

Joint Bodies in the EU's International Agreements: Delegating Powers to the European Commission in EU External Relations

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ABSTRACT In many international agreements, the European Union (EU) sets up joint bodies (JBs) such as “association councils” or “joint committees.” These JBAs bring together EU and third-country officials for agreement implementation. To date, we know surprisingly little about the degree of discretion the European Commission enjoys in them. Drawing on a principal–agent framework, we hypothesize that the complexity of agreements, the voting rule, conflict within the Council, and agency losses can explain Commission discretion in JBAs. Drawing on an original dataset covering nearly 300 JBAs set up by the EU since 1992, we find robust empirical support for all expectations but agency losses. In the conclusion, we set out avenues for future research of what we consider the most glaringly overlooked aspect of EU external relations today.

Keywords: EU external relations; international agreements; agreement implementation; joint bodies; Commission discretion; principal–agent approach.

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Introduction

The European Union (EU) is one of the most prolific authors of international agreements in the world. In the area of trade, for example, the EU has concluded more agreements than any other state or regional organization (Dür *et al.* 2014: 357). In many respects, these international agreements only constitute a “starting point” and leave it to states to flesh them out through continued government-to-government interactions after entry into force (Cooley and Spruyt 2009: 9). Just as important as the conclusion of agreements, therefore, is a stable institutional framework for their successful implementation. This function is provided by what we term “joint bodies” (JBs) in this article. Whoever in the EU holds the keys to these bodies, can steer implementation and shape EU external relations for years to come.

Prominent examples of JBs include association councils or joint committees. These JBs bring together representatives from the EU and the other agreement signatories for continued negotiations over agreement implementation. In the EU, it is often the European Commission (henceforth, simply “Commission”) that takes over important functions in JBs. Which exact role the Commission plays, however, strongly varies across agreements. In the Comprehensive Economic and Trade Agreement (CETA) with Canada, for example, the Council of the European Union (“Council”) gave the Commission substantial leeway. The Commission, for example, can define the EU position for negotiations with Canada on which geographical indications to include in the future. Moreover, in the CETA joint committee, where these negotiations with Canada take place, the EU is represented by the Commissioner for Trade. Germany’s constitutional court criticized that member states were not even assured a seat at the table in this JB, which risked undermining their influence (German Federal Constitutional Court 2016: 62). But the German government supported extensive powers for the Commission noting that such arrangements were “common” in trade agreements (German Federal Constitutional Court 2016: 29).

The Commission does not always enjoy such a high level of discretion. In the

“stepping stone” Economic Partnership Agreement (EPA) with Ghana, concluded within months of CETA, the Council made sure that the joint committee is made up of representatives of the Commission *and* the Council. In the Euro-Mediterranean Agreements with Israel, Jordan, Morocco, and Tunisia signed between 1995 and 1997, member states empowered the Council Presidency to represent the EU in JBs rather than the Commission. When concluding an agreement with the Seychelles in 2014 on access for fishing vessels to Mayotte, member states even pinned a 400-word annex on the Commission detailing its “scope of the empowerment” in the joint committee (Council 2015). What explains this variation across JBs in the discretion that the Council gives to the Commission?

In this article, we formulate a principal–agent (PA) argument to explain Commission discretion in JBs, understood as the leeway that the Commission is formally granted (which may differ from the autonomy the Commission exerts in practice). Our theoretical framework, and subsequent empirical findings, show that the same factors often hypothesized to explain delegation in internal (domestic) legislation are also apt to explain discretion in external relations. However, we also argue that in external relations Commission discretion is generally high because the Council cannot delegate implementation to national bureaucracies and it relies on the Commission’s skills to aggregate diverse preferences before negotiations with third countries.

Despite this general dynamic, we show that the Council still tailors Commission discretion to factors in line with previous applications of the PA model to the EU. Commission discretion increases with (i) the complexity of international agreements, (ii) a majority voting rule for agreement ratification, and (iii) conflict among EU governments in the Council. By contrast, like most large-N empirical studies on Commission discretion before us, we find no support that the Council grants more leeway to the Commission where the two’s preferences are more closely aligned (see the online Appendix for a more extensive discussion of empirical findings of previous studies).

To empirically test our expectations, we rely on an original dataset of 252 international agreements concluded by the EU between 1992 and 2020. For all agreements, we have gathered full texts from various sources and EU ratification documents, which usually detail who represents the EU and how the EU position is adopted before JB meetings. These two sources provide unprecedented insight into the inter-institutional dynamic and operation of JBs on the side of the EU. In terms of actors, we focus fully on the dyadic relationship between the Commission and the Council. The European Parliament (EP) is practically completely sidestepped in JBs and we, too, find no evidence of any meaningful role for it based on our data. Moreover, we do not include the third country in our analysis. The decision of who represents the EU and how its position is defined is entirely one for the EU to make. Even if the international agreement does contain information on who should represent the EU, this part of the agreement can be changed unilaterally through EU-internal decisions (see the online Appendix for details).

