Chapter 2

Executive Politics

The governments of the member states of the EU have delegated significant powers of political leadership, policy implementation, and regulation to the Commission. As a result, executive responsibilities are shared between the Council and the Commission. This institutionalized separation of powers, or 'dual executive', can sometimes lead to deadlock. However, consensus and stability are secured through a division of labour, with the Council governing long-term matters and the Commission governing short-term ones, via highly developed mechanisms to manage Commission discretion, and careful involvement of national administrations. To help understand how this division of labour came about and how it works we shall first present the standard framework for understanding executive power, delegation, and discretion in political science.
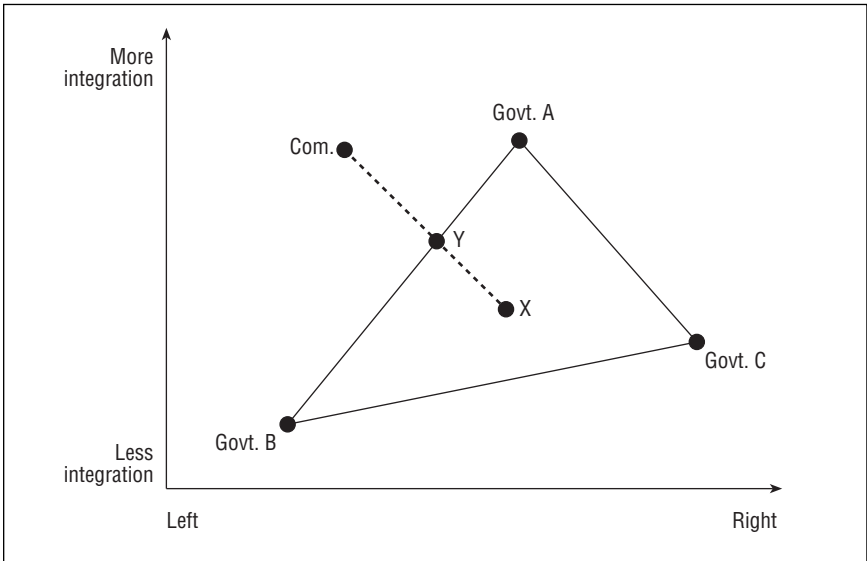
Theories of Executive Politics

In the classic constitutional framework the legislature decides, the executive enacts and the judiciary adjudicates. However, modern governments do more than simply implement law. Their powers are twofold: political and administrative. Governments use their political power of leadership to steer the society through proposals for policy and legislation, and use their administrative powers to implement law, distribute public revenues, and pass secondary and tertiary rules and regulations.

Some systems concentrate these powers in the hands of one set of office holders. Other systems, like the EU, divide these tasks between different actors and bodies. Political scientists use the 'principal–agent' framework to study delegation of responsibilities to specific actors. In this framework, a principal, the initial holder of executive power, decides to delegate certain powers to an agent who is responsible for carrying out the task.

The key challenge for the principal is to ensure that the agent executes the task in a neutral fashion. However, agents have their own interests and policy preferences. First, the agent may be targeted by groups lobbying on behalf of segments of the society affected by the task. If the costs and benefits arising from the task are unevenly distributed, interests that stand to gain or lose may either attempt to 'capture' the agent (Lowi, 1969), or make the agent dependent on their information, or tempt the agent with inducements (such as well-paid jobs in the industry after retirement). Second, agencies may want to increase their own influence over the policy process. According to classical rational choice theory, public officials want to maximize their budget (Niskanan, 1971). Larger budgets allow officials to increase their salaries, employ more staff, and raise their profile. Government agencies compete for limited public resources. They hence overestimate budgetary needs and spend as much as possible. The result is growing demands by bureaucrats for public resources. Third, bureaucrats may be more interested in maximizing their independence from their principals and their ability to shape policy rather than maximize the budget (Dunleavy, 1991). All this means that agents may wish to diverge from the principals' original policy intention. It is hence essential to understand the principal's ability and willingness to limit 'policy drift'.

The principal has two means of controlling how the agent executes the task: selection and control. When selecting an agent, the principal often has to make a choice between choosing an agent with similar preferences to the principal and an agent who is highly competent to carry out the task. One problem the principal faces is that the agent may be able to shift policy away from the policy most preferred (ideal point) by the principal towards the agent's own most preferred policy. Another problem is that the agent may not be sufficiently competent to execute the task in line with the request of the principal (Huber and McCarty, 2004). In an ideal scenario, both of these problems can be solved by selecting a competent agent whose ideal point is identical to that of the principal. In practice, an agent with such characteristics may be impossible to find.
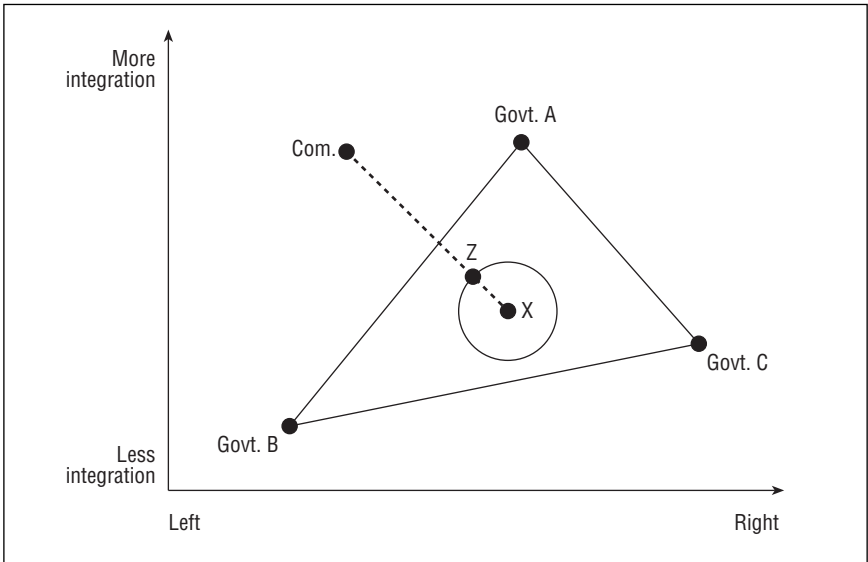
The decision to delegate is often made by a collective body whose actors do not have identical ideal points. Depending on the decision rule (see Chapter 3), all or a subset of actors need to agree upon a policy and the level of delegation. This phenomenon is illustrated in Figure 2.1, which shows a two-dimensional policy space in which there are three governments with 'ideal policy preferences' (points A, B, and C). The Commission's ideal policy preference lies outside the 'core' of governmental preferences (depicted by the triangle). The governments and the Commission will each try to secure a policy that is as close as possible to its ideal point. The governments agree on a piece of legislation at position X. The Commission is responsible for implementing this legislation, and during the implementation it is able to shape the final outcome;

Figure 2.1 *Policy drift by the European Commission*

moving the policy away from X towards its ideal policy preference. In fact, the Commission can move the final policy as far as position Y. Governments A and B prefer this policy to the original deal because Y is closer to their ideal preferences than X. If the Commission implements policy Y, governments A and B have no incentive to introduce new legislation to overrule the Commission, and will oppose any attempt by government C to take such action. However, governments A and B will block any moves further towards the Commission's ideal point, as any policy in this direction would be less attractive to these two governments than position Y. Hence, the Commission has discretion to change the original policy outcome, but within the constraints of the preferences of the legislators.

