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and Kalypso Nicolaidis

Is the Commission the Small Member States' Best Friend?

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FOREWORD

The institutional framework of the European Union hinges on a delicate balance of power between large and small Member States. This relationship tends to be intensely discussed during Treaty revisions, which was obvious during the work of the Convention and the subsequent Intergovernmental Conference. Institutional issues such as voting weights, number of seats in the European Parliament, the rotating presidency and the composition of the Commission all touch upon power issues concerning, *inter alia*, the balance between large and small Member States. Traditionally it has been said that large Member States prefer the Council while small Member States find their natural ally in the Commission. Is this simple description close to the truth or outright false? This is the question the present report seeks to analyse and answer.

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EXECUTIVE SUMMARY

This study investigates the nature of the relationship between small states and the European Commission, posing the question whether the Commission is a small state's "best friend."

The notion of "best friend" is understood in terms of the expectations small states might have of a best friend, including:

- a greater sensitivity than other actors to the need to safeguard the principle of "equality between states" in the EU and to prevent the dominance of big states;
- a greater sensitivity than other actors to small states' national interests and alliance-building efforts in their pursuit of their interests within the EU; and
- a political readiness and ability to ensure compliance by all Member States, regardless of their size.

Focusing in particular on the Belgian, Greek, Finnish and Hungarian experience, the key findings indicate that the small state-Commission relationship is not as straightforward as the "best friend" analogy may suggest. A twofold argument is put forward:

- Within the EU's institutional balance and hence at a *general* institutional level, the Commission has indeed played a crucial role in guaranteeing a degree of equality for small states in the EU, both through its composition and its functions. This becomes particularly evident if compared to purely inter-governmental decision-making processes which are generally a reflection of sheer power politics. In addition, it explains small states' defence of the Commission in the EU's successive rounds of institutional reform.
- However, when it comes to drafting *specific* legislative proposals the Commission is no defender of small state interests. Indeed, small state preferences differ widely on other than institutional issues. Thus they must lobby and defend their interests themselves.

The analysis identifies four conditions under which small states are most likely to be heard and defended by the Commission:

- when they form coalitions with at least one or two big states;
- when they become active before a proposal is formally presented;
- when they have well-developed networks within the Commission; and
- when they can offer special technical expertise on an issue.

Examination of the Commission's power in shaping final policy outcomes and the role of the Council presidency in brokering agreements show that:

- the evidence regarding power of the Commission in shaping final policy outcomes is mixed and often exaggerated. Commission proposals change – often significantly – in Council negotiations and in the co-decision procedures;
- in order to shape final compromises, coalitions are crucial including with the Member State holding the presidency; and
- since the Commission and the presidency compete for agenda influence, the Commission can be a crucial ally as well as a constraint for countries holding the presidency.

IS THE COMMISSION THE SMALL MEMBER STATES' BEST FRIEND?*

*"Small Member States are well served if the Commission is strong. But the Commission is not the spokesperson for small state interests."*¹

1 INTRODUCTION

The European Union (EU)'s institutional framework relies on a delicate balance between small, medium and large Member States – a balance that has come under intense scrutiny in the Convention on the Future of Europe and the enlargement process. Within the decision-making triangle, the big states have traditionally favoured the Council to wield their power, while the small states have tended to regard the Commission as their closest ally. The incentives of small states to seek close relations with the Commission stem from the combination of its general role in the institutional balance as guardian of the "common interest" and its specific functions from drafting to implementing EU legislation. The independence of the Commission offers small states a potential means to counterbalance the power of the 'big's'. This study revisits this assumption and investigates the multidimensional nature of the relationship between small states and the Commission: is the Commission really the small Member States' "best friend"?

1.1 Cases and Method

There is no unified definition of small states. Some define small states in absolute terms for example according to their population size or voting weights in organisations. Others define small states in relative terms based on perceptions of states. Keohane (1969), for example, distinguishes between large and small powers by focusing on whether their leaders think their states have a decisive impact on the international system. Rothstein (1968) defines small states as countries who are unable to exercise their political will or protect their interests and security. ² This study chooses an absolute definition. It refers to the category of "small" states where political rhetoric usually refers to "small and medium states". Small EU states are defined as those with significantly less than 40 million inhabitants: the Netherlands, Greece, Belgium, the Czech Republic, Portugal, Hungary,

* We would like to thank Gwenda Jeffrey-Jones, Marisabel Aramburu, Juan Antonio Casas, the Permanent Representations of Belgium, Greece, Finland, and Hungary as well as the Commission officials who were available for interviews – the basis for most of the sources of this study. Their requests for anonymity have been respected.

¹ Commission official, Brussels, 14.3.2005.

² See also Thorhallson (2000).

Sweden, Austria, Slovakia, Denmark, Finland, Ireland, Lithuania, Latvia, Slovenia, Estonia, Cyprus, Luxembourg, and Malta. In other words, all Member States except six: the founders, France, Germany, and Italy; and the UK, Spain, and Poland which joined in successive enlargement waves.

While it seeks to draw general conclusions, the study provides empirical examples from the Belgian, Greek, Finnish, and Hungarian experience mostly in the policy area of the internal market. Inspired by the so-called “most-different system” approach of comparative study, these four countries appear as an appropriate sample providing as they do variance in terms of resources, interests/identity (North-South), their degree of commitment to European integration, and experience. The idea is to begin with contrasting starting points, but detect similarities and relationships among variables that travel well across countries. Similarly, focusing on examples of small state-Commission relations in the internal market seems adequate given the powers of the Commission are greatest in this policy area. The analysis is informed by over 30 interviews with officials from small states and the Commission most of which were held between February and March 2005.

1.2 Argument and Structure

We start from a number of assumptions as to what small states might expect from a “best friend”:

- a greater sensitivity than other actors to the need to safeguard the principle of “equality between states” in the EU and to prevent the dominance of big states;
- a greater sensitivity than other actors to small states’ national interests and alliance-building efforts in their pursuit of their interests within the EU; and
- a political readiness and ability to ensure compliance by all Member States, regardless of their size.

Have these assumptions held historically? The study begins with an assessment of the EU’s historical institutional balance and the ability of the Commission to guard equality and prevent big state dominance within this balance. It then discusses small state experiences with the Commission, including illustrative examples mostly drawn from the area of the internal market. A number of conditions are identified under which an alliance with the Commission is most likely.

We argue that within the EU's institutional balance and hence at a *general* institutional level, the Commission has indeed played a crucial role in guaranteeing a degree of equality for small states in the EU, both through its composition and its functions. This becomes particularly evident if compared to purely inter-governmental decision-making processes which are generally a reflection of sheer power politics. In addition, it explains small states' defence of the Commission in the EU's successive rounds of institutional reform.

However, when it comes to drafting *specific* legislative proposals the Commission is no defender of small state interests. Indeed, small state preferences differ widely on other than institutional issues. Thus they must defend their interests themselves. They are most likely to be heard by the Commission when they:

- have formed coalitions with at least one or two big states;
- become active before a proposal is formally presented (in the drafting process);
- have well-developed networks within the Commission; and
- have special expertise in an issue due to their special interests.

When it comes to shaping final policy outcomes, the evidence of the Commission's power is mixed and often exaggerated.³ Commission proposals change – often significantly – in Council negotiations and under European Parliament scrutiny. In order to shape the final compromise, coalitions with other Member States are crucial, particularly with the Council presidency. Since the Commission and the presidency compete for agenda influence, the Commission can be a crucial ally as well as a constraint for the presidency. Thus, the small state-Commission relationship is not as straight forward as the “best friend” analogy may suggest.

³ See also Schmidt (2001).

2 THE IMPORTANCE OF THE COMMISSION WITHIN THE EU'S INSTITUTIONAL BALANCE

The European Community (EC) was founded on two impulses. First, its creators sought to design a system based on shared leadership so that size would no longer equal might and temptations of hegemony by any of the big states would be mitigated. Second, whilst sharing out leadership, this new system denied the full import of sovereign equality between states – one of the most fundamental ways in which the EC diverged from the outset from common standards of international law and institutions. This *in between* approach is reflected in the logic of ‘regressive proportionality’ – a midway house between the principles of “one country, one vote” and “one citizen, one vote” – which prevails both in the Council through voting procedures and in the composition of the European parliament. In practice, small states benefited disproportionately from the pooling of sovereignty, both as a way of managing interdependence and as a way of recovering sovereignty on the international scene. To guarantee a fair balance between the bigs and the smalls, the Paris Treaty set up three complementary mechanisms: independent supranational institutions; a system of weighted votes in the Council of Ministers; and a rotating Council presidency.

2.1 Functions, independence, and composition of the EU's supranational institutions

Supranational law and institutions are supposed to serve weaker actors disproportionately. The independent supranational Commission (formerly High Authority) was granted the monopoly right to initiate Community legislation, monitor implementation, and – if necessary – initiate infringement procedures against the Member States (whether big or small). The intergovernmental Council of Ministers has to accept Commission proposals before becoming law and can only amend them unanimously in the majority of cases – a provision that gives the Commission considerable agenda-setting powers.⁴ The European Parliament (EP) (initially Assembly and largely consultative body) gradually developed into an independent co-legislator alongside the Council. The relative power of these three institutions depends on the underlying legislative procedure (co-decision, co-operation, or consultation) and voting arrangements (QMV or unanimity).⁵ Finally, the European Court of Justice (ECJ) was set up to interpret the treaties and bind all Member States equally to EU law. This combination of functions

⁴ This hold in all cases where qualified majority voting (QMV) applies.

