



# The Power of Initiative of the European Commission: A Progressive Erosion?

Paolo PONZANO, Costanza HERMANIN and Daniela CORONA

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PAOLO PONZANO, COSTANZA HERMANIN AND DANIELA CORONA



**Paolo PONZANO** is a senior fellow at the European University Institute and a special adviser of the European Commission. Former collaborator of Altiero Spinelli at the Institute for International Affairs in Rome, he has worked for the European Commission from 1971 to 2009. He was formerly Director for Relations with the Council of ministers, subsequently for Institutional Matters and Better Regulation. He was also Alternate member of the European Convention in 2002/2003. He published several articles and chapters on the EU institutions. He teaches European Governance and Decision-Making at the University of Florence and at the European College of Parma as well as European Law at the University of Rome.



**Costanza HERMANIN** is a researcher in the department of social and political science of the European University Institute, where she is about to complete her PhD. Her research interests comprise EU social and immigration policy, EU institutional affairs, and human rights and immigration policy in Italy. She has been visiting fellow at several places (WZB, CERl, Columbia, Berkeley). She is the co-editor of a forthcoming book on “Fighting Race Discrimination in Europe” (Routledge, 2012). She has been publishing on Italian and English speaking journals.



**Daniela CORONA** is currently research collaborator at the Robert Schuman Center for Advanced Studies at the European University Institute in Florence where she completed her Ph.D in Law. She specialises in the study of European decision-making and inter-institutional relations of the European Union. Author of articles and contributions dealing with European institutions and policies, she also worked as legal adviser for the Portuguese delegation in GUE/NGL group at the European Parliament.

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## Foreword

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On 9 May 1950 in a famous speech made in the gilded *Salon de l'horloge* at the Quai d'Orsay, the French foreign minister Robert Schuman invited Germany and other European countries to join France in creating an independent authority charged with regulating the coal and steel markets. This short elocution is today considered a defining moment of European integration – not only because it was an essential step in the Franco-German reconciliation, but also because it laid the foundations of a new type of institutional organisation, what would become known as the “community method”. The main components of this model are today well known: the transfer of legislative powers to the European level; an independent executive – at first the High Authority, today the Commission – with a mandate to initiate legislation; the possibility of voting binding laws; and a supranational jurisdiction, the Court of Justice, with powers of sanction.

One of the most remarkable features of this institutional system has been its stability. Sixty years on there are four times the number of member states, the Union is home to more than 500 million citizens and the founding treaties have been revised numerous times. A transnational parliament has been created along with dozens of administrative agencies, and today's Europe is involved in areas

central to state sovereignty such as currency, justice and defence. But in many ways the original model remains unchanged. Indeed, a need to protect the essence of the “community method” is often cited when institutional changes are envisaged.

And yet this model has been under growing pressure since the Treaty of Maastricht. Its legitimacy is sometimes questioned. The Commission itself has shown great interest in what have been called “new modes of governance” and member states governments seem reluctant to transfer new powers to the European level. In a much-remarked speech to the College of Europe\*, the German chancellor Angela Merkel attempted to sketch out an alternative model, the “Union Method”. Does all this mean that the “community method” has had its day?

To make a documented response to this question we thought it essential to look closely at how the “institutional triangle” has evolved and adapted to new circumstances. What use does the Commission make today of its right of initiative? Is voting practice the same in an enlarged Union as previously? The European Parliament’s growing power is surely the most remarkable change of the last twenty years – what has been its impact? This study, together with those which will follow, deals with such questions. Together they aim to provide an up-to-date picture of the “community method” as practiced, and thus to give us a better understanding of its relevance in today’s Europe.

*Notre Europe*

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\* Speech by Federal Chancellor Angela Merkel at the opening ceremony of the 61st academic year of the College of Europe in Bruges on 2 November 2010: [http://www.bruessel.diplo.de/contentblob/2959854/Daten/945677/DD\\_RedeMerkelEuropakollegEN.pdf](http://www.bruessel.diplo.de/contentblob/2959854/Daten/945677/DD_RedeMerkelEuropakollegEN.pdf)

## Preface

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**T**his study, produced by Daniela Corona, Costanza Hermanin and Paolo Ponzano, offers a useful contribution to the current debate on the merits and the alleged limitations of the “Community Method”, of which the Commission’s monopoly over legislative initiative is such a crucial element.

Based on data relating to what are termed “innovative” legislative proposals, it allows the reader to draw conclusions which I feel are equally applicable to the exercise of the power of initiative as a whole, and which confirm the analysis that I have drawn from my experience as Member of the Commission.

As this study argues, we need to distinguish three different kinds of issues if we are to effectively measure the way in which the Commission’s exercise of the power of initiative has partly changed its nature: first, we have the “agenda setting”, then the definition of the “terms of debate”, and lastly the negotiations that lead to the finalisation of the texts.

Regarding the “agenda setting” aspect, in other words the definition of the issues in connection with which any given legislative initiative is to be launched, the



authors rightly highlight the fact that the Commission is now forced to pay increasing heed to the guidelines and suggestions put forward by the European Council and Parliament.

This initial work based on listening and analysing is perfectly logical and very welcome; indeed, it seems to me to be the natural political offset for the monopoly on legislative initiative that the Commission has held since the construction of Europe began. Moreover, this listening task involves not only the institutions but also the economic and social players, the NGOs, and soon, in a more direct way, also any citizens who decide to gather together in support of a proposal in the context of the “citizen’s initiative” right enshrined in the Lisbon Treaty. Indeed, it is precisely because the Commission has proven its ability to listen that it has de facto exercised this monopoly hitherto in the fields of justice and home affairs, even though the treaties assign power of initiative to a group of Member States.

Regarding the definition of the “terms of debate”, in other words the content of the legislative texts due to be submitted for negotiation, it is important to specify that in this field the Commission has managed to hang on to a fairly broad margin for manoeuvre.

The study is quite right to highlight the fact that the Commission makes every effort to heed its co-legislators’ positions when putting together its own proposals, but that does not necessarily mean that that influence undermines its ability to afford priority to the issues and formulations that it considers best suited to the needs of the EU as a whole. The scope of the initiatives taken by the Commission is a key element in the dynamic of negotiations between the Parliament and Council. The overcautiousness of such initiatives can not guarantee that the general interest of the Union is best safeguarded and that expectations of European citizens are met. It is all a matter of political will and skill – and in that connection, it is hardly surprising that the study finds differences between the four colleges it examines, or that the panel chaired by Jacques Delors stands out.

And finally, regarding the negotiations leading to the amendment and finalisation of the legislative texts, the authors are absolutely right to suggest that the

extension of the co-decision procedure and the increasing power of the European Parliament have restricted the Commission's power to influence.

This, because the adoption of the “trialogue” system has led to the European Council and Parliament negotiating in a more direct manner in their capacity as the holders of decision-making powers in the legislative sphere. The Commission can often find itself playing a less central role in the context of this triologue, including in the exercise of its ability to withdraw proposals whose content has become substantively different from the content of the original draft that it submitted.

All in all, this analysis tends to demonstrate that, while the Commission's power of initiative has undergone change and renewal, the Commission still plays a crucial and irreplaceable role. That is an observation that one could usefully extend to the Community Method as a whole, the originality and effectiveness of which also need to be safeguarded while adapting to the new political and institutional context in which the EU exists and acts today.

António Vitorino  
President of *Notre Europe*



## Executive Summary

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This study investigates to what extent the power of legislative initiative of the EC has been exercised and maintained over time by comparing a select number of innovative legislative proposals adopted by four colleges two years after they took up their post: Delors (1991), Santer (1997), Prodi (2002), Barroso (2007).

It enables to draw the following main conclusions:

1. The changes brought about by successive rounds of treaty reforms **have not formally changed the right of the Commission to initiate legislation**; by contrast, its exercise *in practice* has been progressively eroded by the expansion and normalization of the *codecision* procedure.
2. The **practice of direct negotiations between the European Parliament and the Council** since the very first steps of the *codecision* procedure has affected the possibility of the Commission to actively participate in the definition of the content of the legislative measures – by modifying or withdrawing its proposals. Indeed, the Commission is more and more engaged in exercising the role of “*honest broker*” since the early stages of the decision-

making, in order to facilitate the achievement of an agreement between the two co-legislators.

3. The weakened role of the Commission in the codecision procedure also **impacted its power to define the *degree of ambition of its legislative proposals***. As a consequence, the European Commission has started taking into account the positions of the co-legislators already since the drafting of the proposal, refraining from setting contentious objectives that are likely to be opposed by during the negotiation process.

4. **The power to initiate legislation has been significantly eroded also by both the *European Council and the Council***. As to the former, the Commission has increasingly considered itself politically committed to following up to the “conclusions” of the European Council. As to the latter, beyond the possibility to ask the Commission to submit specific proposals, a possibility sanctioned by the Treaty, the Council’s resolutions are considered as informal “mandates” for the Commission.

5. The comparative analysis of the activity pursued by the four colleges shows several interesting trends.

- First, over the years there has been a **reduction in the share of the innovative proposals** adopted by the European Commission, a pattern explainable with reference to the exhaustion of virgin policy domains – e.g. the internal market for the Delors’s cabinet – and to the impact of the “Better Regulation” initiative – starting with the last years of Romano Prodi’s mandate.
- Second, the expansion of the codecision procedure to more policy domains was accompanied by a reduction in the time needed for the adoption of the legislative proposals, and by a **lower degree of conflict over the Commission’s innovative proposals**. In particular, the last “political withdrawal” by the Commission dates back to 1994.

6. To sum up, the introduction of the codecision procedure in the EU decision-making and the functioning in practice of the inter-institutional system have **transformed the role of the Commission from that of an *autonomous initiator* to that of a *reactive initiator*.**

It will be worthwhile to study if and to what extent the modifications to the right of initiative provided by the Lisbon Treaty will contribute to further erode the quasi-monopoly of power on initiating legislation that still formally pertains to the Commission.



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## Introduction

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**A**ccording to the founding treaties, the European Commission (EC) has a monopoly of power on initiating legislation aimed at fulfilling the objectives of the European Community, now Union.<sup>1</sup> The supranational monopoly over the power of initiative was considered as a guarantee of impartiality and expertise over the policy proposals that were submitted to the attention of the legislative branch(es) of what is known as the “institutional triangle” of the European Union, comprised of the Commission, the Council of Ministers, and, with an increasingly equal role as co-legislator over the years, the European Parliament.

Since the foundation of what is today the European Union, a number of accounts have highlighted the *sui generis* functioning of the European institutional triangle. And yet, the Community Method is perhaps the most *sui generis* aspect of this supranational legislative machinery, one that has achieved some of the most unexpected and remarkable results. From the early years of the European Coal and

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1. In order to improve readability, in the remainder of the report we will use the term “European Union” even when referring to the period when legal personality was limited to the European Community. We will continue employing the term Community for those cases that present a consolidated terminology, e.g. Community Method, or when referring to the Treaty Establishing the European Community, abridged as TEC. The Treaty on the European Union and Treaty on the Functioning of the European Union are respectively abridged as TEU and TFEU.

Steel Community (ECSC) in 1951, to the present Union of 27 Member States, the Community/Union, has evolved in terms of number of Member States, competences, institutions, type of acts produced, procedures and objectives. The core of its functioning, the Community Method, however, has persisted over the years.

At the heart of this method, and of the Union itself, is the European Commission in its role as initiator of legislation, which has been described by some as a pioneering institution that has dared to push the boundaries of its formal powers beyond what was initially intended in the treaties.<sup>2</sup> In particular, this role seemed to embody well the central tenets of so-called “functionalist” and “neo-functional” analyses of regional integration mechanisms.<sup>3</sup> “Technocratic automaticity” was the term employed to describe the way in which, as integration proceeded and “spilled over”, the supranational institutions set up to oversee the integration process were themselves to *take the lead* in sponsoring further integration as they become more powerful and “more autonomous” from the Member States.

Nowadays, however, even though the Community Method is still the main decision-making procedure in the Union, and the European Commission the principal initiator of European legislation, some other methods of adopting political and legislative initiatives have been introduced both formally, in the most recent rounds of treaty revisions, and informally (*see Box no. 1*).

In addition, policy proposals are considered as a manifestation of the Commission’s power of initiative, whatever their exact institutional origin. Nonetheless, only a few of the Commission’s proposals (around 5%) are still adopted as a consequence of some autonomous initiatives taken by the services of the Commission (the Directorates General, or DGs) following formal and informal consultations with lobbyists, national experts, civil society organizations, or express political input by the Commissioner. On the other hand, the Commission has increasingly engaged in drafting legislative proposals in response to more or less explicit demands or mandates received by other institutions, such as the European Parliament (EP),

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2. Neill Nugent, *At the heart of the Union: Studies of the European Commission*, Basingstoke: Palgrave, 1997.

3. Wayne Sandholtz and Alec Stone Sweet (eds), *European Integration and Supranational Governance*, Oxford; New York: Oxford University Press, 1998.

the Court of Justice of the European Union and the European Council, or in the framework of multi-annual work plans. In the past two decades, in particular, most of the proposals adopted by the Commission have somehow replied to Council conclusions, consolidating a new informal step in the policy process that has significantly “bounded the Commission’s power to autonomously initiate legislative proposals”.<sup>4</sup> In other words, the decision to legislate at the European level is a shared responsibility between institutions, while the Commission has discretionary power over the content of its proposal.

