

Last Words on Delegation? Examining The Powers of the Union

Mastenbroek, Ellen; Veen, Tim

Postprint / Postprint

Zeitschriftenartikel / journal article

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:

www.peerproject.eu

Empfohlene Zitierung / Suggested Citation:

Mastenbroek, E., & Veen, T. (2008). Last Words on Delegation? Examining The Powers of the Union. *European Union Politics*, 9(2), 295-311. <https://doi.org/10.1177/1465116508089089>

Nutzungsbedingungen:

Dieser Text wird unter dem "PEER Licence Agreement zur Verfügung" gestellt. Nähere Auskünfte zum PEER-Projekt finden Sie hier: <http://www.peerproject.eu> Gewährt wird ein nicht exklusives, nicht übertragbares, persönliches und beschränktes Recht auf Nutzung dieses Dokuments. Dieses Dokument ist ausschließlich für den persönlichen, nicht-kommerziellen Gebrauch bestimmt. Auf sämtlichen Kopien dieses Dokuments müssen alle Urheberrechtshinweise und sonstigen Hinweise auf gesetzlichen Schutz beibehalten werden. Sie dürfen dieses Dokument nicht in irgendeiner Weise abändern, noch dürfen Sie dieses Dokument für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, aufführen, vertreiben oder anderweitig nutzen.

Mit der Verwendung dieses Dokuments erkennen Sie die Nutzungsbedingungen an.

gesis
Leibniz-Institut
für Sozialwissenschaften

Terms of use:

This document is made available under the "PEER Licence Agreement". For more Information regarding the PEER-project see: <http://www.peerproject.eu> This document is solely intended for your personal, non-commercial use. All of the copies of this documents must retain all copyright information and other information regarding legal protection. You are not allowed to alter this document in any way, to copy it for public or commercial purposes, to exhibit the document in public, to perform, distribute or otherwise use the document in public.

By using this particular document, you accept the above-stated conditions of use.

Mitglied der

Leibniz-Gemeinschaft



European Union Politics

DOI: 10.1177/1465116508089089

Volume 9 (2): 295–311

Copyright© 2008

SAGE Publications

Los Angeles, London, New Delhi
and Singapore

Forum section

Last Words on Delegation?

Examining *The Powers of the Union*



Ellen Mastenbroek

Radboud University Nijmegen, the Netherlands



Tim Veen

University of Nottingham, United Kingdom

During the past 10 years or so, the application of theories and models borrowed from comparative politics expanded significantly within the study of the European Union (Pollack, 2005: 368–70). One area of research that has greatly benefited from this trend is the study of the EU's delegation of supra-national powers, which has experienced substantial growth in comparatively informed literature over the past decade (e.g. Dogan, 1997; Pollack, 1997, 2003; Tallberg, 2000, 2002; Tsebelis and Garrett, 2001; Hug, 2003).

Among the contributions assessing the patterns of delegation in the EU, Fabio Franchino's recently published book *The Powers of the Union: Delegation in the EU* deserves further scholarly attention. This book can be seen as the first systematic formal analysis of delegation to both national and supra-national agents. Concurrently, the theory of delegation developed by Franchino is the first to account for the institutional peculiarities of the European Union. At the same time, Franchino's book is not an easy read. For those who are not well-versed in the specifics of principal-agent modelling or EU legislative-bureaucratic relations, it may be a challenge to understand Franchino's theory. In the following, we set out the book's argument, while critically assessing its theoretical, methodological and empirical contribution. Before doing so, we would like to point out that it is a rather daunting task to review a book that is such a rich source of theoretical innovation, methodological originality and analytical skill. Our assessment is thus intended not as a devaluation of Franchino's achievements but as an agenda for future research on EU delegation.

Key argument

The Powers of the Union is the crowning contribution to Franchino's impressive portfolio of work on delegation. The foundations for this book were laid in 2000 with three articles theorizing the amount of discretion of the European Commission (Franchino, 2000a,b,c). Here, Franchino stressed the balance between the Commission's agenda-setting powers and member states' control mechanisms (comitology). In another article focusing on delegation to the Commission, Franchino (2002) showed that there is no association between the degree of constraint of the Commission and the two alternative logics of delegation: credibility and efficiency (Majone, 2001). Besides delegation to the Commission, Franchino also sought to explain delegation to national administrations. In his 2001 article he analysed the patterns of constraint that domestic agents are subjected to when they are in charge of implementing EU legislation (Franchino, 2001). In 2004, Franchino combined the national and supranational implementation paths, seeking to explain the choice of either of the two (Franchino, 2004). In his 2005 article in the *Journal of Theoretical Politics*, Franchino formalized and modelled these patterns of delegation (Franchino, 2005). These two articles paved the way for *The Powers of the Union*, in which he empirically researches this unified model, which also includes the role of the European Parliament (EP).

