according to which the Council asks for the Parliament's opinion on the Commission's legislative proposal before adopting or amending it. Today, it applies only to a limited number of legislative areas, such as market exemptions.

Cooperation procedure Created by the Single European Act, this was the predominant legislative procedure until the Treaty of Maastricht introduced "co-decision." According to this procedure, the Council had to attain unanimous agreement in order to adopt legislative proposals to which the European Parliament objects. The cooperation procedure was more and more replaced by co-decision until the Lisbon Treaty finally abolished it.

Committee of Permanent Representatives (COREPER) The Committee of Permanent Representatives comprises the member states' ambassadors to the EU and prepares the decisions of the Council of Ministers. It works in two configurations: COREPER II consists of the ambassadors and deals with political and institutional matters, whereas COREPER I consists of deputy permanent representatives and deals with technical matters. Issues on which COREPER attains a consensus are referred to the Council as A-points, which the ministers typically adopt en bloc without further discussion. Other, more controversial issues enter the Council's agenda as B-points.

Council of Ministers The Council of the EU comprises ministers from the member governments and meets in various issue-specific formations (e.g., Council of Ministers of the Environment). Its role in legislation is to adopt or change, jointly with the European Parliament, the Commission's legislative proposals. The position of president of the EU Council rotates among the member states every six months. Not to be confused with the European Council, which is composed of the chiefs of government and has no role in legislation.

Enlargement Describes the accession of new member states to the European Union. There have been seven enlargements so far: Denmark, Ireland, and the United Kingdom in 1973; Greece in 1981; Spain and Portugal in 1986; Austria, Finland, and Sweden in 1995; Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia in 2004; Bulgaria and Romania in 2007; and Croatia in 2013.

European Atomic Energy Community (Euratom) Founded in 1957 alongside the EEC. Its institutions were merged with those of the European Economic Communities and the European Coal and Steel Community in 1965.

European Coal and Steel Community (ECSC) Established by the 1951 Treaty of Paris, it centralized the governance of war-relevant sectors in order to prevent military mobilization in the future. When the Treaty of Paris expired in 2002, the European Community absorbed the European Coal and Steel Community's activities and resources.

European Commission The EU's principal supranational bureaucracy. It consists of a political level, composed of the Commission president and a college of commissioners, and an administrative level (the "services"), staffed with permanent civil servants and composed of various departments (the directorate generals). The Commission sets the legislative agenda by submitting proposals for legal acts. It also helps implement EU law by making secondary rules.

European Council The regular meetings ("summits") between the chiefs of government. It was not until the Treaty of Lisbon that the European Council was mentioned as an official institution. Although it has no official role in legislation, it is supposed to define the EU's general political direction and priorities. The Lisbon Treaty also created the position of a full-time president of the European Council, which is currently held by Herman Van Rompuy. Not to be confused with the Council of the EU, which comprises ministers and has an official role in legislation.

European Court of Justice (ECJ) The highest court in the European Union and part of the system of EU courts, the Court of Justice of the European Union. It is tasked with interpreting EU law and ensuring its general application across the member states. Since most EU law is to be transposed into national law, the preliminary reference procedure allows national courts to ask the ECJ to clarify the interpretation of EU law and whether it conflicts with national laws.

European Economic Community (EEC/EC) Established by the 1957 Treaty of Rome, aimed at creating a common market among its member states. Its institutions were merged with those of the Euratom and the ECSC in 1965 (see Merger Treaty). The Maastricht Treaty renamed it the European Community. The European Union legally absorbed the EC with the Treaty of Lisbon.

European Parliament (EP) Starting out as a consultative assembly composed of national parliamentarians, its role in the legislative process has increased steadily over time. Since 1979, its members are directly elected every five years by universal suffrage. Its 754 seats are distributed among the member states proportional to their population. For example, German citizens are represented by ninety-nine members of the

European Parliament. The members of the European Parliament are organized into seven parliamentary groups, including the conservative European People's Party, the Progressive Alliance of Socialists and Democrats, the Alliance of Liberal and Democrats, the Greens, and various Euroskeptic groups.

European Union (EU) Established in 1992 with the Treaty on European Union (see Treaty of Maastricht). Initially, the EU was a political umbrella for the three communities and two policies outside of these communities, namely, Justice and Home Affairs and a Common Foreign and Security Policy. The European Union legally absorbed the communities with the Treaty of Lisbon.

Expert groups Informal groups comprised of government experts or private experts that consult with the Commission in its preparation of legislative proposals.

Merger Treaty Signed in 1965, entered into force in 1967. The Merger Treaty created a single Council and Commission to serve all three European communities, namely, the European Economic Community, the European Coal and Steel Community, and Euratom.

Qualified Majority Voting (QMV) On most issues, the Council may make decisions by majority voting. Each country is allocated a number of votes roughly equivalent to its population. Today, a qualified majority is reached if a majority of member states approves and this majority comprises at least 70 percent of the votes cast. The voting weights and voting threshold have changed with the accession of new member states. From 2014 on, a qualified majority vote requires approval by 55 percent of the members of the EU Council, who must represent 65 percent of EU citizens.

Single European Act (SEA) Signed in 1986, entered into force in 1987. It notably extended qualified majority voting in the Council to articles pertaining to the creation of the Single Market, and created the cooperation procedure that gave the European Parliament more powers.

Treaty of Amsterdam Signed in 1997, entered into force in 1999. Notably, it created the "Co-decision II" legislative procedure to replace the more complicated "Co-decision I" procedure.

Treaty of Lisbon Signed in 2007, entered into force in 2009. Notably, it increased the European Parliament's involvement in legislation by extending the "Co-decision II" procedure (renamed Ordinary Legislative Procedure). It also recognizes the European Council as an official EU institution and creates a permanent (full-time, five-year tenure) president for this institution.

Treaty of Maastricht Formally the Treaty on European Union, signed in 1992, entered into force in 1993. It established the European Union as the political umbrella for the European Community and two other policies, namely the Common Foreign and Security Policy and Justice and Home Affairs. Notably, it established the Economic and Monetary Union (including the euro) and created the "Co-decision I" legislative procedure, which gave the European Parliament more say in legislation.

Treaty of Nice Signed in 2001, entered into force in 2003. It slightly changed the composition of the Commission and redefined the voting system in the Council.

Treaty of Rome Signed in 1957, entered into force in 1958. It set up the European Economic Community and Euratom next to the European Coal and Steel Community.

Trilogue Informal meetings between the chairperson of COREPER, the European Parliament's rapporteur, and the European Commission. The purpose of these contacts is to get an agreement that both the Council and the European Parliament can accept without having to go through all stages of the legislative process.

Working Groups Meetings of COREPER are prepared by Council working groups composed of government experts.

References

Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54 (3): 401–19.

Abbott, Kenneth W., and Duncan Snidal. 2000. "Hard and Soft Law in International Governance." *International Organization* 54 (3): 421–56.

Acemoglu, Daron, Simon Johnson, and James A. Robinson. 2001. "The Colonial Origins of Comparative Development: An Empirical Investigation." *American Economic Review* 91 (5): 1369–1401.

Achen, Christopher H. 2006a. "Evaluating Political Decision-Making Models." In *The European Union Decides,* edited by Robert Thomson, Frans N. Stokman, Christopher H. Achen, and Thomas König, 264–98. Cambridge: Cambridge University Press.

——. 2006b. "Institutional Realism and Bargaining Models." In *The European Union Decides,* edited by Robert Thomson, Frans N. Stokman, Christopher H. Achen, and Thomas König. Cambridge: Cambridge University Press.

Agence Europe. 1975. "At the Start of Each Council Session the Presidency (Ireland) Will Indicate the Points Which Could Be Approved by Majority Voting." January 22.

——. 1991. "EP Committee Studies Draft Directive on Worker Participation in Management." January 10.

——. 1999a. "EU/Environment." June 25.

——. 1999b. "EU/Environment." June 26.

——. 1999c. "Romano Prodi Sets Out His Intention over Reorganisation of European Commission." June 3.

——. 2000a. "EP/Environment/Industry." February 4.

——. 2000b. "EU/Environment." May 26.

——. 2001. "A Look behind the News." January 18.

——. 2010. "A Look behind the News, by Ferdinando Riccardi: Conclusions on Entry into Force of the Lisbon Treaty." March 6.

——. 2011. "A Look behind the News, by Ferdinando Riccardi: Van Rompuy's Position on Role of European Commission." March 1.

Alter, Karen J. 1998. "Who Are the 'Masters of the Treaty'? European Governments and the European Court of Justice." *International Organization* 52 (1): 121–47.

Alting von Geusau, Frans A. M. 1964. *European Organizations and Foreign Relations of States: A Comparative Analysis in Decision-Making.* Leyden: Sythoff.

——. 1966. "Problèmes institutionnels des Communautés Européennes." *Cahiers de Droit Européen* 3: 227–50.

Amphoux, Jean, Jean-Louis Dewost, Jean-Victor Louis, Jacques Mégret, Jean Verges, Daniel Vignes, and Michel Waelbroek. 1979. *Le Droit de la Communauté Économique Européenne: Commentaire du Traité et des Textes pris pour son Application.* Vol. 9. Brussels: Editions de l'Université de Bruxelles.

Andoura, Sami, and Peter Timmerman. 2008. *Governance of the EU: The Reform Debate on European Agencies Reignited.* EPIN Working Paper 19/2008.

Arrow, Kenneth J. 1963. "Uncertainty and the Welfare Economics of Medical Care." *American Economic Review* 53 (5): 941–73.

Auswärtiges Amt. 1960. Fernschreiben aus Brüssel (EWG-Vertretung) Nr. 197, March 5, B20–200, Band 405, Politisches Archiv des Auswärtigen Amts.

———. 1965. Aufzeichnung zur Ratstagung am 17/18. Januar 1966 in Luxemburg, December 29, B20–200, Band 1293, Politisches Archiv des Auswärtigen Amts.

———. 1970. Gesandter Poensgen an Botschafter Rolf Lahr, July 28, B20–200, Band 1639, Politisches Archiv des Auswärtigen Amts.

Axelrod, Robert. 1984. *The Evolution of Cooperation.* New York: Basic Books.

Ayral, Michel. 1975. "Essai de classification des groupes et comités." *Revue Du Marché Commun* 18: 330–42.

Azzi, G. Ciavarini. 1982. "Les experts nationaux: Chevaux de troie ou partenaires indespensables?" In *Community Bureaucracy at the Crossroads,* edited by J. Jamar and Wolfgang Wessels, 99–104. Bruges: De Tempel.

Bagwell, Kyle, and Robert W. Staiger. 1990. "A Theory of Managed Trade." *American Economic Review* 80 (4): 779–95.

Bähr, Paul. 1963. "Le rôle des Représentants Permanents des états membre dans le fonctionnement des Communautés Européennes et notamment de l'Euratom." PhD diss., Université Libre de Bruxelles.

Bergström, Carl Frederik. 2005. *Comitology: Delegation of Powers in the European Union and the Committee System.* Oxford: Oxford University Press.

Bergström, Carl Frederik, and Adrienne Héritier. 2007. "Institutional Rule Five: Controlling the Implementation Powers of the Commission (Comitology)." In *Explaining Institutional Change in Europe,* edited by Adrienne Héritier, 171–227. Oxford: Oxford University Press.

Bertram, Christoph. 1968. "Decision-Making in the E.E.C.: The Management Committee Procedure." *Common Market Law Review* 5 (3): 246–64.

Bieber, R. J. Pantalis, and J. Schoo. 1986. "Implications of the Single Act for the European Parliament." *Common Market Law Review* 23: 767–92.

Bieber, Roland. 1995. "Majority Voting and the Cooperation Procedure." In *From Luxembourg to Maastricht: Institutional Change in the European Community after the Single European Act,* edited by Christian Engel and Wolfgang Wessels, 51–65. Bonn: Europa Union Verlag.

Bieber, Roland, and Michael Palmer. 1975. "Power at the Top—the EC Council in Theory and Practice." *World Today* 31 (1): 310–18.

Bitsch, Marie-Thérèse. 2007. "The College of Commissioners: A New Type of Public Authority." In *The European Commission, 1958–1972: History and Memories,* edited by Michel Dumoulin, 181–204. Brussels: European Commission.

Blom-Hansen, Jens. 2011. "Interests, Instruments and Institutional Preferences in the EU Comitology System: The 2006 Comitology Reform." *European Law Journal* 17 (3): 344–65.

Bluman, Claude. 1989. "La Commission, agent d'execution du droit communautaire: La comitologie." In *La Commission au cœur du systeme institutionnel des Communautés Européennes,* edited by Jean-Victor Louis and Michel Waelbroek, 49–70. Brussels: Université Libre de Bruxelles.

