

The EU Comitology System: Who Guards the Guardian?

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Paper to be presented at the Fourth Pan-European Conference on EU Politics organised by the ECPR's Standing Group on the European Union, 25-27 September 2008, Riga, Latvia.

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Every year the EU's Council of Ministers and European Parliament delegate power to the European Commission to issue hundreds of implementing rules – Commission directives, regulations, and decisions. However, in some areas the Commission's delegated powers are monitored by committees of member state representatives. This committee system – known as comitology - comprises 2-300 committees that the Commission must consult before implementing rules (or, secondary legislation) can be adopted. These committees function as *mini*-Councils of Ministers. They meet regularly in Bruxelles and, using the same voting system as the Council of Ministers, they decide whether to approve the Commission's proposals or to refer them to the Council of Ministers for closer scrutiny.

The comitology system was originally established in the early 1960s by the member states as a control mechanism. They wanted to be able to delegate decision-making competence to the Commission without losing control (Blom-Hansen 2008; Bergström 2005: 43-57). The later evolution of the system has been a struggle over the control of EU executive law-making in which the member states, the European Parliament and the Commission each have sought to secure their institutional ability to influence policy (Bergström et al. 2007; Franchino 2000). However, while there is general agreement in the literature that the main EU actors consider comitology a control mechanism in the ongoing inter-institutional battle over the development of the system and the establishment of new committees, there is less agreement on the daily workings of the system. A number of observers of the day-to-day operations of the various comitology committees have found that the national representatives do not act as controllers of their home government's interests, but rather as policy experts seeking professionally sound solutions to common policy problems. They appear unconstrained by their home government, or at least operating within wide margins of discretion to solve problems. Meetings in the comitology committees seem to be consensual deliberations between well-intentioned experts, not bargaining sessions between guardians of national interests (Dehousse 2003; Joerges & Neyer 1997; Wessels 1998).

These findings represent a paradox. Why would the member states struggle to establish control mechanisms and then forget about them once they are in place? In order to understand this problem we need to shift our focus from Bruxelles to national capitals. The national

representatives in the various comitology committees are not parliamentarians or government ministers, but civil servants from ministerial departments and agencies. How are these civil servants controlled by their politicians? Do they receive instructions before votes are taken in the comitology committees? To what extent is their work in the committees monitored by their home government and parliament? Do the seemingly autonomous actions by the national representatives indicate out-of-control bureaucrats or obedient servants faithfully operating within well-understood limits of their mandate?

The purpose of this paper is to shed light on these questions. The problem facing national politicians will be studied as one of delegation and draw upon the insights of the rational delegation literature (Bendor et al. 2001; Kiewiet & McCubbins 1991; Epstein & O'Halloran 1999). For lack of time and insight national politicians cannot sit on the many comitology committees themselves. They need to delegate this task. But since the loyalty of agents cannot always be taken for granted, delegated power must be controlled. However, since controlling agents is costly, control must be used carefully. To reduce control problems the delegation literature would expect national politicians to follow the 'ally principle', i.e. to delegate to agents with similar goals whenever possible. However, the exact degree of control of delegated powers will depend on two key factors. First, the more complex the issue area to be regulated is, the greater the need for expert insight to decide regulatory measures. In this situation principals need to allow agents more autonomy. Second, if principals cannot find like-minded agents - i.e. they violate the ally principle – there is a conflict between the preferences of the principal and the agent. This situation calls for more control of the agent. The paper will investigate whether these two arguments for variation in control of delegated powers can increase our understanding of the member states' control of their representatives in the comitology committees.

The paper is structured as follows. After a brief introduction to the comitology system, I present the theoretical argument based on the delegation literature in more detail. I then discuss questions of research design: the operationalisation of core variables, the choice of one member state (Denmark) for empirical analysis, and data, most of which come from a survey of Danish national representatives on nearly all comitology committees in 2006. I then move on to the empirical analysis of the impact of complexity and conflict on the delegation of powers. The results show that the Danish parliament allows comitology representatives more discretion in complex issue areas and less discretion in areas in which it is distrustful of the supranational executive, i.e. the Commission. The results also show that conflict with the supranational executive leads to more

procedural control with the comitology representatives. The paper thus confirms some, but not all, of the hypotheses derived from the delegation literature. The overall lesson is that the autonomy of comitology representatives is carefully calculated by national politicians according to predictable factors. Some representatives do indeed enjoy considerable discretion. However, this does not appear to be a coincidence, but because their political masters have deliberately decided so.

The EU comitology system

The origins of the comitology system date back to the early 1960s when the first management committees were installed to implement the common agricultural policy. This quickly proved to be a convenient way for the member states to delegate powers to the Commission without losing control. The Council of Ministers therefore soon required the Commission to consult committees of member states representatives when adopting secondary rules in other policy areas. For many years the comitology system had no solid Treaty foundation, but the Single European Act in 1987 codified the system. The EC Treaty's article 202 now states that the Council of Ministers may 'impose certain requirements' upon the Commission when delegating implementing powers. This provision has been used to install an ever increasing number of comitology committees (Haibach 2000).

Today there are 200-250 comitology committees. They cover almost all aspects of EU policy making. Their institutional affiliation in the Commission comprises 23 Directorates-General. Their activity varies; some committees – e.g. the agricultural management committees – meet almost once a week, while others only hold 1-2 meetings every year (Commission 2007). The committees are gatekeepers. They cannot amend or reject Commission proposals, but may refer them to the Council if they disagree with them.

The working rules of the committees are specified in the Council's so-called comitology decision (Council of Ministers 2006). This specifies four procedures according to which the committees may refer proposals to the Council, the timing of Council control, the default condition if the Council does not act, and the degree of involvement of the European Parliament. First, under the *advisory* procedure, the national representatives in the committee issue an opinion before the Commission adopts its proposal. The Commission is required to take the utmost account of this opinion, but if it disregards it, there is no referral to the Council. Second, under the

management procedure, the committee decides by qualified majority whether to submit the Commission's proposal to the Council. If the proposal is referred, the Council may block it by qualified majority within a specified period. Third, under the *regulatory* procedure, the committee decides by qualified majority whether *not* to submit the Commission's proposal to the Council. If such a majority is not reached, the proposal is submitted to the Council which may block it by qualified majority. Under these three procedures the position of the European Parliament is weak. It receives all relevant information and may exercise some *ultra vires* control. If the Parliament finds that the Commission's proposal exceeds its delegated powers, it may adopt a resolution. The Commission must take this resolution into account, but may continue with the procedure. Finally, in 2006 a fourth procedure was introduced. This is the *regulatory procedure with scrutiny* according to which all Commission proposals are referred to the Council and the European Parliament, irrespective of the opinion of the committee. Under this procedure both the Council and the European Parliament may block the proposals. This new procedure was a victory for the European Parliament which for the first time gained veto rights over delegated decision making in the EU.