Nevertheless, principals can limit policy drift. When controlling the agent, the principal can employ monitoring devices or constrain the possibility for drift by specifying the delegated task. Monitoring devices may include employing another agent with the task of controlling how the first agent is executing the task. Alternatively, the principal can rely on affected parties, such as interest groups and private citizens, to report such drift. The former approach to control is sometimes labelled 'police-patrol', while the latter approach is sometimes labelled 'fire-alarm' (McCubbins and Schwartz, 1984). By specifying the delegated task the principal can limit the scope for policy drift. The principal can design rules and procedures to minimize agent's discretion (Horn, 1995; Kiewiet and McCubbins, 1991; Moe, 1989). Careful delegation thus implies striking the optimal balance between the cost of policy drift and

Figure 2.2   *Controlling policy drift by restricting discretion*

the costs of constraining and controlling the agent (Weingast and Moran, 1983).

The result of such controls is a restriction of the ability of an agent to diverge from the original policy intention. This is illustrated in Figure 2.2. As in Figure 2.1, the governments agree on a piece of legislation at point X, but to limit the ability of the Commission to change the policy outcome, government C, who has most to lose from potential policy drift, forces the other governments to introduce a set of procedures that define exactly how the Commission should go about its job. The result is some drift towards the Commission's ideal point, but only to Z instead of Y.

It can be the case that the agent has access to information which is not available to the principals. This asymmetry is a central feature in recent models of delegation (Epstein and O'Halloran, 1999; Huber and Shipan, 2002). In these models, the agent can use this information to move the policy towards her ideal point when implementing the law, while the principal can limit this possibility by specifying how the law shall be implemented. Once the principal has chosen the policy and the limits for policy drift, the agent decides whether to implement the law or risk punishment for failure to do so.

Franchino (2007) amends this framework to apply it to the dual executive nature of EU. His central premise is that EU legislators can rely on two agents to implement EU legislation: the Commission and the national bureaucracies. When deciding whether to delegate to the Commission or to national administrations, EU governments trade

the risk that the Commission may drift away from the agreed policy against the risk that national bureaucracies may implement the legislation differently. The choice is then between a common policy which differs from the policy agreed by the governments and a variation in how EU policies will be implemented in each member state. How the governments decide the balance on this trade-off depends on the complexity of the policy issue as well as the divergence in the policy preferences of the governments. The more complex a policy issue is, the more the governments are likely to favour delegation to national bureaucracies, because they tend to have more administrative resources than the Commission. The more divergent the policy preferences of the governments, the more the governments are concerned that delegation to the Commission will lead to policy drift. As a result, if a policy issue is decided by unanimity (such as taxation), governments prefer to delegate to their national administrations, knowing that once a decision has been made it will be difficult to change. On the other hand, if a policy issue is decided by a qualified majority (such as many of the rules in the single market), governments will be willing to delegate to the Commission, knowing that they will be able to reform the legislation if the Commission changes the policy beyond their original intention.

In sum, the degree of autonomy that executive agents are given by their principals depends on the nature of the tasks in question, the institutional rules under which they operate, the degree of policy disagreement between the principals, as well as the amount of information the principals have on the likely actions of the agents (Tsebelis, 1999, 2002). All these elements are central to the relationship between the Council and the Commission in the EU (Franchino, 2004; Moravcsik, 1999; Pollack, 2003; Tallberg, 2000).

The Member States: Executive Power, Delegation, and Discretion

In this section, we first discuss how the member states have made certain trade-offs in Intergovernmental Conferences. Second, we discuss political leadership in the EU and member states' choices of whether to delegate power to the Commission or national administrations. Third, we explain the pattern of implementation and transposition of EU legislation.

Delegation and intergovernmental conferences

The signing of treaties and their subsequent reform are the result of careful bargaining and agreement between the member state governments in Intergovernmental Conferences (IGCs) (Christiansen and Reh, 2009;

Moravcsik, 1998). The requirement of unanimity in IGCs tends to produce 'lowest common denominator' treaty bargains. However, the process of European integration has been able to proceed because different governments have placed different emphasis on different issues, and hence have been prepared to 'lose' on some issues in return for 'winning' on the issues that are more important to their national interests. The resulting package deals have gradually added new competences to the EU and delegated increasing executive powers to the Commission (Christiansen *et al*., 2002; Greve and Jørgensen, 2002). In line with the delegation framework presented above, the tasks facing the governments in IGCs are to decide which tasks to delegate to a common agent and to strike a balance between the need to ensure that a common policy is implemented across the EU while limiting the scope for policy drift. Throughout the history of EU integration, governments have struck this balance differently across policies and time, depending on the bundle of issues that were on the negotiating table (Moravcsik, 1993, 1998).

The Treaty of Paris (signed in 1951 and entered into force in 1952), which established the European Coal and Steel Community (ECSC), was essentially a deal between France and Germany. In return for lifting discriminatory rules on German industry, France sought a framework for planned production and distribution in its own coal and steel industry. To secure these aims, the member state governments delegated certain powers to a new supranational body: the High Authority, the precursor of the Commission. Robert Schuman and Jean Monnet were the brains behind this idea. The common production and distribution of coal and steel could have been governed through meetings of ministers of the member governments, but Schuman and Monnet argued that such intergovernmental arenas would suffer from procrastination, indecision and disagreement, as each government would defend its own interests. Consequently, they proposed that decision-making efficiency could best be guaranteed by delegating the responsibility for generating policy ideas and for the day-to-day management of policy to a supranational body (Haas, 1958, pp. 451–85; Monnet, 1978). This combination of intergovernmental decision-making with policy initiation and management by a supranational executive – the so-called 'Monnet method' – provided the model for future treaties (Parsons, 2002; Rittberger, 2001).