Franchino seeks to find out under which conditions member states delegate implementation powers to bureaucratic agents – the European Commission or national authorities. This question is highly relevant from an academic perspective, given the ongoing debate about the optimal and actual balance of power between the member states and supranational institutions. It is a fascinating question why ministers adopt laws that constrain national governments and administrations, especially from a liberal inter-governmentalist perspective. In addition, this question is normatively relevant because it ties in to public concerns about the powers of the European Commission vis-à-vis the member states. The risks of delegation may be higher in the EU than in national systems, given that the European Commission is less democratically accountable than national bureaucracies.

The added value of Franchino's work primarily lies in the fact that he focuses not on treaty delegation (Pollack, 1997; Moravcsik, 1998) but on executive delegation, i.e. the granting of executive powers to bureaucratic agents on the basis of secondary legislation. He hence seeks to model the 'day-to-day operation of a supranational political system' (Franchino, 2007: 2). In order to do so, Franchino draws upon two literatures. First, he uses existing principal-agent frameworks suited to the American context, notably Epstein and O'Halloran (1994, 1999) on the delegation of powers in the context of the federal system of the United States. This approach is rooted in the

transaction costs model of delegation, and has been translated to parliamentary systems by Huber and Shipan (2002). In a nutshell, this perspective assumes an informational asymmetry between legislators and executive authorities. The legislative agent has less information on the consequences of a proposed policy than a bureaucratic agent in charge of implementation. The bureaucratic agents may exploit their information advantage by shifting the policy towards their preferred position. Legislators can prevent such bureaucratic drift by decreasing the agent's discretionary powers. Limiting discretion, however, incurs other costs on the legislator, which 'neither has the time nor expertise to micromanage policy decisions' (Epstein and O'Halloran, 1994: 701). In addition, the less discretion is left to an implementing agency, the less flexibility it has to adapt the rules to changing circumstances. Studies of delegation seek to explain the outcome of this dilemma by modelling the level of discretion set by the legislator.

Franchino adapts this transactional cost model to the EU. He adds to the existing literature on delegation in the EU by including EU-specific institutional variables, such as the decision rules and the choice between the Commission and national administrations as agents. Rather than studying only delegation to the European Commission, he explicitly considers the possibility of delegation to the member states. Moreover, Franchino enters conflict within and between the EU's legislative actors into the equation. Hence, he builds a bridge between legislative-bureaucratic theory and the formal work on EU legislative processes (especially Steunenberg, 1994; Garrett, 1995; Crombez, 1996).

For the reader who is not familiar with Franchino's earlier work, the exact object of his research is perhaps not as clear as it could be. In the introduction, Franchino states that he seeks to explain centralization and bureaucratization in the EU. Bureaucratization is a rather straightforward concept, which refers to the degree of discretion allowed by a piece of secondary legislation. Centralization, on the other hand, is a bit harder to grasp. Whereas on page 3 Franchino states that this concept refers to the 'extensive reliance for policy implementation on the European Commission', on page 4 he uses another definition, namely 'the relative reliance on national administrations *and* on the Commission'. Later on, the picture becomes even more complicated, as Franchino explains there are actually five dependent variables, namely delegation to the European Commission, delegation to the national authorities, the degree of discretion for the European Commission, the degree of discretion for the national authorities, and the relative discretion of the national authorities vis-à-vis the European Commission.

Fortunately, transparency enters the equation with the introduction of the formal model (Franchino, 2007: 29). The structure of the model is the following: the players are the Council of Ministers, composed by national

governments, the European Commission and the European Parliament, if involved. Besides the standard assumptions common to the literature on delegation,¹ the model is built upon the premise that national authorities share the same preferences as the ministers who negotiate in the Council. The model consists of three main stages. First, at the legislative stage, the Commission proposes a certain policy to the Council of Ministers. Key aspects of the proposal are the baseline policy, which can be visualized as a point on a one-dimensional policy space, a degree of discretion and an implementation path, referring to the choice between the European Commission and the national authorities. Second, the Council sets the policy, on the basis of either unanimity or qualified majority voting (QMV), and possibly with the involvement of the European Parliament. After the policy has been decided, the third stage begins: that of implementation. In this stage the agent implements the policy, based on its cost considerations and staying within the discretionary limits. If agents exceed the limits set on discretion, they may be challenged by the European Court of Justice, which makes such defection an unattractive option.

From his model, Franchino (1997: 53) derives several propositions, which he translates into the following hypotheses (pp. 64–5). To begin with, he argues that delegation to national authorities is more likely under unanimity than under QMV. The inverse holds for delegation to the European Commission, which is more likely under QMV. The explanation is that under QMV a supranational Commission has more chances of gaining the required majority for its position. Furthermore, he expects that the discretion of national administrations increases under unanimity and in areas with great complexity. In addition, in the case of QMV and a supranational Commission, the level of national discretion decreases with increasing conflict. The explanation is that, the more conflict in the Council, the higher the chances of implementation problems, which gives the member states supporting a certain proposal an incentive to shift executive powers from the national level to the European Commission.

