

What Does the European Union Do?

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Abstract

We construct a set of indicators to measure the policy-making role of the European Union (European Council, Parliament, Commission, Court of Justice, etc.), in a selected number of policy domains. Our goal is to examine the division of prerogatives between European institutions and national ones, in light of the implications of normative models and in relation to the preferences of European citizens. Our data confirm that the extent and the intensity of policy-making by the EU have increased sharply over the last 30 years. Such increase has taken place at different speeds, and to different degrees, across policy domains. In recent times the areas that have expanded most are the most remote from the EEC's original mission of establishing a free market zone with common external trade policy. We conjecture that the resulting allocation may be partly inconsistent with normative criteria concerning the assignment of policies at different government levels, as laid out in the theoretical literature.

1 Introduction

The institutional design of the European Union (EU) is at the forefront of the policy debate in Europe. Many political leaders have recently called for a “European Constitution”, and the European Commission has launched an “open debate” on the future of the Union. A major rethinking of Europe's institutions and policies is underway.

This discussion is timely. The introduction of a single currency and the delegation of monetary powers to the European Central Bank (ECB), reforms

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of high substantive and symbolic value, are seen by many as steps towards fuller political integration. At the same time, while the prospect of integration in the EU is fuelling enthusiasm among several countries seeking entry, the integration process may be losing support at home. Large portions of European citizens seem reluctant to accept further centralization in the European governance, or at least demand that the rationale for centralization be made more explicit and understandable. The existing EU charters fall significantly short of providing a method - let alone a detailed road map - for assigning policy prerogatives among supranational, national and local policy authorities in the continent. Providing a rationale for this is a key ingredient of any “constitutional phase” for Europe.

The goal of this paper is to put forth some ideas and evidence relevant to this debate. We begin by briefly reviewing the theoretical arguments on how to think about what country union should do, following recent contributions by Alesina and Wacziarg (1999) and Alesina, Angeloni and Etro (2001a,b). These papers focus on a trade-off between the benefits of centralization, arising from economies of scale or externalities, and the costs of harmonizing policies in light of the increased heterogeneity of preferences in a large union.¹ The normative prediction of these papers is that policies where economies of scale and/or externalities are predominant should be allocated at the union level, or even at the world level. Instead, policy areas where heterogeneity of preferences are high relative to externalities should be allocated to a national or sub national level. These results are related with the vast literature on fiscal federalism, as nicely reviewed by Oates (1999). When thinking about federations of countries like the European Union however, there are several important differences. One is that the literature on fiscal federalism heavily emphasizes individual mobility across jurisdictions, a phenomenon which applies only to a limited extent to the European Union. The second is that the size of fiscal transfers between levels of governments within a country is much larger than those between Europe and country members. The third is that heterogeneity of preferences across countries is likely to be much larger than within a single country

Building on these ideas, we shift here the focus from the normative-theoretical to the empirical side, asking the question: “what does the EU actually do?” Does the allocation of policy prerogative between the EU and national governments satisfy the broad criteria of optimality described above?

In order to answer these questions, we construct first a set of detailed numerical indicators to measure the “policy involvement” of the EU in a limited but all-encompassing set of policy domains. We find that the range of prerogatives attributed to the EU has expanded considerably in recent decades, far away from the EEC’s original mandate, particularly in the 1990s.

We then ask the question of whether the EU prerogatives have expanded in ways which are consistent with the normative criteria we described above. Our evidence suggests that important deviations of the EU’s action from those criteria may have occurred. A prominent example concerns the area of social

¹A similar trade-off in a discussion of the size of countries is emphasized by Alesina and Spolaore (1997).

protection. Much reluctance to further European integration among e.g. the British public stems from the fear of having to adopt “continental style” social welfare policies. Our results suggest that this is indeed an area in which the EU involvement is overexpanded. Another one is sectoral policies, notably in agriculture.

In contrast, are there areas in which EU involvement is too limited? In principle one would think that defense and foreign relations is a policy area typically allocated to the highest level of government. In practice, the EU has a limited (but growing) role in these areas. Environmental protection is another area of EU involvement that, in our framework, seems to be insufficiently developed.

The paper is organized as follows. First (sections 2 and 3) we define our framework of analysis and lay out the list of relevant policy domains. In section 4, we describe briefly the instruments and processes used by the EU to enact its policies. In section 5 we introduce our empirical analysis giving a brief excursus of how the EU involvement in these domains has evolved in the last 30 years. The core of the results, regarding the role the EU presently plays in the different domains of policies, is presented in section 6. Our overall assessment is presented in section 7. Some caveats and directions for further research are discussed in section 8.

2 A Framework for Assessing EU Policy Involvement

2.1 Theory

Unions are collections of countries that decide together on the provision of certain public “goods”, that affect them all. “Goods” in this context can mean several things, including traditional public goods (like defense) and “policies” (e.g. a legal or regulatory framework; a single money). In the choice of the union concerning what and how much to centralize, a trade-off arises between the benefit of scale and the costs of heterogeneity. The most general implication is that the EU - like any union among heterogeneous countries - should focus exclusively on policy areas where economies of scale are large, and internalizing externalities is important, and delegate to national or lower-level government, the policy areas where heterogeneity of preferences is predominantly relative to the benefit of scale. Alesina and Wacziarg (1999) and, especially Alesina, Angeloni and Etro (2001a) formally address these and other related points.

The intuition of their results is simple. In a multi country union, some policy prerogatives are subtracted from national control and allocated at the union level. If the latter centralizes too many prerogatives, several countries may not join because they are too distant from the “median” union member, assuming that the chosen policy is close to the median preference. On the other hand if the union centralizes too little, it does not fully benefit from economy of scales and from externalities, which motivate the creation of a union in the first place.

In other words, for given distribution of preferences by potential union members and over a diverse range of policies, in equilibrium one should observe either small unions that centralize many prerogatives, or large unions in which few prerogatives are delegated above national governments. This trade off is particularly important when the union is considering enlargement. According to this reasoning, enlargement of the union and a deepening of coordination of policies are contradictory if the new members and the incumbents are heterogeneous. How the union would choose along this trade off depends on the voting rules within the union. This is why the discussion about what a union should do is deeply linked to the constitutional issues concerning "who decides what and how". Alesina, Angeloni and Etro (2001a) discuss the possibility of a centralization bias in the union. If the prerogative of the union are not defined ex ante by constitutional design, when the union is formed the members close to the "median" have an incentive to increase centralization and harmonization. Anticipating this tendency, potential members will stay out to begin with, leading to unions that are "too small". A union where prerogatives are fixed ex ante leads to superior outcomes.

From an empirical stand-point, government functions obviously do not neatly line upon a scale from high to low economy of scale, high to low externality, high to low heterogeneity of preferences. Only in some cases, is the judgement rather obvious. Think of international trade, with large externalities, and educational choices in local schools, where heterogeneity of preferences are critical. In many other cases the choice is less clear cut; think of fiscal policy, for instance. This is why, in practice, the allocation problem is complex.

An interesting case, in this respect, concerns a special type of public policy: redistribution. The latter has an "economy of scale" aspect: income redistributions across countries can occur only at the union level. The heterogeneity of preferences, depending on different income level, are also rather obvious and strong. In fact, the reluctance to expand the budget of EU may stem also from the fact that wealthier countries (and regions) in Europe do not want to excessively subsidize poor regions. The small size of these fiscal redistributions is also often mentioned as a problem for the EU single currency area, e.g. relative to the US.

Optimally, then, one should think of policy allocation as a choice on the preferred position in the trade off just explained. From a "positive" point of view, however, several additional politico-economic forces come into place. In particular, competing bureaucracies may not be willing to easily give up responsibilities. Standard theories of bureaucracies² argue that bureaucrats derive prestige from the size of their influence in various policy domains. Bureaucracies at different levels of government will then compete over the allocation of responsibilities. If this is the case, several outcomes are possible. For example, this game may lead to an excessive centralization in policy areas in which the supranational bureaucracy has been successful in gaining prerogatives. Or, on the contrary, national bureaucracies may be successful in resisting delegation of

²See W. Niskanen (1971).

functions to the union. The point is that one should not expect necessarily an efficient outcome from this non-cooperative game. Note that these arguments apply to all levels of government, from a city council to the EU. In this paper, however, we focus exclusively on the allocation issue between EU and national governments.

2.2 Empirics

On which policy areas does the European Union mainly concentrate? Answering this question is not easy.

One should be able to determine the policy prerogatives of the EU institutions - and as a complement those belonging to other government levels - directly from the EU Treaties. Constitutional charters are intended to lay out the criteria for the allocation of power, their limits, checks and balances, etc. However, the EU Treaties do not provide an exhaustive guide on whether, and on the basis of what principles, policy powers fall within or outside the realm of EU powers. Their complexity and generality make it difficult for anybody, even somebody informed, to grasp the degree of effective presence of EU institutions in the relevant areas of policy-making.

If one takes an extensive interpretation of the Treaties, the EU seems to have some say in almost all policy areas. This is, by itself, a problem, because it potentially opens the door for an excessive attribution of responsibilities in too many areas and it also weakens accountability. However, the mention of a given policy chapter in the Treaties does not mean that the EU effectively exercises policy-making power in that area, and conversely the EU takes concrete action in areas only vaguely mentioned in the Treaties. In short: whether the EU is active in a given field and how important such presence is, is a question that cannot be answered by consulting the Treaties alone. Other information is necessary.

