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The Effects of Supranational Delegation on Policy Development

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Abstract

Studies on delegation to international organisations have extensively examined the determinants of supranational delegation. Yet, systematic empirical accounts on the effects of different types and degrees of delegation on policy developments remain limited. This paper addresses this gap by using a novel dataset that combines delegation data from the Treaty of Rome with data on legislation and case law developed by the European authorities (1958-2000). The analysis produces three findings. First, a higher level of delegation of legislative and executive functions has a positive effect on the volume of secondary legislation, but no effect on the volume of case law. Second, a higher level of judicial delegation has a positive effect on the volume of case law, while limiting legislative activity. Third, the precision of the Treaty provisions constrains the volume of secondary legislation. The findings show how the type and intensity of supranational delegation shape supranational policy development.

Keywords: European Union, supranational delegation, policy development

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Introduction

Policy delegation is a key feature of international organisations. It can be defined as the conditional granting of authority over specific policy areas, for the purposes and aims determined by the delegating act. In general terms, international organizations can vary in *scope*, i.e. the number of policy areas being covered by the international organisation, and *centralisation*, i.e. the extent to which the authority over one or more policy areas is concentrated in a single delegated body (Abbott *et al.*, 2000; Koremenos, Lipson, Snidal, *et al.*, 2001; Koremenos, 2016; Jensen *et al.*, 2014). These two attributes define a space of institutional variation, which can encompass all the existing international organisations. Hence, we find international organisations with a limited policy scope (covering only one or a few policy areas) and a limited level of centralisation, such as the Convention on International Trade in Endangered Species (CITES). We find international organisations with a broad policy remit but limited centralisation, such as the United Nations (UN), or organisations with a narrow policy remit but a substantial level of centralisation, such as the International Criminal Court (ICC). Finally, we find the case of the European Union (EU), a supranational organisation characterised by different degrees of centralization which vary significantly across policy areas. In all these cases, it is a treaty that defines the policy scope of the organization, and the level of delegation (or centralisation) within specific policy areas.[1]

The EU provides a unique opportunity to study policy delegation at the supranational level, because the asymmetric policy delegation that characterizes it allows us to observe how different levels - and types - of treaty delegation affect policy development in different areas. At the same time, its breadth of involvement in different policy areas allows us to leverage the within-case

[1] We use "level of delegation" and "centralization" as synonyms in this paper. The level of delegation is the extent to which the authority over a policy area is delegated to a specific body, at national or supranational level. In this sense it is a synonym of centralization.

variation, while minimizing the role confounders that we would have by studying different varieties of IOs.

The literature has, in the past decades, amassed considerable knowledge about delegation to international organisations. Special attention has been given to defining the concept of supranational delegation (Hawkins *et al.*, 2006; Abbott *et al.*, 2000) and to explaining 'why, when and how' states delegate authority to international organisations to regulate one or more policy areas (Pollack, 2003; Moravcsik, 1998; Koremenos, Lipson, and Snidal, 2001; Koremenos, 2016; Hawkins *et al.*, 2006). This literature has predominantly focused on the factors and causal conditions that determine the choice of specific institutional designs, and on the conditions of expansion of their policy portfolios (Hooghe *et al.*, 2019). This article continues down this road by addressing the question of how policies are developed by the supranational institutions once treaty delegation endows them with legislative, executive and judicial powers. This is because to get a broad picture of supranational delegation to international organizations, it is not only important to explain why and how this happens, but also how different types of treaty delegation (executive, legislative, judicial) affects policy development in the long run. Specifically, the focus of the article is on Treaty based policy delegation in the EU as opposed to policy delegation via secondary legislation.

From a theoretical viewpoint, delegation theory and the literature on incomplete contracting theory have developed a number of linked hypotheses on the effects of 'incompleteness' of international agreements on *ex-post* specification and re-negotiation of the Treaty provisions (Cooley and Spruyt, 2009; Alter, 1998; Pollack, 2003; Hooghe *et al.*, 2019; Citi 2014). Nonetheless, we lack Large-N assessments of how different types of delegated functions (legislative, executive and judicial) fill in the 'gaps' in the treaties in the post-delegation phase, and how they jointly affect policy development in the long term. In this paper, we study how different types and degrees of delegation embodied in the Treaty of Rome (1957) have influenced

the legislative and judicial activity of the European Economic Community (EEC) in the decades following the Treaty's adoption. Thus, the study is concerned with an international organisation characterised by a broad policy scope and different levels of delegation across policy areas.

The study is based on a novel dataset containing delegation data (type and degree of delegation) for each article of the EEC Treaty, along with variables tracking the volume of legislative and judicial activity developed on the basis of each article of the Treaty, over several decades (1958-2000). These variables allow us to examine how the volume of legislative and judicial activity varies depending on the degree of delegation, and the relationship between the legislative, executive and judicial functions when interpreting and 'developing' different parts of the Treaty. While studying the drivers of treaty delegation is not new, the distinction between legislative, executive and judicial transfer of power with regard to international organizations helps to assess systematically the delegation of different functions to international organizations (Pollack, 1997; Pollack, 2003). In addition, our dataset contains a variable that estimates the level of precision of norms contained within the Treaty. This makes it possible to assess how the precision of Treaty provisions affects *ex-post* policy developments in the form of legislation and case law. Our study shows that policy development – both in the form of secondary legislation and case law – is asymmetric across policy areas and depends on the type and intensity of delegation in different chapters of the Treaty, on the nature of the policy (regulatory/expenditure policies), and on precision of Treaty provisions. The study contributes to the growing body of literature on delegation to international organisations by enhancing our understanding of the relationship between different types of delegation, institutional design and policy development (Pollack, 2003; Moravcsik, 1998; Koremenos, Lipson, and Snidal, 2001; Koremenos, 2016; Hawkins *et al.*, 2006; Hooghe *et al.*, 2019).

