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The EU Polity and Foreign Policy Coherence

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Abstract

The present article examines the character of the European Union (EU) as a polity by looking at the mechanisms it employs to ensure the coherence of its foreign policies. It first contrasts three ideal polity types. The methods selected to ensure coherence in foreign policy actions differ according to each of the three polity types. The article then explores how the EU ensures coherence through institutional reform, and subsequently looks in detail at two illustrative policy fields: aid sanctions and civilian crisis-management. The investigation concludes that the organisation of EU foreign policies combines elements from different polity types.

Keywords

European Union; Coherence; Sanctions; Civilian crisis management; Polity types

INTERNATIONAL ORGANISATIONS, STATES AND OTHER GOVERNANCE SYSTEMS HAVE PUT in place various mechanisms to ensure that their policies are coherent out of a conviction that this enhances the effectiveness of their output (Nathan and Oliver 1987, OECD 2003, Gebhard 2010). The foreign policy of the European Union (EU) constitutes a prime example: its structures and formulation of EU are exceptionally complex in comparison with those of states and purely intergovernmental organisations. Until the introduction of the Lisbon Treaty, EU foreign policy has been articulated at the three different levels: in the Community framework of the first pillar (EC), in the intergovernmental framework of the second pillar, and at the national level by the member states. With the Lisbon Treaty the pillar structure is formally eliminated, but competences of different actors and decision-making still vary from one policy field to another. Hence, the occurrence of incoherence is more likely than in other international entities. Incoherence can arise from different sources: conflicts may erupt horizontally among EU institutions or pillars and vertically among member states (Nuttall 2005).

The EU treaties provide an obligation for all actors at play to formulate a coherent foreign policy (Tietje 1997; Wessel 2000; Hillion 2008). Such obligation, included for the first time in

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the Treaty establishing the European Economic Community during its first revision in 1986, the Single European Act (SEA), predates the creation of the EU in 1993. How does the EU implement this principle of coherence in its foreign policy? And what does this reveal about the nature of the organisation? The present article outlines how the methods utilised for ensuring coherence in foreign policy vary in different types of polities and subsequently establishes which of these methods are selected by the EU. We consider different 'ideal types' of international polities: The main type of actor in international relations is the state, of which the EU already presents some features. In a state, coherence rests on hierarchical decision-making structures in foreign policy. A second ideal type, the intergovernmental organisation, achieves coherence through coordination among member states while each member retains veto power. Finally, if considered as a cosmopolitan polity, the EU would add a new layer of government functions to the member states without superseding them. Coherence would thus be achieved by deeply institutionalised mechanisms of coordination.

The methods used by the EU to implement the principle of coherence are analysed at two different levels. On the one hand, the article analyses treaty reforms and on the other hand, it examines the organisation of specific policy fields altered as a result of the emergence of new external actions by the EU. Because scholarship has overwhelmingly focussed on institutional innovations introduced by the treaties, this article attempts to widen the scope of the investigation by looking at the "micro-level". Namely, it explores tailor-made arrangements devised to address incoherence in policy fields where inter-pillar collaboration is necessary. Arrangements governing these policy fields were not conceived in the treaty reform process, but resulted from agreements hammered out at a later stage, after the treaty had entered into force. While the exploration of the mechanisms devised in the aftermath of treaty reform remains neglected in the literature, it can increase our knowledge about how the EU ensures foreign policy coherence. To this end, the organisation of sanctions and civilian crisis-management operations are looked into as cases exemplifying inter-pillar collaboration and the difficulties it entails.

The present article proceeds as follows: A first section presents three ideal type polities developed in the framework of the RECON (Reconstituting Democracy in Europe) project by Eriksen and Fossum (2007). A second section examines the methods used by the EU to implement its aspiration to enhance the coherence of its foreign policy. A final section concludes by ascertaining what these three case studies – treaty reform and the policy fields of sanctions and civilian crisis management - reveal about the nature of the EU as a polity.

The requirement of coherence

Defined as the absence of contradiction between policies, coherence in external policy output is a concern to many actors in international relations, in particular to federal states (Nathan and Oliver 1987, Di Francesco 2001, Stengel and Weller 2010). The idea that states need to follow a unitary foreign policy, free of contradictions, is the objective pursued by the principle of coherence. In a state, the actor bearing responsibility for co-ordination remains the state executive. According to Böckenförde, the executive government branch is responsible for the organisation and co-ordination of a common outcome (1964:39; 129). In the case of the EU, incoherent outcomes are particularly likely to arise due to its fragmented legal-institutional structures (Smith K 2003). In contrast to states, which rely on one single bureaucracy for foreign policy and mostly a unitary source of foreign policy authority – the executive – , EU foreign policy has struggled with differences between the EU level and the member states as well as between the Community and the intergovernmental level. In the absence of a single executive, the EU received

coordinating powers in the course of the integration process in order to allow it to shape a common foreign policy.

The EU must ensure coherence at different levels. In order to ensure vertical coherence, the foreign policies of the member states and the EU should be complementary (Hillion and Wessell 2008). The problem of vertical coherence is aptly described in the Commission's Communication on "Europe in the world":

> first and foremost, political agreement among Member States on the goals [is] to be achieved through the EU. This requires a strong partnership between the EU institutions and a clear focus on a limited number of strategic priorities where Europe can make the difference, rather than dispersing efforts across the board. This is the condition *sine qua non* [...] For the EU, there is the additional challenge in ensuring coherence between EU and national actions (European Commission 2006: 5-6).

Under horizontal coherence, also called "cross- or inter-pillar" coherence, policies between different pillars have to be coordinated. Beyond inter-pillar co-ordination, intra-institutional coordination concerns the coordination of policies within a specific institution, e.g. Commission policies across different Directorates General (Christiansen 2001).

The Treaty on European Union (TEU) sets out the legal basis for coherence in EU foreign policy. According to its old Article 3 TEU (pre-Lisbon), the Union shall ensure consistency of its external activity and especially the Commission and the Council "shall cooperate" to this end. The old Article 13 TEU (now Article 26 TEU post-Lisbon) states that the Council "ensure[s] the unity, consistency and effectiveness of action by the Union". Coherence emerges thus as an obligation for all actors in European foreign policy to coordinate their policies to produce coherent outputs. A formal requirement is needed to hold together different policies whose formulation corresponds to different actors and institutions within the EU.

The ideal-type polities and their methods to ensure coherence

Which methods can we expect a hybrid, unique entity like the EU to use in order to ensure coherence in its foreign policy? To answer this question, three ideal types of polities are presented, along with their corresponding methods of accomplishing coherence in their foreign policy actions. The following section conceptualises what coherence-building mechanisms are expected to look like according to these three ideal types of polities. Each of these ideal types uses different methods to ensure coherence in its international relations.

Ideal-type polities and coherence

The three polities introduced below are "intergovernmental organisation", "federal state", and "regional cosmopolitan polity". They are ideal-types in the sense that their ideal conceptions do not necessarily match the empirical reality (Eriksen and Fossum 2007; Sjursen 2007). Parts of their conceptions may differ from empirical reality.

The nature of the EU's overall institutional setting and the nature of the EU's institutional setting in foreign policy in particular have been researched for some time. Focussing on grand-conceptions such as "federations" or "intergovernmental organisations", studies have analysed the nature of the overall institutional setting and have identified the EU as "less than a federation, more than an intergovernmental organization" (Wallace 1983), "a supranational organization" (Bogdandy 1999), "a quasi-federation" (Weiler 2003) or

"condominio" (Schmitter 2005). Studies that have paid particular attention to the institutional foreign policy structures of the EU have mainly analysed executive politics across pillars, calling them "transgovernmental" politics (Majone 2005; Smith 2003; Vanhoonacker 2011), "administrative governance" (Duke and Vanhoonacker 2006) and "cross-pillar-politics" (Stetter 2004). Often these findings have not been linked back to the question of which grand-conception the EU resembles (but see Allen 1998; Burgess 2000). The present article links three grand conceptions to the field of EU foreign policy. Grand-conceptions can guide us to understand the nature of the EU in the context of ensuring coherence in foreign policy.

Intergovernmental organisation

In the first ideal-type, the EU is viewed as an intergovernmental organisation (Eriksen and Fossum 2007). Its purpose is to address problems that its member states cannot resolve acting independently. Institutions are established in which member states retain veto power, preserving the intergovernmental character of the EU (Hyde-Price 2005). With only limited tasks being delegated to the European level, the member states steer the Union through modes of hierarchy (as principals) and intergovernmentalism (by upholding power to veto or consent). This ideally constitutes a European order with foreign, security and defence policies, based on the voluntary coordination of member states under the roof of intergovernmental – thus consensual or unanimous – decision-making. The competence to act in foreign policy lies with the member states, but the coordination thereof can mutually be agreed upon. Under this scenario, member states prevent incoherence by means of coordination. Coherence is only achieved at a vertical level through coordination of member states in the intergovernmental institutions of the EU. Member states do not lose their right to conduct foreign policies. Horizontal coherence is provided by holding EU institutions accountable, subduing them to the intergovernmental framework.

Federal state

In the second conception, the EU is regarded as a multinational federal state. There is a single foreign, security and defence policy at the federal level. In the "federal state" model, the integration of foreign, security and defence policy is based on the pooling and centralising of foreign policy powers that previously have rested on the state level. In this federal model, the policy is made by a federal administration taking over central functions of the national executives and administrations. The pooling of authority is linked to a strong belief in institutions on the level of the integrating entity. Like in most federal states, the competence of foreign policy making rests with the EU on a federal level, without ruling out sublevel foreign policy making. In order to achieve vertical coherence, the sub-federal level has to comply with decisions made by the federal level in foreign policy. Horizontally, the European foreign policy administration has to ensure inter- and intra-institutional coherence amongst the different branches of government dealing with foreign relations. This is done by the federal government through its power of organisation (Böckenförde 1964): the head of the executive uses organisational planning and hierarchical directives to make his or her administration work coherently (Nathan and Oliver 1987; Stengel and Weller 2010).

Regional cosmopolitan polity

The third conception considers the EU as a regional cosmopolitan polity, in which government functions become separated from the state and embedded in global

governance. Here, the EU is a democratic non-state polity, with explicit government functions. In such an EU polity, the concept of government would rest on a cosmopolitan authority of procedures established for decision making and law making (Eriksen and Fossum 2007:29). The EU's authority to act is based on the idea that the regional order looks after the implementation and protection of cosmopolitan norms and principles (such as universal human rights) which form the constitution of a transnational (global) society. While concurrent powers of foreign policy action could rest on the EU level (Sjursen 2007), coherence in the vertical dimension would be ensured by member state compliance. As a regional polity, the EU is embedded in global governance structures. In that sense, the EU policies would not only have to be coherent between the member states and the EU, but also between the EU and centres of global governance, such as the United Nations. On the regional level, independent institutions on the European level direct the co-ordination of EU foreign policy. EU institutions have to provide close institutionalised co-ordination in order to fulfil their governmental tasks.

In the reminder of this article, the attempts by the EU to give effect to the obligation of coherence are examined against the background of these ideal-types of foreign policy actors.

The quest for coherence through treaty reform

This section examines how institutional reform has addressed the question of coherence in EU foreign policy. Which methods were selected for achieving coherence, and to which ideal polity-types do these different methods correspond?

Already the Single European Act (SEA) which formalised the European Political Co-operation (EPC) contained an exhortation to ensure coherence between its outputs and the external relations of the Community: "external policies of the European Community and the policies agreed in the European Political Co-operation must be consistent" (SEA 30(5)). This explicit linkage subjected both areas to the need for consistency, and entrusted both the Commission and the Presidency with the task of ensuring consistency (Krenzler and Schneider 1997:134). However, the inclusion of a general exhortation in the treaty was largely unaccompanied by supporting institutional arrangements. The defining moments for the configuration of coherence in EU foreign policy came with the treaty revisions of the nineties at Maastricht and Amsterdam. Improving the effectiveness of the EU's external capabilities was a key motivation behind the signing of the TEU in 1991 (Smith ME 2004:209). The central innovation introduced by the Treaty of Maastricht was the establishment of a single institutional framework through the creation of the European Union. In terms of foreign policy, this comprised the external relations of the first pillar, agreed under the Community method, and the intergovernmental pillars of the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). Until then, the ECP and the TREVI groups, the predecessors of the CFSP and JHA respectively, had remained fully separate from the Community framework, as they were not covered by the original treaty. The rationale for the creation of the single institutional framework was that coherence would be improved because all policy fields, while governed under different rules, would now share the same institutions. As part of the creation of the single institutional framework, the small secretariat that had supported the EPC was integrated into the Council Secretariat. However, the establishment of the single institutional framework did not in itself lead to improved coherence of EU external action: "by attempting to create a closer link between the EC and the EU's other external capabilities, the drafters of the TEU unwittingly created tensions, inconsistencies, and gaps between the rules governing these domains at the organisational and even individual levels" (Smith ME 2004:209). This situation was exacerbated by two further provisions: Firstly, the exhortation to ensure coherence was now addressed to both the Council and the

Commission. Secondly, the European Court of Justice (ECJ) was precluded from exercising jurisdiction over the policies produced in the second and third pillars. The combination of entrusting both Council and Commission with the task of ensuring coherence and the lack of ECJ jurisdiction was unable to eliminate the "grey areas" where the competences of Council and Commission overlapped. In fact, many of the arrangements contributing to EU foreign policy coherence result from sharpening the delimitation of competences between the Community and the intergovernmental framework. Thus, the unfinished businesses of Maastricht had to be solved through arrangements which were put in place following a series of major inter-institutional conflicts which erupted following the entry into force of the TEU. While the most publicised example was the dispute over the financing of the CFSP due to the European Parliament's activism on the matter, similar struggles characterised the few years following the entry into force of the TEU (Schmalz 1997:22). The outcome of those disputes created many of the mechanisms which ensure coherence in EU foreign policy until today.

Similarly, activism among EU actors advocating arrangements for improved coherence emerged with the creation of the European Security and Defence Policy (ESDP) in the run up to the Treaty of Nice. While a renewed attempt was made to strengthen provisions on coherence in the treaty, the need for consensus once again brought about mechanisms which were harshly criticised by EU actors and commentators alike. Resenting that the Nice Treaty provisions on enhanced co-operation set ESDP apart from the rest of the CFSP, Missiroli lamented that "unless a legally more constraining framework is established…the potential for occasional turf battles and 'malign' initiatives and interpretations is there to stay" (Missiroli 2001:10). Paradoxically, the adoption by the EU of a military operational role through the establishment of the ESDP exacerbated the need for improving coherence, while the sensitive nature of defence issues rendered consensus among member states more difficult. Another example is the creation of a High Representative (HR) for the CFSP, a role introduced by the Treaty of Amsterdam. While this post potentially constituted a key instrument for the improvement of vertical coherence, the HR was meant to represent the Union externally in subordination to the Presidency, which already had to share its external representation functions with the Commission in accordance with Article 18(3) of the Amsterdam Treaty. Such an arrangement complicated the question of external representation of the Union as it added to the multiplicity of actors involved rather than reducing it. Only with the progressive enhancement of the powers of the HR in subsequent treaty revisions is developed into a role contributing to the enhancement of coherence in the CFSP.

Yet, beyond the defining years of the post-Maastricht, and to some extent the post-Amsterdam and post-Nice periods, improved coherence in EU foreign policy resulted from the increasing delimitation of competences between the institutions and pillars. The EU has been ameliorating its coherence mechanisms gradually: "despite a number of internal and external obstacles, the EU continues to make gradual institutional breakthroughs in this area" (Smith ME 2004:209). The step-by-step, often conflict-ridden elimination of "grey areas" was made possible chiefly by two developments. Firstly, the ECJ became increasingly involved in adjudicating in inter-institutional disputes over competences with major implications for coherence. The role played by EC law in promoting coherence through the ever-sharper delimitation of competences has been central (Cremona 2008; 2011). Secondly, the delineation of competences also resulted from the Commission's tacit acceptance of the loss of a portion of its autonomy in matters where Community and CFSP competences overlapped: "when a policy action generates a conflict between CFSP and EC decision-making rules […], the procedures of the CFSP tend to dominate […] Some CFSP decisions even undermined EC's own competencies, thus contaminating the EC with intergovernmentalism" (Smith ME 2004:215). This development was facilitated by the circumstance that the Council that is responsible for the CFSP, although both Council and

Commission are entrusted with ensuring coherence. In this sense, the arrangements were aided by the Commission's selective activism: "Given its institutionalised preoccupation with economic integration, the Commission still chooses its battles carefully and has not emerged as a major enforcer of compliance in external political affairs" (Smith ME 2004: 219).

Up until the Lisbon Treaty, endeavours to ensure coherence conducted by treaty reform have been regarded as largely insufficient (Smith ME 2001). The Lisbon Treaty displayed a clear focus on the organisation of foreign policy. Three main institutional innovations have been discussed so far in the context of coherence: the creation of the posts of High Representative of the Foreign Affairs and Security Policy and of President of the European Council and the establishment of the European External Action Service (Gaspers 2010). The newly-created post of HR of Foreign Affairs and Security Policy constitutes a genuinely "cross-pillar" double-hat: the new HR is simultaneously Vice-President of the Commission. It enjoys, in both capacities, a right of initiative in the CFSP. In its capacity as HR, it assumes the external representation functions that previously corresponded to the EU Presidency, in addition to chairing the Foreign Affairs Council. In its capacity as Commissioner, it takes on a coordinating function of Commissioners from the RELEX family, with the notable exception of the Trade Commissioner. The addition of the role of head of the EEAS and of chair of the Foreign Affairs Council has led some observers to describe this post as a "four-hatted" rather than double-hatted. By contrast, the position of President of the European Council has been created from scratch and has taken over some of the roles that once belonged to the rotating presidency. The creation of this post accompanies the de jure elevation of the European Council's status to a fully–fledged institution, which is now officially entitled to identify the strategic interests and objectives of the Union across all intergovernmental and former Community aspects of foreign policy. Accordingly, the President of the European Council also represents the Union on issues concerning its Common Foreign and Security Policy.

The setting up of the European External Action Service (EEAS) was foreseen as part of the implementation of the Lisbon Treaty. The Treaty itself failed to specify its modalities, leaving decisions on the configuration of the EEAS to a post-treaty agreement, clearly due to the delicate choices that it involved. The decision outlining the organisation of the EEAS was only taken in June 2010, after extensive consultation with the actors involved, especially the European Parliament. According to its foundational document, the EEAS is a "functionally autonomous body" separate from the Council Secretariat and the Commission, operating under the authority of the HR. It has a mandate to support the HR as well as the President of the European Council and an explicit duty to "ensure consistency between the different areas of the Union's external action and between those areas and its other policies" (Council 2010: art.3). Its establishment underscores the importance of the follow-up phase of the Lisbon Treaty to ascertain its consequences: "the actual enforcement of the Lisbon provisions on 'foreign policy' […] may prove as crucial as the original drafting of the treaty text" (Missiroli 2010: 429). Cremona resents that according to the treaty arrangement, "not only will there be a number of different actors to co-ordinate, a number of different actors will have responsibility for that co-ordination" (Cremona 2008: 34). To an extent, double hatting is being (ab)used by the EU in the expectation that it will ensure co-ordination in the absence – or in lieu - of legal-institutional reform. As has often been the case in the past, the overly ambitious "synergy" arrangements might eventually lead to an uncomfortable grey area.

The first treaty changes at Maastricht and Amsterdam correspond to the intergovernmental polity type, while the more recent arrangements tend to incorporate some elements that transcend the traditional intergovernmental level and tend to approximate the state polity type. This is particularly visible in the figure of the HR, which

takes on a co-ordination role within the RELEX family (except for the trade Commissioner). Similarly, the EEAS has mitigated the multiplicity of actors representing the EU in third countries, integrating members of the Council Secretariat, Commission and the diplomatic services of the member states. On the other hand, distinctively intergovernmental elements are maintained, such as the figure of a President of the European Council.

The quest for coherence in policy fields

While scholarly attention has overwhelmingly focused on how institutional reform can enhance coherence, developments outside the treaty framework remain central. Indeed, post-treaty arrangements often served to resolve conflicts created by the often cumbersome provisions of the treaties.

Sanctions

The imposition of sanctions by the EU constitutes a classic case of inter-pillar collaboration – indeed, one that precedes the creation of the pillar structure (Nuttall 1996; Koutrakos 2001). When EC member states were first confronted with the requirement to implement UNSC sanctions in the sixties, they did so through national legislation, relying on a Treaty provision expressly allowing member states to deviate from the Common Commercial Policy "in order to carry out obligations […] accepted for the purpose of maintaining peace and international security" (Article 297 TEC). Yet, the Commission argued in favour of uniform implementation though the Community claiming that different national measures threated to undermine the operation of the common market (Nuttall 1996:138). This prompted a shift towards the involvement of the Community, giving rise to the so-called "two-steps" procedure (Lukaschek 2002): It consisted in the adoption of a decision to impose sanctions in the extra-communitarian forum of the European Political Co-operation (ECP), followed by the adoption of a Community Regulation under Article 113 TEC.

The shift from implementing sanctions through national measures to Community legislation can be explained by pragmatic considerations: Member states aimed to enhance the effectiveness of sanctions by implementing them uniformly throughout the Community (Koutrakos 2001; Lukaschek 2002). The two-steps procedure provided a mechanism which could be employed for member states to agree and implement sanctions in the absence of a UNSC mandate. Indeed, this method was employed in the early 1980s when the EC member states imposed autonomous sanctions against the USSR during the Polish crisis and against Argentina during the Falklands war. The two steps procedure was eventually formalised by the Treaty of Maastricht (Koutrakos 2001). The codification of the inter-pillar procedure for the application of sanctions solved the legal problem created by the Community implementing decisions adopted in an extra-communitarian framework, a situation previously judged incompatible with EC law. This procedure, a sui generis provision in Community Law, served as a model for subsequent "hybrid" legal bases such as the "dual-use regulations" (Gebhard 2010: 115).

Sources of incoherence

Despite the formalisation of the time-honoured two-steps procedure under the Maastricht Treaty, a number of inconsistencies in the implementation of sanctions can be identified.

Horizontal incoherence: hurdle surmounted

In the post-Maastricht phase, inconsistencies were motivated by a situation of uncertainty regarding which pillar was appropriate for the suspension of development aid to third countries. Sanctions of different nature, such as arms embargoes, financial measures and interruption of aid were agreed simultaneously and reflected in a single document. Hence, following the entry into force of the TEU, sanctions belonging to different pillars were decided concurrently. Development aid to target countries was sometimes suspended according to first pillar procedures, and sometimes agreed in the framework of the second pillar despite being identical in character and scope: The Commission cut off aid to Rwanda following the Kibeho massacre in 1995, while the Council suspended aid to Niger in response to its 1996 coup d'état (Schmalz 1997:31). This led to considerable tensions as both Council and Commission claimed to have exclusive responsibility for the suspension of development aid.

Competences were subsequently clarified. The accommodation reached consists in submitting measures within different fields of competence to separate procedures. Under the current arrangement, the Community has responsibility for development aid suspensions. This takes place in the framework of consultations which are led by the Commission, a responsibility allocated in recognition of its particular expertise in the field of development co-operation (Schmalz 1997:33). Yet, the Commission abandoned the practice of suspending aid without the approval of the Council, which became necessary for suspensions and resumptions of aid. In contrast, all other sanctions are agreed in the framework of the CFSP and applied through the two-steps procedure. For instance, development aid to Zimbabwe was interrupted in 2002 through a first-pillar decision, while on the same day a CFSP Common Position imposing a visa ban on the ruling elite was adopted.

Vertical incoherence: persistent non-compliance

A traditional problem of sanctions lies with the challenges posed by member states which do not comply with them. In comparison with other international sanctions, notably those imposed by the UN, non-compliance with EU measures is infrequent. Still, the rare deviations from CFSP sanctions have routinely been tolerated and ultimately legalised through the inclusion of clauses in the imposing documents allowing states to deviate from them under specific circumstances. This practice was initiated in order to accommodate Greece's refusal to implement the grain embargo imposed against the Soviet Union in 1980 (de Wilde 1998), and has survived to our days. France's decision to invite Zimbabwean President Mugabe to the French African summit in 2002 in defiance of the visa ban compelled the EU to insert a clause in ensuing regimes allowing states to grant exemptions. While not technically disallowed, these deviations contravene the spirit of the measures and undermine their credibility. Thus, the EU obviated the problem of vertical inconsistency by accommodating occasional non-compliance.

Assessment: which polity?

The operation of sanctions displays a relatively harmonious and well-developed method of ensuring coherence. The accommodation found successfully prevented the recurrence of horizontal inconsistencies, even though it does so, to some extent, to the detriment of Commission prerogatives. Nevertheless, the fact that CFSP sanctions mostly consist of targeted measures deprived of economic implications renders the possibility of market distortion more unlikely and consequently makes the participation of the Community less relevant. Yet, the elimination of inter-pillar tension in the field of sanctions has been

accompanied by the persistence of vertical inconsistencies. The fact that the individual behaviour of the member states is responsible for inconsistencies suggests that institutional provisions are more useful in disciplining the inter-pillar relationship than individual member states which deviate from agreed decisions.

What do the methods employed by the EU to solve the problems of inconsistencies reveal with regard to our ideal polity types? To which ideal polity type do these methods correspond?

The arrangements put in place in order to solve inconsistency problems display some features corresponding to each of the ideal types. The centre of gravity in the decision-making process is still located in the second pillar, which points to the international organisation type, according to which coherence is ensured by following an intergovernmental decision-making model where each member state has a veto. Furthermore, many coherence problems faced by the EU typically correspond to those suffered by international organisations, such as member state defection. On the other hand, the EU comes close to the ideal regional cosmopolitan type embedded in global governance. In the field of sanctions, the EU closely approximates the cosmopolitan entity in which co-ordination with other international actors is ensured. Collaboration with the UN, but also with major international partners such as the US is central. Moreover, the EU and UN practice have remained intertwined over the years, with EU sanctions often overlapping with UN practice (Portela 2005; 2010). Also, the Commission collaborates closely with the Council, drafts sanctions legislation and monitors the implementation of financial and economic sanctions, while member states are in charge of implementing bans and embargoes of non-economic nature. Thus, these entities discharge government functions in different phases of the formulation and implementation of sanctions, forming a new layer of governance.

Nevertheless, while the methods used to achieve coherence feature elements of these types, the EU functions mostly as a state in terms of sanctions imposition and implementation. The mechanisms for imposition and implementation of sanctions in the EU resemble the hierarchical allocation of responsibilities that characterise a federal entity (Coppieters 2007). The model of decision-making follows a hierarchical structure characterised by clearly defined competences of the actors involved. The legal acts are binding upon member states, and even impose reporting requirements on public and private financial institutions. The resemblance to the hierarchical division of labour that characterises states is especially evident in the solution selected to address the problem of horizontal coherence: The initial conflict between the Council and Commission was solved by (re)allocating competences among EU institutions, whereby the Council was entrusted with CFSP sanctions while the Commission retained some responsibility for aid suspensions. Beyond the thematic division of labour, roles were also allocated along functional lines: through the two-steps procedure, the Council remained the decision-making centre for the imposition and lifting of sanctions; yet, the specificities of the sanctions regime such as the items covered under the embargo are worked out in the form of a Regulation with considerable Commission's input. Thus, the use of hierarchisation and functional division of labour suggests that the EU neutralised a potential source of incoherence by using methods characteristic of a state.

Civilian crisis-management

A new dimension of EU external relations, crisis-management has both a civilian and a military realm. Civilian crisis-management embraces crisis-management tools "in the absence of military means", such as the deployment of police, administrative and judicial staff (Howorth 2007:124). Military crisis-management has been conducted in the

framework of the European Security and Defence Policy (ESDP) and after Lisbon in the Common Security and Defence Policy (CSDP), whereas up to the Lisbon Treaty competences for civilian crisis-management have been found in the first and second pillar of the EU. In the first pillar, civilian crisis management instruments have comprised a wide range of tools, including those from humanitarian aid, development and human rights policies: the Humanitarian Aid Instrument, the Instrument for Stability, the Democratic and Human Rights Instrument, the Instrument for Pre-Accession Assistance and the Neighbourhood and Partnership Agreement (European Commission 2006:4). In the second pillar of the EU, the most important instruments of civilian crisis-management have been laid down in the Petersberg tasks in the framework of the European Security and Defence Policy (ESDP) – now Common Security and Defence Policy (CSDP). According to the Feira Council in 2000, civilian missions encompass policing missions, rule of law missions, civilian administration missions and civil protection. At the time of writing, ten civilian crisis-management missions are run by the EU, seven have been completed.[1] After Lisbon, the policies originally assigned to different pillars continue to vary according to different decision-making processes and the competence of different actors in the field.

Sources of incoherence

With the introduction of ESDP, the TEU created a potential for duplication: civilian crisis-management could now be decided upon in two ways: through the Community and intergovernmentally (Nowak 2006: 141). Hoffmeister, who was at the time lawyer at the Commission legal service, has argued that civilian crisis-management is often, when it comes to short-term civilian crisis-responses, in a "grey zone" (2008:163). At the same time, the treaties require a solidly justified power for action, as they do not allow encroachments upon the two mechanisms. The old Art. 47 TEU (pre-Lisbon) prohibited encroachments upon Community law by EU acts: If external action rested on a Community competence, it could not be enacted through intergovernmental means (Hoffmeister 2008:159). The new Art. 40 TEU (post-Lisbon) foresees that encroachments are also not possible on powers of the Union in CFSP/CSDP. The two areas of competences are thus demarcated by the Treaty of Lisbon, while factually civilian crisis-management remains a domain of "cross-pillar-politics" (Stetter 2004). But in the end how does the EU ensure coherent civilian crisis-management?

Horizontal coherence

In the old pillar-structure, the Community has had the competence to act in a number of fields concerned with development and conflict prevention (Hoffmeister 2008:163). The Community received the competence of election monitoring missions in 1999 through two new Regulations (975/99 and 976/99) which provided a specific legal basis for Community operations that "contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms" in third countries (European Commission 2000:11). However, for some missions in the field of rule of law, civilian administration, civil protection and monitoring, the intergovernmental CFSP/CSDP framework was chosen even though, as critics argued, these fields belonged to Community competences (Hoffmeister 2008:164-170). The dominance of CFSP/CSDP in civilian crisis-management provoked concerns in the Commission that external relations were being transferred to the intergovernmental CFSP/CSDP framework. The Commission filed a case against the Council in front of the ECJ arguing that the Council had impinged upon Community competence by adopting a CFSP Joint Action to combat small arms proliferation in West Africa. The ECJ ruled that the

[1] See http://www.consilium.europa.eu/showpage.aspx?id=268&lang=EN (accessed 10 May 2011).

measures of the CFSP Joint Action should have been adopted in two acts – one of them intergovernmental, containing the security aspects, and a second one, a Community act, encompassing the development aspects of the action (Wessel 2009:136; De Baere 2009:288). The Court departed from the reasoning of its Advocate General in the first ruling, who argued that the CFSP Joint Action was justifiable as an intergovernmental measure on account of its clear "security nature" (Wessel 2009:136). The Court annulled the original Council decision, which "means that no second or third pillar act may be adopted on any matter falling within the scope of the EC Treaty, regardless of the non-exclusive character of the Community competence concerned" (De Baere 2009:289). The jurisdiction of the ECJ in ECOWAS has put a break on a more integrated civilian crisis-management approach: neither the Community, nor CFSP/CSDP can take over full responsibility.

Coordination of civilian crisis-management rests on a complex network of bodies. The Political and Security Committee (PSC), in which member states, Commission and the Council Secretariat have framed civilian crisis-management, constitutes the central forum for coordination in the second pillar. With regard to cross-pillar issues, Coreper is also well positioned, "as [it] has the overview of what happens in the Community pillar, […] to keep an eye on whether decisions in the First Pillar are in line with those developed in CFSP and ESDP" (Vanhoonacker 2008:149). Council Committees dealing with crisis-management and reporting to the PSC include representatives of the member states, the Commission and the Council Secretariat. Potentially, they can serve as arenas of inter-pillar coordination. The EU Military Committee (EUMC) constitutes an exception, as it comprises Chiefs of Defence Staff of the member states or their deputies and advises the PSC on military crisis management (Duke 2008:89). The composition of the Committee on Civilian Aspects of Crisis Management (CivCom) is mixed – including representatives of member states and Commission. It reports to Coreper and advises the PSC on police and civilian options. A Civilian Planning Conduct Capabilities (CPCC) unit in the Council advises the PSC on operational planning of police and civilian missions (Duke 2008:91). The overall divide between military instruments of crisis-management (second pillar) and civilian crisis-management (first and second pillar) has been addressed in the Civilian-Military Cell, established beneath the level of EUMC and CivCom. Again, its composition reflects the multiple institutions and policy issues involved, comprising "military" and "civilian planners" as well as "Council fonctionnaires" (Duke 2008:89). Amongst other functions, the Civilian-Military Cell has to oversee "the development of civilian-military relations within the institutions" (Duke 2008:89). Overall, the highly complex institutional structure clearly mirrors the attempt to achieve coherent inter-institutional decision-making.

After the formal end to the inter-pillar structure, coordination is expected to improve with the establishment of the High Representative and the EEAS after the introduction of the Lisbon Treaty (Duke 2008: 99). The "new" High Representative and her administrative substructure, the EEAS, are meant to introduce further mechanisms of coordination with a potential for greater coherence (Raube 2007:289). It is yet to be seen if coherence will be achieved more easily thanks to the emerging hierarchical executive and administrative structures. The High Representative, as pointed out above, is Vice-President of the Commission and Chairman of the Council on Foreign Affairs and head of the EEAS, which, amongst others, consists of the CFSP/ESDP branches of the current Council Secretariat and the DG RELEX of the Commission.

The emerging structure of the High Representative and the EEAS can already point to some potentials for further institutionalised coordination in the field. The only DG within the EEAS directly supervised by the High Representative is the "ESDP and crisis-management structures" unit (Council 2010). This entity within the EEAS includes the Military Staff (EUMS), the newly created Crisis Management and Planning Department (CMPD) and the CPCC. The strategic nucleus of the DG will be the CMPD, headed by Belgian diplomat Walter Stevens, and there will be a direct link to the Council's CivCom,

which will be chaired by an EEAS member, M. Leinonen. Thus, crisis management structures have the potential to streamline strategic incentives and identify capabilities across the different areas of competence between CFSP and the Community. Potentially coherent action can be taken in the Council through the chairman role of the EEAS in CivCom. However, the coherence of crisis-management with other policies remains to be seen, as the High Representative will not take over all responsibilities in the areas of development and neighbourhood policy (Council 2010).

Problems of horizontal coherence have also been identified in EU civilian crisis-management missions on the ground (Gross 2011: 129; Keukeleire, Kalaja and Collaku 2011: 202). The multiple competences in EU crisis-management are mirrored in the EU's external representation and multiple EU actors (Commission delegations, EU Mission offices, Special Representatives, etc.) need to increase their coordination on the ground if they are to speak with one voice. As it has been pointed in the case of the EUPOL/Afghanistan, often it seems that multiple policy efforts exist in parallel instead of one coordinated action (Gross 2011). The changes in the Lisbon Treaty may again carry some potential to coordinate civilian-crisis-missions under the roof of the Union delegations. In the case of the EUPOL mission in Congo the Union delegation carry the overall coordinating function on the ground (Justaert 2011: 6). However, the sufficient coordination needs to be established from case to case between the national delegations, the Special Representatives and Heads of Delegations.

The new system after Lisbon may be beneficial to horizontal coherence. The High Representative, the EEAS and its EU delegations, rather than overcoming conflicts of competence in civilian crisis-management, will further institutionalise the coordination of formerly separated institutions.

Vertical coherence

The European Commission communication "Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility" underlines that the EU has to ensure vertical coherence (2006). According to the logic of the Commission, the functional unity of the EU is only given if cross-pillar policies are coherently coordinated on the EU level, if the EU member states back these policies on the EU level, and if the European and the national level are bound together by sufficient coordination mechanisms. At the same time, member states have an obligation to cooperate and formulate their foreign policies in the context of the CFSP, including civilian crisis-management. Indeed, once member states stay away from coordination on the EU level, they do follow the obligation to actively formulate and support a common EU foreign policy, which is neither to be contradicted, nor to be weakened by the national level (Hillion and Wessel 2008: 91-92).

Still, non-bridgeable differences between member states and the EU can run into a situation of vertical incoherence in civilian crisis-management as well. This is illustrated in the case of the civilian crisis-management mission in Kosovo (EULEX). Whereas the EU was not able to overcome member state differences on the recognition of Kosovo's independence in 2008, the EU still decided to run EULEX. While the CSDP-based civilian crisis-management mission was an attempt to oversee the post-conflict crisis-management in Kosovo, the EU was not able to fully back its EULEX mission with a clear view on the EU's position towards the status of Kosovo (see also Keukeleire, Kalaja and Cullaku 2011). Similarly, the EU was able to run a monitoring mission in Georgia as a consequence of the Georgian-Russian conflict, but the member states remain divided over their grand policy towards Russia in the long-run (Bosse 2011: 143). One can argue that the overall incentive to provide coherent conflict-management tools to Kosovo and Georgia is undermined by the member states' difference on the future status of Kosovo and the EU's

relationship with Russia. At the same time, the member states' resource commitments and bilateral actions need to be in line with EU action, if they are not to cause incoherent action. One fundamental problem of the Afghanistan mission EUPOL is said to be the lacking personnel that member states are able to provide to run the mission more effectively (Gross 2011: 128). In addition, bilateral action of member states on the ground often irritates coordinated action.

Rifts across member states' perceptions, actions and commitments mirror the diversity of member states in the EU. But the EU can try to increase coordinating efforts. While the HR and the President of the European Council are in a good position to coordinate actions between the member states after Lisbon (for example by chairing the Foreign Affairs Council), a vertically coherent civilian crisis-management will only get up and running if the member states are convinced by the potential of EU action. The new horizontal coordination setting in crisis-management involves member states at an early planning stage and it might persuade them to refrain from counter-productive action. As such, coordination towards horizontal and vertical coherence becomes intertwined. At the same time, it is interrelated with centres of global security governance. Following its Security Strategy, the EU supports and closely cooperated with the United Nations (UN), including in emerging conflicts and crisis-management (European Council 2003). The wording of several decisions on CSDP missions underline that EU crisis-management policies are "in close cooperation", in "full complementarity" or "a follow-up" to the UN actions. Scholars highlight the coordination efforts between the EU and the UN (Wolter 2007), not without also emphasizing competitiveness on the ground (Gourlay 2010).

Assessment: which polity type?

The findings point to mechanisms and institutions that are in place in order to compensate for, or palliate, the absence of a clear hierarchical structure in civil crisis-management. Current arrangements to ensure coherence do not correspond to the ideal state-like polity characterised by hierarchical organisation. Neither does the EU's attempt to achieve coherence resemble an international organisation which mainly uses instruments of coordination to ensure member state solidarity and compliance. In the old and the new setting after Lisbon, procedures to ensure coherence go beyond classical intergovernmental coordination, while in civilian crisis-management intergovernmental and non-intergovernmental policies co-exist. In order to palliate the absence of a clear hierarchical structure in civilian crisis management, a close web of institutions has been put in place to ensure political coordination across pillars, with the Council' s CivCom playing a central role. The Lisbon Treaty can be seen as another step towards more institutionalised coordination in civilian crisis-management. While the HR receives hierarchical powers within the EEAS that enable her to foster coordination, overall coordination is still necessary in the Council. While the system lacks overall hierarchy, we do identify institutionalized coordination, which – with a view on security governance – can carry cosmopolitan imprints.

Conclusion

The present article identified the mechanisms devised by the EU to prevent incoherence both through institutional grand-reform and in inter-pillar policy fields. It has done so with the objective of ascertaining to which polity types the methods selected by the EU to enhance coherence correspond: either to a federated state, an intergovernmental organization or a cosmopolitan entity. The picture that emerges is heterogeneous. The macro-level of grand-institutional reform, typically agreed in the framework of Inter-governmental Conferences (ICGs), presents an evolution. While in the initial treaty reforms

– Maastricht and Amsterdam – the methods used for co-ordination can be clearly associated with those of an intergovernmental organisation, the latest reforms display an increasingly institutionalized trend, even state-like features. The creation of a HR and the EEAS, whose functions clearly approximate those of a foreign minister and a ministry of foreign affairs illustrate this trend.

In specific policies which necessitate inter-pillar collaboration, such as sanctions and civilian crisis-management, current mechanisms through which the EU ensures coherence go beyond intergovernmental coordination. Thus, here the EU cannot be equated to an international organisation. Sanctions decision-making features mechanisms that have become detached from the international organisation and now follow the hierarchical structure characteristic of a state: clear delimitation of competences and allocation of tasks along a hierarchical structure that allows for exceptionally smooth inter-pillar co-ordination. In the case of civilian crisis-management coherence was increasingly pursued through the establishment of new council bodies and institutionalised co-ordination which transcends intergovernmental coordination but does not borrow tools characteristic of a state. Because EU civilian crisis-management is often conducted in global security governance framework combining various international bodies, which endows it with a marked cosmopolitan imprint, methods to ensure coherence in the EU resemble predominantly those of a cosmopolitan regional organisation.