Our article makes several contributions to the literature. Theoretically, we develop an original argument on why the Commission experiences relatively high levels of discretion in external relations. Despite this generally high watermark, we show that variables traditionally found in PA scholarship still apply – perhaps even more so than in previous studies on EU-internal legislation. This further cements the model’s versatility and highlights its robustness across different policy areas. Empirically, we push the envelope concerning research on JBs. Despite their importance for EU external relations, current knowledge is limited to small-N, qualitative case studies often predicated on the EU’s neighborhood. We base our analysis on a much larger number of cases and without any a priori regional limitation. Combining these two insights, we also add to the large literature on EU external relations by arguing that the Commission has been the primary beneficiary of the spread of JBs and gained considerable latitude in shaping EU external relations through them. Methodologically, we heed the calls of multiple PA scholars to test the model’s predictions with large-N research designs (e.g.,

Anastasopoulos and Bertelli 2020; Laloux and Delreux 2018; Migliorati 2020). Our results can therefore be generalized with greater levels of confidence.

I. JBs in EU agreements with third countries: what do we know this far?

How JBs operate is still, largely, a mystery. They garnered most attention with countries in and around Europe and based on qualitative methods. For example, Leuffen *et al.* (2013: 77) focus on European countries with an accession perspective when arguing that horizontal external differentiation “goes hand in hand with a proliferation of association councils and bilateral committees.” Gstöhl (2015) systematically surveys institutional solutions with countries in the EU’s neighborhood and shows that JBs are an almost universal feature that serve to support varying levels of “deep economic integration” with the EU. From an external governance perspective, Lavenex and Schimmelfennig (2009: 798) argue that JBs can be primarily viewed as a form of network governance, which underlines the importance of continued negotiations to resolve conflicts on a sectoral level (see also Lavenex *et al.* 2009). Finally, Schimmelfennig (2003: 121) reports how Turkey suspended its participation in the association council to protest the EU’s refusal to accord it candidate country status in 1997. This suggests that participation in JBs is valued by states as else Turkey would not have felt it could use its withdrawal to put pressure on the EU.

While these contributions are primarily concerned with the effect of JBs on relations between the EU and third countries, the intra-EU dimension of how these bodies are affected by the relationship between the EU institutions themselves is currently underdeveloped. There are only two exceptions that we could identify, both again based on qualitative methods. In painstaking archival research, Gastinger (2016) uncovered how JBs have been at the center of a decades-long dispute between the Commission and Council in the formative years of the EU’s external governance structures. In the 1970s and 1980s, the Commission was eager to expand the power of JBs with India while the Council was trying to put the brakes on them.

Around the 1990s, member states themselves began taking a greater interest in JBAs for agreement implementation and the negotiation of follow-up agreements. Börzel and van Hüllen (2014: 1039) report that the Commission enjoys wide latitude in bilateral negotiations with European Neighbourhood Policy countries conducted within JBAs when promoting (conflicting) goals of good governance through so called “Action Plans.” To the extent that research in this area exists, it thus points in the direction of considerable Commission discretion.

Another interesting thread in the literature differentiates JBAs along their effect on democratic decision making. Political scientists, generally, take a remarkably optimistic view of JBAs in this regard. For example, the EEA/EFTA countries adopt a substantial amount of the EU *acquis* without formal representation in the decision-making process. Here, JBAs are portrayed as assuaging legitimacy concerns rather than exacerbating them (Lavenex *et al.* 2009: 818). Similarly, when dealing with autocratic states in Europe’s neighborhood, JBAs are viewed as tools for promoting democracy abroad (van Hüllen 2012) rather than undermining democracy at home. Overdevest and Zeitlin (2018: 67) argue that JBAs with developing countries promoting sustainable forest governance play a “crucial role” by inviting civil-society actors to help monitor implementation, thereby increasing public accountability.

This contrasts starkly with critical voices expressed primarily by legal scholars. They point out that JBAs can adopt binding decisions that may be directly applicable without further actions required from the Council and EP (Maresceau 2006: 247; Mendez 2013: 103). Schmalenbach (2016: paragraph 30), for example, observes that the EP only needs to be informed of EU positions and decision in JBAs. Put differently, the EP has no formal right of participation or other mechanism of control to influence decision making in JBAs. To increase the legitimacy of JBAs, Weiß (2018: 31–32) suggests requiring EP consent for “essential” JB decisions and including members of the EP as part of the EU delegation. Finally, Melillo (2019: 17) finds that JBAs are often not transparent, which impedes public scrutiny. While all

of this may make JB's powerful tools for the efficient implementation of agreements and the reduction of transaction costs, it also concentrates extensive powers in their hands. Bogdandy *et al.* (2004: 130) conclude succinctly that in external relations “the desire for barriers against the diffusion of legal and political responsibility seems less developed”

We take away two main points from this brief discussion of the state of art. First, JB's matter. While they have never been at the center of scholarly investigation in the way we do in this article, it is clear from the literature that they are widespread and able to take important decisions. Second, functional concerns seem to trump continuous participation of political institutions. The focus is to delegate extensive powers to the Commission to ensure efficient implementation of international agreements rather than establishing an elaborate system of checks and balances among EU institutions.¹ It is also this second observation that serves as our starting point for the development of hypotheses explaining Commission discretion from a PA perspective.