This study, also, seeks to add to the literature on delegation in the EU which traditionally has focused on the reasons and consequences of delegation using Principal-Agent Theory

(Franchino, 2007; Hooghe and Marks, 2015; Pollack, 2003; Dehousse, 2008; Pollack, 1997). The field has recently increasingly focused on the consequences of delegation of competences with regard to particular agencies and policy areas (Schimmelfennig, 2018; Perkowski, 2019; Mathieu, 2020; Jordana and Triviño-Salazar, 2020). This study adds to the growing literature by providing a general empirical analysis of how the EU-delegated bodies contribute to the *ex-post* specification and development of the original Treaty provisions.

Supranational delegation and policy development

The Principal-Agent model has become the main theoretical tical device for explaining 'why, when and how' states delegate authority to international organisations (Koremenos, 2016; Koremenos, Lipson, and Snidal, 2001; Moravcsik, 1998; Hawkins *et al.*, 2006; Pollack, 2003). Although created to account for patterns of delegation in domestic politics (McCubbins *et al.*, 1987; McCubbins *et al.*, 1989; Epstein and O'Halloran, 1999) the Principal-Agent framework has proven to be highly applicable in a wide range of contexts beyond its original domain of domestic politics. The common assumption of all these models, both at the national and supranational level, is that political actors delegate authority for two main reasons. Firstly, principals delegate authority to lower the *transaction costs* of policy-making (Franchino, 2002; Majone, 2001a; Pollack, 1997; Pollack, 2003). Transaction costs are costs incurred in developing, adopting and enforcing contracts, including contracts that come in the shape of international agreements. Delegation is a solution to the problem of transaction costs, because delegated supranational bodies will typically use their authority to develop, monitor and enforce the provisions of the international agreement, hence reducing the costs of cooperation for its member states (Pollack, 1997; Pollack, 2003; Dehousse, 2008).

Secondly, supranational delegation is also a response to the problem of *credible commitment*. When states adopt international agreements, they commit to some common policy objectives

(such as the EU single market). However, since national governments change, and new governments may have different policy preferences, international agreements would not be credible without a mechanism that prevents member states from reneging on their original commitments (Majone, 1996; Majone, 2001a). Supranational delegation hence operates as a mechanism of commitment, since it effectively 'ties the hands' of member states in those policy areas by transferring the power to interpret, monitor and enforce the original agreement to the supranational bodies.

In this paper, we investigate first, the relationship between policy-specific levels of delegation and the volume of executive, legislative and judicial activity in the post-delegation phase. We do so by relying on a dataset, that brings together a measure of delegation at provision level, and measures of the volume of secondary legislation and case law developed on the basis of each Treaty provision of the Treaty of Rome (1958-2000). In a second step, we study whether some specific chapters of the EEC Treaty have been taken as the legal basis for more extensive policy developments via secondary legislation and case law. In particular, we investigate whether the EU executive, legislative and judicial functions have asymmetrically 'targeted' some chapters of the Treaty, developing some policies more than others. In a third step, we use a measure of norm precision to test whether a higher level of precision negatively affects the volume of legislative and judicial activities. The assumption, derived from delegation theory and incomplete contracting theory, is that the precision of Treaty provisions may work as a constraint on post-delegation policy development (Farrell and Héritier, 2003; Alter, 2000; Abbott *et al.*, 2000; Koremenos, 2005; Koremenos, 2016; Cooley and Spruyt, 2009; Hooghe *et al*., 2019).

The article differentiates between executive delegation to the Commission, legislative delegation to the Parliament and Council, and judicial delegation to the ECJ, and thereby contributes to the existing literature, which has primarily focused on executive delegation (Pollack, 2003a; Franchino, 2007). The distinction between different types of delegation builds on the doctrine of

the tripartite separation of power, and adds to our understanding of how different kinds of delegation affects policy development in the ex-post delegation phase. This is highly relevant in the context of the EU, and provides a neat explanation to the phenomenon of policy proliferation in the context of a multi-level governance system (Börzel, 2020; Marks *et al.*, 1996). We consider the three types of delegation as supranational delegation.

The Commission is the institution that has been analyzed most in terms of delegated competences, which is not surprising as it is the institution that has been granted the right of initiative and in many areas acts as the executive branch of the EU (Pollack, 1997; Pollack, 2003b; Franchino, 2007). Delegation to the European Parliament and the Council have also received considerable attention as the two institutions can be considered as the legislative branch of the EU (Hix and Høyland, 2011). Although the Council is generally classified as an intergovernmental body representing the interests of the member states, we consider it as a legislative body that operates *above* the level of member states, composed of delegated representatives from member states that take part to joint decision-making. In many cases, the Council has in fact promoted policies that advanced supranationalism in the EU (Menon and Weatherill, 2011). The level and character of judicial delegation has received some attention through the lenses of PA-theory and incomplete contract theory especially by Pollack (1997, 2003a).

With regard to the specific hypotheses that we can derive from this body of theory, we know from delegation theory that policy details can either be developed directly by the principal(s), or delegated to executive and judicial agents (McCubbins *et al.*, 1989; McCubbins *et al.*, 1987). In terms of transaction costs theory, this is a 'make or buy' decision (Epstein and O'Halloran, 1999). When member-state principals agree on the general principles of future legislation, and delegate to supra-national agents the function of articulating specific policies, the latter will be in a position to develop the details of policy through their legislative, executive and judicial activity

(Pollack, 2003). We therefore expect that *higher levels of legislative and executive delegation lead to more extensive policy development via ordinary legislation* (hypothesis H1). In other words, we expect the Commission, the Council and (from 1979) the Parliament to develop a higher volume of secondary legislation in those policy areas where they received higher levels of delegation. The same argument is applicable to the Court, where it can be expected that *higher levels of judicial delegation lead to more extensive policy development via litigation and case law* (hypothesis H2). The court operates by adjudicating on litigation, but given the range of actors who can activate the litigation, we can expect that over a few decades the ECJ will have vast opportunities to issue judgments on most of the articles of the Treaty (Mathieu *et al.*, 2018).