Mapping the true origins of a policy proposal is, however, an uneven task, requiring an analysis of a network of influences frequently hard to disentangle. That said, when a legislative proposal is finally adopted by the college of Commissioners, it is supposed to crystalize the will and preferences of that Commission as the initiator of European legislation. We conceive of the Commission’s “power of initiative” as a concept synthesizing the objectives set out at this moment (e.g. when adopting the proposals) thanks to the right of initiative, and the objectives achieved at the end of the legislative process, thanks to the power to amend and withdraw proposals.

Based on this definition, this study attempts to determine whether the extent to which the prerogatives of the Commission as one of the main sponsors of further integration and initiator of far-reaching legislative proposal has varied over the last 20 years. If the exercise of the power of legislative initiative by the European Commission has evolved over the years, has it really weakened the role of the Commission as initiator of legislative proposals? What best explains the outcome of policy proposals put forward by the Commission in terms of adherence to their initial objectives? And, more broadly, what has determined the possible erosion of the role of the Commission as initiator of legislation?

Considering the Commission in its role as “policy innovator”,<sup>5</sup> we look at how the Commission managed to keep its policy ambitions throughout the legislative decision-making process for a selected number of innovative proposals adopted

4. Paolo Ponzano, “Le droit d’initiative législative de la Commission européenne: théorie et pratique”, *Revue des Affaires européennes/Law & European Affairs*, Issue 1, 2009-2010, pp. 27-35.

5. Nektarios Alexopoulos, *The European Commission as a Policy Innovator: Bureaucratic Politics in Perspective*, PhD Thesis, Department of Political and Social Sciences, Florence: European University Institute, 2000.

by four colleges (Delors II, Santer, Prodi and Barroso I) led by different personalities during their third year of activity (1991, 1997, 2002, 2007).

Comparing the results obtained for each proposal and year we seek to establish whether there is any significant variation in the exercise of the power of initiative by the European Commission, and whether this is better explained by procedural evolutions, the length of a negotiation process, the policy domain to which a proposal pertains, or factors related to the succession of the different colleges. Before venturing upon the empirical analysis in part 2 and in the theoretical and explanatory section in part 3, we begin with an overview of the power of legislative initiative in section 1.

## 1. The European Commission's Power of Initiative: Origins and Components

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### 1.1. The Original Powers of the Commission

As we begin a study on the evolution of the exercise of the power of initiative by the Commission, it is essential to revisit briefly the main original missions of the European Commission as outlined by the treaties. This overview will help explain why the European Commission was designed as the core of the Community institutional system and of the Community Method.

Historically, the experience of the creation of bilateral Anglo-French commissions between the two World Wars proved to Jean Monnet the added value of bodies acting in the general interest vs. the inefficacy of bodies acting mainly through the instrument of consensus among Member States, as in the so-called “intergovernmental decision method”. This consideration inspired the primary characteristics of the current European Commission: the drafters of the treaties conceived for the High Authority (the forerunner of the current European Commission) an institutional architecture that would guarantee its independence from the Member States. On the one hand, such an institution ought not to be subject to particular national

interests; on the other, it had to be granted the necessary expertise and powers to identify and pursue the next steps to foster the project of “ever closer Union”.<sup>6</sup>

Thus, even though the members of the Commission are appointed by the Member States, the multinational character of the Community administration and the impossibility for a single Commissioner to determine the content of a legislative proposal – the Commission can take its decision in a collegial way and by simple majority (see current article 250 TFEU) – guarantees that Commissioners act as independently as possible from the interest of their state of citizenship (see article 245 TFEU).

The treaties assign to such a designed European Commission the power to pursue the general interest of the Community through three main tasks:

- 1) the (quasi) exclusive monopoly on legislative initiative, which is the core element of the so-called Community Method. According to this principle, the Council of Ministers and the European Parliament can only legislate on the basis of a Commission proposal. In any event, the Council (and European Parliament) should not be able to denaturise the content and the scope of the European Commission’s proposal;
- 2) a role of “guardian of the treaties”, aiming to ensure that both the treaties and secondary legislation are correctly enforced. In this role, the Commission can start judicial procedures and take Member States or other institutions before the Court of Justice;
- 3) the task to implement legislation through the adoption of executive measures, except for specific cases where the Council of Ministers retains this power for itself.

The Commission exercises its power of initiative by relying on three main capacities: an exclusive right of initiative, the power to amend proposals, and the power to withdraw proposals.

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6. In the words of Jean Monnet, “Putting governments together and making national administrations cooperate starts with a good intention but fails as soon as there are differences in interests if there is no independent political body capable of taking the common view and coming to a common decision”, Jean Monnet, *Mémoires*, Paris: Fayard, 1976, p. 101 (own translation).

## 1.2. The Ratio for an Exclusive Right of Initiative

The treaty drafters conferred on the Commission an independence that was intended to grant it a “unique position” to identify the general interest of the Community. In their intentions, such an interest was not to be conceived as a sum of the national interests of Member States, the prevailing interest of one of the big Member States, or that of the funding Member States. Rather, the Commission was supposed to be able to adopt legislative proposals that would be based on the most advanced national legislation or on innovative regulation that pursued the interest of the entire Community/Union. This is the main reason why – differently from the national practice – a European Parliament, where the smaller Member States were not sufficiently represented to defend their interests, was *not* conceived as the initiator of the legislative process.

The monopoly on the legislative initiative has been maintained over the years and to date, in spite of successive treaty amendments (*see Box no. 1*), the European Commission can still be considered as the primary engine of the formal decision-making process.<sup>7</sup>

7. See on the subject: Contribution présentée par MM. Barnier et Vitorino, membres de la Convention: “*Le droit d’initiative de la Commission*”, La Convention européenne, Bruxelles 3 septembre 2002, doc. CONV 230/02; House of Lords, European Union Committee, “Initiation of EU Legislation”, 22nd Report of Session 2007-08.



**BOX NO. 1**  
**WHO HAS THE RIGHT OF LEGISLATIVE INITIATIVE IN THE EU?**  
**THE MONOPOLY OF THE EUROPEAN COMMISSION AND ITS EXCEPTIONS**

THE QUASI-EXCLUSIVE RIGHT OF LEGISLATIVE INITIATIVE WAS CONFERRED ON THE EUROPEAN COMMISSION BY THE TREATY OF ROME AND MAINTAINED IN THE SUCCESSIVE ROUNDS OF TREATY REVISIONS AS GENERAL PRINCIPLE. THIS RIGHT CONCRETIZES IN THE MONOPOLY TO DRAFT AND SUBMIT LEGISLATIVE PROPOSALS TO THE EU LEGISLATOR(S).

- THE TREATY OF ROME ALREADY PROVIDED SOME LIMITED EXCEPTIONS TO THE MONOPOLY OF THE RIGHT TO INITIATE LEGISLATION OF THE EUROPEAN COMMISSION, REGARDING:
  - CUSTOMS DUTIES (ART. 28 EEC);
  - AIR AND SEA TRANSPORTS (ART. 84 EEC);
  - STATISTICS (ART. 213 EEC).

THESE DOMAINS COULD BE REGULATED AT THE INITIATIVE OF A SINGLE MEMBER STATE.

- THE MAASTRICHT TREATY PROVIDED NEW EXCEPTIONS TO THE MONOPOLY OF THE RIGHT OF LEGISLATIVE, CONCERNING:
  - COMMON AND FOREIGN SECURITY POLICY (ART. 22 TEU);
  - JUDICIAL COOPERATION IN CIVIL MATTERS (ART. 67 TEC).

IN THESE SECTORS, BOTH THE EUROPEAN COMMISSION AND EACH MEMBER STATE COULD SUBMIT PROPOSALS TO THE COUNCIL OF MINISTERS.

THE MAASTRICHT TREATY ALSO PROVIDED FOR INSTANCES OF “INDIRECT” RIGHT OF INITIATIVE, BY GRANTING OTHER AGENTS THE POWER TO INVITE THE EUROPEAN COMMISSION TO SUBMIT LEGISLATIVE PROPOSALS. THIS RIGHT WAS CONFERRED ON:

- THE EUROPEAN PARLIAMENT (EX ART. 192 TEU; ART. 225 TEU);
- THE COUNCIL OF MINISTERS (EX ART. 208 TEU; ART. 241 TFEU).

- THE LISBON TREATY FURTHER MODIFIED THE PROVISIONS ON THE RIGHT OF INITIATIVE OF THE EUROPEAN COMMISSION. THE EUROPEAN COMMISSION KEEPS HAVING A QUASI-EXCLUSIVE RIGHT OF LEGISLATIVE INITIATIVE WITH THE EXCEPTIONS EXPRESSLY PROVIDED BY THE TREATY (ART. 17.2 TEU). NEW EXCEPTIONS CONCERN:
  - COMMON FOREIGN AND SECURITY POLICY (ART. 42 TEU): THE COUNCIL’S LEGISLATIVE DECISIONS CAN BE ADOPTED ON A PROPOSAL FROM THE HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY OR ON AN INITIATIVE FROM A MEMBER STATE.

– JUDICIAL COOPERATION IN CRIMINAL MATTERS AND POLICE COOPERATION (ART. 76 TFEU): IN THE LATTER CASE, THE COMMISSION SHARES ITS RIGHT OF INITIATIVE WITH A QUARTER OF THE MEMBER STATES.

THE LISBON TREATY EXTENDED THE “INDIRECT” RIGHT OF INITIATIVE, BY ESTABLISHING THE RIGHT OF CITIZENS’ INITIATIVE. THIS RIGHT WAS OPENED TO:

- ONE MILLION CITIZENS WHO ARE NATIONALS OF A SIGNIFICANT NUMBER OF MEMBER STATES (ART. 11 TEU):

THE TREATY ALSO SPECIFIED THAT, IN ALL CASES OF INDIRECT RIGHT OF INITIATIVE, THE EUROPEAN COMMISSION IS NOT LEGALLY BOUND TO PUT FORWARD A PROPOSAL, BUT IT MUST GIVE THE GROUNDS FOR ITS REFUSAL TO PROPOSE.

LAST BUT MOST IMPORTANTLY, THE EUROPEAN COMMISSION RECEIVES DEMANDS FROM THE EUROPEAN COUNCIL TO DRAFT LEGISLATIVE PROPOSALS, EVEN IF THE TREATY DOES NOT FORMALLY PROVIDE FOR SUCH A PROCEDURE. IN GENERAL, THE EUROPEAN COMMISSION FOLLOWS UP ON THE EUROPEAN COUNCIL’S RESOLUTIONS, AS THE PRESIDENT OF THE COMMISSION IS A MEMBER OF THE LATTER.

### 1.3. The Power to Amend

After having adopted a legislative proposal, the Commission has the right to amend it during the decision-making process. In doing so, it can facilitate the adoption of a legislative act by the Council if a majority of Member States are ready to agree with the content of a proposed measure. However, if the European Commission does not agree with the proposed amendments and refuses to modify its proposal accordingly, such refusal determines a levelling up of the voting rule in the Council. In this event, the Council has to vote by unanimity to adopt an act that is different from the original text proposed by the Commission.

This rule is the second element that defines the Commission's Power of Initiative and further protects the European Commission's exclusive right to initiate legislation; it makes it impossible for groups of Member States to change the content of a text, e.g. to the detriment of other Member States, unless the Commission approves the suggested amendment.<sup>8</sup> When a non-agreed upon change is made, and the contents of a proposal steered away from its initial aims, the proposal is defined as "denaturalised".

In practice, the instances in which the Commission refuses to modify a proposal in the presence of a qualified majority in the Council are very few.

### 1.4. The Power to Withdraw

Since the 1970s, the European Commission considers that the power to withdraw legislative proposals is a corollary of its right to initiate legislation. In general the European Commission claims that it can withdraw a proposal on the condition that the withdrawal is justified by the same general interest that had underpinned the adoption of the proposal. This means that the European Commission deems that

8. In the words of Emile Noël: "Il n'est donc pas possible que le Conseil adopte à des majorités changeantes, au gré de coalitions d'intérêts ou de luttes d'influences entre gouvernements, des propositions contradictoires suivant les sujets. Il est également exclu qu'une majorité au Conseil, sans l'accord de la Commission, impose à un État minoritaire une mesure qui léserait gravement ses intérêts essentiels. Si la Commission remplit effectivement ses obligations, elle ne peut prêter la main à une telle opération. Son intervention donne donc une garantie importante, notamment aux petits États, et ceux-ci y ont toujours été très attachés", Emile Noël, *Les Rouages de l'Europe : comment fonctionnent les institutions de la communauté européenne*, Paris: F. Nathan, 1976, p. 38.

it can withdraw a proposal exclusively for legitimate reasons and within the limits set out by the Treaty.<sup>9</sup> For the European Commission, a proposal can be withdrawn:

- when the proposal is no longer relevant because of external evolutions;
- when there is a serious risk that the legislator adopts an act that goes beyond the objective of the proposal (for example, if the amended text envisages a modification of the design of the pension systems whereas the European Commission proposal related only to monthly salaries);
- when there is a serious risk that the legislator “denaturalises” the content of the proposal (for example, a case in which the legislator adopts an amendment that restricts the use of pension funds while the European Commission proposal aimed to liberalize them at EU level).