Unfortunately, the literature is also of little help. Despite extensive exploration by political scientists,³ we are aware of no attempt to rigorously weigh and compare the involvement of the EU in its key policy domains⁴. Using the available information, provided mainly through EU on-line services, we derive simple quantitative measures of the EU involvement across policy areas.⁵ We accomplish this using a very simple method: we count the number of legal, judiciary, and other non-binding acts (“policy acts”) emanating from the EU, classified across broadly homogeneous policy fields, and assembling the results from various sources into summary indicators.

³A useful reference is Nugent (1999). His vast bibliography covers the relevant political science literature on the subject. see also McCormick (2000).

⁴After writing this paper we became aware of the work by Pollack (2000), whose empirical approach is similar to ours. His conclusions – that EU regulatory action has “continued its relentless growth throughout the last four decades”, whereas budget spending has been contained – are consistent with ours.

⁵Most of the documentation elaborated for this paper is available on the European Union website (<http://europa.eu.int/>). We are grateful to C. Nicasi of the EU Commission for advising us on the use of Celex, our source of EU legal acts.

Our approach has advantages and drawbacks. The key advantages of simple counting are transparency and objectivity. The disadvantage is that individual policy acts can be more or less influential. If these differences are randomly distributed across policy chapters, however, one can rely on the law of large numbers to mitigate the problem (the available sample sizes are indeed very large, as we shall see).

3 Domains of EU Policy-Making

We have sketched our classification of policy domains having two requirements in mind. First, each domain should be broadly homogeneous in terms of the concepts highlighted by the theory. Second, our list of domains should reflect some basic institutional and historical features of the EU. This is necessary to make efficient use of the existing information and to understand the origins and the motivations of the EU role in certain fields. It must be mentioned that the policy domains do not exhaust the range of activities carried out by the EU, mainly because the former does not include internal administration (which absorbs a lot of resources, as we shall see). Therefore, throughout our analysis we have excluded from our consideration all internal administrative acts.⁶

3.1 Nine Policy Domains

For our purpose, we identify the following 9 policy domains:⁷

International Trade. The most important area of EU policy-making, the closest to the original *raison d'être* of the European Communities, is the creation of a common market with a common external trade policy. We distinguish between external trade provisions (covered under this heading) and the policies aimed at the establishment of the common internal market (grouped in the following heading). External trade provisions cover both the international agreements between the EU and third countries, and the provisions aimed at establishing uniform trade and tariff policies with non-member countries.

Most would agree that there are sizeable benefits from free trade at the global level. This implies a high degree of policy harmonization, again at the global level, directed towards the removal of trade barriers. A free trade area, with common external trade policy, is obviously a second best solution. It is welfare improving only if the common external policy is consistent with free trade principles. With this important proviso, economic arguments speak in favor of a clear EU-wide assignment of trade and common market legislation.

⁶This means implicitly assuming that resources devoted to administration can be allocated to the domains pro-quota. This is a convenient, but not necessarily a good assumption. In some instances it is probably not justified, since as we will see below the policy production process seems to be more resource-efficient in certain areas than in others.

⁷An Annex Table explains in detail how all the EU policy actions have been grouped into the 9 categories.

Common Market. The EU common market policies are a natural complement of a common external trade policy, and equally close to the original purpose of the Community. The Common market legislation chapter includes a variety of provisions promoting the free internal movement of goods, services, capital and people. This covers all acts aimed at harmonization/approximation and mutual acceptance of national provisions so that obstacles to such movements are removed. From a normative viewpoint, however, the exact role of this type of legislation within the context of the Single Market is ambiguous. On the one side, a certain degree of harmonization of domestic laws is necessary to guarantee a level playing field for intra-area trade. On the other side harmonization may at times go beyond what strictly required for this purpose, thus becoming an infringement, rather than a support, of free area-wide competition.

Money and Finance. In our definition, this broad area includes monetary and exchanges rate policy, payments systems and financial market regulation and legislation, bank supervision, fiscal and tax policies, etc. Though not being one of the tasks addressed by the EEC founding fathers from the start, unification of money and financial markets was always in the background and was soon recognized as complement of the Single Market.⁸ With the creation of the ECB (1998) and the introduction of the euro (1999), this turned out to be one of the most active and successful policy chapters in the history of the EU.

On the benefits and costs stemming from integration of money and finance, the prescriptions from economic theory are rather mixed. On money, the theory of Optimum Currency Areas provides a clear framework for the international allocation of policy responsibilities.⁹ The empirical evidence on optimal currency areas is controversial, though in the case of the euro-area the balance tends to tilt in favor.¹⁰ Payments systems regulation is closely linked to monetary policy. For bank and financial regulation and supervision, the elements of the trade-off are rather clear. The economies of scale inherent in gathering supervisory information and the international spillovers of financial fragility speak in favor of centralization, whereas the fiscal elements built into the provision of lending-of-last-resort may suggest allocation at a “lower” geographical level.¹¹ On the whole, however, the drive towards integration of financial markets is a powerful stimulus to supranational ruling. As to fiscal policies, responsibility of the EU versus national governments is very controversial. Inroads into national responsibility have been made in the co-ordination and harmonization of budget balances and fiscal surveillance. But fiscal policies ultimately remain national responsibility although the growth and stability part implies an important constraint on the national budget. Whether or not this constraint is

⁸A point forcefully made by Padoa-Schioppa (1987).

⁹See Mundell (1961) for the path breaking contribution and Alesina and Barro (2002) for recent work.

¹⁰For a recent survey see Kenen (2001).

¹¹This is one of the rare cases where the EU advocates decentralisation; see EU (2000). An opposite view is taken by Danthine et al. (1999).

useful, necessary or an infringement on national sovereignty is debatable. The EU has a vaguely specified role in the co-ordination of taxation and certain limited spending responsibilities. Here again, the judgement on the economics of EU involvement is mixed.¹²

Education, Research and Culture. This policy chapter focuses on youth policies, research, technology, preservation of the cultural heritage, etc. Though not included in the original EEC Treaty, this area developed considerably in subsequent times. On economic grounds, the gains from international co-ordination are vague at best. On the one side, the externality element in this policy domain could potentially be large. There is also a general interest in the spreading and communication of knowledge across frontiers, but this can simply be achieved with free circulation of individuals and ideas. It is also likely to be an area in which local preferences and backgrounds have a predominant weight.

Environment. This is an area where international - indeed global - externalities are important: pollution of the seas and global warming are just two obvious examples. An involvement of the EU as regards EU-wide externalities seems therefore desirable. There may also be fixed costs (e.g. research) and economies of scale in the setting of environmental policies. However, much environmental effects are local or regional (garbage, river pollution). The preservation of territory and the enforcement of environmental policies are likely to have also a strong "local" component (local communities are the first, though ultimately not the only, to suffer from a deterioration of environmental conditions).

Business Relations (Sectoral). We divide the area of Business Relations in two compartments. The first - Sectoral - is very well defined and includes all policies designed to affect the behavior and performance of the economic producing sectors. In the subsequent analysis, we further break down this into three sub-areas, Agriculture (and fishing), Industry (with energy) and Transport. Agricultural policy is one of the oldest and most active policy chapters since the origins of the EEC, though its justifications on efficiency grounds have long and convincingly been challenged. Other sectoral policies could provide public goods, for example, if they support an EU wide transportation and communication network. However, sectoral policies do not necessarily provide such public goods. They could even be used to delay the completion of the internal market (as might be feared, for example, in energy and postal services). All together we are sceptical on the need for such sectoral policies at the EU level.

Business Relations (Non-Sectoral). This broad area encompasses undertaking laws, market competition and state subsidies. Antitrust has a growing global dimension, which reflects market globalization. The importance of maintaining competition at the EU level to promote the functioning of the internal

¹²A critique of EU fiscal coordination (beyond the Stability and Growth Pact) is contained in Alesina et al. (2001).

market is reflected in the EU's mandate in this area. However, the fact that only large mergers/acquisitions are under EU scrutiny takes into account that only such mergers/acquisitions can have implications for competition in the EU as a whole and should hence be dealt with at that level. As regards subsidies and state aid, the logic of EU involvement is similar because such government policies could undermine the level playing field in the common market. On this basis, EU involvement in these domains seems economically sensible.

International Relations. This includes foreign policy, defence, and foreign aid. In principle, there may be significant economies of scale and externalities to be exploited in foreign policy and defence, provided geo-political interests are similar.¹³ This leaves an ambiguous picture about the desirable EU involvement, but some involvement on foreign policy is desirable. As for foreign aid there is no externality or economy of scale, while there is heterogeneity of preferences.

Citizen and Social Protection. This encompasses home affairs, justice, consumer protection, civil rights, health, labor relations, etc. It also includes the important Social Cohesion chapter, with the attached structural and regional funds. Just as for education and culture, important elements of local/national preferences are likely to be dominant. Given the high standards of social protection existing in all EU countries, a strong EU involvement in this area is highly questionable. As to structural and regional funds, there may be important distributional reasons justifying EU activity. From an efficiency perspective, however, they are much harder to justify. Heterogeneity of preferences in redistributive policies are likely to be very large, and highly correlated with per capita income.