The other important element we investigate is how the precision of Treaty provisions influences policy development in the long term. The EEC defined a legal framework for economic and political cooperation that was very wide in scope but relatively scant in detail (Hooghe *et al.*, 2019). Indeed, this is an element that is common to all international treaties, because it is virtually impossible to concentrate all the inter-state bargaining activity in the *ex-ante* phase of negotiations. For this reason, Majone defined the EEC Treaty as a 'relational contract' (Majone, 2001b) i.e. a contract where the parties agree on general principles and on a set of procedures for adapting the contract to future contingencies, without providing substantive detail on the content of their common policies. The same thesis is suggested by scholars who have advanced incomplete contracting theory in the field of international relations (Cooley and Spruyt, 2009) and in the study of the EU (Leblond, 2004; Hix, 2002; Farrell and Héritier, 2007). The argument is that contracting parties have an inherent difficulty in unambiguously defining all the contingencies that might arise in the future. Therefore, states design international treaties with an inbuilt degree of generality, because this allows them to adapt the original contract to *ex-post* changing circumstances, and modify it in case the original design creates distributional asymmetries (Cooley and Spruyt, 2009). Within this logic, less precise Treaty provisions allow for a higher degree of discretion, while decreasing the likelihood of being criticised for using the

wrong legal basis for policy developments. Thus, we expect that *a higher level of norm precision constrains ex-post policy developments via secondary legislation and case law* (hypothesis H3).

Turning to the type of policy competences that member states delegated to the supranational level, the EEC has always had an inbuilt bias in favour of regulatory policies over policies with a distributive/redistributive component (expenditure policies), due to a difference in the strategic nature of these policies (Scharpf 1999). Regulatory policies typically have an efficiency-enhancing effect, resulting in Pareto-improvements for all member states: a common market with a common set of rules and the possibility of wider economies of scale has always been in the interest of most member states. For this reason, the EEC has also been called the 'regulatory state' (Majone, 1994; Majone, 1997; Majone, 1996). Expenditure policies, on the other hand, take place 'along the Pareto frontier'; they have a different strategic nature because they are essentially zero-sum games, and as such they are more prone to conflict (Krasner, 1991). Indeed, evidence shows that redistributive conflicts are salient in EU decision-making (Bailer *et al.*, 2015; Zimmer *et al.*, 2005). For this reason, we expect that *regulatory policies are developed to a significantly higher level than distributive and redistributive policies* (hypothesis H4). In the remaining part of this paper, we test the hypotheses introduced in this section.

Data

Our analysis is based on the provisions of the Treaty of Rome (1957) which founded the European Economic Community (EEC), and on the entire set of legislative acts and case law that were developed during the years 1958-2000. We base our analysis on the EEC Treaty for the following reasons: because of the varying degrees of legislative, executive and judicial delegation that the supranational institutions received across policy areas, because of the high number of

data points generated by several decades of legislative and judicial activity of the EEC institutions, and because of the overall stability of the EEC Treaty, which was not reformed until the Single European Act (SEA) entered into force in 1987. Despite the change of the legal basis with the SEA, we found ample (and unexpected) evidence that the legislators and the ECJ continued to make reference to the articles of the Treaty of Rome for more than a decade. We thought that these data could contain precious information, so we decided to keep them. However, The SEA constitutes an important turning point in European integration, as it increased the scope of policy competence at the European level and altered the decision-making rules for adopting policies from de facto unanimity following the Luxembourg compromise of 1966 to increased used of Qualified Majority Voting whereby member states could be outvoted. To account for these changes, we subset the dataset in before and after the adoption of the Single European Act in 1987.

Dependent Variables

The first dependent variable measures the volume of secondary legislation (regulations, directives and decisions) and delegated legislation produced by the Commission, the Council and the European Parliament on the basis of each article of the EEC Treaty. In other words, this variable counts the number of EEC laws taking as a legal basis a specific article of the Treaty. The assumption is that this count variable is a reliable measure of the extent to which supranational legislators developed policies targeting specific areas of the EEC Treaty. A higher count could either be the result of a higher level of supranational delegation in some specific policy areas, where the EU was explicitly required to legislate, or it could be the effect of Treaty provisions being broad enough to allow an extensive interpretation and an expansion of *scope* of the EU legislation. Both these possibilities are reflected in our hypotheses and thoroughly tested in the empirical part of this paper. To collect the legislative data, we used the advanced search

facilities provided by the Eur-Lex website, taking as a timeframe the years 1958-2000.[2] The resulting count variable is represented in Figure 1 (dotted line). This variable shows a high level of variability, from a minimum score of zero, to a maximum score of 3,635. A score of zero is given to those articles that have never been taken as a legal basis for secondary legislation, whereas higher scores are given to those articles that have repeatedly been taken by the EU legislators as a legal basis for new legislation.

The second dependent variable measures the volume of case law developed by the ECJ on the basis of each article of the EEC Treaty. More precisely, this variable counts the number of ECJ rulings that make reference to specific articles of the EEC Treaty, during the same timeframe of 1958-2000.[3] We retrieved these references via the search and indexing tool provided by the curia.europa.eu website. We then sorted and aggregated these references on an article-by-article basis. The second dependent variable is therefore a count variable, representing the total number of ECJ judgements that make specific reference to each article of the EEC Treaty. The underlying assumption is that the volume of case law developed on the basis of each Treaty provision is a reliable measure of the extent to which the ECJ has 'targeted' different areas of the EEC Treaty in its judicial activity. This focused targeting of different articles of the EEC Treaty could either

[2] The legislative data were collected from the Eur-Lex online database. <https://eur-lex.europa.eu/homepage.html>, accessed in March 2018. Search query: Domain: EU law and related documents, Subdomain: Legislation, Legal basis treaty: Treaty establishing the European Economic Community (1957), Legal basis – article: 1-248, Search language: English. The search was repeated serially for each of the 248 articles of the EEC Treaty. The analysis stops at the year 2000 since in this year we have the very last references to the Treaty of Rome.

