GOVERNING IN THE SHADOW OF INTERGOVERNMENTAL HIERARCHY: DELEGATION FAILURE AND EXECUTIVE EMPOWERMENT IN THE EUROPEAN UNION

Dr Scott James

Department of Political Economy

King's College London

London WC2R 2LS

scott.james@kcl.ac.uk

Tel: 020 7848 1220

Dr Paul Copeland

School of Politics and International Relations

Queen Mary, University of London

London E1 4NS

p.copeland@qmul.ac.uk

Tel: 020 7882 5840

ABSTRACT

This paper develops a model of executive empowerment to explain how and why the European Council has become increasingly involved in 'policy setting' and 'policy shaping' decisions in the European Union. Rather than being driven by intergovernmental power politics, we draw upon rational choice approaches to attribute this to three characteristics of the EU's economic reform agenda: the domestic distributional consequences; the horizontal functional interdependencies; and divergent national policy preferences. The paper suggests that this contributes to two types of delegation failure at the EU level: agenda failure (in the Commission); and negotiation failure (in the Council of Ministers). Utilising principal-agent analysis, we argue that EU-level agents have sought to overcome delegation failure by transferring functional tasks – policy initiation and decision making – upwards to Member State principals in the European Council. We refer to this counter-intuitive process of *reverse* delegation as 'Commission cultivation' and 'Council escalation'. These are illustrated using examples from both the Lisbon Strategy (the Services Directive) and Europe 2020 (the Europe 2020 poverty target). The paper contributes to our understanding of EU governance by reasserting the importance of intergovernmental hierarchy in securing credible political commitments at the European level.

KEYWORDS

European Council, executive empowerment, principal-agent analysis, delegation, Lisbon Strategy

INTRODUCTION

Over the past decade, the European Council has come to occupy an increasingly prominent role within the European polity. Many have sought to attribute these changes to structural developments. For example, the pace and nature of the integration process since the early 1990s has placed a greater burden on heads of state and government (HSGs) by increasing the frequency of treaty changes, intergovernmental conferences, Council summits and bilateral meetings (Hayes-Renshaw and Wallace 2006; Johansson and Tallberg 2010). In addition, expanding EU competence in areas of high politics (such as economic and monetary union) requires strong political leadership at both the national and supranational levels (Tallberg 2007). More recently however evidence has emerged that the European Council has also become increasingly involved in relatively routine, low-level policy making processes (for example Lassalle and Levrat 2004; Wessels 2008). These pressures generated a number of reform proposals for improving the agenda and workings of summit meetings, culminating in the 2009 Lisbon Treaty which replaced the rotating six-monthly chair with a new semi-permanent president. Since then the European Council has played a leading role in crafting and coordinating the EU's response to the financial and sovereign debt crises.

Despite the accumulation of anecdotal evidence, there remain few theoretically-informed explanations of why the European Council has become increasingly important within the EU policy process. There is also a tendency within much of the existing literature to avoid specifying the precise nature of the causal processes involved. In particular little attempt has been made to disaggregate the European Council's role at different stages of the policy process or develop theoretical explanations that move beyond narrow state-centric accounts.

In response this paper sets out to explain how and why the European Council has become increasingly involved in 'policy setting' and 'policy shaping' decisions. In order to avoid our dependent variable (the role of the European Council) being over-determined by other causal factors (e.g. international 'events'), we deliberately exclude the impact of developments surrounding the financial and sovereign debt crisis from our analysis. It is simply too early to tell whether the critical role of national leaders in managing the eurozone crisis, through extraordinary summit meetings and dedicated 'eurozone summits', is a permanent feature or a temporary aberration (see Puetter 2012). Instead our concern here is to explain the involvement of the European Council in the day-to-day policy process. We attribute the empowerment of the European Council to longer-term trends related to the development of the EU's economic and social reform agenda, brought together under the framework of the Lisbon Strategy (2000-2010) and Europe 2020 (2010-to date).

The paper proceeds as follows. The first section reviews the impact of the economic reform agenda on the European Council and existing theoretical accounts based on liberal intergovernmentalism. Drawing upon theories of rational choice institutionalism and principal-agent analysis, the paper puts forward an alternative model of 'executive empowerment'. The model hypothesises that the European Council has been empowered over the past decade through two separate mechanisms: Commission cultivation and Council escalation. Illustrated using case studies of both hard law (the Services Directive) and soft law (the Europe 2020 poverty targets), we argue that empowerment can be explained by the need to address two types of delegation failure at the EU level: agenda failure and negotiation failure. This has forced EU-level agents (in the Commission and Council of Ministers) to reverse the delegation of key functions back to Member State principals in the European Council. The paper concludes by reflecting on the importance of intergovernmental hierarchy and the implications for our understanding of EU governance.

THE LISBON STRATEGY AND THE EUROPEAN COUNCIL

In 2000 the Lisbon Council set out a long-term holistic strategy designed to make Europe the most dynamic and competitive knowledge-based economy within ten years (see Borrás 2009; Borrás and Radaelli 2011). The Lisbon Strategy, as it became known, sought to develop a synchronised annual process for facilitating domestic reforms across a swathe of macroeconomic, employment and structural policies. This innovative approach sought to utilise both old and new policy instruments: combining traditional 'hard' binding legislation, such as regulations and directives, with new 'soft' modes of governance, labelled the open method of coordination (OMC). Despite failing to achieve many of its objectives, the strategy was re-launched in 2010 as Europe 2020, guided by a series of new headline targets and thematic priorities related to employment policy, poverty reduction, research and development and climate change.

At the apex of this elaborate governance architecture sits the European Council. Although its importance has grown since its foundation in 1974, the European Council's role was transformed as HSGs were given a 'pre-eminent guiding and coordinating role to ensure overall coherence and the effective monitoring of progress' for the Lisbon Strategy (European Council 2000). This was given an institutional basis through the designation of a special spring European Council meeting as the forum for managing the Lisbon process. Although most of the technical negotiations were left to the relevant sectoral councils, regular summits provided a valuable forum for defining the strategy's broader strategic objectives, resolving political questions, and holding governments to account through peer pressure. These changes were further embedded in a series of reforms introduced in 2002 which attempted to streamline and simplify the summit preparation process and doubled the frequency of annual summit meetings from two to four times a year (European Council 2002).

