

EUROPEAN INTEGRATION SINCE THE 1990s: MEMBER STATES AND THE EUROPEAN COMMISSION

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Paper prepared for ARENA seminar
University of Oslo
11 February 2004

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Abstract

The relationship between the member states and the Commission is at the heart of the EU's institutional structure and at the centre of debates about the European Union. In the 1990s, the new institutionalism and the multi-level governance approach emphasised the limitations of state power in EU decision making and stressed the ability of the supranational institutions, particularly the European Commission, to shape European integration. Contrary to their expectations that power would continue to shift from national government to the supranational bodies of the EU, integration since the 1990s has been marked instead by a strengthening of member state control and a decline in the status of the Commission. This paper charts these developments. It explains how the member states were able to reassert their authority, considers the fate of the Commission, and offers a critical examination of the weaknesses of the two theories. It also considers the significance of the Commission's decline for the future of the Union.

INTRODUCTION

The relationship between member states and the European Commission is a core element of the institutional system of the European Union, and the extent to which the Commission is an obedient servant or an autonomous actor is a key concern.³ No less important is the way in which the relationship has changed over time, reflecting and reinforcing the shifting balance between supranational and intergovernmental bodies, methods and procedures at the EU level.⁴ For much of the 1990s, the dominant view in the integration literature was that power in the European Union was shifting ineluctably away from governments and towards the supranational institutions. New institutionalists emphasised the resources that the Commission has at its disposal, stressing its autonomy, capacity for independent action and ability to pursue its own preferences, while at the same time highlighting the difficulties faced by national governments in maintaining or (re-)asserting control over the supranational institutions (Pierson 1996; Pollack 1996, 1997). Multi-governance theorists, meanwhile, drew attention to the limitations on state executive control, both individual and collective, and sought to ‘analyse the conditions under which central state executives may lose their grip on power’ (Marks *et al* 1996: 341). Though acknowledging that state executives remained important, perhaps even the most important, actors in the European Union, they identified ways in which power was draining away from the central state upwards to Brussels and downwards to sub-national authorities and others. In the face of these challenges, even intergovernmentalists were compelled to concede that member state control over supranational institutions might in fact be less than absolute. The role of the European Court of Justice was, for example, described as ‘anomalous’ by the leading proponent of liberal intergovernmentalism (Moravcsik 1993: 513).

Developments in European integration since the 1990s in this light are rather remarkable. Instead of the steady decline of member state power within the European Union consistent with the theories mentioned above the period has witnessed a re-assertion of their authority by national governments vis-à-vis the supranational institutions. The member states have strengthened their institutional role, placing themselves at the heart of EU decision making

³ See Moravcsik (1993, 1998), Pierson (1996), Pollack (1996, 1997), Doleys (2000), Cram (1993), Matlary (1997).

⁴ See, for example, Moravcsik (1993, 1998), Pierson (1996), Pollack (1997, 1996). See also Menon (2003), Kassim and Menon (2003) ‘The Principal-Agent Approach and the Study of the EU: Promise Unfulfilled?’ *Journal of European Public Policy*, 10:1, 121-139.

and taking control of key areas of policy. Rather than demonstrating its capacity for independent action as some of the above theories anticipated, the Commission has been increasingly sidelined, its role downgraded and its autonomy circumscribed as the EU moves in the direction of a parliamentary system (Majone 2002, 2003).

This article argues that the theories that came to dominate the literature in the 1990s underestimated the strength of the member states, the ability of the latter to assert themselves and their capacity to learn, and overestimated the power of the supranational institutions, in particular, the European Commission, and the obstacles faced by governments in altering the institutional balance. It contends that the Maastricht negotiations were a turning point, not least in increasing the domestic salience of 'Europe' with the effect that even governments in countries historically supportive of integration were forced to moderate their enthusiasm under closer scrutiny from the public and the media. It also argues that the Commission bears some of the responsibility for the changes that have taken place. Over much of the period it has been characterised by poor leadership and over-ambition.

The discussion below is divided into four sections. The first reviews the claims of the new institutionalism and the multi-level governance approach. The second examines member state assertiveness. It looks at the way in which governments secured their ascendancy and downgraded the Commission. The third section considers the two questions that arise from the discrepancy between the expectations of the new institutionalism and the multi-level governance approach for integration and developments in the European Union – the first: what explains member state assertiveness from the 1990s? And the second: what weaknesses in the two theories do these developments reveal? The final section reflects on the significance of the decline of the European Commission for the future of integration.

THEORISING INTEGRATION IN THE 1990s

The 1990s saw the emergence of two new theoretical approaches to European integration. The new institutionalism, in its historical variant, which drew upon the writings of Ikenberry (1994) and Thelen and Steinmo (1992), and its rational choice incarnation, which was

influenced by institutionalist analyses of the US Congress,⁵ addressed the relationship between the member states and the EU institutions, and drew attention to the circumstances under which the latter could act independently of the former. Multi-level governance, by contrast, stressed the limitations of the traditional state in controlling EU decision making.

The New Institutionalism⁶

Though acknowledging the role of the member states in creating the European Communities, historical institutionalism and rational choice institutionalism proceed from the assumption that the influence of the member states over the course of European integration is limited. They seek to trace the limits of state power and to identify the conditions under which member states become unable to control the destiny of the Communities. The capacity of the supranational institutions, particularly the Commission and the Court, are cited as key factors in restricting the ability of member states to shape the direction of integration. Both versions of the new institutionalism thereby function as critiques of intergovernmentalism, which holds not only that member states dictate the pace and scope of integration, but also that supranational institutions were created to perform particular tasks for governments and remain subordinate to them.

The central claim of historical institutionalism is that intergovernmentalism is flawed because ‘the current functioning of institutions cannot be derived from the aspirations of the original designers’ (Pierson 1996: 127). Although in the case of the European Union the member states created the supranational institutions to perform important functions on their behalf, the member states are likely to lose control over these institutions, because over time gaps are likely to emerge that are difficult for them to close. These gaps develop for four reasons:

- the ‘autonomous actions of European institutional actors’: EC institutions are new actors, with their own interests, which are likely to ‘diverge from those of its creators’, and have significant resources -- ‘expertise and delegated authority’ (Moe 1990: 121) – of their own;
- the ‘restricted time horizons of national decision makers’: politicians in the member states are likely to give greater priority to the short-term (Pierson 1996: 136) due to the demands of the electoral cycle and their relatively short periods in office compared to the long-term missions of the supranational institutions;

⁵ See, for example, McKelvey (1976), Riker (1980, 1986), Shepsle (1979, 1986, 1989), McCubbins and Sullivan (1987).

⁶ This section draws on Kassim and Menon (2003:129-33).

- the potential for unintended consequences: issue density in the European context generates ‘overload’ and ‘spillover’, producing ‘interaction effects’ that lead to outcomes that are unlikely to have been anticipated at the outset. (1996: 136-9);
- shifts in the policy preferences of national governments: the institutional and policy preferences of the member states change over time, while successive enlargements alter policy coalitions.

Once these gaps emerge, ‘change-resistant decision rules and sunk costs associated with societal adaptations make it difficult for member states to reassert their authority’ (1996: 123). According to historical institutionalism, there is a tendency over time for the member states to lose control over integration and for supranational institutions to act autonomously on the basis of preferences that may diverge from member state governments.

