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**CAUSES AND CONSEQUENCES OF DELEGATION IN
POST-MAASTRICHT EUROPEAN UNION**

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The PhD program Political Studies (POLS) (31st cohort) stems from the collaboration of three Universities, namely Università degli Studi di Genova, Università degli Studi di Milano, Università degli Studi di Pavia. The University of Milan serves as the administrative headquarters and provides the facilities for most teaching activities.

Abstract

Who governs the European Union? How are powers and competences to implement EU policies distributed among its components, and what determines that? Throughout this dissertation I aim to address these questions by providing four specific contributions to the academic debate about EU executive governance. First, I extend our knowledge of delegation dynamics in the EU to the whole post-Maastricht period. I analyse competing factors affecting the distribution of executive competences between national administrations and the European Commission. Second, I account for the reliance by the legislator on EU decentralised agencies in secondary legislation for implementation purposes. Third, I analyse and account for the evolution of EU agencies' mandates and budget from the Maastricht treaty onward. And fourth, I look at the implementation of a specific policy item in the field of food safety regulation in order to investigate how the European Commission and EU agencies use their powers and tasks to shape policy outputs. The underlying goal linking the chapters throughout the thesis is, in sum, to grasp process of delegation to – and the empowerment of – supranational bodies in the EU multi-level administration.

The thesis is structured as follows: in Part I, I address the determinants of delegation to executive actors in the EU. After presenting a newly collected dataset of relevant EU legislation in Chapter 2, throughout Chapter 3 I test well-established hypotheses grounded in the delegation literature. I consider policy-specific features – mainly policy complexity– the distribution of preferences of the main decision makers– Council, European Parliament and the Commission– in the legislative process and the decisions rule as explanatory factors for the incentives of decision makers to grant executive leeway to the main supranational institution, the European Commission, and to national administrations. Compared to previous studies, I extend the observation of this phenomenon to the whole post-Maastricht period and show how executive discretion is distributed among salient legislative acts covering the period between 1985 (the Single European Act) and nowadays. My findings, obtained through linear regression models, show that decision rules and conflict along

integration lines are the main explanatory factors behind the granting of executive discretion to the European Commission. Moreover, my results suggest that the involvement of the European Parliament through co-decision has resulted into lower discretion granted to the European Commission.

Given that the creation and use of specific executive bodies— such as EU agencies and regulatory networks— are actions concerted between the EU legislators and a bureaucratic actor, the Commission, in Chapter 4 I employ both delegation theory and theory of bureaucratic behaviour in order to account for the reliance on EU agencies by the legislator in the same dataset of major secondary laws. By means of logistic regression analyses I demonstrate that the more complex a policy issue is, the higher the probability to rely on an agency in policy implementation. Moreover, I identify a curvilinear relationship between the powers accumulated by the Commission overtime and the likelihood of agency use in EU secondary laws. This finding points to the fact that reliance of agencies goes together with the empowerment of the Commission, so long as this latter is not highly powerful.

In Part II of the thesis I move from executive delegation in legislation to the consequences of delegation through two different chapters. In Chapter 5 I first describe and then analyse the growth of the EU agency system by assessing the determinants of the variation in the allocation of EU agencies' budget. In particular, after an assessment of agencies reforms and developments since the early 1990's, I investigate whether the observed reforms have led to a significant empowerment of those agencies in budgetary terms. To do so, I employ theories of budgeting (incrementalism and punctuated equilibrium theories) and legislative- bureaucratic relationships. I build an original dataset tracing the developments in tasks and budget of all EU agencies overtime from 1992 to 2016. It tests my hypotheses by means of a cross-sectional time-series analysis, revealing that trends in agencies budgetary allocation are explained by (i) crisis response, including the financial crisis and the

Schengen borders crisis; (ii) by the reforms agencies have gone through overtime (iii) the typology of agency.

Finally, in Chapter 6 I look at the configuration of actors that, together, shape EU policy outputs. Given the growth of the agency system and the alleged reliance of the Commission on these bodies, through this last chapter I seek to grasp the concerted role of Commission and EU agencies in producing policy outcomes in politicised situations. I build a theoretical framework by drawing different configuration of the Commission's preferences of in comitology decision making vis-à-vis national governments, stakeholders, agencies and public opinion. I test my theoretical propositions through theory-testing process tracing, focused on the Glyphosate's license renewal (2015-2017). I find that under strong political pressures the Commission engages in blame-shifting strategies and tries to avoid the burden of taking unpopular policies, while following agencies' expertise becomes less of a priority.

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1 Introduction

Who governs the European Union (EU)? How are powers and competences distributed among its components, and what determines that? These are overarching questions which scholars of EU integration have been trying to answer for decades. From early debates between neofunctionalism (Haas, 1958, 1964), and (new) intergovernmentalism (Bickerton, Hodson, & Puetter, 2015; Moravcsik, 1998) and post-functionalism (Hooghe & Marks, 2009) the main questions posed by students of the EU were *why* regional integration takes place, and, as a consequence *who* detains the power to make and implement policies. Is this latter entirely concentrated in the member states' hands, as they exert full control over decision making through bargaining so as to facilitate mutually advantageous co-ordination (intergovernmentalism)? Or is the EU a system in which the articulation of authority takes place across jurisdictions at diverse scales (Hooghe & Marks, 2001, 2009)?

There is no definitive answer to these questions. Yet, whatever the theoretical approach we choose to follow, it is undeniable that some features of the 'Eurocracy' (Kelemen & Tarrant, 2011) have evolved differently to what theories had envisaged: neither the European Union has become a technocratic 'superstate' where all powers are cantered in the hands of one single actor, nor it has remained an entirely intergovernmental arena. The power of *executing* EU policies in particular has been progressively distributed between different bodies: national-level administrations, the European Commission (EC), which works both as policy initiator *and* executor, 34 EU agencies, and a plethora of policy and inter-governmental networks and committees engaged in regulatory activities and policy implementation. While the Commission is considered as the paramount supranational implementer (Brandsma & Blom-Hansen, 2017) agencies and networks have recently gained visibility within the EU system of governance: they were established through a process of "agencification" which has entailed an expansion of the EU bureaucracy (Kelemen, 2005), and yet a slight downturn in the process of supranationalisation of EU policies (Bickerton, Hodson, & Puetter, 2015).

In light of the continuous evolution of this system through new laws, new agencies, new political issues in sight, I maintain that the reasons lying behind the wide distribution of competences we observe, the proliferation of new bureaucratic actors and the extent to which they have been empowered overtime requires further investigation. The question bears especially normative consequences given that in an increasingly complex political system, citizens may not know who to turn to when they have to attribute responsibility for, for example, unpopular policy choices (Rittberger, Schwarzenbeck, & Zangl, 2018). For instance, is the EU border agency FRONTEX to blame for inefficient border management, or is it the Italian and Maltese governments? Is the European Commission responsible for having renewed the licence of Glyphosate, a potentially carcinogenic pesticide, or is it the European Food Safety Authority or, ultimately, member states' governments?

Throughout this thesis it is my specific aim to address this set of questions, by analysing the evolution of EU executive governance under different aspects and by means of new data and several methodological tools. I provide a comprehensive picture of the processes of delegation that originate from the Member States, assign tasks to the European Commission and EU agencies and produce specific policy outputs.

1.1 Relevance and contributions

Since the Maastricht Treaty (1992) the European Union has gone through considerable changes. From the completion of the single market to the progressive EU enlargements, from the creation of the Eurozone, passing through several food scares, a devastating financial crisis and massive refugee influxes since 2011, and arriving today, 2019, to the Brexit – the way the whole EU apparatus looks is quite different from its early times. By looking at historical developments in the past three decades, it is undeniable that the EU has acquired more and more policy competences: students of EU governance hold that the acquisition of such capabilities is, indeed, one of the most striking features of the European Union (Dimitrova & Steunenberg, 2000). At the treaty level, Maastricht (1992)

famously created a pillar structure, which the treaty of Amsterdam (1997) expanded considerably by transferring Justice and Home Affairs under the ‘first pillar’ and making asylum, immigration, crossing external borders, combating fraud, customs and judicial cooperation to be decided under the ‘community method’. Furthermore, the Treaty of Lisbon (2009) notably abolished the former intergovernmental structures and made the powers of the Union well-defined, by distinguishing between three types of competences, that is exclusive competence; shared competence; and supporting competence. Scholars of EU integration define this progressive transfer of decision-making from the national to the supranational level as the ‘breadth’ of EU integration, while they identify the ‘depth’ of EU integration according to the type of decision-making procedures involved, such as qualified majority voting versus unanimity voting in the Council of ministers and the involvement of the European Parliament in decision making through the co-decision procedure. Notably Börzel (2005) has provided an historical map of the level of policy integration in the EU considering the level and scope of integration, while Hix and Hoyland (2012) have shown synthetically how different treaties have modified the competences and the decision-making process in the EU overtime.

Not only EU integration has progressed at the treaty-level through competence transfer and change of decision-making rules and procedures: it has also developed through the adoption of secondary legislation. Though this latter, negotiated between the Commission, the Council and the European Parliament (under the co-decision procedure) specific tasks are assigned, or ‘delegated’ to different policy executors: delegation in secondary law occurs mainly towards a) national administrations; b) the European Commission and c) EU agencies. For example, as I will show throughout the following chapters, social policies are mainly implemented by national administrations, competition policy is largely in the hands of the European Commission, while food safety regulation is usually implemented by the Commission together with national and EU-level agencies, that is EU level public authorities with a legal personality and a certain degree of organisational and financial autonomy that

are created by acts of secondary legislation in order to perform clearly specified tasks (Keleman, 2002).

The study of delegation processes in the EU has developed extensively in the past twenty years, and yet throughout this dissertation I maintain that it can benefit from new data and angles of analysis: scholars focusing on policy outputs at the EU level have measured competence distribution in legislation (Directives, Regulations) and/or budgetary expenditures (Ershova, 2018; Fligstein & McNichol, 2001; M. A. Pollack, 1997, 2003; Thomson & Torenvlied, 2011; Wessels, 1997). Franchino (2007); Thomson and Thorenvlied (2011) and very recently Ershova (2018) in particular have analysed the assignment of power and competences to either the European Commission and/or national administrations in secondary laws. First of all, although these works successfully tackle delegation to the national and supranational level, they limit to an analysis of either the pre, or the post-Lisbon era. For this reason, I extend the analysis of delegation to the Commission and national administrations to the post-Maastricht period by building an original dataset including, at best of the resources available and through selection criteria as rigorous as possible, the major (i.e. most salient) legislative provisions adopted through different procedures between 1985 and 2016¹. Moreover, I think that the role of the European Parliament is not comprehensively addressed by the aforementioned scholars (apart from Ershova 2018). I hence add the co-decision procedure and preferences of the EP as variables bearing a potential to explain variation in delegated executive leeway.

Secondly, none of the available contributions, so far, has shown an interest in a third possible kind of actor to which tasks may be delegated, i.e. EU agencies. I deem important giving space to these bodies

¹ I chose 1985 (date of the Single European Act, SEA) as a benchmark for the data collection, because the SEA represented the first substantial change to the Treaty of Rome and practically laid the foundations to the Maastricht Treaty. Therefore, I deem important considering legislation adopted during that period.

within the literature on delegation in EU governance, considering that there is wide agreement on the fact that, among the plethora of committees, working groups and policy networks created in the course of the Union's existence, EU agencies are the public institutions which have undergone the most impressive evolution. From only two, created in 1975, the EU now (2018) functions with the help of over 34 of these bodies. Existing literature has focused especially on the degree of independence of EU agencies compared to their national counterparts (M. Busuioc, Curtin, & Groenleer, 2011; M. Groenleer, 2009; Wonka & Rittberger, 2010a), their organisational structure and behaviour and their relationship with EU legislators and the Commission (Egeberg & Trondal, 2011, 2016; Egeberg, Trondal, & Vestlund, 2015). Researchers have also examined how agencies use their connections with external actors to manage complex transboundary problems and crises (Boin, Busuioc, & Groenleer, 2014), and what strategies they employ in order to deliver effective policy coordination (Heims, 2016). Finally, some political scientists have addressed the role played by selected agencies in the process of national-level implementation (M. Busuioc, Groenleer, & Trondal, 2012; M. Groenleer, Kaeding, & Versluis, 2010; Versluis & Tarr, 2013). Beyond these analyses, there is scarce evidence about the relevance of EU agencies in contributing to the fulfilment of EU policy goals by acquiring a role in adopted legislation. They are supposed to be important in this context as they cover tasks which are tightly connected to the implementation of transnational EU regulations by working as hubs of regulatory networks (Dehousse, 1997; Levi-Faur, 2011a; Tarrant & Kelemen, 2007) that facilitate consensus and the exchange of knowledge (Eberlein & Grande, 2005:90) and eventually harmonise policies through soft law and information sharing. I will address this issue by analysing the likelihood of including an agency in the legislative design for the scope of implementing policy measures. In sum, the second goal of this thesis is precisely to understand the determinants of the reliance upon agencies for implementation purposes in the post-Maastricht era.

As a third contribution, I focus on how and why agencification has unfolded overtime, given that the expanding literature focusing on this phenomenon, in spite of its comprehensive focus on agencies

as a new feature of the EU governance structure, fails to look at the comparative development of agencies as executors *per se* in the system of EU governance². Bickerton and colleagues argue that from Maastricht onward ‘where delegation occurs, governments and traditional supranational actors support the creation and empowerment of *de novo* bodies³’ (Bickerton et al., 2015), but do not test this proposition empirically. This expectation about the alleged empowerment of EU agencies should be analysed more in depth. As we lack almost entirely of comparative perspectives on agencies evolution and empowerment, I consider the evolution of agencies’ budgets as, assuming that budget fluctuations can be used as a proxy of agency empowerment.

Fourth, while scholars interested in EU agencies have analysed, for example, the contributions of agencies to compliance with EU laws (Versluis and Tarr, 2015), and agencies’ entrepreneurial and policy strategies (Wood 2018; Rimkute 2018), they have hardly addressed the use the Commission makes of EU agencies in the actual implementation of EU policies. On the one hand, the verdict about the importance of EU agencies in the implementation of EU policies is still inconclusive. Some scholars consider agencies extremely relevant to EU policy making (see for example Boin et. al. 2014; Busuioc, 2016; Busuioc et. al. 2011; Groenleer, 2009; Groenleer et. al. 2010; Versluis & Tarr, 2013). Others, instead, see them as the mere product of political bargains between who seeks more integration and who seeks less of it (Keleman, 2002; Kelemen & Tarrant, 2011) without adding any substantial benefit to the overall system. On the other hand, while several scholars have focused their attention on the Commission’s policy *formulation* activities, there is barely no evidence about the Commission’s behaviour and preferences at the implementation stage. In particular, is the tension between technocratic and responsive decision making observed in the agenda setting stage also reflected in the implementation of supranational provisions, when the Commission has sufficient leeway? And how relevant is agencies’ expertise vis-à-vis other concerns?

² For example, see Rittberger and Wonka, 2010, for a comparative analysis of agencies’ independence

³ i.e. agencies

In sum, and in light of the literature just briefly overviewed, through this dissertation I provide four main contributions to the literature on EU governance. First, I extend our knowledge of delegation dynamics in the EU to the whole post-Maastricht period by analysing competing factors which may affect the distribution of executive competences between national administrations and the European Commission. Second, I account for the reliance of the legislator on EU agencies in secondary legislation for implementation purposes. Third, I analyse and account for the evolution of EU agencies' mandates and budget from the Maastricht treaty onward. And finally, I analyse the implementation of a specific policy item in the field of food safety regulation in order to show how the European Commission and EU agencies use the powers and tasks they receive through secondary law to produce policy outputs. In the next section, I specify the structure of the dissertation more in detail.

1.2 Structure of the thesis and main findings

The central aim of the thesis is to grasp the determinants of delegation to – and the empowerment of – supranational bodies in the EU multi-level administration. In order to address this puzzle, I worked on four main empirical chapters, divided into two main parts. In Part I, I address the determinants of delegation to executive actors in the EU. I start by drawing on the classic Principal-Agent (P-A) framework because it greatly helps framing the whole architecture of the project. In light of a considerable body of previous literature I maintain that this approach provides the most straightforward interpretation of the dynamics of delegation from legislators to executors both in American and European politics. Therefore, after presenting a newly collected dataset of relevant EU legislation in Chapter 2 throughout Chapter 3 I test well-established hypotheses grounded in the delegation literature. I consider policy-specific features – mainly policy complexity – the distribution of preferences of the main decision makers – Council, EP and the Commission – in the legislative process and the decisions rule as explanatory factors for the incentives of decision makers to grant executive leeway to the main supranational institution, the Commission, as opposed to national

administrations. Compared to previous studies, I extend the observation of this phenomenon to the whole post-Maastricht period and show how executive discretion is distributed among salient legislative acts covering the period between 1985 (the Single European Act) and nowadays. My findings, obtained through linear regression models, show that decision rules and conflict along integration dimensions are the main explanatory factors behind the granting of executive discretion to the European Commission and national administrations. Moreover, my results suggest (although weakly) that the involvement of the European Parliament through co-decision has resulted into lower discretion granted to the European Commission.

The P-A framework is ideal to tackle delegation from the Council of the European Union to the Commission, and yet it proves to be somewhat insufficient to grasp other delegation paths taking place in EU governance. The creation and use of specific executive instruments— such as EU agencies and regulatory networks— are concerted actions between the EU legislators (the Council and the Parliament) and a bureaucratic actor, the Commission. In Chapter 4 I expand this framework by using both delegation theory and theory of bureaucratic behaviour in order to account for the reliance on EU agencies of the legislator in the same dataset of major secondary laws. By means of logistic regression analyses I show that policy complexity and the powers accumulated by the Commission overtime greatly affect the likelihood of agency use in secondary laws.

In Part II of the thesis I move from executive delegation in legislation to the consequences of delegation through two different chapters. In Chapter 5 I first describe and then analyse the growth of the EU agency system by assessing the determinants of the variation in the allocation of EU agencies' budget. In particular, after a thorough assessment of agencies reforms and developments since the early 1990's, I investigate whether the observed reforms have led to a significant empowerment of those agencies in budgetary terms. To do so, I employ theories of budgeting (incrementalism and punctuated equilibrium theories) and legislative- bureaucratic relationships. I build an original dataset tracing the developments in tasks and budget of all EU agencies overtime

from 1992 to 2016. It tests my hypotheses by means of a cross-sectional time-series analysis, revealing that trends in agencies budgetary allocation are explained by (i) crisis response, including the financial crisis and the Schengen borders crisis; (ii) by the reforms agencies have gone through overtime (iii) the typology of agency. Results suggest that a general budget decrease followed to the financial crisis, exception made for the new supervisory authorities. Second, budgetary augmentations follow to the reform of agencies' mandates and third, agencies dealing with services and operational activities have systematically received more resources overtime than other kinds of agencies.

Finally, in Chapter 6 I look at the configuration of actors that, together, shape EU policy outputs. Given the growth of the agency system and the alleged reliance of the Commission on these bodies, through this last chapter I seek to grasp the concerted role of the European Commission and EU agencies in producing policy outcomes in politically salient situations. I build a theoretical framework by drawing different configuration of the Commission's preferences in comitology decision-making vis-à-vis national governments, stakeholders, agencies and public opinion. I test my expectations through theory-testing process tracing focusing on the case of the Glyphosate renewal process. I find that under strong political pressures the Commission engages in blame-shifting strategies and tries to avoid the burden of taking unpopular policies by seeking citizens' consensus, while agencies' role and expertise become less of a priority for the Commission.

1.3 A note on methodology

Given the diversity of questions and data utilised, the thesis is not inclusive of a separated chapter dedicated exclusively to methodology. Rather, the details of the research design are left to each empirical chapter. I still deem relevant, however, introducing the rationale behind the methodological choices I have made.

First of all, the scientific approach to research is consistent throughout the thesis. All chapters follow a deductive logic. I first review the relevant academic literature, and then formulate hypotheses

grounded in existing theories of decision making a political/bureaucratic behaviour. I then test them empirically through different kinds of data collected through the analysis of primary and secondary sources (including legislation, budgets, reports, media outlets), as well as interviews with key stakeholders.

The ambition of this research is by no means exploratory as it does not provide ‘mere description’ (Gerring, 2012) of political phenomena but, rather, it seeks to provide explanations to a set of events, i.e. to detect the causal mechanisms underlying an observed phenomenon (Elster, 1989). Description *per se*, although useful in certain instances, would not enrich our understanding of the reasons *why* we observe the phenomenon, but just a more detailed picture of the ‘what’ it is, i.e., the phenomenon itself. Throughout this dissertation, in sum, I aim to identify the causal mechanisms underpinning the observed phenomena by subjecting theory-driven hypotheses to empirical investigation.

To do so, I employ a mixed-method (Greene, 2007) approach. As mentioned in the previous section, I make use of quantitative analyses by means of OLS and logistic regressions, cross-sectional and time series, as well a single-n case study based on theory-testing process-tracing. The reason behind the utilisation of different methods lies both in the nature of the research questions at hand which underlie each chapter and, quite obviously, in the kind of data collected. In Chapter 3 and 4 I aim to investigate a phenomenon– executive delegation to the national and supranational level in the European Union– which requires an ability to grasp changes taking place across policy, across time and in an evolving political context. In order to do so, I have opted for the construction of a rather large (n=309) dataset able to embrace such changes. Moving on, in chapter 5 I seek to grasp the comparative evolution of *all* EU agencies overtime (n=409) in an innovative way, by looking at the resources they are granted. Again, this question is more thoroughly answered through quantitative analysis given the considerable number of agencies created in the past 25 years. In a nutshell, analysing budgets through time series regression analysis allows me to avoid focusing on isolated or

small-n cases, while making it possible to draw the ‘bigger picture’ of agencies reform and empowerment overtime.

As, notably, correlation does not necessarily imply causation, the approaches just described may be deemed limited by some readers, because statistical results through OLS and logistic regressions are not always sufficient *per se* to make causal claims. Yet, if the strength of theoretical argumentations is fair, considering that most of my hypotheses throughout the chapters derive from well-grounded theoretical frameworks, I shall deem statistical analysis a sensible methodological choice in order to generalise the mechanisms hypothesised to a larger population. Thus, while on the one hand this quantitative approach makes it hardly possible to analyse the so called ‘black box’ of decision making in detail, which imposes certain limitations upon the explanatory power of my results, on the other, it allows me to generalise delegation phenomena and agency empowerment in the European Union in a large time-span and across a number of policy areas.

Chapter 6 differs from the others insomuch as it focuses on a more recent and overall ‘newer’ field of investigation. Indeed, the territory of Commission responsiveness under politicisation is still largely unexplored, especially as regards comitology decision making. The originality of the research question requires in my view a closer look to the decision-making process in order to individuate the chain of interlocking events leading to specific outcomes. With this aim in mind, I decided to focus on a qualitative analysis of one comitology procedure through process tracing, which is considered the most valuable methodological alternative to trace in detail what took place in a particular case and making causal inferences, when it is not possible to do so otherwise (George & Bennet, 2005), e.g. collecting a large amount of observations within or across case.

I now turn to Chapter 2, where I describe the first dataset on which I base the first two empirical analyses of Part I.

Part I– Delegation choices in the EU: national administrations, Commission or agencies?

2 A new dataset of major EU measures

In this section I introduce the dataset I utilise in the first two empirical analyses, respectively, Chapter 3 and Chapter 4. As I overviewed in the introduction, the aim of Part I of this thesis is to grasp the determinants of a) executive delegation and discretion granted to the Commission and national administrations in secondary legislation; and b) the reliance of legislators upon EU agencies.

There are three main data-sets that have been used so far to analyse delegation to the Commission and to national administrations. Franchino (2007) was the first EU governance scholar collecting 152 legislative acts adopted between 1958 and 1993. The time-span this dataset covers, however, cannot reflect the changes that occurred after the Maastricht Treaty such as the EU enlargements and new treaty provisions changing decision rules and transferring new competences at the EU level. Secondly, Thomson and Torenvlied (2011) have employed a dataset including legislative acts that were on the Council agenda in 1999, 2000, or introduced after the 2004 Eastern enlargement but before the end of 2005. Yet this dataset does not take into account the changes introduced by the Treaty of Lisbon such as the extension of the ordinary legislative procedure to several policy areas. Finally, Ershova (2018) has recently compiled a dataset of 248 secondary legislative acts approved and adopted under the ordinary legislative procedure (OLP) between 2013 and 2016. This time-frame covers legislation initiated under two Commissions (Barroso II and Juncker) and encompasses several policy areas. Although this recent dataset is able to grasp delegation dynamics after the Lisbon Treaty, it still fails to cover the whole set of changes that took place before these dates and cannot control for any variation between acts adopted under co-decision and other procedures (such as consultation and

cooperation procedures). Secondly, it limits the analysis to acts approved under only two Commissions, which may represent an obstacle to the generalizability of her findings.

Differently to previous contributions, my aim is to make use of data making possible to embrace the most salient EU policy making activities in the past three decades. I am particularly interested in the post-Maastricht period, given that Maastricht laid the foundations for a single currency, expanded cooperation between European countries in a number of new areas, extended the co-decision procedure to new areas of policy-making and, according to Hooge and Marks (2009), signified the start of a new era for EU politics, an era in which issues of EU integration are more salient and visible to voters, and, importantly for the scope of Chapter 4, stroke the beginnings of intensive agencification. Nevertheless, I chose 1985 (date of the Single European Act, SEA) as a benchmark for the data collection, because the SEA represented the first substantial change to the Treaty of Rome and practically laid the foundations to the Maastricht Treaty. Therefore, I deem important considering legislation adopted during that period.

I built an original dataset including, at best of the resources available and through selection criteria as rigorous as possible, the *major (i.e. most salient)* legislative provisions adopted through different procedures between 1985 and 2016. In order to get a fairly large sample of non-trivial EU legislation I have followed two selection strategies: on the one hand, following Franchino's approach (2007), I considered their *legal* salience by collecting major EU law textbooks in the library of University of Milan and consulting all the laws cited by these books. I compiled a list of all regulations and directives cited, for a total of 504 measures. On the other hand, following the example of Rasmussen, Reher, & Toshkov (2018)⁴ I have relied on the relevance given to specific EU measures by one relevant media outlet performing media coverage through the newsroom *Euractiv*. I chose this newsroom because it is not politically sided, it is clearly divided by specific topic and policy area and

⁴ They use media coverage of specific policy issues found on the Financial Times

publishes extensively about all fields of EU policy making. From the media coverage I have extracted over 1000 measures between directives and regulations. Assuming that when a measure is cited in both textbooks and by specialised media, this is a fairly reliable proxy of overall salience, I selected the measures mentioned at least twice by both sources⁵, and discarded the others. The resulting dataset is composed by 309 legislative acts, that is Council (and European Parliament) directives and regulations. I excluded tertiary measures such as Commission directives and regulations because they are adopted through different procedures.

My dataset covers a number of policy issues, from environmental protection and water management, to energy, telecommunications, regulation of chemicals, food safety and transports, competition, privacy and consumer protections, financial provisions. Figure 2.1 shows the policy areas present in the dataset, identified through Eurlex categorisation, showing that the most represented policy area is environmental protection, followed by finance, energy and food safety.

Laws were adopted under three different procedures, that is cooperation, consultation and co-decision, as shown in Figure 2.2. Fifty-four acts were adopted under unanimity voting (U), and 255 under qualified majority voting (QMV), as shown in Figure 2.3. Acts were adopted under nine different Commissions, from Santer to Juncker (Figure 2.4).

The dataset presents some limitations that should be stressed. First, 309 is a small amount in comparison with the overall EU legislative output, although the selection procedure should ensure a fair degree of representativeness⁶. Second, the data consists of only *adopted* laws, hence it leaves aside the negotiation phase and limits the analysis to the legislative output, without grasping the informal process that may have come into play in the policy formulation process.

⁵ More information about the selections criteria in Appendix 1

Figure 2.1: Measures by policy area

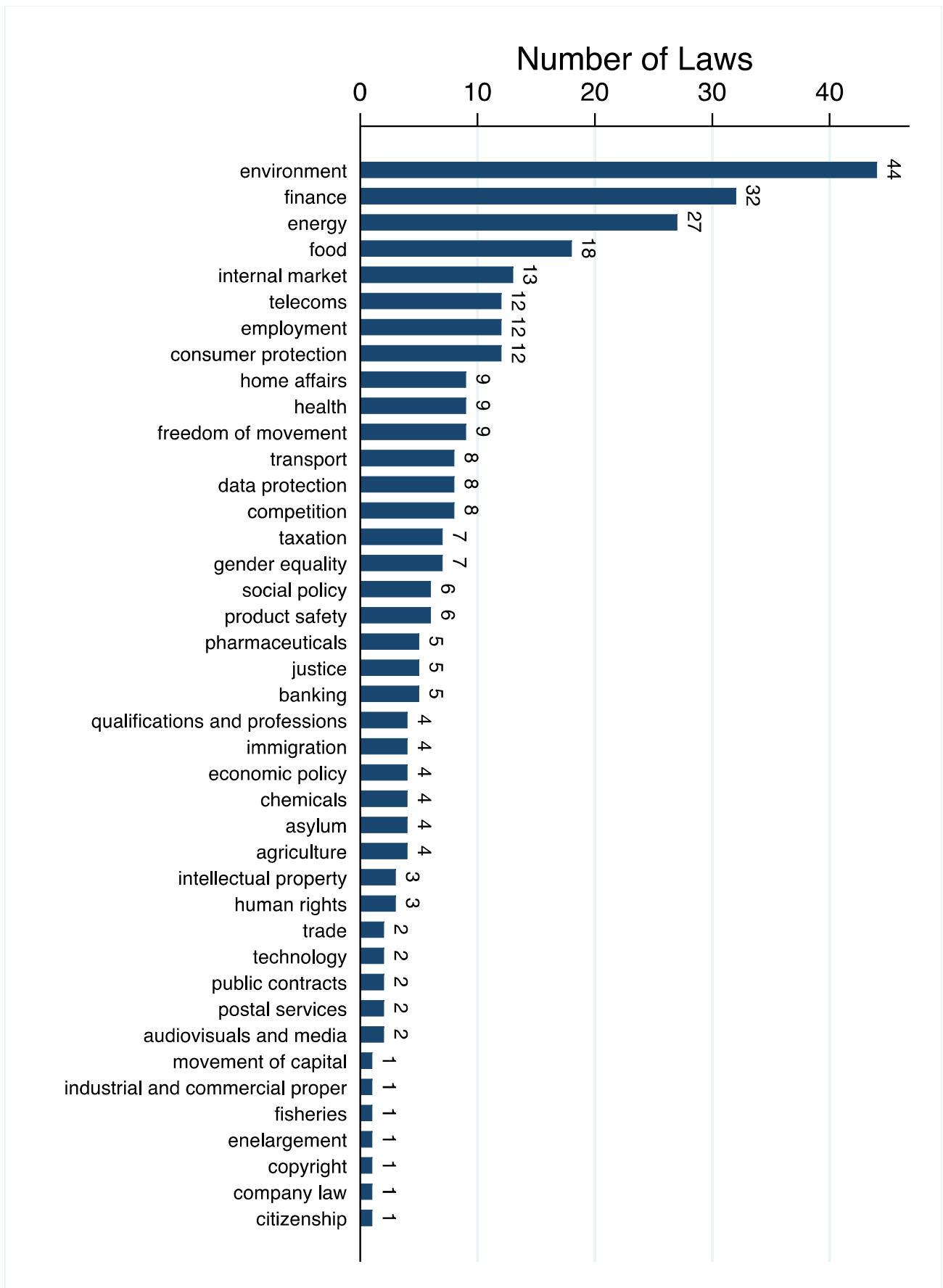


Figure 2.2: Legislative procedure

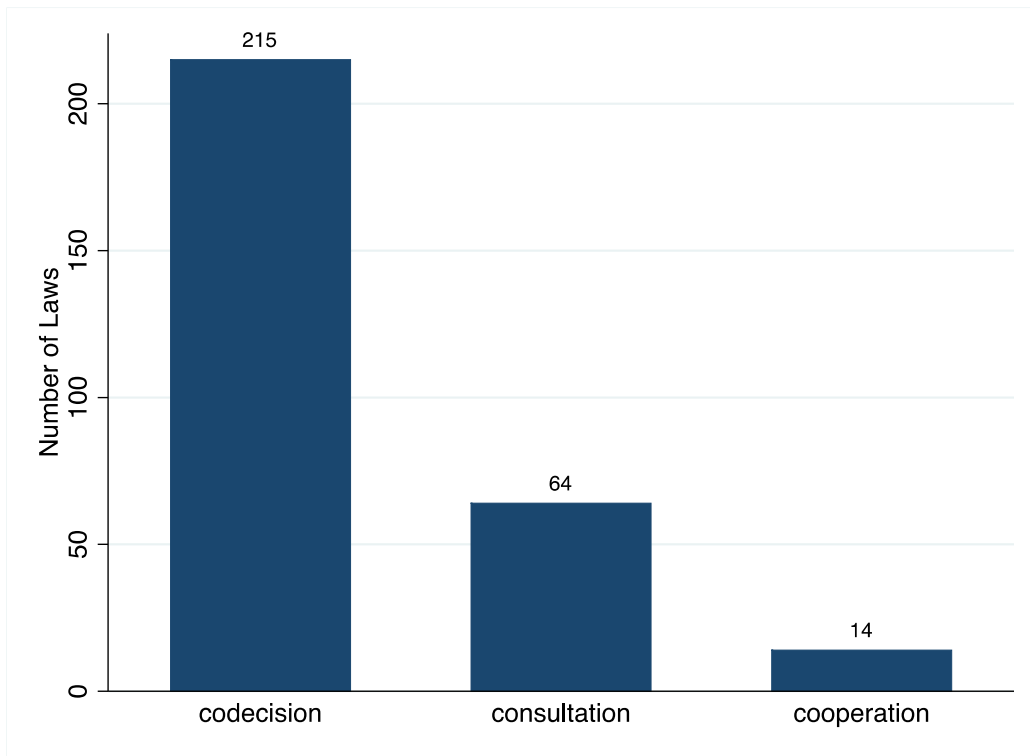


Figure 2.3: Voting rule

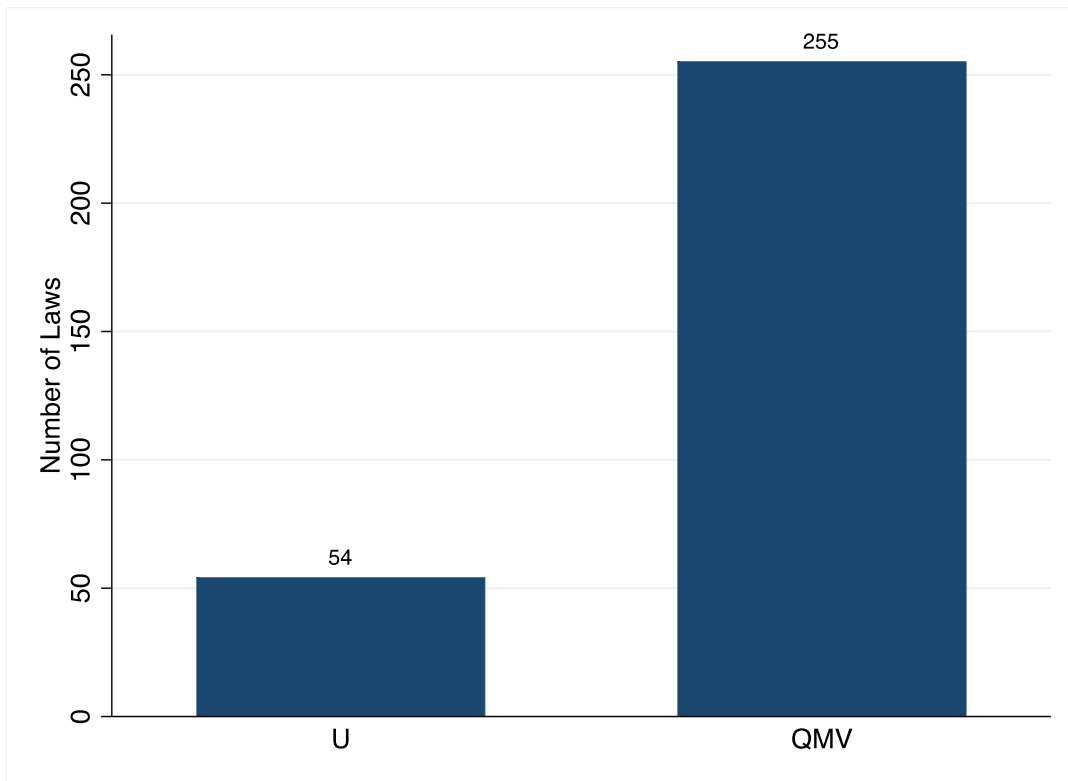
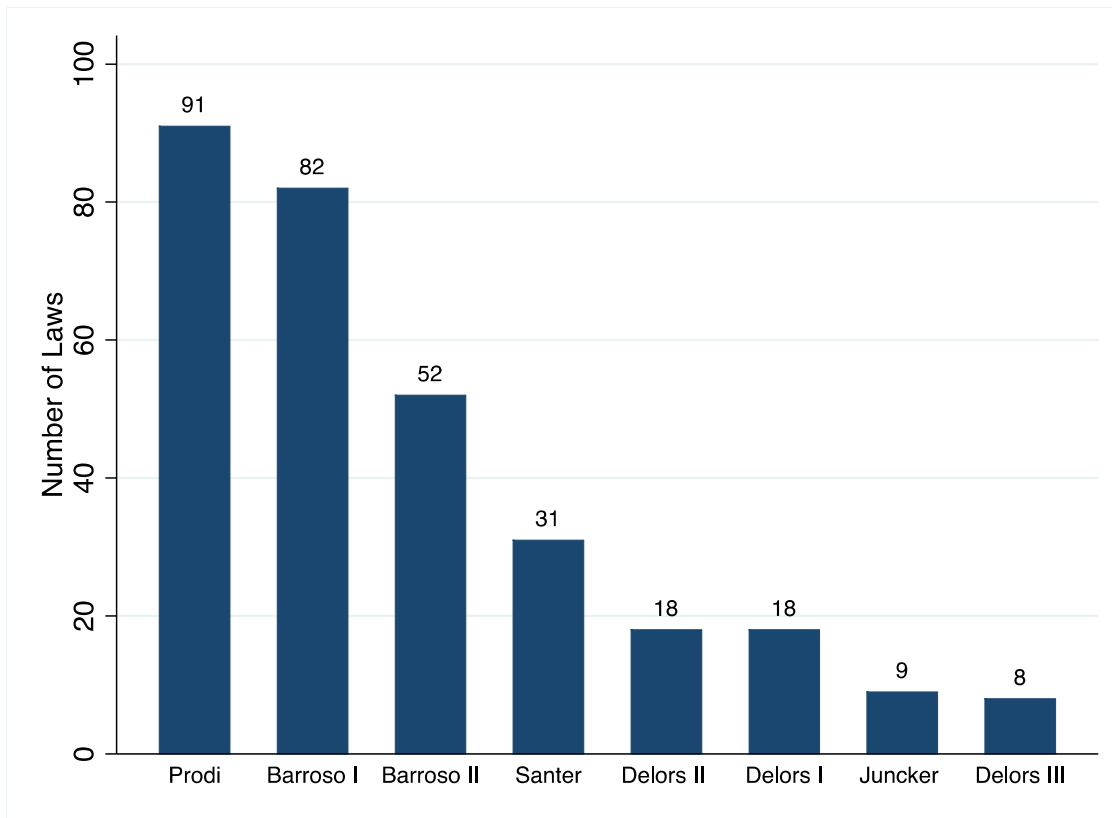


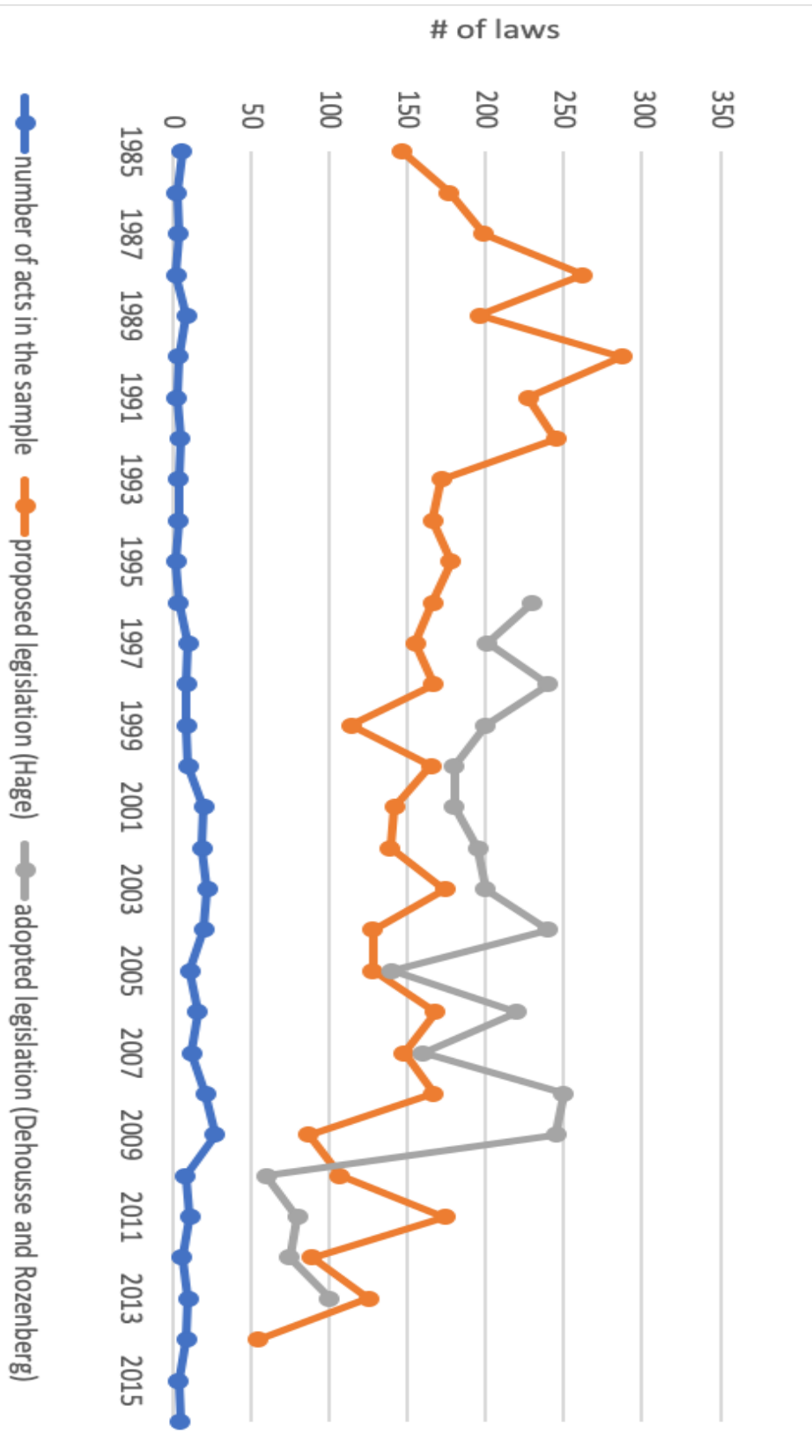
Figure 2.4: Commissions



It is beyond the scope of this research discussing the EU legislative output, however it is important at least considering how representative my sample is in different periods of time.

