**Appendix**

**Section I**

# Calculating delegation and discretion through legislative text analysis

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

## Counting of Major Provisions

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

## Coding executive delegation

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

## Calculating the delegation ratio

1. I calculate the delegation ratio by dividing the number of delegating provisions (D) by the total number of major provisions (Tm).

## Delegation to agencies

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

## Delegation paths

The resulting delegation paths are 4. The coding seeks to grasp different degrees of supranational delegation. Completely national delegation is present when only national delegation is higher than 0. The first degree of shared occurs when both national and commission delegation ratios are higher than 0 but no agency is involved. The second degree of shared occurs when both commission and national delegation ratios are higher than 0 and an agency is involved in implementation. Finally, the path is supranational when national delegation ratio is equal to 0 and commission delegation ratio is higher than 0.

## Calculating constraints and discretion ratios

### Coding procedural constraints

Delegation comes with risks, and risks are minimised by the principal though control mechanisms. In particular, legislative acts do delegate authority, but such authority is always balanced by the constraints imposed by the legislator upon the executor(s). Therefore, the Commission, its agencies, and national administrations will be more or less constrained depending on the case. As Franchino (2007) shows, the degree of constraint is quite variable. The section below lists 12 types of procedural constraints detected within the legislative acts: for the categories and coding I follow Franchino (2007) who in turn, draws on Epstein and O’ Halloran (1999) .

1. *Time Limits*: limits of time for implementing a given measure
2. *Spending limits*: not frequently used
3. *Reporting requirements:* reporting to committees; MS to write a report addressed to the Commission
4. *Consultation requirements* **:** consult a body before taking decision
5. *Public hearings*: not frequently used 🡪 e.g. Persons to submit comments before any executive decision
6. *Rulemaking requirements***:** detailed rules🡪 e.g. detailed criteria, standards, rules (by far the most frequent)
7. *Appeals procedures*: specific reference to possibility to appeal to the courts (constraint to MS)
8. *Exemptions:* when certain categories, e.g. a specific country, are (temporarily or permanently) protected from the effects of the law.
9. *Legislative action required:* a requirement of a Council’s approval prior to a Commission’s or a member state’s measure becoming effective. It also includes cases whereby measures, when referred to the Council, are either suspended until Council action or, if immediately applicable, are revoked in the case of Council inaction after a set time period. This is the case in certain kinds of comitology procedures.
10. *Legislative action possible***:** procedures whereby actions of the Commission or a member state are referred to the Council prior to becoming effective or whereby these measures may be referred, by the Commission or another member state, to the Council
11. *Executive action required:* requirement that another executive agent must approve the agency’s action prior to becoming effective. It includes the Commission’s prior approval to member states’ measures, and vice versa, and provisions asserting that the Commission can take a measure only if required by a member state
12. *Executive action possible***:** procedures whereby measures taken by member states may be overruled, within a set time limit, by actions taken by the Commission, and vice versa.
13. I calculate the constraint ratio by dividing the number of constraints (C) by the number of all the possible procedural constraints (Tc), i.e. 12.
14. I calculate the discretion ratio (dr) by subtracting from the delegation ratio, the value of the constraint ratio weighted by the value of the delegation ratio

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

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

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Number and %**  |  | **Number and %** |
| **Acts Not Delegating to national administrations**  | 278.74% | **Acts Not delegating to the Commission**  | 107 34.63 % |
| Acts delegating to both: 189 (61%) |
| **Acts with highest delegation ratio** |
| **Delegation to national administrations**  | **Delegation Ratio**  | **Delegation to the Commission**  | **Delegation Ratio** |
| Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC | 57.14 | Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector | 31.57 |
| Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions | 55.55 | Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs | 30.15 |
| **Acts with highest discretion ratio** |
| **Discretion to national administrations**  | **Discretion Ratio** | **Commission Discretion**  | **Discretion Ratio**  |
| Council Directive 1999/81/EC of 29 July 1999 amending Directive 92/79/EEC on the approximation of taxes on cigarettes, Directive 92/80/EEC on the approximation of taxes on manufactured tobacco other than cigarettes and Directive 95/59/EC on taxes other than turnover taxes which affect the consumption of manufactured tobacco | 39.28  | Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector | 23.68 |
| Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Text with EEA relevance) | 55.55 | Council Directive 2001/110/EC of 20 December 2001 relating to honey | 21.15 |