The Treaty of Rome (signed in 1957 and entered into force in 1958) established the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). In the EEC, the central bargain was between the German goal of a common market and the French goal of protection for agricultural products, through the Common Agricultural Policy (CAP) (Lindberg, 1963). Again, to achieve these aims the EEC Treaty delegated policy initiation in the common market and administration of the CAP to the Commission. A further

innovation of the Treaty of Rome was a legislative procedure – known as the consultation procedure – that made it easier for the Council to accept a Commission proposal than to overturn it. This rule allowed the new supranational executive significant 'agenda-setting' powers in the establishment of rules governing the common market (see Chapter 3). In other words, the governments allowed the Commission a somewhat broader scope for policy drift in order to enable more common policies.

The package in the Single European Act (SEA) (signed in 1986 and entered into force in 1987) centred on the economic goal of establishing a 'single market' by 31 December 1992 in return for new social and environmental 'flanking policies' (Budden, 2002; Garrett, 1992; Hoffmann, 1989; Moravcsik, 1991). This time, the Commission had played an important leadership role by detailing how the single market could be achieved and by preparing the treaty reforms (Sandholtz and Zysman, 1989; Dehousse and Majone, 1994; Christiansen *et al.*, 2002). The reward was new responsibilities for the Commission: to initiate a large body of legislation to establish the single market; to propose and implement common environmental, health and safety, and social standards; to prepare the reform of the structural funds; and to draft a plan for economic and monetary union (EMU). Moreover, to enable the single market programme to be completed by the 1992 deadline, the decision-making rules of the European Community (EC) were amended to strengthen the agenda-setting powers of the Commission: through more QMV in the Council and a new legislative procedure, the cooperation procedure. Finally, the SEA introduced provisions for intergovernmental cooperation in foreign policy, known as European Political Cooperation (EPC), but in this area the member state governments decided that executive authority should be held by the Council. This substantive increase in policies and discretion delegated to the Commission came as a result of the failure to create a functioning common market with the earlier arrangements, and the perceived competitive disadvantage of the European economies vis-à-vis the US and Japan. The governments were hence re-evaluating their trade-off between the need to establish credible common policies and the risk of increased policy drift. The governments needed not only a new initiative, but also a scapegoat for unpopular, but required, policy reforms. By delegating a substantive degree of agenda-setting power and changing the decision-rule to QMV across many policy areas, governments were more concerned with winning the next national election than the long-term policy implications, and could blame the EU for unpopular policy decisions while taking credit for popular decisions.

The Treaty on European Union (the Maastricht Treaty, agreed in 1991 and entered into force in 1993) institutionalized the Commission-brokered plan for EMU. In return, more funds were promised for cohesion policies, EU social policy was strengthened, new health, education,

transport, and consumer protection policies were added, and EU 'citizenship' was established (Falkner, 2002; Moravcsik, 1993; Sandholtz, 1993). The Commission was again delegated the responsibility of initiating legislation and managing these policies. However, the Council refused to delegate executive powers to the Commission in two new 'pillars' that were separate from the main EC pillar: the second pillar, on a common foreign and security policy (CFSP), which replaced EPC; and the third pillar, on justice and home affairs (JHA), which aimed to achieve the 'free movement of persons' in the EU. The Maastricht Treaty also introduced a new legislative procedure, the co-decision procedure, which weakened the agenda-setting powers of the Commission (see Chapter 3).

The main policy innovation in the Amsterdam Treaty (signed in 1997 and entered into force in 1999), was the transfer of the provisions for establishing the free movement of persons to the EC part of the EU Treaty (McDonagh, 1998; Moravcsik and Nicolaïdis, 1998). The member state governments accepted that the JHA provisions in the Maastricht Treaty had failed, partly due to the lack of political leadership. To solve this, the governments again agreed to delegate policy initiation rights in this area to the Commission (while allowing policies also to be initiated by the governments). However, similar arguments about the lack of development of CFSP did not result in new Commission powers in this field. Instead, the governments delegated responsibility for policy ideas and the monitoring of CFSP issues to a new 'task force' located in the Council secretariat.

The Nice Treaty (signed in 2001 and entered into force in 2003) mainly aimed to reform the EU institutions in preparation for the accession of Central, Eastern, and Southern European countries (Galloway, 2001). Nevertheless, there were some policy changes, particularly in the area of defence policy. Defence was formally established as an EU competence for the first time, as an integral part of the provisions on a European Security and Defence Policy (ESDP). As with the CFSP provisions, policy initiation, agenda-setting, decision-making, and implementation in the area of defence were kept well away from the Commission.

Finally, the Lisbon Treaty (signed in 2007 and entered into force 2010) formalized the allocation of policy competences between the member states and the EU in a 'catalogue of competences'. The Lisbon Treaty also reformed the decision-making rules within and between the governments and the Commission: such as the weighting of votes in the Council, and two new leadership offices (a permanent President of the European Council and a High Representative for Foreign and Security Policy).

In other words, the development of the EU treaties is a story of selective delegation of political and administrative powers by the governments to the Commission. Treaty reform is a blunt instrument. When signing

treaties, governments cannot predict the precise implications of treaty provisions and new decision-making rules, or exactly how the Commission will behave when granted new powers. For example, few member states were able to perfectly foresee the precise implications of the new decision-making rules in the Treaty of Rome and the Single European Act (Tsebelis and Kreppel, 1998). Moreover, once certain powers have been delegated through this mechanism, they may be difficult to overturn in subsequent treaty reforms as at least one member state may benefit from Commission discretion. This, Pierson (1996) argues, leads to long-term 'unintended consequences' of delegation by the member states and policy drift by the Commission.

However, the history of EU Treaty reform suggests that the member state governments are able to rein in the Commission as their evaluation of the trade-off between the need for common policies versus the risk of policy drift changes. With the extensive delegation of agenda-setting to the Commission in the Single European Act, the member states experienced the day-to-day implications of these powers in the construction of the single market. As a result, in Maastricht, Amsterdam, and Nice, the governments were more reluctant to hand over agenda-setting in new or highly sensitive policy areas, and reformed the legislative procedures to restrict the agenda-setting powers of the Commission in those areas where policy initiative had already been delegated to the Commission.

There are several possible explanations of the outcomes of IGCs. First, one approach is to assume that all member states have equal voting power in IGCs (Brams and Affuso, 1985; Hosli, 1995; Widgren, 1994, 1995). A second approach is to assume that only the big member states matter, and hence focus on the preferences of Germany, France, and the UK (Moravcsik, 1998). A third approach, building on the two-level games framework (Putnam, 1988), emphasizes how expected difficulties in the national ratification process binds the hands of some governments to a larger extent than other governments (Hug and König, 2002; König and Hug, 2000). Fourth, spatial models of negotiations suggest that the relative positions of the actors vis-à-vis the existing institutional and policy set-up (status quo) determine who wins and loses in treaty negotiations (König and Slapin, 2004). Because the status quo (the outcome if there is no new agreement) is the current treaty, actors located closer to the status quo tend to win more often than actors who would like more radical policy or institutional change. Slapin (2006) tests these alternative theories of bargaining in IGCs on data from the Amsterdam Treaty negotiations. He finds that all actors are not equally able to 'win', but it is not only the bigger member states who matter. Instead, proximity to the status quo and domestic ratification constraints of certain governments best explain the outcomes in the Amsterdam Treaty.