Figure 2.5 compares the number of laws present in my sample by year, with a list of proposed legislation (1985-2014) compiled by Häge (2011) and a list of adopted legislation (1996-2013) compiled by Dehousse and Rozenberg (2015). Some correspondence is observable in the diminishing trend between 2003 and 2005, the peak in 2009, followed by a diminishing trend from 2009 onward. I do not find a similar matching with earlier times, especially between 1985 and 1993. However, Häge's dataset covers *proposed* legislation, while my dataset looks at *adopted* one, while Dehousse's dataset is available only from 1996. There still might be a problem of underrepresentation of the period between 1985 and the early 90s probably because there is less online media coverage available about laws adopted in that period than more recent times, considering that in the period before Maastricht EU politics dealt with a much more limited amount of policy areas and was overall less salient to the general public.

Figure 2.5: Legislative output in the EU and my sample. A comparison



The dataset includes several pieces of information which will serve for the purposes of hypothesis testing in the next two empirical chapters. I include measurements of policy complexity levels for

each act. I calculate Council, European Parliament and Commissioners' positioning along left-right and integration dimensions for each time of adoption. I also include measurements of Commission's and national administrations' discretion levels granted by the legislation, as well as the times EU agencies are employed by the legislator. I will introduce this information in detail in the measurement sections of the following chapters.

In the next chapter I analyse the reasons behind varying discretion granted to the Commission and national administrations on the basis of the dataset I have just presented.

3 Executive delegation in post-Maastricht EU secondary legislation: Commission and national administrations

3.1 Introduction

Why is the distribution of executive power relevant to the study of EU governance? Since the late 50s political scientists started investigating how and why policy competences are pooled and transferred from the national to the supranational level. Since Haas's (1968) seminal work theorising neofunctionalism, students of EU governance did not stop analysing this issue: they were interested in understanding why, alongside the process of EU integration, member states progressively transferred to the EU level policies which traditionally belonged to the national sphere. For example, the move of the area of Justice and Home Affairs (JHA) to the first pillar with the treaty of Amsterdam (1997) was a huge and highly debated change to the EU architecture (Börzel, 2005b).

In the past three decades the EU system of governance has indeed become essentially more complex: treaty amendments have affected the formal distribution of powers in the EU as they secured more competences to the supranational level by providing a more substantial involvement of the European Parliament through the co-decision procedure and by extending qualified majority voting (QMV) to several areas of policy making, which has allegedly facilitated a shift towards further EU integration (Tsebelis and Garrett 2000). The Council of the European Union, which at the dawn of the European Community was the main decision maker within a mostly intergovernmental system dominated by unanimity voting, nowadays shares its legislative tasks with the European Parliament and permits that a considerable share of policy competences is (partly) handled by the supranational sphere (Pollack, 1997; Crum, 2003; Franchino, 2007). Moreover, new bodies such as EU agencies and networks have proliferated alongside the European Commission and are in charge for the implementation of several policy issues.

Within this evolving scenario, understanding who is in charge for the execution of EU policies is becoming an increasingly intricate exercise. Often, scholars of European integration have argued that one of the most important consequences of European integration is that it weakens the authority of national states (Caporaso, 1996, 2000; Hooghe & Marks, 2001; Risse, 1996; Wayne Sandholtz & Stone Sweet, 1998): how far is this authority actually weakened by delegation to the supranational, EU level? Is the European Union becoming a more decentralised or supranational system of governance? Ultimately, what are the factors influencing the competences delegated by EU policy makers to supranational institutions, and how free are these institutions to operate?

As briefly outlined in the introduction of this thesis, while the EU *legislative* power is divided between the Commission (which initiates the legislation) the Council and European Parliament (that negotiate the laws proposed by the Commission), the main *executors* of EU policies are essentially three: First, the major policy executors are national administrations as they generally have more resources, expertise and knowledge of the situation at the national level (Franchino 2007). Secondly, the European Commission, to which the treaties have granted not only the exclusive right of legislative initiative but also the possibility to execute (part of) EU policies (Pollack 1997; 2003). Third, 34 EU decentralised agencies have been established since the 1970s: although these new institutions do not have formal role in the treaties, they are being increasingly employed, by means of secondary legislation, to assist the Commission and the member states the implementation of several EU policies. These bodies are in charge of several tasks, from the implementation of technical provisions, to the development of regulatory standards, information gathering and the diffusion of best practices. Given the existence of three kinds of executors in the system of EU governance, in order to implement policies EU legislators, have the possibility to choose between different implementation paths in secondary legislation (Franchino 2007; Thomson, & Torenvlied, 2011): the *national* one, that uses national administrations as major policy executors. The supranational one, i.e. that uses the European

Commission as the major policy executor. Two kinds of paths ‘in-between’ in which implementation is shared (in varying proportions) among the Commission, national administrations and EU agencies. The paths just described are overviewed in Table 3.1. For each path I provide a description, and an example of legislative act following that path. For instance, legislation on temporary agency work leaves implementation in the hand of national administrations, while competition in the air transport sector is delegated to the Commission. Since 2006, regulation of chemical products in the Union is shared between the Commission, national regulatory authorities and the European Chemicals Agency (ECHA)⁷.

With the present chapter I aim to clarify the dynamics underlying the first three implementation paths, i.e. the choice of delegating to national administrations and/or the European Commission. The innovations I bring about, as compared to previous literature on similar themes are mainly two: first, I employ a newly collected dataset of major EU laws encompassing the past 30 years, which I have described in Chapter 2. Second, I develop a set of hypotheses and underlying causal mechanisms leading to varying levels of executive discretion delegated to the Commission and national administrations. While most of the identified mechanisms are grounded into the P-A framework, I add on this literature by taking into account the role of the European Parliament in delegation outcomes by first distinguishing between laws adopted under co-decision and laws adopted under different procedures, and by measuring the relative distance of preferences between the Commission and the European Parliament and the Council and the European Parliament, respectively.


Results agree with previous findings by showing that decision rules work as good predictors of varying discretion levels granted to both national administrations and the Commission. Moreover, I find that conflict along the integration dimension within the Council is an important factor shaping different delegation outcomes to national administrations, while legislative complexity yields

⁷ The examples are derived from an original coding of the sampled legislation. See later in this Chapter and in Appendix 2

contradictory results. Finally, while I do not find any difference between laws adopted under co-decision and other laws in delegation to the national level, my results point to lower discretion granted to the Commission under co-decision. In spite of that, there is no evidence of any significant impact of the conflict between the European Parliament and the other two institutions in different discretion levels.

Table 3.1: Examples of implementation paths

Implementation Path	Description	Example
National	National administrations are mainly in charge for policy execution	Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work
In-between (I)	National Administrations and Commission share executive tasks	Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry
In-between (II)	National administrations share executive tasks with the Commission and EU agencies.	Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC
Supranational	The European Commission is mainly in charge for policy execution	Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector



National implementation

Supranational implementation

3.2 The principal-agent framework: a brief overview

Over 30 years ago American scholars started cultivating a keen interest in understanding the determinants of delegation of tasks from the legislative to the executive branch (Calvert, McCubbins, & Weingast, 1989; Epstein & O’Halloran, 1994; Mathew D. McCubbins & Schwartz, 1984; Matthew D. McCubbins & Sullivan, 1987; Volden, 2002). Since then, several political scientists have sought to analyse political systems, the European Union included, through the well-known Principal-Agent (P-A) framework. According to P-A, executive delegation occurs when legislators (the ‘principals’)

decide to give up a share of their responsibility to policy executors (the ‘agents’) in order to implement policies. This stream of social scientists, which are generally identified with the ‘rational choice’ school, political principals are willing to delegate executive tasks following several ‘logics’. Notably, two logics of delegation (Majone, 2001), which may co-exist, have been recognised as the most important ones. First, politicians delegate powers in order to reduce transaction costs (Pollack, 1997) and overcome issues such as lack of policy efficiency. Second, they delegate to ensure credible commitments (Majone, 2001; Thatcher, 2002, 2011a; Yesilkagit & Christensen, 2010). In the former situation, the pure P-A logic assumes that policy makers are mainly interested in gaining policy efficiency, and therefore delegate tasks to an agent while maximising control mechanisms so as to ensure the proximity between the agent and their own preferences; the latter, instead, emphasises the need to policy makers to look credible to their voters. Given that ‘an agent that simply carries out the principals’ directives cannot enhance the latter’s credibility’ (Majone, 2001:104), principals concerned by credibility will seek to maximise the *distance* between themselves and the agent in order to ensure this latter’s independence⁸ and, as a consequence, ensure higher policy credibility.

In spite of the benefits of delegation to the principals, all these processes may produce costs in the form of agency losses derived from ‘shirking’, due to diverging preferences between principals and agents, and information asymmetries between them (Kiewiet & McCubbins, 1991; Pollack, 2003:26-7 ; Thatcher, 2011). In brief, delegation entails by definition a risk for the principals to lose control over their agents, who in turn may defect and pursue their own agendas (agency drift), or simply fail to produce outcomes as good as if the principal had been in charge (agency loss). In order to minimise costs, therefore, delegation of any kind of authority must be accompanied by control mechanisms (Epstein & O’Halloran, 1994). To control their agent political principals have several options. They can impose ex ante controls by creating, among others, detailed legislation and budgetary restrictions this way limiting the flexibility of the agent’s actions (Mathew D. McCubbins & Schwartz, 1984;

⁸ Like it happens, for instance, in the case of Central Banks and independent regulators

Matthew D. McCubbins, Noll, & Weingast, 1989). The legislator moreover, can decide to delegate while setting levels of discretion through the imposition of procedural constraints within the legislation (Franchino, 2007).

Prominent scholars of both American and EU politics have shown that delegation processes in policy making are likely to be affected by transaction costs calculation related to the lack of information and expertise (Epstein & O'Halloran, 1999; Huber & Shipan, 2000; Majone, 2000) and by the degree of conflict among principals (Epstein & O'Halloran, 1999; Franchino, 2007; Huber & Shipan, 2000, Volden, 2002). A solution to these problems, as mentioned above, can be to delegate authority to agencies and make them independent from both present and future political principals (Gilardi, 2007:49; Horn, 1995; Volden, 2002): as Epstein and O'Halloran (1999) show in the case of US politics, under unified governments Congress delegates more authority, while with divided governments it gives up more executive discretion to independent regulatory agencies; on the other hand, they demonstrate how agency discretion increases with uncertainty and decreases with conflict between the legislature and the agency. Several scholars have also analysed the impact of information intensity (policy complexity) on delegation: most argue that when a specific policy is very complex, and costly to implement, principals are sensibly keener to delegate it to an agent with higher resources, information and expertise (Majone, 1997; M. Pollack, 2007). Given that the level of complexity of a policy is not particularly salient for voters, politicians may have few incentives to develop such expertise for themselves, nor do they have the resources to do so (Elgie & McMenamin, 2005; Majone, 2001; Thatcher, 2002: 131–2 ; Wonka & Rittberger, 2010). Finally, students using P-A frameworks take into account the institutional context affecting the relative costs and benefits of delegation for the principals, such as their capacity to pass legislation, the bargaining environment or the availability of non-statutory forms of control over agents (Franchino, 2007; Huber & Shipan, 2000; Thatcher, 2011a). Franchino (2007) in particular theorises and proves empirically how voting rules have a significant impact on the levels of discretion granted to the European Commission.

This vast literature on delegation, in sum, points to the fact that political principals are more prone to delegate authority to an agent if the cost of delegation is smaller than implementing the policy without an agent; that principals, when they delegate, impose constraints upon agents in order to limit agency losses; and that the degree to which they delegate authority is related to conflict, policy complexity and the institutional setting. In the next section I briefly look at main findings of the delegation literature applied specifically to the European Union.

3.3 Principals, agents and delegation in the European Union

The EU has been a prolific testing ground for scholars interested in delegation of executive leeway to national and supranational institutions, given that its establishment has involved a remarkable transfer of tasks from the national to the supranational level.

Relying on the P-A literature back in the early 2000s, Majone (2001) argued that that while EU member states delegate broad discretion to the Commission in the treaties in order to ensure credible commitments, they opt to delegating ordinary/managerial tasks and less discretion to the Commission in secondary legislation. After him Pollack (2003) analysed extensively the transfer of competences to the EU Commission *in the treaties*, concluding that member governments of the EU delegate to the Commission the same kind of functions delegated to Congressional committees and regulatory agencies by the US Congress. Moreover, Pollack showed how member governments created a variety of control mechanisms in order to limit the Commission's discretion. While the above findings suggest that the leading motivation for treaty-based delegation to the Commission is the demand for credible commitments, Pollack (2003) claims that the reasons for delegating of tasks in secondary legislation appear mixed.

Theoretical attempts, through formal models, to explain delegation include Tsebelis and Garrett's (2001), that developed a spatial analysis of EU legislative procedures and derived propositions on the executive discretion of the Commission based on the core of each procedure; and Dimitrova and Steunenberg (2000), that proposed a spatial model to explain the granting of exemptions to some

member states in EU legislation. The first theoretical *and* empirical attempt to systematise the study of delegation to the European Commission in secondary legislation is Franchino's seminal work 'The powers of the Union'. In this book he gathered a sample of EU laws approved between 1958 and 1993 and then analysed the determinants of the discretion granted to the European Commission and to national administrations. He finds that decision rules, complexity and conflict are the main explanatory factors for the variation in the discretion granted to executors. After Franchino, Thomson and Torenvlied (2011) have given a similar contribution by concentrating on the period between 2000 and 2005: they find that delegation to the Commission is affected by the degree of policy complexity, and that conflict in the Council is significantly and positively associated with the number of discretionary provisions to member states when the unanimity rule applies.

By taking stock of the general P-A literature and on the previous findings addressing delegation dynamics in the European Union, in the next section I overview the set of competing mechanisms explaining the variation of delegation and discretion in EU secondary laws and formulate a set of hypotheses.

3.4 The determinants of delegation and discretion in the EU: hypotheses

3.4.1 Complexity

Several scholars notably point to the fact that poorly-informed politicians tend to rely more on the expertise of implementers (Epstein and O' Halloran 1999; Elgie & McMenamin, 2005; Majone, 2001; Thatcher, 2002: 131–2 ; Franchino 2007; Wonka & Rittberger, 2010). According to a pure transaction-cost calculation in fact, it is sensible for a legislator to delegate the burden of implementing policies requiring high levels of expertise. If implementers are better informed about the effects of European policies than are policy makers, particularly on policy issues that are highly complex, it is more efficient for the legislator to grant high levels of discretion to implementers. It follows that in the case of the European Union, we should observe more discretionary powers granted to both national administrations and the Commission when the policy at stake is more complex.

H1a: The higher the policy complexity the higher the discretion granted to national administrations

H1b: The higher the policy complexity the higher the discretion granted to the Commission

3.4.2 Agency loss

Transaction-costs calculations are likely to be affected by the risks of agency's defection. When implementers' preferences diverge from the decision outcomes adopted by policy makers, those implementers have incentives to deviate (Thomson and Torenvlied, 2011:140). The divergence of preferences between the Council and the Commission in particular, namely, the risk to incur in agency losses, should therefore considerably affect the amount of discretion granted to this latter: according to several scholars (Hug, 2003; Pollack, 1997, 2003; Tallberg, 2002; Franchino 2007) differences between the Commission's preferences and member states' preferences generally discourage policy makers from delegating power to the Commission due to the fear of incurring in disproportionate agency losses.

H 2: The higher the divergence of preferences between the Commission and the Council, the smaller the discretion granted to the Commission

For what concerns the European Parliament, agency loss can likewise be a factor shaping the delegation outcome. According to Franchino (2007) two important changes occur when the Parliament is involved in the adoption of a measure: 'in the case of national implementation, members of the Parliament are likely to prefer lower national executive discretion because they face higher costs of ongoing control than Council ministers, and this situation is heightened when the Council and the Parliament do not share similar views. In the case of Commission implementation, the Parliament would prefer greater discretionary authority of this institution than the Council, 'to the

extent that the Parliament and the Commission have more similar preferences' (2007:5). Given that the EP is considered as an actor preferring higher supranationalisation and deeper integration in general, we may expect that when its preferences are in line with those of the Commission, it should seek to grant higher discretion to this latter.

H3: When co-decision applies, the higher the conflict between the EP and the Council, the lower the discretion granted to national administrations

H4: When co-decision applies, the higher the preference similarity between the EP and the Commission, the higher the discretion granted to the Commission

3.4.3 Conflict in the Council

Expectations about the impact of conflict of tasks distribution in delegation varies across theoretical models, and have often generated contradictory results (Oosterwaal, Payne, & Torenvlied, 2012; Thomson & Torenvlied, 2011). Mc Cubbins and colleagues expect that conflictual situations result in lower discretion granted to executors because implementation agencies have to face multiple decision makers who prefer different policy alternatives. Those decision makers in favour of a policy will have a strong incentive to monitor the implementation process in order to avoid noncompliance: therefore, decision makers are expected to delegate lower levels of discretionary authority in order to secure tighter controls over the implementers (McCubbins et al., 1989). Moreover, Bendor and Meirowitz's (2004) assume that delegation of executive tasks requires the support of coalitions of politicians, and that it is more difficult to form coalitions when there is high disagreement among them. This would imply observing less discretion granted to both the Commission and national administrations when conflict among decision makers in the Council is more intense.

H5a: Under QMV, the higher the conflict among Council members, the lower the amount of discretion granted to the Commission

H5b: Under QMV, the higher the conflict among Council members, the lower the amount of discretion granted to national administrations

However, Epstein and O' Halloran (1999) show that with divided governments the Congress gives up more executive discretion to independent regulatory agencies. Applied to the European context, this example suggests that the less governments in the Council trust one another i.e. the higher the conflict among them, the less they grant high discretion in policy implementation to national administrations and choose, instead, a more impartial executor. In practice, governments would rather bind their own hands through more constraining laws, than incur in losses provoked by other states' defection. In additional support to this view, I deem important to consider that when conflict among Council members is high, member states governments are more likely to face commitment problems associated with conflict (Thomson & Torenvlied 2011; Franchino 2007). Delegation of executive discretion to the Commission would be, therefore preferable, because it protects states from each other's defections, and make their political promises more credible.

H5c: Under QMV, the higher the conflict among Council members, the higher the discretion granted to the European Commission

3.4.4 Decision rules

In the Council of the European Union laws are approved either by unanimity or by qualified majority voting. How does the outcome of delegation change, if decisions are taken by either of these two procedures? The theoretical predictions of the effect of decision rules on delegation and discretion to the Commission differ across scholars: according to Tsebelis and Garrett (2000:368) the executive

discretion of the Commission is greater when new legislative acts are adopted in the Council under unanimity rather than under qualified majority voting, because states may have a ‘harder time’ agreeing on restrictions upon the Commission unanimously than by QMV. Consequently, the move to qualified majority voting should reduce the discretionary authority of the Commission. Yet, Tsebelis’s work refers to behavioural dynamics which do not apply to this context, given that I focus on formal procedures. According to Franchino (2007) delegation of executive tasks to the Commission by the Council is more likely under qualified majority voting than unanimity: The Commission should have more leverage under QMV as it has to convince less actors in order to obtain a policy closer to its preferences and higher leeway. Moreover, pivotal actors in QMV are supposed to have less extreme positions than under unanimity and changing the status quo– i.e. transferring competences to the EU level– is, comparatively, easier

H6: Acts adopted under qualified majority voting grant more discretion to the European Commission

What about the discretion granted to national administrations? Dimitrova and Steunenberg’s (2000) consensus building approach in particular expects that under unanimity rule we should observe higher national discretion because under unanimity, the veto of only one member state is sufficient to block the adoption of a legislative proposal: if states’ first concern is to secure the larger possible degree of consensus, unanimity facilitates larger room of manoeuvre to national implementers, so as to make the majority of states satisfied with the minimum effort.

H7: Acts adopted under unanimity grant more discretion to national administrations

3.4.5 The European Parliament

Most of the literature on EU executive delegation fails to tackle both theoretically and empirically the role of the European Parliament in determining the distribution of competences between national

administrations and the European Commission. Grasping the relative weight of the European Parliament in determining delegation outcomes is no trivial exercise: in particular, a thorough analysis should take into account the relative influence the EP has vis-a-vis the Council within co-decision negotiations, while having clear expectations about *in what* EP's preferences may differ substantially to the Council's (on this debate see Franchino and Mariotto, 2013). I argue that when the EP is more involved in the legislative process (under co-decision) as opposed to when it is less involved (under consultation and cooperation), legislation should be expected to be more constraining towards national administrations, provided that the oversight through legislative design should be more important to the EP when national administrations are the main implementers (Franchino & Mariotto, 2013) because it has less ability to monitor national implementers through ex-post controls. The same reasoning cannot apply to delegation to the Commission, because the EP may be willing to impose constraints upon the Commission as much as the Council does. In fact, according to previous findings (Franchino 2007:286), the impact of the EP on Commission's discretion is mixed: when amending the legislation, the EP tends to expand some Commission's powers, while it increases consultation and reporting requirements imposed upon the European Commission.

H8: Laws adopted under co-decision are more constraining towards national administrations than laws adopted under other procedures.

Table 3.2 summarises the main hypotheses and mechanisms just overviewed

Table 3.2: Summary of main hypotheses

Independent Variables	Mechanism	Effect on National discretion	Effect on Commission Discretion
Complexity	Maximisation of policy efficiency	Positive (H1a)	Positive (H1b)
Conflict P-A	Risk of agency loss		Negative (H2)
Conflict with the EP	Preference distance	Negative (H 3)	
Agreement with EP	Preference proximity		Positive (H 4)
Conflict in the Council under QMV	Monitoring costs and bargaining problems	Negative (H5a)	Negative (H5b)
	Commitment problems		Positive (H5c)
Qualified Majority Voting	Easier to move the SQ towards higher integration		Positive (H6)
Unanimity	Consensus building	Positive (H7)	
Involvement of the EP	Monitoring	Negative (H8)	Uncertain

3.5 Measurement

3.5.1 Dependent Variables

I measure the two dependent variables, namely the discretion granted, respectively, to the Commission and national administrations, by means of a qualitative textual analysis. In order to make my results comparable to previous findings I have opted for a hand coding of the 309 legislative acts. Following Franchino's (2007) approach, I coded acts delegating to the national and/or supranational level. I then obtained a measure of discretion ratio by weighting the amount of provisions delegating to either of the executors with the amount of provisions imposing constraints upon them. When there

is no delegation, constrains are obviously absent. Details about the coding procedure and measurement are provided in [Appendix 2](#).that secured by the Commission.

Figure 3.1 and Figure 3.2 show, respectively, the distribution of national and Commission's discretion. I have excluded observations in which discretion is equal to zero. In 30 cases out of 309 national discretion is equal to 0, while in 107 cases out of 309 the Commission's discretion is equal to 0. The two graphs show that national discretion is, overall, comparatively twice as high than the Commission's, and that both distributions are skewed towards zero. This confirms that the executive leeway granted to national executors is overall much higher than that secured by the Commission.

Figure 3.1: Distribution of national discretion ratio

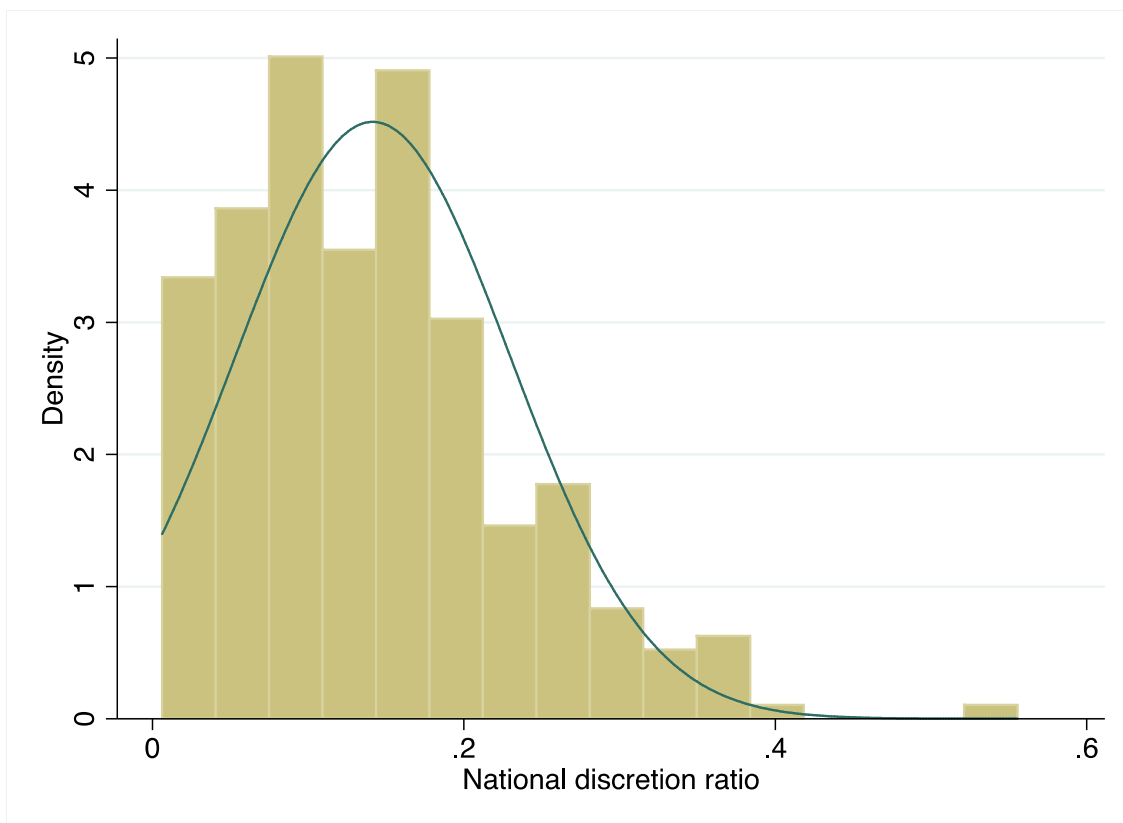
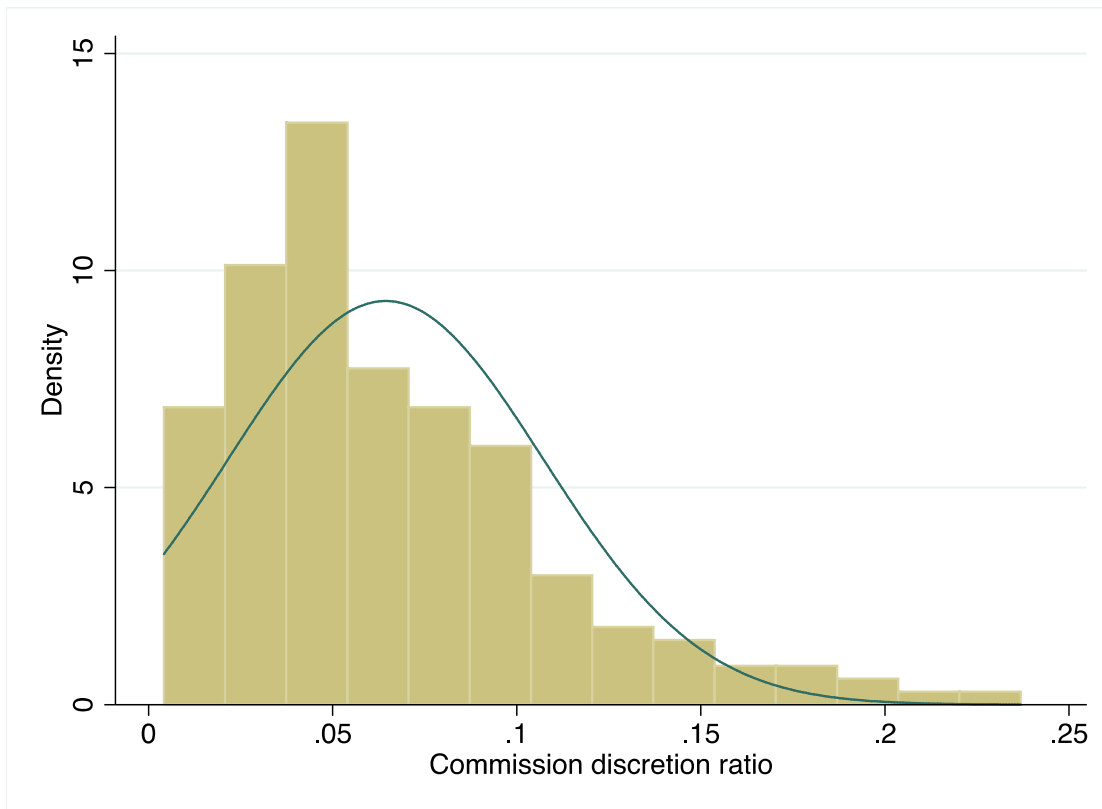


Figure 3.2: Distribution of the Commission's discretion ratio



The distribution of discretion across policy areas differs between national administrations and the Commission. Figure 3.3 and Figure 3.4 show, respectively, the average discretion granted to the national level and to the Commission. The highest national mean discretion level is found in policies dealing with postal services industrial and commercial property and freedom of movement, while the highest mean Commission's discretion is found in agriculture and competition policies⁹. More details about discretion levels are provided in [Appendix 2](#).

⁹ For a comparison with earlier legislation see Franchino (2007)

Figure 3.3: National discretion ratio by policy area

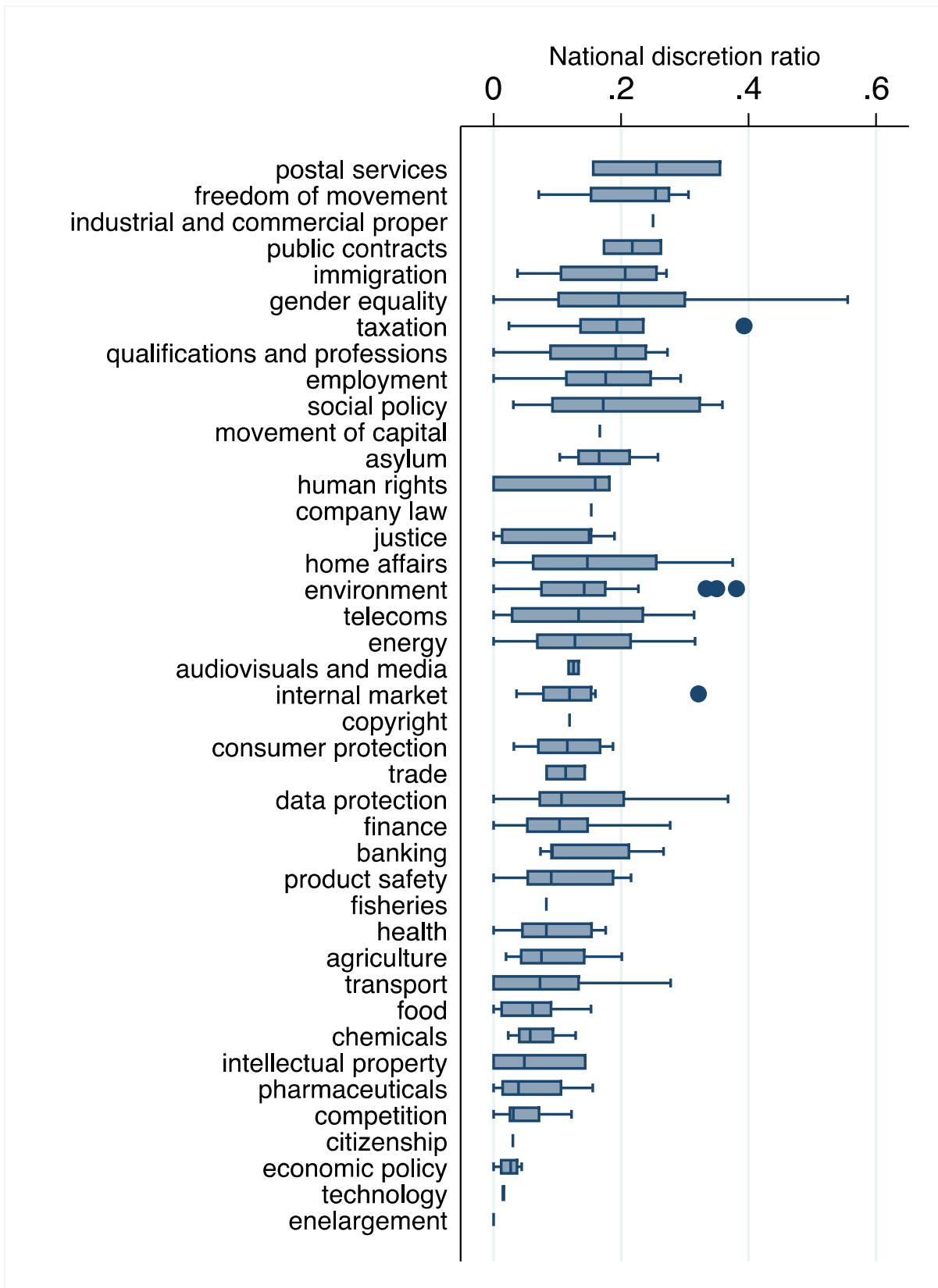
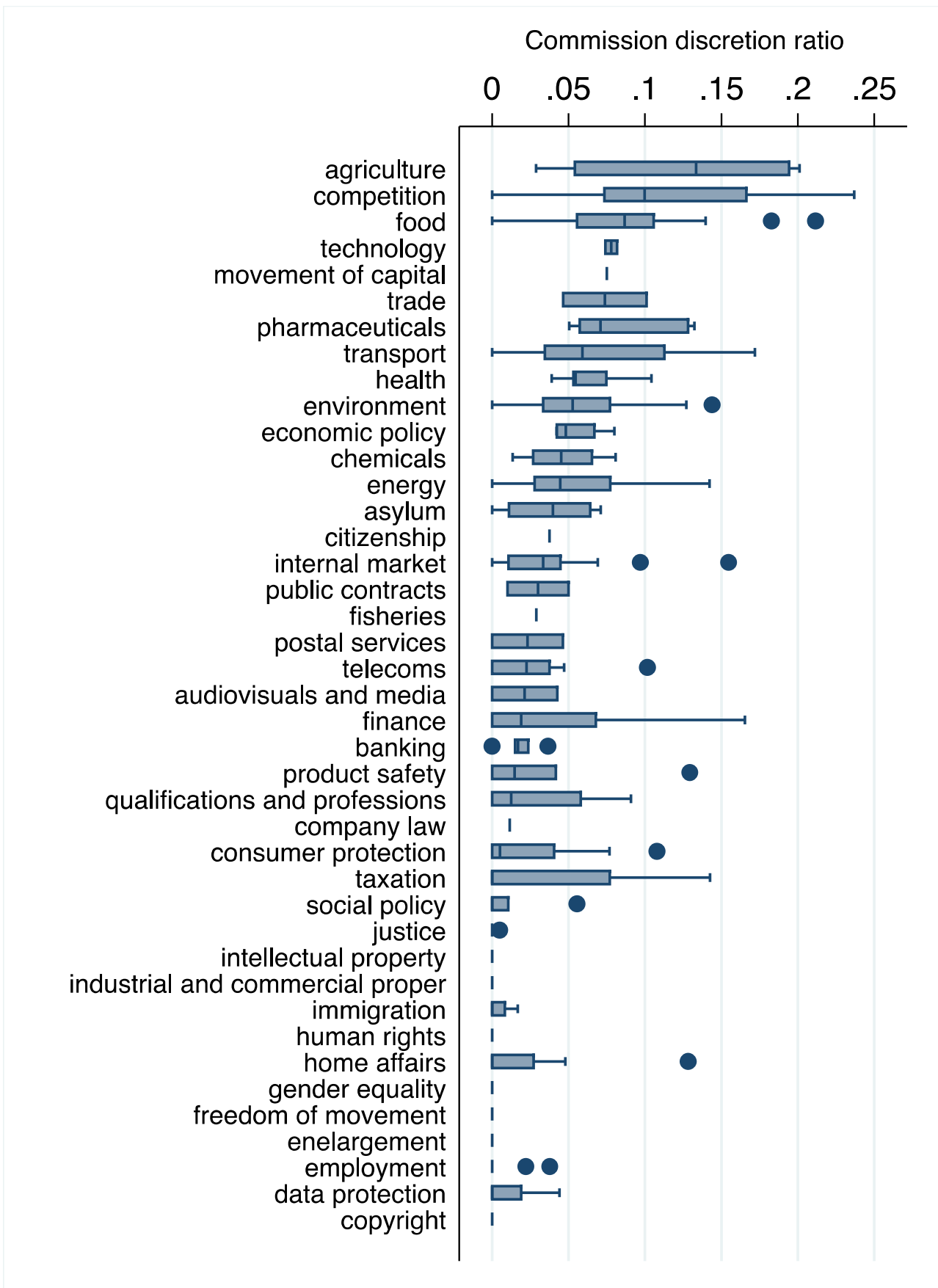


Figure 3.4: Commission discretion ratio by policy area



3.5.2 Independent variables

Complexity

Existing literature provides several ways to operationalize complexity. Ringquist et. al (2003) employ a dichotomous variable, which however in this study would not ensure enough variation. A number of scholars have employed the number of recitals included in the legislative acts. Franchino (2000) for instance assumes that long texts are associated with more complex policy areas, although length could also be associated with the legislators' unwillingness to delve on issues they do not master. Moreover, such measurement may rather hint to the scope of a proposal, its salience and/or controversy (Warntjen, 2012). Rassmussen and Reh (2013) use the number of EP Committees involved in the legislative process, arguing that complex policy issues should involve a greater number of committees. I use recitals as the main complexity measurement as it is the most widely employed by the relevant literature. As robustness checks I also run analyses with alternative measurements i.e. EP Committees; the number of definitions at the top of the provision, weighted by the length of the text.