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Lobbying for the Rights of Refugees: An Analysis of the Lobbying Strategies of Pro-migrant Groups on the Qualification Directive and its Recast

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Abstract

At the 1999 Tampere Council Summit, the Heads of the European Union (EU) Member States agreed to create common standards for refugees and persons in need of subsidiary protection by 2012. In 2004, as part of the Common European Asylum System, a first version of the Qualification Directive was adopted. In its effort to further approximate the rights of refugees and beneficiaries of subsidiary protection, the Commission opened a recast process on the Qualification Directive in 2009. The negotiations of both directives have been followed actively by pro-migrant groups. Their intensified political involvement and presence in Brussels did not remain unnoticed by political scientists. However, previous studies mainly focused on the analysis of the factors that affect the emergence of such groups and the variety of their missions. This article, in turn, firstly, identifies those pro-migrant groups active in lobbying on both Qualification Directives; secondly, explores their lobbying strategies; and thirdly, assesses to what extent political opportunity structures affected the lobbying choice of the pro-migrant groups. Analysing the lobbying efforts of the pro-migrant groups on the original Qualification Directive and its post-Lisbon recast allows for an evaluation of whether the groups have benefited from the modified decision-making procedures. The study is based on a documentary analysis of the strategy papers and recommendations of the groups, as well as on 28 in-depth expert interviews with EU officials and interest representatives.

Keywords

EU asylum policy; Interest representation; Lobbying strategy; Political opportunity structures

THE DEVELOPMENT OF THE EUROPEAN UNION (EU) ASYLUM AND MIGRATION POLICY has come a long way and has only recently born fruits. First integration efforts resulted in the signing of the 1993 Maastricht Treaty that, however, only represents a compromise solution. The Treaty introduced the following reforms: co-operation by agreement between national sovereigns, shared right of initiative between the Council of the European Union (Council) and the Commission of the European Communities (Commission), unanimous acting on initiatives by the Council, the right of the European Parliament (Parliament) to be informed and consulted, and jurisdiction by the European Court of Justice (ECJ) as far as international conventions are concerned (Geddes 2008; Ter Steeg 2006). It has widely been criticised for producing non-binding and lowest common denominator recommendations or agreements (Geddes 2001; Mester 2000). Critics further disapproved of the lacking parliamentary and judiciary control that hindered the

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development of a coherent policy (Lindstrøm 2005; Niessen and Rowlands 2000). This criticism was supported by the Commission, Parliament, and ECJ that called for more participation rights and the communitarisation of the asylum and migration policy (Geddes 2008). With the coming into force of the Amsterdam Treaty in 1999, migration and asylum matters were integrated into the first pillar; qualified majority voting (QMV) and the consultation of the Parliament was introduced for visa affairs, the co-decision procedure with QMV was introduced for asylum issues, and the consultation procedure with unanimity voting was adopted for migration issues. Moreover, the Commission was granted the exclusive right for initiatives and the ECJ was provided with the right of preliminary ruling (Geddes 2008; Brinkmann 2004). With the 2004 Nice Treaty, QMV was established for legal migration, visa policy, and the integration of third country nationals. Under the 2009 Lisbon Treaty, all provisions pertaining to Justice and Home Affairs (JHA) were pooled in Title V 'Area of Freedom, Security and Justice'. Article 77 (2) and Article 294 TFEU determine that the Parliament and the Council share the right to legislate on border, asylum, and migration policies under QMV.

As the competences of the different EU institutions have expanded, so did their ambitions to harmonise the national legislations in the areas of asylum and migration. At the 1999 Council summit in Tampere, the heads of the EU Member States agreed on the creation of a Common European Asylum System that complies fully and inclusively with the 1951 'Convention and Protocol relating to the Status of Refugees' (Geneva Convention). As part of that ambitious programme, the Commission (2001) published its proposal for the Qualification Directive[1] that differentiates between refugee status and subsidiary protection status in 2001. In October 2002, the rapporteur responsible for the Qualification Directive, Jean Lambert, presented her report to the plenary of the Parliament (2002). In March 2004, the Member States reached an agreement on the directive, which was adopted the following month (Council 2004). As the comprehensive impact assessment of the implementation of the Qualification Directive had shown that there is further need for approximating the grounds and the content of international protection, the Commission opened the recast of the original directive[2] in October 2009 (Commission 2009: 5). After negotiations in the Parliament and the Council, both institutions adopted the recast Qualification Directive under ordinary legislative procedure in December 2011 (Parliament and Council 2011).

This historical outline has illustrated that the recently adopted instruments that harmonise asylum policies at EU level are the results of inter-institutional power struggles that have been fought over the past two decades. In addition to the EU institutions, the paper introduces another type of stakeholders that is supposed to have co-shaped the policy outcomes of the Qualification Directive and its recast – interest groups that advocate for the concerns of people who seek international protection in the EU (hereinafter pro-migrant groups). In the paper, it is argued that pro-migrant groups have adapted their lobbying venues and strategies to the changing political opportunity structures at EU level. The two Qualification Directives have been chosen as case studies because, since they are both located in asylum policies, the same groups that had lobbied on the original Directive also lobbied on the recast. However, both directives differ in the decision-making procedure under which they were adopted. While the original Qualification Directive had been negotiated under consultation procedure, its recast was adopted under ordinary legislative procedure and, thus, by the Parliament and the Council. Hence, the comparison

[1] Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection.
[2] Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

of the two case studies allows to test whether the change in the political opportunity structures has affected the lobbying channels chosen by the pro-migrant groups.

For this analysis, eight groups that actively tried to exert influence on both directives have been identified and their lobbying strategies as regards the original and the recast Qualification Directive are compared. The pro-migrant groups that lobbied on the two directives are the following: Amnesty International Europe (AI Europe), Asylum Aid, the Churches and Christian Organisations in Europe on Migration and Asylum (CCOEMA), the European Council on Refugees and Exiles (ECRE), the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe), the European Women's Lobby (EWL), the Red Cross, and Terre des Hommes (TdH). The analysis is based on a documentary analysis of the strategy papers and recommendations of the pro-migrant groups as well as on 28 expert interviews with the representatives of the groups and EU officials conducted in 2011 and 2012.

Theoretical embedding

To analyse the reason for using certain lobbying channels in the attempt of the groups to exert influence on the two Qualification Directives, the political opportunity structures prevalent at that time need to be considered as theoretical framework. The opportunities of these groups to participate in political decision-making processes have widely been discussed in the literature. Schrover and Vermeulen (2005) assume that pro-migrant groups, just as any other civil society representative, are dependent on the attitude of political actors towards them. They distinguish between different societies: one, societies that treat immigrants as undesirable foreigners and, thus, impede organised interest representations; and two, liberal societies that encourage and stimulate the advocacy work of interest groups. Ireland (2006) and Guiraudon (1997) concretise the political opportunity structures as legal and political bureaucrats, political parties, and trade unions that act as gatekeepers and control access to political participation. If the political opportunity structures at national level are blocked, Tarrow (2010) and Keck and Sikkink (1998) suggest that the affected interest groups seek allies and access points at another level – e.g the EU institutions – or might also switch between the different policy venues (Risse and Sikkink 1999). According to Guiraudon (2003), the EU institutions appear to be more receptive towards weak societal actors who aim at promoting subjects like anti-discrimination and social inclusion. Geddes (2000: 635), in turn, differentiates between the attitudes of the EU institutions towards pro-migrant groups. He argues that it is the Commission and the Parliament in particular that use interest groups as allies to expand their authority in the areas of asylum and migration and find European solutions for Europe-wide issues. Beyond that, the case law of the ECJ does not only strengthen the rights of third-country nationals but also facilitates the advocacy work of pro-migrant groups (Geddes 1998: 709). The Council, on the contrary, is expected to be less receptive towards the demands of the pro-migrant groups (Westlake and Galloway 2004).

As the Member States have had the exclusive right to decide about pre-Lisbon asylum matters and since they still play a crucial legislative role today, national institutions must not be neglected in the lobbying strategies. Proponents of the multi-level governance approach (Ansell 2000; Beyers 2002; Blatter 2001; Greenwood et al. 1992; Hooghe 1996; Kohler-Koch and Eising 1999; Marks 1996; Pollack 1997), therefore, stress that European policies are negotiated at subnational, national, and EU level which offers interest groups a multitude of access points. As a consequence of this multi-levelled decision-making, Eising (2004) suggests that interest groups seek to divide labour between the Secretariats in Brussels whose task it is to liaise with EU policy-makers and national members that are supposed to lobby decision-makers at Member State level.

Deducing from these theoretical considerations, it is expected that pro-migrant groups choose their lobbying strategies and venues according to the legislative authority of the different decision-makers and their responsiveness towards the objectives of the groups. In this context, it is assumed that an institution with high authority and responsiveness towards the demands of the groups constitutes the ideal lobbying target. An ideal institution is easily accessible, its policy proposals are aligned to the ideas of the pro-migrant groups, and it is powerful enough to drive the policy-making process. On the contrary, a low level of authority and low responsiveness towards the claims of the groups would render the lobbying of that institution hopeless because neither is the said institution accessible nor does it hold enough authority to actively shape the policy outcome. In addition, the lobbying of an institution that has low authority in the policy-making process but is responsive towards the political objectives of the pro-migrant groups is expected to be unfeasible because it appears to be unlikely that this institution is able to convince more authoritative policy-makers of its ideas. Finally, an institution with high legislative authority but low responsiveness towards the claims of the interest groups is believed to be difficult to lobby. But even though the lobbying might be elaborate, it seems to be worthwhile as the said institution holds enough authority to actively shape the policy outcome.

The assumptions on the correlation of authority and responsiveness on the part of the EU institutions and lobbying choices to be made by the pro-migrant groups is summarised in Figure 1.

Figure 1: Correlation between authority and responsiveness of the EU institutions and lobbying conditions for pro-migrant groups

		Responsiveness: High	Responsiveness: Low
Authority	High	Ideal lobbying conditions	Elaborate lobbying conditions
	Low	Unfeasible lobbying conditions	Hopeless lobbying conditions

To what extent the authority and responsiveness of the EU institutions had an actual effect on the lobbying strategies of the pro-migrant groups is tested in the remainder of the article. Therefore, the strategies of the pro-migrant groups that actively lobbied on the outcomes of the two Qualification Directives are juxtaposed and linked with one another.

Analysis of the lobbying strategies

As outlined above, eight groups have been identified that were active in lobbying on the two Qualification Directives by screening those stakeholders that contributed to the Commission's online consultation on the 2007 'Green Paper on the future Common European Asylum System'. As this Green Paper reflects on those directives that had already been adopted in the area of asylum and migration, it appears to be an expedient starting point for sampling. Moreover, in interviews with interest representatives further pro-migrant groups could be singled out. While only three of them sought to exert influence on the original Qualification Directive, all eight of them were involved in lobbying on the recast. In the following sections, it is illustrated what lobbying strategies the individual groups applied in order to influence the policy outcome of the two directives.

How did the pro-migrant groups lobby on the original Qualification Directive?

Starting with the original Qualification Directive, it is now being elaborated which actors the pro-migrant groups included in their lobbying strategy. ECRE was the only one of the three groups that addressed the Commission. As regards the Parliament, none of the interest groups appear to have considered that institution in their lobbying strategies. The Council or national civil servants, in turn, were approached by all three of the groups. Their lobbying strategies are further elaborated below.

In a first attempt, ECRE informed the Commission about a comprehensive interpretation of Article 1 of the Geneva Convention and outlined how this interpretation affects the content of the Qualification Directive (ECRE 2000b). Then ECRE explained its position on complementary protection to the Commission (ECRE 2000a). The group also ascribed the Council a crucial role in the decision-making process and as such approached national civil servants in various ways. Its Brussels office forwarded comments on the proposal for a Qualification Directive to the Council intending to convince the Member States of its recommendations (ECRE 2001). ECRE also confirmed that it "met with the Presidencies of Italy (and) Ireland […] to further promote its position". It also distributed its written comments on key issues among all Council working groups (ECRE 2005: 4). In addition, ECRE approached national politicians and asked its member organizations to lobby national ministries and parliaments. A former member of ECRE staff reported that, at times, the liaison office received information from the Commission about the negotiations in the Council which helped ECRE addressing those Member States that opposed its position (Interview 40).

AI Europe solely approached national civil servants but it did this pursuing a versatile strategy. It took the Laeken Council meeting as an opportunity to brief the heads of the EU Member States on Amnesty's ideas about a fair EU asylum system (AI Europe 2001b; Khan 2001). Furthermore, AI Europe commented on the relationship between safeguarding internal security and complying with international protection obligations and instruments that the Commission examined for the Council (AI Europe 2001a). In addition, AI Europe presented its concerns about recognition rates of refugees and persons in need of protection in Member States at the 2002 JHA Council meeting in Copenhagen (AI Europe 2002b). Article by article, AI Europe commented on the Commission's proposal for a Qualification Directive and forwarded its recommendation to the Council (AI Europe 2002a; AI Europe 2003). AI Europe also targeted national ministries through their national sections. In its annual report, the Brussels offices emphasised how important it is "to influence EU decision-making also through the capitals" (AI Europe 2004: 6, 8). As guidance for the national sections, the Brussels office sent them updates on policy developments and advised them on how to pursue a joint strategy. Even though AI Europe did not approach the Commission during the drafting stage, it sought contact to Commission

officials during the inter-institutional negotiations to find out about the obstacles in the discussion and about the actors that opposed the position of AI Europe (Interview 19).

Under the umbrella of the Churches and Christian Organisations in Europe on Migration and Asylum, Caritas Europa, CCME, Commission of the Bishops' Conferences of the European Community, International Catholic Migration Commission, Jesuit Refugee Service Europe, and the Quaker Council for European Affairs jointly commented on the Commission's proposal for the Qualification Directive (CCOEMA 2002). In addition to the joint comments, the strategies of its members are taken into consideration. The then person responsible for the advocacy work of CCME on the Qualification Directive confirmed that the groups was able to access Council General Secretariat but, nevertheless, had difficulties in developing personal contacts to opinion-makers in the Council working groups. The interviewee further pointed out that, as a form of compensation for the limited effectiveness on the Council General Secretariat, CCME began to cooperate with its national member organizations to complement the lobbying of EU institutions with advocacy work at national level. On this occasion, for instance, a n umber of its members got together to approach the German government in a joint letter (Interview 28). Caritas Europa, in turn, was in contact with few Permanent Representations such as the German and Portuguese one and sent representatives to the countries that held the EU Presidency when the directive was being negotiated to present its ideas (Interview 1). A representative of the JRS explained that the group did not pursue an individual strategy but either held meetings with other NGOs and EU officials or was represented by other groups in such meetings.

How did the pro-migrant groups lobby on the recast Qualification Directive?

The lobbying strategies of the pro-migrant groups on the recast Qualification Directive appear to have been much more comprehensive than their advocacy attempts on the original directive.

As regards the recast Qualification Directive, AI Europe started its advocacy work earlier in the policy-making process. The group (AI Europe 2007) first responded to the Commission's online consultation on the 'Future Common European Asylum System (CEAS)' and then met with the desk officer who was responsible for the file. The contact to Commission officials in charge of the file was maintained during the further course of the negotiations in order to stay informed about the different positions of the various stakeholders. What is more, AI Europe also frequently addressed the Parliament – more precisely the rapporteur, shadow rapporteurs, and further MEPs. As such, the group tried to approach as many opinion-makers in the Parliament as possible – like-minders and opponents – to ensure that its position was well-presented among the different political groups (Interview 19).

As EWL, Asylum Aid, and ILGA Europe cooperated with each other in their attempt to influence the outcome of the recast Qualification Directive, their lobbying strategies are jointly presented. Asylum Aid is the group that was least active in this joint advocacy work. It was solely involved in the formulation of the joint recommendations (EWL, Asylum Aid, ILGA Europe 2010) and not in the direct advocacy work (Interview 26). EWL and ILGA Europe, on the contrary, intensively lobbied the EU institutions. Their representatives confirmed that both groups were in close contact with the Commission. EWL (2007) responded to the Commission's online consultation on the CEAS and was invited by the Commission to inform the desk officers responsible for the dossier about issues that occurred in the course of the implementation of the original Qualification Directive. ILGA Europe had contacted the relevant Commission officials to ensure that their views on the sensitive treatment of lesbian, gay, bisexual, and transsexual (LGBT) people who are

persecuted on gender-specific grounds were taken into consideration from the very beginning of the recast process. Access points in the Commission, according to one interviewee, are the Directorate General for Home Affairs (DG Home) and the relevant persons in the cabinet of the Commissioner. In the Parliament, EWL exclusively met with Jean Lambert, the rapporteur of the directive. This contact was described as close and as a vital source of information as regards the inter-institutional discussions. Even though EWL did not approach other MEPs personally, it distributed its recommendation throughout the Parliament. ILGA Europe, in turn, met with the rapporteur, shadow rapporteurs, MEPs of the Socialists, Democrats, and the Lefts, as well as with the 'LGBT Intergroup'. From the information they received from theses sources they could assess which MEPs are going to vote LGBT-friendly and who needs to be convinced of the demands of ILGA Europe. As regards the lobbying at Council stage, a representative of EWL attested that the group was not actively involved in advocacy work, whereas ILGA Europe appears to have been in contact with Permanent Representations (Interviews 11 and 22).

For the illustration of the advocacy strategy of CCOEMA, again, the results of the interviews with representatives of its member organizations are compiled. Concerning the lobbying of the Commission, Caritas Europa and CCME reported that they engaged in the drafting process before the Commission issued its proposal either by informal or formal consultations such as the online consultation on the 'Green Paper on the future CEAS' (CCOEMA 2007). After the issuance of the Commission's proposal for the directive, the groups forwarded their common position paper to the Parliament and the Council (CCOEMA 2010). Within the Parliament, Caritas Europa and CCME focussed on the rapporteur, shadow rapporteurs, and further MEPs affiliated to the LIBE committee in general (Interviews 1 and 12). An official of JRS explained that he attended hearings organised by the Parliament on the relevant file to find out about potential stumbling blocks and present the ideas of JRS. In general, he believes what Commission officials and MEPs are interested in is how asylum instruments affect the persons' concerns and, therefore, he always brings along stories about what his colleagues experienced on the ground to those meetings (Interview 9). Instead of approaching the Council General Secretariat, the groups reported that they focussed on Permanent Representations and ministers or administrative staff of the countries that held the EU Presidency at the time the recast was being negotiated (Interviews 1 and 9).

The lobbying strategy of ECRE towards the recast Qualification Directive was very comprehensive. At the drafting stage, the Commission invited ECRE to a stakeholder meeting before it issued its proposal after the group had responded to the Commission's online consultation (ECRE 2007). Moreover, ECRE (2008) provided the Commission with a report on the implementation of the original Qualification Directive, that they had produced for 20 Member States with the help of their European Legal Network on Asylum. In so doing, they pointed out to the ambiguity in wording where MS chose an interpretation that was not intended by the Commission. In further meetings with Commission officials, ECRE was asked to collect information from its national member organizations for the purpose of scrutinising the concerns raised by certain Member States. As regards the Parliament, ECRE pursued a versatile strategy too. They met with the rapporteur, the shadow rapporteurs, the secretariat of the LIBE committee, and the secretariats of the political groups. Furthermore, they were informed about those MEPs and political groups that seem to have opposed certain provisions in order to discuss their concerns. ECRE (2010a) also tabled a briefing paper for the EP just before the LIBE committee was going to do its orientation vote. The briefing paper was distributed to the various MEPs via the national member organizations. Finally, ECRE used resolutions and parliamentary questions to raise issues in the Parliament. Regarding the Council, ECRE approached those Member States that strongly opposed a provision that was of the group's interest and tried to explain to them the necessity of certain provisions. In Brussels,

they focussed on the Presidencies and Permanent Representations. Again, in support of their demands, they referred to their findings of the implementation of the original Qualification Directive. For instance, ECRE confronted those MS that had already harmonised the different statuses at national level but still opposed a harmonisation at EU level with the actual situation in the Member States and argued that harmonising these standards between the Member States would not cause additional costs. The information they needed on the different national positions they got from their member organizations that are in frequent contact with the relevant ministries. Finally, ECRE also organised informal seminars to which officials from the Commission, the Parliament, and few Member States as well as relevant NGOs and academics were invited with the purpose of giving ECRE an understanding of the different views of the stakeholders (Interview 18).

A representative of the Red Cross declared that the group circulated its recommendations among the Commission, the Parliament, and Permanent Representations. Regarding the Commission, the Red Cross (2007) contributed to its online consultation on the CEAS in which the group advocated for the introduction of a single protection status and widening of the scope of the directive with special attention paid to vulnerable people. Key access points in the Commission were Heads of Units and in rare cases the Director of a DG. In the Parliament, the Red Cross (2010) focussed on the MEPs allocated to the LIBE committee and in particular on the rapporteur. They first met with the assistants to MEPs and then sometimes with the MEPs in a follow-up meeting. Furthermore, they were invited to conferences and meetings organised by the Commission and the Parliament or organised events themselves to which they invited EU officials to promote the ideas of the Red Cross and find out about the EU officials' positions. Beyond that, the Red Cross contacted the Permanent Representations of the respective EU Presidencies but, for instance, failed setting up a meeting with the Belgium representatives (Interview 10).

TdH (2007) first replied to the Commission's online consultation and then had a meeting with one of the commission officials involved in the drafting of the proposal for the recast. Furthermore, the former representative of TdH met with few MEPs who, according to him, were not familiar with the realities of the asylum system in the different Member States. In addition to presenting the position of TDH (2009), he used those meetings and coffee breaks during hearings to tell stories about what he experienced in his daily work with juveniles who applied for international protection (Interview 8). Another member of TdH staff stressed that it is particularly important to approach those 'swinging MEPs' who do not clearly support the position of TdH but at the same time are not totally against it. In addition, TdH organised conferences and roundtables to which EU officials, professionals, and NGOs were invited to "provoke the debate (and) provide a forum for different actors" (Interview 5).

Beyond the lobbying attempts in Brussels, most of the interviewees also confirmed having tried to contact national decision-makers. In this context, the members of CCOEMA reported that their member churches focussed in particular on the officials of the Member State that held the EU Presidency (Interviews 1, 12, 28). Representatives of AI Europe (Interview 19), ECRE (2010: 7), EWL (Interview 11), ILGA (Interview 22) reported that the liaison offices in Brussels developed lobbying kits or template lobby letters together with, or for, their national branches to facilitate their lobbying efforts. In so doing, the overall objectives of the groups were integrated in the different lobbying strategies and adapted to the national context. The Red Cross also included its national societies in its lobbying strategy. To ensure that all members advocate on the same issue, every four years they adopt a common agenda that determines the political objectives that are to be pursued at national, EU, and international level (Interview 10). The same lobbying strategy was applied by TdH. One of its former representatives particularly referred to parallel lobbying efforts in Germany and Malta that comprised press releases about visits in reception camps and subsequent meetings with national parliamentarians and officials of the

relevant ministries (Interview 8). Asylum Aid as a UK based group, on the contrary, could not effectively contribute to the lobbying efforts of EWL and ILGA because of the resistance of the British government towards the claims of the groups and its reluctance to opt in to the new asylum instruments (Interview 26).

This section has revealed that the lobbying strategies of the pro-migrant groups differed as regards the two directives. While less attention was paid to the Commission when the original Qualification Directive had been negotiated, during the recast procedure all groups approached the Commission at the drafting stage. As reason for their early stage commitment they stressed that they wanted to ensure that their positions were taken into consideration from the very beginning of the decision-making process. A similar difference in strategy could be detected for the lobbying of the Parliament. During the negotiations of the original Qualification Directive, the Parliament was not considered in the advocacy strategies of the groups. When the recast was being discussed, on the contrary, the lobbying of relevant MEPs formed a significant part of their strategy. In the Parliament, the interest representatives met with the rapporteur and shadow rapporteurs of the directive, with members of the LIBE committee and other MEPs to which they had developed personal relations over time. With a view to their engagement with the Council, all pro-migrant groups reported that rather than approaching the persons responsible for the dossiers in the Council General Secretariat or the working groups, they met with officials working with the Permanent Representations or representing the EU Presidency when the directive were negotiated, as well as civil servants of the national ministries. More than during the negotiations of the original Qualification Directive, during the discussions on the recast, the staff of the Brussels liaison offices cooperated with their national member organization in the attempt of convincing national decision-makers of their position.

The increase in attention paid to the Commission and the Parliament implies that this is due to a change in political opportunity structures offered by those two institutions. The groups appear to have responded to this change. With a view to the Council, on the contrary, the access barriers seem to have remained the same. That would explain why the groups did not focus their means on lobbying the Council but contacted Permanent Representations, EU Presidencies, and decision-makers at national level instead.

To what extent do political opportunity structures determine the lobbying strategies of pro-migrant groups?

In order to test the preliminary assumptions about the effect of the authority and responsiveness of the EU institutions on the lobbying choices of the pro-migrant groups, these variables are examined for the Commission, the Parliament, and the Council during the two policy-making processes. For this assessment, information generated from expert interviews with the interest representatives and EU officials involved in the decision-making is analysed.

Commission

The majority of the interest representatives that has been interviewed on the accessibility of the EU institutions assessed the Commission as a predominantly open and responsive institution (Interviews 1, 8, 9, 11, 12, 18, 19). As reason for this openness, it was referred to the sincere intention of DG Home to widen the possibilities for asylum-seekers to obtain refugee status and improve the rights attached to the status (Interview 11). A further reason that was given regards the career background of the Commission officials working in DG Home – some of them appear to have worked with either NGOs or international organizations such as the UNHCR before (Interview 8). Nevertheless, the Commission was

not ascribed a general responsiveness towards NGOs: access rather varies between the Commission officials. Comparing the accessibility of the Commission over time, it is said to have become more difficult for the pro-migrant groups to approach Commission officials just after the separation of DG Justice and Home Affairs and due to the consequent personnel turnover (Interview 10, 12, 22). A further issue that was brought to the attention of the author is the general perception that the Commission more and more, already in its proposal, takes into account how far Member States are willing to go. That has resulted in a decrease in the responsiveness of the Commission towards the demands of the pro-migrant group. According to the interviewees, whenever the Commission senses reluctance from the capitals towards more progressive and liberal provisions, the Commission would prefer abandoning a provision to risking that a directive is rejected completely by the Member States (Interviews 11 and 22). At the same time, however, the Commission is reported having intensified its stakeholder dialogues by means of formal and informal meetings and consultations in recent years (Interview 1).

Commission officials themselves have also confirmed the Commission's openness towards NGOs. "It's not only that I am approached, I also approach them," one interviewee stressed (Interview 7). She referred to ECRE, EWL, and TdH as groups that she had consulted either formally or informally. As the main reason for the consultation of NGOs, the Commission officials pointed to the limited knowledge they possess about what is going on in the Member States. They argued that it is for instance difficult for the Commission to monitor and pinpoint those Member States that do not transpose the directive in the way the Commission meant it to be transposed. "NGOs are our eyes at Member States level. We don't have any other means of monitoring what's happening. We really base ourselves on what NGOs working on the ground tell us," one of the Commission officials said (Interview 7). Nevertheless, they stated that they cannot speak for all their colleagues and, thus, the responsiveness of the Commission depends on the person's receptiveness towards civil society and on the policy that is concerned (Interviews 3 and 7).

This self- and peer assessment of the responsiveness of the Commission towards pro-migrant groups has only partly proven the assumption that political opportunity structures did affect the lobbying choices of pro-migrant groups. On the one hand the Commission's general rights-based approach as regards asylum legislation appears to have made the institution a vital lobbying target. Moreover, the institutionalisation of stakeholder consultation might even have facilitated the access of the groups to the Commission. On the contrary, the interest representatives have noticed a growing reluctance towards recommendations of which the Commission assumes that the Member States would not approve of. As regards the authority of the Commission, no significant change between the negotiations of the original Qualification Directive and its recast could be observed. During both decision-making processes, the Commission had the right of initiative and functioned as a mediator in the negotiations between the Parliament and the Council. Thus, while the Commission's legislative authority remained high during both negotiations, its responsiveness towards the claims of the pro-migrant groups seems to have decreased slightly. This change in responsiveness notwithstanding, the groups have even intensified their lobbying strategies towards the Commission in recent years.

Parliament

The Parliament, just like the Commission, has been described as an easily accessible institution (Interviews 1, 2, 4, 10, 11, 12, 18, 19, 22). As reasons for its accessibility, the interest representatives named the transparent organization and work of the Parliament as well as the fact that its meetings are public and all documents are publicly available (Interviews 10, 12, 22). Nevertheless, it was pointed to the difficulty to develop lasting contacts to relevant MEPs because of their limited mandate and to the likeliness that they

are not re-elected for the next parliamentary term or change between committees (Interviews 1, 9, 11). The interviewees also stressed the importance of lobbying the Parliament as a consequence of the modified decision-making that granted the Parliament the same legislative competences as the Council has – making it a crucial player in the legislative process (Interviews 1, 5, 19). As a drawback of the expanded competences, the interest representatives reported that it has become more difficult to convince MEPs of their views because the parliamentarians more and more seem to consider feasibility matters in their decisions (Interviews 1 and 26). Moreover, they did not ascribe the Parliament a general responsiveness but explained that this is a question of the individual attitude of the MEPs. They further elucidated that in the negotiations of the recast directive, it was the Greens, including the rapporteur, the Socialists and Democrats, and the Lefts that approved of their ideas, whereas the Liberals and the Conservatives widely opposed their views. This led to an internal friction within the Parliament and, consequently, weakened the power of the Parliament in the negotiations with the Council. Thus, even if Jean Lambert, the rapporteur, had been willing to include more recommendations of the pro-migrant groups, she could not do so because of the opposition from other political groups and some Member States (Interview 9, 11, 18, 26). Finally, a representative of EWL explained that she has noticed that with the general political climate in Europe becoming more conservative, it has also become more difficult to convince MEPs of rights-based ideas because they are increasingly guided in their voting by what their national government predetermine (Interview 11).

The MEPs that have been interviewed on the Parliament confirmed the opinion of the interest representatives whereupon the Parliament is responsive towards civil society concerns. The rapporteur of both Qualification Directives highlighted that it was not only the groups that approached her; she also took the initiative and contacted them – for instance ECRE, ILGA Europe, and EWL. She regarded the consultations as a helpful instrument to strengthen her own argument or "to make sure that we really understood the wording that has been given to us and understood the implications of that [legislation]" (Interview 17). Other MEPs argued that because of the excellent organization of pro-migrant groups such as AI Europe, ECRE, and ILGA Europe, they do not need to contact them because they are usually approached very early in the decision-making procedure and provided with very detailed and tailored position papers. According to them, it is the LIBE committee in particular that has established a very good relationship to NGOs. On the other hand, one MEP alluded to the national background of the parliamentarians that notably affects the lobbying intensity. As he represents the United Kingdom, he is less frequently approached because the UK government has not opted in on the Qualification Directive (Interviews 21 and 27).

Again, the political opportunity structures only partly appear to explain the lobbying choices of the pro-migrants. The most obvious reason for not having lobbied the Parliament when the original Qualification Directive was negotiated is the limited authority it had back then. It always seems to have been a responsive institution but was not considered by the pro-migrant groups as a useful lobbying target before it gained the right to co-decide. This newly gained power is certainly one of the main reasons for the increased interest of the groups in the Parliament. Just like the Commission, however, the Parliament is reported to take its new responsibility seriously and weighing feasibility against more liberal standards (Interview 17). Thus, while the legislative authority of the Parliament has increased as a result of the introduction of co-decision in negotiations on asylum matters, the institution's responsiveness towards the political objectives of the interest groups appears to have decreased by some degree. Despite the aloofness and growing reluctance of some MEPs to adopt the groups' recommendations unquestioned, this does not appear to have undermined their persuasion that lobbying the Parliament and trying to convince MEPs of their position is worthwhile.

Council

From the results of the interviews with interest representatives, it became clear that even though since the Swedish EU Presidency more information on the work of the Council has become publicly available (Interviews 12 and 18), the pro-migrant groups still find it difficult to access the Council. According to them, most of the draft documents are still not accessible to the public and the composition and the procedures of the working groups are opaque. Furthermore, stumbling blocks that had occurred during the discussions were concealed from the public because meetings were rarely broadcasted and staying in contact with relevant opinion-makers in the Council was impeded due to the high personnel turnover (Interviews 1, 8, 9, 10, 12, 22). For a better visualisation of the opaqueness of the Council, a representative of JRS said that he has got the impression that "once you are employed with the Council General Secretariat, you need to undergo surgery where your mouth is stitched up" (Interview 9). These issues were prevalent during both policy-shaping processes. What impeded the advocacy work of the pro-migrant groups during the recast process is the fact that the recast Qualification Directive was adopted in an early agreement where the Council had its common position ready before the Parliament agreed on its report. As a consequence, the interest representatives complained about difficulties to follow the trilogues and to react on them (Interviews 18 and 22). For those reasons, the pro-migrant groups, rather than trying to access the Council itself, approached the Permanent Representations of the Member States or national ministries. Lobbying the Permanent Representations, yet, appears to have become more obsolete in recent years. This is because they are not as involved in the Council negotiations as they used to be. Today, national experts from the Member States are sent to attend the working group meetings. Thus, in order to find out about the outcomes of these meetings, the national member organizations need to approach national ministries to identify these experts (Interview 18). The interest representatives also drew on the fact that Permanent Representations are bound by their national governments. Thus, they agreed that it is important to address national politicians and civil servants too (Interviews 10, 11, 12, 26). Some of the pro-migrant groups, however, experienced difficulties in accessing national authorities especially in countries that are ruled by a conservative government and by countries that opted out of the Qualification Directives (Interviews 10 and 26).

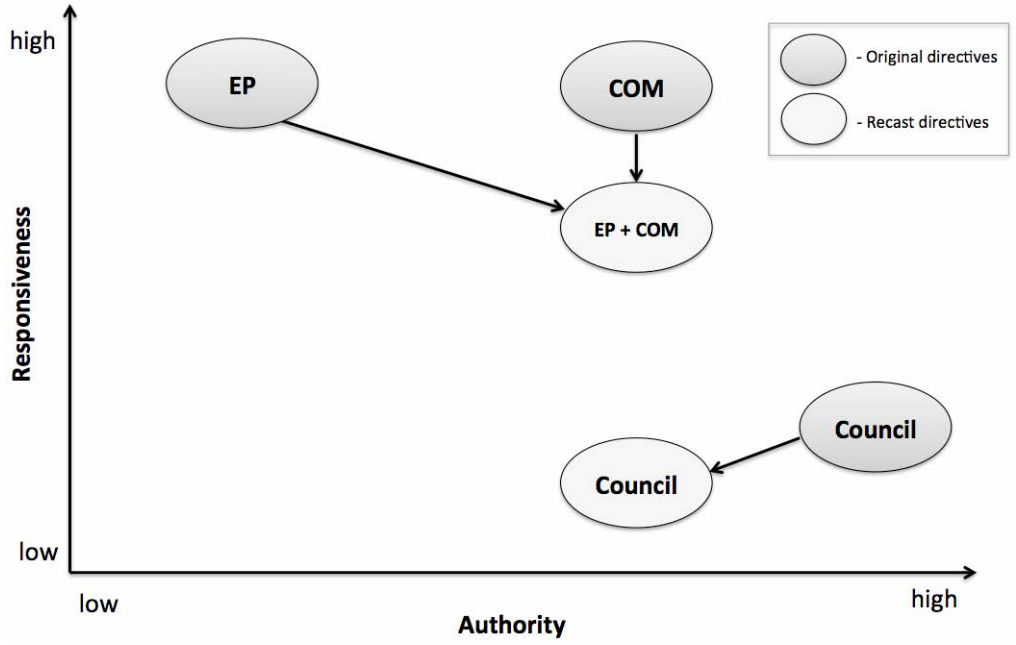
Representatives of the Council General Secretariat and Permanent Representations have come to similar conclusions concerning their responsiveness. An official of the Council General Secretariat for instance explained the limited responsiveness of the Council by claiming that the institution has to defend the interests of the Member States because there are no counterparts for human rights organizations in the civil society; the Council, thus, acts as that counterpart. What is more, the Council General Secretariat seeks to be a "neutral broker" because it assists each EU Presidency in mediating between the different Member States. It is for these reasons that he thinks the Council is not responsive towards pro-migrant groups (Interview 2). Only few of the JHA Councillors that have been interviewed on their accessibility reported that pro-migrant groups frequently approached them when the Qualification Directives were negotiated. However, they also revealed that the lobbying intensity on the part of the interest groups was much higher when their country held the EU Presidency. Again, it was explained that the openness of a Permanent Representation depends on the personal contacts established to individual JHA Councillors (Interviews 15, 16, 25). Some of the interviewees that were not approached by interest groups in Brussels assumed that this is due to the fact that in their countries an institutionalised and consolidated system of stakeholder consultations exists that gives interest representatives the opportunity to raise their concerns (Interviews 4, 6, 15, 20, 23). Most of the interviewed JHA Councillors appear to be accordant that lobbying national ministries and decision-makers is a much more promising strategy than

approaching the Permanent Representations in Brussels because they are bound by instructions of the governments. Hence, all they can do is forward the position papers and recommendations to their colleagues in the capitals (Interviews 13, 14, 20, 23, 24, 25).

As a conclusion, both the interest representatives and EU officials have revealed that the political opportunity structures at Council level are very limited. Opaque organization and proceeding as well as the self-concept of the Council as the advocate of national interests have impeded the lobbying attempts of the pro-migrant groups. To compensate for these restrains, the groups focussed on Permanent Representations and national lobbying routes instead. Here the interest representatives experienced similar restraints either in the form of lack of relevant authority or responsiveness on the part of the lobbying targets. As regards the overall authority of the Council, it needs to be stressed that since the introduction of the co-decision procedure in asylum matters, the Council's legislative authority has decreased. Thus, the assumption regarding the limited political opportunity structures at Council and Member State level has been confirmed by the empirical data. Both, its authority and responsiveness towards the claims of the pro-migrant groups has declined. To bypass these unfavourable political opportunity structures at Council level, the groups included national decision-makers in their lobbying strategy when the recast directive was discussed. Yet, this adapted strategy was hampered by the limited responsiveness of crucial national policy-makers. Until today, the pro-migrant groups do not seem having been successful in developing an efficient solution that overcomes the limited political opportunity structures prevalent at Council level and national level.

For a better understanding of the relation between authority and responsiveness of the three EU institutions during the two policy-making processes, Figure 2 illustrates the empirical findings.

Figure 2: Authority and responsiveness of the EU institutions during the negotiations of the original Qualification Directive and its recast



What other factors affected the lobbying strategies of pro-migrant groups?

Besides the political opportunity structures that appear to have widely determined the lobbying choices of the pro-migrant groups, the interest representatives pointed to other factors – personnel and financial capacities, representativeness, and the engagement of the member organizations at national level – that are meant to have affected their lobbying strategies. In the following, the relation between these internal factors and the lobbying strategies chosen by the pro-migrant groups are highlighted.

With a view to the personnel and financial capacities, most of the groups stressed that their resources did not allow for a close and continuous monitoring of the inter- and intra-institutional negotiations and for a systematic follow-up on the debate (Interviews 8, 9, 10, 11, 12, 18, 19, 26). "We can't go to the institutions every day," one interest representative said even though he knows that "one meeting is good, two meetings are better" (Interview 1). This issue has also been referred to by a representative of the JRS (Interview 9). Another interviewee reported that due to the limited resources of the group, they had to focus their lobbying attempts on certain issues (Interview 12). A representative of EWL, in turn, explained that limited resources are the reasons for not having lobbied the Council at all. She stated, "if you really want to have an impact [on the Council], you need to invest lots of time". According to her, one person alone is required to follow what is happening in the Council (Interview 11). A representative of TdH is convinced that if the group had invested more money and personnel in the advocacy work on the recast Qualification Directive, they could have achieved much more (Interview 8). A representative of the Red Cross referred to the high turnover within the group that hampered its advocacy work. Between 2008 and 2010 there was nobody working on asylum issues in the Brussels Secretariat of the Red Cross and when she took up her job she had to work hard to catch up with what has been happening in the meantime (Interview 10). Finally, an official of Asylum Aid stressed that limited resources prevented the group from maintaining a liaison office in Brussels what, as consequence, prevented any personal contact to EU policy-makers (Interview 26).

