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November 2015

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**LIMITATIONS TO AGENCY CONTROL IN EU POLICY-  
MAKING: THE COMMISSION AND THE POVERTY  
PROGRAMMES**

**Publication Details:**

Michael W. Bauer, 2002: Limitations to Agency Control in EU Policy-Making. The Commission and the Poverty Programmes, in: Journal of Common Market Studies, Vol. 40, No. 3, 381-4.

## Abstract

The principal–agent model (PAM) has produced valid hypotheses for conceptualizing actor relationships, but its disadvantage – as an economic concept transferred from the field of industrial organization and the theory of the firm to that of European integration – is often overlooked. This article argues that, when applying the concept, researchers interested in the empirical analysis of the EU policy process should be aware of some sensitive points concerning both ‘internal’ consistency and ‘external’ theoretical constraints. Drawing on a case study of the EU poverty programmes, three behavioural patterns – ‘discourse framing’, ‘lobby sponsoring’ and ‘stretching’ – are identified. These all indicate how the uncritical use of PAM may lead to faulty judgements about the actual degree of Commission autonomy in EU public policy-making.

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## Introduction

The advantage of applying the fashionable principal–agent model (PAM) in conceptualizing actor relationships in EU politics – especially between the Council and the European Commission – is that it produces fruitful hypotheses. The frequently overlooked disadvantage is that it is an economic concept, transferred from the field of industrial organization and the theory of the firm to that of regional integration and, consequently, not always a suitable tool for analysis. In this article I argue that the uncritical use of PAM in the study of European politics may seriously bias research results and that, in order to avoid such a bias, students of EU policy-making should reflect carefully on the intricacies of agency controllability, and formulate competing

hypotheses, which are critical of the principal–agent model. In other words, to reduce the risk of bias when studying the role of the European Commission in public policy-making, PAM may be flanked by inductively obtained propositions that allow us to recognize and explain purposeful agent behaviour. Three examples of such explanatory patterns – namely ‘discourse framing’, ‘lobby sponsoring’ and ‘stretching’ – will be discussed here in an attempt to gauge the potential degree of agency autonomy in the sphere of EU public policy-making. The value of the three concepts will then be discussed in relation to the EU poverty programmes. To round this off, the literature will be examined for similar phenomena in other spheres of EU policy-making.

## I. PAM and the Theory of the Firm

In economic theory the principal–agent model (PAM) deals with the unantici-

ated ‘informational asymmetries’ that develop after individuals sign a contract that specifies that one party (the ‘principal’) hires another party (the ‘agent’) to do something on its behalf (Fama, 1980; Radner, 1981; Arrow, 1985). By carefully drafting the contract, the parties attempt to mitigate the structural problem inherent in the principal–agent relationship, i.e. that the agent usually has an informational advantage, or is able to engage in ‘hidden action’ *independent of, and counter to*, the will of the principal (Mas-Colell *et al.*, 1995, p. 477, emphasis added). This phenomenon, known as ‘moral hazard’ (Holmström, 1979), assumes that the agent is in a position to accumulate and exploit superior information about the available opportunities for action. A wide range of economic relationships can be conceptualized using PAM, most prominently those between a firm and its workforce, between the owner of a firm and its managers, between banks and borrowers, between manufacturers and distributors, or between insurance companies and the insured. Economic theory suggests ways to minimize the risk of moral hazard, *inter alia*, by designing compensation schemes that indirectly give the agent incentives to take the correct actions, by initially optimizing agent selection, or by boosting agency competition with comparisons of the efforts of two or more agents who do the same kind of work (Kreps, 1990, pp. 610–13). In any case, profit maximization is usually the ultimate yardstick used in evaluating the agent’s actions and adjusting the terms of the contract. It should be noted that, according to economic theory, deviations from utility-maximizing behaviour (by the agent) are considered implicitly ‘pathological’, since such behaviour, by definition, produces sub-optimal equilibria, which in turn limit gains in the overall welfare (always from the perspective of the principal). Indeed, the declared objective of this branch of economic theory is to teach economists how to reduce the principals’ risk of being ‘morally harassed’ (Tirole, 1993).