Conflict in the Council: two dimensions

Several scholars have argued that the EU policy space is multi-dimensional (see Hix and Hoyland 2012) and therefore measured through more than one dimension. Three are the most important ones acknowledged by the literature i.e. the integration dimension; the left-right dimension; and the policy dimension. Some studies have considered all of them (for example Franchino 2007), while others such as Crombez and Hix (2015) simplify the multi-dimensionality argument and employ just the left-right dimension, arguing that it is reasonable to assume that politicians' preferences on EU policies are influenced by their underlying left-right preferences and by their actual policy preferences (Hix and Crombez 2015). In order to make the analysis as encompassing as possible, I employ both the left-right and the integration dimensions.

I calculated the left-right position of each government drawn from the *Parlgov* dataset¹⁰ at time of legislative adoption, by weighting the left-right score of each party sitting in the government by the share of seats it holds in the national parliament. I then measured the right-left range among Council member governments by calculating the absolute difference between the extreme right and the extreme left government position in the Council (under unanimity rule), and the absolute difference between the right and left pivot (under QMV), at time of adoption. In a one-dimensional setting, there are two pivotal states, one for the leftward move (the most left-wing member among the right-wing), and one for the rightward one (the most right-wing member among the left-wing ones. To identify, respectively, the right and left pivot I employ the codebook of the Comparative Manifesto Project (CMP) in order to match policy categories and corresponding leftward and right-ward shifts. I apply a matching similar to Franchino (2007) and Ershova (2018). For example, I match the ‘Water framework directive’, which aims at the prevention of waters pollution, within the category ‘Environmental Protection’, which is recognised as being a priority for left-wing parties. In this case therefore, more environmental protection implies a left-ward shift¹¹.

I followed a similar procedure to calculate conflict along the integration dimension through the Parliament and government database (*Parlgov*). Assuming that EU legislation always implies a shift towards higher integration, the integration pivot is the least integrationist among the pro integration Council members.

As there are no datasets available for the whole period covered by my sample and expert surveys may nevertheless be biased by the expert’s judgement. As a robustness check, I also include the times under which each measure fell under a B point. This is a quite straightforward and valid measurement for conflict among Council members, as B points they indicate the Council’s need to discuss the issue

¹⁰ Doring and Manow use ‘expert judgment’ data from a range of sources to estimate the left-right position of each political party in the EU on a 0 to 10 left-right scale.

¹¹ The pivotal actor in this instance was Belgium

and overcome disagreements, as widely recognised in the literature (see for example Brandsma & Blom-Hansen, 2017; Häge, 2007).

Agency Loss along left-right and integration dimensions

Commissioners with clear partisan affiliations have become increasingly dominant overtime (MacMullen, 1997; Franchino 2007:136) and the last four Commissions were composed almost entirely by party-affiliated officials. Therefore, to identify the main position of Commissioners, following Hix and Crombez (2015) I assume that each Commissioner has the same preferences of his/her party of affiliation. I calculate the Commissioners' *left-right and integration* position through the ParlGov dataset. As a proxy of conflict between the Commission and the Council I subtract the absolute value of the score of the relevant Council pivot¹², to the position of the *Commissioner in charge* for the implementation of the relevant act.

Finally, I measured the difference of preferences between the EP, the Council and the Commission by calculating the difference between the median EP group and, respectively, the Council pivot and the Commissioner in charge.

Decision Rules

I created a dichotomous variable taking the value of 1 when qualified majority applies (QMV) and zero for unanimity (U). The majority (85.52%) of legislation in the sample is adopted by QMV. The rest (17.48 %) is adopted by unanimity.

The involvement of the European Parliament

I created a dummy variable taking the value of 1 when the act is adopted by co-decision, and 0 when it is adopted through any other procedure.

The conflict between the European Parliament, the Commission and the Council

¹²The Council pivot's preference is the position of the Council member that is pivotal under either qualified majority voting or unanimity. This is the member whose positive vote would unblock

Using the ParlGov dataset I calculate the position of the European Parliament following Hix and Crombez (2014) procedure, thereby taking the score of the left-right and integration position of the median EP group at each time of adoption. I then obtain the absolute value of the difference between the median EP (across integration and left-right dimensions) and, respectively, the Council pivot and the Commissioner in charge.

Controls

Contrarily to Thomson and Torenviold (2011) I do not include a control variable differentiating directives from regulations. The relationship between executive discretion and type of legislative act is typically *endogenous*, as regulations are directly applicable to national jurisdictions, while directives require the adoption of new legislation at the national level. Given that regulations are implemented at the supranational level, the Commission is by definition, typically more constrained by the legislators, while directives are implemented at the national level, which implies that more detailed constraints are not necessary. I opted, instead, to control for acts which amend from those which introduce completely new laws, because when a provision is completely new, the impact of the Council's preferences should be higher as the implementers' discretion starts from zero, while in the case of amending acts, we start from a different status quo in which the Commission and national administrations may already have some leeway secured by previous acts. Finally, I control for Treaty fixed effects given that there could be systematic differences depending on treaty under which legislation was approved. In the next page, Table 3.3 summarises the main variables of interest.

Table 3.3: Summary statistics of main dependent and independent variables

Variable name	Description	Obs.	Mean	SD	Min	Max
National discretion	National discretion ratio: delegation ratio minus the constraint ratio weighted by the value of the delegation ratio	309	12.77	9.38	0	55.55
Commission discretion	Commission discretion ratio: delegation ratio minus the constraint ratio weighted by the value of the delegation ratio	309	4.21	4.63	0	23.68
Complexity	Main measurement: number of recitals	309	33.60	22.34	5	173
	Robustness check: number of definitions at the top of each provision	309	0.14	0.14	0	0.88
Conflict in the Council	Left-right Council range: absolute difference between right left pivots in the Council	309	2.69	0.97	0.29	5.08
	Integration Council range: absolute difference between pro and anti-integration pivots in the Council	309	1.94	1.70	0.01	6.93
	Robustness check: number B items	309	1.47	1.63	0	12
Agency loss	Left-right difference: absolute value of the l-r score of the relevant Council pivot minus the position of the <i>Commissioner in charge</i> for the implementation of the relevant act	309	3.41	1.70	0.05	15.43
	Integration difference: absolute value of the integration score of the relevant Council pivot minus the position of the <i>Commissioner in charge</i> for the implementation of the relevant act	309	1.74	1.62	0.052	9.29
Decision rules	Laws adopted by QMV	309	0.82	0.38	0	1
	Laws adopted by unanimity	309	0.17	0.38	0	1
Co-decision	Laws adopted by co-decision	309	0.69	0.46	0	1
Conflict with the European Parliament:	Commission EP proximity left-right: absolute value of the difference between the median EP and the Commissioner in charge. dimension	309	1.14	0.89	0.004	3.288
	Commission-EP proximity integration: absolute value of the difference between the median EP and the Commissioner in charge.	309	3.48	2.24	0.035	9.25
	Council-EP proximity left-right absolute value of the difference between the median EP and the Council Pivot	309	1.266	0.749	0.078	3.654
	Council-EP proximity integration: absolute value of the difference between the median EP and the Council pivot.	309	3.579	1.668	0.011	6.929
Amending laws	Amending legislation	309	0.26	0.44	0	1

3.6 Analyses

3.6.1 Analysis (I): the determinants of discretion to national administrations

Decision rules, complexity and co-decision

I run a quantitative analysis by means of linear (OLS) multivariate regressions with Huber/White robust standard errors. I report four models: Models I, II, III and IV in Table 3.4 to test hypotheses about decision rules, complexity and co-decision. Given that I am interested in the variation in discretion levels, I restrict the sample to observation presenting a discretion level higher than 0. Consequently, the sample size drops from 309 to 279. I use recitals only as a complexity proxy: I have run other models with the alternative measurements reported in the methodological section of this chapter, which however did not enhance the explanatory value of the models. As mentioned above, I control for Treaty fixed effects given that there could be systematic differences depending on treaty under which legislation was approved.

Table 3.4: Effect of decision rules, complexity and co-decision on national discretion

All laws (national discretion>0)				
	Model I	Model II	Model III	Model IV
Unanimity	3.834** (1.555)	3.299** (1.566)		3.220* (1.654)
Amending	-1.521 (1.325)	-1.082 (1.319)	-1.761 (1.323)	-1.077 (1.323)
Recitals		-0.0673*** (0.0207)		-0.0671*** (0.0208)
Co-decision			-1.979 (1.557)	-0.194 (1.578)
Constant	15.49*** (1.307)	17.50*** (1.539)	17.64*** (1.867)	17.66*** (2.052)
Observatio ns	279	279	279	279
R^2	0.088	0.109	0.072	0.109

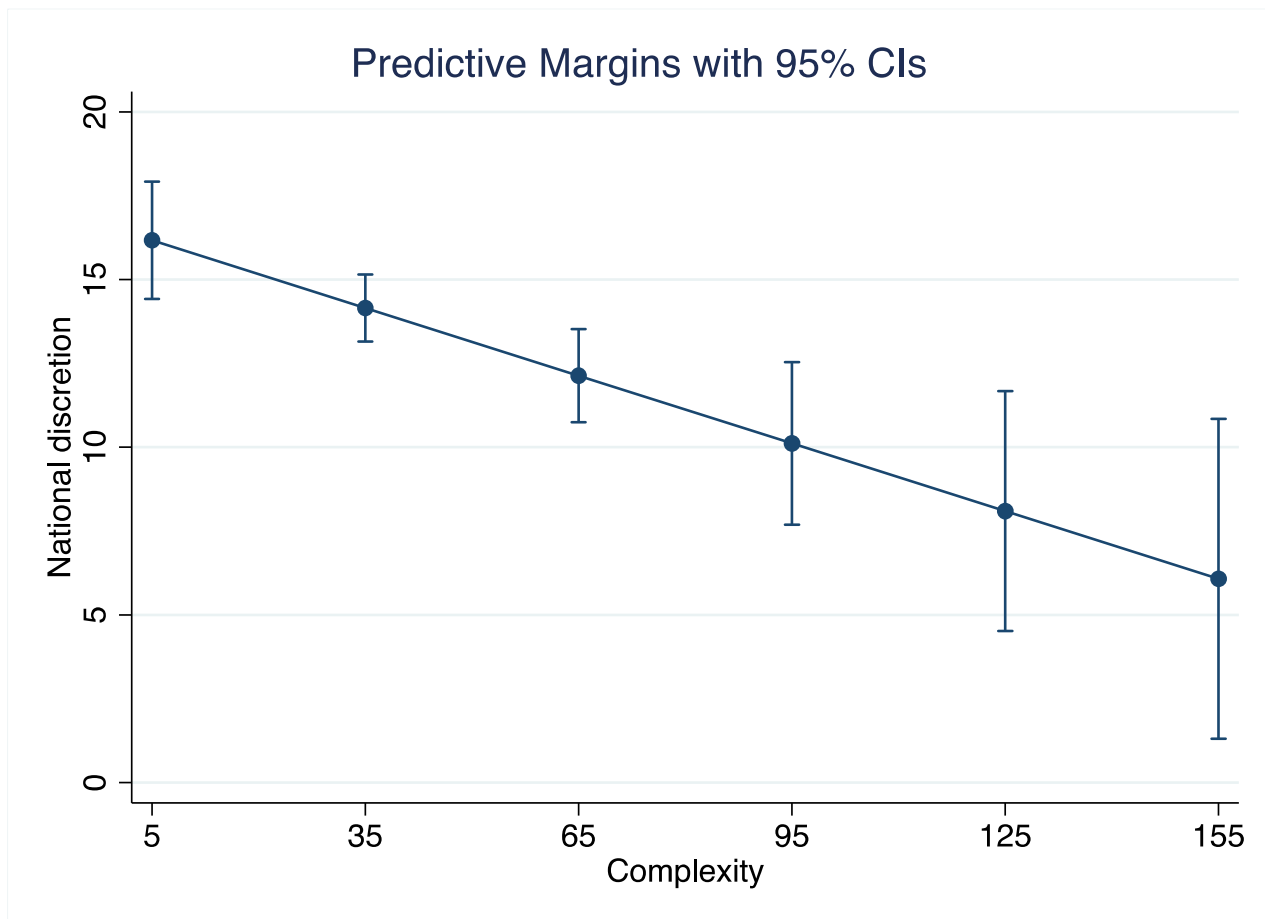
DV=national discretion ratio

OLS regressions with treaty fixed effects. Robust standard errors in parentheses

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Complexity displays a negative correlation with the discretion granted to national administrations: as showed in Figure 3.5 one standard deviation increase in complexity, on average, leads to a 2% decrease in national discretion. The direction of this relationship is quite counterintuitive, and the opposite than what I expected to find in H1a. It is grounded in theory that high levels of complexity should be associated to higher levels of executive leeway. These results, therefore, may be due to a problem with measurement validity: namely, a high number of recitals may signify that legislation is overall more constraining towards both national and supranational implementers. In spite of that, alternative complexity measurements did not offer more comprehensive explanation.

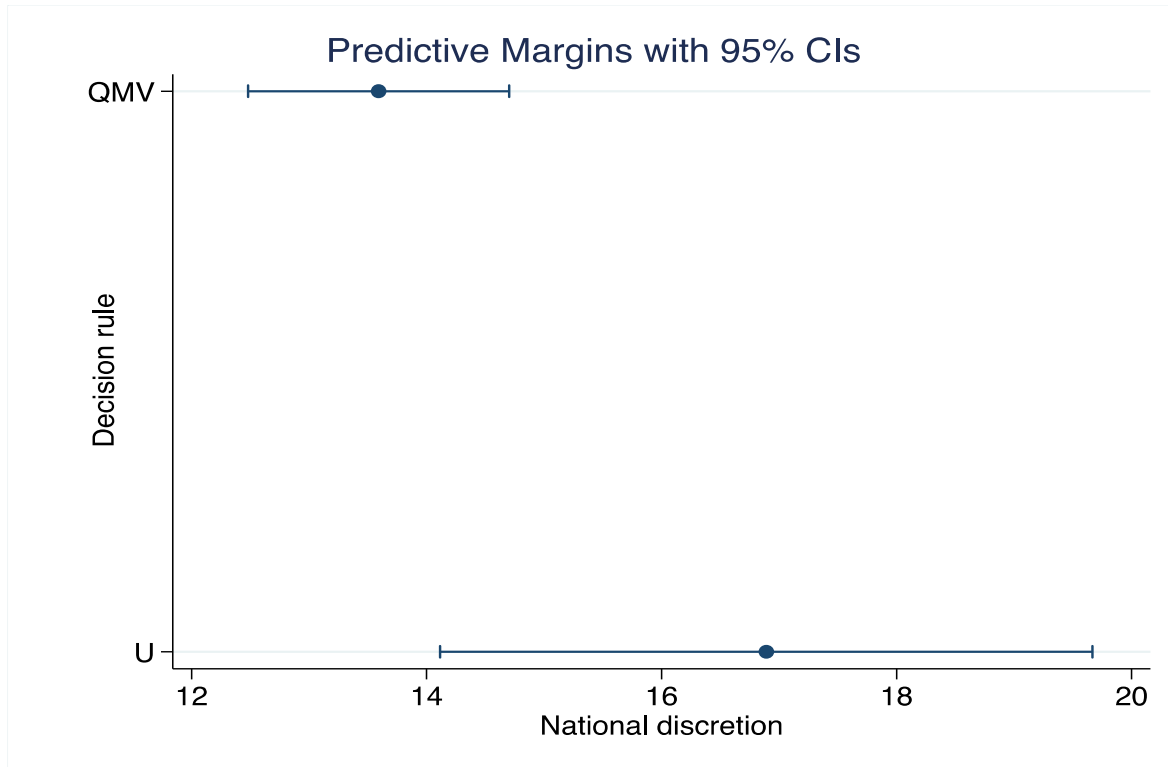
Figure 3.5: Effect of complexity on national discretion



Finally, unanimity voting holds as good predictor for higher discretion, so long as we do not control for co-decision (Model IV). This makes sense considering that laws adopted under co-decision are approved by QMV most of the time. On average, unanimity voting facilitates larger room of manoeuvre to national implementers: as shown in Figure 3.6 under this voting requirement, on

average, national discretion is 25% higher than under QMV. This finding corroborates H7 and previous empirical findings.

Figure 3.6: Effect of decision rules on national discretion



Conflict among Council members and conflict with the EP

In Table 3.5 I test the hypotheses related to conflict among Council members under qualified majority voting (Models I to V) and conflict between the Council and the Parliament under co-decision (Model VI) by means of linear (OLS) multivariate regressions with robust standard errors. I include an interaction between conflict and decision rule, given that hypotheses related to conflict are conditional upon this latter. I control for Treaty fixed effects like in the previous analysis.

Table 3.5: Effect of conflict in the Council on national discretion

	All laws (discretion>0)					Co-decision laws
	Model I	Model II	Model III	Model IV	Model V	Model VI
Unanimity	12.20 (8.189)	9.934 (8.218)	21.93* (12.51)	21.83* (12.56)	23.91* (12.22)	-1.976 (10.63)
Council integration range (QMV)	-3.309** (1.304)		-3.669*** (1.411)	-3.476** (1.405)	-3.483** (1.407)	-2.576 (2.255)
Amending	-1.336 (1.321)	-1.439 (1.317)	-1.190 (1.312)	-0.788 (1.309)	-0.795 (1.311)	-0.710 (1.436)
Council left-right range (QMV)		-0.265 (0.947)	-0.526 (1.032)	-0.502 (1.041)	-0.477 (1.046)	0.388 (1.180)
Recitals				-0.0624*** (0.0207)	-0.0634*** (0.0208)	-0.0596*** (0.0220)
Co-decision					1.034 (1.624)	
EP-Council conflict (integration)						2.663 (2.095)
EP-Council conflict (l-r)						-0.301 (1.021)
Constant	18.18*** (1.845)	16.02*** (2.541)	19.59*** (3.466)	21.22*** (3.477)	20.26*** (3.758)	8.780 (9.870)
Observations	279	279	279	279	279	197
R ²	0.122	0.090	0.127	0.145	0.146	0.136

DV= national discretion ratio

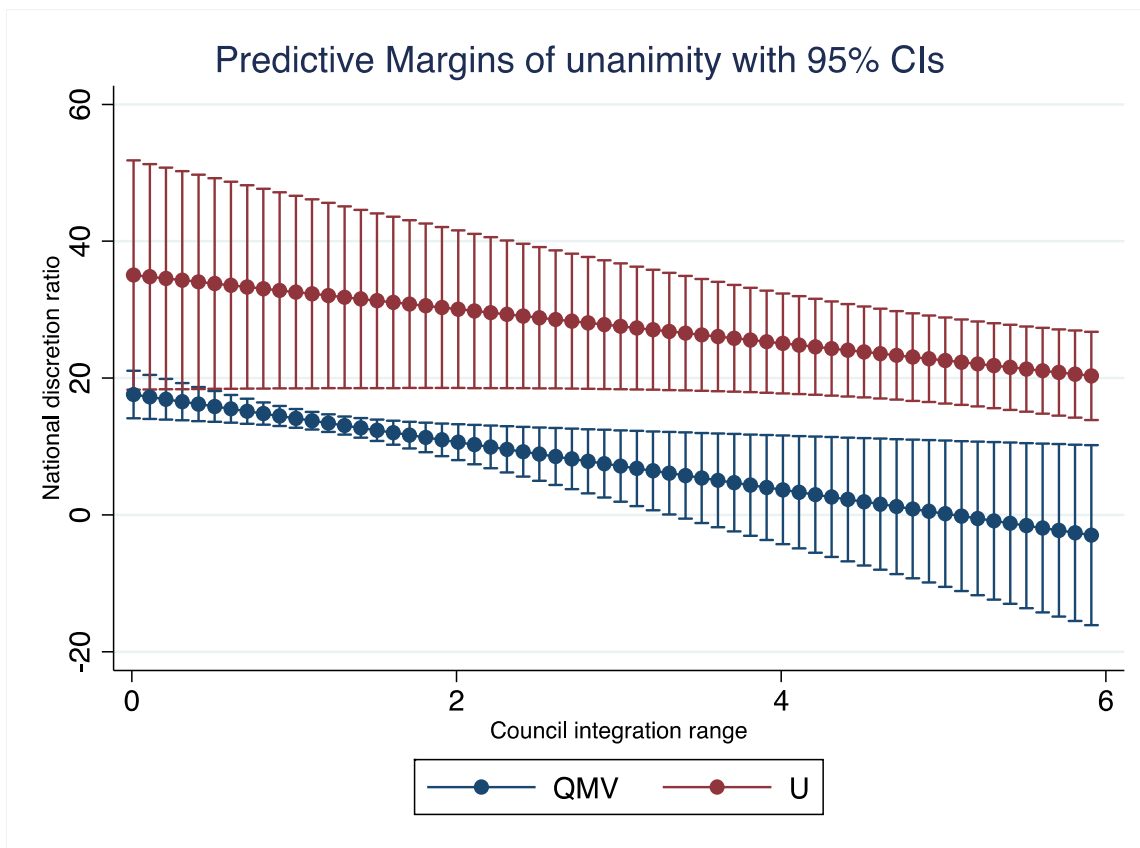
OLS regressions with treaty fixed effects. Robust standard errors in parentheses

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

From the regressions emerges that under QMV, conflict in the Council along both integration and left-right dimensions have a negative effect on national discretion, although only the integration dimension is statistically significant. In line with H5a, when discretion is higher than zero and QMV applies, the higher the conflict in the Council, the lower the discretion granted to national administrations: on average, under QMV one standard deviation increase in the integration range leads to about 33% decrease in national discretion.

Figure 3.7, next page, shows the effect of conflict in the Council under both procedures. To be fair, also under unanimity the effect is negative, although under QMV the slope is steeper and discretion values are systematically lower. This result points to the inability of member states to agree to common policies implemented with few constraints at the national level in presence of high levels of conflict, given the limited trust they have of each other's commitments. This result differs however from Franchino's findings (2007:172), which show that an increase in the integration range augments national discretion, as opposed to a decrease in national discretion as the policy range increases.

Figure 3.7: Effect of conflict along integration lines on national discretion under unanimity and QMV



The left-right dimension shows a similar trend, although falling short of significance. The effect of conflict conditional upon decision rules falls short of significance in Model VI, that is when co-decision applies. This may be due to the reduction of the sample size, as well as the much lower variation given that most acts falling within co-decision are adopted by QMV. In Model VI in fact, I test H3 about the impact of the conflict between the EP and the Council. In this case I restrict the sample to co-decision laws in which discretion is higher than 0 (197 observations).

There is no evidence corroborating what hypothesised in H3: the EP does not seem to manage to impose more constraints upon the national level when its preferences differ substantially from those of the pivotal actors in the Council, neither along the integration, nor along the left-right dimensions.

3.6.2 Analysis (II): The determinants of discretion to the Commission

Decision rules, complexity, agency loss

In Table 3.6, next page, I report seven models testing the effect of decision rules, complexity and agency loss on the discretion of the Commission through OLS multivariate regression analyses with robust standard errors and controlling for Treaty effects. In model VI and VII I restrict the sample to laws adopted under co-decision only, in order to test H4 about the conflict between the Commission and the European Parliament: the number of observations drops from 201 to 152. I only report one measure of complexity (recitals): similar to the national administrations case, I have run the analysis with alternative measures reported in the methodological section of this chapter, which did not enhance the explanatory value of the models. Although I do not have clear theoretical expectations in this sense, I include co-decision in models from I to V to control for any significant difference between this latter and other procedures.

In line with what I hypothesised in H6, qualified majority voting grants significantly higher discretion to the Commission: this result, significant when controlling for conflict, corroborates Franchino's (2007) findings on the effect of decision rules on Commission's discretion. Figure 3.8 shows the predictive margins of QMV on Commission's discretion. Laws adopted under QMV grant on average twice the discretion granted by the legislator under unanimity.

Table 3.6: Effect of decision rules, complexity and agency loss on Commission's discretion

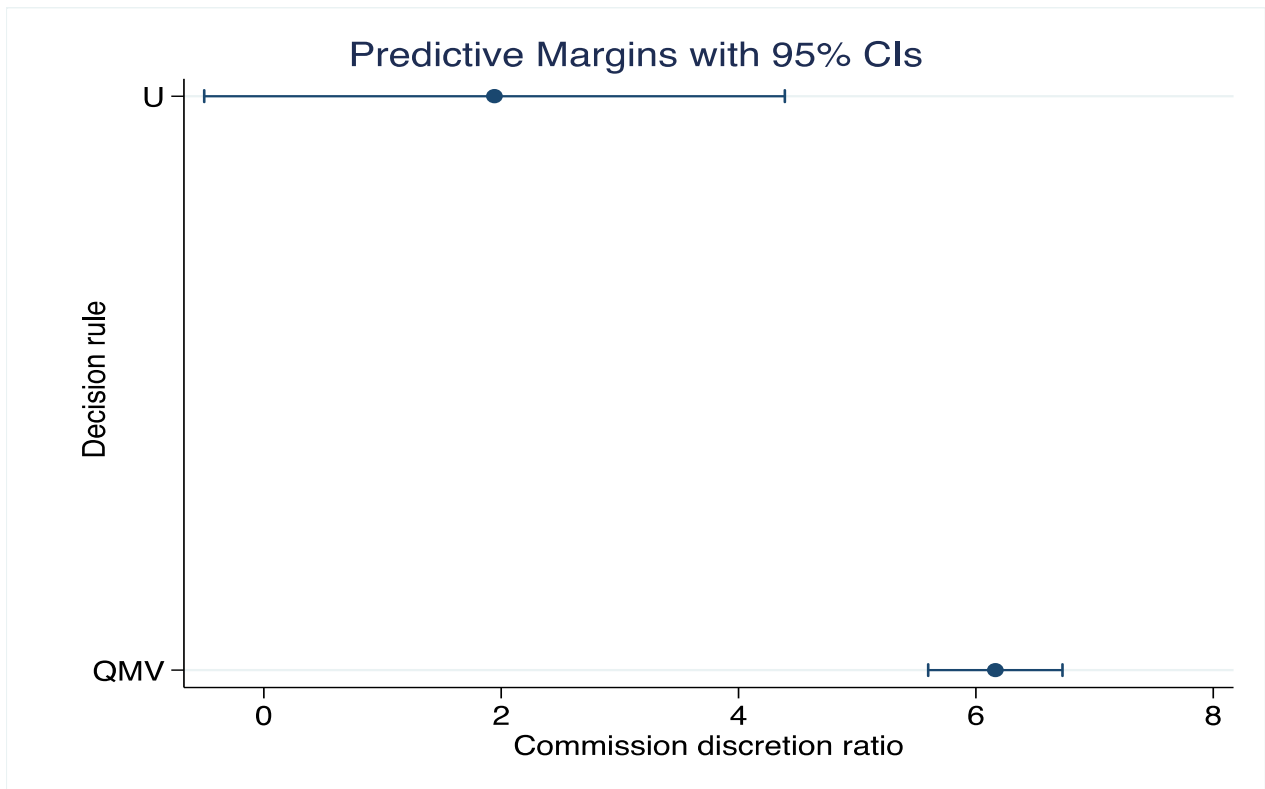
	All laws. Discretion>0					Co-decision laws. Discretion>0	
	Model I	Model II	Model III	Model IV	Model V	Model VI	Model VII
QMV	1.017 (1.215)	1.199 (1.203)	1.888 (1.375)	3.693** (1.564)	3.567** (1.578)	3.780*** (0.874)	4.221*** (1.325)
Amending	0.0588 (0.714)	0.441 (0.705)	0.416 (0.687)	0.695 (0.692)	0.732 (0.696)	0.455 (0.690)	0.574 (0.679)
Recitals		-0.049*** (0.0110)	-0.046*** (0.0102)	-0.046*** (0.0106)	-0.047*** (0.0106)	-0.046*** (0.0100)	-0.042*** (0.0101)
Co-decision			-1.770 (1.236)	-1.928 (1.219)	-1.974 (1.222)		
Integration conflict				0.701** (0.316)	0.675** (0.313)		0.642 (0.517)
Left-right conflict					-0.196 (0.243)		-0.492 (0.340)
EP-Commission conflict left-right						0.123 (0.347)	0.550 (0.470)
EP-Commission conflict integration						0.000843 (0.284)	-0.391 (0.389)
Constant	5.933*** (1.264)	7.253*** (1.282)	8.027*** (1.463)	5.714*** (1.655)	6.188*** (1.697)	4.413*** (1.349)	4.484*** (1.534)
Observations	202	202	202	202	202	152	152
R ²	0.045	0.104	0.121	0.147	0.150	0.136	0.166

DV= Commission's discretion ratio

OLS regressions with treaty fixed effects. Robust standard errors in parentheses.

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Figure 3.8: Effect of decision rules on Commission's discretion



From the regression analyses also emerges that complexity is a significant explanatory factor accounting for the variation of the discretion granted to the Commission in policy implementation: one standard deviation increase in complexity (recitals), leads to approximately 1.5% decrease in the Commission's discretion level. However, the direction is the opposite than what I expected to find in H1b. Similar to the case of national administrations, it may be that a high number of recitals points to more constraining legislation both to the national and the supranational level. At the same time, this finding is in line with Majone's (1994) and Franchino's argument (2007) about policy makers preferring the Commission as an implementer when broader managerial/generalist tasks are required. Moreover, Ershova (2018) uses the number of recitals as a proxy of legislative salience: following Calvert et al. (1989) she hypothesises that higher salience should lead to lower Commission's discretion. It is not to exclude that recitals may even capture these underpinning dynamics, although I have some reservations about the possibility that recitals can actually grasp salience.

Agency loss in turn shows no consistent effect on the discretion granted to the Commission, contrarily to what expected in H2. Rather, Model IV and V point to exactly the opposite than what I expected to find as conflict between the Commission and the Council leads to significantly higher Commission's discretion levels.

Effect of conflict in the Council and co-decision on the Commission's discretion

In the next page, Table 3.7 displays three models testing the effect of conflict in the Council and co-decision on the discretion of the Commission through OLS multivariate regression analyses with robust standard errors and controlling for Treaty effects. I include the interaction terms between decision rules and Council range.

The analysis shows that conflict in the Council along both dimensions has a positive effect on Commission's discretion, although they fall short of significance¹³. Therefore, there is no consistent evidence corroborating the hypothesis that when Council members disagree on a policy issue, they would rather grant wider discretion to a non-majoritarian actor to commit to credible policy objectives under QMV. Finally, there is also hardly consistent evidence about the role of the EP in the process: from Model III it seems that co-decision per se leads to a decrease in the overall Commission's discretion, when controlling for conflict. This may be due to the fact that the European Parliament is willing to impose constraints upon the Commission which add on those imposed by the Council, which would imply that under co-decision laws have become more constraining, rather than more permissive, towards the supra-national level.

¹³ The effect of the integration range is significant under unanimity (not displayed in table)

Table 3.7: Effect of conflict in the Council and co-decision on the Commission's discretion

All laws. Discretion>0			
	Model I	Model II	Model III
QMV	13.20** (6.054)	14.09** (5.842)	18.29*** (6.847)
Council integration range (QMV)	1.334 (0.981)	1.255 (0.967)	1.247 (0.991)
Council left-right conflict (QMV)	0.492 (0.812)	0.675 (0.791)	0.544 (0.802)
Recitals		-0.0526*** (0.0119)	-0.0482*** (0.0111)
Co-decision			-2.456* (1.277)
Constant	4.848* (2.536)	6.114** (2.423)	8.517*** (2.795)
Observations	202	202	202
R^2	0.086	0.151	0.181

DV= Commission's discretion ratio

OLS regressions with treaty fixed effects. Robust standard errors in parentheses.

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

3.7 Discussion

With the present chapter I have taken stock of the literature on delegation in the European Union and tested their contending hypotheses on a newly collected dataset of relevant EU laws. The results I have obtained reiterate, on the one hand, the pivotal importance of decision rules to the discretion granted to national administrations and the Commission. On the other, they point to conflict along the integration dimension as the most important in grasping the variation of the discretion granted to national level administrations. While the observed effect of decision rules is consistent with the bulk of delegation literature in the EU, the effect of conflict should be discussed. First of all, why should the integration dimension be the relevant one affecting national discretion? Previous scholars have

shown that left-right positioning and policy preferences highly correlate with governments positions about EU integration in general (Marks & Steenbergen, 2004; Thomson, 2011; Thomson, Boerefijn, & Stokman, 2004a; Zimmer, Schneider, & Dobbins, 2005): If that holds I should find significance across all dimensions. The answer may lie in measurements limitations, such as identifying the correct pivot along left-right dimensions, which in some instances proves to be complicated. Alternatively, it may be that, assuming that the force that shapes public opinion on European integration also structures debate among political parties on EU matters (Hooge and Marks, 2009:17), parties hold positions about EU integration which not always match the right/left positioning at the national level, and this results in less delegation to national administrations. Second, the discretion granted to the Commission does not seem to be affected by conflict in the Council, nor by agency loss. This finding opens up questions about whether we should enrich the theoretical framework and go way beyond delegation theory to explain the variations in the Commission's leeway.

Moreover, the absence of any significant difference between co-decision and other procedures in the discretion granted to national administrations is somewhat disappointing given that this was the first empirical attempt to measure this quantitatively. On the other hand, the more constraining effect of co-decision /which is however weakly significant) on the Commission's discretion gives us some useful insights: in particular, that the heightened presence of the EP in the decision-making process alone does not make policies comparatively more 'supranational', but exactly the opposite. This finding is in line with previous research suggesting an overall weakening of the Commission vis-à-vis the EP after the introduction of co-decision (Costello & Thomson, 2013). The conflict between the two institutions and the EP, in turn, does not seem to explain varying degrees of executive leeway. Further research may consider finding more sophisticated ways to account for the role of the EP when dealing with large datasets.

There are some limitations to this study: first, it leaves aside reliance on other bureaucratic actors, that is EU agencies, an issue which I will tackle in the next chapter. Secondly, due to time ad

measurement limitations I do not consider a dimension which may be important in influencing delegation patterns, i.e. the salience of the policy issue under analysis¹⁴: according to Rittberger et. al (2018) major media outlets tend to frame political responsibility for policy failures against the actor which is in charge for the implementation of a policy. Considering the increasing politicisation of EU integration (Hooge and Marks 2009; Hartlapp et. al. 2013; Rauh 2018) it may be the case that the logics of delegation themselves in the EU are influenced by this pattern: in particular, the unpopularity of certain policy decisions may result in higher levels of delegation to the Commission, or to EU agencies, although this would go against the argument linking salience to lower discretion put forward by Clavert et al (1989) and more recently Ershova (2018). The underlying explanation should lie in a rather simple mechanism which also belongs to the delegation literature, that is blame shifting. The more the politicisation on EU issues increases and the public is more aware of decision taken at the EU level, and the more a policy is unpopular, the more member states governments may be willing to delegate tasks to supranational executors so as to free themselves from the responsibility of implementing uneasy measures. Further research could be done in this direction, by constructing valid measurements of policy salience and by improving the coding of delegation and discretion through automated text analysis and machine learning, which would enable to enlarge considerably the sample of analysed legislation. In the next Chapter I turn to the reliance of the legislator on a new kind of executive bodies, EU agencies. This step is essential to the whole architecture of the project as only this way I can grasp the full ‘story’ behind delegation in the European Union. In fact, the so called ‘agencification’ phenomenon has been pervasive, especially since the Maastricht treaty onward and has signified that beyond the Commission and national administrations, the EU can rely on a new set of bureaucratic institutions which perform (quasi) regulatory tasks in a number of policy areas.

¹⁴ Although my dataset is constructed on the basis of salience, this does not mean each act in the sample has the same degree of salience

4 Beyond the Commission-national dichotomy: relying on agencies in major European Union laws

4.1 Introduction

As I overviewed in the [introduction to Chapter 3](#), the delegation paths chosen by the EU legislator can be of different kinds. In the previous chapter I just analysed the national and supranational implementation paths by looking at the determinants of delegation to the Commission and national administrations in laws adopted between 1985 and 2016. I now conduct a further investigation which is highly relevant to the study of delegation dynamics in the EU: I move to the involvement of EU agencies by answering to the following question: how significant are European Union (EU) agencies in the implementation of the same major legislative measures?

The term *agencification* appears quite often in recent scholarly work about European Union (EU) governance. This expression refers to the establishment of EU agencies, that is EU level public authorities with a legal personality and a certain degree of organisational and financial autonomy that are created by acts of secondary legislation in order to perform clearly specified tasks (Keleman, 2002). The growing interest in this subject is unsurprising: there is wide agreement on the fact that, among the plethora of committees, working groups and policy networks created in the course of the Union's existence, EU agencies are the institutions which have undergone the most impressive development: from only two agencies created in 1975, the EU functions with the help of over 34 of these bodies in 2018. This process has gone together with the evolution of the EU from an overly intergovernmental negotiation arena into a system of 'multi-level governance' (Hooge and Marks 2001). This system relies on the implementation—intended as the multi-layered process through which various actors work together to put adopted policies into effect—by national administrations on the one hand, and a supranational administration on the other. This latter has not always expanded linearly by progressively centralising competences into the hands of European Commission's Directorate Generals (DGs) but, rather, by distributing competences between the European

Commission and, increasingly, EU-level agencies (Bickerton et al., 2015). Notably, nowadays agencies' implementation tasks are several and vary considerably across policy area: for example, the European Environmental Agency (EEA) and the Fundamental Rights Agency (FRA) cover soft implementing tasks as they are engaged in the production of reports and the coordination of transnational networks of experts and practitioners. Some agencies can perform checks and inspections in the member states territories, such as the European Maritime Safety Authority (EMSA), the European Railway Agency (ERA) and the European Aviation Safety Agency (EASA), while others function as trainers of national officials (e.g. the European Agency for Law Enforcement and Training) and coordinators of security and border management (Europol and Frontex). Regulators like the European Patent Office (EUIPO), the three Supervisory Authorities, the European Medicines Agency (EMA), the European Food Safety Authority (EFSA) and the European Chemicals Agency (ECHA) are, instead, directly engaged the supervision of compliance and the release of patents, authorisations and assessments.