⁵ See, for example, Tsebelis (1994) and (1995).

of the EU institutions and their independence were to ensure that size would no longer equal disproportionate influence. Obviously, no political construct can or indeed should attempt to entirely mitigate power asymmetries. In fact, decision making dynamics in the EU continue to reflect such asymmetries. What we attempt to measure therefore is not how close the system is to one of equal power between states of different size but rather to what extent it tends to diverge from purely reflecting power asymmetries.

2.1.1 The Commission

Interestingly, although the Commissioners were explicitly prohibited to “[either seek or take] instructions from any government,”⁶ small states initially feared potential *dirigisme* and Franco-German dominance.⁷ It was their insistence that led to the creation of the Council representing the Member States. However, over time, the Commission developed a reputation as “guardian of the treaties”⁸ and “catalyst of a European interest.”⁹ The collegiality rule prevented Commissioners from systematically defending their Member State’s interest.¹⁰ In addition, should the Council – without unanimous agreement – try to change a Commission proposal discriminating against a group of Member States, the Commission college has the possibility to disagree or withdraw it. Finally, the Commission has been seen as crucial when it comes to implementation. Data from the ECJ illustrates that the Commission sues the big and small states equally. If anything, big states seem more of a target, but that could be in fact a function of their higher propensity to disregard EU law rather than a Commission pro-small state bias. Of all currently pending Commission versus Member State cases of 2005, for example, 9 are against big Member States and 3 are against small Member States.¹¹ In addition, even in politically sensitive dossiers the Commission has not shied away from taking the big states to the ECJ.¹²

⁶ Treaty of Paris Art. 9; Treaty of Rome Art. 157. Similar provisions were made for the judges and advocates general of the ECJ.

⁷ George (1991), p. 3.

⁸ Nugent (1995), p. 112.

⁹ Kohnstamm and Durand (2003), p. 4.

¹⁰ Joana and Smith (2002).

¹¹ See Commission versus UK T-143/05 and T-178/05; Commission versus Italy T-110/05, T-83/05, T-82/05, T-26/05 and T-14/05; Commission versus Spain T-99/05; Commission versus Finland T-177/05; Commission versus Belgium T-134/05; and Commission versus Ireland T-56/05.

¹² See, for example, Germany and France over the Stability and Growth Pact and Germany and Spain over energy policy. However, some small state as well as Commission officials argued this may not happen enough given the Commission lacks the resources to monitor everything effectively. Commission official, Brussels, 7.2.2005.

Thus, small states have generally come to see the Commission as their strongest ally and defender of minority interests, while big states tend to assert their power in the various layers and sub-structures of the Council, which emerged over the years as intergovernmentalism strengthened. As various practitioners put it:

The Commission is the warrant of Community interest. When the inter-governmental approach prevails it is difficult to inflict anything on the big Member States.¹³

It is in our interest to have a strong Commission. Otherwise we are completely in the hands of France and Germany.¹⁴

The perception of needing a strong Commission to defend small states stems not only from the independence and functions of the Commission, but also from the additional resources, expertise, and international role it offers small states:

For us it is impossible to check everything. The Commission writes reports on everything and we often rely on its assessments.¹⁵

In international fora we only play a role through the Commission. Thus it is very important for small states.¹⁶

Finally, the composition of the Commission explains in part its support by the small countries. The fact that each Member State sends at least one of its nationals to the college of Commissioners has been all the more important for small states as they were disproportionately less represented in the Commission bureaucracy as a whole, in important representations abroad or in subsidiary bodies like regulatory agencies. Although the EU's big states have had two Commission posts until the formation of the Barroso Commission in the fall of 2004 – often with the most important portfolios – this has not tipped the balance of support by the smalls. In other words, the marginal difference made by a second Commissioner in terms of clout has been minimal. While not supposed to represent his or her government formally, the Commissioners often become the ears and voice of their country in the Commission. Although obviously, Commissioners nominat-

¹³ Belgian official, Brussels, 28.2.2005.

¹⁴ Finnish official, Brussels, 16.3.2005.

¹⁵ Hungarian official, Brussels, 28.2.2005.

¹⁶ Belgian official, Brussels, 17.2.2005.

ed by their government cannot be expected to be fully impartial,¹⁷ the point here is not one of direct advocacy potential but rather one of sensitivity. A Commissioner's task is to explain rather than represent national sensitivities to their colleagues when relevant:

The Commission is independent but should have an ear for the Member States. We have no problem with that. Of course the Commissioners do not formally seek instructions – but they inform themselves about the consequences for one's country.¹⁸

Since November 2004 the Nice provision of one Commissioner per state applies. This theoretically equals out the differences between small and big. In addition, although a number of key Directorate-Generals (DGs), for example, trade, economic and monetary affairs, and justice and home affairs were allocated to big states (the UK, Spain, and Italy respectively), small states also got important portfolios. The Netherlands, for example received competition, Denmark agriculture, Ireland the Internal Market, and Portugal the Commission presidency.

Once the EU consists of 27 states, the number of Commissioners should be less than the number of Member States and chosen according to a rotation system based on the principle of equality and reflecting the demographic and geographical range of all states.¹⁹ This system should come into force in the next Commission of 2009, assuming Bulgaria and Romania have acceded by then. Alternatively, the Constitutional Treaty sets the number of Commissioners at two-thirds of the number of Member States by 2014. After the double no by France and the Netherlands, this seems like a mute point, at least for the moment. Either way, this development is not good news for small states. While bigger states can compensate for the lack of a Commissioner through their weight in the other EU institutions or in the Commission staff itself, smaller countries will find themselves at a greater disadvantage. This explains small countries' fierce defence of the principle of one Commissioner per state at the 2003/2004 IGC and the inclusion of a provision in the Constitutional Treaty that enables the EU's

¹⁷ Recent prominent examples of partiality on behalf of the Commissioners include the debate whether to take Germany and France to the ECJ over their effective suspension of the Stability and Growth Pact (SGP) in 2003. The Commissioners from the bigger countries were in favour of dropping the case, while those from the smaller states supported legal action. Similarly, echoing the Greek Cypriot government, the Greek and Cypriot Commissioners expressed concerns over Commission proposals to establish trade links with the Turkish Cypriot north of the Island. See, for example, *EU Observer*, 13.1.2004 and 9.7.2004.

¹⁸ Hungarian official, Brussels, 28.2.2005.

¹⁹ Treaty of Nice, Protocol on enlargement, Art. 4, Provisions concerning the Commission.

members to appeal the envisaged reduction of the size of the Commission by 2014 if circumstances justify:

We are a small state and if you do not have a Commissioner you are in a sense out of the game.²⁰

2.1.2 The European Parliament

De-facto inequality is also visible in the EP. The attribution of seats in the EP is degressively proportional, half way between equal representation and population proportionality. As a result, most small states are either three or four times less represented in the EP than the big ones (see Table 1). Under the current Nice arrangements the number of MEPs is fixed at 732. The smallest Member State, Malta, had 5 seats and the largest Member State, Germany, 99.

While subsequent enlargements increased the overall representation of the smalls from 24% in 1958 to 40% in 2004, the big states' share is still 60%. The Constitutional Treaty foresaw the continuation of this trend. While not detailing the breakdown of seats between the Member States, it states that representation of citizens should be degressively proportional (Article I-20) and raises the minimum number of seats for the small states to 6, lowers the highest number of MEPs per country to 96, and fixes a maximum of 750 MEPs.²¹ Nonetheless, the EP's more fluid nature offers small states the possibility of forming *ad hoc* coalitions within transnational political groups. Thus, smaller state representatives tend to promote their interest better in the EP than in a rigid intergovernmental Council. However, compared to the Commission, outcomes in the EP are often more difficult to influence. Much depends on the size of a national delegation within the big party groups – the key structures within the EP. A large state may be weak when its representation is divided into 6–7 groups and a small one can be relatively influential when it is concentrated, well organised and ideologically “median” (as the case with the Belgian or Dutch socialists, for example).

²⁰ Finnish official, Brussels, 2.3.2005.

²¹ Sufficiently in advance of the EP elections in 2009, the European Council is to adopt by unanimity, on the basis of a proposal from the Parliament, and with its consent, a decision establishing the composition of the Parliament. This procedure will apply with each subsequent enlargement.