How can we explain the transformation of the European Council's role? Governance approaches to the EU offer an obvious place to start. This literature explains the development of new initiatives like the Lisbon Strategy as a horizontal sectoral governance 'architecture' which is analytically separate from territorially-bounded democratic government (Borrás and Radaelli 2011). It explains the promotion of socio-economic reform through the use of OMC: non-binding EU guidelines, benchmarking and implementation in national reform programmes, and the promotion of mutual learning and best practice using peer review. Despite its early promises, empirical evidence suggests that the OMC has much in common with more established modes of policy making: highly centralised, relatively closed and dominated by inter- and trans-governmental negotiations (see Duina and Raunio 2007; Borrás and Conzelmann 2007).

In response attention has shifted back to the importance of the ‘shadow of hierarchy’, understood as executive or legislative decisions that steer governmental action, in underpinning the effectiveness of the open method (Heritier and Lehmkuhl 2008; Börzel 2010; Heritier and Rhodes 2011). Hierarchy in this instance tends to refer either to the Commission’s supranational capacity to threaten stakeholders with hard EU legislation (Börzel 2010) or to the role of national governments in facilitating coordination and enforcing implementation at the domestic level (for example, Rhodes 2010). With respect to the latter, Diedrichs *et al* (2011) find that the new modes retain important aspects of intergovernmental policy making while Rhodes and Visser (2011, p.126) argue that the growing complexity of social and economic tasks renders the ‘steering’ role of government more important in terms of defining rules, goal setting, incentive creation and the application of sanctions. Similarly, Heritier and Lehmkuhl (2008, p.6) explain that governments may seek to restrict delegation of sectoral governance to supranational institutions, civil society and private actors to minimise loss of control.

Despite this important rebalancing in the literature, two important gaps remain. First, there is almost no substantive discussion of the role of the European Council. Existing studies tend to overlook or downplay the summit meetings of HSGs – perhaps a reflection of the fact that until 2009 it was not, strictly speaking, a formal part of the EU institutional architecture at all. Second, despite the accumulation of empirical evidence, there remains no theoretically-informed account of the importance of *intergovernmental* hierarchy at the EU level and no specification of the causal mechanisms through which it is activated.

Liberal intergovernmentalism offers a potential solution. Its main contribution would be to emphasise the desire of HSGs to retain tight control over politically sensitive areas, such as economic and social policy (Moravcsik 1993, 1998). Although the Commission was delegated important administrative and later political responsibilities for the Lisbon Strategy, the European Council’s ‘pre-eminent guiding role’ was designed to ensure that coordination would remain open in terms of outcomes, constrain attempts to centralise policy formation, and prevent the development of more hierarchical methods of integration (Hodson and Maher 2001, p.739).

Although this argument remains persuasive, we argue that it provides a partial and misleading picture of how the European Council's role has evolved. In particular, it is inadequate for analysing the impact of the Lisbon Strategy in three key respects. First, intergovernmental explanations fail to capture the depth or breadth of involvement by the European Council by focusing on the impact of 'history-making decisions' at intergovernmental conferences. This ignores the extent to which HSGs are increasingly engaged in relatively routine policy making processes involving policy setting (decisions concerning a choice between policy alternatives) and policy shaping (decisions dealing with the formulation and implementation of specific policies) (Peterson 1995). Second, liberal intergovernmentalism downplays the degree of autonomy, the space for agenda setting, and the explicitly political role that the Commission has developed in the management of the EU's economic reform agenda since 2005 (Borrás 2009). Because of the assumption that executive power is distributed in zero-sum terms, there is little scope for understanding the degree of mutual interdependency between the European Council and European Commission. Finally, and perhaps most importantly, state-centric theories assume that national leaders are driven by a competition for power with the other EU institutions in awarding themselves a pre-eminent role in the management of economic and social policy. Yet this ignores the tremendous burden placed on national leaders and their immediate officials, particularly those with smaller and less well-resourced public administrations. Increasing involvement in low-level policy making has at times proved detrimental to the efficient operation of the European Council itself (Ludlow 2002). Given these deficiencies we need to explain how such trends may be shaped by functional necessity rather than reflecting strategic calculation on the part of HSGs.

A MODEL OF EXECUTIVE EMPOWERMENT

This paper suggests that rational choice institutionalism provides a useful theoretical bridge between liberal intergovernmentalism and governance approaches in explaining the empowerment of the European Council. It emphasises the importance of functional efficiency rather than power politics as the driving force behind international cooperation. In particular, principal-agent (P-A) analysis has been used to explain why national government 'principals' seek to delegate power to 'agents' by creating international institutions (Shepsle 1989; Koremenos *et al* 2001; Pollack 2003). This is attributed to the capacity of autonomous institutions to help states overcome collective action dilemmas, such as high transaction costs, information asymmetry and enforcement problems (Keohane 1984). In the European context P-A analysis has been applied to help us understand the delegation of agenda-setting and decision-making authority to the European Commission and Council of Ministers by Member State principals, the extent to which these autonomous agents are able to pursue their own preferences, and the oversight mechanisms that national governments use to minimise agency loss (such as shirking or slippage) (Pollack 2003).

In order to explain executive empowerment through the European Council, we turn the logic of P-A analysis on its head. Specifically, we set out to explain why agents in the Commission and Council of Ministers have increasingly sought to delegate agenda-setting and decision-making functions back to the European Council, conceptualised here as the 'collective' principal for the Member States. This is something of a paradox given the assumption underpinning P-A analysis that rational agents in the EU institutions will strive to enhance their power and autonomy vis-a-vis national principals. In fact we argue that such behaviour is perfectly compatible with the rational choice approach. To summarise, we claim that three characteristics (our independent variables) of the EU's Lisbon Strategy explain executive empowerment (dependent variable): the distributional consequences; the horizontal functional interdependencies; and the divergence of political preferences. In short, the economic reforms which the strategy sought to facilitate (such as the free movement of services, labour market flexibility or pensions reform) have direct distributional implications for different groups in society, are characterised by complex horizontal functional interdependencies which link different policy fields, and engender a high level of political disagreement both within and between Member States over the direction of reform. Echoing Kassim and Menon (2003), we argue that conventional P-A approaches ignore the implications of these important policy dynamics in explaining the likelihood and effectiveness of delegation.