Bradley, Kieran St Clair. 1992. "Comitology and the Law: Through a Glass, Darkly." *Common Market Law Review* 29: 693–721.

———. 1997. "The European Parliament and Comitology: On the Road to Nowhere?" *European Law Review* 3 (3): 230–54.

Brittan, Leon. 2000. *A Diet of Brussels: The Changing Face of Europe.* London: Little, Brown and Co.

Bueno de Mesquita, Bruce. 2004. "Decision-Making Models, Rigor and New Puzzles." *European Union Politics* 5 (1): 125–38.
Bulmer, Simon, and Wolfgang Wessels. 1987. *The European Council: Decision-Making in European Politics.* Houndmills, UK: Macmillan.
Bundesministerium für Landwirtschaft. 1965. Vermerk: Zusammenstellung der Mehrheitserfordernisse für die Abstimmung im Rat der EWG, July 16, B116, Band 13861, Bundesarchiv Koblenz.
Bundesministerium für Wirtschaft. 1965. Abstimmungsverhältnis im Rat der EWG, July 16, B116, Band 13861, Bundesarchiv Koblenz.
———. 1967. Staatssekretärbesprechung am 10. Juli 1967. Kontakte deutscher Dienststellen zu den Bediensteten deutscher Staatsangehörigkeit bei der Kommission, May 31, B102, Band 61703, Bundesarchiv Koblenz.
Bunse, Simone. 2009. *Small States and EU Governance: Leadership through the Council Presidency.* London: Palgrave Macmillan.
Burley, Anne-Marie, and Walter Mattli. 1993. "Europe before the Court: A Political Theory of Legal Integration." *International Organization* 47 (1): 41–76.
Busch, Marc L., and Eric Reinhardt. 2000–2001. "Bargaining in the Shadow of the Law: Early Settlement in GATT/WTO Disputes." *Fordham International Law Journal* 24: 158–72.
Calvert, Randall L. 1985. "The Value of Biased Information: A Rational Choice Model of Political Advice." *Journal of Politics* 47 (2): 530–55.
Cameron, David R. 1978. "The Expansion of the Public Economy: A Comparative Analysis." *American Political Science Review* 72 (4): 1243–61.
Campbell, A. 1986. "The Single European Act and Its Implications." *International and Comparative Law Quarterly* 35 (October): 932–39.
Camps, Miriam. 1958. *The First Year of the European Economic Community.* Princeton, NJ: Center of International Studies.
———. 1966. *European Unification in the Sixties: From the Veto to the Crisis.* New York: Council on Foreign Relations.
Caporaso, James A. 2007. "The Promises and Pitfalls of an Endogenous Theory of Institutional Change: A Comment." *West European Politics* 30 (2): 392–404.
Carrubba, Clifford J., Matthew Gabel, and Charles Hankla. 2008. "Judicial Behavior under Political Constraints: Evidence from the European Court of Justice." *American Political Science Review* 102 (4): 435–52.
———. 2012. "Understanding the Role of the European Court of Justice in European Integration." *American Political Science Review* 106 (1): 214–23.
Cengiz, Firat. 2010. "Multi-Level Governance in Competition Policy: The European Competition Network." *European Law Review* 35 (5): 660–77.
Chalmers, Damian, Gareth Davies, and Giorgio Monti. 2010. *European Union Law: Cases and Material.* 2nd ed. Cambridge: Cambridge University Press.
Chiti, Eduardo. 2000. "The Emergence of a Community Administration: The Case of European Agencies." *Common Market Law Review* 37: 309–43.
Christiansen, Thomas. 1997. "Tensions of European Governance: Politicized Bureaucracy and Multiple Accountability in the European Commission." *Journal of European Public Policy* 4 (1): 73–90.
Christiansen, Thomas, and Simona Piattoni. 2003. *Informal Governance in the European Union.* Cheltenham, UK: Edward Elgar.
Cini, Michelle. 1996. *The European Commission: Leadership, Organisation and Culture in the EU Administration.* Manchester, UK: Manchester University Press.
———. 2000. *Organizational Culture and Reform: The Case of the European Commission under Jacques Santer.* EUI Working Paper RSC 2000/25.

Clark, W. Hartley. 1967. *The Politics of the Common Market.* Englewood Cliffs, NJ: Prentice-Hall.
Commission des Communautés Européennes. 1988. Note pour MM. les membres de la Commission: Rapport sur les comités et groupes d'experts, September 8, SEC (88) 1277.
———. 1991a. Rapport de la Commission au Conseil: Attribution de competences d'execution a la Commission, January 7, SEC (90) 2589.
———. 1991b. Rapport de la Task Force Screening à la Commission, March 19, SEC (91) 551.
———. 1992. Comités et groupes d'experts, March 27, SEC (92) 619 (restreint).
———. 1993. Exercise du droit initiative de la Commission en 1992, January 8, SEC (93) 44.
Commission Européenne. 1994. Reflexions sur l'efficacité de l'institution et de son administration: Rapport établi conformement au mandat confié à M. Philippe Petit-Laurent, November 9.
Commission of the European Communities. 1986. Proposal for a Council Regulation (EEC) Laying Down the Procedures for the Exercise of Implementing Powers Conferred on the Commission, March 3, COM (86) 35 final.
———. 2000. Reforming the Commission. A White Paper—Part I, April 4, COM (2000) 200 final/2.
———. 2002. Communication from the Commission: The Operating Framework for the European Regulatory Agencies, December 11, COM (2002) 718 final.
Committee of Independent Experts. 1999a. Second Report on Reform of the Commission: Analysis of Current Practice and Proposals for Tackling Mismanagement, Irregularities and Fraud. Vol. 1. September 10, 1999.
———. 1999b. Second Report on Reform of the Commission: Analysis of Current Practice and Proposals for Tackling Mismanagement, Irregularities and Fraud. Vol. 2. September 10, 1999.
Conseil de la CEE. 1958. Projet de Procès-Verbal de la réunion officieuse des représentants qualifiés tenue à Bruxelles, le 17 Janvier 1958, January 24, C14/58.
———. 1960a. Lettre de Secretaire Générale Calmes aux Représentants Permanents: Objet: Mesures à prendre pour une meilleure organisation des travaux des Conseils, July 27, CM2.
———. 1960b. Note: Mesure à prendre pour une meilleur organisation des travaux des Conseils, June 27, C 1266/60.
Conseil des CE. 1970. Extrait du projet du procès-verbal de la 120ème session du Conseil tenue à Luxembourg, le lundi 29 juin 1970, July 8, C1318/70, CM2–1970–129.
Conseil Européen. 1977. Extrait sur l'organisation des Conseils Européens, June 30; http://www.cvce.eu/obj/declaration_de_londres_extrait_sur_l_organisation_des_conseils_europeens_30_juin_1977-fr-747ed4f9–9562–4faf-91ba-ffd33016e571.html.
Coombes, David. 1968. *Towards a European Civil Service.* London: Chatham House.
———. 1970. *Politics and Bureaucracy in the European Community: A Portrait of the Commission of the E.E.C.* London: George Allen and Unwin.
Copeland, Brian R. 1990. "Strategic Interaction among Nations: Negotiable and Non-Negotiable Trade Barriers." *Canadian Journal of Economics* 23 (1): 84–108.
Corbett, Richard. 1998. *The European Parliament's Role in Closer EU Integration.* Houndmills, UK: Macmillan Press.
Corbett, Richard, Francis Jacobs, and Michael Shackleton. 2005. *The European Parliament.* 6th ed. London: John Harper.

COREPER. 1962. Compte Rendu Sommaire de la Réunion Restrainte Rendue à l'Occasion de la 225ème Réunion du Comité des Représentants Permanents à Bruxelles, les 3 et 4 Octobre 1962. CM2, C 721/62.
Council of the EC. 1962. Regulation no 17: First Regulation Implementing Articles 85 and 86 of the Treaty, February 21, OJ 013/204.
———. 1974. Joint Statement by the President of the Council and the President of the European Commission, May 2, R 1122/74.
———. 1980. Report on European Institutions. Presented by the Committee of Three to the European Council, October 1979; http://www.cvce.eu/obj/report_on_european_institutions_october_1979-en-d1e23cf8–0d43–4ddd-81ba-8f4b61c0259d.html.
———. 1987. Council Decision 87/373/EEC of 13 July 1987 Laying Down the Procedures for the Exercise of Implementing Powers Conferred on the Commission. OJ L 197/33.
Council of the EU. 1993. Council Directive 93/104/EC of 23 November 1993 concerning Certain Aspects of the Organization of Working Time. OJ 93 L 307/18.
———. 1998. Report from the Permanent Representatives Committee to Council: Proposal for a Council Directive on End-of-Life Vehicles, December 17, 14271/98 (LIMITE).
———. 2000. Report by the Presidency and the General Secretariat of the Council to the European Council on Making the Co-Decision Procedure More Effective, November 28, 13316/1/00 REV 1 LIMITE.
———. 2006. Council Decision 2006/512/EC of 17 July 2006 Amending Decision 1999/468/EC Laying Down the Procedures for the Exercise of Implementing Powers Conferred on the Commission, OJ L 200/11.
———. 2009. Council Decision of 1 December 2009 Adopting the Council's Rules of Procedure, 2009/937/EU.
Cox, Gary W. 2008. "The Organization of Democratic Legislatures." In *The Oxford Handbook of Political Economy,* edited by Barry R. Weingast and Donald A. Wittman, 141–61. Oxford: Oxford University Press.
Cox, Gary W., and Mathew D. McCubbins. 2001. "The Institutional Determinants of Economic Policy Outcomes." In *Presidents, Parliaments, and Policy,* edited by Stephan Haggard and Mathew D. McCubbins, 21–63. Cambridge: Cambridge University Press.
Crombez, Christophe. 1996. "Legislative Procedures in the European Community." *British Journal of Political Science* 26 (2): 199–228.
———. 1997. "The Co-Decision Procedure in the European Union." *Legislative Studies Quarterly* 22 (1): 97–119.
———. 2000. "Institutional Reform and Co-Decision in the European Union." *Constitutional Political Economy* 11 (1): 41–57.
Crombez, Christophe, Bernard Steunenberg, and Richard Corbett. 2000. "Understanding the EU Legislative Process: Political Scientists' and Practitioners' Perspectives." *European Union Politics* 1 (3): 363–81.
Culley, Paul. 2004. "The Agriculture Council." In *The Council of the European Union,* edited by Martin Westlake, 191–210. London: John Harper Publishing.
Dai, Xinyuan. 2002. "Information Systems in Treaty Regimes." *World Politics* 54 (4): 405–36. doi:10.1353/wp.2002.0013.
Daily Mail. 1993. "We'll Fight for the Right to Work in Our Own Way." June 2.
Dashwood, Alan. 1992. "Majority Voting in the Council." In *Legislation for Europe 1992,* edited by Jürgen Schwarze. Baden-Baden: Nomos.
de Bassompierre, Guy. 1988. *Changing the Guard in Brussels: An Insider's View of the EC Presidency.* New York: Praeger.