Another internal factor that seems to have affected the lobbying attempts of the pro-migrant groups is their representativeness. On this aspect, the interest representatives agreed that the more EU member states are represented by a group, the better its standing and the more likely its ability to access EU decision-makers is. They explained this interrelation by arguing that EU decision-makers are more willing to meet one umbrella group than many different national groups due to their time constraints. While a representative of Caritas, therefore, stated that it would be much better if migrants and asylum-seekers were involved in the work of the group because this would increase its representativeness, a representative of ECRE was convinced that because the group represents "more than 67 NGOs across Europe both within the European Union but also in the border countries […], this does certainly open some doors for us" (Interviews 1 and 18).

As a final factor that affected the lobbying attempts of the pro-migrant groups towards the Qualification Directives, the interviewees pointed to the internal structure of the groups and more precisely to the engagement of their member organizations. Some interviewees, in this context, illustrated that their members did not prioritise the recast Qualification Directive and that is why they less actively lobbied on it compared to other directives (Interviews 8 and 11). A representative of ILGA Europe linked the national priorities of its members with the ability to provide the EU institutions with on the ground information. Small members, according to him, found it more difficult to conduct fundamental research. As a consequence, ILGA had less information to provide the Commission with in 2009 compared to the information provided for the Parliament or the Member States during the further course of the negotiations (Interview 22). A representative of the Red Cross alluded to another aspect. She confirmed that the actions

taken by the Brussels Secretariat are usually the result of discussions between its national societies. As it is not always easy to find a compromise that is agreed on by all the members because they focus on different aspects of asylum, long debates between the members sometimes impede the flexibility to react to the inter-institutional negotiations at EU level (Interview 10). Finally, a representative of TdH regretted that the member groups function independent from the office in Brussels and do not optimally cooperate with each other and, thus, do not always pursue the same strategy (Interview 8).

The results gained from the interviews with the pro-migrant groups disclose that, even though political opportunity structures appear to have extensively affected their lobbying tools and routes, internal factors like personnel and financial resources, representativeness, and engagement of the Member States cannot be neglected in that regard. Thus, both external political opportunity structures and internal group-specific factors cannot be considered as completely separate issues. In fact, it is the combination of external and internal factors that appear to have determined the lobbying strategies of the groups.

Conclusion

This article aimed to assess the extent to which political opportunity structures affected the lobbying strategies of the pro-migrant groups that lobbied on the two Qualification Directives. In the following, the results of this assessment are summarised.

Approaching the Commission was an essential aspect of the strategies of the pro-migrant groups – both in the context of the original Directive and the recast directive. Their lobbying efforts were certainly facilitated by the general openness of the Commission towards actors of the civil society and its interest in collecting information from various stakeholders. As such, the Commission has fostered the institutionalisation of stakeholder consultations and has become an active partner that seeks contact with NGOs. However, the interest representatives also reported having noticed a growing reluctance towards the promotion of rights-based innovations in asylum policies in recent years. Thus, while the legislative authority of the Commission remained high over the years, it responsiveness towards the ideas of pro-migrant groups has slightly decreased. This change in the political opportunity structures notwithstanding, the groups continued their advocacy work towards the Commission.

With regard to the Parliament, the interest representatives explained that they did not consider MEPs in their lobbying strategies on the original Qualification Directive because the Parliament only had the right to be consulted at that time. However, with the coming into force of the Lisbon Treaty and the extension of the right to co-decide on legislative instruments to the Parliament, MEPs have become important lobbying targets. With the newly gained power, the Parliament started to take his responsibility more seriously and more and more seems to favour feasibility concerns over rights-based ideas. That has certainly limited the responsiveness of the Parliament towards the demands of the pro-migrant groups, which, nevertheless, regard the Parliament as a very open institution that is worth lobbying.

Finally, the Council in general and in particular the Council General Secretariat were described by the interest representatives as opaque and inaccessible during the negotiations of both directives. Therefore, the groups focussed their lobbying attempts on the Permanent Representations in Brussels or they encouraged their member organizations to lobby relevant decision-makers at national level instead. Yet, Permanent Representations and national decision-makers cannot be described as actors that offer more open political opportunity structures than the Council. Permanent representations,

while they might be more accessible, are bound by instructions of their national governments and, thus, lack legislative authority. National civil servants working in the relevant ministries, on the contrary, are intensively involved in the positioning of the Member States but at the same time appear to have been as difficult to access as their equivalents at EU level. As a consequence, even though the groups sought to bypass the limited political opportunity structures of the Council, they seem to have encountered similar issues when approaching Permanent Representations and national ministries.

Thus, the investigation of the lobbying strategies of the pro-migrant groups, indeed, has confirmed the initial assumption whereupon political opportunity structures affect the lobbying channels of the interest groups. Yet, from the interviews with the interest representatives it also became clear that, in addition to the political opportunity structures, internal factors such as personnel and financial capacities, representativeness, and the engagement of the member organizations in the lobbying attempts have had an effect on the lobbying choices of the pro-migrant groups. As regards the two Qualification Directives, the majority of the interviewees acknowledged that their limited capacities also constrained their ability to liaise more frequently with the relevant decision-makers. Furthermore, they pointed to the limited capacities of their member organization and to the fact that they did not always share the same policy focus as factors that hampered their ability of gathering timely on the ground information. Their representativeness, on the contrary, was generally assessed as adequate. However, smaller groups that are not represented in many EU Member States seem to be less successful in making their voice heard in Brussels. As a consequence, both the political opportunity structures that prevail at EU and national level and the internal factors of pro-migrant groups need to be considered as factors that influenced their lobbying choices.

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"Fear or Love Thy Neighbour"? The EU Framework for Promoting Regional Cooperation in the South Caucasus

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Abstract

Building on the model of the enlargement policy, the European Union (EU) designed the European Neighbourhood Policy and the Eastern Partnership to further promote its norms and principles. One of the goals of its new policies has been to foster regional cooperation among partner countries and their neighbours. This article specifies the EU's framework for promoting regional cooperation through the aforementioned policies and discusses its potential impact on the example of the South Caucasus republics of Armenia, Azerbaijan, and Georgia. The South Caucasus has not only been an arena of intraregional conflicts, but has also often been troubled by disputes between its neighbours. This article argues that, due to a lack of proactive and consistent engagement, the EU's framework risks leaving regional conflicts in the current state of stagnation and without advancement in regional cooperation.

Keywords

Regional cooperation; Conflict; European Neighbourhood Policy; South Caucasus

THROUGH THE ENLARGEMENTS OF 2004 AND 2007, THE EUROPEAN UNION (EU) transferred its norms to the then candidates and managed partly to silence the critics of its foreign policy (Kelley 2004, 2006; Schimmelfennig and Scholtz 2008; Smith 2008). Nevertheless, the EU's foreign policy incorporates sometimes clashing objectives and aims to play a unique role in respect of each of them. While the unique actorness of the EU is disputable in the cases of the promotion of human rights, the promotion of democracy and good governance, the prevention of violent conflicts, and the fight against international crime, its uniqueness is beyond doubt in the case of the promotion of regional cooperation (Smith 2008). The objective of regional cooperation has also found its place in the European Neighbourhood Policy (ENP) and later in the Eastern Partnership (EaP), which was dubbed as an upgrade to the ENP for some of its members.[1] Geographic position and levels of cooperation have largely varied among the ENP partners because the policy has included states as dissimilar as Ukraine, Egypt or Jordan. Nevertheless, the

[1] The EaP partner countries are Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine.

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EU has been optimistic about the ENP's impact on the target countries (Ferrero-Waldner 2006).

This article analyses the role of the promotion of regional cooperation within the ENP and discusses the potential influence of its framework and mechanisms on the current cooperation status of the ENP countries in the case of the South Caucasus. It also examines the EU's framework for promoting regional cooperation and its possible outcomes based on the proposed analytical framework for cooperation that equally considers the actions of both international and regional players. It goes on to analyse the role of regional cooperation in the ENP and the strategies of promoting regional cooperation and discusses their conduciveness to successful implementation of the policy. The South Caucasus region, which includes the three post-Soviet countries of Armenia, Azerbaijan, and Georgia, has been included in the EU's external relations for more than ten years and holds important connections vis-à-vis relations with Russia. The region has lacked cooperation in certain issues and has been marred by intraregional and interstate disputes. Successful regional cooperation is of utmost and particular importance in a region such as the South Caucasus, where political and economic developments are closely interconnected with the resolution of the half-frozen conflicts. The examination of policy strategies and domestic conditions can shed light on potentially effective strategies in problematic regions.

Currently, the ENP and the EaP are the main instruments of the EU in the region, which address political and economic issues and have regional cooperation as one of their priorities. As the ENP and the EaP are currently under implementation, with progress reports being published every second year, this study is both an ex-ante and ex-post examination of regional cooperation policies. Though both policies lack the attractive membership perspective, they still aim to promote EU norms within neighbourhood. However, lack of sufficient funding and weak engagement tools, make the EaP unlikely to transform the target countries (Boonstra and Shapovalova 2010), leaving the main focus of this article on the ENP.

The EU's strategies of promoting regional cooperation in the South Caucasus countries of Armenia, Azerbaijan, and Georgia are analysed. The Nagorno Karabakh conflict receives a specific focus here. Though some authors (Way 2006) have equated these conflicts to the umbrella category of ethnic conflicts, they are different. Unlike South Ossetia and Abkhazia, the Nagorno Karabakh case has transformed from a secessionist movement supported by a kin-state into an interstate (and intraregional) conflict between Armenia and Azerbaijan.[2] The article is based on the analysis of the concept of cooperation, on its further modification, and application to the EU's framework for regional cooperation. It also entails the analysis of possible behavioural options of the EU and partner countries based on the interaction of the already-introduced components of successful cooperation. Through consideration of the effectiveness of the ENP based on these results, the article suggests policy implications and areas for future research. Based on the empirical findings, this article argues that the EU needs to set clearer objectives and follow a consistent plan of implementation, combined with credible incentives and conditionality to achieve progress in regional cooperation. In addition, the analytical framework of game-theoretical cooperation is a useful tool for understanding the potential impact of the policy under specific international and domestic conditions.

[2] The conflicts in Georgia caused the armed conflict between Russia and Georgia in summer of 2008. However, unlike the Nagorno Karabakh conflict, the Russia-Georgia war is not an ongoing conflict with an imminent threat of transforming into a full-scale war.

Framing the promotion of regional cooperation

The possibilities of cooperation have always been at the centre of the neorealist-neoliberal debate. Before proceeding to the main components of regional cooperation analysed in this article, this section briefly outlines the debate presenting the main arguments for and against the likelihood of cooperation. If simplified, the neorealist (whether defensive or offensive) argument claims that cooperation is largely impossible and if possible then only in the low politics arena (economics), however, not in the high politics one (security) (Waltz 1979; Mearsheimer 2001). The neoliberal perspective claims that cooperation is possible regardless of the issue (Keohane 1984; 1989) and, in contrast to the neorealist perspective, that conflict is simply unnecessary and avoidable. However, according to neoliberals, conflict can be overcome and lead to cooperation if preferences over strategies are changed, and institutions are an effective tool for this. On the other hand, neorealists argue that institutions can be effective only if both parties believe that cooperation would result in mutual benefit. Following these arguments, liberalist thought has always been more supportive of cooperation, mostly due to economic interdependence (Keohane and Nye 1977), and has believed that international institutions are the main instruments to help overcome the selfish behaviour of states and put them on the way to sustainable cooperation (Walt 1998).

Despite disagreement on the possibilities of cooperation, both camps of scholars agree on the absence of a sovereign authority able to impose binding agreements on other states. Nevertheless, through its promotion of regional cooperation the EU to a certain extent attempts to take the role of the common government by creating institutions to facilitate cooperation among third parties, in some cases concluding binding agreements, and introducing sanctions, rewards, and conditionality. Despite the fact that sometimes the terms cooperation and integration are used interchangeably by both the EU and the South Caucasus countries, the two should not be confused (Vasilyan 2006: 2). Integration entails the shifting of loyalties of domestic political actors to a supranational centre, which "posess[es] or demand[s] jurisdiction over the pre-existing national states" (Haas 1958: 16). Cooperation happens in the environment of conflicting interests, where actors are required to adjust their behaviour to the preferences of others (Axelrod and Keohane 1985). Cooperation requires "the presence of common problems and tasks" and is derived out of "concrete needs" (Welsh and Willerton 1997: 37) and assumes "self-governing, self-provisioning communities interacting with each other through consensus" (Edwards 2004: 11).

The international and domestic conditions of effective promotion of regional cooperation are yet to be identified. However, a considerable amount of research has been done on the achievement of cooperation under conditions of systemic anarchy. When considering cooperation in world politics, issues are traditionally divided into political-economic and security-military ones, where the former is more institutionalised than the latter (Lipson 1984). To understand the failure or success of cooperation efforts, three dimensions of variables borrowed from a game-theoretical approach should be taken into consideration—the mutuality of interest, the shadow of the future, and the number of players (Axelrod and Keohane 1985). The mutuality of interests refers to the payoff structures that might encourage the actors to cooperate or defect and is based on how the actors perceive their own interests. At the same time, the economic issues demonstrate less conflicting payoff structures than the security ones (Oye 1985). The shadow of the future is seen as "long time horizons, regularity of stakes, reliability of information about others' actions, quick feedback about changes in the others' actions" (Axelrod and Keohane 1985: 232), and for cooperation to happen future payoffs should be valued over the current ones. This dimension still visibly differentiates between the economic and security issues because there are more chances of retaliation in the case of defection from economic cooperation than the security one.

Another factor facilitating cooperation is the number of actors and the structure of their relationship where reciprocity plays a major role (Axelrod 1984) and is conditioned by the ability of actors to identify the defectors, ability to focus retaliation on defectors and presence of incentives to punish the defectors (Axelrod and Keohane 1985). Thus, cooperation would be achieved best "not by providing benefits unilaterally to others but by conditional cooperation" (Axelrod and Keohane 1985: 249). Besides the three dimensions, cooperation also depends on the context in which interaction takes place, which largely means sharing norms and values with other international and regional actors. In the case of EU promotion of regional cooperation, the presence of shared norms and values with other states in the region, and to a lesser extent with the EU, would increase the likelihood of cooperation as there would be no societal barriers. Cooperation is also possible without commonly shared norms; although it becomes more problematic if the actors adhere to different values.

Though developed to analyse possibilities of cooperation between states provided there is no central authority, the framework can also be applied to the case of the EU's promotion of regional cooperation and is applicable to any region where regional cooperation is promoted. The EU is the major promoter of regional cooperation (Vasilyan 2006) and is even considered to be a unique actor in this field (Smith 2008). Choosing the South Caucasus as a target region, this article covers an economically and politically troubled region with semi-frozen conflicts. In addition, the case of the South Caucasus permits controlling for the identification-with-the-promoter component: though the intensity of the EU membership aspirations of Armenia, Georgia, and Azerbaijan vary, all three countries demonstrate rhetorical commitment to EU norms.

The EU, of course, does not represent a supranational authority; however, it provides a certain agenda for facilitating cooperation and to some extent acts as a guiding authority. When considering these dimensions on an EU-partner[3] divide, the mutuality of interests and number of actors combined with the structure of their interaction are applicable to both, while the shadow of the future dimension fits best the EU alone, because it provides a framework for possible cooperation (see Table 1). Mutuality of interests refers to the EU to the extent it helps to understand whether the EU is interested in promoting regional cooperation on certain issues. The EU may be in line with regional interests rhetorically and fully endorse cooperation on certain issues in respect of action (high) as well, but it may also show strong rhetorical commitment combined with vague and inconsistent actions (medium). However, as it has already launched certain policies it is unlikely not to endorse the policies at least rhetorically (low). In the case of partnering countries, the mutuality of interest refers to their understanding of the issue and sharing a mutual interest not only in the form of cooperation but also in respect of the outcomes of the cooperation. Thus, states in the region may show commitment to cooperation and be interested in a similar framework and outcome (high); or show commitment, be interested in a similar framework, but prefer different outcomes (medium); or show commitment but be interested in different frameworks and prefer different outcomes (low). Showing no commitment to cooperation in certain issues would not be an option in this case, as the EU's promotion of regional cooperation is always based on consensus. A combination of high mutuality of interests from all actors would facilitate the cooperation process, while the medium and low factors would decrease the potential of cooperation, especially in security matters.

The shadow of the future dimension with its constituting elements in this case refers to the framework for cooperation to be provided by the EU to facilitate cooperation. Thus, providing long-term cooperation opportunities accompanied by regular rewards, reliable

[3] When addressing EU promotion of regional cooperation, this article considers the initiatives launched by the EU or its bodies and not by the individual member states.

information about all actors and quick reaction to possible changes would increase the likelihood of the promoted regional cooperation happening. These elements can score from high to low within the cooperation framework. Both partner actors and the EU should have a clear understanding of the consequences of non-cooperation, which should be the same for all the actors involved. The promoter should have consistent mechanisms for information sharing (meetings, summits and conferences) to identify and sanction or reward the states for their respective actions. The promotion policy has a higher probability of success when there is the chance of either social and material sanctions or rewards. Sanctioning in the case of defection may be exercised by various means by both the promoter of regional cooperation and regional actors (see Table 1). However, the willingness of the EU to exercise sanctioning may depend on its overall geopolitical and economic considerations. As security issues are generally considered to be cooperation-laggards, closer attention is paid to those in the following sections that analyse the variables described above in the case of EU promotion of regional cooperation in the South Caucasus.

Table 1: Dimensions of a framework for externally promoted regional cooperation

		EU	ENP COUNTRIES
MUTUALITY OF INTERESTS	high	strong rhetorical commitment with consistent policy actions	interested in the same framework and the same outcomes
	medium	strong or medium rhetorical commitment with inconsistent policy actions	interested in the same framework but different outcomes
	low	low rhetorical commitment with no policies	interested in different frameworks and different outcomes
SHADOW OF THE FUTURE	high	fixed term policy with a specific outcome; regular material and social rewards; fast feedback; information from all parties	N/A
	medium	fixed term policy without a specific outcome; irregular material and (maybe) social rewards; fast or belated feedback; only partial information sharing	N/A
	low	no fixed term policy; irregular social and no material rewards; no feedback; no information	N/A
IDENTIFICATION OF DEFECTORS	high	high information sharing	high information sharing
	medium	medium information sharing	medium information sharing
	low	low information sharing	low information sharing
SANCTIONS	high	withdrawal of all (mainly material) rewards and possibly termination of the policy	termination of bilateral cooperation projects until compliance
	medium	rechanneling the policy to another domestic actor without withdrawal of rewards	no individual sanctioning, waiting for the promoter's actions (provided the promoter has sanctioning mechanism)
	low	no sanctioning or social shaming	no mention of sanctioning in the policy

The EU as a promoter of regional cooperation

The EU pursues various foreign policy objectives, however the one that makes it stand out among other international actors is that of regional cooperation. While the member states have not needed much encouragement to pursue other foreign policy objectives, such as the promotion of democracy and human rights, fighting against organised crime and violence, regional cooperation has always been a unique domain of the EU (Smith 2008). The uniqueness of the EU's promotion of regional cooperation is the extent to which it prefers to group neighbouring countries that share transnational problems into regions. Generally after the regional groups are defined, the EU actively supports cooperation within the group and among different regional groups (Smith 2008). It classifies countries under regional strategies and supports regional groupings (Smith 2008) understanding regional cooperation as "all efforts on the part of neighbouring countries to address issues of common interest" (European Commission 1995: 3). Theoretical differentiation between regional integration and regional cooperation is reflected in the actual practices of the EU. While regional integration aims to remove the barriers to movement of goods, services and production, regional cooperation aims to reduce those barriers and better manage common resources (European Commission 1995). Thus, due to its understanding of regional cooperation rather than imposition of its own model, the EU tends to support cooperation efforts (Smith 2008).

As with all foreign policy objectives, the promotion of regional cooperation is explained by rival motives: materialist and idealist (Smith 2008). From the materialist perspective, regional cooperation increases the EU's power vis-à-vis other international actors and target countries as regional cooperation often entails increased trade and diffusion of EU rules (Soderbaum et al. 2005). Though EU promotion of regional cooperation may increase the leverage of neighbouring counties in the grouping, it is up to the EU to bestow or withdraw the benefits (Edwards and Regelsberger 1990). Thus, the economic interests of the EU are never sacrificed for the sake of regional cooperation. Regional cooperation and treatment of neighbours based on regional grouping also saves time and finances for the EU as it can create regional strategies and organise regional meetings that also include bilateral[4] negotiations (Reiterer 2006). Additionally, from the neorealist point of view, promotion of regional cooperation is in the EU's interests (European Commission 1997) since it is supposed to eliminate possible dividing lines between neighbouring countries, thus decreasing chances of conflict in proximity to the EU.

From the idealist perspective, the EU has promoted regional cooperation because based on its own experience it realises that such cooperation provides peace, stability and economic development (Smith 2008) and is supposed to "make an important contribution to a more orderly world" (European Commission 2003: 9). Although these altruistic considerations are sometimes responded to with doubt (Farrell 2005), according to the EU it promotes regional cooperation to foster economic development in neighbouring countries and assist them in increasing their competitiveness (Development Council 1995). Following the usual perception of the EU as "one of the most important, if not the most important, normative powers in the world" (Peterson 2007), the EU promotes regional cooperation to demonstrate the effectiveness of its own policies and structural organisation, at the same time assisting target countries to develop their own policies for their own sake. Though the EU's motives for promoting regional cooperation may vary, it is more important to understand what the potential of promoting regional cooperation is in general and in a conflicted region in particular.

[4] In this article, bilateral agreements refer to the agreements signed between the EU or its bodies and a partner country.

The EU's traditional instruments of regional cooperation promotion are assistance to conflict prevention and crisis-management by increasing the capacity of regional groupings, cooperation agreements, economic assistance for cross-border projects, political and economic dialogue and conditionality, albeit to a limited extent. Interestingly, the EU is the only donor which provides financial aid for regional cooperation programmes and through political dialogues it aims to provide a framework for discussion of issues of regional interest. In contrast to its enlargement processes, the EU does not often use its favourite tool of conditionality when promoting regional cooperation and in cases where the regional groupings are weak it opts for bilateral agreements still aimed at promoting cooperation between the neighbouring countries. Bilateralism over regionalism is especially visible in the case of the ENP which gives considerable preference to bilateralism (Smith 2008). While rhetorically promoting regional cooperation, the EU opts for concluding bilateral agreements with a partner country, instead of involving the interested parties in multilateral negotiations and agreements. This lack of multilateral agreements may be due to poor economic or security stability in the ENP regions. The lack of stability also applies to the South Caucasus.

Regional cooperation in the context of the European Neighbourhood Policy

The ENP was introduced in the Commission Communication on Wider Europe and was created to respond to post-enlargement challenges (European Commission 2004).Its principal mission is the elimination of the dividing lines that appeared after the enlargements of 2004 and 2007, through promotion of stability, security, and democracy. The Strategy Paper on the European Neighbourhood Policy published in May 2004 sketches out strategies for cooperation with partner countries (European Commission 2004), while the documents published in December 2006 and December 2007 outline suggestions for strengthening the ENP (European Commission 2006a). Though the ENP lacks a "uniform acquis" (Kelley 2006: 36), it proposes partnership based on "mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development" (European Commission 2004: 3). The partnership is offered to neighbouring countries according to the "extent to which these values [respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights] are effectively shared" (European Commission 2004: 3).

The partnering countries regard the EU as an important player but the EU also clearly realises its capabilities and therefore the opportunities for success in promoting regional cooperation. The Commission states that because no other donor holds a similar key position in its neighbouring regions, the EU "represents a unique driver for change and progress" and "has the ability to act as mediator, facilitator and accelerator of processes beneficial to both the EU and partner countries" (European Commission 2007). Thus, to ensure the attractiveness of its activities through the ENP, the Commission elaborates the following incentives:

1. a perspective of moving beyond co-operation to a significant degree of integration, including a stake in the EU's internal market and the opportunity to participate progressively in key aspects of EU policies and programmes;

2. an upgrade in the scope and intensity of political co-operation;

3. the opening of economies, reduction of trade barriers;

4. increased financial support;

5. participation in Community programmes promoting cultural, educational, environmental, technical and scientific links;

6. support for legislative approximation to meet EU norms and standards;

7. deepening trade and economic relations (Kelley 2006: 37 based on the Action Plans).

In 2007, the EU introduced reforms to the structure of its external funding replacing MEDA, TACIS, and other programmes with the European Neighbourhood and Partnership Instrument to support reform, according to the priorities of country-tailored Action Plans. The financial tool of the ENP has EUR 12 billion available for the budgetary period 2007-2013. Following the enlargement logic, this assistance is conditional:

> where a partner country fails to observe the principles referred to in Article 1, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps in respect of any Community assistance granted to the partner country under this Regulation (EP and EC Regulation No 1638/2006: Article 28/1).

Nevertheless, the sanctions for defection are incomplete because Parliament and the Council proceed to clarify that in case of non-cooperation by the state institutions "Community assistance shall primarily be used to support non-state actors for measures aimed at promoting human rights and fundamental freedoms and supporting the democratization process in partner countries" (Official Journal of the EU: Article 28, para 2). Thus, the EU does not fully withdraw financial assistance, instead just switching its recipient from state to civil society, still maintaining assistance in the country. Given that most of the ENP countries are not consolidated democracies and their civil societies are weak and largely dependent on donor and sometimes state financing, this strategy is unlikely to be effective (Schimmelfennig et al. 2006). Another concern arises over the question of considering whether the EU will be consistent and impartial when exercising its conditionality and sanctions.

The ENP is supposed to reinforce and encourage further development of regional networks by designing various cross-border cooperation initiatives, which include local and regional authorities and non-governmental actors. In its ENP Strategy Paper, the EU differentiates between those regions it is targeting and, in regard to regional cooperation on its eastern borders, prioritises "reinforced cooperation on economy, environment, nuclear safety and natural resources, Justice and Home Affairs issues, and people-to people contacts" (European Commission 2004: 19). While the EU is not willing to establish new regional organisations but rather wants to support existing ones, it does seek the greater involvement of Russia in efforts to promote regional cooperation in the eastern dimension of the ENP. Involving an important regional player is a praiseworthy effort. However, the EU should arguably contain the imperialistic ambitions of Russia towards the South Caucasus; otherwise, a strategy of retreat risks increasing Russia's influence in the region and undermining the EU's efforts, when it does not have recourse to reliance on a credible membership perspective.

In an attempt to strengthen its strategy and better address some regional cooperation issues, the EU stated that more active interaction should be encouraged, especially in the resolution of regional conflicts (European Commission 2006). Thus, the EU has launched the Black Sea Synergy initiative to complement its mainly bilateral policies (European Commission 2007). With regard to cooperation on the resolution of frozen conflicts, the Black Sea Synergy aims to promote "confidence-building measures in the regions affected,

including cooperation programs specifically designed to bring the otherwise divided parties together" (European Commission 2007: 7). Still employing the somewhat vague language of the ENP, little is said about how such promotion is to be implemented and some duplication of the efforts already described in the ENP Action Plans and the ENP Instrument of Eastern Regional Programme is discernible. In addition to its fuzzy language, the EU often treats the politically, culturally, and economically divergent countries of the South Caucasus with "simplistic uniformity" (Babayan 2011: 4). Rhetorically acknowledging some differences, the EU involves the South Caucasus countries in the same policies and assigns them the same priority areas, running the risks of decreasing its efficiency (Babayan 2011).

Promoting regional cooperation in the South Caucasus as part of the European Neighbourhood Policy

Unlike the other post-Soviet states grouped in a region, i.e. the Baltic States, the South Caucasus republics of Armenia, Azerbaijan, and Georgia have never been in the spotlight of the EU's attention. The EU initiated relations with the region later than some EU member states, the OSCE and the Council of Europe, which entered the region in 1992. Relations with the EU were channelled through the Partnership and Cooperation Agreements (PCA) that were signed in 1996 and entered into force in 1999 in all three countries, while assistance funds were allocated through TACIS and the EIDHR (European Instrument for Democracy and Human Rights). However, in 2001 the EU expressed its willingness for closer cooperation with the South Caucasus, one of the objectives of such cooperation being the resolution and prevention of conflicts. The South Caucasus governments were ready to welcome this initiative and in 2003 the European Council appointed Heikki Talvitie as the first EU Special Representative for the South Caucasus. Taking into consideration the strongly expressed EU aspirations of all three states, the EU possesses both legitimacy and credibility in acting as an external mediating actor. The region has become closer to the EU economically because since 2004 the EU has been its primary trade partner (though for the EU the trade with the South Caucasus is only 0.5% of its overall figure), and geopolitically because of the eastern enlargements of 2004 and 2007. The EU has preferred to include previously weak and unstable South Caucasus states in its "ring of friends" (European Commission 2003) because they have been deemed potentially helpful in fighting terrorism and trafficking (European Council 2003).

Because the region shares borders with important international actors such as Russia and Iran and with NATO member and EU candidate Turkey, the EU "has a strong interest in the stability and development of the South Caucasus" (European Commission 2004). This interest is also justified bearing in mind that the region suffers from three frozen conflicts in Nagorno Karabakh, Abkhazia and South Ossetia, and proximity to a conflict region is not in the EU's interests. Although the governments of all three states have expressed their willingness to resolve the conflicts, there has been no visible progress and resolution is unlikely without external mediation. These conflicts have also negatively impacted the economy of the region because the dispute over Nagorno Karabakh prevents Armenia and Azerbaijan from cooperating economically or in respect of security. The conflicts have wider impact as well: the Nagorno Karabakh conflict has slowed down improvement in Armenian-Turkish relations; while the Abkhazia and South Ossetia conflicts have aggravated Georgian-Russian relations. Armenia, which is under the economic embargo of Azerbaijan, has maintained economic cooperation with Georgia, and Georgia has maintained economic and security cooperation with Azerbaijan, there has been no trilateral cooperation in the region. Achieving trilateral cooperation through resolution of the frozen conflicts should be among the priorities of the EU regional cooperation policy for the South Caucasus. Further complexity lies in the fact that the Abkhazia and South Ossetia conflicts are internal to Georgia rather than regional.

It is true that involvement in the ENP denies prospects of membership. Nevertheless, it represents advancement in relations with the EU and provides certain incentives for cooperation and compliance with the ENP requirements. The EU's conditionality methods with respect to the ENP and South Caucasus countries differ from those it uses with its candidate countries. Conditionality in the case of the former is a positive one, i.e. the complying states will receive the promised stakes of closer integration into the EU market and to some extent politics. However, there is no mention of negative conditionality or sanction in case of non-compliance, which could actually limit the effectiveness of the ENP implementation. Thus, although the EU does provide a framework of long-time horizons and regular stakes, it does not guarantee punishing the defectors, thus undermining the value of its stakes and potentially undermining the achievements of the other cooperating state.

To guarantee "joint ownership", each ENP Action Plan was developed in consultation with the respective government and civil society. The Action Plans for the South Caucasus states were adopted in 2005 and the financial tools, National Indicative Plans, cover two equal periods within 2007-2013. The three governments had different success rates when attempting to incorporate certain clauses into the Action Plans. While the Action Plan for Armenia mentions the concept of "the principle of self-determination of people", the Action Plan for Azerbaijan, unlike the one for Georgia, mentions the concept of "territorial integrity" only once. According to some scholars this is a double standard on the part of the EU (Alieva 2006), but it can also be attributed to the different bargaining strategies of the South Caucasus states and the willingness of the EU to accommodate two ENP partner states with contradictory aspirations.

Each Action Plan for the South Caucasus covers a variety of issues such as economic development, promotion of democracy and human rights, energy, transport, environmental protection, people-to-people contacts, development of political institutions, cross-border and regional cooperation. These issues are grouped and divided into priority areas in each Action Plan. Although regional cooperation is given a separate priority area, the definition of regional cooperation in the South Caucasus is vague. While the regional cooperation priority area entails specific action, the concept of regional cooperation is a presence throughout the Action Plans, the Strategy Papers and the National Indicative Plans, being mentioned in the fields not originally present in the corresponding priority area. An important role is given to transnational and inter-parliamentary dialogues concerning cooperation in water management, border management, transport and communication; however, there is no explicit mention of inter-governmental interaction. This omission probably arises from the non-existent dialogue between the Armenian and Azerbaijani governments. However, the whole concept of regional cooperation in the South Caucasus is at risk if these two countries are not able to achieve a compromise.

The Action Plans for Armenia and Georgia elaborate on eight priority areas, the Action Plan for Azerbaijan on ten. There are expected overlaps in the priority areas though the numbering of those is usually different. However, the sequence of priorities in the Action Plans should not be seen as pointing to the importance of the issue, at least in the case of regional cooperation, because it would be highly irrational to think that one of the states needs regional cooperation more (Georgia) than the other two. In the case of Armenia and Azerbaijan, there are two priority areas that explicitly mention regional cooperation: contribution to the peaceful solution of the Nagorno Karabakh conflict and enhanced efforts in the field of regional cooperation (priority areas 7 and 8 for Armenia and 1 and 10 for Azerbaijan respectively).The nearly identical priority areas of Nagorno Karabakh in the Armenian and Azerbaijani Action Plans call for increased diplomatic efforts, increased political support to the OSCE Minsk Group, people-to-people contacts and intensified EU

dialogue. However, there is nothing about bilateral talks or efforts directed at how those might be carried out.

The rhetorical sharing of mutual interest in fast and peaceful resolution of the conflict does not translate into shared expectations in the outcomes, which can be seen from the text of the Action Plan alone. Thus, given the differences and vague language the value added of this priority area to potential regional cooperation is rather dubious. There has not been tangible progress in Armenian-Azerbaijani relations since the enforcement of the ENP and peaceful resolution is doubtful given Azerbaijan's increased military spending, which doubled from 2005 to 2006 (SIPRI 2008) and continues to increase. Bellicose statements from the Azerbaijani government do not contribute to peaceful resolution either. President Aliyev's statement that Azerbaijani people "have to be ready to liberate [their] lands by military means, and [they] are ready" (Aliyev 2008) casts uncertainty over the possibilities of cooperation on this particular issue. Although this divergence in interests cannot be blamed on the ENP implementation framework, the EU's adherence to consensus and friendly language in the Action Plans reduces the possibility of any concrete action in conflict resolution through cooperation. The Mardakert skirmishes in March 2008, which coincided with riots in Yerevan due to contested presidential elections results, and the subsequent mutual blame exercises clearly demonstrated the fragility of cooperation. Despite the fact that the incident directly undermined efforts at cooperation, the EU delegation in Armenia did not officially react to that.

The Action Plans of all three states mention the need for enhanced cooperation in education, environment, transport, border management; strengthened participation in law enforcement initiatives of the Black Sea region; support for the Caucasus Regional Environmental Centre; enhanced bilateral and multilateral cooperation in the Black Sea region; and youth exchange. In addition to these, the Armenian and Georgian Action Plans include a point on enhanced cooperation in the energy and transportation sectors. This clause is a separate priority area in the Azerbaijani Action Plan. Interestingly enough, only the Armenian Action Plan has a clause calling to "continue efforts in cooperation with neighbouring countries, to resolve regional and other related issues and to promote reconciliation" (European Commission 2006b). This clause seems general but may point to two perspectives: either Armenia is the least cooperative South Caucasus state, thus it, requires a separate clause encouraging it to cooperate or the EU is inconsistent in the wording of its policies even when targeting the same region. However, given the so-called "complementary diplomacy" strategy of the Armenian government throughout the 1990s and 2000s and at least rhetorical commitment to cooperation, Armenia is unlikely to defect.

Despite the rhetorical commitment of the ENP to facilitate cooperation in military-security matters, country related ENP documents show more concrete actions and less vague language on economic matters (see Table 2). Regardless of the nature of the cooperation issue, the ENP provides a long-term cooperation framework, but does not clearly specify what partner countries can expect after the ENP implementation is over. The ENP entails regular rewards if applicable, however the rewards do not vary depending on the priority area and domestic costs of adaptation. Through regular progress and country reports, the ENP provides reliable information about its, and if possible, the partner states' actions. However, feedback on changes in actions of the partner states might sometimes be absent or not actually relevant because in cases of non-cooperation or non-compliance, instead of addressing the issue of divergence, the EU simply opts for amending the Action Plan. In addition, while the rhetorical commitment of the EU, Armenia and Azerbaijan to the peaceful resolution of the Nagorno Karabakh conflict is high, the ENP framework is vague and often sacrifices specific actions for consensus. In their turn Armenia and Azerbaijan strive for different outcomes from the conflict: Armenia advocates for the

independence of Nagorno Karabakh, while Azerbaijan insists that Karabakh is to be within its territory and shows readiness to advance its perspective through military means.

Though the number of actors in the South Caucasus regional cooperation is not large and they are coordinated by the EU, the situation is complicated by the EU's inconsistent policy of conditionality. Unlike other international organisations present in the region, the EU, due to its economic and political status, has the leverage to sanction the regional actors in case they defect from cooperation. However, in the ENP documents sanctions are mentioned only as a change of target within the country through which the assistance is channelled. Nevertheless, despite the fact that participating countries either rhetorically or even sometimes by action have defected from the accepted framework for cooperation, the EU has not introduced any sanctions. In addition, though the South Caucasus states can identify the defectors from cooperation, they are not entitled to take preventative actions against defectors, at least not within the ENP framework and not explicitly quoting non-cooperation as a reason.

Table 2: Military-security issues and cooperation on the resolution of the Nagorno Karabakh conflict

<table>
<tr><th></th><th>ENP</th><th>Armenia</th><th>Azerbaijan</th></tr>
<tr><td>Mutuality of Interests</td><td>medium</td><td>medium</td><td>low</td></tr>
<tr><td>Long-term cooperation</td><td>medium</td><td colspan="2" rowspan="4">N/A</td></tr>
<tr><td>Regular rewards</td><td>medium</td></tr>
<tr><td>Information</td><td>high</td></tr>
<tr><td>Feedback</td><td>medium</td></tr>
<tr><td>Identification of non-cooperation</td><td>high</td><td>high</td><td>high</td></tr>
<tr><td>Sanctioning non-cooperation</td><td>medium-low</td><td>low</td><td>low</td></tr>
</table>

Conclusion

The ENP Strategy Paper identifies the South Caucasus as a region that should receive "stronger and more active interest" than it currently does (European Commission 2004: 10). The EU also acknowledges the promotion of regional cooperation as one of its main foreign policy priorities and lays claim to a unique approach to it. This article argues that the ENP framework has greater potential to achieve successful promotion of regional cooperation in economic rather than in military-security issues. Though the EU does offer further economic cooperation as a stake for cooperating states, this might not be enough when addressing security issues. In addition, the article argues that due to the lack of a proactive and consistent approach, the EU risks leaving the regional conflicts in stagnation. The potential ineffectiveness of the ENP promotion of regional cooperation in military-security issues can be explained not only by the divergent interests of the regional actors but also by the reluctance of the EU to take specific actions, instead opting for vague propositions and inconsistent policies. While stressing the importance of the region and intentions of closer cooperation with it, the EU, nevertheless, has struggled with the

decision of appointing a new EU Special Representative, with the decision finally being made in late August 2011 after months of uncertainty.

In its multilateral approach to the conflicts in the South Caucasus, the EU is closely connected to current international initiatives (the OSCE Minsk Group). However, it gives the priority to other organisations with less leverage, rather than acting proactively. Even if conflict resolution may not be the EU's main priority in the South Caucasus, conflicts that largely dominate the economy and politics of the region cannot be ignored. In addition, the ongoing conflicts may also be used by the partner countries as justification for their non-compliance. The mere rhetorical support to the OSCE Minsk Group undermines the visibility of the EU in the region. However, delegating its own representative to the Group, instead of those of seven scattered member states, would increase the involvement and stabilise the position of the EU in the region. Such an action seems timely also given the creation of the European External Action Service. Increased involvement may also garner more EU-enthusiasts and result in increased EU-isation of the regional policies. However, the current approach of the EU, besides having marginal, if any effect on conflict resolution in the South Caucasus, risks decreasing the leverage of the EU in the region, inducing the local actors to turn for more concrete action to Russia or the USA. Reiterated commitment to "enhance EU involvement in solving protracted conflicts" (European Union 2011) is yet to demonstrate positive results.

Without undermining the EU's efforts at promoting regional cooperation within the ENP framework, this article argues that the EU needs to take a more proactive role not only in the implementation of policies but also in the development of certain conflict settlement actions. This would not only give the EU ownership over the policy but would also increase the legitimacy of its interests in the South Caucasus. Though conflict resolution is rather different from general regional cooperation it should be specifically addressed within the policy of regional cooperation when dealing with a post- or in-conflict region. The EU needs to develop clear and feasible objectives, take concrete actions and carry out active monitoring of implementation, both on a regional and country basis. Given the close relations of the South Caucasus countries with some of their out-of-region neighbours, there is also a need for an increased engagement of regional actors—Turkey and Russia—in the development of cooperation policies over issues requiring more attention.