The actual workings of the comitology system are disputed. Two images have been presented in the literature (Pollack 2003). The first image is derived from studies of the design of the comitology system. Blom-Hansen (2008) studies the beginnings of the system. Bergström (2005) traces the development of the system over its entire history. Bergström et al. (2007) study selected turning points in the system's history. Schusterschitz and Kotz (2007) and Bradley (2008) study the introduction of the new regulatory procedure with scrutiny in 2006. Dogan (2000), Pollack (2003), Bergström (2005: 209-249) and Franchino (2007: 282-285) study the exact choice of comitology procedures in given regulatory fields, i.e. the exact formulation of the comitology provision in individual legislative acts. All these studies conclude that the actors, when designing the system's rules, or when deciding the exact powers of comitology committees in concrete settings, consider comitology an instrument to control executive rulemaking.

The second image stems from case studies of the daily workings of selected comitology committees. Joerges and Neyer (1997) study the standing committee for foodstuffs. Daemen and Van Schendelen (1998) investigate the advisory committee on safety, hygiene and health protection. Töller (1998) examines the environmental management and audit scheme (EMAS) committee. Gehring (1999) studies three environmental comitology committees: the drinking water committee, the nitrate committee, and the packaging waste committee. These case studies all find that comitology committees provide a forum in which experts meet and discuss to

find the best or most efficient solutions to common policy problems. According to this image, comitology is not about control of the Commission, but constitutes supranational deliberation in which informal norms, persuasion and good arguments matter more than national interests and formal voting rules. Although not all case studies support this image - e.g. Philip (1998) and Bradley (1998) – Dehousse (2003: 799; see also Wessels (1998) and van Schendelen (2006)) provides an apt summary of this research:

Recent evidence appears to suggest that committees have evolved into fairly autonomous creatures, whose decision-making style is largely consensual. While this evolution may be welcome from the standpoint of efficiency, it can also give rise to problems of its own: Whom do committees represent and to whom are they accountable?

The two images constitute a puzzle. Why would member states invest considerable time and amounts of money in establishing control mechanisms, but then disregard them once they are in place? Do they really not control their representatives? The next section provides a theoretical discussion of this question.

Controlling national representatives in comitology committees: A delegation problem

From the perspective of the individual member state, the staffing of the numerous comitology committees represents a delegation problem. The committees have been created to enable the member states to control the Commission, but for obvious time and informational reasons the national politicians need to delegate this task. This creates an agency problem. To whom and under what conditions can national politicians delegate the task of controlling the Commission? The member states face no constraints when appointing representatives in the comitology committees. They are free to choose whoever they deem most qualified. In this case their best strategy is to follow the ‘ally principle’ (Bendor et al. 2001), i.e. to choose representatives whose preferences are identical to their own. This would make delegation trivial. National politicians could assure themselves of qualified control of the Commission by simply granting their representatives in the comitology committees unlimited discretion.

The ally principle can be followed to some extent. The member states are all modern nation states where national politicians have a large and professionalized weberian bureaucracy at their service. The incentives in the national administrative hierarchy secure a certain minimum degree of loyalty between bureaucrats and their political masters. This is probably the reason why all member states invariably choose civil servants to represent them in the comitology committees. But general weberian incentives are not perfect. Consequently, national politicians will be reluctant to give unlimited discretion to their comitology representatives. However, controlling representatives is costly, and limitations in the representatives' discretion will reduce their ability to adjust to changed circumstances and hence also their value as representatives. How do politicians calculate the right amount of discretion to grant their civil servants?

This question has occupied the attention of the delegation literature for a number of years (Ogul and Rockman 1990). This literature originates from studies of the US Congress. It has generated a rich supply of hypotheses on legislators' incentives to delegate to the executive branch, investigations of agency discretion and choices of control mechanisms. Reviews of this literature are provided by Bendor et al. (2001) and Huber and Shipan (2000). Two central insights follow from this literature. The first is that Congress delegates more discretionary authority to the executive in complex issue areas. As discussed by, among others, Bawn (1995) legislators face a trade-off between control and expertise, and this is likely to affect the discretion granted to the executive. Increasing discretion increases the executive's ability to incorporate knowledge of policy consequences into its decisions. Seen from the legislators' perspective, growing complexity means that the gains from the executive's expertise will gradually outweigh the losses from potential agency drift. In other words, the optimal level of discretion increases with growing issue complexity.

The second insight is that Congress delegates less discretion if its policy goals and preferences diverge from those of the executive branch. As argued by, among others, Epstein and O'Halloran (1994; 1996; 1999), when legislators have reason to suspect that the executive will make policy decisions they dislike, they will not delegate broad discretion. Everything else being equal, seen from the perspective of the legislators, preference divergence, or conflict, with the executive branch increases the risk of agency drift, and hence reduces the value of delegation. In other words, the optimal level of discretion declines with growing preference divergence.

These central insights are now increasingly being investigated in other institutional settings than the US federal system. First, Volden (2002) and Huber and Shipan (2002: 139-171)

examine US states. Both studies find empirical support at the state level for the influence of preference divergence between the legislature and the executive, or conflict, on the degree of delegation. Volden (2002) also finds supports for the complexity thesis. Huber and Shipan do not investigate this thesis because, although their comparative delegation theory includes technical complexity as a determinant of delegation, their data only cover one issue area (Medicaid) at one point in time. Hence, issue complexity is invariant. Second, Huber and Shipan (2002: 171-210) apply their theory on Western parliamentary systems. They find support for the conflict thesis but, again, do not investigate the complexity thesis. Third, Franchino (2004; 2007) examines delegation in the European Union and, after due consideration for the specific institutional features of this system, finds empirical support for both the complexity and the conflict thesis. In sum, there is mounting evidence to suggest that the core insights of the delegation studies of the US Congress are robust and hold across various institutional settings.