De Ruyt, Jean. 1989. *L'Acte Unique Européen.* 2nd ed. Brussels: Institut d'Etudes européennes.
De Witte, Bruno. 2002. "Simplification and Reorganization of the European Union Treaties." *Common Market Law Review* 39 (6): 1255–87.
de Zwaan, Jaap W. 1995. *The Permanent Representatives Committee: Its Role in European Union Decision-Making.* Amsterdam: Elsevier.
Dehousse, Renaud. 1989. "1992 and Beyond: The Institutional Dimension of the Internal Market Programme." *Legal Issues of European Integration* 1: 109–36.
Delors, Jacques. 2004. *Erinnerungen eines Europäers.* Berlin: Parthas.
Dewost, Jean-Louis. 1976. Le Processus de Décision dans le Conseil des Communautés: Texte de l'exposé fait devant une délégation du Conseil d'Etat français, January 26, EN 824, Archives Historiques des Communautés Europénnes.
———. 1980a. "Les relations entre le conseil et la commission dans le processus de décision communautaire." In *Congrès Européen: Nature et Évolution des Institutions de la Communauté Européenne,* edited by Association nationale des docteurs en droit, 16–23. Paris: puf.
———. 1980b. "Les relations entre le conseil et la commission dans le processus de décision communautaire." *Revue Du Marché Commun* 23 (8): 289–94.
———. 1983. "Situations conflictuelle et leurs solutions possibles dans la Communauté Européenne." *Objectif Europe* 21–22: 74–81.
———. 1984. "La Présidence dans le cadre institutionel des Communautés Européennes." *Revue Du Marché Commun* 273: 31–34.
———. 1987. "Le vote majoritaire: Simple modalité de gestion ou enjeu politique essentiel?" In *Du Droit International au Droit de L'integration: Liber Amicorum Pierre Pescatore,* edited by Francesco Capotorti, Claus-Dieter Ehlermann, Jochen Frowein, Francis Jacobs, René Joliet, Thijmen Koopmans, and Robert Kovar, 167–75. Baden-Baden: Nomos.
Die Welt. 1999a. "Altauto-Verodnung droht zu kippen." June 25.
———. 1999b. "Auto-Lobbyist Schröder ist erneut gescheitert." July 24.
Dogan, Rhys. 1997. "Comitology: Little Procedures with Big Implications." *West European Politics* 20 (3): 31–60.
Dondelinger, Jean. 1975. "Le Conseil Européen." Unpublished manuscript, Library of the Council of the European Union, Brussels.
Downs, George W., and David M. Rocke. 1995. *Optimal Imperfection? Domestic Uncertainty and Institutions in International Relations.* Princeton, NJ: Princeton University Press.
Dunoff, Jeffrey L., and Joel P. Trachtman. 2009. "A Functional Approach to International Constitutionalization." In *Ruling the World? Constitutionalism, International Law, and Global Governance,* edited by Jeffrey L. Dunoff and Joel P. Trachtman, 3–35. Cambridge: Cambridge University Press.
Dworkin, Ronald. 1977. *Taking Rights Seriously.* Cambridge, MA: Harvard University Press.
Earnshaw, David, and David Judge. 1995. "The Cooperation Procedure. External Study Prepared for the European Parliament Directorate General for Research." Political Series Working Paper 11.
———. 1997. "The Life and Times of the European Union's Co-operation Procedure." *Journal of Common Market Studies* 35 (4): 543–64.
Economist. 1990. "Europe's Social Insecurity." June 23.
———. 1991a. "Never on a Sunday." October 19.
———. 1991b. "Workers of the EC (Except Britain), Unite." October 19.
———. 1993. "Still Looking for a Role." June 26.

Edwards, Geoffrey, and David Spence. 1994. "The Commission in Perspective." In *The European Commission,* edited by Geoffrey Edwards and David Spence, 1–30. London: Longman Group.

Edwards, Geoffrey, and Helen Wallace. 1977. "The Council of Ministers of the European Community and the President-in-Office." Working Paper. London: Federal Trust.

———. 1978. *Die Präsidentschaft im Ministerrat: Eine zentrale Rolle im Entscheidungsprozeß von EWG und EPZ.* Bonn: Europa Union Verlag.

Egeberg, Morten. 2006. *Multilevel Union Administration: The Transformation of Executive Politics in Europe.* London: Palgrave Macmillan.

Egeberg, Morten, and Andreas Heskestad. 2010. "The Denationalization of *Cabinets* in the European Commission." *Journal of Common Market Studies* 48 (4): 775–86.

Ehlermann, Claus-Dieter. 1988. "Compétences d'Execution Conferées à la Commission: La Nouvelle Décision Cadre du Conseil." *Revue Du Marché Commun* 316: 232–39.

———. 1990. "The '1992 Project': Stages, Structures, Results and Prospects." *Michigan Journal of International Law* 11: 1097–1118.

———. 1995. "Reflections on a European Cartel Office." *Common Market Law Review* 32 (3): 471–86.

———. 2000. "The Modernization of EC Antitrust Policy: A Legal and Cultural Revolution." EUI Working Papers RSC 2000/17.

Elgström, Ole. 2003. "The 'Honest Broker'? The Council Presidency as a Mediator." In *European Union Council Presidencies: A Comparative Perspective,* edited by Ole Elgström, 38–54. London: Routledge.

Endo, Ken. 1999. *The Presidency of the European Commission under Jacques Delors: The Politics of Shared Leadership.* Houndmills, UK: Macmillan.

Engel, Christian, and Christine Borrmann. 1991. *Vom Konsens zur Mehrheitsentscheidung: EG-Entscheidungsprozesse und nationale Interessenpolitik nach der Einheitlichen Europäischen Akte.* Bonn: Europa Union Verlag.

Eppink, Derk-Jan. 2007. *Life of a European Mandarin: Inside the Commission.* Tielt, Belgium: Lannoo.

Erhardt, Carl A. 1983. "Die Kommission." In *Jahrbuch Europäische Integration 1982,* edited by Werner Weidenfeld and Wolfgang Wessels, 57–65. Bonn: Europa Union Verlag.

Euobserver. 2008. "EU Accused of Heavy Reliance on Industry Lobbyist." March 25 http://euobserver.com/9/25866.

European Commission. 1975a. Eighth General Report on the Activities of the European Communities in 1974.

———. 1975b. Report of the Commission on the European Union, June 25, Bulletin of the European Communities, Supplement 5.

———. 1976. Ninth General Report on the Activities of the European Communities in 1975.

———. 1977. Tenth General Report on the Activities of the European Communities in 1976.

———. 1978. Eleventh General Report on the Activities of the European Communities in 1977.

———. 1999a. Commission Statement (Article 5) on Council Decision 1999/468/EC of 28 June 1999 Laying Down the Procedures for the Exercise of Implementing Powers Conferred on the Commission, OJ 1999 C 203/1.

———. 1999b. White Paper on Modernisation of the Rules Implementing Articles 85 and 86 of the EC Treaty—Commission Programme No. 99/027, April 28, COM (99) 101 final.

——. 2000. Reforming the Commission—A White Paper, March 1, COM (2000) 200 final.
——. 2001. European Governance: A White Paper, July 25, COM (2001) 428 final.
——. 2005. Draft Interinstitutional Agreement on the Operating Framework for the European Regulatory Agencies, February 25, COM (2005) 59.
——. 2008. Communication from the Commission to the European Parliament and the Council: European Agencies—the Way Forward, March 11, COM (2008) 135.
——. 2012. "Directorate-General for Agriculture and Rural Development: Agriculture in the European Union; Statistical and Economic Information 2011." http://ec.europa.eu/agriculture/statistics/agricultural/2011/index_en.htm.
European Communities. 1966. Final Communiqué of the Extraordinary Session of the Council, January, Bulletin of the European Economic Community 3.
——. 1972a. Report of the Working Party Examining the Problem of the Enlargement of Powers of the European Parliament: Report "Vedel," March 25; http://www.cvce.eu/obj/vedel_report_25_march_1972-en-a4f5b134–99b9–41b3–9715–41769dfea12a.html.
——. 1972b. Statement from the Paris Summit, October, Bulletin of the European Communities 10.
——. 1975. Joint Declaration of the European Parliament, the Council and the Commission, March 4, OJ C 89/1; http://www.cvce.eu/obj/joint_declaration_by_the_european_parliament_the_council_and_the_commission_on_the_conciliation_procedure_4_march_1975-en-f64b70af-8ecb-4a6d-93e4–9b8c06933cd0.html.
——. 1977. Report by the Ministers of Foreign Affairs to the Council on European Union, Bulletin of the European Communities, Supplement 8/77.
——. 1978. Answer to Written Question No 1293/77 by Mr Dondelinger to the Council of the European Communities, February 28, OJ C 150/13.
——. 1979. Proposals for Reform of the Commission of the European Communities and Its Services: Report Made at the Request of the Commission by an Independent Review Body under the Chairmanship of Mr. Dirk Spierenburg, September 24; http://aei.pitt.edu/993/.
——. 1980. Written Question 1560/79 by Mr. O'Connell to the Commission: Commission Employees Working in Different Policy Areas, OJ C110/56.
——. 1988. Answer to Written Question No 2470/87 by Mr Thomas Megahy to the Council of the European Communities, February, OJ C 160/28.
——. 1999. Final Adoption of the General Budget of the European Union for the Financial Year 1999, OJ L 39/136.
——. 2000a. Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning Certain Aspects of the Organisation of Working Time to Cover Sectors and Activities Excluded from that Directive, OJ L 195/41.
——. 2000b. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning Certain Aspects of the Organisation of Working Time, OJ L 299/9.
European Convention. 2003. Contribution Submitted by Mr Dominique de Villepin and Mr Joschka Fischer, Members of the Convention, CONV 489/03.
European Council. 1974. Final communiqué, December 10 (Paris), Bulletin of the European Communities 12.
——. 1989. Presidency Conclusions—Strasbourg, 8 and 9 December 1989, 441/2/89.
——. 2002. Presidency Conclusions, June 22 (Seville), 13464/02.

European Court of Justice. 1963. Judgment of 05/02/1963. Van Gend en Loos / Nederlandse Administratie der Belastingen [Case 26/62].
———. 1964. Judgment of 15/07/1964. Costa / E.N.E.L. [Case 6/64].
———. 1969. Judgment of 15/07/1970. Chemiefarma / Commission [Case 41/69].
———. 1970. Judgment of 17/12/1070. Einfuhr- und Vorratsstelle für Getreide und Futtermittel / Köster [Case 25/70].
———. 1980. Judgment of 29/10/1980. Roquette / Council [Case 138/79].
———. 1988. Judgment of 27/09/1988. Parliament / Council [Case 302/87].
———. 1989. Judgment of 24/10/1989. Commission / Council [Case 16/88].
———. 1996. United Kingdom of Great Britain and Northern Ireland v Council of the European Union. Case C-84/94.
———. 2000. Judgment of the Court of 3 October 2000. Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana. Case C-303/98.
———. 2003. Judgment of the Court of 9 September 2003. Landeshauptstadt Kiel v Norbert Jaeger. Case C-151/02.
European Parliament. 1975. Debates of the European Parliament, January 15, OJ Annex No 185.
———. 1983. Resolution on the Cost to the EC Budget and Effectiveness of Committees of a Management, Advisory and Consultative Nature, September 17, OJ C 277/195.
———. 1986. Report Drawn Up on Behalf of the Political Affairs Committee on the Proposal from the Commission of the European Communities to the Council (Com (86) 35 final) for a Regulation Laying Down the Procedures for the Exercise of Implementing Powers Conferred on the Commission (Rapporteur: Mr. K. Hänsch), July 2, A 2–78/86.
———. 1988. Report Drawn Up on Behalf of the Committee on Institutional Affairs on the Results Obtained from the Implementation of the Single Act (Rapporteur: Graziani), September 26, A 2–176/88.
———. 1989. Commission Statement, Debates of the European Parliament, 2–374/267.
———. 1993. Report of the Committee on Institutional Affairs on the Role of National Experts and the Commission's Right of Initiative (Rapporteur: Mrs. Maria Luisa Cassanmagnago-Cerretti), December 6, A3–0416/93.
———. 1994. Report of the Committee of Institutional Affairs on the Independence of Members of Community Institutions (Rapporteur: Dunn), January 28, A3–0048/94.
———. 1995. The Cooperation Procedure. Directorate General for Research, Political Series Working Paper W-11 (Authors: David Earnshaw and David Judge).
———. 1996a. Intergovernmental Conference Briefing No. 8: Co-Decision Procedure; http://www.europarl.europa.eu/igc1996/fiches/fiche8_en.htm.
———. 1996b. Working Document on the Modus Vivendi concerning the Implementing Measures for Acts, September 12, PE 218.255.
———. 1998. Report on the New Co-Decision Procedure after Amsterdam: Committee on Institutional Affairs (Rapporteur: Mr Andrea Manzella), July 7, A4–0271/98.
———. 1999a. Activity Report 1993–1999 of the Delegations to the Conciliation Committee, May 6, PE 230.998.
———. 1999b. Report on Improvements in the Functioning of the Institutions without Modification of the Treaties (Rapporteur: Mr Fernand Herman), March 26, A4–0158/99.
———. 2004. Activity Report 1999–2004 of the Delegations to the Conciliation Committee, PE 287.644.