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The Political Geographies of Europeanisation: Mapping the Contested Conceptions of Europeanisation

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Abstract

This article questions why Europeanisation is such a contested notion, by exploring the different politico-geographical structures of meaning on which the different conceptions of Europeanisation can be mapped. It starts with the contention that the political geography of Europeanisation has long been determined by European Union (EU) integration alone. This produced an EU, inward-looking bias in Europeanisation research, which a paradigmatic shift towards governance perspectives helped mitigate. Such a shift is not only progressive in terms of concept formation; it also explains why the concept of Europeanisation has developed multifaceted contours. Using three ideal types of European governance (Westphalian, neo-Westphalian, post-Westphalian), the article shows that conceptions and spaces of Europeanisation are multiple in essence. It concludes that defining Europeanisation is a social act having politico-geographical motivations. But it nonetheless denies the claim that all conceptions of Europeanisation are equally good.

Keywords

Europeanisation; EU-isation; governance; Westphalia

WHEN WRITING THEIR CONTRIBUTIONS, EUROPEANISATION RESEARCHERS INEVITABLY devote some preliminary thoughts to defining this concept. Such academic cautiousness is anything but superfluous, considering the "many faces of Europeanisation" (Olsen 2002), the alleged "essential contestability" of the concept (Gwiadzda 2002), and the fact that its many "meanings vary according to the theoretical perspective adopted and the subject area chosen" (Quaglia, Neuvonen, Miyakoshi, & Cini 2007). For instance, some studies understand Europeanisation as a process of national adaptation through legal compliance. They investigate "the growing influence of European treaties, directives and case law on the substance of domestic legal systems" (Smits 2004: 229). Other studies encompass a wider ontology, and therewith examine all kinds of "pressures emanating […] indirectly from EU [European Union] membership" (Featherstone 2003 cit. in Wouters, Nollkaemper, & De Wet 2008: 6), including "the impact of the development of transnational society […] and supranational governance […] on national process and outcomes" (Stone Sweet 2002: 13). Once concentrated on member states' domestic polity, policy and politics, the scope of Europeanisation research has now grown so far as to encompass conflict resolution in Moldova and Abkhazia (Coppieters, et al. 2004). In response to this conceptual

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proliferation, some scholars declared Europeanisation "faddish" (Featherstone 2003: 3), conceptually overstretched (Radaelli 2000), and questioned its ability to serve as an organising concept (Kassim 2000).

In the face of this scholarly turmoil, little attention has been paid to understanding why so many conceptions of Europeanisation have mushroomed over the past fifteen years, and whether it is for the greater good of the discipline. Understandingly, because Europeanisation is a nascent, "emergent field of inquiry" (Goetz & Hix 2001: 15), its conceptual and spatial domains remain poorly delineated. But one could rightfully expect renewed efforts in dealing with definitional issues, not least because "we cannot measure unless we first know what it is that we measure" (Sartori 1970: 61). A meta-analysis of the existing literature recently performed by Exadaktylos & Radaelli, however, showed that to date, in Europeanisation research, "measurement features more prominently than conceptual development" (2009: 526). Rather than being an indicator of academic vitality, this profusion of Europeanisation conceptions may thus simply reflect the fact that the majority of Europeanisation studies "has not been reflexive about the concepts it is employing" (Buller & Gamble 2002: 4). It should then be examined critically, as a potential (and actual) source of confusion, which notably hampers the development and consolidation of cumulative knowledge in the field.

This is where this article aims to make a theoretical contribution. It is devoted to key definitional issues in Europeanisation research. It contends that the conceptual proliferation that strikes Europeanisation research today is rooted in Europe's contested political geography; that the various conceptions of Europeanisation in fact reflect different social constructions of Europe's geo-political order; and that conceptions of Europeanisation are not all equal in terms conceptual utility. In this article, the question "why are there so many conceptions of Europeanisation, and are they all equally good?" is rephrased into: "on which basis can the political geography of Europeanisation be constructed, and what does it entail in terms of concept formation?". The purpose is to highlight the social connection that links the many conceptions of Europeanisation to three politico-geographical structures of meaning, conceived as ideal types of European governance. For each of them, it is to specify and delineate the conceptual and spatial domains of Europeanisation, as they can be deducted from EU integration and European governance theories, rather than inferred from the empirical literature, where semantic confusion prevails. It finally is to assess the utility of some conceptions of Europeanisation relative to others, especially with regards to their ability to travel outwards, across EU boundaries.

The remainder of the article is organised as follows. First, the article shows that notions of Europeanisation have long been connected to space through EU integration theories alone, and not for the greater good. It shows that a useful shift towards European governance perspectives has been initiated in Europeanisation research, and suggests that re-conceptualisations of the phenomenon should in the future draw more from this multifaceted approach. The article then proposes to use three ideal types of European governance (Westphalia, neo-Westphalia, post-Westphalia) as paradigmatic frames, upon which the different conceptions of Europeanisation can be mapped. Each of these ideal types commands a specific conceptualisation of Europeanisation, which is successively delineated in definition and space. The conclusion summarises the findings, and argues that Europeanisation has been very prolific conceptually over the past years, owing to the contested nature of the European "beast" (Risse-Kappen 1996) and its disputed modes of governance. In the absence of teleological design, the article concludes that it is ill-advised to assume the verticality of social processes in Europe. In their research, the scholarship would be wiser to rely on horizontal, post-Westphalian approaches because these are less normative and more inclusive.

Europeanisation as a natural child of EU integration

The conceptual and spatial domains of Europeanisation have long been determined by European integration theories alone. After all, Europeanisation emerged as the "logical outgrowth" of the evolution of the European integration (Caporaso 2007), and the phenomenon, in many instances, is still defined as "the impact of European integration at the national level" (Knill & Lehmkuhl 2002: 255). In their scholarly debates, Europeanisation students, often, do not question the intimate relationship that connects European integration approaches to Europeanisation research. They concur that "Europeanisation would not exist without European integration"(Radaelli 2000: 6), and their discussions, then, rather revolve around the theoretical role one concept should play in relation with the other, i.e. whether Europeanisation shall be conceptualised as a problem or a solution *vis-à-vis* European integration (Goetz & Hix 2001). The assumption of an organic link between Europeanisation and European integration theories is also reinforced by the frequent transposition of the semantic confusion characterising EU/European integration theories. This roughly equates Europe to the EU, and allows for the indiscriminate use of both terms, especially in their adjectival form. All in all, this produced what Vink and Graziano (2007) called the "EU domination of Europeanization research". Europeanisation, in this paradigm, is co-defined by EU integration; its conceptual space is determined by the extent to which the EU has widened in territory and deepened in competency; and its geography is ineluctably confined to that of the EU.

This EU bias in Europeanisation research has sometimes been criticised for conflating Europeanisation with "EU-Europeanisation", "EU-isation", "Communitization" or "Unionisation" (Goetz 2001: 1037; Lenshow 2006: 59-61; Emerson 2004: 17). For some, Europeanisation should instead denote a "wider process of political, economic and societal transformation" (Emerson 2004) involving the study of other forms of institutionalised cooperation (e.g. the Council of Europe, the OSCE, the EFTA). These institutions are "highly intertwined with the European Union in terms of organization and even identity" (Vink & Graziano 2007). But such re-conceptualisations, in practice, are hard to achieve, and they have rarely been followed by empirical applications (but see Callewaert 2008). This is because European integration theories have long been conveying a *sui generis* image of the European "beast" (Risse-Kappen 1996), which spilled over Europeanisation studies. If the EU is so unique, after all, why would its internal mechanics of institutional, behavioural and attitudinal change –i.e. Europeanisation- not be one-of-a-kind?

Resilient as it is, this EU bias bears untenable pitfalls. Although it favourably fostered the conceptual genesis of Europeanisation out of EU integration theories, it has subsequently prevented the newly formed concept from flying on its own wings, therewith constraining its sound development. First, the conceptual coalescence of the European and EU spaces neglects the spatial domain that exists between the two concepts –a "non-EU Europe" domain that Europeanisation research has no reason to discard. Second, European integration perspectives seem to indicate that Europe shall necessarily head towards its institutional apex, the EU. This teleological bias also suggests that that the former (Europe) is only a poor (though transitory) reflection of the latter (the EU). Third, the nature of the EU has profoundly changed in recent years, becoming for instance decreasingly homogenous internally and increasingly intertwined externally (e.g. Dyson & Goetz 2003: : 21). This makes the EU becoming closer to "Europe", unlike (or perhaps in addition to) what many European integration theorists delve in demonstrating, i.e. the reversed dynamic of a "wider Europe" increasingly mirroring an integrated EU. These three reasons underscore the growing inadequacy of the EU integration paradigm in driving conceptual developments in the field of Europeanisation research. These also indicate that the

political geography of Europeanisation would gain in being re-constructed through an alternative approach –European governance.

Europeanisation as a spiritual child of European governance

European governance perspectives conceptualise Europe as political and social order, or more prosaically, a system of formal and informal rules (e.g. Kohler-Koch & Eising 1999; Olsen 2007), and governance, as "the authority to make, implement, and enforce [these] rules in a specified policy domain" (M. E. Smith 2004a: 176). Unlike integration approaches, governance perspectives do not arbitrarily set boundaries to the system of rules they analyse –they may thus target actors with no EU accession perspectives. Nor do they provide it with a teleological design. These distinctions have a substantial effect on the premises upon which researchers seek to conceptualise Europeanisation. They are helpful to mitigate the conceptual limitations imposed by European integration theories, and all in all, also provide better frames of conceptual analysis. First, they free Europeanisation from its inwards-looking EU bias by opening up its field of inquiry to new geographical horizons (e.g. non-EU Europe); second, they offer plentiful opportunities for researchers willing to indulge in cross-boundary or divide-transcendent thinking, since politico-geographical lines in Europe, more often than not, are difficult to draw; and third, they shed some light on the concept of Europeanisation by emphasising the contestability of its spatial, and thence conceptual, domain.

Of course, the differences between European integration and European governance approaches should not mislead scholars in envisaging their incompatibility. EU integration (and EU enlargement), as processes underpinned by a set of formal and informal rules, can equally be approached through European governance perspectives, e.g. as specific modes of EU governance (e.g. Jachtenfuchs 2001; Schimmelfennig & Sedelmeier 2004). Likewise, EU-isation (in an EU integration perspective) can also be considered as a specific case of Europe-anisation (in a governance perspective). The difference between the two approaches, however, is very palpable, as it comes to the study of the "external dimension of Europeanisation", e.g. involving European states with no EU immediate accession perspective (e.g. Switzerland, Ukraine), or neighbouring spaces that have been targeted by European foreign policy actions and discourses (e.g. Transnistria, the Mediterranean) (e.g. Lavenex & Ucarer 2004; Schimmelfennig 2009; Börzel 2010; Jones 2006; Gawrich, Melnykovska, & Schweickert 2009; Coppieters, et al. 2004). Here, the emergence of a new strand of literature specifically investigating the transformative power of the EUrope in geographical spaces, i.e. regions, where EU integration theories exhibit strong limitations, is revealing. It is symptomatic of the way the conceptual domain of Europeanisation is trying to be extended and re-delineated. And it demonstrates that paradigmatic shifts in European studies can exert an influence on concept formation in the Europeanisation sub-discipline.

European governance approaches do give a new impetus to Europeanisation research, but they do not alleviate the confusion induced by the proliferation of Europeanisation conceptions in the field, and for good reason. The discrepancies between the different strands of European governance approaches cannot be played down. European governance is a multifaceted, contested approach. This is because it is based the disputed notion of authority, prescribing different logics of political action; because it relies on different representations of Europe's political order; and because it problematises the notions of territoriality, sovereignty and society rather than taking them for granted. Classical governance, for instance, is premised on the legitimate exercise of power within a clearly demarcated territory (the state), which is also the container of a congruent society (the nation). Therein, hard territoriality, exclusive sovereignty and embedded society are mutually co-defining concepts. Yet, postmodernist views underlined that governance

need not be territorial, and even when it is, "the prevailing concept of territory need not entail mutual exclusion" (Ruggie 1993: 149; Agnew 1994). The multi-level governance approach illustrates an alternative conception, whereby Europe consists of a plurality of overlapping layers with human societies being connected rather than contained (Hooghe & Marks 2001). The governance network approach provides another illustration of fragmented territoriality and de-territorialised sovereignty (Eising & Kohler-Koch 1999; Ansell 2000). Today, different approaches to governance co-exist (and interact) in social discourses, and eventually, "any description of European governance participates in the struggle to fix the latter's meaning" (Diez 2001: 91). Viewed as competing frames, these different approaches to European governance serve as constraining and enabling structures of meaning in the conceptual definition and spatial delineation of the notion of Europeanisation. They are the building blocks of the Europeanisation conceptual and spatial domains. And being contested, it is the multiplicity of, and discrepancies in, these European governance approaches that produce the puzzling diversity of meanings taken by Europeanisation.

The next section of this article substantiates this finding by reviewing systematically how the conceptual and spatial domains of Europeanisation can be delineated in three different "worlds" of governance. These three worlds are ideal-typical social constructions, each of them depicting an idealised, heuristic picture of the European political order, upon which conceptions of Europeanisation can be mapped. The labels used (Westphalia, neo-Westphalia and post-Westphalia) are examined regardless of their historical accuracy (for a critique, see Osiander 2001).

Europeanisation in Westphalian Europe

In the Westphalian ideal, "Europe" is fragmented into sovereign states that neatly occupy the European continental space. States' boundaries are defined on the basis of hard territoriality by the unambiguous disjunction of what is "inside" and what is "outside" of the state (Caporaso 2000: 10). In the inside, the state is sovereign –it can "claim absolute and final authority over a wide range of issues" (Biersteker 2002: 167). It contains the society from which it derives its legitimate rule. In the outside, states have no sovereign right to act, but they nevertheless seek to influence the domestic politics of peer sovereign states through the exercise of their foreign policy. This makes sovereign states both inceptors and receptors of external influences. But most importantly, it makes them the prime actors and incontrovertible channels of institutional change.

Defining Europeanisation in Westphalia

In Westphalia, states (being prime actors and incontrovertible channels), are transitive, proactive "europeanisers", i.e. they incept the structural and substantive change in the system of rules that governs their relations. This places the Europeanisation *explanandum* at the European level, where change takes place, and its *explanans* at the domestic level, where changes originate from. The challenge for Europeanisation students, then, is to "identify the actors, and the motivations and forces that determine [the] choices" that state actors make in Europeanising their domestic structures of governance (Olsen 2002: 929).

Westphalian Europeanisation can accordingly take three different forms –all subscribing to the *bottom-up* pattern of institutional, behavioural or attitudinal change. To start with, it may denote a process of institution-building that accounts for the dynamics of EU regional integration. In this case, change is structural, and Europeanisation is anything but a governance approach to EU integration. Some definitions of Europeanisation corresponding to that approach can be found in the literature, as the "emergence and development at the European level of distinct structures of governance, that is, of political,

legal, and social institutions associated with political problem-solving that formalize interactions among the actors […] specializing in the creation of authoritative rules" (Risse, Green Cowles, & Caporaso 2001: 3). This definition denotes a radical case of institution-building, which entails the structural empowerment of supranational institutions to act authoritatively from a distinct level of governance. It involves "the creation and consolidation of authoritative political institutions at the supranational European level" (Mair 2004: 340-341), the delegation of policy competences, the transference of Westphalian sovereignty from the state to non-statal actors (Stone Sweet & Sandholtz 1998; Lawton 1999), or the constitutionalisation of the European polity (Weiler 1997; Shaw 1999).

Institution-building may also be less radical, if states agree on an intergovernmental mode of Europeanisation, wherein they remain the incontrovertible inceptors of change in the principal-agency relationship they build at the European level, whilst cautiously strengthening the latter's organisational capacity for collective action. Europeanisation, then, is about intensifying the regulatory, socializing, democratic and welfare institutions that sustain intergovernmental cooperation (Olsen 2002: 931ff.). It is about "elevating policy-making" (Jørgensen 2004: 50) rather than subduing it to supranational agencies.

Whether conceived of as supranational or intergovernmental institution-building, Westphalian Europeanisation may additionally entail identity changes through the "development of common ideas, such as new norms and collective understandings regarding citizenship and membership" (Checkel 2001: 180; Marcussen, Risse, Engelmann-Martin, Knopf, & Roscher 2001). It more generally implies "constructing systems of meanings and collective understandings" (Sedelmeier 2004: 127) , and for instance, the development of common procedural norms, as the "*réflexe communautaire*", i.e. the "institutionalised imperative of concertation" in policy-fields traditionally governed by member states alone (Glarbo 2001). Whether "radical" or "soft", Westphalian Europeanisation is still a process primarily driven by national *élites*, e.g. in intergovernmental conferences. But although party officials in exercise could formerly only rely on the "passive approval" of the public (M. E. Smith 2004b: 746), this "permissive consensus" requirement, increasingly, has transformed into accommodating "constraining dissensus" (Hooghe & Marks 2009).

Europeanisation may finally take even "softer" forms by altering the substance, and not the structure of the European rules norms. In this case, Europeanisation denotes a process of policy-uploading. It involves the "ability to participate in integration so as to best be able to 'project' national government's concerns", policy preferences and approaches onto the European level (Bulmer & Burch 2000: 3). The underlying motivation is not necessarily institution-building *per se*, but, for instance, the conduct of *ad hoc* "politics of scale" (Ginsberg 1999: 438ff.). The uploading dimension of Westphalian Europeanisation can lead to the formation of issue-specific coalitions with like-minded states, who voice out domestic concerns in multilateral negotiations, and attempt to "multilateralise" their domestic preferences in European forums (Keukeleire & MacNaughtan 2008: 142).

A Westphalian geography of Europeanisation

The political geography Westphalian Europeanisation is primarily determined by the European (foreign) policy of European states, and it is bordered by two types of frontiers – one spatial, one temporal. First, there are the continental borders of *Europe*. Only the states located on the European continent can shape the Westphalian space of Europeanisation. This includes, theoretically, European non-EU member states as well, who may act as agents of Europeanisation through their membership in a variety of pan-European international organisations (e.g. Council of Europe). More unexpectedly, their

status of EU candidate may allow them to upload domestic preference onto the EU institutions, though with limited success (e.g. Král 2005). Among the spaces that are especially hospitable in crystallising europeanised policies and practices, the EU doubtlessly stands out, not least because it is "currently the core political project in Europe" (Olsen 2002: 927). But this apparent congruence between the EU and the Europeanisation spaces is misleading. European states may seek to europeanise their interests through non-EU institutional settings (e.g. through the OECD in the case tax evasion policy), or work at the consolidation of cross-institutional links between the EU and other European international organisations (e.g. EU's Berlin-Plus arrangements with NATO).

The second frontier that marks an ending point for Westphalian Europeanisation is temporal. It is contingent on the stock of states' interests and structures of governance that are still "europeanisable", i.e. for which further Europeanisation is possible. In Westphalia, Europeanisation is a finite process of institutional change culminating with the full transformation of the state-centric political order into a supranational, state-like, neo-Westphalian mode of governance. Students of Europeanisation will investigate how policy-uploads are institutionalised in intergovernmental forums, how the authority of the latter is extended through supranational institution-building, and how supranationalism is consolidated beyond the EU, throughout the whole European continent. But the emergence of European-wide supranational institutions certainly marks both the apex of regional integration and the conceptual limit to Europeanisation. That Europeanisation is finite, however, does not mean that the process cannot be reversed; regional disintegration would create anew opportunities for re-Europeanisation.

Europeanisation in neo-Westphalian Europe

The neo-Westphalian ideal type shares some assumptions with Westphalia, especially its commitment to territoriality, but it contemplates the European space from a very different scale, and reflects the "shifting conceptualisations of the EU, both as a political space and as an actor in the world system" (Scott & van Houtum 2009: 271). Here, Europe, or more adequately the EU, is conceptualised as a proto-state. Internally, supranational rules enable Community actors to exert supreme authority over a wide range of issues, and to authoritatively penetrate states' domestic polities. Externally, the EU proto-state projects its interests through the conduct of a European foreign policy in its idiosyncratic capacity of "international actor" (Ginsberg 1999), "civilian power" (Whitman 2002), "ethical power" (Aggestam 2008), or "normative power" (Manners 2002). The distinction between internal and external action is assumed to unambiguous, since European external borders are posited as "recognizable, even impregnable" (Christiansen, Petito, & Tonra 2000: 389). Because it is presumed on the ontological existence of an institutional centre exerting sovereign authority both internally and externally, the neo-Westphalian ideal finds virtually no empirical support whatsoever in the pan-European studies literature unless it is applied restrictively to its EU institutional core.

Defining Europeanisation in neo-Westphalia

In neo-Westphalia, it is the proto-statal system of rules giving shape to European internal and external governance that delineates the space of Europeanisation. This system of rules constitutes an EU-level *référentiel* acting as an identifiable source of adaptational pressures. These pressures, under certain circumstances, are conducive to "change in the core domestic institutions of governance as a consequence of the development of European-level institutions, identities and policies" (Olsen 2007: 79). This neo-Westphalian conceptualisation of Europeanisation, which the "goodness of fit model" seeks to theorise

(Börzel 2003; Green Cowles, Caporaso, & Risse-Kappen 2001), places the Europeanisation *explanandum* at the domestic level, where institutional change takes place, and its *explanans* at the European level, where changes originate from. It denotes a *top-down*, transitive, albeit passive, process of change, in which states are no *europeanisers*; they are instead europeanised -*by* the EU actors. These EU actors primarily consist of technocratic *élites*, acting as Community or intergovernmental EU principals *vis-à-vis* national agents. The role of the public in this process is notably constrained by Europe's democratic deficit.

Neo-Westphalian Europeanisation has both an internal and an external dimension. Internally, it involves the transformation of territorial states and the restructuring of their functions, and the internalisation by domestic actors of European norms and values (Checkel 2001). This supposes that the EU becomes "an embedded feature which frames politics and policy within the European states" (Wallace 2000: 370), alternatively constraining choices, providing incentives, generating expectations, framing actions. Europeanisation, in this sense, constitutes an international source of domestic change, a "second image reversed" (Gourevitch 1987), that re-orientates "the direction and shape of politics to the degree that EC political and economic dynamics become part of the organisational logic of national politics and policymaking" (Ladrech 1994: 69). Whether neo-Westphalian Europeanisation eventually leads, internally, to institutional isomorphism remains disputed. Most scholars contend that it rather entails "convergence towards moderate diversity" (Falkner 2001; Goetz 2006). As Europeanisation is a process mediated by domestic institutions facilitating and constraining change, its outcome is mostly likely institution-dependent (e.g. Green Cowles, et al. 2001).

The external dimension of Europeanisation is often addressed through the lens of European external governance (e.g. Lavenex & Ucarer 2004; Lavenex 2004; Lavenex, Lehmkuhl, & Wichmann 2009; Schimmelfennig 2009). Here, Europeanisation is about "the external projection of internal solutions" towards non-EU states (Olsen 2002: 937ff.). Scholars usually distinguish various concentric circles of external governance upon which the EU projects its foreign policy preferences. These circles differ from one another according to the type of institutional link they exhibit with the EU. For instance, Lavenex & Ucarer (2004: 423) distinguish close association (e.g. Switzerland, Norway), accession association (e.g. Croatia), pre-accession association (e.g. Serbia), neighbourhood association (e.g. Ukraine) and loose association (e.g. African, Caribbean and Pacific countries). Europeanisation, measured by policy diffusion, differs across these circles both in terms of effect and mechanisms (Börzel 2010). In candidate states, Europeanisation refers to "the impact of the EU accession process on national patterns of governance" (Grabbe 2001: 1014). It mainly operates (with remarkable effectiveness) through the hard conditionality regimes set up by the EU, in which little institutional discretion is left to applicant states as for the need to absorb the EU *acquis* (Schimmelfennig & Sedelmeier 2007). At the periphery, by contrast, the weak conditionality regimes that are set up in the framework of the ENP lead to comparatively superficial changes (Gawrich, et al. 2009), except perhaps in sustaining democratisation (e.g. Orlovic 2007; Emerson & Noutcheva 2005). In Switzerland, finally, Europeanisation involves deeply-rooted social learning, or *autonomer Nachvollzug* (Sciarini, Fischer, & Nicolet 2004). Beyond these intra-European circles of external governance, neo-Westphalian Europeanisation takes a softer form conveyed by EU foreign policy actions. It involves the external diffusion of European normative understandings, most notably through the worldwide promotion of regionalism (e.g. Murray 2010), constitutional norms (e.g. respect for human rights and minority rights, rule of law and democracy) (Schimmelfennig 2009; Manners 2002), and approach to conflict resolution (Coppieters, et al. 2004).

A neo-Westphalian geography of Europeanisation

In neo-Westphalia, the political geography of Europeanisation is primarily determined by the EU and its sphere of internal and external governance. The main boundary to the phenomenon, then, is not territorial, since the EU has set up diplomatic, economic or political relations with most of the states in its external environment. Consequently, Europeanisation may virtually affect any political space in which it interacts with national agents. It is nevertheless limited legally by the principles of subsidiarity and competence conferral, and institutionally, by the (non) existence of EU norms to be downloaded. In policy fields where the EU has no competency, the EU neo-Westphalian proto-state is similar to a federal polity in which the central government has statutorily devolved powers to subnational authorities. In those policy fields, the EU no longer acts as a *référentiel* – which is a precondition, in neo-Westphalia, for the occurrence of Europeanisation. In other words, intense levels of Westphalian Europeanisation are a precondition to the exercise of neo-Westphalian Europeanisation.

Europeanisation in post-Westphalian Europe

The third ideal type conceptualises "EUrope" as the "first truly postmodern international political form" (Ruggie 1993: 172-173; 140). It asserts the fundamental heteronomy of European communities, the "blurring of territoriality" (Biersteker 2002: 166) and the "growing irrelevance of states" (Ruggie 1993: 142) in contemporary politics. In post-Westphalian Europe, borders are characteristically permeable, leaky, and, most importantly, "fuzzy" (M. Smith 1996: 21; Christiansen, et al. 2000). This is, arguably, most obvious in the EU's "near abroad" (Christiansen, et al. 2000), or in "wider-Europe" (Lavenex 2004), i.e. in those "intermediate spaces between the inside and the outside of the Union" (Christiansen, et al. 2000: 411ff.). But this also applies internally, within the "EU", in the tentative (and often vain) demarcation of what is "national" and what is "European".

Defining Europeanisation in post-Westphalia

Post-Westphalia contends that it is of little pertinence to take the nation-state or the European proto-state as sole points of reference in approaching Europeanisation, or to forcibly draw analytical boundaries on a territorial basis as for what is internal Europeanisation and what is external Europeanisation (White 2004: 13; Keukeleire & MacNaughtan 2008: 21). Post-Westphalia rejects the conceptualisations of Europeanisation premised on the ontological emergence, or pre-existence, of a *référentiel*, and prefers referring to Europeanisation as occurring *through* EUrope, i.e. through a multi-dimensional arena, or "transfer platform" (Bulmer & Radaelli 2004), the contours of which are not given but constructed. This arena, accordingly, fosters all sorts of interactions between and among national, subnational, supranational and transnational actors, in a direction that is not purely hierarchical, and that transcends the principal-agent relationship. Preferences, in this *horizontal* understanding of Europeanisation, are neither uploaded, nor downloaded, but socially, normatively and discursively reframed and "cross-loaded" (Wong 2007). Although policymakers play an important role in this process, they are not the only actors in which the capacity to interact on the EU arena is vested. Other actors, organised in networks, or influential in discourse politics, may for instance be driving post-Westphalian Europeanisation.

Post-Westphalian Europeanisation is more than policy adjustment: it has a constitutive impact on the actors' multiple, non-exclusive identities and preference formation (Hooghe & Marks 2001: 51ff.). It is an "interactive, ongoing and mutually constitutive process of 'europeanising' and 'europeanised' countries" (Major 2005: 175) constitutively linking

various levels of governance. It implies cross-level relationships, not only in a causal sense, but as a "matter of reciprocity between moving features" (Bulmer & Radaelli 2004), for instance, in a "process by which areas of domestic policy making and implementation become increasingly subject to systems of multi-level governance" (Bromley 2007: : 203). In foreign policy, Europeanisation for instance entails the "Brusselisation" of national foreign policies, and national diplomats "going native" (Allen 1998: 42, 54; Sjursen 1998: 11ff.). Legally, Europeanisation, in post-Westphalia, implies the plural, postnational constitutionalisation of legal regimes in a "complex of overlapping, interpenetrating or intersecting normative systems or regimes, amongst which relations of authority are unstable, unclear, contested, or in the course of negotiation" (Cotterell cit. in Shaw 1999: 10; see also Walker 2002; La Torre 2000; Stone Sweet 2009). Post-Westphalian Europeanisation, as a result, shall not necessarily entail more uniformity and cross-national convergence around European norms. The fragmented and contested *loci* of authority that thrive in EUrope permits instead the elaboration of negotiating contexts, in which uniformisation is attenuated, and "domestic norms are not compromised" (Clark & Jones 2011: 362).

A post-Westphalian geography of Europeanisation

Delineating the space of Europeanisation in post-Westphalia is difficult. Although the EU doubtlessly shapes its most influential contours (owing to the high level of institutionalisation of the EU arena), its institutional borders, in practice, remain poorly delineated owing to the plurality and the non-congruence of EUropean institutional settings. For instance, not all EU member states are part of the Schengen area (e.g. UK) or the Euro-zone (e.g. Denmark); some EU member states have negotiated transitory arrangements (e.g. Austria regarding free movement of Bulgarians), which others have lifted (e.g. Sweden). And, some member states have negotiated opt-out clauses (e.g. Poland regarding the Charter of Fundamental Rights), whereas others have few or no opt-outs on their record (e.g. Spain). The EU arena, thus, is far from unitary, even in its internal policy realm. To make the matter more complex, some European states use the Euro as official currency (e.g. Montenegro), or are part of the Schengen area (e.g. Switzerland), although they are no EU member-states. In so doing, they interact institutionally on a EUropean arena, though not in an extensive manner. But in a post-Westphalian world in which monetary and migration policies cannot be considered in isolation of other policy fields, the participation of non-EU member states to EU institutional schemes opens wide avenues to the study of Europeanisation in non-EU Europe.

Europeanisation may not only concern non-EU states, but non-EU pan-European international organisations as well, such as the Council of Europe, the OSCE, Nato, or the OECD, as well as subregional organisations, such as the EFTA, the Nordic Council, the Black Sea Economic Cooperation and the Stability Pact (replaced by Regional Cooperation Council) (see Neuwahl 2005: 31). These organisations participate in the weaving of European rules and norms to a considerable extent, and they render difficult to isolate what norms and practices distinctively stem from the EU. Besides, many EU member states multiply cross-memberships. The Europeanisation space in post-Westphalia, is therefore best conceptualised as a set of overlapping spheres characterised by "varying degrees of EU-Europeanness" (Scott & van Houtum 2009) and variable institutional densities (Christiansen, et al. 2000: 192; Lavenex & Ucarer 2004: 423). But unlike neo-Westphalia, these spheres are not centred on Brussels, but admit "competing locations of authority" (Biersteker 2002: 169). The porosity of institutional borders is very well seen in the EU "near abroad", where the EU shifted its governance focus from neo-Westphalian-style "exclusionary politics" towards "politics of inclusion" (M. Smith 1996). Politics of inclusion does necessarily not entail enlargement (Christiansen, et al. 2000: 412), but it entails "the extension of the legal boundary of authority beyond institutional integration" (Lavenex

2004: 683), and, in other terms, the extension of European governance beyond EU institutional borders. This extension may even penetrate other non-European spaces, i.e. other continents. Drawing from an historical analysis of the evolution of cross-border connections in Europe, Wallace notably observed that Europe has evolved into a "complex cobweb of interconnectedness" with some connections "radiating out into the near abroads in Africa and Asia" (2000: 374). She concludes that "these connections provide multiple opportunities for inference in, and influence from, across the borders" (Ibid.).

What, then, if not territorial borders, delineate the political geography of post-Westphalian Europeanisation? The answer provided by the theory is: *interactions*. Interactions are both the constitutive and structuring factor that creates the spaces (and post-Westphalian arenas) in which norms are cross-loaded. This means that a series of actors may play a decisive role in Europeanisation, presuming they are endowed with some agency. State actors, whether located in the EU, in Europe or in the outer world, may for instance interact on a EUropean arena, which they subjectively construct by nurturing a one-sided plan of EU accession, and anticipatively performing adaptational change (e.g. the case of Moldova in Nodia 2004). Delineating the spatial domain of Europeanisation then requires a measure of interpretivism. Europeanisation may finally take place on more structured transfer platforms, constructed intersubjectively. In this case, interactions follow patterned relationships organised as social networks. These networks admit a large variety of actors, not only statal and governmental ones. Their organisation and functional patterns have been studied in general terms under the various labels of policy networks (e.g. Falkner 2001), advocacy coalitions (e.g. Jenkins-Smith & Sabatier 1994; Keck & Sikkink 1998), epistemic communities (Haas 1992) and policy transfer networks (Evans & Davies 1999). But more research should be carried out to understand their specific contribution to post-Westphalian Europeanisation, not least because they are the clearest point of departure from neo-Westphalia.

The way forward

For many researchers, Europeanisation is first and foremost "a model-building, not a definitional challenge" (Olsen 2002: 943ff.). The *raison d'être* of this "set of puzzles" (Radaelli 2004: 1) is not to pave the conceptual ground of inexistent theories of Europeanisation, but instead, and accordingly, to serve as an attention-directing device in the study of EU processes. Judging from the profusion of definitions that mushroomed in the field, many students seem to have taken this non-commitment very seriously. These welcome conceptual diversity as a testimony of the scholarship's vitality in the field (Gwiadzda 2002), and too rarely wonder where this lack of conceptual clarity comes from, and whether it should really be discarded as secondary issue. This theoretical article brought some insights in this respect.

To begin with, the article showed that conceptions of Europeanisation that are premised on European integration in their definition are likely to suffer from an EU bias constraining their conceptual development. A natural child of European integration studies, Europeanisation would gain in cutting its apron strings with the EU integration discipline. This would not only benefit Europeanisation research by disjointing its political geography from EU integration. It could even contribute to normalising EU integration research, by relocating it under the auspices of governance theories. After all, if Westphalian Europeanisation, denotatively, is a governance approach to EU integration, then, theories explaining the latter may in the future be redesigned on a less *sui generis* basis, i.e. in better accordance with mainstream political sciences. This goal has already been formulated by Hassenteufeul and Surel (2000: 20) –as well as Europeanisation's expected contribution thereto-, but little attention has otherwise been paid to this tremendous potential (but see Exadaktylos & Radaelli 2009). To date, much of the conceptual reflection

in the field is driven by empirical concerns on how to extend the concept's denotation (e.g. by including eastwards' democratisation) without reducing the number of connotational properties (e.g. "domestic impact of EU integration"). Under such conditions, the firm anchoring of Europeanisation in EU integration theories necessarily bears the risk of conceptual stretching. Fortunately enough, a paradigmatic shift is on its way, which has been supported by research on external Europeanisation. This paradigmatic shift, driven by empirical curiosity rather than theory, takes the right direction, even though, in the short term, it magnifies the conceptual diversity that already characterised the field. European governance approaches, indeed, provide Europeanisation with a more fertile ground than EU integration.

European governance approaches, in their great variety, also better account for the conceptual diversity characterising Europeanisation research. Their competing claims, which have been studied here through three ideal types, draw rather different images of Europe's political order, and do not concur in their delineation of the conceptual and spatial domain(s) Europeanisation. This finding –that Europeanisation *cannot* be conceptualised in a unique manner because European governance is a politically and geographically contested notion- echoes Clark & Jones's article on the "spatialities of Europeanisation" (2008). In their thought-provoking contribution to the Europeanisation debate, the authors conclude that Europeanisation pertains in fact to socialisation and learning in different spaces of Europeanisation (on the construction of these spaces, see Jones 2006; Kallestrup 2002). Some (echoing Westphalia and neo-Westphalia) are autonomous spaces with hierarchical structures rooted in a well-bounded territory and with a clientele of their own, whereas others, cutting across scales, consist of more inclusionary networks, and resemble post-Westphalian arenas (for a comprehensive study, see Jones & Clark 2010). The present article supports this argument and further emphasises that geography (and space) are no exogenous variables. They are constitutive of the *conceptual* domain of Europeanisation. In substance, it questions the assumption that there is one concept of Europeanisation (may it be defined by learning, adaptation or convergence) that objectively transcends all the three worlds of European governance. Defining Europeanisation, it contends, is a social act having politico-geographical motivations. It is a research prerequisite, which not only defines the object of the research, but also, in the spirit of constructive idealism, contributes to build the social construction of Europe.

Does it mean that Europeanisation *is* an essentially contested concept? It is indeed remarkable that not one use of the concept can be "set up as its generally accepted and therefore correct or standard use" (Gallie 1964, cit. in Gwiadzda 2002: 4). The essential contestability of the Europeanisation concept may thus prove serious, and it certainly constitutes a fundamental challenge to researchers aiming at theorising genuine Europeanisation. There does not seem, indeed, to be an overarching construction of "European governance", which aggregates all spaces of Europeanisation into a single coherent domain. All three ideal types presented in this article co-exist in Europe's multiple realities. They are simple depictions of complex systems of rules admitting considerable overlaps. For instance, in foreign policy, White (2004) differentiates three "subsystems" of Europe's external governance: the foreign policy of European Communities (EC), of the EU and of the member states' (EUMS). Each of these subsystems is characterised by "different sets of actors and policy processes" (White 2004: 15-25), but their combination, he argues, defines what the European foreign policy is. Studying the Europeanisation of this European foreign policy, thus, would require the conceptualisation of Europeanisation in all spaces of Europeanisation, i.e. in Westphalian *EUMS* governance, in neo-Westphalian *EC* (external) governance, and in post-Westphalian (multi-level) *EU* governance. Finding a single conceptualisation of Europeanisation that cuts across these three governance subsystems is challenging, to say the least.

But such enterprise, i.e. the conceptual consolidation of the field, would be rewarded by the perspective of theory-building accomplishments. Since concepts are the "building-blocks of all inferences" (Gerring 1999: 364), their flaws are detrimental to the design of progressive theories. Despite brilliant attempts, Europeanisation research still neglects this outlook. It treats Europeanisation as a "phenomenon which a range of theoretical approaches have sought to explain" (Bulmer 2007: 47), not as an embryonic, would-be theory. Today, Westphalian Europeanisation is often explained by liberal intergovernmentalism or neofunctionalism; neo-Westphalian Europeanisation, by new institutionalist and international relations theories; and post-Westphalian Europeanisation, by still under-theorised discursive or interactionist approaches. The challenge of consolidating the field would thus not only enhance its conceptual clarity. It would make a theoretical contribution to a better understanding of social change, policy diffusion and political learning in institutional contexts.

Not only is more conceptual clarity desirable, but it is possible, despite the concept's essential contestability, because all conceptions of Europeanisation are not equally good. Conceptions premised on EU integration approaches, it has been seen, are certainly not as good as those relying on European governance approaches. This is a first lesson to draw. But even among governance approaches, normative differences can be noted. If the aim of Europeanisation researcher is to consolidate the field and develop theories of Europeanisation, then, post-Westphalia is most probably the better starting point for this endeavour. First, it does not assume the verticality of social processes in European politics, and does not reify national and EU institutional structures as distinct agents. It thus paves the ground of the examination of "softer", more reflexive conceptions of Europeanisation, where interaction structures like the Open Method of Coordination play a more substantial role. Second, its emphasis on interaction structures that are constructed and contested opens vistas that are more inclusive with regards to the ontological and epistemological positions upon which theories may be developed. Third, and most interestingly, its key determinant, the European interaction structure, can be problematised as a key determinant of what Europeanisation entails and how it proceeds as a process. Its variegated properties and the way it is constructed, transformed and reproduced shall therefore lie at the crux of future conceptual and theoretical research.

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The European Union as a Normative Power and Conflict Transformation in Moldova: A "Force for Good"?

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Abstract

European Union (EU) elites frequently refer to EU norms and values and tend to see the EU as a 'force for good' in conflict situations. The 'frozen conflict' between the Moldovan central state and the separatist Transnistrian region has caused 'soft' security problems in the EU's immediate neighbourhood and has increasingly engaged its attention. This article examines how the EU as a normative power can affect conflict transformation in Moldova. The theoretical framework that guides the analysis assumes that the EU can influence conflict transformation through the mechanisms of integration and association. The key argument is that the EU can have an impact on conflict transformation in the case of Moldova, but it does not use its full potential.