Besides the more or less wide array of tasks agencies are given through their founding acts, we still ignore to what extent these novel institutions are systematically involved in legislative provisions for implementation purposes: on the one hand, students of the EU legislative process including Pollack (2003), Franchino (2007), Thomson and Torenviold (2011) and Ershova (2018) have tackled extensively the reasons behind the delegation of executive tasks *to the Commission* in secondary laws, and yet they have failed to address what determines the utilisation of EU agencies for the execution of EU policies. On the other hand, scholars focusing specifically on agencification, have investigated the reasons behind the establishment of these bodies, without however analysing the extent to which they are subsequently included in the implementation of newly adopted laws. I argue that such inclusion bears a significant impact on the magnitude of agencies' contribution to the functioning of the EU apparatus, given that it is precisely through secondary measures that EU policy makers set

‘who does what’. Hence, I ask, what factors make EU policy makers keener to rely on agencies for the implementation of newly adopted legislation?

Through this chapter I extend our understanding of delegation dynamics in the EU by addressing a still unknown component. Through a quantitative analysis based on the newly collected dataset of salient EU secondary legislation presented in Chapter 2 I test three hypotheses drawn from the theories of delegation and bureaucratic behaviour. I show that the likelihood of a legislative measure relying on an EU agency increases with the initial growth of Commission’s policy making powers, but then decreases significantly when the Commission reaches high levels of policy competences. Moreover, I demonstrate that it is more likely that legislators rely on agencies when a legislative measure is more complex.

The remainder of this chapter is structured as follows: after a review of the literature about the creation and development of EU agencies, I develop three hypotheses based on theory-driven causal mechanisms likely to affect the probability of agency utilisation in secondary laws. I then outline the methodology and measurements. Finally, I analyse data by means of multivariate logistic regressions and discuss the results.

4.2 Agencies: from creation to use

Scholars have associated the so-called *agencification* phenomenon to the rise of the regulatory state (Gilardi, 2008; Levi-Faur, 2011b, 2011a; Majone, 1994, 1997a, 2000) in which independent regulatory authorities (IRAs) are in charge of important aspects of economic and social regulation. IRAs, specialised agencies which operate at arm's length from central government (Majone 1997) and already extensively used in the US (Epstein and O’ Halloran, 1999) developed more slowly but steadily across EU member states since the mid-1980s (Gilardi, 2005) in the fields of securities, banking, energy, telecommunications, transports. From the 1990’s onward the agency phenomenon also extended to the supranational (EU) level, but the significance of these new institutions in the implementation of EU measures remains an open question. The origins of EU-level agencification

have been subjected to thorough scrutiny (Blauberger & Rittberger, 2015; Keleman, 2002; Levi-Faur, 2011a; Thatcher, 2002, 2011a): on the one hand, this process has been explained by functionalists as driven by the necessity of creating specialised bodies able to reduce information asymmetries and solve credible commitments problems (Kreher, 1997; Majone, 1994, 1997, 2000). On the other, given that agencies were established through bargaining processes that often involved conflicting preferences among the three EU institutions (Keleman and Tarrant 2011; Thatcher 2011), students in this field have argued that the creation of agencies is not only related to the functions they are assigned, but also to underlying political dynamics. That is, creating an agency is a specific choice bearing both policy and political consequences, which will benefit one, some, or all the actors involved. At the same time, establishing an agency is only the first step of agencification: their existence does not imply an extensive and systematic use in the future.

Beyond extensive debates focusing on the institutional features of agencies such as their degree of independence (Busuioc, et al. 2011; Groenleer, 2009; Wonka & Rittberger, 2010), and their organisational structure and behaviour (Egeberg & Trondal, 2011, 2016; Egeberg et al. 2015), studies about agencies' actual role in policy implementation are limited and often focus on a small set of cases. For example, researchers have examined how some agencies use their connections with external actors to manage transboundary crises (Boin et. al. 2014), what strategies they employ in order to deliver effective policy coordination (Ekelund, 2017) and exercise transgovernmental outreach (Rimkutė & Shyrokykh, 2017), and what is the impact of their design on EU decision making (Meissner, 2017). Finally, some scholars have addressed the role played by selected agencies in the process of national-level implementation (Busuioc et al., 2012; Groenleer et al. 2010; Versluis & Tarr, 2013). There is, yet, hardly any evidence about the relevance of EU agencies in contributing to the fulfilment of EU policy goals by acquiring a formal role in adopted legislation: when the European Commission proposes a draft legislative act, it can decide whether relying or not a certain agency for the proposed measure. Likewise, the Council (and European Parliament under co-

decision) can decide to change the original Commission's proposal. What are then, the causal mechanisms determining the reliance of EU legislators on such institutions in legislative measures?

4.3 Expectations about agency use

In this section I overview the theoretical arguments in support of three hypotheses about the reasons behind legislators' choice to rely on EU agencies for the implementation of EU measures: the complexity of the topic addressed; the risk of agency loss faced by the legislator; and the degree of competences accumulated by the Commission overtime.

In the previous chapter I hypothesised, following prominent scholarly accounts such as Franchino, (2007), Oosterwaal et al., (2012) Pollack, (2007; 2003) Thomson & Torenvlied (2011) that legislative complexity should account, in theory, for the leeway given to the Commission and national administrations. The same mechanism can be extended to the reliance upon agencies. Functionalist approaches (Kreher 1997; Majone 1997, 2000, 2001) explain the creation and use of agencies because they are tools able to reduce information asymmetries by providing higher specialization to policy makers. Majone, a pioneer in the study of EU agencies, referred to 'regulation by information' (Majone, 1997), which reflects the ability of impartial, non-majoritarian institutions to produce *credible and effective* information able to increase the efficiency and accountability of policy making. Following this account, I argue that the necessity for the legislator to rely on EU-level agencies depends on policy-specific features, in this case, the complexity of the issue area (Font 2015: 777; Ringquist et al., 2003). As highly technical policies require an extensive inclusion of experts in the implementation process, high levels of policy complexity should increase the likelihood not only of the establishment, but also of the utilisation of EU agencies to accomplish specific policy goals.

H1: The greater the complexity of a policy issue, the higher the likelihood that a legislative measure relies on an agency

Secondly, I employ again the concept of agency loss, that is the difference between the best possible outcome for the principal and the consequences of the acts of the agent. As overviewed in Chapter 3, Drawing on the P-A framework several scholars (see Franchino 2007; Thomson and Torenvield 2011) have suggested that such risk may affect the willingness of member states to delegate powers to the Commission. For example Hug (2003, p. 60-5) shows that member states opposing delegation to the Commission on the third pillar during the Amsterdam intergovernmental conference were generally those more distant from the Commission's policy positions. I argue that this kind of mechanism may also affect reliance on agencies. According to Keleman and Tarrant (2011), the creation of EU agencies depends on political cleavages: specifically, member states' unwillingness to delegate to the Commission more powers is translated into the establishment of agencies, whose tasks and design vary depending on the distributional costs of delegation. The need to harmonise policy on the one hand, and the willingness to keep supranational institutions under control on the other, make states prone to establish agencies, while the Commission and the European Parliament (EP) accept this compromise as a second-best solution to achieve greater integration. In the context of the legislative process, I apply the same reasoning. That is, Council members' mistrust in the Commission's conduct alongside the need to carry out common policies may make them keener to involve executors which provide expertise but are more easily controllable than the Commission. National governments' officials, in fact, are represented in agencies' management boards, which are in charge for important tasks such as monitoring the budget, activity planning and performance, and the appointment of the Executive Director (Egeberg & Trondal, 2016). Moreover Egeberg & Trondal (2011) provide evidence suggesting that the role of national ministries in agencies implementation activities is high especially when issues are contested.

H2: The greater the conflict between the Council and the Commission, the more likely a measure relies on an agency

Not only the Council has stake in the utilisation of agencies. Provided that the EU is a multi-principal environment (Dehousse, 2008) the Commission is a principal itself and covers a crucial role in this context because it can propose legislation that creates and empowers (or not) EU agencies. This process of ‘double-delegation’ (Eberlein and Grande, 2005) makes it necessary to take into account not only the behaviour and preferences of politicians in the Council in delegating to a bureaucracy rather than another, but also to look at the preferences and behaviour of a relatively centralised bureaucracy (the Commission) in entrusting other smaller bureaucracies (EU agencies) with new tasks.

Reflecting on the creation of EU regulatory agencies Thatcher observes that ‘in domains where the Commission had limited discretion and powers, an ERA¹⁵ represented an opportunity for an expansion in the Commission’s role not a rival to it [...]. Moreover, in the creation of ERAs, the Commission has defended its ‘turf’, limiting their powers and scope to ensure that its own role remains’ (2011:802). Relying on the assumption that the Commission acts as most bureaucrats do, Thatcher looks at the establishment of agencies as an opportunity for the Commission to substantially expand its competences in areas in which it is weaker. My argument is that there exist a causal connection between the competences the Commission gathers overtime through new legislation and the use it makes of existing agencies in the same area beyond their establishment.

Commission officials usually prefer to at least keep the supranational competences their organization has, or to increase them (Rauh, 2016). Notably, the Commission has been entrusted with varying degrees of competences across areas. For example, in social policies its prerogatives are generally quite low, while in fields such as food safety, environment, chemicals, energy, telecoms and financial services, the power accumulated by the Commission overtime has considerably increased. In all these fields EU agencies are present, and the Commission may be keen to use them in order to further

¹⁵ European Regulatory Authority

extend its capacity, to allocate the critical tasks (Wilson, 1991) it controls more efficiently and to exert more control over policy execution through the expertise agencies offer. Considering the mostly generalist nature of the Commission staff (Franchino, 2007; Nugent, 1995; Spence, 1994; Stevens, 2000) and the rather limited size of its internal administration, the reliance on these agencies within the legislation represents an advantage and expansion of its administrative capacity, especially where the Commission is increasingly required to implement important aspects of legislation. Specialized personnel hired by agencies is more efficient and prepared to perform specific tasks too burdensome for the DGs alone. In sum, the higher the Commission's competences in a policy area, the more the Commission needs agencies' help and consequently, the more likely Commission's reliance upon them should be.

At the same time, I maintain that the Commission will rather avoid involving agencies in areas over which it has acquired very extensive competences. In the following paragraphs I offer two examples in support of this expectation. Agriculture and competition, which are the policy areas in which the Commission enjoys the highest amount of implementing powers (Franchino 2007) and are not supported by any agency in policy implementation. The Commission has been the main regulator of competition policy since the beginnings (Tarrant & Kelemen, 2007) and would have scarce reasons to propose the creation of an agency which could compete with it, also considering that the Commission itself has decentralised certain powers in competition policy in the context of the 2003 reform¹⁶(Kokkoris & Lianos, 2010), and compromised with the member states for the creation of the European Competition Network (ECN) in order to enhance the cooperation among regulatory authorities. Creating an agency instead, would have been an unnecessary centralisation.

The second area in which the Commission enjoys considerable power is agricultural policy (Franchino 2007). The Commission has never proposed the creation of an agency for agriculture probably because there is neither a political nor a functional need for that. It has instead created a

¹⁶ Council Regulation 1/2003

Consumers, Health, Agriculture and Food Executive Agency¹⁷ to manage specific tasks and projects. Moreover, the European Food Safety Authority (EFSA), the European Environmental Agency (EEA) and the Community Plant Variety Office (CPVO) also dedicate part of their activities to agriculture sub-policies. Finally, being competition and agriculture the two oldest policies of the EU, the Commission has had the chance to gather a solid amount of expertise in these areas without recurring to more institutionalised governance instruments such as EU agencies.

Against this background I argue that, while the Commission seeks to extend its capacity through agencies' support with the increase of its delegated competences, when the bureaucrat enjoys extensive executive powers, it has less incentives to involve agencies and conversely, more incentives to, like Thatcher (2011) suggests, limit their action and scope. In fact, if the Commission progressively acquires the in-house expertise necessary to carry out the required task autonomously, certain agencies might, at that point, constitute an institutional constraint to the exercise of the Commission's prerogatives, rather than an asset. They would be an obstacle by overstepping within its turf as well as by eventually generating unnecessary monitoring costs (Shepsle, 2010: 367). In case of necessity the Commission can still rely on less formal and costly expertise providers, such as networks, executive agencies and committees¹⁸

H3: The greater the amount of competences the Commission acquires in a policy area, the more likely a measure relies on an agency. However, such likelihood is expected to decrease when Commission's competences are very extensive.

Table 4.1 summarises the 3 hypotheses just overviewed.

¹⁷ They differ from regulatory agencies inasmuch they are 'set up for a limited period of time by the Commission to manage specific tasks related to EU programmes'

¹⁸ Like suggested by the above-mentioned cases of agriculture and competition.

Table 4.1: Summary of main hypotheses

Independent Variable	Mechanism	Effect on reliance upon EU agency
Complexity	Efficiency	Positive (H1)
Conflict	Agency Loss	Positive (H2)
Commission's powers	Capacity (↑); Turf (↓)	Curvilinear (H3)

4.4 Measurement

4.4.1 Dependent variable

If an agency is present in the core of the legislative act¹⁹, it is because the legislator believes that the agency's role should be made clear for the scope of implementing that specific policy. However, agencies can be used by the legislator for a diverse set of purposes. Their tasks can limit to the production of reports and the monitoring of progresses in the national implementation of a measure, like in the case of the European Environmental Agency (EEA) in the field of waste prevention programmes²⁰. Some agencies are used for consultation purposes, such as the European Food Safety Authority (EFSA), which is in charge, among other things, of the assessment of the major risks

¹⁹ Preambles are excluded from the analysis as they do not grant tasks but just outline the premises for the new legislation adopted

²⁰ The European Environment Agency is invited to include in its annual report a review of progress in the completion and implementation of waste prevention programmes' (Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008)

associated to food production²¹. Agencies may also be responsible for monitoring by requesting to carry out inspections²², like in the case of the European Medicines Agency (EMA) in the sale of falsified medicinal products. Other agencies have an even more substantial role in policy execution, as they are requested to draw regulatory standards. This is the case of the European Securities and Markets authority (ESMA) in setting, for example, the standards for the transparency of information provided by securities traders²³.

Regardless the type of function covered, to measure reliance on an agency I coded 1 all legislative acts that use an agency for the purpose of policy implementation. Conversely, when no agency is mentioned, or it is not mentioned for that purpose²⁴ I coded it as a '0'. This measurement limits to an assessment of the reliance on agencies in a legislative measure without grasping how many times, for example, an agency is mentioned in an act. This would generate confusion, because the number of times agencies are mentioned is largely influenced by the kind of tasks they are assigned: for example, if we consider food regulations or financial ones, it is most likely the case that agencies, when they are, are mentioned several times because in their founding act they are granted roles such as producing technical regulatory standards for each single provision. On the other hand, research and coordination agencies (e.g. the European Asylum Support Office; the European Environment Agency) are often granted more general tasks such as monitoring the implementation of a measure or sharing

²¹ 'Any Union measure in the field of food information law which is likely to have an effect on public health shall be adopted after consultation of the European Food Safety Authority' (Regulation (EU) No 1169/2011

²² 'a Member State, the Commission or the Agency may require a manufacturer established in a third country to submit to an inspection' (Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011)

²³ 'ESMA shall develop draft regulatory technical standards to specify the method of calculation of the 5 % threshold referred to in paragraphs 5 and 6' (Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013).

²⁴ For example, if an agency's report is mentioned, or if an agency is mentioned as reference to other legislation

information and best practices and are (if they are) included only at the end of the measure. And still, they are. In summary, a dichotomous variable does not account for how many times an agency is used in each act, but whether it is used, or not, which is the core question I am addressing throughout this chapter. By employing this measurement, I seek to grasp the relative use of agencies by adopted legislation, without making confusion between acts *establishing* agencies and acts *granting* tasks to agencies in new legislation: failing to do so would run the risk to measure agency creation, rather than agency use. For this precise reason the sample does not contain legislation establishing agencies, exception made for two measures: the so called ‘REACH’ regulation²⁵; and the regulation laying down the general principles and requirements of food law, establishing EFSA: I decided to keep these acts in the dataset because they not only establish the two agencies, but also extensively reform the regulation of food feed and chemicals in the EU by relying on two agencies for the implementation of those policy measures.

In the next page, Table 4.2 lists the agencies used for implementation purposes by the analysed legislation and the frequency of their appearance in the sample. A total of 17 different agencies (out of 34 existing agencies) are present in 14% of the sample, for a total of 45 observations.

²⁵ Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

Table 4.2: Agencies in the sample

Name	Frequency	%
Agency for the Cooperation of Energy Regulators (ACER)	5	11.11
Office of the Body of European Regulators for Electronic Communications (BEREC Office)	2	4.44
Community Plant Variety Office (CPVO)	1	2.22
European Asylum Support Office (EASO)	1	2.22
European Banking Authority (EBA)	5	6.67
European Chemicals Agency (ECHA)	2	4.44
European Environment Agency (EEA)	3	6.67
European Food Safety Authority (EFSA)	7	15.56
European Medicines Agency	8	17.78
European Maritime Safety Agency (EMSA)	2	4.44
The European Union Agency for Network and Information Security (ENISA)	1	2.22
European Space Agency (ESA)	1	2.22
European Securities and Markets Authority (ESMA)	6	13.33
EU law enforcement agency (EUROPOL)	1	2.22
European Border and Coast Guard Agency (FRONTEX)	1	2.22
Total	45	100

4.4.2 Independent variables

Complexity

As discussed in Chapter 3, existing literature provides several ways to operationalize complexity. Ringquist et al. (2003) employ a dichotomous variable, which in this context would hardly ensure enough variation. Several existing studies employ the number of recitals included in the legislative acts: Franchino (2000) for instance assumes that long texts are associated with more complex policy areas, although length could also be associated with the legislators' unwillingness to delve on issues they do not master. Moreover, such measurement may rather hint to the scope of a proposal, its salience and/or controversy (Warntjen, 2012). Rassmussen and Reh (2013) use the number of EP committees involved in the legislative process, arguing that complex policy issues should involve a greater number of committees: this measure assesses how many dimensions a policy issue encompasses. As a robustness check, I use both measurements in my analysis.

Agency Loss

Several scholars have argued that the EU policy space is multi-dimensional (see Hix & Høyland, 2011) and therefore measured through more than one aspect. Three are the most important acknowledged ones: the integration dimension, the left-right dimension, and the policy dimension. Some researchers have considered all of them (for example Franchino 2007), while others such as Crombez & Hix (2015) simplify the multi-dimensionality argument and employ just the left-right dimension. In this particular context, I consider the conflict between the two institutions along the integration dimension the most important, given that the literature shows, precisely, that it is preferences over the integration of implementation powers that explain whether implementing powers are delegated to EU agencies and EU regulatory networks (Coen & Thatcher, 2008; Keleman, 2002; Thatcher, 2011). In spite of that I decided to include all three dimensions.

*Council Pivot*²⁶

I first identify the Council pivotal members along the three dimensions. To measure the integration and left-right dimensions I employ the ParlGov dataset, which provides aggregated positions drawn from the most prominent party expert surveys conducted in the past two decades, which ensures a fair degree of measurement validity. I then weight the position score of each party sitting in the government by the share of seats it holds in the national Parliament. I then identify the pivotal member state for each adopted measure. First, assuming that EU legislation always implies a shift towards higher integration, the integration pivot is the least integrationist among the pro-integration Council members. Second, to identify, respectively, the right and left pivot I employ the codebook of the Comparative Manifesto Project (CMP) in order to match policy categories and corresponding leftward and right-ward shifts. I apply a matching similar to Franchino (2007) and Ershova (2018): For example, I match the ‘Water framework directive’, which aims at the prevention of waters pollution, within the category ‘Environmental Protection’, which is recognised as being a priority for left-wing parties. In this case therefore, more environmental protection implies a left-ward shift: the pivotal actor in this instance was Belgium. More information about matching is provided in Appendix 3, Table A 3: CMP categories Table A 3 and Table A 4. Finally, to measure the policy dimension I employ the CMP scores: I take the policy scores of the electoral campaign manifestoes of the parties that sit in each government at time of legislative adoption. In case of governments formed without an election, I take the closest manifesto to the date. CMP is the most widely used dataset of party position in comparative politics (Curini & Pinto, 2017; Volkens et al. 2013). On the one hand Klingemann et. al (2006), for example, deem it ‘good, valid and reliable’. On the other, both methodological (Däubler et al. 2012; Mikhaylov et al., 2012) and theoretical (Zulianello, 2014) arguments exist against it.

²⁶ The Council pivot’s preference is the position of the Council member that is pivotal under either qualified majority voting or unanimity. This is the member whose positive vote would unblock legislation under the relevant decision rule. Its position varies depending on the direction of the shift along the one-dimensional space that the adoption of the new law generates.

While acknowledging its limits, I deem CMP's encompassing policy categories efficient to assess policy-specific positions across policy and time without engaging in direct interviews with key informants (Thomson et al. 2004), which is hardly feasible with very old legislation, and may still produce distorted results (see Hix and Hoyland, 2013:171).

The Commission's position

Commissioners with clear partisan affiliations have become increasingly dominant overtime (MacMullen 1997; Franchino 2007, p. 136), and the last four Commissions were composed almost entirely by party-affiliated officials. Therefore, to identify the position of Commissioners, following Crombez and Hix (2015) I assume that they have the same preferences of his/her party of affiliation along the three different dimensions.

Finally, as a proxy of conflict between the Commission and the Council I subtract the absolute value of the score of the relevant Council pivots to the position of the Commissioners in charge of the implementation of the relevant act.

Competences of the Commission

To quantify the policy competences of the Commission I employ the delegation ratio measurement calculated in [Chapter 3](#) and described in [Appendix 2](#): I sum each ratio up to the point when a new act is passed in each policy area, generating a continuous variable. As shown in Figure 4.1, agriculture and competition policies display the highest competences scores, followed by the environment, food safety and energy policies. On the other hand, areas displaying, on average, lower competences include social policies, human rights and immigration, which reflect the fact that the Commission does not generally enjoy extensive *executive* powers in these areas.

Figure 4.1: Commission cumulated competences by policy area

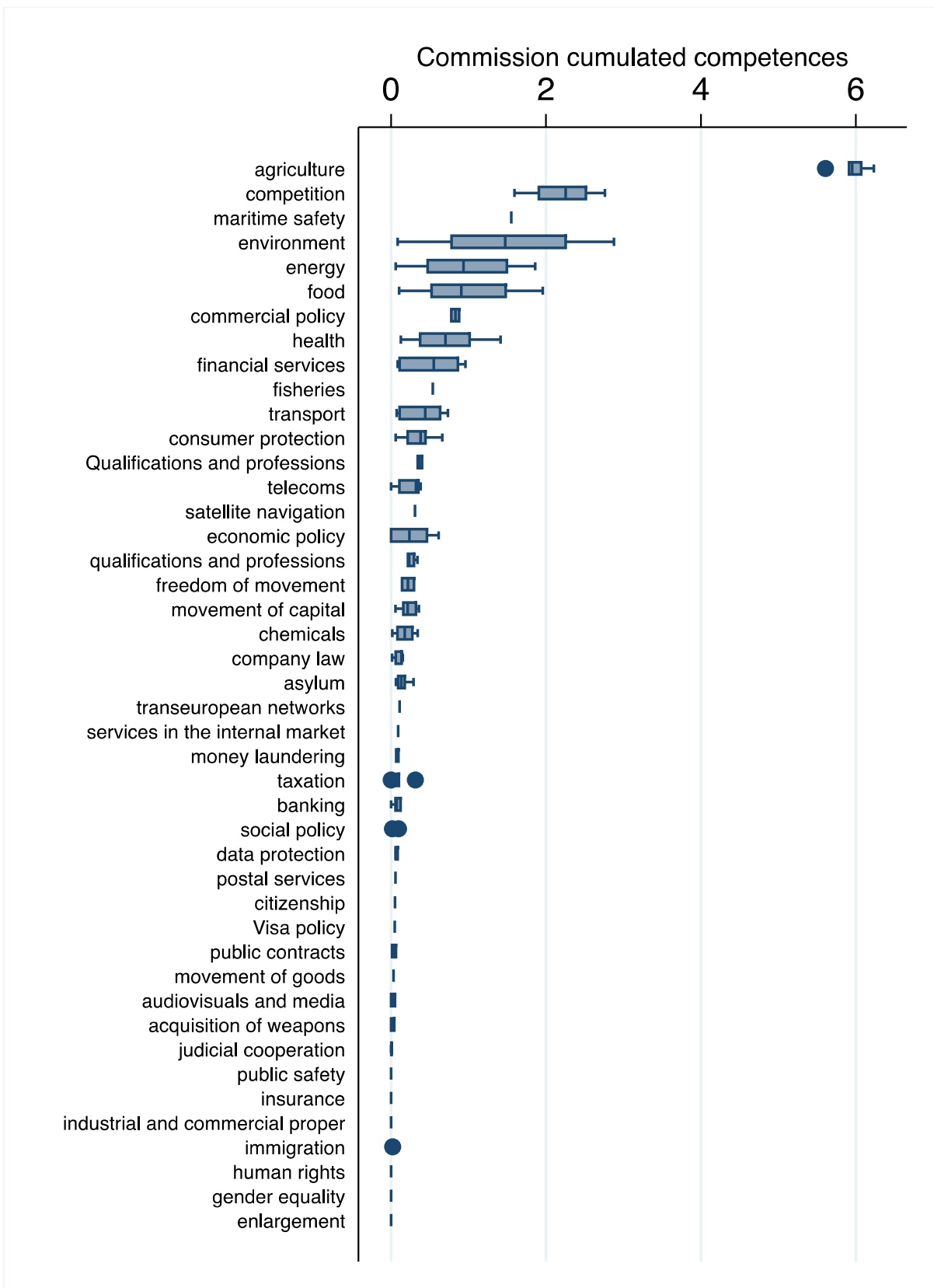
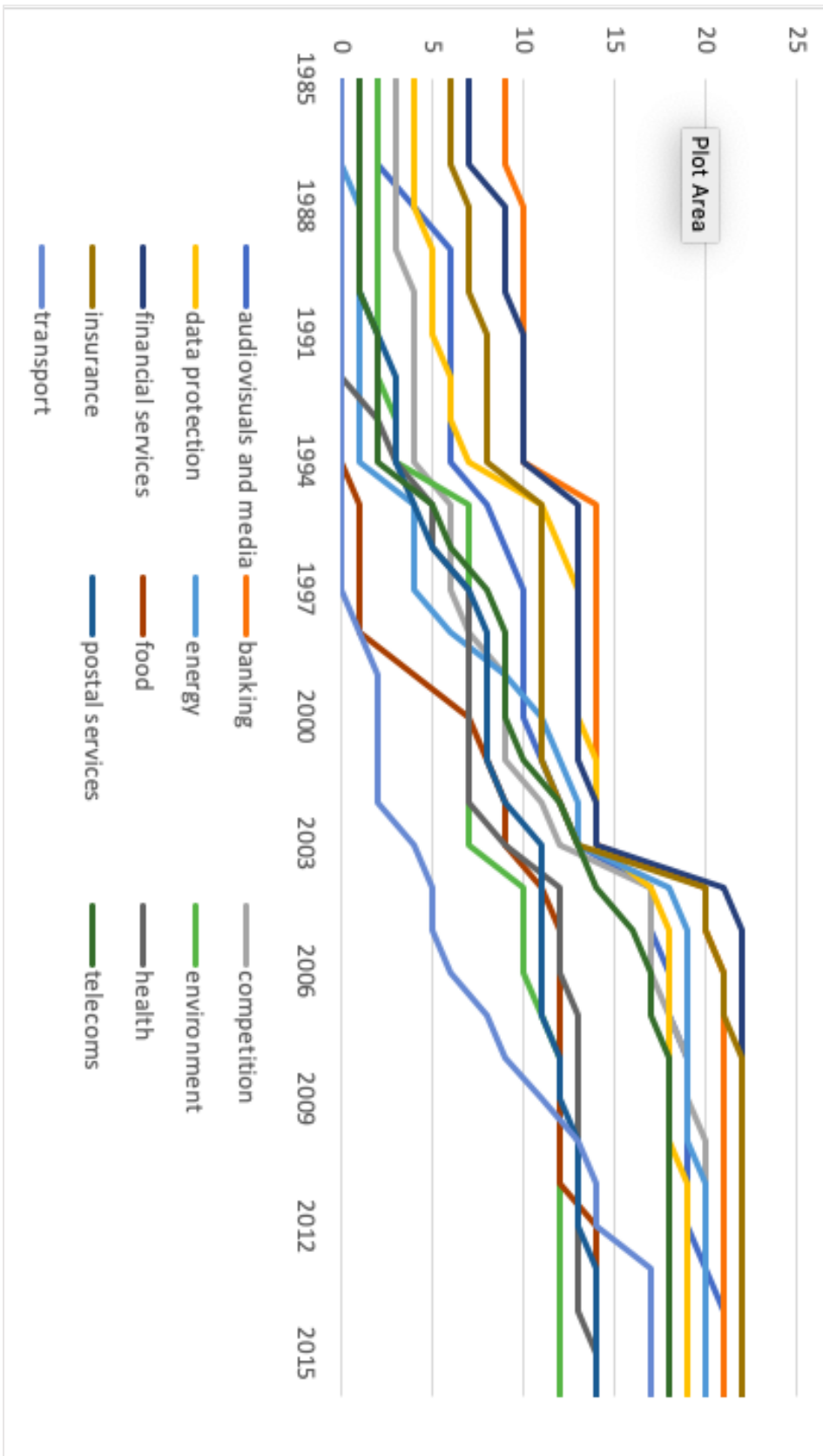


Figure 4.2: Number of IRAs in the EU 25 (1985-2016)



Source: IRAs websites

Control variables

According to Majone ‘in order to take an active part in the formulation of [...] new rules in Brussels, and then to implement them at national level, member states have been forced to develop regulatory capacities on an unprecedented scale’ (1997:146). Independent regulatory authorities are tightly linked to member states being much more connected to the EU level and expanding agencification took place at both levels in similar periods (EU and national). During this expansion of the EU regulatory space the two levels may be correlated to each other, therefore I consider it necessary controlling for this dimension in my analysis. As a measurement, I simply include the number of IRAs present in each policy area at time of adoption. Figure 4.2 shows IRAs development in the EU 25 between 1985 and 2016.

Secondly, I control for the kind of policy area under examination: Agencies dealing with social regulation, for example the European Agency for Health and Safety at Work, the European Medicines Agency, the European Chemicals Agency, were created earlier in time (Thatcher 2011). This may positively affect the probability of finding these agencies in the sample of legislation. I control for this possibility through a dummy variable taking the value of 1 if the agency deals with social regulation, and 0 if it deals with economic regulation.

Third, although studies about delegation in the EU generally control for kind of legislative act (e.g. Thomson and Torenvield, 2011) I decided not to, because I maintain, as argued in Chapter 3, that this would raise a considerable *endogeneity* problem: namely, the legislator’s choice of using an instrument rather than another (in this case, either a directive or a regulation), depends on the policy design, not the opposite. In summary, it is the legislator’s choice of relying on an agency that may affect decision of using a regulation rather than a directive, not the other way around.

Finally, I do not control for adoption procedure, although it would be reasonable doing so in other circumstances, simply because there is no variation: *all* acts containing reference to an agency for implementation are indeed adopted by co-decision.

Descriptive statistics of all the variables included are displayed in Table 4.3.

Table 4.3: Summary statistics of dependent and independent variables

Variable	Description	Obs.	Mean	Std. Dev.	Min	Max
Reliance on agency	Legislative act uses agency for implementation purposes	309	0.14	0.353	0	1
Complexity	Number of recitals	309	33.60	22.34	5.00	173
Complexity (II)	Number of EP committees involved	309	3.22	1.85	0	12
Agency Loss	Left-right difference: absolute value of the l-r score of the relevant Council pivot minus the position of the <i>Commissioner in charge</i> for the implementation of the relevant act	309	2.27	2.33	0	6
	Integration difference: absolute value of the integration score of the relevant Council pivot minus the position of the <i>Commissioner in charge</i> for the implementation of the relevant act	309	1.72	1.48	0.05	6.84
	Policy difference: absolute value of the policy score of the relevant Council pivot minus the position of the <i>Commissioner in charge</i> for the implementation of the relevant act	309	2.27	2.33	0	6
Commission competences	Sum of delegation ratios	309	0.679	1.01	0	6.23
IRAs	Number of IRAs	309	5.252	5.55	0	42
Social regulation	Agencies dealing with social regulation as opposed to economic regulation	309	0.582	0.49	0	22
					0	1

4.5 Analysis and results

I conducted a multivariate analysis by means of a logistic regression. In order to test the curvilinear relationship hypothesised in H3 I include an interaction term, i.e. the squared value of the variable measuring the policy competences of the Commission. Table 4.4, next page, reports the results of the regression analyses. I run five models. Model I to IV test all the hypotheses and includes controls. As a robustness check Model V restricts the sample to only those policy areas where agencies exist at time of legislative adoption²⁷. For example, any act dealing with energy before the creation of ACER, is not included. I insert two alternative measures of complexity in the same model, although they slightly correlate²⁸.

²⁷ This is important because it further controls for the possibility of being measuring agency creation instead of agency use: one may argue that in those policy fields where EU agencies have been created, it is more highly likely that the corresponding legislation makes use of the EU agency created, otherwise, why would policymakers create an EU agency if they do not use it? This robustness check controls for this possibility.

²⁸ I have also run two separate models with the two measures, but results do not change substantially

Table 4.4: Probability of agency use in secondary laws

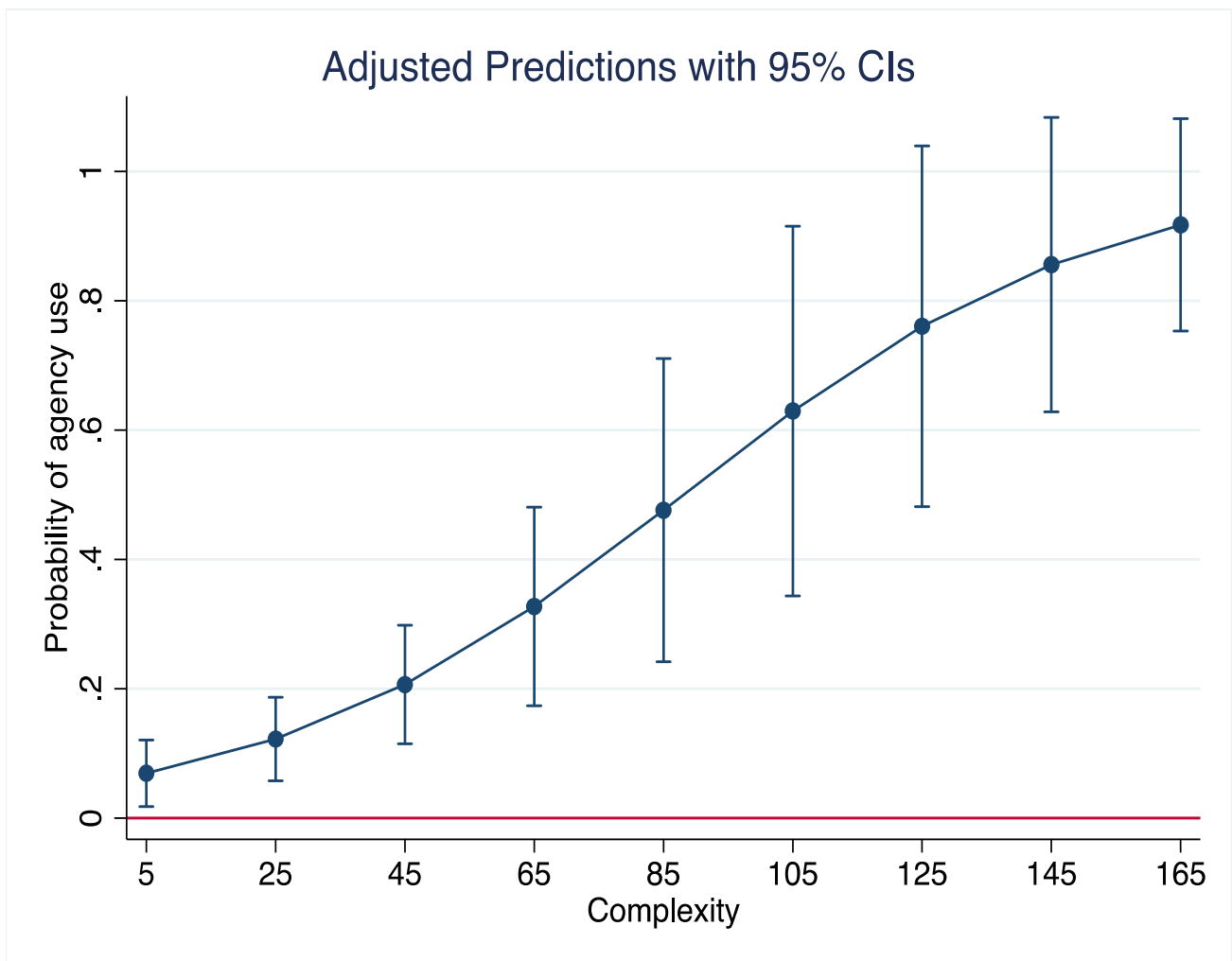
	Model I	Model II	Model III	Model IV	Model V (robustness check)
Recitals	0.0285*** (0.00855)			0.0313*** (0.00851)	0.0333*** (0.0123)
EP Committees	0.0785 (0.106)			0.0939 (0.110)	0.0617 (0.136)
Policy Difference		0.0200 (0.0716)		0.0336 (0.0840)	0.0469 (0.0921)
Integration Difference		-0.141 (0.156)		-0.142 (0.191)	-0.0823 (0.256)
l-r Difference		0.0698 (0.141)		0.133 (0.159)	0.0242 (0.179)
Commission Competences			2.483*** (0.877)	2.974*** (0.939)	2.532** (1.143)
Commission Competences (squared)			-0.967** (0.381)	-1.028*** (0.392)	-1.095** (0.504)
IRAs	0.0179*** (0.00461)	0.0227*** (0.00463)	0.0165*** (0.00512)	0.00985* (0.00540)	-0.000313 (0.00668)
Social Regulation	0.818* (0.423)	0.793** (0.404)	0.555 (0.428)	0.393 (0.455)	-0.632 (0.547)
Constant	-4.535*** (0.615)	-3.304*** (0.599)	-3.718*** (0.526)	-5.252*** (0.830)	-2.572** (1.064)
Observations	309	309	309	309	130
Pseudo R^2	0.188	0.120	0.152	0.244	0.185

DV= EU agency employed

Logistic Regression. Standard errors in parentheses. Legend: * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

My findings corroborate H1. Namely, the probability that an agency is used for implementation in a legislative measure is significantly affected ($p < 0.01$) by the complexity of the act under analysis: for example, when the number of recitals is at its minimum, i.e. 5, the probability that a measure relies on an agency is 7%. When recitals are 65, probability jumps to 33%. For very high complexity (e.g. 125 recitals), the probability of agency use reaches 76%. The relationship is showed graphically in Figure 4.3. The alternative measurement of complexity, i.e. the number of parliamentary committees involved does not yield significant affects. This makes sense considering that, as noted earlier, the number of parliamentary committees may be more connected to how encompassing a policy is, rather than how technical it is.