——. 2008. Working Party on Parliamentary Reform, Part B: Deliberations and Conclusions, May 15, PE406.309/CPG/GT.
——. 2009a. Activity Report 2004–2009 of the Delegations to the Conciliation Committee, PE 427.162.
——. 2009b. *Building Parliament: 50 Years of European Parliament History.* Luxembourg: European Communities.
European Report. 1992a. Social Affairs Council: One Woman's Success Story Is Another Woman's Disaster. December 5.
——. 1992b. Social Affairs: Working Time and Pregnant Women of June 24 Agenda. June 24.
——. 1993a. Social Affairs Council: EC Ministers Common Position on Working Hours. June 2.
——. 1993b. Social Affairs Council: UK Accused of Holding Up European Social Policy. November 27.
——. 1993c. Social Policy: Adoption of the Directive on Working Time. November 24.
European Union. 2011. General Budget of the European Union for the Financial Year 2011, OJ L 68.
European Voice. 1998. "The Car Is the Star in Austria's Plans." May 28.
——. 1999a. "Car Recycling Backdown Skids into TV Trouble." July 1, 2011; http://www.europeanvoice.com/article/imported/car-recycling-backdown-skids-into-tv-trouble/38971.aspx.
——. 1999b. "Clash Looms over End-of-Life Vehicles Rule." May 4.
——. 1999c. "Fate of EU Car Recycling Plan Hangs in the Balance." January 27.
——. 1999d. "Germany to Back Down over Car Recycling Rules." June 17.
Europolitique. 1991a. "Affaires Sociales: Des Espoirs de clarification lors du conseil informel du 6 mai." May 1.
——. 1991b. "Charte Sociale: Seules les directives sécurité/santé sont adoptables a court terme." March 2.
——. 1991c. "Temps de Travail: Le Parlement Européen se trouve une majorité à gauche pour adopter des amendements très contraignants." February 23.
——. 1991d. "UNICE: Les patrons bornent le champ de l'Europe." April 4.
——. 1992. "Affairs Sociales: Le Parlement réclame des nouvelles propositions de directives." July 13.
——. 1993a. "Affaires Sociales: Les ministres évoquent une rélance des négociations CE." January 30.
——. 1993b. "Conseil Affaires Sociales: Comité d'entreprise et temps de travail au menu du 6 avril." April 3.
Evans, Peter B. 1993. "Building an Integrative Approach to International and Domestic Politics: Reflections and Projections." In *Double-Edged Diplomacy: International Bargaining and Domestic Politics,* edited by Peter B. Evans, Harold K. Jacobson, and Robert D. Putnam, 397–430. Berkeley: University of California Press.
Falkner, Gerda, Oliver Treib, Miriam Hartlapp, and Simone Leiber. 2005. *Complying with Europe: EU Harmonisation and Soft Law in the Member States.* Cambridge: Cambridge University Press.
Fang, Songying, and Randall W. Stone. 2012. "International Organizations as Policy Advisors." *International Organization* 66 (4): 537–69. doi:10.1017/S0020818312000276.
Farrell, Henry, and Adrienne Héritier. 2004. "Interorganizational Negotiation and Intraorganizational Power in Shared Decision Making: Early Agreements under Codecision and Their Impact on the European Parliament and Council." *Comparative Political Studies* 37 (10): 1184–1212.

———. 2007. "Introduction: Contested Competences in the European Union." *West European Politics* 30 (2): 227–43.
Fearon, James D. 1999. "Electoral Accountability and the Control of Politicians: Selecting Good Types versus Sanctioning Poor Performance." In *Democracy, Accountability, and Representation,* edited by Adam Przeworski, Susan C. Stokes, and Bernard Manin, 55–97. Cambridge: Cambridge University Press.
Feenstra, Robert C., and Tracy R. Lewis. 1991. "Negotiated Trade Restrictions with Private Political Pressure." *Quarterly Journal of Economics* 106 (4): 1287–1307.
Financial Times. 1990. "More Employers' Groups Join Attack on EC Working Conditions Directive." September 17.
———. 1991a. "Commissioner Hits Back over 5bn Work-Hours Cost Claim." October 26.
———. 1991b. "Countdown to Maastricht: EC Working Time Directive Shelved—Dutch Presidency Rules Out Vote before End of Year on 48-Hour Week and Sunday Day of Rest." December 4.
———. 1991c. "EC Working Directive Shelved." December 4.
———. 1991d. "Social Row Could Sour the Summit: Britain Is at Odds with the EC on Working Conditions Legislation." November 28.
———. 1991e. "UK Government Softens Stance on EC Social Charter." May 13.
———. 1991f. "UK Men Found to Work Longest Hours in EC." June 10.
———. 1991g. "UK Softens on EC Social Charter." May 13.
———. 1992a. "Britain and EC Close to Deal for 48 Hour Working Week: UK Would Get 10 Years to Implement the Directive." June 11.
———. 1992b. "Brussels May Force Clock Watchers into a Re-think." February 30.
———. 1992c. "EC Shift Working Plans Opposed." June 13.
———. 1992d. "The ERM and Maastricht—Union Leader Invited to Social Affairs Talks." September 16.
———. 1992e. "UK Hedges Acceptance of 48-Hour Working Week." May 1.
———. 1992f. "UK Hunts for Working Week Deal." June 24.
———. 1993a. "EC Work Hours Pact Near." May 29.
———. 1993b. "EU Sets Working Week Limit—UK to Challenge the Social Charter's 48-Hour Directive." November 24.
———. 1993c. "UK to Challenge EC's 48-Hour Working Week." June 2.
———. 1994. "Personal View: Europe Must Show Will to Compete." November 17.
———. 1999. "European Car Producers Face Big Clean-up Bill." February 4.
———. 2012a. "Greece Braced for Crucial Austerity Votes." November 5.
———. 2012b. "Greek Exit Fears Strengthen Draghi's Hand." September 5.
Financial Times Business Information. 1991. "UK Government Softens View." May 1.
Fitzgerald, Garret. 1991. *All in a Life: Garrett Fitzgerald; An Autobiography.* London: Macmillan.
Fitzmaurice, John. 1978. "Direct Elections and the European Parliament." *West European Politics* 1 (1): 208–25.
———. 1988. "An Analysis of the European Community's Co-operation Procedure." *Journal of Common Market Studies* 26 (4): 389–400.
Follesdal, Andreas, and Simon Hix. 2006. "Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik." *Journal of Common Market Studies* 44 (3): 533–62.
Forrester, Ian. 2000. "Modernization of EC Competition Law." *Fordham International Law Journal* 23 (4): 1028–88.
Forster, Anthony. 1998. "Britain and the Maastricht Negotiations." *Journal of Common Market Studies* 36 (3): 347–68.

——. 1999. *Britain and the Maastricht Negotiations.* Houndmills, UK: Macmillan.
Fortna, Virginia Page. 2004. *Peace Time: Cease-Fire Agreements and the Durability of Peace.* Princeton, NJ: Princeton University Press.
Fouchet Committee. 1962. Draft Treaty—Fouchet Plan II, January 18; http://www.cvce.eu/content/publication/1999/1/1/c9930f55–7d69–4edc-8961–4f12cf7d7a5b/publishable_en.pdf.
Franchino, Fabio. 2007. *The Powers of the Union: Delegation in the EU.* Cambridge: Cambridge University Press.
Frankfurter Allgemeine Zeitung. 1999. "Deutschland verhindert Altauto-Regelung." June 25.
Garrett, Geoffrey. 1995. "The Politics of Legal Integration in the European Union." *International Organization* 49 (1): 171–81.
Garrett, Geoffrey, Daniel Kelemen, and Heiner Schulz. 1998. "The European Court of Justice, National Governments, and Legal Integration in the European Union." *International Organization* 52 (1): 149–76.
Garrett, Geoffrey, and George Tsebelis. 1996. "An Institutional Critique of Intergovernmentalism." *International Organization* 50 (2): 269–99.
Garrett, Geoffrey, George Tsebelis, and Richard Corbett. 2001. "The EU Legislative Process: Academics vs. Practitioners—Round 2." *European Union Politics* 2 (3): 353–66.
Garzon, Isabelle. 2006. *Reforming the Common Agricultural Policy: History of a Paradigm Change.* Houndmills, UK: Palgrave Macmillan.
Gerber, David J. 1994. "The Transformation of European Community Competition Law." *Harvard International Law Journal* 35 (1): 97–147.
——. 2007–08. "Two Forms of Modernization in European Competition Law." *Fordham International Law Journal* 31 (5): 1235–65.
Gilligan, Michael J. 2009. "The Transaction Costs Approach to International Institutions." In *Power, Interdependence, and Non-State Actors in World Politics,* edited by Helen V. Milner and Andrew Moravcsik, 50–65. Princeton, NJ: Princeton University Press.
Glaesner, H.-J. 1994. "The European Council." In *Institutional Dynamics of European Integration: Essays in Honour of Henry G. Schermers,* edited by Deidre Curtin and Ton Heukels, 101–15. Dordrecht: Martinus Nijhoff Publishers.
Goetz, Charles J., and David J. Scott. 1977. "Liquidated Damages, Penalties, and the Just Compensation Principle: Some Notes on an Enforcement Model and a Theory of Efficient Breach." *Columbia Law Review* 77 (4): 554–94.
Goldstein, Judith L., and Lisa Martin. 2000. "Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note." *International Organization* 54 (3): 603–32. doi:10.1162/002081800551226.
Golub, Jonathan. 1999. "In the Shadow of the Vote? Decision Making in the European Community." *International Organization* 53 (4): 733–64. doi:10.1162/002081899551057.
——. 2006. "Did the Luxembourg Compromise Have Any Consequences?" In *Visions, Votes and Vetoes: The Empty Chair Crisis and the Luxembourg Compromise Forty Years On,* edited by Jean-Marie Palayret, Helen Wallace, and Pascaline Winand. Brussels: Peter Lang.
Gormley, Laurence W. 2002. "Competition and Free Movement: Is the Internal Market the Same as a Common Market?" *European Business Law Review* 13 (6): 517–22.
Gornitzka, Ase, and Ulf Sverdrup. 2008. "Who Consults? The Configuration of Expert Groups in the European Union." *West European Politics* 31 (4): 725–50. doi:10.1080/01402380801905991.

Gourevitch, Peter A. 1999. "The Governance Problem in International Relations." In *Strategic Choice and International Relations,* edited by David A. Lake and Robert Powell, 137–64. Princeton, NJ: Princeton University Press.
Goyder, D. G. 1993. *EC Competition Law.* 2nd ed. Oxford, UK: Clarendon Press.
Goyder, Joanna, and Albertina Albors-Llorens. 2009. *Goyder's EC Competition Law.* 5th ed. Oxford: Oxford University Press.
Grant, Charles. 1994. *Delors: Inside the House That Jacques Built.* London: Nicholas Brealy Publishing.
Graupner, Frances. 1973. "Commission Decision-Making on Competition Questions." *Common Market Law Review* 10 (3): 291–305.
Gray, Margaret. 1998. "A Recalcitrant Partner: The UK Reaction to the Working Time Directive." In *Yearbook of European Law 1997,* edited by A. Barav and D. A. Wyatt, 323–62. Oxford, UK: Clarendon Press.
Greif, Avner. 2006. *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade.* Cambridge, MA: Cambridge University Press.
Grossman, Gene M., and Elhanan Helpman. 1994. "Protection for Sale." *American Economic Review* 84 (4): 833–50.
Guardian. 1991a. "After the Maastricht Summit: Opt-out Deal Gives Room for Manoeuvre." December 12.
———. 1991b. "Government Faces Fresh Embarrassment over Sunday Trading." October 21.
———. 1991c. "The Road to Maastricht: Progress Is Slow on Controversial Social Dimension." December 5.
———. 1991d. "The Road to Maastricht: Victorian Working Jibe Stings Howard." December 4.
———. 1992. "British Bosses 'Exaggerating' 48-hr Problem." August 13.
———. 1993a. "EC Law Suit Looms over Working Time Directive." June 4.
———. 1993b. "Howard to Be Right's Voice on Economy." May 31.
———. 1993c. "Major Wrestles Delors over Costs." June 22.
———. 1993d. "Time Stands Still for Workers Exceeding 48-Hour Limit." June 1.
Haas, Ernst B. 1961. "International Integration: The European and the Universal Process." *International Organization* 15 (3): 366–92.
———. 1963. "Technocracy, Pluralism, and the New Europe." In *A New Europe? A Timely Appraisal,* edited by Stephen R. Graubard, 62–88. Boston: Beacon Press.
Hall, Peter A., and Rosemary C. R. Taylor. 1996. "Political Science and the Three New Institutionalisms." *Political Studies* 44 (5): 936–57.
Hallstein, Walter. 1962. *United Europe: Challenge and Opportunity.* Cambridge, MA: Harvard University Press.
———. 1965. Address by Walter Hallstein, President of the Commission of the European Economic Community (EEC), Given at the British Institute of International and Comparative Law in London on 25 March 1965; http://www.ena.lu/address_walter_hallstein_london_25_march_1965–2-10125.
Hambloch, Sibylle. 2002. "Die Entstehung der Verordnung 17 von 1962 im Rahmen der EWG-Wettbewerbspolitik." *Europarecht* 37 (6): 877–97.
Harris, Simon, Alan Swinbank, and Guy Wilkinson. 1983. *The Food and Farm Policies of the European Community.* Chichester, UK: John Wiley & Sons.
Hawkins, Darren, David Lake, Daniel Nielson, and Michael Tierney. 2006. "Delegation under Anarchy: States, International Organizations, and Principal-Agent Theory." In *Delegation and Agency in International Organizations,* edited by Darren Hawkins, David Lake, Daniel Nielson, and Michael Tierney, 3–38. Cambridge: Cambridge University Press.