## II. Applying PAM to the World of European Politics

PAM is extensively applied in the current literature to account for the policy supervisory abilities of the US Congress (McCubbins and Schwartz, 1984; McCubbins *et al.*, 1989). Arguably, it is applied to an even greater extent in doctoral theses dealing with actor interaction in European public policy-making. A critical point in the theoretical debate concerns whether agency autonomy exists and, if so, how the determinants and explanatory patterns of agency influence should be characterized. In other words, is the Commission's behaviour in EU policy-making sufficiently deviant and purposeful to cause the Council to lose control? Can the Commission make a difference by pursuing its own goals? And does it actually have the skills and capacities to engage in deviant behaviour, strategically using its information when dealing with the Parliament and the Council in order to forge winning coalitions or to design 'promising' proposals that reflect its own institutional interests?

Answering these questions affirmatively, 'policy entrepreneurship' approaches stress the 'broker' qualities of the Commission in the initial phase of transnational public policy projects (Sandholtz and Zysman, 1989; Hooghe and Keating, 1994; Laffan, 1997). Related concepts of 'purposeful opportunism' claim that the Commission's bureaucratic skills in the day-to-day execution of Community policies are evidence of its independence (Cram, 1993, 1997; Klein and O'Higgins, 1985). By contrast, 'agency-slack' interpretations contend that the public policy shaping influence of the Commission 'is nil' (Moravcsik, 1998, p. 53), and that what looks like Commission autonomy is in fact hidden obedience in the face of anticipated sanctions and that such 'autonomous' action should therefore be ignored (Moravcsik, 1993, 1995, p. 620; Pollack, 1997; see also Weingast and Moran, 1983; Moe, 1984; Aldrich and Pfeffer, 1976; McCubbins and Schwartz, 1984; Majone, 1999, 2001).

The 'agency-slack' interpretations, which are arguably more theory driven than the entrepreneurship and opportunism approaches (and can be located on the intergovernmentalist side of the classical neo-functional *v.* neo-realist debate in the discipline), paint a positive picture of the controllability of agents, especially in the EU context. A major weakness of these interpretations is that they do not pay much attention to the possible limitations of the supervision capacity of the actual 'principal'. Since that principal actually consists of 15 national governments whose preferences are, to say the least, not always identical, it is more severely limited than is often realized. These inconsistencies, or the ways that an agent may exploit them, are not explained in sufficient detail. Neither is it clear whether and how the time horizon makes a difference – the time horizon here refers specifically to whether the PAM relationship concerns a single project or long-term public policy (probably reshaped

on several occasions). Moreover, most theorists seem to adhere to a 'top-down' conceptualization of policy implementation, thereby implicitly assuming that *ex ante* fixed policy objectives are the yardstick best used for measuring whether policy implementation is appropriate for the agents involved; as a result, these theorists often neglect the vast literature on the limitations to, and intricacies of, evaluating the implementation 'success' of public policies (Weiss, 1972; Bauer, 2001).

By contrast, the 'entrepreneurship' and 'purposeful opportunist' approaches are more sceptical of the principal's ability to programme the agent via 'remote control'. It is probably no coincidence that the fault line in this debate (i.e. regarding whether or not 'agency autonomy' can assume the value of an 'independent variable') seems to fall between theory-driven and empirically-inspired research programmes. This is arguably the result of the inadequate theoretical specification of what exactly 'agency autonomy' is, and of the respective implications of the original economic concept. In explaining this fault line, we must bear in mind that, in economic theory, 'deviant agency behaviour' is considered pathological; and, thus, normally it is not positively specified in theoretical terms. Consequently, questions such as 'when should it be expected?' or 'when will it be successful?' have been neglected. The aim of the basic economic concept is simply to show how the principal's uncertainty about whether the agent will deliver correctly can be reduced; or put differently, the question is how to increase and sustain the controllability of agency behaviour. The usual response to such concerns stresses that contracts must be carefully drafted to prevent the interests of principals and agents from drifting too far apart.

While I am not claiming that PAM should be dropped altogether in the study of Council–Commission relationships, it may be wise to keep in mind both that it has an implicit theoretical tilt towards controllability and that it appears to neglect the positive implications of deviant agency behaviour. In other words, the development of empirical categories of purposeful agency behaviour should help sharpen the available analytical tools for analysing actor relationships in EU politics (Pollack, 1997, p. 111; Bache, 1999, p. 43). By distinguishing between whether agency strategies are directed at the policy process or at policy outcomes, both supporters and detractors of the 'purposeful agent behaviour' thesis may be able to improve their analytical grasp of EU politics, and the explanatory accuracy of their models. This would facilitate the approach towards one key issue: namely, the linking of behavioural syndromes to testable hypotheses. It would thus allow the researcher (systematically) to identify the circumstances better under which agents may or may not be able to 'achieve their goals' (Hooghe, 1997, p. 95).