The level of discretion for the Commission, to continue, is expected to be higher under QMV than under unanimity if there is less conflict between the Commission and the pivotal Council member, and in issue areas that are less complex. Under these conditions the legislator has fewer incentives or possibilities to curtail the discretion of the Commission. Under QMV, in addition, the level of discretion of the European Commission increases with increasing conflict among the Council members. Diverging preferences in the Council increase the fear of agency loss, a result that a majority of member states want to prevent.

Another set of hypotheses expands the expectations for discretion given above to the discretion for member states relative to the Commission. This relative discretion is thought to decrease with QMV versus unanimity and increasing conflict within the Council, at least when QMV is being used and the Commission has supranational preferences.

Finally, Franchino seeks to explain the preferences of Parliament versus those of the Council regarding discretion. He expects that the EP prefers less discretion for national administrations than the Council, because it has fewer non-statutory control mechanisms to supervise national implementation of EU policies. As conflict with the Council increases, the EP prefers less national discretion than the Council. Moreover, the EP is expected to demand more discretion for the Commission than desired by the Council.

Theoretical contribution

Franchino's main theoretical contribution to the study of the EU is that he tailors Epstein and O'Halloran's transaction cost model (1999) to the complex decision-making process of the European Union. Thus, he does not regard the EU as a *sui generis* institution, but instead uses existing toolboxes from comparative politics. This strategy is not entirely unproblematic, because delegation in the EU differs in three important aspects from delegation in domestic systems. In our view, these vital differences complicate the application of the existing transaction cost approach.

A first complexity is that the EU has two possible bureaucratic agents: national authorities and the European Commission. As is depicted in Figure 1, Franchino (2007: 29) models the choice faced by the legislative between these two agents. In doing so, however, he forgoes the theoretically prior decision of whether or not to delegate, which is at the heart of the work by Epstein and O'Halloran (1999: 56; see Figure 2). In their model, there is a close logical connection between delegation and discretion, in that delegating no authority comes down to granting no discretion. Their key variable, consequently, is the amount of discretion. Franchino, by contrast, treats delegation and discretion as analytically distinct variables. Decision-makers first choose an implementation path (delegation), after which they set the amount of discretion. We wonder to what extent we can speak of delegation when the decision-maker assigns no discretion at all. Despite this different focus, Franchino defines delegation in line with Epstein and O'Halloran, namely as 'the granting of substantive policy discretion' (Franchino, 2007: 84). His work hence seems to be slightly inconsistent here:

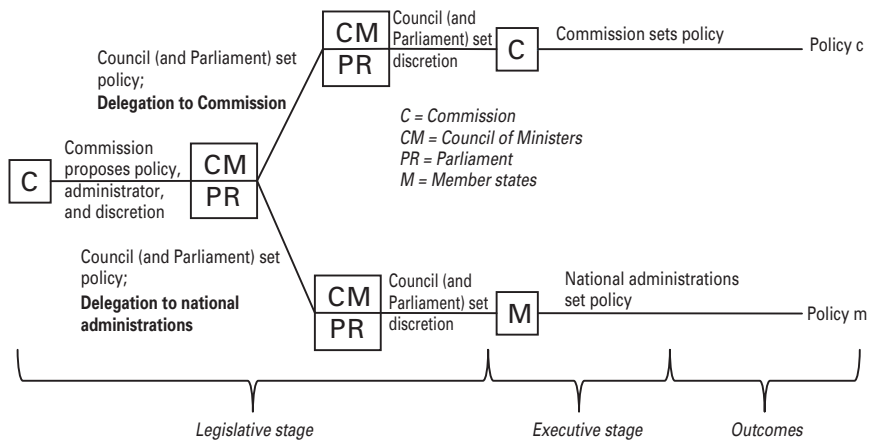


Figure 1 Franchino's model of delegation (simplified).
Source: Franchino, 2007: 29.

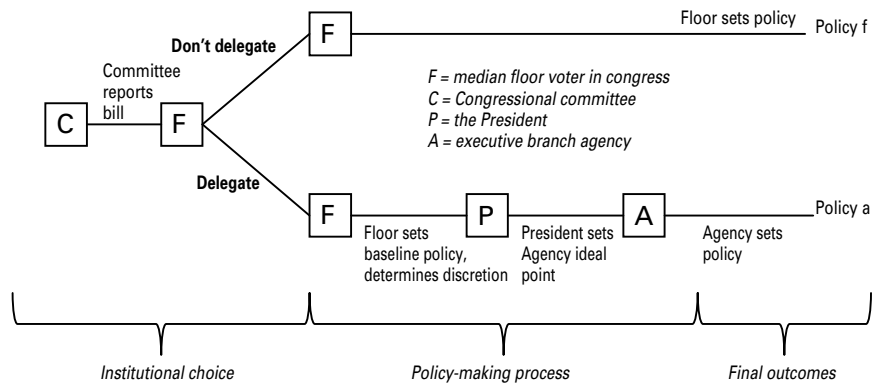


Figure 2 Epstein and O'Halloran's model of delegation (simplified).
Source: Epstein and O'Halloran, 1999: 56.

on the one hand he establishes a close relationship between delegation and discretion, while he logically separates the two in both his conceptual model and his empirical analysis. The relationship between the two concepts and the use of delegation as a standalone dependent variable are issues that in our view deserve further attention.