We suggest that these characteristics give rise to two types of delegation failure rooted in the inability of EU agents to secure credible commitments by themselves: agenda failure (in the Commission); and negotiation failure (in the Council). Attempts to overcome this delegation failure have therefore led to the delegation of functional tasks – policy initiation and decision making – back to HSGs in the European Council in order to secure the necessary political commitment from Member State principals. We refer to these processes of *reverse* delegation as 'Commission cultivation' and 'Council escalation'. Crucially, reverse delegation cannot be explained simply by the fact that Member State principals deliberately designed the Lisbon Strategy to ensure that the European Council would retain an oversight role in the operation of the new modes of governance. There are two grounds for making this claim. First, we find that the empowerment of HSGs has been an unwelcome development, giving rise to the unintended overload of summit meetings. Second, evidence of reverse delegation is apparent in relation to policies which are subject to both the open method of coordination and the traditional Community Method. Hence the nature of the policy issue, rather than the desire of national governments to retain control by restricting delegation, must be the main causal variable.

Figure 1. The Executive Empowerment Model

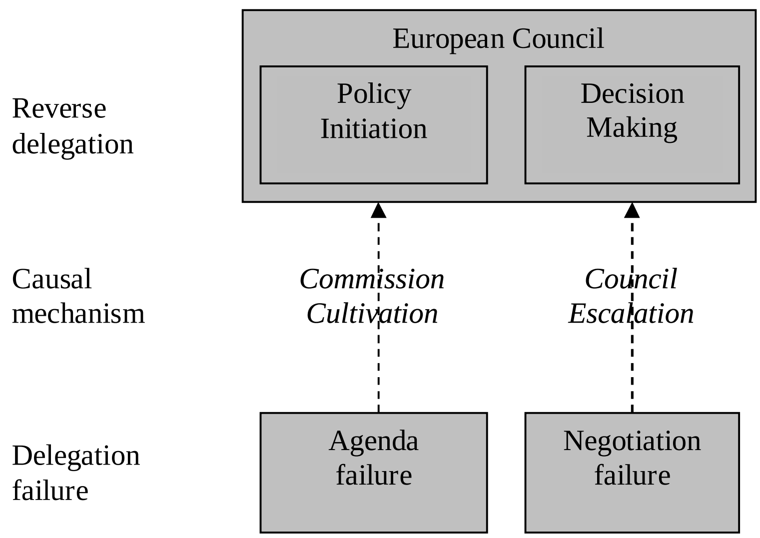

Figure 1 summarises the model of executive empowerment proposed here through which the European Council has become increasingly involved in policy setting and policy shaping decisions. Our argument is illustrated using careful process tracing of critical interventions by the European Council during two policy processes: first, the development of the Lisbon Strategy's flagship Services Directive under the Community Method of decision making between 2000 and 2006; and the new headline target for poverty which was agreed in the Europe 2020 strategy in 2009/10, characterised by the use of new modes of governance. By combining our argument into a single causal model, the paper is intended to form the basis for further empirical application and hypothesis testing.[1]

1. Agenda Failure: Commission Cultivation

The first mechanism is concerned with the prominent role that the European Council plays in policy initiation. In theory although the European Council is responsible for defining the Lisbon Strategy's strategic direction and shaping its annual agenda, the Commission enjoys the exclusive right to initiate binding legislation and draft the Integrated Guidelines (Duina and Raunio 2007). In reality however

[1] The paper is informed by a series of non-attributable interviews conducted with twelve Brussels-based permanent representatives and home-based officials.

the European Council has emerged as the primary agenda setter in social and economic governance and is actively engaged in day-to-day policy making (Puetter 2012, p.162). The Commission has been forced to relinquish this role because it lacks sufficient political legitimacy to serve as the motor of integration in this field (Lassalle and Levrat 2004, p.433). As a consequence national leaders tend to request new policies, programmes and/or draft legislation at annual Spring summit meetings, limiting the Commission's initiative to around 10% of proposals (Allerkamp 2010b, p.11). This has in effect reversed the traditional Community method of decision making: although the Commission retains the exclusive or shared right to initiate new proposals under the Lisbon Strategy, in practice only the European Council wields sufficient political clout to set the policy agenda.

Contrary to intergovernmental assumptions however, greater policy initiation by HSGs is actively encouraged and facilitated by the European Commission. It is able to exploit the mandate provided by the European Council for its draft proposals, and/or the threat of referring issues back to national leaders, in order to strengthen its own position vis-à-vis the Council and Parliament. Typically the Commission will try to upload issues for discussion at the European Council and push to insert formulations into the presidency conclusions that function as 'hooks' for future initiatives (Tallberg 2006a, pp.84-86). For example, commissioners often bypass the Council by actively lobbying HSGs and their sherpas to formally 'request' a proposal in summit conclusions and have even manipulated summit conclusions in order to add issues that were not discussed at meetings (Werts 2008, p.53). This is because the Commission tends to refrain from issuing draft proposals under the Lisbon Strategy until formally requested by the European Council and occasionally issues them directly to national leaders for approval prior to sending them to the Council or Parliament (European Voice 2007).

We argue that the European Council's role in policy initiation is deliberately cultivated by the Commission in order to resolve a specific type of delegation failure at the EU level: agenda failure. This refers to an absence of effective agenda-setting because institutions lack the capacity or willingness to initiate or steer new policy proposals (Tallberg 2006b, p.121). We suggest that the

Lisbon Strategy is particularly prone to agenda failure because it has significant domestic distributional consequences and is characterised by a high level of national preference divergence. The domestic political salience and sensitivity that this engenders weakens the Commission's agenda setting role by limiting its capacity to secure the necessary political commitments to economic reform from national governments.