Figure 4.3: Effect of complexity on the probability of agency use



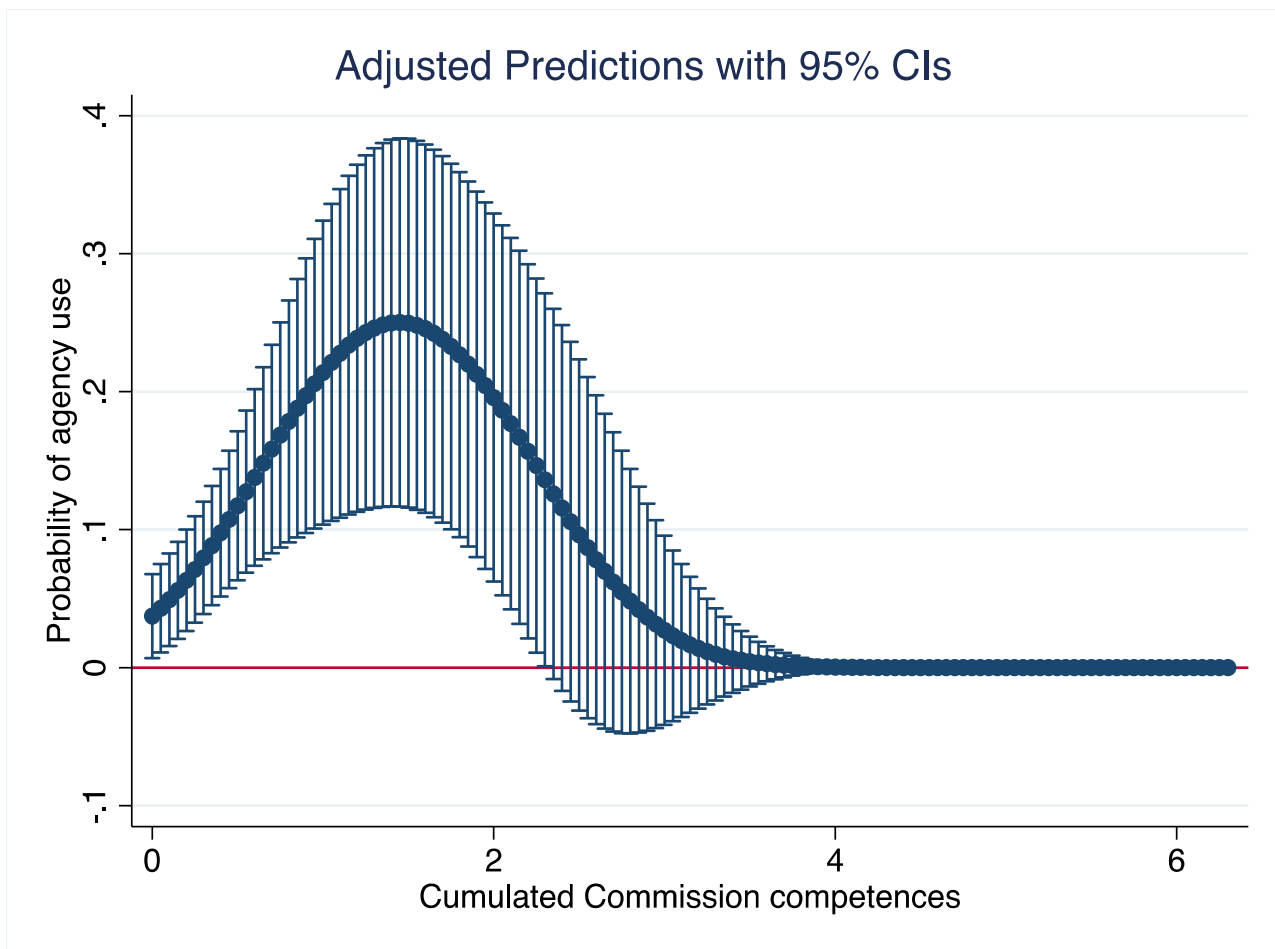
Agency loss does not have a significant impact on the probability of a measure relying on an agency, neither along the policy dimension, nor along the integration one. H2 is therefore not corroborated. This is interesting considering that literature suggests that especially conflict along the integration dimension lies at the basis of agencies' establishment. It could it be the case that conflict between the Council and the Commission translates into, simply, no delegation to EU actors, neither to the Commission nor to agencies. Likewise, in [Chapter 3](#) I showed that there is no significant correlation between agency loss and discretion granted to the Commission.

All models strongly corroborate H3, namely that the probability of a measure relying on an agency is strongly and significantly ($p < 0.01$), correlated to the degree of Commission's powers: it initially increases with the increase of Commission's competences ratio, and then decreases when competences become very high. As showed in Figure 4.4, when competences are very low, e.g. 0.2, the probability that an agency is employed is 5%. It grows to 22% when Commission's competences reach a medium level (1.8) and decreases to 0.1% when Commission's competences reach very high values (3.6). Beyond the 1.8 threshold the slope starts going downward: here lie legislative acts dealing with competition and agriculture, in which agencies are absent, as well as provisions dealing with the energy and the environment. This suggests, for example, that when the Commission has accumulated higher competences in environmental legislation, the EEA is less likely used than when competences are lower.

The finding corroborates the mechanism according to which the more the Commission seeks and needs to extend its capacity, the more likely it will rely on agencies' capabilities, so long as the degree of in-house competences accumulated is not very high.

Among controls, the increasing number of independent regulatory agencies in the member states has a very small (and almost insignificant, $p < 0.1$) effect on the probability distribution. Finally, models do not show consistent differences between legislation dealing with social regulation, as compared to economic one.

Figure 4.4: Effect of Commission's cumulated competences on probability of agency use



4.6 Discussion

Scholars of EU governance have addressed the agencification phenomenon from many angles, and yet many questions remain open. This analysis tackles one of them, by being the first-ever attempt to account for the variation in the reliance of legislators on EU agencies in major legislative measures. Understanding which agencies are included in new legislative measures and why, bears a considerable relevance: in a nutshell, why creating these bodies in the first place, if they have no role in newly adopted laws?

My results point to an important fact, namely that agencies are deemed more crucial in policy implementation when legislators have to deal with more complex issues, which is a well-established hypothesis in the literature on agencification. This finding confirms that EU policy makers believe that agencies can offer an actual added value to the execution of complex EU policies.

Moreover, my findings suggest that the reliance on EU agencies in legislative measures goes together with the empowerment of the Commission, so long as the Commission is not highly powerful: areas of medium-high Commission cumulated competences are more likely to rely on agencies while, on the contrary, when the Commission is very powerful agencies are scarcely used. It follows that if, on the one hand, agencies constrain the Commission by over-representing member states in their boards, on the other, the Commission is keen to use them to extend its capacity and gain further expertise. Previous findings suggest that delegation to both the Commission and agencies may occur in parallel rather than in opposition (Scipioni, 2017:1). My results point to the fact that delegation to agencies is incremental to delegation to the Commission, apart from those instances in which the Commission has acquired a great deal of competence and expertise. This might signify that, if in the coming years the Commission acquires new competences in areas where it is currently weak, for example, social policies with the recent creation of the European Pillar of Social Rights, agencies active in that policy area may be used more extensively in new legislation in order to extend capacity to newly ‘conquered’ turf.

A limit of this study of this study is that it is hardly capable to grasp dynamics which take place outside the legislative process. For example, some evidence (Blauberger & Rittberger, 2015; Migliorati, 2017) suggests that the Commission not only uses agencies, but it is also able to orchestrate informal networks of policy makers in order to harmonise implementation practices, especially in areas displaying high cumulated competences such as competition and environment. The use of these kind of soft tools may intervene in the picture of reliance on specialised actors, and it is not possible to measure this through an analysis of secondary legislation. Moreover, some students of agencification perceive the use and empowerment of these body an *informal* process in which agencies may become the actual implementers of certain policy measures beyond what prescribed by the legislation (for example Boin et. al. 2014; Hartley 2016).

Future attempts to measure reliance on agencies may seek to expand the analysis to a considerably higher amount of legislation in order to have a more extensive picture of agency use both across policy areas and, possibly, across time. Researchers could also try to extend the proposed theoretical framework to new hypotheses and underlying mechanisms.

I now turn to Part II: In Chapter 5 I analyse cross-agency budgetary and task development overtime in order to grasp another dimension of agencification: namely, given that the legislator uses different agencies under different circumstances, to what extent are these agencies empowered through more or less budget?

Part II: The consequences of executive delegation in the EU

5 The Evolution of EU agencies' budget and tasks – a story of empowerment?

5.1 Introduction

[In Part I](#) of this dissertation I have addressed the reasons behind the delegation of tasks to national administrations and to the Commission, as well as the reliance of the legislator upon EU agencies.

I now move to the consequences of delegation by looking, first, at the development of EU agencies overtime. Although these bodies occupy a rather small portion of the EU governance architecture—for example their budget represent only 0.8% of the overall community's budget²⁹— we know from the previous chapter that they are deemed important for the purposes of implementing several aspects of EU legislation such as the approval of chemical substances and pharmaceuticals, the coordination among national regulators in several policy fields such as energy and telecommunications, the management of border security operations.

Overtime, their characteristics, mandates and resources have considerably evolved, although not to the same extent. To cite some examples, the European Medicines Agency (EMA), the EU regulator in charge for the authorization of pharmaceutical products has had a budget growth of about 16% per year. It was opened in 1995 with a €10 million budget and 60 people in its staff. Now (2018) it is one of the biggest agencies in the EU, it counts over 500 people in its staff and works with an annual budget of over € 300 million. The EMA transfer from the United Kingdom in 2017 generated a political debacle among member states about which city would have the advantage to host its new premises. Frontex, the EU border control agency was launched in 2006 with a € 6 million budget, and now works with almost €300 million. Notably, after the Arab Spring— between 2011 and 2016—

²⁹ EU agencies network website, 2017: <https://euagencies.eu/>

Frontex had its budget increased by 120%. It used to be a small agency in charge for research and risk assessment while at present it is in the process of consolidating its role as a pooler of intelligence and national resources to control Schengen borders thanks to a substantial reform passed in 2016 (Scipioni, 2017). In contrast with the situations just described, the European Environment Agency (EEA), one of the oldest agencies in the EU, was established in 1993, and since then its mandate has never been reformed –apart from minor changes to the scope of its action. It started with € 5 million budget and ended up in 2016 with € 35 million. Its annual budget increase has been, on average, of 7%.

These few examples suggest that beyond their mere establishment, agencies have not developed in the same way and have not been granted the same amount of resources.

I argue that addressing the differences just described is important to grasp the relevance policy makers give to agencies in the overall development of the EU system of governance. I ask what are the ‘fortunes’ (Davis, Dempster, & Wildavsky, 1966) experienced by EU agencies since their establishment and in particular, I analyse which ones have changed and been empowered the most through more resources and why, in order to better gauge whether policy makers ‘value’ some agencies more than others. Addressing these issues provides comparative evidence about EU agencies by offering a ‘big picture’ on their relative development and potential empowerment, given that existing literature on agencification has not, so far, done that.

The remainder of this Chapter is structured as follows: after a brief review of the state of the art on agencification I present original data about the budget and task evolution of EU agencies from 1992 to 2016. After that I develop a set of hypotheses which I test through a cross-sectional time series regression analysis and a Traj group-based model. Results show that trends in agencies budgetary allocation are explained by (i) crisis response, including the financial crisis and the Schengen borders crisis; (ii) by the reforms agencies have gone through overtime and (iii) the typology of agency under analysis. Specifically, results hint to the fact that the financial crisis provoked a general budget

decrease, exception made for agencies in charge for the monitoring of the financial market. Moreover, when agencies' mandate is reformed as part of bigger policy reforms, reformed agencies are granted more resources. Finally, agencies which provide services and coordination in the internal market have been more empowered – in terms of resources– than others.

5.2 Looking beyond the origins of agencification

As I have already stressed throughout Chapter 4, in the past ten years scholars have devoted a great deal of attention to what are the dynamics pushing for the *agencification* of the European Union administration, as well as to what is the role of EU agencies in the EU regulatory space (Levi-Faur, 2011a). Functional needs (Majone, 2001), political struggles (Kelemen & Tarrant, 2011b) and previous chains of delegation (Thatcher, 2011a) have influenced the establishment of agencies. In contrast to these logics, in Dehousse's view, agencies were created in a 'rather unsystematic even haphazard way' (Dehousse, 2008 p. 790) and, according to isomorphism, the choice of delegation matter less than its symbolic properties (Gilardi, 2007) that is, the creation of regulatory institutions derives from the perception that that is 'the right thing to do'.

In 2001 Majone (2001) pointed out how crucial it is that EU policy makers design EU governance structures in such a way to respond to the needs of a growing community of states like the European Union. In his view, the politicization of the European Commission, accompanied by a great expansion of policy tasks, brought about a credibility crisis of the EU as an effective policy implementer. For this reason, he looked at agencies as a way to produce *credible and substantial expertise* while connecting national regulators to each other. More recently, in 2008, the European Commission claimed that 'agencies can bring real added value to the Union's governance structures. At present, however, this potential is being held back by the lack of a common vision about the role and functions of regulatory agencies' (European Commission, 2008:9). Nine years later, in his 2017 speech on the state of the Union, President Juncker mentioned the need to establish a European Cybersecurity Agency, 'to help defend us against (cyber) attacks', and a common Labour Authority 'for ensuring

fairness in our single market' (Juncker, 2017). The extensive inclusion of agencies in the speech suggests that these bodies have become an integral part of the EU system of governance not only as administrative tools, but also as entities with a political connotation, to the point that he hinted at them as symbols of higher security, equality and justice in the European Union.

How much value, then, do policy makers give to these institutions? We have seen in [Chapter 4](#) that agencies are used in new legislative measures, although just in 14% of cases (45 out of 309 in my sample). Moving forward, the extent to which EU policy makers seek to modify and finance agencies' work is relevant in order to assess the impact they can have on the execution of EU policies. Empowerment through new tasks and resources can indeed signify the growing importance of a body in the overall development of a system of governance and in the pursuit of policy goals.

As of today, the literature offers limited evidence about patterns of EU agency development and growth. The only existing study mapping the overall evolution of agencification is by Levi Faur (2011), but this is limited to a description of the patterns of transformation of regulatory networks into EU-level agencies. Busuioc et al (2011) have looked at the European Police Office's development of autonomy and accountability practices overtime, while Groenleer (2009) has analysed the informal development of some agencies in terms of their 'de facto' autonomy. Existing research has mapped agencies' entrepreneurial strategies, analysed how agencies use connections with external actors to manage complex transboundary problems and crises (Boin et al., 2014), and what strategies they employ in order to deliver effective policy coordination. More recently Scipioni (2017) has showed how the two Area of Freedom Security and Justice (AFSJ) agencies (Frontex and the European Asylum Support Office, EASO) have undergone important mandate changes in reaction to the recent refugee crisis and argued that their development takes place in parallel to the competences of the Commission.

As regards the delegation of competences to agencies, recent work by Brandsma and Blom-Hansen (2017) maintains, on the one hand, that EU legislators have no true alternative to delegating

competences to the European Commission, which is the only feasible EU policy executor in the EU: ‘For the vast majority of delegation situations we [...] find it difficult to see them as true alternatives to the Commission as an agent’ (2017, p. 12). On the other hand, Bickerton et al. argue that from Maastricht onward ‘where delegation occurs, governments and traditional supranational actors support the creation and empowerment of *de novo* bodies³⁰’ (Bickerton et al., 2015), but do not test this proposition empirically. This expectation about the alleged empowerment of EU agencies should be analysed more in depth. Findings in Chapter 4 suggests that there is indeed a pattern of delegation to agencies as—if not an alternative to the Commission—a valuable asset. Yet, beyond the limited number of studies just overviewed, there is scarce comparative evidence about whether, how, and why the agency phenomenon has developed overtime. In particular, there is scant theoretical and empirical research comparing the evolution of agencies since their establishment. Policy makers’ choice to create an ad hoc body is just the first step of a process that starts with the establishment, but then may continue with the reform, consolidation or dismantlement of that body in order to adjust to changing times and conditions.

Given that agencification in the EU is by now a fact, I address the issue of what is the extension of this phenomenon by trying to understand (i) whether and to what extent EU agencies have been actually empowered through new tasks and resources overtime; (ii) which ones were empowered the most (iii) and what conditions have caused (or at least favoured) that.

I first analyse and categorise the evolution the existing EU agencies created so far, in their organisational aspects (i.e. budget, tasks and mandate). I then use the collected data to investigate the mechanisms leading to the observed variation.

³⁰ That is, agencies

5.3 Assessing EU agencies' budgetary trends

'The 'sine qua non' of bureaucratic power is access to resources—money, personnel, legislative authority, and other tools necessary to make and implement decisions. Without such resources, an organization ceases to exist' (Meier, 1980).

Notably, in the United States the agency phenomenon started much earlier in time compared to the European Union. For this reason, American scholars have already looked into the sources of agency empowerment (Meier 1980), and at the ways bureaucratic structures are shaped in terms of resources and tasks. A rather straightforward way to analyse the empowerment of a bureaucratic body is to look at whether its material resources—that is, the budget they are assigned—have substantially grown (or not) overtime. According to Jones 'budgets quantify collective political decisions made in response to incoming information, the preferences of decision makers, and the institutions that structure how decisions are made. The distribution of budgetary outputs is crucial to the study of policy change, as budget changes reflect changing governmental priorities' (Jones et al., 2009).

Changes in an agency's budget can then be used as a proxy for tracking its growing or decreasing relevance. Observing how agencies' budgets change overtime gives us insight on how the agencification process itself developed and whether policy makers adapt it to different set of conditions. Although regulatory changes may not be systematically reflected in the budget as much as in redistributive policies (Citi, 2013), analysing agencies' budget variation sheds light on the importance that EU policy makers give to the role of these agencies in implementation, intended as the general realisation of EU policy goals set in the legislation. For example, a sudden budget increase may signify that legislators care more about the impact an agency can deliver to the Union's policies in a certain area in a certain moment in time, while a decrease or a flat trend may just indicate that the amount of resources an agency has is perfectly satisfactory, or perhaps, that the legislator does not 'care' that much about what the agency can deliver. Sources of power of any organisation, in fact, reside in their ability to influence policy outcomes, which in turn resides in the capabilities organisations are given to pursue the tasks they are assigned.

5.4 Mapping changes in agencies' budget

Agencies in the EU are currently 34, and were created into three waves: the first in the 70's, the second in the 90's, the third in the mid-2000's. Most of them are funded entirely by contributions from the European Union budget. Some agencies, however, depend on other revenue, such as fees received from industry. Partially self-financed agencies include the European Chemicals Agency (ECHA), the European Aviation Safety Agency (EASA) and the European Medicines Agency (EMA). Fully self-financed agencies include the Office for the Harmonisation in the Internal Market (OHIM), the Community Plant Variety Office (CPVO), the Single Resolution Board (SRB) and the Translation Centre for the Bodies of the European Union (CdT). Some Agencies—i.e. the three supervisory authorities established after the financial crisis³¹—are partially co-financed by national public authorities.

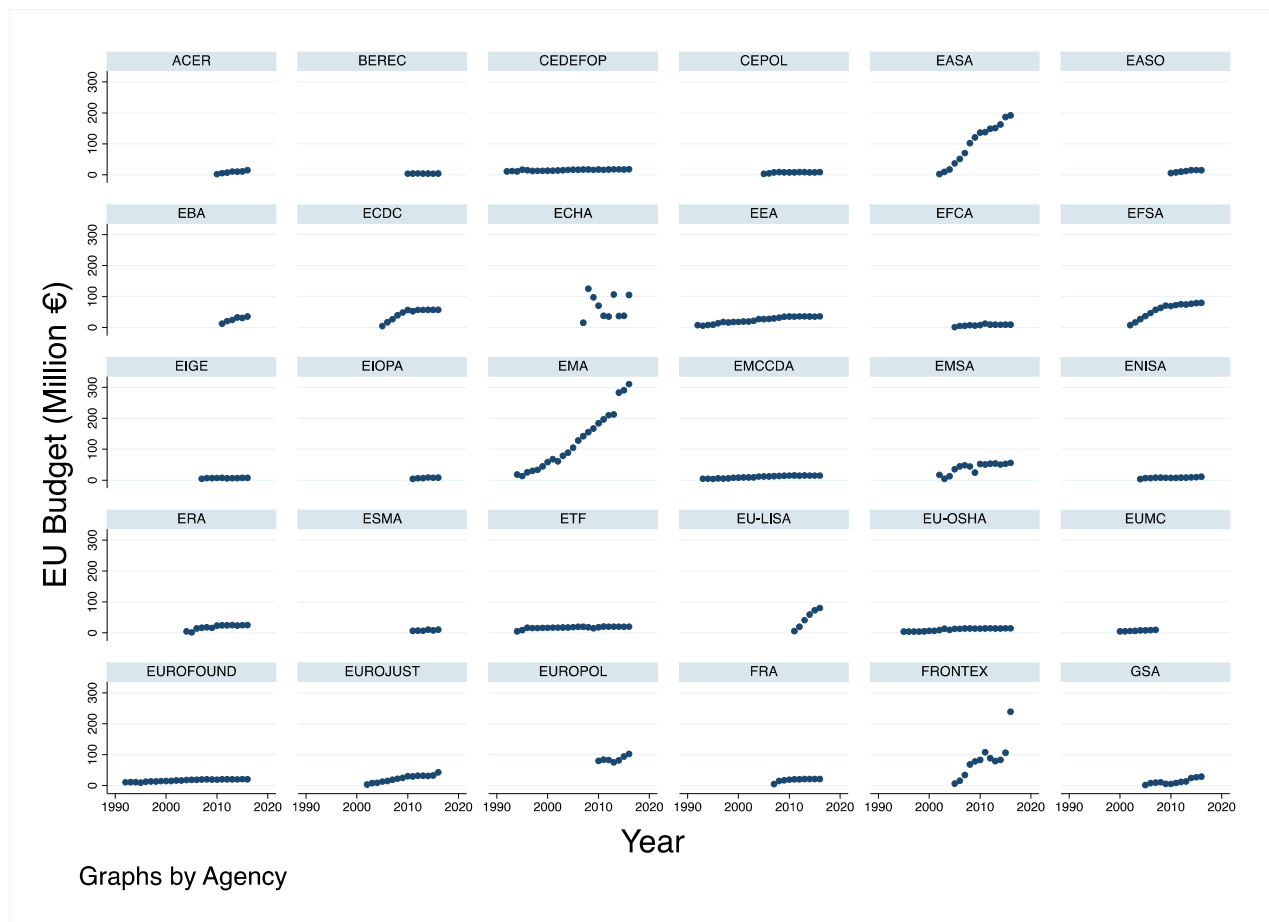
Scatterplots in Figure 5.1 show the absolute variation of funds received by each agency from 1990 to 2016. The Community Plant Variety Office (CPVO) and the EU Intellectual Property Office (EUIPO)— which release patents with the EU trademark— are excluded, as they are fully self-financed therefore their budget does not depend on EU decision-makers but, rather, on the demand for patents. The Single Resolution Board (SRB) is excluded because it was established in 2016. The Translation Centre for the Bodies of the European Union (CdT) is excluded because its functions deviate substantially from the rest of agencies, as it is purely a technical service provider that does not have to do with policy implementation. Finally, the European Agency for Reconstruction (EAR) is excluded because it was closed down in 2008 and represented an extreme case: it handled a very high budget (approximately 3 billion euros) for the purpose of reconstructing Kosovo in the aftermath of the crisis.

³¹ The European Banking Authority (EBA); the European Securities and Markets Authority (ESMA); the European Insurance and Occupational Pensions Authority

Overtime, some EU agencies have seen their budget growing steadily, such as the European Medicines Agency (EMA). The most striking example of increase, but discontinuous, is Frontex, the European border agency. Figure 5.1 displays very clearly that a sharp increase started at the same time as the so-called Arab Spring in 2011, followed by a small resource decrease and, finally, a steep increase, corresponding to the reform of the agency during 2015-2016 and probably in response to the Syrian refugee crisis. A few other agencies present a discontinuous budget change (although relatively smaller than Frontex). Eurojust, an agency dealing with judiciary coordination, was given more funds starting in 2015, and EU-LISA shows a steep budget increase since 2010. Some agencies (such as Eurofound and the European Training Foundation, ETF) instead, show hardly any variation since the 90s. The European Chemical Agency (ECHA) got an important budget expansion in 2015-2016 (+65 million €). According to the Commission this increase is due to the increase in the balancing contribution to the chemical activities of the European Chemicals Agency (EU Commission 2014:206). Tables in [Appendix 4](#) show more in details the budget evolution of partly self-funded agencies ³²

³² All budgets are in current amounts. This represents a methodological challenge as it does not control for inflation, yet the rate does not change dramatically in the observed period

Figure 5.1: Agencies budgetary trends (1990-2016)³³



5.5 Interpreting budget changes: incrementalism vs punctuated equilibrium

Budget changes in public policy have mainly been explained through two competing theories. According to budgetary incrementalism (Wildavsky, 1964) annual budgeting should be describable as function of the previous year's expenditure: 'budgeting is so complex that decision makers largely forfeit a review of existing expenditure, referred to as the 'base'. Rather, 'this year's budget is based on last year's budget, with special attention given to a narrow range of increases or decreases' (Davis et al., 1966:529-30). Punctuated-equilibrium (P-E) models (Baumgartner & Jones, 1993; Jones & Baumgartner, 2012; Jones et al., 2009) on the other hand point out that, although generally public policies evolve through small-scale policy adjustments, the same forces that produce incremental changes can be responsible for major departures from the status quo. As governments are assumed to

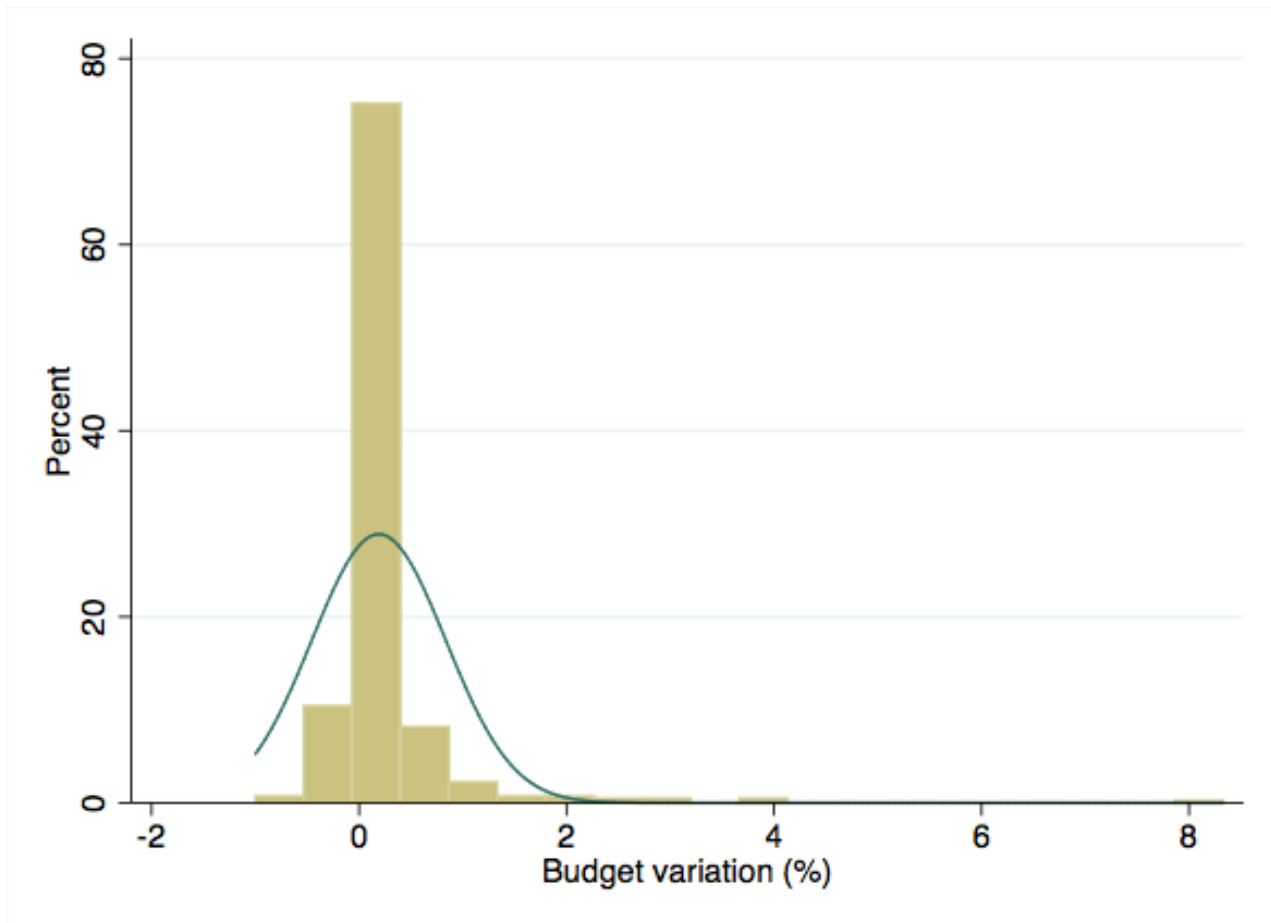
³³ Acronyms in [Appendix 4](#)

have limited time, attention and information, they tend to focus on the few items that are salient on the political agendas and overlook a number of other issues. Yet, if some of the neglected issues reach a high level of severity, the pattern of incremental adjustments is likely to be interrupted by sudden changes. In the EU context, Citi (2013) has already showed that EU budgeting for redistributive policies follows a punctuated equilibrium dynamic. Does the same apply to regulatory ones?

I calculate the pooled annual percentage changes of EU agencies budget allocation, which are displayed in Histogram in Figure 5.2.³⁴ This shows that the higher concentration of the budget distribution is around plus-minus 10%. It also shows a skew to the right (Skewness=6.9; Kurtosis=72) and some departures from the status quo in agencies' budget allocation. As the leptokurtic shape of the graph is generally associated with punctuated equilibrium dynamics (Citi, 2013) it is reasonable to claim that EU expenditure for agencies follows a punctuated equilibrium pattern; that is, the allocation of EU budget to agencies has been readjusted in a discontinuous way overtime.

³⁴ The percentage change is calculated by subtracting the amount devoted to an agency at time t (b_t), minus the budget given to the same agency at time (b_{t-1}), divided by the same amount (b_{t-1}). $(b_t - b_{t-1}) / b_{t-1} * 100$

Figure 5.2: Budget variation (pooled percentages)



5.6 Explaining the variation: crises, reforms and agencies typology

The punctuations just observed may be connected to the need of policy makers to adjust agencies' budget to changing conditions in order to enhance their impact on specific policies. I argue that three main factors should be deemed particularly relevant: crisis situations, agencies' reforms and agencies' typology.

5.6.1 Crises

Two major crises took place in the studied period (Schimmelfennig, 2018). First, the 2008 financial crisis—which possibly influenced negatively the overall budget devoted to the EU. This is suggested for example by a statement of the European Parliament during the 2011 budgetary procedure, saying that 'aware of the pressures on Member States' national budget, as a result of the crisis, Parliament

broke with the tradition that it proposes a budget considerably higher than that proposed by the Commission' (European Parliament, 2011)³⁵. Yet, the crisis led to the creation of three above mentioned supervisory authorities, therefore the budget devoted to them should account for significant punctuations. Secondly, the 2014 Schengen borders crisis sparked from the Syrian civil war and continuing nowadays should be connected to higher resources devoted to the European Border Agency (Frontex) and the European Asylum Support Office (EASO). Overall, I expect that the financial crisis led to a general decrease in agencies' budget, and a significant increase in then supervisory authorities' one; and that the Syrian refugee crises had a positive impact on the budget of agencies dealing with immigration and security, i.e. FRONTEX and EASO, at the expense of other agencies. The first hypothesis follows:

H1: Crises account for significant departures from the status quo in the budget of those agencies involved in crisis management activities³⁶

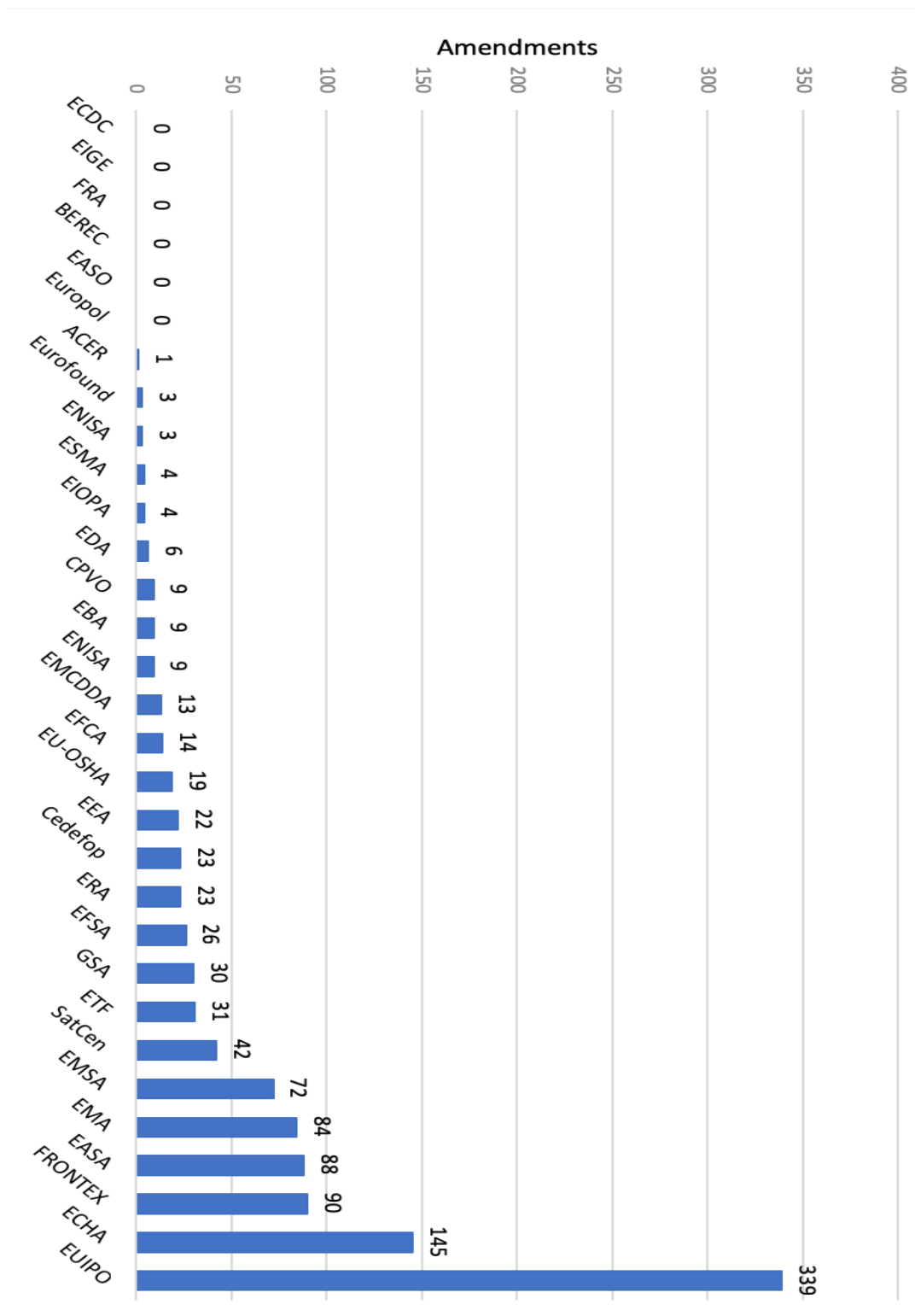
5.6.2 Reforms

The second reason that may account for punctuations lies in the reforms that agencies went through. Agencies have been reformed in very different ways overtime. Figure 5.3, next page, shows a striking variation across agencies in the extent to which their mandate was modified (0 to 339 amendments). I retrieved data from the Eurlex database, which identifies all the amendments made to each legislative act overtime.

³⁵ 2010/2001(BUD) - 20/10/2010 Budgetary text adopted by Parliament

³⁶ Another important crisis was the Mad Cow epidemics in the 90s. I am unable to consider this crisis in my analysis due to the data structure. In fact, the crisis was lengthy but ended before the European Food Safety Authority was even established. Hence, I cannot control for the interaction between BSE outbreak and EFSA budgetary development

Figure 5.3: Amendments to agencies' founding act³⁷



Source: EUR-lex

³⁷ Simple count of total number of amendments to the founding acts

Starting from this evidence I have categorised the kind of development each agency has gone through along the years, by dividing the kind of reforms into ‘task expansion’ and ‘scope expansion’, basing my coding on the original reforming legislation and Commission reports about agencies. On the one hand, there are agencies whose mandate maintained all its original characteristics, such as the European Environment Agency (EEA) and the Fundamental Rights Agency (FRA). Some other agencies have been reformed so as to extend the same functions to new areas, such as the European Medicines Agency in the field of orphan medical products in the 1999 reform³⁸. Some agencies have been reformed substantially through the granting of completely new functions. For example, in 2008 EASA got new tasks to new fields of aircraft operations: it got responsibilities to develop the regulations in air operations flight crew licensing and the oversight of third country operators.

Finally, some agencies are in the process of being reformed, such as the European Agency for Health and Safety at Work (EU-OSHA), EUROFOUND and the European Asylum Support Office. Reforms do not appear in the analysis as they have not been implemented yet³⁹

There is a difference between granting new tasks and expanding the scope of action. The former is generally connected to substantial reforms in the regulation of a policy issue and require new and different kinds of expertise and equipment; while an enlarged scope of action may have more symbolic purposes and could be dealt with the same kind of resources. For example, the extension of the European Environmental Agency’s activity to research on coastal and marine protection in 1999 was not followed by budgetary or staff increase, nor it seemed moved by the willingness to effectively change the nature of agency’s activities and its impact on the regulation of environmental provisions.

³⁸ Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products

³⁹ [Appendix 4](#) provides an overview of all EU agencies, their function, the policy area they deal with, the source of their funding and the kind of reform they went through. Such modifications are outlined in the ‘type of reform’ column. Six agencies in total³⁹ were task-reformed, while ten³⁹ had their scope expanded. There is obviously a time-dependent factor which intervenes in this picture, insofar as some agencies were created very recently and may take longer to be modified substantially in the future.

As the European Parliament (EP) specifies, legislation aimed at ‘consolidating certain activities of the Agency in clearly defined fields, but without strictly speaking giving it any new tasks’⁴⁰. On the other hand, for example Frontex was reformed in 2011 to coordinate joint return operations, and development and operation of information systems and to the provision of assistance to the European Border Surveillance system (Eurosir) Its mandate passed from risk assessment to operational task and was accompanied by an increase in funds for 2011.