This paper will investigate whether the complexity and the conflict theses can also explain the delegation decision of national politicians in the EU countries facing the problem of how much discretion to allow their representatives in the hundreds of comitology committees. I follow the literature and define delegation as consisting of two components.¹ The first is the substantive component. This specifies the national representative's policy authority, i.e. his/her discretion to define the national position when votes are taken in the comitology committees. The second component is procedural. This specifies the legislative oversight of the national representatives' behavior in the comitology committees.

Concerning the impact of the complexity of the issue area, I expect this to increase the national representative's policy authority, i.e. the substantive component of delegation. This is in correspondence with the broad delegation literature. However, when bureaucratic discretion grows, the risk of agency drift increases. If the legislature takes an interest in overseeing the executive, this means that there is an incentive to offset increased discretion with tighter procedural controls. Hence the first hypothesis is this:

Hypothesis 1: Growing issue complexity leads to increased policy authority for the national representative and to tighter procedural control by the legislature.

¹ My distinction between substantive and procedural components of delegation largely follows McCubbins and Page's (1987) distinction between structural and management arrangements and Epstein and O'Halloran's (1999: 90-101) and Franchino's (2007: 84-102) distinction between delegation and constraints.

Concerning the influence of conflict, or preference divergence between the legislature and the executive, this is likely to make legislators distrustful of the executive. Following the delegation literature I expect conflict to make legislators delegate less discretion and impose tighter procedural controls on the executive. However, within the specific institutional setting of the comitology system the national legislators in the EU member states face a double executive. The delegated control task is implemented by the national executive, but the delegated regulatory task is implemented by the supranational executive, i.e. the Commission. Since preference divergence can be relevant in both relationships, hypothesis 2 and 3 are as follows:

Hypothesis 2: Growing conflict between national legislators and the national executive leads to reduced policy authority for the national representative and tighter procedural controls.

Hypothesis 3: Growing conflict between national legislators and the Commission leads to reduced policy authority for the national representative and tighter procedural controls.

To test these hypotheses the rest of the paper examines a dataset of delegation to national comitology representatives in one EU member country, Denmark, at one point in time, the situation as of 2006. There is thus no variation in the data across time or member states. While this means that a lot of potentially ‘noisy’ variables² at the national level are kept constant, it, of course, also means that the results of the analysis must be regarded as preliminary. But they should be suggestive and interesting beyond the case of Denmark because there is sufficient variation in the issue complexity and conflict variables to investigate the core insights of the delegation literature. The following section introduces the dataset and explains how the core variables are operationalised.

² For instance, Huber and Shipan (2002: 187-194) argue that the parliament’s capacity to draft legislation, corporatism, federalism, and the country’s legal system influence the level of delegation. These factors are all kept constant in this paper’s analysis.

Data and operationalisation of variables for empirical analysis

The data to measure delegation to the national representatives stem from a survey of the Danish representatives in nearly all comitology committees that were operative in the autumn of 2006. The survey was conducted in the following steps. First, comitology committees were identified. No precise up-to-date register of comitology committees existed when the survey was planned.³ But an initial list of committees was compiled on the basis of the Commission's (2006) comitology report for 2005. Committees that had not met in 2005 were excluded as 'inactive'. Committees established after the report was printed were identified as participating actors were consulted in the process. Some committees have sub-committees. If these have a permanent character and take formal votes according to the Council's comitology decision they were counted as regular committees. One example is the Standing Committee on the Food Chain and Animal Health, which has eight subcommittees dealing with various aspects of food safety and animal welfare. Another example is the Customs Code Committee, which is also divided into a number of permanent subcommittees. In total, 191 committees were identified in this way.

The second step was to identify the national representatives. There is no central list of national representatives, neither in Brussels nor in Copenhagen. The national representative was found by contacting the relevant ministry's or agency's EU coordinating unit. In most cases there is not *one* Danish representative, but several. Generally, a variable number of civil servants sometimes spanning more than one ministry are attached to the various committees. The choice of the representative to a given meeting then depends on the meeting's agenda. The questionnaire was completed by the most frequent or experienced representative on the individual committees. This choice of respondent is, of course, debatable, but it secures that a lack of delegation to the representative is not simply caused by his/her inexperience with the committee's work. After repeated contacts the questionnaire was filled out by 161 respondents in the period from November 2006 to February 2007. This gives an overall response rate of 84 per cent (see Blom-Hansen 2007 for a full explanation of the survey). Most, but not all, variables that are used in the following analysis stem from this dataset and have been constructed as indices of Likert-scale items from the questionnaire.

³ Now such a list is available at the Commission's online comitology register at <http://ec.europa.eu/transparency/regcomitology/registre.cfm?CL=en>

Measuring the national representative's policy authority. This is the substantive component of delegation that specifies the national representative's discretion to define the national position when votes are taken in the comitology committees. In order to address the paradox in the comitology literature – that comitology committees are installed to control the Commission, but in practice operate autonomously – we need a measure of bureaucratic discretion at the level of the individual representative. However, this is not necessarily identical to the theoretically defined concept of bureaucratic discretion. The delegation literature focuses on relations between the legislature and the executive at the organizational, not individual, level. To what extent does organizational and individual bureaucratic discretion overlap? In parliamentary systems the overlap is likely to be considerable. Ministers and higher civil servants are well aware of the preferences of the legislature, and their incentive is to make sure they have a firm hand on issues in which the legislature takes an interest.

Measuring bureaucratic discretion has been done in various ways in the literature. Epstein and O'Halloran (1999: 90-112) and Franchino (2007: 84-102) use a discretion measure that takes into account the relative number of delegating and procedurally constraining provisions in selected laws. Volden (2002) investigates welfare policy and uses the establishment of state welfare boards as a measure of delegation. Huber and Shipan (2002: 44-77) use the length of statutes to measure bureaucratic discretion arguing that long statutes place greater limits on bureaucratic freedom.

None of these techniques measure discretion at the individual level. Therefore, I rely on the questionnaire data where the respondents have been asked to evaluate the freedom they have to determine the Danish position when votes are taken in their comitology committee. They have indicated the extent to which they agree with the following two statements: "In reality I have considerable freedom to decide the national position in my committee" and "I take the position in my committee that I think is best according to my own professional judgement". These statements measure the respondents' own evaluation of their degree of freedom. They are obviously not easy questions to answer since the respondents must average across the many issues and cases they deal with in their committee. But the respondents have almost all taken time to reflect upon them and provide an answer. The answers to the two questions have been combined to create an index. I thus end up with a continuous measure of perceived discretion at the level of the individual representative. The index has been coded to vary between 1 and 5. High values indicate high levels of discretion (please see the appendix for summary statistics).