Political leadership and delegation

The treaties provide the general framework for the division of power and policy competences in the EU (see Chapter 1). Basically, the European Council (the heads of government) sets the guidelines and objectives for the Commission and monitors how the Commission implements these guidelines. The European Council also executes CFSP and macroeconomic policies, agrees the multi-annual budgetary framework, and can adopt new policy competences for the EU. The medium term political leadership of the EU lies in the hands of the European Council in general and the President of the European Council in particular. Meeting at least four times a year, the European Council provides guidance for the work of the meetings of the Council (of ministers) and invites the Commission to develop policy initiatives in particular areas, and monitors the domestic policies of the member states.

The Lisbon Treaty created a separation between the Presidency of the Council and the President of the European Council. While the Presidency of the Council rotates on a six-monthly basis and has a mainly legislative role (see Chapter 3), the European Council elects its President for a renewable two-and-a-half-year term. The first European Council President, elected in December 2009, was Herman Van Rompuy, a former Prime Minister of Belgium. It is not yet clear whether the President is meant to be the chief executive of the EU, or a silent consensus broker, operating behind the scenes at European Council gatherings. Some of the early candidates for the post, such as former British Prime Minister Tony Blair and former Swedish Foreign Minister Carl Bildt would have been suitable for the former type of role, but the choice of Van Rompuy may indicate that some governments prefer the President to take the latter role.

In other words, it is likely that the role of the President of the European Council will be mainly political rather than administrative: focusing on resolving high-profile political disputes among the heads of government, rather than getting involved in day-to-day management of the relationship between the governments and the Commission. In contrast, the Presidency of the Council (of ministers) will continue to play both a political and an administrative role. The member state holding the rotating Council Presidency is responsible for ensuring the smooth running of Council meetings, and providing a six-monthly work programme.

The next chapter focuses in detail on how the legislative process works. From the point of view of executive politics, though, one of the key issues when legislating is who should be responsible for implementing policy: the Commission, or national administrations. Delegation to national administrations benefits individual member states as it allows for control over how legislation is implemented in their own country, and allows them to rely on the policy competences of their national bureaucracies. However, if

member states would like to see common EU legislation, the reliance on national bureaucracies increases the risk that a member state will see that it is in its interest to not implement the legislation properly if there is a cost involved. This may be the case for several member states, which leads to a classic coordination problem, where no member state implements the legislation, and nobody reaps the benefit of a common policy. This coordination problem can be solved be delegating more power over the implementation process to the Commission, as the Commission would like to see legislation implemented equally in all member states. A similar justification for involving the Commission in implementation is that, although all member states prefer to implement the legislation, they differ in their preferences over how to implement the legislation.

Transposition of EU legislation

The member states are responsible for transposing EU directives into national law by a certain deadline and in compliance with the adopted statutes. The Commission may take non-complying member states to the ECJ for infringement (see Chapter 4). For member states to comply with EU law they need to have the bureaucratic capacity to implement the legislation in a timely and correct manner (Börzel, 2000). However, despite their comparatively weak administrations, the new member states from Central and Eastern Europe have largely been able to incorporate the full body of EU law into national legislation (Toshkov, 2007). It is, hence, not obvious that it is the capacity of national administrations that is the key factor in explaining varying transposition rates between member states. Across all member states, new EU legislation is more likely to be delayed than legislation which amends existing directives or regulations. Also, deadlines for implementation have a positive effect as it focuses the attention of the national administrations. Policy complexity, however, tends to delay transposition (Luetgert and Dannwolf, 2009).

Several political factors also play a role. Zhelyazkova and Torenvlied (2009) find, for example, that policy conflict within the Council may speed up the transposition process while more freedom to set domestic rules (discretion) slows down the transposition process. On the other hand, König and Luetgert (2009) find that conflict in the Council increases the chance of infringement notification against a member state. Meanwhile, divergent policy preferences between parties in a coalition government in a member state further delays the transposition of directives (*ibid.*; Toshkov, 2008).

The choice of monitoring strategy adopted at the national level also matters. In social policy, for example, Jensen (2007) finds that oversight procedures that concentrate power in the hands of the national bureaucracy (a police patrol mechanism) strengthen the ability of member states to solve infringement cases. He also suggests that member states that

reduce their reliance on interest-group participation (a fire alarm mechanism) can improve their ability to solve infringement cases. However, because reliance on interest-group participation is less costly than building up the capacity if national administrations, member states may prefer to risk reduced ability to solve their infringement cases.

In sum, when deciding how and when to implement a directive, the member state governments weigh the costs associated with correct implementation against the costs associated with failure or delays in the implementation process. As the member states would in principle like to see EU law not only correctly implemented but also similar across all the other member states, they have delegated oversight powers to the Commission. But, the executive role of the Commission is not limited to this role. The next section explains the broader role of the Commission in the executive politics of the EU.

Government by the Commission

The Commission has several responsibilities:

- to propose policy ideas for the medium-term development of the EU;
- to initiate legislation and arbitrate in the legislative process;
- to represent the EU in bilateral and multilateral trade negotiations;
- to issue rules and regulations, for example on competition policy;
- to manage the EU budget; and
- to scrutinize the implementation of the primary treaty articles and secondary legislation.

To carry out these responsibilities the Commission is organized much like a domestic government: with a core executive (the College of Commissioners) focusing on the political tasks; a bureaucracy (the directorates-general) undertaking legislative drafting, administrative work and some regulatory tasks; and a network of quasi-autonomous agencies undertaking a variety of monitoring and regulatory tasks.

A cabinet: the EU core executive

Following the Nice Treaty all member states now have only one Commissioner each. The College of Commissioners meets at least once a week (usually on a Wednesday). The President of the Commission chairs the meetings. As far as possible, College decisions are by consensus, but any Commissioner may request a vote. When votes are taken, decisions require an absolute majority of Commissioners, with the Commission President casting the deciding vote in the event of a tie. This absolute majority rule means that abstentions and absentees are equivalent to

negative votes. Voting is usually by show of hands (so not by secret ballot). The results of votes are confidential, but how each Commissioner has voted is recorded in the College minutes, and on high-profile issues this information is often leaked to the press from somewhere in the Commission bureaucracy. Nonetheless, the Commissioners are bound by the principle of 'collective responsibility', which is a key norm in most cabinet government systems. This principle means that even if a Commissioner was in a losing minority in a vote, he or she must toe the line of the majority in the outside world.