From what I just outlined I argue there may be a significant connection between budget changes and task reforms. If such connection is present, this would suggest that EU policy makers willingly empower agencies not only with a ‘symbolic’ granting of tasks, but also with the means necessary to cover more extensive mandates and contribute more substantially to the pursuit of new policy objectives⁴¹. In my view it should be very likely to observe that more resources are devoted following to a reform in order to meet the targets of the new policy, assuming that agencies are integral part of the realization of EU policy objectives.

Niskanen’s budget maximising model argues that public servants will generally seek to inflate the budgets of their bureaus (Niskanen, 1971) especially when asymmetries of information between the legislature and the executive branches of government occur. According to this view bureaucrats are able to get higher budgets because politicians are misinformed about the needs of the administration in performing a given task. Yet, according to Bendor & Moe (1985) legislators can strategically use budget cuts and increases in different ways. The budget is an incentive in and of itself, as well as a means of generating output. When policy makers are interested in a particular output to be delivered by an agency, they may be willing to increase the agency’s budget in order to make the agency able to perform well in that domain. It follows that when an agency is reformed in view of covering more

⁴⁰ Legislative proposal available at:

<http://www.europarl.europa.eu/oeil/popups/summary.do?id=62669&t=e&l=en>

⁴¹ As there have not been reforms reducing tasks it is not possible assessing this possibility

tasks, this should correspond to a significant increase of the agency's budget. In sum, my second expectation is as follows:

H2: Agencies' budgets increase as their tasks are expanded

5.6.3 Agency typology

EU Agencies have been categorised in different ways among which, notably, Keleman (2005) Yataganas, (2001) and Rittberger and Wonka (2011). These categorisations are mainly based upon the kind of function performed by agencies (such as information provider, regulation provider, coordination provider). For the purpose of this research, I deem relevant distinguishing an important factor, that is, that the demand of different kind of agencies from EU member states is different. For example, it is, arguably, more likely to find more demand for chemicals and aircrafts licenses than reports on human rights standards. Secondly, in an enlarging border-free area like Schengen the security threats started after 2001 and intensified with the immigration fluxes of the Arab spring may call for constant border and police coordination. In sum, the demand for services and coordination from member states and the industry should account for significant differences in budgetary trends, and that agencies providing information should be comparatively less financed than agencies delivering operational activities and services. Therefore, my third hypothesis is as follows:

H3: agencies dealing with market authorisations, services and operational activities receive systematically higher budgets

5.6.4 Controls

I deem relevant to control the level of integration of EU policies, which has substantially changed overtime. If agencies develop together with the rest of the Union, a higher integration of a policy may be connected to more resources devolved to implement it, including EU agencies budget. Not taking into account this possibility could distort the results of my analysis.

Scholars have distinguished between the breadth of integration in each policy area, i.e. whether decision-making resides at the national or supranational level; and depth of integration, i.e. the type of decision-making procedures that are involved. The balance of policy authority between the EU and national levels has primarily been investigated through case studies, focusing on individual treaty effects or the effects of secondary legislation (Featherstone & Radaelli, 2003; Saurugger & Radaelli, 2008). Moreover, Borzel (2005) has notably provided a historical map of policy integration in the EU considering the level and scope of integration. Also Hix and Hoyland (2012) show how different treaties have modified the competences and the decision-making process in the EU overtime. The depth and breadth of integration is relevant in this context as EU agencies are generally conceived as a further degree of expansion of the European Union and specifically, an expansion of its administration. Ripoll Servent argues that in the EU ‘power is usually not delegated horizontally (from the Commission to the agency) but vertically—which means that creating an agency is often preceded by a transfer of competences to the EU level’ (2017:5). An increase in budget is a form of empowerment of an executive instrument. It follows that if an agency deals with a policy that is more supranationalised overtime, it should acquire more importance in the overall implementation process and therefore may undergo more substantial budget increases.

Secondly, I deem important controlling for agencies’ salience. Agencies dealing with policies subjected to a systematically higher political contestation should generally require more resources. The more the policy an agency deals with is considered salient, the higher the budget that agency should receive. Therefore, in general I would expect a comparatively higher budget given to agencies dealing with politically salient issues, regardless whether an agency has been reformed or not. In particular, if EU policy makers are systematically responsive to public opinion (Wratil, 2015) and the salience attached to a policy by the public, this should be reflected in higher resources devolved to agencies dealing with more salient issues. For example, immigration is generally more salient than railways safety.

Finally, considering that both according to incrementalism and to punctuated equilibrium, it is likely that each year's budget is influenced by the budget in the previous year, I necessarily include the amount of budget adopted in the year before the budget under observation. In the next page, .

Table 5.1 summarises the hypotheses just presented.

Table 5.1: Summary of main hypotheses

Independent Variables	Mechanism	Effect on reliance upon EU agency
Crisis	Crisis response	Positive for agencies involved in the crisis (H1)
Reforms	Efficiency	Positive (H2)
Agency type	Demand for certain tasks more than others	Positive for agencies invested with operational tasks/delivering services (H3)

5.7 Data and Measurements

I built an original dataset reporting 32 agencies' budgetary variation between 1992 and 2016. To do so I employed official EU documents—EU budgets and agencies' programmes of work. For partly self-funded agencies I also include the external resources received in order to account for the full budget variation.

To measure crisis periods, I used a dummy variable. I coded 1 for the year after the financial crisis started (2009) until 2012. This measurement should reflect the immediate and prolonged effect of the crisis on budget change and help to detect changes in policy makers' budgetary decisions. The Schengen crisis is coded 1 from 2014 onward.

Task reforms are counted as 1 in the year the task reform took place and the following two years to take into account the administrative times necessary to put a reform into practices. The absence of a reform is coded as 0.

To test H3, I divided agencies into three groups: the first includes all agencies neither dealing with market authorisations nor with operational activities⁴². The second includes agencies dealing with operational activities and market authorisations and services financed only through the EU budget⁴³. The third includes agencies dealing with authorisations and services financed also by the industry⁴⁴. The changing level of integration of a policy can be measured in different ways. Recently Nanou et. al have produced a dataset with Europeanisation scores by policy area obtained through an expert survey. It is not possible to employ it in this empirical section as scores are lacking for years 2015 and 2016, and this would produce an excessive amount of missing values in the dataset. Following the ‘breath’ and ‘depth’ categorisation, I measure the change to more or less supranationalisation by looking at the change from unanimity voting to qualified majority voting (QMV), as well as the shift to co-decision (or ordinary legislative procedure). Franchino, (2007) Thomson & Torenvlied (2011) and my findings in [Chapter 3](#) show that that QMV is associated with higher levels of Commission discretion, we may assume that policies using QMV are those in which the Commission enjoys more competences over implementation, and in which the ‘depth’ is higher. Moreover, acts adopted under co-decision are supposed to increase the breath of integration by including the European Parliament in the decision-making process.

I measure the degree of policy integration through two dummy variables. The first takes the value of 1 when QMV applies to a policy and 0 when it does not; the second takes the value of 1 when co-decision applies, and 0 when other procedures are used. Particularly the area of justice and home affairs

⁴² BEREC; ACER; CEDEFOP; CEPOL; EBA; EEA; EFCA; EIGE; EIOPA; EMCCDA; ENISA; ERA; ESMA; ETF; EU-OSHA; EUMC; EUROFOUND; EUROJUST; FRA

⁴³ Frontex; Europol; EASO; EU-LISA; EFSA; EMSA; ECDC.

⁴⁴ EMA, EASA, ECHA

underwent changes from unanimity to QMV after Amsterdam and Lisbon. The Treaty of Amsterdam sets under co-decision important policies such as health and transports, while the Treaty of Lisbon transfers QMV and co-decision to policies dealt with by Eurojust, Europol and GSA⁴⁵. Moreover, after Lisbon co-decision (i.e. ordinary legislative procedure) starts to apply to all policy areas leaving however the unanimity voting rule for the approval of measures dealing with social policies.

The salience of each agency in the EU is measured through a categorisation made by Wood (2017). He measures political salience following Koop's (Koop, 2011) approach using data from media (newspaper) coverage of an agency and its prominence in EP debates. To the best of my knowledge this is the only attempt in the literature to measure the salience attached to what agencies do and fits our purposes as it looks at how important agencies activities are considered by the public and by policy makers. Table 5.2 summarises all the variables just described

⁴⁵ Unanimity until the Lisbon treaty (see art 130n-o Maastricht treaty consolidated version)

Table 5.2: Summary statistics

Variable	Observations	Mean	Std. Dev.	Min	Max
Financial Crisis	403	0.258	0.438	0	1
Schengen crisis	403	.215	.411	0	1
Supervisory authority	403	0.044	0.206	0	1
Groups	403	1.39	0.691	1	3
Task expansion	403	0.059	0.236	0	1
High salience	403	0.506	0.500	0	1
QMV	403	0.667	0.471	0	1
Co-decision	403	0.687	0.464	0	1
Budget	403	32108.47	44160.15	1000	310292.5
Lagged budget	403	28149.68	39917.36	0	290370.8

5.8 Analysis

I estimate a statistical model by means of a cross-sectional time-series regression analysis with panel corrected standards errors. Table 5.3 reports the results obtained. I specified four models. In Model I, I include only the control variables. Model II, III and IV progressively include the explanatory variables i.e. crisis periods, type of agency, task expansion. To test H1 I include two interaction terms namely the interaction between the financial crisis and the three supervisory authorities and the one between the Schengen crisis and Frontex and EASO.

In line with H1, the financial crisis has led to a general decrease in EU agencies budget allocation of about € 4 million. This does not apply to agencies dealing with the monitoring of the financial markets, which have significantly increased their resources in comparison to all others. The effect is quite substantial as on average they got about 6 million more ($p < 0.01$) than all other agencies. Part of the observed punctuations in agencies' budget allocation can then be explained by the financial crisis effect of *reduction* on several agencies budget and *increase* on some of them. A similar argument holds for the Schengen crisis, as EASO and FRONTEX indeed received significantly higher funds in that period (on average, 21 million more, $p < 0.05$) However, this did not take place at the expenses of other agencies, as the crisis per se did not produce a significant reduction in the general budget allocation. In sum, the punctuations observed in the descriptive section can also be linked to differentiated crisis responses.

Table 5.3: The determinants of agencies' budget allocation overtime

	Model I	Model II	Model III	Model IV
Salience	2214.0** (1124.6)	764.8 (845.1)	494.3 (594.8)	558.9 (546.5)
QMV	2469.4*** (820.6)	1314.8** (661.8)	934.1 (732.7)	554.4 (702.7)
Codecision	-395.4 (812.8)	-94.71 (808.2)	1457.9 (1196.2)	1587.1 (1178.6)
Lagged budget	1.046*** (0.0260)	0.977*** (0.0438)	0.984*** (0.0471)	0.983*** (0.0464)
Group 2: service providers		7758.2*** (2376.8)	5825.1** (2323.1)	6510.2*** (2245.7)
Group 3: service providers (partial self-fund)		12582.3** (5522.3)	11999.8** (5828.6)	11306.1** (5729.2)
Financial crisis			-3207.7* (1904.3)	-3941.7** (1824.8)
Supervisory agency			-385.4 (1768.8)	94.25 (1757.8)
Financial crisis x supervisory agency			5657.5** (2694.2)	6338.5** (2678.8)
Schengen crisis			-1801.8 (1894.9)	-1859.5 (1831.5)
Migration control agency			-248.9 (7664.0)	-3403.1 (6768.9)
Schengen crisis x migration control agency			20183.8* (10577.0)	21372.8** (9482.5)
Task expansion				10601.6** (4256.8)

DV= Agencies total Budget (Million €)

Cross-Sectional time-series regression analysis. Panel corrected standard errors in parentheses * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Perhaps the most important evidence provided by this empirical analysis is that punctuations are connected to task reforms, which are generally followed by significant budgetary increase. Looking at Model II, on average agencies that are task-reformed received about €10 million more during and after the reform ($p < 0.05$). This result points exactly to the fact that policy makers truly value agencies as useful policy implementers and therefore choose to grant them more resources when they are assigned new tasks as part of policy reforms (H2).

Finally, as hypothesised in H3, results show agency effects: group 2, to which EU-funded operational and services provider agencies belong, received a systematically higher budget (on average, 6.2 million, $p < 0.05$) as compared to the reference group, i.e. agencies dealing with information and research. Group 3, i.e. the partly self-funded agencies ECHA, EASA and EMA received a systematically higher budget as well, about € 11 million more than group 1 ($p < 0.05$). These effects corroborate the hypothesised mechanism according to which agencies providing operational support and services have been resourced more than information provider-agencies. To corroborate this finding, I have performed a group based-model. Traj estimates a discrete mixture model for clustering of longitudinal data series. They assign probabilities of group trajectories unfolding through a specific trend across data. Groups may represent, ultimately, components of a discrete approximation for a potentially complex data distribution. In practice, Traj models identify groups of— in this case— agencies— following similar progressions of some phenomenon (the budget) over time and estimates the effects of covariates not only on trajectory shape, but also group membership. According to the assumptions of group-based trajectory modeling, time stable covariates influence group membership and time dependent covariates explain variation about the average trajectory within each group.

Interestingly, the trajectories generated seem to confirm that agencies budgetary trends can be divided into three main clusters, very similar to the division I have envisaged in the theoretical section, which follow three well-distinguishable trajectories.

Figure 5.4 shows the resulting clusters, while Table 5.4 compares the Traj-generated clusters to my three groups. They differ to each other inasmuch as ECHA is located in Cluster 2 instead of Cluster 3. The first Cluster, which includes pretty much all agencies of Group 1, is a flat line, meaning that the budget variation overtime has been minimal. Cluster 2, including the AFSJ agencies plus EFSA, EMSA, ECDC and ECHA varies more considerably but still increases quite sharply overtime. The last Cluster, composed by EMA and EASA, shows a steep growing trend. This modelling not only comes to help in corroborating the division made in theory between operational/service providers and information agencies, but also to show that there appears to be a systematic positive budgetary trend for certain kinds of agencies, and a constant one for the majority of them. The same comparison can be done by confronting Traj models and graph in Figure 5.5, which describes budgetary trends across groups, as shown

Among the control variables, the lagged budget has, unsurprisingly, a highly significant effect on agencies' budget allocation, while the others do not show any explanatory value.

Figure 5.4: Traj clusters

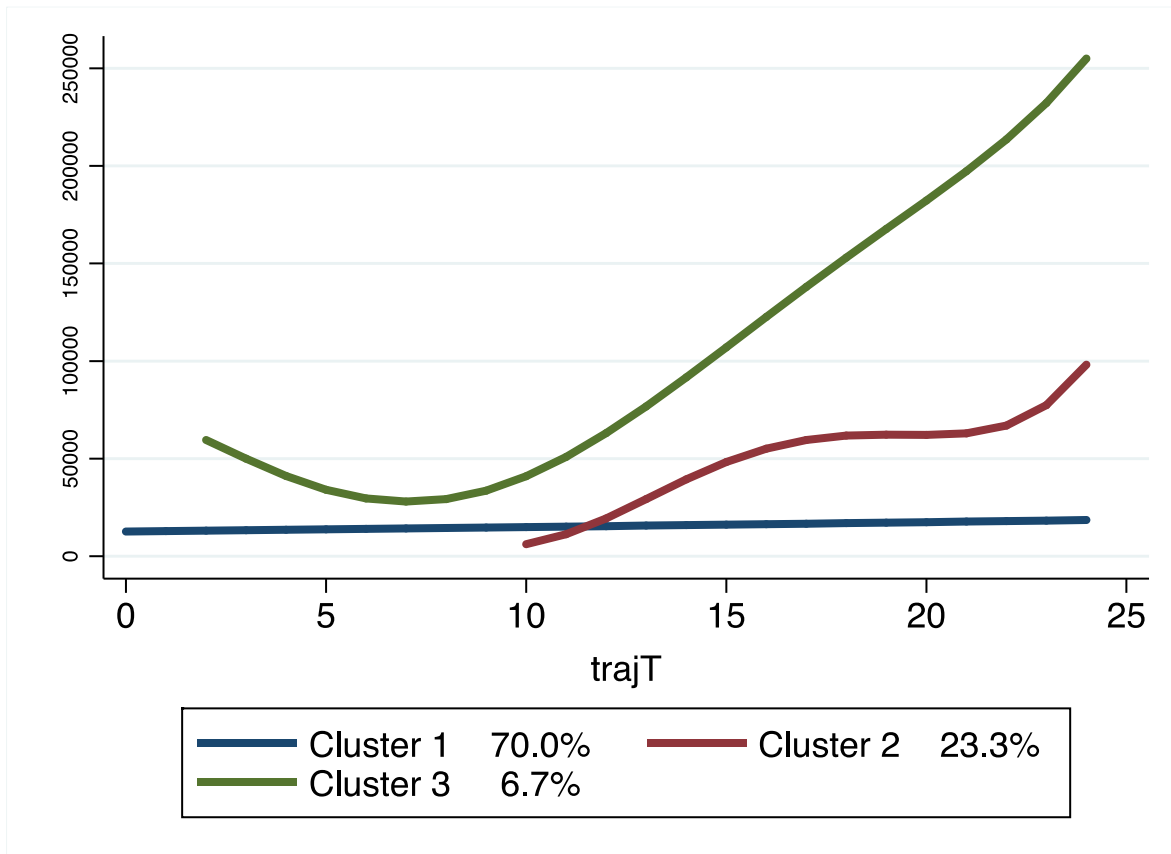


Figure 5.5: Agencies budgetary trends by group

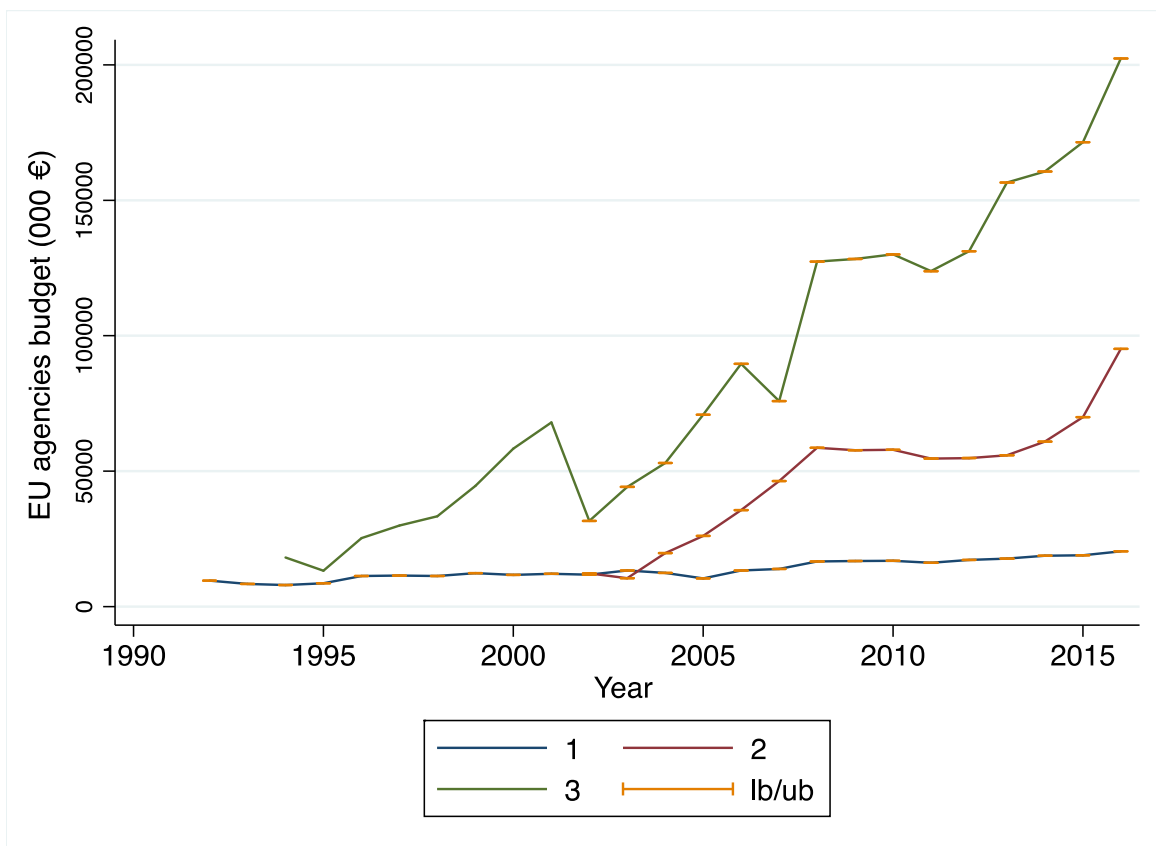


Table 5.4: Comparison between groups and Traj clusters

Group 1 (information)	Group 2 (Operational/Services)	Group 3 (Operational/Services partly self-funded)	Traj cluster 1	Traj cluster 2	Traj cluster 3
EASO	EFSA	EASA	EASO	ECDC	EASA
BEREC	EMSA	ECHA	BEREC	ECHA	EMA
EBA	EU-LISA	EMA	EBA	EFSA	
CEPOL	EUROPOL		CEPOL	EMSA	
CEDEFOP	FRONTEX		CEDEFOP	EU-LISA	
ACER	ECDC		ACER	EUROPOL	
EEA			EEA	FRONTEX	
EFCA			EFCA		
EIGE			EIGE		
EIOPA			EIOPA		
EMCCDA			EMCCDA		
ENISA			ENISA		
ERA			ERA		
ESMA			ESMA		
ETF			ETF		
EU-OSHA			EU-OSHA		
EUMC			EUMC		
EUROFOUND			EUROFOUND		
EUROJUST			EUROJUST		
FRA			FRA		
GSA			GSA		

5.9 Discussion

The evolution of EU agencies has been impressive and exceptionally quick. There were only two agencies in 1990, now there are 34 of them. Several agencies are valued for their contribution to EU governance, some others are criticised – such as EFSA during the recent Monsanto Papers scandal⁴⁶. It remained, so far, unknown the extent to which these agencies are valued through new resources over time. This analysis has aimed to go beyond the mere intuition that agencies are important and that they are developing. It has precisely aimed to show *how* they are developing and tried to assess *why*. It turns out that agencies' budget has been affected by the financial crisis, which, however intuitive this could seem, is important considering that agencies represent a tiny fraction of EU budget and yet, they have been penalised. In times of financial crisis, even the EU administration has, in sum, suffered, exception made for the new bodies created to face the crisis, which points to an effort by member states to address the crisis through new specialised bodies. Also, the economic empowerment of FRONTEX and EASO following to the Schengen border crisis emerges evidently from the analysis. This, again, points to EU governments' attempt to use these agencies to respond to the crisis, although empirical evidence tells us that this economic empowerment has not been accompanied by a real effort to change the EU border management regime (Schimmelfennig, 2018).

Importantly, when EU policy makers reform agencies' mandate and grant them more responsibilities, they also provide them with more economic resources. This result suggests that agencies are valued by policy makers as actual contributors to new-coming EU policies and, eventually, policy change. Moreover, policy makers have systematically granted more funds to agencies providing services to the industry and security providers such as Frontex, Europol and EU-Lisa. Not only that: the Traj-model previously displayed shows that there is an evidently positive trend of economic empowerment of those agencies delivering services and coordination of intelligence and border management, while

⁴⁶ <https://www.theguardian.com/environment/2017/sep/15/eu-report-on-weedkiller-safety-copied-text-from-monsanto-study>

the others have not been subjected to dramatic changes – in fact– they have been extremely stable overtime. This is relevant because when studying the development of agencies comparatively, we must then acknowledge that certain agency types are indeed more valued and, probably, used than others, in this case through more financial resources.

This analysis has various limits, among which time-dependence: some agencies have been existing for over 20 years, others, such as the three supervisory authorities, only for five. It may be the case that these authorities will be granted further tasks and perhaps given higher resources in the near future. Secondly, limiting to an analysis of the budget is perhaps not enough to grasp the informal resources mobilised by agencies, such as information, knowledge, reputation. What is clear, is that some agencies are becoming more powerful than others, increasing their competences and their resources. There is no single way to measure the development of an institution, and this contribution sheds light on a small, but still relevant, cross-agency variation.

In the [next chapter](#) I focus on a different aspect of the post-delegation phase, by asking whether and how agents actually utilise the powers they are delegated by their principals to implement policies. Specifically, by means of a case study analysis I look at the rationale driving the Commission's decision making in comitology procedures, and the use it makes of EU agencies under political pressures. As a last (but not least) step of this thesis in fact, I deem it crucial to go deeper into the 'black box' of decision making in order to understand the underlying dynamics of executive decision making in the European Union. Given that the Commission is formally delegated tasks, and that agencies are formally used and financed by means of EU law, it is extremely policy-relevant knowing in practice what the Commission and agencies actually do with the powers and tasks they are entrusted. What are the priorities of the Commission when it has implementing powers, and how useful is agencies' expertise in politicised contexts? In particular, the next Chapter addresses the involvement of the European Commission and a specific agency, EFSA, in the implementation of a

supranational provision which was extremely debated at time of adoption, namely, the renewal of the pesticide Glyphosate.

6 Expertise, politics and public opinion at the crossroads in the EU Commission's decision making. The case of Glyphosate

6.1 Introduction

The evolution of European Union executive governance has entailed multiple processes of delegation from the national to the supranational level. So far, I have tackled the reasons behind the delegation of discretionary powers to the Commission and national administrations ([Chapter 3](#)). I analysed the reliance of legislators upon EU agencies in secondary laws ([Chapter 4](#)), and the reasons behind agencies' relative empowerment through new resources and tasks ([Chapter 5](#)). Throughout this final Chapter I aim to tackle another dimension of EU executive governance that I deem of utmost importance: the implementation stage. How do the Commission and EU agencies use the powers and tasks they are delegated/assigned? What determines their behaviour and implementation strategies? As emerged from the previous chapters, neither the Commission nor agencies operate 'in a vacuum': they interact throughout the decision-making processes and they are granted more or less specific tasks in order to implement supranational policies. It is uncertain, however, how they utilize their assigned tasks, given the varying conditions under which they operate. In fact, 'It is not self-evident that an [...] agency produces 'good' decisions, because bureaucracies may well develop and pursue their own interests, rather than those of their principals (Kiewiet & McCubbins, 1991). There exists, evidently, a trade-off between allowing agents to act with the level of discretion required to perform their tasks, and to ensure at the same time that they do not overstep their competencies (Majone, 2001:119): agents operate under several constraints and yet they may drift, by behaving differently from the directives given by their principals. How do agents behave at the implementation of supranational provisions?

Assuming that EU agencies cannot be considered as fully autonomous decision makers— but, rather, as agents of the European Commission and the member states⁴⁷, analysing the implementation of a supranational provision implies looking at the Commission’s decision-making and the use it makes of the relevant agency, within the constraints imposed by member states’ governments. I do this by looking at the approval of a highly salient and conflictual implementing provision in the field of food safety regulation: the renewal of the active substance e Glyphosate (2015-2017). I chose this specific policy field because, as exemplified in Chapter 3 and as I will explain in section 6.4, food safety is implemented through the joint efforts of the Commission, one European agency, that is the European Food Safety Authority (EFSA), and the member states. Hence, differently from other policies, when implementing food safety supranational provisions, the Commission is bound to at least consider the opinion of the EFSA. Therefore, the agency is active part of the implementation process, although the degree to which it is actually used depends on the preferences of the Commission, which can ultimately choose the details of the implementing measures.

Through this analysis I contribute to the literature in two ways: first, I present empirical evidence about agents’ behaviour in the policy making process by tackling to what extent the European Commission in particular relies upon agencies and their expertise when complex decision which involve both political and scientific concerns. Second, I contribute to the scholarly debate about the European Commission itself by showing how this latter, when it has sufficient leeway to implement a highly politicised issue, may adjust its behaviour according to what public opinion demands.

The remainder of this Chapter is structured as follows: I review the literature about EU agencies’ relevance to policy implementation, and then I briefly outline the debate about the role of the Commission in EU policy making. I then describe the system of pesticide authorization in the EU and the formal decision-making framework. After that, by drawing on delegation, knowledge

⁴⁷ It is hardly possible to treat them as actual decision makers simply because they have no formal power to take autonomous decisions.

utilization and reputational theories I formulate three expectations about the Commission's behaviour in policy implementation. I then test these expectations through a single-n case study analysis by triangulating semi-structured interviews, media and official documents analysis. Discussion follows.

6.2 Agencies' role in the implementation of EU policies

The verdict about the importance of EU agencies in the implementation of EU policies is still inconclusive. Some scholars consider agencies extremely relevant to EU policy-making (see for example Boin et. al. 2014; Busuioc, 2016; Busuioc et. al. 2011; Groenleer, 2009; Groenleer et. al. 2010; Versluis & Tarr, 2013). Others, instead, see them as the mere product of political bargains between who seeks more integration and who seeks less of it (Keleman, 2002; Kelemen & Tarrant, 2011) without adding any substantial benefit to the overall system. Wherever the truth lies, agencies are *in theory* supposed to contribute to the efficient and flexible implementation of EU policies, especially in areas requiring decisions based on technical or scientific knowledge and where uncertainty is great, such as food or chemicals policy (Groenleer, 2011). Another frequently cited reason of agencies' added value in policy making is to remedy the perceived shortcomings of the committee framework (Everson, Majone, & Schout, 1999) which was seen as 'among the least transparent policy-making processes in the democratic world' (Shapiro, 1997). The 'mad Cow' crisis in 1996 for example, demonstrated the downside of comitology, when anonymous experts were put into decision-making positions and failed to deliver efficient outputs. In contrast to committees, the inclusion of *ad hoc* bodies in the policy process seems to be more transparent. As Heidbreder (2017) points out, ambiguity in certain policy areas has led to policy failure— e.g., again, food-scandal cases – to which the reaction was to establish agencies in order to reduce such ambiguity. Agencies are, as a principle, tightly connected to the reduction of information asymmetries, efficient decision making, fair regulation by means of totally depoliticised expertise. According to the Commission 'the main advantage of using agencies is that their decisions are based on purely technical evaluations of very high quality and *are not influenced by political or contingent considerations*' (Commission of the

European Communities 2002, p. 5)⁴⁸. The European Commission has historically followed a depoliticized, expertise-based route to gain attention for policy issues and credibility to deal with them (Haverland, de Ruiter, & Van de Walle, 2018:328) maintaining that agencies work as impartial expertise providers which ease implementation issues and facilitate evidence-based policy making. Overall, agencies lack a defined and clear-cut role in the EU regulatory space because they often operate between the member states, the Commission, civil society and – in several cases – other stakeholders such as representatives of the industry. Notably agencies’ tasks vary considerably across policy areas: as I showed in [Chapter 4](#) and [Chapter 5](#) some agencies are mainly coordination providers, others produce and disseminate information; some perform risk assessments and offer highly specialised scientific evaluations. They are also more or less extensively involved in the implementation process at the EU and national level. Bodies like the European Environmental Agency (EEA) and the Fundamental Rights Agency (FRA) have ‘soft’ implementing tasks as they are engaged in producing reports, raising awareness and coordinate transnational networks of experts and practitioners in order to build best practices. Some agencies have the possibility to perform directly inspections and checks in the member states territory, such as the European Maritime Safety Authority (EMSA), the European Railway Agency (ERA) and the European Aviation Safety Agency (EASA), while others function as trainers of national officials (e.g. the European Agency for Law Enforcement and Training) and coordination of security and border management (such as Europol and Frontex). Regulators like the European Patent Office (EUIPO), the three recently established supervisory authorities (European Banking Authority; European Insurance Occupation and Pensions Agency and European Securities and Markets Authority), and the European Medicines Agency, the European Food Safety Authority and the European Chemicals Agency (ECHA) are, instead, directly engaged in supervising compliance and releasing patents, authorisations and assessments. I have

48 Communication from the Commission - The operating framework for the European Regulatory Agencies

/* COM/2002/0718 final */. Emphasis added.

shown in [Chapter 5](#) that the resources devoted to these kind of agencies in particular have considerably grown overtime in respect to agencies providing only information. Not only these agencies have been empowered economically, but they are also deeply engaged in the policy making process as their opinion and expertise is required by law to implement specific provisions of EU policies, often as a part of the European Commission's system of implementing and delegated acts. The political environment in which they work varies considerably: agencies operating in sectors such as insurances and patents are more isolated from the public as they deal with less visible policy areas (Wood, 2017). Conversely, bodies dealing with issues such as chemicals, food and health safety generally not only operate in contexts of scientific uncertainty, but also of high visibility and political pressures.

It remains unclear, beyond the legal requirements for the Commission to ask agencies' advice, how relevant they are in the supranational implementation process. Some students of EU agencies have sought to frame agencies' work within the theory of knowledge utilisation by asking how regulatory agencies use their own expertise (Rimkutė, 2015; Schrefler, 2010) and showing that they employ the knowledge they produce instrumentally, strategically or symbolically according to the characteristics of the decision making environment and the policy at stake. Researchers have also examined how agencies use their connections with external actors to manage complex transboundary problems and crises (Boin et al., 2014) and what strategies they employ in order to deliver effective policy coordination (Heims, 2016). Recently Wood (2017) has mapped EU agencies' behaviour as political actors in terms of their entrepreneurship strategies, his argument being that, given the limitations to agencies powers imposed by EU law, agencies manage to gain influence over the decision-making processes by engaging with external actors through different strategies according to the type of political environment they are facing. According to this framework, agencies dealing with politically salient issues are those which put into practice the widest array of entrepreneurial actions.

In most cases however, and especially in those where they have to provide scientific expertise, they lack the power to *decide*, although they can try to reach out to the public and make their voice as heard and credible as possible. Scholars also emphasise that, in spite of the potential limitedness of agencies impact on policy outputs given their legal status, their de facto power could be substantial. Sources of de facto agencies' power may derive from three things: the lack of expertise of the European Commission to challenge expert agency opinions; the need to safeguard the independence of the agency; and procedures which make it very cumbersome for the Commission to disregard the agency's opinion (Busuioc & Lodge, 2016; Krapohl, 2004). For example, some argue that EMA has gained de facto decision-making powers overtime, and in most instances the agency's recommendation is simply adopted by the Commission as policy without any further investigation (Sabel & Zeitlin, 2008). Likewise, EFSA's opinions are deemed very important in shaping policy outcomes given that several food regulations 'explicitly require the Commission to take EFSA opinion into account and, if Commission's draft decision is not in accordance with the opinion of EFSA, to provide an explanation for the differences' (Alemanno & Mahieu, 2008:325). Groenleer (2009) suggests that it is difficult to quantify the extent to which EFSA opinions are systematically included by the Commission in the policies it adopts, Boin et al. (2014) and Hartley (2016) have even suggested that EFSA actively *makes* policy instead of simply delivering expertise to the Commission. Finally, Rimkute applies reputational theories to EU regulators showing that 'agencies cho[o]se to focus on different aspects of their scientific conduct and sen[t]d either professional or protectionist signals to their regulatory audiences' (2018:11). Specifically, she shows how EFSA prefers to cultivate its reputation as a scientific expert in a decentralized environment where many fragmented demands are present, and no one is individually strong enough to impose one specific legitimate action. In the next section I turn to a brief overview of the Commission's powers in policy implementation.

6.3 From agenda setting to supranational implementation. The Commission's decision-making powers and their limits

As argued above, agencies' role in the implementation of EU policies varies considerably across policy area. What are, on the other hand, the actual implementing powers of their direct principal, the European Commission? In Chapter 3 I have shown that the executive leeway granted to the Commission is much more limited than the one given to the national level, and that this latter is explained by decision rules, policy complexity and conflict among Council members. Yet, what the Commission does with the leeway it has been granted (the 'post-delegation phase'), is a whole different story.

Notably the Commission is considered to be a powerful actor in *legislative* decision making (Schmidt, 2000; Wonka, 2008) insomuch as it has the formal monopoly over initiation of legislation. Agenda-setting studies in the EU have shown that the European Commission often follows a technocratic and depoliticized agenda-setting strategy (Pollack, 1994; Princen & Rhinard, 2006) to push forward its policy priorities. To substantiate its action, scholars recognise that the Commission often utilizes the knowledge provided by experts (Boswell, 2009) from different backgrounds including agencies and expert committees (Rimkute and Haverland 2015). Previous studies show that by using these institutional and informational advantages the Commission is capable of acting as a policy entrepreneur (Pollack, 1997) 'creeping through' the political agenda 'from below' (Princen & Rhinard, 2006:1123). On the other hand, Kreppel and Oztas have challenged the extent of the Commission's agenda setting powers by distinguishing between its procedural ability to initiate technical legislation and its actual political ability to shape policy outcomes (Kreppel & Oztas, 2017). Until recently, the Commission's priorities in agenda setting were depicted as driven by the pursuit of more integration in the single market, and shielded by a culture of 'permissive consensus' (Hooghe & Marks, 2009). However, the progressive politicization of EU integration has entailed 'the articulation of direct political expectations or demands from the European public towards the supranational level' (Rauh, 2016 Ch. 3.1) and consequently, the need for the Commission to take

public demands into account (Hartlapp, Metz, & Rauh, 2014; Rauh, 2016). In their landmark study about the Commission's responsiveness, Hartlapp and her colleagues (2014, Ch. 9) provide empirical evidence for this.

Evidently, while several scholars have focused their attention on the Commission's policy formulation activities, there is barely any evidence, besides very few exceptions⁴⁹, about the Commission's behaviour and preferences at the implementation stage. In particular, is the tension between technocratic and responsive decision making reflected also in the implementation of supranational provisions, when the Commission has sufficient leeway? And how relevant is agencies' expertise vis-à-vis other concerns? In the next section I overview the formal decision-making context in which the Commission and agencies operate, concentrating on a specific policy area, i.e. the approval of pesticides.

6.4 The formal decision-making context: food safety rules in the EU between the Commission, EU agencies and the member states

The approval of active substances⁵⁰ in the EU falls within the area of food and safety regulation. I selected this area of policy making because as showed in Chapter 3, it is a policy category implemented by the Commission together with EU agencies and national administrations. Moreover, in this field the Commission enjoys a rather high level of executive leeway, and in which EFSA, as I will show, is invested with a quite important supervisory role, as legislation explicitly requires the concerted action of the European Commission and one EU agency in particular, EFSA, to implement most of the supranational provisions applicable in the member states territories.