Measuring procedural control. Following McCubbins and Schwartz (1984) a distinction may be made between centralised ‘police patrol’ oversight and decentralised ‘fire alarm’ control by third parties. These two generic types of procedural control may take a variety of concrete manifestations depending on the specific institutional setting.⁴ In the specific area of controlling comitology representatives procedural control must focus on the representatives’ voting. Do the representatives receive instructions before they vote? Do they have a voting mandate? If so, what are the procedures for formulating the voting mandate?

Controlling the representatives can be done by both police patrol and fire alarm mechanisms. Police patrol oversight of the government’s EU policy is, in the Danish context, done by the parliament’s EU committee. This committee represents the end-point of the national EU coordination procedure the aim of which is to control the Danish position in the EU decision-making process. The procedure’s primary objective is to secure that the government has a voting mandate from the parliament before meetings in the Council of Ministers. The procedure runs on a weekly basis. Every Friday the parliament’s EU committee meets, and all ministers who are to travel to Brussels to vote in the Council of Ministers in the coming week appear before the committee to have their mandate cleared (Pedersen 2000; Esmark 2008; Jensen 2003: 140-162).

The parliament’s EU committee has carefully followed the development of the comitology system and has gradually tightened its control with the government’s handling of comitology cases. Procedural initiatives have been introduced over a number of years and carefully explained by the committee in a series of reports. Immediately following the enactment of the Single European Act, which provided the first Treaty foundation of the comitology system, the EU committee established a subcommittee to deal with the implication for the national control of EU affairs. Concerning comitology, the subcommittee proposed that measures should be taken to ensure the parliament’s ability to intervene in committee procedures (EU committee 1986: point 7h). These measures were gradually introduced in the following years. In 1996 the EU committee noted that a practice had been established according to which the government submits negotiation mandates in selected comitology cases to the EU committee. The EU committee (1996: Point 6) now wanted this practice strengthened and decreed that the Danish negotiation position in relation to all important proposals for Commission directives and regulations to be decided by regulatory comitology committees had to be cleared by the EU committee. In 1999 the EU committee decided to extend

⁴ For example, Epstein and O’Halloran (1999: 99-101) identify fourteen concrete examples of procedural control mechanisms that the US Congress uses to control the executive branch.

this procedure to include proposals for Commission decisions to be decided by regulatory comitology committees and also to cases of “more general importance” in management committees. As the EU committee (1999: Point IV) stated, this meant that all important comitology cases now had to be cleared by the committee. In 2001 the EU committee noted that comitology cases were growing in importance, and it introduced a procedure according to which the government could clear urgent comitology cases with the committee in writing (EU committee 2001). Finally, in 2004 the EU committee again noted that the number of comitology cases was growing, and it introduced a standardised format for the government’s regular information material.

In sum, by 2006, when the survey of the Danish comitology representatives was conducted, Danish parliamentary practice required the government to clear negotiation mandates in all important comitology cases with the parliament’s EU committee. In other words, police patrol oversight was well in place. Turning to fire alarm control, the Danish parliament has from the outset made systematic use of consultations with interest organisations when controlling the government’s EU policy. In 1986 it formally required the government to consult all relevant interest organisations on all Commission proposals as a standard operating procedure. Further, the view points of the interest organisations were to be reported to the parliamentary EU committee before voting mandates could be cleared to the Council of Ministers (EU Committee 1986: Point 7d). In 1996, when this clearing procedure was extended to the comitology area, the parliamentary EU committee stressed that it was to receive “a complete account” of the view points of all relevant interest organisations (EU Committee 1996: Appendix 3). There is thus a large element of systematic, decentralised third party control of the comitology committees in the Danish system. The result of this control mechanism is effectively channelled to the parliament’s EU committee and taken into account when this committee clears voting mandates to comitology representatives.

In total, the Danish system of procedural control of comitology representatives hinges on the parliament’s EU committee. This committee oversees all comitology committees, possesses all relevant information to perform its control function, and all important cases must be formally cleared by it. The EU committee has never explained exactly how to identify important from unimportant cases. This is probably no coincidence since it enables the committee to intervene and criticise the government in all cases it deems convenient.

The survey is the first attempt to map in which comitology committees cases need to be cleared by the Danish parliament’s EU committee. It shows that the comitology representatives sometimes need to have a voting mandate cleared by the parliament’s EU committee, sometimes

not. They have been asked to indicate the extent to which they agree with this statement: “My negotiation mandate is normally coordinated with the Parliament’s EU Committee”. The respondents can fully or partly (dis)agree with this statement because it is possible that they only need to involve the parliament in some cases. Furthermore, the respondents have reported whether the parliament’s EU Committee directly authorizes their mandate. I measure procedural control on the basis of these two questions from the survey. In order to qualify as this type of oversight respondents have to *fully* agree that the mandate is normally coordinated with the parliament’s EU committee *and* that their mandate is directly authorized by this committee. I thus measure legislative oversight as a dichotomous variable that takes the value of 1 if these two conditions are met, and zero otherwise (please see appendix for summary statistics).

According to this measure the Danish parliament oversees eleven comitology committees. They are listed in Table 1. The list includes well-known hot potatoes in EU politics. First, the list comprises two committees that were established as part of the Lamfalussy reform to speed up the completion of the internal market for financial services (the Banking Committee and the Securities Committee). This reform was debated and enacted in the period 2000-2002 after protracted institutional conflict between the member states, the European Parliament and the Commission on the exact degree of autonomy to grant the Commission. The ensuing legislative implementation of the reform has been equally conflictful (Avgerinos 2002; de Visscher et al. 2008). Second, the list includes a number of subcommittees under the Standing Committee on the Food Chain and Animal Health. The area of food safety and animal welfare is also very controversial, not least after the ‘mad cow disease’ in the late 1990’s. This is especially true in relation to genetically modified organisms (GMO’s) in food and feed. The Commission’s authorisation of GMO food and feed has generated heated conflicts among member states and in their relations to the Commission, and a number of member states have introduced national bans to avoid the Commission’s authorisations (Skogstad 2003; Tsioumani 2004). Third, the list comprises the taxation area, one of the policy areas where the member states have been least willing to give up national sovereignty (Radaelli 2003; Holzinger 2005). In all these areas the member states have been skeptical of the Commission’s intentions and reluctant to delegate far-reaching powers. It makes sense that the Danish parliament wants to keep an eye on the comitology committees in these areas.