The political leadership of the Commission operates along the lines of cabinet government in several other ways. The first is the allocation of a portfolio to each Commissioner, as shown in Table 2.1. The most high-profile portfolios are given to the Commission vice-presidents and those who were Commissioners in previous administrations. In the Barroso II Commission, for example, those Commissioners who were in the previous Barroso administration all held key portfolios. Nevertheless any Commissioner is capable of making a name for him- or herself through hard work and skilful manipulation of the media.

The Commission President is the 'first among equals' (Bagehot, 1987 [1865]). The President sets the overall policy agenda of the Commission by preparing the annual work programme, sets the agenda and chairs the meetings of the College, and is in charge of the Secretariat General, which oversees the work of the directorates general). The President also decides which Commissioner gets which portfolio, in consultation with the individual Commissioners and the governments that nominated them. In practice, the member state governments hold agenda-setting power in this relationship as they are responsible for nominating their Commissioners in the first place. Nevertheless, the Commission President can exert some pressure on national governments to propose more high-profile and competent figures (and sometimes more pro-European figures). The President can also ask individual Commissioners to resign if they prove to be corrupt or incompetent.

A further aspect of cabinet government is the system of Commissioners' *cabinets*. The *cabinet* system was imported from the French government system, although it exists in most collective-government systems. The *cabinets* have four main functions: to serve as political antennae and filters for party and interest-group demands; as policy advisers of civil servants in the directorates-general; as mechanisms for inter-Commissioner coordination and dispute resolution; and as supervisors and controllers of the work of the directorates-general responsible to the Commission (Donnelly and Ritchie, 1997). The *chef des cabinets* meet together every week to prepare the agenda for the weekly meeting of the College of Commissioners. They try to resolve most of the items on the weekly agenda, leaving only the more controversial and political decisions to their political masters. The *cabinets* used

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Table 2.1 *The Barroso II Commission*

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Commissioner	Member state	European political group affiliation	Portfolio
President			
José Manuel Barroso*	Portugal	EPP	
Vice-Presidents			
Catherine Ashton*	UK	S&D	Foreign Affairs and Security Policy
Viviane Reding*	Luxembourg	EPP	Justice, Fundamental Rights and Citizenship
Joaquín Almunia*	Spain	S&D	Competition
Siim Kallas*	Estonia	ALDE	Transport
Neelie Kroes*	Netherlands	ALDE	Digital Agenda
Antonio Tajani*	Italy	EPP	Industry and Entrepreneurship
Maroš Šefčovič*	Slovakia	S&D	Inter-Institutional Relations and Administrations
Members			
Janez Potočnik*	Slovenia	Ind.	Environment
Olli Rehn*	Finland	ALDE	Economic and Monetary Affairs
Andris Piebalgs*	Latvia	EPP	Development
Michel Barnier	France	EPP	Internal Market and Services
Androulla Vassiliou*	Cyprus	ALDE	Education, Culture, Multilingualism and Youth
Algirdas Šemeta*	Lithuania	EPP	Taxation and Customs Union, Audit and Anti-Fraud
Karel De Gucht*	Belgium	ALDE	Trade
John Dalli	Malta	EPP	Health and Consumer Policy
Máire Geoghegan-Quinn	Ireland	ALDE	Research, Innovation and Science
Janusz Lewandowski	Poland	EPP	Financial Programming and Budget
Maria Damanaki	Greece	S&D	Maritime Affairs and Fisheries
Kristalina Georgieva	Bulgaria	EPP	International Cooperation, Humanitarian Aid and Crisis Response
Günther Oettinger	Germany	EPP	Energy
Johannes Hahn	Austria	EPP	Regional Policy
Connie Hedegaard	Denmark	EPP	Climate Action
Štefan Füle	Czech Republic	S&D	Enlargement and European Neighbourhood Policy
László Andor	Hungary	S&D	Employment, Social Affairs and Inclusion
Cecilia Malmström	Sweden	ALDE	Home Affairs
Dacian Cioloş	Romania	EPP	Agriculture and Rural Development

Note: *Member of the previous Commission.
EPP = European People's Party, ALDE = Alliance of Liberals and Democrats for Europe. S&D = Progressive Alliance of Socialists and Democrats, Ind.= Independent

to be handpicked fellow nationals of the Commissioners. This is no longer the case, as the majority members of the *cabinets* are no longer the same nationality as their Commissioner (Egeberg and Heskestad, 2010).

Although the EU Treaty proclaims that the members of the Commission shall serve the general interest of the EU and be completely independent, the Commission is a political body, occupied by actors with backgrounds in national politics. As discussed above, the member states care about two main issues when delegating to the Commission: the gap between the preferences of the Commission and the governments, and the competency of the Commission. Much of the literature on EU politics assumes preference–divergence between the governments and the Commission: the Commissioners prefer more integration than the member states. However, from a principal–agent perspective, it is puzzling that the member states would select a Commission with outlying preferences (Crombez, 1997; Hug, 2003). Commissioners tend to have previously held political positions in parties that are in government at the time of their appointment to the Commission (Wonka, 2007). This suggests a high level of preference–similarity between the governments and the Commission, at least when the Commission is first appointed.

Nevertheless, when choosing Commissions, governments also care about their political competence, and have tended to care more about the competence of prospective Commissioners as the powers of the Commission have increased (Döring, 2007). Put another way, political has-beens with little to offer are now rarely appointed as Commissioners. Also, the allocation of portfolios within the Commission suggests that more experienced and politically moderate Commissioners tend to obtain better policy portfolios (Franchino, 2009).

Comitology: interface of the EU dual executive

The Commission is not completely free to shape policy outcomes when implementing EU legislation. The Council has designed an elaborate system of committees, known as 'comitology', composed of national government officials who scrutinize the Commission's implementing measures. Under some procedures of the comitology system there is a separation of powers, whereby the legislators (the governments) can scrutinize the executive (the Commission). Under other procedures, however, comitology has created a fusion of powers, whereby the member state governments can in some respects enforce their wishes on the Commission, and so exercise both legislative and executive authority.

The comitology system was established by a Council decision in July 1987 and reformed by Council decisions in June 1999 and July 2006. These decisions established four types of committee – advisory, management, regulatory, and regulatory committee with scrutiny – and a set of

rules governing their operation. The membership of the committees depends on their role: committees composed of national civil servants monitor the implementation of legislation; temporary committees composed of representatives of private interest groups consider matters for which the Commission feels wider consultation is necessary; and committees composed of scientists and experts give advice on technical issues. This structure of the system dates back to the establishment of the CAP, when the Commission proposed this system, which worked as a powerful focal point for subsequent arrangements (Blom-Hansen, 2008).