The explicit distinction between processes and outcomes makes it easier to identify ‘purposeful agent behaviour’. For example, critics of the concept of the ‘purposeful agent’ in EU politics like to measure alleged agency autonomy against final policy outcomes. They usually indicate – quite correctly – the differences between actual policy outcome and the original preferences of the agent, and they are swift to dismiss independent agency input simply as ‘noise’ in intergovernmental interaction. In doing so, they run the danger of forgetting that a similar analysis of a given individual government’s preference may, in the great majority of cases, reveal equally little measurable ‘impact’ on policy results. Nobody, however, would consequently conclude that governments (or the government under question) had no say in the matter. The distinction between processes and outcomes allows us to reduce the level of confusion; and the empirical analysis presented here indeed suggests that supranational agents have a better chance of successfully influencing EU politics when they focus on background processes instead of openly and explicitly targeting policy outcomes.

I will discuss three ‘behavioural patterns’ here, two of which seem to influence the policy process (and thus challenge PAM from an ‘external’ theoretical perspective) and one which influences the direct outcome (remaining ‘inside’ the logic of PAM). I shall attempt to gauge their significance with respect to autonomous and deviant Commission behaviour. The data are taken from a case study on deadlock and development in the history of the EU poverty programmes. A search for indications of similar phenomena in the literature about other EU policy areas will help complete the picture.

### **III. A Short History of EU Poverty Programmes**

In the early years of European integration, EU social policy studies were limited to research on the transnational movement of the labour force. It was only in 1972, at the Paris summit, that Heads of State and Government agreed to foster the Community’s ‘social dimension’ by establishing a European social action programme. The Commission proposed the ‘Specific Action II.11: Action against Poverty’ (*Bulletin of the EC*, 2/74, p. 17) under the heading ‘improvements in living and working conditions’. The Council endorsed the proposed ‘specific measures to combat poverty’ (*OJ C* 13 1974, p. 3), and a European anti-poverty programme was implemented. Given the absence of a treaty provision suitable for fighting poverty, the catch-all Article 235 TEC (requiring unanimity) was employed. Poverty 1 ran between 1975 and 1980, with a budget of approximately ecu 20m earmarked for some 24 projects, mostly in the areas of research, information exchange and evaluation. Moreover a network was to be developed to make ‘project leaders conscious of

their interdependence on a national and Community-wide basis' (*COM (80) 666*, 4.11.1980, p. 17). The Commission argued that the programme constituted a first step towards making administrative and political authorities 're-think' poverty, including its European dimension, in terms of 'social exclusion'. The main focus, therefore, was on the 'new' poor, emerging 'from the fringe of the middle-class' (*COM (80) 666*, 4.11.1980, p. 4). This new poor was characterized not only by economic hardship but also by an inability actively to reintegrate into society.

Between the 1980s and the early 1990s two similar programmes – poverty 2 and poverty 3 – were implemented. But in the wake of poverty 3, there was much discussion among Council members as to whether the European commitment to fight poverty was either effective or appropriate. The Council was unable to reach agreement on a new poverty programme, in part because both Germany and the UK opposed the Commission proposals for poverty 4. With the advent of a Labour government in 1997, London changed its position. This paved the way for an agreement at the Amsterdam summit, where Germany's reservations were also overcome. As a result, a new treaty article was formulated, legally enabling the EU to take action in the fight against 'new poverty' (redefined as 'social exclusion'). The Commission's post-Lisbon proposal for a respective EU action programme is currently in the 'conciliation' phase of the co-decision procedures.

This picture fits the 'classical' PAM and intergovernmental 'agency-slack' models. At crucial times, the Commission was unable to overcome opposition in the Council, although it was eager to get involved in a new field of EU action. The Council allowed the Commission to implement (some minor) anti-poverty action, but at the same time it kept the Commission on a 'short leash'. Indeed, in the light of the fact that the Council was able to recall or even block further EU action after poverty 3, it seems that the Council never surrendered its overall supervisory powers. Moreover, it was only the shift in the policy preferences of key Council members that made EU anti-poverty action possible at all (primarily by commissioning research and publishing the results).