The view of the Council of Ministers and the European Parliament on the European Commission right to withdraw has consistently conflicted with the conception outlined above. The Council of Ministers assumes, in fact, that the European Commission cannot deprive the Council of its right to amend a legislative proposal by withdrawing it, including, in the last case mentioned above (denaturalisation) and in particular when a modification occurs at the second or third reading of the codecision procedure.<sup>10</sup>

The European Parliament’s view is quite close to that of the Council, even though the European Parliament mainly claims a right to be consulted before the European Commission decides to withdraw a proposal.

Beyond the conflict of views among institutions on the power to withdraw, historically the European Commission exercised its power to withdraw its proposals in the following cases:

- when scientific or technical advances or the indifference of the legislator made the proposal obsolete and no longer topical. In such cases, the European Commission regularly (every two or three years) withdraws pending legislative proposals which are no longer relevant and up to date. This kind of

9. To put it more explicitly, the Commission is not allowed to withdraw a proposal if the withdrawal would render the European legislators incapable of adopting a compulsory act provided for by the Treaty within the time limits set by the latter. For example, the European Commission could not withdraw its proposals concerning the price fixing for agricultural products if such withdrawals were to prevent the Council from determining prices by 1<sup>st</sup> April every year.

10. Member States attempted to include this rule in the Maastricht Treaty, but the strong opposition in this sense of President Delors helped prevent it.

*technical withdrawal* is not contested by the Council. Following the launch of the Better Regulation action plan<sup>11</sup> by the Barroso college, in September 2005, the European Commission withdrew around seventy proposals pending before the legislators as being no longer relevant in terms of “better regulation strategy” or at a standstill in the decision-making process.

- when a proposal is about to be denaturalised by the legislator. Historically, the cases of *political withdrawals* by the Commission have been quite rare.

Nowadays the European Commission continues to exert its right to withdraw proposals even though its last real “political withdrawal” took place in 1994 (*see below*).<sup>12</sup>

## 1.5. An Evolving Community Method?

Although the main foundations of the Community Method have remained the same over the years, successive treaty amendments have profoundly changed the decision-making process. Back in the 1950s, the founding treaties envisaged just one legislative procedure, the consultation procedure, according to which the European Parliament is only asked for a non-binding opinion and the Council is not obliged to take account of the European Parliament’s amendments (see now article 289 TFEU). According to this procedure, the decision-making process is in the hands of the Commission, as initiator of the legislative process, and the Council, as the legislator of the Community system. Over the years, however, every new policy objective to be pursued has been linked to one of the different decision-making procedures that shaped the Community Method in different ways.

The introduction of the cooperation procedure with the Single European Act of 1986 was the first step towards a modification of the inter-institutional dialogue. According to this procedure, the European Parliament had the power to amend the common position adopted by the Council, even though the latter could overrule the Parliament by unanimity and adopt its own text.<sup>13</sup>

11. European Commission, “Better Regulation: simply explained”, Brussels, EU Publication Office, 2010.  
[http://ec.europa.eu/governance/better\\_regulation/dwocuments/brochure/br\\_brochure\\_en.pdf](http://ec.europa.eu/governance/better_regulation/dwocuments/brochure/br_brochure_en.pdf)

12. Paolo Ponzano, “La prassi del processo decisionale nella Comunità europea: il ruolo della Commissione”, *Il Diritto dell’Unione europea*, Issue 4, 1996, pp. 1029-48.

13. The cooperation procedure was repealed by the Treaty of Lisbon.

The codecision procedure – renamed the “ordinary legislative procedure” by the Lisbon Treaty (see article 294 TFEU) – was introduced by the Maastricht Treaty in 1992 and subsequently modified by the Amsterdam Treaty in 1997.

Codecision had a significant impact on the functioning of decision-making through the addition of a new element in the Community Method: an enhanced role for the European Parliament. Through the introduction of codecision, the European Parliament was given a role equal to that of the Council of Ministers, and the adoption of legislative acts through codecision is possible solely with the agreement of both institutions, an agreement that can be reached at three different stages, called “readings” as in national legislative practice. In 1997, the Amsterdam Treaty made it possible to adopt proposals at first reading, setting the ground for quicker decision-making.

As a consequence, what was once a dialectical relation between the European Commission and the Council has given leeway to a “true” institutional triangle in which the content of the legislative acts is decided by the co-legislators, namely the European Parliament and the Council. In the years between 1991 and 2009, consultation, cooperation and codecision, all coexisted within the framework of the Community Method.

Beyond formal treaty amendments, a more informal practice also influenced the power of the Commission to initiate legislation over the years. Since the 1980s, in fact, the European Council, reuniting the heads of state and government of the member states and the president of the European Commission, started including in its conclusive statements (“conclusions”) policy “requests” for the Commission. The practice, which was never formalised in the Treaty, went stabilizing and expanding throughout the years, leading the European Council to take the role of an informal pre-initiator of legislation. The formal right to make proposals, as we have seen, has in fact official stayed with the European Commission.

## 2. Initiating Legislation: Four Colleges in Perspective

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### 2.1. The Empirical Analysis

In this second section, we show the results of our empirical analysis. Analysing systematically all proposals presented by the Commission would have been a daunting task. We therefore decided to focus on a limited sample, composed of the legislative proposals adopted by four colleges of Commissioners during their third year of activity. The third year of activity has been selected as this is normally a period in which a new Commission can best and most fully pursue its own policy goals, without having to deal with leftovers from its predecessors, or care about an imminent reappointment. Trying to respect similar intervals of time, the colleges that were selected for the study are the second Delors Commission (year of activity: 1991); the Santer Commission (1997); the Prodi Commission (2002); and, finally, the first Barroso Commission (2007).

Each year, every college proposed on average 456.5 legislative acts. Not all equally were relevant to assess variation in the exercise of the power of initiative by the European Commission, since many related to obligatory acts, such as those adopted to comply with treaty obligations, with requirements set out by previous

legislation or deriving from international commitments, for which the Commission is bound to act. As a consequence, we excluded those proposals from our sample. Second, we considered that the Commission exercises its power of initiative most fully when it proposes *innovative* legislative proposals. Legislative proposals are defined as *innovative* whenever they regulate a domain where there was no prior EU regulation, or when they set decisively new objectives, procedures and principles within an already regulated domain. This is of course an approximation of the real exercise of the power of initiative by the European Commission: innovative targets can also be proposed in the process of amending and recasting existing legislation. However, our method ensured that we kept into account those proposals where the power of initiative of the Commission develops most prominently its full potential.

For the sake of accuracy, we limited our analysis to the legislative instrument that is generally the most accessible to a non-specialist: namely directives. According to the treaties, directives “shall be binding, as to the result to be achieved” (article 288 TFEU) and are therefore not as technical as other legislative instruments (regulations and decisions) may be. This makes it easier for both the researcher and the reader to assess what objective the Commission is pursuing through its proposal, and to what extent the legislator agreed upon these objectives. We assume that the results obtained for the set of the directives can reasonably be extended to the other legislative instruments as well.

**TABLE 1 – SELECTION OF DIRECTIVES RELEVANT TO THE STUDY BASED ON PRELEX ADVANCED QUERIES (MARCH 2010)**

| COLLEGE/YEAR   | COM PROPOSALS ADOPTED |            |           |        | SELECTED PROPOSALS    | SAMPLE                            |
|----------------|-----------------------|------------|-----------|--------|-----------------------|-----------------------------------|
|                | REGULATIONS           | DIRECTIVES | DECISIONS | TOTAL  | INNOVATING DIRECTIVES | INNOVATING DIRECTIVES ON ALL ACTS |
| DELORS II 1991 | 360                   | 62         | 94        | 516    | 17                    | 3%                                |
| SANTER 1997    | 214                   | 53         | 148       | 415    | 15                    | 4%                                |
| PRODI 2002     | 187                   | 54         | 189       | 430    | 14                    | 3%                                |
| BARROSO I 2007 | 172                   | 53         | 240       | 465    | 7                     | 2%                                |
| TOTAL          | 933                   | 222        | 671       | 1826   | 53                    | 3%                                |
| AVERAGE/YEAR   | 233.25                | 55.50      | 167.75    | 456.50 | 13                    | 2.90%                             |

**QUERY: PRELEX DATABASE: COM, ADOPTION BY THE COMMISSION BETWEEN 01/01/YEAR – 01/01/YEAR+1, PROPOSAL FOR A REGULATION/DIRECTIVE/DECISION.**

Having defined what we consider to be the power of initiative of the Commission within the framework of this study in section 1, and explained how we constituted the sample for the research, we finally need to introduce the way in which we measure whether this power was strengthened or weakened as a result of the decision-making process for each of the selected proposals.

In the absence of an in-depth expertise of each policy domain in which the Commission deploys its power of initiative, we abstain from judging whether each proposal sets either far-reaching or non-ambitious objectives for the Union. However, we attempt to underline when the proposal was the output of a minimum common denominator choice, and when it was inspired by more ambitious aims and hence outlined more far-reaching goals.

We use a double strategy to evaluate the outcome of the decision-making process in terms of weak or strong exercise of the power of initiative. First, our measure of the power of initiative is based on a comparison between, on the one hand, the text of the directives as proposed by the Commission and, on the other, on the text as adopted by the Council. To understand whether the proposals of the European Commission undergo significant amendments, we look at the definitive proposal (COM document) and at the legislative act adopted at the end of the decision-making process (Directive), checking for documents that testify to the intermediary phases of the negotiation process (Internal European Commission working documents and press releases, Council register documents, amendments adopted by the European Parliament). By comparing the various documents we can see the extent to which the text was amended and what parts of the proposals were concerned by amendments.

Second, we employ a process-based reasoning. We detect a stronger exercise of the power of initiative of the European Commission in cases in which the objectives initially set in the proposal encounter some degree of resistance in the decision-making process, and are therefore debated for longer and kept in the pipelines of the decision-making process, with results that do not amount to simple and rapid adoptions with few amendments by the co-legislators. On the contrary, we interpret as weaker exercise of the power of initiative situations in which proposed texts are basically agreed to and maintained at the end of the legislative process in spite



of minor amendments (“adopted (with amendments)”). In fact, we assume that more far-reaching objectives are likely to encounter a certain degree of resistance by Member States – or by the European Parliament –, whereas minimum common denominator policies will be adopted more smoothly. In the case of proposals that are “withdrawn”, we make individual assessments in order to understand how these outcomes are to be related to the power of initiative. Indeed, withdrawal and rejections can sometimes be the sign that a proposal has been too far-reaching for the legislators, and withdrawal by the Commission can be seen as a way to safeguard its power of initiative.

Once we have performed this type of analysis in relation to each innovative proposal, we compare the four colleges with a view to providing an explanation of possible signs of variation in the exercise of the power of initiative by the European Commission.

We organize our analysis describing first the historical and institutional context in which the four colleges operated. Second, we single out three specific indicators of the exercise of the power of initiative: the main policy domain(s) targeted by the innovative proposals, the decision-making procedure selected for the new acts, and the length of the decision-making process.

## **2.2. The Historical and Institutional Context for the Action of the Four Colleges**

As a way to introduce the empirical part of the study, we briefly contextualize the phase of the European integration process characterizing the action of the four Commissions. Indeed, the four colleges have been operating in different historic and institutional contexts. Variations in the number of Member States of the Union, in the number and type of competences attributed to it, and changes in the rules for the functioning of the decision-making system determined, over the years, an evolving institutional framework for the four colleges. For instance, during the second Delors term and the first term of Barroso, the EU evolved dramatically in terms of competences and member states respectively. This evolution impacted on the context in which each college of Commissioners exercised the power to legislate during their mandate, and certainly also on the political priorities of the various colleges.

The Delors Commission – or, more precisely, the Delors Commissions given that the Frenchman Jacques Delors presided over the European Commission for three terms from 1985 to 1995 – deeply impacted upon the building and the functioning of the European Union and gave significant momentum to European integration.

Indeed, many of the most important events in the history of the Union took place during Jacques Delors' tenure: the signature and then the entry into force of the Single European Act in 1987 and the Maastricht Treaty in 1993, the enlargement to include Spain and Portugal in 1986, and the conclusion of the negotiations for the accession of Austria, Norway, Sweden and Finland in 1994.

The Delors colleges pursued two major political priorities. The first was the achievement of European Economic and Monetary Union, which set the path to the later adoption of the Euro. The second priority was the completion of the Internal Market by 1992, and its catalyst was the adoption of the White paper on *Completing the Internal Market* of 1985. The paper listed around 300 measures that were needed in order to eliminate physical, technical and fiscal barriers to intra-European exchanges of all kinds.

Luxembourger Jacques Santer was appointed in 1995 and was in charge until 1999 when, due to fraud allegations, the Commission resigned collectively. The college inherited the task of completing and implementing the Single Market program launched by Delors, as well as that of preparing the last phase of Monetary Union. The leitmotiv of the Santer Commission – stressed during the informal European Council held in Pörtlach in October 1998 – was “do less, but do it better”. The motto translated into the commitment to begin fewer new legislative initiatives but to engage more deeply in the attainment of key policy priorities.

The Santer college paid particular attention, *inter alia*, to setting up modern transport facilities, liberalizing energy and telecommunication markets, and fighting unemployment. In addition, it strongly supported the institutional innovations brought by the new Treaty negotiated and then adopted in Amsterdam during its term, backing the effort to bring people closer to the EU and to overturn the democratic deficit.