II. Theoretical framework

The PA approach foregrounds the functional benefits and drawbacks of delegation from the point of view of actors (“principals”) delegating certain tasks to other actors (“agents”) empowered to act on the former’s behalf. This decision always involves a trade-off between granting the agent sufficient discretion to efficiently carry out the mandated tasks, while maintaining control to reduce agency shirking (Pollack 1997: 115). Discretion thus refers to an agent’s “leeway so that it can adapt to changes in its task environment” (Bendor *et al.* 2001: 264). Leeway, in turn, can translate into autonomy to engage in independent actions, if the agent uses it to pursue its own interests (Hawkins *et al.* 2006: 8).

¹ Note that we are focusing on the efficiency of JB decision making on the side of the EU rather than the effectiveness of agreement implementation as such, which depends greatly on the actions of the third country. Still, allowing the Commission greater leeway and avoiding gridlock within or between EU institutions should, in most instances, increase the likelihood of successful implementation.

In developing our theoretical expectations to explain variation in Commission discretion, we focus on the Council–Commission relationship. Our theoretical framework uses well-established variables to explain Commission discretion, but we argue that the Commission generally enjoys high levels of discretion in external relations. To illustrate the Commission’s central position in EU external relations, we juxtapose external relations and internal (domestic) legislation along two broad lines.

First, the literature on domestic legislation is primarily interested in different implementation paths, explaining when the Council prefers to delegate implementation to supranational agents such as the Commission rather than national agents such as their own national bureaucracies. But in external relations the “pool of available agents” (Hawkins and Jacoby 2006: 203) is restricted to the Commission, the Council itself, or – since Lisbon – the High Representative/Vice President (HRVP).² If the option of empowering national bureaucracies is available, the Council largely refrains from empowering the Commission and, on average, accords less discretion to it than to national bureaucracies (Franchino 2007; Migliorati 2020). The mere fact that delegation to national bureaucracies is unavailable is in itself an important point of distinction that promises to have a major impact on member states’ calculus for the delegation to supranational agents.

Second, Franchino (2007: 143–144) argues that the Council relies on the Commission for general managerial skills but delegates to national bureaucracies when specialized technical skills are required. However, in JBs – as in comitology bodies – both these skill sets are necessary to ensure efficient implementation. If substantive technical knowledge is needed, the Commission can “draw upon the expertise of the member states’ national administrations” (Brandsma and Blom-Hansen 2010: 503) to craft common EU positions. If

² Notice the important distinction between “the Council” and “national bureaucracies.” In domestic legislation, the Council can push implementation directly unto the national level by empowering each member states’ national bureaucracies. In external relations, the Council delegates implementation only to itself, if at all, even if national bureaucracies (e.g., national customs authorities) may assist EU agents during implementation. Moreover, we provide some additional reflections on the impact of the HRVP on JBs in the online Appendix.

the focus is on managerial or process expertise, it can use its superior knowledge of the *acquis* to shape outcomes (see also Dijkstra 2010: 531). Our argument, therefore, is not that the Commission is entirely cut loose from national bureaucracies in external relations – and neither do we believe that it would be in its own interest to seek such a radical notion of autonomy. But we contend that the implementation of international agreements always requires “general managerial skills” to tie various interests together and coherently negotiate with third countries. As Dür and Elsig (2011: 331) aptly observe, “delegation is most likely for reasons of efficiency ... when negotiating with third countries.”

Nevertheless, there is ample variation in Commission discretion across JBs that can be explained with PA variables. In the remainder of this section, we discuss four such variables: complexity, decision-making rules, Council conflict, and agency losses.

Complexity

One of the primary predictors for agent discretion encountered in the PA literature is the complexity – or “information intensity” – of delegated decisions. The provision of technical knowledge by specialized agents is a key functional benefit of delegation (Dür and Elsig 2011: 329; Hawkins *et al.* 2006: 13; Wonka and Rittberger 2010: 736). Put succinctly, agents generate policy-relevant information to keep up with the “technical complexity of modern society” (McCubbins 1985: 722), leading to superior policy outcomes. As we have just argued, the Commission primarily provides general managerial skills and lacks specialized technical knowledge, which will be more readily available on the national level. However, if an international agreement requires a complex implementation effort on part of the EU, the need for overarching coordination only becomes stronger, particularly since delegation to national-level bureaucracies directly is generally unavailable. Therefore, we expect

complexity and Commission discretion to go hand in hand in JBAs. Our first hypothesis hence reads:

H1: The higher the complexity of an international agreement, the more discretion the Council grants to the Commission in JBAs.

