

The Comitology Game: European Policymaking with Parliamentary Involvement

by

Bernard Steunenberg

and

*Dieter Schmidtchen**

CSLE Discussion Paper 2000-05

Abstract:

This paper discusses institutional reforms that might strengthen the role of the European Parliament in the policymaking process of the European Union. Using simple game theory, the paper analyzes the working properties of the different implementation procedures that are known as ‘comitology’. The Council of the European Union employs these procedures when it delegates some of its policymaking power to the Commission as part of Union legislation. We show how the balance of power is determined by the current comitology procedures, and how this balance would change if the role of the European Parliament were strengthened in the comitology game.

JEL-Classification: D72

Encyclopedia of Law and Economics: 0550, 9100

Keywords: Strategic power index, comitology, balance of power

* Steunenberg: Leiden University, Department of Public Administration, Leiden, the Netherlands; Schmidtchen: Center for the Study of Law and Economics, University of Saarland, Department of Economics, Bldg. 31, POBox 151 150, D-66041 Saarbrücken, Germany, Phone: 0681-3022132, Fax: 0681-3023591, email: csle@rz.uni-sb.de, homepage: <http://www.uni-sb.de/fak1/fr12/csle>.

1. Introduction *

The European Parliament plays a considerable role in the legislative process of the European Union.¹ Parliament may amend and eventually veto most Council decisions. Despite its legislative role, Parliament is not formally involved in the implementation process of common policies. In this process, and based on legislation set by the Council and Parliament, the Commission decides on the way in which common policies have to be executed by the member states. These policy decisions by the Commission are made conditional to the assistance of supervisory committees and in some cases the agreement of the Council

Parliament has always been interested in gaining a foothold in the implementation process (see Bradley, 1997; Haibach, 1997). Since the way legal acts are implemented is what matters in the end, not being involved in this process might lead to a serious attenuation of the decision making ‘rights’ assigned to the Parliament, particularly in the cooperation and codecision procedure. In addition, getting involved in the implementation process will strengthen the role of Parliament in the Union. As Westlake puts it, the European Parliament prefers, ideally, to see the ‘...Commission exercising full and untrammelled executive powers, with the Commission directly responsible and clearly accountable to the Parliament’ (Westlake, 1994: 71).

The reason why the European Parliament did not succeed, lies in the outcome of a ‘power game’ played during the mid-eighties with three players involved: the European Commission, the Council and Parliament. This game started in the wake of the Single European Act, when the long-standing practice of comitology—that is, the review of Commission decisions by committees of national government officials, which decide whether or not the Council needs to be involved in the decision making process—received the status of primary community law. It reached a temporary peak on July 13, 1987, with the comitology decision of the Council, in

* We thank Ronald Heiner, Manfred Holler, Peter Moser, Gerald Schneider, and the participants in the 1996 ‘Forschungsgespräch’ on creating countervailing institutions in Europe at the University of St. Gallen, Switzerland, for their helpful comments. We thank Christian Koboldt (Dot Econ Ltd., London, United Kingdom) for the computations of the strategic power index presented in Tables 1 and 2.

¹ See Cooter and Drexler (1994), Tsebelis (1994, 1996), Steunenberg (1994b, 1997), Crombez (1996), and

which the Council established procedures for the exercise of implementation powers conferred on the Commission.² This decision officially established advisory committees, management committees and regulatory committees, which are bodies of national government officials (mostly civil servants) who supervise the Commission's execution of legal acts. Whereas in the case of the advisory committee the Commission is relatively unrestricted in its policy, the management and the regulatory committees can block a measure proposed by the Commission. While not having decision making power of their own, the latter committees act as *gatekeepers*. If they are in disagreement to the Commission's position, the Council will take up the matter and may overrule or just void the Commission's decision.

According to some commentators, the comitology decision represents an example of an institutional roll-back (Meng, 1988). There was a general feeling that the comitology decision has tilted the balance of power between the Community and the member states too far in favor of the Council (and thereby to the member states). This is evident in the fact that the Commission protested against this decision (see Ludlow, 1991: 106), and Parliament brought a claim against the Council before the European Court of Justice, which failed (see Docksey and Williams, 1994: 131-2).³ Despite the fact that Parliament is not an official player in the comitology game, it is still concerned with it. It adopted guidelines on comitology '...the gist of which is systematically to propose amendments seeking to increase the Commission's autonomy and decrease the Council's blocking powers' (Westlake, 1994: 72).⁴ As early as 1988, the Commission agreed '...to keep Parliament fully informed of all proposals it submits to "comitology" committees' (Westlake, 1994: 72).⁵ In 1994 the Commission, the Council and Parliament concluded a provisional agreement, the so-called *modus vivendi*.⁶ According to this

Moser (1997), for more detailed analyses of the legislative procedures in the European Union.

² Decision of the Council of July 13, 1987 (Official Journal of the European Union 1987: L 197/33).

³ See case 302/87, European Parliament v. Council of the European Communities, ECR 5615.

⁴ See Westlake (1994: 119) and Corbett, Jacobs and Shackleton (1995: 233-56).

⁵ This is the so-called Delors-Plumb agreement, which is based on an exchange of letters between the former presidents of the Commission and Parliament.

⁶ *Modus vivendi* of December 20, 1994, between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the EC Treaty. See Official Journal 1995, C 43/40.

agreement the Commission will send any draft proposal for an implementing act not only to the comitology committee, but also to the appropriate committee of the European Parliament. The ‘Commission shall take account of as far as possible’ of the comments of Parliament’s committee.⁷ Furthermore, the ‘...Council shall adopt a draft general implementing act which has been referred to it ... only after informing the European Parliament, ... setting a reasonable time limit for obtaining its Opinion and, in the case of an unfavourable Opinion, taking due account of the European Parliament’s point of view without delay, in order to seek a solution in the appropriate framework.’⁸ A definitive solution was left to the 1996 Intergovernmental Conference.⁹ However, at the Amsterdam summit, the member states did not agree on a new comitology procedure. The draft Treaty of Amsterdam (1997) includes a declaration in which the member states call on the Commission to submit to the Council by the end of 1998 a proposal to amend the comitology decision of 1987. On 16 July 1998 the Commission submitted a Proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission with one of the main objectives of simplifying these procedures and reducing the number of possible formulas.¹⁰ However, according to this proposal the European Parliament still has no formal role in the implementation process. As Article 7 of the Commission proposal makes clear, ‘[t]he European Parliament shall be informed of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty [*new Article 251, authors*], and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.’