Rational choice institutionalism approaches the issue of member state control slightly differently, seeking to establish the conditions under which ‘supranational institutions will be delegated authority and will enjoy autonomy from and exert influence on the member governments of the Community’ (Pollack 1997: 100-1). Pollack concludes that the functional theory of delegation can explain the functions entrusted to the supranational institutions by the member states. These include: monitoring compliance and enforcing treaty provision, solving problems of incomplete contracting, independent regulation and agenda-setting. However, using principal-agent theory to model the relationship between the member state principals and supranational agents, he argues that the latter are able to assume functions that were not originally anticipated by their creators. A survey of the mechanisms available to the member states to control the supranational institutions leads to the identification of four mechanisms:

- comitology (a form of police patrol monitoring), whereby the member states monitor and control the exercise by the Commission of its executive function, but where effectiveness depends on which of the three committee-types is in place
- fire-alarm oversight, involving the EC legal system, the European Parliament’s power of dismissal, and the European Court of Auditors, which are designed to enforce Commission accountability
- *ex post* sanctions, including cutting the budget – costly to member states, since it may have adverse effects for their domestic constituencies; the power of appointment – relatively ineffective, since it can only be exercised every five years (Commission) or

six years (judges in the Court); the introduction of new legislation – costly, because it requires mustering a winning majority under QMV or the support of all other member states, where the unanimity rule applies; and unilateral non-compliance – too costly to a member state’s reputation.

- revising an agent’s mandate though revision of the treaty -- ‘the “nuclear option” – exceedingly effective, but difficult to use – and ... therefore a relatively ineffective and noncredible means of member state control’ (Pollack 1997: 118-9).

Pollack argues, however, that ‘both monitoring and sanctioning are costly to member state principals as well as to their supranational agents, and that supranational agents can and do therefore exploit conflicting preferences among the member states to avoid the imposition of sanctions’ (1997: 101).

With respect to agenda setting, Pollack argues that the Commission has formal power where it has the exclusive right of initiative and where it ‘is easier to adopt than to amend a Commission proposal ... differences in member state preferences can be effectively exploited, and ... member states are dissatisfied with the status quo and impatient to adopt a new policy’ (1997: 124). Its informal agenda-setting influence depends on ‘member state uncertainty regarding the problems and policies confronting them and on the Commission’s acuity in identifying problems and policies that can rally the necessary consensus among member states in search of solutions to their policy problems’ (1997: 128). Again, however, Pollack underlines the supranational agents’ position of strength: ‘their [supranational institutions] policy expertise and institutional persistence can provide them with certain informational advantages vis-à-vis both competing agenda setters and the Council of Ministers in a setting of incomplete information’ (1997: 102).

Summarising his findings, Pollack contends that supranational autonomy is determined by four factors: the distribution of preferences among member state principals and supranational agents (1997: 129); the institutional decisions rules for applying sanctions, overruling legislation, and changing agents’ mandates (ibid); the role of incomplete information and uncertainty in principal-agent relationships (1997: 129-30) with autonomy greater where the Commission has more information about itself than do others (1997: 130); and the presence or absence of transnational constituencies of subnational institutions, interest groups or

individuals within the member states, which can act to bypass the member governments and/or place pressure directly on them (ibid). Although at first sight, this seems to suggest that the attempts of supranational agents to act autonomously are likely to be thwarted by monitoring and control mechanisms put in place by the member states, the emphasis that Pollack places on the difficulty and cost of monitoring and sanctioning, and on the resources – expertise and information – available to the Commission makes clear that his analysis should ultimately be read as a diagnosis of the limitations of member state control and of the strength of the supranational institutions. Such an interpretation is confirmed by his later work, which emphasises the ability of supranational institutions, specifically the Commission and the Court, to exert an independent influence in EU policy processes.⁷

Multi-level Governance

In their important article, Marks, Hooghe and Blank contest the ‘core presumption of state-centric governance ... that European integration does not challenge the autonomy of the nation-states’ (1996: 342). The alternative view to which Marks *et al* subscribe is that ‘authority and policy-making influence are shared across multiple levels of government – subnational, national, and supranational’, and that though ‘national governments are formidable participants in EU policy making, control has slipped away from them to supranational institutions’ (1996: 342). A key thrust of the article is to demonstrate that ‘even collectively, national governments are constrained in their ability to control supranational institutions they have created at the European level’ (Marks *et al* 1996: 352). Like rational choice institutionalism (explicitly) and historical institutionalism (implicitly), multi-level governance theorists use principal-agent theory to analyse the relationship between the member states and the supranational institutions. They contend that the ability of the member state principals to control supranational agents is constrained by several factors, as follows:

- the multiplicity of principals: the presence of multiple principals ‘prone to competition and conflict’ not only makes monitoring and control over the agent problematic, but also leads to compromise and therefore room for the agent to exploit in treaty and other negotiations;

⁷ See, for example, Pollack (2003: 390) where emphasises ability of ‘Commission and Court to exert at least some influence over policy outcomes, which counter-factually would not have been adopted by the member governments in the absence of supranational action’. Creeping competence.

- constraints on change: where the decision rule is unanimity, as is the case for institutional change in the EU, the barriers to reform are high. While a member states needs to muster agreement among all its partners to introduce change, the Commission ‘need only dent the united front of state executives in order to block a proposed change’ (1996: 354)
- informational asymmetries: agents are often able to exert leverage as a result of their privileged access to information. In the case of the Commission, though ‘small and thinly staffed ... its position as interlocutor with national governments, subnational authorities and numerous interest groups gives it a unique information base. The Commission’s job in reducing transaction costs of policy co-ordination among Member State governments provides it with unparalleled access to information and, therefore, the means for independent influence vis-à-vis those governments’ (Marks *et al* 1996: 355)
- detailed regulation as a response to mutual mistrust: ‘While state executives are induced to ambiguity in the high politics of treaty making, they give the Commission latitude to formulate very precise regulations on specific policies’ (Marks *et al* 1996: 355). By entrusting the Commission with the task of proposing legislation that ‘approximates a “complete contract”, legislation that is designed to straightjacket principals and so reduce their scope for evasion’ (*ibid.*)
- unintended consequences of institutional change: ‘The complexity of policy-making across disparate territories and multiple actors, the changing patterns of mutual interaction among policy arenas, the sensitivity of EU decision-making to international and domestic exogenous shocks – these contribute to a fluid and inherently unpredictable environment which dilutes the extent to which Member State decisions at time T_0 can control supranational actors at T_1 ’ (Marks *et al* 1996: 355-6).

In a later stage of the argument, Marks *et al* divide the policy-making process into sequential phases with the aim of demonstrating that national governments share power rather than impose their preferences collectively on other institutions’ (Marks *et al* 1996: 156). Three observations are particularly relevant for the purposes of the present study: the first is the emphasis that Marks *et al* place on the Commission’s role at the policy initiation stage, which gives it ‘significant autonomous influence over the agenda’ (1996: 356); the second in the decision phase, where among the Commission’s assets are its agenda-setting capacity under the co-operation procedure, its brokerage role under co-decision, its ability ‘as a hierarchical organization ... to present a more coherent position than the Council’ (1996: 365), and the

negotiating skills and experience that Commission officials bring to the table; and the third is the Commission's 'extensive executive powers, e.g. in competition policy, state aids, agriculture, commercial policy, and the internal market', where comitology is weakest (1996: 367).