[3] ECJ ruling data were collected from the online database of the Court of Justice of the European Union <http://curia.europa.eu/juris/recherche.jsf?language=en>, accessed on March 2017. Search query: Court = "Court of Justice, General Court"; References to case-law or legislation = [Search in = "Grounds of judgment, Operative part"; Category = "Treaty"; Treaty = "EEC (Rome)"; Article = "1-248"]. The search was repeated serially for each of the 248 articles of the EEC Treaty.

be the effect of a higher level of delegation of judicial authority over specific policy areas, or the effect of lack of precision of some Treaty provisions, which may generate a higher volume of litigation between the EEC member states, or between the EEC institutions, or between the member states and the EEC institutions.

A representation of the frequency of judgements for each article of the Treaty of Rome is provided in Figure 1 (solid line). Figure 1 compares the legislative and judicial activity developed over four decades on the basis of each article of the EEC Treaty. As we can see, there are some articles that have been used as a legal basis for a very high number of laws. These are mainly articles related to commercial policy (especially Art. 113 and 115), agricultural policy (especially Art. 42 and 43), and articles regulating the customs union (mainly Art. 25, 28 and 29). The judgements of the ECJ, on the other hand, show a significantly lower degree of variability across the various chapters of the Treaty. However, they show peaks of activity around the principles (primarily Art. 3, 5, 7), the elimination of quantitative restrictions (mainly Art. 30 and 36), the rules on competition (especially Art. 85-86 and 92-93) and the rules affecting the EU institutions (particularly Art. 173, 177 and 189-190). Furthermore, the figure shows that the two lines have some overlapping peaks, which means that in a few cases the same articles have constituted the legal basis for a high number of legislative developments and for an extensive judicial activity. This is the case for Article 85, which prohibits cartels and collusive business practices, or for Article 100, which defines the old procedure for adopting directives via the consultation process with unanimity vote in the Council. In general, however, the pattern that we can observe is that the secondary legislation has primarily focused on the Treaty provisions related to internal market regulation, agricultural policy and external trade policy, whereas the ECJ has focused its activity on the interpretation of the Treaty's principles, on the removal of barriers to internal trade, and on the interpretation of institutional rules.

Figure 2 provides additional insights on the dynamics of legislative development based on different chapters of the EEC Treaty. The heat map shows that some Treaty chapters were almost completely disregarded as a legal basis for new legislation. This is the case of the chapters on the elimination of quantitative restrictions, the chapter on the movement of capital, and the chapter on social provisions. Other chapters were used for a moderate number of legislative developments, namely the chapters on the rules on competition and approximation of laws (with more intense activity in the 1970s and early 1980s) and the chapter on institutions (with peaks of activity in the early 1960s and late 1980s – i.e. after the adoption of the Treaty of Rome and the Single European Act). Among the chapters that were used more intensively as a legal basis for legislation, we notice a particular peak of activity in the area of customs union in the 1960s, the area of agricultural policy between the mid-1970s and the early 1990s, and the area of commercial policy between the early 1970s and the early 1990s. The heat map is an accurate visualisation of the various 'waves' of legislation developed within each policy areas of the EEC Treaty which correspondence well with historical accounts (Dinan, 2010).

Independent Variables

Our empirical section starts with an analysis of the effects of supranational delegation. As we argued in the theoretical part of the paper, delegation of authority is one of the fundamental dimensions of international agreements addressed by an extensive debate in the literature (Nielson and Tierney, 2008; Abbott *et al.*, 2000; Pollack, 1997; Pollack, 2003; Koremenos, 2016; Moravcsik, 1998; Hooghe and Marks, 2015; Dehousse, 2008). As a measure of the "level of delegation" we use the variable *delegation ratio*, a measure originally developed by Epstein and O'Halloran in their prominent study of bureaucratic delegation (Epstein and O'Halloran, 1999) and subsequently employed in all the main studies of executive delegation in the EU (Franchino,

2007; Pollack, 2003). Although alternative measures of delegation may exist, we decided to stick to this measure that is already consolidated and acknowledged in the literature.

Delegation ratio is calculated in three steps.[4] In a first step, the number of Treaty provisions is counted. Short (single-paragraph) articles are counted as single provisions. Numbered paragraphs within articles are counted as separate provisions. Unnumbered paragraphs and sub-paragraphs are counted as separate provisions only if they have a substantive distinction from the previous paragraph and are not a mere elaboration of the previous paragraph. In a second step, the delegating provisions are counted. Delegating provisions are any provisions delegating policy discretion to any of the EEC supranational bodies, allowing them to move the policy away from the status quo. In a third step the delegation ratio is calculated, by dividing the number of delegating provisions by the total number of provisions contained in each article. Traditionally, empirical measures of delegation have focused on executive delegation, a measure developed by studies analysing bureaucratic delegation in the US, and occasionally applied to measure executive delegation in the EU. However, in addition to executive delegation, the EEC Treaty contains provisions that delegate legislative functions to the Council/Parliament and judicial functions to the ECJ. These acts of delegation confer the authority to define/develop policies that are only broadly defined in the Treaty, and/or 'move' them away from the status quo point. To be sure, the ECJ does not require any article-specific act of delegation in order to rule on the interpretation of any article of the treaty. However, the Treaty contains numerous delegating provisions to the ECJ, mostly to define the remit of its judicial authority, and limit the possibility of overstepping its original mandate, especially in policy areas at the core of national sovereignty. Several contributions have shown how this has historically been an issue for the EU member

[4] We are grateful to Fabio Franchino for sharing his measures of executive delegation and discretion with the authors. We developed our dataset of legislative, executive, and judicial delegation ratio on the basis of his approach.

states (Alter, 1998; Alter, 2009; Weiler, 1991; Maduro and Wind, 2017; Martinsen, 2015a; Martinsen, 2015b). For this reason, member states develop judicial delegating provisions with specific constraints, which prevent the problem of potential circumvention. Hence, we include in our analysis all the three types of delegation. To do so, we use the same method used in the literature to calculate the executive delegation ratio to calculate two additional variables: a legislative delegation ratio and a judicial delegation ratio. The coding document is available in Appendix 2.