In this paper we analyze the working properties of the different procedures laid down in the comitology decision and show how these procedures affect the balance of power between the Council, the Commission and Parliament. In addition, we focus on some alternative procedures in which the European Parliament plays a

⁷ *Modus vivendi* of 20 December 1994, Official Journal 1995, C43/40, no. 4 and 6.

⁸ *Modus vivendi* of 20 December 1994, Official Journal 1995, C43/40, no. 5.

⁹ *Modus vivendi* of 20 December 1994, Official Journal 1995, C43/40, no. 3.

role. In preparation to the 1996 Intergovernmental Conference, the various institutional players in the Union have revealed their preferences concerning the direction of reform. Parliament, for instance, states that ‘[g]eneral responsibility for implementing measures should be devolved to the Commission. The Council and Parliament should be informed of the measures proposed and should each have the opportunity to reject the Commission’s decision and to call either for new implementing measures or for full legislative procedures’ (European Parliament, 1995a). This view has been supported by the Commission in a report on the proposed treaty reforms (European Commission, 1996: 9). Based on the analysis in this paper we show how alternative implementation procedures may strengthen the role of Parliament in the implementation process.

The paper is organized as follows. We first analyze the current decision making procedures, using a model in which the Commission may select a policy that is subject to review by a committee of representatives of the member states and the Council. The results for these procedures are summarized using the *strategic power index*, which we developed in another paper (Steunenberg *et al*, 1999). We then add two decision procedures in which the Parliament is given some influence on the final outcome. The procedures are examined in terms of the extent to which the Council, the Commission and Parliament may affect the final outcome.

2. Analyzing policymaking under different arrangements: general framework

To analyze the extent to which the Commission is bound to the Council in selecting different policy measures, a model with four types of players will be used:

- (i) the members of the Council of the European Union,
- (ii) the members of the committee of state representatives, who are civil servants of the national administrations of the member states. Depending on the policy field involved, more than one sector specialist from the same member state can be appointed to these committees. Furthermore, changes in appointments to these committees occur relatively infrequently. So, in our view, it is *a priori* not clear that committee members have preferences identical to those of the ministers in the Council;

¹⁰ See Official Journal 1998, C 279/5.

- (iii) the Commission, which will be regarded as a unitary actor, and
- (iv) the members of the European Parliament (in our hypothetical procedures with parliamentary involvement).

The implementation measures on which we focus have to be set within the framework of an existing legal act. This act, in which the Council delegates policymaking power to the Commission conditional to one of the current comitology procedures, reduces the options the Commission will take into account for policy proposals.

In this paper we assume that players decide on an issue that can be represented by a one-dimensional space. Their preferences can be represented by a utility function that defines single-peaked preferences, which have two important properties. First, each player prefers one policy to all other possible policies as the outcome of the decision making process. This most preferred policy is represented by a player's *ideal point* on the policy dimension. Second, a player's preference for alternative policies depends on their distance to his or her ideal point. The farther away an alternative is from a player's ideal point, the less preferred this alternative is.

Decisions are assumed to be made sequentially. The sequence is based on the existing procedures that specify the order in which players are allowed to make a move. Players are assumed to have complete and perfect information. Complete information implies that the preferences of players, the structure of the game, and the fact that players behave in a rational way are assumed to be common knowledge. Perfect information means that each player exactly knows what has happened in the previous stages of the game. Two different lines of research can be distinguished in regard to this choice. The first line, which is found in a large number of studies, explores the effects of information asymmetry on decision making (see, for instance, Matthews, 1989; Banks and Weingast, 1992). A second line examines the effects of different institutions on the outcomes of decision making within a framework in which players are assumed to have complete and perfect information. Naturally, a general model of decision making should incorporate both lines of research. Nevertheless, the incorporation of information asymmetries will increase mathematical complexity and require a reduction of institutional features. In face of this tradeoff, we prefer to maintain in the model the complex sequence of moves, which characterizes the Union's decision making process, and thus follow the second line of research.

Furthermore, we assume that none of the players prefers its decision to be overturned. This preference can be viewed as imposing some cost on a proposal that is not the final outcome of the decision making process. These costs are assumed to reduce the final payoff to a player. All implementation games we consider in the paper have a unique subgame-perfect Nash equilibrium, which we take to define the solution of a game.

Both the Council and the various committees have to make decisions by qualified majority. Under this rule, each voter may cast a specific number of votes, and a special majority is required to take a decision. This rule may lead to a number of deadlocks in the decision making process depending on the role of a player in the decision making process. We discuss first the consequences of qualified majority voting for decision making in the Council. We then focus on a committee that may act as a gatekeeper.

Under most implementation procedures, the Council may reverse the Commission proposal by qualified majority. Whether the Council is able to adopt an alternative policy depends on whether sufficient Council members prefer the new policy to the Commission proposal. The critical member for the formation of a qualified majority will be called the *decisive* Council member. However, depending on the location of the Commission proposal on the policy dimension, two potentially decisive Council members can be identified. We define L_r as the rightmost decisive Council member, who finds to its left the ideal points of other Council members whose vote shares constitute the smallest qualified majority, including its own vote share. Similarly, we define L_l as the leftmost decisive Council member.

[Figure 1 about here]

To illustrate the role of these members, and the extent to which the Council is able to change the Commission proposal, we assume for simplicity that the Council consists of only five members.¹¹ The preferences for these Council members are presented in Figure 1. L_i denotes the most preferred outcome of Council member i , and $L_i(x)$ stands for this member's point of indifference to the policy x . If, for instance, a two-thirds majority is needed to approve a proposal, while Council members have equivalent vote shares, members 2 and 4 are the

¹¹ Our argument, however, holds for any number of Council members and any distribution of vote shares,

decisive Council members. So, if the initial proposal is found to the right of L_4 , such as x in the figure, a two-thirds majority strictly prefers an alternative proposal $y = L_3$ to the initial proposal x . The alternative policy, $y = L_3$, is found in the Council's *qualified majority win set of x* . This set is defined as *all proposals that are supported by a qualified majority against the current policy, x* , and it includes all points up to the decisive member's point of indifference, $L_4(x)$.¹² Consequently, if the Council can adopt a new proposal by qualified majority, it will choose the alternative proposal $y = L_3$ to the initial proposal x .

However, for intermediate values, i.e. $L_2 \leq x \leq L_4$, the initial proposal divides the members of the Council. This is illustrated by the Commission policy x' in the figure. Now, some members prefer a move to the left, others to the right. But neither fraction is able to form the required qualified majority against the initial proposal. In other words, the Council's *qualified majority win set* is empty. The Council cannot adopt a new proposal, so x' will be implemented.