Hay, Richard. 1989. *Die EG-Kommission und die Verwaltung der Gemeinschaft.* Luxemburg: Amt für amtliche Veröffentlichungen der Europäischen Gemeinschaften.
Hayes-Renshaw, Fiona, Wim Van Aken, and Helen Wallace. 2006. "When and Why the EU Council of Ministers Votes Explicitly." *Journal of Common Market Studies* 44 (1): 161–94.
Hayes-Renshaw, Fiona, and Helen Wallace. 2006. *The Council of Ministers.* 2nd ed. Houndmills, UK: Palgrave Macmillan.
Heisenberg, Dorothee. 2005. "The Institution of 'Consensus' in the European Union: Formal versus Informal Decision-Making in the Council." *European Journal of Political Research* 44 (1): 65–90.
Helmke, Gretchen, and Steven Levitsky. 2004. "Informal Institutions and Comparative Politics: A Research Agenda." *Perspectives on Politics* 2 (4): 725–40. doi:10.1017/S1537592704040472.
Henig, Stanley. 1973. "New Institutions for European Integration." *Journal of Common Market Studies* 12 (2): 129–37.
———. 1980. *Power and Decision in Europe: The Political Institutions of the European Community.* London: Europotentials Press.
Herald. 1993a. "Government to Challenge EC 48-Hour Ruling in European Court of Justice." June 2.
———. 1993b. "Hope of Shorter Week for Junior Doctors." October 28.
Héritier, Adrienne. 1999. *Policy-Making and Diversity in Europe: Escape from Deadlock.* Cambridge: Cambridge University Press.
Hix, Simon. 1994. "The Study of the European Community: The Challenge to Comparative Politics." *West European Politics* 17 (1): 1–30.
———. 1998. "The Study of the European Union II: The 'New Governance' Agenda and Its Rival." *Journal of European Public Policy* 5 (1): 38–65.
———. 2002. "Constitutional Agenda-Setting through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam." *British Journal of Political Science* 32 (2): 259–80.
———. 2008. *What's Wrong with the European Union and How to Fix It.* London: Polity Press.
Hix, Simon, and Bjorn Hoyland. 2011. *The Political System of the European Union.* 3rd ed. Houndmills, UK: Palgrave Macmillan.
Hix, Simon, Abdul Noury, and Gerard Roland. 2007. *Democratic Politics in the European Parliament.* Cambridge: Cambridge University Press.
Hofmann, Herwig. 2009. "Legislation, Delegation and Implementation under the Treaty of Lisbon: Typology Meets Reality." *European Law Journal* 15 (4): 482–505.
Hooghe, Liesbet. 2001. *The European Commission and the Integration of Europe.* Cambridge: Cambridge University Press.
———. 2005. "Several Roads Lead to International Norms, but Few via International Socialization: A Case Study of the European Commission." *International Organization* 59 (4): 867–98.
Hörl, Björn, Andreas Warntjen, and Arndt Wonka. 2005. "Built on Quicksand? A Decade of Procedural Spatial Models on EU Legislative Decision-Making." *Journal of European Public Policy* 12 (3): 592–606. doi:10.1080/13501760500091950.
Hosli, Madeleine O. 1993. "Admission of European Free Trade Association States to the European Community: Effects on Voting Power in the European Community Council of Ministers." *International Organization* 47 (4): 629-43.
Houben, Petrus. 1964. *Les Conseils de Ministres des Communautés Européennes.* Leyden: Sythoff.

House of Lords. 1993. Select Committee on the European Communities: Enforcement of Community Competition Rules. Session 1993–94, 1st Report.
———. 1999. Select Committee on the European Union: Delegation of Powers to the Commission: Reforming Comitology. Session 1998–99, 3rd Report.
Howse, Robert, and Ruti Teitel. 2010. "Beyond Compliance: Rethinking Why International Law Really Matters." *Global Policy* 1 (2): 127–36. doi:10.1111/j.1758–5899.2010.00035.x.
Huber, John D., and Charles R. Shipan. 2008. "Politics, Delegation, and Bureaucracy." In *Oxford Handbook of Political Economy,* edited by Barry R. Weingast and Donald A. Wittman, 256–72. Oxford: Oxford University Press.
Hug, Simon. 2003. "Endogenous Preferences and Delegation in the European Union." *Comparative Political Studies* 36 (1–2): 41–74. doi:10.1177/0010414002239371.
Hurd, Ian. 1999. "Legitimacy and Authority in International Politics." *International Organization* 53 (2): 379–408.
Independent. 1990. "EC Rights for Part-timers Angers Howard." June 14.
———. 1991. "Maastricht Summit: Major Rejects Powers to Influence Job Conditions." December 10.
———. 1992. "Britain Fights Community Proposals to Shorten Working Week." June 24.
———. 1993a. "Fresh Split Looms as Tory Right Takes Aim at Clarke." May 30.
———. 1993b. "Hunt Faces EC Anger over Work-Time Directive." June 2.
Institut für Europäische Politik. 1989. "Comitology"—Characteristics, Performance and Options, Preliminary Final Report (Confidential), September. Bonn.
International Herald Tribune. 1993. "EC Weighs More Labor Protection." June 1.
Jacobs, F. G., Richard Corbett, and Michael Shackleton. 1992. *The European Parliament.* 2nd ed. Harlow, UK: Longman.
Jacobs, Francis, and Richard Corbett. 1990. *The European Parliament.* Harlow, UK: Longman Group.
Joerges, Christian, and Jürgen Neyer. 1997. "From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology." *European Law Journal* 3 (3): 273–99.
Johnson, Michael. 1998. *European Community Trade Policy and the Article 113 Committee.* London: Royal Institute of International Affairs.
Johnston, Mary Troy. 1994. *The European Council: Gatekeeper of the European Community.* Boulder, CO: Westview.
Jouve, Edmond. 1967. *Le Général De Gaulle et la Construction de l'Europe (1940–1966),* Tome Premier. Paris: Librairie Générale de Droit et de Jurisprudence.
Judge, David, and David Earnshaw. 2008. *The European Parliament.* 2nd ed. London: Palgrave Macmillan.
Kardasheva, Raya. 2009. "The Power to Delay: The European Parliament's Influence in the Consultation Procedure." *Journal of Common Market Studies* 47 (2): 385–409. doi:10.1111/j.1468–5965.2009.00809.x.
Kassim, Hussein. 2004a. "A Historic Accomplishment: The Prodi Commission and Administrative Reform." In *The Changing European Commission,* edited by Dionyssis G. Dimitrakopoulos, 31–62. Manchester, UK: Manchester University Press.
———. 2004b. "The Kinnock Reforms in Perspective: Why Reforming the Commission Is an Heroic, but Thankless, Task." *Public Policy and Administration* 19 (3): 25–41.
———. 2008. 'Mission Impossible,' but Mission Accomplished: The Kinnock Reforms and the European Commission." *Journal of European Public Policy* 15 (5): 648–68. doi:10.1080/13501760802133146.

Katzenstein, Peter J. 1985. *Small States in World Markets: Industrial Policy in Europe.* Ithaca, NY: Cornell University Press.
Keeler, John T. S. 1996. "Agricultural Power in the European Community: Explaining the Fate of CAP and GATT Negotiations." *Comparative Politics* 28 (2): 127–49.
Kelemen, R. Daniel. 2002. "The Politics of 'Eurocratic' Structure and the New European Agencies." *West European Politics* 25 (4): 93–118.
Kennedy, David. 2009. "The Mystery of Global Governance." In *Ruling the World? Constitutionalism, International Law, and Global Governance,* edited by Jeffrey L. Dunoff and Joel P. Trachtman, 37–68. Cambridge: Cambridge University Press.
Keohane, Robert O. 1984. *After Hegemony: Cooperation and Discord in the World Political Economy.* Princeton, NJ: Princeton University Press.
Keohane, Robert O., and Joseph Nye. 1977. *Power and Interdependence: World Politics in Transition.* Boston: Little, Brown and Co.
Kim, So Young. 2007. "Openness, Risk, and Volatility: Implications for the Compensation Hypothesis." *International Organization* 61 (1): 181–216.
King, Gary, Robert O. Keohane, and Sidney Verba. 1994. *Designing Social Inquiry: Scientific Inference in Qualitative Research.* Princeton, NJ: Princeton University Press.
Kingdon, John W. 1995. *Agendas, Alternatives, and Public Policies.* 2nd ed. New York: Harper Collins College Publishers.
Kirchner, Emil. 1992. *Decision-Making in the European Community: The Council Presidency and European Integration.* Manchester, UK: Manchester University Press.
Kleine, Mareike. 2013. "Knowing Your Limits: Informal Governance and Judgment in the EU." *Review of International Organizations* 8 (2): 245–64, doi:1-20.10.1007/s11558-012-9148-7.
Kohler, Phillipe, and Michael O. Moore. 2001. "The Safeguard Clause, Asymmetric Information, and Endogenous Protection." *Review of International Economics* 9 (1): 52–67.
König, Thomas. 2007. "Divergence or Convergence? From Ever-Growing to Ever-Slowing European Legislative Decision Making." *European Journal of Political Research* 46 (3): 417–44.
Kono, Daniel Y. 2006. "Optimal Obfuscation: Democracy and Trade Policy Transparency." *American Political Science Review* 100 (3): 369–84.
Koremenos, Barbara. 2005. "Contracting around International Uncertainty." *American Political Science Review* 99 (4): 549–65.
Koremenos, Barbara, Charles Lipson, and Duncan Snidal. 2001a. *The Rational Design of International Institutions.* Cambridge: Cambridge University Press.
———. 2001b. "The Rational Design of International Institutions." *International Organization* 55 (4): 761–99.
Kortenberg, Helmut. 1998. "Comitologie: Le retour." *Revue Trimestrielle de Droit Européen* 34 (3): 317–27.
Kranz, Jerzy. 1982. "La vote dans la practique du Conseil des Ministres des Communautés Européennes." *Revue Trimestrielle de Droit Européen* 18 (3): 403–30.
Krasner, Stephen D. 1982. "Structural Causes and Regime Consequences: Regimes as Intervening Variables." *International Organization* 36 (2): 185–205.
Krehbiel, Keith. 1991. *Information and Legislative Organization.* Ann Arbor: University of Michigan Press.
Kreher, Alexander. 1997. "Agencies in the European Community—a Step towards Administrative Integration in Europe." *Journal of European Public Policy* 4 (2): 225–45.