(insert Table 1 about here)

Measuring issue complexity. Finding empirical indicators of the complexity of the regulatory field facing legislators – and thus their need for technical expertise when regulating – has been a challenge in the literature. Some studies avoid the problem by focusing on one policy area and thus holding complexity constant (Huber and Shipan 2002: 142; Epstein & O’Halloran 1996). Other studies have found ingenious indicators. In a study of state welfare policies in the USA Volden (2002) measures complexity by the composition of the client group arguing that welfare policies are more complex to handle for legislators when demographics are changing. Epstein and O’Halloran (1999: 206-208) develop a complexity measure based on committee hearings arguing that hearings are held to the greatest extent in complex issue areas. Franchino (2007:143-146) uses three indicators to measure issue complexity in EU legislation: the number of provisions in an act that call for detailed rules to be adopted by the executive; the extent to which acts are based on programmes; and whether expert committees have assisted the Commission in the drafting of the act. I again rely on information provided by the respondents to the survey. They have indicated the extent to which they agree with the following statements: “You need considerable technical insight to work with the cases in my committee”; “It is difficult for outsiders to understand the cases we work with in my committee”; and “The cases in my committee are often technically complex”. These statements measure the respondents’ own evaluation of the complexity of the cases they work with. They are challenging to answer because the respondents must average across the many issues and cases they deal with in their committee. But almost all respondents have made an effort to answer the questions. I have combined their answers to the three statements to create an index of issue complexity. The index has been coded to vary between 1 and 5. High values indicate high levels of complexity (please see the appendix for summary statistics).

Since complexity is such a challenging concept to operationalise the validity of empirical indicators is an issue of concern. In my case two validity checks are possible. First, like other national administrations the Danish central administration is divided into a number of ministries which again are divided into a ministerial department and a number of agencies. The organisational rationale is that the ministerial department focuses on general questions and on producing policy advice to the minister, while the agencies deal with the details of day-to-day administration and with providing the informational basis for new legislation. Consequently, we would expect comitology committees that are anchored at agencies to deal with more technically

complex issues than committees anchored at the ministerial departments. And indeed, the average value on the complexity measure is 4.0 for the 138 (out of 161) comitology committees in the survey, that are anchored at agencies, while the corresponding value for the 23 committees anchored at ministerial departments is 3.3. Given the fact that the complexity measure has an empirical range between 2 and 5 (cf. the technical appendix), this is a notable difference.

Second, some committees deal with issues that, *a priori*, are plausibly more technically complex than others. A rough correspondence between the complexity measure and *prima facie* understandings of the committees' tasks is thus to be expected. Table 2 provides an overview of the ten committees that score the lowest and the highest values on the complexity measure. The table shows that the committees, which the respondents characterise as having low complexity, are dealing with general policy initiatives, research and welfare issues. In contrast, the committees that score high values of complexity deal with technical environmental issues, technical aspects of trade questions, statistical and customs issues. This rank order makes sense; it has a certain degree of face validity. In sum, the complexity measure appears to be a valid indicator of the technical complexity of the various comitology committees' tasks.

(insert table 2 about here)

Measuring conflict between the legislature and the executive. Conflict is defined as preference divergence between legislators and the executive. Empirical delegation studies have mostly relied on partisanship as a proxy for preferences (Epstein and O'Halloran 1996; 1999: 77-79; 129-133; Huber and Shipan 2002: 147-148; 183-187; Volden 2002).⁵ Partisanship is a measure that can be used to make comparisons across systems, or comparisons across time within a given system. However, conflict may also vary across issue areas within a given system at a given point in time. A measure of this type of conflict is what is needed in the present context.

Conflict with the national executive. In parliamentary systems conflict between the government and the parliamentary opposition may vary across individual government ministers. Each minister has a certain degree of autonomy. Laver and Shepsle (1996) famously argue that this autonomy is so great that individual ministers can dictate policies within their jurisdiction. This is probably an exaggeration, but the principle of individual ministerial responsibility does make it

⁵ But see Franchino (2004) for an alternative measure based on voting rules and Franchino (2007: 122-143) for an alternative sophisticated measure based on a combination of election manifestos and biographical material.

possible for each minister to follow her own agenda to a certain extent. And this may cause the policy distance to the parliamentary opposition to vary across ministerial portfolios.

The parliamentary opposition has various instruments available to control the government the use of which indicates their trust of it. Prominent among these are the rights to pose questions to individual ministers and to hold hearings, i.e. to ask ministers to appear before parliamentary committees in order to explain matters under scrutiny. The Danish parliament makes extensive use of these control instruments, and they are a strong weapon given the Danish tradition of minority governments. Table 3 shows the extent to which the Danish parliament posed questions to ministers and required them to appear before committees in the parliamentary session 2005-2006, i.e. the session before the comitology survey was conducted. At this time Denmark was governed by a two-party minority government consisting of the conservative and liberal parties, which took office in 2001. As can be seen from Table 3 the Danish parliament's use of these control instruments varies considerably across areas. I use their average relative frequency to measure conflict between the legislature and the executive at the national level (please see appendix for summary statistics).

(insert Table 3 about here)

Conflict with the supranational executive. At the EU level there is no equivalent to the principle of individual ministerial responsibility. If the member states do not trust the Commission, they must design control instruments in each specific case where they grant it autonomy. This is one of the basic reasons behind the whole comitology system. However, conflict between the member states and the Commission varies across the issues dealt with in the comitology system.