Both examples show how the Council will choose under qualified majority voting. If all Council members are allowed to propose amendments, the Council will adopt a proposal that is equivalent to the position of its decisive member when its qualified majority win set is not empty.¹³ The policy, like x , will be amended to one that is closer to most Council members. When its qualified majority win set is empty, the Council is not able to form a qualified majority against the initial proposal. That case occurs when the initial proposal made by the Commission is found between the Council's two decisive members.¹⁴ Those proposals that do not allow the Council to adopt an alternative, are part of, what we will call, the *Council's blocking set*.

The committees of national government officials play a different role in the implementation procedures. Those committees do not have the right to amend the Commission proposal. However, they act as a *gate-*

since in both instances decisive members can be identified.

¹² For notational convenience, we define a win set as those points that are weakly preferred by the constituting members to some reference point, in this case, the Commission policy x . We deviate from the usual definition of a win set as the set of points that is strictly preferred by a majority to a reference point.

¹³ Formally, the Council's qualified majority win set is not empty when $x > L_r$ or $x < L_l$. The Council will then amend the initial proposal to a new policy $y = L_r$ or $y = L_l$, respectively.

¹⁴ Formally, when $L_l \leq x \leq L_r$.

keeper, that is, they can decide whether or not the Commission proposal has to be submitted to the Council. In fact, the committee can choose only between the initial proposal made by the Commission or the Council's policy. Its choice whether or not to 'open its gates', and to demand that the Commission submits its proposal to the Council, depends on whether the committee can form a qualified majority in favor of either the Commission proposal or the Council's policy. For a further analysis of the consequences of this power for the committee's behavior, we refer to another paper (Steunenberg *et al*, 1996).¹⁵ Important is that cases exist for which the committee is not able to reach a decision. Depending on the specific implementation procedure that is used, a divided committee may lead to either the implementation of the Commission policy or the submission of this proposal to the Council. We turn to these procedures now.

3. Commission policies under the current implementation procedures

Based on the comitology decision, we distinguish three types of implementation procedures in this paper. These procedures are the advisory committee procedure (procedure I according to the formal Council decision on comitology), the management committee procedure (procedure II), and the regulatory committee procedure (procedure III).¹⁶

In the *advisory committee procedure*, a committee gives its opinion on a draft measure of the Commission. The Commission has to take this advice into account and is obliged to inform the committee about the way in which it has affected its final policy choice. This procedure will not be analyzed further in this paper since it

¹⁵ Briefly, we need to define two qualified majority win sets for this purpose. The first one is the committee's *qualified majority win set to x*, denoted as $Q_C(x)$, which contains all proposals that are supported by a qualified majority of committee members against the initial proposal made by the Commission. Similarly, we define the committee's *qualified majority win set to the Council policy, y*, denoted as $Q_C(y)$, which contains all proposals that are supported by a qualified majority against the Council proposal. Based on both win sets, three different cases may occur: (i) $y \in Q_C(x)$ and $x \notin Q_C(y)$, which implies that a qualified majority of committee members prefers the Council policy to the Commission proposal and thus decides to open its gates; (ii) $y \notin Q_C(x)$ and $x \in Q_C(y)$, which indicates that a qualified majority of committee members prefers the Commission proposal and keeps the gates closed; and (iii) $y \notin Q_C(x)$ and $x \notin Q_C(y)$, which implies that a qualified majority of committee members does not prefer the Council policy or the initial Commission proposal. In other words, the committee is divided and cannot take a decision.

¹⁶ See Kapteyn and VerLoren van Themaat (1990: 240-247) and Docksey and Williams (1994: 125-9) for a

does not grant any decision making power to other players than the Commission.¹⁷

The second type is the *management committee procedure*. In this procedure the committee has to decide by qualified majority whether or not the Commission proposal has to be submitted to the Council.¹⁸ If the committee agrees with the Commission proposal or remains divided, the Commission proposal will be implemented. If the committee adopts a different view—which is called a ‘*negative opinion*’—the Commission reports its proposal to the Council.¹⁹ The Council may only take a decision that deviates from the Commission proposal by qualified majority. If the Council agrees with or does not respond to the proposal, the Commission is allowed to implement its proposal.

The third procedure is the *regulatory committee procedure*. In this procedure, the Commission may only implement its proposal when the committee presents a *positive* opinion, which is the main difference from the management committee procedure. If the committee gives a *negative* opinion, or when the committee does not reach a decision, the Commission has to submit its proposal to the Council. With regard to decision making in the Council, two variants of this procedure can be distinguished. In both variants, the Council may amend the Commission proposal by qualified majority. In variant (a), which we call the *amendment procedure*, the Commission proposal will be adopted if the Council does not decide otherwise. A Council decision that deviates from the Commission proposal has to be based on a qualified majority. In variant (b), which we label as the *veto procedure*, the Council may also veto the Commission proposal by a simple majority. This variant is also known as the *contrefilet* procedure.

The main difference between the two variants of the regulatory committee procedure, viz., the amendment

more detailed discussion of these procedures. See also Westlake (1994: Appendix 3)

¹⁷ In the recently submitted Commission proposal (Official Journal 1998, C279/5), the advisory procedure is defined in Article 3, which is identical to the procedure described in the 1987 comitology decision.

¹⁸ As provided for in Article 205(2) EC.

¹⁹ At this point two variants of the procedure can be distinguished which will not be discussed in this paper. In variant (a) the Commission may implement the measure if it is being discussed by the Council. In variant (b) this is not possible, and the implementation of the measure has to be deferred for a specific period of time. In the recently submitted Commission proposal (Official Journal 1998, C279/5), this procedure is defined in Article 4, which drops variant (a).

and the veto procedure, is the voting procedure. In the amendment procedure, the Council can change the Commission proposal only if a qualified majority prefers a different point, including the initial *status quo*. If the Council fails to adopt a different view, the Commission proposal will be implemented. In the veto procedure, the Council is able to reject the Commission proposal by a simple majority in favor of the initial *status quo*. In that case, the Council has to make a comparison between the *status quo post* and the *status quo ante*. If the Council prefers the Commission proposal to the *status quo ante*, it will not use its veto power.²⁰

The current implementation procedures can be modeled as sequential games in which the Commission moves first. In these games, the Commission proposes a draft measure or new policy, which has to be considered by a committee in the second stage. This committee considers the Commission proposal, and it may decide by qualified majority whether or not to support the Commission. When it disagrees with the Commission, or, depending on the procedure involved, when it cannot form an opinion on the proposal, the Commission has to submit the proposal to the Council. The Council, in the last stage of the game, may decide to reject the proposal by simple majority (veto version of the regulatory committee procedure), or propose amendments to the proposal by qualified majority (management committee procedure and the amendment version of the regulatory committee procedure). Knowing the responses of the other players, the Commission selects its best policy such that it does not trigger Council involvement. The Commission's choice and the corresponding equilibrium outcome are analyzed in Steunenberg, Koboldt, and Schmidtchen (1996, 1997). They show that the outcomes for these procedures may vary depending on the preferences of the players and the location of the *status quo ante*.