#### **IV. External Conceptual Challenges to PAM**

##### *Shaping the Policy Process 1: Discourse Framing*

The account of the history of the EU poverty programmes lends support to a classical PAM reading of the case, but this explanation is difficult to maintain when 'deviant agent behaviour' is more carefully specified. The Commission's subtle and, in the last analysis, successful strategy to influence the interpretation of the problem, thereby pre-determining possible answers, can be read as 'discourse framing' (Schön and Rein, 1994).

The disadvantage of a classical PAM perspective in coming to terms with 'discourse framing' becomes clear if one reflects on how little attention PAM pays to the character of post-contractual 'problems', i.e. to the nature of 'informational asymmetries'. According to PAM there *is* a predetermined optimal way for the agent to do his job. For example, the workforce of a car production company is expected to assemble cars as quickly as possible. The workforce is not normally involved in defining rational ways of executing its tasks, nor is it asked whether it would be better for society to produce a completely different sort of car, or no cars at all.

It is, however, precisely this type of question that often makes it difficult to agree to a particular public policy. And the bureaucratic 'agents' are usually the first (being asked by their political principals) to contribute to discussions. Students of public policy are well acquainted with the view that problem formulation constitutes a crucial stage in public policy-making (Kingdon, 1984). The way in which problems are conceived and the ideas that are available to resolve the problems, are decisive, although not entirely systematic, factors in the policy-making process (Cohen *et al.*, 1972). The challenge of studying such phenomena has recently been taken on under the heading of 'constructivism' (Checkel, 1998; Christiansen *et al.*, 1999). The actor or organization that is able 'scientifically' to back-up the definition of, and solution to, a social problem, and which is able skilfully to disseminate and advocate 'its' way of conceiving of 'things', may be able to influence deliberations among actors (McAllister, 1988). In national arenas, where the policy process is highly institutionally embedded, such a resource may merit little attention. But in the context of the less transparent EU decisional processes, where it is essential to forge transnational coalitions and to connect different political arenas, the ability to conduct 'discourse framing' has a much greater value.

With respect to the EU poverty programmes, we can say that in most cases they have dealt with precisely those issues of problem definition and problem solution. The central task of poverty 1 was to research and publish national reports on poverty and anti-poverty action in the Member States, an undertaking that sparked off national debates on the subject (Room, 1990, 1995). The reports and the subsequent evaluations commissioned under poverty 2 and 3 did indeed help redefine the notion of *European* poverty as a matter of 'social exclusion' (Room *et al.*, 1993). It was argued that the problem of new poverty could not simply be defined as 'joblessness' insofar as the rapidly changing nature of European societies, to which EU policies themselves were party, had altered the intrinsic character of poverty. The Community, the argument ran, should assume responsibility for, and become active in the fight against this new poverty, i.e. social exclusion (Duffy and Morrissey, 1994, p.



7). In other words, since the problem of new poverty was (at least partly) European-made, the EC/EU, and consequently the Commission, had to assume responsibility for the problem and be active in resolving, or trying to resolve it.

With respect to the poverty programmes, the Commission had assumed the task of framing the definition of the problem. This strategy of 'discourse framing' (see, e.g., Radaelli 1995; Behrens and Smyrl, 1999, pp. 420–2; Gottweis, 1999) is designed to shape the policy process by committing the principals to a specific conceptualization of a societal problem and to possible policy solutions. An analysis of the EU poverty programmes reveals how skilfully the Commission exploited a relatively new concept imported from the social sciences, namely, 'social exclusion', (re)defining it as a *European* problem requiring a *European* policy response. This constituted a precondition for involving the Commission in the search for a solution. The importance of the terminology should not be underestimated. In the EU poverty undertaking, 'social exclusion' was to become a buzzword allowing the Commission to move poverty policy away from traditional labour-market reintegration approaches. Had the fight against social exclusion been defined simply as a facet of traditional re-employment policy, the continuity of the Commission's involvement would have been threatened, if only by hinting at the lack of available EU financial resources. While the Commission did not invent the notion of 'new poverty', it did finance seminal research in this area, and it exploited the term to criticize the 'outdated' poverty policies of the Member States (Room, 1995; Room *et al.*, 1993). In doing so, it was able to present itself as a trend-setter in the fight against 'new poverty' and 'social exclusion' (Langendonck, 1990, p. 22).