Another key variable in our analysis is *article precision*, which estimates the level of precision provided by each article of the Treaty. A higher level of precision means that an article provides either a higher level of policy detail, or a more precise definition of the delegated powers. In line with the theory of bureaucratic delegation, and coherently with incomplete contracting theory, we assume that higher levels of precision limit the discretion of the supranational authorities and constrain the possibility to expand the Treaty provision's policy scope (Huber and Shipan, 2002; Hart and Moore, 1999). The literature on bureaucratic delegation has traditionally relied upon the length of legislative statutes as a measure of specificity of delegating acts (Huber and Shipan, 2002, pp. 72–76). However, this measure cannot be used in our analysis, because our units of analysis are the articles of the EEC Treaty, not legislative statutes. More problematically, Treaty provisions related to specific policies, or to specific delegated functions, can be incorporated in longer articles, or broken down into shorter articles. Hence, article length *per se* is not a valid measure of precision of Treaty provision. We therefore rely on a measure of lexical complexity called Type-Token Ratio (TTR), a measure used in linguistics to estimate complexity of ideas and language precision (Durán *et al.*, 2004). Studies of policy complexity have taken a comparable approach with the use of the Shannon diversity index (Hurka and Haag, 2019), a measure of word entropy. However, the latter is suitable for longer texts like entire pieces of legislation, not for Treaty provisions, that are typically much shorter. TTR is similar in nature to the Shannon diversity index, and is calculated by dividing the number of *unique* words in a unit

of text (in this case an article of the Treaty) by the total number of words in the same unit of text. The underlying assumption is that if we compare two units of text of equal length (for instance a paragraph, or an article), the unit with a higher ratio of unique words (types) to the total number of words (tokens) contains more precise language. To be sure, TTR is not a perfect measure of textual precision. However, it is preferable to measures of textual readability such as the Flesh-Kincaid score, because the latter is measure of readability that takes into account factors like average sentence length and average word length, and as such it is not a measure of the amount of detail contained in a unit of text.[5] We used Kenneth Benoit's *quanteda* for R (Benoit, 2018) to compute TTR for each article of the EEC Treaty. Moreover, since EEC Treaty articles vary in length, and TTR is known to be sensitive to textual length (McNamara *et al.*, 2014; Durán *et al.*, 2004), we created an additional variable to control for article length (number of words).

Finally, our models contain Chapter-level controls; that is to say, we enter all chapters of the EEC Treaty as dummy variables. We do this because we know from the literature that some policy areas, such as redistributive policies, are more prone to political conflict and hard political bargaining than regulatory policies (Scharpf, 1999). As a consequence, member states will be likely to accept legislative and judicial policy development in some policy areas more than others. We therefore use chapter-level dummies to limit the possibility of an omitted variable bias.

Estimation and findings

[5] To substantiate this point, we can make the following example: if we take a long paragraph and break it into smaller sentences, we will get a higher readability score. However, the amount of information and detail contained in the paragraph will remain unchanged. Hence, readability scores cannot be a valid measure of the amount of information and detail contained in Treaty provisions.

The two dependent variables are both count variables, taking the value of positive integers above or equal to zero. The Poisson regression is normally appropriate for this type of data, provided that the distribution of the output variable has the property of equidispersion, i.e. its conditional variance is equal to the mean (Cameron and Trivedi, 2013, p. 69). If this assumption is violated, the statistical inference computed by using maximum likelihood can produce inflated standard errors, and hence unreliable z-scores. We therefore checked the equidispersion property of the two dependent variables, and found that both of them have a variance that greatly exceeds the mean. For this reason, we opted for the negative binomial regression, which accommodates overdispersion and allows for a more correct specification of the model. The results of the regression are reported in Table 1.

In the first model, we test the relationship between three types of supranational delegation that we find in the EEC Treaty (legislative, executive, judicial delegation) and the volume of laws adopted by the EU in our timeframe (1958-2000). In line with our hypothesis H1, we find that articles containing higher levels of legislative or executive delegation are significantly more likely to be used as a legal basis for policy developments in the form of regulations, directives and decisions. A 1% increase in the legislative delegation ratio increases the logs of the expected count of laws by 3.45 units, whereas a 1% increase in the executive delegation ratio increases the logs of the expected count of laws by 2.79 units. Hence, higher levels of legislative and executive delegation determine more extensive policy development via ordinary legislation. Interestingly, articles containing some level of judicial delegation are significantly less likely to be used as a legal basis for legislation. This can be interpreted as evidence that EEC legislative and executive powers somewhat 'restrain' their legislative activity in those areas of the Treaty where the ECJ has received a higher level of judicial delegation.

In our second model, we test the impact of article precision on legislative development, while controlling for article length and chapter-level unexplained heterogeneity. Here we find that

Treaty articles that are more precise are significantly less likely to be used as a legal basis for policy development via ordinary legislation. This finding, which corroborates our hypothesis H3, substantiates the claim that precision of language used in Treaty provisions constrains *ex-post* policy developments via secondary legislation, whereas provisions that are comparatively less precise can be used more extensively as a legal basis for future policy developments.

In other words, states that define the provisions of their 'contract' in higher detail seem to put more stress on the *ex-ante* definition of their policies, with more limited policy developments after the Treaty is adopted. On the contrary, states that define their Treaty provisions in more general terms seem to prefer an *ex-post* development of their policies via ordinary legislation. This is a claim that has been discussed quite extensively in the theoretical literature, but to our knowledge it has not been verified on the basis of a comprehensive empirical analysis of treaty-based data.