A second complexity is that the EU experiences a less stringent division between principals and agents than most national settings. In Epstein and O'Halloran's account, the legislative is the principal and a bureaucratic agency is in charge of implementation. In the European setting, by contrast,

the ministers are in charge of both decision-making and implementation. National ministers are agents and principals at the same time, delegating powers to themselves as well as to their counterparts in other member states. Consequently, there is a tension in Franchino's work. On the one hand, Franchino (2007: 28) views the national authorities as independent agents who are better informed than the EU legislators at the executive stage. At the same time, he assumes that the members of the Council of Ministers and their bureaucracies have the same preferences (Franchino 2007: 26). These two assumptions are mutually inconsistent. We hence agree with Thomson and Torenvlied (2007: 8) that the principal-agent approach might be inappropriate for analysing delegation to the member states.

Third, we find that the assumption of shared preferences between governments and bureaucracies cannot be upheld empirically. Different domestic bureaucratic actors, such as departmental units, the cabinet and the responsible minister, may hold diverging preferences as to how a directive should be implemented. This conceptualization clashes with that of Franchino, as this would imply that the positions assumed by the ministers in the Council are not a valid indicator of future implementation performance. It would be interesting to relax this assumption and consider national ministers and their governments as different players, just as Steunenberg (2006) has done for national implementation. This would imply that there might be a difference in the preferences voiced in the Council, the Committee of Permanent Representatives (COREPER) and the Council committees (see Häge, 2007). A suggestion for future research would be to take this possibility into account, for instance by distinguishing between A-issues and B-issues in Council decision-making.

The fourth interesting theoretical issue arises from the empirical analysis and concerns the link between implementation and delegation. In his empirical chapter, Franchino (2007: 236) finds that problems with national implementation may lead legislators to adopt stricter limits on member states' delegation and to strengthen the executive role of the European Commission. In our view, there is a tension between this result and Franchino's model. As Franchino explains on page 204, the conflict in the Council of Ministers is not always indicative of future implementation patterns. Yet the model does not take into account the possibility that member states do not voice their actual policy preferences and defect during the implementation stage. In reality, member states have an incentive not to resist a Commission proposal openly, being aware that conflict might lead to more discretion for the Commission. In addition, preferences aired during decision-making may be inconsequential when a future government with different preferences is responsible for implementation. All in all, the level of intra-Council conflict may not be a

good predictor of the degree of discretion granted, which could explain why the results for the conflict variable are not robust. We could try to overcome this problem by paying more attention to the measurement of preferences and controlling for changes in government.

Finally, we would like to suggest some alternative explanations of the degree of discretion. Franchino (2007: 7) mentions some of them: the need to rely on technical expertise, the wish to reduce workload and to enhance the efficiency of decision-making, as well as the wish to secure credibility. Some of these explanations are highly relevant for the EU. Considering its relatively small administrative staff, the Commission may not constitute a serious option for the delegation of too many legislative acts. In the case of looming saturation, the Commission may find itself stuck between a rock and a hard place and gear its proposals towards delegation to member states. Hence the assumption that the Commission's 'ideal choice is delegation to itself with maximal discretion' (Franchino, 2007: 34) may not always hold. Another important mechanism that may be relevant to delegation in the EU is 'blame shifting'. By putting the responsibility for implementation in the hands of the Commission, member states can introduce domestically unpopular policy while maintaining that 'the Commission made them do it' (Smith, 1997). It would be interesting to test Franchino's model against such alternative explanations. A first step in this direction was recently taken by Thomson and Torenvlied (2007), who contrasted Franchino's predictions with the commitment perspective (also see Franchino, 2007: 187) and the consensus-building perspective, which holds that the granting of discretion depends not so much on transaction cost considerations as on the wish to reach a compromise in the Council (also see Dimitrova and Steunenberg, 2000).

Methodology

To test his model, Franchino employed an impressive mixed methods design, encompassing a wide range of analysis techniques. The design consists of three consecutive steps. First, Franchino carried out statistical analyses on the hypotheses relating to delegation to and the degree of discretion for national authorities and the European Commission, as well as their relative discretion. He then proceeded with a qualitative analysis of the hypotheses relating to conflict and decision rules. Third, he investigated the remaining hypotheses concerning the influence of the European Parliament on decisions about delegation and discretion, using ordinary least squares regression and content analysis.