Just after the resignation of the Santer Commission, the Amsterdam Treaty entered into force, on 1 May 1999. The Amsterdam treaty made substantial changes to the decision-making system provided by the Maastricht Treaty, in particular, by granting more power to the European Parliament and conferring more competences to the EU.

In this new institutional framework, the former Italian Prime Minister Romano Prodi was appointed as president of the European Commission in 1999. As early as 2002, the college led by Prodi faced a tough agenda. The Euro was being implemented for the first time, a Convention on the Future of Europe was working to reshape the institutional architecture, and 15 new Member States were preparing to join the European Union. In addition to this already ambitious programme, the Commission had to engage in an extended administrative reform that was only completed in 2004 and in an effort to rationalize its legislative power. The latter initiative, known as “Better Regulation”, would progressively change the way in which the Commission exercised its power of initiative, generalising stakeholders’ consultation and impact assessment with subsidiarity checks for every proposal, and requiring a rationalization of existing legislation.

The Portuguese José Manuel Barroso, appointed in 2004, engaged more decidedly in the “Better Regulation” initiative mentioned above. From the previous Commission, Barroso’s team also inherited the task to approve some contentious pieces of legislations, namely the Services Directive (commonly known as Bolkestein Directive) and the REACH Regulation, finally adopted in 2006 after long and difficult negotiations between the Commission and the co-legislators. In the meanwhile, in fact, the EU was enlarged to include ten new Member States and, in 2007 also Romania and Bulgaria joined the EU.

### **2.3. Shifting Attention to New Policy Areas: the Domains Tackled by the Innovating Proposals**

The competences of the Commission evolved incredibly throughout the past twenty years. Accordingly, the different colleges prioritized a varying number of policy domains.

The Delors Commission adopted most of its 17 innovative proposals in the domain of internal market and freedom of movement (*see Annex 1*). Apart from these general “caps”, however, 6 out of 17 innovative proposals adopted in 1991 dealt with environment and were either based on article 130s TEC – a specific provision inserted in the Single Act in 1986, or on article 100a TEC – dealing generally with the harmonization of legislation for the attainment of a single market.<sup>14</sup> In fact, in these years environmental policy was still ancillary to the Internal Market and counted mainly insofar as it affected barriers to trade. Directive 92/14/EEC on the limitation of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1, Annex 16 of the Convention on International Civil Aviation, second edition (1988) was instead adopted on the basis of a special provision referring to the transport sector.

In the year of reference, the Delors college also paid particular attention to the area of telecommunications (three proposals), especially with the proposal then adopted as Directive 92/38/EEC concerning the standards for satellite broadcasting of television signals. The rest of the proposals put forward by the Commission dealt with financial services (Directive 92/121/EEC on monitoring and controlling large exposure of credit institutions), energy (Directive 92/75/EEC on the labelling and standard product information of the consumption of energy and other resources of household appliances), and social policy (see the package included in COM(1991)273 and Directive 96/71/EEC concerning the posting of workers in the framework of the provision of services).

In 1997 the Santer Commission adopted six proposals out of 17 in relation to transport and five on an internal market legal basis (*see Annex 2*). Among the latter some crossed also into other policy domains, like the environment, industrial policy and public health.

The college was particularly active concerning intellectual property rights putting forward three important proposals (among them, the one which turned into Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society). Another relevant domain was that of the freedom of

14. In the analysis of the Commission's activity in the four different years, we refer to the treaty articles that applied *at the time* of the proposal, using the numbering in force at that time. TEEC stands for “Treaty on the European Economic Community”.

movement for workers and social policy, where two proposals were aimed at the safeguard of the supplementary pension rights of employed and self-employed persons moving within the European Union (then Directive 98/49/EC) and the other implemented the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC (then Directive 97/81/EC). Three proposals concerned the environment.

The 14 innovative proposals adopted by the Prodi Commission are distributed evenly among more traditional and more recent policy portfolios (*see Annex 3*). Three have legal bases that concern the policy area of the internal market. Of these, one is concerned with company law (the Directive on takeover bids 2004/35/EC) and two – on computer-implemented inventions and on the reuse and exploitation of public sector documents – with a more recent sector of action, that of information society. Two proposals concern the domain of immigration policy and two that of justice. Among the latter, it is remarkable that one proposal – the Directive on compensation offered to crime victims 2004/80/EC – was not adopted on a legal basis pertaining to the domain of justice, but rather using article 308 TEC, which allows the Union to act to accomplish objectives within the scope of the treaties that do not have an explicit legal basis. Finally, three more proposals deal with energy and the environment (article 175 TEC), one with social policy (article 137.2 TEC) and a final one with public health (article 152 TEC). In comparison to the other colleges studied thus far, therefore, the new domains of justice and immigration – communitarized through the Amsterdam and Nice treaty – have a substantial incidence over the Commission's activity. The proposals are, however, mainly a consequence of the Council resolutions adopted at Tampere in 1999.

The first salient characteristic of the 2007 proposals adopted by the college of José Manuel Barroso is that the predominant domain of innovative legislative activism is that of immigration, with three proposals out of seven (*see Annex 4*). A second salient characteristic is that two out of seven proposals aim to provide common standards in the domain of criminal law, even though one proposal is related to immigration and a second one to the environment. The last set of proposals refers to the area of internal market and regulates competition for some goods previously exempted from internal market regulation (e.g. defence products). Among these, the Barroso Commission goes back to airport services after a 1997 proposal by the Santer Commission had to be withdrawn because of gridlock in the Council.

## 2.4. Expanding Codecision. Evolutions in Term of Procedure

A second relevant characteristic of the innovating proposals put forward by the four colleges is the type of procedure according to which they were negotiated with the co-legislators. As we know, possibilities in terms of procedure evolved over time, and the four colleges could seize them to a different extent.

Ten out of the 17 proposals put forward by the Commission in 1991 were negotiated on the basis of the cooperation procedure, three in consultation, and one according to the procedure laid down in article 84.2 TEEC, without the consultation of the European Parliament (*see Annex 1*). Only one proposal was adopted by codecision given the change of legal basis after the entry into force of the Maastricht Treaty (article 189B TEC) during the process of approval, Directive 96/71/EC concerning the posting workers in the framework of the provisions of services. Three other directives that were switched to codecision were withdrawn. In fact, the first cases of application of the codecision procedure caused conflicts among institutions. The Council changed the legal basis proposed by the Commission in two circumstances: the Proposal on the landfill of waste and the Proposal on the statute for a European cooperative, so that finally the consultation and the cooperation procedures were applied respectively, even though the first proposal had to be withdrawn. A similar situation emerged in the case of the Proposal for a directive relating to investment funds held by institutions for retirement provision, which was first negotiated through codecision then withdrawn because of a situation of gridlock within the Council.

The package of six proposals adopted by the Commission on the statute for different types of association (COM (1991) 273 1 to 6) deserves particular mention: out of the six proposals – three regulations and three directives regulating in pairs the statute of the European association, cooperative society and mutual society – the four proposals that were changed to the codecision procedure were withdrawn. The Council finally adopted only two measures of this package: Regulation (EC) 1435/2003 and Directive 2003/72/EC on the European cooperative society, in both cases after having agreed to use article 308 TEC, which provides for Council unanimity and the consultation of the European Parliament.

The Santer College designed the most proposals (nine out of 17 proposals) to be negotiated using codecision (*see Annex 2*). Three of these proposals originally had a legal basis providing for the use of the cooperation procedure, and passed to the codecision only after the entry into force of the Amsterdam Treaty (1 May 1999). The analysis of these proposals shows again the difficulties that the co-legislators experienced during the first period of application of the new codecision procedure that allowed for the agreements at first reading: three of these proposals were adopted at the second reading, two at the third reading, and four were withdrawn by the Commission.

It is worth noting, moreover, that the three proposals negotiated in cooperation (Directive 1999/37/EC on registration documents for motor vehicles and their trailers, Directive 1999/31/EC on the landfill of waste and Directive 1999/36/EC on transportable pressure equipment) were adopted by the Council just few days before the entry into force of the Amsterdam Treaty so as to avoid the application of codecision and the negotiation with the European Parliament.

The special procedure included in article 4(2) of the Agreement on social policy (annexed to the Maastricht Treaty) provided the basis for the “Proposal concerning the framework agreement on part-time work”, according to which the social partners negotiated a text that was translated into a proposal of the Commission to be adopted unanimously by the Council without the consultation of the European Parliament. Given the prior negotiation between the social partners, thus, it should be acknowledged that this act cannot be fully inscribed into the conceptual framework of the *autonomous* power of initiative of the Commission outlined in the introduction (i.e. the power to determine the contents of the proposals).

In spite of the fact that 2002 was the first year in which the reform (and extension) of the codecision procedure decided at Amsterdam in 1997 could be assessed within the parameters of this study, in that year five out of 14 proposals for directives (36%) proposed by the Prodi Commission were still negotiated in consultation (*see Annex 3*). The five dossiers were the Proposal for a Council Directive on the control of high activity sealed radioactive sources, adopted on the basis of the Euratom treaty, in addition to those related to the domains of immigration and justice. The latter, in fact, fell within the transitional period defined by article 67

TEC according to which measures concerning immigration and justice were to be adopted in consultation and by unanimity until a review of the procedure would be decided in 2004.<sup>15</sup>

The Directive on temporary agency work (2004/108/EC) was negotiated with the Council acting unanimously given the rules that applied in the domain of social policy (article 137 TEC). Today, with the Treaty of Lisbon in force, all these proposals would be subject to codecision.

In 2007, only two out of the seven proposals adopted by the Barroso college were not negotiated using codecision (*see Annex 4*). One of these proposals – the proposal for the “Blue Card” permit of stay for highly qualified immigrants – was substantially amended during the decision-making process, mainly in view of the main objective of the Commission’s proposal, i.e. the establishment of a single European permit that would *not* complement competing national procedures, as in the final act adopted by the Council. The second proposal negotiated through consultation, always in the domain of immigration, has not yet been adopted, due to considerable opposition to the general principle of a single European permit for labour migrants and equal treatment provisions as proposed by the Commission within the Council. The proposal is nowadays kept alive by the procedural transformation introduced by Lisbon, which changed it to codecision in 2009. However, there has been proof of significant gridlock in the Council and its possible outcome is highly uncertain.

## 2.5. The Length of the Decision-Making Process

Negotiation among institutions can be more or less time consuming and, as we already noticed, a long negotiation may well be the indicator of the fact that the goals set out in a proposal are considered too ambitious by the co-legislators.

The decision-making process for the 17 innovative proposals of Delors II lasted on average more than three years (*see Annex 1*). The negotiation process among

15. Since the 1 January 2005, visas, asylum, immigration and other policies associated with the free movement of persons were transferred to the codecision procedure by Council Decision 2004/927/EC.



the institutions, especially between the Commission and the Council, was always long and characterized by in-depth discussion within the latter. By contrast, two proposals were adopted quite rapidly: the proposal on “the broadcasting of television signals” (ten months) and the one on “the limitation on the operation of certain categories of aeroplanes” (Directive 92/14/EEC) (11 months).

Directive 2003/72/EC supplementing the statute for a European cooperative society deserves particular mention also because of the length of the process of approval: while the proposal was adopted by the Commission in December 1991, the Council adopted the directive only in July 2003, after 11 years and 7 months. In general, the cases of substantial amendment and withdrawal are, as expected, those that took more time to decide.

Of the directives adopted in 1997 by the Santer Commission, only one was approved within a short timeframe: the Directive on part-time work, which, as we have seen, was based on a prior agreement among social partners (*see Annex 2*). The proposal for Directive 2003/96/EC on the restructuring of the Community framework for the taxation of energy products, instead, was only agreed after 11 years and seven months of negotiation. The measure was long debated among Member States, involving six discussions at the Council between December 2001 and December 2002. It was finally adopted in 2003 using the consultation procedure and with unanimity in the Council, but 12 statements were attached to the verbatim of the Council session. The proposals negotiated from 1997 onwards took on average three years to be adopted and six years to be withdrawn by subsequent colleges. As expected, the two denaturalised proposals were negotiated over longer time periods, on average for 53 months.

In 2002, with the Prodi Commission, the average length of the negotiation process for the innovative directives was two and a half years (*see Annex 3*). Only one directive was adopted upon first reading within 17 months, namely Directive 2004/25/EC on takeover bids. However, in terms of adherence to the initial proposal, the negotiation process was unsuccessful. The Council and European Parliament agreed to make optional two core articles of the Commission proposal ending up with a common position that denaturalised the proposal and had to be adopted using unanimity against the view of Commissioner Bolkestein. In fact, the

Commissioner had suggested withdrawing the proposal, but the college preferred a directive denaturalised rather than no directive at all. We identified substantial amendments also in a second case of a directive adopted rapidly, but in consultation: Council Directive 2004/80/EC on compensation to crime victims.