3.2 Preferences on policy devolution

We have summarised the considerations just expressed in a set of "judgements" concerning the desirable allocation of policy responsibilities (Table 1). These judgements are tentative and, though reflecting our best understanding of the underlying trade-offs, are subjective and hence potentially biased. In section 7, we will use them as a working assumption to guide our reading of the empirical evidence concerning the actual involvement of the EU in the policy domains. Before getting there, however, it is interesting to see how our judgements compare with the ones of the European citizens.

A broad ranging survey of the Europeans' opinions concerning the assignment of policies in the Union is beyond the scope of this paper. Hence, we have only looked at the most readily available information. We have used Eurobarometer (Spring 2001 issue), a publication of the EU Commission containing the results of an opinion poll, focused on the role and the policies of the European Union. Eurobarometer is a public opinion survey conducted, twice

¹³It should be noted, however, that defence is already largely part of the supranational NATO umbrella.

a year, face-to-face with a representative sample of individuals in each member state. An identical set of questions is asked 1000 people in each member state¹⁴. The main drawback of this opinion survey is its very limited sample size. A key advantage from our viewpoint is the fact that some of the questions focus exactly on the set of issues we are interested in. We concentrated our attention on section 5.1 of Eurobarometer, in which survey respondents are asked whether, for each of 25 policy areas, they "think that the decisions should be made by the [own] government, or made jointly with the European Union". Answers are published in percent (N=decisions should be national; S=decisions should be shared; U=uncertain; N+S+U=100). We have grouped the 25 areas on broader areas consistent with our earlier classification (see footnotes to Table 2 for details).

Unfortunately, not all our previously defined policy areas are included in the survey, so we have no information to report on some areas. Among the 25 policy areas considered, 15 refer to the broad area that we have called *Citizen and social protection*; hence, we have in Table 2 provided a further breakdown of this broad area in five sub-areas: 9a (*Migration*); 9b (*Crime-local*); 9c (*Crime-global*); 9d (*Health and social welfare*); 9e (*Unemployment, social exclusion and regional aid*)¹⁵. Each cell of Table 2 reports, for each policy area, the (integer of the) balance of the answers calculated as follows: $[(S - N) \cdot (1 - U/100)]$. We multiply $(S - N)$ by $(1 - U/100)$ so that the balance receives a lower weight if the share of uncertain respondents is large. Hence, the larger the number in each cell of Table 2 is, the stronger the (percent) number of people that have expressed a preference for a "Shared" responsibility, weighted for the undecided. The maximum (minimum) theoretical entry in each cell is 100 (-100), meaning an unanimous preference for Shared (National).

In interpreting these data, two caveats are in order. First, the exact meaning of "Shared" is unclear; different interpretations by respondents in different countries cannot be ruled out. Second, the responses to certain questions (for example: regional aid) could be biased in certain countries by the presumption that transferring policy responsibility to the EU may result in net benefits for those countries. In other words, the response to the questionnaire may reflect the perception of personal or country gains rather than a fair judgement about the optimality of allocative criteria.

Nonetheless, in the main, our own conjectures concerning the proper allocation of policy areas seem confirmed by the survey. The (unweighted) mean across countries reveals that *Money and finance*, *Environment and International relations and foreign aid* receive a positive value (Shared), whereas *Education, research and culture and Agriculture* have a negative one (National). Very diverse opinions are expressed on the five sub-areas belonging to *Citizen and social pro-*

¹⁴See all technical details in: <http://europa.eu.int/comm/dg10/epo/eb.html>.

¹⁵The sub-areas include Eurobarometer questions as follows (in italics, name of category in brackets): *immigration policy, political asylum, accepting refugees, exploitation of human beings (migration)*; *police, justice, urban crime, juvenile crime (crime-local)*; *organised crime, drugs (crime-global)*; *health and social welfare (same category)*; *unemployment, social exclusion and regional aid (same category)*.

tection: Crime-local and Health and social welfare are viewed to be "National", whereas Migration, Crime-global and Unemployment, social exclusion and regional aid are judged to be areas of "Shared" responsibility. However, as noted earlier, we suspect that on the latter area the data reported by Eurobarometer may be biased. Also interesting is the fact that there are significant differences across countries and domains. Denmark, Portugal, the United Kingdom and the Scandinavian countries seem the most EU sceptic while Italy, Belgium and the Netherlands are most supportive of a strong EU role.

In the last column of Table 2 we report the results of a different aggregation of the country preferences. The column shows how many votes a proposal to centralize a policy domain would (hypothetically) get if member governments were to vote in the European Council according to the outcome of Eurobarometer. In other words, we assume that Council members of countries with a majority of voters in favor of a strong EU role on certain issues (a positive number in their respective cells of Table 2) would vote in favor. A negative number would imply a negative vote by Council members. We then aggregate the country preferences using the current allocation of votes in the Council.

The figures in the last column of Table 2 suggest that a shared EU role finds a simple majority of Council votes (currently, Council votes total 87) in Money and finance, Environment, International relations, and certain aspects of Citizen and social protection (Crime-global, Migration, Unemployment, social exclusion and regional aid). EU involvement would receive unanimous support in only one domain: the fight against organized crime (Crime-global). Centralization in the other domains except Migration would get a qualified majority of Council votes (at least 62 out of 87). Policies on Education, research and culture, Agriculture, Crime-local and Health and social welfare would be voted to be undertaken at the national level.

In summary, the evidence from the Eurobarometer shows that the preferences of European citizens regarding the allocation of functions between Europe and member countries is remarkably similar to our judgement based on the predictions of theoretical models. We find this comforting.

4 Instruments and processes of EU policy

We now need to make a brief detour on the instruments and processes used by the EU to formulate and to enact its policies, as some understanding of it is necessary to tackle the data analysis that follows. This section offers a short "primer" on the nature of the legal instruments and the processes of EU policymaking.¹⁶

¹⁶For a more complete and extensive discussion see Peterson and Bomberg (1999) and Nugent (1999) and the references cited there.

4.1 The Treaties

The primary source of law and policy-making power in the EU are the Treaties. New treaties are negotiated at so-called Intergovernmental Conferences and need to be ratified by all member governments. Together with their annexes and Protocols, the Treaties constitute the ultimate source of mandate and legitimacy for all EU institutions and for all their legislative and judicial authority. However, important initiatives can occasionally arise in the EU context that have no origin, or even mention, in the Treaties.¹⁷

More frequent are cases in which important policy chapters have only a tenuous or very general basis in the letter of the Treaties (e.g., transport). In other cases, explicit Treaty provision remain either inoperative or at least hardly developed, perhaps for many years, until the conditions for concrete action materialize.

Conversely, cases exist as well in which the letter of the Treaty has a direct and immediate application. For example, the Treaty-based goal of price stability has become a cornerstone of the ECB's monetary policy.¹⁸

4.2 Secondary Legislation and Non-Binding Acts

Secondary legislation comprises a broad and differentiated range of binding and non-binding legal instruments. There are three principal categories of binding legal acts.

1. **Regulations** contain general provisions, fully binding vis-à-vis all parties in all member states. They are directly applicable without need for national implementation.
2. **Directives** are binding vis-à-vis all member states addressed. They specify the results to be achieved but leave member states the choice of form and methods to implement them. They need not apply to all member states (although they usually do) and are rather general, often specifying outcomes that national measures are supposed to attain.
3. **Decisions** are binding vis-à-vis all parties addressed. They may be addressed to one, several or all parties or member states. They can be very specific, like administrative acts, or rather general.

In addition, the EU Commission issues a number of “softer” acts, or documents, of non-binding nature. Occasionally, particularly when new policy initiatives are envisaged, the Commission publishes White Papers to outline their legislative strategies.¹⁹

¹⁷An example was the set up, in 1979, of the European Monetary System, as a result of an informal agreement between heads of state.

¹⁸See Issing et al. (2001)

¹⁹The Common Market project started out as a White Paper before it became a binding strategy in the Single European Act. So-called Green Papers are Commission reports that aim at influencing the public debate.

Legislation in the EU is typically initiated and prepared by the Commission, who can also sign legislative acts. Before the Maastricht Treaty, other legislative acts were signed by the Council alone. Pressures from the European Parliament have resulted in the so-called co-decision procedure, where the Parliament also has to sign (and with its refusal can veto) certain acts. Since the Amsterdam Treaty, only agriculture, justice, home affairs, trade, fiscal harmonization and EMU issues are largely outside the control of the European Parliament, although admittedly these are among the most important dossiers.

4.3 Enforcement via the Court of Justice

The EU Court of Justice²⁰ has the double important mandate of interpreting EU law and to seek its application and enforcement. Court cases can be initiated by governments and private agents, including staff of the EU agencies.

Contrary to Anglo-Saxon practice, judicial rulings do not have legal status in the EU; but the influence of the Court in giving content to existing legislation and making it effective is considerable. Acting on the initiative of EU bodies, member states, or private parties, the Court rules using as a basis the entire EU legislation (Treaties, Directives, Regulations, etc.) and its deliberations have a key influence on how such legislation is interpreted and applied. The influence of the EU judiciary is enhanced decisively by the fact that European law now “breaks” national law and European Court of Justice rulings “break” national Court decisions.