Table 1 The evolution of the composition of the European Parliament

Biggs	Number of MEPs:										2009 Max. 96	Representing % of MEPs	% of EU27
	1958	1973	1976	1981	1986	1991	1995	2004	2007	2009 Max. 96			
Germany						99	99	99	99	99		13.5	17.0
France	36	36	81	81	81	81	87	78	72			9.8	12.4
Italy													12.4
Great Britain	-					60	64	54	50		Not defined	6.8	12.0
Spain	-	-	-	-	-	-	-	-	-				8.3
Poland	-	-	-	-	-	-	-	-	-				8.0
Seats (%)	76	73	79	75	74	75	68	60	57		Min. 6	56.7	70.1
Smallis													
Romania	-	-	-	-	-	-	-	-	33			4.5	4.6
Netherlands	14	14	25	25	25	25	31	27	25			3.3	3.3
Belgium				24	24	24	25	24	22			3	2.2
Greece	-	-	-	-	-	-	-	-	-				2.1
Portugal	-	-	-	-	-	-	-	-	-				2.1
Czech Republic	-	-	-	-	-	-	-	-	20			2.1	2.1
Hungary	-	-	-	-	-	-	-	-	-				2.1
Sweden	-	-	-	-	-	-	22	19	18			2.5	1.8
Austria	-	-	-	-	-	-	21	18	17			2.3	1.7
Bulgaria	-	-	-	-	-	-	-	-	-				1.6
Denmark	-	10	16	16	16	16	16	14	13		Not defined	1.8	1.1
Finland	-	-	-	-	-	-	-	-	-				1.1
Slovak Republic	-	-	-	-	-	-	-	-	-				1.0
Ireland	-	10	15	15	15	15	15	13	12			1.6	0.8
Lithuania	-	-	-	-	-	-	-	-	-				0.7
Latvia	-	-	-	-	-	-	-	9	8			1.1	0.5
Slovenia	-	-	-	-	-	-	-	7	7			1	0.4
Luxembourg	6	6	6	6	6	6	6	6	6			0.8	0.3
Estonia	-	-	-	-	-	-	-	6	6			0.8	0.2
Cyprus	-	-	-	-	-	-	-	-	-				0.1
Malta	-	-	-	-	-	-	-	5	5			0.7	0.1
Seats (%)	24	27	21	25	26	25	32	40	43		Max. 750	37.3	29.9
Total	142	198	410	434	518	536	626	732	732		Max. 750	100	100

Source: Bunsse (forthcoming)

2.1.3 The European Court of Justice

The ECJ is probably the most independent of the EU institutions. By establishing early on the principles of supremacy and direct effect of Community law the ECJ gave itself the power to deliver judgments countering the position of big Member States. While there is a lively academic debate as to the extent to which the Court has actually done so, there is little doubt that small countries have benefited from its case law.²² However, as the ECJ is the very last resort and only 10% of all cases identified by the Commission go to court²³, it is hardly a defender of small state interests in the everyday policy-making of the EU:

The ECJ is not a natural ally either – it should be a completely independent actor – although it helps to enforce legislation I would not go as far as calling it an ally.²⁴

2.2 Weighted votes in the Council of Ministers

Weighted votes offer a degree of security for small state interests while giving the largest members a greater say in the decision. The EC's initial system of QMV is a perfect illustration of the logic of 'regressive proportionality'. In 1957, the three large states were given 4 votes, Belgium and the Netherlands 2, and Luxembourg 1 vote. This implied that the largest states were 25 times 'less represented' than the smallest one. A decision could be blocked by 6 votes, i.e. two large states or one large and at least one small state, but not by a small state alliance or one state alone. The qualified majority (QM) represented about 70% of the population.

The 1973 enlargement called for a first revision of this bargain: while the UK received the same votes as the three large founders, Denmark and Ireland were given a smaller weight than Belgium and the Netherlands. The four big states now had 10 votes, Belgium and the Netherlands 5, Denmark and Ireland 3, and Luxembourg 2. The original idea of a 'blocking minority' (BM) was preserved. Successive enlargements to Greece, Portugal, Spain, Finland, Sweden and Austria followed the same logic (see Table 2). In May 2004, Poland, the Czech Republic, Hungary, Slovakia, Lithuania, Latvia, Slovenia, Estonia, Cyprus, and Malta were accommodated into this system. While the BM became more complex with each enlargement, the relative scale of representation – with a factor of one to five between the smallest and biggest state – remained unchanged.

²² See, for example, Stein (1981), Burley and W. Mattli (1993), Weiler and Haltern (1996).

²³ Commission official, Brussels, 7.2.2005.

²⁴ Irish official, Brussels, 11.3.2005.

However, with the growing number of ‘smalls’, favouring them became more contentious. Thus, the Nice Treaty, whose institutional provisions have been in force since November 2004, redesigned three parameters of the EU’s traditional voting system: the number of votes of the big states increased from five to almost ten times that of the smallest member; the majority threshold was raised from 71 to 74%; and it adopted additional voting criteria. Acting upon a Commission proposal, the votes must be cast by a majority of the Member States; otherwise the Council requires votes by at least two-thirds of the members. In addition, the QM must represent at least 62% of the EU population. Above all, this was the first revision of the relative weight of Member States. The new arrangements changed the weightings in favour of the big states (at expense of the smalls) bringing the system closer to the principle of one person, one vote than in the original 1958 bargain.²⁵ Thus, while over-representing the smalls proportionally, in absolute terms larger states retained much greater decision-making weight. As Irish Prime Minister Bertie Ahern recently stated: “If I had to depend on Ireland’s weighted vote to promote our interests in the Council, I would not bother to turn up.”²⁶

The Constitutional Treaty proposed to replace the EU’s traditional system of weighted votes with a double majority system. When the Council acts on Commission proposals votes must be cast by 55% (at least 15) of the Member States, rather than a simple majority. In addition, the population minimum increased to 65%. In highly sensitive matters, when the Council acts on its own initiative, a Member State, the European Central Bank or the proposed Union Minister for Foreign Affairs, the required QM is to consist of 72% of the Member States representing 65% of the EU’s population. A blocking minority, in turn, must comprise at least four states. Further safeguards introduced include the provision that states can appeal to the European Council when vital national interests have been violated to ask for further discussion of the proposals.²⁷ Population thresholds generally benefit the bigger states, while Member State thresholds benefit the more numerous smalls. This new double majority system would boost the power of the EU’s 4 largest members even further.²⁸ Even though, the Treaty will not be implemented in its current form, some have argued that this new system of voting might be rescued from the ashes of the blue-

²⁵ See, for example, Raunio and Wiberg (1998).

²⁶ Ahern, cited in Brown (2004).

²⁷ If after 12 months no agreement can be reached, the Member States supporting the proposed policies may move ahead on their own.

²⁸ See also Baldwin and Widgrén (2004).

print. While there are arguments in favour (transparency and EU-wide democracy), the combined opposition of Spain and Poland on one hand (much favored in Nice) and the small states (hurt by the reform) may make even this very partial rescue unlikely.

2.3 The rotating Council Presidency

While the Commission offers (more so than the EP, ECJ or weighted votes in the Council) small states a potential guarantee against big state dominance, the only institution that has applied equality in its pure form has been the rotating Council Presidency. At the creation, small countries feared that if they gave the EC a single figurehead at the top, this person would unavoidably be in the sway of the big and powerful. Thankfully, such a fear chimed with that of big country heads of state and government who wanted to avoid the emergence of an autonomous leader that could have undermined their own prestige. There was also widely shared agreement that a permanent presidency would risk generating rivalry with the young Commission. Thus, the original model established a system of equal rotation among the governments of the Member States to chair the different formations of the Council of ministers followed regardless of size, economic power, or merit.²⁹

The rotation principle allows equal access to the institution which evolved – rather unexpectedly – from a “fairly passive [manager]”³⁰ and mere administrative function into a crucial agenda setter, initiator, and promoter of political initiatives. It is the chair of all Council meetings (during which proposals frequently change drastically); the co-ordinator, mediator, and broker of different viewpoints between the Member States and the other Community institutions; and the representative of the Council vis-à-vis the Commission, the EP, and third states.³¹ Although the presidency operates within numerous constraints, its combination of formal roles and informal powers as the chair allows it considerable agenda setting capacity and influence in the EU’s negotiation game.³² While the Commission tries to defend its proposals in the Council negotiations, it is the Council presidency that brokers the deal. When the approaches of the two actors coincide this is often done in tandem and the Commission turns into a crucial resource for the Presidency. When they differ both actors compete for influence.

²⁹ Wallace (1985), p. 2 and Westlake (1995), p. 37.

³⁰ Wallace and Edwards (1976), p. 536.

³¹ Kirchner (1992), Westlake (1995), Hayes-Renshaw and Wallace (1997), Sherrington (2000).

³² Bunse (forthcoming).

Table 2 The evolution of Member States' weight in the Council of Ministers

Biggs	Weighted Votes							Biggs	Double Majority 2009 ⁴	Pop. (million)
	1958	1973	1981	1986	1995	May 2004	Nov. 2004 ¹			
Germany								D	17.0% (+8.6)	82.398
France	4 (23.5%)	10 (17.2%)	10 (15.9%)	10 (13.2%)	10 (11.5%)	10 (8.1%)	29 (9%)	F	12.4% (+4)	60.181
Italy							29 (8.4%)	I	12.0% (+3.6)	57.998
Great Britain	-							GB	12.4% (+4)	60.065
Spain	-	-	-	8 (10.5%)	8 (9.2%)	8 (6.5%)	27 (7.8%)	E	8.3% (+0.5)	40.217
Poland	-	-	-	-	-	-		PL	8.0% (+0.2)	38.623
Total	12 (70.6%)	40 (69%)	40 (63.5%)	48 (63.2%)	48 (55.2%)	56 (45.2%)	170 (53%)	Total	70.1% (+20.8)	339.482
Smalls								Smalls		
Romania	-	-	-	-	-	-	14 (4.1%)	R	4.6% (+0.5)	22.272
Netherlands							13 (3.8%)	NL	3.3% (-0.5)	16.151
Belgium	2 (11.8%)	5 (8.6%)	5 (7.9%)	5 (6.6%)	5 (5.7%)			B	2.1% (-1.4)	10.289
Greece	-	-						Gr	2.2% (-1.3)	10.666
Portugal	-	-	-			5 (4%)	12 (3.7%)	P	2.1% (-1.4)	10.249
Czech Republic	-	-	-	-	-			CR	2.1% (-1.4)	10.249
Hungary	-	-	-	-	-			H	2.1% (-1.4)	10.045
Sweden	-	-	-	-	-			S	1.8% (-1.1)	8.878
Austria	-	-	-	-	4 (4.6%)	4 (3.2%)	10 (3.1%)	A	1.7% (-1.2)	8.188
Bulgaria	-	-	-	-	-	-	-	Bu	1.6% (-1.3)	7.538