Ideally, we need data that directly measures the degree of preference convergence between the Commission and the Danish legislators in the cases of each comitology committee. To my knowledge, this type of data does not exist. Instead, I rely on Franchino's (2004) approach and use decision rules as a proxy for member state preferences. The argument is that decision rules are endogenous with respect to the underlying policy preferences. The more reluctant the member states are of granting the Commission autonomy, the more stringent the comitology rule they choose to control it. As game theoretic analyses confirm, the most stringent comitology rule is the regulatory

procedure, followed by the management and the advisory procedure (Steunenberget al. 1997).⁶ The regulatory procedure is chosen in the most controversial areas where the member states delegate power to the Commission. Examples include food safety, regulation of financial services (the Lamfalussy areas), environmental protection, and transport policy. Studies of the exact choice of comitology procedure in a given regulatory field - i.e. the exact formulation of the comitology provision in individual legislative acts – confirm that this is the result of an inter-institutional conflict where the Commission and the European Parliament argue for soft (or no) comitology procedures, while the member states in the Council of Ministers argue for tough procedures to constrain the Commission (Dogan 2000; Pollack 2003; Bergström 2005: 209-249; Franchino 2007: 282-285).

Arguably, then, the regulatory comitology procedure indicates areas where the member states are most reluctant to relinquish national sovereignty and are the most distrustful of the Commission. However, strictly speaking, it is a measure for preference divergence between the Commission and the pivotal member state in the Council of Ministers. It is thus not necessarily valid as a measure for selected individual member states. But, having twice rejected the EU in national referendums (the Maastricht Treaty in 1992; the euro in 2000) and holding four opt-outs from the EU since the Maastricht Treaty (defence, EMU, union citizenship, justice and home affairs), Denmark is a sceptical member state. If biased as a measure, the regulatory procedure probably underestimates conflict between Denmark and the Commission. The analysis thus may have a conservative bias.

The comitology procedures of the various committees' are listed in Table 4 where the individual committees are sorted according to their institutional affiliation in the Danish government. It shows that about one third of all comitology committees operate exclusively under the regulatory procedure. The management and advisory procedures are used by a smaller number of committees and some committees use several procedures. In order to construct as concise a measure of conflict with the Commission as possible I focus on the exclusive use of the regulatory procedure. I thus measure conflict with the Commission as a dichotomous variable that takes the value of 1 in case of committees exclusively using the regulatory procedure, and zero otherwise (please see appendix for summary statistics).

(insert Table 4 about here)

⁶ The new regulatory procedure with scrutiny, which was introduced in 2006, is arguably now the strictest comitology procedure. However, this procedure is so new that it was not yet in operation at the time of data collection.

Control variables. Since the dependent variables are measured as each representative's perceived degree of delegation, they may to some extent be influenced by individual characteristics of the respondents. To control for these individual differences I include measures of the gender, age and education of the respondents in the analyses (please see appendix for summary statistics).

Data Analysis

In this section I investigate hypothesis 1-3 on the impact of issue complexity and conflict on delegation. I do this by regressing the delegation measures on the complexity and conflict measures and the control variables.⁷ The results are shown in Table 5.

(insert Table 5 about here)

In the first two columns of this table I analyse discretion, i.e. the individual comitology representative's policy authority. Being an index composed of Likert-scale items, the discretion measure is interval-scaled. Therefore, I use OLS regression. The table reports the results of a full model containing all the independent variables, and a reduced model only containing the statistically significant variables. The sign for the coefficient for issue complexity is, as expected, positive and statistically significant in both the full and the reduced model. The coefficient indicates that a one unit increase in the five-point scale measuring issue complexity leads to a third of a unit increase in the five-point scale measuring discretion. A move from a score of 2 on the issue complexity scale (lowest empirical score) to 5 (highest empirical score) leads to a one-unit increase in discretion. Issue complexity thus has a sizable impact on the discretion of the individual comitology representative.

⁷ Using the full analysis of the discretion variable (the first column in Table 5) as the baseline model the following regression diagnostics have been performed. *Outliers* have been detected by Cook's Distances. 11 cases marginally exceed the critical value of $4/n$, where n is the number of cases. Running the regression without these cases makes the R^2 jump to .15, but does not substantially change the size, signs or statistical significance of the coefficients. So these cases have not been excluded. *Multicollinearity* has been checked by inspecting variance inflation factors. Their maximum value is 1.13, which is far below any level that may raise concern. *Error variance* has been checked by a Breusch-Pagan/Cook-Weisberg test for heteroscedasticity. This shows that the hypothesis of non-constant error variance is significant at the 8 per cent level. There is thus a weak indication of heteroscedasticity. However, running the regression with robust standard errors does not substantially change any results. So the reported analysis is based on ordinary standard errors.

Conflict, or preference diverge between the legislators and the executive, was hypothesised to reduce the discretion of the comitology representatives since this is a sign that the legislators are distrustful of their agent. However, as argued earlier in the paper, in the comitology system national legislators face a double executive. The delegated control task is implemented by the national executive, but the delegated regulatory task is implemented by the supranational executive, i.e. the Commission. The results in Table 5 indicate that conflict with the national executive does not influence the comitology representatives' discretionary authority to decide the Danish position. But conflict with the supranational executive, i.e. the Commission, leads, *ceteribus paribus*, to reduced discretion. The negative and statistically significant coefficient in both the full and the reduced model means that the comitology representatives have less freedom to decide the Danish position in the regulatory committees than in the management and advisory committees, or committees using several voting procedures. As argued above, the voting rules of the committee are not a perfect indicator of conflict between the national legislators and the Commission, but probably the best proxy that is available. Given the somewhat rough nature of this indicator the result is significant.

As to the control variables measuring individual characteristics of the respondents, only age has a significant impact on discretion. This may be interpreted as a sign that older respondents perceive their discretion as being higher than younger ones, but age may also to some extent measure the experience of the representatives in which case the result means that more experienced representatives generally have more individual discretion. Since age only functions as a control variable, I have refrained from further investigation of this result.

The last two columns of Table 5 show the results of the analysis of the legislators' procedural control of the comitology representatives. To recapitulate, this is measured as a requirement that the representatives must clear their voting mandate with the Danish parliament's EU committee. This is a dichotomous variable that takes the value of 1 in case of such a requirement, and zero otherwise. Therefore, I use logistic regression. This is a non-linear type of regression analysis. The individual regression coefficients indicate the effect of a unit increase in the independent variable upon the log of the odds of a requirement of clearance by the EU committee. To ease understanding I report (in the text only) the odds ratio of the statistically significant regression coefficients. This indicates the percent change for a unit increase in the independent variables in the odds of the EU committee requiring the comitology representatives to

clear their voting mandate. Again, the table reports the results of a full model containing all the independent variables, and a reduced model only containing the statistically significant variables.