The approval procedure is lengthy and starts with an application issued by the producer to an EU country called Rapporteur Member State (RMS), whose competent authority verifies if the

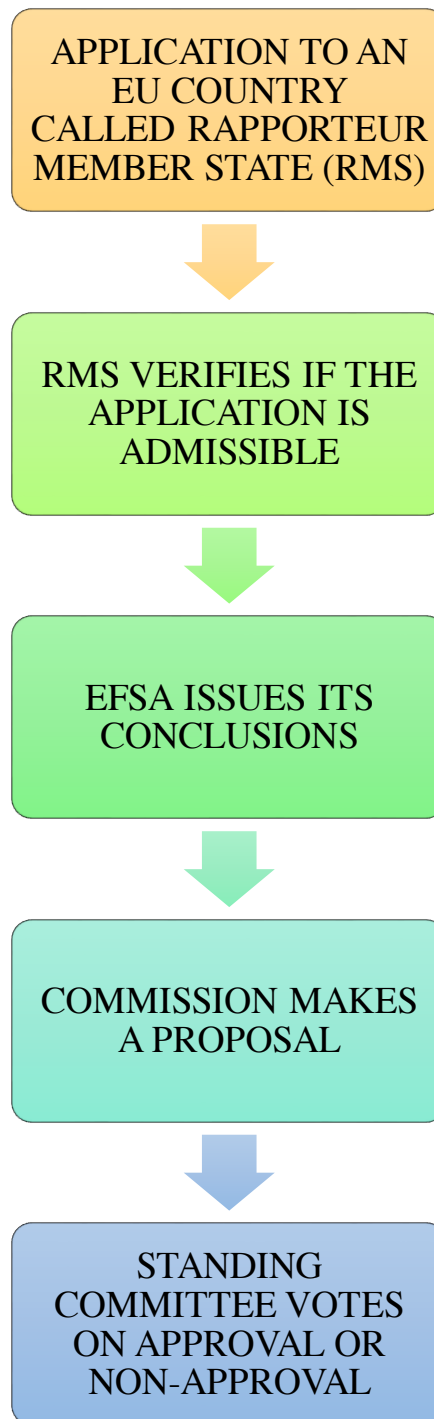
⁴⁹ (Guidi & Guardiancich, 2018) provide an empirical analysis of the Commission's technocratic behavior in the European Semester

⁵⁰. The active component used against pests/plant diseases contained in pesticide products

application is admissible. Within 12 months from the notification of admissibility, the RMS prepares a draft assessment report (DAR), assessing whether the active substance can be expected to meet the approval criteria. The DAR is then submitted to the Commission and EFSA. The EFSA peer review comprises the following steps: Commenting; Consideration of the comments; Expert meetings (optional); Drafting of the EFSA conclusion. Where appropriate, EFSA can organise a consultation of experts, including experts from the rapporteur member states. EFSA has to adopt within 120 days after the commenting period a conclusion on whether the active substance can be expected to meet the approval criteria. This period is extended to 150 days in case an expert consultation takes place. Within six months of receiving the conclusion the Commission presents a review report and a draft regulation on approval or non-approval of the active substance to the relevant comitology Committee through the Examination Procedure. The Committee votes and, depending on the outcome, the application is finally either approved or rejected.

Figure 6.1 briefly summarises the procedure up to the Committee vote.

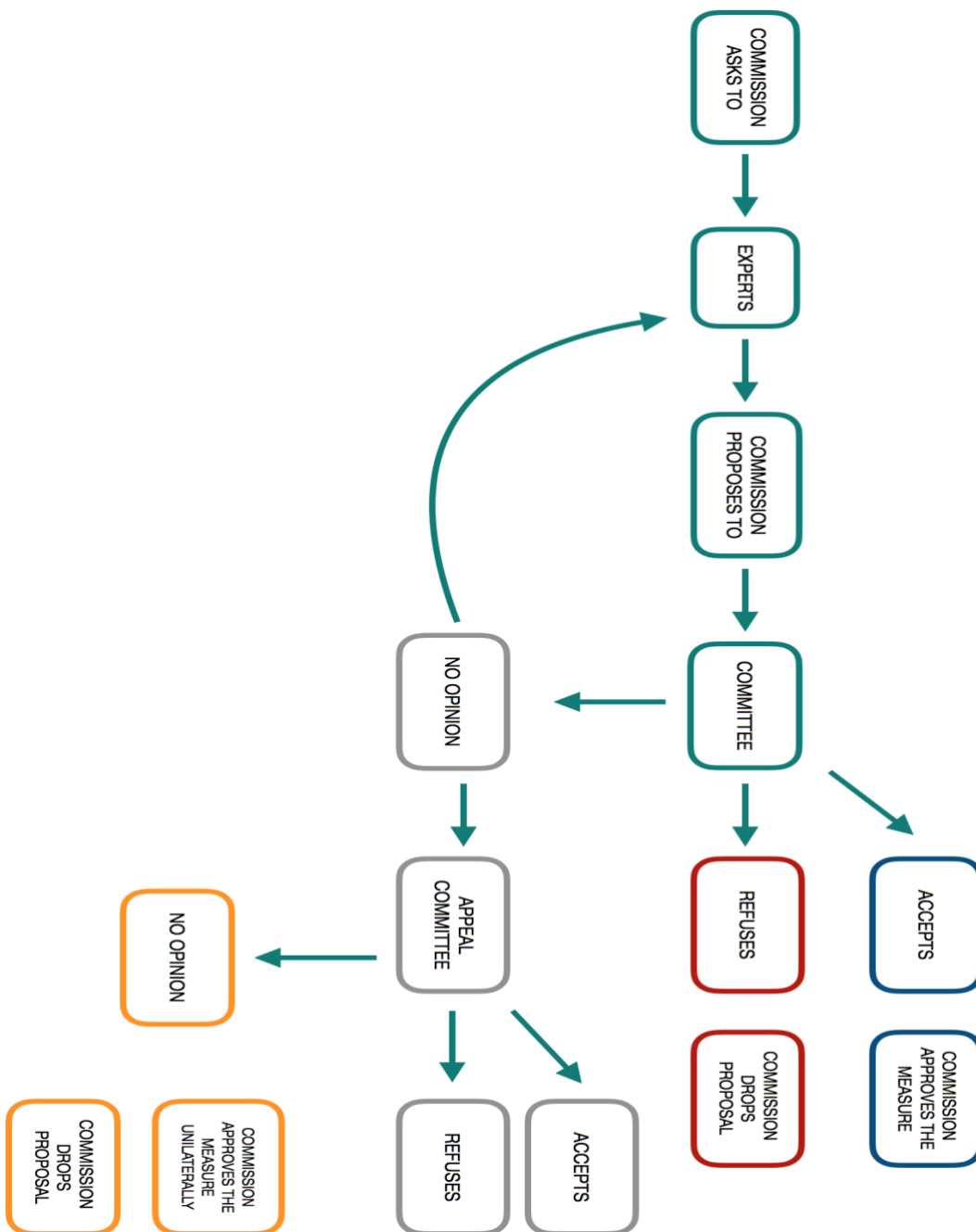
Figure 6.1: Active substances approval procedure



The outcomes of the comitology examination procedure, as shown in Figure 6.2 in the next page, can be of three types: member states can either adopt the proposed measure by qualified majority (1); they can reject it by qualified majority (2); or, when they fail to reach the required threshold, they

have the possibility to deliver a “no opinion” vote (3). If this happens, the same proposal is voted in an ‘appeal committee’ composed by government ministries. If no qualified majority is reached again, the Commission *can* choose either to carry out the proposed implementing measure, or to submit a new version to the committee, taking into account the views expressed in the previous committees. In the next section I briefly overview the literature about comitology procedures.

Figure 6.2: Comitology examination procedure



6.5 Comitology and its shortcomings

The above described approval procedure involves the participation of the Commission, EFSA and the member states and the final approval of each specific measure in this context depends, in practice, on the outcome of a vote in the examination committee.

The EU system of comitology is supposed to be designed in order to discuss the implementation of measures before they are adopted so as to ensure that these measures are applicable to the situation in the member states (Groenleer, 2011:6). Most of the literature in this field agrees that comitology works as an intergovernmental arena in which member states exert their police patrol over the Commission, while pursuing their own political agendas (Ballmann, et. al. 2002; Franchino, 2000; Pollack, 2003; Steunenbergh, Schmidtchen, & Koboldt, 1999). Several scholars have criticised the comitology system (see Shapiro, 1997) because it lacks transparency and has a widely consensual nature (Christiansen & Larsson, 2007; Joerges & Neyer, 1997; Wessels, 1998). These features of comitology procedure – secrecy and consensus culture– make it hard to analyse the role of the European Commission and agencies in this context. However, there are situations in which these procedures are much more conflictual than they seem, especially in regulatory policies (Dehousse et al. 2014). Such *dissensus* emerges very clearly from the set of rare ‘no opinion’ cases in which the Commission can decide to act alone, because governments representatives fail to reach a qualified majority to either approve or reject the measure⁵¹. This is a typical situation in which the Commission enjoys considerable leeway given the indecisiveness of national governments. How does it use this discretion? In the next section I draw competing theoretical expectations about the way the Commission behaves in the context of comitology procedures. I then proceed to the analysis of a case

⁵¹ about 3% of regulatory and examination committee votes ended in a ‘no opinion’ outcome in 10 years, 20% of which were related to food and health legislation. Retrieved from comitology register: <http://ec.europa.eu/transparency/regcomitology/index.cfm?do=Search.Search&NewSearch=1> (Last accessed 4 June 2018)

falling within the examination procedure— namely, the Glyphosate renewal process (2015-2017) resulted in a 5-year license renewal—in order to grasp empirically the logics of the Commission’s decision making.

6.6 Commission’s images and logics of decision making in comitology

This section introduces the theoretical arguments in support of my expectations about the role of the Commission as a decision maker in comitology. I argue that the role and preferences of the Commission are influenced by the image we have of this institution: just a technocratic agent of the member states that follows strict evidence-based criteria? Or a ‘responsive technocracy’ (Rauh, 2016) seeking reputation? There is no apparent reason not to think that it may correspond partly to one image and partly to another, especially in light of recent literature offering examples of the Commission acting also politically (Bürgin, 2017; Hartlapp et al., 2014). Following these two images and drawing on different theoretical frameworks I derive three propositions related to the Commission’s behaviour in policy execution.

In line with the first image, and as I overviewed in [Chapter 3](#) and [4](#) a number of scholars conceive the Commission as an agent of the member states, that decides mainly by following evidence-based criteria and scientific knowledge. Policy makers can choose to rely on experts either as functional tools to solve scientific uncertainty, or symbolic tools to substantiate their preferred action and/or prove that government’s actions are credible and legitimate. Boswell (2009) has analysed how the Commission utilises expert knowledge in order to legitimise its action and substantiate its policy preferences. Boswell’s unit of analysis – immigration– does not require hard scientific evidence, and the Commission does not have direct implementing powers in this area. Conversely, when the Commission is delegated tasks requiring scientific expertise that its officials do not have, the need to rely on trusted expertise is a functional priority, and EU agencies are involved in the process (Majone, 1994; Thatcher, 2011c). It follows that, when it has to implement a measure, the Commission is likely

to rely on the most trustworthy and available source of expertise it has—the one provided by EU agencies— in order carry out its mandate effectively (Schrefler, 2010).

Proposition 1: The Commission strictly relies on the expertise provided by the competent EU agency

When the Commission receives tasks from the member states, it is supposed to perform them with different degrees of discretion (Franchino, 2007; Thomson & Torenvlied, 2011) within the boundaries dictated by primary and secondary law. The preferences of member states can therefore impose a limit to the set of options available to the Commission (Tsebelis & Garrett, 2000). Some evidence suggests that the Commission’s proposals in comitology tend to reflect ‘not only ... [its] interest but also what it assumes to be in the interest of more than a qualified majority of the other parties involved’ (Joerges & Neyer, 1997:617-18). The Commission’s implementing actions are likely to follow such a compromise logic, given that in about 90% of cases, measures are adopted at the first voting round⁵². It follows that the Commission should drop a measure (or not even propose it) unless it knows a qualified majority is in sight.

Proposition 2: The Commission does not propose a measure unless it knows this will be backed by at least a qualified majority in comitology committee

According to the second image identified at the beginning of this section the Commission can be conceived as a policy entrepreneur motivated by its own preferences and concerned by keeping a certain ‘reputation’, i.e. ‘a set of symbolic beliefs about the agency’s capacity, history, and mission that are embedded in multiple audiences’ (Carpenter, 2010:33). There is contrasting evidence and theorization about who/what the Commission’s audience is: some scholarly accounts agree that the Commission derives its legitimation from the added value it produces for its stakeholders (e.g. Majone, 1996; Menon & Weatherill, 2002). However recent studies suggest that the Commission is

⁵² Source: comitology register

also responsive to public sentiment, particularly in consumer policies (Rauh, 2018). According to van der Veer & Haverland (2018) a regulator's reputation is a vital asset to the safeguard of its institutional position: I consider food and health safety a regulatory policy field in which reputational concerns are particularly pressing for the Commission because it is very valued by public opinion. In fact, while the original objective of the EU is ensuring the well-functioning of the internal market, the primary objective of the General Food Law (Regulation 178/2002) is *consumer's* and *public* health protection. I deem food and health safety an area in which reputational concerns towards citizens are particularly pressing for the Commission because it is very valued by citizens and consumers. In this policy sector the Commission is the actor taking implementing– risk-management– decisions, for example to renew a license or to withdraw a dangerous substance from the market and therefore, it is the one bearing the highest political costs of unpopular decisions, being the Commission publicly accountable for them.⁵³ According to Maor (2011) there are two kinds of reputation that can be developed specifically to food regulation: 'a reputation for scientific expertise [...] and a reputation

⁵³ executive decision-making in food policy presents a controversy between a precautionary and an emergency approach. This debate originates from the recognition of risk as something that cannot be eliminated, but only minimized. The presence of a risk is what leads from an emergency administration to a precautionary one. Namely, an emergency-based administration activates in presence of a crisis, while a precautionary-based administration activates in presence of a risk. The precautionary principle can be invoked when a phenomenon – or a product, or a process – can have potentially dangerous effects, identified through an objective and scientific assessment, if this assessment cannot determine the risk with sufficient certainty. This principle is recognized by several international conventions such as the Sanitary and Phytosanitary Measures (SPS) Agreement, and it is cited in Article 91 of the Treaty on the Functioning of the European Union (TFEU). Therefore, when scientific uncertainty is high this principle comes into play, ensuring the less risky outcome. Risk-based regulation has become a paradigm at the EU level, and several policy sectors are regulated according to the risk analysis principle: risk assessment, risk management, and risk communication. I deem necessary to take into account this paradigm when investigating the EU executive decision-making, particularly regarding food safety and consumer protection-related issues, which can be characterized by both high scientific uncertainty and politicization.

as a guarantor of public safety in the media' (Maor 2011: 558). The 'right' way to pursue the former is to approve safe substances (and ban the unsafe ones), while to pursue the latter is to provide timely public warning. As a consequence, expertise-driven bureaucrats will be, for example, reluctant to withdraw a substance previously approved because that would represent a failure in their previous evaluation.

Conversely, bureaucrats bearing a reputation as consumer protectors will be keen to do so because that would uphold their role. Given the political role of the Commission in food policy and related issues, the Commission is expected to respond to a certain audience which, in this case, are EU citizens and consumers. Existing literature has highlighted the role of beneficiaries of public policies as ultimate actors of the regulatory chain (Abbott, Genschel, Snidal, & Zangl, 2012; Goodin, 2007; Koenig-Archibugi & Macdonald, 2017; Rehfeld, 2006; Urbinati & Warren, 2008), and underlines that various modes of engagement of beneficiaries can lead to consequences for processes and outcomes. Particularly, within food safety regulation, beneficiaries are represented by regulators, the European Commission in this case.

Proposition 3: The Commission cares about the preferences of its audience for reputational reasons

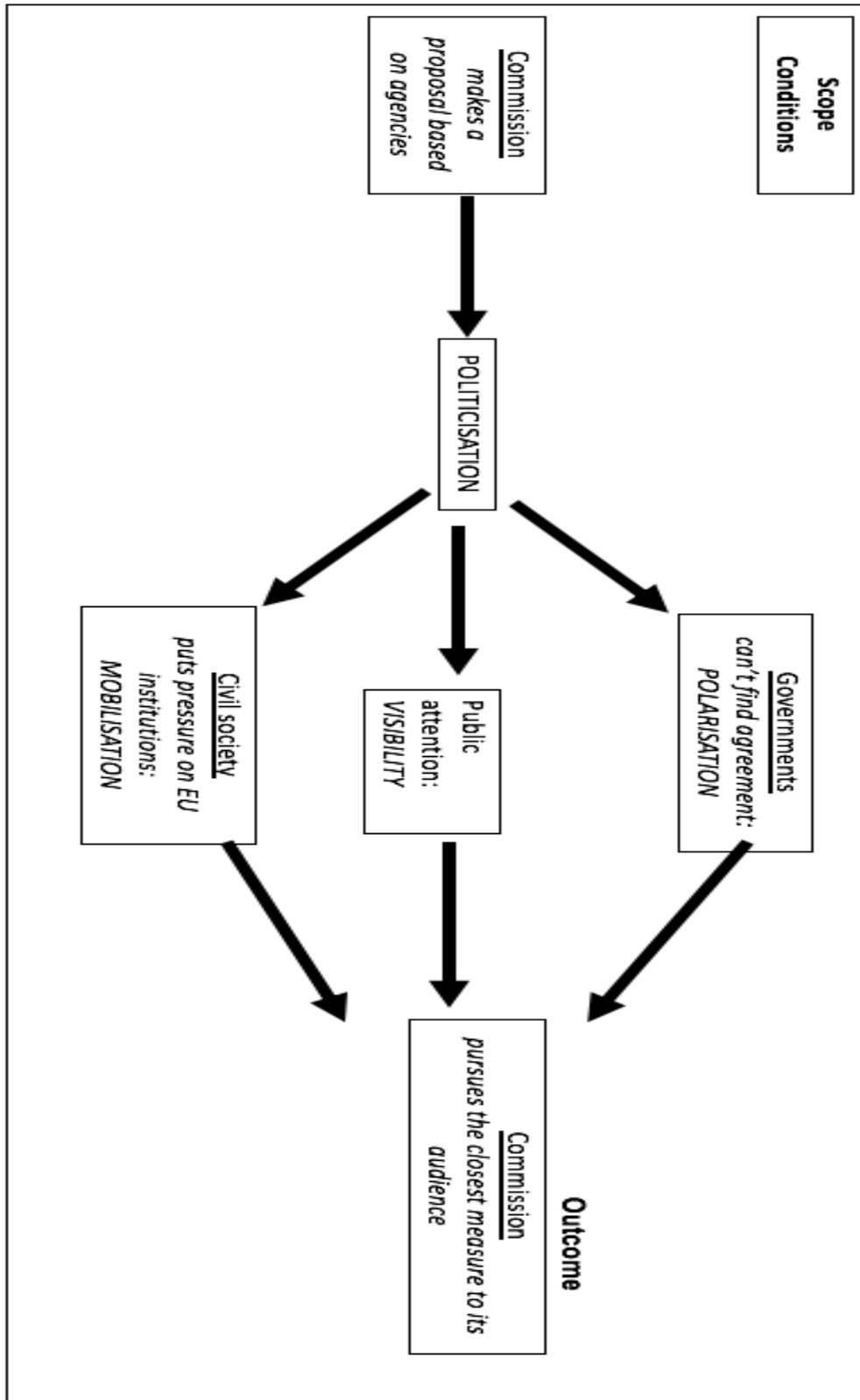
Given the theoretical propositions just outlined, we argue that, on the one hand the Commission seeks evidence-based decision making and member states' consensus; on the other, it cares about safeguarding its own reputation vis-à-vis its audience. I pose that reputational concerns in comitology become a priority for the Commission just when governments' preferences are deeply divided and the issue at stake is highly visible. In fact, in absence of issue polarisation at the committee level (resulting in no opinion votes) the Commission does not have the power to decide autonomously; and in absence of visibility the Commission does not need to compromise with the public, as this latter is unaware of the process and therefore unable to mobilise.

In summary, the main claim is that in a politicised context, characterised by polarisation, visibility and public mobilisation (Rauh, 2016; de Wilde, 2012) the Commission is keen to compromise with its audience. Table 6.1 summarises the scope conditions on which I based this major theoretical claim, while represents graphically the causal mechanisms involved, while Figure 6.3 shows graphically the identified causal chains.

Table 6.1: Scope conditions

1. Comitology decision-making process involving agencies
2. Scientific Uncertainty
3. A decision must be made
4. Divided governmental preferences
5. A salient issue for the public
6. Public must be able to be heard by EU institutions

Figure 6.3: Causal chains



6.7 Research design

In order to test the above prepositions and consequent claim, I need to observe empirically the causal mechanisms involved and the associated outcome. According to Mayntz, mechanisms state how and by what intermediaries steps, a certain outcome follows from a set of initial conditions (2004: 241). In this sense, narrative explanations are causal reconstructions of events, and the activation of one or more mechanisms in combination can be seen to have given rise to event trajectories (Barzelay, 2007: 528). As mentioned in the introductory chapter, individuating the causal mechanisms underlying an observed phenomenon is crucial to the purpose of scientific research. Mechanisms are indeed widely recognized as factors that have specific consequences for specific actors in a decisional network (Barzelay 2007:533). I focus on causal mechanisms by thoroughly analysing the system of actions and interactions, in time and space, between the different actors along the decision-making process in relation to specific outcomes (Kaufmann & Majone, 1986; Righettini & Bazzan, 2017: 312; Klijn et al. 2010). To do so, I employ theory-testing process tracing (Beach & Pedersen, 2013: 56-60), a deductive approach recognised as ideal to grasp the interlocking parts of a mechanism leading from X to Y. I am aware that process tracing maximizes the internal validity of causal inferences, whereas it does not generate any external validity per se, and therefore makes generalization hard (Schimmelfennig, 2015:103). Yet, I can still prove that under certain scope conditions the theorized mechanisms actually unfold. According to Beach, the analytical value added of unpacking causal mechanisms in detail through process tracing is twofold. ‘First, unpacking mechanisms exposes the causal claim to more logical scrutiny because one cannot just postulate that a cause like norms is linked to behavioural change through “mechanisms” described with terms like “personal moral convictions” or “world opinion” [...]. By unpacking a causal process, I am better able to identify logical shortcomings in our theories and also critical links in causal stories that are particularly interesting to elaborate on. More logical scrutiny about causal logics results in better causal theories, other things being equal’ (2017:2)

After theorising the mechanisms through a set of propositions, I specified the scope conditions under which they are supposed to work. I then test the existence of these causal mechanisms within the selected case, the Glyphosate's license renewal. In doing so, I divide the case into episodes and underline the empirical manifestations of the theorised mechanisms. I purposely chose this case because its salience and recentness make it possible to observe dynamics which otherwise would be hidden. The Glyphosate renewal is indeed one of the most debated and recent among the set of cases in which the Commission can make a decision, based on the opinion of an agency, given the lack of a qualified majority in comitology. Furthermore, the politicisation of this issue was really high.

I triangulated the information available from official documents and media outlets with semi-structured interviews conducted with actors directly involved in the process⁵⁴. This way I made sure to crosscheck the data in a consistent manner and empirically demonstrate the plausibility of the theorised mechanisms.

6.8 Case description: The Glyphosate renewal process

6.8.1 T1. A standard renewal procedure

The active substance Glyphosate was approved for the first time for weed-killing purposes in the EU in 2002: the license required re-approval after a period of 15 years to the date. In 2012, in line with provisions of Article 5 of Directive 91/414/EEC, several companies, under the name of 'Glyphosate Task Force', notified the Commission about their wish to renew the approval of the active substance Glyphosate. In accordance with Regulations 1107/2009 and 1141/2010 the process of renewal of the authorisation for this substance was initiated. The Glyphosate's rapporteur's competent authority, the German Bundesinstitut für Risikobewertung (BfR) delivered its first draft report in December 2013. On 12 March 2014 the EFSA launched on its website a public consultation on the draft Report of BfR.

⁵⁴ List in [Appendix 5](#)

6.8.2 T2. The turning point: EFSA vs AIRC and issue visibility

The turning point in the— so far standard— renewal process was determined by an unexpected event: while EFSA was conducting its assessment, on 20 March 2015 the International Agency for Research on Cancer (IARC) published a report stating that Glyphosate was ‘probably carcinogenic to humans’ (IARC, 2015). Provided that Glyphosate, employed by the multinational Monsanto in the preparation of a pesticide called Roundup— is the most widely used herbicide across the EU territory, the effect of this assessment had a high resonance on world-wide and EU media.

On 30 April 2015 EFSA received a further mandate by the Commission to take into account IARC publication in its final assessment. For this reason, EFSA’s deadline was extended to the end of October.

EFSA eventually delivered her risk assessment report on 12 November arguing that ‘Glyphosate is unlikely to pose a carcinogenic hazard to humans’ (EFSA; 2015 a) and underlining that ‘unpublished studies that were the core basis of the peer review evaluation were not available to the IARC experts as reported in the IARC monograph on Glyphosate’ (EFSA, 2015 b). This opinion, which went diametrically against the IARC’s assessment, met on the one hand an outraged reaction from some parts of the scientific community while, on the other, was saluted by farmers associations and Glyphosate producers, for which the renewal’s stakes were very high.

6.8.3 T3. Gridlock, polarisation and the failure of the first examination procedure

At this point, the decision to renew or not to renew the license was pending upon a vote in the Standing Committee on Plants, Animals, Food and Feed (PAFF), a vote that the Commission seemed reluctant to call. Indeed, had the committee failed to deliver any kind of opinion on its proposal, the Commission would have had to decide whether acting unilaterally, or just keeping delaying the decision. In fact, in March 2016, Italy, France, Sweden and the Netherlands had informally opposed a new 15-year license for Glyphosate at a committee meeting which had been expected to reapprove the substance. Earlier on, the Swedish environment minister, Ms. Romson, had stated that they would

not 'take risks with Glyphosate' and that they would 'propose that no decision is taken until further analysis has been done and the EFSA scientists have been more transparent about their considerations' (The Guardian, 2016).

In the meantime, on 14 April 2016 the European Parliament voted in single reading a motion for a non-binding resolution urging, *inter alia*, the Commission to renew the marketing approval of Glyphosate for just seven years, instead of fifteen, and for professional use only. It passed with 374 votes in favour, 225 against and 102 abstentions.

On 19 May the vote on Glyphosate renewal was once again delayed because it would not have reached the required majority: in fact, this time, Germany claimed to be willing to abstain due to divisions within the government on the matter, and France did too (De Carbonnel, 2016).

On 6 June 2016 the first Committee vote took place. On that day the Committee delivered a 'no opinion' vote on a Commission's proposal of 10-year renewal. 20 members voted in favour, one against (Malta) and 7 abstained (Germany, France, Italy, Greece, Austria, Portugal and Luxembourg). In accordance with the examination procedure, on 24 June an appeal committee was reunited, which however failed to deliver an opinion once again. This time, France joined Malta in its opposition, while Bulgaria joined the abstention side.

6.8.4 T4: The Commission's delay strategy

The European Commission then had to decide by 30 June 2016 whether or not to keep Glyphosate on the EU list of approved active substances. Otherwise, after a six-month 'grace period', Member States would have been obliged to remove it from the market. Eventually the Commission decided to extend Glyphosate's license for 16 extra months pending upon a further assessment of the substance classification by the European Chemicals Agency (ECHA). On 15 June 2017, ECHA's Committee for Risk Assessment (RAC) submitted its independent scientific opinion to the European Commission concluding that the available scientific evidence did not meet the criteria to classify Glyphosate as a carcinogen (ECHA 2017).

In the meantime, a European Parliament's Plenary session on 13 June 2017 gathered in a debate with Health Commissioner Vytenis Andriukaitis about Glyphosate. Soon after, the Commission's spokesperson Pedraru said that a 10-year renewal, 5 years less than the original proposal, 'should be a good starting point for discussion' (Michalopoulos 2017).

6.8.5 T5: Mobilisation: the European Citizen Initiative and EFSA under the spotlights

This happened just before a European Citizen Initiative (ECI) was launched (and signed by over 1 million people) to ban Glyphosate from the internal market. On the same day the Commission discussed with the PAFF Committee the state of the art on Glyphosate approval. As expected, the Commission proposed to renew the license for 10 years, instead of the regular 15 years. At the PAFF meeting of 20 July, it asked member states to comment on this proposal.

In August, the EFSA published a peer reviewed risk assessment saying that Glyphosate is not an endocrine disruptor, following to a request of the Commission of 27 September 2016. A day after, the media reported that EFSA had copied and pasted large portions of the dossier from the Monsanto application to BfR, which intensified the debate around the renewal (The Guardian, 2017). As a consequence, the European Parliament's Environment and Agriculture Committee held a public hearing on the 'Monsanto Papers' on 24 October 2017. The European Parliament subsequently called on the Commission to 'adopt the necessary measures' to phase out the use of Glyphosate 'no later than 15 December 2022' (European Parliament, 2017). The day after, the Commission decided not to proceed on a formal vote because committee members were still deeply divided on the matter.

6.8.6 T6: The second comitology procedure and a 5-year renewal

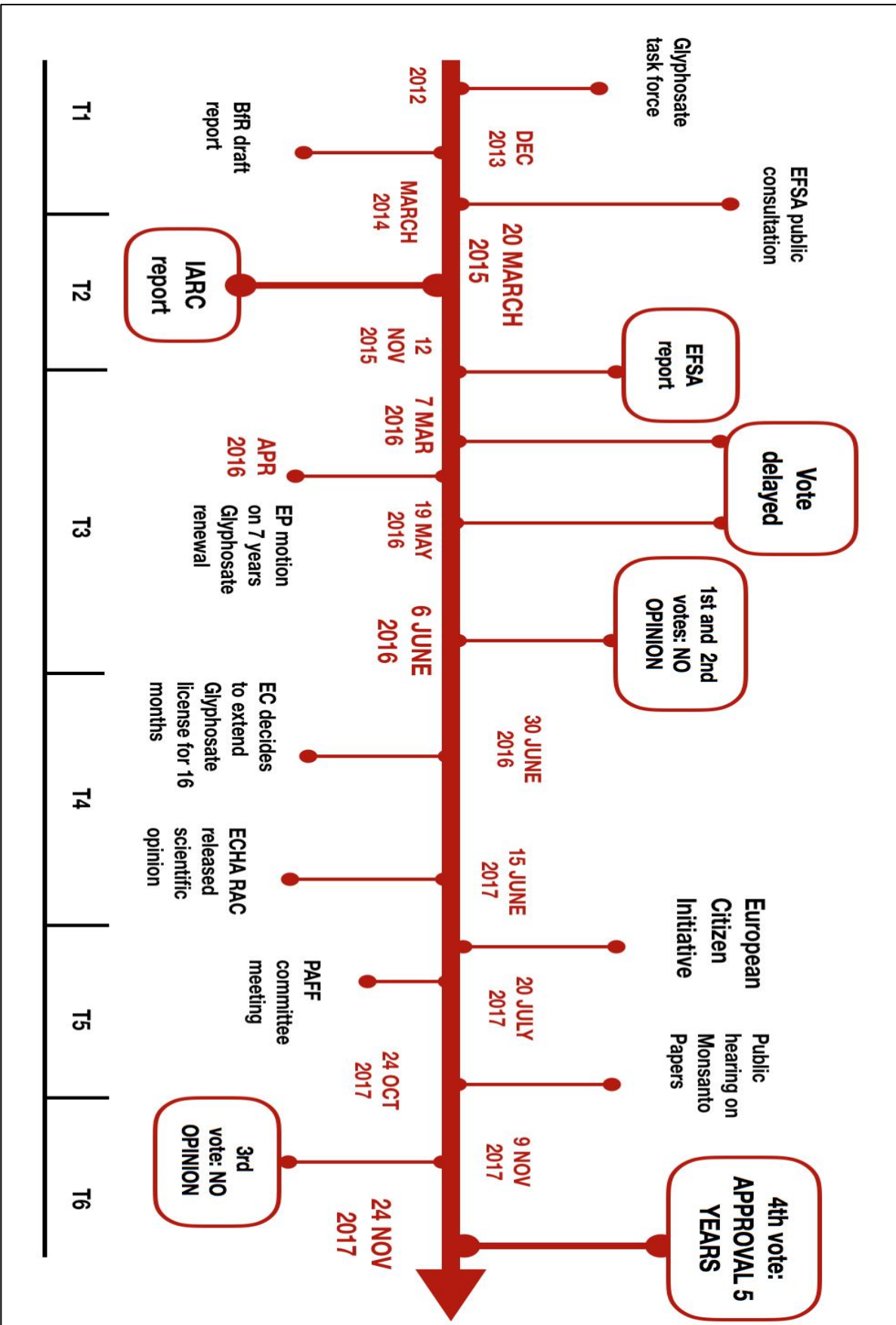
On 9 November 2017 the third vote on Glyphosate renewal took place, with the Commission proposing a renewal of only 5 years. The meeting once again resulted in a no-opinion outcome. Interestingly, the member states who voted against renewal were much more numerous than 2016: Belgium, Greece, France, Croatia, Italy, Cyprus, Luxembourg, Malta, Austria. While Romania, Poland, Germany, Portugal Bulgaria abstained from vote, and the remaining 14 backed the proposal.

The Swedish government published a statement on 9 November, suggesting to produce more research on the matter and in the meantime approve the substance renewal to facilitate farmers' work (Government office of Sweden, 2017).

The Appeal Committee then reunited on 27 November and eventually approved the renewal of Glyphosate for 5 years instead of the 10 which had been envisaged by the former proposal. This time Belgium, Greece, France, Croatia, Italy, Cyprus, Luxembourg, Malta, Austria remained against the proposal, while those who had abstained in the earlier round decided to back the authorisation. Germany, unexpectedly and against government's directions, voted in favour, securing a positive outcome: since the beginnings Germany's line had been to abstain given the divisions between the social democrats (anti-glyphosate) and CDU. When the government crisis started, after the September federal elections, the Agriculture minister Schmidt took the decision 'on his own' in spite of Merkel's directions.

Figure 6.4 summarises the case timeline

Figure 6.4: Case timeline



6.9 Analysis

In Table 6.2 below, I link the steps of the theorised causal chain to the observable manifestations within the case under analysis.

Table 6.2: Steps in the causal chain and observable manifestations

Steps in the causal chain	Empirical manifestations
Trigger: Commission makes a proposal based on agencies' assessment	EFSA delivers a report and the Commission proposes a measure in line with the content of the report (T1)
Raise in public attention: Visibility	IARC's report contradicts EFSA's assessment (T2)
Governments cannot find an agreement: Polarisation	Two no opinion votes in PAFF committee (T3) Commission's delay strategy (T4)
Civil society puts pressure on EU institutions: mobilisation	European Citizens' initiative; European Parliament actions (T5)
Commission pursues closest possible measure to its audience	Final Commission proposal: 5 years instead of 15 (T6)

While the renewal procedure started as a standard scenario (T1), IARC's report on potential Glyphosate's carcinogenicity fundamentally served as a catalyser of visibility: since its assessment, the diatribe about the dangerousness of Glyphosate was inserted at the centre of an ongoing debate about the alleged flaws attributed by civil society to the system of pesticide approval in the European

Union. In fact, EFSA retrieves data from applicants and most of the time does not challenge them, but simply inserts them in its final assessment (civil society interviewee #1). IARC's report therefore signified a quite ideal opportunity for civil society, both to make health safety issues connected to pesticide use more visible, and to challenge the EU risk assessment system and push to change it (civil society interviewee #2). The open controversy between different international authorities - IARC on the one hand, and EFSA and ECHA on the other- gave also leverage to states which already had interest in the matter to politicise the issue: at T3, March 2016 in particular, was the moment in which the Glyphosate renewal process polarised and took a political turn (civil society interviewee #2).

Since then and for the whole period until November 2017 both EU agencies- the EFSA and ECHA- were being challenged as unreliable and affiliated with the industry, while member states governments were unable to take a common position because some were concerned about hostile public opinion (interview with ex DG SANCO⁵⁵ member), while several others were worried about producers and farmers interests (civil society interviewee #1; interview with diplomat #1). On the top of that, the Commission had a major concern about the detrimental impact that a potential ban on Glyphosate would have had on trade agreements with third countries- an issue which makes Glyphosate simply 'too big to ban' (civil society interviewee #2).

The Commission's behaviour during this lengthy process changed, so as to face upcoming problems: the first Commission's proposal voted by the PAFF Committee in June 2016 (T3) started from a renewal of 10 years (instead of 15), in response to the call of states worried about IARC's report. In line with Proposition 1, the Commission limited to the standard procedure asking for agencies' assessment (EFSA first, ECHA later on), and then, according to Proposition 2, Commission proposed a 5-year reduction in the (failing) attempt to seek a compromise between member states. However,

⁵⁵ Directorate General for Health and Consumer Protection

when the issue became politicised and dramatically visible to the public, especially when citizens mobilised through the ECI (T5), the European Commission was ultimately obliged to cover the role of main decision maker (expert interviewee #1). The Commission found itself in a political impasse in which it could not seek a clear position by member states— as, clearly, a consensus was not present— and had to decide how to behave: to base everything on its trusted experts (Proposition 1) and renew Glyphosate’s license, or to respond to citizens ad ban it (Proposition 3)? The Commission was hesitant to do either of the two: on the one hand, to follow agencies’ opinion *tout-court* and take on leadership in the matter – reapprove the substance—would have been highly unpopular to the eyes of public opinion. On the other, to ban would have meant applying very strictly the precautionary principle and putting IARC’s assessment before EU agencies.

The Commission’s first strategy was to delay the decision (T4) by renewing the license for just 16 months pending upon a re-approval in comitology. The second was blame-shifting (interview with diplomat #1): this emerges clearly from Mr Juncker’s speech about the state of the Union 2016, claiming that 'It is *not right* that when EU countries cannot decide among themselves whether or not to ban the use of glyphosate in herbicides, the Commission is *forced* by Parliament and Council to take a decision. So, we will change those rules – because *that is not democracy*' (Juncker, 2016, Emphases added). With the situation at a stalemate, Juncker’s statement translated into a proposal (14 February 2017) to revise comitology rules in order to disregard abstentions at the last stage of the comitology procedure (appeal committee) and overcome this kind of impasses.

One year later, during the second round of comitology votes, the Commission’s revised proposal started from a renewal of 5 years (T6) which, was not justified neither on the basis of agencies’ assessment, nor by member states’ preferences: indeed, by upholding a 5-year proposal Commissioner Andriukaitis secured even less support than before. Romania, Poland and Bulgaria did not back the 5-year proposal because they did not see any valuable reason not to have a 15 or 10-year one given the positive assessments by EFSA and ECHA (civil society interviewees #1 and #2;

interview with MEP #1; Interview with diplomat #1). Belgium and Austria, in which the impact of the ECI had been very strong—third and fourth largest number of signatures after Germany and Luxembourg—decided to oppose (Interview with MEP #1). Given that Romania Bulgaria and Poland represent 13% of population, while Belgium and Austria about 3%, the Commission would have benefited more, in terms of approaching a larger consensus, from sticking to a 10-year proposal. In sum, the Commission did not propose 5 years to follow agencies' assessment (Proposition 1) or in order to gather a higher consensus among states representatives (Proposition 2) but, rather, to give signals of cooperation to pressing public concerns (Proposition 3) driven by civil society organisations and the European Parliament (civil society interviewee #2, Interview with diplomat #1). The attitude of the Commission is also exemplified by Commissioner Andriukaitis's hyper-critical rhetoric against member states: on 13 November Commissioner spoke in front of the European Parliament about the status of the implementation of the pesticide directive. He openly blamed national implementation deficits as the main responsible of civil society frustration over Glyphosate. He then engaged in a heart-felt speech defending the Commission's legal obligation to take a stance on the matter by the end of November:

I am legally obliged to finalise the situation about Glyphosate, obliged by the law adopted by this very house. We cannot phase out the substance because there is no legal ground to do that. Who will pay fines if I take such measure? They will go to court, because I am the one legally responsible. What can we do here? For me, it is crystal clear, science-based arguments are on the ground. Some say I am avoiding the precautionary principle

– NO! I asked ECHA to assess once again because of the precautionary principle, and now I have no grounds to use it! (Andriukaitis, 2017)⁵⁶

The empirical evidence just presented shows that the Commission's attitude was extremely political, characterised by blame-shifting and delay strategies, aiming to make states take the political responsibility it was not willing to take. The Commission evidently did not pursue a complete alignment with public opinion as a ban was never proposed. However, it sought to propose a 10-year license reduction, which will make possible to lobby against renewal again in less than two years from now (civil society interviewee #1; Interview with diplomat #1), considered that the re-evaluation process lasts three years.