Keywords

Moldova; Normative power; Conflict transformation

THE 2004 AND 2007 EASTWARD ENLARGEMENT BROUGHT NEW CHALLENGES IN THE European Union's (EU) immediate neighbourhood. On the EU's eastern border, Moldova had been involved in a so-called 'frozen conflict' with Russian-backed separatists in Transnistria since 1992. A short civil war in Transnistria on the eastern Moldovan border took place. Although Transnistria declared *de facto* independence from Moldova, it has not been internationally recognised. The principal and decisive battle in Bender on June 19-21 ended with the intervention of Russian forces. In July 1992, the Moldovan president Snegur and Yeltsin signed an agreement in Moscow, providing for an immediate cease-fire and the creation of a demilitarized zone extending 10 km from the Nistru on each side of the river. Moreover, the agreement included a set of principles for the peaceful settlement of the conflict. The principle of withdrawal of Russian forces in Moldova was also acknowledged in the 1992 agreement. However, while the Russian forces in Chisinau were withdrawn within two years, the 14th Army stationed on the left bank remained. It has been contested ever since whether or not withdrawal should be linked to a political settlement. Numerous rounds of negotiations concerning the withdrawal have been held, but so far, Russia has refused an unconditional withdrawal of its 'peacekeeping' forces in Transnistria. Furthermore, the disagreement on fundamental questions and uncertainties in domestic Moldovan and Transnistrian politics have created a 'frozen conflict' situation (see Barbé and Kienzle, 2007; OSCE paper, 1994; Roper in Schmidtke and Yekelchyk, 2008; Vahl and Emerson, 2004).

Being situated less than 100 km from the border to Romania, the conflict is geographically the closest one to the EU and it poses a number of security challenges, especially non-military, 'soft' security issues. First of all, the separatist Transnistrian region has turned into a hub for organised crime, including illicit trafficking in arms, people and drugs (Popescu,

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2005; Barbé and Kienzle, 2007). Secondly, the presence of Russian troops in Transnistria is controversial because it further complicates the conflict. The military presence of Russia in Transnistria is not welcomed by Moldova (Barbé and Kienzle, 2007: 523). Moreover, the Russian military involvement remains a locus of tension in the EU-Russia relationship, as Russia is eager not to permit the EU to become too influential in the region due to strategic and prestige reasons (Popescu, 2005; Barbé and Kienzle, 2007). Thirdly, Moldova is already one of the poorest countries in Europe and the unresolved conflict weakens its chances to make political and economic progress. A settlement of the conflict would both mitigate the soft security challenges and at the same time possibly assuage an irritant in EU-Russia relations (Popescu, 2005: 43). Due to the fact that the conflict in Transnistria has developed into a more or less non-violent, frozen conflict, there is no apparent urgency for the EU to become more involved and the 1994 Partnership and Cooperation Agreement, the framework for EU-Moldovan relations, did not explicitly include a security dimension (Barbé and Kienzle, 2007: 523). Nevertheless, especially with the 2004 enlargement, the EU has shown an increased interest in the Transnistrian conflict. Although the Transnistrian conflict does not constitute the most salient problem for the EU, it has seen the greatest EU involvement, in comparison to other post-Soviet secessionist conflicts, such as the ones in Abkhazia, South Ossetia, and Nagorno-Karabakh (Popescu, 2009: 461).

Various studies have been carried out concerning the EU's lack of a stronger CFSP engagement in Moldova (see for example Popescu, 2005; Barbé and Kienzle, 2007). Yet little attention has been paid to the EU's involvement in Moldova from a normative power perspective and research on this topic is scarce. Niemann and de Wekker have analysed the extent to which the EU constitutes a normative power in its relations with Moldova (Niemann and de Wekker, 2010). This article focuses on how the EU as a normative power can affect conflict transformation in Moldova, and whether political conditionality as a primary modality of implementing normative power can be considered an effective tool of conflict transformation. Is the EU setting standards rather than using military or other force? EU actors tend to see themselves and the EU as a whole as a 'force for good' in conflict situations and, generally speaking, as a normative power in world politics (Diez and Pace, 2007: 2). In the ENPI National Indicative Programme for the Republic of Moldova it is stated that:

> [a]s a global player, the EU promotes its norms, values and interests through various instruments [...]. In particular, the EU strives to promote prosperity, solidarity, security and sustainable development worldwide (ENPI National Indicative Programme 2011-2013, Republic of Moldova: 7).

The EU's involvement in Moldova is especially interesting, because the accession of Romania in 2007 has brought the conflict close to the EU's borders Moreover, the Transnistrian conflict is claimed to be the most solvable one of the conflicts in the EU's neighbourhood, because the conflict is neither embedded in ethnicity nor history, but rather in contemporary politics (Popescu, 2005: 5; see also Roper in Schmidtke and Yekelchyk, 2008). Thus subject positions could be expected to be easily transformed. In this article, the link between the EU as a normative power and its conflict transformation strategies in the Moldovan region will be examined. The issue will be approached as follows: first of all, a theoretical framework combined of two concepts - *normative power Europe* and *conflict transformation* - will be presented. Secondly, a brief review of EU-Moldova relations will be given. Thirdly, the EU's approach towards conflict transformation in Moldova and Transnistria will be analysed. The empirical findings of this case study are mainly based on official documents and newspaper commentaries and are supported by secondary sources.

Normative power Europe and conflict transformation

The analysis of the EU's foreign policy and external relations has undergone a shift from a 'hardware' dimension focusing on military aspects to a 'software' dimension including norms and beliefs (Lucarelli and Manners, 2006: 1). A range of scholars have started to focus on the images, principles and values of the EU and the way in which they shape the discourse and practices of the EU's external relations (Lucarelli and Manners, 2006: 1). It is widely discussed if the EU can be conceived as a normative power and Manners' initial concept has become a target of extensive criticism. Yet, this article will not focus on the question whether the notion of the EU as a normative power is empirically accurate, but rather whether the self-construction of the EU as a normative power affects the EU's role in conflict transformation. In this context, it is more interesting to see to what extent the EU is regarded as setting standards rather than using military or other force (Diez and Pace, 2007: 4). The concept of normative power Europe, put forward by Ian Manners, implies the idea of a power that is able "to shape conceptions of the 'normal' in international relations" (Manners, 2002: 239). The normative power argument stems from the social constructivist tradition, as it focuses on the power of norms to influence actors' behaviour (Diez, 2005: 616). It is important to consider, that normative power can go alongside other forms of power, such as military or economic power (Manners, 2002; Diez 2005). Yet, the concept of normative power stands out through ideas and values and is neither military nor purely economic. Power in this case becomes an effect of norm leadership and persuasion (Diez and Pace, 2007: 1). Manners has identified five core norms which compose the normative basis of the EU: peace, liberty, democracy, rule of law and human rights (Manners, 2002: 242). The notion of the EU as a normative power is a discursive construction rather than an objective fact and this discursive construction leads to a form of identity of the EU against the image of others (Diez, 2005; Diez and Pace, 2007). The discourse of the EU as a normative power constructs a particular self of the EU, attempting to change others through the spread of certain norms (Diez, 2005: 614). Power in this context is an ambiguous concept. First of all, power can be understood as a property of a relationship. Second, power can also be seen as a property of the entity associated with the stronger position in the relationship. Hence the EU can both exert normative power and be a normative power (Diez and Pace, 2007: 4). To shape conceptions of the normal and change others through the spread of certain norms are relevant aspects when it comes to conflict transformation efforts.

A conflict is defined as the incompatibility or antagonism of subject positions with different identities or interests (Diez, 2003:1). In the case of Moldova, the situation is often described as a 'frozen' conflict. The term 'frozen conflict' implies a violent conflict over secession, with the secessionist party being militarily successful. Yet, the military outcome is neither recognized by the losing party nor by the international community. Thus the conflict remains unresolved (Nodia, 2004: 1). The term 'frozen' conflict is often criticized, as the situation cannot be considered fully frozen, since there can occur minor changes, either concerning agreements or smaller acts of violence (Nodia, 2004: 1). Discourses of identity are often involved in border conflicts and these discourses construct an identity of a particular group against the Other (Diez, 2003). To achieve lasting peace, the perceived incompatibility of the parties involved needs to be transformed. Conflict transformation is defined as the *transformation of subject positions from incompatibility/antagonism to compatibility/tolerance* (Diez, 2003: 1). Despite a possible persistence of the conflict, successful conflict transformation implies that "the way in which actors see themselves and relate to each other will have been transformed to such an extent that they will not resort to violent means, and ideally will change their identity so that conflict is fundamentally altered" (Diez and Pace, 2007: 3). Thus, the conflict does not necessarily have to be resolved, but the opposing identities have to be transformed into a state of mutual acceptance.

In the area of conflict settlement or conflict resolution, there are two different dimensions of a possible EU involvement. First of all, the EU can act directly as a third party mediator. Secondly, the EU's institutional context can provide a framework for conflict resolution in two ways - within the EU's institutional context, integration or association can be used as means to achieve conflict transformation. The EU with its multilevel system of governance could provide an institutional and symbolic framework, supporting the articulation of multiple identities (Coppieters et al., 2004; Diez, 2003; Miall, 2007). The institutional setting of the EU can serve as a model for resolving constitutional dilemmas related to secessionist conflicts (Diez and Pace, 2007; Coppieters et al., 2004). New institutional options and incentives offered by the EU could potentially lead to a redefinition of the interests and identities at the heart of the conflict.

Diez et al. (2006; 2008) have suggested four different pathways of EU impact on conflict transformation. The first possible pathway comprises a direct influence through the mechanisms of integration and association, also referred to as the carrot and stick model. Through its policy of conditionality the EU is able to put its norms and values at the centre of its relation with third parties. EU conditionality primarily follows a rationalist strategy of reinforcement by reward (Schimmelfennig and Sedelmeier, 2004: 661). Especially the prospect of membership, the EU's main carrot, can motivate the conflicting parties to change their policies. However, this path requires the desire of the conflict parties to become an EU member. The second path implies the idea that political actors within conflict parties can link their agendas with the EU. References to EU integration may justify desecuritising moves that otherwise may not be considered legitimate: "if EU membership or association is widely seen as an overarching goal, actors can use the legal and normative framework of the EU to substantiate their claims and delegitimise previously dominant positions" (Diez et al., 2008: 27). The third path focuses on strengthening the contact between the conflict parties, often through financial incentives. The aim of this path is to form social networks across conflicting parties and to stimulate identity change. Within the fourth path, it is suggested that the EU indirectly can contribute to a (re-) construction of identities through creating new discursive frameworks. The EU can serve as a model for multiple and overlapping identities.

Yet, these four pathways are closely connected to the EU's reputation among other parties and thus the self-construction of the EU as a normative power has to be taken into account when assessing the EU's influence on conflict transformation. If the normative power construction is shared by a conflict party, a positive effect can be expected, as it becomes more likely that the conflict party follows EU advice or takes integration experiences as an example (Diez and Pace, 2007: 4). If the construction is not shared by conflict parties, a negative effect can be expected, as the EU's role in international politics is challenged (Diez and Pace, 2007: 4).

The suggestions presented above pose some empirical difficulties. First of all, concerning the carrots and sticks offered by the EU, it is rather difficult to measure whether the conflict parties really are persuaded by EU norms or if they act driven by strategic interests. Sharing the construction could be used superficially to achieve more carrots, but this does not necessarily have to transform the underlying beliefs concerning the conflict. Hence, the direct involvement of the EU in form of carrots and sticks may only have short-term effects. Furthermore, when it comes to the impact of the EU as a normative power on conflict transformation and the normative power debate in general, the involvement of other actors is rarely taken into consideration. The relation between the EU and conflicting parties cannot be isolated from other states, such as the United States, or Russia, or other organisations, such as the UN or OSCE. The interests and positions of other third party mediators cannot be ignored when analysing the impact of the EU as a normative power on conflict transformation, and the international context has to be taken into account.

Since political conditionality enables the EU to put its norms and values at the centre of its relation with third parties, it can be seen as a primary modality of implementing normative power. In light of the 2004 enlargement, the EU Commission has developed a policy towards the EU's new neighbours - the European Neighbourhood Policy (ENP). The ENP was designed as a framework for privileged relationships with neighbouring countries, without offering the prospect of membership. It is stated on the EU's website that

> [w]ithin the ENP the EU offers our neighbours a privileged relationship, building upon a mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development) (European Commission, European Neighbourhood Policy).

Thus, essentially, the ENP is a process of norm diffusion in the European "near abroad" (Parmentier in Laïdi, 2008: 105). The EU's norm diffusion within the ENP is mainly put into practice through the strategy of conditionality (Gstöhl in Orbie and Tortell, 2009: 72). As stated in the EU Commission's European Neighbourhood Policy Strategy Paper: "The ENP will reinforce stability and security and contribute to efforts at conflict resolution" (ENP Policy Strategy Paper, 2004: 4). Yet, it has been argued that the ENP generally lacks a conflict resolution dimension (see Panainte, 2006; Popescu, 2005). While the ENP is a Commission-driven policy, crisis management falls under the scope of the Council (Popescu, 2005: 10). Hence the Commission's contribution to conflict resolution is restricted to conflict prevention and post-conflict rehabilitation (Popescu, 2005: 10). Considering the ENP, it can be expected that the EU is setting standards rather than using military or other forces, and that the first path of EU influence has an impact on conflict transformation in Moldova. This article focuses on the mechanisms, especially political conditionality, through which the EU tries to transform conflicts based on its normative power. It is rather the potential than the actual impact of EU conflict transformation that will be analysed, because a range of initiatives have been recently launched and results remain still to be seen.

EU-Moldova relations

In the early years of independence, Europe and the European Union played only a limited role in Moldova's domestic political discourse, because the new state was preoccupied with other issues, such as the Transnistrian conflict and the transition to democracy and a market-based economy (Vahl and Emerson, 2004: 21). It was first in the late 1990s that Moldova expressed its interest in EU integration (Vahl and Emerson, 2004: 19). Yet, the EU has been unwilling to consider Moldova as a potential membership candidate and the Transnistrian conflict did not constitute a salient problem for the EU either. "The Transnistrian conflict remained far down the list of concerns of the EU and its member states in the early 1990s, and direct EU involvement was never seriously considered" (Vahl and Emerson, 2004: 18).

The 1994 Partnership and Cooperation Agreement (PCA), the framework for EU-Moldovan relations which first entered into force in 1998, included mainly economic cooperation and did not comprise a political or a security dimension (Barbé and Kienzle, 2007; Vahl and Emerson, 2004). The PCA only encompassed vague commitments and a limited scope for the use of EU conditionality (Vahl and Emerson, 2004: 19). With the Eastern enlargement, bringing Moldova closer to the EU, the EU became more interested in Moldova and the Transnistrian conflict, as it could have a direct impact on the EU. It was first with the enlargement that the EU showed a greater willingness to enhance its engagement with Moldova (Vahl and Emerson, 2004: 20). The enlargement turned the Romania-Moldova border into an EU-Moldova border and the EU has "realized that conflict management in Transnistria may not only be in the interest of Moldova but affects mutually Moldovan and

European interests" (Barbé and Kienzle, 2007: 526). Thus, since the EU first got more involved when direct consequences for the EU became apparent, it could be argued that conflict transformation only becomes an important issue for the EU if strategic interests are involved.

Although Moldovan political leaders repeatedly applied a rhetoric of European integration, in practice Moldova did not introduce any reforms and the PCA commitments were not implemented either (Barbé and Kienzle, 2007: 22). After the 2001 parliamentary elections, analysts expected Moldova to further integrate into the Russian zone of influence, because the Moldovan Community Party (PCM), which had received more than 50 percent of the votes, outlined pro-Russia policy changes (Roper in Schmidtke and Yekelchyk, 2008: 80). Yet, a policy reorientation from Russia towards the EU could be observed and Moldova increased its diplomatic and economic relations with the EU. With this reorientation a steady increase in public support for EU membership has come along (Roper in Schmidtke and Yekelchyk, 2008: 80).

After the 2005 parliamentary elections, in which a PCM majority was returned, EU-Moldova relations have intensified and, in February 2005, the ENP Action Plan for increased economic and political cooperation was signed (Popescu, 2005; Roper in Schmidtke and Yekelchyk, 2008). On the official website of the Moldovan Government it is stated that "European integration is an irreversible strategic objective of the foreign and domestic policy of the Republic of Moldova" (Republic of Moldova, Official Website, European Integration). Thus, since EU membership or at least association is seen as an overarching goal by the Moldovan political authorities, it can be expected that political conditionality enables the EU to put its norms and values at the centre of its relation with Moldova and exert influence on conflict transformation.

EU conflict transformation in Moldova

As previously mentioned, the EU has expressed an increased interest in the Transnistrian conflict. The EU-Moldova ENP Action Plan foresees a “shared responsibility in conflict prevention and conflict resolution. One of the key objectives of this action plan will be to further support a viable solution to the Transnistria conflict” (ENP Action Plan: 1).

Yet, although further support for a viable solution of the Transnistrian conflict is one of the key objectives of the action plan, there are no concrete measures to be found and, apparently, references to a direct involvement of the EU are avoided. In the five-sided negotiations between Moldova, Transnistria, Russia Ukraine and the OSCE on the status of Transnistria the EU is only involved as an observer (Barbé and Kienzle, 2007: 532; see also Popescu, 2005). Even though the EU has appointed a Special Representative for Moldova in order to ensure a better coordination and consistency of external actions, it has been "very reluctant to use more forceful policy instruments at its disposal, in particular sanctions and crisis mechanisms" (Barbé and Kienzle, 2007: 532 f.). “This focus also results from the reality that direct crisis management is more controversial than prevention and post-conflict rehabilitation within the EU and with partners such as Russia [...] who are weary of greater EU involvement in conflicts where they have important interests” (Popescu, 2005: 10). Thus, as the EU is reluctant to use its CFSP dimension in the case of Moldova, the focus has to be shifted to conflict transformation from a normative power perspective.

The EU and its possible contribution to a solution of the Transnistrian conflict have become increasingly prominent in the Moldovan political discourse. In a speech to the Parliamentary Assembly of the Council of Europe in September 2003, President Voronin stated that:

> [w]e believe that moving towards the European Union and introducing European standards is also the main way of integrating our society, a method of uniting the country and resolving the persistent Transnistria problem (Session of the Parliamentary Assembly of the Council of Europe, 2003).

According to Voronin, it is only on the basis of European principles and the best traditions of European integrity that Moldova will be able to restore its state integrity and to overcome the serious consequences of nationalism and separatism (Session of the Parliamentary Assembly of the Council of Europe, 2003). Voronin refers to characteristic European principles, such as linguistic and cultural diversity, and the protection of minority rights. Joining the EU is not merely based on the geographical claim that Moldova belongs to Europe, but "our main premise is that our country's place is with those who share fundamental European values of human rights and freedoms and of proper social and national development" (Session of the Parliamentary Assembly of the Council of Europe, 2003). As suggested in the theoretical framework, the EU with its multilevel system of governance provides an institutional and symbolic framework, supporting the articulation of multiple identities. In an interview conducted by Euronews, Moldova's Prime Minister Vlad Filat also refers to Moldova's commitment to European values: "We aim to put ourselves in the unique sphere of the European Union's values" (Euronews, 2009). According to an EU-funded Opinion Polling and Research Project carried out across countries benefiting from the ENP, 83 percent of the interviewed opinion leaders and 81 percent of the general public found that the EU helps the promotion of democracy. Moreover, a strong majority of the interviewees think that the EU can help to bring peace and stability to the country and the region. The main finding of the survey – a baseline study of 103 opinion leaders, followed up by an opinion poll questioning 400 members of the general public, was a "strong affinity of values with the European Union" (ENPI Info, 2010). Core norms, such as democracy, peace and human rights, as identified by Manners, are referred to as being European values by Moldovan officials. The self-construction of the EU as a normative power is shared by Moldova, since European norms have become the main standard to strive for, and a positive effect of EU involvement can be expected, as it becomes more likely that the conflict party follows EU advice or takes integration experiences as an example. According to the political discourse in Moldova, in which the importance of 'European values' is stressed, EU integration can contribute to conflict transformation, as it will make Moldova more attractive and thereby catalyze reintegration. The Deputy Prime-minister of the Republic of Moldova, Victor Osipov, has recently presented Moldova's approach towards Transnistrian conflict settlement in a lecture held at the Center for Strategic and International Studies in Washington D.C. In his lecture, Osipov emphasised the importance of European integration for Moldova's reintegration:

> Achieving economic growth and welfare and cardinal democratic transformations through the European integration of Moldova will increase, without doubts, the attractiveness of the right bank for the left bank population and thus catalyze reintegration (Victor Osipov, 2010: 5).

The combination of European integration and state reintegration is also to be found in Moldova's foreign policy objectives, and in the priorities for medium term development recently published by the Moldovan government (see Republic of Moldova, European Integration; Government of Moldova, 2010). Thus, European integration is used as a strategy towards conflict resolution. This strategy arises from Moldova's weakness as a state and its lack of attractiveness. The ideological support for Transnistrian independence is mainly based on economic arguments, as there is no ethnic argument to the conflict (Popescu, 2006: 9). The Transnistrian economy benefits especially from trade, legal but mainly semi-legal and illicit (Popescu, 2006: 3). Transnistria's claims to have a stronger economy than Moldova does not reflect reality, but it is an instance of 'imagined economy' (Popescu, 2006) The belief that the "entity lives better, or would live better than the state it

wants to secede from, and not actual economic facts, mobilises populations in favour of secessionism" (Popescu, 2006: 10). In reality, Transnistria is slightly poorer than Moldova. However, Moldova does not offer an attractive alternative for the Transnistrian population to support reintegration. Following the first path of EU impact on conflict transformation, mechanisms of integration and association have set standards that, first of all, have transformed Moldova's policies, and, secondly, are expected to transform Transnistria too, as soon as results in form of a more attractive Moldova can be seen. However, this underlying assumption in Moldova's strategy towards conflict resolution is problematic, because it is not given that a more Europeanised Moldova will become an attractive target for Transnistria. Moldova shares cultural ties with Romania, while Transnistria is strongly influenced by Russia (Vahl and Emerson, 2004: 6). Thus the relation between the EU and conflicting parties and its impact cannot be isolated from other states, in this case Russia, and it could be argued that the EU's ability to shape conceptions of the normal and change others through the spread of certain norms is dependent on at least a certain degree of cultural affinity.

Practically, the spread of norms is implemented through political conditionality. The main priorities identified in the Action Plan cover sustained efforts towards a viable solution to the Transnistrian conflict; the strengthening of institution guaranteeing democracy and the rule of law; ensuring respect for the freedom of media and the freedom of expression; reinforcing administrative and judicial capacity, and cooperation on economic and regulatory issues aimed at poverty reduction, to strengthen private sector led growth and for fiscal sustainability (ENP Action Plan). Although Moldova has made substantive progress in most areas of the Action Plan, weaknesses with regard to the state of democracy, the rule of law, respect for human rights including media freedom and minority rights, the fight against corruption, and the issue of trafficking in human beings are repeatedly highlighted (ENPI, National Indicative Programme 2011-2013: 5). As stated in the Commission's National Indicative Programme for the Republic of Moldova (NIP), "[t]he last Country Evaluation and experience on the ground since 2007 suggest that Moldova has not always been an easy partner when it comes to technical and financial cooperation" (ENPI, National Indicative Programme, 2011-2013: 10).

Although EC assistance has helped to advance policy formulation in key Action Plan areas, there are hardly any tangible outcomes to be observed. The Commission has identified a disappointing private sector development, underdeveloped export potential to Europe, growing but modest Foreign Direct Investment, and the persistence of corruption (ENPI, National Indicative Programme, 2011-2013). According to the NIP, "Moldova made no or only limited progress in the effective implementation of key priorities under the EU-Moldova Action Plan" (ENPI, National Indicative Programme, 2011-2013: 6). Thus, the rhetoric of EU integration is not properly followed up in practice. The commitment of the Communist government to Europeanization remained largely declaratory (Vahl, 2005: 6). This can be explained by the fact that conditionality within the framework of the ENP does not include the prospect of membership - the EU's golden carrot. EU conditionality towards ENP countries is more permissive than it was in relations with the Central and Eastern European Countries (CEEC) that had the prospect of membership: "if the EU wants to reward partial progress in certain areas, the country may infer that lack of progress in other areas is acceptable" (Kelley, 2006: 36). Moreover, it could be argued that, in the absence of a membership perspective, adaptation costs might be too high and the incentives offered by the EU, on the other hand, not appealing enough for the Moldovan authorities to comply with EU conditions (see Schimmelfennig, 2005). Thus, although political conditionality is theoretically considered to be an effective tool of conflict transformation, in practice, in the case of Moldova it is rather ineffective. It has been argued that the Action Plan is too 'thick' on Moldova's commitments and too 'thin' on EU responsibilities (Popescu, 2005: 38). Additionally, the rewards offered by the ENP in

response to compliance with EU rules are long-term and vague (Panainte, 2006: 29). While the EU is able to put its norms and values at the centre of its relation with third parties through its policy of conditionality, it runs the risk of conjuring the image of a normative hegemon imposing its values and principles if it hardly takes any responsibilities. In order to make political conditionality more effective and to avoid the normative hegemon image, the EU needs to show a stronger commitment to Moldova. It should be recognized that EU-Moldova relations are increasingly intensified. During the Swedish Presidency in 2009, Moldova has been at the centre of EU attention. At the Cooperation Council between the EU and the Republic of Moldova, intentions to launch negotiations on an EU-Republic of Moldova Association Agreement in January 2010 have been confirmed (Swedish Presidency of the EU, se2009.eu). According to a Joint Statement of the EU and the Republic of Moldova, the two parties "reiterated their vision of the new agreement as an innovative and ambitious document going beyond the established framework of cooperation and opening a new stage in their relations, notably by enhancing political dialogue and deepening sectoral cooperation" (Joint Statement, EU-Republic of Moldova Cooperation Council, 2009).

The transformation of a country through political conditionality in the absence of a membership prospect may not be as effective as in the case of the CEECs that joined the EU in 2004. The process seems to be more protracted, showing hardly any immediate outcomes. Nevertheless, Moldova has made significant progress and with a new agreement going beyond the established framework of cooperation political conditionality may become more effective. Thus, from a long-term perspective, political conditionality can be considered to constitute a complement to other conflict transformation measures aimed at achieving a sustainable solution to the Transnistrian conflict. Yet, the first path of EU influence through political conditionality gives rise to doubts whether it really is the normative power construction that has an impact on conflict transformation. Although the normative construction of the EU is shared in Moldova's political discourse, it is difficult to measure whether this is due to true conviction. Norms may only be accepted in order to receive material benefits. Kwarciak (2006: 13) points out the danger of EU conditionality: "after a relatively short period of intensive socialization, having received all rewards available, the state may lack incentives to integrate itself more deeply into the normative framework of the community".

Furthermore, the importance of material benefits becomes also apparent when considering other actors being involved in Moldova, such as Russia. As soon as the EU does not offer appealing economic and political benefits anymore, there will always be the possibility that Moldova might return to a pro-Russian foreign policy (Roper in Schmidtke and Yekelchyk, 2008: 94). The opportunity of the EU to diffuse its norms and thereby have an effect upon conflict transformation in Moldova is limited by the influence and interests of other actors, in this case Russia. If there is cross-conditionality, implying that the target government has alternative sources offering benefits, EU conditionality becomes less effective (Schimmelfennig and Sedelmeier, 2004: 666). Russia has a significant influence on Moldova. In 2006, for example, Russia banned wines from Moldova. The wine industry is estimated to account for almost 25 per cent of Moldova's GDP, with 80 per cent of the wine exported to Russia (Kennedy, 2007). Observers criticized the ban as a political punishment for Moldova's intensifying relations with the West (see Chivers, 2006; Kennedy, 2007). Furthermore, Russia uses its energy resources to exert influence on Moldova (Panainte, 2006: 33). Although this does not really correspond to cross-conditionality, "Moldova finds itself entrapped in a highly dependent economic relationship with Russia" (Panainte, 2006: 33). Hence, material benefits trump norms and it becomes more difficult for the EU to diffuse its norms and contribute to the transformation of the country.

Nevertheless, although norm diffusion and transformation is a difficult and slow process in Moldova, it has been shown that the EU as a normative power does have an impact on the country. In the political discourse, the Europeanization of Moldova is considered to be the main way of resolving the Transnistrian problem. Thus, political conditionality is a useful approach towards durable conflict transformation. Yet, it needs to become more effective. Panainte (2006: 33) suggests that "the EU has to increasingly open its market to Moldova and update its institutional ties with the country, which will enhance the effectiveness of its policies and Moldova's Europeanization". Negotiations on a new agreement may be the first step towards this.

The EU's approach towards Transnistria

In the case of Transnistria, the EU hardly applies political conditionality, since "Russia is the only recognized paymaster for the secessionist region" (Panainte, 2006: 32 f.). Nevertheless, in February 2003, the Council adopted a Common Position concerning restrictive measures against the leadership of the Transnistrian region (see Council Common Position 2008). This travel ban on 17 separatist Transnistrian leaders was a response to their unwillingness to support efforts aimed at conflict settlement (Moldova Azi, 2010). In August 2004, the travel ban was extended to a number of people who were responsible for a campaign against the use of the Latin alphabet in Transnistrian schools (Government Offices of Sweden, sweden.gov.se, 2010). In 2009 and 2010 the sanctions were extended for additional 12 months each time. In response to the sanctions posed by the EU, the Transnistrian leadership started to prohibit the entry into the region for Moldovan leadership representatives (Moldova Azi, 2010). Furthermore, in March 2009, over ten EU and other officials were not allowed to enter Transnistria (Moldova Azi, 2010). In 2010, the Council agreed upon to suspend the sanctions for seven months in order to invigorate the settlement process (see sweden.gov.se, 2010; Moldova Azi, 2010). In late September 2010, the Council will evaluate the effects of the suspension and decide whether to continue the sanctions or cancel them (Moldova Azi, 2010). In light of the travel ban, there is a growing scepticism about the EU in the Transnistrian political discourse (Emerson and Vahl, 2004: 24). The Transnistrian Minister of Security controls a range of social organisations and newspapers that is dominated by a discourse of the Moldovan threat (Lynch, 2001:11). "The Ministry of Security conflates an imaginary Moldovan threat with the so-called aggressive Western alliance and the revanchist fascist regime in Romania" (Lynch, 2001:11). Hence the travel ban as an attempt to apply conditionality to Transnistria reinforces the incompatibility of subject positions rather than contributes to their transformation. However, as Popescu argues, sanctions are necessary in order to break the deadlock and make the status quo unattractive. At the same time, incentives are crucial to create a basis for a sustainable solution (Popescu, 2005: 41). As stated in the NIP, "[d]epending on developments during the programming period regarding the settlement of the Transnistria issue, the EC will provide specific assistance, within the overall resources available, for all aspects of conflict settlement and consolidation of the results" (NIP 2011-2013: 12).

In 2009, the EU launched, on a pilot basis, confidence-building projects involving CSOs from both conflict sides (NIP 2011-2013: 11). Funds are allocated to small-scale projects bringing together right-bank and left-bank implementers around shared objectives. These projects aim to increase the access of Transnistrian communities to basic social and economic services, as well as to objective and diversified sources of information (United Nations Development Programme, Republic of Moldova). According to local experts, the Europeanization of business rules, norms and standards in the Transnistrian zone is the most suitable way for reconciliation (Center for Strategic Studies and Reform, 2006). The EU has taken up this approach and confidence-building projects are also aimed at the development of small and medium-sized enterprises in the Transnistrian region. At the

opening ceremony of a Business school in Bender, the Head of the EU Delegation, Ambassador Dirk Schuebel, said that the EU attaches great importance to promote fruitful dialogue and cooperation between Moldova and Transnistria. The EU is not only involved on a political stage, but also at a technical level with very concrete initiatives (EU Co-operation News, November 2010). 15 per cent of the NIP budget is allocated to conflict resolution/confidence-building measures. However, rather than identifying these measures as a priority in themselves, it is suggested in the NIP that they are treated under the other priorities, such as good governance, rule of law, social, human and sustainable development. Funds are allocated to actions under sectoral or capacity-building priorities specifically for the inclusion of Tiraspol de-facto authorities (NIP 2011-2013). These initiatives are recent and their efficiency remains to be seen. Nevertheless, these measures show that the EU's conflict resolution approach in Transnistria is based on setting standards rather than using military force. With its carrot and stick strategy, putting norms at the centre of the relationship with other parties, the EU aims at transforming incompatible subject positions through confidence-building measures.

It has been claimed that the EU could apply a more effective conditionality to Transnistria, since the EU is an important trade partner for Transnistria (Panainte, 2006: 33). The self-proclaimed government in Tiraspol relies heavily on export-oriented production (Vahl, 2005: 3). However, some of the big and older Member States of the EU are not willing to challenge Russia (Barbé and Kienzle, 2007: 534). As Socor has described the EU's style of progress in Transnistria: "too little, very late, inhibited by a Russia-first approach, and with a mandate that seems likely to be restricted by Franco-German objections" (Soco, 2005). This leads us back to one of the main points of criticism in the normative power Europe debate, put forward by Hyde-Price, namely that Member States only allow the EU to act normatively as long as it does not concern their core national interests (Hyde-Price, 2006). Vahl also stresses the willingness of the EU and, especially of some of the large Member States, to sacrifice basic European values in order to facilitate a rapprochement with Russia (Vahl, 2005: 7). Thus, in the case of Transnistria, the EU undermines its own self-construction as a normative power and does not use its potential influence to transform the subject positions. Referring back to Hyde-Price, the structural distribution of power is neglected in the normative power argument and thus the social constructivist approach cannot fully account for the EU's role in conflict transformation.

However, although the EU's involvement in Transnistria may not be so obvious at first glance, it has to be taken into account that normative power instruments in the context of conflict transformation are less bold than military measures. Subject transformation, according to certain norms and values, and confidence-building are a slow processes that require time. The outcome remains still to be seen.

Conclusion

To sum up, due to the EU's institutional setting, the EU is not directly involved in the Transnistrian conflict settlement, because the ENP, the EU's framework for the relations with Moldova put forth by the Commission, lacks a conflict resolution dimension. However, the main hypothesis of this article was that the EU can exert influence on conflict transformation with its normative power. The normative construction of the EU has been adopted by Moldovan political leaders and can be found in Moldova's political discourse. References to further EU integration and the EU's principles and values are even used as a strategy towards Transnistrian conflict settlement. The aim is to make Moldova more attractive and thereby to stimulate a reintegration of the country in order to achieve a sustainable solution. Yet, the rhetoric of EU integration is not properly followed up in practice. Despite some remarkable progress that Moldova has made, there are still considerable weaknesses to be observed when it comes to the implementation of the

Action Plan. This gap between rhetoric and practice shows that political conditionality, the EU's main tool for norm diffusion, is less effective than expected, especially without the prospect of EU membership. Furthermore, considering the conceptualization of the normative power argument, the EU is often presented as isolated from the international context. However, the EU is not the only actor involved in Moldova and, as shown in this article, Russia's influence on Moldova impedes the EU's norm diffusion. In Transnistria the EU does not use its full potential, as it hardly applies political conditionality, even though trade relations with Transnistria provide an opportunity to exert influence. This is, once again, due to Russia's prevalence in the region. Some of the larger member states prioritize their relationship towards Russia over EU principles and values and, thereby, undermine the EU's normative self-construction. Nevertheless, the EU supports important confidence-building measures that aim at bringing together actors from both conflict parties.

As shown in the analysis, there are a number of different factors that exacerbate the norm diffusion and make it a long process. It is not even given that Transnistria will be approaching Moldova, once it has become more attractive. Nevertheless, this is not to discard the transformative power of the EU, as it still has some important value. The EU is setting standards rather than using military or other force. If the EU used its full potential to contribute to the transformation of Moldova and Transnistria, and the first path of EU influence was combined with more active short-term measures directed towards conflict resolution, the EU might become an important actor when it comes to durable conflict transformation in Moldova. Yet, this requires a degree of reflexivity to avoid the normative hegemon image, as well as a comprehensive and consistent position on the country.

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Standard Cost Model: Three Different Paths and their Common Problems

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Abstract

Red tape is not desirable as it impedes business growth. Relief from the administrative burdens that businesses face due to legislation can benefit the whole economy, especially at times of recession. However, recent governmental initiatives aimed at reducing administrative burdens have encountered some success, but also failures. This article compares three national initiatives – in the Netherlands, UK and Italy - aimed at cutting red tape by using the Standard Cost Model. Findings highlight the factors affecting the outcomes of measurement and reduction plans and ways to improve the Standard Cost Model methodology.

Keywords

Administrative burdens; Red tape; Standard Cost Model

IN RECENT YEARS, THERE HAS BEEN AN INCREASING NUMBER OF GOVERNMENT initiatives dedicated to reducing the administrative burdens placed on businesses by legislation (Coursey and Pandey, 2007; Pandey and Moynihan, 2006). These initiatives could potentially bring about enormous benefits for the economy. For instance, it has been estimated that administrative burdens in the UK amount to £ 14 billion, negatively affecting about 1.4 per cent of the national GDP (World Bank, 2005). At the same time, projects aimed at measuring and then reducing red tape can be highly demanding both in terms of public administration resources and the amount of data required from business and government departments (Bozeman, 1993 and 2000). Recent governmental initiatives aimed at reducing the administrative costs of regulation have encountered some success but also failures. The lessons from these initiatives on reducing the administrative costs of regulation are particularly interesting when considering the expected rise in financial regulation (Baldwin and Black, 2008) and environmental regulation (Rothstein et al., 2006) over the next few years. It is therefore important to examine different national practices in order to understand the successes and failures of governments' attempts to dispose of red tape.

This article examines recent Dutch, British and Italian experiences in measuring and reducing the administrative burdens imposed on businesses by existing legislation. The Netherlands, the UK and Italy have been chosen because of their significantly different approaches. The Netherlands was the first European country to systematically measure quantitatively administrative burdens on business by implementing the Standard Cost Model (SCM), a method to quantitatively appraise the administrative burdens on businesses, breaking down regulation into information obligations. It was also the first country to set a goal of 25 per cent reduction of the overall administrative placed on businesses by legislation. The British government adopted the Dutch model, carrying out a one-off measurement of all administrative burdens produced by UK and EU legislation to

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the year 2006. Italy embraced a completely different approach, deciding to gradually measure the red tape produced by government legislation sector by sector.

The article begins by introducing the SCM (Section 2). It describes the Dutch (Section 3), British (Section 4) and Italian (Section 5) experiences with measuring and reducing administrative burdens on business. It subsequently qualitatively compares the institutional contexts and applications of the SCM practices of these three countries (Section 6). The article concludes by providing recommendations on ways to improve the SCM methodology and reflecting on the future of this instrument (Section 7).

The Standard Cost Model

Measuring administrative costs

Every piece of legislation imposes different costs on businesses, the state, private individuals and households (Booth, 1997; Pandey and Scott, 2002). The SCM specifically sets out to measure and eliminate parts of legislation which impose excessive administrative costs on business. It has been applied by different public administrations to determine the administrative burdens related to existing and new legislation. It can be used to measure a single law, selected areas of legislation or to perform a baseline measurement of all legislation in a country. As a preliminary note, it should be noted that the applications of the SCM as implemented by the Governments examined in this article are simplifued versions of the original model as designed by Nijsen and Vellinga (2002). The main aim of the model is to ensure that existing regulations and new regulations do not impose excessive administrative burdens to businesses. The focus is not on the policy objectives of each regulation: the measurement focuses only on the administrative activities that must be undertaken in order to comply with regulation and not whether the regulation itself is reasonable or not.

The SCM focuses on the administrative compliance burdens that legislation imposes on businesses. It measures specifically those administrative activities businesses only conduct because regulation requires it. It does not consider direct financial costs, i.e. the direct obligation to transfer a sum of money to the Government or the competent authority, including administrative charges, taxes, etc.; capital costs, i.e. the total price spent in purchasing depreciable property, including buildings, equipment, etc.; and efficiency or indirect costs, i.e. lost innovation for time spent in non productive activities.

Methodology

The SCM is an activity-based measurement of the businesses' administrative burdens, breaking down regulation into a range of manageable components, named information obligations, that can be measured. Information obligations are the units of measurement of the model. They can be defined as the obligations arising from regulation to provide information and data to the public sector. In other words, an information obligation is a duty to procure or prepare information and subsequently make it available to either a public authority or a third party. It is an obligation businesses cannot decline without coming into conflict with the law (IWGAD, 2004). An information obligation does not necessarily mean that information has to be transferred to the public authority, but may include a duty to have information available for inspection or supply on request. A regulation may contain many information obligations. Typical examples of information obligations are: drawing up and registering annual accounts, applying for permits, general obligations to retain business records, provision of information on sick employees to

working conditions services, annual statement of employee insurance to social security body (BRE, 2005).

For each information obligation price and quantity are calculated as follows. Price (Π) consists of a tariff (W), i.e. wage costs (plus overhead, non-wage costs) for activities done internally or hourly cost for external service providers and time (T), the amount of time required to complete the activity. Wage data is normally taken from statistical sources. For external costs a national average figure is used. Quantity (Q) comprises of the size of the population (P) of businesses affected and the frequency (Φ) that the activity must be completed each year.