Commission officials respond to this agenda failure by reversing the process of delegation and transferring responsibility for policy initiation back to Member State principals in the European Council. Faced with powerful political constraints, Commission officials have a clear incentive to seek a strategic alliance with HSGs because only summit meetings can provide the political impetus and secure the credible commitments necessary to drive policy forward. This reverse delegation enables it to circumvent its own lack of political authority and agenda setting capacity, even in areas of hard law; to overcome political and institutional obstacles to agreement in the Council and Parliament; and /or simply to demonstrate its continued relevance in ongoing policy debates. Similarly, principals seeking to shape the Lisbon agenda (such the rotating Council presidency or larger Member States) will need to collaborate closely with the Commission to develop proposals and secure the support of other governments. This is because the Commission can provide scarce and valuable resources, including detailed policy proposals (such as draft legislation, revised integrated guidelines or data on Member State compliance), honest brokerage between Member States (commonly in cooperation with the Council presidency), and political knowledge and information (that derives from the Commission's structural position within the policy process). By contrast with intergovernmentalist approaches, this rational choice perspective assumes a positive sum game in which the 'unholy alliance' (Wessels and Schäfer 2007) of the Commission and European Council collaborate in order to periodically (re-)shape the Lisbon Strategy's policy agenda. This allows us to formulate our first hypothesis:

H1. The Commission cultivates the role of the European Council with regard to policy initiation in order to overcome agenda failure.

Testing this hypothesis involves careful process tracing of the timing and sequencing of policy initiation under the Lisbon Strategy. If the hypothesis is correct we would expect to find that the Commission times interventions to shape European Council agendas, summit conclusions will contain detailed requests for policy development by the Commission, and/or that the Commission coordinates with HSGs to drive the policy agenda forward. The hypothesis would be disproved if the Commission was able to autonomously initiate policy under the Lisbon Strategy and summit conclusions simply contained broad political statements of agreement. The following case study represents a tentative testing of this claim.

The Services Directive provides a valuable illustration of how the Commission can skilfully cultivate the political support of the European Council to steer the policy agenda. Throughout the 1990s the Commission consistently pushed for greater services integration but was thwarted by Member State opposition. The launch of the Lisbon Strategy provided a fleeting window of opportunity to act and so the Prodi Commission lobbied aggressively in the run up to the summit despite a lack of evidence that it was politically viable (Loder 2011, p.566). In its contribution to the Lisbon Special European Council, the Commission proposed two over-arching objectives for the Lisbon Strategy: the pursuit of economic reform to prepare the knowledge economy; and the strengthening of the European social model by investing in people (European Commission 2000, p.2). To achieve the former the Commission put forward six sub-objectives of which one was for improvements to the Internal Market which required ‘attacking’ restrictions to the growth of cross-border services by 2004. As a result, the March 2000 Presidency Conclusions briefly called for the Commission to outline a strategy for the ‘removal of barriers to services’ before the end of 2000 (European Council 2000, p.6). By emphasising the pressures of globalisation and the knowledge-based economy, highlighting the competitiveness advantages of services liberalisation and downplaying the potential political and regulatory challenges, the Commission successfully framed the terms of the debate in its favour. The summit in March 2000 proved to be a watershed moment as it was the first time that national governments accepted the logic of the argument (Loder 2011, p.570). In response they instructed the

Commission to draw up a comprehensive solution for removing barriers to trade in services by the end of the year (European Council 2000). This strong political mandate was seized upon by the Commission which immediately set to work developing a detailed strategy outlining a series of harmonisation measures (European Commission 2000). It was initially anticipated that following the 2001 review the Commission would publish a 'systematic and comprehensive list of persistent barriers and a request for their removal to Member States' (European Commission 2001, p.1). However, 'informed by the latest economic research' and pushed by the then Commissioner for Internal Market and Services Frits Bolkenstein, the Commission used the opportunity to propose a directive arguing that 'the key global competitiveness goal set by the Lisbon European Council could not be met unless sweeping changes were made to the functioning of the Internal Market for services in the near future' (European Commission 2004, p.5). The Barcelona European Council in March 2002 injected further political momentum by giving the Commission a green light to proceed with haste: urging it to complete its analysis of barriers to services as soon as possible, inviting the Council to take the necessary procedural decisions to facilitate the process, and signalling broad support for the Commission to develop a proposal for a single framework directive for the first time (European Council 2002). What emerged in January 2004 was a draft directive which proposed a 'radical form of automatic recognition' through the country of origin principle (Nicolaidis and Schmidt 2007, p.721). By harnessing the political will of HSGs at the beginning of the process and by timing its intervention carefully to coincide with the launch of the Lisbon Strategy, the Commission successfully used the periodic intervention of the European Council to build momentum for its proposal and gradually overcome opposition in the Council and Parliament.

We also find evidence that the European Council can periodically re-set the policy agenda by pressurising the Commission to launch new initiatives or alter existing ones. The poverty target enshrined in the Europe 2020 strategy offers a useful example of how summit meetings can force the Commission to suddenly shift course. In March 2008 the European Council gave the Commission a mandate to draw up proposals for a successor to the Lisbon Strategy. After repeated delays the release of the Commission's consultation document at the end of 2009 revealed that its position on social

Europe remained largely unchanged to that of the re-launched Lisbon Strategy: progress in reducing poverty and social exclusion was to follow from success in economic growth and job creation (European Commission 2009, p.7). Yet by March 2010 the Commission had accepted the need for an ambitious 'headline target' to reduce poverty within the EU by 25% by 2020 using a single measurement of poverty (European Commission 2010, p.5): the first quantitative social target in the EU's history. Two factors were at the root of this shift in position. First, the Commission's initial lack of ambition provoked a storm of protest from several Member States (notably Austria, Belgium, Cyprus, France, Italy, Portugal and Spain) and social NGOs. This culminated in a call by national leaders at the December 2009 summit for the Commission to develop an ambitious social plan to address rising unemployment and poverty (EurActiv 2009). In response Barroso forged a partnership with the newly appointed European Council President, Herman van Rompuy, to kick start the reform process at a specially convened informal summit in February 2010 (Copeland and James 2014, p.8). Second, Barroso needed to secure the support of the European Parliament for his re-appointment as Commission President. Between 2004 and 2009 the relationship between the Commission and the Parliament had become strained. Not only did the Parliament point to a lack of progress within social Europe during the period, but when EU social policy was negotiated the Parliament was largely ignored or sidelined (Copeland and Daly 2012, p.5). The insertion of the poverty target into Europe 2020 was in part an attempt to gain the support of key interests within Parliament.