4.4 International Agreements

The EU also negotiates international agreements of three types. Trade agreements including preferential agreements are based on the mandate on international trade policy (e.g. WTO agreements). Trade and co-operation agreements include the granting of trade preferences and assistance mainly for development reasons. Finally association agreements (e.g. with Mediterranean countries) grant reciprocal rights and obligations typically beyond trade.

4.5 The ECB

The responsibilities and prerogatives of the ECB in the sphere of monetary policy are, in comparison to other policy areas, very clearly defined in the Treaties and well documented in the literature.²¹ There is thus no need to go into details here. From our viewpoint it should be noted, however, that monetary policy making is conducted within a different institutional framework than that of other policies. The Maastricht Treaty defined the main features of EMU and

²⁰For simplicity, Court of Justice for us is intended to include also the Court of First Instance. Created in 1989, the latter has progressively complemented the main Court by issuing first instance judgements on a number relatively simpler cases.

²¹See Issing et al. (2001). The legal profiles of the ECB are examined in Zilioli and Selmayr (2000).

its objective of price stability (Article 105). The Eurosystem, comprising the ECB and national central banks adopting the euro, determines and implements monetary policies via the ECB Governing Council and Executive Board. The ECB decision-making bodies are independent in their task i.e. not subject to influence or approval by other EU or national bodies.

5 The Expansion of EU Legislation, 1971-2000

We present some summary data on the expansion of EU policy activity in the last 30 years in Tables 3, 4 and 5. We have divided this period in six 5-year sub-periods. For each of them, we show the number of legal acts (of various sorts, including binding and non-binding), judiciary acts and international agreements, that emanated from the EU over the period. The tables include all acts, i.e. also those that have subsequently been repealed and are no longer in force today. Hence, the data are intended to describe the policy making activity that has taken place during each sub-period, independently of the degree to which such activity has been relevant in shaping the EU policies as they are today (we shall look at this aspect later). For comparison, we have also added summary data on the size of the EU budget.

The sharp increase in the production of EU secondary legislation in the 3-decade period stands out clearly in Table 3. We find everywhere a similar increase in activity, but to different degrees. On the whole, the number of legislative acts and Court decisions increased three to sevenfold between the early 1970s and the late 1990s. If one considers just the acts of secondary legislation, the total output in 1996-2000 was 11414 acts - that is, a yearly average of well over 2000 among regulations, directives and decisions. This represents a slight decrease from the previous 5 years but a fourfold increase relative to 1971-75. The bulk of the increase took place between 1971 and 1990. While the production of legal acts has been roughly stable since the late 1980s, the upward trend has continued for Court activity. The picture for international agreements is similar.

By contrast, the direct fiscal role has grown only slowly and has remained very limited. EU expenditure as a share of GDP and relative to national public spending has increased somewhat, but minimally in respect to the legislative and Court activity. It also remains very low in absolute terms - i.e., if one compares with the size of government spending in any existing example of federal government. EU expenditure rose from 0.4% of GDP in 1975 to 1.1% in 2000. Relative to national budget share of near 40% of GDP in the early 1970s and near 50% of GDP in the late 1990s, spending has also increased but more slowly, especially over the past decade.

Table 4 focuses on the total of regulations, directives and decisions. Again, acts subsequently repealed are included. We break down the data by policy chapter, and consider both the total number of acts for each chapter and its share relative to the total. In this way, we can measure the relative role each policy domain has played in the total of EU policymaking.

International trade and agriculture feature the bulk of the EU’s legislative activity over the past 30 years. More surprising is the low and relatively stable share of common market-related acts until the second half of the 1990s. This is partly explained as the result of mutual recognition rather than harmonization as the guiding principle of this process and the strong increase in legislation in other policy areas. Moreover, as we shall see later, a large amount of secondary legislation in this area takes place in the form of directives, thus leaving the implementation to national authorities.

Another key feature is that the share of the “classic” EU domains, international and intra-EU trade and agriculture, fell from 80 per cent in the early 1970s to less than 65 percent by the late 1990s. The growing role of the EU in international relations and foreign aid, citizens and social protection (from second half of 1980s), money and finance (late 1990s), environment and non-sectoral business policies, education, research and culture (all 1990s) is clearly shown in the table. Only transport and industry/energy do not exhibit significant increases over the past two decades. All this shows the broadening of the scope of activity of the EU.

In Table 5 we have assembled the data on the non-binding acts and documents. We find it interesting to document also these “softer” forms of policy, since in many cases they are used to lay tentative ground for successive more binding forms of policy. The growth in the number of recommendations and opinions, as well as “white” and “green” papers, is particularly sharp in the 1990s. Common market and business relations take the lion’s share, but it is noteworthy that a sharp increase took place also in two more peripheral areas, i.e., education, research and culture and citizen and social protection.

6 Where We Now Stand: EU Presence Across Policy Domains

6.1 Basic Data

We now move from past evolution to the present, looking in some detail at the today’s EU policy involvement in our policy domains via Treaties, legislation, the Court and subordinate measures.

Table 6 focuses on the role of the Treaties. Such role is measured, across the policy domains, by the degree of detail devoted to each of them, approximated by the number of articles or the number of words (for details on the breakdown of the Treaties into policy domains, see the annex table). Some policy chapters that are clearly of key importance, such as agriculture or business relations (non-sectoral), have little mention in the Treaties. International trade has also relatively little weight, despite its full centralization at the EU level.²² Other domains, like common market or money and finance (the latter, particularly after Maastricht) are heavily present. A surprisingly large share of articles and

²²The full centralisation is reflected also in the fact that trade negotiations in the context of the WTO are conducted by the EU rather than be national delegations.

words (almost one quarter of the combined Articles of the Treaties) are devoted to the citizen and social protection chapter. International relations also covers a large share (mainly due to its presence in the EU Treaty). The ECSC and Euratom treaties give rise to a large presence to sectoral policies on “industry and energy” in the Treaties.

Tables 7 looks at total legislation in force today, showing the acts signed by all signatories by policy chapter. Two findings seem important. Again agriculture is coming out on top of the list in terms of the number of legal acts passed, followed by trade, common market and business non-sectoral. Education, environment, industry, transport, international relations and citizens and social protection come out as less important.

Tables 6 and 7 together suggest that there is a certain substitutability between Treaties and secondary legislation as vehicles for enacting policy. Both the common market and the money and finance domain are extensively represented in the Treaties, but feature less prominently in secondary legislation. International trade, by contrast, has less provisions in the Treaties but features more prominently in secondary legislation (and, as indicated below, in international treaties). Similarly, non-sectoral business relations are more prominent in secondary legislation than in the Treaties. We will take this into account when constructing the summary indicators.

Table 8 displays the Court of Justice activity by policy chapter. Data limitations forced us to restrict ourselves to the period between June 1997 and March 2001. The Court of Justice is only asked for an opinion or a judgement if the EU has an important presence in the corresponding area. The “front-runners” of previous tables, trade, common market and agriculture, also generate numerous Court cases. In addition, the Court had to decide on many taxation related cases and in non-sectoral business relations. It is hardly surprising that Education and research and culture are virtually absent from the Court, but also industry and energy play a very limited role in the Courts as in secondary legislation, despite their important role in the Treaties. On the contrary, the citizens and social protection chapter generate a large amount of Court activity.

Table 9 assembles various other indicators, including international agreements, non binding acts, as well as the staffing of the EU Commissions and the level of spending in the EU budget, all broken down by policy area. International agreements are mainly negotiated in international trade (about 80% of the total), whereas agriculture and international relations make up for almost all of the remaining 20%. Recommendations and opinions, Green Papers and White Papers show, as already seen in an earlier table, a significant coverage of non-traditional policy areas, such as citizen and social protection. They can serve to justify staffing and budgets and show readiness to take on and centralize other policy responsibilities in the future.

The final two columns of the table reveal some familiar and some surprising facts as well. As well known, most of the EU budget goes into agriculture and regional and structural funds (here under citizen and social protection). These areas do not, however, correspond to those in which the Commission is most heavily staffed. By contrast, some of the policy domains with the main

legislative activity are surprisingly modestly staffed. International trade, common market, non-sectoral business and even agriculture only account for a few percent each of total staff. Education and international relations and foreign aid seem rather favorably equipped with manpower. Administration (which includes notably Personnel/Administration and translation services) account for an astonishing 44 percent of the total Commission staff of 23000. In addition, the other institutions (notably the Parliament) employ another 9000 staff.²³

6.2 Summary Indicators

The elementary indicators presented so far provide a somewhat fragmented picture of the intensity of EU policy involvement in each policy area. Moreover, each elementary indicator can be misleading because it measures such involvement from a specific angle and can be affected by measurement problems. Assembling all evidence into summary indicators can thus help us get a clearer overall sense of the results. To construct them, we proceed in two steps. First, we compile semi-aggregate indicators of policy involvement (broken down by domains) for each of the three main channels of policy making, i.e., the Treaties, the secondary legislation and the Court. Second, we combine these into overall indicators of policy involvement, using specific aggregation criteria. All results are presented in Table 10.