Franchino developed an impressive data set for his quantitative analysis. Counting textbook references, he listed all major EU directives and regulations enacted from 1958 until 1993. This innovative procedure yielded a shortlist of 159 major laws, containing more than 7000 legal provisions. For the qualitative part, he used a different unit of analysis, namely a policy area, comprising different laws adopted over time. The policy areas selected were public procurement, fisheries, telecommunications and non-residents' savings incomes. Finally, for the analysis of the role of the EP, he constructed yet another data set containing the amendments to 414 co-decision proposals.

An important methodological contribution made by Franchino (but see also Franchino, 2001) is his EU-specific measure of discretion. Building on Epstein and O'Halloran (1999), Franchino constructed a discretion index consisting of two elements. These are a delegation ratio, or the proportion of provisions in a legislative act that delegate executive powers, and a constraint ratio, which refers to the number of constraints divided by the number of possible constraints. Franchino's innovation is not so much in the construction of this index as in the classification of possible constraints on executive action. Franchino describes 12 different statutory constraints that curtail implementation powers, ranging from time limits to comitology.

However advanced, Franchino's method could be improved in the following respects. First, Franchino argues that detailed rules are a proxy for complexity (2007: 145). In our view, however, detailed rules could be an indicator, rather than a cause, of limited discretion. Following Epstein and O'Halloran (1994, 1999), limiting discretion is the way to prevent bureaucratic drift. The legislator can achieve this by developing detailed rules. For this reason, the argument seems to be tautological. The same holds for committees, another proxy for complexity (see Franchino 2007: 146). One could argue that the use of committees is yet another check on executive powers, and thus a cause of increased discretion to national authorities, rather than an indicator of complexity. It would be interesting to use other measures of complexity, such as the number of recitals in a piece of law (Kaeding, 2006).

Having built a data set that covers decades of EU legislative decision-making, Franchino faced the problem that there were no data available on Council members' preferences over this period. To solve this problem, Franchino employed the Manifesto data set (see Budge et al., 2001; Laver, 2001), which contains policy positions extracted from party manifestos from 1945 through to 1998. Drawing upon the work of Budge et al. (2001), Franchino convincingly derived three measures of the Council members' preferences. Although this is a laudable and original approach to generate preference data in EU studies, the use of political manifestos has two disadvantages. First,

it is questionable whether the manifesto pledges are translated into a government's policy, especially in the case of coalition cabinets. Second, the translation to European politics is not straightforward either. A suggestion for further research would be to use other measures of Council member preferences, based on more advanced content analysis techniques (Sullivan and Selck, 2007).

In order to establish the preferences of Commissioners, Franchino uses a similar method as for the Council: he infers their preferences from their party affiliation or, in the case of non-partisan Commissioners, the preferences of their home government at the time of their appointment. This method rests on a rather contentious assumption, namely that Commissioners share their home government's preferences. This is an interesting assumption because it conflicts with the view that the Commission should act as a pro-integrationist actor. Yet König (2005) showed that the member states are indeed aware of the country-biased preferences of the Commissioners. He argues that member states have established a committee system that scrutinizes the Commission's proposals in order to control for the influence of particular member states in Commission proposals. Recently, Wonka (2007: 185) confirmed that Commissioners are being chosen because of party affiliation. More research on this issue would be welcome.

Finally, we would like to reflect on Franchino's mixed methods design. On the one hand, we applaud Franchino's intention to complement the statistical findings with qualitative results. Qualitative methods can serve as a powerful complement to quantitative analysis, bolstering the statistical evidence found using process-tracing and identifying possibly omitted variables (George and Bennett, 2005; Lieberman, 2005). However, we find that Franchino is a bit ambiguous on the exact goals of the qualitative analysis. Listing various goals of mixed methods, such as process-tracing, the case studies seem primarily geared towards the purpose of charting and explaining developments in delegation and discretion over time. More specifically, the case studies seem to address a theme that is different from that of the statistical analysis, which is how distributive losses resulting from implementation problems may lead to more executive power for the Commission and less discretion for the member states. The focus thus shifts from an explanation of how executive powers are designed to how they are amended over time.

Whereas Franchino offers an interesting account of how delegation patterns change over time in the four policy areas studied, he does not live up entirely to his promise to unveil the causal mechanisms underlying the statistical results. Instead of process-tracing, he often merely interprets the patterns found, using his model. For instance, in the case of

telecommunications, Franchino (2007: 226) finds that there is no clear trend towards more or less discretion over time. He argues that this must be related to low to moderate conflict in the Council. When he finds that much literature finds the opposite, he argues that this divergence 'is probably overplayed' (ibid: 227), citing two authors who support this view. In our view, Franchino could have linked the case studies more closely to the quantitative analysis, through process-tracing as recommended by George and Bennett (2005), and the identification of omitted variables, through a careful comparison of cases that were well predicted by the model and cases that were 'off the line' (Lieberman, 2005).