Both cases offer preliminary support for our hypothesis. Although the Commission either enjoyed the formal right to initiate legislation (the Services Directive) or was responsible for drafting a new policy initiative (the poverty headline target), it lacked the capacity to shape the policy agenda on its own. Instead it was dependent upon the political authority wielded by HSGs in one of two ways: by uploading its own broad policy ambitions and objectives into summit conclusions; or by forging a strategic alliance with the European Council President and other national leaders. In both cases the European Council contributed directly to agenda setting by instigating, steering or redirecting new policy proposals.

2. Negotiation Failure: Council Escalation

The second mechanism suggests that executive empowerment occurs at the level of decision making. This arises when issues and decisions have to be sent for arbitration and resolution by the European Council because sectoral ministers in the Council are simply unable to agree. Historically this has been attributed to the impact of successive EU enlargements (which has made Council meetings increasingly unwieldy and inefficient) and the failure of the General Affairs Council to provide cross-sectoral coordination (as foreign ministers lack the expertise to deal with technical dossiers) (Gomez and Peterson 2001, p.72; Wessels 2008). As a result even relatively mundane issues are often resolved on the margins of summit meetings by informal networks of prime ministers' EU advisors (Tallberg 2007, p.36). Consequently the agenda of summit meetings and the importance of informal discussions and joint declarations by HSGs have steadily increased (Agence Europe 2002). These problems were first identified in a report compiled by the then Secretary-General of the Council Secretariat, Javier Solana (Council Secretariat 2002). It found that owing to the 'malfunctioning of the Council' national leaders were increasingly being asked to spend time on 'laborious low-level drafting work'. This 'drift' was adversely affecting the normal decision making process, causing the European Council to become 'sidetracked' from its original purpose and reducing its meetings to 'report-approval sessions'. It concluded that summits had become 'clogged up' with overloaded agendas and legislative dossiers, and had become an 'appeal body' for resolving disputes in the Council. Although the changes agreed at the Seville European Council streamlined the preparation process, Solana's recommendations for augmenting the Council's capacity to resolve political issues (by creating a new Council of deputy prime ministers, Europe ministers or separating General Affairs from External Affairs) were not implemented. As a consequence the achievements of the reforms proved modest (see Harrison 2006; Allerkamp 2010b).

We argue that the Lisbon Strategy contributes to executive empowerment of the European Council through a second type of delegation failure: negotiation failure. Rational choice institutionalism informs us that negotiations fail when policy makers' inability to find agreement results in deadlock and/or the breakdown of bargaining (Tallberg 2006b, p.125). This may be due to the heterogeneity of actor preferences, decision making rules that enable actors to veto agreements, and/or decision making structures that hinder policy linkages. P-A analysis suggests that negotiation failure may be resolved if national principals delegate brokerage functions to autonomous institutions: at the EU level this role is performed by the six-monthly rotating Council Presidency. Yet two characteristics of the Lisbon Strategy hinder the capacity of the Presidency from overcoming negotiation failure in the Council of Ministers. First, national government preferences on the Lisbon agenda are highly heterogeneous owing to the distributional consequences of policy outcomes and ideological divisions over the desirability and direction of economic reform. Second, the strategy constitutes a broad governance 'architecture' for a wide spectrum of economic and social policies (Radaelli and Börras 2011). As such it contains multiple complex functional interdependencies between related policy fields, which increases the importance of issue linkages in the decision making process. Although the Presidency serves as the lead actor, the negotiation of cross-sectoral agreements is ill-suited to Council 'silos' (Johansson and Tallberg 2010, p.216).

In order to secure agreement the Presidency is periodically forced to reverse the delegation of decision making by escalating issues upwards from sectoral Council meetings to European Council summits. Contrary to what conventional P-A analysis tells us, reverse delegation from agents to principals can in this instance facilitate the resolution of collective bargaining problems in three respects. First, escalation can reduce the transaction costs of negotiation by providing more effective political brokerage (Keohane 1984; Pollack 2003). This is because informal pre-summit discussions between national leaders and their senior sherpas may simply provide a more effective and efficient way of overcoming political deadlock and/or avoiding decision making through time-consuming Council committees (James 2011, p.162). Second, it helps to reduce information asymmetries between different negotiating parties. In particular, the escalation of decision making from sectoral-specific Councils and committees to a higher level addresses the problem that negotiators often lack sufficient knowledge and authority to exploit issue linkages. Finally, reverse delegation may resolve enforcement problems associated with ‘assurance games’ (Bellamy *et al* 2011, pp 141-2). The European Council is able to secure the credible commitments to complex package deals as HSGs wield the political authority to informally sanction non-compliers. By reducing the risk of defection and building trust, summit meetings serve to legitimise and expand the potential scope for EU-level agreement. This forms the basis for our second hypothesis:

H2. The Council escalates issues to the European Council to overcome decision making deadlock, facilitate bargaining or resolve enforcement problems.

This requires process tracing of the timing and sequencing of the EU legislative process. Support for the hypothesis would come from evidence of summit conclusions urging the Council and Parliament to reach agreement and an acceleration of the legislative decision making process following an intervention by HSGs. By contrast the finding that the European Council simply rubber stamps decisions reached in the Council and/or with Parliament prior to summit meetings would disprove the claim.