In summary, both theoretical perspectives stressed the limitations on member state power in EU decision making, argued that member state control over the supranational institutions was limited, and emphasised the capacity of the Commission for independent action. They shared a common assumption: that member state power would continue to wane, while the Commission's strength was destined to grow.⁸

THE CHANGING INSTITUTIONAL BALANCE: FROM THE MAASTRICHT IGC TO THE CONVENTION ON THE FUTURE OF EUROPE

The theories that became well-established in the 1990s were strikingly at odds with developments in the European Union from the beginning of that decade. As the above discussion shows, new institutionalists and theorists of multi-level governance anticipated a shift in the institutional balance in a supranational direction. The precise reverse has in fact taken place. From the Maastricht IGC in 1991, the member states have strengthened their control over the EU and the integration process, while the Commission has been in slow decline. At successive IGCs, governments have revised and amended the Union's constitutional framework to enhance their own influence and to limit the power of the Commission. The member states have limited the Commission's power and responsibilities in new areas of EU competence, and restricted the Commission's monopoly over the initiation of legislation. IGCs became more frequent. Their agendas were longer, the level of detail greater, and their expansion into policy more extensive. The Commission was relegated to a secondary role. The greater frequency of IGCs and a more explicitly

⁸ A different kind of argument has been made by Susanne K. Schmidt (2000, 2004). Schmidt argues that the Commission's agenda-setting power is reinforced in certain situations by its ability to call upon other resources, associated with its management responsibilities and role as guardian of the treaties. It can force action by presenting member states with a choice: either adopt the measured set of proposals that we have put on the table or face policy making by judicial fiat. However, although the Commission used this strategy to great effect during the 1980s and early 1990s, arguably such an approach is no longer available.

institutional agenda has not, however, been the only indication of the member states' growing assertiveness, even if it has the most visible. The volume and scope of business transacted at European Councils have also increased - evidence of 'creeping competence' on the part of Heads of State and Government. The agenda of the European Council was no longer restricted to matters of high politics and troubleshooting, but extended to include more routine policy deliberation. In addition, the member states introduced a series of institutional changes that have had the effect of downgrading the Commission both directly and indirectly by strengthening the European Parliament, attributing new powers and responsibilities to other bodies, such as agencies, and introducing new methods and procedures. They have taken charge of decision making in key policy areas. Finally, the member states have impeded the operation of the Commission as an administration.

Constitutional change

The three-pillar structure, as well as the principle of subsidiarity, introduced at Maastricht, was intended to rein in Commission ambitions and to establish member state control over policy formulation in the new – and politically sensitive -- areas brought within the scope of the European Union (Menon 2003a).⁹ The fiction of the common institutional framework did little to disguise the erosion of Commission powers.¹⁰ In a radical departure from the Community method, the Commission lost its traditional monopoly over policy initiation in the new pillars and member states acquired the right to make formal proposals for the first time. The General Affairs Council and the European Council, operating by unanimity, became the main decision-making bodies in the second pillar, the Common Foreign and Security Policy. Representation and implementation were reserved to the Council Presidency, supported by the EPC Secretariat, which became an autonomous unit within the Council Secretariat. The Commission was to be 'fully associated' with developments in the CFSP, but enjoyed no legislative powers.

The third pillar, Justice and Home Affairs, meanwhile, 'formalized the network of intergovernmental cooperation among national ministries of justice and the interior, and among related national agencies' (Den Boer and Wallace 2000: 494). The Council was the

⁹ Gerda Falkner (2002) argues convincingly that negotiations in social policy ran counter to the trend.

¹⁰ It could be argued, moreover, that integration *à la carte* has disadvantaged the Commission to the extent that it constitutes a departure from the original Community method, where the Commission played a central role.

key body, serviced by the K4 Committee, a special committee that co-ordinated the work of a complex network of working groups (Hayes-Renshaw and Wallace 1997: 96). The Commission's legislative role was shared with the member states in some areas of JHA. In others, the member states were granted exclusive competence. Determining the visa regime for third country nationals was the only area within the heterogeneous subject matter of the third pillar where the Commission was given its traditional monopoly over policy initiation

The strengthening of the European Parliament under the Treaty of European Union also moved the European Union further from the original Community model. Commission accountability to the European Parliament was strengthened at Maastricht by the extension of the Commission's term of office to five years, making it concurrent with the European Parliament. A new provision (Article 214) requiring governments to consult the Parliament in regard to their nomination of their nominee for Commission President. 'This', as Simon Hix has observed, 'enable[d] the issue of the Commission President to be debated at the first plenary sessions following each set of EP elections' (2000: 98). In addition, the Parliament's interpretation of Article 214, according to which it was entitled to take a vote on the governments' nominee and 'if the vote were negative the nominee would be withdrawn' (ibid), was confirmed by the then Council President. The introduction of the co-decision procedure, moreover, elevated the European Parliament to the status of co-legislator with the Council, if not yet as an equal, thereby profoundly re-shaping relations within the institutional triangle (Commission, Council, Parliament). Co-decision has routinised direct contact between the Council and the Parliament – indeed, when a conciliation committee is convened, they negotiate face-to-face– and has diluted the Commission's influence in the legislative process where this procedure applies.

Though different from its predecessors in that it did not introduce major new policy competencies, the Amsterdam IGC largely confirmed these trends. With respect to policy, the CFSP remained resolutely intergovernmental. The European Council and the General Affairs Council remained the central actors, although the Commission was to be 'fully associated' with work carried out in the second pillar. Member states decided on the appointment of a High Representative for CFSP, to relieve the rotating Council Presidency of the burden of representing the Union across the full range of external policy and to provide greater continuity. This office was to be held by the Secretary General of the Council with a

deputy Secretary General assuming responsibility for the operation of the Council Secretariat. By contrast, the Treaty of Amsterdam transferred migration-related areas – common visa, immigration and asylum policy – from the third pillar to the first, and granted the Commission the right of co-initiative with the Council in respect of the areas that remain (now called ‘Police and Judicial Cooperation in Criminal Matters’). However, for a transitional five-year period, the Commission and the member states were to share the right of initiative with regard to the transferred areas. Thus, ‘[f]or the first time in Community pillar history, the Commission’s exclusive right of legislative initiative was violated – albeit with a view to retaking it at a later stage’ (Devuyst 1999: 114).¹¹ In the area of trade policy, moreover, where the Commission had called for an extension of Community competence to negotiate trade agreements to all types of services and intellectual property, the member states chose not to delegate ‘full negotiating authority ... over the “new trade issues” of services and intellectual property’ (Meunier and Nicolaïdes 1999: 477). Largely due to the acrimony generated by differences over the Uruguay Round, ‘the member states elected to reject further delegation of trade competence to the supranational level’ (Meunier and Nicolaïdes 1999: 497). They agreed instead to amend Article 113 (renumbered 133) to allow ‘for future expansion of exclusive competence to the excluded sectors through a unanimous vote in the Council’ (496), making the extension of Community competence the result of case-by-case political decisions.

The Commission’s accountability to the Parliament was also strengthened. The Treaty of Amsterdam institutionalized the Parliament’s interpretation of the provisions of the TEU, granting it a formal investiture power (Hix 2000: 98).¹² The simplification and reform of the co-decision procedure, most notably, removal of the Council’s right to return to its common position, and its extension, making it the most commonly used legislative procedure, may not have satisfied all the Parliament’s demands, but did make it a co-equal co-legislator with the Council (Falkner and Nentwich 2000).

¹¹ See Kostakopoulou (2000) for a sceptical view on why this institutional change is not likely to bring about a radical change in EU policy or policy making with respect to migration.

¹² Article 214 (para. 2) provides that the member states’ nomination for Commission President ‘shall be approved by the European Parliament’.

Unlike at previous IGC's the Commission was largely passive, more the object of discussion about its future role, size and composition rather than an active negotiator (Moravcsik and Nicolaïdes 1999). More generally, the agenda of the 1996 ICG, the nature of the negotiations at Amsterdam and the outcome in terms of the institutional balance, including the introduction of a flexibility clause, formally providing for the possibility of differentiated integration, mark a new phase for some observers (Moravcsik and Nicolaïdes 1998). Federal ideas and the 'Community method' appear to have been exhausted: 'Amsterdam represents the beginning of a new phase of flexible, pragmatic constitution-building in order to accommodate the diversity of a continent-wide polity' (Moravcsik and Nicolaïdes 1998: 36).

The marginalisation of the Commission continued at Nice, where its position was further eroded. The strengthening of the European Parliament (through the extension of codecision to seven new areas) is one illustration, continuing a process that has run through successive IGCs (Hix 2002). As Majone (2003) has argued, the effect of increasing the EP's power and the Commission's accountability to the EP threatens to transform the Commission from a non-majoritarian institution, designed to stand above ideological differences and interests of particular sorts, and capable of independent action, into partisan body, concerned more about its short-term survival and placating MEPs than pursuing the long-term objectives set down by the treaties and acting in the general interest (Majone 2002, 2003). At the Convention, arguably, this process came to a climax, with the proposal in the draft Constitution that the Commission President be elected by the European Parliament.