The first three columns present the semi-aggregate indicators on EU involvement via Treaties, secondary legislation and Court activity, respectively. In practice, we standardize all earlier detailed indicators for each of the channels - i.e., (i) Treaty articles and words; (ii) regulations, directives, decisions; (iii) Court decisions and opinions - in Tables 6-8 by dividing each cell by the column mean. In this way, attention is restricted exclusively to the relative weights across policy domains: the information on the absolute values of the elementary indicators is lost. Subsequently, we take the arithmetic means of the elementary indicators for each channel. This yields the three semi-aggregate indicators, referring respectively to the Treaties, to secondary legislation, and to Court activity. By construction, each of them has mean equal to one.

The three indicators assume quite different values for each policy domain. This supports the view that EU action in each field tends to take place through a different mix of policy instruments. For example, international trade and agricultural policies are enacted mainly through secondary legislation, with some support from the Court; the direct input from the Treaty is minor. On the contrary, in the areas of money and finance and citizen and social protection the Treaty plays a greater role than secondary legislation; the Court is again important here. In general, the contribution of the Court (as measured by the third semi-aggregated index) tends to be characterized by lower variability across policy domains than the legislative. In turn, the first two are negatively correlated across policy domains, thereby seemingly confirming their complementarity. All

²³By comparison, in Germany, the Parliament, Bundestag and Bundesrat, employ a total of 2300 and 190 staff respectively.

this strengthens our earlier conjecture that there is substitutability between Treaty and secondary legislation as policy vehicles. The Court activity is positively correlated with both the legislative and the Treaty (though the second coefficient is very small). In our interpretation, it should be instead be seen rather as a complement of the first two.²⁴

We then proceed to aggregate this information further. We use the production function analogy to construct three alternative indicators characterized, by construction, by different elasticities of substitutions among the basic indicators. They are, respectively, the arithmetic mean, a (mixed) geometric mean, and a so-called “Leontief” mean constructed as follows (and normalized to have mean equal one):

$$\begin{array}{ll}
 i_1 = (i_1 + i_2 + i_3)/3 & \text{Arithmetic mean;} \\
 i_1 = \frac{P}{[(i_1 + i_2)/2]i_3} & \text{(Mixed) geometric mean;} \\
 i_3 = \min \{[(i_1 + i_2)/2]; i_3\} & \text{“Leontief” mean.}
 \end{array}$$

The first one assumes that the EU policy services (the “output”) are provided with a production technology that is linear in the three “inputs,” i_1 (the Treaties), i_2 (secondary legislation) and i_3 (Court activity). The second index uses the same technology for the first two inputs, while the first two and the third are aggregated using a Cobb Douglas technology. In the latter, the elasticity of substitution is constant and unitary, which implies that the rate of substitution between $(i_1 + i_2)/2$ and i_3 decreases as the use of i_3 increases. This expresses the idea that the pair of inputs $(i_1 + i_2)/2$ and i_3 are to some extent complementary. In the third index, we push this idea further by assuming that the production technology is of Leontief type: there is no substitution at all between $(i_1 + i_2)/2$ and i_3 and the “output” is determined by the most scarce “input”. Finally, we also calculate a rank indicator, equal to the mean of the ranks of i_1 , i_2 and i_3 .

The summary indicators provide a measure of the relative degree of involvement of the EU in the policy areas. Focusing on the arithmetic mean first, there are five areas where the indicator comes out larger than unity (call this “upper group”): in decreasing order they are Agriculture (way above all others), Common market, Business (non-sectoral), Citizen and social protection, International trade. Industry, Money and finance and International relations are close to average (the latter somewhat lower). The “lower group” includes, in increasing order from the bottom, Education, Transport, Environment.

The other two types of mean provide some important qualifications to this ranking. First and foremost, the index value of Industry falls sharply if one moves from the arithmetic to the geometric mean, and even more to the Leontief mean. This reflects the fact that the sections of the Treaties relating to

²⁴The data are as follows: standard deviation of the three columns, in order: .7, 1.3 and .8. The correlation coefficient between the first two is equal to -.33, between the second two .53. The positive correlation between Treaty and Court is just .00032. The number of cases in which the Court rules only on the basis of the Treaties appears therefore to be limited.

Industry (mainly Coal and Steel and Euratom Treaties) are not backed by corresponding secondary legislation and even less by Court activity. We are inclined to interpret this as meaning that EU policy in this area is not really operative. Second, the position of International trade and Common market within the “upper group” is strengthened further. On the contrary, the weight of International relations decreases significantly and moves towards the “lower group”. We regard this result with some special caution, however, since Court activity may be less relevant for this particular policy chapter. Finally, in the “lower group,” Education is reduced even further, while Transport and Environment remain roughly unchanged.

The rank indicator basically confirms all these judgements. We just note that, among the more borderline cases, the position of International relations is somewhat strengthened by the rank indicator.

7 Assessment

We now look at the findings of the quantitative analysis in the light of the normative claims as to the desirable policy allocation suggested in section 3. To facilitate comparison, we have inserted a summary of the evidence, coming from the summary indicators just reviewed, in the earlier table. This yields Table 11.

In the table, we have highlighted in bold the areas in which we find relative clearer evidence of discrepancy between our “normative” priors and the evidence. We shall turn to these areas later. Let us first review the other ones, on which there appears to be broad consistency between the two.

The key historical functions of the EU - International trade and Common market - seem on the whole to be properly allocated. The EU role is large on both, and rightly so. While there seem to be no doubt whether the EU should have a dominant role in these areas, there may be an issue of how such a role is performed. Though the analysis of this paper does not have much to say in this, it is worth recalling two caveats.

First, a free trade area is consistent with sound economic principles, provided its external trade policy is also consistent with them. Second, common market legislation should aim at ensuring effective mobility of goods, services, capital and people in the Single Market area, but does not need to go beyond that. Top-down harmonization of national practices can be equally at odds with economic principles as impediments to trade are. Free trade promotes welfare by allowing countries and regions to specialize while respecting local practices and preferences. In recent years, this principle seems to have been given increasing weight within the context of EU common market policies.

Money and finance is a heterogeneous area, within which quite different considerations apply. The existence of a single European currency, the arguments and evidence in support of which we regard as convincing, requires a significant area-wide centralization of this policy domain not only in the strict field of monetary policy, but also in related areas such as payments systems, money market infrastructures, etc. Financial market integration is gradually

but powerfully pushing towards increasing area-wide co-ordination of supervisory practices and financial market policies. In the areas of budget policies and taxation, the two current issues regard budget co-ordination (beyond the Stability and Growth Pact) and tax harmonization. Our analysis in this paper does not have specific implications for these debates.²⁵ On the whole, however, we see no reason to regard an “average” degree of EU involvement in the overall Money and finance chapter as inconsistent with our normative priors.

The EU involvement in Education, research and culture appears justifiably limited. Though significant emphasis is devoted to this in the Treaties, the effect of this is diluted in the overall indexes by the fact that the legislature and Court activity is practically nil. We also noted that the EU devotes a considerable amount of financial and staff resources to it which seems uncalled for. On the whole, our numbers suggest a case for strictly limiting the EU policy initiatives in the areas to the sole areas in which a strong externality argument can be made.

We also find broad accordance with priors in the area of Business (non-sectoral) policies. There is here a good balance of Treaty basis, legislative activity, and Court support. The historical developments in our indicators clearly show that the decade of the 1990s has been decisive for the enhancement of the extent and intensity of EU action in this field, notably in the sub-areas of competition and state-aid control. This progress appears to us fully consistent with economic arguments, given, *inter alia*, the shortcomings of much of the national legislation in this field and the increasingly continental and indeed global nature of business competition. Non-sectoral business relations are, indeed, a key complement of the common market if applied in a competition enhancing way.

The first and most obvious area where our normative priors seem to conflict with present arrangements is Agriculture. Mentioned only in broad terms in the Treaties, this area jumps to the top of the list for EU involvement due to an intensive use of secondary legislation and to a more limited extent Court activity. The exceedingly high value of the semi-aggregate indicator of legislation intensity in agriculture (4.46 times the average) simply reflects the fact (shown in Table 6) that over 40 percent of the EU secondary legislation today in force concerns agriculture. In addition to that, agriculture absorbs the lion share of the EU financial resources. In light of our results, some fundamental rethinking seems warranted. On the contrary, among the other areas of sectoral policy (Industry, Transport), we see no significant issue raised by our evidence.²⁶

We also find similar inconsistencies in the area of Citizen and Social Protection. It is hard to see reasons against a fairly decentralized scheme of policy management, delegated to local and national authorities. The degree of EU in-

²⁵The relatively strong EU involvement in indirect taxation, not reflected in our detailed numbers but which comes out of a more careful look at legislation and Court activity, in conjunction with plans for further co-ordination in other areas (e.g. capital income taxes) may suggest some concern.

²⁶The Treaties provide for some common transport policy, concerning e.g. the provision of supra-national public goods (cross-border roads), but this has not developed very far.

volvement is instead surprisingly strong, due to extensive Treaty provisions but also to a significant support of secondary legislation and particularly the Court of Justice. The latest Treaties have strengthened the base for EU social policies to include “human resource, social protection and social inclusion” (Maastricht) and employment promotion (Amsterdam). Provisions like working hours and labor protection regulation, layoff rules, co-determination at the workplace seem unnecessary in a single market framework and quite outside the scope of what needs to be dealt with at the supranational level²⁷.