Here is how the comitology procedures work. Under the advisory procedure, the Commission has the greatest degree of freedom: although it must take 'the utmost account' of the opinion of the national experts, it can simply ignore their advice. This procedure is used in most areas of EU competition policy, such as Commission decisions on mergers and state aid to industry.

Under the management procedure, if the implementing measures adopted by the Commission are not in accordance with the committee's opinion, the Commission must refer them to the Council, which, within a certain timeframe, may adopt a different decision by QMV. This procedure is mostly used for the CAP and most other areas of EU expenditure, such as regional policy, research, and development aid.

Under the regulatory procedure, if the implementing measures of the Commission are not in accordance with the committee's opinion, the Commission must refer them to the Council and, for information, to the European Parliament. The Council may give its agreement or introduce an amendment within three months. The 2006 amendment to the rules introduced a second variant of the regulatory procedures, known as the regulatory procedure with scrutiny. Under this procedure, the Council and European Parliament can carry out a check prior to the adoption of a measure by the Commission and if there is opposition in either of these institutions the Commission cannot adopt the measure. The regulatory procedure was developed by the Council in the late 1960s to cover areas outside agriculture where the member governments wanted more control over the Commission than they had under the advisory and management committee procedures (Docksey and Williams, 1997). This procedure is now used in such areas as animal, plant and food safety, environmental protection and transport.

The Lisbon Treaty commits the Council and the European Parliament, acting under the ordinary legislative procedure, to adopt a new set of rules to simplify the comitology procedures. In March 2010, the Commission initiated a proposal which aims to simplify the procedures radically.

Given the different degrees of freedom the Commission has under each of the procedures, one would expect the Commission and the Council to be constantly in conflict over which procedure should be used for the enactment of each piece of legislation. However, Dogan (1997, 2001)

found that this was not necessarily the case. For example, 29 per cent of all comitology procedures proposed by the Commission between 1987 and 1995 were under procedures where the Commission was weak (such as the regulatory procedure), and contrary to the Commission's rhetoric about the Council's opposition to the advisory committee procedure, the Council accepted 40 per cent of the Commission's proposals for use of this procedure. Dogan consequently argues that 'the Commission is deeply implicated in the pattern of Council comitology preferment' (1997, p. 45). However, as with the seemingly harmonious relationship between the Commission and the committees in the operation of comitology, the figures might reflect the fact that the Commission is strategic in its choice of comitology procedures, and hence only proposes the advisory procedure in cases where it thinks it has a reasonable chance of getting them past the Council.

The European Parliament has been critical of comitology (Bradley, 1997; Corbett *et al.*, 1995, p. 253; Hix, 2000). After the establishment of the system, the European Parliament argued that the system lacked transparency, due to the secretive nature of committee proceedings. It also argued that by allowing the member state governments to scrutinize the executive powers of the Commission, the comitology system undermined the principle of the separation of powers between the legislative authority of the EU (the Council and the Commission) and the executive implementation authority (the Commission). Moreover, the Parliament was critical of the fact that the procedures only allowed for issues to be referred back to one part of the EU legislature (the Council), rather than to both the Council and the European Parliament. The new regulatory procedure with scrutiny established in 2006 was specifically designed to address this concern. Also, the committees are now far more transparent than they used to be, as since April 2008 all committee documents are publicly available in a comitology register.

Some researchers argue that the comitology system enables Commission and national experts to work together to solve policy issues in a non-hierarchical and deliberative policy style (e.g. Joerges and Neyer, 1997). However, the involvement of scientific experts and private interests in the process of policy implementation and regulation is a common feature of most public administration systems. And, on high-profile policy issues, conflicts do arise between the Commission and the national experts, and between experts from different member states.

Administrative Accountability: Parliamentary Scrutiny and Transparency

The administrative and regulatory tasks of the Commission and the Council are subject to parliamentary scrutiny in much the same way as

domestic bureaucracies and regulatory agencies are (Rhinard, 2002). First, the President of the Commission presents the Commission's annual work programme to the European Parliament. Second, Commissioners and Commission officials regularly give evidence to European Parliament committees, and certain European Parliament committees have introduced a 'question time' for the Commissioner responsible for the policy areas they oversee. Third, the president-in-office of the Council presents the Council's six-monthly work programme to the European Parliament. Finally, government ministers from the member state that holds the Council Presidency often appear before European Parliament committees, and the President of the ECB and the heads of the EU agencies appear before the European Parliament committees on a regular basis. In contrast, while the President of the European Council is not accountable to the European Parliament, he does appear before the MEPs to report on European Council meetings.

The European Parliament has a highly developed system of presenting oral and written questions to the Council and the Commission (Raunio, 1996). As in national parliaments, these questions enable MEPs to gain information, force the executive to make a formal statement about a specific action, defend their constituencies' interests, and inform the Commission and Council of problems with which they might be unfamiliar. The full texts of the questions and the answers by the institutions are published in the EU *Official Journal*. Proksch and Slapin (2011) show that MEPs from parties in opposition at the national level more actively use questions to scrutinize the Commission and the Council.

Unlike most national governments, however, there are no formal rules governing individual responsibility for Commissioners. Individual Commissioners are often blamed for inconsistencies in the DG in their charge, or for lack of action in the policy area they cover, but no procedure exists for forcing individual Commissioners to resign. Also, the Commission has not developed a culture in which a Commissioner or a senior official would resign out of a sense of obligation, and the European Parliament does not have the right to censure individual Commissioners. Nonetheless, in January 1999 the European Parliament announced it would hold separate votes of no confidence on two Commissioners: Édith Cresson and Manuel Marín, who were in charge of administrative divisions where fraud and nepotism had been alleged. Although these motions would have no legal force, considerable pressure to resign was put on the two Commissioners by the media and several governments. In the event, the motions were defeated.

Despite the above, since the early 1990s the Commission has been eager to promote transparency in its administrative operations. First, in

February 1994 it unveiled a 'transparency package'. This included the publication of its annual work programme in October instead of January, which allows the European Parliament and Council time to debate the draft before the final adoption of the full legislative programme in January. Second, in the initiation of legislation the Commission now makes more use of green and white papers, public hearings, information seminars, and consultation exercises. Third, the Commission's new code of conduct commits it to make internal documents public, with the exception of minutes of its meetings, briefing notes, the personal opinions of its officials and documents containing information that might damage public or private interests. Finally, the Commission submits draft legislation to national parliaments so that their committees on EU affairs can scrutinize the legislation before their government ministers address it in the Council.

Officially the Council supports greater openness in EU decision-making. However, both the Commission and the European Parliament have accused the Council of hypocrisy. First, the majority of member states (and thus the Council) have opposed the Commission's efforts to allow public access to EU documents – many member state governments are keen to prevent private interests and the media from learning more about what they sign up to in the EU legislative and executive processes. Second, the Council has proved reluctant to expose itself to public scrutiny. The EU Treaty (Article 207) specifies that:

> the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.