Institutional change

Institutional developments within the Union have also served to enhance member state control and to limit the influence of the Commission. The continued refusal of the 'masters of the Treaty' to reform comitology is one example, despite repeated calls for change on the part of the Commission – most recently in the White Paper on Governance (European Commission 2001) -- particularly in relation to management and regulatory committees (Wincott 2001).¹³ Three other developments during the Prodi Presidency are also significant. The first is the introduction of the open method of coordination (OMC) as part of the Lisbon process.¹⁴ Formally introduced as a new form of EU decision making at the Lisbon European Council (European Council 2000: 8), the method has been

¹³ The Commission also wants to be allowed to fill in framework directives as part of its executive role.

¹⁴ This section draws extensively from the excellent discussion in Hodson and Maher (2001).

applied to macro-economic policy, the employment chapter of the treaty, social policy, and structural policy. The objective of the OMC is 'not to establish a single common framework, but rather to share experience and encourage the spread of best practice' (Wallace 2000: 33) through the setting of guidelines, the establishment of performance indicators, the translation of targets from European to national and regional levels, and periodic monitoring, peer review and evaluation (Hodson and Maher 2001). It is highly decentralised in line with the principle of subsidiarity, and marks a rejection of both the 'community method' based on the adoption of binding legal and non-legal instruments in Brussels, where the Commission plays a key part in 'policy design, policy-brokering and policy execution' (Wallace 2000: 28) and the 'regulatory model', where the Commission has played the role of 'architect and defender' (Wallace 2000: 30). The 'desire of the EC to control outcomes, as manifest in the directive as the rule of choice in the single market, with its emphasis on common outcomes if not methods, is overcome by recognition of the importance of diversity at the national level in relations to policy formation, legal frameworks, ideational references and popular perceptions and relations to either the European project generally or the specific policy being coordinated' (Hodson and Maher 2001).

The Commission has little influence where the OMC is concerned. Its agenda-setting and policy leadership functions are redundant, since the European Council sets strategic priorities, monitors progress and, with the Council under the Luxembourg, Cardiff and Cologne processes, decides what action is relevant. Neither does it play a coordinating role. Indeed, co-ordination 'can arise only when there is support from the European Council...[Its] central role also underlines the intergovernmental nature of co-ordination and ensures that processes remain open in terms of outcomes, such that there is no attempt to centralise policy formation or to introduce top-down methods of integration' (Hodson and Maher 2001). Whilst some of the characteristics of the policy areas where the OMC has been introduced suggest that the method may be difficult to apply to other sectors, it nevertheless marks an important evolution in the relationship between member states and the Commission, and a significant illustration of how member states perceive multilateral cooperation within the EU framework.

A second development is associated with the incorporation of new policy sectors, which has led to the introduction of new forms of policy making, designed, at least in part, to ensure effective intergovernmental control at the expense of the 'supranational' institution. Developments in the foreign and defence policy fields have been emblematic of these trends. The EU's foreign policy

has always been intergovernmental, and the formal structure introduced by the Nice Treaty for managing the EU's defence capacities remain consistent with that constitutional principle. The Council Secretariat has been given a key role, within which a significantly increased staff will be responsible for defence policy matters.¹⁵

Certainly, the Commission has managed to co-operate quite effectively with the Council Secretariat, which has emerged as a central actor in the EU external policy system (Christiansen 2001b). Yet it is important not to overstate this. While some scholars are anxious to stress the collaborative nature of this relationship, (Christiansen 2001b), based on what they see as shared allegiance, a common bureaucratic culture, and the emergence of an epistemic community amongst external policy specialists in Brussels, there is still significant scope for tension. For one thing, the emergence of the Council Secretariat as a significant and, for the first time, high profile actor, potentially confronts the Commission with an institutional rival. Second, the relative harmony that has characterised relations between the two to this point may owe much to purely contingent factors, notably the relatively good personal relationship between the High Representative, Javier Solana, and Commissioner for External Affairs, Chris Patten, or the fact that the military elements of the EU's external policy have not as yet been seriously tested. Finally, it should be noted that a large proportion of the staff recruited to the Secretariat General to work on ESDP are not Community officials but detached national experts from national administrations. At the very least this provides room for doubt as to whether any shared allegiance exists between the Commission and Council staff. Indeed, a more compelling characterisation of the development of decision-making structures in the defence policy sphere is perhaps Helen Wallace's (Wallace 2000) notion of intensive transnationalism, as national officials in the permanent representations, along with colleagues from the Council, develop habits of cooperation and approaches to common problems that distinguish them from both the Commission and, potentially, their home governments.

More broadly, recent institutional initiatives have led to an effective downgrading of the Commission's status in terms of the external representation of the Union, as the Commissioner for External Relations has now *de facto* accepted subordinate status to the High Representative (at press conferences attended by multiple EU representatives, the trend has been for the Presidency to

¹⁵ In a complete departure from established practice, moreover, the EU's satellite centre in Spain has been designated a Council agency.

speak first, followed by Solana and then Chris Patten). In keeping with practice in the second and third pillars, the Commission has the right to attend the Political and Security Committee, but does not enjoy the right of initiative it possesses in the first pillar.

A third development is the creation of specialized agencies to deal with specific regulatory and management tasks. Whilst some have interpreted these initiatives as a step in the direction of more effective 'administrative integration' (Kreher 1997), or a 'sensible outsourcing of specialised knowledge so the Commission can concentrate on its core tasks' (Christiansen 2001a), they can also be seen as further evidence of the marginalisation of the Commission. That the Commission itself fears as much is evident from the White Paper on Governance. Whilst acknowledging that the potential advantage of such institutions lies in 'their ability to draw on highly technical, sectoral know-how, the increased visibility they give for the sectors concerned (and sometimes the public) and the cost-savings that they offer to business' (Commission 2001, 24), the Commission goes on to criticize their functioning and propound a highly restrictive view of where and how they should be deployed (Wincott 2001). Indeed, Commission officials have in practice attempted to restrict the effective authority of agencies, as illustrated by its White Paper proposals for an independent European Food Authority (Majone 2003).

This attitude is partly explicable in terms simply of a desire not to delegate real authority to a potential competitor. It also, however, reflects an understanding that agencies may in fact turn out to be, not independent at all, but rather tools of the member states. In his analysis of the creation of the European Environmental Agency (EEA), Majone (2003) is categorical in stating that 'comparing the preferences of the main political actors – member states, EP, Commission – with the provisions of Council Regulation 1210/90, one sees that the member states clearly won the contest over institutional choice'. The member states, moreover, succeeded in packing the influential management board of the organisation with their own representative, thus further ensuring not only that the Commission's prerogatives in this crucial policy area were challenged but that their own were not.