Krenzler, Horst Günther. 1974. "Die Rolle der Kabinette in der Kommission der Europäischen Gemeinschaft." *Europarecht* (1): 75–79.
Krisch, Nico. 2010. *Beyond Constitutionalism: The Pluralist Structure of Postnational Law.* Oxford: Oxford University Press.
Kucik, Jeffrey, and Eric Reinhardt. 2008. "Does Flexibility Promote Cooperation? An Application to the Global Trade Regime." *International Organization* 62 (3): 477–505. doi:10.1017/S0020818308080168.
Kydd, Andrew H. 2003. "Which Side Are You On? Bias, Credibility, and Mediation." *American Journal of Political Science* 47 (4): 597–611.
Kydland, Finn E., and Edward C. Prescott. 1977. "Rules Rather Than Discretion: The Inconsistency of Optimal Plans." *Journal of Political Economy* 85 (3): 473–92.
Lahr, Rolf. 1983. "Die Legende vom 'Luxemburger Kompromiß'." *Europa-Archiv* 8: 223–32.
Lakatos, Imre. 1970. "Falsification and the Methodology of Scientific Research Programmes." In *Criticism and the Growth of Knowledge,* edited by Imre Lakatos and Alan Musgrave, 91–196. Cambridge: Cambridge University Press.
Lambert, John. 1966. "The Constitutional Crisis 1965–1966." *Journal of Common Market Studies* 4 (3): 195–228.
Lamont, Norman. 1999. *In Office.* London: Little, Brown and Co.
Larsson, Torbjörn. 2003. *Precooking in the European Union—The World of Expert Groups.* Stockholm: Swedish Ministry of Finance.
Lassalle, Claude. 1968. "Les Comités et L'Évolution Institutionelle de la CEE." *Cahiers de Droit Européen* 4 (4): 395–419.
Lemaignen, Robert. 1964. *L'Europe au Berceau: Souvenirs d'un Technocrate.* Paris: Plon.
Lenaerts, Koen, and Amaryllis Verhoeven. 2000. "Towards a Legal Framework for Executive Rule-Making in the EU? The Contribution of the New Comitology Decision." *Common Market Law Review* 37: 645–86.
Lewis, Jeffrey. 1998. "Constructing Interests: The Committee of Permanent Representatives and Decision-Making in the European Union." PhD diss., University of Wisconsin–Madison.
———. 2005. "The Janus Face of Brussels: Socialization and Everyday Decision Making in the European Union." *International Organization* 59 (4): 937–71. doi:10.1017/S0020818305050320.
Lindberg, Leon N. 1963. *The Political Dynamics of European Economic Integration.* Stanford, CA: Stanford University Press.
Lohmann, Susanne. 1992. "Optimal Commitment in Monetary Policy: Credibility versus Flexibility." *American Economic Review* 82 (1): 273–86.
Ludlow, N. Piers. 2003. "An Opportunity or a Threat? The European Commission and The Hague Council of December 1969." *Journal of European Integration History* 9 (2): 11–26.
Ludlow, Peter. 1991. "The European Commission." In *The New European Community: Decisionmaking and Institutional Change,* edited by Robert O. Keohane and Stanley Hoffmann, 85–132. Boulder, CO: Westview.
———. 1995. "The Presidency of the Council: A New Power in the European Union?" In *L'équilibre européen: Etudes rassemblées en hommage à Niels Ersbøll, Bruxelles, Secrétariat général du Conseil (1980–1994),* edited by Peter Ludlow, 145–62. Brussels: Secretariat General du Conseil.
Lustick, Ian S. 1996. "History, Historiography, and Political Science: Multiple Historical Records and the Problem of Selection Bias." *American Political Science Review* 90 (3): 605–18.
Maass, Peter. 1987. "U.K. Told Officials How to Manipulate Presidency." *International Herald Tribune,* February 16.

Maduro, Miguel Poiares. 2003. "Europe and the Constitution: What if This Is as Good as It Gets?" In *European Constitutionalism beyond the State,* edited by J. H. H. Weiler and Marlene Wind, 74–102. Cambridge: Cambridge University Press.

——. 2009. "Courts and Pluralism: Essay on a Theory of Judicial Adjudication in the Context of Legal and Constitutional Pluralism." In *Ruling the World? Constitutionalism, International Law, and Global Governance,* edited by Jeffrey L. Dunoff and Joel P. Trachtman, 356–79. Cambridge: Cambridge University Press.

Maggi, Giovanni, and Andres Rodriguez-Clare. 1998. "The Value of Trade Agreements in the Presence of Political Pressures." *Journal of Political Economy* 106 (3): 574–601.

Magnette, Paul, and Kalypso Nicolaidis. 2005. "Coping with the Lilliput Syndrome: Large vs. Small Member States in the European Convention." *European Public Law* 11 (1): 85–104.

Mahoney, James, and Kathleen Thelen. 2010. "A Theory of Gradual Institutional Change." In *Explaining Institutional Change: Ambiguity, Agency, and Power,* edited by James Mahoney and Kathleen Thelen, 1–37. Cambridge: Cambridge University Press.

Majone, Giandomenico. 1994. "The Rise of the Regulatory State in Europe." *West European Politics* 17 (3): 77–101.

——. 1997. "The New European Agencies: Regulation by Information." *Journal of European Public Policy* 4 (2): 262–75.

Mancini, G. Frederico. 1989. "The Making of a Constitution for Europe." *Common Market Law Review* 26 (4): 595–614.

Manin, Bernhard, Adam Przeworski, and Susan C. Stokes. 1999. Introduction to *Democracy, Accountability, and Representation,* edited by Adam Przeworski, Susan C. Stokes, and Bernhard Manin, 1–26. Cambridge: Cambridge University Press.

Mansfield, Edward D., Helen V. Milner, and B. Peter Rosendorff. 2002. "Why Democracies Cooperate More: Electoral Control and International Trade Agreements." *International Organization* 56 (3): 477–513.

March, James G., and Johan P. Olsen. 1998. "The Institutional Dynamics of International Political Orders." *International Organization* 52 (4): 943–69.

Marjolin, Robert. 1989. *Architect of European Unity: Memoirs 1911–1986.* London: Weidenfeld and Nicolson.

Mattila, Mikko. 2009. "Roll Call Analysis of Voting in the European Council of Ministers after the 2004 Enlargement." *European Journal of Political Research* 48: 840–57.

Mattila, Mikko, and Jan-Erik Lane. 2001. "Why Unanimity in the Council? A Roll Call Analysis of Council Voting." *European Union Politics* 2 (1): 31–52.

Maurer, Andreas, Jürgen Mittag, and Wolfgang Wessels. 2000. "Theoretical Perspectives on Administrative Interaction in the European Union." In *Committee Governance in the European Union,* edited by Thomas Christiansen and Emil Kirchner, 23–44. Manchester, UK: Manchester University Press.

Mayhew, David R. 1974. *Congress: The Electoral Connection.* New Haven, CT: Yale University Press.

McCubbins, Mathew D., Roger G. Noll, and Barry R. Weingast. 1989. "Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies." *Virginia Law Review* 75 (2): 431–82.

McCubbins, Mathew D., and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms." *American Journal of Political Science* 28 (1): 165–79.

McGowan, Lee. 2005. "Europeanization Unleashed and Rebounding: Assessing the Modernization of EU Cartel Policy." *Journal of European Public Policy* 12 (6): 986–1004. doi:10.1080/13501760500270646.

McGowan, Lee, and Michelle Cini. 1999. "Discretion and Politicization in EU Competition Policy: The Case of Merger Control." *Governance* 12 (2): 175–200.

McGowan, Lee, and Stephen Wilks. 1995. "The First Supranational Policy in the European Union: Competition Policy." *European Journal of Political Research* 28 (1): 141–69.

McKelvey, Richard D. 1976. "Intransitivities in Multidimensional Voting Models and Some Implications for Agenda Control." *Journal of Economic Theory* 12 (3): 472–82.

McKeown, Timothy J. 2009. "How U.S. Decision-Makers Assessed Their Control of Multilateral Organizations, 1957–1982." *Review of International Organizations* 4 (2): 269–91.

Mégret, Jean. 1961. "Les Conseils des Communautées Européennes." *Annuaire Francais de Droit International* 7: 632–67.

Meng, Werner. 1988. "Die Neuregelung der EG-Verwaltungsausschüsse: Streit um die "Comitologie"." *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 48 (2): 208–27.

Michaels, Ralf. 2009. "Global Legal Pluralism." *Annual Review of Law and Social Science* 5 (1): 243–62. doi:10.1146/annurev.lawsocsci.4.110707.172311.

Michelmann, Hans J. 1978. "Multinational Staffing and Organizational Functioning in the Commission of the European Communities." *International Organization* 32 (2): 477–96.

Milgrom, Paul R., Douglass C. North, and Barry R. Weingast. 1990. "The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs." *Economics and Politics* 2 (1): 1–23.

Mitra, Devashish. 2002. "Endogenous Political Organization and the Value of Trade Agreements." *Journal of International Economics* 57 (4): 473–85.

Mitrany, David. 1943. "A Working Peace System: An Argument for the Functional Development of International Organization." London: Royal Institute of International Affairs.

Monnet, Jean. 1950. "Letter from Jean Monnet to Edwin Plowden, 25 May 1950." In *The Origins and Development of European Integration,* edited by Peter M. R. Stirk and David Weigall, 77. New York: Pinter.

Moravcsik, Andrew. 1998. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht.* Ithaca, NY: Cornell University Press.

———. 2000a. "De Gaulle between Grain and Grandeur: The Political Economy of French EC Policy, 1958–1970 (Part I)." *Journal of Cold War Studies* 2 (2): 3–43.

———. 2000b. "De Gaulle between Grain and Grandeur: The Political Economy of French EC Policy, 1958–1970 (Part II)." *Journal of Cold War Studies* 2 (3): 4–68.

———. 2002. "In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union." *Journal of Common Market Studies* 40 (4): 603–24.

———. 2008. "The Myth of Europe's Democratic Deficit." *Intereconomics* (November): 331–40.

Morgan, Annette. 1976. *From Summit to Council: Evolution in the EEC.* London: Chatham House.

Mortelmans, K.J. 1974. "The Extramural Meetings of the Ministers of the Member States of the Community." *Common Market Law Review* 11 (1): 62–91.

Moser, Peter. 1996. "The European Parliament as a Conditional Agenda Setter: What Are the Conditions? A Critique of Tsebelis (1994)." *American Political Science Review* 90 (4): 834–38.

Mukherjee, Bumba, and David Andrew Singer. 2010. "International Institutions and Domestic Compensation: The IMF and the Politics of Capital Account Liberalization." *American Journal of Political Science* 54 (1): 45–60.

Neven, Damien, Robin Nuttal, and Paul Seabright. 1993. *Merger in Daylight: The Economics and Politics of European Merger Control.* London: Centre for Economic Policy Research.

Neville-Rolfe, Edmund. 1984. *The Politics of Agriculture in the European Community.* London: Policy Studies Institute.

Newhouse, John. 1967. *Collision in Brussels. The Common Market Crisis of 30 June 1965.* London: Faber and Faber.

Nicoll, William. 1994. "The European Parliament's Post-Maastricht Rules of Procedure." *Journal of Common Market Studies* 32 (3): 403–10.

Nielsen, Terkel T. 1971. "Aspects of EEC Influence of European Groups in the Decision-Making Processes: The Common Agricultural Policy." *Government and Opposition* 6 (4): 539–58.

Noël, Emile. 1963. "Comment fonctionnent les institutions de la communauté économique européennes?" *Revue du Marché Commun et de l'Union Européenne* 5 (4): 14–21.

———. 1966. "Le Comité des Représentants Permanents." Paper presented at the Institut D'Etudes Européennes, Université Libre de Bruxelles, April 19.

———. 1967a. "Der Ausschuss der Ständigen Vertreter." *Europarecht* 1: 24–54.

———. 1967b. "The Committee of Permanent Representatives." *Journal of Common Market Studies* 5 (3): 219–51.

———. 1968. Le fonctionnement des organismes de la C.E.E, November 29, EN 809, Archives Historiques des Communautés Européennes.

———. 1973. "The Commission's Power of Initiative." *Common Market Law Review* 10 (2): 123–36.

———. 1976a. *Les rouages de l'Europe: Comment fonctionnent les institutions de la Communauté Européenne.* Luxembourg: European Community.

———. 1976b. "Some Reflections on the Preparation, Development and Repercussions of the Meetings between the Heads of Governments (1974–75)." *Government and Opposition* 11 (1): 20–34.

———. 1985. "The European Community Today: What Kind of Future?" *Government and Opposition* 20 (2): 147–55.

———. 1992. "Témoigne: L'administration de la communauté européenne dans la rétrospective d'un ancien haut fonctionnaire." In *Die Anfänge der Verwaltung der Europäischen Gemeinschaft,* edited by Erk Volkmar Heyen, 145–58. Baden-Baden: Nomos.

Noël, Emile, and Henri Étienne. 1969. "Quelques aspects des rapports et de la collaboration entre le Conseil et la Commission "In *La décision dans les Communautés Européenes,* edited by Pierre Gerbet and Daniel Pepy. Brussels: Université Libre de Bruxelles.

———. 1971. "The Permanent Representatives Committee and the 'Deepening' of the Communities." *Government and Opposition* 6 (4): 422–47.

Nord, Hans, and John Taylor. 1979. "The European Parliament before and after Direct Elections." *Government and Opposition* 14 (4): 411–32.

NRC Handelsblad. 1991. "Het 'sociale gezicht' van Europa blijft verborgen." December 5.

Nugent, Neill. 1995. "The Leadership Capacity of the European Commission." *Journal of European Public Policy* 2 (4): 603–23.

———. 2001. *The European Commission.* Houndmills, UK: Palgrave.

Obstfeld, Maurice. 1997. "Destabilizing Effects of Exchange-Rate Escape Clauses." *Journal of International Economics* 43 (1–2): 61–77. doi:10.1016/s0022–1996(96)01460–2.

Olson, Mancur. 1965. *The Logic of Collective Action.* Cambridge, MA: Harvard University Press.

———. 1985. "Space, Agriculture, and Organization." *American Journal of Agricultural Economics* 67 (5): 928–37.