Decision-making rule

Another predictor of Commission discretion is the voting rule applicable in the Council when ratifying the international agreement setting up the JB. The Council qualifies as a “collective” principal (Nielson and Tierney 2003: 247) made up of various actors (in the case of the Council, sovereign states) that need to solve decision-making problems before empowering the Commission. Spatial models of connected winning coalitions predict that unanimity voting introduces a “lowest common denominator” bias into legislative politics in the Council and leads to less integrationist outcomes (Garrett and Tsebelis 1996: 281) such as less Commission discretion. Put simply, under unanimity the least integrationist member state can make its agreement conditional on its moderate preferences being reflected in the final outcome. If the Council can delegate to national instead of supranational bureaucracies, Franchino (2007: 51) even predicts no discretion for the Commission whatsoever under unanimity. While this effect is mitigated in external relations because delegation to national bureaucracies is unavailable, the voting rule within a collective principal still promises to be an important predictor of agent discretion. We therefore hypothesize that:

H2: When unanimity is required in the Council for agreement ratification, the Commission is granted less discretion in JBAs.

Council conflict

Given the Council's nature as a collective principal, a further factor explaining Commission discretion can be found in heterogeneous preferences among member states as its constitutive units. While diverging positions among principals almost always lead to more discretion when agents exercise authority once delegated (e.g., Conceição-Heldt 2011; Schneider and Tobin 2013), its effect during the initial legislative game is more ambiguous. Pollack (2003: 32) suggests that principals will anticipate greater difficulties in reining in agents *ex post* and reduce agent discretion from the start. Bendor and colleagues (2001: 245) similarly suggest that divided principals limit agent discretion to ensure that no principal is made worse off by delegation. Franchino (2007: 48–49), by contrast, argues that heterogeneous preferences among member states allow the Commission to table proposals including more discretion for itself. Bailer (2014: 7), similarly, holds that conflict enables the Commission to “strategically build alliances” with likeminded governments and secure more discretion. While the former two studies seem to have unanimity decision-making in mind, the latter two clearly are only applicable in cases of qualified majority decision-making.

Our reasoning for the case of EU external relations differs from both of these positions and focuses on the fact that the signing of an international agreement means that member states expect gains from agreement implementation. We argue that, *ceteris paribus*, conflict makes the Council grant more discretion to the Commission in JBs because discretion lowers transaction costs in situations of diverse preferences. Clearly, for this relationship to materialize in cases of unanimity preferences cannot be “so extreme as to vitiate the gains from delegation” (Hawkins *et al.* 2006: 28). But this condition is necessarily given in the cases we are interested in as the EU can only sign an international agreement if there is sufficient support for it within the Council. In other words, we only observe a JB if member states are interested in reaping the gains from international cooperation. Given this interest,

member states grant discretion to the Commission to avoid Council conflict impeding the implementation of the agreement, which would defy the purpose of signing an agreement in the first place. In this vein, Majone (1999: 4) sees the primary benefit of delegation in achieving credible commitments, which is exacerbated by heterogeneous preferences (see also Thomson and Torenvlied 2011: 144–145). This reasoning leads to the following expectation:

H₃: The more conflict within the Council, the greater the discretion granted to the Commission in JBs.

Agency losses

Even though (and partly because) governments are interested in efficient agreement implementation, they may be concerned that the Commission can use the authority delegated in unintended ways. Agency losses, in the form of agents bringing about policy outcomes different from what principals prefer, are among delegation's primary problems (Pollack 1997: 108). The preferences of principals and agents, both conceived as self-interested rational actors in the PA model, are bound to diverge to some extent. Principals weigh the benefits of delegation against its expected costs, the latter coming primarily in the form of undesired policy outcomes. The further the agent's preferences are from those of the principal, the greater the expected agency losses and the less discretion agents will be granted (Epstein and O'Halloran 1999: 77–79; for a more general formalization of this relationship, see Bendor and Meirowitz 2004: 307). By contrast, the more principals see their own and the agent's preferences overlap, the more leeway they will grant agents to adapt to unforeseen events and external shocks (Franchino 2007: 56). Our fourth hypothesis hence is:

H₄: The greater the preference distance between the pivotal government in the Council and the Commission, the less discretion the Commission is granted in JBs.

III. Research design

The starting point for our analysis is the Treaties Office Database (TOD) of the EU. Set up in 2006, its purpose is to provide a comprehensive picture of international agreements negotiated by the EU institutions. Its advantage over EUR-Lex, which is an even more comprehensive database containing the entire EU *acquis*, is that the TOD includes information on whether JBs have been set up for the management of agreements. However, since this information is incomplete in some cases, we manually mapped JBs ourselves. In May 2020, we identified 252 agreements with JBs concluded by the EU since 1992 for which we could find information concerning Commission discretion either in the agreements themselves or the EU ratification decisions associated with them. We exclude agreements before 1992 as there is a break in the data in terms of agreements included in the TOD before and after that date. Still, our dataset is easily the most comprehensive dataset of JBs established in EU international agreements to date.