Policy areas

Member states have asserted their control, while peripheralising the Commission (and the European Court of Justice) in a number of policy domains. Economic and monetary union offers one illustration. The passage from the convergence criteria stipulated by the TEU to

the birth of the euro was undoubtedly one of the greatest triumphs of the integration process. However, that transition has been marked by the increased predominance of ECOFIN as an arena for managing the euro, marking a clear break from the entrepreneurial role played by Delors -- and indeed the Commission more generally (Jabko 1999) -- in the early stages of the project. The Commission plays a somewhat limited, though not unimportant role, in the complex institutional architecture created to manage economic and monetary union. It is represented in only two of the three decision-making systems or 'sets of policy rules' (Jones 2002) that govern economic and monetary union -- economic and employment-related -- where it performs a 'watchdog' function (Tsoukalis 2000: 162), while the European System of Central Banks and ECOFIN are the key actors in the third, namely, monetary policy.¹⁶

The economic rules commit the member states to ensuring that their economic policies are consistent 'with Community objectives, with each other, and with EMU' (Jones 2002: 47), and establish two accountability procedures. The first, multilateral surveillance, is designed to ensure member state compliance with broad economic policy guidelines (BEPGs) that are adopted annually by ECOFIN and form a common frame of reference for governments. The second, the excessive deficit procedure, concerns the budgetary situation and government debt in the member states. ECOFIN is the central actor in both. As Jones (2002: 48) observes:

'The basic model for oversight on economic policy is that the Council establishes the terms of reference, the member states provide the basic information, the Commission and the EFC audit and analyze that information in order to prepare recommendations for the Council, then, finally, the Council decides as to whether the member states have lived up to their obligations ... If the Council determines that a particular member state is not in compliance, it will instruct the member state to reform its policies and, if necessary, it will apply relevant sanctions'

The enforcement rules relating to employment, by contrast, are far looser (see discussion of OMC below) and the position of the Commission much weaker. Although it performs a similar function to its role with respect to the economic rules, its criticisms of performance

¹⁶ See Jones 2002: 35-57.

by national governments are not translated into sanctions. To cite Jones (2002: 50-51) once more, because '...the employment-related rules are process-centred, compliance has more to do with participation than with the outcomes of participation per se ... The employment-related rules more closely approximate a form of self help than a form of delegation ... The institutions of the European Union are primarily just concerned intermediaries'.

The dominance of the member states and the marginalisation of the Commission have been even more marked in regard to the Common Foreign and Security Policy. Although always intergovernmental (Forster and Wallace 2000), developments since autumn 1999 have further strengthened member state control, as Heads of State and Government have sought to establish a capacity for autonomous action in internal crisis management. The Helsinki European Council in December 1999 re-affirmed the commitment, made by Heads of State and Government in Cologne in June 1999, to the creation of 'a militarily self-sustaining' force of 15 brigades as part of 'the common European security and defence policy (CESDP) and entrusted this task to 'the General Affairs Council with the participation of December Ministers' (European Council 1999). Following decisions taken at the Helsinki and Nice European Councils (the latter in December 2000), it was agreed to establish three new bodies: a standing Political and Security Committee, composed of national representatives of senior or ambassadorial rank; a Military Committee, composed of Chiefs of Defence, represented by military delegates; and the Military Staff to provide military expertise and support to the CESDP. Although the Commission is fully associated with the work carried out in the CFSP, and shares the right of initiative with the member states and the High Representative, it is not a key actor.

A further danger for the Commission inherent in the development of the ESDP has been the tendency on the part of certain member states to use the EU's defence ambitions as a pretext for the spread of intergovernmentalisation in other areas of foreign policy. During the French Presidency of the second half of 2000, Paris was quick to attempt this, arguing in favour of passing control over the EU's initiatives on land mines from the Commission to the Council on the grounds that it represented part of the EU's security policy (interviews, Brussels, 2001). In a similar vein, the Franco-German contribution to the Convention on the Future of Europe, presented in January 2003 showed a flagrant disregard (as predictable from Paris as it was surprising from Berlin) for both the Community method and the independence and

effectiveness of the Commission with, notably, its proposal for the creation of an EU Foreign Minister who would simultaneously be based in the Council and the Commission (Menon 2003b).

The assertion of member state control is evident beyond these, admittedly, areas of ‘high politics’. In adopting, at the Lisbon European Council in March 2000, the strategic goal of becoming ‘the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion for the first decade of the new century’, the Heads of State and Government laid claim to leadership across a broad swathe of existing policy areas. Objectives were set under two headings – preparing the transition to the new economy and modernising the European social model -- in relation to a wide range of specific projects, programmes or policies, including: the information society, the creation of a European Area of Research and Innovation, the development of a friendly environment for starting up and developing innovative businesses, especially SMEs, economic reforms to complete the internal market and make it fully operational, efficient and integrated financial markets, coordinating macro-economic policies, education and training for the knowledge society, the development of an active employment policy, modernising social protection, and promoting social inclusion.

The European Council has not only defined the aims, but will also orchestrate their realisation. It has assumed ‘a pre-eminent guiding and coordinating role to ensure overall coherence and the effective monitoring of progress towards the new strategic goal’ (European Council 2000: 8). Progress towards the achievement of these aims will be reviewed annually at a special spring meeting of the European Council.¹⁷

¹⁷ Although the Nice Treaty continued a process of communitarianisation of the third pillar begun at Amsterdam, it is important not to exaggerate the extent to which member states have loosened their control over policy. Codecision will be applied to a major part of visa, asylum and immigration policy, but application to most provisions will be deferred to a later date. In the case of asylum, codecision will not be applied before the Council has adopted Community legislation defining common rules and principles, though some decisions relating to immigration will be adopted under codecision from 1 May 2004. Co-decision will, however, apply to judicial cooperation in civil matters. The Commission’s powers remain unchanged.

The member states and the Commission as an administration

The assertion of member state power has not been restricted only to policy or institutional developments, but has extended also to the Commission's internal organisation, functioning and resources. First, the member states have refused to take measures to streamline the College, even though, at least since the Spierenburg Report (European Commission 1979), it has been generally accepted that the number of Commissioners makes genuine collegiality difficult, exacerbates problems of coordination, and produces unnecessary complexity in the accountability of the services. The national governments' insistence on retaining the principle that the larger countries nominate two Commissioners and the small countries one has contributed to the difficulties of coordinating an already complex organisation, since a portfolio, including responsibility for one or more Directorates-General, has to be defined for each member of the Commission. Even the decisions taken at Nice – one Commissioner per member state from 2005 and fewer Commissioners than the number of member states once the Union has more than twenty seven members – do not promise a satisfactory resolution.

A second problem has been the insistence on the part of member states that they each continue to be represented at the highest levels of the Commission administration in A1 (Director General) and A2 (Director) posts. The existence of a 'geographical quota' has applied in practice, if not in principle, since the Community was established, with the *cabinets* playing a lead role in promoting the cause of their nationals.¹⁸ A central aim of the human resources element of the Kinnock reform package has been to make merit the guiding principle for recruitment at all levels of the organisation, removing the ceiling that limited the promotion prospects of permanent officials and ensuring that the appointment of the best candidate. Measures have been adopted to broaden the selection process and to insulate it from interference from national governments (see Egeberg 2003: 12-16). However, some governments have been unhappy at the removal of a quota system, where fewer of their nationals now occupy top positions. Moreover, it is unclear whether member states, will be prepared in the long-run to tolerate a situation in which none of their nationals heads a Directorate-General. As Desmond Dinan observes:

'given its multinational, multicultural and multilingual character, and given also the nature of the EU system, the Commission will never conform to neat political and

¹⁸ The legality of any explicit rule would, of course, have been dubious.

administrative models. For reasons of legitimacy, a rough balance of nationalities will always be important. For reasons of prestige and national advantage, Member States will always seek to influence staff policy and the implementation of EU legislation. For systemic reasons, the Commission can never become simply an executive body. Thus the Commission can be reformed, but there are limits to how much it can be transformed' (2000: 33).