The rest of model two controls for unexplained variability at chapter level, taking chapter 2.1.2 "Elimination of quantitative restrictions" as the reference category (omitted in the regression table). Here we notice that most chapters of the ECC Treaty have been used as a legal basis for policy development at a significantly higher rate than the chapter on elimination of quantitative restrictions. Moreover, looking at the effect size and significance level of these chapter-level controls, we can see that the development of supranational legislation has been more limited in the following areas: right of establishment, capital (a policy area significantly developed at a later stage with the creation of the EMU), provisions common to the EU institutions (a very sensitive area mostly addressed at intergovernmental conferences), and two chapters containing a redistributive component (social provisions, financial provisions). This confirms our hypothesis H4 that policy development at the EU-level has been very uneven, with most of the legislative activity focusing on regulatory policies and significantly more limited developments in macroeconomic, financial and redistributive policies.

In the third model, we test the relationship between the intensity of judicial delegation and the volume of case law developed by the ECJ. We find that the level of judicial delegation has a positive and significant effect on the activity of the ECJ: A 1% increase in the judicial delegation ratio increases the logs of the expected count of ECJ judgements by 1.61 units. This finding supports our hypothesis H2, that higher levels of judicial delegation lead to more extensive supranational policy development via litigation and case law. Moreover, the same model shows that higher levels of legislative and executive delegation do not significantly affect the activity of the ECJ. This can be interpreted as evidence that the ECJ does not constrain its judicial activity in those areas of the Treaty characterised by higher levels of legislative or executive delegation and lower levels of judicial delegation.

In our fourth model, we test whether article precision has any impact on the activity of the ECJ, while controlling for all the other variables. We find a negative effect of article precision on the volume case law, which is logically coherent with our theoretical argument and with the findings of model two, although this time the relationship is statistically insignificant. In other words, there is no clear evidence that the ECJ shies away from interpreting those articles of the Treaty that were defined in more precise terms by the member states. Finally, looking at the chapter-level controls, we can see that the ECJ has been significantly more active in the area of chapter 2.1.2 “Elimination of quantitative restrictions” (taken as category of reference and omitted from the table) than in almost any other policy area of the Treaty. This is coherent with similar findings in the literature that have shown an extensive, and decisive, involvement of the ECJ in the abolition of the trade barriers among the member states of the EEC, a phenomenon that has been defined by Scharpf as ‘negative integration’ (Scharpf, 1999). Other chapters, specifically the chapters on “principles”, “free movement of goods”, “agriculture”, “free movement of workers” and “rules on competition” do not differ in any significant way from the category of reference, which means that the ECJ has been involved in those areas as much as in the area of chapter 2.1.2 “elimination of quantitative restrictions”. Taken together, models three and four constitute clear

evidence that the judicial activity of the ECJ has not been evenly distributed across the various areas of the Treaty, but has concentrated on developing those regulatory areas where it has received the highest level of delegation. At the same time, there is no evidence that the ECJ has constrained its activity in those areas where the EEC legislative and executive bodies have received higher levels of legislative and executive delegation. To test the robustness of our findings, we repeated the same regressions limiting our dependent variables (volume of legislation and case law) to a shorter period of 'stable institutional environment' between the Treaty of Rome and the Single European Act (1958-1987). We found an even stronger evidence of all the findings illustrated above. The results are reported in Appendix 1.

Conclusion

Despite the existence of a growing body of literature focusing, on the one hand, on the determinants of supranational delegation, and, on the other, on the legislative and judicial politics of the delegated bodies (Pollack, 2003; Moravcsik, 1998; Koremenos, Lipson, and Snidal, 2001; Koremenos, 2016; Hawkins *et al.*, 2006), the relationship between type and level of supranational delegation and policy development has been underexplored by the empirical literature. This paper has contributed to addressing this gap by examining how asymmetry of supranational delegation across policy areas affects policy development in the long term, studying in particular the case of the EEC Treaty. To pursue this objective, we used an original dataset containing Treaty delegation data (type and degree of delegation), plus variables tracking the volume of legislative and judicial activity over several decades (1958-2000), and a variable measuring precision of Treaty provisions.

The descriptive data presented in the paper have shown that secondary legislation has mostly concentrated on the Treaty chapters dealing with commercial policy, agricultural policy, and the customs union. The activity of the ECJ, on the other hand, has a lower degree of variability across

the chapters of the Treaty, but has targeted in particular the principles of the EEC, the chapters on elimination of quantitative restrictions, the rules on competition, and the rules affecting the EU institutions. In a few cases (such as Article 85 on cartels and collusive business practices) the legislative, executive and judicial functions have had a parallel (and somewhat competing) activity in policy development.

The inferential part of the analysis has shown that a higher level of legislative and executive delegation has a positive and significant effect on the volume of secondary legislation. Moreover, the evidence shows that articles containing some degree of judicial delegation are significantly less likely to be used as a legal basis for secondary legislation. We interpret this finding as evidence that the legislative and executive powers have restrained their activity in those policy areas of the Treaty where the ECJ received a higher level of delegation. Symmetrically, a higher level of judicial delegation in a given policy area has a positive and significant effect on the volume of case law developed within the same policy area. However, the evidence shows that the ECJ has not constrained its activity in those areas of the Treaty with a significantly higher level of legislative and executive delegation. This might be the result of the mechanism of preliminary rulings, which 'forces' the ECJ to produce case law in a wide range of cases that are referred to it by the national courts (Carrubba and Murrah, 2005; Carrubba and Gabel, 2015). Alternatively, it may be the result of a high level of independence enjoyed by the ECJ vis-à-vis the member states, which has given the ECJ more scope for interpreting treaty provisions.

Another key finding of this paper is that precision of the legal provisions contained in the Treaty significantly constrains the volume of secondary legislation. More specifically, the Treaty articles that are defined with a higher level of detail are significantly less likely to be used as a legal basis for policy development via secondary legislation. This finding strongly corroborates the hypothesis of incomplete contracting theory, and shows that precision of language used in Treaty provisions constrains *ex-post* policy developments via secondary legislation, whereas provisions

that are comparatively less precise can be used more extensively as legal basis for *ex-post* policy developments.