The basic SCM formula provides the activity costs related to a single information obligation:

$$\text{Activity Cost}_{(IO)} = \Pi \times Q = (W \times T) \times (P \times \Phi)$$

Activity costs can be defined as the costs of the administrative activities that businesses are required to conduct in order to comply with the information obligations that are imposed through regulation. Each piece of legislation may impose several information obligations. The time and money that an entrepreneur spends drawing up and publishing an annual statement with the use of the services of an accountant, hired in via an accountants' office results in the external price. The time the entrepreneur spends correlating and passing on the information that the accountant needs is the internal price. If no external consultancy of professional accountant advice is needed the external price will be nil ($\pi_{external} = 0$) and the administrative activity will be attributed internally ($\Pi_{total} = \pi_{internal}$).

SCM applications

The SCM was initially developed in the Netherlands and has been subsequently applied extensively in most EU countries. The international SCM framework is set out in the Administrative Burden declaration and the International SCM Manual (IWGAD, 2004). It is to date the most widely applied methodology for measuring administrative costs (OECD, 2004). In 2003, a network of European countries was formed to consistently apply the Standard Cost Model.

The SCM can be applied both *ex ante* and *ex post*. The anticipated administrative consequences of a draft law, draft executive order or other initiative can be contained in the Regulatory Impact Assessment. Similarly, the results from an *ex-ante* measurement may, for example, form part of the overall consequence assessment of a bill's economic and administrative effects on the public sector, businesses, citizens, environment etc. The *ex-post* application of the SCM consists of the measurement of the administrative costs that arise after a regulation has come into effect and has been able to have an impact on business. In this case the SCM entails the factual administrative consequences for the businesses in respect of an implemented law, statutory instrument or other initiative. An *ex-post* measurement is carried out when an initial measurement is to be made of the overall administrative costs in an area of regulation, known as a baseline measurement (BRE, 2005). A baseline measurement, as carried out in the UK, is a statement of the overall

administrative costs that businesses have in following a current set of regulations at a given point in time.

The Netherlands: the international blue-print for cutting red tape

The institutional context

The Netherlands was the first European country to systematically measure the red tape produced by its public administrations. It is the country where the SCM was invented (Nijsen and Vellinga, 2002) and the first government to set a goal of 25 per cent reduction of the overall administrative costs (IPAL, 2004).

The practice of measuring and reducing administrative burdens imposed on business by government legislation was developed in the Netherlands in two stages.

In the mid-nineties, the Dutch government identified the need to measure and reduce the administrative burdens of businesses. At that time economic growth in the Netherlands was modest and unemployment rates were high. The Dutch economy was suffering from business sluggishness and rigidity in responding to new developments. The regulatory framework was considered to be an obstacle to the starting up of new businesses, competition, investment and innovation. In an OECD (1999) report, Dutch regulation was accused of slowing down the process of starting business, and thus reducing Dutch competitiveness.

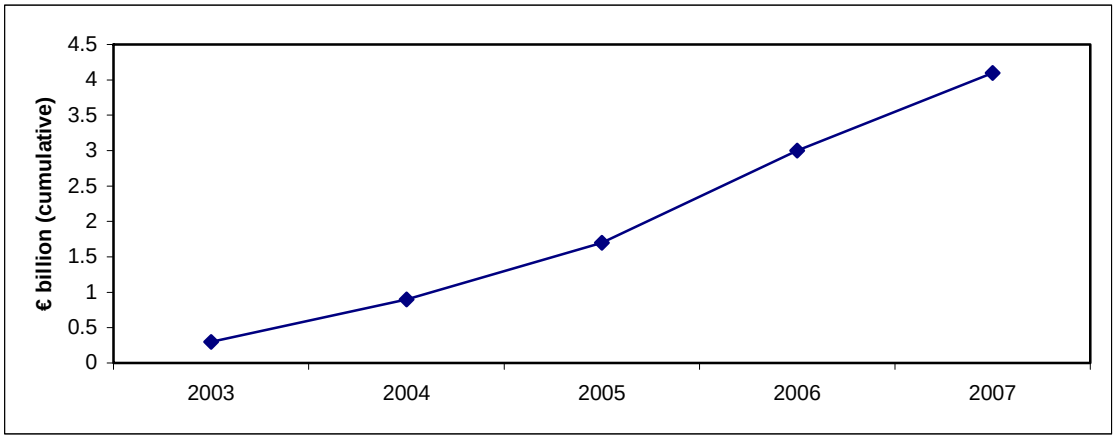
In response to the need for enhanced entrepreneurship, competition and less bureaucracy, in the year 2000 the Dutch government decided to consistently quantify administrative burdens on businesses. A high-level committee composed of industry stakeholders and under the leadership of the former CEO of Royal Shell Oil convinced the government to systematically measure the administrative burdens of regulation (Doorn and Prins, 2005). In the same year a government decree established the Dutch Advisory Board on Administrative Burdens (Actal). The creation of Actal was also a suggestion by the committee and implied an institutionalisation of the administrative burdens project. Actal consists of a government-appointed advisory body that acts as a watchdog and facilitator for the Dutch government, giving backing to the government's own objective of reducing administrative burdens on businesses. Actal independently reviews legislative proposals, appraises ministerial plans to reduce administrative burdens related to existing legislation and advises the government concerning its overall strategy to structurally achieve lower administrative burdens.

As the result of the first two years of work by Actal, in 2002 the total reduction of administrative burdens was estimated at € 1 billion - or 6 to 7 per cent less than the 1994 level (Minez, 2004). Compared to the extensive horizontal measurement efforts on large legislative areas, these total figures were rather modest. At the same time, administrative burdens increased due to new legislation (IPAL, 2005). The economic situation in the Netherlands was deteriorating: economic growth had almost come to a halt, unemployment rates were growing rapidly and after years of surpluses the state budget was in a deficit (OECD, 2003). Businesses again made an appeal to government for a firm reduction of their administrative burdens (Stevens, 2009). Hence, the reduction of administrative burdens for businesses became one of main priorities in the government's agenda.

Application of the Standard Cost Model

In the year 2006, the Cabinet presented a package of reduction measures of almost €3 billion gross (World Bank, 2006). In 2007 the package was expanded. The total reduction of administrative burdens at the end of the Cabinet period tops out at over € 4 billion net (see Figure 1).

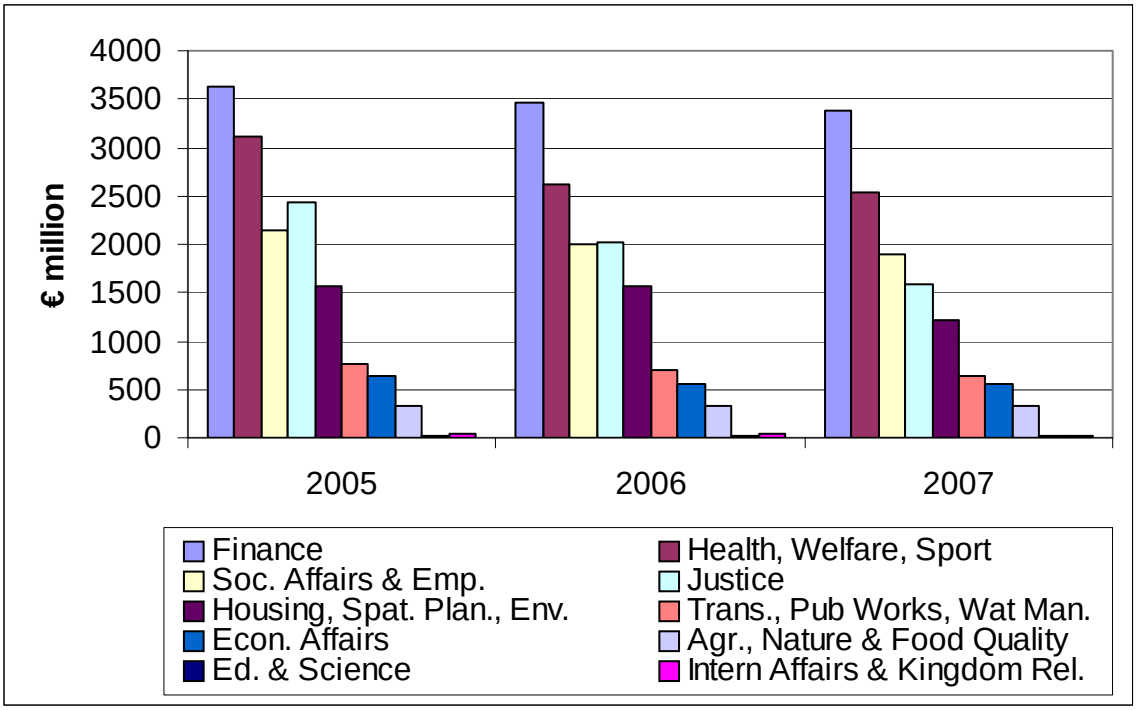
Figure 1: Net reduction by year in € billion



Source: Sevat, 2007

The application of the SCM in the Netherlands was not, however, trouble-free. It required a significant resource effort by public administrations. It involved work both internally - coordinating unit and government departments- and externally -consultants contracted for interviewing stakeholders and quantifying available data. However, the Dutch government's emphasis on the SCM and reduction of administrative burdens is justified by its hope to increase competition and give companies more scope for their business activities. Reducing administrative compliance costs means eliminating non-productive expenditures for business (den Butter and Hudson, 2009). Intuitively, money spent in fulfilling administrative tasks cannot be re-invested in profitable activities. At the macroeconomic level, diminishing administrative burdens would cause the GDP to increase in the medium term, because the time and money saved would be redeployed in more productive activities (Dutch Cabinet, 2005). According to Dutch figures (see Figure 2), the SCM does pass a cost-benefit analysis test, because the costs of carrying out the exercise are justified by the economic benefits of having reduced administrative burdens.

Figure 2: Administrative burdens imposed on business by each Ministry



Source: IPAL, 2007

The Dutch lesson

The Dutch program to measure and reduce administrative burdens originates from a specific need in the economy to release businesses from excessive regulatory burdens. The Netherlands attempted for years to damp down the expansion of red tape. In practice this meant an extended measurement and reduction exercise which is still ongoing. Commitment to this plan was shared by political actors reacting to a clear societal need and business stakeholders moved by the aspiration to improve the level of competitiveness of Dutch markets. The input by the latter is a key factor for the success of the Dutch plan to reduce administrative burdens. Involvement and participation of industry stakeholders in the early days of a regulatory reform, as it occurred in the Netherlands, are crucial. On the one hand, industry becomes aware of the programme to reduce administrative burdens and appreciates the technical effort carried out by the public administration; on the other hand, it actively participates in the measurement exercise. The SCM requires a high level of commitment by individual companies because 'normally efficient businesses' are required to provide data as to the money and time spent in information obligations (IWGAB, 2004).

The UK: much ado about £ 14 billion

The institutional context

The UK provides one of the most entrepreneurial friendly environments in the world in terms of legislation, taxation and regulation (Small Business Services, 2004). Yet existing legislation weighs on both government expenditures and the private sector. The UK also spends from 8 to 11 percent of total government spending to administer business

regulations (World Bank, 2005). Red tape reduction of 15 percent would result in a 1.2 to 1.8 percent reduction in total government expenditures. Government calculations after the one-off SCM measurement show that the administrative burdens faced by businesses due to government and EU legislation amount to approximately £ 14 billion.

In the history of British public administration, on several occasions discussions on ways to reduce red tape have been high in the political agenda. In the 1980s, Thatcher governments emphasised the importance of reducing administrative and legislative burdens. In 1986 Procedural guidelines appeared from the Enterprise and Deregulation Unit calling for departments to specify basis and objectives of proposed regulations, their positive and negative impacts on businesses, the regulatory alternatives, and their compliance costs of. The Deregulation Initiative involved both reporting and monitoring requirements. Departments had to set up internal Deregulation Units, each reporting to a Minister, which supervised regular 'forward looks' (early warning of proposed Regulations) and reviews (DTI, 1985).

In 1997 the UK Government started introducing "better regulation" initiatives aimed at reducing unnecessary and burdensome regulation. A Better Regulation Task Force was set up with the mandate of leading on such initiatives. Eight years later, The Better Regulation Task Force recommended that the government should measure and reduce the administrative burdens of existing legislation (BRTF, 2005). The Better Regulation Executive, at the time based in the Cabinet Office, coordinated the one-year exercise between 2005 and 2006.

The first body to be officially named after "better regulation" was the Better Regulation Task Force (BRTF), which was set up in 1997 and based in the Cabinet Office. The BRTF was responsible for taking the "better regulation" initiative forward and was given the express task of considering the needs of "small businesses and ordinary people". The BRTF (1998) set out the five principles of better regulation and the Compliance Cost Assessment procedure was replaced by a more developed Regulatory Impact Assessment process. In 1999, the Better Regulation Unit had been renamed the Regulatory Impact Unit at the Cabinet Office. Furthermore, each department was embedded with Regulatory Reform Ministers. In 2001, the Regulatory Reform Act guaranteed legislative support for improved regulation. Since the pilot year 2003, the Government has an agreement with the National Audit Office (NAO) to carry out an annual review of departments' RIAs. Throughout the years the NAO noticed a slight improvement in RIA practice, although quality in some cases does not reach high standards (NAO, 2007). In 2004, it was announced that the Prime Minister promised to reduce the "red tape burden" by chairing the Panel for Regulatory Accountability and the BRTF launched investigations into unnecessary regulation and 'regulatory creep'.

In 2005, the focus of Better Regulation in the UK, similarly to what happened in the EU changed from improving regulation to reducing regulatory burdens. In the same year two important reports were published: 'Regulation – Less is More' (BRTF, 2005) and the Hampton Review on Reducing Administrative Burden (HMT, 2005). The former recommended to reduce administrative burdens on business, and, suggested to adapt the Standard Cost Model in order to reduce administrative costs to businesses. The latter recommended reducing the number of regulators and that these should increase the use of risk assessments. The Hampton recommendations were endorsed by the Government 2005 budget speech, and government departments had to establish new targets for reducing the information burdens they impose on businesses. It was at that time, under strong political pressure, that the SCM project took place.

Application of the Standard Cost Model

The plan to implement the SCM involved seventeen departments which were accountable for providing information about the legislation generating excessive information obligations to business. The quantitative measurement involved 8500 interviews with businesses to understand how much time they were spending in administrative activities. Estimates of the time taken for each of the 20,000 information obligations measured were obtained for a 'normally efficient' business. In addition, 200 expert panels assessed those areas of regulation which are either particularly complex, infrequently applied, or which affect only a small number of organisations.

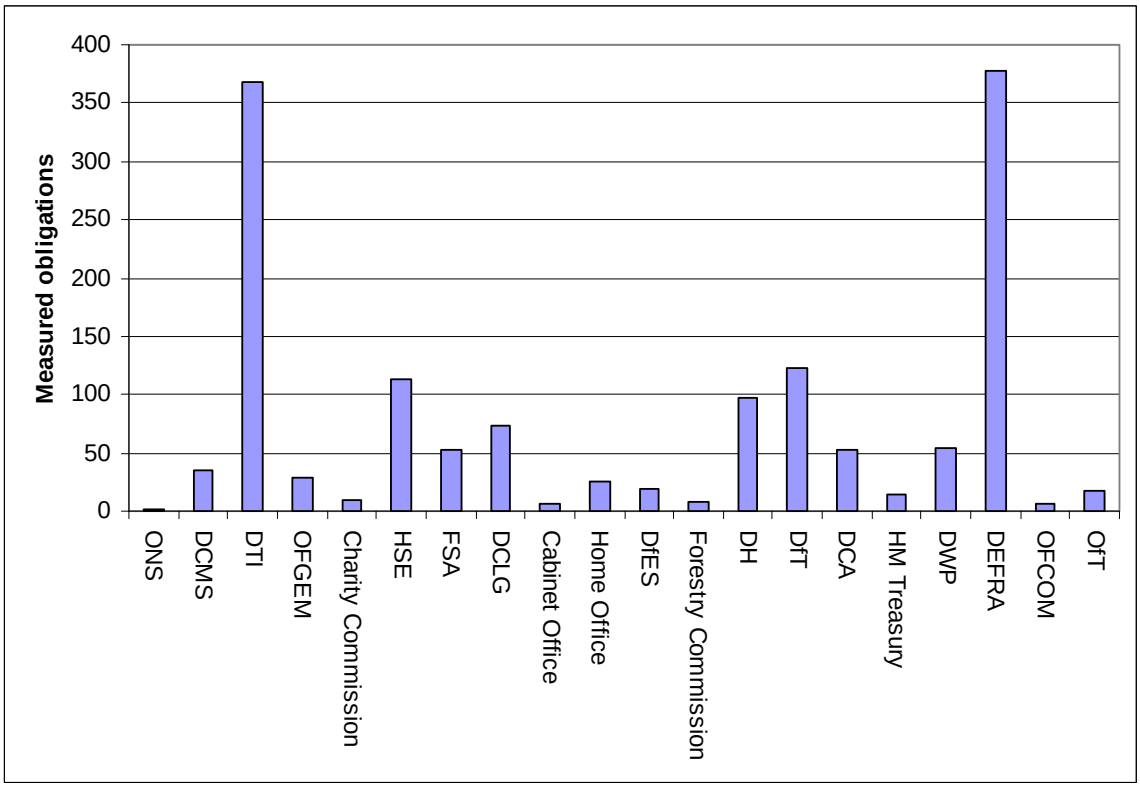
After completing the measurement exercise, individual departments published Simplification Plans. The total administrative burden was calculated to be approximately £ 14 billion, equivalent to around 1.4 percent of GDP. The Financial Services Authority and HM Revenue and Customs conducted separate, parallel exercises to measure the administrative burdens imposed by the rules and legislation for which they are responsible. The administrative burden was calculated to be approximately £ 855 million and £ 5 billion respectively.

The detailed measures in the Simplification Plans include reforms to the Companies Act which will deliver estimated administrative savings of almost £ 150 million, initiatives to deliver a simpler, faster and more efficient planning system which will save £ 124 million and measures to make compliance with health and safety requirements easier, saving over £ 300 million.

Altogether, the seventeen government departments which published Simplification Plans in 2006 launched five hundred initiatives to cut red tape. The Plans are expected to save businesses and the third sector over £ 2 billion. The government's aim is to cut administrative burdens by 25 per cent by 2010.

Indeed, a great volume of information was produced thanks to the SCM exercise. The UK measurement is particularly ambitious because it covers all business-related regulations with information obligations and data requirements. This means that all economic, social and environmental regulation produced by central government is within the scope of this implementation. The most substantial sources of information obligations were the Department of Trade and Industry and the Department of Environment Food and Rural Affairs (see Figure 3). This is not surprising if one considers that the compliance costs of environmental legislation are often considered the highest by businesses (Stirling, 1997).

Figure 3: Number of information obligations by Department-UK government



The ambitious measurement objectives were faced with some obstacles. The measurement exercise proved extremely difficult due to the lack of information and reliable data to rely on at the beginning of the exercise: departments did not know how many businesses they regulated or how much regulation they had produced to date. Given these premises, the creation of the baseline for information obligations was far from being scientifically exact.

Also, the measurement was heavily compromised by the inclusion of those costs which are not administrative burdens. The SCM is designed to measure only those administrative burdens that businesses face in order to comply with regulation. This excludes those administrative activities that businesses may maintain even if the regulations were removed. However, the measurement included also the costs of activities which business would be likely to carry out even without regulation. This problem was identified late in the measurement, and the data collected prior to this was affected by such 'business as usual' costs. To reduce the impact of 'business as usual' costs on the overall measurement, an *ad hoc* methodology was introduced. The *ad hoc* methodology addressed a reduced sample, provided that instead of reviewing the 20,000 information obligations individually, weights were attributed to some 300 information obligations.

The British lesson

In the UK there has been a strong political drive to reduce the administrative burdens on business. Former Prime Minister, Tony Blair, said in 2006:

> The exercise to produce these simplification plans has been extensive and far-reaching. It demonstrates the commitment across government and the regulators to reduce the administrative burden of regulation to the benefit of business, our public

services and the voluntary sector. These are thorough and detailed action plans that will deliver year-on-year reductions in the administrative burden of regulation.

One important reason for spending substantial resources on reducing red tape is the international reputation of a supposedly business-friendly environment in the UK and the European leadership on 'better regulation' initiatives. The British plan emphasised the potential high economic return of measuring and reducing administrative burdens. The 2005 report by the Better Regulation Task Force had already suggested that adopting the SCM in the UK might bring about "an outstanding return on investment for the UK - potentially an estimated £16 billion increase in GDP for an investment of some £ 35 million" (BRTF, 2005: 1).

Italy: making a virtue out of necessity

Institutional context

Despite being a country characterised by a high level of bureaucratisation and regulatory boundaries on business action, in Italy the political emphasis on administrative burdens and red tape has never been significantly high (Radaelli and Silva, 1998). The Italian regulatory system has been described as imposing disproportionate administrative burdens on the private sector (OECD, 2007). The structural problems of the Italian red tape slow down Italian business, which mainly consists of small and medium enterprises (OECD, 2005). The 4.5 million Italian Small and Medium Enterprises suffer particularly from this situation, as their reduced capacity is not apt to face the excessive amount of administrative burdens (Coco, 2007). Hence, a country with fragmented firms' structure therefore stands to gain potentially much more from cost reduction than one with a concentrated structure. The Italian SCM program focused only on Small and Medium Enterprises. All Italian estimates have been carried out only on single-located Small-Medium Enterprises and are based on two separate surveys for small and medium firms.

Between 2005 and 2006, the Italian government carried out a pilot measurement on 19 cases in different legislative areas, ranging from VAT to road freight transport. Given the limited expandability of the results of the pilot study, in 2006 the industry confederation convinced the government to initiate a joint initiative with the ambitious aim of reducing administrative costs for forthcoming legislation. The government's attempt to limit administrative burdens of new legislation gained political momentum between 2006 and 2007 and was backed by several ministries. Individual Ministers were bounded by an internal directive to provide information on the administrative burdens of their legislation and to integrate individual initiatives on cutting red tape with joint schemes.

The main joint action plan to reduce administrative burdens in Italy was defined under the Action Plan launched in 2007. The plan to measure and then reduce administrative burdens basically consists of adopting the instructions provided by the European Council and by the European Commission in the Communication on administrative costs (EC, 2006). The measurement aims to reduce those administrative burdens associated with information obligations -e.g. filling in forms, keeping accounting books, etc- which weigh on the private sector's economic activities. According to the European Council, the reduction of administrative burdens by 25 per cent by 2012 should consist in information obligations only. The Italian government intends to consider not only information obligations as the basis for the measurement, but also other administrative burdens. In this more holistic definition of administrative burdens fall those administrative costs related to control systems and the inefficient use of human resources.

Application of the Standard Cost Model

The Italian measurement of administrative burdens has significant points of similarity with the Dutch SCM methodology -also used in the UK. However, the focus of the Italian SCM is on assessing the net costs of administrative obligations imposed on businesses. The aim is to assess *ex ante* the administrative costs imposed by a new piece of legislation in relation to the administrative costs imposed by existing legislation.

Net costs = Costs introduced by legislation - Costs suppressed by legislation.

With the Net Administrative Cost Model, as with the SCM, an administrative action required by law, but corresponding to what an entity would normally do in the absence of any legal obligation, is not regarded as an administrative obligation. For example, a large part of accounting and auditing legislation corresponds to normal business practice. The Italian Net Administrative Cost Model differs from UK and Netherlands experiences in its focus on proposals imposing major administrative obligations and particularly burdensome acts. While the British and Dutch approaches measure and decrease administrative burdens horizontally, i.e. across a wide range of government departments and sectors; the Italian model acts vertically by focusing on fewer selected legislative areas. The reasons for following this approach originate from the fragmented structure of the Italian economy which called for a measurement centre on Small and Medium Enterprises.

The decision to measure the administrative burdens of the most onerous actions may, on paper, reduce the measurement effort. The Italian Action Plan, for instance, identifies those policy areas which will undergo the measurement. Areas for the year 2008 measurement involved environmental regulation, fire prevention, landscape and cultural goods, work safety and prevention. The overall administrative costs of legislation on Small and Medium Enterprises amounted to about € 14 billion. Should 25 per cent of these administrative burdens be eliminated by 2012, the benefit would amount to € 3.5 billion.

Table 1: Estimated total administrative burdens for the 4.5 million Italian SMEs, 0-249 employees

Legislative areas	Total yearly cost
Environment	€ 2.059.189.473
Fire prevention	€ 1.409.514.567
Landscape and cultural goods	€ 621.400.026
Work safety	€ 6.910.644.075
Social security and prevention	€ 3.029.542.069
Total cost	**€ 14.030.290.210**

Source: MOA, 2008

Cavallo et al. (2009) highlight the methodological variations of the SCM as implemented in the Italian context. They note that the different pieces of legislation on business coming out the different levels of Government (EU, national, regional and municipal) affect the way of valuing red tape.

The Italian measurement of administrative burdens presented two main problems. First, a wide variety of estimates of the burden associated with the same administrative activity suggests that the measurement might not be very precise. Second, problems arose in the sample selection process. Participation in the survey was difficult to secure in particular for micro firms- those with four or fewer employers. Small firms tend to externalise most administrative burdens to, for example, business associations.

The Italian lesson

The early attempts and pilot studies as well as the existing literature show that removing legislation or pieces of legislation is even more difficult than introducing new legislation. Italy has the potential to gain significantly from the reduction of administrative burdens. This might *prima facie* seem a paradox when considering that the Italian design to reduce administrative costs is less ambitious than the British and Dutch ones. However, by carrying out measurement activities with fewer resources, but also less hurry, more time and more attention to reducing only where it is really needed, Italy might diminish red tape more effectively than other countries. Much of the input for reducing administrative burdens derives from the EU plan (EC, 2006), rather than national initiative.

Comparison of institutional contexts and applications of the Standard Cost Model

The three national experiences on measuring administrative burdens examined in this article vary substantially among themselves. Seven concluding remarks are drawn below on the basis of a comparison of the institutional contexts, applications of the SCM (Table 2) and main lessons learned (Table 3) in the three countries. First, strong political emphasis is a *sine qua non* condition for major government plans to measure and reduce administrative burdens. In the Netherlands, the highest peaks of political consensus were reached at times of grave economic regression. Hence, society as a whole understood the need for the de-regulative interventions associated with red tape reduction. In the UK, strong political emphasis on administrative burdens was reached at a time –at least during Blair's government- when businesses were not suffering from any particularly serious economic stall. This may explain the only partial success of the SCM exercise. In Italy the need for government intervention to reduce the heavy burdens created by legislation is not accompanied by any real political emphasis, probably due to a disconnection between politics and other parts of society (OECD, 2007).

Second, the active role of business stakeholders is fundamental for any initiative to reduce red tape. In the Netherlands the proactive input by industry in the strategic planning phase was key to the successful implementation of the Standard Cost Model. In contrast, the insufficient involvement of business stakeholders in the UK meant a low level of understanding of why all the information for the measurement was required. In Italy, finally, although there was a high level of involvement by business associations in convincing government to cut red tape, there was a low participation of individual businesses in the measurement phase.

Table 2: Comparison of institutional contexts and applications of the Standard Cost Model

	Netherlands	UK	Italy
Purpose of the measurement	Progressively measuring and reducing the costs of administrative obligations imposed on businesses	Estimating and reducing administrative burden on the economy as a whole	Reducing the administrative burdens imposed on business in determinate policy areas
Scope of the measurement	All sectors of the economy	All sectors of the economy	Some sectors of the economy
Initial need for reducing administrative burdens	Reducing the administrative burdens imposed on business in determinate policy areas	Relatively low	Very high
Key players in proposing Standard Cost Model	Industry, senior civil servants and politicians	Prime Minister	EU and Ministry of Finance
Timing/ Frequency	Progressive annual review of administrative burdens; yearly measurement	One year; one-off measurement	Each year policy areas for measurement are defined; *ad hoc* measurement
Problems with measurement	Net reduction of administrative burdens affected by incoming regulation	Lack of departmental information on existing legislation; low business involvement; inclusion of other typologies of costs	Precision of measurement and population sampling
Other features	High commitment by senior civil servants	International regulatory competitiveness as a key driver	Scarce resources and focus on SMEs lead to the choice of net administrative cost model
Future	Measuring administrative burdens for public administration and citizens	Including Standard Cost Model in Impact Assessment	Enhancing number of policy areas for measurement to meet 25% targets

Third, the type of institutional setting in place for measuring administrative burdens determines the type of accomplishments of the red tape reduction initiatives. The three countries analysed in this article entail differences in terms of bodies responsible for the measurement. In the Netherlands the responsibility belongs to the Ministry of Finance whilst the control of the process is left to Actal. In the UK, the administrative burdens project was managed by the Better Regulation Executive when this was still located within the Cabinet Office. In Italy, the shared responsibility across Ministries could in theory lead to a virtuous competition between services, but so far has only brought a very heterogeneous approach to measuring administrative costs across the economy. Moreover, the institutional setting and legal frameworks count in determining the gap between the intended reduction plans – normally set at around 25 percent following the Dutch figure- and the actual de-regulative initiatives. In general, the government asks for free intervention to the Parliament in order to carry out the necessary legislative changes. In the UK, the House of Commons, for instance, approved the Legislative and Regulatory Reform Bill, which enables the government to implement measures to remove unnecessary burdens on business.

Fourth, the timing, duration and length of the measurement determine its solidity and exactness, whereas the reduction objectives are very similar throughout the three countries. In the Netherlands there has been a cumulative effort in the last few years to measure and reduce administrative burdens (see Figure 1). In the UK, the one-off measurement involved a discrete - albeit high - employment of resources by government and a set of difficulties also related to the stringent time constraints. In Italy, the measurement is being made sector by sector, with the decision on where to measure next being taken each year. This implies a less heterogeneous reduction of red tape but increases the likelihood of precision in the measurement. Otherwise, the reduction objectives envisaged in the Netherlands, UK and Italy are very similar. Here the Dutch initiative at 25 per cent of the overall administrative burdens played a crucial role not only at national level, but also at the EU level. The expected benefits originating from reduction plans do not differ significantly either, with € 4.2 billion for the 2003-2007 period in the Netherlands, £ 3 billion for the one-off measurement and reduction in the UK and €3.5 billion in Italy, should reductions act on 25 per cent of the administrative burdens on Small and Medium Enterprises take place.

Table 3: Cross-country analysis - comparison of main lessons

	Political emphasis	Role of business	Responsibility in government	Expected benefits from reduction plans	Other features	Future
Netherlands	High	Pro-active both at planning and project levels	Minister of Finance + Actal	€ 4.2 billion (period 2003-2007)	High commitment by senior civil servants	Measuring administrative burdens for public administration and citizens
UK	High	Low response rate at project level	BRE-Cabinet Office	£ 3 billion	International regulatory competitiveness as a key driver	Including Standard Cost Model in Impact Assessment
Italy	Low	Pro-active at planning level only	Across Ministers	€3.5 billion for 2008 measurement	Scarce resources and focus on SMEs lead to the choice of net admin cost model	Enhancing number of policy areas for measurement to meet 25% targets

Fifth, applications of the SCM also depend on distinct national features, which are unrepeatable in other countries and yet may be important for the success or failure of the model. One reason for the success of the measurement in the Netherlands was a media-driven discussion about the high salaries of senior board officials. These officials were thus forced to prove the importance of their job by leading an efficient measurement exercise. The former UK Prime Minister, Mr Blair, stressed the importance of the one-year measurement. Additional resources were dedicated to keeping up the reputation of the UK as international leaders in 'better regulation' and to attract investors with the claim of a regulatory environment which does not present excessive red tape. The Dutch model has been the international blueprint for measuring administrative burdens on business because considered successful. However, the context and market structure of the Netherlands differ from other countries and caution should be used when replicating the Dutch model.

Sixth, there at least three remarks about the SCM methodology which need to be discussed. The first remark regards the fact that the SCM supposes that the money saved on administrative burdens will be re-invested by industry in productive activities. Making a speculation like this implies a degree of certainty about the change in the management assets within firms, including internal shifts of human resources from administration and accounting offices to internal productive functions. Intuitively, the structure of a large size firm does not change because each year there are two forms less to fill in. Arguably, a

reduction of administrative activities does not necessarily imply the elimination of certain administrative jobs which remain fundamental in business management. The second remark is that the effort of calculating and eliminating administrative costs may prove ineffectual if the consequent overall economic improvement cannot be measured. Assuming that companies do benefit from administrative relief, how can this benefit be measured? How can the success of the SCM be measured? The GDP is dependent on too many variables to be employed as a direct indicator for the benefits coming from the suppression of administrative burdens. Moreover, the elimination of certain administrative fulfillments does not imply the opening of new production units, rendering the GDP an obsolete indicator. The third remark regards the assumption of full compliance. The SCM measurement is carried out supposing that all businesses comply with the legislation in place. However, there are studies that proved that the level of compliance in certain sectors is not more that 50 per cent of the existing regulation. Sectoral studies, for instance, state that 42 per cent of businesses do not comply with some part of food safety regulations (HSE, 2005). Only in 2003-04 UK national regulators issued 357,000 warnings or enforcement notices, and prosecuted or fined almost 11,000 businesses (HM Treasury, 2005). The assumption of full compliance simplifies the calculations but brings the measurement far from reality. The full compliance assumption may also bring about inequalities in the phase of removal of administrative burdens. If the SCM does not take into account that industry sectors have different levels of compliance, businesses within highly compliant sectors may end up disadvantaged due to this generalisation. This may occur because the overall administrative burdens of a less compliant sector will be inflated compared to reality: some costs will be attributed to legislations they do not fully comply with. The risk is to match real administrative burdens with inflated, fictional administrative burdens and take decisions based on this unfair matching. The next section provides recommendations on how to overcome these three problems.

Seventh, future initiatives aimed at reducing administrative burdens will depend on the current SCM footprints. In the Netherlands the continuous effort to measure administrative burdens on business will be reflected in future initiatives to measure and reduce administrative burdens also for citizens and the public administration itself. Administrative burdens for Dutch citizens amounted to about 100 million hours in terms of time spent and €1.25 billion in terms of out-of-pocket costs calculated for the year 2002 (Dutch Program on Reducing Administrative Burden for Citizens, 2006). The new Dutch program, which foresees a reduction by 25 percent of the administrative burdens for citizens, is destined to attract the attention of the regulatory reform community and create a sort of blueprint for other public administrations, as occurred for the Standard Cost Model. In the UK, an attempt to “normalise” the SCM into daily policy-making practice will be made by integrating it into the Impact Assessment system. In Italy, the number of policy areas covered by the net administrative cost model will increase in order to meet the 25 per cent target established by the European Union.

Conclusion

Initiatives aimed at systematically measuring and reducing red tape could potentially bring about enormous benefits to troubled economies by stimulating growth in times of recession. The three national experiences examined in this article illustrate the state of the art of the SCM. It was observed that political commitment, stakeholder involvement, adequate allocation of institutional responsibilities, prolonged trial time, and consistency with distinct national features are all key metrics for the success of the SCM.

The problems which emerged in the application of the SCM can in part be attributed to the complexity and heterogeneity of the data on administrative costs and in part lead to questioning the SCM methodology.

It was pointed out that the SCM fails to take into account the extent to which money saved on administrative burdens will be re-invested by industry in productive activities. Research is needed to understand how businesses re-invest once they are relieved from administrative burdens. A full understanding of how individual firms of different sizes react to the reduction of administrative burdens would in turn enable more targeted measurement projects and reduction plans. Such research could investigate the extent to which businesses actually re-invest; whether they move into more profitable activities and how the structure of the business changes because there are less administrative duties to comply with.

The SCM does not quantify the benefits of alleviating businesses from information obligations. In order to understand how much businesses actually lose due to administrative activities, the SCM model may include the concept of opportunity costs. In this case, opportunity costs would consist of how much each business gives up to fulfil administrative tasks. Opportunity costs provide an understanding of how much the time spent by a single business means in relative terms. Businesses are asked how they spend their resources in alternative to administrative costs. They are subsequently monitored to understand whether and how alternative investments occur. Such investigation could be carried out only on a limited sample of population. The standardisation and aggregation of opportunity costs would then give a rough estimate of the overall benefits of reducing administrative burdens.

The SCM methodology is flawed because it assumes complete compliance. Instead of calculating administrative burdens on the basis of full compliance, the government should first investigate on the actual level of compliance of businesses and hence estimate administrative costs. Alternatively, if the measurement already took place, the total value should be weighted with realistic compliance rates, estimated depending on available studies on the sector.

If SCM methodologies improve, political emphasis remains high and businesses actively participate in measurement projects, then national economies will have the opportunity to experience relief from red tape. A reduction in administrative burdens might be vital for businesses at times of economic recession.

Without the abovementioned improvements, the expected rise in financial regulation and environmental regulation over the next few years is likely to increase the amount of administrative burdens.

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Comitology and Parliamentarisation: Strong Causality and Weak Interaction

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Abstract

The comitology procedures have been an integral part of the European Union legislative decision-making process. The negotiation of the legal framework of the comitology procedures, as well as the administrative practice of the European Commission in drafting implementing acts, is relevant to the legal research on the evolution of European integration. This article studies the dynamic relationship between the process of regulation and implementation of comitology procedures, and the process of parliamentarisation of the European Communities and later of the European Union. Two hypotheses are tested. The first hypothesis claims that there is a clear causal link between the use of newly acquired budgetary and legislative powers of the European Parliament, and the limitation of control by Member States on the Commission by the comitology committees. The second hypothesis claims that a weak system interaction exists between the notion of parliamentarisation and the reform of the comitology system.

Keywords

Comitology; Parliamentarisation; Feedback loop; Community method; Politicisation

THE AIM OF THIS ARTICLE IS TO ANALYSE THE POTENTIAL LINK BETWEEN TWO DISTINCT aspects of institutional change in the European Union (EU) that have implications for the future debate on the institutional nature of the EU: the parliamentarisation of the EU and the evolution of the comitology procedures. The two processes are both determinative for the transformation of the institutional mechanism of the EU. When exploring the discourses on the EU's institutional future, the unique features of the comitology procedures must be taken into account. Though the non-transparency of the procedures has attracted much criticism (Neuhold 2001: 22), the deliberative quality of the procedures has been acclaimed[1]. On the other hand, the link between the parliamentarisation of the EU and the regulation of comitology procedures is relatively understudied. That is why the focus of this article will be to explore and explain the potential link between these two processes, how they communicate, correspond and interrelate to shape the institutional nature of the EU. For the aim of this article, parliamentarisation is understood as the ambition to establish and the gradual evolution towards a system of government at the European level with a strong priority-setting and policy-planning input from the European Parliament (Lehmann and Schunz 2005: 6). The main objective of the article is to examine whether the two institutional transformation processes are linked – and if they are, how strong these links are. Furthermore, the article will explore whether these two processes correlate, what the extent of correlation is and whether there a causal link between them. This main objective is explored by two hypotheses.

[1] For a short overview of the academic debate see Vos 2009: 24-27 and the literature cited there.

Georgiev, V. (2012). 'Comitology and Parliamentarisation: Strong Causality and Weak Interaction', *Journal of Contemporary European Research*. Volume 8, Issue 1, pp. 109-127.
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The first hypothesis is that there is a strong causal link between the process of parliamentarisation of the EU and the reform of the comitology procedures. The assumption is that having obtained new budgetary and legislative powers, the European Parliament (EP) extends those powers specifically to reduce the level of control of Member States over the process of implementation of Community law by the European Commission. It is important to explore the cases where such causality is revealed and, if possible, to trace the mechanism of causality. The main tool for studying the possible causal link between the two processes is the study of formal amendments of relevant primary and secondary EU legislation. The time sequence of the amendments is also important to examine. The amendments of EU legislation that provide new budgetary or legislative powers to the EP should be prior to the amendments of the comitology procedures. These amendments of the comitology procedures should also limit or otherwise dilute the level of control of Member States on the implementing powers of the Commission. In addition to the timing sequence, the historical record should provide ample evidence that in discrete cases the EP used its newly obtained powers as part of a focused strategy to force Member States to reduce the level of control on the Commission through the comitology procedures. The field of validity of this hypothesis should also be explored. The first hypothesis may be rejected if one claims that the two processes are correlated, but not necessarily causally linked – i.e. that the EP was not instrumental in the process of reform of the comitology procedures. In that case the relevant case studies should be considered in order to evaluate the extent to which the newly acquired powers of the EP were used directly and successfully in order to limit the control of Member States through the comitology committees, and whether the EP is interested in participating in the comitology procedures itself.