A lack of resources is a third difficulty --- one that is also highlighted by the current reform process. The member states have continued to delegate additional functions to the Commission and many of them, such as the administration of the PHARE and TACIS programmes to assist former Communist states in central and Eastern Europe, have involved new types of responsibility. Others, such as the various education programmes, may have been far narrower in scope, but have also made severe demands on Commission manpower. However, the willingness of governments to entrust new tasks to the Commission has been unmatched by a commitment to increase the resources, particularly the human resources, necessary to carry them out. The recourse to the creation of technical assistances offices -- better known by their French acronym, BATs -- with the attendant questions surrounding the status of their employees, accountability and delegation on the part of the Commission developed as a response to a serious shortage of personnel. Whether the Council is prepared to grant the Commission the staff that the latter needs, following a detailed review of the tasks of the administration and the human resources available to it, is unclear.¹⁹

Finally, although there seems to be some evidence that Commissioner *cabinets* have been less ready since 1999 to act as spokesperson for the national capital and for *chef* and special chef meetings to resemble mini-Councils (Peterson and Bomberg 1999: 39) -- the consequence of Prodi's decision to insist on the multinationality of the Commissioners' private offices and to locate the Commissioner and the *cabinet* in the same building as the Directorate-Generate for which they are responsible -- the member states have continued to use other means to ensure that their interests are articulated and protected within the Commission. Certainly, the inclination and ability of member states to place, and use, their nationals in the Commission as sources of information and influence varies considerably (Kassim *et al.* 2001), but there is

¹⁹ Following the peer review exercise carried out under the chairmanship of the Commission President, a request was made to the budgetary authority for XX posts.

less respect for the independence of the Commission. Even in countries where Commission independence has historically been regarded as sacred, such as the Netherlands, contact with the Dutch Commissioner is no longer regarded as taboo (Soetendorp and Andeweg 2001). Not only do member states encourage officials from their national administrations to sit the *concoirs* (thereby, ensuring 'their people' are placed in that institution), but both the emphasis on sending short term secondees, and the way in which national administrations are striving to maintain close contact with fellow national in Brussels attest to the ways in which member state influence extends to inside that institution (Kassim and Peters 2001, Menon 2003a). As Kassim and Wright have put it, the Union's bureaucratic system is 'shot through with national officials and influences' (Kassim and Wright 1991: 835).

MEMBER STATES AND THE COMMISSION SINCE THE 1990s: EU DEVELOPMENTS IN THEORY AND IN PRACTICE

The above discussion raises two questions: What explains member state assertiveness from the beginning of the 1990s? Why is there such a disparity between the trajectory of growing supranationalism anticipated by both the new institutionalism and multi-level governance and the reality of the changing institutional balance since the Maastricht IGC?

Member state assertiveness

The first question is answered more straightforwardly than the second. The answer has two parts. First, in the period following the Single European Act, the member states became increasingly concerned about the ambitions of the Commission President and challenged Commission intervention in sensitive areas such as culture, education and public health (Pollack 2000: 525). The series of initiatives launched by Delors that threatened to extend the competencies of the Community and thereby intrude in policy domains that had traditionally fallen within the preserve of the member states – social policy, economic policy, and security and defence -- only increased their anxiety. It was not necessarily that national governments opposed the content of these initiatives, though in some cases that was indeed the situation, but that they were wary of their implications for state sovereignty and the ever-expanding reach of Brussels. Governments had 'learned' from experience that even the most apparently technical of exercises, such as the 1992 project (Hancher 1996), contained unsuspected threats to their freedom in the form of expanded powers for the Commission, extended

competence for the European Court of Justice, and a narrowing of their own autonomy in policy making. While the way that they explicitly addressed the consequences of the Barber decision at Maastricht indicated that they were aware of the problems posed by the European Court of Justice as an independent agenda, their actions from the late 1980s indicated a wariness of the European Commission.

Thus, the seeds of the recalibration of the institutional balance lay in the very successes achieved under Delors, as a consequence of which EC policies now affected far more people than in the past. In consequence, member states increased their vigilance. As Jean-Charles Leygues, a member of Delors' *cabinet*, commented ruefully in comparing the role of the Commission during the SEA and Maastricht negotiations:

‘Before we could count on being ahead of other people strategically. We knew what we wanted and they were less clear, partly because they didn't believe that anything much would follow from the decisions we asked them to make. Now they know that we mean business and they all look for the implications of our proposals’, (cited in Ross 1995: 137)

In other words, and from around the start of the 1990s, member states paid far more attention to the actions of the Commission than previously, with a view to preventing or thwarting the kinds of ambitious, entrepreneurial initiatives that had been such a feature of the first Delors Presidency.

The second part of the explanation concerns a fundamental change in the nature of European integration as a political issue that occurred in the early 1990s. The Maastricht IGC and particularly the post-Treaty ratification process are widely regarded as a milestone in the history of European integration. Until this moment, European integration was essentially an elite process, involving the political leaders of Communities, but ignored by the wider population at large or viewed as international diplomacy distant from the lives of ordinary people and, outside traditionally Eurosceptic member states such as Denmark and the UK, relatively uncontroversial. However, and for whatever reason, the process that led ultimately to the Treaty of European Union became politicized and, as a result, ‘Europe’ became, and has remained, a salient domestic political issue. Anti-Europeanism emerged as a significant political force across much of Western Europe. It has taken a variety of forms, including

single issue anti-European parties, such as the de Villiers List in France and the UK Independence Party in Britain, popular movements elsewhere, and the development of cross-cutting divisions within existing political parties, such as the Conservative Party in Britain and the RPR in France. In whatever form it was expressed, the effect was the same: 'Europe' became an issue of domestic political importance and the action of national governments, particularly in grand set-pieces, such as IGCs, were subject to the scrutiny of their domestic media and publics. The close attention has compelled political leaders not only to take a more instrumentalist approach to integration, but also to ensure the centrality of national governments in decision making at the EU level and to limit the role of the supranational institutions.

The new institutionalism and multi-level governance: a critical examination

Despite their different emphases, the two theoretical perspectives share a number of suppositions and understandings about the dynamics of integration, member state weakness, and the power of supranational institutions, as the above discussion shows. They also exhibit two common failings: first, they underestimated the power of national governments in integration; and second, they overestimated the strength of the European Commission.

Revisiting member state power

The history of integration since the 1990s demonstrates that the member states are far more powerful than contended either by new institutionalism or the multi-level governance approach. Both theories, for example, underestimated the ability of national leaders to strengthen the position of governments and weaken that of the Commission through constitutional change. Reform has not proved to be a 'nuclear option' and member governments have not encountered insuperable barriers in introducing change that changes the powers and responsibilities of EU institutions. Rather they have exploited their status as 'masters of the treaty' to enhance the role of intergovernmental bodies and to limit the Commission's influence. Some changes, such as the increased centrality of the European Council and the introduction of the open method of coordination, has been achieved, moreover, without any requirement on the part of governments to undertake formal constitutional change.

The new institutionalism and multi-level governance may in addition overstate the ability of the Commission and understate the influence of the member states in shaping the policy agenda at the day-to-day level of policy. Not only is the Council President able to exercise a degree of discretion over the Community's legislative agenda, but the agenda-setting power of the Commission can be exaggerated. The Commission undertakes extensive consultation with interested parties, including the member states, at the pre-proposal stage, and endeavours to maximise the chances that an initiative will ultimately be acceptable to at least a qualified majority among national governments. Moreover, as Garrett and Weingast (1993) emphasise, the Council has the last say in the legislative process. The Commission's agenda-setting power should, therefore, be regarded as conditional.

A further problem is that both theories play down the influence that member states can exercise over the Commission as an administration. The member states have various prerogatives, as masters of the Treaty, and members of the Conference of Member States, the European Council and the budgetary authority, that enable them to influence the functioning of the Commission. Though the EP's influence has grown with respect to the appointment of the Commission President and investiture of the College, national governments retain the right of nomination. This is an extremely important power, as the appointment of the less threatening figure of Jacques Santer as the successor to the activist Jacques Delors illustrates. In addition, the approval of the Council is required for changes to the Staff Regulations and to the Finance Regulation, which regulate the day-to-day life of the Commission as an organisation. Finally, many governments attempt to use 'their' Commissioner(s) or networks of their nationals within the Commission to influence the content of policy proposals or to secure senior appointments within the services. These powers give the member states considerable leverage over the operation of the Commission.