Ultimately, the slim 5-year renewal (T6) was secured by an unexpected 'change of heart' of Mr. Schmidt, Germany's agriculture minister– who acted against the directives given to him by Ms. Merkel. Without Germany backing the proposal, the Committee would have probably once again delivered a 'no opinion', as Germany's line was to keep abstaining given the delicate political situation between Merkel's party and the social democrats (interview with MEP #1), and that Germany notably enjoys the highest share of votes under QMV given its population size. The other member states who wanted a longer renewal, such as Poland and Romania, changed their mind during the appeal committee 'in a spirit of compromise' (European Commission 2017). This was mainly due to the fact that persistent stagnation was not possible in a long-term perspective, neither for the internal market's economy, nor for the image given to citizens (expert interviewee #1; Interview with diplomat #1). At some point no one would have wanted a 'no opinion' outcome, and everyone would have made some concessions in order to reach an agreement (interview ex DG SANCO member), although which one is uncertain. I am hardly able to speculate about what would have happened

⁵⁶ The legal ground mentioned by the Commissioner is true just to a certain extent, namely, the Commission can take decisions which are different from what the agency recommends, but only if the Commission explains the reasons in detail.

otherwise (interview with civil society 1 and 2; interview ex DG SANCO member). It is hard to tell, for example, if the Commission would have, at that point, proposed a ban or decided unilaterally to renew the license taking political responsibility for that.

6.10 Discussion

The case of Glyphosate is a very good example of public opinion succeeding in influencing decision-making in the most secretive procedure of the EU. The Commission was clearly influenced by public sentiment in its decision of not taking responsibility for a renewal, and of considerably reducing the proposed amount of years of the herbicide's license.

Hutter and colleagues (2016) argue that if an issue is not debated in public, and is not articulated by political organizations, it can only be politicised to a limited extent. The case of Glyphosate shows that when an issue is severely politicised, this can influence the logics of decision making, even in the EU comitology system: not only governments, but also the Commission, need to take into account actors which are normally outside the process of supranational implementation. Moreover, when expertise, politics and public opinion intertwine, 'evidence-based' policy making is less of a priority: in fact, in this situation the Commission relied on agencies' scientific knowledge so long as the issue was not under the public eye. When politicisation kicked-in, I found, in line with Hartlapp and colleagues, 'blame-avoidance strategies where the Commission tries to avoid or to postpone position-taking until public salience fades away' (2014:6). Public salience however, did not fade away this time. The delays and blame-shifting game the Commission and national governments played with each other, and Commission's ultimate unwillingness to take an autonomous decision, highlight how the comitology system can work as a shield for decision makers. Rules of comitology in fact, allow both states and Commission representatives to delay and manipulate policy decisions on the basis of dynamics which the public is generally unaware of. In the case of Glyphosate, the visibility of the issue put decision makers under strain, and partly 'unshielded' the elites deciding behind closed doors.

What are the normative implications of these findings? Does the Commission's responsiveness to public sentiment represent a positive factor entering the domain of supranational decision making, or could it be detrimental to the quality of policy outputs? On the one hand, politicisation has a constraining effect: becoming responsive puts at risk the Commission's ability to find 'cooperative policies that instil consensus among [...] member states governments' (Rauh, 2016: Ch. 1). On the other hand, the Commission's responsiveness can enhance the quality of the regulatory outcomes under the principle of openness, that is, an emerging rationale of the EU executive implying different forms of participation. This principle, sanctioned by the Treaty of Lisbon⁵⁷, imposes on the EU institutions 'a prescriptive, proactive duty to seek broader participation [...] in order to attain broader democratic objectives' (Alemanno, 2014: 85). In sum, the responsive attitude of the Commission could enhance legitimacy and help solving the problem of the democratic deficit of the EU.

What was EFSA's place in the overall procedure? The case suggests that the impact of the expertise provided by EFSA decreases as the politicisation of the issue increases. The agency's assessment was considered but the Commission but became less relevant within the final decision.

I started this chapter by asking how the Commission and agencies use the powers they are delegated, what is the outcome of that, and why. It seems, from the above analysis, that the Commission is willing to take science-informed decisions so long as they are not too unpopular, while the agency per se does not have enough leverage to influence the policy process when politicisation is high. Overall, I believe that this chapter invites to reflect upon what Hooge and Marks refer to when they talk about post-functionalism 'as agnostic detachment about whether the jurisdictions that humans create are, or are not, efficient' (2009:2). Indeed, the Glyphosate renewal procedure hints to the fact that European decision making is not just a product of calculations targeted to the achievement of the most efficient result. The behaviour of the Commission in this case in particular suggests that there

57 Art. 15(1) TFEU: "In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible."

is more at stake than just policy efficiency, and especially when we enter the realm of politicised issues. In spite of the existence of a structured implementation system where bureaucratic bodies can secure a fairly good degree of information and expertise, the outcome achieved in the case of Glyphosate is blatantly inefficient, because a five-year renewal forces to re-start a lengthy, costly and complex procedure in just two years from the last adoption.

Further research could focus on comparing, for example, different cases displaying varying levels of politicisation so as to extend the generalisability of this interesting finding.

I now turn to general concluding remarks about the overall project: findings, limitations and further research perspectives.

Conclusions: findings, limitations and future research

Throughout this thesis I have sought to tackle the determinants of delegation to bureaucratic actors including national administrations, the Commission and EU agencies, and then to assess what happens in the ‘post-delegation’ phase. Pursuing this research has entailed multiple efforts, both at the empirical and theoretical level. I have managed to introduce different degrees of innovations to the state of the art in the field. First of all, I have autonomously collected and presented a new dataset of EU legislation selected on the basis of the overall salience of policy measures across sector. I have done this because there was an evident lack of analyses of delegation in the EU encompassing the whole post-Maastricht period, as explained in [Chapter 2](#). Through this data, in [Chapter 3](#) I have tested well-known hypotheses drawn from the delegation literature, and added one important dimension, namely, the presence of the European Parliament in the legislative process. I have shown how the granting of discretion to the Commission and national administrations is influenced by voting rules and inter-state conflicts, and that co-decision seems to impose bigger limits upon the Commission’s leeway. Some of these findings tend to confirm previous ones on similar subjects, while shed some doubts about how we should investigate the determinants of delegation in the Post-Maastricht era in the future: for example is it really the case that agency loss on the one hand, and clashes with the EP on the other do not affect the discretion granted to bureaucratic actors, the Commission especially, at all? Formal analyses of the legislative process may be insufficient to grasp dynamics which are perhaps ‘hidden’ in the black box of informal decision-making processes, and increasingly influenced, as suggested in the discussion to [Chapter 3](#), by the salience and visibility of the policy at stake, and by blame-shifting dynamics.

Then, throughout [Chapter 4](#) I assessed why EU agencies are more or less used by the legislator for implementation purposes, which adds on substantially to the literature about agencification of EU governance. I have shown that the empowerment of the Commission goes together with the utilisation of agencies for implementation of policy measures, and that complex laws seek agencies expertise

more than relatively simple ones. This chapter has introduced mainly two innovations: at the theoretical level, I made the first attempt to grasp the reasons behind the legislator's willingness to involve agencies in the implementation of salient provisions. At the methodological level, I have sought to look at agencies' use on a large scale through a quantitative analysis. As underlined in the Chapter's discussion the limits of this approach to agencification are defined by the impossibility to grasp dynamics that go beyond the legislative process. Future research on this topic may consider expanding sensibly the number of observations in order to increase the amount of legislation in which agencies are actually employed.

In Chapter 5, through an original dataset reporting EU agency budgets I have assessed the determinants of agencies' empowerment overtime. In this case, I have deemed relevant to look at the formal allocation of budget as a proxy of bureaucratic empowerment: this does not represent an innovation per se within the bureaucratic politics literature, yet, it is a new way to approach agencification in the EU. The evidence I offered points to a quite rational allocation of resources to agencies according to the services they provide, to their involvement in critical situations and the reforms they go through. These findings are important in light of the debates about the actual usefulness of agencies in the EU system of governance. Intuitive as it might appear, the willingness of policy makers to grant agencies more resources when they are more needed, points to the fact that they are considered as a valuable governance instrument. As noted at the end of the chapter, the main limitation to this analysis is that notably, budget is not the only source of empowerment and that with more time and resources it would be possible to develop more sophisticated proxies and make the analysis richer. For example, comparative case studies could be conducted in order to look at specific agencies reforms and the dynamics underpinning them.

Finally, in Chapter 6 I have reconstructed an analytical narrative through theory-testing process tracing the implementation of a salient supranational provision in order to assess the role and behaviour of agencies and the Commission in the post-delegation phase. This case is a brilliant

example of the interlocking of politicisation, bureaucratic behaviour and knowledge utilisation, and it helps demonstrating that the Commission uses agencies' assessments so long as it does not have other priorities, such as satisfying a rather hostile audience. The limits of this final chapter are embedded in the fact that the case under analysis is only one, which could represent an issue in terms of representativeness and generalisability. Yet, the Glyphosate case narrative is well-grounded in theory and offers the possibility for further research to extend, eventually, the analysis to a wider population of cases.

What do we do with this evidence? While a lot can still be discovered about EU executives, this project has substantially added on our previous knowledge of these subjects, theoretically, methodologically and empirically. First of all, I have confirmed that delegation theory holds quite well when discretion is at stake, especially in terms of how decision rules affect the outcome of decision making. Secondly, I point to the importance of acknowledging that agencies are indeed valued by the legislator, although not always in the same way. Neither all agencies are used in the same proportion, nor they are given same or similar amounts of resources. Yet certainly, agencies' empowerment and use depend largely on how important the functions of these agencies are in a specific moment in time. In my view, the last chapter is the one opening the most fascinating discussion: namely, about how willing agents are to use the power they are delegated, and what are the boundaries of their actions. According to a straight P-A logic I would have expected the Commission to be eager to exercise its implementing powers in full, when it can do so, in order to secure evidence-based, efficient implementing standards. Yet, it seems that a rather hostile public opinion plays a crucial role in shaping its preferences. This finding points to a vital matter for the whole European Union apparatus: that is, EU institutions need to take actual, public, political responsibility for their preferences and actions beyond efficiency considerations. From the Commission, to agencies, to member states governments, no one works outside the public eye any more. While formal processes are always important, because they provide us the 'scope conditions'

under which phenomena occur, the informal dynamics and the behavioural logics unfolding between decision makers are clearly crucial in determining the outcome of the legislative processes, that culminates in the implementation of the adopted provisions. As overviewed in Chapter 6, there is a flourishing literature looking at the responsiveness of the European Union (Commission and agencies included) towards citizens, and I believe this is a necessary turn for future studies on EU governance. Against this background, future research should probably move towards the acquirement of a greater understanding on whether and how EU institutions represent citizens in the supranational arena, and whether and why they respond to their solicitations.

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Appendix 1

List of consulted EU law books

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A note on Euractiv search

Euractiv search is available only since 1999. However, the platform also cites legislation going back to the late 80s and early 90s. Euractiv mentions directives and regulations by name, not by code: for this reason I look for legislation through keyword search: “directive” and “regulation” across the

different sections. At the time of data collection (2016) the Euractiv platform is divided into the following macro policy areas⁵⁸:

1. Climate and Environment
2. Agriculture and Food
3. Euro and Finance
4. Energy
5. Justice and Home Affairs
6. Social Europe and Jobs
7. Health and Consumers
8. Digital

⁵⁸ Some categories such as Environment, agriculture and energy sometimes overlap in the search because they deal with issues encompassing all three categories.

Appendix 2

Calculating delegation and discretion to national administrations

Based on Epstein and O'Halloran (1999) and Franchino (2007), the methodological steps to calculate both national and Commission's discretion are the following:

Counting of Major Provisions

- (1) articles and numbered paragraphs count as separate provisions;
- (2) Subparagraphs and indents do not count if they merely elaborate on the previous paragraph, but they do count if they include new substantive authority;
- (3) Unnumbered paragraphs count as separate provisions only if they are substantively distinct;
- (4) If a paragraph is followed by a colon and a list of elements, even if numbered, and if the elements of the lists merely elaborate on the main point of the paragraph, then the paragraph and accompanying list count as one provision;
- (5) I count two provisions if, even in a single sentence or a paragraph, the Commission and the national administrations are delegated substantively different policy authority;
- (6) I count only one provision if the Commission and the national administrations are delegated, in a sentence or a paragraph, policy authority on exactly the same issue (an example is where member states may take some measures but they need the Commission's authorisation).

Coding executive delegation

- (1) I consider provisions granting executive discretion to Member States those:

- (2) Specifying that Member States may or are entitled to take some action
 - (3) Specifying that Member States are exempt from some obligations
 - (4) Giving member states some room of manoeuvre in the application of the legislation
 - (5) Giving national agencies/authorities the authority to take measures
 - (6) Giving member states minimum requirements (means that beyond the minimum, they can take extra provisions)
- Provisions granting authority on Commission are mainly those conferring upon the Commission the authority to:
 - (1) Adopt decisions, set guidelines and standards, request actions, authorise action of other actors
 - (2) Undertake missions and negotiations
 - (3) Perform inspections and checks on the member state territory , request information for investigations purposes
 - Examples of what delegation to the Commission, EU agencies or to national administrations is not:
 - (1) examination of member states' measures by the Commission but without the power to alter them
 - (2) submission of proposals by the Commission (this is a legislative, not an executive, power);
 - (3) design and issuance of certificates, forms and documents;
 - (4) diffusing or exchanging information, setting rules for information exchange, notifying measures or ensuring professional secrecy;

Coding procedural constraints

Delegation comes with risks, and risks are minimised by the principal through control mechanisms.

In particular, legislative acts do delegate authority, but such authority is always balanced by the

constraints imposed by the legislator upon the executor(s). Therefore, the Commission, its agencies, and national administrations will be more or less constrained depending on the case. As Franchino (2007) shows, the degree of constraint is quite variable. The section below lists 12 types of procedural constraints detected within the legislative acts: for the categories and coding I follow Franchino (2007) who in turn, draws on Epstein and O' Halloran (1999) .

1. *Time Limits*: limits of time for implementing a given measure
2. *Spending limits*: not frequently used
3. *Reporting requirements*: reporting to committees; MS to write a report addressed to the Commission
4. *Consultation requirements* : consult a body before taking decision
5. *Public hearings*: not frequently used —> e.g Persons to submit comments before any executive decision
6. *Rulemaking requirements*: detailed rules —> e.g detailed criteria, standards, rules (by far the most frequent)
7. *Appeals procedures*: specific reference to possibility to appeal to the courts (constraint to MS)
8. *Exemptions*: when certain categories, e.g a specific country, are (temporarily or permanently) protected from the effects of the law.
9. *Legislative action required*: a requirement of a Council's approval prior to a Commission's or a member state's measure becoming effective. It also includes cases whereby measures, when referred to the Council, are either suspended until Council action or, if immediately applicable, are revoked in the case of Council inaction after a set time period. This is the case id certain kinds of comitology procedures.

10. *Legislative action possible*: procedures whereby actions of the Commission or a member state are referred to the Council prior to becoming effective or whereby these measures may be referred, by the Commission or another member state, to the Council
11. *Executive action required*: requirement that another executive agent must approve the agency's action prior to becoming effective. It includes the Commission's prior approval to member states' measures, and vice versa, and provisions asserting that the Commission can take a measure only if required by a member state
12. *Executive action possible*: procedures whereby measures taken by member states may be overruled, within a set time limit, by actions taken by the Commission, and vice versa.

Calculating the delegation, constraint and discretion ratio

- (1) I calculate the delegation ratio by dividing the number of delegating provisions (D) by the total number of major provisions (Tm).
- (2) I calculate the constraint ratio by dividing the number of constraints (C) by the number of all the possible procedural constraints (Tc), i.e. 12.
- (3) I calculate the discretion ratio (dr) by subtracting from the delegation ratio, the value of the constraint ratio weighted by the value of the delegation ratio

$$dr = D/Tm - D/Tm * C/Tc$$

Table A 1 shows the percentage of acts not delegating to either national administrations or the Commission and the two acts which, respectively, show the highest level of delegation and discretion to national administrations and the Commission.

Table A 1: Delegation and discretion (min and max)

Number and %	Number and %
-----------------	-----------------

Acts Not Delegating to national administrations	27 8.74%	Acts Not delegating to the Commission	107 34.63 %
Acts delegating to both: 189 (61%)			
Acts with highest delegation ratio			
Delegation to national administrations	Delegation Ratio	Delegation to the Commission	Delegation Ratio
Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC	57.14	Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector	31.57
Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions	55.55	Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs	30.15
Acts with highest discretion ratio			
Discretion to national administrations	Discretion Ratio	Commission Discretion	Discretion Ratio

<p>Council Directive 1999/81/EC of 29 July 1999 amending Directive 92/79/EEC on the approximation of taxes on cigarettes, Directive 92/80/EEC on the approximation of taxes on manufactured tobacco other than cigarettes and Directive 95/59/EC on taxes other than turnover taxes which affect the consumption of manufactured tobacco</p>	<p>39.28</p>	<p>Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector</p>	<p>23.68</p>
<p>Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Text with EEA relevance)</p>	<p>55.55</p>	<p>Council Directive 2001/110/EC of 20 December 2001 relating to honey</p>	<p>21.15</p>

A note on alternative measurements of discretion

As explained above the dependent variable of this study is the *amount of executive discretion* granted to EU executors by EU legislators. Among different possible measurement strategies, I opted for qualitative text analysis. Although automated text analysis through powerful software such as *quanteda*⁵⁹ and *txm*⁶⁰ would have been an interesting option, no scholar has managed to develop a satisfactory proxy for executive delegation *yet*.

From the outset, I tried to measure delegation to the Commission through the relative frequency of the word “Commission” in each act. I verified the correlation between the number of times the Commission is mentioned in a text and the amount of executive delegation and discretion granted to it, basing my analysis on Franchino’s (2007) data: results show a weak (although significant) correlation and a counterintuitive positive relationship between number of times “Commission” is mentioned and procedural constraints (see Table A 2 and Figure A 1). One reason for that is probably to be found in the fact that often, when the Commission is delegated authority, provisions refer to the executive procedure explained in the implementing provisions without necessarily mentioning the word “Commission”. This becomes a problem when using natural language analysis as the computer may disregard provisions which indeed delegate powers to the Commission.

⁵⁹ <https://cran.r-project.org/web/packages/quanteda/vignettes/quickstart.html>

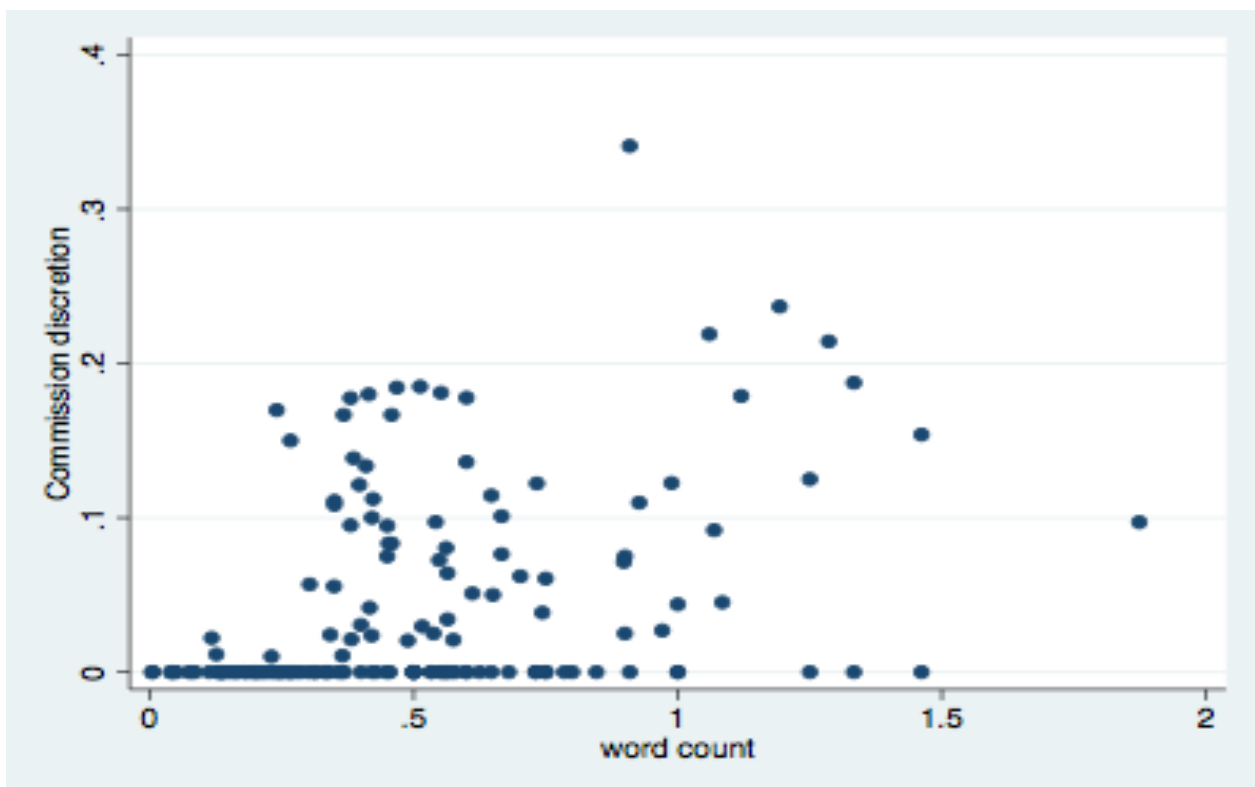
⁶⁰ <http://textometrie.ens-lyon.fr/spip.php?rubrique96&lang=en>

Table A 2: Correlation table between “Commission” frequency, Commission delegation, discretion and constraints ratios

	Word count	Commission delegation ratio	Commission constraint ratio	Commission discretion ratio
Wordcount	1.000			
Commission delegation ratio	0.3887*	1.000		
Commission constraint ratio	0.3293*	0.7531*	1.000	
Commission discretion ratio	0.3870	0.9760*	0.6495*	1.000

Legend: * p<.001

Figure A 1: Relationship between “Commission” frequency and Commission discretion



Another option available to measure delegation through automated text analysis is offered by Shaffer (2016): the author sought to extract institutional relationships from natural language by analysing US legislative acts. His way of determining delegation to actors is “relational”: namely, the more the network of actors involved in implementation is *dense*, i.e. the more actors are “tied” to each other in the legislative texts, the more – according to Shaffer – authority of implementation is shared among them and the administrative structure is complex : “if we observe that two actors are co-mentioned in a section of a law, we can reasonably conclude that those two actors share authority over the policy area under consideration in that section. Without a sharper definition of the relationships under consideration we cannot draw strong conclusions about the nature of the connections between actors, but we can draw general conclusions about the complexity of the structures created by a given law” (Shaffer 2016:19). The main problem with this approach is that the number of actors present in the European Union is generally (although not in all cases) smaller than in the US, and less specific. That said, a relational approach may have its perks as it gives a sense of how executive powers are “diffused” among different executors, but it is not exhaustive about *who is invested with more discretion*.

A third way to measure (national) discretion with automated text analysis may be developing measures of specificity: the intuition behind this is that the more an act’s provisions are specific, the smaller is states’ *range of manoeuvre*.

Appendix 3

Measurement through CMP: additional information on the matching of policy categories, predicted leftward and rightward shifts ⁶¹

Table A 3: CMP categories

Comparative Manifesto Project Category	Policy	Action	Shift
Free Market Economy	Competition; banking financial markets,	More market economy	Right
Protectionism	company law, cross-border payments;	Less protectionist policy	Right
Economic Orthodoxy	transports, telecoms; intellectual property rights; taxation;	More economic orthodoxy	Right
Market regulation	consumer protection (food safety, chemicals, privacy, pharmaceuticals); competition (Market abuse); occupational retirement	higher protection standards; market rules	Left

⁶¹ A similar approach and matching were done by Frachino (2007) and Ershova (2018)

Equality; Labour Groups; welfare state expansion	Social policies (gender equality; health and safety of workers; working conditions)	More equality, more workers protection; extension of welfare provisions	Left
National way of life (immigration);	Asylum and immigration, border management	Restriction of flows, increased border control, stricter asylum rules	Right
Technology and Infrastructure: positive; Democracy: positive; Human rights: positive			Neutral

Table A 4: CMP summary table

Macro-area	Codebook
Market economy	Per 401+per 406+per 414
Market Regulation	Per 403
Social policies	Per 503+per 504+per 701
Immigration	per602_2
Environment	Per 501

I have used the Comparative Manifesto Project, which extracts parties' policy preferences by analysing parties manifestoes, to calculate actual policy preferences in chapter 4 : to measure the integration and left-right dimensions I employed the ParlGov dataset (Döring & Manow, 2016) because expert surveys are deemed more accurate in estimating left-right positions because they

contain smaller measurement error than party manifestoes (Benoit and Laver 2007), and they seem to provide the most valid and reliable data to measure the integration dimension (Marks et. al 2007). Moreover, expert surveys seem better able to provide generalisations of party positions overtime (Volkens, 2007:109), which is a good feature considered the time-span of my dataset. I employed, instead, the Comparative Manifesto Project (CMP) to measure the policy dimension as it provides a wider range of policy categories than ParlGov, and it is able to record changes in competitive party strategies as it is based on electoral campaigns (Volkens, 2007). According to Klingemann et. al (2006) CMP produces overall ‘good, valid and reliable’ estimates and still, several methodological (Däubler et al. 2012; Mikhaylov et al., 2012) and theoretical (for a review see Zulianello, 2014) arguments exist against it. Moreover, it should be noted that CMP has a series of missing values in certain policy categories which may bias the results: for instance, at the time of coding, information was missing about Malta’s manifestoes. Moreover, for example, the scores of the category ‘national way of life: immigration positive and negative’ was missing for several member stat

Appendix 4

List of Agencies Acronyms

ACER	Agency for the Cooperation of Energy Regulators
BEREC Office	Office of the Body of European Regulators for Electronic Communications
CEDEFOP	European Centre for the Development of Vocational Training
CEPOL	The European Union Agency for Law Enforcement Training
CPVO	Community Plant Variety Office
EASO	European Asylum Support Office
EBA	European Banking Authority
ECHA	European Chemicals Agency
EEA	European Environment Agency
EFCA	European Fisheries Control Agency
EFSA	European Food Safety Authority
EIGE	European Institute for Gender Equality
EMA	European Medicines Agency
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EMSA	European Maritime Safety Agency
ENISA	The European Union Agency for Network and Information Security
ERA	European Railways Agency
ESA	European Space Agency
ESMA	European Securities and Markets Authority (ESMA)
ETF	European Training Foundation
EUIPO	European Union Intellectual Property Office
FRA	Fundamental Rights Agency

EU-Lisa	European Agency for the operational management of large-scale IT Systems in the area of freedom, security and justice
EU-OSHA	European Agency for Safety and Health at Work
EUROFOUND	European Foundation for the Improvement of Living and Working Conditions
EUROJUST	European body for the enhancement of judicial co-operation
EUROPOL	EU Law Enforcement
FRONTEX	The European Border and Coast Guard Agency
GSA	European GNSS Agency

Partly self-funded agencies budget evolution

Figure A 2: EMA Budget Evolution

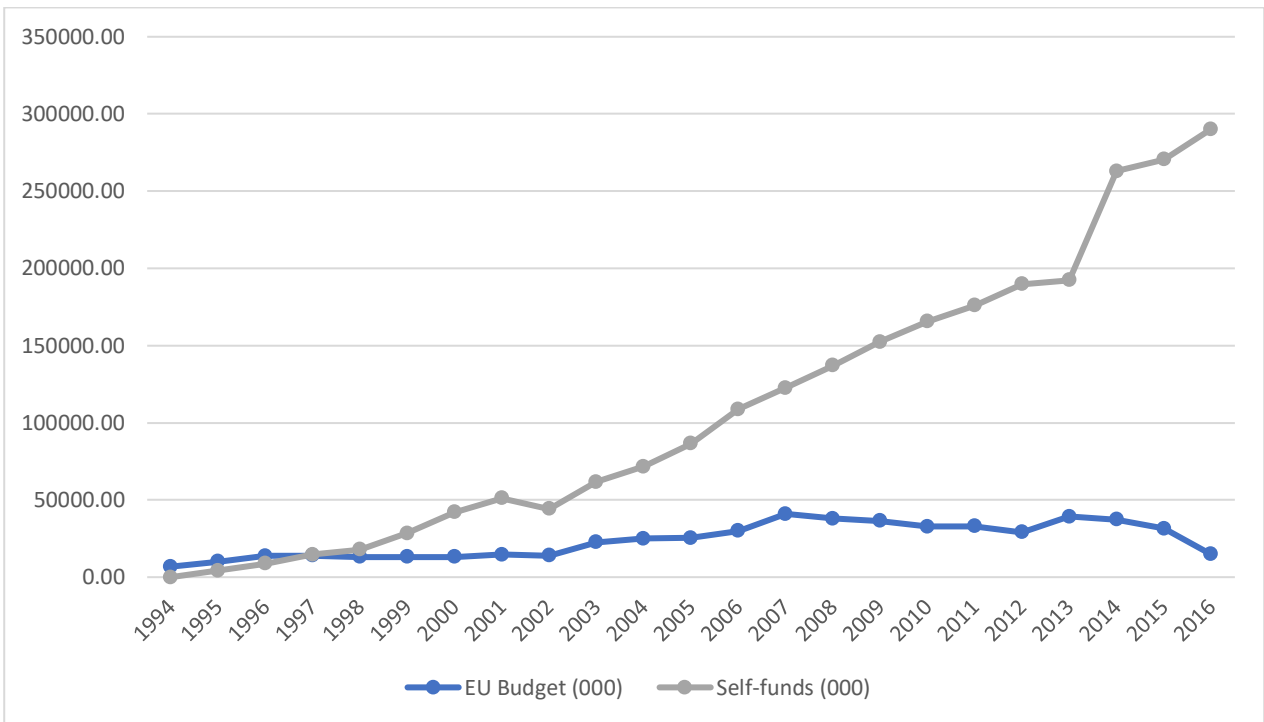


Figure A 3: EASA Budget Evolution

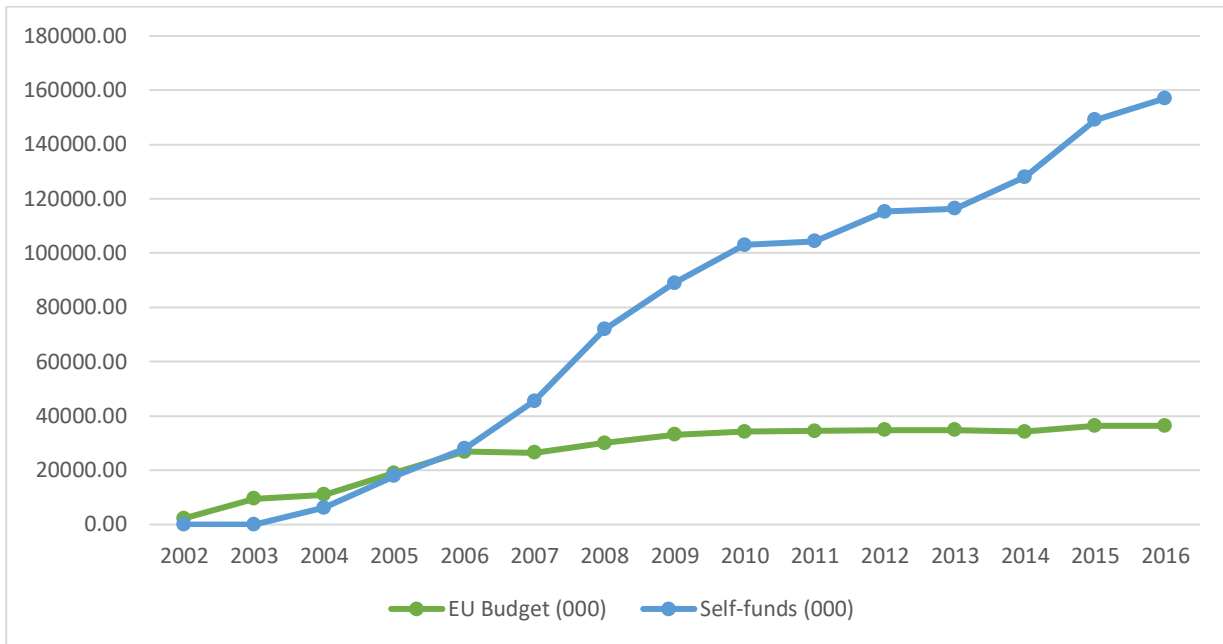
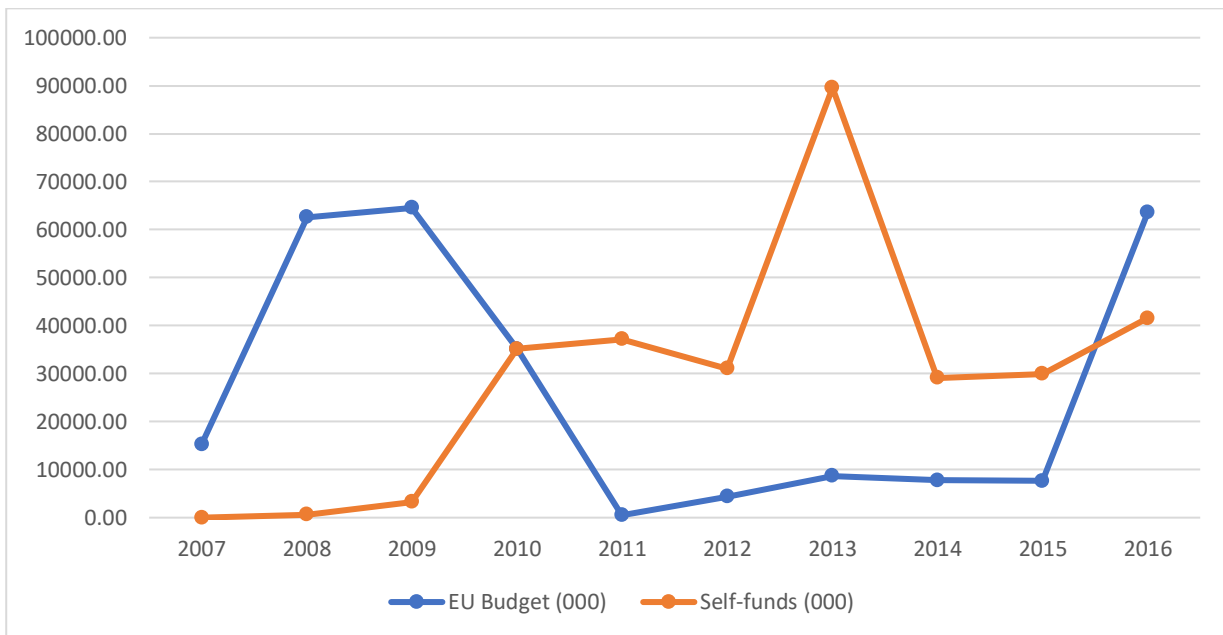


Figure A 4: ECHA Budget Evolution



Categorisation of agencies type and reforms

Figure A 5: Agencies types and reforms

Agency	Main Tasks	POLICY	Financing ⁶²	Reform	Legislation
ERA	regulatory/monitoring/inspections	Transports	EU	Scope and task expansion	Regulation (EC) No 1335/2008 amending regulation 881/2004; Regulation (EC) No 454/2011 (TAP TSI); Regulation (EC) No 328/2012 amending regulation 62/2006 (TAF TSI) Regulation (EU) 2016/796
EFCA	inspections	Fisheries	EU	No	-
EURO JUST	coordination	Justice and Fundamental Rights	EU	Scope and tasks expansion	2009/426/JHA
GSA	operational	Space	EU	Scope and tasks expansion	GNSS Regulation No 1285/2013

⁶² Source: COM (2015) 300 – June 2015

EASA	advisory/regulatory/monitoring	Transports	MIX	Scope and task expansion ⁶³	REGULATION (EC) No 216/2008; REGULATION (EC) No 1108/2009
ENISA	information/regulatory	Security	EU	No	-
FRONTEX	coordination/operational+regulatory	Security/immigration	EU	scope and task expansion	Regulation (EC) No 863/2007; Regulation (EU) No 1168/2011; Regulation (EU) 2016/1624
EUROPOL	coordination/information	Security	EU	No	-
CEPOL	training	Security	EU	Scope expansion	Specific Agreement No. JLS/2008/ISEC/FP A/C2/030 for the action entitled:

⁶³ 2002: Airworthiness; environmental compatibility → Airworthiness; 2008: Environmental compatibility; Flight Crew Licensing (FCL); Operation of Aircraft; Safety of foreign operators →2009: Aerodromes Air; Traffic Management (ATM); Air Navigation Services (ANS)

					CEPOL Exchange Programme for Senior Law Enforcement Officers
EASO	information/operational	Security/immigration	EU	No (reform is ongoing)	-
EU-LISA	operational/monitoring	IT	EU	No	-
EMSA	advisory/monitoring	Environment	EU	Scope expansion	Regulation 100/2013 Regulation 911/2014
ECHA	regulatory/monitoring	Chemicals	MIX	Scope Expansion	Regulation of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals
EURO FOUND	information	Social Policy	EU	No	-

EU-OSHA	information	Social Policy	EU	No	-
CEDEFOP	information	Social Policy	EU	No	-
BEREC	regulatory/advisory	Telecoms	EU	No	-
EEA	information	Environment	EU	Scope Expansion	Council Regulation 933/1999
EMCD/DA	information	Health	EU	Scope Expansion ⁶⁴	Recast Regulation (EC) 1920/2006
ECDC	information/advisory	Health	EU	No	-
EFSA	risk assessment/advisory	Food	EU	No	-
FRA	information/regulatory	Justice and Fundamental Rights	EU	No	-
EIGE	Information/regulatory	Justice and Fundamental Rights	EU	No	-

⁶⁴ p 381 : COM(2015) 300 – June 2015

ETF	information/regulatory	Social Policy	EU	No	-
EBA	supervisory/advisory/regulatory	Banking	MIX	No	-
EIOPA	supervisory/advisory/regulatory	Insurance	MIX	No	-
ESMA	supervisory/advisory/regulatory	Securities	MIX	No	-
ACER	Regulatory/advisory	Energy	EU	No	-
EMA	Evaluation/supervision/safety monitoring	Pharmaceuticals	MIX	Scope Expansion	Council Regulation (EC) No 297/95; Directive 2004/24/EC of the European Parliament and the Council of 31 March 2004; Regulation (EC) No 1901/2006 of the European Parliament and the Council of 12 December 2006; Regulation (EC) No 470/2009 of the European Parliament

					and the Council of 6 May 2009
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Appendix 5

List of interviewees

- Expert # 1: Phone interview, 20 February 2018. Duration: 15 minutes
- Civil Society # 1: Phone interview, 28 February 2018. Duration: 30 minutes.
- Civil Society #2: Phone interview, 23 March 2018. Duration: 30 minutes
- Commission #1: Phone Interview, 5 April 2018. Duration: 20 minutes
- EP #1: Phone interview, 28 March 2018. Duration: 30 minutes