Dependent variable

To measure Commission *Discretion* in JBs as our dependent variable (defined above as the leeway the Commission has when carrying out its tasks in JBs), we have collected the full texts of all 252 agreements from various sources and all documents connected to their ratification available on EUR-Lex. Based on these two data sources, we build an additive discretion index consisting of five indicators. These indicators can be grouped into two dimensions. The first dimension focuses on how JB meetings are conducted with the third

country and consists of three indicators. Indicators four and five are connected to a second dimension of how the EU position is prepared before JB meetings. Moreover, we account for two levels of JBs in our analysis. All agreements in our dataset set up at least one joint committee, which are thus consistently included. Moreover, 45 agreements set up a joint council on top, which we also included in our coding procedure (see the online Appendix for additional details). This brings the total number of JBs covered by our article to 297.

First, we coded whether the Commission represents the EU in the joint committee. While in comitology bodies the Commission always presides over meetings, in JBs this decision can be taken freely by the member states. This is particularly important when it is the EU's turn to the chairmanship in JBs, which alternates between the EU and the third party. If the Commission represents the EU, it chairs JB meetings in those periods. Holding the chairmanship allows actors to exert influence in negotiations (Tallberg 2010), thus adding to Commission discretion in JBs.

Second, we look for any indication that EU member states themselves wanted to be present during JB meetings and engage in direct "police-patrol" monitoring to mitigate problems of asymmetric information and reduce moral hazard (Pollack 2003: 26). Again, in comitology bodies national representatives are always present, but in JBs this can vary freely. Whether member states are present or not can be indicated, for example, by the agreement stating that representatives of the Council form part of the joint committee or a more general reference that the Commission should be "assisted by representatives of the Member States." We add one point to Commission discretion where member states have *not* secured their right to a seat at the table when JBs meet.

Third, member states in the Council can rein in the Commission through joint councils. Similar to decisions within the EU that need to be adopted by the Council before coming into force, this is apt to constrain lower-level bodies. In fact, joint committees can often only act where empowered by the joint council to do so. Therefore, if the Council plays

a stronger role in the joint council, it can use this position to limit the margin of maneuver of the Commission in the joint committee. For example, EU member states could make clear to the Commission that they would not consider adopting a decision prepared in the joint committee at the level of the joint council or oppose the delegation of powers to the joint committee in the first place. Since joint councils (like joint committees) always operate on the principle of consensus, EU member states do not have to rely on third-country support to employ such sanctioning mechanisms effectively but can wield them unilaterally. For these reasons, we accord one point to agreements *not* setting up a joint council in which the EU is explicitly represented by an actor other than the Commission.

Fourth, and turning to how EU positions are adopted, we code whether the Commission can, in at least one instance, define the EU position with only majority support among member states in the Council. This mostly means qualified majority support, though in isolated instances it could also mean lower voting thresholds. When the position is adopted by majority in the Council, the Commission also practically always enjoys agenda-setting power, which is why we did not include this as a separate indicator. This bestows considerable discretion on the Commission to shape the EU position before JB's even meet. Fifth, and finally, the Council sometimes sets up specialized committees to assist the Commission in the discharge of its duties in relation to JB's. Since a special committee is more effective in controlling the Commission than a looser format or when decisions are prepared within a body not primarily concerned with the JB, we accord one additional point to Commission discretion if the Council does *not* set up a specialized committee.

To arrive at our final dependent variable, we proceed in two ways. On the one hand, we determine statistically optimal weights to add up these items using latent trait analysis. Concretely, we apply a Rasch model that weighs the five indicators according to the frequency with which they appear in the index (*Discretion (Rasch)*). On the other hand, we construct a simple additive index ranging from 0 to 5 that assigns one point to Commission

discretion for each indicator. While we prefer the former variable because of the optimization of indicator weights, our results are robust to using the simple additive index as an alternative dependent variable. Table A2 in the online Appendix also shows that the indicators have low pairwise correlations and capture largely independent information.

Predictors

Complexity, our first predictor, is notoriously difficult to operationalize. In studies on domestic EU legislation, the number of recitals is often used for a lack of better alternatives (Rasmussen and Toshkov 2011: 82). However, recitals in international agreements are used differently than in EU legislative acts. The preamble, while a fundamental part of most international agreements, does not appear to us to be a good proxy for complexity. Instead, we use the length of the annex in words as an indicator for complexity (*Complexity*), which should be a superior proxy. We take the log of that score because of outliers and add one to the value before logging because of the 0 values for agreements without annexes.

Hypothesis 2 refers to agreements that require unanimity in the Council for ratification (*Unanimity*). To determine the decision rule, we collected the legal bases used to conclude agreements from the TOD and ratification documents. Knowing the legal bases, we could infer the decision-making rule from the treaty governing the EU at any given point in time. Today, for example, this mostly refers to the Treaty on the Functioning of the European Union (TFEU). We operationalize this variable as a dummy that is coded 1 for agreements that include at least one legal basis requiring unanimity in the Council and 0 otherwise.