4. Strategic power under the current implementation procedures

To assess the distribution of power between the various players in the European Union, we will use the *strate-*

²⁰ In the recently submitted Commission proposal (Official Journal 1998, C279/5) both variants are dropped. Article 5, defining the regulatory procedure, now states: 'If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it may present a proposal relating to the measures to be taken in accordance

gic power index. This index, which is proposed in Steunenberg, Schmidtchen, and Koboldt (1999), is based on the average distance between the outcomes from the application of a give procedure and a player's ideal point in each application. It presents an *a priori* measurement of power, since it indicates a player's prospects of playing a game without knowing the specific preference constellation of all players. In addition, the index measures power in absolute terms, since it relates the position of a player in a game to an external observer, that is, somebody who does not have any decision making power and thus can be regarded as 'powerless'. For a specific player, a , the strategic power index is defined as

$$P_a = 1 - \frac{A}{E},$$

with A as the mean distance for player a , and E as the mean distance for the external observer. This index lies in the interval $[0,1]$ and increases with the power of a player. The expected distance for a player that is 'powerful' enough to dictate the outcome of a game under any preference configuration would be zero leading to a corresponding value for the index of one. By contrast, if a player has a similar effect on the outcome of a game as the external observer (which, by definition, is 'powerless'), the expected distance for this player is the same as for the external observer leading to a corresponding value for the index of zero.

In order to calculate the mean distances between outcomes and the ideal points of the players under different procedures, we make the following simplifying assumptions:

1. The possible ideal points of the players and the possible *status quo ante* are equidistant on the policy dimension, and the minimal distance between two possible ideal points is the same for all preference constellations;
2. The ideal points of all players as well as the ideal point of the external observer may but need not differ from each other and may but need not differ from the *status quo ante*; and,
3. We call a combination of a particular ideal point for each player and the *status quo* a 'state of the world'.

We assume, that all states of the world are equally probable.

with the Treaty'.

For each of these states of the world we have determined the equilibrium outcome. Based on the mean distances between these outcomes and the ideal points of each player, we then calculated the strategic power index for a finite outcome space of eight possible outcomes, which are equidistant. Clearly, this does not reflect the diversity of policies that can be observed in reality. However, from an analytical perspective, this outcome space is sufficient to capture the potential for different ideal policy choices for all players whilst preserving a manageable number of simulation runs.²¹ The Commission is treated as a unitary actor whereas the Council is represented by the ‘typical’ (average) Council member.

[Table 1 about here]

The results of our simulations are presented in Table 1. The first three columns present the values for the strategic power index for the Commission, the (typical) Council member, and the European Parliament. Since Parliament does not participate in the current implementation procedures, it has a power score of zero. We also calculated the average distance between the *status quo ante* and the outcome of a given procedure and derived an ‘inertia index’ (see Steunenberg *et al*, 1999). This index reveals the *status quo* bias of a procedure and can be used as an indicator for a procedure’s tendency to lead to deadlock. The index is presented in the last column of Table 1.

The strategic power of a player does not only depend on the deadlock effect (which has the same sign for all players), but also on the relative strengths of the players in the game. When moving from one procedure to another procedure two effects must be considered, namely a redistribution of power and a change of power the direction of which is the same for all players.²² This leads to two important conclusions. First, a change of power in the context of the strategic power index is not a zero-sum game. Second, a player’s power as meas-

²¹ Based on other and smaller numbers, we noted a clear convergence of the values for the index. Nevertheless, there might still exist some ‘bias’, which is a result of the limited outcome space. However, since we compare the index for different players over different procedures, which are all based on the same number of different states of the world, this ‘bias’ will be the same for all players and procedures, and therefore does not affect our conclusions. Put differently, the precise value of the strategic power index may change marginally, but the ranking and the order of magnitude of the differences between the index values for different players will remain unaffected by an increase in the number of possible outcomes.

ured by the strategic power index can shrink (increase) even if he gains (loses) power from a purely redistributive perspective. That is the case when the (pure) redistributive effect and the level effect, as measured by the inertia index, point into different directions, and the latter is stronger than the former.

From the indices presented in Table 1, we can draw the following implications. First, the current three comitology procedures convey a different amount of power to the Commission. The strategic power index is largest in the management committee procedure and smallest in the regulatory committee veto procedure. Given these results, the Commission prefers the management committee procedure the most and the veto version of the regulatory committee procedure the least. The difference in Commission power between the management procedure and the amendment version of the regulatory committee procedure results from the fact that the management committee procedure allows the commission to select a proposal from a larger range of policies than the regulatory committee procedure. Both procedures differ with respect to the consequences of an undecided committee. Whereas in the management committee procedure an undecided committee means that it will keep its gates closed allowing the Commission to implement its proposal, a regulatory committee must form a qualified majority in favor of the proposal to allow the Commission to continue with its plans. The difference in Commission power between the veto version and the amendment version of the regulatory committee procedure results from the fact that the Commission is restricted in the veto version by the possibility that the Council may veto the Commission proposal in favor of the *status quo ante*.

Second, the three procedures also convey a different amount of power to the Council. The strategic power index is largest in the amendment version of the regulatory committee procedure and smallest in the management procedure with no substantial difference to the veto version of the regulatory committee procedure. This difference in Council power between the management procedure and the amendment version of the regulatory committee procedure reflects the influence of the factors that drive Commission's power in the opposite direction. The difference in Council power between the veto version and the amendment version results from the

²² One might be reminded to the substitution effect and the income effect following a price change.

fact, that the Council's veto leads to the *status quo ante*. It is the *status quo* bias of the veto version, which explains that the power of both players decreases in comparison to the amendment version.