Denmark	-						DK	1.1% (-0.9)	5.384
Ireland	-	3 (5.2%)	3 (4.8%)	3 (3.9%)	3 (3.4%)		Ire	0.8% (-1.2)	3.924
Finland	-	-	-	-	3 (2.4%)	7 (2.2%)	Fin	1.0% (-1)	5.191
Slovak Republic	-	-	-	-	-		SR	1.1% (-0.9)	8.878
Lithuania	-	-	-	-	-		Li	0.7% (-1.3)	3.593
Latvia	-	-	-	-	-		La	0.5% (-0.7)	2.349
Slovenia	-	-	-	-	-		Slo	0.4% (-0.8)	1.936
Estonia	-	-	-	-	-	4 (1.2%)	Es	0.3% (-0.9)	1.409
Cyprus	-	-	-	-	-		Cy	0.2% (-1)	0.772
Luxembourg	1 (5.9%)	2 (3.4%)	2 (3.2%)	2 (2.6%)	2 (2.3%)		L	0.1% (-1.1)	0.454
Malta	-	-	-	-	2 (1.6%)	3 (0.9%)	M	0.1% (-0.8)	0.400
Total	5 (29.4%)	18 (31%)	23 (36.5%)	28 (36.8%)	39 (44.8%)	151 (47%)	Total	29.9% (-20.8%)	145.220
QM	12 (70.6%)	41 (70.7%)	45 (71.4%)	54 (71.1%)	62 (71.3%)	88 (71%) ³	QM	65% of pop. 55% of MS ⁵	-
BM	6 (35.3%)	18 (31%)	19 (30.2%)	23 (30.3%)	26 (29.9%)	37 (29.8%)	BM	4 MS	-
Total	17	58	63	76	87	124	Total	100	484.702

Notes: Due to rounding totals may not add up. ¹ Nice Treaty ² Bulgarian and Romanian accession ³ Cast by a majority of MS on a Commission proposal (in other cases, cast by at least two-thirds of MS) and 62% of the EU's total population. ⁴ Constitutional Treaty ⁵ Where the Council is not acting on a proposal of the Commission or initiative of the Union Minister for Foreign Affairs, the QM is obtained with 72% of the MS representing 65% of the EU population. Council members representing at least three-quarters of a BM (either at the level of MS or population) can demand that the Council should further discuss the issue. The Council may decide to withdraw the latter measure in 2014. Population estimates July 2003, CIA World Factbook 2003. QM=Qualified Majority, BM=Blocking Minority, MS=Member State, Pop.=Population

The presidency is most likely to be influential when a) it has a strong expertise in a particular dossier; b) there is a great heterogeneity of views in the Council giving the presidency more leverage to steer things the way it wants, and c) the intensity of preferences of other Council members is high, making it more difficult for the Commission – biased towards its initial proposal – to help broker the deal.³³

Thus, although the dominant conceptualisation of the presidency is that of a neutral broker, the presidency has considerable – if subtle – agenda influence which has been particularly valued by the smalls:

The rotating presidency system gives us a big share of power even if it is for a short period and of course the presidency is not totally neutral.³⁴

However, the rotation principle also keeps the presidency from being used as a systematic tool of influence by any state. In a Community of six, each government chaired the Council every three years. With successive enlargements the gap between presidencies has grown much wider. Under the Constitutional treaty, with the creation of a permanent European Council president (while keeping rotation at the level of Councils of Ministers) and the European foreign minister, its role would have declined particularly in foreign policy matters. As per the voting issue however, all bets are off as to whether this part of the Treaty might be rescued in the foreseeable future. On this count, the demise of the Treaty is good news for the small states, which get to keep the rotating presidency.

In sum, the mechanisms which preserved the basic principles of equality and shared leadership among Member States have obviously been most valued by the smalls. They are found in the key characteristics of the EU's institutional balance, the functions and composition of the Commission as well as of the rotating presidency. The in-built bias in favour of small states created by these characteristics has tamed the kind of power politics that defines purely intergovernmental decision-making processes. The Commission has been of particular importance in this context, due both to its independence and to its monopoly on drafting legislation. Undoubtedly, if one imagines the EU without a Commission or as a purely intergovernmental organisation, policies and legislative projects would look differently and power politics within the EU would be significantly more pronounced.

³³ See Schmidt (2001) for examples of the Presidency substituting the role of the Commission as an agenda setter in the policy area of the internal market.

³⁴ Finnish Official, Brussels, 2.3.2005.

The more likely scenario in such a context would be one akin to the dynamics of UN security council decisions with big states producing first drafts to be adopted on a take-it-or-leave-it basis with possibility only for marginal amendments – and exceptionally a small state taking the lead as a neutral broker. The Commission certainly provides a much more substantive avenue for small state input. However, as the number of small states in the EU has grown and the solidarity between its ever more heterogeneous group of members is being tested the big Member States have become concerned about their “tamed power” within the EU and have attempted – with varying degree of success – to move the equation in their favour.

3 SMALL STATE-COMMISSION RELATIONS: INSTITUTIONAL PREFERENCES VERSUS LEGISLATIVE REALITIES

Unsurprisingly, any reforms tilting the traditional institutional balance towards intergovernmentalism or endangering the equality principle have been heavily resisted by the smalls.³⁵ The proposals by big states during the Convention of a permanent European Council presidency, for example, were rejected by a small state coalition out of fear such a president would “[nibble] away at the Commission’s powers.”³⁶ Only Denmark and Sweden did not fear rivalries between a permanent European Council president and the Commission. Both countries have traditionally been more jealous of their sovereignty and have viewed any extension of the Commission powers with scepticism. A similar divide has become visible in the preparations for the EU’s External Action Service (EAS) which is to assist the future Union Minister for Foreign Affairs.³⁷ While the UK and France favour a strong tie between the Foreign Minister and the European Council and an EAS under Council authority, the small countries fear the marginalisation of the Commission and the creation of an autonomous structure for big states to sideline them. Thus, as of the spring of 2005, they are heavily lobbying for an independent foreign minister and EAS tied to the Commission.³⁸ These examples demonstrate that at a general institutional level the smalls still regard the rotating Council presidency as the best guarantor of shared leadership and the Commission as the best defender of their interests.

However, when it comes to specific legislative proposals, neither institution is regarded as a small country’s “best friend” as illustrated by the following analysis of a group as diverse as Belgium, Greece, Finland, and Hungary.

³⁵ See, for example, Benelux Memorandum: A balanced institutional framework for an enlarged, more effective, and more transparent Union, Brussels, 4.12.2003, available at: http://europa.eu.int/constitution/futurum/documents/press/oth041202_en.htm

³⁶ Gijs de Vries (Govt. Netherlands), Convention plenary, 21.1.2003. For the Finnish and Austrian positions see, for example, Finnish Ministerial Committee for EU-Affairs 17.1.2003, The Future of the EU and the work of the Convention, Extract from the Government report to Parliament on Finland’s position regarding the future of the EU and issues that have emerged in the work of the Convention.

Available at: http://europa.eu.int/constitution/futurum/documents/other/oth170103_en.pdf. and Austrian Foreign Minister Benita Ferrero-Walnder, in BBC News, 16.1.2003.

³⁷ See Bunse, Magnette, and Nicolaidis (2005).

³⁸ For a detailed discussion of the problematic surrounding the EU’s external action service, see Maurer and Reichel (2004).

3.1 The Cases: Diverse Characteristics and Approaches

Belgium is one of the EU's well-off founding members with federalist aspirations. Ever since the 1950s the country has placed European integration at the centre of its economic and foreign policies. International cooperation based on common institutions and a multilateral trading system was initially seen as key to contain potential future Franco-German hegemony. But over time, Europe grew into a means "to adapt [Belgium's] increasingly open economy to globalization while preserving some features of the European socio-economic model" and multiply its foreign policy influence.³⁹

Greece, in contrast, is a relatively poor, southern Member State which joined the European Community (EC) in 1981. But – contrary to Belgium – Greece joined half-heartedly. EU membership profoundly challenged its political, administrative, and economic structure characterised by endemic statism and clientelism. A significant part of Greece's state protected business, organised labour, and political class felt they were losing out from the adjustment that EU accession entailed and resisted change. The first decade of Greek membership was therefore marked by anti-European feelings.⁴⁰

However, Greece steadily moved towards the EU's core and today, the EU is generally seen as "a catalyst for political, economic, and social modernisation."⁴¹ Greece joined the Economic and Monetary Union (EMU) in 2001 and has recently acted as a bridge builder between the EU, the Western Balkans, and Turkey. In the Convention it defended the development of a Political Union with a federal character and greater cohesion.