We operationalize “Council conflict” as used in Hypothesis 3 by calculating the policy range that exists on an issue in the Council (*Council policy range*). In doing so, we assume that the range and the decision-making rule applicable at the time of ratification extend into the implementation phase of the agreement. We first matched agreements with substantive

policy categories included in the Comparative Manifestos Project. To aid this process, we have been guided by the agreement’s EuroVoc descriptors available on EUR-Lex, the summaries available for each agreement in the TOD, and in case of doubt agreement texts themselves. To determine the policy position of each member state in the Council, we have used the position of the parties in government, weighted by seat shares in the country’s lower house in the case of coalition governments. To identify the parties in government, we have relied on the parliaments and governments (ParlGov) database (Döring 2013). *Council policy range*, under unanimity, is the range between the governments in the Council with the most extreme scores in the applicable policy category. Under qualified majority voting, it is the range between the government with the most extreme policy score on the side of the status quo and the pivotal government at which the qualified majority threshold is first met (see the online Appendix for details).

Hypothesis 4 requires us to determine the policy distance between the Council pivot and the Commission (*Council Commissioner distance*). The pivot is again the position of the government that is necessary to unlock negotiations in the Council given the decision-making rule. To determine the Commission’s preferences, we take the position of the Commissioner in charge of the primary lead Directorate General (Thomson 2008). The lead Directorate General is identified in the procedure tab of EUR-Lex, which we extracted manually for all 252 agreements. To derive the position of the Commissioner, we rely on the position formation in the EU dataset (Hartlapp *et al.* 2014), which we supplemented with information for the Barroso 2 and Juncker Commissions. For “political” Commissioners, we take the position of the party to which they belong when first appointed. For “technocratic” Commissioners, we take the position of the government at the time of appointment.

Control variables

In our baseline model, we control for agreements concerning a core competence of the Commission. As Conceição-Heldt and Meunier (2014: 967) note, in trade “the EU is solely responsible for acting and representing a common position externally.” This does not by itself specify that the EU must be represented by the Commission at all times. But Art. 207 TFEU unequivocally puts the Commission in the lead for trade negotiations, giving the Treaty an “in-built bias” (Brandsma and Blom-Hansen 2017: 26–27) for conferring powers on the Commission also during implementation. Moreover, we include agriculture as a core competence of the Commission because of its strong interlinkages with common commercial policy (Dür and Elsig 2011: 311; Young and Peterson 2014: Chapter 4). We construct a dummy variable (*Core competence*) that is 1 if at least one legal basis of the agreement falls under the EU’s common commercial policy or agriculture, and 0 otherwise.

Furthermore, we control for procedural differences concerning the ratification of agreements. First, the EP’s assent can be necessary. The EP could support higher discretion for the Commission as its “supranational ally” (Ellinas and Suleiman 2012: 76) in the legislative game played with the Council. Whether the EP’s assent was necessary for ratification was primarily inferred from the ratification documents, which spell out whether the EP had given its assent, only provided an opinion, or was not involved at all. If no ratification document was available, we resorted to the legal bases to infer the EP’s level of involvement. We create a dummy variable that takes a value of 1 if the EP’s assent was necessary and 0 otherwise (*EP assent*).

Second, we control for mixed agreements that require ratification both at the EU and national level. The need to obtain the assent of all national (and, in some member states, even regional) parliaments increases the number of veto players that could block higher Commission discretion (*Mixed agreements*). Finally, to account for systematic changes over

time and the influence of different treaty frameworks (Migliorati 2020: 12), we add dummies for the Treaty in effect when an agreement was signed. Table 1 contains descriptive statistics for all variables besides the treaty dummies.

Table 1: Descriptive statistics

Statistic	N	Mean	St. Dev.	Min	Pctl(25)	Pctl(75)	Max
Discretion (Rasch)	252	-0.02	0.51	-1.60	-0.54	0.002	1.16
Discretion	252	2.95	0.92	0	2	3	5
Complexity	252	7.17	3.39	0.00	6.20	9.54	13.80
Unanimity	252	0.31	0.46	0	0	1	1
Council conflict	252	2.58	3.11	0.00	0.41	3.63	17.71
Council Commissioner distance	245	1.69	1.76	0.00	0.22	2.50	10.53
Core competence	252	0.45	0.50	0	0	1	1
EP assent	252	0.53	0.50	0	0	1	1
Mixed agreement	252	0.30	0.46	0	0	1	1

IV. Empirical evidence

We show the results of our empirical analysis in Table 2. In Model 1, the dependent variable is *Discretion (Rasch)* and in Model 2, it is *Discretion*. We treat *Discretion (Rasch)* as a continuous variable and hence estimate the model using ordinary least squares regression. Since *Discretion* is an ordinal variable, we estimate Model 2 using ordinal logistic regression. The standard errors are computed to be robust to heteroscedasticity. The distribution of our dependent variables supports our expectation that the Commission generally enjoys high levels of discretion in external relations. In fact, we only find two agreements in which there is no evidence whatsoever that the Commission plays any role, both in the area of Common Foreign and Security Policy (CFSP).