Third, the current comitology procedures convey more power to the Commission than to the Council. The Commission is thus the most powerful player in the comitology game.²³

Finally, moving from the management procedure to the amendment version of the regulatory procedure increases the power of Council members at the expense of the Commission. Here we have a pure redistribution of power as indicated by the value of the inertia index. When moving to the regulatory procedure *status quo* bias comes in as the inertia index shows. On the side of the Commission the redistributive effect is reinforced. On the side of the Council members the redistributive effect is overcompensated leading to a reduction of power in comparison to the amendment version. Although the veto procedure allows Council members to block the Commission by simple majority, it does not mean that Council members gain power. This apparent paradox can thus be understood by focusing on the changes in the distribution as well as the overall level of power in a game, which are well-captured by the strategic power index.

5. Alternative procedures with parliamentary involvement

As mentioned in the introduction, the European Parliament revealed a strong preference for becoming involved in the implementation phase of legal acts. As indicated in Table 1, Parliament is still a 'powerless' player under the current comitology procedures. More involvement can be arranged in many different ways. In this paper we analyze two alternative procedures. In the first procedure Parliament serves as a gatekeeper for Council review of Commission policies. In other words, Parliament takes over the role of the committee of national officials as discussed in the preceding section. In this procedure, Parliament is allowed to make

²³ Our conclusion, based on an *a priori* measurement of power, is in accordance with the Commission's actual power or influence as derived by Joerges and Neyer (1997: 279, 281, 289, 290). Based on expert interviews and questionnaires, they find that the Commission plays a dominant role in the area monitored by the Standing Committee for Foodstuff. Furthermore, note that in our analysis the power of the Council is represented by the power of the 'typical' Council member. Calculating the power for the median member does not change our conclusions, although the median member has always more power than the 'typical'

decisions by simple majority. This procedure will be called the *parliamentary gatekeeping* procedure. In the second alternative Parliament is assumed to have an absolute veto on Committee proposals, which is a variant of the veto version of the regulatory committee procedure. Parliament and not the Council may now force the Commission to implement the *status quo ante*. This procedure will be called the *parliamentary contrefilet* procedure. Both procedures will be modeled as alternative policy games that may be played by these actors in the near future.

[Figure 2 about here]

In the game that is based on the proposed *parliamentary gatekeeping* procedure, Parliament substitutes for the committee of representatives. This game runs as follows. In the first stage, the Commission selects a new proposal, x , that will be submitted to Parliament. The Commission may also decide not to initiate a new proposal and stick to the current state of affairs, or *status quo*, which is denoted as q . Parliament, as a gatekeeper, has to decide whether or not it will accept this proposal, or open its gates and submit the Commission proposal to the Council. In the last stage the Council decides by qualified majority whether it will amend the Commission policy. If the Council does, we will have a new and amended policy, y . If the Council decides not amend the Commission proposal, the outcome will be x . The game tree for this game is given in Figure 2. Note that the median member of Parliament is decisive concerning the opening of the gates and the submission of the Commission proposal to the Council.

[Figure 3 about here]

Under the *parliamentary contrefilet* procedure, Parliament, rather than the Council, may veto the Commission proposal by simple majority. The game tree is given in Figure 3. This procedure is a variant of the regulatory committee procedure: after the decision of the committee of representatives to open its gates, the Council may decide by qualified majority whether the Commission proposal, x , will be amended. If it is amended, Parliament can either accept the new Council policy, which is denoted as y , or veto it in view of the

member.

status quo ante. If there is no amendment, Parliament can either accept the Commission proposal, or issue a veto. This procedure resembles the suggestion for reform made by the Committee on Institutional Affairs of Parliament. In its report on the functioning of the Treaty on European Union, the committee proposes an arrangement in which ‘[t]he Council and Parliament should be informed of the measures proposed and should each have the opportunity to reject the Commission’s decision and to call either for new implementing measures or for full legislative procedures’ (European Parliament, 1995a). Both Parliament and the Council should be able to affect the Commission proposal. The solutions for both games are given in the Appendix.

6. The balance of power under the new arrangements

The results of the alternative procedures can be assessed using the strategic power index as introduced in Section 4. The results are presented in Table 2, which also includes the current procedures. Again, the power scores for the main actors are presented in the first three columns, while the inertia index is presented in the last column of the table.

[Table 2 about here]

From the indices in Table 2, the following implications can be drawn. First, the position of the Parliament improves by becoming involved in the implementation game, where the improvement from being a gatekeeper under the parliamentary gatekeeping procedure is smaller than the improvement from having veto power (under the parliamentary *contrefilet* procedure).

Second, the Commission remains the most powerful player, whereas the Parliament is at least as powerful as the Council. Nevertheless, the procedures with parliamentary involvement imply a change in Commission power. It is pertinent to compare Commission power in the management procedure with that in Parliamentary gatekeeping and Parliamentary *contrefilet*. In the first case Commission’s power shrinks from 0.89 to 0.82. This is due to the fact, that the Parliament may open its gate with simple majority, whereas the management committee has to disagree with a qualified majority. Consequently, Parliament may decide to submit the issue to the Council, which will amend the Commission proposal, in cases where the committee otherwise would be

indecisive and thus not able to submit to proposal to the Council or to block the Commission initiative. In the second comparison Commission's power shrinks more dramatically from 0.89 to 0.53. This is due to the fact that in the case of the parliamentary *contrefilet* procedure, an additional player can veto the Commission proposal and force the Commission to implement the *status quo ante*.

Third, the procedures with parliamentary involvement also imply changes in Council power. Following the comparisons used above for the Commission, it turns out, that the power of the Council increases with the involvement of the Parliament. This is due to the fact that the power of the Commission is reduced. The reduction of the power of the Commission corresponds with an increase of the power of the other players. Note that change of power in the context of the strategic power index is not a zero-sum game.

Finally, the possibility of a veto reduces the power of the Commission dramatically (the power of the Commission power goes down to 0.27 for the current regulatory-veto procedure and to 0.53 for the parliamentary *contrefilet* procedure). However, this reduction is less dramatic in the case where the number of players increases (compare the regulatory-veto procedure with the parliamentary *contrefilet* procedure). The Commission may then exploit the conflict of interest that arises among the different players, which prefer policy changes in different directions. As long as these players disagree on the direction of change and therefore block amendments to the Commission proposal, the Commission can implement its initial proposal.²⁴ This explanation is supported by the value of the respective inertia indices, which is smaller for the parliamentary *contrefilet* procedure compared to the regulatory-veto procedure.