We find the judgement on the Environment chapter complex. On the one side, the presence of supra-national externalities calls for supra-national solutions. However, the presence of national/local aspects points to potential synergy between different levels of governance, among which the EU should find its place. According to our data, the EU involvement is very limited. Judging from the EU treaties, the mandate of the EU is rather general and by no means restricted to international environmental challenges. EU intervention seems to be justified also as means to strengthen the Common Market through the creation of a levelled regulatory playing field. We feel this policy area could usefully be developed further in areas where supra-national solutions are needed.

The degree of EU-level involvement in the area of International relations is rather limited, according to our summary data. The normative case is mixed. There are clear arguments for centralization in certain areas such as defence or diplomacy, where economies of scale and specialization are likely to be an advantage. In other areas included in this category, such as foreign aid, such a case does not seem to exist, unless one sees foreign aid mainly as a complement of foreign policy. Moreover, foreign policy itself may still display non-negligible differences in “tastes” across EU member countries.²⁸

8 Conclusions

We have attempted in this paper an empirical investigation aimed at determining the role played by the European Union (European Council, Parliament, Commission, Court of Justice, etc.), in a number of policy areas. To this aim we have constructed indicators of “policy involvement” based on the extent to which the EU role is mandated in the Treaties, regulated through secondary legislation, or enforced via the European Court of Justice. We have then compared our results with certain priors concerning the desirable degree of supranational allocation of policy responsibilities. We based these priors on three elements: the recent theoretical literature; our own views as to the relative advantages of centralisation or decentralisation of each policy area; the results from an opinion survey. These criteria pointed in the same direction.

Our conclusion is that the allocation of EU policy prerogatives is partly inconsistent with normative criteria for the proper assignment of policies at dif-

²⁷For reasons similar to ours, Boeri (2000) argues in favor of maintaining unanimity for EU decisions on social policy.

²⁸See Alesina and Dollar (2000) on this point.

ferent government levels. The EU is too involved in certain areas where economy of scale seems low and heterogeneity of preferences high and not involved enough in others, which, in principle, should have the opposite characteristics.

Our research should be extended in several directions. First, our empirical measures used a particular source of information on the role of the EU as a policy-maker, namely, that resulting from the letter of the Treaties and the legislative/judicial activity. This seems to us a sufficiently broad basis. Within this framework, our approach here consisted of simple counting. We have already stressed its limitations in section 2, concluding that for this reason our evidence should be seen as complementary to other sources of information. Second, we have adopted the important assumption that the EU role can be gauged from its own acts alone, rather than also indirectly by the policies conducted by national states. But we know that much EU legislation today constrains national legislation, especially via the use of directives and decisions. If most national legislation is influenced by Brussels, via legislation or Court decisions, then our estimates of policy involvement are to be seen as (perhaps much) lower bounds of the actual role of the EU. National legislation should be examined in order to clarify this. Finally, the judgement of the “public good” nature of each policy chapter could be improved. This would require measuring the externalities and spillovers of policies across national states. One would also need to measure asymmetries of preferences over policies. It is hard to think of empirical analyses, however accurate, that can shed complete light on these questions, but an effort in this direction seems worthwhile. A wealth of indirect information (voting behavior, consumer preferences, survey measures more extensive than the ones explored here, etc.) could be exploited.

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Statistical Annex

All data relating to the number of legislation acts issued and in force have been gathered from the European Commission website Celex. This website (<http://europa.eu.int/celex/>) provides access to all European legislation and enables the user to search through them using a variety of criteria. In particular, Celex classifies documents according to subcategories which have been regrouped to obtain our classification in policy chapters.

Data on Court cases were retrieved from the European Court of Justice web site search facility under <http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>. Subject categories were reclassified to make them consistent with our policy chapters.

The following search patterns have been used to obtain our data:

Table 3: Number of Directives, Decision and Regulations in L series retrieved by means of a standard search, second menu (“legislative acts”).

The historical data on EU expenditures were obtained from the publication *Vademecum 2000* “The facts in figures” by the European Commission under <http://europa.eu.int/comm/budget/pdf/budget/syntchif2001/en.pdf>.

Table 4: All numbers were obtained by means of “standard” searches with restrictions by date and subject. Legislative acts were then classified according to their content (see Annex Table).

Table 5: Numbers on international agreements and recommendations and opinions were obtained by means of “expert” searches with restrictions by form, subject and date. White and Green Papers were obtained from EU web site. Non-binding acts and documents were then classified according to their content into the defined policy chapters (see Annex Table).

Table 6: Articles in the Treaties were classified according to their content (see Annex Table).

Table 7: All numbers were obtained by means of “expert” searches with restrictions by form, date and subject. Legislative acts were classified according to their content (see Annex Table).

Tables 8: Court case numbers were retrieved from the EU Court of Justice website. Court cases were classified according to their content (see Annex Table).

Table 9: Numbers on international agreements and recommendations and opinions were obtained by means of “expert” searches with restrictions by form, subject and date. White and Green Papers were obtained from EU web site. They were classified according to their content (see Annex Table).

The staff numbers broken down by policy chapters were provided by the DG-Personnel and Administration of the European Commission. It regards

the staff as of 01/03/2001, including temporary posts. The EU administrative expenditures (4703.7 mil.EUR) have been allocated to the policy chapters/administration/other institutions pro-quota according to the staff size.

Table 10: compiled from previous tables.

Table 1

	Policy Domains	Externalities	Pref. Assymetry	Devolution
1	International Trade	High	Low	EU/Global
2	Common Market	High	Low	EU
3	Money & Finance	Med./High	?	National/EU
4	Education, Res & Culture	Low	High	Local/National
5	Environment	Med./High	High	National/EU/Global
6	Bus. Relations (Sectoral)	Low	High	National
7	Bus. Relations (Non-Sectoral)	High	?	EU/Global
8	International Relations	Med./High	Low	National/EU
9	Citizen & Social Protection	Low	High	Local/National

Table 2: Desired allocation of policy responsibilities: the results from Eurobarometer

	B	DK	D	GR	E	F	IRL	I	L	NL	A	P	FIN	S	UK	Maximum	Minimum	Mean	Median	Hypothetical Council votes in favour of EU responsibility ¹
1 International trade	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
2 Common market	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
3 Money and finance	46	-14	16	36	31	30	34	59	51	42	10	-4	-15	-39	-46	59	-46	16	30	62
4 Education, research, culture	-8	-38	-14	-9	-1	-7	-9	14	1	-10	-23	-25	-18	-36	-21	14	-38	-13	-10	12
5 Environment	28	7	35	24	33	33	10	28	20	44	2	-6	-14	-5	-10	44	-14	15	20	66
6 Business relation, sectoral	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
6a Agriculture and fishery	30	-8	20	-15	3	9	6	-1	14	30	-30	-26	-44	-28	-15	30	-44	-4	-1	43
6b Industry and energy	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
6c Transport	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
7 Busin. non-sect. (compet/subs/comp law)	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
8 International relations & foreign aid	43	-1	32	5	32	36	23	47	29	36	10	1	-19	-21	2	47	-21	17	23	77
9 Citizen and social protection	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a	n.a
9a Migration	32	-18	5	3	26	34	-3	46	7	36	-18	-13	-32	-12	-16	46	-32	5	3	55
9b Crime - local	-26	-58	-20	-9	-18	-22	-34	-6	-12	-23	-25	-29	-39	-56	-46	-6	-58	-28	-25	0
9c Crime - global	49	32	48	20	41	49	24	44	44	49	37	13	28	27	3	49	3	34	37	87
9d Health and social welfare	-30	-65	-31	0	-27	-41	-28	-7	-26	-29	-45	-27	-76	-78	-36	0	-78	-36	-30	0
9e Unemployment, social exclusion, reg. aid	26	5	24	24	32	19	23	37	32	9	15	0	-3	2	-1	37	-3	16	19	74
Mean across domains	25	-12	16	8	18	18	10	28	21	25	-6	-12	-22	-25	-18					
Total	19	-16	12	8	15	14	5	26	16	18	-7	-12	-23	-25	-19					

Source: Eurobarometer, spring 2001, section 5.1

The table reports the balance of answers (S-N). (1-U/100), where: S = percentage of respondents favouring shared responsibility between EU and national authorities; N = percentage of respondents favouring national responsibility; U = undecided; n.a.: survey results not available. See text for further details.

¹Number of votes that would be cast in favour of EU responsibility if Council members voted according to survey replies (majority = 44; qualified majority = 62 votes; unanimity=87 votes)

Table 3: EU activities; 1971-2000

	1971-75	1976-1980	1981-1985	1986-1990	1991-1995	1996-2000
No. of Directives	108	264	330	537	566	532
No. of Regulations	1788	4022	6106	9124	7752	5583
No. of Decisions	716	2122	2591	3251	4242	5299
Total No. of "domestic" legal acts	2612	6408	9027	12912	12560	11414
No. of Court Decisions	693	1155	1760	2127	2027	2487
No. of International Agreements	454	488	517	542	852	1223
No. of Recommendations and Opinions	68	114	95	143	1246	1505
No. of White and Green Papers	0	0	1	9	28	37
EU expenditure as % of EU GDP*	0.4	0.7	0.8	0.9	1.0	1.1
EU expenditure as % of gov. expenditure	1.0	1.5	1.6	1.8	2.0	2.4

*last year of 5-year period only

Sources: See annex

Note: The data on legislative acts include all acts issued in the period, including those no longer in force today.