We can find evidence of 'discourse framing' in the creation of a EU maritime policy (Alexopoulos, 2000), where the Commission arguably behaved more assertively than in anti-poverty action. In fact, it actually invented the demand for policy. Other examples are corporate direct taxation (Radaelli, 1995, 1999), industrial policy (Lawton, 1997), environmental policy (Héritier *et al.*, 1996), telecommunications (Fuchs, 1995; Schneider *et al.*, 1994), labour-market policy (the introduction of the new objective 4 in the 1993 reform of the structural funds is a good example; see Michie and Fitzgerald, 1997), the regulation of genetic engineering (Gottweis, 1999) and other fields of social policy (Cram, 1993, 1997).

### *Shaping the Policy Process 2: Lobby Sponsoring*

In order to succeed in implementing a policy, public actors are increasingly dependent on each other and on co-operation with societal groups and interests (Rhodes, 1997). The ability to mobilize constituencies for policy projects

and problem solutions has long been a valuable power resource, but it is given a new twist when the agent starts creating his own constituencies with the clear intention of raising support for particular policy solutions and, thus, of influencing deliberations and indirectly setting political priorities. I refer to this kind of autonomous behaviour as 'lobby sponsoring'. This is not simply another form of 'agency lobbying'; even a classical reading of PAM would have no problem accounting for an agent who tries to convince the principal of the superiority of his or her (the agent's) point of view. 'Lobby sponsoring' differs from this. It should instead be seen as an indirect (and thus perhaps less transparent) lobbying strategy, namely, via institutionalization and third parties (Héritier, 1999, p. 273; Mazey, 1995; cf. also Schmidt, 2000, p. 43). There is considerable literature on the interaction between the Commission and interest groups or other lobbyists such as experts and user groups (Andersen and Eliassen, 1991; Van Schendelen, 1993; Peterson 1995). The term 'lobby sponsoring' should, however, be confined to phenomena where the Commission encourages third-party lobby activities in order to raise issues and to keep them on the public agenda (Mazey and Richardson, 1993). There is a greater likelihood of such autonomous behaviour when the formal political struggle among European principals in the Council and between the Council and the Commission has come to a standstill, and in the wake of 'big' (often financial) decisions (McAleavey, 1994; Smith, 1997).

As regards the poverty programmes, the relationship between DG V and the European Anti-poverty Network (EAPN) is of some significance. EAPN was not only created as a Commission initiative; it is also financed to a considerable extent out of the EU budget (Hodson, 1996; Boswell, 1996). Its task, as one Commission official put it, is to 'put pressure on the system so that the fight against poverty and social exclusion is not forgotten'. There are also a number of European level associations or NGOs that cover very circumscribed issue areas; for example, the European Federation of National Associations Working with the Homeless (FEANTSA), or the Society for Children in Poverty (Mazey and Richardson, 1994, p. 179). All these groupings enjoy the financial support of the Commission; and despite not being particularly powerful players in institutional or legal terms, they know how to make their voices heard, and they are often invited to do so by the Commission (see, for example, *Agence Europe*, 26.3.1997). The Commission uses these lobby groups as a kind of public relations platform. When there was stalemate in the negotiations over poverty 4, senior officials were regularly present at meetings and events organized by the lobbies (Oliver, 1994). On such occasions, neither ex-President Santer nor the then Commissioner for Social Affairs, Pdraig Flynn, was slow to criticize the Member States' opposition to poverty 4 (the latter once openly accused the Member States of 'play-

ing politics in a most cynical way with Europe's least privileged people', *Agence Europe*, 13.5.1995). This certainly boosted media coverage of and public attention towards the poverty issue at crucial points in the negotiations with the Commissioner's EU peers.

'Lobby sponsoring' is likely to be most effective if it is co-ordinated to influence policy deliberations at the European or national level directly before crucial decisions are required. The chances of success increase when the Council's view on a specific question is split. It is unlikely to transform stark opposition into benevolent approval. However, national government officials are responsive to this sort of indirect pressure. In the words of a German public official, expressing his relief at the Amsterdam summit over the (previously opposed) endorsement of future poverty 4 action by his federal government, 'the situation became very tough for us ... in Brussels. Everybody pointed the finger at us, complaining, "they're the ones who don't want to fight poverty"' (interview Federal Ministry of Labour, September 1998).