The observation should not, however, be generalised: two other directives adopted in the space of 16 months (in the domain of transports and internal market) were not substantially amended. Among most of the other directives in codecision that were debated until the second reading, Directive 2008/108/EC on temporary agency work should certainly be mentioned not only for its exceptionally long negotiation (seven years) but also for its extraordinary long history. A first proposal by the Commission to regulate this domain was submitted in the 1980s, but no agreement could be built up on the topic until 2008, even after the Commission supported negotiation between social partners. A parallel proposal – on part-time work – was adopted in 1997 by the Santer Commission and then rapidly agreed by the Council. If the proposal of 2002 on temporary agency work was not strongly amended at the end of the process this was probably due to the many compromises and exceptions that the Prodi Commission had already inserted into its initial text, which draw upon the issue of the negotiations held by the social partners in 1999-2001.

Of the seven proposals adopted under Barroso, more than a half have been adopted with a fast track procedure that reduced the decision-making time to less than 18 months (*see Annex 4*). This is consistent with the findings of research focused on the incidence of early agreements.<sup>16</sup> Among these proposals, not all are the result of trialogues (informal meetings between the three EU institutions) because also one procedure in consultation (the “Blue card”) was adopted in rapid time. Of the items in codecision, however, only the Directive on the airport services reached the second reading, proving that even a proposal targeting a subject that had been already debated at length could encounter difficulties.

The proposal on a single application procedure for a single work-permit for third country nationals has been in the pipelines for more than three years, in view of a Council compromise regarded as unacceptable by the Commission.

16. Olivier Costa, Renaud Dehousse and Aneta Trakalová, “Co-decision and ‘early agreements’: an improvement or a subversion of the legislative procedure?”, Studies and Research, Paris: *Notre Europe*, no. 84, 2011.

## 2.6. The Outcome of the Decision-Making Process

A last indicator that is necessary to take into account to assess variation in the power of initiative of the European Commission is obviously the outcome of the decision-making process.

The analysis of the outcome of the proposals for directives put forward in 1991 shows a slight majority of cases (nine out of 17) in which the proposals of the Delors college were adopted with amendments but maintained the core structure and content of the original text (*see Annex 1*).

Only three directives were adopted, implying significant modification of the original text proposed by the European Commission, two in the domain of energy/environment, and one on social policy. In the case of the Energy Labelling Directive (92/75/EEC), for example, the Council softened the regime envisaged in the proposal of the Commission so as to make implementation smoother for the Member States.

In five cases, finally, the Commission withdrew its proposals. It is interesting to note in this context that most of these measures were to be adopted by codecision and pertained to the domain of environment or social policy. In all cases the failure of the proposal was determined by the inability of the Council to find a compromise among the Member States. Thus, the withdrawals are to be considered political in nature (*see Box no. 3 below*).

The Proposal on minimum standards for the keeping of animals in zoos is noteworthy because of its cumbersome history. The Commission withdrew it in 1995 after the European Council of Edinburgh decided that some proposals were in opposition to the principle of subsidiarity. In the same year the Commission transformed the proposal in a recommendation. However, the Council, after an in-depth discussion among Member States, and agreeing with the amendments proposed by the European Parliament, transformed it again into a directive and finally adopted the measure through consultation, with the abstention of Germany, in 1999.

The analysis of the innovative proposals adopted by the Santer college in 1997 reveals that out of 15 directives only five were finally adopted with minor amendments (see *Annex 2*). The explanation for this result may well be based on the fact that the Commission drafted some of these texts by taking into account of the limits imposed by the national regulatory framework of the different Member States already at the moment of the proposal. Indeed, some of these proposals are very simply structured. Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access is a good example: it only has nine essential articles and, had it then been possible, it would have probably been adopted upon first reading.

Two thirds of the proposals by the Santer college, however, encountered hardship during the negotiation process: five (a third of all innovative proposals) were withdrawn, two denaturalised, and three substantially amended. These cases pertained to different domains: two proposals on transport policy, two on environment, one on taxation.

Among these, it is worthwhile highlighting that we find once again a proposal for a Directive on the landfill of waste. In fact, upon the Council's express request, the Commission had to propose a new text after the failure of the decision-making process related to its original proposal of 1991 (COM(1991)102). Once again, and even though the Commission had taken into account some of the problems emerging from the previous text, the proposal had to undergo significant changes in order to gain the Council's agreement.

Another interesting case concerned the proposal which aimed to "harmonize at Community level the effective protection afforded to technical inventions by national laws and in so doing to ensure the smooth functioning of the single market" (COM(1997)691). The adoption of the Directive would have obliged those Member States which at that time had no system of protection of inventions by the utility model (United Kingdom, Luxembourg, Sweden) to adopt this form of protection, but the majority of the Member States were opposed to such a measure and blocked the proposal.

All the other withdrawals pertained to proposals in the area of air transport, and became gridlocked at the level of the Council of Ministers. The Commission went back to these dossiers years later, adopting new, and possibly less far-reaching, proposals. In both cases (Directive 2004/36/EC proposed by the Prodi Commission in 2002 and Directive 2009/12/EC proposed by the Barroso I college in 2007) the legislative measures were adopted.

In the case of the third year of activity of the Prodi commission, only half of the innovative proposals put forward by the Commission were adopted with minor amendments (*see Annex 3*). The other half produced different types of outcomes. Following our analysis, four directives have been substantially amended: the two directives pertaining to the immigration domain, one directive in the field of justice – on the compensation of crime victims – and one in the field of environment, Directive 2004/35/EC on environmental liability. As mentioned, the Directive on takeover bids was adopted in opposition to the Commission's view and another proposal in the field of the internal market, on the patentability of computer-implemented innovation, was rejected in second reading by the European Parliament. This outcome, which is anything but common in the decision-making process, signalled a major setback for both the European Commission and the Council, which had agreed to a common position, and can be considered as an undeniable marker of the power acquired by the European Parliament during the past decades.

Last, the proposal on the control of high activity sealed radioactive sources (COM(2002)130) based on the EURATOM treaty was withdrawn in 2009 as obsolete in the framework of the periodic review by the Commission. It is therefore not to be considered as a case of political withdrawal.

The hardship faced by a significant number of the proposals for directives launched by the Prodi Commission is not strongly correlated with newer policy domains, a specific legislative procedure, an inter-institutional alliance rather than another, or with the length of the decision-making process. For at least a part of the directives that were denaturalised, strongly amended or rejected, certain far-reaching objectives set forth in the proposals (adequate compensation to victims of crimes, subsidiary state liability in case of environmental damages, decided approximation

of rules on takeover bids, harmonization of patent law on computer inventions, and enhanced protection for victims of trafficking) were simply watered down or reduced in scope *as such*.

Contrary to the findings concerning the other colleges, in the year 2007 the proposals that have been either withdrawn or substantially amended by the Barroso Commission, or are stuck in the pipelines of the decision-making process (four of seven), implying a rejection of the objectives initially pursued by the Commission through its innovative proposals, are a slight minority (*see Annex 4*). Most proposals followed a more straightforward path and were finally adopted with non-substantial amendments, in some cases because some of them already translated a position of compromise or common minimum standards. The Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals (COM(2007)249), for instance, was adopted with a change in its *intitulé* that highlighted this reduction in scope (Directive 2009/52/EC... *providing for minimum standards* on sanctions and measures against employers of illegally staying third-country nationals). Even though or perhaps precisely because the Commission also attempted to regulate very innovative policy domains – such as economic migration and criminal law of the environment – it did not achieve completely its initial policy goals in these fields.



## 3. Evolutions in the Exercise of the Power of Initiative

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### 3.1. A Comparative Overview of the Four Colleges

Juxtaposing the information collected so far on the proposals adopted by the four colleges offers an interesting synthetic overview of the evolution of the exercise of the power of initiative by the Commission.

First, we note a reduction in the share of innovative directives proposed in the most recent years, a phenomenon that we explain with reference to the impact of the Better Regulation initiative and the exhaustion of virgin policy domains. Second, our data testify to the progressive expansion of the codecision procedure to the vast majority of the acts proposed by the Commission. Of course, we could not evaluate the impact of the Lisbon Treaty, but the 2007 data include the significant extensions already implemented by the last treaty rounds before Lisbon. Third, we remark on a notable variation in the principal areas of policy covered by the innovative proposals of the Commission, a variation that is, however, in line with successive treaty revisions and policy objectives adopted, for the first colleges, by the Commission, and, for the third and fourth colleges, mainly suggested by Council conclusions. It is possible to notice, for instance, the expected incidence of the



internal market area for the Delors I cabinet and that of the transports domain for the Santer college, which had to implement the new provisions of the Maastricht Treaty and which championed the Trans-European networks (TENs) agenda. In 2007, instead, we note a predominance of the immigration sector that testifies to an agenda very much shaped by the Council's Tampere conclusions (1999) and by the Hague Programme (2004).

As regards the results of the decision-making process, starting from 1997 we witness an increase in the number of proposals that are tacitly agreed to by the Commission and the co-legislator, in line with a progressive reduction in the time needed to debate and adopt these proposals. Data on the proposals that were either substantially amended, denaturalised, rejected or withdrawn show a complementary trend, testifying to less conflict over the Commission's innovative proposals in the last years. Concerning withdrawals, we excluded from the table a technical withdrawal concerning a proposal adopted by the Prodi commission. The last Barroso I college did not (as yet) withdraw any innovative proposals, but one of those that were analysed in our sample is still in the decision-making pipeline. This explains why the sums of the last two "result" categories for the Prodi and Barroso I Commission do not amount to 100%.

**TABLE 2 – THE EXERCISE OF THE POWER OF LEGISLATIVE INITIATIVE BY FOUR COMMISSIONS**

| <b>RESULTS</b>    | <b>INNOVATING DIRECTIVES ON ALL DIRECTIVES PROPOSED</b> | <b>INNOVATING DIRECTIVES IN CODECISION</b> | <b>PRINCIPAL POLICY AREA OF INNOVATING PROPOSALS</b> | <b>SECONDARY POLICY AREA</b> | <b>AVERAGE TIME FOR ADOPTING PROPOSALS (MONTHS)</b> | <b>INNOVATING DIRECTIVES “ADOPTED WITH AMENDMENTS”</b> | <b>INNOVATING DIRECTIVES SUBSTANTIALLY AMENDED, DENATURISED, REJECTED, WITHDRAWN</b> |
|-------------------|---|--|--|------------------------------|---|--|--|
| DELORS II<br>1991 | 27%   | 24%  | INTERNAL MARKET<br>53%                               | ENVIRONMENT<br>35%           | 37  | 53%  | 47%  |
| SANTER<br>1997    | 28%   | 53%  | TRANSPORTS<br>42%                                    | INTERNAL MARKET<br>33%       | 41  | 33%  | 67%  |
| PRODI<br>2002     | 26%   | 62%  | INTERNAL MARKET<br>21%                               | ENVIRONMENT<br>21%           | 31  | 50%  | 43%  |
| BARROSO I<br>2007 | 13%   | 71%  | IMMIGRATION<br>43%                                   | INTERNAL MARKET<br>28%       | 22  | 58%  | 28%  |
| AVERAGE           | 24%   | 53%  | /  | /                            | 33  | 42%  | 46%  |

**SOURCE: POWER OF INITIATIVE (POI) DATABASE 2011.**

## 3.2. Explaining Change: a Procedural View

Our data on the selection of innovative directives proposed by four colleges of Commissioners over the last 20 years (1991-2011) suggest that the treaty amendments concerning the legislative decision-making procedure that were introduced starting from 1991 have had a direct effect on the power of legislative initiative by the Commission and on how the Commission exercises that power.

When Member States decided at Maastricht to amend the founding treaties and to insert the codecision procedure, their main purpose was to reply to the longstanding debate over the democratic deficit in the European Union<sup>17</sup>. At that time, in fact, the hiatus between an increasing number of competences that the Community was going to acquire, and the perceived lack of legitimacy of its main institutions generated a climate of discontent against the “hyper-activism” of the Community, in general, and of the Commission, in particular. The codecision procedure was designed and advocated, also by the college of Commissioners of the time (Delors II), in order to fill this gap.

After codecision was inserted into the TEC, the European Parliament gave proof from the outset of its determination to actively play its role of co-legislator: since then, the cases of complete failure of the legislative process in codecision are mainly caused by the formal rejection by the European Parliament (*see Box no. 2*). After an initial period of shared mistrust – due to the institutions’ different attitudes towards negotiations – the European Parliament and the Council began cooperating in an efficient but once again somewhat opaque way, within the so-called “trialogue system” in which the representatives of the two co-legislators, with the mediation of the Commission, directly negotiate the content of the legislative acts. The trialogues (or tripartites) are in fact informal meetings that take place among a small number of representatives of the European Parliament,

17. See, among others, Philippe Schmitter, *How to Democratize the European Union... and Why Bother?* Lanham, Md: Rowman & Littlefield, 2000; Andrew Moravcsik, “In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union”, *Journal of Common Market Studies*, Vol. 40, Issue 4, 2002, pp. 603-624; Paul Craig, “Democracy and Rulemaking within the European Commission: an Empirical and Normative Assessment”, in P. Craig and C. Harlow (eds), *Lawmaking in the European Union*, London- Boston: Kluwer Law International, 1998, p. 33 ss.; Jean-Claude Piris, “After Maastricht, are the Community Institutions more efficacious, more democratic and more transparent?”, *European Law Review*, 19(5), 1994, pp. 449-487; George Ress, “Democratic Decision-Making in the European Union and the Role of the European Parliament”, in D. Curtin & T. Heukels, “*Institutional Dynamics of European Integration*”, Essays in honour of Schermers Henry. G., Vol. II, Dordrecht: MartinusNijhoff Publishers, 1994, p. 153 ss.