In conclusion, this paper has studied the effects of different types and degrees of supranational delegation on (asymmetric) policy development, studying in particular the case of the EEC Treaty. In so doing, it has sought to enrich the debate on supranational delegation and supranational legislative politics, while providing systematic evidence for the theoretical debate on incomplete contracting theory in international relations. These results are highly relevant for the study of the EEC, the EU, and other types of international organisations, although the external validity of these findings will necessarily remain limited until we will have more extensive comparative data across international organisations. Examining international organisations with different configurations of delegation in scope of policy areas and level of centralisation of competences such as ASEAN and MERCOSUR will improve our understanding of the post-delegation phase.

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Table 1. Explaining the volume of supranational legislation and case law

VARIABLES	Model (1) Laws	Model (2) Laws	Model (3) Case Law	Model (4) Case Law
Legislative delegation ratio	3.455***	2.637***	-0.113	0.187
	(0.906)	(0.619)	(0.309)	(0.317)
Executive delegation ratio	2.794***	1.244	0.773	0.539
	(0.995)	(0.758)	(0.472)	(0.736)
Judicial delegation ratio	-4.383***	-4.404***	1.223***	1.611***
	(0.333)	(0.322)	(0.362)	(0.403)
Article precision (TTR)		-4.051**		-1.297
		(2.049)		(1.941)
Article length		0.001		0.000
		(0.001)		(0.001)
Chapter-level dummy variables				
Chapter = 1, Agriculture		3.975***		-1.159*
		(0.312)		(0.617)
Chapter = 3, European investment bank		-16.917***		-2.537***
		(1.065)		(0.590)
Chapter = 4, European social fund		3.153***		-3.728***
		(0.236)		(0.476)
Chapter = 5, Financial provisions		1.024***		-3.669***
		(0.189)		(0.584)
Chapter = 6, Free movement of goods		1.955***		-1.184**
		(0.255)		(0.516)
Chapter = 7, Free movement of workers		2.409***		-0.687
		(0.670)		(0.519)
Chapter = 8, General and final provisions		2.602***		-2.444***
		(0.349)		(0.525)
Chapter = 9, Principles		2.577***		-0.400
		(0.336)		(0.422)
Chapter = 10, Right of establishment		0.644*		-1.690***
		(0.389)		(0.569)
Chapter = 11, Rules on competition		3.321***		-0.533
		(0.108)		(0.535)
Chapter = 12, The customs union		3.193***		-2.311***
		(0.297)		(0.164)
Chapter = 13, The institutions		3.073***		-2.020***
		(0.355)		(0.357)
Chapter = 14, Transport		2.549***		-3.235***
		(0.256)		(0.365)
Chapter = 15, Approximation of laws		3.429***		-1.232**
		(0.618)		(0.536)
Chapter = 16, Association of overseas		1.062***		-3.781***
		(0.316)		(0.657)
Chapter = 17, Balance of payments		1.603***		-3.163***
		(0.177)		(0.574)
Chapter = 18, Capital		-0.524		-2.941***
		(0.334)		(0.512)
Chapter = 19, Commercial policy		4.962***		-2.412***
		(0.459)		(0.524)
Chapter = 20, Conjunctural policy		3.926***		-2.473***
		(0.330)		(0.595)

Chapter = 21, Economic and social committee		4.026***		-5.310***
		(0.328)		(0.448)
Chapter = 22, Provisions common to institutions		-0.441		-0.088
		(0.374)		(0.330)
Chapter = 23, Services		3.244***		-1.589***
		(0.519)		(0.534)
Chapter = 24, Social provisions		0.980***		-2.150***
		(0.294)		(0.372)
Chapter = 25, Tax provisions		3.680***		-1.212***
		(0.347)		(0.453)
Constant	2.472***	2.101	3.312***	5.722***
	(0.231)	(1.452)	(0.272)	(1.722)
Observations	248	248	248	248
Pseudo R-squared	0.0408	0.0771	0.00562	0.0553

Negative binomial regressions. Standard errors are clustered by Treaty chapter. Robust standard errors in parentheses. Significance level: *** p<0.01, ** p<0.05, * p<0.1