Contrary to our expectations, issue complexity does not have an impact on procedural control. This means that the legislators do not offset increased bureaucratic discretion in complex issue areas with increased procedural control. Conflict between the legislators and the executive was expected to lead to increased procedural control. Again this is examined in relation to both the national and the supranational executive. The result is parallel to the analysis of the discretion of the individual comitology representative. Conflict at the national level does not have an impact, but at the supranational level conflict does lead to increased procedural control. This result holds in both the full and the reduced model. The odds ratio of the coefficient of 1.48 in the reduced model is 4.40 which means that the odds of the Danish parliament's EU committee requiring the comitology representatives to clear their voting mandates is increased by 340 per cent in case of regulatory comitology committees. Although this result is significant, it should be stressed again that regulatory committees are not a perfect indicator of conflict between legislators and the Commission. So interpretation should be done with caution. As to the control variables, again only age has a significant impact. Older representatives experience less procedural control. This may be interpreted as an indication that older, or more experienced, representatives pay less attention to legislative oversight than their younger, or more inexperienced, colleagues.

Discussion and conclusion

Studies of the EU comitology system demonstrate that, when designing the system's rules, the EU actors consider comitology an instrument to control the Commission. But studies of the actual workings of selected comitology committees show that the national representatives in practice operate autonomously and do not act as guardians of their national interests. This is a paradox. Why would member states establish control instruments, but then forget about them once they are in place? To understand this paradox this paper focuses on national capitals in the EU member states rather than Bruxelles. The central question is how national politicians in the member states control their representatives in the hundreds of comitology committees. To answer this question the paper turns to the delegation literature. According to this literature delegation from legislators to the executive is a calculated act in which the gains from delegation are carefully balanced against the

risks of agency drift. The literature finds that the optimal level of delegation depends on the complexity of the area to be regulated and the preference divergence between the legislature and the executive. The paper investigates whether these central insights from the delegation literature can also shed light on the EU member states' control of their comitology representatives.

The empirical analysis focuses on one EU member state (Denmark) and confirms most, but not all, of the hypotheses derived from the delegation literature. The results show that the Danish parliament allows comitology representatives more discretion in complex issue areas and less discretion in areas in which it is distrustful of the supranational executive, i.e. the Commission. The results also show that conflict with the supranational executive leads to more procedural control with the comitology representatives.

These results help explain the paradox in the comitology literature. They indicate that national representatives are indeed sometimes granted a large degree of discretion to decide the national position in comitology committees. The case studies of selected individual comitology committees that find these committees to be autonomous creatures staffed by representatives unconstrained by their home government may therefore be right. But the paper's results also indicate that the autonomy of comitology committees is carefully measured out by the national parliament. It depends on predictable factors – issue complexity and conflict with the Commission. This result suggests that comitology representatives are not out-of-control bureaucrats, but rather that their discretion is a deliberate decision made by their political masters.

However, the paper fails to confirm one of the delegation literature's traditional findings, namely that legislators offset bureaucratic discretion with increased procedural control. When the Danish parliament's EU committee allows comitology representatives more discretion due to issue complexity, they do not increase legislative oversight. Since the legislators do not possess the necessary technical insight to evaluate the behaviour of the representatives in complex areas increased oversight would have to be done by third parties to be effective. However, interest organisations are already systematically involved in the control of comitology committees in Denmark, and tightening this type of control mechanism even further may not be deemed necessary by the parliament. Following Ogul and Rockman's (1990) extension of McCubbins and Schwartz' (1984) classic distinction between police patrols and fire alarms, interest organisations in the Danish system function more like decentralised police patrols than the reactive, unsystematic fire alarms discussed by McCubbins and Schwartz.

The final question is the generalisability of the Danish findings. Do they have value beyond the case of Denmark? The paper has found that delegation to the comitology representatives depends on issue complexity and conflict between the legislature and the executive. This is in broad correspondence with the delegation literature which have documented this relationship in diverse institutional settings. There is thus reason to believe that these basic relationships also hold in relation to other EU member states' control of their comitology representatives. However, the exact control mechanisms are likely to vary across member states depending on the specific national institutional setting. Denmark has one of the most powerful national parliamentary EU committees in the EU area (Kassim 2000). This is probably conducive to legislative committee oversight. Other EU countries may find other institutional solutions to the delegation problem in the comitology area. Furthermore, Denmark has a tradition for minority governments which may make parliamentary oversight more pertinent. Other EU countries may rely more on mechanisms internal to the government machinery to control comitology representatives.

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Appendix 1. Descriptive statistics for variables used in empirical analyses

	Average value	St. dev.	Min. value	Max. value
<p><i>Discretion</i></p> <p>Index of survey questions (potential range: 1-5; alpha=.59):^a</p> <ul style="list-style-type: none"> - In reality I have considerable freedom to decide the national position in my committee - I take the position in my committee that I think is best according to my own professional judgement 	3.9	.9	1.0	5.0
<p><i>Procedural control</i></p> <p>Dichotomous measure based on survey questions:</p> <ul style="list-style-type: none"> - My negotiation mandate is normally coordinated with the Parliament's EU Committee. - Does the Parliament's EU committee authorize your negotiation mandate? <p>The measure equals 1 for respondents who <i>fully</i> agree with the first statement <i>and</i> answer yes to the second question; zero otherwise.</p>	.07	-	0	1
<p><i>Issue complexity</i></p> <p>Index of survey questions (potential range: 1-5; alpha=.71):^a</p> <ul style="list-style-type: none"> - You need considerable technical insight to work with the cases in my committee - It is difficult for outsiders to understand the cases we work with in my committee - The cases in my committee are often technically complex 	3.9	.8	2.0	5.0
<p><i>Conflict with the national executive</i></p> <p>Average relative frequency of Danish parliamentary questions and hearings in 2005-6 parliamentary session (potential range: 0-100)</p>	5.2	1.9	.2	10.3
<p><i>Conflict with the supranational executive</i></p> <p>Exclusive use of the regulatory comitology procedure</p> <p>The measure equals 1 for committees that exclusively use the regulatory procedure; zero otherwise.</p>	.35	-	0	1
<p><i>Control variables:</i></p> <ul style="list-style-type: none"> - Gender (1=male; 0=female) - Education (1=specialist - e.g. engineer, veterinarian; 0=generalist – e.g. political scientist, economist) - Age 	.7 .3 48.5	- - 10.9	0 0 26	1 1 68

Note:

a. Based on five-point response scale (“agree”, “partly agree”, “neither agree nor disagree”, “partly disagree”, “disagree”).