7. Conclusion

Although advisory committees, management committees and regulatory committees have become an integral part of the European institutional structure there is surprisingly little research on their performance and their influence on the balance of power. Using the tools of non-cooperative theory this paper analyses the working

²⁴ See Steunenberg (1996), for a more extensive analysis of the discretion of agents that is a result of the structure of the decision making process. His analysis indicates that the more lawmaking power is differen-

properties of the implementation procedures that govern policymaking in the European Union. Based on these insights, the power of the players is measured with the help of a concept that focuses on strategic power. As it turns out, not the Council but the Commission is the most powerful player in the comitology game. It remains in this position even if European Parliament would get formally involved in the implementation process.

That is an interesting result for several reasons: Taking the Council as the principal and the Commission as the agent, the agent is on average in a better position to impose its preferences on the policy to be implemented than the principal. Obviously, the comitology procedures are not able to solve the problem virulent in all principal-agent relationships, namely how to align the agents actions with the preferences of the principal.²⁵

Matters become even more dramatic, if the position of the Commission in European legislative decision making is taken into account. Contrary to a widely held view, it is not the Council which holds most power, but it is the Commission (see Steunenberg *et al*, 1999). It seems necessary to stress, that ‘more’ or ‘less’ power for the Commission does not necessarily coincide with ‘better’ or ‘worse’ decision making procedures. The latter judgment has to be kept for a *normative* analysis. For this kind of analysis, one needs a normative criterion to judge the quality of different procedures in terms of their outcomes. Such a criterion would have to acknowledge that none of the institutional players should be seen as an end in itself, but rather that all of them are intended to serve the interest of the European citizens. Thus, the normative criterion would have to judge how well the preferences of the European citizens are mirrored in the policies that are selected at the European level. An answer to this question needs further institutional analysis.

The strategic power index, as calculated in this paper, refers to the ability of a player to make a difference in the outcome of a policy game. This ability depends on the rules of the game, which describe the set of players, the sequence of moves and the set of available actions. Since the strategic power index captures general features behind decision making, it is of highly importance for constitutional decision making.

tiated and assigned to different players, the larger is the discretion of the agent.
²⁵ See also Joerges and Neyer (1997: 290), who suggest that ‘[t]he whole argument turns the insights of the principal-agent thesis on its head.’

Constitutional decision making consists of the design of rules, which govern the daily play of games in the post-constitutional stage of a society. What the framers of the rules need to know are the possible future courses of actions under varying preferences. That is exactly the kind of information the strategic power index provides. That is the reason, why we feel that this index might become an indispensable tool in the upcoming European constitutional debate.