Finland can be characterised as a wealthy, northern, pragmatic pro-European country. It formed part of the 1995 EFTA enlargement and developed into the EU's only 'mainstream'⁴² Nordic partner firmly committed to Community projects despite its lack of federalist political culture, and often critical public. In fact, EU integration became the "very core of Finnish post-Cold War international identity."⁴³ Finland views the EU as an "ever developing union of independent states" granting it – a small country

³⁹ De Winter and Türsan (2001), p. 11.

⁴⁰ Anti-European sentiment expressed itself, for example, in demands to renegotiate Greek accession terms shortly after joining.

⁴¹ Tsoukalis (2003), pp. 324-325. See also Mavris (2004), pp. 133-134.

⁴² 'Mainstream' is defined here as a country that has not opted out of any policies. Denmark, for example, opted out of EMU and Sweden rejected euro membership in a referendum in 2003.

⁴³ Tiilikainen (2001), p. 60.

long caught between two power blocs – security, internal market access, and increased influence in international affairs.⁴⁴ It approaches the EU mainly as an intergovernmental body whose activities are evaluated in national terms.⁴⁵

Hungary is part of the EU’s last wave of accession by former communist Member States. It has consistently enjoyed the highest rate of popular support for membership among the 10 candidate states that joined in 2004. In addition, Hungary was the best prepared economically, although its GDP levels remain at just over half of the EU 15 average. It is still too early to determine Hungary’s approach to the EU, but in general the Central and Eastern European countries (CEECs) have been more jealous of their only recently gained sovereignty and “are not as communitarian yet.”⁴⁶ Table 3 summarizes the differences and similarities of the four countries.

Table 3 Differences and similarities

Small State	Resources	Interests/ Identity	EU policy	Experience/ Membership
Belgium	wealthy	northern	federalist	since 1958
Greece	relatively poor	southern	mainstream, historically reluctant	since 1981
Finland	wealthy	northern	pragmatic mainstream	since 1995
Hungary	poor	eastern	enthusiastic, albeit jealous of its sovereignty	since 2004

Their view of the Commission has reflected their different EU policy approaches. Belgium has traditionally been a “staunch supporter”⁴⁷ of the Commission and the expansion of its right of initiative. The Commission also offered Belgium answers to internal problems stemming from Belgium’s complex coalition governments and federal structure. For example,

⁴⁴ Tarja Halonen (1998), Nicosia, 12.10.1998.

⁴⁵ Tiilikainen (1998).

⁴⁶ Finnish official, Brussels, 28.2.2005.

⁴⁷ Belgian official, Brussels, 17.2.2005.

Belgian efforts to join the Euro were very much driven by the Commission – “the stick behind the door” and “instrument for change.”⁴⁸

Greece’s relations with the Commission have been marked by its initial reluctance towards the EU as well as its dependence on the institution’s technical expertise.⁴⁹ When Greece assumed membership it was not well prepared for dealing with all the EC’s demands. Its administration was weak and it has been slow to develop effective formal structures to deal with EU issues. Greece’s dependence on Commission expertise has been particularly visible in Regional Policy matters. In order to benefit from the EU’s Structural Funds, whereby the Member States have to present satisfactory regional development plans, Greece has relied heavily upon Commission assistance.⁵⁰

In Finland the Commission is regarded as an important “leveller in the EU’s decision-making system”⁵¹ – a perception that grew out of Finland’s co-operation with the Commission in the accession phase. Finland sought EU support for its remote areas with high unemployment and particular climatic conditions and negotiated special arrangements with the Commission accommodating Finnish regional and agricultural concerns.⁵² While under former Prime Minister Lipponen’s governments, it was “much more a matter of principle to defend the Commission”, the relationship under the new government has become “less philosophical and more practical.”⁵³

Similarly, Hungary’s view of the Commission is marked by its accession negotiations. Although the Commission tried to foster positive relations with Hungary by finding an enlargement approach that would resemble as far as possible previous enlargements, it was also a tough negotiator ensuring that accession conditions were met and conveying that the cost of Eastern enlargement is a sensitive issue amongst the EU 15. Since becoming a member, Hungary feels a kind of ownership of the Commission:

Our relationship with the Commission during the accession negotiations was different from our relations with the Commission now. The Commission was a hard and strict negotiator. When we wanted to show progress the Commission always got back to us with questions.

⁴⁸ Belgian official, Brussels, 17.2.2005.

⁴⁹ Interview, Greek Permanent Representation, Brussels, 30.4.2004.

⁵⁰ Thorhallson (2000).

⁵¹ Finnish official, Brussels, 2.3.2005.

⁵² For example, it agreed that Regional Policy Objective 6 also covered areas with less than 8 people per square kilometre to cover Finnish northern regions. Interview, Finnish Permanent Representation, Brussels, 9.3.2005.

⁵³ Finnish official, Brussels, 28.2.2005.

We had the impression that the Commission was responsible to the Member States when it came to negotiating enlargement and wanted to do everything to the satisfaction of the Member States. Of course they wanted to ensure that Hungary is prepared and prove to the Member States that Hungary was ready. Since May 1st we are also owners of the shop and now the Commission is also at our service.⁵⁴

Despite the differences between these states in terms of resources, identity, length of membership, EU policy and integration philosophy, their experiences regarding the Commission have been similar:

- In specific legislative proposals their relationship with the Commission as well as the other EU institutions varies depending on their own diverse preferences. Thus there are no stable coalitions across policies.
- Their relations with the Commission are somewhat one-sided, that is they are the *demandeurs* more than the Commission. Given that big states have greater decision-making power, the Commission is more likely to consult them rather than the numerous and heterogeneous smalls. Thus, small states do well to construct coalitions that include at least one or two bigs.
- Small states are more likely to influence the Commission if they establish contact early and have well developed networks within the Commission to exchange information (either with their own nationals or people in influential positions).
- Their access to the Commission depends upon the level of technical expertise they can offer on specific issues.
- In Council negotiations, the Member States, and in particular the presidency, are more important allies than the Commission
- Once a small state holds the Council presidency, it becomes more important to the Commission which can both be a resource or a constraint to the presidency.

Each of these findings is examined in turn.

⁵⁴ Hungarian official, Brussels, 14.3.2005.

3.2 The Findings: Similar Experiences and Strategies

3.2.1 The absence of a general picture

In the case of specific legislative proposals small states' relations with the Commission differ from case to case and Belgian, Greek, Finnish, and Hungarian officials all agreed that no generalisations are possible in this realm. Coalition partners can include the Commission, big and small states, the EP, as well as key stake holders who lobby the EU institutions. Alliance building is strategic and rests on similar interests, preference convergence and the capability of reaching compromises.⁵⁵ Coalition partners change from policy area to policy area, proposal to proposal, and even from article to article within given proposals. Consequently, examples of good and bad cooperation with the Commission exist both across and within issue areas and practitioners hardly use the "best friend" terminology:

I cannot say that the Commission is Finland's best friend. It really depends on the case.⁵⁶

The Commission can sometimes be your best friend, a good friend, or no friend at all. It very much depends on the issues you are looking at and the field you are talking about. No single judgement is possible.⁵⁷

Belgium, for example, enjoys "friendly relations" with the Commission in the environmental field and foodstuffs, Greece in the area of the budget and cohesion policy, Finland found a key ally in the Commission in its quest for greater transparency in the EU, and Hungary has had Commission support in the EU's management of mining waste within and around its borders. In the area of the internal market, particularly Belgium, Finland and Hungary are also generally supportive of Commission initiatives which in turn generates goodwill on the part of the latter. Their export-oriented economies are heavily reliant on the EU's internal market:

In most cases our positions on the core internal market issues, such as the free movement of labour, goods, capital and services are close to the Commission positions. An open market is very much in our interest because we are so small and rely heavily on export.⁵⁸

In addition, they can often follow Commission proposals due to their limited number of particularly important economic sectors. Proposals frequent-

⁵⁵ Thorhallson (2000).

⁵⁶ Finnish official, Brussels, 14.3.2005.

⁵⁷ Hungarian official, Brussels, 28.2.2005.

⁵⁸ Finnish official, Brussels, 16.3.2005.

ly do not affect them, or – if they do – to a lesser extent than the bigger countries. Thus:

Many times we can live with a Commission proposal. When you are from a small country, you do not have as many big interests as the bigger countries do. So we are mostly aligning ourselves with the Commission.⁵⁹

In exchange for their alignment with the Commission on many issues, the Commission tends to support them in those issues which are of greater importance to them. Thus, all small state officials stressed that their relations with the Commission are generally co-operative rather than conflictive:

For supporting the Commission in one issue they support us in others. Then it becomes a chain reaction.⁶⁰

Our relationship is usually very co-operative with the Commission, so we usually do not present difficulties for them. But we expect the Commission in return to listen to us when we have very special interests at stake.⁶¹

However, the Commission's "specific legislative proposals do not always reflect small state concerns."⁶² In the area of the internal market Belgium's approach, for example, regularly differs from the Commission in consumer affairs and liberalisation – problematic for Belgium despite its support for, and heavy reliance on, the internal market. In the first case Belgian consumer protection standards are much higher than those of the Commission. Thus, it seeks to protect its national laws and frequently rejects Commission attempts to introduce article 95 on the approximation of laws into consumer-related legislation. Rather than the Commission, Belgium's allies in the area of consumer protection are often France, Italy, as well as Finland and Portugal.