Council and Commission with the aim of reaching an agreement on a legislative proposal. Once a text is agreed, it is forwarded to the two co-legislators for formal adoption. The practice of having informal tripartite negotiations made its appearance in 1994-1995, following an attempt by the Council to adopt during its third reading the (then rejected) Proposal for a Directive on voice telephony. Originally, these meetings took place after the second reading, in order to facilitate the task of the Conciliation Committee, but they soon became standard practice during all the stages of codecision, in particular after the possibility of first reading agreements was sanctioned by the Treaty of Amsterdam.

As a result, nowadays the length of the decision-making process for the acts negotiated in codecision has decreased, cases of failure are rare and, in general, commentators tend to argue that the introduction of the codecision procedure in the European Commission decision-making has been a “success” in terms of ensuring the adoption of Commission’s proposals.

At the same time, however, the internal equilibrium of the institutional triangle has significantly changed. The power of initiative was perhaps the main loser in this procedural cost-effectiveness balancing game.

**Box no. 2**  
**CASES OF FAILURE OF THE CODECISION PROCEDURE**  
**ALL TYPES OF PROPOSALS, 1991 TO 2009**

| YEAR | PROPOSAL No   | PROPOSAL TITLE   | COLLEGE   | CAUSE  |
|------|---------------|--|-----------|--|
| 1994 | COM(1992)247  | PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON THE APPLICATION OF OPEN NETWORK PROVISION (ONP) TO VOICE TELEPHONY   | DELORS II | REJECTION BY THE EP* OF THE COUNCIL COMMON POSITION AT THE END OF THE CONCILIATION PROCEDURE |
| 1995 | COM(1988) 496 | PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON THE LEGAL PROTECTION OF BIOTECHNOLOGICAL INVENTIONS  | DELORS I  | REJECTION BY THE EP OF THE JOINT TEXT AT THIRD READING                                       |
| 2001 | COM(1995) 655 | PROPOSAL FOR A 13TH EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON COMPANY LAW CONCERNING TAKEOVER BIDS  | SANTER    | REJECTION BY THE EP OF THE JOINT TEXT AT THIRD READING                                       |
| 1998 | COM(1995) 360 | PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE AMENDING COUNCIL DIRECTIVE 93/6/EEC OF 15 MARCH 1993 ON THE CAPITAL ADEQUACY OF INVESTMENT FIRMS AND CREDIT INSTITUTIONS AND COUNCIL DIRECTIVE 93/22/EEC OF MAY 1993 ON INVESTMENT SERVICES IN THE SECURITIES FIELD | SANTER    | NO AGREEMENT REACHED BY THE EP AND THE COUNCIL IN THE CONCILIATION COMMITTEE                 |
| 2003 | COM(2001) 35  | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL ON MARKET ACCESS TO PORT SERVICES  | PRODI     | REJECTION BY THE EP OF THE JOINT TEXT AT THIRD READING                                       |
| 2005 | COM(2002) 92  | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL ON THE PATENTABILITY OF COMPUTER-IMPLEMENTED INVENTIONS  | PRODI     | REJECTION BY THE EP AT SECOND READING  |
| 2009 | COM(2004)607  | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL AMENDING DIRECTIVE 2003/88/EC CONCERNING CERTAIN ASPECTS OF THE ORGANISATION OF WORKING TIME   | PRODI     | NO AGREEMENT REACHED BY THE EP AND THE COUNCIL IN THE CONCILIATION COMMITTEE                 |

\*EP: EUROPEAN PARLIAMENT.

**SOURCE: DANIELA CORONA, *IL CONSIGLIO DEI MINISTRI NELLA PROCEDURA DI CODECISIONE: PROBLEMATICHE GIURIDICHE E PRASSI ISTITUZIONALE*, PHDTHESIS, DEPARTMENT OF LAW, EUROPEAN UNIVERSITY INSTITUTE, 2011.**

### 3.3. Effects on the Exercise of the Power of Legislative Initiative

As we try to unpack the effects of this systemic change on the exercise of the power of initiative by the Commission, the first element to be looked at is the monopoly of the right of initiative. Over the years, the power to co-legislate, shared by the European Parliament and the Council, and the related practice involving talks between the representatives of the co-legislators, has *de facto* impacted upon the monopoly of the legislative initiative of the Commission. This effect is well summarized by a Joint Declaration on practical arrangements for the codecision procedure, in which one of the main tasks of the Commission is now described as a mandate to “[...] *facilitate such contacts and [...] exercise its right of initiative in a constructive manner with a view to reconciling the positions of the European Parliament and the Council.*”<sup>18</sup>

Today, the Commission plays a new and distinctive role in the negotiations between the European Parliament and the Council – that of “mediator” or “honest broker” – as provided for by the treaties, and not only during the third reading. Thus, it often happens that both European Parliament and Council ask the European Commission to present proposals or amend proposals on specific dates, or even suggesting the content of such proposals. These types of requests are usually incorporated into the texts of related legislative measures or contained in separate statements annexed to them. The practice is especially used in order to overcome a situation of gridlock in the negotiations and reach the agreement on a legislative proposal. In general, Commissioners and Commission’s officials fiercely oppose such practices because it adversely impacts the autonomous exercise of the power of initiative; thus, they care about limiting the scope of such requests. In spite of this, however, the European Commission has increasingly taken over the responsibility to present proposals as “indicated” by the co-legislators.

18. See points 13 and 22 of the Joint Declaration on practical arrangements for the codecision procedure, in OJ C 145 of 30.06.2007, p. 5.

### 3.4. The Power to Amend

Although the power to amend its own proposals at any time was always enshrined in the treaties (see article 293 TFEU), up until the Single European Act of 1985 the agreement generally known as the “Luxembourg compromise” dictated that the Council of Ministers was to vote by unanimity on each proposal of the Commission.

For a long time, therefore, this practice deprived the European Commission of the power to amend its own text in order to gain a majority of Member States’ approval. Although the Luxembourg compromise was *de facto* abandoned before the period covered by this study, one reason to mention it here is that it greatly enhanced the President of the Council of Ministers as a compromise broker, a role that almost resulted in the presidency overtaking the Commission in the task of amending proposals.

At present, the “Presidency compromises” are amongst the main practical steps in the functioning of the codecision procedure. They are all the more essential in the framework of the informal negotiations between the representatives of the European Parliament and the Council.

As a consequence, even though the Commission still exercises its power to amend its proposals during the first and second reading of the codecision, it generally bases its texts on the compromise drafted by the Presidency of the Council. Over the years, the European Commission has only very rarely objected to an agreement reached between the two co-legislators thanks to a Presidency compromise.

In addition to this informal limit to the European Commission’s power of initiative, when an agreement between the co-legislators occurs at the third reading of the codecision procedure – i.e. within the Conciliation committee – the Commission can no longer modify its proposal and influence the voting rule in the Council. Rather, the treaty specifically calls on the Commission to “*take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council*” (see article 294 TFEU).

To summarize, the Commission's room for manoeuvre was significantly reduced by the practices outlined above, with the aim of facilitating the attainment of agreement between the two equal co-legislators.

### **3.5. The Power to Withdraw**

Our study has presented several cases in which the European Commission withdrew its proposals: five proposals adopted by the Delors Commission; five adopted by the Santer Commission; and one by the Prodi Commission.

In the majority of the cases pertaining to our sample, however, we do not talk about an explicit “political” use of the power to withdraw: the proposals were not withdrawn in order to save them from imminent denaturalisation. Rather, most of the proposals in our sample were withdrawn because they had been stuck in the decision-making process for a long time, without any prospect of being adopted.

This happened, in some cases, because the Council could not reach a common position on a proposal, or, in some other cases, because the decision-making process became gridlocked already at the first reading, where a time limit for reaction is not explicitly set by the Treaty. In 90% of the cases covered by our study – all but the 1991 Proposal on pension funds – therefore, the withdrawal by the Commission was not “political”, according to the meaning explained in Section I. These withdrawals are, however, counted as relevant to explain change in the exercise of the power of initiative because they are a symptom of difficulties in the inter-institutional dialogue concerning a Commission's proposal and they are different from purely technical withdrawals.

The last case in which the European Commission exercised its power to withdraw a proposal for political reasons – in order to prevent the denaturalisation of a text – dates back to 1994. The college(s) that exercised the power to withdraw politically most frequently were those led by Jacques Delors.

This data on the withdrawals is particularly important in light of the Commission's practice of seeking information on the respective political positions of the two co-



legislators with reference to a proposal before adopting it formally. Since the introduction of codecision, the European Commission rarely objects to the contents of amendments that are agreed by both European Parliament and Council. In cases where the Commission is opposed to the agreement, it increasingly records it in official statements, as we have seen in the case of the Directive on takeover bids. In some other cases, this type of investigations leads the Commission to take a consensual approach, and sometimes a common denominator approach from the very beginning of the negotiation process, in order to allow for a smooth adoption with few amendments.

**BOX NO. 3**  
**CASES OF POLITICAL WITHDRAWAL BY THE EUROPEAN COMMISSION**

| YEAR | PROPOSAL No  | PROPOSAL TITLE  | COMMISSION PROPOSING               |
|------|--------------|---|------------------------------------|
| 1977 | COM(1976)452 | COMMUNICATION FROM THE COMMISSION TO THE COUNCIL: 3 YEAR INDICATIVE FOOD AID PROGRAMME, 1977-1979   | ORTOLI                             |
| 1986 | COM(1983)166 | PROPOSAL FOR A SEVENTH COUNCIL DIRECTIVE AMENDING DIRECTIVE 69/169/EEC ON THE HARMONIZATION OF PROVISIONS LAID DOWN BY LAW, REGULATION OR ADMINISTRATIVE ACTIONS RELATING TO EXEMPTION FROM TURNOVER TAX AND EXCISE DUTY ON IMPORTS IN INTERNATIONAL TRAVEL | THORN<br>(WITHDRAWN BY DELORS I)   |
| 1986 | COM(1985)756 | PROPOSAL FOR A COUNCIL DECISION ADOPTING THE EUROPEAN COMMUNITY ACTION SCHEME FOR THE MOBILITY OF UNIVERSITY STUDENTS (ERASMUS)   | DELORS I                           |
| 1989 | COM(1979)215 | PROPOSAL FOR A COUNCIL DIRECTIVE ON A RIGHT OF RESIDENCE FOR NATIONALS OF MEMBER STATES IN THE TERRITORY OF ANOTHER MEMBER STATES   | JENKINS<br>(WITHDRAWN BY DELORS I) |
| 1989 | COM(1988)424 | PROPOSAL FOR A COUNCIL DECISION ADOPTING A SPECIFIC RESEARCH PROGRAMME IN THE FIELD OF HEALTH – PREDICTIVE MEDICINE – HUMAN GENOME ANALYSIS (1989/1991)   | DELORS I                           |
| 1994 | COM(1991)301 | PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE RELATING TO THE FREEDOM OF MANAGEMENT AND INVESTMENT OF FUNDS HELD BY INSTITUTIONS FOR RETIREMENT PROVISIONS   | DELORS II                          |

**SOURCE: INTERNAL NOTE BY THE SECRETARIAT GENERAL OF THE EUROPEAN COMMISSION, 30 APRIL 2001 (ON FILE WITH THE AUTHORS).**

## Conclusion

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**O**ur research has focused on directives that represent a small portion of the entire legislative activity of the EU. A generalization of our findings, thus, must be accompanied by the necessary words of caution. This notwithstanding, our findings in terms of evolution of the exercise of the power of initiative – i.e. the monopoly of the right to initiate proposals, the power to amend proposals, and to withdraw them – are consistent with what was underlined by the second paper on codecision of *Notre Europe* series.<sup>19</sup>

While the right of the Commission to initiate legislation has not formally changed tremendously in the process of European integration (exceptions to it are still minor) and, on the contrary, we can say that it went expanding alongside with the extension of the Union's competences, we cannot reach the same conclusion regarding its practical exercise. The Commission's power to modify or withdraw legislative proposals has indeed been progressively eroded by the contemporary expansion and normalization of codecision – standing out in our study as a main explanatory variable for the variation in the number, type and results of the proposals analysed in our sample.

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19. Costa *et al.* (cit.)

The expansion in the outreach of the codecision procedure in terms of policy areas not only had a direct effect on the overall decision-making in terms of its legitimacy – an equal role for the European Parliament in all policy domains, and its effectiveness. The successive reforms affecting the codecision procedure directly impacted also on the exercise of the power of initiative by the European Commission. Nowadays, the practice of direct negotiations between the European Parliament and the Council since the first reading has certainly worked to the detriment of the capacity of the European Commission to modify or withdraw its proposals. As shown in the second paper on codecision of the *Notre Europe* series, in the last years around 72% of legislative acts are adopted at first reading.<sup>20</sup> This is due to the fact that the European Commission is more and more politically engaged, at this earlier stage, to exercise its role of “honest broker” which was indeed formally provided by the Treaty, but limitedly to the conciliation stage of the procedure (third reading).

Moreover, our data support the view that the new constraints of the codecision procedure may have an impact also in terms of substance. By affecting the three main components of what we have defined as the power of initiative of the European Commission, they weaken its autonomous exercise on the part of the Commission. Thus, the Commission will increasingly refrain from setting contentious objectives that are likely to be opposed by the co-legislators and possibly hijacked by them.