Although – as this quotation suggests – such third-party 'lobbying' has been effective, its exact value in the poverty 4 case has yet to be determined.

More empirical analysis is thus needed, in particular since results from research in the area of structural funds, for example, indicate that, in fact, such lobbies did not accomplish much (McAleavey, 1993, 1994; Smith, 1997, 1998).

Nevertheless, 'lobby sponsoring' also exists in the area of Community initiatives. There, so-called 'supportive structures' and 'networks' have been set up at the national and European levels, which perform at least partially similar public relations tasks (Héritier, 1999, p. 273; Kohler-Koch, 1999, p. 24). Moreover, the Commission's information policy with regard to the introduction of the euro (Mak, 1999), and its attempts to establish an 'urban' policy (Tofarides, 2000), appear to contain elements of 'lobby sponsoring', designed to shape the policy process in ways more favourable to the Commission's preferences.

## V. Internal Empirical Challenges to PAM

### *Getting the Parameter Right: Stretching*

If the owner of a firm is fed up with his manager, he sacks him. What may be called the principal's power of *ultima ratio* does not usually apply to public policy-making, where the actors, although interdependent, enjoy a greater degree of autonomy and certainly more 'existential' stability (Rhodes, 1997). While an unsuccessful public agent may become less influential or lose his grip on resources (Aldrich and Pfeffer, 1976; Pfeffer, 1982), the risk of institutional dissolution is still remote in the day-to-day business of politics (March and Olsen, 1989). This means, first of all, that it is up to the bureaucratic

agent to decide whether or not to ignore signals of principal resistance and openly to promote a particular policy outcome, even at the risk of subsequent sanctions. In terms of classical PAM, the potential for later sanctions is the principal's assurance that the agent will comply in the first place. Agents are therefore seen as highly 'risk averse'. In EU politics, however, such an assumption is not universally applicable. In other words, although the Commission may be caught and punished for seriously deviant or precipitate action, it nevertheless enjoys the freedom to choose such a strategy, and it does not risk being pushed 'out of the game' should the Council resume its supervision of a particular matter. Taking a risk and defying the Council's explicit or implicit wishes may be another way for the Commission to respond to what it considers a policy deadlock. The *frequency* of agency insubordination is not particularly important. The evidence of 'stretching' should lead us to rethink the theoretical implications and conceptualizations of the 'anticipating sanction' argument that are implicit in 'agency-slack' interpretations. In other words, identifying the agent's risk-taking behaviour challenges 'agency-slack' theorists to make their analyses more empirically accurate. This is not to say that the poverty programmes, where the Commission autonomously established anti-poverty action even after the Council denied approval of precisely such action, are an example of 'EU politics as usual'. Yet, neither is it to say that it is particularly exceptional for the Commission to ignore the Council's prerogatives (Héritier, 2001). The question is not *whether* the Commission ignores the Council recommendations, but *when* it can expect to get away with it. In the case of poverty 4, the Commission tried to launch a similar (but smaller) version of the contested programme on its own account, but it was stopped by the European Court of Justice (ECJ) (ironically, itself a kind of a supranational agent). But even after its legal defeat, the Commission still managed to get much of the content of poverty 4 into the new Integra initiative (that was to focus more on 'traditional' labour market support). Therefore, it seems that the Commission may be able to pursue previously rejected policies under a different label, using a slightly modified emphasis.

The strategic behaviour of the Commission in the poverty 4 question – i.e. the more or less open defiance of the Council's ('non-') decision – consisted of ignoring or sidelining (see Lawton, 1997, p. 130) the principal's inertia: here this is referred to as 'stretching'. In contrast to 'discourse framing' or 'lobby sponsoring', the agent applies 'stretching' in order to address policy outcomes directly. Additionally, one notes that while 'discourse framing' and 'lobby sponsoring' point to 'external' theoretical limitations of PAM, 'stretching' remains 'inside' its conceptual logic and is about setting the correct value of the agency-autonomy parameter. To clarify the concept, the 'non-transition' from poverty 3 to poverty 4 will be examined in greater detail.