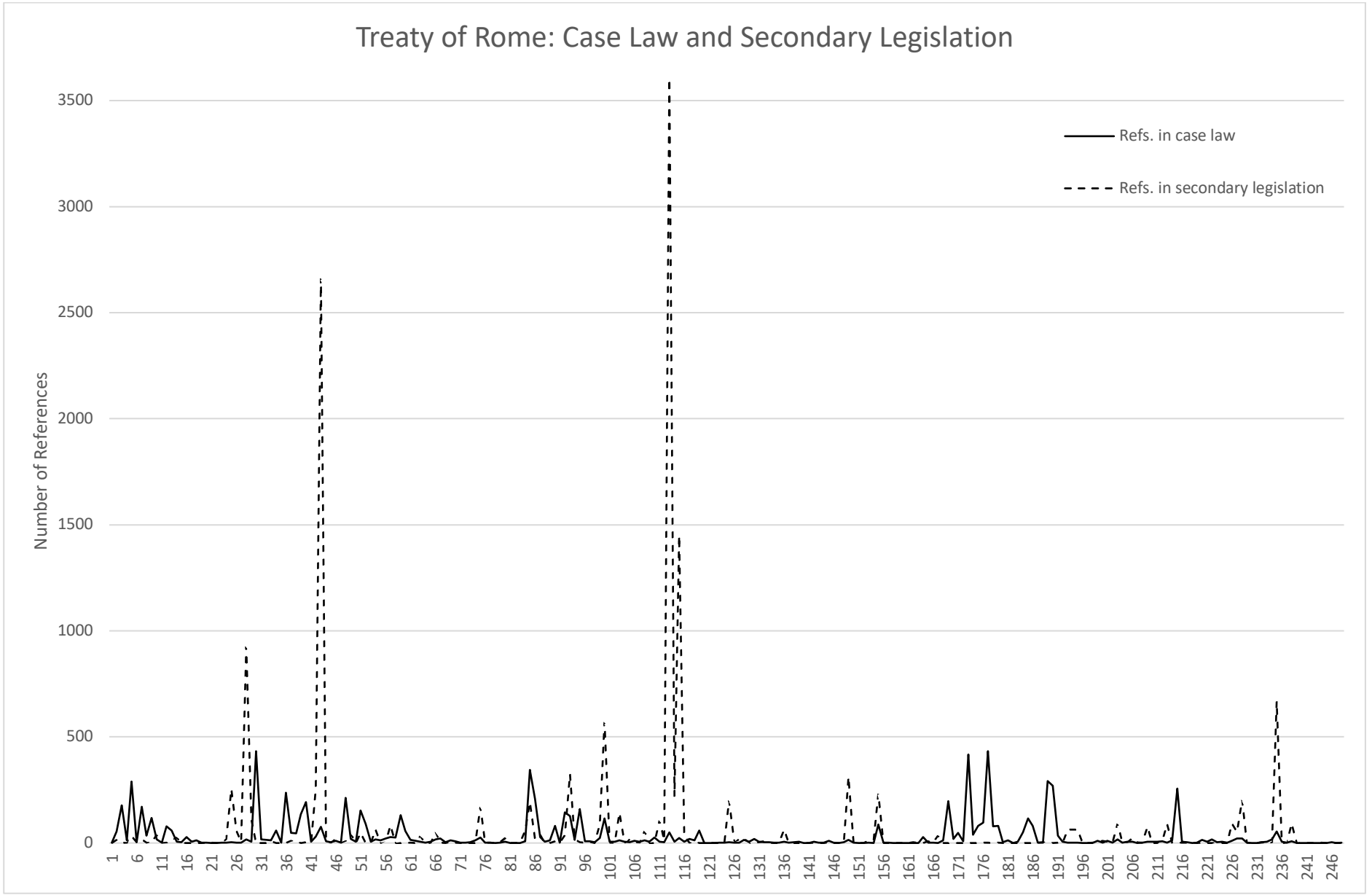

Figure 1. Number of references to EEC Treaty articles in case law and in secondary legislation (y axis), by article number (x axis), 1958 – 2000.

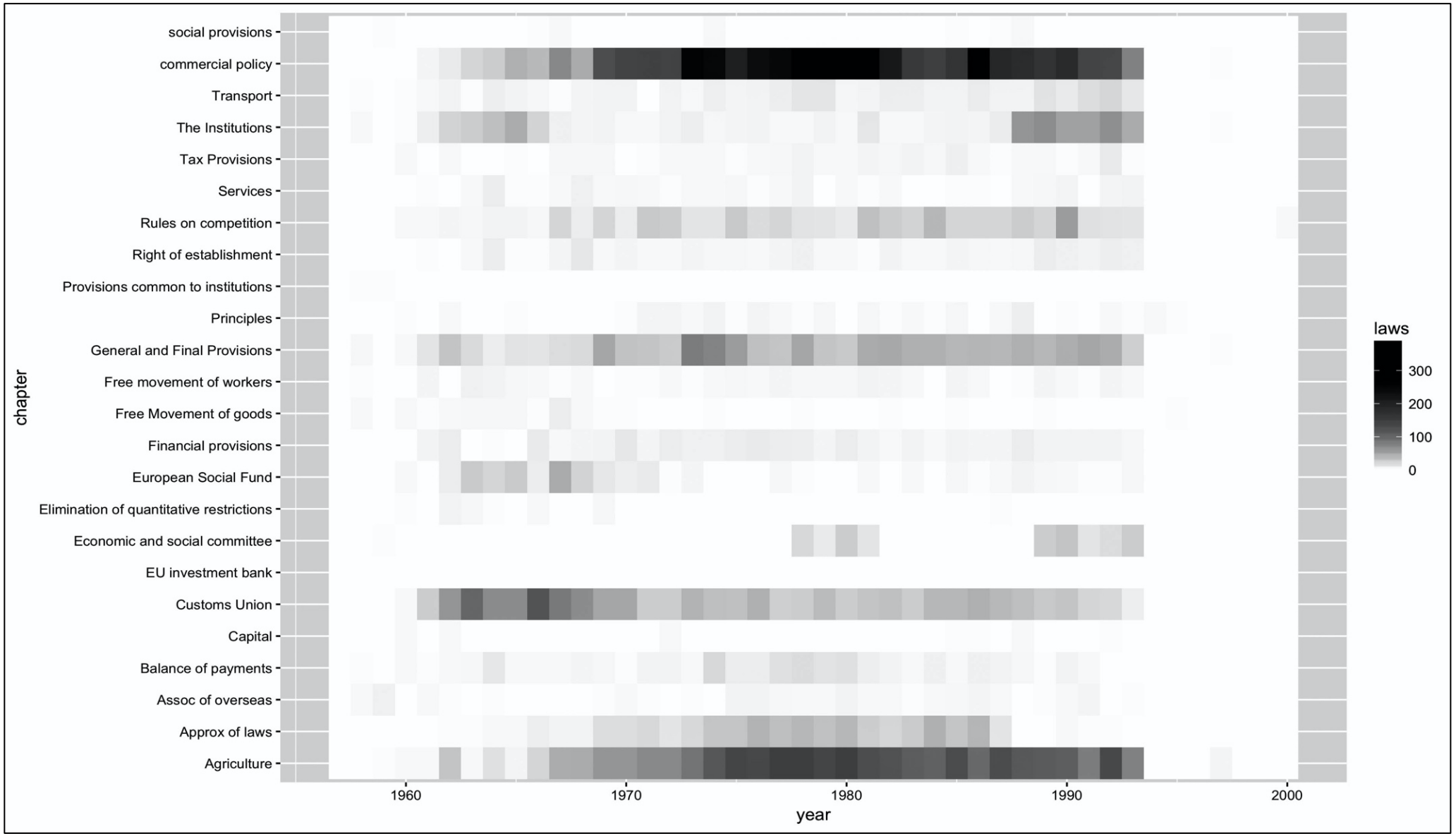

Figure 2. Number of acts of secondary legislation adopted by the EU, per year per Treaty chapter (1957 – 2000)