Ophüls, Carl Friedrich. 1966. "Die Mehrheitsbeschlüsse der Räte in den Europäischen Gemeinschaften." *Europarecht* 1 (3): 193–229.

Oppermann, Thomas. 1979. *Walter Hallstein—Europäische Reden.* Stuttgart: Deutsche Verlagsanstalt.

Pag, Sabine. 1987. "The Relations between the Commission and National Bureaucracies." In *The European Administration,* edited by Sabino Cassese, 445–93. Baden-Baden: Nomos.

Page, Edward C. 1997. *People Who Run Europe.* Oxford, UK: Clarendon Press.

Patterson, Lee Ann. 1997. "Agricultural Policy Reform in the European Community: A Three-Level Game Analysis." *International Organization* 51 (1): 135–65.

Pelc, Krzysztof J. 2009. "Seeking Escape: The Use of Escape Clauses in International Trade Agreements." *International Studies Quarterly* 53 (2): 349–68. doi:10.1111/j.1468–2478.2009.00537.x.

———. 2010. "Eluding Efficiency: Why Do We Not See More Efficient Breach at the WTO?" *World Trade Review* 9 (4): 629–42.

———. 2011. "How States Ration Flexibility: Tariffs, Remedies, and Exchange Rates as Policy Substitutes." *World Politics* 63 (4): 618–46.

Peterson, John. 1999. "The Santer Era: The European Commission in Normative, Historical and Theoretical Perspective." *Journal of European Public Policy* 6 (1): 46–65.

———. 2004. "The Prodi Commission: Fresh Start of Free Fall?" In *The Changing European Commission,* edited by Dionyssis G. Dimitrakopoulos, 15–32. Manchester, UK: Manchester University Press.

———. 2008. "Enlargement, Reform and the European Commission. Weathering a Perfect Storm?" *Journal of European Public Policy* 15 (5): 761–80.

———. 2010. "Mission? Gestion? Cabinets in the Barroso Commission." Paper prepared for presentation at the Political Studies Association Conference in Edinburgh, April 1.

Pierson, Paul. 1996. "The Path to European Integration: A Historical Institutionalist Analysis." *Comparative Political Studies* 29 (2): 123–63.

———. 2000. "Increasing Returns, Path Dependence, and the Study of Politics." *American Political Science Review* 94 (2): 251–68.

Polanyi, Karl. 1944. *The Great Transformation.* Boston: Beacon Press.

Pollack, Mark A. 1997. "Delegation, Agency and Agenda Setting in the European Community." *International Organization* 51 (1): 99–134.

———. 2003a. "Control Mechanism or Deliberative Democracy? Two Images of Comitology." *Comparative Political Studies* 36 (1–2): 125–55.

———. 2003b. *The Engines of European Integration.* Oxford: Oxford University Press.

———. 2005. "Theorizing the European Union: International Organization, Domestic Polity, or Experiment in New Governance." *Annual Review of Political Science* 8: 357–98.

Posner, Richard A. 2002. *Economic Analysis of Law.* New York: Aspen Law & Business.

Poullet, Edouard, and Gérard Deprez. 1976. *Struktur und Macht der EG-Kommission: Die Kommission im System der Europäischen Gemeinschaft.* Bonn: Europa Union Verlag.

Press Association. 1992. "Shephard Fends Off 48-Hour Week—for Now." April 30.
Prodi, Romano. 1999. Intervention of Prof. Prodi in European Council, 3rd June 1999. NIO/99/248.
Proksch, Sven-Oliver, and Jonathan B. Slapin. 2010. "Position Taking in European Parliament Speeches." *British Journal of Political Science* 40 (3): 587–611.
Pryce, Roy. 1962. *The Political Future of the European Community.* London: John Marshbank.
Rat der EG. 1973. Auszug aus dem Entwurf eines Protokolls über die 252. Ratstagung am Montag, den 23. und Dienstag, den 24. Juli 1973 in Brüssel, October 18, R/1587/73. CM2 1973/017.
———. 1974a. Ratsbeschluss vom 4. Juni 1974, Bulletin der Europäischen Gemeinschaften 6/1974.
———. 1974b. Ratsbeschluss vom 4./5. Februar 1974, Bulletin der Europäischen Gemeinschaften 2/1974.
Rat der EWG. 1960a. Ausschuss der Ständigen Vertreter: Entwurf eines Protokolls über die 93. Tagung am 4. März 1960 in Brüssel, March 15, R 103/60.
———. 1960b. Ausschuss der Ständigen Vertreter: Entwurf eines Protokolls über die Tagung im engeren Rahmen am 15. und 16. September 1960 in Brüssel, October 4, R 918/60.
———. 1960c. Interne Aufzeichnung über die Gemeinsame Agrarpolitik (im Anschluss an die Diskussion in der internen Sitzung am 2. Juni 1960), June 13, R 46/60.
———. 1962. Ausschuss der Ständigen Vertreter: Entwurf einer Kurzniederschrift über die Sitzung im engeren Rahmen anlässlich der 234. Tagung (7., 8., 9. November in Brüssel), November 29, R 822/62.
———. 1963. Entwurf eines Protokolls über die Sitzungen im engeren Rahmen anlässlich der 60. Tagung des Rates der Europäischen Wirtschaftsgemeinschaft vom 18. bis 22. und am 29. und 30. Dezember 1961 sowie vom 4. bis 14. Januar 1962 in Brüssel (2.Teil), January 17, R/78/62.
Räte der Europäischen Gemeinschaften. 1960. Sitzung des Präsidialausschusses des Europäischen Parlaments (Brüssel, den 1. März 1960), March 7, R 17/60.
Raz, Joseph. 1979. *The Authority of Law: Essays on Law and Morality.* Oxford: Oxford University Press.
Représentation Permanente de la Belgique. 1966a. Session extraordinaire du Conseil C.E.E. à Luxembourg, 17/18 janvier 1966, January 14, CM2–1966.
———. 1966b. Session extraordinaire du Conseil C.E.E. à Luxembourg, 28/29 janvier 1966, February 1, CM2–1966.
1973. Document de Travail: Suggestions practique visant à améliorer les procédures de décision au sein des Communautés Européennes, March 17, CM2–1973.
Reuters. 1992a. "Britain Weighing New Plan on Working Hours." June 11.
———. 1992b. "Commissioner Blames Britain for Social Policy." December 4.
Rieger, Elmar. 2005. "Agricultural Policy." In *Policy-Making in the European Union,* edited by Helen Wallace, William Wallace, and Mark A. Pollack, 161–90. Oxford: Oxford University Press.
Riley, Alan. 2003. "EC Antitrust Modernisation: The Commission Does Very Nicely—Thank You! Part Two: Between the Idea and the Reality: Decentralisation under Regulation 1." *European Competition Law Review* 24 (12): 657–72.
Risse, Thomas. 2000. "'Let's Argue!' Communicative Action in World Politics." *International Organization* 54 (1): 1–39.
Risse, Thomas, and Mareike Kleine. 2010. "Deliberation in Negotiations." *Journal of European Public Policy* 17 (5): 708–26.

Ritchie, Ella. 1992. "The Model of French Ministerial Cabinets in the Early European Commission." In *Die Anfänge der Verwaltung der Europäischen Gemeinschaften,* edited by Erk Volkmar Heyen, 95–106. Baden-Baden: Nomos.

Rittberger, Berthold. 2005. *Building Europe's Parliament: Democratic Representation beyond the Nation-State.* Oxford: Oxford University Press.

Rodrik, Dani. 1998. "Why Do More Open Economies Have Bigger Governments?" *Journal of Political Economy* 106 (5): 997–1032.

Rogers, John H. 2007. "Monetary Union, Price Level Convergence, and Inflation: How Close Is Europe to the USA?" *Journal of Monetary Economics* 54 (3): 785–96.

Rometsch, Dietrich. 1999. *Die Rolle und Funktionsweise der Europäischen Kommission in der Ära Delors.* Frankfurt am Main: Peter Lang.

Rosendorff, B. Peter. 2005. "Stability and Rigidity: Politics and Design of the WTO's Dispute Settlement Procedure." *American Political Science Review* 99 (3): 389–400.

Rosendorff, B. Peter, and Helen V. Milner. 2001. "The Optimal Design of International Trade Institutions: Uncertainty and Escape." *International Organization* 55 (4): 829–57.

Ross, George. 1994. "Inside the Delors Cabinet." *Journal of Common Market Studies* 32 (4): 499–523.

———. 1995. *Jacques Delors and European Integration.* Cambridge, UK: Polity Press.

Ruggie, John G. 1982. "International Regimes, Transactions, and Change." *International Organization* 36 (2): 379–415.

Sabel, Charles F., and Jonathan Zeitlin. 2008. "Learning from Difference: The New Architecture of Experimentalist Governance in the EU." *European Law Journal* 14 (3): 271–327.

Sandholtz, Wayne, and Alec Stone Sweet. 2012. "Neo-functionalism and Supranational Governance." In *Oxford Handbook of the European Union,* edited by Erik Jones, Anand Menon, and Stephen Weatherill, 18–33. Oxford: Oxford University Press.

Sasse, Christoph. 1972. "Die Zukunft der Verfassung der Europäischen Gemeinschaft: Überlegungen zu einigen Reformkonzepten." *Europa-Archiv* 27 (3): 87–100.

———. 1975. *Regierungen, Parlamente, Ministerrat: Entscheidungsprozesse in der Europäischen Gemeinschaft.* Bonn: Europa Union Verlag.

Schalk, Jelmer, Renee Torenvlied, Jeroen Weesie, and Frans N. Stokman. 2006. "The Power of the Presidency in EU Council Decision-Making." *European Union Politics* 8 (2): 229–50.

Scharpf, Fritz W. 1999. *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.

Scheinman, Lawrence. 1966. "Some Preliminary Notes on Bureaucratic Relationships in the European Economic Community." *International Organization* 20 (4): 750–73.

Schindler, Peter. 1971. "The Problems of Decision-Making by Way of the Management Committee Procedure in the European Economic Community." *Common Market Law Review* 8 (2): 184–205.

Schön-Quinlivan, Emmanuelle. 2011. *Reforming the European Commission.* London: Palgrave Macmillan.

Schoutheete, Philippe de. 2003. "Die Debatte des Konvents über den Europäischen Rat." *integration* 26 (4): 468–82.

Schuman, Robert. 1950. The Schuman Declaration, May 9; http://www.cvce.eu/obj/The_Schuman_Declaration_Paris_9_May_1950-en-9cc6ac38–32f5–4c0a-a337–9a8ae4d5740f.html.

Scotsman. 1993. "MEPs Oppose British Opt Out on Work Hours." October 28.
Shackleton, Michael. 2000. "The Politics of Codecision." *Journal of Common Market Studies* 38 (2): 325–42.
Shackleton, Michael, and Tapio Raunio. 2003. "Codecision since Amsterdam: A Laboratory for Institutional Innovation and Change." *Journal of European Public Policy* 10 (2): 171–88.
Shavell, Steven. 1979. "On Moral Hazard and Insurance." *Quarterly Journal of Economics* 93 (4): 541–62.
Shepsle, Kenneth A. 1979. "Institutional Arrangements and Equilibrium Multidimensional Voting Models." *American Journal of Political Science* 23 (1): 27–59.
———. 1989. "Studying Institutions: Some Lessons from the Rational Choice Approach." *Journal of Theoretical Politics* 1 (2): 131–47.
Silj, Alessandro. 1967. "Europe's Political Puzzle: A Study of the Fouchet Negotiations and the 1963 Veto." Occasional Papers in International Affairs 17. Harvard University: Center for International Affairs.
Siotis, Jean. 1964. "Some Problems of European Secretariats." *Journal of Common Market Studies* 2 (3): 222–50.
Spence, David. 1994. "Staff and Personnel Policy in the Commission." In *The European Commission,* edited by Geoffrey Edwards and David Spence, 62–96. London: Cartermill.
Spence, David, and with Geoffrey Edwards. 2006. *The European Commission.* 3rd ed. London: John Harper Publishing.
Staiger, Robert W., and Guido Tabellini. 1987. "Discretionary Trade Policy and Excessive Protection." *American Economic Review* 77 (5): 823–37.
Stein, Eric. 1981. "Lawyers, Judges, and the Making of a Transnational Constitution." *American Journal of International Law* 75 (1): 1–27.
Steuenberg, Bernard. 2000. "Seeing What You Want to See: The Limits of Current Modelling on the European Union." *European Union Politics* 1 (3): 368–73.
Steuenberg, Bernard, Christian Koboldt, and Dieter Schmidtchen. 1996. "Policymaking, Comitology, and the Balance of Power in the European Union." *International Review of Law and Economics* 16 (3): 329–44.
Stevens, Anne, and Handley Stevens. 2001. *Brussels Bureaucrats? The Administration of the European Union.* Houndmills, UK: Palgrave.
Stone, Randall W. 2011. *Controlling Institutions: International Organizations and the Global Economy.* Cambridge: Cambridge University Press.
Stone Sweet, Alec, and Thomas Brunell. 2010. "How the European Union's Legal System Works—and Does Not Work: Response to Carrubba, Gabel, and Hankla." Faculty Scholarship Series. Paper 68.
———. 2012. "The European Court of Justice, State Noncompliance, and the Politics of Override." *American Political Science Review* 106 (1): 204–13. doi:10.1017/S0003055412000019.
Strasser, Daniel. 1979. *Die Finanzen Europas.* 2nd ed. Luxembourg: Amt für amtliche Veröffentlichungen der Europäischen Gemeinschaften.
Streinz, Rudolf. 1984. *Die Luxemburger Vereinbarung: Rechtliche und politische Aspekte der Abstimmungspraxis im Rat der Europäischen Gemeinschaften seit der Luxemburger Vereinbarung vom 29. Januar 1966.* Munich: Verlag V. Florentz.
Sunday Times. 1991a. "Eurocrats Plot Ambush to Enforce 48-Hour Week." December 15.
———. 1991b. "Gloom for Labour as Tories Close Poll Gap." December 1.
———. 1993. "Back Door Route for EC Social Charter." May 23.