However, this has allowed the Council to remain secretive about matters that come under its executive capacity, and also to define for itself when it is 'acting as a legislature'. The Lisbon Treaty has change this slightly, by defining that the Council acts as a legislature under the ordinary legislative procedure, and so requires the Council to be more open in its legislative activities.

The activities of the governments in the Council are also scrutinized by their national parliaments (Bergman, 1997; Norton, 1996; Raunio, 1999; Saalfeld, 2000). In every national parliament this is primarily conducted by a special EU affairs committee, which receives drafts of legislative initiatives by the Commission, and usually asks national government officials and ministers involved in EU affairs to give evidence and answer questions. Some national parliaments are more effective than others in this role. For example, the EU affairs committee in the Danish Folketing, which was set up in 1972, issues voting

instructions to Danish government ministers prior to meetings of the Council. In contrast, the Select Committee on European Legislation in the British House of Commons has very little control over the activities of British ministers in the Council. The extent of national parliament involvement in the transposition of EU legislation is a function of preference–divergence in a national cabinet and the power of the national parliament vis-à-vis the government in a member state (Franchino and Høyland, 2009). In general, member states with single-party majority governments (as in the UK, France, and Greece) tend to have national parliaments which are less involved in EU affairs, whereas member states with minority or coalition governments (as in Scandinavia and the Benelux countries) tend to have national parliaments who are more involved in EU affairs.

As European integration has progressed, and governments have delegated more powers to the EU institutions, several scholars have detected a decline in the ability of national parliaments to scrutinize the executive branch of their national governments effectively (e.g. Andersen and Burns, 1996). For example, Moravcsik (1993, p. 515) argues:

> by according governmental policy initiatives greater domestic legitimacy and by granting greater domestic agenda-setting power … the institutional structure of the EC strengthens the initiative and influence of national governments by insulating the policy process and generating domestic agenda-setting power for national politicians. National governments are able to take initiatives and reach bargains in Council negotiations with relatively little constraints.

However, since the mid-1990s national parliaments have fought to retrieve at least some of the powers they have lost to the executive as a result of EU integration (Raunio and Hix, 2000). By 1995 all the national parliaments had set up EU affairs committees to scrutinize their governments' activities at the EU level, and developed procedures requiring ministers and national bureaucracies to provide detailed information on new EU legislation and how EU decisions would be implemented in the domestic arena. Furthermore, the Lisbon Treaty establishes an early warning system whereby national parliaments are given six weeks to offer a reasoned opinion on whether a Commission proposal violates the subsidiarity and proportionality principles (the subsidiarity principle means that decisions should be taken at the lowest possible level, and the proportionality principle means that the EU may only act to the extent that is needed to achieve its objectives and not further). If one-third of the national parliaments considers a Commission proposal to be in violation of subsidiarity or proportionality, the Commission has to review the proposal. However, having conducted the review, the Commission is free to amend, redraw, or leave the proposal unchanged. It is thus not

clear that this new measure will involve the national parliaments in any meaningful way (Cooper, 2006).

Political Accountability: Selection and Censure of the Commission

In the collective exercise of political leadership in the Council the member state governments can claim legitimacy via national general elections (see Chapter 7). However, the legitimacy of the political leadership role of the Commission is more problematic. Until 1994 the President of the Commission was chosen by a collective agreement among the heads of government in the European Council. The Commission President was regarded as one post in a package deal between governments on the heads of a number of international agencies, such as the secretaries-general of the WTO and the North Atlantic Treaty Organization (NATO). This was more akin to selecting the head of an international organization than to choosing the 'first among equals' in a political cabinet.

However, the Maastricht Treaty introduced a new investiture procedure, whereby the term of office of the Commission was aligned with the term of the European Parliament. Also, the European Parliament would now be consulted on the member state governments' nominee for Commission President, and the members of the full Commission would be subject to a vote of approval by the European Parliament. However, the European Parliament interpreted 'consulted' as the right to vote on the nominee for Commission President (Hix, 2002a). Consequently in July 1994, in the first ever Commission President investiture vote in the European Parliament, Jacques Santer was approved by the European Parliament as Commission President by a margin of only 12 votes (Hix and Lord, 1995). In addition, following the nomination of the individual Commissioners, the European Parliament introduced Commissioner hearings, where the nominees had to give evidence to the European Parliament committee covering their portfolios (consciously modelled on US Senate hearings of the nominees for the US President's cabinet) (Westlake, 1998). Finally, once the committee hearings were complete, the European Parliament took a second vote on the Commission as a whole. The Amsterdam Treaty reformed the procedure, to institutionalize formally the European Parliament's power to veto the nominated Commission President.

Subsequently, the Nice Treaty introduced QMV in the European Council for the nomination of the Commission President and the Commission as a whole. The Lisbon Treaty only slightly amends this combination of QMV in the European Council and veto by the European

Parliament, by requiring that the European Council takes account of the European Parliament election results when nominating a Commission President.

Despite the fact that the European Parliament cannot formally veto individual Commissioners, the Parliament has used its role in the Commission investiture procedure to extract concessions from the governments. In particular, in October 2004, the European Parliament refused to back the investiture of Barroso's first Commission, after the European Parliament's Civil Liberties committee had issued a negative opinion on the appointment of the Italian politician Rocco Buttiglione as the Commissioner for Justice, Freedom and Security. The socialist, liberal, radical left, and green MEPs objected to Buttiglione's views on gender equality and the rights of homosexuals, which were particularly relevant because his portfolio included EU equality provisions. The Italian government initially refused to withdraw Buttiglione, but after the Parliament refused to back the Commission as a whole, Barroso was able to persuade the Italian Prime Minister Berlusconi to nominate Franco Frattini instead.

Then in 2009, Bulgaria's nominated candidate, Rumiana Jeleva, was withdrawn after heavy criticism from a number of MEPs about her alleged connections to organized crime in Bulgaria.

Regarding the removal of the Commission, since the Treaty of Rome the European Parliament has had the right to censure the Commission as a whole by a 'double majority': an absolute majority of MEPs and two-thirds of the votes cast. Motions of censure have been proposed on several occasions, but none has ever been carried. The European Parliament tends to fear that throwing out the Commission would back-fire, as governments and the public would accuse the European Parliament of acting irresponsibly. Also, before the new investiture procedure there was nothing to prevent governments from reappointing the same Commissioners. Above all, the double majority in practice means that a very broad political coalition is required to censure the Commission. This means that the European Parliament's right of censure is more like the right of the US Congress to impeach the US President than the right of a domestic parliament in Europe to withdraw majority support for a government, and therefore it can only be exercised in extreme circumstances – in instances of what the US constitution calls 'high crimes and misdemeanours'.