The results from our statistical analyses support three of the four hypotheses specified above. For one, the coefficient for *Complexity* is positive and statistically significant. This means that Commission discretion increases in more complex international agreements.

Substantively, the coefficient indicates that moving *Complexity* from its minimum to its maximum is associated with a change in the dependent variable of 17 percentage points. This is approximately equivalent to one of the five items making up the dependent variable being coded 1 rather than 0. We find a negative and statistically significant coefficient for *Unanimity*, which is in line with Hypothesis 2. The substantive effect of this variable is just slightly smaller than the one of *Complexity*.

Table 2: Baseline models

	Dependent variable	
	<i>Discretion (Rasch)</i>	<i>Discretion</i>
	Model 1	Model 2
Complexity	0.03*** (0.01)	0.14*** (0.04)
Unanimity	-0.30*** (0.10)	-1.19*** (0.44)
Council policy range	0.04** (0.02)	0.17*** (0.07)
Council Commissioner distance	0.02 (0.02)	0.09 (0.09)
Core competence	0.16** (0.07)	0.58** (0.29)
EP assent	0.10 (0.11)	0.78 (0.49)
Mixed agreement	-0.31*** (0.09)	-1.64*** (0.40)
Constant	-0.29** (0.16)	
Observations	245	245
Adjusted R ²	0.16	

Note: Model 1 is estimated using linear regression. Model 2 uses ordinal logistic regression. For Model 1, we report heteroscedasticity robust standard errors. Treaty fixed effects are omitted from the table. * p<0.1; ** p<0.05; *** p<0.01.

For *Council policy range*, we find a positive and statistically significant coefficient. Again, this is in line with the expectation set out in Hypothesis 3. Greater conflict in the Council as measured by *Council policy range* thus is positively associated with Commission discretion in JBAs. Substantively, of the three variables discussed so far, this one has the largest effect. Moving it from the minimum to the maximum is associated with a change of about 26 percentage points in the dependent variable. Adding the effects of the three variables together, therefore, shows that the dynamics we capture with them can explain a considerable portion of the variation in the dependent variable.

We do not find support for Hypothesis 4. The coefficient for *Council Commissioner distance* does not only fail to reach statistical significance, but even has the wrong sign (positive instead of negative). Various reasons may account for this non-finding. For one, our operationalization of Commission(er) preference is necessarily crude. Commissioners may diverge in their preferences on specific issues from the governments or parties that proposed them for their role. Alternatively, Council concern with implementation gains (see Hypothesis 3) may trump any uneasiness about agency losses. Finally, this may also be a result of the limited pool of agents in external relations, which means the Council cannot empower another agent with preferences closer to its own.

With respect to the control variables, *Core competence* has a positive and statistically significant coefficient. At the same time, the coefficient for *Mixed agreement* is negative and statistically significant. These are the effects that we expected these variables to have. By contrast, greater involvement by the European Parliament as captured by *EP assent* does not seem to play a role in the decision on which powers to delegate to the Commission in JBAs.

Model 2, which is estimated using ordinal logistic regression with *Discretion* as the dependent variable, confirms all of these findings both with respect to the sign of the coefficients and their level of statistical significance. Overall, therefore, we find empirical support for Hypotheses 1 to 3, but not for Hypothesis 4.

Robustness checks

We performed several tests to check the robustness of our findings. In two models (Models 3 and 4 in Table A5 in the Online Appendix), we take up the question whether it is really the *policy* range within the Council and the *policy* distance between the Council and the Commission that matters for Commission discretion. We do so by substituting the respective variables with ones that capture the *integration* range and *integration* distance. The integration dimension is the primary dividing line among member states in theories of European integration (Franchino 2007: 124). These variables are calculated relying on ParlGov data (Döring and Manow 2016) and each party's integration preferences as gauged by the Chapel Hill Expert Survey (Bakker *et al.* 2015). However, we find little evidence that integration preferences are driving the process of granting Commission discretion in JBs. None of the coefficients for *Council integration range* and *Council Commission integration distance* is statistically significant (although the one for *Council integration range* comes close to statistical significance). The other results are robust, with the exception that in Model 4, the coefficient for *Unanimity* is no longer statistically significant.

In an additional set of robustness checks, we include some further control variables to the models presented in Table 2. For one, our results may be driven by agreements containing provisions related to Common and Foreign Security Policy (Model 5). This policy field may be particular in that it is concerned with policies that are of high salience for many member states. Adding a variable that is coded one for all agreements including a legal basis referring to CFSP (*CFSP*), however, hardly changes the results presented before. All predictors have the same sign and level of statistical significance as in Table 2, with the exception that the coefficient for *Unanimity* now only is weakly statistically significant. This makes sense as CFSP agreements require unanimity in the Council. The coefficients for *CFSP* itself is negative and statistically significant.