In addition, the overall research design is a bit imbalanced. Whereas Franchino carefully justifies his quantitative design, he pays relatively little attention to his qualitative design. For instance, the basis of case selection is not entirely clear. Franchino (2007: 200) states that the selected cases are 'archetypal examples of the situations EU legislators encounter when they decide to delegate executive powers'. Using the variables decision rule, the severity of intra-Council conflict and Commission preferences, he selected four cases, without making clear why these are archetypal. Equally confusing is the fact that, in this stage, the units of analysis are policy areas rather than individual legislative acts. Franchino (2007: 200) argues that this is important so as to keep 'legal, political and public policy attributes' constant. Yet he does not clearly list these attributes, nor does he discuss the possibility that these attributes change over time. In sum, we feel that Franchino could have bolstered his findings by better justifying his design.

Empirical contribution

Franchino's key empirical achievement is that he investigates the effects of both conflict and decision rules on delegation decisions. Franchino shows that delegation to the Commission is more likely under QMV than under unanimity. By contrast, delegation to the member states is more likely under unanimity. Also, unanimity leads to greater national discretion than does QMV, and to less discretion for the Commission. Under QMV, more policy-related conflict leads to greater discretion for the Commission, in both relative and absolute terms. Results for the other measures of intra-Council conflict, referring to the integration and left-right dimensions, are less straightforward. Regarding policy complexity, Franchino finds that member states are given more discretion in highly complex policy areas, and the discretion of the Commission generally increases when implementation requires general and managerial skills. Findings for the effect of conflict

between the Council and the Commission are not robust. An increasing distance between the Commission's policy position and that of the Council pivot does not have a clear effect on the discretion given to the European Commission. These results are broadly supported by the case studies. Finally, concerning the role of the EP, Franchino's main conclusion is that delegation to and discretion of the Commission increase when the EP plays a role, especially when there is conflict between the EP and the Council.

Furthermore, Franchino also pays explicit attention to his descriptive findings. Most importantly, he finds that EU legislators rely twice as often on national administrations as on the European Commission for implementation. Moreover, for about 13% of all cases Franchino found no delegation to the national administrations, and the Commission was excluded from the implementation of every second law (55%). In nearly 60% of the cases the legislative chose a singular implementation path. Regarding the policy fields, delegation to national authorities is most common in legislation concerning the movement of persons, taxation and company law. Low national delegation rates are found in measures relating to competition law, customs law and agriculture. Yet in our view we should treat these figures with caution, given that the delegation ratio by itself is a rather ambiguous measure if it has not been corrected for the number of constraints. A legislator may grant extensive powers to an agent while counteracting this with extensive constraints, which results in zero discretionary powers. It is not entirely clear to what extent the delegation ratio is a useful standalone indicator. At the same time, this part of the discretion measure has been implemented as such in recent research, even serving as a measure of discretion (Thomson et al., 2007: 694).

Concerning discretion, the European Commission is confronted with twice as many statutory constraints as are national authorities. In line with our previous remarks, it is interesting to note that, the more executive powers are delegated, the more constraints are imposed on the agents, thus lowering discretion. Discretion, which Epstein and O'Halloran (1999: 90) defined as a dichotomous variable from 0 (no delegation) to 1 (full delegation), ranges from 0 to 0.49 for national administrations, with the mean at 0.16. Commission discretion ranges from 0 to 0.34, with the mean at 0.04. Furthermore, Franchino finds that the average number of provisions has declined steadily over time, identifying a tendency in the EU towards laws with fewer provisions. An opposite trend is reported for the amount of discretion, at least for the national administrations. The data show that national discretion has increased by about 1% a year. For the Commission, no such long-term trend is identified. Here, an increase in discretion appears to be linked to the eras of the Commission's presidents: under Hallstein and Delors, the Commission acquired relatively many delegated powers.

Franchino's results indicate that the Commission faces serious constraints when it comes to the implementation of EU policies. Therefore, one could argue that the Commission is not a 'runaway bureaucracy', escaping effective steering and control by member states, but rather a controlled agency whose powers are being carefully limited. At the same time, Franchino has shown that the degree of control over the Commission depends on the Commission's president. If a strong leader is in charge, controls can loosen, resulting in more discretion. What is more, as we have argued, it is not clear to what extent the delegation ratio in itself is a valid indicator of the degree of centralization. The discretion ratio, a more valid measure, on average is higher for the member states than for the Commission. All in all, fears of extensive centralization seem to be misplaced; the legislators keep a very tight check on the Commission.