However, in 1998 and 1999 the European Parliament became more confident about using the threat of censure. In 1998, with widespread public disapproval of the Commission's handling of the BSE crisis, the European Parliament successfully threatened censure to force the Commission to reorganize its handling of food safety issues. In January 1999 the European Parliament demanded that the Commission respond to the high-profile allegations of financial mismanagement, nepotism,

and cover-up (the Commission had sacked an official who had leaked a report on fraud and financial mismanagement). On the eve of the censure vote, Commission President Santer promised that an independent committee would be set up to investigate the allegations, and that there would be a fundamental administrative reform of the Commission, including a new code of conduct, rules governing the appointment and work of the cabinets, and restrictions on 'parachuting' political appointees into top administrative jobs. As a result, the censure motion was narrowly defeated, with 232 MEPs in favour of censure and 293 opposed (mostly from the Party of European Socialists and European People's Party).

In a separate motion passed in January 1999, however, the European Parliament put the Commission on probation until the committee of independent experts set up by the European Parliament reported on the allegations of fraud, corruption and nepotism. When the highly critical report was published in March 1999 a new motion of censure was tabled. On Sunday 14 March, the day before the vote, Pauline Green, the leader of the largest political group (the Party of European Socialists), informed Jacques Santer that because the majority in her group would be voting for censure, the motion would probably be carried. Santer promptly called an emergency meeting of the Commissioners, who agreed they should resign en masse. Hence, one can reasonably claim that the European Parliament did in fact censure the Commission in March 1999, even though a vote was never taken – in much the same way as President Nixon was forced to resign in 1974 after a committee of the US House of Representatives had issued an opinion, and before an actual impeachment vote in either the House or the Senate was taken.

Because of the effective censure of the Santer Commission by the European Parliament, the incoming Prodi Commission was much more sensitive to Parliament's concerns. For example during their committee hearings, the prospective Commissioners showed more respect for the opinions and questions of the MEPs than several of the members of the previous Commission had in their hearings. Also, during the debate on the investiture of the next commission, Romano Prodi promised to sack individual Commissioners if the Parliament could prove allegations of corruption or gross incompetence. This effectively gave the Parliament the right to censure individual Commissioners. However, counter-intuitively, this could limit the influence of the European Parliament over the Commission as a whole, as it might undermine the norm of collective responsibility in the Commission – a key weapon of any parliament over a government.

Consequently, the procedures for selecting and deselecting the Commission have become a hybrid mix of the parliamentary and presidential models. The Maastricht and Amsterdam Treaties injected

an element of parliamentary government by requiring that the Commission be supported by a majority in the European Parliament before taking office, and that the right of censure allows the European Parliament to withdraw this support. Also, the introduction of QMV in the European Council for nominating the Commission means that the same bicameral majority is now required for electing the executive and passing the legislative initiatives of the executive. Hence, there is a fusion of the executive and legislative majorities, as in a parliamentary system.

However, in the process of selecting the Commission President the member state governments are the equivalent of a presidential electoral college, over which the European Parliament can only exercise a veto. The European Parliament cannot propose its own candidate. And, once invested, the Commission does not really require a working majority in the European Parliament. The right of censure is only a 'safety valve', to be released in the event of a serious political or administrative failure by the Commission.

This design reflects a conscious effort by the member state governments to maintain their grip on who holds executive office at the European level. The European Parliament has gained a limited role in the investiture procedure because the governments had to address the 'democratic deficit' (see Chapter 6). During the Convention on the Future of Europe, which drafted the Constitution, a variety of alternative models were proposed. These included a classic parliamentary model, with a contest for the Commission President in European Parliament elections and the translation of the electoral majority in the European Parliament into the formation of the Commission; and a presidential model, with some form of direct or indirect election of the Commission President. However, neither model was acceptable to the member state governments, which perceived that the benefits of any alternative (democratic) model of electing the Commission would be considerably lower than the potential costs: the loss of their power to choose the members of the other branch of the EU executive, and the likely politicization of the Commission.

Conclusion: the Politics of a Dual Executive

The power to set the policy agenda and implement EU policies is shared between the EU governments in the Council and European Council and the Commission. Basically, the governments set the long- and medium-term agendas, by reforming the EU Treaty and delegating political and administrative tasks to the Commission. In the areas where executive powers have been delegated, the Commission has a significant political leadership role and is responsible for distributing

the EU budget, monitoring policy implementation by the member states, and making rules and regulations.

The member state governments have delegated powers to the Commission to reduce transaction costs and produce policy credibility. However, they have been selective in this delegation. For example, they have limited the Commission to certain regulatory matters, such as competition and agricultural policies. They have also retained control of key executive powers, such as treaty reform, policy-making under CFSP, front-line implementation of EU legislation, long-term agenda-setting and the coordination of national macroeconomic policies. In addition, the governments have limited the Commission's discretion through the comitology system and retained their monopoly over the nomination of the Commission President and the selection of the Commissioners.

Meanwhile, the Commission has developed many of the characteristics of a supranational 'government'. At the political level, the College of Commissioners operates along the lines of cabinet government, with collective responsibility and the Commission President as the first among equals. Also, the Commissioners are partisan career politicians and pursue their own political objectives in the EU policy process. At the administrative level, the Commission directorates-general are quasi ministries and many of the directorates-general have direct regulatory powers. Also, like national administrations each service in this Euro-bureaucracy has its own institutional interests, policy objectives, and supporting societal groups. As a result, the Commission has powerful incentives and significant political and administrative resources to pursue an agenda independently from the member state governments.

The member state governments have tried to tilt the balance of power in this dual-executive relationship back to themselves. For example, following the activism of Delors the governments were careful to choose Commission Presidents (Santer, Prodi, and Barroso) who they felt were more sensitive to member state interests. Moreover, the governments have tried to use the European Council to set the medium- and short-term policy agenda, and thereby take away some of the Commission's policy-initiation power. Finally, since the resignation of the Santer Commission, the Commission administration has gone through a period of self-investigation and internal reform, which has bred further insecurity vis-à-vis the governments.

The result is a system with strengths and weaknesses. The main strength is that the dual character of the EU executive facilitates extensive deliberation and compromise in the adoption and implementation of EU policies. This is a significant achievement for a continental-scale and multi-national political system, and it reduces the likelihood of system breakdown. However, there are two important weaknesses. First, the

flipside of compromise is a lack of overall political leadership and dual-executive systems tend to be characterized by policy stability. Second, and linked to this issue, there is the problem of democratic accountability. There is no single chief executive whom the European public can 'throw out'. The consequence is a political system that seems remote to most European citizens, as we shall see in Chapter 5.