The Commission's unfair commercial practices directive is an illustrative example. The aim of the directive was to make the rights of the consumers clearer, cross-border trade simpler, and replace national rules and court rulings on commercial practices with a single set of rules granting consumers the same level of protection across the internal market. However, Belgium lobbied heavily for the deletion of the Commission's reference to Article 95 in the proposal in order to keep greater leeway in the applica-

⁵⁹ Belgian official, Brussels, 17.2.2005.

⁶⁰ Greek official, Brussels, 7.3.2005.

⁶¹ Finnish official, Brussels, 9.3.2005.

⁶² Belgian official, Brussels, 28.2.2005.

tion of its own, higher standards of consumer protection. Belgium got its way with the backing of France and Italy, in spite of initial Commission resistance.

In the area of liberalisation Belgium – governed by a 5-party coalition combining liberal/conservative and socialist parties – takes a case by case approach and generally defends the European Social model rather than the so-called Anglo-Saxon approach. The Commission proposals thus sometimes go too far for Belgium:

We have got some problems with the Commission when it comes to liberalisation. We have a background of monopolies. 51% of our basic services remain under state control. We do not want them to be too expensive, but we want basic guarantees for a minimum service and protect consumer rights, and do not only think about profitability.⁶³

Belgium disagreed, for example, with key elements of the Commission directive to liberalise ports. The directive was part of a policy to boost sea transport. The Commission and advocates of open market access argued that the cost of port services needed to be brought down to make shipping more competitive and existing restrictions on port handling removed to break up monopolies. The ports directive was politically particularly sensitive, because it meant liberalisation as well as harmonisation and opening up a market that was protected in Belgium.

Amongst its most controversial points was the provision that operators could provide their own cargo-handling teams – a regulated profession in Belgium. To weaken the Commission text Belgium lobbied for the introduction of a compulsory license system and a minimum level of protection for dock workers. Rather than in the Commission or the Council, here Belgium found its most important ally in the EP. Like Belgium, the majority of MEPs were cautious on liberalisation and concerned that high safety standards would be maintained in this sector. Enjoying co-decision power in this area, the EP pushed through numerous amendments in both readings. As the Council and the Parliament could not agree on the cargo self-handling clause, a deal was finally brokered in the conciliation procedure used in the event of severe disagreement between the two institutions. However, the EP plenary eventually overturned the deal and the whole package of legislation was formally rejected. The Commission now has to decide whether to present new proposals.

⁶³ Belgian official, Brussels, 28.2.2005.

Finland, in contrast, shares the Anglo-Saxon approach and frequently aligns itself with the Commission and the Northern liberals including the UK, Sweden, and the Netherlands. Finnish disagreements with the Commission arise often out of fears of over-regulation due in part to Finland's different legal culture which relies heavily on voluntary rather than mandatory agreements. Particularly when company regulation or liberalisation is concerned, Finland generally prefers less and lighter regulation, or even self-regulation by private actors. In the energy and telecommunications sector, for example, the country has gone much further than Commission proposals. In the energy sector Finland is neither keen on Commission involvement nor on mandatory arrangements:

Finland feels that our economy is already very energy efficient and we have done everything we can. We are not very keen on Commission involvement here — they do not seem to understand us and the way we are doing it. Our national system is based on voluntary agreements and our experience is that we get much wider coverage for energy efficiency through this voluntary system. The Commission insists on mandatory arrangements. So here the Commission is doing something where Member States are not keen on action. It tries to gain more powers for itself and interfere with national policies.⁶⁴

Greece, in turn, has hardly been a driver behind Commission initiatives. This has been particularly visible when Greece assumed the Council Presidency in the 80s and early 90s. In 1988, for example, it was still opposed to key aspects of the 1992 internal market project leading to considerable tensions with the Commission. Similarly, the 1994 Greek Presidency was hesitant to push the EU's liberalisation agenda (telecommunications and other services) despite it being at the core of the Community's economic recovery plan. When it comes to the internal market Greece tends to align itself with France and Belgium rather than with the Commission.

The liberalisation of postal services is one illustration where Greece formed a coalition with France, Belgium, Luxembourg, Austria and Portugal to oppose a Commission directive. When no agreement on the 1997 directive was forthcoming in the Council, the Commission threatened to use its competition law power to liberalise the sector. France and Germany subsequently put forward a compromise deal. However, the Franco-German compromise was rejected by the pro-liberalisation camp, including the Commission. France responded by signalling political conflict and calling

⁶⁴ Finnish official, Brussels, 16.3.2005.

for an extraordinary Council meeting on the issue. The latter eventually brokered an agreement on the Franco-German proposal that the Commission initially rejected.⁶⁵ Other tensions with the Commission have recently arisen regarding Greece's budget deficit and more targeted conflicts at the micro management level have occurred in areas such as research, energy, and Trans-European networks.

Finally, like Finland and contrary to Belgium and Greece, Hungary is amongst the pro-liberalisation camp. However, as in the other cases discussed here, this does not imply that Hungary always agrees with the Commission approach. For instance, in the case of the proposed new legislation on the registration, evaluation, and authorisation of chemicals (REACH), Hungary has formed an alliance with the UK against the Commission. The British-Hungarian proposal – supported *inter alia* by the chemicals industry and environmental groups – suggests a 'one substance, one registration' (OSOR) approach whereby companies would be able to share the costs of registering chemical substances. Reducing costs would benefit SMEs which, particularly in Hungary, are worried about their competitiveness.⁶⁶ Opponents of OSOR are raising legal and practical issues including the mandatory sharing of patent protected data by industry and compliance with international intellectual property law. At the time of writing Hungary was organising a special seminar on the OSOR to convince other Member States and the Commission of its benefits. However, the Commission signalled its unwillingness to change its original proposal drastically. In this case, there is little doubt that being a small country with little bargaining power played a role.

In all countries, some tensions with the Commission have also arisen over their implementation records of internal market legislation. Hungary ranks third best with a 2.0% transposition deficit of internal market legislation after Lithuania and Spain. Belgium's transposition deficit has increased to 3.4% (as of November 30, 2004) and is well over the 1.5% target. Of the former EU-15 only Italy and Greece score worse. In Greece, political commitment to implement EU legislation has often been lacking. Thus, Greece's implementation deficit in internal market legislation remains above 5%⁶⁷ and the number of single market related infringement cases

⁶⁵ For more details see Schmidt (2001), pp. 134–135.

⁶⁶ The Hungarian Chemical Association estimated that the existence of 40 to 60 % of SMEs would be in jeopardy should the current Commission proposal be adopted.

⁶⁷ Only Malta, Slovakia, Latvia and the Czech Republic score worse in the Commission's November 2004 internal market scoreboard.

brought to the ECJ is significantly higher than the EU average.⁶⁸ Finland has traditionally been amongst the countries with the lowest implementation deficits although it has recently fallen on the implementation scoreboard of the Commission.⁶⁹ Thus, it has received more attention and reminders by the Commission. Whether its dialogue with the Commission over implementation turns positive or negative often seems to depend on the specific DG:

When it comes to infringements then it is a question of have you implemented or have you not. You start negotiating with the Commission and get the message through what you have been doing in order to implement and whether legislation is coming through etc. Here the dialogue can be positive or negative. Also a lot depends on the DG you are dealing with. DG environment for example tends to be very legalistic and there have been tensions particularly with regard to the European Natura nature protection programme.⁷⁰

Another area, where tensions over Commission involvement are frequently arising is foreign policy. In foreign policy matters the Member States – no matter whether small or big – have been jealously protecting their sovereignty, while the Commission has tried to gain more powers. A recent example includes plans by Hungary and a few other Member States to meet informally with a Ukrainian official ahead of the signing of the EU Action Plan to strengthen the bilateral relationship with Ukraine. The Commission reacted angrily, arguing that the intention to seek such a separate meeting would send a message of division. While some states reacted to the Commission criticisms by not attending the meeting, Hungary disagreed with the Commission's interference:

We did not like the behaviour of the Commission — we are sovereign states and can meet whoever we want to meet. I guess the action plan was negotiated by the Commission and they were afraid of any contradictions. But we do not like the approach that we were told what to do. The last time that happened was under the Warsaw Pact.⁷¹

Similarly, Greece has been sceptical of the involvement of the Commission in foreign policy matters when it comes for instance to dealing with the Arab world and has sought an autonomous role for itself.

⁶⁸ Dimitrakopoulos and Passas (2004).

⁶⁹ Available at: http://europa.eu.int/comm/internal_market/score/index_en.htm.

⁷⁰ Finnish official, Brussels, 14.3.2005.

⁷¹ Hungarian official, Brussels, 28.2.2005.

3.2.2 The one-sided nature of the small state-Commission relationship and the importance of the bigs

The best friend terminology is not only flawed because the relationship of the small states with the Commission differs from area to area and proposal to proposal, but also because their relationship is not mutual, i.e. the incentives of the Commission to seek close contact with smaller Member States and the latter's incentive to do so with the Commission are not equally strong. As Thorhallson argues:

The Commission does not automatically give smaller states goodwill. Small states have to fight their way through the EU decision-making system. The Commission is no exception to this.⁷²

Various reasons account for this. As seen above – at least officially – the Commission is not supposed to think in terms of small or big, but to act as an honest broker by establishing the general interest:

The Commission has no specific strategy towards small or big Member States. It is there to keep a general balance and ensure all interests are taken into account.⁷³

Its methods to establish such a general balance include: consulting all Member States and stakeholders through issuing questionnaires or internet consultations; consulting only those Member States with the biggest interests in a proposal; or making its own impact assessments without consulting any Member State. There is no rule which option to pursue when and no records exist which method is used most.⁷⁴ Commission officials agreed that – not least due to a lack of resources – consulting all Member States on every piece of legislation is difficult, especially after enlargement:

We are so understaffed – we cannot take care of all the small Member States. They have to defend their interests themselves.⁷⁵

The Commission tries to find a majority. It does not always check the in-depth positions of the Member States. At the same time it has to ensure there is no discriminatory effect.⁷⁶

⁷² Thorhallson (2000), p. 126.