Figure 1: Qualified majority voting in a five-member Council

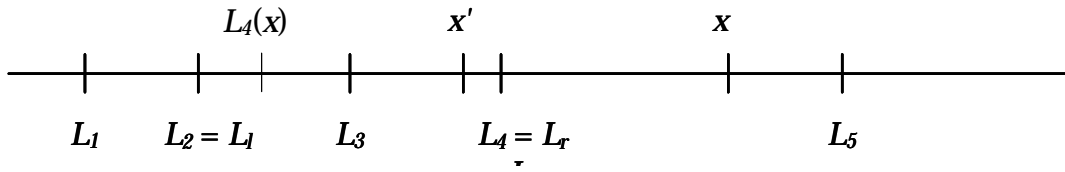


Figure 2: Game tree for the parliamentary gatekeeping procedure

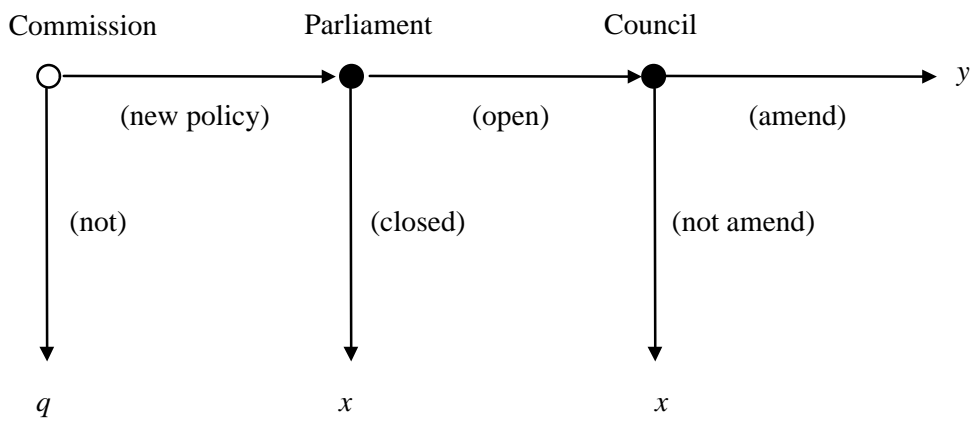


Figure 3: Sequence of play for the parliamentary *contrefilet* procedure

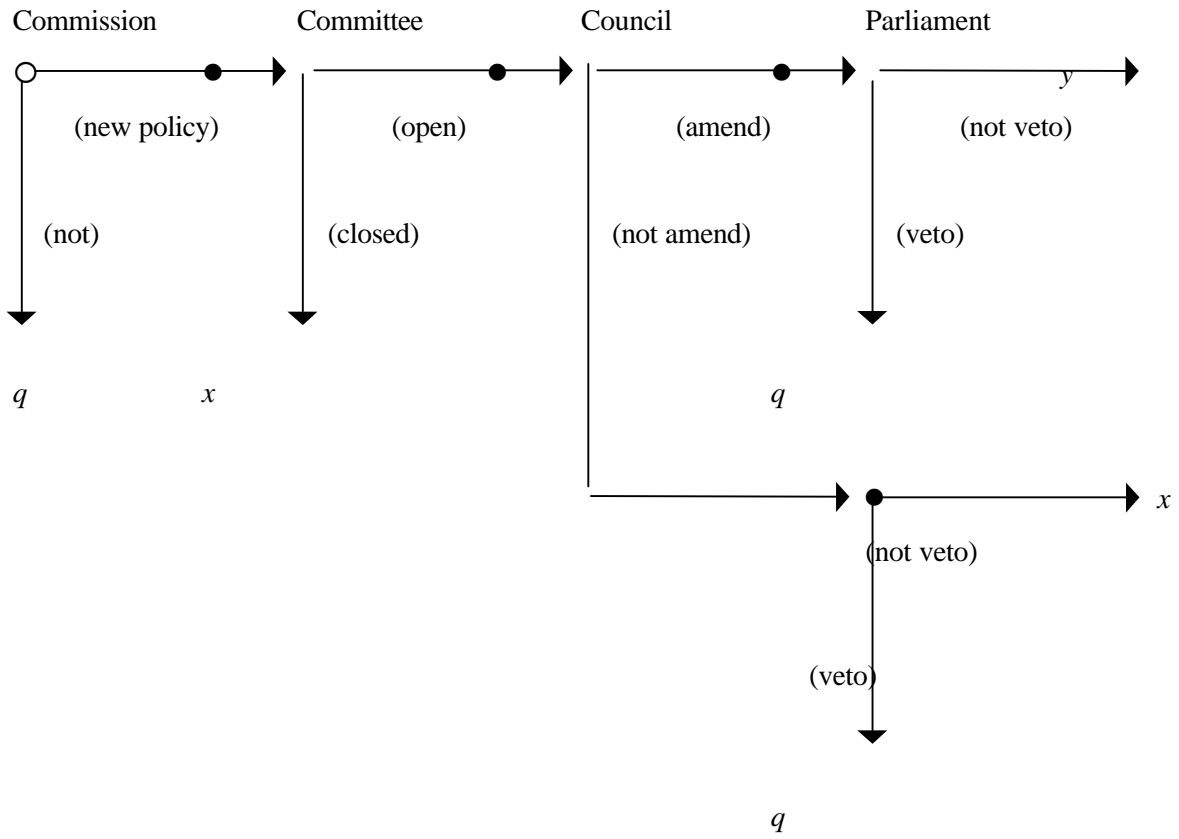


Table 1: The distribution of power for the current implementation procedures

<i>actors:</i>	strategic power index			inertia index
	Commission	Council (typical member)	European Parliament (external observer)	
<i>procedures:</i>				
- management	0.89	0.06	0	0.00
- regulatory-amendment	0.74	0	0.00	
- regulatory-veto	0.27	0.07	0	0.46

Table 2: The distribution of power for the alternative implementation procedures

<i>actors:</i>	strategic power index			inertia index
	Commission	Council (typical member)	European Parliament	
<i>alternative procedures:</i>				
- parliamentary gatekeeping	0.82	0.11	0.11	0.00
- parliamentary <i>contrefilet</i>	0.53	0.12	0.21	0.22
<i>current procedures:</i>				
- management	0.89	0.06	0	0.00
- regulatory-amendment	0.74	0	0.00	
- regulatory-veto	0.27	0.07	0	0.46

Appendix. Structure and solutions to the discussed games

Parliamentary gatekeeping procedure

To solve this game, we proceed by backward induction. We begin with the last stage of the game and determine the last player's best choice. Knowing that, we move to the second-to-last player and determine this player's optimal choice. In this way we will work our way back through the game tree. In the last stage, the Council will consider the Commission proposal and determine whether sufficient support exists to select a different and new Council policy that differs from the Commission proposal. The Commission proposal, x , forms the *status quo post* that will be implemented if the Council does not respond, which occurs when it is found in the Council's blocking set. Otherwise the Council will propose a policy that is equivalent to the most preferred position of one of its decisive members.

In the second stage, Parliament has to determine whether or not it will accept the Commission proposal given this response of the Council. Parliament keeps its gates closed when:

1. a simple majority of its members prefers the Commission proposal to the Council policy; or when
2. the Council cannot amend the Commission proposal and therefore will accept its proposal, that is, the Commission proposal is found in the Council's blocking set.

Knowing this response, the Commission selects its best proposal that satisfies one of these two conditions. Such a proposal thus will be either preferred by a majority in Parliament, or cannot be amended by the Council, which implies that Parliament will not consider submission. It therefore forms the equilibrium outcome.

Formally, let L_r be the rightmost decisive qualified majority member in the Council; L_l is the leftmost qualified majority member. In addition, let L_m denote the median Council member. By definition, $L_l \# L_m \# L_r$. The median member of Parliament is denoted as E_m . For simplicity, we restrict our attention to the policy space that is found to the right of the median Council member, that is, for $x \geq L_m$. Then, for the parliamentary gatekeeping procedure, the equilibrium policy x is the Commission's most preferred point in the interval $[L_m, \max\{L_r, E_m(L_r)\}]$. Similar results can be derived for symmetric cases that are found to the left of the median

Council member.

Parliamentary contrefilet procedure

Applying again backward induction, the game can be solved as follows. In the last stage, Parliament decides whether or not to use its veto right, that is, to veto either the amendment made by the Council or the Commission proposal. A veto-proof proposal, that is, a proposal that will not be vetoed, must be found in Parliament's win set to the *status quo ante*. In the third stage, the Council decides whether or not it will amend the Commission proposal given Parliament's response. The Council will only consider an amendment when it prefers to do so and when the amended proposal is veto-proof. The Council will not consider an amendment when the Commission proposal is found in the Council's blocking set. Then, no qualified majority can be formed since the Council members will be divided about amending the Commission proposal.

In the second stage the committee has to decide whether or not to keep its gates closed, i.e. to give a positive opinion on the Commission proposal. The committee will keep its gates closed when it (weakly) prefers the Commission proposal, x , to either the Council's policy, y , or the *status quo ante*, q .²⁶ The committee also accepts the proposal when the Council cannot amend it and therefore will accept x , while Parliament does not issue a veto.²⁷ Knowing this response of the committee, the Commission selects its best proposal from the union of these sets, which does not lead to involvement of either Parliament or the Council.

Formally, let C_r denote rightmost decisive qualified majority member of the committee; similarly, C_l is the leftmost decisive qualified majority committee member. Assume, again, that $x \geq L_m$. Then, for the parliamentary *contrefilet* procedure, the equilibrium policy x is equivalent to a point, or the point in one of the following intervals which the Commission prefers most:

²⁶ Note that if the Council decides to amend the Commission proposal, the amended policy will be either $y = L_r$, for $x > L_r$, or $y = L_l$ for $x < L_l$.

²⁷ Formally, the Commission proposal will not be submitted to the Council when:

- (i) $x \in Q_C(L_r) \cup [B_L(x) \cap W_E(q)]$ for $q > L_r$;
- (ii) $x \in Q_C(q) \cup [B_L(x) \cap W_E(q)]$ for $L_l \leq q \leq L_r$; or,
- (iii) $x \in Q_C(L_l) \cup [B_L(x) \cap W_E(q)]$ for $q < L_l$.