Alternatively, our results may be biased because we do not control for the depth or level of ambition of agreements.³ The depth of an agreement is defined as the “extent to which it requires states to depart from what they would have done in its absence” (Downs *et al.* 1996: 383). More ambitious agreements may either mean more Commission discretion (because the Council needs more support from the Commission in the implementation of such agreements to reap its benefits) or less Commission discretion (because the Council is more reluctant to empower the Commission to induce policy change). While we do not have a measure for the depth of agreements that directly captures this concept across different policy areas, we add two controls that can serve as proxies for depth: the (natural log of the) word count of the agreements (*Word count*) and a dummy variable that is coded one if the agreement is a broad association agreement (*Association agreement*). Adding these variables again does not change the results for *Complexity* and *Council policy range* (Model 6). However, the coefficient for Unanimity now just misses statistical significance ($p=0.11$). The coefficient for *Word count* is negative and statistically significant, whereas the one for *Association agreement* is negative but not statistically significant. Overall, therefore, it seems that depth is negatively associated with Commission discretion in JBs.

In Model 7 we substitute the treaties under which the agreements have been signed with year dummies. Doing so does not affect our key results. Finally, in Model 8 we drop agreements that have not yet been ratified. These agreements may be different as we need to rely on Commission proposals, which could still be changed by the Council before ratification. Excluding those agreements, however, has no effect on our findings. Overall, therefore, the results supporting Hypotheses 1 to 3 are robust, but we find no support for Hypothesis 4.

³ We owe this point to an anonymous referee.

Conclusion

In this article, we put the question of Commission discretion in JBs at the center of scholarly investigation for the first time. We add to the PA literature that the European Commission generally enjoys higher levels of discretion in external relations than in internal (domestic) legislation. We show empirically that in only two cases JBs are not, in some shape or form, empowering the Commission. Both these agreements were concluded in the area of CFSP, where the Commission has an exceptionally weak standing. Moreover, we have shown that Commission discretion – despite generally higher levels – can still be explained with established PA variables. Testing our expectations across 252 international agreements concluded since 1992, we find robust support that complexity, the decision rule, and conflict within the Council help explain Commission discretion. By contrast, like most other large-N empirical studies applied to the EU, we find no evidence that divergent interests between the Council and the Commission influence this decision. Our study thus also sheds new light on open debates on the effects of various PA variables on Commission discretion (see the online Appendix for more details on these previous findings).

Our findings have several broader implications for different strands of literature. Our article makes a major step in better understanding how JBs impact the EU's inter-institutional balance by concentrating powers in the hands of the Commission. For the literature on the EU as a global actor, we take from this finding that the Commission is in a stronger position to shape EU external relations than previously recognized. JBs are pervasive and play a major role in the implementation of international agreements. The important role the Commission plays should make the EU a more “internally cohesive” actor (Conceição-Heldt and Meunier 2014: 966) that should usually be able to speak with a “single voice” in international negotiations taking place within JBs. What remains to be investigated is whether this cohesiveness also translates into increased effectiveness, thus raising the EU's profile as a global actor.

For the literature on permanent secretariats in international organizations more broadly (Bauer and Ege 2016; Haftel 2013; Hooghe and Marks 2015), our findings point towards an important oversight. Where these international organizations possess the authority to strike international agreements and these agreements set up JB, permanent secretariates could find themselves empowered far beyond what is currently acknowledged. The focus of these studies is often limited to an internal perspective of how these secretariats impact relations among member states themselves. Therefore, it would be desirable to extend the research agenda on bureaucratic autonomy within JB developed in our article to international organizations beyond the EU.

Moreover, JB can be incorporated into the picture of the EU as a market power. Damro (2015: 1345–1346) emphasizes that this framework is not limited to economic issues but inclusive of many policy areas. Still, the framework currently pays scarce attention to implementation, which is described as a “separate issue” (Damro 2012: 692). Damro’s account supports the interpretation that the Commission is *the* major actor pushing the boundaries of Market Power Europe (his article cites five Commission documents and not a single Council or EP document). This sits well with our own argument that the Commission often finds itself empowered in international agreements. It is also some indication that the Commission could strategically use JB to promote Europe’s interests, both at political and sectoral expert levels (Lavenex 2014). How exactly the Commission employs JB, however, is still very much unknown.

Finally, in the light of the far-reaching decisions taken in JB, it is paramount to learn more about how they operate on the side of the EU. There is a limit to how much insight can be gleaned through documentary evidence providing the empirical foundation for our article. For example, the EP and civil society could play a bigger role when EU positions for JB meetings are drafted than is apparent from formal provisions. Also, the Commission could be monitored by national representatives even if no such provision is included or vote-taking

could occur rarely because the Commission strives to form broad consensus among member states. In this sense, the variation we uncovered in this article could be more formal than real. Still, we feel confident that one of our central claims, namely that the Commission finds itself greatly empowered through the spread of JB's, would remain true. Qualitative case studies focused on JB decision-making or surveys with JB officials promise valuable additional insight into those questions, which are also at the heart of the legitimacy concerns raised by their creation. Hopefully, our contribution can serve as a catalyst and spur research on what we consider the most glaringly overlooked aspect of EU external relations today.

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