Table 4: Breakdown of EU legislation by policy domain: number of Regulations, Directives and Decisions

	1971-75	1976-1980	1981-1985	1986-1990	1991-1995	1996-2000
1 International trade	864	2573	2208	3416	2783	2041
2 Common market	133	251	184	268	305	529
3 Money and finance	49	69	98	65	100	249
4 Education, research, culture	15	40	73	104	180	136
5 Environment	29	61	98	131	197	255
6 Business relation, sectoral	1155	3051	5685	7281	7130	5437
6a Agriculture and fishery	980	2479	5165	6880	6654	4907
6b Industry and energy	109	445	408	300	309	370
6c Transport	66	127	112	101	167	160
7 Busin. non-sect. (compet/subs/company law)	116	137	256	358	669	1406
8 International rels & foreign aid (wout intl. Trade)	155	100	162	768	426	501
9 Citizens and social protection	96	126	263	521	770	860
Total	2612	6408	9027	12912	12560	11414

Shares (% of column)

1 International trade	33.1	40.2	24.5	26.5	22.2	17.9
2 Common market	5.1	3.9	2.0	2.1	2.4	4.6
3 Money and finance	1.9	1.1	1.1	0.5	0.8	2.2
4 Education, research, culture	0.6	0.6	0.8	0.8	1.4	1.2
5 Environment	1.1	1.0	1.1	1.0	1.6	2.2
6 Business relation, sectoral	44.2	47.6	63.0	56.4	56.8	47.6
6a Agriculture and fishery	37.5	38.7	57.2	53.3	53.0	43.0
6b Industry and energy	4.2	6.9	4.5	2.3	2.5	3.2
6c Transport	2.5	2.0	1.2	0.8	1.3	1.4
7 Busin. non-sect. (compet/subs/company law)	4.4	2.1	2.8	2.8	5.3	12.3
8 International rels & foreign aid (wout intl. Trade)	5.9	1.6	1.8	5.9	3.4	4.4
9 Citizens and social protection	3.7	2.0	2.9	4.0	6.1	7.5
Total	100.0	100.0	100.0	100.0	100.0	100.0

Sources: See annex

Note: The data include all acts issued in the period, including those no longer in force today

Table 5: Breakdown of EU non-binding acts by policy domain

	Recommendations & opinions					
	1971-75	1976-1980	1981-1985	1986-1990	1991-1995	1996-2000
1 International trade	6	2	12	11	49	38
2 Common market	4	20	8	17	160	200
3 Money and finance	3	1	4	1	50	107
4 Education, research, culture	2	2	4	1	68	92
5 Environment	4	2	4	17	92	149
6 Business relation, sectoral	37	79	48	55	559	574
6a Agriculture and fishery	5	5	2	11	183	148
6b Industry and energy	1	13	13	26	273	311
6c Transport	31	61	33	18	103	115
7 Busin. non-sect. (compet/subs/company law)	6	1	1	7	49	45
8 International rels & foreign aid (wout intl. Trade)	0	3	3	15	39	33
9 Citizens and social protection	6	4	11	19	180	267
Total	68	114	95	143	1246	1505

Note: The total number of documents may differ from the corresponding total in table 6a, since some documents were released before 1971

	White Papers					
	1971-75	1976-1980	1981-1985	1986-1990	1991-1995	1996-2000
1 International trade						
2 Common market			1	1		1
3 Money and finance					2	
4 Education, research, culture					1	
5 Environment						1
6 Business relation, sectoral					1	3
6a Agriculture and fishery						
6b Industry and energy					1	
6c Transport						3
7 Busin. non-sect. (compet/subs/company law)						1
8 International rels & foreign aid (wout intl. Trade)					1	
9 Citizens and social protection					1	2
Total	0	0	1	1	6	8

	Green Papers					
	1971-75	1976-1980	1981-1985	1986-1990	1991-1995	1996-2000
1 International trade						1
2 Common market				4	7	4
3 Money and finance					1	
4 Education, research, culture					3	2
5 Environment				1	2	3
6 Business relation, sectoral				1	4	4
6a Agriculture and fishery				1		
6b Industry and energy					1	3
6c Transport					3	1
7 Busin. non-sect. (compet/subs/company law)				2		7
8 International rels & foreign aid (wout intl. Trade)						1
9 Citizens and social protection					5	7
Total	0	0	0	8	22	29

Sources: see annex

Table 6: Measures of policy intensity: the Treaties

	Treaty of European Community		Treaty of European Union		Steel & Coal and Euratom Treaties		Total role in Treaties	
	Articles	Words	Articles	Words	Articles	Words	Articles	Words
1 International trade	15	1454	0	0	0	0	15	1454
2 Common market	38	6057	0	0	0	0	38	6057
3 Money and finance	18	4335	0	0	0	0	18	4335
4 Education, research, culture	14	1614	0	0	0	0	14	1614
5 Environment	3	682	0	0	0	0	3	682
6 Business relation, sectoral	19	2285	0	0	86	14998	19	17283
6a Agriculture and fishery	7	1072	0	0	0	0	7	1072
6b Industry and energy	1	230	0	0	86	14998	1	15228
6c Transport	11	983	0	0	0	0	11	983
7 Busin. non-sect. (compet/subs/company law)	11	1248	0	0	0	0	11	1248
8 International rels & foreign aid (wout intl. Trade)	7	752	18	2742	0	0	25	3494
9 Citizens and social protection	32	4133	14	2514	0	0	46	6647
Total	157	22560	32	5256	86	14998	189	42814

Shares (% of column)

1 International trade	9.6	6.4	0.0	0.0	0.0	0.0	7.9	3.4
2 Common market	24.2	26.8	0.0	0.0	0.0	0.0	20.1	14.1
3 Money and finance	11.5	19.2	0.0	0.0	0.0	0.0	9.5	10.1
4 Education, research, culture	8.9	7.2	0.0	0.0	0.0	0.0	7.4	3.8
5 Environment	1.9	3.0	0.0	0.0	0.0	0.0	1.6	1.6
6 Business relation, sectoral	12.1	10.1	0.0	0.0	100.0	100.0	10.1	40.4
6a Agriculture and fishery	4.5	4.8	0.0	0.0	0.0	0.0	3.7	2.5
6b Industry and energy	0.6	1.0	0.0	0.0	100.0	100.0	0.5	35.6
6c Transport	7.0	4.4	0.0	0.0	0.0	0.0	5.8	2.3
7 Busin. non-sect. (compet/subs/company law)	7.0	5.5	0.0	0.0	0.0	0.0	5.8	2.9
8 International rels & foreign aid (wout intl. Trade)	4.5	3.3	56.3	52.2	0.0	0.0	13.2	8.2
9 Citizens and social protection	20.4	18.3	43.8	47.8	0.0	0.0	24.3	15.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Sources: See annex

Note: The counting of articles and words includes only those sections of the Treaties that are directly related to policies (i.e. excluding administrative and institutional aspects).

See annex for details.

Table 7: Measures of policy intensity: legislation in force

All signatories				
	Regulation	Directive	Decision	Total
1 International trade	1568	20	1216	2804
2 Common market	48	890	184	1122
3 Money and finance	58	77	138	273
4 Education, research, culture	22	19	94	135
5 Environment	66	193	188	447
6 Business relation, sectoral	3915	650	2738	7303
6a Agriculture and fishery	3733	484	2245	6462
6b Industry and energy	70	45	380	495
6c Transport	112	121	113	346
7 Busin. non-sect. (compet/subs/company law)	73	38	2309	2420
8 International rels & foreign aid (wout intl. Trade)	222	1	258	481
9 Citizens and social protection	257	178	527	962
Total	6229	2066	7652	15947

Shares (% of column)

1 International trade	25.2	1.0	15.9	17.6
2 Common market	0.8	43.1	2.4	7.0
3 Money and finance	0.9	3.7	1.8	1.7
4 Education, research, culture	0.4	0.9	1.2	0.8
5 Environment	1.1	9.3	2.5	2.8
6 Business relation, sectoral	62.9	31.5	35.8	45.8
6a Agriculture and fishery	59.9	23.4	29.3	40.5
6b Industry and energy	1.1	2.2	5.0	3.1
6c Transport	1.8	5.9	1.5	2.2
7 Busin. non-sect. (compet/subs/company law)	1.2	1.8	30.2	15.2
8 International rels & foreign aid (wout intl. Trade)	3.6	0.0	3.4	3.0
9 Citizens and social protection	4.1	8.6	6.9	6.0
Total	100.0	100.0	100.0	100.0

Sources: See annex

Table 8: Measures of policy intensity: Court activity (from June 1997 to March 2001)