(1) for $E_m \leq q$:

(a) and if $q \leq L_r$:

- (i) $[L_m, q]$ for $C_r < q$ and $\min\{E_m(q), C_r(q)\} \leq L_m$;
- (ii) $[\min\{E_m(q), C_r(q)\}, q]$ for $C_r < q$ and $\min\{E_m(q), C_r(q)\} > L_m$;
- (iii) $[\max\{L_m, E_m(q)\}, q]$ for $C_l \leq q \leq C_r$; or,
- (iv) $[\max\{L_m, E_m(q)\}, C_l(q)]$ for $C_l > q$;

(b) and if $q > L_r$:

- (i) $[L_m, L_r]$ for $C_r < L_r$ and $\min\{E_m(q), C_r(q)\} \leq L_m$;
- (ii) $[\min\{E_m(q), C_r(q)\}, L_r]$ for $C_r < L_r$ and $\min\{E_m(q), C_r(q)\} > L_m$;
- (iii) $[\max\{L_m, E_m(q)\}, L_r]$ for $C_l \leq L_r \leq C_r$; or,
- (iv) $[\max\{L_m, E_m(q)\}, C_l(L_r)]$ for $C_l > L_r$;

(2) for $E_m > L_r, q > L_r$ and $E_m(q) > L_r$:

- (a) $[\max\{L_m, C_r(q)\}, q]$ for $C_r < q$;
- (b) the *status quo ante* point q for $C_l \leq q \leq C_r$; or,
- (c) $[q, C_l(q)]$ for $C_l > q$;

(3) for $E_m > q$:

(a) and if $q \leq L_r$ and $E_m(q) > L_r$:

- (i) $[\max\{L_m, C_r(q)\}, L_r]$ for $C_r < q$;
- (ii) $[q, L_r]$ for $C_r \geq q$ and $C_l \leq L_r$; or,
- (iii) $[q, C_l(L_r)]$ for $C_l > L_r$;

(b) and if $q \leq L_r$ and $E_m(q) \leq L_r$:

- (i) $[\max\{L_m, C_r(q)\}, E_m(q)]$ for $C_r < q$;
- (ii) $[q, E_m(q)]$ for $C_l \leq q \leq C_r$; or,
- (iii) $[q, \max\{E_m(q), C_l(q)\}]$ for $C_l > q$.

References

- Banks, J.S. and B.R. Weingast (1992) The political control of bureaucracies under asymmetric information. *American Journal of Political Science* 36: 509-24.
- Black, D. (1987 [1958]) *The Theory of Committees and Elections*. Boston: Kluwer.
- Bradley, K.S. (1997) The European Parliament and comitology: On the road to nowhere? *European Law Journal* 3: 230-254.
- Cooter, R. and J. Drexler (1994) The Logic of Power in the Emerging European Constitution: Game Theory and the Division of Powers. *International Review of Law and Economics* 14: 307-326.
- Corbett, R., F. Jacobs, and M. Shackleton (1995) *The European Parliament*. London: Cartermill.
- Crombez, C. (1996) Legislative procedures in the European Community. *British Journal of Political Science* 26: 199-228.
- Docksey, C. and K. Williams (1994) The Commission and the execution of Community policy. In: G. Edwards and D. Spence (eds) *The European Commission*. London: Cartermill. 117-145.
- European Parliament (1995a) Report on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference: Implementation and development of the Union. Committee on Institutional Affairs. 4 May 1995 (A4-0102/95/Part I.A).
- European Parliament (1995b) Report on the Commission's response to Parliament's request for information on the 1994 activities of executive committees (following the decision of Parliament's budgetary resolutions of 27 October 1994 and 15 December 1994 to place funding in the reserve). Committee on Budgets. 25 July 1995 (A4-0189/95).
- European Commission (1996) Reinforcing political union and preparing for enlargement. Commission Opinion. Brussels. February 1996.
- Haibach, G. (1997) Comitology: A comparative analysis of the separation and delegation of legislative powers. *The Maastricht Journal of European and Comparative Law* 4: 373-385.
- Joerges, C. and J. Neyer (1997) From intergovernmental bargaining to deliberative political processes: The

- constitutionalisation of comitology. *European Law Journal* 3: 273-299.
- Kapteyn, P.J.G. and P. VerLoren van Themaat (1990) *Introduction to the Law of the European Communities: After the Coming into Force of the Single European Act*. Deventer: Kluwer.
- Lenaerts, K. (1993) Regulating the Regulatory Process: 'Delegation of Powers' in the European Community. *European Law Review* 18: 23-49.
- Ludlow, P. (1991) The European Commission. In: R. Keohane and S. Hoffmann (eds) (1991) *The New European Community: Decisionmaking and institutional change*. Boulder: Westview. 85-132.
- Matthews, S.A. (1989) Veto threats: Rhetoric in a bargaining game. *Quarterly Journal of Economics* 104: 347-69.
- Meng, W. (1988) Die Neuregelung der EG-Verwaltungsausschüsse. Streit um die 'Comitologie'. *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht* 48: 208-228.
- Moser, P. (1997) A theory of the conditional influence of the European Parliament in the cooperation procedure. *Public Choice* 91: 333-350.
- Reflection Group (1995) Reflection Group's Report, Brussels, 5 December 1995.
- Steunenberg, B. (1994a) Regulatory Policymaking in a Parliamentary Setting. In: P. Herder-Dorneich, K.-E. Schenk and D. Schmidtchen (eds) *Jahrbuch für Neue Politische Ökonomie, Band 13*. Tübingen: Mohr. 36-57.
- Steunenberg, B. (1994b) Decision Making Under Different Institutional Arrangements: Legislation by the European Community. *Journal of Institutional and Theoretical Economics* 150: 642-669.
- Steunenberg, B. (1996) Agent discretion, regulatory policymaking, and different institutional arrangements. *Public Choice* 86: 309-339.
- Steunenberg, B., C. Koboldt, and D. Schmidtchen (1996) Policymaking, comitology, and the balance of power in the European Union. *International Review of Law and Economics* 16: 329-344.
- Steunenberg, B., C. Koboldt, and D. Schmidtchen (1997) Beyond comitology: a comparative analysis of implementation procedures with parliamentary involvement. *Aussenwirtschaft* 52: 87-113.

- Steunenberg, B., D. Schmidtchen, and C. Koboldt (1999) Strategic power in the European Union: Evaluating the distribution of power in policy games. *Journal of Theoretical Politics* 11: 339-366.
- Tsebelis, G. (1994) The Power of the European Parliament as a Conditional Agenda Setter. *American Political Science Review* 88: 128-142.
- Westlake, M. (1994) *The Commission and the Parliament: Partners and rivals in the European policymaking process*. London: Butherworth.