Svensson, Lars E. O. 2002. "What Is Wrong with Taylor Rules? Using Judgment in Monetary Policy through Targeting Rules." NBER Working Paper 9421.
Swinbank, Alan. 1989. "The Common Agricultural Policy and the Politics of European Decision Making." *Journal of Common Market Studies* 27 (4): 303–22.
———. 1997. "The CAP Decision-Making Process." In *The Common Agricultural Policy,* edited by Christopher Ritson and David Harvey. Wallingford, UK: CAB International.
Sykes, Alan O. 1991. "Protectionism as a 'Safeguard': A Positive Analysis of the GATT 'Escape Clause' with Normative Speculations." *University of Chicago Law Review* 58 (1): 255–305.
Tallberg, Jonas. 2006. *Leadership and Negotiation in the European Union.* Cambridge: Cambridge University Press.
Teasdale, Anthony L. 1993. "The Life and Death of the Luxembourg Compromise." *Journal of Common Market Studies* 31 (4): 567–79.
Thalmann, Jörg. 1987. "Die Kommission." In *Jahrbuch der Europäischen Integration 1986/1987,* edited by Werner Weidenfeld and Wolfgang Wessels, 68–75. Bonn: Europa Union Verlag.
Thies, Cameron G., and Schuyler Porche. 2007. "The Political Economy of Agricultural Protection." *Journal of Politics* 69 (1): 116–27. doi:10.1111/j.1468–2508.2007.00498.x.
Thompson, Alexander. 2006. "Coercion through IOs: The Security Council and the Logic of Information Transmission." *International Organization* 60 (1): 1–34.
Thomson, Robert. 2008a. "National Actors in International Organizations: The Case of the European Commission." *Comparative Political Studies* 41 (2): 169–92.
———. 2008b. "The Council Presidency in the European Union: Responsibility with Power." *Journal of Common Market Studies* 46 (3): 593–617.
———. 2009. "Actor Alignments in the European Union before and after Enlargement." *European Journal of Political Research* 48 (6): 756–81. doi:10.1111/j.1475–6765.2009.00848.x.
———. 2011. *Resolving Controversy in the European Union.* Cambridge: Cambridge University Press.
Thomson, Robert, Jovanka Boerefijn, and Frans Stokman. 2004. "Actor Alignments in European Union Decision Making." *European Journal of Political Research* 43 (2): 237–61. doi:10.1111/j.1475–6765.2004.00153.x.
Times. 1991a. "Lisbon Seeks to Dilute Charter." December 16.
———. 1991b. "Ministers Claim Triple Victory on EC Powers." November 15.
———. 1991c. "Ministers Likely to Put 48-Hour Work Aside." December 2.
———. 1991d. "Prime Minister Major Fights Threat to Sunday Working from EC Directive." October 25.
———. 1992. "Whitehall Rejects Compromise Offer on 48-Hour Week." June 16.
———. 1993a. "EC's Labour Laws Driving Away Business, Leaders Told." June 22.
———. 1993b. "UK Goes to Court over EC Working Week Vote." June 2.
Tomz, Michael. 2007. *Reputation and International Cooperation: Sovereign Debt across Three Centuries.* Princeton, NJ: Princeton University Press.
Torrelli, Maurice. 1969. "L'application de la règle de la majorité au Conseil de ministres." In *La décision dans les Communautés Européennes,* edited by Pierre Gerbet and Daniel Pepy, 83–97. Brussels: Université Libre de Bruxelles.
Trondal, Jarle. 2010. *An Emergent European Executive Order.* Oxford: Oxford University Press.
Tsebelis, George. 1994. "The Power of the European Parliament as a Conditional Agenda Setter." *American Political Science Review* 88 (1): 128–42.

——. 1996. "More on the European Parliament as a Conditional Agenda Setter: Response to Moser." *American Political Science Review* 90 (4): 839–44.
Türk, Alexander. 2009. "The Development of Case Law in the Area of Comitology." In *21st Century Comitology: The Role of Implementing Committees in the Wider European Union,* edited by Thomas Christiansen and Beatrice Vaccari. Maastricht: European Institute of Public Administration.
Ungerer, Werner. 1989. "Die neuen Verfahren nach der Einheitlichen Europäischen Akte: Eine Bilanz aus Ratsperspektive." *integration* 12 (3): 95–106.
Van Beuge, Charles. 1993. "Strategies and Perspectives of the Dutch EC Presidency." In *The EC Council Presidency: A Comparison of the Dutch and Luxembourg Presidency and Reform Considerations,* edited by Emil J. Kirchner and Anastassia Tsagkari. London: UACES.
van der Meulen, Joseph. 1966. "Medidations sur le Rôle et le Statut du Comité des Représentants Permanents et des Représentantes Permanentes dans la Cadre des Communautés Européennes Instituées par le Traité de Rome." Speech given at l'Association belge pour le droit Européen, Brussels, June 9.
van Gerven, Walter. 1974. "Twelve Years EEC Competition Law (1962–1973) Revisited." *Common Market Law Review* 11 (1): 38–61.
van Rijn, Thomas. 1972. "Le Comité des représentants permanents dans les Communautés élargis." *Cahiers de Droit Européen* 8 (6): 637–61.
Vertretung der BRD bei der EG. 1971. Bericht über die 5. deutsche Präsidentschaft, February 4, AV Neues Amt, Band 7407, Politisches Archiv des Auswärtigen Amts.
Vertretung der BRD bei der EWG. 1964a. Note an die Herren Vorsitzenden der Arbeitsgruppen des Rates, June 25, AV Neues Amt, Band 7406, Politisches Archiv des Auswärtigen Amts.
——. 1964b. Vorzeitige Veröffentlichung von Vorschlägen der EWG-Kommission, November 2, B102, Band 120015, Bundesarchiv Koblenz.
——. 1965a. Fälle, in denen der Rat der EWG oder der EAG Mehrheitsentscheidungen getroffen hat, November 15, B20–200, Band 1290, Politisches Archiv des Auswärtigen Amts.
——. 1965b. Konzept: Bericht über die dritte deutsche Präsidentschaft (1. Juli bis 31. Dezember 1964), January 18, AV Neues Amt, Band 7406, Politisches Archiv des Auswärtigen Amts.
Virally, M, P. Gerbet, and J. Salmon. 1971. *Les Missions Permanentes Auprès des Organisations Internationales.* Brussels: Dotation Carnegie pour la Paix Internationale; Emile Bruylant.
Voeten, Erik. 2001. "Outside Options and the Logic of Security Council Action." *American Political Science Review* 95 (4): 845–58.
von der Groeben, Hans. 1985. *The European Community: The Formative Years; The Struggle to Establish the Common Market and the Political Union (1958–1966).* Brussels: Commission of the European Communities.
Wallace, Helen. 1973. *National Governments and the European Communities, European Series.* London: Chatham House.
——. 1979. "The European Parliament: The Challenge of Political Responsibility." *Government and Opposition* 14 (4): 433–43.
——. 1985a. "Negotiation and Coalition Formation in the European Community." *Government and Opposition* 20 (4): 453–72.
——. 1985b. "The Presidency of the Council of Ministers of the European Community: Tasks and Evolution." In *The Presidency of the European Council of Ministers: Impacts and Implications for National Governments,* edited by Colm O' Nuallain and Jean Marc Hoscheit, 1–24. London: Croom Helm.

Wallace, Helen, and Geoffrey Edwards. 1976. "European Community: The Evolving Role of the Presidency of the Council." *International Affairs* 52 (4): 535–50.
Warntjen, Andreas. 2007. "Steering the Union: The Impact of the EU Presidency on Legislative Activity in the Council." *Journal of Common Market Studies* 45 (5): 1135–57.
———. 2008. "The Council Presidency: Power Broker or Burden? An Empirical Analysis." *European Union Politics* 9 (3): 315–38.
Washington Post. 2012. "Germany's Central Bank Chief Fights New Steps to Contain Debt Crisis." October 3.
Weiler, J. H. H. 1991. "The Transformation of Europe." *Yale Law Journal* 100: 2403–84.
Weingast, Barry R. 2002. "Rational-Choice Institutionalism." In *Political Science: The State of the Discipline,* edited by Ira Katznelson and Helen V. Milner, 660–92. New York: W. W. Norton.
Weingast, Barry R., and William J. Marshall. 1988. "The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized as Markets." *Journal of Political Economy* 96 (1): 132–63.
Weinstock, Ulrich. 1981. "Vorschläge zur Belebung des Ministerrats der Europäischen Gemeinschaft." *Europa-Archiv* 2: 47–56.
Wendt, Alexander. 1999. *Social Theory of International Politics.* Cambridge: Cambridge University Press.
———. 2001. "Driving with the Rearview Mirror: On the Rational Science of Institutional Design." *International Organization* 55 (4): 1019–49.
Werts, Jan. 1992. *The European Council.* Amsterdam: North-Holland.
———. 2008. *The European Council.* London: John Harper Publishing.
Wessels, Wolfgang. 1990. "Administrative Interaction." In *The Dynamics of European Integration,* edited by William Wallace. London: Pinter Publishers.
Westlake, Martin. 1994a. *A Modern Guide to the European Parliament.* London: Pinter Publishers.
———. 1994b. *The Commission and the Parliament: Partners and Rivals in the European Policy-making Process.* London: Butterworths.
———. 1995. *The Council of the European Union.* London: Cartermill Publishing.
Westlake, Martin, and David Galloway. 2004. *The Council of the European Union.* 3rd ed. London: John Harper Publishing.
Wigger, Angela. 2008. "Competition for Competitiveness. The Politics of Transformation of the EU Competition Regime." PhD diss., Vrije Universiteit Amsterdam.
Wilks, Stephen. 1996. "Options for Reform of European Competition Policy." In *Developments in European Competition Policy,* edited by Aad van Mourik, 153–76. Maastricht: EIPA.
———. 2007. "Agencies, Networks and the Trajectory of European Competition Enforcement." *European Competition Journal* 3 (2): 437–64.
Wilks, Stephen, and Lee McGowan. 1995. "Disarming the Commission: The Debate over a European Cartel Office." *Journal of Common Market Studies* 32 (2): 259–73.
Willis, Virginia. 1982. *Britons in Brussels: Officials in the European Commission and Council Secretariat.* London: Policy Studies Institute.
Winham, Gilbert R. 1977. "Complexity in International Negotiation." In *Negotiations: Social-Psychological Perspectives,* edited by Daniel Druckman, 347–66. London: Sage Publications.
Wonka, Arndt. 2008. "Decision-Making Dynamics in the European Commission: Partisan, National or Sectoral." *Journal of European Public Policy* 15 (8): 1145–63.
World Trade Organization. 2011. "International Trade Statistics 2011." http://www.wto.org/english/res_e/statis_e/its2011_e/its11_toc_e.htm.

Wurzel, Rüdiger K. W. 2000. "Flying into Unexpected Turbulence: The German EU Presidency in the Environmental Field." *German Politics* 9 (3): 23–42.
Zimmer, Christina, Gerald Schneider, and Michael Dobbins. 2005. "The Contested Council: Conflict Dimensions of an Intergovernmental EU Institution." *Political Studies* 53 (2): 403–22.

Index