	Judgements	Opinions	Total
1 International trade	139	70	209
2 Common market	218	206	424
3 Money and finance	105	123	228
4 Education, research, culture	1	0	1
5 Environment	70	59	129
6 Business relation, sectoral	248	130	378
6a Agriculture and fishery	214	106	320
6b Industry and energy	2	0	2
6c Transport	32	24	56
7 Busin. non-sect. (compet/subs/company law)	317	116	433
8 International rels & foreign aid (wout intl. Trade)	44	28	72
9 Citizens and social protection	123	85	208
Total	1265	817	2082

Shares (% of column)

1 International trade	11.0	8.6	10.0
2 Common market	17.2	25.2	20.4
3 Money and finance	8.3	15.1	11.0
4 Education, research, culture	0.1	0.0	0.0
5 Environment	5.5	7.2	6.2
6 Business relation, sectoral	19.6	15.9	18.2
6a Agriculture and fishery	16.9	13.0	15.4
6b Industry and energy	0.2	0.0	0.1
6c Transport	2.5	2.9	2.7
7 Busin. non-sect. (compet/subs/company law)	25.1	14.2	20.8
8 International rels & foreign aid (wout intl. Trade)	3.5	3.4	3.5
9 Citizens and social protection	9.7	10.4	10.0
Total	100.0	100.0	100.0

Sources: See annex

Table 9: Other measures of policy intensity: international agreements, non-binding legislation, papers, staff & budget

	International agreements	Recommendations & opinions	White papers	Green papers	Staff size¹	EU expenditure²
1 International trade	4521	130	0	1	372	55
2 Common market	11	454	3	15	330	194
3 Money and finance	1	168	2	1	682	100
4 Education, research, culture	101	172	1	5	3821	5064
5 Environment	3	268	1	6	410	218
6 Business relation, sectoral	833	1385	4	9	2521	42940
6a Agriculture and fishery	735	361	0	1	1036	41744
6b Industry and energy	44	649	1	4		958
6c Transport	54	375	3	4		21
7 Busin. non-sect. (compet/subs/company law)	5	129	1	9	1095	364
8 International rels & foreign aid (wout intl. Trade)	426	94	1	1	2061	8481
9 Citizens and social protection	28	498	3	12	1483	33039
<i>Memo: administration³</i>					10214	1498
<i>Memo: other Community institutions⁴</i>					9074	1331
Total	5929	3298	16	59	32063	93284

Shares (% of column)

1 International trade	76.3	3.9	0.0	1.7	1.2	0.1
2 Common market	0.2	13.8	18.8	25.4	1.0	0.2
3 Money and finance	0.0	5.1	12.5	1.7	2.1	0.1
4 Education, research, culture	1.7	5.2	6.3	8.5	11.9	5.5
5 Environment	0.1	8.1	6.3	10.2	1.3	0.2
6 Business relation, sectoral	14.0	42.0	25.0	15.3	7.9	46.7
6a Agriculture and fishery	12.4	10.9	0.0	1.7	3.2	45.4
6b Industry and energy	0.7	19.7	6.3	6.8	0.0	1.0
6c Transport	0.9	11.4	18.8	6.8	0.0	0.0
7 Busin. non-sect. (compet/subs/company law)	0.1	3.9	6.3	15.3	3.4	0.4
8 International rels & foreign aid (wout intl. Trade)	7.2	2.9	6.3	1.7	6.4	9.2
9 Citizens and social protection	0.5	15.1	18.8	20.3	4.6	35.9
<i>Memo: administration</i>					31.9	1.6
<i>Memo: other Community institutions</i>					28.3	
Total	100.0	100.0	100.0	100.0	100.0	100.0

Sources: See annex

Note: Slight discrepancies in the total numbers with respect with table 3 are due to the difference in the time periods considered.

1. Staff size as of 01/03/2001, included temporary posts.

2. The EU administrative expenditures (4703.7 mil.EUR) have been allocated to the policy domains according to staff size.

3. "Administration" includes the Commission, Secretariat-General, Legal service, Press and communication service, External relations, Personnel and Administration, Budget, Financial Control, European Anti-Fraud Office, Joint Interpreting and Conference Service, Translation Service, Office for Official Publications of the EC, Representations in the EU.

4. "Other Community institutions" include Parliament (4126), Council (2648), Court of Justice (1006), Court of Auditors (552), Economic and Social Committee and Committee of the Regions (742).

Table 10: Involvement of the EU in policy making: measures of intensity by policy chapter

	Basic Indicators (1)			Means (1)			Rank			
	Treaty	Legislation	Court	Arithmetic	Geometric	Leontief	Treaty	Legislation	Court	Mean
1 International trade	0.62	1.93	1.10	1.22	1.30	1.54	6.00	2.00	5.00	4.3
2 Common market	1.88	0.77	2.24	1.63	1.89	1.86	3.00	4.00	2.00	3.0
3 Money and finance	1.08	0.19	1.20	0.82	0.96	0.89	5.00	10.00	4.00	6.3
4 Education, research, culture	0.61	0.09	0.01	0.24	0.05	0.01	7.00	11.00	11.00	9.7
5 Environment	0.17	0.31	0.68	0.39	0.44	0.34	11.00	8.00	7.00	8.7
6 Business relation, sectoral										
6a Agriculture and fishery	0.34	4.46	1.69	2.16	2.21	2.36	10.00	1.00	3.00	4.7
6b Industry and energy	1.99	0.34	0.01	0.78	0.12	0.01	2.00	6.00	10.00	6.0
6c Transport	0.45	0.24	0.30	0.33	0.35	0.41	9.00	9.00	9.00	9.0
7 Busin. non-sect. (compet/subs/company law)	0.48	1.67	2.29	1.48	1.72	1.50	8.00	3.00	1.00	4.0
8 International rels & foreign aid (wout intl. Trade)	1.18	0.33	0.38	0.63	0.59	0.53	4.00	7.00	8.00	6.3
9 Citizens and social protection	2.19	0.66	1.10	1.32	1.37	1.54	1.00	5.00	6.00	4.0
Average:	1.00	1.00	1.00	1.00	1.00	1.00	6.0	6.0	6.0	6.0

(1): Indicators are normalised so that the columns average equals unity.

Sources: see annex

Table 11

	Policy Domains	Externalities	Pref. Asymmetry	Devolution	EU Role
1	International Trade	High	Low	EU/Global	Large
2	Common Market	High	Low	EU	Large
3	Money & Finance	Med./High	?	National/EU	Medium
4	Education, Res & Culture	Low	High	Local/National	Small
5	Environment	Med./High	High	National/EU/Global	Small
6	Bus. Relations(Sectoral)	Low	High	National	
6a	Agriculture	...	...	...	Large
6b	Industry	...	...	...	Small
6c	Transport	...	...	...	Small
7	Bus. Relations (Non-Sectoral)	High	?	EU/Global	Large
8	International Relations	Med./High	Low	National/EU	Small
9	Citizen & Social Protection	Low	High	Local/National	Large

Annex Table: Sources for measuring policy intensity

Policy chapters and sub-chapters and corresponding categories/chapters in European Treaties, Celex database of legislation, and in the European Court of Justice website

	Treaty of the European Communities	European Steel and Coal Treaty	Treaty on the European Atomic Energy Community	Treaty of the European Union	Celex categories	Court of Justice website categories
1 International trade International agreements etc. Goods/customs duties	Articles 23-30, 131-135, 184, 185				11.30.10-30, 11.4, 11.6, 11.70.30 02	commercial policy, Assoc. of Overseas Countries & Territories free movement of goods
2 Common market Internal market related legislation Services/establishment right Capital People	Articles 31, 39-50, 56-69, 87-97				13.3 06 10.4 20.1	Community Trade Mark, approximation of laws freedom to provide services free movement of capital free movement of persons
3 Money and finance Monetary policies Other economic Taxation	Articles 98-115				10.2 10.1, 10.3 09	economic policy taxation
4 Education, research and culture	Articles 163-173, 149-151				16	research, information, education, statistics (from environment and consumers)
5 Environment	Articles 174-176				15.1	
6 Sectoral						
6a Agriculture and Fisheries Agriculture Fisheries	Articles 32-38				03 04	ECSC, EAEC, agriculture
6b Industry and Energy Energy Industrial policy (steel etc.)	Article 157	Articles 1-6, 46-75	Articles 1-2, 4-51		12 13 except 13.3 07	energy industrial policy transport
6c Transport	Articles 70-80				17	law related to undertakings, intellectual property
7 Business non sectoral Undertakings law Competition Subsidies	Articles 51-55, 81-86				08 except 8.6 8.6	competition state aid
8 International rels & foreign aid (wout intl. Tra Multilateral co-operation, embargos Foreign policy, defence Foreign aid	Articles 177-183			Articles 11-28	11.1, 11.2, 11.30.40, 11.30.50, 11.30.60, 11.3 18 11.5, 11.7 except 11.70.30	external relations, new accesions common foreign and security policy
9 Citizen & social protection Freedom, society justice Consumer/health protection Labor protection, empl., socsec Regional policies	Articles 125-130, 136-148, 152-156, 158-162, 186-188			Articles 29-42	19, 20.2 15.2, 15.3, 15.4 05 14	justice and home affairs, european citizenship (from environment and consumers) social policy regional policies, economic and social cohesion