The bulk of the actions funded by poverty 3 came to an end in 1994. Having already proposed a successor programme, the Commission continued to pressure the Council to approve poverty 4. The main difference between poverty 3 and poverty 4 (the latter often being referred to as 'social exclusion 1'; see Commission, 1993) was the budget: it doubled, from ecu 55 to 110m. The strongest opposition came from the German, UK and Danish governments. Since the legal basis was still Article 235, which required unanimity, the probability of making a rapid transition to poverty 4 looked bleak.

Opponents of further EU anti-poverty action argued that the implementation mode of the Commission's poverty approach endangered the subsidiarity principle, recently reinforced by Maastricht. The financial ministers of the net-contributing Member States also put pressure on the Commission to reduce the Union's budget by terminating one project that was considered to be of uncertain value. After several attempts, it became evident (June 1995) that the Council would not approve poverty 4. The EU budget for 1995, however, provided (under the heading B3-4103) for money to be spent on it. On 11 August 1995 the Commission announced that a programme to counter social exclusion would soon be established. The Commission deliberately ignored the fact that the Council had reached stalemate on this matter. On 16 August it requested applications for projects 'seeking to overcome social exclusion 1995' (Court of Justice judgment of 12.5.1998, case C-106/96, no. 12). In a very short space of time the Commission received more than 2,000 applications for grants under the provisional programme, mostly from Germany and the UK (around 400 each), precisely the two countries most opposed to poverty 4 (*Agence Europe*, 24.1.1996). The Commission swiftly chose 86 'demonstration projects', which were funded with ecu 6m.

With this action, the Commission set a precedent. The UK, supported by Germany and Denmark, applied to the ECJ, claiming that – on the basis of Articles 173 and 174 TEC – the Commission was spending EU money 'illegally', i.e. without authorization. The Commission was accused of acting beyond the powers granted to it under the Treaty (Article 4 TEC; *Agence Europe*, 25.9.1996). In its preliminary ruling, the Court of Justice forbade the Commission to spend more money. The Commission defended itself (unconvincingly) by arguing that the actions funded were of a 'non-significant character' and therefore did not require expenditure authorization by the Council.

While the Court was preparing its final judgment in the social exclusion case, a quarrelsome inter-institutional and public debate flared up over the issue of poverty. The EP, the anti-poverty lobby groups and, above all, the Commission lashed the Council for its stubborn rejection of poverty 4. On the 'international day for the elimination of poverty', for example, the Commis-

sion (lobby) sponsored a gathering with NGOs in Brussels. There, Padraig Flynn once again stressed that ‘unless Europe redoubles its efforts to combat relative poverty as well as absolute poverty, ... we run the risk of undermining social cohesion’. On the same occasion, Jacques Santer expressed the need to ‘strengthen European solidarity’ and to ‘mobilise everyone against unemployment, poverty and exclusion’ (*Agence Europe*, 18.10.1996).

Even though the Court’s preliminary ruling declared the Commission’s ‘preparatory action’ void, the Commission managed to keep social exclusion on the EU agenda. In 1997 it started a new Community initiative within the realm of the European social fund: the employment-Integra programme. This initiative concentrated on integrating migrants, refugees, the homeless, single parents and ex-prisoners into the labour market, i.e. it focused precisely on the clientele of the poverty programmes (Commission, 1997). Although conceived of as a labour-market reintegration programme, it emphasized the underlying principles of the poverty programmes: participation, a multi-dimensional approach and local partnership.

As anticipated, in May 1998 the Court confirmed its preliminary ruling, and its final judgment annulled the action taken by the Commission in 1995 to finance ‘preparatory measures’ in order to combat social exclusion (Pries, 1998).

Contrary to what the Commission has argued, the purpose of the projects ... was not to prepare future Community action or launch pilot projects. Rather, it is clear from the activities envisaged, the aims pursued and the persons benefited that they were intended to continue the initiatives of the poverty 3 programme, at a time when it was obvious that the Council was not going to adopt the poverty 4 proposal, which sought to continue and extend Community action to combat social exclusion. (C-106/96 Judgment 12.5.1998)

Although it is tempting to take this as evidence supporting the thesis that EU principals can always resume their supervisory capacity, and that they therefore remain the unchallenged master of the policy process (Moravcsik, 1998; Majone, 1999), the principals could not directly prevent the agent from following a deviant course of action. Another agent, in this case the ECJ, was needed to stop the Commission, and there is no guarantee that in other instances this second agent will always take the position of the Council. On this occasion, outright ‘stretching’ was not able to bring about the policy outcome preferred by the agent, and the principals’ control capacity – although not apparently as insurmountable as the implementation of the Integra initiative suggests – cannot simply be written off. ‘Stretching’, however, would appear to be a promising deviant strategy with which to shape policy outcomes; it focuses on contents without giving the principal the opportunity to intervene

on formal grounds (that is, disregarding the procedures, etc.). In other words, the Commission is most likely to defy the Council's wishes successfully and to go ahead with its own agenda if it acts indirectly and with diplomatic stealth.