These empirical results, though, have to be interpreted with caution. First, the data set is relatively small ($n = 153$), especially as it comprises more than three decades of legislation, which comes down to an average of about five laws a year. When compared with the annual output of secondary legislation, estimated at more than 500 in the mid-1980s (Schulz and König, 2000: 653), this bias becomes even more apparent. Second, the data are biased towards conflict, because they cover only the major laws of the EU (Franchino, 2007: 80). This bias reduces the external validity of the findings and challenges Franchino's intention to understand day-to-day decision-making in the EU. It would be interesting to find out more about delegation patterns in more 'technical' EU legislation.

Conclusion

Franchino has written a rigorous account of the mechanisms underlying delegation in the EU. Combining insights from the general transaction costs literature with spatial models of EU decision-making, he sets the standard for further work on EU delegation.

The empirical implications of Franchino's work are clear and convincing. Most importantly, he demonstrates that, the greater the conflict within the Council, the more discretion is given to the European Commission under QMV. By contrast, the greater the conflict within the Council, the more restricted are the implementation powers of national bureaucracies. This latter finding sets the EU apart from national political systems, where conflict has been proven to increase the level of discretion for executive agents. In this respect, the EU appears to be a *sui generis* phenomenon after all.

Franchino's work offers a solid basis for further theoretical and empirical work. We envisage the following research agenda. A first avenue for future

research would be to relax the assumption that ministers and their governments hold the same preferences. Second, more work could be done on measuring Council preferences, for instance using more advanced content analysis techniques or expert judgements. Third, more research could be done that tests Franchino's principal-agent model against competing explanations of delegation such as commitment, blame-shifting and consensus-seeking. Fourth, we could pay more attention to the variable of complexity, and develop alternative measures. Fifth, it would be interesting to carry out more case studies that lay bare the causal mechanisms linking conflict to delegation outcomes and identify possibly omitted variables. Such research would greatly increase the plausibility of Franchino's results. Finally, with regard to Franchino's objective of understanding day-to-day decision-making, it would be interesting to repeat his analysis on a data set not only containing major EU laws but extending to the more technical measures that the EU enacts on a daily basis.

A final set of questions that require more attention concerns the normative implications of EU delegation. Franchino rightly argues that delegation studies are important from a normative point; the general 'uneasiness' about centralization processes is even more relevant for the EU than for national states, given the alleged democratic deficit of the EU. We agree with Franchino that such questions cannot be answered on the basis of empirical research. The judgement of whether the EU is too centralized should be a political one. But the rich empirical information provided by Franchino offers a first step towards answering this question: member states are more at ease delegating powers to national bureaucracies than to the supranational European Commission, unless they have reason to distrust the intentions of their colleagues in the Council.

Notes

- 1 More technical assumptions are that the policy space is one-dimensional and that preference points are single-peaked. The players' utility is assumed to have a quadratic functional form. Legislators act under uncertainty; implementing agents have an information advantage over legislators.

References

- Budge, Ian, Hans-Dieter Klingemann, Andrea Volkens, Judith Bara and Eric Tanenbaum (eds) (2001) *Mapping Policy Preferences: Estimates for Parties, Electors and Governments 1945–1998*. Oxford: Oxford University Press.

- Crombez, Christophe (1996) 'Legislative Procedures in the European Community', *British Journal of Political Science* 26(1): 195–217.
- Dimitrova, Antoaneta and Bernard Steunenberg (2000) 'The Search for Convergence of National Policies in the European Union: An Impossible Quest?', *European Union Politics* 1(2): 201–26.
- Dogan, Rhys (1997) 'Comitology: Little Procedures with Big Implications', *West European Politics* 20(3): 31–60.
- Epstein, David and Sharyn O'Halloran (1994) 'Administrative Procedures, Information, and Agency Discretion', *American Journal of Political Science* 38(3): 697–722.
- Epstein, David and Sharyn O'Halloran (1999) *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*. Cambridge: Cambridge University Press.
- Franchino, Fabio (2000a) 'Control of the Commission's Executive Functions: Uncertainty, Conflict and Decision Rules', *European Union Politics* 1(1): 63–92.
- Franchino, Fabio (2000b) 'Statutory Discretion and Procedural Control of the European Commission's Executive Functions', *Journal of Legislative Studies* 6(3): 28–50.
- Franchino, Fabio (2000c) 'The Commission's Executive Discretion, Information and Comitology', *Journal of Theoretical Politics* 12(2): 155–81.
- Franchino, Fabio (2001) 'Delegation and Constraints in the National Execution of the EC Policies: A Longitudinal and Qualitative Analysis', *West European Politics* 24(4): 169–92.
- Franchino, Fabio (2002) 'Efficiency or Credibility? Testing the Two Logics of Delegation to the European Commission', *Journal of European Public Policy* 9(5): 1–18.
- Franchino, Fabio (2004) 'Delegating Powers in the European Community', *British Journal of Political Science* 34(2): 449–76.
- Franchino, Fabio (2005) 'A Formal Model of Delegation in the European Union', *Journal of Theoretical Politics* 17(2): 219–49.
- Franchino, Fabio (2007) *The Powers of the Union. Delegation in the EU*. Cambridge: Cambridge University Press.
- Garrett, Geoffrey (1995) 'From the Luxembourg Compromise to Codecision: Decision Making in the European Union', *Electoral Studies* 14(3): 269–99.
- George, Alexander L. and Andrew Bennett (2005). *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA: MIT Press.
- Häge, Frank M. (2007) 'Committee Decision-making in the Council of the European Union', *European Union Politics* 8(3): 299–328.
- Huber, John D. and Charles R. Shipan (2002) *Deliberate Discretion? The Institutional Foundations of Bureaucratic Autonomy*. Cambridge: Cambridge University Press.
- Hug, Simon (2003) 'Endogenous Preferences and Delegation in the European Union', *Comparative Political Studies* 36(1–2): 41–74.
- Kaeding, Michael (2006) 'Determinants of Transposition Delay in the European Union', *Journal of Public Policy* 26(3): 229–53.
- König, Thomas (2005) 'Controlling the Guardian? A Principal-Agent Analysis of Commissioners and Member States in the Process of European Legislation from 1984 to 2002', paper presented at the annual meeting of the American Political Science Association, 1–4 September, Washington D.C.