Finally, there is specific challenge to historical institutionalism.²⁰ Governments may have short-term horizons, but it does not follow that they neglect developments at the European level. Member states have established specialist mechanisms to coordinate their European policies and to manage their inputs into EU decision-making (Kassim *et al* 2000; 2001). With respect to unintended consequences, though issues densities and overload may make

²⁰ This section draws on Kassim and Menon (2003a).

spillover possible, national administrations are present at key stages of the policy process, enabling them to intervene to defend their interests (Kassim and Wright 1991; Kassim 2003; Dogan 1997). In addition, the European policies of the member states do not betray the kind of instability that historical institutionalism suggests. On the contrary, the outlook of many member states at the polity and policy level has been remarkably stable.

Revisiting the power of the Commission

New institutionalism and multi-level governance also overestimated the power of the Commission. This applies particularly to the Commission as an agenda-setter, not only at the routine level of policy making, but also at the 'heroic' level where, since Delors, Commission Presidents have had hardly any impact at European Councils and the Commission has been a rather peripheral actor at IGCs. More broadly, the two theories overlook the multiple dependencies and 'multiple accountability' (Christiansen 1997) that characterise the Commission's position. The Commission depends in the exercise of its functions on the member states (national administrations for policy enforcement and implementation; national officials in consultative and executive committees), the Council, and the European Parliament, is formally accountable to the European Parliament, to the Court of Auditors, and the European Court of Justice, and is subject to scrutiny of the European Ombudsman.

A second weakness of both theories is that, though they stress the importance of unintended consequences, they consider only how these may serve to strengthen the supranational institutions at the expense of the member states and not how the Commission might be weakened. However, there is no reason to exclude the latter possibility. Indeed, it could be argued that efforts on the part of member governments to strengthen the European Parliament in response to calls to reduce the 'democratic deficit' have had the unintended consequence of weakening the Commission, for reasons identified by Majone (see above).

More serious, however, is the failure of both the new institutionalism and multi-level governance to take into account the organisational attributes of the Commission, which are a major source of weakness. The Commission's small size and the extent to which it has suffered 'functional overload' – too few resources to manage the growing list of responsibilities that have been entrusted to it -- have already been noted. However, other features of the Commission as an organisation, how these impact on its effectiveness and the

leadership difficulties that they create, are important considerations. The Commission is an extremely difficult machine to manipulate. What it lacks in size it makes up for in complexity. Power and authority are fragmented. Hence, the characterisation of the Commission as a ‘multi-organisation’ (Cram 1994). At the political level, there is no central concentration of power. The College lacks cohesion – the ties that link ministers in national governments, such as ideology, party affiliation or coalition pact, are absent -- while the Commission President, even after the Treaty of Amsterdam, is little more than *primus inter pares*. The services, meanwhile, described as ‘silos’ by insiders and by one as ‘a collection of baronies’ (interview conducted by Kassim, 17 January 2002), tend to be inward looking and reluctant to cooperate with other departments. Coherence and coordination are difficult to construct, leadership difficult to achieve.

Beyond these structural difficulties, the leadership of Commission Presidents since the late 1980s has not been conducive to the ultimate effectiveness of the organisation. Under Delors, the Commission was extremely effective, particularly the so-called ‘Delors I’ and ‘Delors II’ Commissions, and its contribution to several historical achievements – the single internal market, EMU, and the reform of the EU budget – significant. However, Delors imposed his own system and management style on the ‘house’ (see Ross 1995, Endo 1999) rather than undertaking the reform of the organisation that he has since recognised should have been a priority. More importantly, his ambition for the development of the Communities, as well as his skill, determination and talent, terrified the member states. Having seen the implications of the SEA for the powers of the Commission and the limitations that would be imposed on national authorities only after the event, and increasingly concerned about other projects, member governments had by the time of the Maastricht IGC learnt to suspect Commission initiatives and adopted a defensive approach to proposals issuing from Brussels. Their anxiety was reflected in their choice of the man to succeed Delors.

Santer’s leadership style and vision for the Commission could not have been more different from that of his predecessor. Under the slogan of ‘do less better’, the Santer Commission set out not to look for more responsibilities or to expand its competencies, as its predecessors had done, but to consolidate and concentrate on its existing functions. The weakness of the Commission President had become evident even before the allegations of fraud, corruption and mismanagement that were ultimately to bring about its downfall with, for example, the

publication by one Commissioner (Bjerregaard) without consulting Santer of a diary of life in the Commission and another (Bangemann) accepting fees for speeches, as well as ‘cover-ups in the “mad cow” affair’ (Spence 2000: 9).²¹ The resignation of the Santer Commission in March 1999, following months of seemingly endless allegations of scandal and corruption, escalating conflict with the European Parliament, and the publication of the first report by the Committee of Independent Experts, brought the reputation of the institution to an all-time low.²² It revealed serious weaknesses in the internal management and administration of the organisation, even if no Commissioner was accused of committing fraud, or of benefiting financially from the irregularities and instances mismanagement allegedly engaged in by officials in the services. Although the Commission was not brought down by a formal vote of confidence, the circumstances of the resignation vividly illustrated its accountability to Parliament – a message that was conveyed loudly and clearly to the President-designate and his nominees during the parliamentary hearings that took place over the summer of 1999.

The appointment of Romano Prodi, formerly Italian Prime Minister, to the post of Commission President was widely held to represent a desire on the part of the member states to rejuvenate the institution by providing it with the firm leadership lacking under his immediate predecessor. For some academic observers, this high profile appointment – the first former Prime Minister from a large member state to be appointed to the office -- implied that the member states had chosen to equip the Commission with the resources necessary to carry out its existing tasks rather than to downgrade it (Christiansen 2001a). That Prodi became the first incumbent to enjoy the enhanced powers of the Commission President following the reforms introduced by the Amsterdam Treaty was a further cause for optimism for supporters of a strong Commission.²³ In practice, however, these hopes have been confounded.

²¹ There were also significant achievements: the introduction of the euro, the start of enlargement pre-negotiations, and attempted internal reform.

²² The first report of the Committee of Independent Experts (1999), the submission of which precipitated the Commission’s resignation, exposed serious short-comings in the organisation, and followed months of negative press coverage, and an unprecedented level of antagonism between the Commission and the Parliament. It is, though, somewhat ironic that an introspective Commission, which made internal reform a priority (see Kassim 2004), and which boasted such modest ambitions should have been brought down amidst allegations of impropriety.

²³The new subparagraph of Article 219 stipulated that ‘The Commission shall work under the political guidance of its President’, while Declaration No. 32 attached to the Final Act provided that ‘the President of the Commission must enjoy broad discretion in the allocation of tasks within the College, as well as in any reshuffling of those tasks during a

Despite the calibre of the College, some notable achievements -- for example, in administrative reform and enlargement -- and the fact that it continues to play a key role across many policy areas, the Commission has not been able to recover its former status. Though the scope for entrepreneurialism and dynamism that characterised the Delors Commission may have been narrowed due to the (near) realisation of the aims of the original EEC Treaty, opportunities still existed for the Prodi Commission to restore the institution's reputation through astute political action, an ability to sell the Community method to national governments and other constituencies, or a demonstration of its indispensability to the functioning of the Union. However, a lack of effective leadership at the top and a series of tactical errors have prevented the achievement of such aspirations. First, the Commission President has not demonstrated effective command over the organisation. The early decisiveness shown by Prodi in declaring the Commission to be a putative government, which led him to locate Commissioners and their *cabinets* in the same premises as the Directorates-General for which they are responsible -- just as ministers in the member states are based in their departments -- has not been followed up. The effects of this bold gesture, which was intended to improve vertical coordination -- a long-standing problem in the Commission that had worsened under Santer (interviews 2002) -- may well have been to render horizontal coordination -- also a perennial problem -- even more difficult by making contact between *cabinets* harder, since they no longer worked under the same roof in the Breydel building.²⁴ More importantly, the departmentalisation of the College has not been counter-balanced by the creation of a powerful centre under the President, capable of providing firm leadership and a political steer to the work of the Commission. While the Secretariat-General of the Commission, has been strengthened as part of the reform process, its role is largely administrative and the Commission's fourth Secretary General, appointed in 2000, prefers an apolitical approach to the more interventionist inclinations of some of his predecessors (interviews 2002). The President's *cabinet*, meanwhile, which has an explicitly political function, has not been particularly effective (interviews 2002). This is a serious problem, since it is the President's team that is responsible for providing lines of communication with