Beyond what is shown by our analysis, a second factor certainly needs to be cited when talking about the recent evolution, and confirmed erosion, of the power of initiative of the Commission. Whereas our data do not allow to empirically demonstrate this influence, since the end of 1980s the so-called “conclusions” of the European Council have started containing an increasing number of general political orientations as well as more detailed requests to the European Commission to translate such orientations into legislative proposals. Even though the Treaty does not expressly provide for such “mandates”, the Commission has increasingly considered itself politically committed to following up the requests of the European Council. Indeed, the president of the Commission is also a member of the European Council and, as such, he participates in the drafting of its conclusions. At the end of the nineties, an internal study by the European Commission already showed that the “mandates” to the European

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20. *Ibidem*, p. 38.

Commission numbered between five and ten requests at each session of the European Council. Further, the Council may request the Commission “to submit to it any appropriate proposals”. And according to current article 241 of TFEU, if the Commission does not submit a proposal, it shall inform the Council of the reasons. Already in the 1990s, beyond the “mandates” of the European Council, the different configurations of the Council of Ministers added around thirty resolutions per semester, which were likely to include more of these informal “mandates”.<sup>21</sup> Such requests to come up with specific proposals operate at a level that could not be caught directly through our analysis. The data collected through this study, however, will allow future research to compare the “mandates” formulated by the various Council formations to the actual innovative proposals adopted in the years that have made the object of our study.

Moreover, since the Treaty of Lisbon established a permanent president of the European Council, the Council started issuing political mandates also for its president, e.g. in matters of economic governance. This most recent development further limits the possibility of the Commission to develop proposals that would differ from those of the president of the European Council.

To conclude, the increasing importance of the codecision procedure and the political influence of the European Council, have undoubtedly pushed the Commission’s main role more and more from that of a powerful initiator to that of an “honest broker”, on the one hand, and from that of an autonomous initiator to that of a reactive initiator, and on the other.

While identifying this clear trend, and its determinants, we do not imply that other factors, linked to the personality of the single commissioners, the policy domain of single proposals, changing majorities in the European Parliament and in the Council of Ministers, timing and salience of the proposals, had no influence on the exercise of the power of initiative. Even though the power of initiative may provide the Commission with less freedom than between 1966 and the progressive affirmation of codecision as the ordinary legislative procedure, there may still be room for a bolder use of it in the framework of the Community Method as, formally, it has not been eroded to a significant extent.

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21. Internal note by the Secretariat General of the European Commission (on file with the authors).

## Annex 1 – Innovative proposals adopted in 1991: Negotiation Process and Outcome

| REFERENCE    | TITLE   | DOMAIN (TEEC)   | PROCEDURE   | READING AT WHICH DECISION-MAKING ENDS | NEGOTIATION LENGTH IN MONTHS | FINAL ACT            | RESULT                    |
|--------------|---|---|-------------|---------------------------------------|------------------------------|----------------------|---------------------------|
| COM(1991)358 | PROPOSAL FOR A COUNCIL DIRECTIVE ON PROCEDURES FOR HARMONIZING THE PROGRAMME FOR THE REDUCTION AND EVENTUAL ELIMINATION OF POLLUTION CAUSED BY WASTE FROM THE TITANIUM DIOXIDE INDUSTRY | INTERNAL MARKET, ENVIRONMENT (ART. 100A)                        | COOPERATION | 2                                     | 14                           | DIRECTIVE 92/112/EEC | ADOPTED (WITH AMENDMENTS) |
| COM(1991)301 | PROPOSAL FOR A DIRECTIVE RELATING TO THE FREEDOM OF MANAGEMENT AND INVESTMENT OF FUNDS HELD BY INSTITUTIONS FOR RETIREMENT PROVISION  | FREEDOM OF MOVEMENT, FINANCIAL SERVICES (ART. 66 AND 57.2)      | CODECISION  | /                                     | 38                           | /                    | WITHDRAWN                 |
| COM(1991)287 | PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING MEDICAL DEVICES   | INTERNAL MARKET, INDUSTRIAL POLICY, CONSUMER POLICY (ART. 100A) | COOPERATION | 2                                     | 23                           | DIRECTIVE 93/42/EEC  | ADOPTED (WITH AMENDMENTS) |
| COM(1991)285 | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE INDICATION BY LABELLING OF STANDARD PRODUCT INFORMATION OF THE CONSUMPTION OF ENERGY AND OTHER RESOURCES OF HOUSEHOLD APPLIANCES                | INTERNAL MARKET, ENERGY (ART. 100A)                             | COOPERATION | 2                                     | 14                           | DIRECTIVE 92/75/EEC  | SUBSTANTIALLY AMENDED     |
| COM(1991)276 | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE COORDINATION OF CERTAIN RULES CONCERNING COPYRIGHT AND NEIGHBORING RIGHTS APPLICABLE TO SATELLITE BROADCASTING AND CABLE RETRANSMISSION         | FREEDOM OF MOVEMENT, TELECOMMUNICATION (ART. 57.2)              | COOPERATION | 2                                     | 26                           | DIRECTIVE 93/83/EEC  | ADOPTED (WITH AMENDMENTS) |
| COM(1991)242 | PROPOSAL FOR A COUNCIL DIRECTIVE ON STANDARDS FOR SATELLITE BROADCASTING OF TELEVISION SIGNALS  | INTERNAL MARKET, TELECOMMUNICATION (ART. 100A)                  | COOPERATION | 2                                     | 10                           | DIRECTIVE 92/38/EEC  | ADOPTED (WITH AMENDMENTS) |
| COM(1991)230 | PROPOSAL FOR A DIRECTIVE CONCERNING THE POSTING WORKERS IN THE FRAMEWORK OF THE PROVISIONS OF SERVICES  | FREEDOM OF MOVEMENT, SOCIAL POLICY (ART. 57.2 AND 66)           | CODECISION  | 2                                     | 66                           | DIRECTIVE 96/71/EC   | ADOPTED (WITH AMENDMENTS) |

|                |   |  |                            |   |     |                              |                           |
|----------------|---|--|----------------------------|---|-----|------------------------------|---------------------------|
| COM(1991)220   | PROPOSAL FOR A COUNCIL DIRECTIVE ON AIR POLLUTION BY OZONE  | ENVIRONMENT (ART. 130s)  | CONSULTATION               | / | 15  | DIRECTIVE 92/72/EEC          | ADOPTED (WITH AMENDMENTS) |
| COM(1991)177   | PROPOSAL FOR A COUNCIL DIRECTIVE LAYING DOWN MINIMUM STANDARDS FOR THE KEEPING OF ANIMALS IN ZOOS                                 | ENVIRONMENT (ART. 130s1)   | COOPERATION                | / | 53  | /                            | WITHDRAWN                 |
| COM(1991)154   | PROPOSAL FOR A COUNCIL DIRECTIVE RELATING TO THE SULPHUR CONTENT OF GASOIL  | INTERNAL MARKET, ENVIRONMENT (ART. 100a)                         | COOPERATION                | 2 | 23  | DIRECTIVE 93/12/EEC          | SUBSTANTIALLY AMENDED     |
| COM(1991)102   | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE LANDFILL OF WASTE   | INTERNAL MARKET, ENVIRONMENT (ART. 100a)                         | COOPERATION                | / | 64  | /                            | WITHDRAWN                 |
| COM(1991)68    | PROPOSAL FOR A COUNCIL DIRECTIVE ON MONITORING AND CONTROLLING LARGE EXPOSURE OF CREDIT INSTITUTIONS                              | FREEDOM OF MOVEMENT, FINANCIAL SERVICES (ART. 57,2)              | COOPERATION                | 2 | 21  | DIRECTIVE 92/121/EEC         | ADOPTED (WITH AMENDMENTS) |
| COM(1991)30    | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE APPLICATION OF OPEN NETWORK PROVISIONS TO LEASED LINES                                    | INTERNAL MARKET, TELECOMMUNICATION (ART. 100a)                   | COOPERATION                | 2 | 16  | DIRECTIVE 92/44/EEC          | ADOPTED (WITH AMENDMENTS) |
| COM(1990)445   | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE LIMITATION OF THE OPERATION OF CHAPTER 2 AEROPLANES                                       | TRANSPORT, ENVIRONMENT (ART. 84,2)                               | COUNCIL UNANIMOUS DECISION | / | 11  | DIRECTIVE 92/14/EEC          | ADOPTED (WITH AMENDMENTS) |
| COM(1991)273-2 | PROPOSAL FOR A DIRECTIVE SUPPLEMENTING THE STATUTE FOR A EUROPEAN ASSOCIATION WITH REGARD TO THE INVOLVEMENT OF EMPLOYEES         | INTERNAL MARKET, SOCIAL POLICY (ART. 100a)                       | CODECISION                 | / | 51  | /                            | WITHDRAWN                 |
| COM(1991)273-4 | PROPOSAL FOR A DIRECTIVE SUPPLEMENTING THE STATUTE FOR A EUROPEAN COOPERATIVE SOCIETY WITH REGARD TO THE INVOLVEMENT OF EMPLOYEES | INTERNAL MARKET, SOCIAL POLICY (ART. 100a) ART. 308 (CS ADOPTED) | CONSULTATION               | / | 139 | COUNCIL DIRECTIVE 2003/72/EC | SUBSTANTIALLY AMENDED     |
| COM(1991)273-6 | PROPOSAL FOR A DIRECTIVE SUPPLEMENTING THE STATUTE FOR A EUROPEAN MUTUAL SOCIETY WITH REGARD TO THE INVOLVEMENT OF EMPLOYEES      | INTERNAL MARKET, SOCIAL POLICY (ART. 100a)                       | CODECISION                 | / | 51  | /                            | WITHDRAWN                 |

Source: Power of Initiative (POI) DATABASE 2011

## Annex 2 – Innovative proposals adopted in 1997: Negotiation Process and Outcome

| REFERENCE    | TITLE   | DOMAIN (TEC)  | PROCEDURE                  | READING AT WHICH DECISION-MAKING ENDS | NEGOTIATION LENGTH IN MONTHS | FINAL ACT            | RESULT                    |
|--------------|---|---|----------------------------|---------------------------------------|------------------------------|----------------------|---------------------------|
| COM(1997)691 | PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE APPROXIMATING THE LEGAL ARRANGEMENTS FOR THE PROTECTION OF INVENTIONS BY UTILITY MODEL             | INTERNAL MARKET; INTELLECTUAL PROPERTY (ART. 95)                          | CODECISION                 | 1                                     | 99                           |                      | WITHDRAWN                 |
| COM(1997)629 | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE LIMITATION OF THE EMISSION OF OXIDES OF NITROGEN FROM CIVIL SUBSONIC JET AEROPLANES                                 | TRANSPORT; ENVIRONMENT (ART. 80,2)  | CODECISION                 | 1                                     | 30                           |                      | WITHDRAWN                 |
| COM(1997)628 | PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON THE HARMONIZATION OF CERTAIN ASPECTS OF COPYRIGHT AND RELATED RIGHTS IN THE INFORMATION SOCIETY | INTERNAL MARKET; INTELLECTUAL PROPERTY (ART. 95, 47,2; 55)                | CODECISION                 | 2                                     | 41                           | DIRECTIVE 2001/29/EC | ADOPTED (WITH AMENDMENTS) |
| COM(1997)486 | PROPOSAL FOR A COUNCIL DIRECTIVE ON SAFEGUARDING THE SUPPLEMENTARY PENSION RIGHTS OF EMPLOYED AND SELF-EMPLOYED PERSONS MOVING WITHIN THE EUROPEAN UNION    | FREEDOM OF MOVEMENT; SOCIAL POLICY (ART. 235; 51)                         | CONSULTATION               | /                                     | 8                            | DIRECTIVE 98/49/EC   | ADOPTED (WITH AMENDMENTS) |
| COM(1997)392 | PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE FRAMEWORK AGREEMENT ON PART-TIME WORK CONCLUDED BY UNICE, CEEP AND THE ETUC                                 | FREEDOM OF MOVEMENT; SOCIAL POLICY (ART. 4(2) AGREEMENT ON SOCIAL POLICY) | COUNCIL UNANIMOUS DECISION | /                                     | 5                            | DIRECTIVE 97/81/EC   | ADOPTED (WITH AMENDMENTS) |
| COM(1997)382 | PROPOSAL FOR A COUNCIL DIRECTIVE ON SAFETY REQUIREMENTS AND ATTESTATION OF PROFESSIONAL COMPETENCE FOR CABIN CREWS IN CIVIL AVIATION                        | TRANSPORT (ART. 80,2)   | CODECISION                 | 1                                     | 104                          |                      | WITHDRAWN                 |