The second hypothesis is that a weak system interaction exists between the notion of parliamentarisation of the EU and the gradual moderation of the control exercised by Member States through the comitology procedures. While the general assumption is that the parliamentary system embodies a model of democratic governance (Gerrin, Thacker and Moreno 2005), the gradual strengthening of the executive on the national level due to the loss of veto power of national parliaments and the increasing scope of supranational powers leads to a need to compensate this loss through the empowerment of a supranational parliamentary body (Rittberger 2005). In that case the weak interaction should lead to the objectification of the notion that parliamentary control is superior to comitology in checking the implementing powers of the European Commission. One possible venue for this objectification would be through a process of rhetorical action and social influence (Rittberger and Schimmelfennig 2007). However, one can argue that the weak interaction may not be that easily traceable in individual acts of political players, and may be more evident in long-term trends of institutional reform stemming from pressures for inertia and continuity in western democracies (Kaase, Newton and Scarbrough 1997). When thinking in terms of constitutional options statist analogies about representative democracy prevail (Kohler-Koch 1999). Self-expression values, typical for the societies of the EU Member States, can be interpreted as conducive to the development of democratic institutions at the supranational level (Inglehart and Welzel 2005: 171). That is why the second hypothesis should be explored through low-resolution, long-term analysis of the alterations of the institutional mechanism of the EU that reveals the possible parameters of that interaction. The second hypothesis could be rejected whereas the Commission's implementing powers are further restricted either by the introduction of stricter means of control by the Member States, or by the creation of independent executive bodies. The politicisation of the Commission through the provision and expansion of instruments of political control by the EP must also be taken into account (Wille 2010: 72).

The testing of both hypotheses will be performed through a non-doctrinal, interdisciplinary socio-legal approach (McConville and Chui 2007: 5). The essence of this

approach is to study the process of adoption, implementation and amendment of relevant legislation, and to supplement the analysis of the legislative dynamic with insight from other social sciences. More specifically the description of Tallberg 2002: 24 of the four-step casual chain of supranational delegation will be used[2]. The approach, however, remains focused on the legal institutional perspective of the subject[3]. This broad historical account allows for the parallel exploration of both hypotheses. The approach enriches the conclusions about the vector of change of the institutional mechanism of the EU with insight and explanations stemming from relevant political science and sociology literature, but also taking into account law as an institution and thus containing normative visions concerning the mix of relationships between the EU and Member States (Armstrong 1998: 156).

The next section will explore the institutional dynamics of the EU both in terms of empowerment of the EP and the reform of comitology procedures during the last three decades. The third section will compare the main findings with the two preliminary hypotheses. The fourth concluding section will explore the implications of the findings for the normative debate on the institutional future of the EU, and will outline prospects for future discussion.

Comitology and parliamentarisation in perspective: powers and reforms

This section will present a parallel review of the institutional development of the comitology procedures and the process of parliamentarisation of the EU.

The battle for power, the battle for comitology

The institutional battle for power in the European Communities (later the EU) is interwoven with the process of revision of the Treaties. This sub-section will present an overview of the most important developments that shaped both the process of parliamentarisation and the comitology procedures during the three most active decades of the institutional reform of the European Communities.

The Single European Act

When on 16 September 1983 the EP refused to release part of the financing of the European Commission, by claiming insufficient information on the effectiveness of the comitology procedures and appealed to the European Commission to provide more information to this effect, as well as to future rationalisation of the procedures[4], this marked the first time when the EP used its budgetary powers to gain influence on the comitology procedures. Following this interference, the Commission presented a specific Report on Committees and Groups of Experts[5] and partially reviewing the number and composition of committees[6]. This leads to a release of the funding by the EP[7]. Ever since this first occasion, the EP utilized its positions to gain further control over comitology.

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[2] See also the contribution of Pierson 2000 on the four features of path dependent political processes – multiple equilibria, contingency, a critical role for timing and sequencing, and inertia.
[3] See also Eskridge 1994: 48-80 on the dynamic statutory interpretation approach that takes into account the dynamics of political conflict and balance.
[4] Resolution on the cost to the EC budget and effectiveness of committees of a management, advisory and consultative nature. OJ C 277/1983.
[5] Commission Report on Committees and Groups of Experts. Communication from the Commission to the European Parliament. COM (84) 93 final, 21 February 1984.
[6] *ibid*, p. 6 – p. 26.

Another tool used by the EP to expand its powers and to gain control over comitology was the drafting of a Treaty on the EU[8]. One of the important proposals in the draft treaty was for joint legislative powers of the Council and the EP. The draft also included a clear hierarchy of legal acts, divided into two groups – laws and implementing acts. The implementing acts would be adopted by the Commission, having an obligation to notify them to the double legislature[9].

The most debated issue during the IGC was the principle of qualified majority voting (QMV) in the Council (Tsebelis and Kreppel 1997: 17-18). The second problematic issue was the cooperation procedure for adopting the legislation concerned with the completion of the common market. The Single European Act (SEA) [10] for the first time effectively included the EP in the decision-making by the cooperation procedure (Article 149 EEC (1986) due to the concerns for the widening democratic legitimacy deficit of the Community (Rittberger 2003, pp. 218-220).

Regarding comitology, SEA modified the text of Article 145 EEC (1957) and provided for an act of the Council that would regulate the comitology procedures on the proposal of the Commission and after a consultation with the EP. The question of delegation of implementing powers to the Commission was for the first time positively regulated in primary Community law. However, the Member States considered the new version of article 145 TEEC (1986) not only as a restriction of the participation of the EP in the regulation of comitology, but also as an opportunity to circumvent the cooperation procedure by delegating more powers to the Commission (Lodge 1986: 216). The events that followed proved that the Member States wanted to keep the full and unconditional control over the definition of principles and rules for delegation of implementing powers (Pollack 2003: 123).

Shortly after signing of the SEA, the European Commission proposed a draft regulation for the exercise of implementing powers conferred on the Commission[11]. This proposal suggested a codification of the procedures, without providing any criteria for selection; the Commission aimed at a speedy adoption of the regulation (Bergström 2005: 191-192). In its resolution on this proposal[12], the EP demanded the abolition of the regulatory committee procedure; a right for the EP to initiate a consultation procedure on the choice of comitology procedure, and an obligation for the Commission to present a report on the activity of the committees. The Council adopted Decision 87/373/EEC laying down the procedures for the exercise of implementing powers conferred on the Commission[13] in June 1987. No role whatsoever was provided for the EP. This decision evidenced the will of the Council to keep the comitology procedures *in statu quo ante*. The comitology procedures were indeed *numerus clausus*, but that did not render them more transparent (Kietz and Maurer 2007: 31). The comitology system was not simplified (Neuhold 2008). On a more general level Decision 87/373/EEC did not resolve the controversy among the Community institutions on that issue (Vos 2009: 10; Bradley 1997: 236).

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[7] Resolution on the rationalization of the operations of management, advisory and consultative committees, groups of experts and similar bodies financed from the EC budget. OJ 127/1984.
[8] European Parliament, Resolution concerning the substance of the preliminary draft Treaty establishing the European Union (14 September 1983). OJ C 277/1983.
[9] *ibid*, art. 22 and 23.
[10] Single European Act (1986). OJ L 169/1987.
[11] Commission Proposal of 3 March 1986 for a Council Regulation laying down the procedures for the exercise of implementing powers conferred on the Commission (COM (86) final).
[12] European Parliament Resolution closing the procedure for consultation of the European Parliament on the proposal from the Commission to the Council for a regulation laying down the procedures for the exercise of implementing powers conferred on the Commission, OB C 297/94/1986.
[13] Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission. OJ L 197/1987.

The reactions of both the Commission[14] and the EP were strongly negative. The EP was much more active in its opposition. The first line of attack was the decision of the EP Bureau[15] to systemically replace in draft acts under the cooperation procedure the referral to the regulatory committee procedure with a referral to the management committee procedure, and in the area of the common market – with the consultative procedure. The regulatory committee procedure could only be adopted at second reading in its less restrictive variant IIIa, but not in the area of the common market.

Second, the EP used its influence on the European Commission to negotiate with it its first interinstitutional agreement (IIA) on comitology in March 1988 (the Plumb-Delors agreement)[16]. The IIA provided for the EP to be duly informed about all draft implementing acts that contained normative (quasi-legislative) texts and could in this way restrict the newly acquired powers of the EP. The Commission accepted this agreement because it needed the cooperation of the EP (Kietz and Maurer 2007: 12-13). The third instrument of the EP was the direct contestation of Decision 87/373/EEC before the Court of Justice of the EEC on the basis of Article 173, para. 1 EEC (1986) and Article 145 EEC (1986). The Court in its decision[17] denied *locus standi* to the EP. This decision can only be characterized as unconvincing (Hartley 2007: 373-374).

The interinstitutional battle on comitology

The Maastricht Treaty

Apart from its principal objections to Decision 87/373/EEC, the EP witnessed the poor implementation of the Plumb-Delors agreement. The European Commission sent too few documents to the EP. In this atmosphere of tension over comitology, the European Council in Rome on 27 and 28 October 1990 decided to convene two IGCs on the Economic and Monetary Union and the Political Union[18]. The conclusions of the European Council foresaw the strengthening of the role of the EP. More notably the European Council asked the IGC on the Political Union to consider developing co-decision procedures for acts of a legislative nature, *"within the framework of the hierarchy of Community acts"*[19]. This sentence deserves special attention. First, the European Council practically envisaged the granting of substantial legislative powers to the EP. Second, it placed this new power within a concept for the hierarchy of Community acts – a concept that, as will be seen, had far-reaching consequences.

The EP took notice. In its second resolution[20] on the IGCs the EP proposed a new approach for revising the Treaties – a constitution based on the 1984 EP draft Constitution of the EU. On its part the Commission proposed a clear division between legislative and regulatory

[14] Bulletin of the European Communities 6-1987, cited in Bergström 2005, p. 202.
[15] Formally adopted by the EP, 'Resolution on the executive powers of the Commission (comitology) and the role of the Commission in the Community's external relations', OJ C 19, 28/01/91, p.274. See also Bradley 1997: 236.
[16] See SG (88) D/03026; European Parliament-Dok.123.217, in European Parliament, Conference of Committee Chairmen: The Application of the modus vivendi on Comitology: Practical Guidelines for the European Parliament's Committees, 7 July 1995.
[17] Case 302/87 European Parliament v Council of the European Communities. ECR [1988] 5615
[18] European Council (Rome, 14.-15.12.1990) - Presidency Conclusions (Part 1), SN 424/1/90. Brussels: Council of the European Communities, December 1990.
[19] Ibid, p. 1.
[20] Parlement européen, Résolution sur la Conférence intergouvernementale dans le cadre de la stratégie du Parlement européen pour l'Union européenne: doc. A3-166/90, in Journal officiel des Communautés européennes (JOCE). 17.09.1990, No C 231, p. 97.

measures[21], as well as between normative and individual administrative acts, and advocated for the abolition of the regulatory committee procedure.

The Maastricht Treaty[22] left the text of Article 145 EEC (1986) untouched. A declaration on the hierarchy of Community acts[23] was attached to the Treaty that instructed the IGC in 1996 to examine whether might be possible to review the classification of Community acts with a view to establishing an appropriate hierarchy.

The first acts of the EP and the Council under the co-decision procedure were adopted in 1994. Of 30 co-decision drafts in 1994, only one common position of the Council was rejected by the EP with absolute majority[24], one of the main reasons being the argument over the comitology procedures (Corbett 2001: 347-349).

The characteristics of a sharp interinstitutional conflict were apparent (Hummer 1998: 83). This conflict also influenced the discussion on the reform of the co-decision procedure itself (Steunenberg and Thomassen 2002: 4). The imperative position of the EP led to a compromise solution. The European Commission proposed an IIA, making a distinction between acts containing legislative measures and implementing acts. The regulatory committee procedure was excluded altogether. The proposal was rejected by the Council on the grounds that even acts adopted under the co-decision procedure were indeed acts adopted by the Council in the sense of Article 145 EEC (1992) (Bergström 2005: 226).

The interinstitutional conflict on comitology now threatened to cause a long-term blockage of the decision-making process. This threat motivated the EU institutions and the Member States to reach a compromise (Kietz and Maurer 2007: 33). The governments of the Member States proposed first, that the question of implementing acts for acts adopted under the co-decision procedure would be reviewed during the IGC in 1996, and second – that in the remaining period a *Modus Vivendi* for the remaining period could grant to the EP some opportunity for control of the comitology procedures. The EP was initially satisfied with this development (Bradley 1997: 239).

This *Modus Vivendi* was signed on 20 December 1994. However, the European Commission practically suspended its implementation. It did not present sufficient information to the EP, nor forwarded all draft measures in due time (Bradley 1997: 240). That is why the EP resorted to delaying co-decision procedures (Bergström 2005: 231). Additionally the EP contested implementing acts before the European Court of Justice (ECJ)[25].

More importantly, the EP again used its budgetary powers to secure a report from the Commission on the activity of comitology committees[26]. The Commission responded with a report containing 1918 pages, which the EP found unsatisfying[27]. After the introduction

[21] Commission Opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union, COM (90) 600 final. Brussels: Commission of the European Communities, 23.10.1990.
[22] Treaty on European Union. OJ C 191, 29 July 1992.
[23] Declaration (No 16) on the hierarchy of Community acts. Declarations annexed to the Final Act of the Treaty on European Union.
[24] Proposal for a COUNCIL DIRECTIVE on the application of open network provision (ONP) to voice telephony. COM/92/247FINAL. OJ 1992 C 263- 20.
[25] See Case C-156/93 European Parliament v Commission of the European Communities ECR [1995] I-2019, and Case C-417/93 European Parliament v Council of the European Union ECR [1995] I-1185.
[26] Resolution on the draft general budget of the European Communities for the 1995 financial year - Section III (Commission) modified by the Council. OJ 1995, C 18-145.
[27] Resolution on the Commission' s response to Parliament' s request for information on the 1994 activities of executive committees (following the decision in Parliament' s budgetary resolutions of 27 October 1994 and 15 December 1994 to place funding in the reserve) OJ 1995, C 308-133.

of new budgetary constraints by the EP, in September 1996 a new agreement was reached (known as the Samland-Williamson agreement)[28].

The Treaty of Amsterdam and the Second Comitology Decision

The preparation for the IGC in 1996 showed the deep divisions among Member States (Goybet 1995). This division was also evident in the "Westendorp" report[29] on the question for the introduction of hierarchy of Community acts. The main argument of the opposition against the hierarchy of acts was that it would introduce a notion of separation of powers in the EU, which was considered inappropriate and unnecessary[30]. The EP, however, supported the idea for introducing a hierarchy of legal acts[31]. The EP suggested that the whole responsibility for the implementing measures should be transferred to the Commission[32].

In spite of the heated debate, the question about a hierarchy of legal acts was not discussed during the IGC (Griller 2000: 26). On the other hand the EP gained substantial new powers both in terms of the replacement of the consultation procedure with the co-decision procedure, extension of the scope of the co-decision procedure, and a reform of the co-decision procedure itself (Nentwich and Falkner 1997: 2-3). The final text of the Treaty of Amsterdam was signed on 2 October 1997[33]. A declaration[34] was attached that called on the Commission to submit to the Council by the end of 1998 at the latest a proposal to amend Decision 87/373/EEC.

In its initial assessment of the Treaty of Amsterdam the EP took notice of its newly extended powers, but also reminded to the Commission that the EP should be involved in the drafting and adoption of the new decision on comitology[35]. The Commission made a proposal[36] aimed at the simplification of the comitology procedures, the introduction of common rules of procedure for the committees, the abolition of the variant IIIb of the regulatory committee procedure, and the introduction of transparency measures. The EP also gained new rights of information on all acts implementing acts adopted under the co-decision procedure[37].

In the end Council Decision 1999/468/EC (also known as the Second Comitology Decision)[38] did not diverge substantially from the Commission proposal. The EP received a qualitatively new prerogative towards the implementing acts within the regulatory committee procedure. In case the EP believed that the Commission has drafted the proposal for implementing act *ultra vires*, it could notify the Council[39]. The EP acquired the same *droit de regard* also towards the management committee procedure in the cases

[28] Resolution on the draft general budget of the European Communities for the financial year 1997 - Section III – Commission. OJ C 347-125, para. 72.
[29] Reflection Group's Report. [ON-LINE]. [Brussels]: European Parliament, [s.d.]. 07.10.2005. Available on http://www.europarl.eu.int/enlargement/cu/agreements/reflex1_en.htm Accessed on 12 June 2010.
[30] *ibid*.
[31] Resolution on Parliament's opinion on the convening of the Intergovernmental Conference; and evaluation of the work of the Reflection Group and definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference, in Bulletin of the European Union. March 1996, No 3, pp. 136-146.
[32] *ibid*, p. 21.6.
[33] OJ 1997, C 340.
[34] Declaration No 31 relating to the Council Decision of 13ºJuly 1987 (2 October 1997). Ibid, p. 137.
[35] European Parliament, Resolution on the Amsterdam Treaty (CONF 4007/97 – C4-0538/97). OJ.1997, C 371-9.
[36] Proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission. COM (98) 380 final. OJ, 1998, C 279-5.
[37] *ibid*, art. 7.
[38] Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission. OJ 1999, L 184-23.
[39] Decision 1999/468/EC, art. 5, para. 5 and art. 8.

when the basic act was adopted under the co-decision procedure[40]. Decision 1999/468/EC was followed by the "Fontaine-Prodi" agreement[41] between the EP and the Commission. The agreement regulated some procedural aspects of the new powers conferred to the EP.

The Treaty of Nice

The Treaty of Nice[42] will only be mentioned here in its stipulations extending the scope of the co-decision procedure, which expanded further the legislative powers of the EP.

New dawn for comitology

The European Convention

The Laeken declaration of the European Council[43] called in December 2001 for the summoning of a Convention on the Future of Europe. The main issues to be discussed included the simplification of the EU's legislative instruments, the maintenance of inter-institutional balance and an improvement of the efficacy of the decision-making procedure.

The European Convention began its work on 28 February 2002. In September 2002 it was decided that a specific working group would be responsible for providing a model for simplification of the legislative procedures and instruments[44]. The deliberations of the Working Group (IX) on simplification began on 19 September 2002[45] and only two months later the result was presented in a final report[46].

The Working Group proposed that legislative acts should be adopted in the form of "laws" and "framework laws". More importantly, the report made a distinction between "delegated" and "implementing" non-legislative acts. The main difference, however, was not their qualitative differentiation, but rather a different way of exercising the political supervision over these acts (Bergström and Rotkirch 2003: 54). Thus the important question was about the differences in the exercise of political control over the two types of non-legislative acts. The delegated acts were subject to three types of control mechanisms: call-back rights, a period of tacit approval, and sunset clauses. Comitology would continue to apply for implementing acts.

The working group's proposal was accepted almost in full by the Convention. The newly constructed hierarchy of legislative and non-legislative acts, and delegated and implementing non-legislative acts, was reproduced in Articles 33-36 of the final text of the Draft Treaty establishing a Constitution for Europe[47]. Only a few changes were made to the Working Group proposals.

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[40] *ibid*, art. 4, para. 3.
[41] Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission. OJ 2000, L 256-19.
[42] OJ C 80-2001.
[43] Presidency Conclusions of the Laeken European Council (14 and 15 December 2001): Annex I: Laeken Declaration on the future of the European Union, in Bulletin of the European Union. 2001, No 12, pp. 19-23.
[44] Mandate of Working Group IX on the simplification of legislative procedures and instruments. 17/09/2002 CONV 271/02.
[45] The theoretical discussion among the three legal experts in the working group - Jean-Claude Piris, Michel Petite and Koen Lenaerts is reviewed in Bergström and Rotkirch 2003, pp. 48-51.
[46] Final report of Working Group IX on Simplification. 29/11/2002 CONV 424/02.
[47] Draft Treaty establishing a Constitution for Europe, OJ C 169-2003.

The Constitutional Treaty[48] can be truly characterized as a victory for the EP. Its long-sought equal status with the Council in the area of delegated decision-making was almost achieved (Blom-Hansen 2008: 15). This was matched by the introduction of the co-decision procedure as the ordinary legislative procedure which largely extended the legislative powers of the EP (Article III-396). Moreover, the abolition of the pillar structure and the provision of *passerelle* clauses for treaty amendment without ratification further enhanced the powers of the EP. The powers of the EP were also increased in respect of the EU budget, international agreements, and the scrutiny and appointment of the executive (Rittberger 2005: 179). However, the referenda for the ratification of the Constitutional Treaty in France on 20 May and in the Netherlands on 1 June 2005 failed.

The 2006 comitology reform

The EP started using its new powers of scrutiny under art. 8 of Decision 1999/468/EC, but maintained its pressure on the Commission and the Council in order to secure a new reform of the comitology system. In 2002, the Commission proposed a revision of the Second Comitology Decision[49]. The proposal, which was amended after consultation with the EP[50], aimed at placing the two branches of the legislature on an equal footing (Schusterschitz and Kotz 2008: 73). Due to the signing of the Constitutional Treaty the negotiations on the draft comitology decision were suspended.

In 2005 an investigation by the EP into possible non-transmission of documents from the Commission showed that in some 50 cases the required documents had not been made available to the EP in time (Christiansen and Vaccari 2006: 11). Because of this, and after the failure of the referenda in the Netherlands and France, the EP decided to take up again its struggle against the institutional "imbalance" in comitology and to secure a reform of the comitology procedures. This was done by blocking the adoption of two single market directives (Schusterschitz and Kotz 2008: 76). The Council conceded. It was decided that a new procedure would be established for "quasi-legislative" implementing measures where the basic instrument was adopted under Article 251 EC (2001). The EP in turn had to agree to a "ceasefire" on inserting sunset clauses in legislation. In June 2006 a new 'regulatory procedure with scrutiny' was introduced in Decision 1999/468/EC in a new Article 5a. The EP received the right to object to the adoption of draft measures submitted to it not only if it considered the measure *ultra vires*, but also if it believed that the measure were not in line with the aims of the basic act, or on the grounds of subsidiarity and proportionality.

In terms of the institutional battle on comitology the assessment of Christiansen and Vaccari 2006: 16 that the 2006 comitology reform put the EP on the map in terms of scrutinising the way in which the Commission is using its delegated powers appears quite accurate.

The Treaty of Lisbon

After the failure of the ratification of the Constitutional Treaty, the Berlin Declaration[51] set a goal for a new reform of the Treaties before the EP elections in 2009. The Treaty of Lisbon[52]

[48] Treaty establishing a Constitution for Europe. OJ C 310-2004.
[49] Proposal for a Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, COM(2002) 719 final.
[50] Amended proposal for a Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (presented by the Commission in accordance with Art. 250(2) of the EC Treaty), COM(2004) 324 final.
[51] Declaration on the Occasion of the Fiftieth Anniversary of the Signature of the Treaties of Rome. Informal Meeting of the Heads of State and Government. Berlin, 24-25 March 2007.

entered into force on 1 December 2009. To a large extent this treaty replicated the texts in the Constitutional Treaty, but merged those into the TEU and EC (now called Treaty on the Functioning of the EU, TFEU).

The rules about the typology and hierarchy of legal acts of the EU were put in Articles 288-292 TFEU. The terminology of "laws" and "framework laws" was abolished. A four-level hierarchy of acts was established. The treaty provisions formed the first level. The second level – legislative acts, was formed by acts adopted under the co-decision procedure, and special legislative procedures where provided for (Article 289 TFEU). The third level was delegated acts (Article 290 TFEU). The fourth level was for implementing acts (Article 291 TFEU).

Delegated acts were subject to revocation or *ex ante* control. More importantly, the implementing acts could be made subject to comitology procedures, but the rules governing these procedures should be adopted by the ordinary legislative procedure, that is – co-decision by the EP and the Council (Article 291, para. 3 TFEU).

A deserved criticism of the provisions can be made towards the criteria for distinction between delegated and implementing acts (Bergström and Rotkirch 2003: 21; Lenaerts and Desomer 2005: 764; Hofmann 2009: 494-499). But it is not so evident that the new provisions entail a reinforcement of the "executive federalism" trend (Hofmann 2009: 497). On the contrary, one could argue that the whole process of regulation of the Community implementing acts since the SEA is a clear proof of the importance of those acts for the Member States (Schütze 2005: 13).

In December 2009 the Commission issued a communication on the application of Article 290 TFEU[53]. The Commission aimed at defining a very broad criterion for delegated acts that would include all acts with normative content *"which change the framework of the legislative act"*. The Commission reiterated its intent to continue to use the counsel of representatives of the public administrations of Member States, but they would have a consultative role.

In March 2010 the Commission also proposed a draft regulation on the mechanisms for control by Member States of the Commission's exercise of implementing powers[54]. The proposal provided for two committee procedures - the advisory procedure, mirroring the existing advisory procedure, and a new "examination" procedure, which would replace the existing management and regulatory procedures. In the examination procedure the Committee could only prevent the adoption of the draft measures by the Commission if a qualified majority of Member States voted against the proposal. The Commission also wanted to abolish altogether the old comitology procedures for implementing acts in force, with the exception of acts under art. 5a of Decision 1999/468/EC. The EP thus could win a co-equal role in setting the mandate for delegated regulations as well as for implementing acts. That is why comitology is likely to lose much of its field of application to the new delegated acts. At the same time the gains of powers for the EP in the Constitutional Treaty were largely kept intact in the Treaty of Lisbon.

[52] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. OJ C 306-2007.
[53] Implementation of Article 290 of the Treaty on the Functioning of the European Union. Brussels, 9.12.2009 COM(2009) 673 final.
[54] Proposal for a Regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. Brussels, 9.3.2010, COM(2010) 83 final.

Comitology in the institutional debate: some implications

Comitology and parliamentarisation: is there a causal link?

There is strong evidence to state that the powers of the EP have expanded significantly from 1970 to 2010. The expansion of powers of the EP has been dramatic (Magnette 2001: 292-293). Evidence shows that this process has been conducive to the overall parliamentarisation of the EU (Lindseth 1999: 674). Furthermore, the very constitutionalisation of the EU as a whole follows the path of gradual and limited parliamentarisation (Rittberger and Schimmelfennig 2007).

A substantial literature (Rittberger 2001, 2003, 2005, 2006; Judge and Earnshaw 2003; Maurer 2003; Kietz and Maurer 2007) clearly supports this claim. From the viewpoint of political science literature, arguments may arise about certain aspects of the co-decision procedure (Tsebelis 1994, Scully 1997, Tsebelis and Garett 1997). However, from a legal and constitutional perspective, one may derive evidence that there is, indeed, a process of parliamentarisation of the EU. This process can be explained by two complementary notions - the cascade-like parliamentarisation of the EU's decision-making mechanism (Maurer 2007: 2), and the existence of critical junctures that define a process of parliamentary path dependence (Magnette 2001: 295). The explanations may have alternative logic in political science, but they fit well when suggested to illustrate how Member States delegated powers to the EP. But the focus of this article has been set on the link of parliamentarisation and the regulation and implementation of comitology procedures. Thus the finding of Kietz and Maurer 2007: 40 that the EP's growing influence in comitology is a clear function of its growing influence in decision-making should be thoroughly supported by empirical observations.

Temporal criterion

The first criterion for determining whether a causal link exists is based on the timing sequence. The amendments of EU legislation that provide new budgetary or legislative powers to the EP should be prior to the amendments of the comitology procedures. If one plots together the treaty reforms and the gradual inclusion of the EP in the comitology procedures, one will notice that, *with some delay*, the EP has indeed succeeded in transforming its decision-making powers into influence over the comitology procedures (see Table 1).

Table 1: The increase in the legislative and budgetary powers of the EP and the reforms of comitology procedures

Period	Increase in the legislative powers of the EP	Increase in the budgetary powers of the EP	Reform of comitology procedures
1970-1975		EP may propose amendments of the budget; to reject the budget en bloc; grants an annual discharge to the Commission.	
1986 – 1987 (Single European Act)	Introduction of the assent procedure and the cooperation procedure		First Comitology Decision
1991-1992 (Maastricht Treaty)	Introduction of the co-decision procedure; expansion of the scope of the assent procedure		
1994			Modus Vivendi
1997 (Treaty of Amsterdam)	Reform of the co-decision procedure and expansion of its scope		
1999			Second Comitology Decision
2000 (Treaty of Nice)	Expansion of the scope of the co-decision procedure		
2006			Introduction of the Regulatory Procedure with Scrutiny
2009 Treaty of Lisbon	The co-decision procedure becomes ordinary legislative procedure; expansion of its scope	Suppression of the distinction between compulsory and non compulsory expenses; constitutional status for the multiannual financial framework	Introduction of a hierarchy of EU legal acts; separate legal procedures for adoption of delegated and implementing acts

The temporal sequence of legal amendments supports the hypothesis for the existence of a causal link between the growing powers of the EP and the subsequent reforms of comitology. However, a closer case by case analysis is needed to justify the causal link.

Case by case analysis

The regulation of the comitology procedures after the initial empowerment of the EP can be divided into discrete case studies that test the first hypothesis about the EP using its newly obtained powers as part of a focused strategy to force Member States to reduce the level of control on the Commission through the comitology procedures.

The period after the adoption of the First Comitology Decision witnessed the concerted action of the EP to advocate less restrictive committee procedures in proposed legislation (Bradley 1997; Corbett 2001). The EP was not successful in its attempts, but it is difficult to justify the claim that the EP wanted mainly to minimise the extent of delegation itself (Bergström, Farrell and Windhoff-Héritier 2007: 354-355). The empirical accounts show that the EP has preferred to limit delegation rather when it implies executive discretion on the national level (Franchino 2007: 294).

After the adoption of the Maastricht Treaty the EP managed to use its newly acquired legislative powers to secure the negotiation of the *Modus Vivendi* by a credible threat to cause a long-term blockage of the decision-making process. This is the first case where the EP used its powers purposefully to try to secure a new principled solution on comitology by the introduction of a reference to the 1996 IGC and the need to re-examine the legal regulation of the comitology procedures. In this model of causality the pre-Amsterdam IGC in 1996 itself clearly stands out as a substantial delaying factor of comitology reform.

The adoption of the Second Comitology Decision is the most important discrete case where there is a strong causal link between the use of powers by the EP and the reduction of the level of control imposed by the regulation of comitology procedures. In the period before the adoption of the Second Comitology Decision the EP clearly used its powers to try to sway the institutional reform with limited success – in the end the Council agreed to a limited simplification of the management and regulatory committee procedures, but refused to abolish the more restrictive variants (Bergström, Farrell and Windhoff-Héritier 2007: 360).

The delay of comitology reform after the Treaty of Nice may be explained by the expectation of the results from the work of the Convention. The 2006 introduction of the regulatory procedure with scrutiny cannot be viewed as directly serving the parliamentarisation agenda; it provides additional means of control for the EP over the adoption of implementing measures by the Commission, but does not limit the existing control mechanisms and the use of regulatory committees in particular. That is why it cannot be considered as directly supporting the first hypothesis.

With the Constitutional Treaty and its heir – the Treaty of Lisbon, the EP succeeded in winning the battle for equal treatment of the two-armed legislature over delegation and implementation of Community legislative acts (Vos 2009: 16). It is not so easy to distinguish strong causality in this case given the specifics of the drafting procedure in the Convention; it may be implied, though, that the threat of future resistance by the EP may have prevented any opposition of certain Member States to the notion of hierarchy of legal acts.

In conclusion, there are at least two discrete cases where the EP has successfully managed to use its newly acquired powers in order to try to limit the control exercised by Member

States on the exercise of implementing powers by the Commission. The negotiation of the *Modus Vivendi* was the first case where the EP managed to secure a specific commitment by Member States to reconsider the legal regulation of comitology procedures. The adoption of the Second Comitology Decision is the second, and more important, case, where the EP managed to some extent to limit the control of Member States exercised through the legal regulation of the comitology procedures. Given the whole history of the comitology this may not look like a significant achievement. However, one should keep in mind that the formal Treaty texts on delegation provided far less scope for creative reinterpretation than did the texts governing legislative decision-making (Bergström, Farrell and Windhoff-Héritier 2007: 363).

Comitology and parliamentarisation: weak interaction?

The second hypothesis of this article has been that a weak system interaction exists between the notion of parliamentarisation of the EU and the gradual moderation of the control exercised by Member States through the comitology procedures. This weak interaction is more difficult to prove based on the research of discrete events. That is why a less granular examination of the institutional dynamics of both comitology and parliamentarisation is needed in this case. However, from the perspective of political science the specificity of the weak interaction mechanism precludes the use of short-term case studies. The history of parliamentarisation shows that it often took considerable time before breaks of legitimacy promoted parliamentary government (Von Beyme 2000: 16-37).

It has been shown in the previous section that the EP's strive has gone beyond securing its own influence on comitology and delegated lawmaking. Indeed, the EP's aversion to the system of comitology spans the entire period of its existence (Bradley 1997: 254). By using its powers, the EP has attempted to systematically strengthen the executive role of the Commission (Franchino 2007: 284). This is also evident from the fight of the EP against the regulatory committee procedure. In other words there is ample evidence that the EP has indeed used the instruments of rhetorical action and social influence (Rittberger and Schimmelfennig 2007) in an attempt to limit the scope of control of Member States. More importantly, the representatives of Member States have always shunned from engaging in open debates with the EP over the comitology procedures. Instead the Member States have basically ignored as much as possible the demands of the Parliament, without providing any meaningful justification for their preference. This is a significant observation given the otherwise quite divergent views of the EP and the Council, and the importance of the comitology procedures for the functioning of the Community. The lack of debate may well be a sign of ideological weakness.

The only significant proof of the existence of such weak system interaction remains the adoption of the text of the Constitutional Treaty, and later – the Treaty of Lisbon. Given that the texts are practically identical, the conclusions are valid for both treaties.

There are three main parameters of institutional change in the Treaty of Lisbon that are important for the second hypothesis. First, the European Commission becomes the principal executive body. Only in *"duly justified specific cases"* the Council may adopt implementing acts (Art. 291, para. 2 TFEU), but not delegated acts. Second, a whole category of implementing acts – called "delegated acts" is unconditionally exempt from comitology control (Art. 290 TFEU). Third, the new instrument regulating the comitology procedures for implementing acts must be adopted by the ordinary legislative procedure (art. 291, para. 3 TFEU). Additionally, the hierarchical subordination of implementing acts under delegated regulations will further enhance the importance of the Commission as an executive organ vis-à-vis the Council (Schütze 2005: 18).

For the first time in the history of European integration the European Commission has acquired a substantial level of discretion over the substance of implementing acts at supranational level. This new institutional setting has objectified the long-held belief of the EP that the Commission should be relieved as much as possible from the control of comitology committees. The existing historical evidence does not show substantial or heated debate on the introduction of a hierarchy of EU legal acts. More or less tacitly the Working Group (IX) on simplification and the Praesidium of the European Convention promoted the most radical variant of the hierarchy that included the new category of delegated acts and paved the way to towards a clear-cut separation of powers (Bergström and Rotkirch 2003: 47-59). This is particularly surprising given the presumed opposition of Member States against the notion of separation of powers on the supranational level. The second ratification process of the same texts in the Treaty of Lisbon rejects the argument that these reforms were swept under the rug and were left unnoticed by Member States.

It is very difficult to explain this institutional shift outside of the weak interaction hypothesis. There is obvious concentration of executive power in the European Commission that might have been easily diluted by creating conditions for truly independent executive agencies at EU level. It is true that the subsidiarity principle, the new powers of the European Council, and the involvement of national parliaments (art. 69 TFEU) may further limit the discretion of the Commission; however, from a legal institutional perspective it is evident that the Commission has obtained significant relief from the control of Member States.

One possibility to reject the hypothesis would be that the EP is only a competence maximiser – i.e. that it will seek to ensure that policy will be enacted through procedures which maximise its own degree of control over the process of policy-making, and not through procedures where has little or no control (Bergström, Farrell and Windhoff-Héritier 2007: 342). Indeed, it is in no way apparent that the EP should seek to limit the level of control of Member States without seeking relevant involvement in the comitology procedures. The careful analysis of the historical record shows that the EP has been quite focused on relieving the Commission from the stricter forms of comitology controls, but has not made symmetrical demands for direct participation in the comitology procedures. The 2006 comitology reform is not a deviation from this principled position especially in the light of the extremely rare use by the EP of its new powers (Hardacre and Damen 2009).

In this sense it is useful to remind the finding of Dehousse 2003: 806 that the new division of labour – with the EP acquiring the real power to *politically s*upervise the process of implementation of legislation – corresponds to the respective functions of parliaments and democracies in modern societies. This may lead to the conclusion that the process of parliamentarisation influences the comitology procedures in a larger framework of an attempt to strengthen the executive role of the Commission, in other words an attempt for the progressive parliamentarisation of the Commission itself (Chiti 2002: 28).

Conclusion

This article aimed to test the validity of two hypotheses that have implications for the future institutional change of the EU. First, it was argued that at least in two specific cases there is a clear causal link between the use of newly acquired budgetary and legislative powers of the EP, and the limitation of control on the Commission by the comitology committees. Second, a weak systemic interaction is considered to exist between the notion of parliamentarisation and the reform of the comitology system. This weak interaction was vocalised by the EP in the one-sided institutional debate on comitology during the last decades, but it was truly objectified at the last stages of institutional reform

with the Constitutional Treaty and the Treaty of Lisbon. The net result of this weak interaction has been the partial relief of control by Member States on the Commission through the comitology committee system. This relative loss of control has not been compensated for by the dilution of executive powers away from the Commission, for example by the creation of truly independent executive agencies. The institutional *status quo ante* has not been preserved; the politicisation of the Commission has accelerated, and the EP has generally restrained from demanding direct participation in the comitology procedures.

These developments should be considered bearing in mind the limitations of the parliamentarisation model for a supranational legal order, as described by the substantial normative objections in the academic literature against such further parliamentarisation of the EU (Mancini and Keeling 1994, Lindseth 1999, Yataganas 2001, Majone 2002, Dehousse 2003, Haltern 2003, Jacque 2004, De Búrca 2006, McCormick 2006). It remains to be seen how the Council, the EP and the Commission will negotiate the relevant rules and procedures for the adoption of delegated and implementing acts under the Treaty of Lisbon. This, along with the empirical observation of the process of agenda-setting and the role of the European Council in it, will provide further evidence for the exact direction and relative impact of the process of parliamentarisation.

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The Political Consequences of Resource Dependence - How Natural Gas Export Can Affect Policy Outcomes: A Quantitative Analysis

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Abstract

With the use of a liberal/rational framework as a baseline, this article examines whether economic asymmetric interdependence can yield political influence. More specifically, it examines exogenous gas supply to the EU and develops a theory that provides testable hypotheses aiming to answer whether the export of gas provides political advantages for the sender state. The outlined hypotheses, and more, are tested in a cross sectional time series dataset, where votes in the United Nations (UN) Assembly are used as the dependent variable, as a measurement for the policy preferences of states. The empirical findings support the prediction made in the theory section. Gas dependence has a conditional effect on policy behaviour. The sender government has to be a sizeable international power, whilst the recipient government should have low military capabilities and be dependent on foreign support.

Keywords

Resource dependence; Natural gas; European Union, Russia

IN RECENT YEARS, SEVERAL COMMENTATORS HAVE WARNED ABOUT THE INCREASED dependency of the European Union (EU) on Russian gas. Dependency, they claim, in the worst-case scenario, can result in a dramatic shortage of fuel, caused by a shut-down in Russian gas export to the European energy market (Financial Times 2009). This line of argument usually draws inspiration from a few sources such as the Russian security strategy paper from 2003 and President Vladimir Putin's PhD dissertation, both of which state that Russia should use gas politically. However, a full stop in gas export from Russia to Europe could hurt Russia as much as it would hurt Europe[1]. According to Stern (2006) exogenous energy supply is as safe as endogenous. One can thus argue that it is in Russia's interest to be perceived as a reliable exporter of energy. A shut-down could possibly ignite an increase in cooperation in Europe, resulting in a common external energy policy between EU member states[2]. Consequently, Russia could find it considerably more difficult to dictate the terms of future gas contracts. On the other hand, Russia has on several

[1] The growth in the energy sector accounted for around 20 percent of Russia's GDP growth between 1998-2004 (Milov, Coburn and Danchenko 2006).
[2] This argument follows Milward (1992) who sees European integration as a response to different types of crisis.

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occasions disrupted energy supply to Ukraine which could suggest that Russia can and will stop the flow of gas as an instrument in order to achieve a political objective (Fredholm 2008). These interruptions in Russian gas to Ukraine and consequently to the European market suggest that being too reliant on Russian gas supply can be problematic.

Thus, the main question this article raises is whether or not dependence on imported natural resources allows the sending country to exert political influence on the recipient country. As highlighted by Chloë (2005:9): "Natural gas has helped it [Russia] to receive military concessions and political loyalty at a time when most CIS states were engaged in asserting their independence". The question is thus important, because it helps determine whether or not European states relying on Russian gas are more likely to support Russian policy choices. In order to examine this question, the article develops a theoretical argument about the political consequences of resource dependence. It integrates elements from bargaining theory and will be outlined on two levels. On the domestic level, the article investigates why the Russian government seeks to affect policy in European countries, while on the international level a condition seeking argument is outlined.

Thus, the contribution of the article, compared with previous literature, is twofold. It refines previous arguments about resource dependence by, amongst other things, considering and theorising the relative importance of trading commodities. Furthermore, it provides much needed empirical evidence on whether or not Russian gas export to the EU has political effects.