Commission's term in office' (see Falkner and Nentwich 2000) As one observer has noted, 'The President's newly introduced powers relative to those of the overall team thus remain rather limited' (Wessels 2001: 211)

²⁴ In fact, *cabinets* have sought to compensate for the lack of day to day contact by instituting regular semi-formal gatherings.

colleagues and the outside world, and the President has attracted severe criticism for failures with respect to both (see, for example, Parker 2002: 15).²⁵

More serious, however, have been the President's interventions in debates whether about policy or about the future of Europe, many of which appear ill-judged. Prodi's call, for example, for the creation of a single foreign policy supremo in the form of a significantly strengthened Commissioner for external affairs to replace the current Council (Solana) - Commission (Patten) dualism drew widespread criticism, including from the latter as Commissioner for external affairs. Prodi's suggestion that there should be senior and junior Commissioners in future Commissions, meanwhile, alienated the very member states – i.e. the smaller ones, who look to the Commission to defend them against steam-rolling by the larger states – most likely to support a strong Commission (*Financial Times* 17 June 2002). In addition, Prodi's observation that the EU's Stability and Growth Pact was 'stupid' may not have been inaccurate, but 'it upset colleagues and infuriated MEPS and leaders of smaller countries -- his traditional allies – who felt he should be upholding the pact, rather than ridiculing it' (Parker 2002: 15). Finally, colleagues were incensed by the Commission President's secret project to draw up a draft EU constitution. The so-called 'Penelope' document was intended, as the Convention enters its final stages, to put the President's vision of deeper integration at the centre of the debate about the Union's future, but the clandestine nature of its preparation was regarded by other members of the Commission as act of profound uncollegiality (Parker 2002b).

Colleagues and natural supporters of the Commission have both been alienated by these actions.²⁶ Even those who share the same vision as the Commission President worry that damage has been done to their cause, either because they consider that the timing was wrong or that they believe a more subtle and strategic approach should have been devised, or that a collective position on these important issues should have been agreed first. In tactical terms, by declaring such ambitious objectives, the Commission President may have committed a serious error, by effectively 'playing the Commission out of the game'. At the very least, his

²⁵ Parker (2002a) quotes one EU ambassador as follows: 'His advisers are appalling, his communication strategy is disastrous'.

²⁶ There has also been criticism from inside the Commission that the President has failed to respect the rules on senior appointments that he championed as part of the reform process.

outbursts have been grist to the mill of Eurosceptics anxious to persuade their governments of the need to reign in an over-ambitious Commission.

A further problem has been tone. The increasingly desperate nature of the Commission's attempts to lobby in favour of its own institutional position were clearly revealed in its White Paper on Governance, which comes across as a defensive document, used to fend off perceived threats to the Commission's position within the EU system (Wincott 2001). The White Paper emphasises the need to reassert the primacy of the Community method, criticises institutions and structures it perceives as a threat – notably agencies and comitology - and subjects both the Council of Ministers and European Council to sharp criticism for fostering sectorisation. Yet as Wincott (2001) points out, such criticism is hardly fair in that, as we have seen above, in that the Commission is being somewhat blind to its own failings in this regard.

CONCLUSION: THE 'FUTURE OF EUROPE' AND THE FUTURE OF THE EUROPEAN COMMISSION

The decline of the Commission, evident since the early 1990s, has continued since the current Commission took office in 1999. There seems little possibility, moreover, that this situation will be reversed. As noted above, member states have proved reluctant to reinforce the Commission by providing it with extra resources. The summits at Amsterdam and Nice, along with the current debate about the so-called 'Future of Europe', reveal the extent to which the question of the role and status of the Commission has been instrumentalised by the member states. Rather than addressing fundamental questions concerning the effective functioning of the EU system as a whole and the Commission in particular, they have chosen instead to focus their attentions either on the Council, or on their relative weight within the Commission, through debating the number of commissioners each member state has the right to appoint. Even the debate about the lack of democratic accountability of the institution may will hinder rather than help a quest for effectiveness (Menon and Weatherill 2002; Majone 2002, 2003), and seems to have more to do with a prevailing and continuing obsession with ensuring national control, rather than ensuring that the Commission can play a full and effective role. In addition, there is a curious disjuncture between member state suspicions and the reality of the Commission's role and ambitions. Prodi's wilder statements notwithstanding, the Commission no longer has the ambitious, even imperialist aspirations

that characterised it under Delors. The obsession with control that they reveal implies, however, that the member states have failed to take this on board.

The decline of the Commission has important implications not only for the institution, but also for the performance of the Union as a whole and the future of European integration – points often overlooked in both political and academic debates.²⁷ The member states' assertiveness, their determination to circumscribe the Commission's power and impose their control, may hinder the ability of the Commission to carry out tasks that are crucial to the effective functioning of the system as a whole and may ultimately prove counterproductive to their own interests. First, the reasons that led the member states to delegate key functions to the Commission in the founding treaties are as relevant today as they were in the 1950s. If there are objectives that governments want to attain, which can only be achieved collectively, it is rational for them to create independent institutions that facilitate the achievement of these goals, for example, by ensuring that all contracting parties comply with their obligations, circulating information, or filling out the details of an incomplete contract. Performing these functions themselves is simply too costly.

Second, intergovernmentalism is inherently problematic, as experience in the second and third pillar demonstrates. Intergovernmental decision making tends to degenerate into horse-trading, with short-term gains valued above the realisation of long-term ambitions. Policy outcomes are modest and often precarious.

Third, despite its organisational weaknesses, the Commission has, as a consequence of its functions and strategic location, accumulated technical expertise and know-how across the full range of EU activities, as well as knowledge of policy and process in the fifteen member

²⁷ Some have argued that developments in the 1990s, beginning at Maastricht and confirmed at Amsterdam, mark the transition from one era of integration to another. Post-war integration, underpinned by a 'teleological ideal' and 'federalist vision of an expanding, undifferentiated, and uniform Europe' (Moravcsik and Nicolaidis 1998: 16), characterised by the application of a single 'Community method' to all areas of policy, has given way to more flexible and pragmatic solutions to 'new more sophisticated, more differentiated and, in many areas, more modest national demands' (Moravcsik and Nicolaidis 1998: 17). Others, by contrast, see evidence of an 'integration cascade' (Wessels 2001), where new areas brought within the scope of the Union are at first subject to intergovernmental decision-making, but are progressively communitarianised. However, while the first perspective fails to address, still less answer, fundamental questions about the Commission and its role in integration, the second somewhat complacently assumes that the member states, as masters of the treaty, will retain faith in the 'Community method' and the centrality of the Commission.

states, which is unrivalled by any single national administration. It would be foolhardy indeed to squander this inheritance. Fourth, given the weaknesses of the Council which is already, with fifteen member states, a large, unwieldy and complex organisation that suffers from problems of internal co-ordination, the Commission plays a crucial stabilising and coordinating role.

All of these functions will increase in importance once the Union enlarges. Tomorrow's Union of twenty-five will have more need than ever of an effective, independent, and adequately resourced Commission. In steadily increasing their own autonomy at the expense of the Commission, the member states may well, therefore, have put into question the continued effectiveness of the Union itself.

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