The Services Directive offers a useful example of how legislative issues can be rapidly escalated to HSGs as they become increasingly politicised. From 2002 onwards the Commission worked closely with national ministries to formulate its plans for a draft directive and the detailed negotiations were conducted in the Competitiveness Council and Committee of Permanent Representatives (Coreper) (see Dagnis Jensen and Nedergaard 2012, pp.854-56). Almost as soon as the draft directive was published at the start of 2004 however, opposition from a broad coalition of actors outside the EU institutions – regional representatives, think tanks, trade unions, public service unions and academics – was swiftly mobilised. Attempts by the Council and Commission to clarify the implications of the country of origin principle did little to quell the controversy and the focus of opposition shifted to the Parliament where public service unions organised demonstrations to highlight the risks of ‘social dumping’ (Dolvik and Odegard 2009, p.10). The debate also shifted to the national arena: in Germany pressure on the job market from the influx of migrants from eastern Europe heightened fears over the impact of further liberalisation; while in France opposition to the Services Directive fuelled support for the ‘no’ camp in the forthcoming referendum on the EU Constitution, leading President Chirac to call for a complete review (EurActiv 2005). Momentarily during the negotiations the locus of decision making shifted upwards from the Council of Ministers to the European Council and the issue of the directive was hastily added to the Spring European Council agenda in 2005. At this meeting President Chirac and Chancellor Schroder were joined by the leaders of Italy, Austria, Sweden and Belgium in calling for the Commission to undertake a far-reaching revision of the directive which would be compatible with the European social model (Agence Europe 2005). In response Charlie McCreevy, Bolkestein’s successor, suggested that if the Parliament could reach a two-thirds majority agreement in plenary on a draft directive, the Commission would accept the amendments and transmit them to the Council for voting. This critical intervention paved the way for the Parliament to craft a compromise removing the country of origin principle. The fate of the Services Directive illustrates the pivotal role of the European Council in unblocking the decision making process at two key points in time: in March 2005 as the Council had become gridlocked by opposing coalitions of Member States; and in March 2006 by endorsing Parliament’s amendments and signalling its approval to the Council to reach agreement.

The controversy over the Europe 2020 targets for poverty displays a similar pattern. Having been cajoled into re-writing its agenda for social Europe by HSGs at the end of 2009, the Commission’s entire Europe 2020 strategy risked failure as a consequence of further stalemate in the Council. Despite Barroso and van Rompuy’s best efforts, national leaders from the UK, Ireland, Sweden and the majority of the new Member States opposed the Commission’s radical proposal of having a single target for reducing poverty (Copeland and Daly 2012, p.278). During the following months discussion and negotiation took place a various levels of governance, including the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) and the Social Protection Committee, as well as tripartite negotiations between the Commission Secretariat-General, the Spanish Presidency and national Permanent Representations. At several points however HSGs also intervened to steer the negotiations. Spanish Prime Minister and Council President Jose Zapatero worked closely with van

Rompuy to convene high-level discussions, while Nicolas Sarkozy and Angela Merkel intervened personally to propose new wording for the targets following the failure to reach agreement by the March 2010 summit deadline (EurActiv 2010). This succeeded in breaking the deadlock, enabling employment and social ministers to agree a compromise text in June committing Member States to lifting 20 million people out of the risk of poverty but now with greater flexibility over the choice of indicators used.

The case studies presented here appear to support the second hypothesis. They suggest that far from being a strategic decision on the part of national governments or supranational institutions, executive empowerment is driven by functional efficiencies which over time expand and lock in the role and influence of HSGs at the decision making stage. In both cases the critical intervention of the European Council followed the breakdown of negotiations in the Council and/or with Parliament, and the high-level engagement of national leaders was necessary in order to negotiate a political compromise. This implies a level of policy involvement significantly beyond that of either rubber stamping or strategic oversight.

CONCLUSION

The model of executive empowerment developed here makes an important contribution to existing accounts of the EU, including traditional integration theory, P-A analysis and governance approaches. To end we reflect briefly on each.

The paper suggests that the increased involvement of the European Council in policy setting/shaping does not signal a return to intergovernmentalism *per se* (for example, see Schaefer 2004; Moravcsik 2005). On the contrary, the model suggests that the continued rise of the EU's main intergovernmental institution is in large part dependent upon the role of the EU's other executive institutions – namely the Commission and Council of Ministers. On the one hand the Commission actively cultivates and is bolstered by the formation of a strategic alliance with HSGs. On the other, the gradual institutionalisation of the European Council's role enables it to perform the role of the General Affairs Council in the decision making process more effectively. This contributes to traditional integration theory by affirming a more recent trend identified within the literature towards the further blurring of the distinction between intergovernmentalism and supranationalism (Allerkamp 2010a; Schout and Wolff 2010). The paper confirms that trying to distinguish between intergovernmental and supranational forms of integration as opposite ends of a continuum is increasingly meaningless as the two constitute preconditions for one another (Schout and Wolff 2010, pp.12-13).

The application of P-A analysis in the paper is significant in one important respect. In order to understand executive empowerment, we have to reverse the normal logic of delegation from principal to agent. Counter-intuitively, we find that EU-level agents (in the Commission and Council of Ministers) frequently resolve collective action problems by reversing the delegation of key functions back to Member State principals (in the European Council). We attribute this to three structural features of the EU's Lisbon Strategy – the distributional consequences of policy outcomes, the complex horizontal functional interdependencies, and the divergence of national political preferences – which contribute to acute forms of delegation failure. Crucially, this delegation failure is apparent for policies subject to both the hard law of the Community method and the soft governance of the open method of coordination. Hence the nature of the policy issue, rather than the desire of national governments to retain control by restricting delegation, must be the main causal variable. In both cases the European Council is uniquely placed to provide the necessary strategic overview and political authority to secure the credible commitments necessary to drive the agenda and/or resolve bargaining problems. This contradicts the P-A assumption that commitment problems are more effectively resolved if principals delegate these functions to autonomous agents (Shepsle 1989). On the contrary we find that reverse delegation can produce functional efficiency gains. How can we explain this paradox?