|              |  |  |              |   |    |                             |                              |
|--------------|--|--|--------------|---|----|-----------------------------|------------------------------|
| COM(1997)369 | PROPOSAL FOR EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON THE APPROXIMATION OF PROVISIONS LAID DOWN BY LAW, REGULATION OR ADMINISTRATIVE ACTION RELATING TO THE IMPLEMENTATION OF GOOD CLINICAL PRACTICE IN THE CONDUCT OF CLINICAL TRIALS ON MEDICINAL PRODUCTS FOR HUMAN USE | INTERNAL MARKET;<br>HEALTH PROTECTION<br>(ART. 95)                       | Codecision   | 2 | 43 | DIRECTIVE<br>2001/20/<br>EC | ADOPTED (WITH<br>AMENDMENTS) |
| COM(1997)358 | PROPOSAL FOR A COUNCIL DIRECTIVE ON END OF LIFE VEHICLES   | ENVIRONMENT<br>(ART. 175,1)  | Codecision   | 3 | 38 | DIRECTIVE<br>2000/53/<br>EC | SUBSTANTIALLY<br>AMENDED     |
| COM(1997)356 | PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON THE LEGAL PROTECTION OF SERVICES BASED ON, OR CONSISTING OF, CONDITIONAL ACCESS  | INTERNAL MARKET;<br>INTELLECTUAL<br>PROPERTY<br>(ART. 57,2; 100A;<br>66) | Codecision   | 2 | 16 | DIRECTIVE<br>98/84/EC       | ADOPTED (WITH<br>AMENDMENTS) |
| COM(1997)248 | PROPOSAL FOR A COUNCIL DIRECTIVE ON REGISTRATION DOCUMENTS FOR MOTOR VEHICLES AND THEIR TRAILERS   | TRANSPORT<br>(ART. 75,1D)  | COOPERATION  | 2 | 23 | DIRECTIVE<br>1999/37/<br>EC | SUBSTANTIALLY<br>AMENDED     |
| COM(1997)105 | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE LANDFILL OF WASTE  | ENVIRONMENT (ART.<br>130S1)  | COOPERATION  | 2 | 25 | DIRECTIVE<br>1999/31/<br>EC | SUBSTANTIALLY<br>AMENDED     |
| COM(1997)154 | PROPOSAL FOR A COUNCIL DIRECTIVE ON AIRPORT CHARGES  | TRANSPORT<br>(ART. 80,2)   | Codecision   | 1 | 43 |                             | WITHDRAWN                    |
| COM(1997)30  | PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE RESTRUCTURING OF THE COMMUNITY FRAMEWORK FOR THE TAXATION OF ENERGY PRODUCTS   | TAXATION<br>(ART. 93)  | CONSULTATION | / | 79 | DIRECTIVE<br>2003/96/<br>EC | DENATURISED                  |
| COM(1997)55  | PROPOSAL FOR A COUNCIL DIRECTIVE ESTABLISHING A SAFETY ASSESSMENT OF THIRD COUNTRIES AIRCRAFT USING COMMUNITY AIRPORTS   | TRANSPORT<br>(ART. 80,2)   | COOPERATION  | 2 | 40 |                             | WITHDRAWN                    |
| COM(1996)674 | PROPOSAL FOR A COUNCIL DIRECTIVE ON TRANSPORTABLE PRESSURE EQUIPMENT   | INTERNAL MARKET;<br>TRANSPORT<br>(ART. 75,1C)                            | COOPERATION  | 2 | 27 | DIRECTIVE<br>1999/36/<br>EC | DENATURISED                  |

Source: POWER OF INITIATIVE (POI) DATABASE 2011



### Annex 3 – Innovative proposals adopted in 2002: Negotiation Process and Outcome

| REFERENCE      | TITLE   | DOMAIN                      | PROCEDURE    | READING AT WHICH DECISION-MAKING ENDS | NEGOTIATION LENGTH IN MONTHS | FINAL ACT             | RESULT                    |
|----------------|---|-----------------------------|--------------|---------------------------------------|------------------------------|-----------------------|---------------------------|
| COM (2002) 769 | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON MINIMUM SAFETY REQUIREMENTS FOR TUNNELS IN THE TRANS-EUROPEAN ROAD NETWORK   | TRANSPORT (ART. 71.1)       | CODECISION   | 2                                     | 16                           | DIRECTIVE 2004/54/EC  | ADOPTED (WITH AMENDMENTS) |
| COM (2002) 562 | PROPOSAL FOR A COUNCIL DIRECTIVE ON COMPENSATION TO CRIME VICTIMS   | JUSTICE (ART. 308)          | CONSULTATION | /                                     | 18                           | DIRECTIVE 2004/80/EC  | SUBSTANTIALLY AMENDED     |
| COM (2002) 548 | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE CONDITIONS OF ENTRY AND RESIDENCE OF THIRD COUNTRY NATIONALS FOR THE PURPOSES OF STUDIES, VOCATIONAL TRAINING OR VOLUNTARY SERVICE  | IMMIGRATION (ART. 63.3)     | CONSULTATION | /                                     | 26                           | DIRECTIVE 2004/114/EC | SUBSTANTIALLY AMENDED     |
| COM (2002) 534 | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON TAKEOVER BIDS  | INTERNAL MARKET (ART. 44.1) | CODECISION   | 1                                     | 17                           | DIRECTIVE 2004/25/CE  | DENATURISED               |
| COM (2002) 415 | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE PROMOTION OF COGENERATION BASED ON A USEFUL HEAT DEMAND IN THE INTERNAL ENERGY MARKET  | ENVIRONMENT (ART. 175)      | CODECISION   | 2                                     | 19                           | DIRECTIVE 2004/8/EC   | ADOPTED (WITH AMENDMENTS) |
| COM (2002) 319 | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON SETTING STANDARDS OF QUALITY AND SAFETY FOR THE DONATION, PROCUREMENT, TESTING, PROCESSING, STORAGE, AND DISTRIBUTION OF HUMAN TISSUES AND CELLS | PUBLIC HEALTH (ART. 152)    | CODECISION   | 2                                     | 22                           | DIRECTIVE 2004/23/EC  | ADOPTED (WITH AMENDMENTS) |
| COM (2002) 207 | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE RE-USE AND COMMERCIAL EXPLOITATION OF PUBLIC SECTOR DOCUMENTS  | INTERNAL MARKET (ART. 95)   | CODECISION   | 2                                     | 16                           | DIRECTIVE 2003/98/EC  | ADOPTED (WITH AMENDMENTS) |

|                |   |  |   |    |                       |                           |
|----------------|---|--|---|----|-----------------------|---------------------------|
| COM (2002) 130 | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE CONTROL OF HIGH ACTIVITY SEALED RADIOACTIVE SOURCES   | RESEARCH, ENVIRONMENT (EURATOM TREATY ART. 31,2; 32) | / | 84 | /                     | WITHDRAWN                 |
| COM (2002) 149 | AMENDED PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON TEMPORARY WORK   | SOCIAL POLICY (ART. 137,2)                           | 2 | 80 | DIRECTIVE 2004/108/EC | ADOPTED (WITH AMENDMENTS) |
| COM (2002) 92  | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE PATENTABILITY OF COMPUTER-IMPLEMENTED INVENTIONS   | INTERNAL MARKET, INTELLECTUAL PROPERTY (ART. 95)     | 2 | 40 | /                     | REJECTED                  |
| COM (2002) 71  | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE SHORT-TERM RESIDENCE PERMIT ISSUED TO VICTIMS OF ACTION TO FACILITATE ILLEGAL IMMIGRATION OR TRAFFICKING IN HUMAN BEINGS WHO COOPERATE WITH THE COMPETENT AUTHORITIES | IMMIGRATION (ART. 63,3)                              | / | 26 | DIRECTIVE 2004/81/EC  | SUBSTANTIALLY AMENDED     |
| COM (2002) 17  | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON ENVIRONMENTAL LIABILITY WITH REGARD TO THE PREVENTION AND REMEDYING OF ENVIRONMENTAL DAMAGE  | ENVIRONMENT (ART. 175)                               | 3 | 27 | DIRECTIVE 2004/35/EC  | SUBSTANTIALLY AMENDED     |
| COM (2002) 13  | PROPOSAL FOR A COUNCIL DIRECTIVE TO IMPROVE ACCESS TO JUSTICE IN CROSS-BORDER DISPUTES BY ESTABLISHING MINIMUM COMMON RULES RELATING TO LEGAL AID AND OTHER FINANCIAL ASPECTS OF CIVIL PROCEEDINGS            | JUSTICE (ART. 61; 67)                                | / | 12 | DIRECTIVE 2002/8/EC   | ADOPTED (WITH AMENDMENTS) |
| COM (2002) 8   | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE SAFETY OF THIRD COUNTRIES AIRCRAFT USING COMMUNITY AIRPORTS  | TRANSPORT (ART. 80,2)                                | 3 | 27 | DIRECTIVE 2004/36/EC  | ADOPTED (WITH AMENDMENTS) |

Source: Power of Initiative (POI) DATABASE 2011

## Annex 4 – Innovative proposals adopted in 2007: Negotiation Process and Outcome

| REFERENCE      | TITLE   | DOMAIN (TEC)   | PROCEDURE    | READING AT WHICH DECISION-MAKING ENDS | NEGOTIATION LENGTH IN MONTHS | FINAL ACT            | RESULT                    |
|----------------|---|--|--------------|---------------------------------------|------------------------------|----------------------|---------------------------|
| COM (2006) 820 | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON AIRPORT CHARGES   | TRANSPORT (ART. 80,1)                                    | CODECISION   | 2                                     | 25                           | DIRECTIVE 2009/12/EC | ADOPTED (WITH AMENDMENTS) |
| COM (2007) 766 | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE COORDINATION OF PROCEDURES FOR THE AWARD OF CERTAIN PUBLIC WORKS CONTRACTS, PUBLIC SUPPLY CONTRACTS AND PUBLIC SERVICE CONTRACTS IN THE FIELDS OF DEFENCE AND SECURITY                | INTERNAL MARKET, FREEDOM OF MOVEMENT (ART. 47,2; 55; 95) | CODECISION   | 1                                     | 16                           | DIRECTIVE 2009/81/EC | ADOPTED (WITH AMENDMENTS) |
| COM (2007) 765 | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON SIMPLIFYING TERMS AND CONDITIONS OF TRANSFERS OF DEFENCE-RELATED PRODUCTS WITHIN THE COMMUNITY  | INTERNAL MARKET (ART. 95)                                | CODECISION   | 1                                     | 18                           | DIRECTIVE 2009/43/EC | ADOPTED (WITH AMENDMENTS) |
| COM (2007) 51  | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROTECTION OF THE ENVIRONMENT THROUGH CRIMINAL LAW  | ENVIRONMENT (ART. 175,1)                                 | CODECISION   | 1                                     | 16                           | DIRECTIVE 2008/99/EC | SUBSTANTIALLY AMENDED     |
| COM (2007) 249 | PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL PROVIDING FOR SANCTIONS AGAINST EMPLOYERS OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS   | IMMIGRATION (ART. 63,3)                                  | CODECISION   | 1                                     | 23                           | DIRECTIVE 2009/52/EC | ADOPTED (WITH AMENDMENTS) |
| COM (2007) 637 | PROPOSAL FOR A COUNCIL DIRECTIVE ON THE CONDITIONS OF ENTRY AND RESIDENCE OF THIRD-COUNTRY NATIONALS FOR THE PURPOSES OF HIGHLY QUALIFIED EMPLOYMENT  | IMMIGRATION (ART. 63,3A)                                 | CONSULTATION | /                                     | 15                           | DIRECTIVE 2009/50/EC | SUBSTANTIALLY AMENDED     |
| COM (2007) 638 | PROPOSAL FOR A COUNCIL DIRECTIVE ON A SINGLE APPLICATION PROCEDURE FOR A SINGLE PERMIT FOR THIRD-COUNTRY NATIONALS TO RESIDE AND WORK IN THE TERRITORY OF A MEMBER STATE AND ON A COMMON SET OF RIGHTS FOR THIRD-COUNTRY WORKERS LEGALLY RESIDING IN A MEMBER STATE | IMMIGRATION (ART. 63,3A)                                 | CODECISION   | /                                     | 41                           | /                    | ONGOING                   |

SOURCE: POWER OF INITIATIVE (POI) DATABASE 2011

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## PAOLO PONZANO

Paolo Ponzano is a senior fellow at the European University Institute and a special adviser of the European Commission.

## COSTANZA HERMANIN

Costanza Hermanin is a researcher in the department of social and political science of the European University Institute.

## DANIELA CORONA

Daniela Corona is research collaborator at the Robert Schuman Center for Advanced Studies of the European University Institute.

# Visions of Europe

## The Power of Initiative of the European Commission: A Progressive Erosion?

At a time when the adoption of a new Treaty is relaunching the debate on the functioning of the EU, this study by Notre Europe analyses the exercise of the power of legislative initiative by the Commission, which is a key element of the “Community Method”. Written by Paolo Ponzano, Costanza Hermanin and Daniela Corona, this study is the third in a series devoted to European institutions. It enables to answer two essential political issues: how has the exercise of the power of legislative initiative by the European Commission evolved over the years?; Has the role of the European Commission as initiator of legislative proposals really been eroded over time ?

This study aims to unveil significant trends by qualitatively analyzing a select number of innovative proposals adopted by different colleges between 1991 and 2007. For each proposal, it tries to check whether the initial policy goals of the text proposed by the colleges of Commissioners were maintained, and to what extent, until the end of the legislative process. The study systematically compares the achievements of the different colleges in terms of maintaining initial policy goals throughout the decision-making process. In doing so, it can control for the policy domain and legal basis, the evolution of the procedural rules during the period in question, and other contextual factors.

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