⁷³ Commission official, Brussels, 11.3.2005.

⁷⁴ A Commission official commented that this information gets lost once the proposal is approved at director general level. Commission official, Brussels, 23.3.2005. As transparency of the preparatory process is becoming more and more important we may expect open internet consultations with the Member States and key stake holders to increase.

⁷⁵ Commission official, Brussels, 11.3.2005.

⁷⁶ Commission official, Brussels, 18.3.2005.

The range and depth of consultations performed will depend, *inter alia*, on the sensitivity of the issues for the Member States, whether the Commission needs additional expertise, on the policy area and the DG, or voting arrangements. Where QMV applies, such as in the case of the internal market, it may be inclined to consult less than in case of unanimity. A concrete example is the case of the controversial services directive, where the Commission collected information about the respective national legislation and rules and the overall approach, but did not consult on the proposal itself.⁷⁷ This has obviously had dire political consequences.

Another reason why the incentives of the Commission to seek close contact with smaller Member States are not equally strong stems from their lesser weight in the Council. Thus, when QMV applies, the Commission is often tempted to consult primarily the big states with the greatest decision-making power:

To ensure we can generate a qualified majority it is normal to have more concern for the bigger Member States. Without two or three of the big states we will not be able to generate a qualified majority.⁷⁸

Similarly, small Member State officials argued:

The Commission is a strategic actor. While it has to listen to everybody in order to come up with better legislation and has to establish what is acceptable, in case of a QMV it may ignore some positions. It takes the pulse and has to come up with a decent proposal. But there is a fine line – how critical can it be of the big Member States?⁷⁹

Paradoxically, with successive enlargements to small states which put the big states in the minority, the influence of the bigs nonetheless seems to be increasing. Big states' Gulliver syndrome, that is their fear of being in the minority and of "being held hostage by the smalls" is leading towards greater co-operation and co-ordination of their viewpoints, making it difficult for the Commission not to consider them.⁸⁰ This increased visible influence of the Member States over the Commission can also be attributed to the slow recovery of the latter since its resignation over allegations of

⁷⁷ Finnish official, Brussels, 31.3.2005.

⁷⁸ Commission official, Brussels, 18.3.2005.

⁷⁹ Belgian official, Brussels, 28.2.2005

⁸⁰ Since the Nice constitutional negotiations, for example, a so-called 'G-5' was created among the big 5 meeting informally (and very secretly) prior to meetings to co-ordinate their positions. More recently, there have also been concerns of the development of a *dirac-toire* consisting of the Franco-German axis and the UK.

fraud and mismanagement in 1999 and its weaker Commission Presidents since Delors:

Traditionally we saw our interests best defended in the Commission. However, in my opinion the Commission has stopped being the defender of the small states. You only have to look at the recent Schröder-Barroso meetings. This has nothing to do with nationalities of the Commission president, but the weakness of past presidents to stand up to the big Member States.⁸¹

Consequently, the small state-Commission relationship is rather one-sided and small states must be pro-active if they are to be heard:

The norm is that you have to be active. We contact the Commission and try to do the pre-influencing which is an extremely challenging task.⁸²

The relationship with the Commission is very much from our side. It is impossible for the Commission to ask us what they think when drawing up a proposal. We have to find informal ways to influence the proposals.⁸³

In addition, to increase the weight of their own arguments, strategies of small countries have focused on bringing at least one or two big states on their side:

An only small coalition is not effective however many states are involved. As an only small coalition it is very difficult to influence the Commission. Thus, usually we bring at least one big Member State on board that shares our position.⁸⁴

[Best] is to work behind the scenes and to be successful you have to get 1 or 2 big states on your side. Only small state coalitions are very rare.⁸⁵

3.2.3 The importance of early contacts and informal networks in the Commission

As important as having big state allies to influence the Commission is to establish contacts with the Commission as early as possible and construct a network within the Commission to maximise the information flow between one's Permanent Representation and the Commission:

⁸¹ Former Belgian official, 2.3.2005.

⁸² Finnish official, Brussels, 2.3.2005.

⁸³ Hungarian official, Brussels, 14.3.2005.

⁸⁴ Finnish official, Brussels, 16.3.2005.

⁸⁵ Austrian Official, Brussels, 22.3.2005.

The ideal scenario is that you are already involved in the phase of the circulating of ideas. Then you can lobby in this phase for certain ideas over others and start influencing along the way. In practice this is difficult.⁸⁶

We try to have contact with the Commission as early as possible. In fact as soon as we know something may be in the pipeline.⁸⁷

Success will often depend on how pro-active a country is.⁸⁸ However, all small countries agreed that they are frequently not proactive enough and that their networks within their national officials in the Commission and other actors in key positions are not as well developed as those of other, bigger countries. Especially Hungary and the other newest EU members have some “catching up” to do:

It is a very big task for us now to create more contact with the Commission and how to influence at the very early stage. We have noticed that when we start looking at a proposal at working group stage the main interests of the other countries are already in there. We are still learning how to get friends and influence in the Commission.⁸⁹

Given their lack of resources smaller countries have to prioritise heavily and tend to be most active in their key interest areas where they have special expertise – another access point to the Commission.

3.2.4 The importance of technical expertise

While most of the time the Member States have to approach the Commission to influence a proposal, the Commission consults national experts as deemed necessary. As a Commission official explained:

The Commission has no universal knowledge and consults national experts. These national experts are regarded as experts and not as government representatives. Sometimes the same people later end up representing the government or chairing meetings, but our relationship with them is technocratic.⁹⁰

The general experience of countries like Belgium, Greece, Finland and Hungary has been that the Commission is most receptive to the views of

⁸⁶ Finnish official, Brussels, 2.3.2005.

⁸⁷ Belgian official, Brussels, 28.2.2005

⁸⁸ Belgian official, Brussels, 17.2.2005.

⁸⁹ Hungarian official, Brussels, 14.3.2005.

⁹⁰ Commission official, Brussels 18.3.2005.

their national experts when their particular interests are at stake and they have a high level of expertise to defend them.⁹¹

A concrete example in the area of the internal market is the peculiar case of Greek feta cheese. Against France, Germany, and Denmark (the other feta producers), the Commission approved the Greek request to put Greek feta on the EU's list of Protected Designation of Origin (PDO) products so that the only cheese able to be sold under the name "Feta" would be that produced in a particular way in certain regions of Greece. Denmark, Germany, and France asked the decision be annulled, arguing that Feta is a generic term that does not refer to a particular region and PDO designation can only apply to a limited territory within a Member State. By 1999 the European Court of Justice decided to reverse the Commission's Feta decision. However, the Greece-Commission alliance did not relent. Influenced by the results of detailed questionnaires and a major Greek study concerning Feta use, the Commission concluded that it should be registered as a PDO on the grounds that Greece – contrary to the others – has been producing Feta since ancient times with production requirements that differentiate it from other Feta-like cheeses, that its production is regional and the biggest in the EU, and, crucially, that its name is non-generic. On June 27, 2002 EU's agriculture ministers accepted that Feta be added to the PDO list. In this case, a successful alliance between the Commission and Greece rested on Greece's technical expertise and its "cultural right" to be consulted on the issue.

Similarly, Finland's impression has been that the Commission is most likely open to national influence when key Finnish interests are at stake and Finland can offer special expertise:

The Commission may listen when you have something very specific that relates only to your country and is of key concern to you – then my experience has been good and the Commission is more likely to listen.⁹²

The Commission listens to everyone when the issues are technical.⁹³

Concrete examples where Finland could change Commission proposals through bilateral negotiations include the peculiar case of the proposed banning of Baltic herring consumption due to high levels of dioxin. Sweden and Finland – whose commercial fishing sector consists almost exclu-

⁹¹ Greek official, Brussels, 7.3.2005. Finnish official, Brussels, 9.3.2005.

⁹² Finnish official, Brussels, 16.3.2005.

⁹³ Finnish official, Brussels, 28.2.2005.

sively of Baltic herring – were allowed to exceed dioxin levels in Baltic fish until December 2006.⁹⁴ The reasoning was that despite the high dioxin concentrations in Baltic herring, their total exposure would not exceed the overall recommendation because of their lower levels of dioxin concentration in milk and meat products than in other EU countries. Thus, only the export of Baltic herring to other EU countries was banned, which affected neither Finland nor Sweden. Other examples of this kind are found within the EU's Natura 2000 nature conservation programme.