We suggest that the answer lays in the continued importance of hierarchy in the EU policy process. In this respect the paper contributes to our understanding of the importance of a 'shadow of hierarchy' in solving collective action problems. Our empirical account adds to existing governance approaches by suggesting that this shadow comes in a variety of forms. In particular, we argue that the delegation failure associated with the Lisbon Strategy means that the *supranational* hierarchy of the Commission and Council has to be buttressed with the *intergovernmental* hierarchy of the European Council. Unlike Börzel (2010) we do not conceptualise the European Council simply as an arena of intergovernmental negotiation. On the contrary this ignores the capacity of HSGs to exert collective influence, secure credible commitments, and provide an independent source of hierarchical authority. This does not derive from formal executive power (such as the Commission's treaty-based right to initiative) or legislative role (Council decision making procedures), but from the informal political power that derives from the European Council's distinct membership. Our model suggests that this shadow of intergovernmental hierarchy has become increasingly important over time as new policy initiatives under the Lisbon Strategy are reliant on the political authority provided by summit meetings for policy initiation and decision making.

BIBLIOGRAPHY

Agence Europe (2002) 'EU/United Kingdom', 20 March 2002. Accessed 15 April 2013.

Agence Europe (2005) '25 underlines that services directive must respond to two imperatives - opening up of services market and respect for European social model', 24 March 2005. Accessed 15 April 2013.

Allerkamp, D. (2010a) 'The Council(s) Beyond Intergovernmentalism: The Transformative Power of Intergovernmental Council Decision Making'. Paper presented at the ECPR Fifth Pan-European Conference on EU Politics, Porto, Portugal, June 23-26, 2010.

Allerkamp, D. (2010b) 'Who Sets the Agenda? How the European Council and the Team Presidencies Are Undermining the Commission's Prerogative'. Paper presented at the ECPR Fifth Pan-European Conference on EU Politics, Porto, Portugal, June 23-26, 2010.

Bellamy, R., Castiglione, D., Follesdal, A. and Weale, A. (2011) 'Evaluating Trustworthiness, Representation and Political Accountability in New Modes of Governance'. In A. Heritier and M. Rhodes (eds.) *New Modes of Governance in Europe: Governing in the Shadow of Hierarchy* (Basingstoke: Palgrave Macmillan, pp 135-62).

Borrás, S. (2009) 'The Politics of the Lisbon Strategy: The Changing Role of the Commission'. *West European Politics,* Vol. 32, No. 1, pp. 97-118.

Borrás, S. and Conzelmann, T. (2007) 'Democracy, Legitimacy and Soft Modes of Governance in the EU: The Empirical Turn'. *Journal of European Integration,* Vol. 29, No. 5, pp. 531-548.

Borras, S. and Radaelli, C. (2011) 'The Politics of Governance Architectures: Creation, Change and Effects of the EU Lisbon Strategy', *Journal of European Public Policy* Vol. 18, No.4, pp. 463-84.

Börzel, T. (2010) 'European Governance: Negotiation and Competition in the Shadow of Hierarchy'. *Journal of Common Market Studies,* Vol. 48, No. 2, pp. 191-219.

Copeland, P. and Daly, M. (2012) 'Varieties of Poverty Reduction: Inserting the poverty and social exclusion target into Europe 2020', *Journal of European Social Policy* Vol.22, No.3, pp.273-87.

Copeland, P. and James, S. (2014) 'Policy windows, ambiguity and Commission entrepreneurship: explaining the relaunch of the European Union's economic reform agenda', *Journal of European Public Policy* Vol. 21, No. 1, pp.1-19.

Council Secretariat (2002) *Preparing the Council for Enlargement*. Report by the Secretary-General, SN 1636/2/02 REV 2, March 11th, 2002.

Cram, L. (1994) 'The European Commission as a multi-organization: social and information technology policy-making in the European Union', *Journal of European Public Policy* Vol.1, No.2, pp.195–217.

Dagnis Jensen, M. and Nedergaard, P. (2012) 'From 'Frankenstein' to 'toothless vampire'? Explaining the watering down of the Services Directive', *Journal of European Public Policy* Vol.19, No.6, pp.844-862.

Diedrichs, U., Reiner, W. and Wessels, W. (2011) 'New Modes of Governance: Policy Developments and the Hidden Steps of EU Integration'. In A. Heritier and M. Rhodes (eds.) *New Modes of Governance in Europe: Governing in the Shadow of Hierarchy* (Basingstoke: Palgrave Macmillan, pp 19-47).

Dølvik, J.E. and Ødegaard, A.M. (2009) 'The Services Directive strife: a turning point in EU decision-making?' FORMULA Working Paper no. 7, University of Oslo.

Duina, F. and Raunio, T. (2007) 'The Open Method of Co-ordination and National Parliaments: Further Marginalization or New Opportunities'. *Journal of European Public Policy*, Vol.14, No.4, pp. 489-506.

EurActiv (2005) 'France wants full review of Services Directive', 3 February 2005, available at http://www.euractiv.com/Article?tcmuri=tcm:29-134994-16&type=news. Accessed 31 May 2013..

EurActiv (2009) ‘EU summit to call for ambitious social plan’, 10 December 2009, available at http://www.euractiv.com/priorities/eu-summit-call-ambitious-social-news-223135. Accessed 31 May 2013.

EurActiv (2010) ‘EU leaders delay deal on 2020 targets’, 26 March 2010, available at http://www.euractiv.com/priorities/eu-leaders-delay-deal-2020-targe-news-383260. Accessed 31 May 2013.

European Commission (2000) ‘An internal market for services: Communication from the Commission to the Council and the EU Parliament’, 888 final, 29 December.

European Commission (2009) ‘Consultation on the Future EU 2020 Strategy’, Commission Working Document, COM (2009) 647 final, 24 November 2009.

European Commission (2010) ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’, Commission Communication, COM (2010) 2020 final, 3 March 2010.

European Council (2000) Presidency Conclusions of the Extraordinary Lisbon European Council, 23-24 March 2000, Brussels.

European Council (2002) Presidency Conclusions of the Seville European Council, 21-22 June 2002, Brussels.

European Voice (2007) Interview by Simon Taylor with Commission President Barroso, 11 January 2007.