## A note on alternative measurements of discretion

As explained abovethe dependent variable of this study is the *amount of executive discretion* granted to EU executors by EU legislators. Among different possible measurement strategies, I opted for qualitative text analysis. Although automated text analysis through powerful software such as *quanteda*[[2]](#endnote-2)and *txm*[[3]](#endnote-3) would have been an interesting option, no scholar has managed to develop a satisfactory proxy for executive delegation *yet*.

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

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



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

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Another option available to measure delegation through automated text analysis is offered by Shaffer (2016): the author sought to extract institutional relationships from natural language by analysing US

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

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

Section II

## Measurement through CMP: additional information on the matching of policy categories, predicted leftward and rightward shifts [[4]](#endnote-4)

Table A 3: CMP categories

|  |  |  |  |
| --- | --- | --- | --- |
| **Comparative Manifesto Project Category** | **Policy** | **Action** | **Shift** |
| Free Market Economy | Competition; banking financial markets, company law, cross-border payments; transports, telecoms; intellectual property rights; taxation;  | More market economy  | Right  |
| Protectionism | Less protectionist policy  | Right  |
| Economic Orthodoxy | More economic orthodoxy  | Right  |
| Market regulation | consumer protection (food safety, chemicals, privacy, pharmaceuticals); competition (Market abuse); occupational retirement  | higher protection standards; market rules  | Left  |
| Equality; Labour Groups; welfare state expansion | Social policies (gender equality; health and safety of workers; working conditions ) | More equality, more workers protection; extension of welfare provisions | Left  |
| National way of life (immigration);  | Asylum and immigration, border management  | Restriction of flows, increased border control, stricter asylum rules | Right  |
| Technology and Infrastructure: positive; Democracy: positive; Human rights: positive  |  |  | Neutral  |

Table A 4: CMP summary table

|  |  |
| --- | --- |
| **Macro-area**  | **Codebook**  |
| Market economy  | Per 401+per 406+per 414  |
| Market Regulation  | Per 403 |
| Social policies  | Per 503+per 504+per 701  |
| Immigration  | per602\_2 |
| Environment  | Per 501 |

I have used the Comparative Manifesto Project, which extracts parties’ policy preferences by analysing parties manifestoes, to calculate actual policy preferences in chapter 4 : to measure the integration and left-right dimensions I employed the Parlgov dataset (Döring & Manow, 2016) because expert surveys are deemed more accurate in estimating left-right positions because they contain smaller measurement error than party manifestoes (Benoit and Laver 2007), and they seem to provide the most valid and reliable data to measure the integration dimension. Moreover, expert surveys seem better able to provide generalisations of party positions overtime (Volkens, 2007:109), which is a good feature considered the time-span of my dataset. I employed, instead, the Comparative Manifesto Project (CMP) to measure the policy dimension as it provides a wider range of policy categories than Parlgov, and it is able to record changes in competitive party strategies as it is based on electoral campaigns (Volkens, 2007). According to Klingemann et. al (2006) CMP produces overall ‘good, valid and reliable’ estimates and still, several methodological (Däubler et al. 2012; Mikhaylov et al., 2012) and theoretical (for a review see Zulianello, 2014) arguments exist against it. Moreover, it should be noted that CMP has a series of missing values in certain policy categories which may bias the results: for instance, at the time of coding, information was missing about Malta’s manifestoes. Moreover, for example, the scores of the category ‘national way of life: immigration positive and negative’ was missing for several member states

1. E.g. if an agency’s report is mentioned [↑](#endnote-ref-1)
2. https://cran.r-project.org/web/packages/quanteda/vignettes/quickstart.html [↑](#endnote-ref-2)
3. http://textometrie.ens-lyon.fr/spip.php?rubrique96&lang=en [↑](#endnote-ref-3)
4. A similar approach and matching were done by Frachino (2007) and Ershova (2018) [↑](#endnote-ref-4)