3.2.5 The Commission's power in Council Negotiations

However, even if small states are successful in influencing the Commission, the subsequent power of the Commission to mitigate the influence of big states in Council negotiations is much weaker:

The Commission has a small role in the negotiations. Of course it is proposing legislation and directives but during the debates they are then modified and here the Commission's role is limited.⁹⁵

Once a proposal is debated in the Council and its various substructures, the strategic attention switches from the Commission to the Member States, particularly the Council presidency and the big Member States:

Once the proposal is out you shift your attention from the Commission to the presidency and you start to form coalitions with the Member States.⁹⁶

You have to find a coalition and a group of like minded states. Often you have to look at Germany, France, and the UK and analyse their conditions in order to find a solution.⁹⁷

The Council presidency frequently takes the lead in Council negotiation and to find agreement it may change the initial Commission proposals significantly. Its influence over the Commission is greatest when: a) there is a high heterogeneity of views in the Council giving the presidency more leverage to steer things the way it wants; and b) the intensity of preferences of other Council members is high making it more difficult for the Commission – biased towards its initial proposal – to broker the deal.

⁹⁴ See Council Regulation (EC) No 2375/2001 of 29 November amending Commission Regulation (EC) No 466/2001 setting maximum levels for certain contaminants in foodstuffs. Official Journal L 321, 06/12/2001 p. 0001-0005.

⁹⁵ Hungarian official, Brussels, 14.3.2005.

⁹⁶ Finnish official, Brussels, 28.2.2003.

⁹⁷ Hungarian official, Brussels, 14.3.2005.

A recent prominent example where the presidency has been taking the key mediating role is the EU's financial perspective. The proposal of the Commission to increase the Community budget to 1.24% of the EU's GDP caused an outcry by the net payers. The Luxembourg presidency took the lead in the conflict and its compromises differed substantially from the initial proposal of the Commission. There are many examples of the Commission relinquishing its agenda-setting powers to the presidency in the area of the internal market including the EU's packaging waste directive, the directive on the posting of workers, the liberalisation of European electricity systems, or postal liberalisation.⁹⁸

In the majority of cases the Commission accepts the compromises brokered by the presidency particularly if the alternative would be no result at all:

All major files generally change quite a bit from the initial proposal. Then the Commission usually backs these changes, in very exceptional cases it turns against a common position reached in the Council. The Commission can think about withdrawing a proposal, but that rarely happens either.⁹⁹

The aim is to reach agreement. To do so the proposals always change. Once the presidency has a compromise, the Commission usually accepts it. However, sometimes Member States who were initially in favour of a proposal end up in the minority once the bargaining is done. Then we have more difficulties accepting the compromise. But the Commission must agree. Usually we do – I recall only very few cases where we did not.¹⁰⁰

3.2.6 The importance of the Council presidency for small states

The question that remains then is under what conditions, given its own sometimes limited influence, the Commission is more likely to defend a small state interest. Unsurprisingly, due to the agenda-setting powers of the presidency, a small state becomes more important to the Commission when it holds the presidency:

The Commission does usually not approach us because we are not regarded as being difficult. But now, because we are preparing the presi-

⁹⁸ For an in-depth discussion of these cases see Schmidt (2001). For other examples drawn from the areas of the internal market and foreign policy, see Bunse (forthcoming).

⁹⁹ Commission official, Brussels, 14.3.2005.

¹⁰⁰ Commission official, Brussels, 18.3.2005.

gency the Commission is calling us. We become much more interesting for the Commission when we are in the presidency seat.¹⁰¹

If an issue is particularly important to the Commission it will start lobbying the presidency to ensure it will pay enough attention to it. Similarly, the presidency country will try to co-ordinate its priorities with the Commission. Thus before and during the presidency a small country's relationship with the Commission becomes more active and small states try to use the Commission and its resources more systematically.

Although both actors compete for influence, there are in-built incentives to co-operate as a strong presidency-Commission team is more likely to reach the desired result. As various officials put it:

The relationship with the Commission changes when you hold the presidency. It becomes a very result-oriented relationship and much more intense. But both institutions always have very strong political agendas. What unites them is that both want to drive the agenda forward, thus there is usually a high degree of areas of communality.¹⁰²

When a country moves into the presidency chair the relationship with the Commission becomes even closer. Co-operation between the presidency and the Commission is necessary for things to function and to identify solutions. So the presidency increases the need of ever closer contact. But the Commission also shifts towards the presidency. The influencing here works both ways – the presidency has certain priorities and the Commission has also its own ideas.¹⁰³

This being said, the Council Secretariat has been a better friend to small states in the Presidency seat than the Commission.¹⁰⁴ Most small country practitioners consider the contact between the Council presidency and the Council Secretariat more immediate than that with the Commission. It does not only provide the presidency with logistical and administrative support, but also and crucially with minute taker and detailed briefs on the positions and preferences of the other Member States. Indeed due to their lesser resources “small Member States can be really dependent on the Council Secretariat. Only if you are abroad and do not have the Council Secretariat, your embassy may rely more on the Commission representation than on the Council Secretariat.”¹⁰⁵

¹⁰¹ Finnish official, Brussels, 16.3.2005.

¹⁰² Commission official, Brussels, 11.3.2005.

¹⁰³ Finnish official, Brussels, 9.3.2005.

¹⁰⁴ Recently, the Council Secretariat is assuming a more political role.

¹⁰⁵ Irish official, Brussels, 11.3.2005.

In sum, unless in the presidency seat, the small Member States are no natural allies of the Commission. Commission relations with the small Member States will depend on the different files without a general pattern emerging except that interest convergence creates coalitions. Big state support is a crucial resource for smalls and frequently constrain the Commission. Indeed, the Commission does not seem to be anybody's best friend amongst the Member States or within the institutional triangle. Is that not how it should be?

I think the Commission is quite isolated in the EU's institutional set-up. The Commission has traditionally seen the European Parliament as its natural ally. But this was until the Santer Commission. Since then the relationship is more conflictual [...] despite the fact that the Commission is becoming more political by nature.¹⁰⁶

¹⁰⁶ Commission official, Brussels, 11.3.2005.

4 CONCLUSION

European integration has been based on a sophisticated concept of shared leadership to manage the inherent tension between large and small countries, indeed a concept more sophisticated than the official label of “equality between states” would suggest. Of the institutions and mechanisms initially set out to safeguard this basic principle, the Commission and the rotating presidency have been most valued by the smalls. The presidency allows each office holder considerable agenda-setting powers. However, the rotation principle obviously implies that it cannot be used as a systematic tool to defend one’s interests. The Commission, in turn, particularly through its legal powers to initiate Community legislation and disagree with Council amendments, can be seen as a potential key defender of small state interests and a counterbalance to pure power dynamics in the EU:

The Commission’s role is the best shield for smalls to be sure that the final outcomes will be a balanced solution and enjoy the support of the majority.¹⁰⁷

However, the experiences of Belgium, Greece, Finland, and Hungary examined in this paper suggest that such a perception of the Commission as small states’ best friend may not generally hold beyond the general institutional level.

First, the Commission is not a *consistent* friend as we find a great deal of *variance* when it comes to drafting and negotiating specific legislative proposals. The closeness of the relationship between the Commission and small states varies from policy area to policy area and proposal to proposal even within the same policy area.

Second, it is hard to speak of a “best friend” when a relationship is not generally mutual. To put it bluntly, small states like the Commission more than it likes them, or at least more consistently. The Commission, understandably is about effectiveness. So when QMV applies, the incentives of the Commission and that of small states to seek close contact with each other are not equally strong. Small states must actively lobby the Commission to have their interests – which apart from institutional issues differ widely – taken into account. They are most likely to be successful, when: they have formed alliances with at least one or two big Member States; they start influencing the Commission in the early drafting phase and ensure good information flows with the Commission through well-developed networks within it; and can offer special technical expertise in a specific issue.

¹⁰⁷ Commission official, Brussels, 14.3.2005.

Third, small states have other friends that matter. This is because we must take into account the limits of Commission influence itself and the relative importance of the Council Secretariat. While the Commission is crucial in the drafting phase, the Member States, and in particular the Council presidency, have greater power at the negotiation stage. Most proposals undergo substantial revisions before agreement is reached. Thus, to shape the final outcomes, small states do well to befriend the Council presidency and build coalitions with other Member States. In this vein, small states are more likely to be successful if their coalition does not only comprise other small states but enjoy the backing of some of the bigs whose weight in the decision-making process is greater.

To be sure, once a small state holds the Council presidency, it becomes more important for the Commission. However, the presidency's "best friend" has generally been the Council Secretariat rather than the Commission as – in addition to administrative support – it provides the presidency with crucial informational resources. The relationship between the presidency and the Commission, in turn, can both be collaborative or conflictual given the two actors' competition for agenda influence.

In sum, we should not be surprised to find a mixed bag of conclusions on this issue. The relationship between small states and the Commission is not as straightforward as the best friend analogy may suggest. The EU was founded as a construct to counter the potential hegemony of a single state on the European continent, a temptation and practice that had plagued European geopolitics for the preceding centuries. The Commission was a crucial element of this vision of the EU as an anti-hegemonic project. There is little doubt therefore that it is a friend to small states to the extent that its very mandate of pursuing the "common good" entails mitigating pure power politics in the EU. In the end, however, small states are their own best friends and are more empowered by the most prominent institution of "shared leadership", that is the rotating presidency, than by the Commission which pursues its own agenda as to what a common European interest might mean. This reality might be strengthened as the EU moves towards increasingly majoritarian logic – as all federations tend to do – and with the politicisation of the Commission through direct accountability to the Parliament. The failure of the draft Constitution has temporarily stalled this process. But the trend is with us to stay. And if this is the case, small states will need to remain vigilant in designing federal safeguards. Friends are good, but rules of the game might be better.

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