- Laver, Michael (ed.) (2001) *Estimating the Policy Position of Political Actors*. London: Routledge.
- Lieberman, Evan S. (2005) 'Nested Analysis as a Mixed-Method Strategy for Comparative Research', *American Political Science Review* 99(3): 435–52.
- Majone, Giandomenico (2001) 'Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance', *European Union Politics* 2(1): 103–22.
- Moravcsik, Andrew (1998) *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca, NY: Cornell University Press.
- Pollack, Mark A. (1997) 'Delegation, Agency, and Agenda Setting in the European Community', *International Organization* 51(1): 99–134.
- Pollack, Mark A. (2003) *The Engines of European Integration: Delegation, Agency, and Agenda Setting in the EU*. Oxford: Oxford University Press.
- Pollack, Mark A. (2005) 'Theorizing the European Union: International Organization, Domestic Polity, or Experiment in New Governance?', *Annual Review of Political Science* 8: 357–98.
- Schulz, Heiner and Thomas König (2000) 'Institutional Reform and Decision-Making Efficiency in the European Union', *American Journal of Political Science* 44(4): 653–66.
- Sullivan, Jonathan and Torsten J. Selck (2007) 'Political Preferences, Revealed Positions and Strategic Votes: Explaining Decision-Making in the EU Council', *Journal of European Public Policy* 14(7): 1150–61.
- Smith, Mitchell P. (1997) 'The Commission Made Me Do It: The European Commission as a Strategic Asset in Domestic Politics', in Neill Nugent (ed.) *At the Heart of the Union: Studies of the European Commission*, pp.167–86. London: Macmillan.
- Steunenberg, Bernard (1994) 'Decision Making under Different Institutional Arrangements: Legislation by the European Community', *Journal of Institutional and Theoretical Economics* 150(4): 642–69.
- Steunenberg, Bernard (2006) 'Turning Swift Policymaking into Deadlock and Delay: National Policy Coordination and the Transposition of EU Directives', *European Union Politics* 7(3): 293–319.
- Tallberg, Jonas (2000) 'The Anatomy of Autonomy: An Institutional Account of Variation in Supranational Influence', *Journal of Common Market Studies* 38(5): 843–64.
- Tallberg, Jonas (2002) 'Delegation to Supranational Institutions: Why, How, and with What Consequences?', *West European Politics* 25(1): 23–46.
- Thomson, Robert and René Torenvlied (2007) 'Information, Commitment, and Consensus: A Systematic Comparison of Three Perspectives on Delegation in the European Union', paper presented at the 4th ECPR Conference, 6–8 September, Pisa.
- Thomson, Robert, René Torenvlied and Javier Arregui, (2007) 'The Paradox of Compliance: Infringements and Delays in Transposing European Directives', *British Journal of Political Science* 37(4): 685–710.
- Tsebelis, George and Geoffrey Garrett (2001) 'The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union', *International Organization* 55(2): 357–90.
- Wonka, Arndt (2007) 'Technocratic and Independent? The Appointment of European Commissioners and Its Policy Implications', *Journal of European Public Policy* 14(2): 169–89.

About the authors

Ellen Mastenbroek is assistant professor in the Department of Public Administration and Political Science, Institute for Management Research, Radboud University Nijmegen, PO Box 9108, 6500 HK Nijmegen, The Netherlands.

Fax: +31 24 36 13022

E-mail: e.Mastenbroek@fm.ru.nl

Tim Veen is a PhD candidate in the School of Politics/The Methods and Data Institute, University of Nottingham, Nottingham NG7 2RD, United Kingdom.

Fax: +44 115 951 4859

E-mail: Ldxtv2@nottingham.ac.uk