Moreover, as regards poverty 4, one notes that by the time the Court of Justice had sealed the legal defeat of the Commission, the political wrestling over European anti-poverty action was already over. Surprisingly, it ended favourably for the Commission. At the Amsterdam summit, a new Article 137(2) TEC 'to combat social exclusion' was agreed upon, thereby allowing the Commission precisely the sort of action it had previously been penalized for.<sup>1</sup> According to the version circulated in the press, the 'poverty dossier' was skilfully scheduled at the Amsterdam summit, and the heads of state had to decide on the new Article 137(2) at lunchtime, and quite obviously in a hurry (*Agence Europe*, 5.7.1997). In any case, with this new article, the Commission obtained a solid basis for a permanent EU commitment in the fight against social exclusion (Mejer, 2000; Commission, 2000).<sup>2</sup>

Is there evidence of 'stretching' in other EU policies? It appears that similar phenomena may occur, once again, in the field of the structural funds. In Germany, the Länder have complained about the Commission's introduction of some Community initiatives, contending that in some instances these initiatives counteract national development strategies in sensitive policy areas. A powerful basis for such complaints is that some Community initiatives exist where an agreement over European funding could not be reached in the negotiations with the Commission about the Community support frameworks in the first place (interview; see Pollack, 1995, p. 374; Schmidt, 2000). The Commission's policy for handling the evaluation requirement of the structural funds also generates similar misgivings (Frankenfeld, 1997).

## Conclusion

The use of the principal-agent model to conceptualize the relationship between the Commission and the Council remains valid as a theoretical approach. The traditional PAM recalls the simple truth that the Commission simply cannot openly swim against the tide. One should, nevertheless, avoid determinism. The fact that PAM-disturbing agency action is difficult to account for does not mean that it is impossible. As has been suggested in this article, students of public policy-making should accommodate PAM in order

<sup>1</sup> Article 137(2): 'The Council, acting in accordance with [the co-decision] procedure, may adopt measures designed to encourage co-operation between Member States through initiatives designed to improve knowledge, develop exchanges of information and best practices, promote innovative approaches and evaluate experiences in order to combat social exclusion'.

<sup>2</sup> For the latest developments in the context of the EU social exclusion policy, see COM(2000)368 of 16 June 2000 and COM(2002) 89 final, of 19 February 2002 (with further EU documents and timetable).

to improve their understanding of European politics. Three patterns of possible independent and significant agency deviation were described – ‘discourse framing’, ‘lobby sponsoring’, and ‘stretching’. I also furnished evidence of their occurrence. These examples of ‘explanatory patterns’ suggest more generally where the empirical researcher should look, and what s/he should search for, in order to decide whether agency behaviour can be interpreted as compliance or as defiance.

A major concern of this article has been to indicate the circumstances under which the identified behavioural patterns influence EU politics, and when the behavioural patterns are likely to be most effective (measured by the preferences of the agent). For supranational agents it makes more sense to influence the deliberative phase of EU politics than to commit its principals directly to particular policy outcomes. In order to obtain testable hypotheses regarding how the Commission is able to guide and shape EU policy-making, the analysis of the poverty programmes advises researchers to pay more attention to the ‘time horizon’ of an EU policy undertaking, to situations of ‘policy deadlock’, to how they are overcome and, last but not least, to whether societal support for a policy is required and, if so, from whom.

In sum, with the help of the conceptual modifications to the principal-agent model, which show the use of ‘discourse framing’, ‘lobby sponsoring’, and ‘stretching’, the evidence presented here obliges us to face up to the fact that the Commission was able to exercise *deviant and significant* input in the development of the EU poverty programmes. In the light of such evidence it can be concluded that the causal explanatory power of purposeful Commission strategies requires further systematic research.

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