Table 1. Comitology committees that are subject to oversight by the Danish parliament's EU Committee

MARKT European Banking Committee
MARKT European Securities Committee
AGRI Management Committee for pigmeat
AGRI Management Committee for poultry meat and eggs
AGRI Regulatory Committee on Organic Farming
SANCO Standing Committee on the Food Chain and Animal Health (subcommittee on animal nutrition)
SANCO Standing Committee on the Food Chain and Animal Health (subcommittee on phytopharmaceuticals)
SANCO Standing Committee on the Food Chain and Animal Health (subcommittee on genetically modified food and feed)
ENV Committee for the adaptation to technical progress and application of the Community award scheme for an eco-label
ENV Management Committee to monitor production and consumption of substances that deplete the ozone layer
TAXUD Committee on the Community programme to improve the operation of taxation systems in the internal market (Fiscalis Committee)

Table 2. Comitology committees scoring low and high values on the issue complexity measure

<p><i>The ten committees with the lowest complexity score:</i></p> <p>Committee for community actions in support of consumer policy (2004-2007)</p> <p>Research program committee (subcommittee on research infrastructure)</p> <p>Committee of the Community action programme to encourage co-operation between member states to combat social exclusion</p> <p>Advisory Committee on the approximation of the laws of the Member States relating to machinery</p> <p>Committee for the fourth multiannual programme for small and medium-sized enterprises in the EU</p> <p>Committee for the application of the regulation authorising voluntary participation by undertakings in the Community eco-management and audit scheme (EMAS)</p> <p>The anti-fraud Committee on mutual assistance in customs and agricultural matters</p> <p>Management Committee for agricultural promotions</p> <p>Research program committee (subcommittee on science and society)</p> <p>Research program committee (subcommittee on human resources and mobility)</p>
<p><i>The ten committees with the highest complexity score:</i></p> <p>Committee for the implementation of the directive concerning the placing of biocidal products on the market</p> <p>Committee for the implementation of the directive on the control of major accidental hazards involving dangerous substances</p> <p>European Agricultural Guidance and Guarantee Fund Committee</p> <p>Committee on the harmonisation of gross national income at market prices</p> <p>Committee on article 6 visa</p> <p>Committee on the second general system for the recognition of professional education and training</p> <p>Customs Code Committee (subcommittee on agriculture and chemicals)</p> <p>Combined heat and power committee</p> <p>Committee for the harmonisation of national measures on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances</p> <p>Committee on safe seas and prevention of pollution from ships</p>

Table 3. Parliamentary questions and hearings called by parliamentary committees in Denmark, 2005-2006

Minister	Parliamentary questions		Ministers' appearances before committees		Average percentage
	No.	Percentage	No.	Percentage	
Labour	433	5,3	35	4,9	5,1
Family and consumer	564	6,9	73	10,2	8,6
Finance	245	3,0	23	3,2	3,1
Defence	318	3,9	8	1,1	2,5
Food	183	2,2	25	3,5	2,9
Interior and Health	736	9,0	35	4,9	7,0
Integration	323	4,0	49	6,9	5,4
Justice	1,025	12,5	57	8,0	10,3
Religion	42	0,5	5	0,7	0,6
Culture	233	2,9	41	5,8	4,3
Environment	327	4,0	52	7,3	5,6
Gender equality	20	0,2	1	0,1	0,2
Nordic cooperation	8	0,1	0	0,0	0,0
Development in the third world	107	1,3	18	2,5	1,9
Taxation	593	7,3	11	1,5	4,4
Social affairs	317	3,9	27	3,8	3,8
Prime minister	353	4,3	25	3,5	3,9
Transport and energy	704	8,6	44	6,2	7,4
Foreign Affairs	617	7,6	30	4,2	5,9
Education	405	5,0	49	6,9	5,9
Science	330	4,0	78	10,9	7,5
Economy and trade	289	3,5	27	3,8	3,7
Total	8,172	100,0	713	100,0	100,0

Source: Parliamentary questions: www.ft.dk. Ministers' appearances before committees: data have been collected by Peter Bjerre Mortensen who kindly made them available to me.

Table 4. The distribution of voting procedures across comitology committees

Danish ministry responsible for the committees	The committees' voting procedure				Total
	Advisory	Management	Regulatory	Several	
Ministry of Trade	0	4	8	3	15
Ministry of Labour Affairs	2	0	0	0	2
Ministry of Food	0	21	4	6	31
Ministry of Transportation and Energy	0	3	9	4	16
Ministry of the Environment	0	3	19	1	23
Ministry of Science	0	6	1	16	23
Ministry of Taxation	1	10	8	2	21
Ministry of Education	0	1	0	3	4
Ministry of Culture	1	0	0	1	2
Ministry of Family and Consumer Affairs	1	0	1	2	4
Ministry of Justice	0	0	3	0	3
Ministry of Foreign Affairs	0	5	0	3	8
Ministry of Finance	0	0	1	0	1
Ministry of Defence	0	0	1	0	1
Ministry of Social Affairs	0	0	0	1	1
Ministry of Refugees, Immigrants and Integration	0	0	0	1	1
Ministry of the Interior and Health	0	0	1	0	1
Total	5	53	56	43	157

Note: Entries are absolute numbers of committees.

Table 5. Regression analysis of comitology representatives' discretion and procedural control

	Dep.var.: Discretion		Dep.var.: Procedural control	
	Full model	Reduced model	Full model	Reduced model
Issue complexity	.34***	.32***	.26	-
Conflict with the national executive	.03	-	-.28	-
Conflict with the supranational executive	-.32**	-.30**	1.34*	1.48**
Gender	-.15	-	.43	-
Education	.05	-	.87	-
Age (log.)	.86***	.78***	-4.29***	-3.94***
Constant	-.77	-.28	12.56*	11.51**
R ² (adj.)	.08	.09	.25 ^a	.17 ^a
N	160	160	160	160
Estimation method	OLS	OLS	Logistic	Logistic

*p<0.1; ** p<0.05; *** p<0.01.

a: Nagelkerke's R²

Entries are unstandardised regression coefficients