Gomez, R. and Peterson, J. (2001) ‘The EU’s Impossibly Busy Foreign Ministers: “No One Is In Control”’. *European Foreign Affairs Review,* Vol. 6, No. 1, pp. 53-74.

Harrison, D. (2006) 'Where Next for the European Council?', comment on the Council of European Responsibilities (COEUR), available at http://www.coeur.ws/comments/comment5.html. Accessed 23 July 2011.

Hayes-Renshaw, F. and Wallace, H. (2006) *The Council of Ministers* (Basingstoke: Palgrave Macmillan).

Heritier, A. and Lehmkuhl, D. (2008) 'Introduction: The Shadow of Hierarchy and New Modes of Governance', *Journal of Public Policy* Vol.28, No.1, pp.1-17.

Heritier, A. and Rhodes, M. (eds.) (2011) *New Modes of Governance in Europe: Governing in the Shadow of Hierarchy* (Basingstoke: Palgrave Macmillan)

Hodson, D. and Maher, I. (2001) 'The Open Method as a New Mode of Governance: The Case of Soft Economic Policy Coordination'. *Journal of Common Market Studies*, Vol. 39, No. 4, pp. 719-746.

James, S. (2011) *Managing Europe from Home: The changing face of European policy making under Blair and Ahern* (Manchester: Manchester University Press).

Johansson, K.M. and Tallberg, J. (2010) 'Explaining chief executive empowerment: EU Summitry and domestic institutional change', *West European Politics* Vol.33, No.2, pp.208–36.

Kassim, H. and Menon, A. (2003) 'The principal-agent approach and the study of the European Union: promise unfulfilled?' *Journal of European Public Policy* Vol. 10, No. 1, pp.121-39.

Keohane, R. O. (1984) *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press).

Koremenos, B., Lipson, C. and Snidal, D. (2001) ‘The Rational Design of International Institutions,’ *International Organization* Vol.55, No.4, pp.761-799.

Loder, J. (2011) ‘The Lisbon Strategy and the politicization of EU policy-making: the case of the Services Directive’, *Journal of European Public Policy* Vol.8, No.4, pp.566-583.

Ludlow, P. (2002) *The Laeken Council* Brussels: EuroComment.

Miklin, E. (2009) ‘National interests or individual ideological preferences? The Services Directive inside the EU’s Council of Ministers’, *West European Politics* Vol.2, No.5, pp.943-62.

Moravcsik, A. (1993), ‘Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach’. *Journal of Common Market Studies,* Vol. 31, No. 4, pp. 473-524.

Moravcsik, A. (1998) *The Choice for Europe* (New York: Cornell University Press).

Moravcsik, A. (2005) ‘The European constitutional compromise and the neofunctionalist legacy’, *Journal of European Public Policy* Vol.12, No.2, pp.349-386.

Nicolaïdis, K. and Schmidt, K. (2007) ‘Mutual recognition “on trial”: the long road to services liberalization’, *Journal of European Public Policy* Vol.14, No.5, pp.190–207.

Peterson, J. (1995) ‘Decision-Making in the European Union: Towards a Framework of Analysis’, *Journal of European Public Policy* Vol.2, No.1, pp.69-93.

Pollack, M. (2003) *The Engines of Integration: Delegation, Agency, and Agenda Setting in the EU* (Oxford: Oxford University Press).

Puetter, U. (2012) ‘Europe's deliberative intergovernmentalism: the role of the Council and European Council in EU economic governance’, *Journal of European Public Policy* Vol.19, No.2, pp. 161-178.

Rhodes, M. (2010) ‘Employment policy: Between Efficacy and Experimentation’. In H. Wallace and M. Pollack and A. Young (eds.) *Policy-Making in the European Union* (6th edition, Oxford: Oxford University Press, pp 279-302).

Rhodes, M. and Visser, J. (2011) ‘Seeking Efficiency, Effectiveness and Legitimacy: New Modes of Socio-Economic Governance in Europe’. In A. Heritier and M. Rhodes (eds.) *New Modes of Governance in Europe: Governing in the Shadow of Hierarchy* (Basingstoke: Palgrave Macmillan, pp 104-134).

Schaeffer, A. (2004) ‘Beyond the Community Method: Why the Open Method of Coordination Was Introduced to EU Policy-making’ *European Integration online Papers* Vol.8, No.13.

Shepsle, K. (1989) ‘Studying institutions: Some lessons from the rational choice approach’, *Journal of Theoretical Politics* Vol. 1, pp.131-47.

Schout, A. and Wolff, S. (2010) ‘Ever Closer Union? Supranationalism and Intergovernmentalism as Concept’. Paper presented at the ECPR Fifth Pan-European Conference on EU Politics, 23-26 June 2010, Porto, Portugal.

Tallberg, J. (2006a) *Leadership and Negotiation in the European Union* (Cambridge: Cambridge University Press).

Tallberg, J. (2006b) ‘Formal Leadership in Multilateral Negotiations: A Rational Institutionalist Theory’, *The Hague Journal of Diplomacy* Vol.1, pp.117-141.

Tallberg, J. (2007) *Bargaining Power in the European Council*, Report 2007:1, Sweden: Swedish Institute for European Policy Studies.

Wall, S. (2008) *A Stranger in Europe: Britain and the EU from Thatcher to Blair* (Oxford: Oxford University Press).

Wallace, H. (2007) *Adapting to Enlargement of the European Union: Institutional Practice since May 2004* (Brussels: TEPSA).

Wessels, W. and Schäfer, V. (2007) 'The European Council in Theoretical Perspectives: The Principals on a Fusion Path'. Paper presented at the Tenth Biennial Conference of the European Studies Association, Montreal, 17-19 May 2007.

Wessels, W. (2008) "The European Council: A Bigger Club, a Similar Role?" In *The Institutions of the Enlarged European Union: Continuity and Change*, ed. Edward Best, Thomas Christiansen, and Pierpaolo Settembri, pp.16-33 (Cheltenham: Edward Elgar)

Werts, J. (2008) *The European Council* (London: John Harper Publishing).