The remainder of the article is structured as follows. First, the article will briefly present some general arguments about the political consequences of resource dependence. The literature review will, like the theory presented in this article, focus on studies consistent with the liberal paradigm. This is because, in addition to the word limit requirements for this article, a recent study done by Maoz (2009) has shown that realist inspired hypotheses about dependence and interdependence are not supported by empirical evidence. Then, the theoretical argument will be presented. The following part will develop the research design. Finally, the outlined hypotheses will be tested and the results will be discussed, before conclusions will be drawn.

Literature review

A widely discussed question in the field of political economy is whether or not resource dependence (trade dependence) can be a source of political influence (Hirchman 1948, Caporaso 1978, Duvall 1978, Abdelal and Kirshner 1999, Wagner 1998). Some scholars have seen a natural connection between influence and resource dependence, and concluded that resource dependent governments are more likely to give in to political coercion (Hirschman 1948, Caporaso 1978, Duvall 1978, Abdelal and Kirshner 1999). Others have argued against too a simplistic link between resource dependence and political influence (Armstrong 1981, Wagner 1998). They hold that governments can only use asymmetric trade relations politically under specific circumstances. Both the 'simplistic' and sophisticated arguments will be discussed in turn.

Hirschman (1948) claimed there was a natural connection between unbalanced trade relations and political coercion, that is, 'larger' states were able to exploit their favourable trade relations with 'smaller' countries in order to increase their influence and consequently their power (ibid). This argument has been refined and expanded by scholars pointing to two 'primary links' between dependence and power (Caporaso 1978, Duvall 1978, Abdelal and Kirshner 1999), dependence either as 'absence of autonomy' or as 'highly asymmetric interdependence' (Caporaso 1978). They provided theories on the long-term implications of unbalanced trade relations (Caporaso 1978, Duvall 1978). The

trade dependence of a government may lead the dependent state to 'shift or change' its national interests in favour of the state that it relies upon (ibid). However, a value shift may be hard to identify, as this is a gradual process. A model that takes into account changes over time is therefore needed. Duvall points out that, in order to appropriately measure dependence, one requires time-series or change data (Duvall 1978).

In contrast, some scholars (Armstrong 1981, Wagner 1988) have argued that one should be careful not to overstate the political effects of trade dependence. By taking more of a conditional approach, they have shown that only under certain circumstances can trade dependence actually yield political influence. In order for economic asymmetric interdependence to become a political instrument, the cost of punishment has to exceed the cost of compliance. According to Armstrong, three conditions need to be met. First, a large part of a state's investment should be controlled by another state (links to Hirschman). Gazprom investments in the European gas market serve as a good example (Aalto 2008, Light 2008). Gazprom has been able to purchase EU based companies, while Russian law prohibits European companies in doing the same in Russia. The second condition is the inability of a resource dependent state to find other sources for a certain commodity (diversification). This problem becomes evident when we look at the gas dependent Europe, who is currently unable to diversify its gas import. Finally, the last condition deals with the relative intensity of the demand for a specific commodity, and is slightly more complicated to evaluate because when the issue is of high policy concern to both parties, the dominant part will try to use the commodity as way to control the dependent parties' behaviour, simultaneously as the dependent states will try to resist pressure in every way (Armstrong 1981).

In another study, Wagner (1988) applies bargaining theory in order to study resource dependence. First, he questions the assumption that market power is the same as bargaining power, and points out how scholars like Hirschman made that connection too hastily. Second, he outlines several conditions that should be considered and met in order for an asymmetric trade relationship to result in political influence. According to Wagner, political concessions from one government over another must be compensated either politically or economically. However this argument has a missing link, because it fails to consider the relative importance of the traded commodity in question. When the commodity is of the highest importance to a country, and when the commodity in question is extremely rigid like gas then compensation is not a necessary condition because the fear of a shutting off is an important factor to decision makers in recipient states. As follows, this article will show that gas has the ability to do precisely that.

Finally, an important term that can shed some light upon the EU-Russian energy debate is asymmetric interdependence. Asymmetric interdependence is defined as a relationship where one party is more dependent on another for a certain commodity (Keohane and Nye 2001). This definition provides a useful and accurate description of the Russia-EU energy relationship. Russia exports a substantial part of its gas to Europe. EU countries on the other hand, imports about the same per cent of its total gas consumption from Russia, thus making both parties dependent on each other (interdependence). However, even though Russia is dependent on the European market, a shut-down in gas supply would hurt certain European countries harder (asymmetric). Mainly because gas is a highly important commodity, which states rely upon in order to fulfil some of the most basic needs in a society (e.g. heating, cooking and so forth) (Cameron 2007).

A political theory of resource dependence

Many commentators and scholars have in their warning about EU's increased dependence on exogenous supply of natural resources (e.g. oil and gas) neglected to explain why it is

problematic that Russia is the most important supplier of gas to the European market. Why could Russia with its vast gas and oil reserves pose a threat to certain European Union member states? And, why would Russia want influence in Europe? Moravcsik (1997) notes that unless we are aware of actors' preferences, it becomes impossible to: 'assess claims linking variation in the particular means available to states on interstates conflict or cooperation' (Moravcsik 1997: 542). However, he is careful to note that preferences should not be confused with strategies. While the latter have a firm link to bargaining theories and interstate relations, the former is independently determined within a state, and should therefore be investigated first.

In this section, the article explains why and under which circumstances resource dependence can be an instrument for political coercion. The argument is based on a rational framework, and it is being assumed that Russian leaders (as all politicians) are office seeking and therefore opportunistic. How a leader seeks to stay in office is dependent on the political institutions in the country in question (Bueno De Mesquita et al. 2005). The article considers Russia to be more an autocracy than a democracy.[3] Autocratic regimes tend to be dominated by a small winning coalition where group loyalty is the key. Therefore, government officials should seek to please the relative small group of elites that dominates the country's political arena. And Russian power politics, after the Cold War, is full of evidence to support the claim that loyalty is the key to political survival in autocratic regimes. When Yeltsin was in power, Putin gradually became part of Yeltsin's inner circle, and when Yeltsin stepped down, Putin – at that time Russia's Prime Minister –, ended up succeeding Yeltsin. When Putin had to step down, due to the fact that Russian Presidents can only serve two consecutive terms, one of his closest and most trusted allies (Medvedev) succeeded him. Putin then stayed in the political arena, as leaders are protected as long as they manage to 'bribe' their most trusted supporters (Bueno De Mesquita et al. 2005), before becoming President again in 2012. However, as pointed out by Plümper and Neumeyer (2009), autocratic regimes cannot afford to neglect the general population altogether. Pleasing the general population tends to be important in the beginning of an incumbent's period in charge in autocratic regimes (Bueno De Mesquita et al. 2005). Putin, in the beginning of his presidency, managed to gather support by invading Chechnya. This provided him with sufficient political capital to go after people that challenged the Kremlin's power.

As we assume that decision makers seek to maximize their utility in order to stay in office, Russian decision makers 'should' advocate a set of beliefs on how the country should behave internationally, as this is needed to please the strong and influential group, which Allison, Light and White (2006) call pragmatic nationalists. The governing elite (with a few exceptions) has dominated Russian foreign policy since the early 1990s. They acknowledge market liberal principles, but at the same time want the Russian government to be in control of vital national resources. The pragmatic nationalists argue that the international community should recognize Russia's right to ensure the stability of the former geopolitical space of the Soviet Union (ibid.).

This article advances the argument that the export of gas serves as a valuable means to two ends for Russian decision makers: a) to raise revenues for the state, and b) to ensure that Russian geopolitical interests are being accounted for. Both aspects may be obvious, but they are nonetheless important to highlight because there are few other trading commodities that could serve the same purpose. By exporting gas, leaders are able to please their most trusted allies economically (pay off key political supporters) and geopolitically.

In order to ensure that the state generates sufficient revenues, Russian leaders want

[3] According to the widely used polity data, Russia scored 4-5 between 2007 and 2009.

continued access to the European energy market, a market that Russia is heavily dependent on for its export of gas (Finon and Locatelli 2007). Gazprom, owned by the Russian government has bought up several European companies that are involved in energy import, in an effort to control both the supply and demand side of the gas market (Aalto 2008). The European market is not only the largest in the world, but also consists of states that are able to pay a good price for Russian gas. Politically, Russian leaders fear that an expanding European Union will be able to ignore Russian interests. The export of gas can either be a tool for coercion or a trading commodity that enables Russian decision makers to act independently from the criticisms of recipient countries, which could otherwise be inclined to publicly condemn Russian foreign policy actions (Hughes 2006). The ongoing Russian-Chechnyan conflict serves as a good example. Some argue that Schroeder (former Chancellor in Germany) hesitated to criticise Russia due to the fact that the new north stream pipeline was being planned, ensuring German supply of gas directly from Russia (Aalto 2008).

A case example: Ukraine-Russia

Even though Ukraine is heavily dependent on Russian gas (according to Stern (2009) Ukraine imports around 47-57 bmc each year), the Ukraine-Russian gas trade can not be characterised as a pure form of dependence (Keohane and Nye 2001). This is because Russia is: a) in need of Ukrainian transit pipelines (Fredhold 2008), and b) relies upon Ukraine as the largest single importer of Russian gas (Stern 2009). The relationship may therefore be characterised as being closer to a form of interdependence (Keohane and Nye 2001). Furthermore, as pointed out by Fredholm (2008), Russia (through the state owned company of Gazprom) has since 2002 aimed to introduce a more professional and businesslike trade relationship between the two countries in question. On the other hand, even in trade relationships where both parties are mutually dependent on each other, political coercion is not out of the realm of possibilities. The Ukrainian-Russian gas trade has, for example, been surrounded by numerous crises, disrupting gas flows to Ukraine and consequently its east European neighbours. However, in order to fully understand the complexity of the Russian-Ukraine gas relationship it is important to consider domestic decision makers incentives and motives. While Viktor Yushchenko where more hostile to Russian efforts to control and own Ukrainian pipelines, the new President of 2010 Viktor Yanukovych is thought to be more pursue a more pro Russian line (Woehrel 2010). Yanukovych has been critical of the current Ukraine-Russian trade agreement, and wants Russia to give Ukraine a price reduction in exchange for Russia to get a larger stake in Ukrainian pipeline systems (ibid). Russia, on the other hand, might to be willing to reduce the price. Political influence, as so often, must be compensated and whether or not Russia values political influence in Ukraine more than increased revenues is difficult to predict. And it should be noted that as Gazprom is not in the same financial situation as they where a few years back, also, the Ukrainian parliament must pass a law permitting such a deal. (ibid.). Political influence, as demonstrated in the Ukrainian-Russian example, must most likely be purchased, or compensated for. Whether or not Russia aims (and manages) to gain political influence over Ukraine or any other country that is heavily dependent on Russian energy supply will therefore vary. However, as this article will demonstrate, there are general cases where Russia could use the export of gas as a political instrument more effectively than in other places.

Separating gas from oil: the importance of the trading commodity

By moving in to how states develop strategies and tactics in order to maximise utility in interaction with other states, it is fruitful to look at bargaining theories, because it enables us to determine under what circumstances asymmetric interdependence can yield

political influence.

One of the main arguments of this article is that the relative importance of a trading commodity determines whether or not governments will make political concessions, and moreover give in to coercion. The basic assumption is that political concessions do not come automatic, but must be compensated in some form. By looking at a theoretical example it becomes clearer why this is the case. Imagine a situation where government ***i*** is dependent on government ***j*** for commodity ***c***. Political concession(s) from government ***i***, as a consequence of the asymmetric trade relationship, must be compensated economically by ***k*** from government ***j***, in order to increase the utility for both governments ***i*** and ***j***. Political influence is not an automatic cause of an asymmetric trade relationship. For that to be true, one important condition must be fulfilled, which is that the trade dependent government must augment its utility function. Without compensation from ***j***, there is little reason to believe that ***i*** should make costly political concessions that suit ***j***. Moreover, government ***j*** should weigh the political concessions as most valuable, at the same time as ***i*** considers the political concessions to be lower than the economical benefits, which were part of the compensation from ***j***. Hence, government ***i*** prefers $c > k$, and government ***j*** prefers $k > c$. In order to change political behaviour, the dependent government should be compensated economically; if not, there is little reason to believe that asymmetric interdependence can yield political influence.

However, this hypothetical situation has not taken into account the relative importance of the traded commodity, and therefore cannot be easily applied to the export of gas. Because, without considering a specific commodity, it is easy to believe that ceasing supply of ***c*** from ***j*** to ***i*** could be compensated by an inflow of ***c*** from another government ***l***. With most commodities, one assumes that the market will reallocate new resources. But when the role of the market disappears, decision makers in recipient government ***i*** will have to consider the possible affect of a shut-down it the country's gas supply. This possible, but unlikely, fear of a shut-down makes economic compensation superfluous in order for government ***i*** to make political concessions to government ***j***. Thus augmenting the possibility that government ***i*** would be more willing to comply with ***j***, and give in to coercion. And precisely because gas is a highly rigid commodity, Russian state officials have highlighted gas as an important foreign policy tool. In 2003, a Russian strategy paper stated that one way for Russia to be an influential and important actor in the near abroad is by the use of gas exports (Stern 2006).

Furthermore, gas cannot easily be diversified. Oil, in comparison, is sold on the world market, and has a number of ways in which it can be transported in numerous different ways. Gas runs mainly trough pipelines, though liquefied natural gas is being used to some extent. However, liquefied natural gas is considerably more expensive and therefore less favoured by importing states (Stern 2006, Cameroon 2007). European gas importing states cannot for the time being diversify their gas supply by other energy forms or alternative suppliers. There are only a limited number of pipelines that provide Europe with gas[4], and it is with only a few exceptions transported by pipelines. Furthermore, oil cannot easily substitute gas, as machines operating on natural gas cannot function on oil (Cameron 2007). As Noel (2008) argues, OPEC, contrary to what people believed after the oil crisis in 73, has not become a significant political actor on the world stage because the oil market is globally integrated, where it is impossible for single exporters to threaten importers with reduced supply.

[4] See Van der Linde 2007.

Conditional effects

The power of the sender government

Even though gas is a highly rigid commodity, it is very unlikely that government officials can use gas by itself as a way to gain political concessions from other governments. If gas would on average yield political influence to be exploited by the exporting state, we would have to treat all gas exporting countries equally. Providing that decision makers in Norway and Algeria would be interested in influencing a gas recipient country, we could expect that Norway and Algeria (whose combined exports amount to around 40 per cent of Europe's total import of gas, see Noel 2008) would gain the same political concessions as Russia from recipient governments. Even though this might be possible in some cases, it is far more unlikely that Norway and Algeria would be in the same position as Russia - the relative (political and military) power of Russia is much greater than that of Norway and Algeria, even combined.

In order to distinguish Russia from gas exporters like Algeria and Norway, one important condition has to be met, and that is that the sender country has to be a sizable international power. The power of the sender state matters for two main reasons. First of all, the greater the relative material power a state possesses, the more likely it is that the decision makers have a broader range of tools to use if they seek to gain political confessions from a particular target state. If the export of gas can be used in combination with economical sanctions, or the threat of military force, the more likely it is that the targeted state is willing to make political concessions that suit the sender state. Secondly, the relative power of the sender state has an effect on the expectations of the target state's political leaders. When decision makers of a target state are aware of the possibility that a coercive government has the ability to hurt the target state in numerous different ways, the more careful they will be when dealing with the sender state. The expectations of the recipient state are also a function of previous experiences in dealing with the sender government. 'In a future conflict, foreign policy leaders will consider the history of prior bilateral negotiations in developing conjectures about the other state's behaviour' (Drezner 1999:32).

On average, gas export is conditioned on a state's material capabilities. More specific Russia is a substantial military power (according to national capacity measurement it ranks only behind the US), with one of the world's largest arsenals of nuclear weapons. In contrast, the size of the Norwegian and Algerian military is at a bare minimum. On the basis of the first argued condition, the first hypothesis is as follows, and applies when the sender country and the recipient country have conflictual interests:

> *H1 – High relative power of the exporting state increases the probability that gas recipient governments will make political concessions in favour of a coercive sender state.*

A crucial part of liberal theory is that it does not treat government preferences as fixed, but rather as something that varies and changes over time, and across issues. On this basis, this article does not assume that Russia seek to influence and penetrate every single European country to the same degree. On average it seeks influence, but the degree in which it pursues its ability to coerce and affect policy varies a great deal. Where the strategic utility is high and the political costs are low, the more likely we are to witness Russian involvement. But Russia's ability to influence and change foreign policy behavior is not solely determined by the strength of Russia. The relative strength of the recipient country must be taken in to account. A big difference in the relative power ratio between

the sender and the target governments augments the possibility that weaker states must give in to coercion, and thus make political concessions to the sender government.

With the recipient country in mind, this article advances two arguments that enhance the ability of gas export to become an effective foreign policy instrument. If the recipient country is: a) in close proximity to the exporting country (Russia), and b) vulnerable to external pressure and shocks, gas dependence is believed to have an increased effect on the recipient governments willingness to give in to political coercion. The first argument is explained with Russian preferences and the relative gas dependent situation in Europe. The second argument deals with the vulnerability of the recipient government, where it is being argued that dependence on foreign support has a significant effect on whether or not the target/recipient government is likely to make policy concessions to the sender government.

Geographical proximity

In order to keep the geographical proximity argument parsimonious, the former Russian satellite states (e.g. East-European countries) will be treated in the same way. I acknowledge that each country has its unique relationship with Russia, but nevertheless there are important similarities. First, there are substantial Russian minorities in the east European countries; therefore Russian leaders have an incentive to make sure that these people's rights are not being infringed upon. This is partly because Russian minorities are valued both by the general population and the governing elite, thus making sure that these people are being taking cared of becomes important for Russian leaders wanting to stay in office. Second, Russia sees East-European countries as part of their sphere of influence. Russia's involvement in Eastern Europe is not evenly distributed. The degree to which it pursues its interests will thus depend on the amount of Russian minorities living in a certain country, and how Russian decision makers evaluate the strategic importance of the country in question. Overall, however, it is more likely that Russia is going to be more involved, and more interested, in influence in the eastern parts of Europe compared to Western Europe.

Also, the degree to which European countries rely on import of gas is different across regions, with the East-European countries as the most dependent ones on Russian gas (Noel 2008). This increases the likelihood that gas will be a more contested trading commodity in Eastern Europe in comparison with West-Europe. The geographical proximity argument only applies if the supplying country is a substantial political power. Sweden is not likely to suffer from the fact that it imports gas from its neighbouring country Norway, because the latter country is not a substantial military power.

Furthermore, the closer the supplier country (of gas) is to the importing country, the more viable is the threat to stop the inflow of gas, because it narrows the amount of affected countries down to a minimum. However, I acknowledge that this is more likely to hold true if the importing country is not also a transit country, but in order to keep the model parsimonious, I treat European gas importing countries as purely recipient countries and not as transit countries.

> *H2 – Geographical proximity between the recipient and the supply country increases the effectiveness of gas being a viable political instrument for decision makers in a gas exporting state.*

The 'vulnerability' of the recipient country

A second factor, which arguably will coincide with the effect of gas dependency, deals with the relative economic vulnerability of the recipient country. 'Weak' countries are arguably more vulnerable and sensitive to external pressure, and therefore more likely to accept certain demands from the supply country. The article defines weak countries as states that are in need of foreign support, which is defined as states with high inflation and high external debt (Dreher and Sturm 2006). Their vulnerability leaves them with few alternatives, and the possible threat of an interruption in the supply of gas from Russia may seem far more dangerous, compared to a country like France, which is partly self-supplied with nuclear power. This means that countries relying on Russian gas supply, in addition to being relatively 'weak' states, are more vulnerable to external pressure, and thus more likely to give in to Russian foreign policy demands. In practise this could imply that those countries are; a) more likely to ensure (e.g. support) that Russia is guaranteed market access in their country and overall in the EU, and b) more likely to make sure that its Russian minority is treated in a way that is satisfactory to Russia. To sum up, the last hypothesis goes as follow:

> *H3: Governments that are more dependent on foreign support are more likely to support policy choices of a coercive gas exporting state.*

Research design

In order to test the outlined hypothesis, pooled cross sectional time series data is used. In comparison to a detailed examination of a specific bargaining situation (e.g. a case study) involving Russia and an EU country, panel data enables us to see the effect of gas export across countries and over time. The data spans from 1991 to 2002, and contains every European Union member[5], and the three major suppliers of gas to Europe: Russia, Norway and Algeria in order to avoid selection bias. The time period was chosen to see if gas export had an effect on foreign policy behaviour over time (Abdelal and Kirshner 1999, Caporaso 1978, Beck and Katz 2001). In addition the dyadic dataset measuring voting correlation in the UN council between importing and exporting countries only goes as far as 2002. Furthermore, it makes little sense to go further back than 1991 as most of the East-European nations were under Soviet rule up until that time. There is also no urgent need to go beyond 2002 because Europe's gas dependence has been fairly stable (see Noel 2008) since the Cold War up until today. If anything has changed since 2002, it is the fact that those countries have been forced to import increasingly more gas from Russia due to the fact that they have no other alternatives (Stern 2006). On the other hand, Russian oil and gas policies have changed since 2002, meaning Russia nationalised most of its energy sector in 2005 (Moe and Rowe 2009). This implies that the ability of Russian decision-makers to use the export of gas as a political instrument has potentially increased since 2005. Accordingly, significant findings from the period 1991-2002 can suggest that gas export is a very real and effective political instrument, which moreover implies that in the period from 2002 until today the political effect of Russian gas export is increasing. As data is not available for every country, the data set is unbalanced, and therefore the number of observations is determined by the selected variables.

[5] Except Malta and Cyprus, as adequate data was not available.

Dependent variable

In order to measure European Union member states' compliance with gas exporting countries' policy preferences, aggregated dyadic data from the UN Assembly provided by Gartzke (2002) is used as the dependent variable. It ranges between -1 and 1, where the former signifies complete disagreement between two countries and, the latter complete compliance between country pairs. The article looks at the directed sender-recipient dyads, where the three gas exporting countries serve as the sender states, while the 25 European Union members make up the recipient countries. The data set includes all votes in UN Assembly in the given time frame, and not only key votes as some scholars have used. As Wittkopf (1973) shows, and as Dreher and Sturm (2006) also point out, there is little difference between including all votes compared to only focus on the most important ones in the UN Assembly. According to Voeten (2000), country position is independent from the importance of the issue that is being voted on at the UN Assembly. One could also question the UN Assembly's relative importance, and therefore argue that countries do not put much time and effort in the issues that are voted on. However, there is little reason to believe that votes in the Assembly do not on average reflect state interests and preferences.

Explanatory variables

The main explanatory variables that are used to test the predictions made in the theory section are measurements for the export of gas, military power, and several economic performance indicators. The gas export variable is obtained from Eurostat, and is an aggregated measure of the amount of gas that is exported from Norway, Algeria and Russia to the 25 European Union countries. The variable is logged in order to reduce skewness. In line with other scholars, this article uses the Composite Index of National Capacity (CINC) as a measurement of a states' relative military power. The national capabilities variable (CINC) is a measure of how powerful materially speaking, a state is, and ranges between 0 and 1. It includes the size of the exporting country's economy, population, geography, and military capabilities, and a country's score is the combination of all these indicators. For example, Russia's score in 2001 was 0.0549, while Norway's score was 0.005 based on the national capacity measurement. The CINC scores are included in the model as sender-recipient dyad. In order to appropriately examine the first hypothesis laid out in the previous section, an interaction variable was created, as recommended by Brambor, Clark and Golder (2005) as a desirable way to test a conditional hypothesis. The interaction variable combines the amount of gas export with the obtained CINC scores.

In line with the geographical proximity argument data provided by Gleditsch and Ward (2001) is being used to create a variable that includes the distance in miles between the capitals of the sender and recipient governments. The last part of the outlined theory predicts that governments that are more dependent on foreign support are more likely to give in to political pressure and support the policy choices, of a coercive gas exporting state. In order to empirically test that argument yearly data from the World Bank is obtained. It includes variables that measure a state's external debt and rate of inflation.

Finally, certain control variables are included that have been shown to have a significant effect on the UN Assembly voting. Voeten (2000) shows that an economical measurement for the size of the economy has a significant effect on voting in the UN Assembly after the Cold War ended. As follows, the model includes the variable GNI per capita in order to control for economical effects on voting coincidence in the UN Assembly. Foreign Direct Investment from the gas exporting countries to the recipient countries, is the second and last control variable used in this article. It is included in order to make sure that gas export

does not pick up the effect of foreign direct investment from the exporting country to the recipient country. Data for the control variables are obtained from the World Bank.

Model specifications

As the article uses cross sectional time series data, commonly referred to as panel data, a linear OLS model would not be sufficient in order to obtain the most unbiased and efficient results, because panel data will most likely have properties that violate the OLS assumptions. Plümper, Troeger and Manow (2005) and Plümper and Troeger (2007) point to heteroscedasticity, serial correlation and unit heterogeneity as reasons for why OLS is an inadequate tool in panel data. Accordingly, this article uses a model specification that will try to solve for some of these problems. First, as there is evidence of panel specific heteroskedasticity, this article employs panel corrected standard errors, as recommended by Beck and Katz (1995). However, as Beck and Katz (1995) point out, this model does not control for autocorrelation. One commonly used tool among political scientists is adding a lagged dependent variable to the right side of the model. But the interpretation of the other right hand-side variables becomes more difficult, because the beta's tend to be biased downwards (Plümper, Troeger and Manow 2005). This article uses a Prais-Winsten transformation to control for autocorrelation. The Prais-Winsten transformation (AR1) integrates an autoregressive structure of order one in to the model. It eliminates autocorrelation by manipulating the original model by reducing the disturbance term to pure innovation (Dougherty 2007). Generally 'AR1 error models tend to absorb less time-series dynamics (than a lagged dependent variable) and may therefore be the method of choice for applied researchers seeking to explain not only cross-sectional variance and cross-sectional differences in changes, but also average changes in level' (Plümper, Troeger and Manow 2005: 343). Finally, as a 'Hausman test' (Wooldridge 2007) provides evidence of correlated unit specific effects, one econometric solution would be to use a fixed effects model. However, fixed effects models are inefficient if the variables change little over time, which is present in this model. Fixed effects take out the variance across units and not time. Plümper and Troeger (2007) point to the fact that if a variable has very little within variance, the estimate will not yield inefficiency that will result in unreliable point estimates, but will also create biased estimators. Also worth mentioning is the fact that the Hausman test has shown to have low power (Troeger 2008), so the reliability of the results of the test is questionable. As this article has outlined a theoretical argument that does not investigate variation within units (e.g. countries), but rather across countries, a fixed effects model, overall, is not an adequate tool.

Results

In this part, the hypotheses derived above are tested. The main theoretical expectation in this article was that gas-export should under certain circumstances have an effect on the policy outcome of recipient states. It was argued in this article that gas export does not have an unconditional effect on policy outcomes, which the results in this model support. It indicates that one should be careful to draw causal inferences about trade dependence and political power.

Now, turning to the main variables of interest, there is evidence to suggest that the relative strength of the gas exporting state is important for decision makers that are willing to use the export of gas politically. By looking at the relative difference in strength between the sender and the recipient countries (CINC), there is a positive significant effect. This means that the greater the difference is in the relative power ratio between a sender and a recipient state, the more likely it is that the recipient state will vote alongside the

sender state in the UN Assembly. The 'weaker' the recipient country is, the more vulnerable it is to political coercion from the sender state.

In order to study the conditional effect of gas export on voting in the UN Assembly, we focus on the created interaction variable. Combined with a measurement for relative power, gas export does turn out to have a significant effect on policy behaviour. However, seen as we are dealing with an interaction variable, it makes little sense to look simply at the outlined coefficient, because as the theory argues, only strong exporters of gas should be able to affect policy choices to decision makers in recipient states. Therefore, we must study the gas export effect on the votes in the UN Assembly on different levels of state power. As we can see in table II in the appendix, gas export does only have a significant positive effect if the sender country has 'high' national capability values. The created interaction variable is not significant at medium or lower values of the CINC variable. In practise this means that gas export does not have an effect on the recipient country's behaviour in the UN Assembly if the country has low or mean values, which applies both to Norway and Algeria. However, a 'strong' exporter of gas (like Russia) will on average have a significant positive effect on the recipient countries foreign policy outcome, as measured in voting coincidence in the UN Assembly. The same conclusion can be drawn by studying the marginal effect of gas export on UN voting on different values of national capabilities (see table I in the appendix). The effect of gas export becomes stronger as the power of the sender country increases. This gives leeway to those scholars that have argued that only under specific circumstances can asymmetric interdependence yield political influence (Armstrong 1981). It also shows that political and economical compensation is not a necessary condition for all commodities in order to affect policy outcomes.

Looking at the predicted effect of the geographical distance measure, the results are quite clear. On average, gas recipient countries that are farther away from the sender state are less likely to vote alongside the sender state in the UN Assembly. The greater the distance between to governments the harder it becomes for the sender state to influence policy in the recipient government. However, for this particular variable we are more interested in what happens when the recipient country is closer to the sender state. The counterfactual is the smaller the distance between capitals, the more likely it is that a coercive sender state can affect policy in a recipient state. Combined with the first hypothesis this implies that when the a sender country possesses enough material capabilities, and have incentives to coerce, we should on average expect recipient countries in close proximity to the sender state to be more likely to give in to coercion, and change their policy in a direction, which is more favourable to the sender state.

The effect is predicted to become even stronger when we add another variable to our analysis, and that is the relative vulnerability of the recipient country. With regards to the final hypothesis the results presented in the model lend some support to the argument that states that are more dependent on foreign support are more likely to vote in line with the gas exporting country in the UN Assembly. Decision makers that are left with few options, and have few political tools in their arsenal, should be less willing to risk open confrontation with a stronger coercive state, and therefore more likely to give in to political pressure. However, as we can witness only one of the two measures for foreign support is found to have a statistical significant effect. The amount of external debt that a government possesses matters, but the rate of inflation does not, statistically speaking. One could argue that the former variable alone is a good description of how much a government must rely on foreign support, seen as it directly measures how much revenues a particular government needs to borrow from other countries or international institutions. But overall one should be careful not to overstate the effect of the third outlined hypothesis.

Finally, the results confirm Voeten's (2000) findings that a measurement for economic size has a substantial effect on voting in the UN Assembly. The last control variable, namely foreign direct investment, is not found to have any significant effect on voting in the UN Assembly.

Conclusion

In this article, it has been argued that, under special circumstances, dependence on natural resources can have political consequences. Overall, the empirical findings lend support to the three outlined hypotheses. In practice, this gives leeway to two main arguments. First, that Russian gas export to Europe can be a political instrument, which enhances the ability of the country to influence European decision makers' policy choices. Second, east-European countries are more vulnerable to Russian political pressure compared to west-European countries. This is because: a) they are in close proximity to Russia, b) they are economically weaker than the west European states, and c) they import a larger proportion of their gas from Russia. A relatively weaker recipient country is significantly more vulnerable to Russian coercion, and more likely to make political concessions in order to ensure continued supply of natural gas.

As results suggest, even in a period where the Russian energy sector became partly privatised, the long time political effect of Russian gas export was significant in the period from 1991 until 2002. Consequently, one could argue that the potential political effect of gas export has increased during the last decade. However, it also important to bear in mind that Russia is heavily dependent on the European market. In addition, even though the EU lacks a common energy policy, it has managed to coordinate and back the east European countries in their different disputes with Russia over gas supply. These two factors combined pose interesting questions that ought to be examined in future studies. How are future gas contracts between Russia and EU countries going to be negotiated? Are joint energy statements by the EU affecting Russian decision makers' willingness to use gas as a political instrument? And finally, how will new pipelines affect the gas market and Russia's ability to use gas as a political instrument? One interesting project that surely will add a new element to the EU-Russian gas dialogue is the North stream pipeline going directly from Russia to Germany, bypassing Eastern Europe.

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- UN voting data:

http://dss.ucsd.edu/~egartzke/datasets.htm

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http://www.systemicpeace.org/polity/polity4.htm

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Appendix: Table 1: Effect on voting in the UN Assembly

Hypothesis 1:	AR(1) Model
Export of gas	-.0007 (.001)
CINC - National Capacity	1.4 (.72) **
Interaction Variable:	
Export of gas * CINCA	.06 (.025)**
Hypothesis 2:	
Geographic Proximity	-.00003(.0001) ***
Hypothesis 3:	
External Debt	.0012 (.00031) ***
Rate of Inflation	0.002 (.0002)
Control Variables:	
GNI Per Capita	.479 (.08) **
Foreign Direct Investment	-.0023 (.0037)
Intercept (alpha)	.71 (.04) **
R square	0.82
N.obs	788
prob>chi2	0.000
Standard errors are between brackets.	
*=p<0.1 **=p<0.01 ***=p<0.001	

Table II	The effect of Export of Gas on votes in the UN Assembly on different values of National Capabilities(CINCA)				
		Coef.	Std. Err.	t	P<|t|
CINCA	HIGH	.0023336	.0006551	3.56	0.000
	MEAN	-.00002	.0009243	-0.02	0.983
	LOW	-.0023736	.0014501	-1.64	0.102

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Commentary

Union Citizenship as a Source of Rights? Case C-434/09, *Shirley McCarthy v Secretary of State for the Home Department*, Judgment of the Court (Third Chamber) 5 May 2011, nyr

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Abstract

McCarthy attempted to rely upon rights under Directive 2004/38 within a home state, but this was not a straightforward case of a purely internal situation, the applicant having acquired Irish nationality and claiming that she was a Union citizen living within the UK as a host Member State. The use of dual citizenship as a potential linking element with Union law follows from earlier developments in citizenship case law. Union citizenship has helped those who do not fully meet requirements of secondary legislation. The 'trigger' of cross-border movement has been weakened to some extent in the identity cases, and others such as *Carpenter*. *McCarthy*'s attempt to rely upon Union law without ever having moved, just by *being* a Union citizen, gave the Court of Justice of the European Union a chance to dispel ideas that being a dual Member State national was automatically a linking factor with EU law.

Keywords

Union citizenship; Dual nationality; Directive 2004/38; Free movement; Purely internal situations

Factual background

Mrs McCarthy is a UK and Irish dual-national. She has always lived within the UK, and was in receipt of State benefits. Her husband, a Jamaican national, lacked leave to remain under UK Immigration Rules. Mrs McCarthy applied for and obtained Irish nationality after her marriage; she and her husband then applied for a residence permit as a Union citizen and family member.[1] The Secretary of State refused their application, finding that Mrs McCarthy was not a 'qualified person,' hence, Mr McCarthy was not the spouse of a qualified person. Mrs McCarthy appealed against this decision, and the case reached the Supreme Court of the United Kingdom, which referred two questions to the Court of Justice:

[1] Case C-434/09, *McCarthy,* Judgment of the Court, 5 May 2011, nyr, paras 16-17

Taroni, C. (2012). 'Union Citizenship as a Source of Rights? Case C-434/09, Shirley McCarthy v Secretary of State for the Home Department, Judgment of the Court (Third Chamber) 5 May 2011, nyr', *Journal of Contemporary European Research*. Volume 8, Issue 1, pp. 145-152.
Available at: http://www.jcer.net/ojs/index.php/jcer/article/view/412/324

1. Is a person of dual Irish and United Kingdom nationality who has resided in the United Kingdom for her entire life a "beneficiary" within the meaning of Article 3 of Directive 2004/38?

2. Has such a person "resided legally" within the host Member State for the purpose of Article 16 of the Directive in circumstances where she was unable to satisfy the requirements of Article 7 of the Directive?

Judgment of the Court of Justice of the European Union

The Court reworked the first question referred,[2] extending it to consider the relevance of Article 21 TFEU.[3] It did not address the Supreme Court's second question, finding its answer to the first rendered this redundant.

Beneficiary status under the Citizens' Directive

Article 3(1) of Directive 2004/38 reads:

> This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.[4]

The Court was very direct: "A literal, teleological and contextual interpretation of that provision leads to a negative reply"[5] to the question of Mrs McCarthy's ability to rely upon it. The Court emphasised the element of leaving one's home state required- the Member State must be other than that of which they are a national. The Court reiterated the Directive's aims- to facilitate and strengthen the right to move and reside freely- so it was not relevant without movement.[6] Domestic citizens' residence cannot be subject to conditions, so it was inappropriate for the Directive to apply to Union citizens enjoying unconditional residence rights due to also being host-state nationals.[7] Union citizens who had never exercised their right of free movement and always resided in a home Member State were not beneficiaries for the purposes of Article 3(1) of Directive 2004/38.[8] This was uninfluenced by the fact that "the citizen concerned is also a national of a Member State other than that where he resides".[9]

Potential Reliance upon the Treaty

The second element of the Court's question related to the application of Article 21 TFEU. Treaty rules do not apply to "situations which have no factor linking them with any of the situations governed by European Union law and which are confined in all relevant respects within a single Member State"[10] -a restatement of the purely internal rule.[11] However, the Court recognised that a lack of personal use of the right of movement is not

[2] As is its prerogative- see Case C-251/06, *ING. AUER,* [2007] ECR I-9689, para 38
[3] *McCarthy,* n 1 above, para 26
[4] Article 3(1) of Directive 2004/38
[5] *McCarthy,* n 1 above, para 31
[6] *Ibid.,* paras 32-33
[7] *Ibid.,* para 34
[8] *Ibid.,* para 39
[9] *Ibid.,* para 40
[10] *Ibid.,* para 45
[11] See Case 175/78, *Saunders,* [1979] ECR 1129, para 11

fatal to a cross-border element, demonstrated by *Schempp,* in which a man's ex-wife moved, affecting the applicable tax rules for him.[12]

The Court failed to find a genuine interference with Mrs McCarthy's right of free movement. Not taking her Irish nationality into account for the purposes of granting a residence right in the UK in no way affected her right to move and reside freely between Member States.[13] Mrs McCarthy's situation was contrasted with that of the Union citizens in *Ruiz Zambrano,* as she would not have been compelled to leave the territory of the EU if a right of residence was not given to her husband.[14] The Court of Justice also distinguished *McCarthy* from *García Avello* and *Grunkin and Paul,* referring to the 'serious inconvenience' liable to be caused in those cases, which was not due to dual-nationality, but to the interplay between two legal systems.[15] Mrs McCarthy's dual Member State nationality was insufficient to find that Article 21 TFEU was applicable.[16]

Comment

The Relevance of Union Citizenship

That *McCarthy* would fail was predictable, and the Court made the correct decision in finding that Mrs McCarthy was not a beneficiary under Directive 2004/38, as she had operated no right of free movement, and was not prevented from doing so. However, the potential for Treaty protection with regard to *García Avello* and *Grunkin and Paul* is more interesting. Union citizenship was also, in *McCarthy,* presented as something which had the potential to place Union law within reach for dual Member State nationals across the Union, and eliminate the possibility of purely internal situations for such people. Being a national of another Member State, and hence a Union citizen, was argued as a sufficient link to EU law without movement by the individual concerned. In *García Avello* it was emphasised that citizenship status was not intended to extend the scope *ratione materiae* of the Treaty to purely internal situations,[17] but there a link existed as the children of Mr García Avello, who were nationals of one Member State (Spain) were "lawfully resident in the territory of another Member State"[18] (Belgium). The children were treated as nationals of *another* Member State, despite also holding Belgian (host-state) nationality, which is seemingly a similar position to that of Mrs McCarthy. However, in *García Avello,* unlike *McCarthy,* this brought the applicants within the scope *ratione personae* of Treaty rights,[19] which is where the difficulty lies.

Leading to the decision, Belgium had only recognised the children's Belgian nationality,[20] whereas the UK was careful to take account of Mrs McCarthy's Irish nationality. The reconsideration of a Tribunal decision earlier in this case's history was ordered solely because of a failure to consider the consequences of Mrs McCarthy's dual nationality, reflecting the imperative that Union citizenship be acknowledged.[21] Someone possessing Union citizenship cannot be denied recognition of that status by a national authority- the UK could not automatically decide that Mrs McCarthy's Union citizenship was 'not real and

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[12] *McCarthy.,* n 1 above, para 46, citing Case C-403/03, *Schempp,* [2005] ECR I-6421, para 22
[13] *Ibid.,* para 49
[14] *Ibid.,* para 50
[15] *Ibid.,* paras 51-52
[16] *Ibid.,* para 54-5
[17] Case C-148/02, *García Avello,* [2003] ECR I-11613, para 26, citing Joined Cases C-64/96 and C-65/96 *Uecker and Jacquet* [1997] ECR I-3171, paragraph 23).
[18] *Ibid.*, para 27
[19] *Ibid.,* para 23; See also Case C-85/96, *Martínez Sala,* [1998] ECR I-02691, para 61
[20] *Ibid., p*ara 28
[21] See *McCarthy v Secretary of State for the Home Department*, Court of Appeal (Civil Division), 11 June 2008, [2008] EWCA Civ 641, [2008] 3 C.M.L.R. 7, para 7

effective,'[22] and the existence of dual nationality has been wholly relevant when assessing the legal position of Union citizens in relation to their Member States of origin.[23] In *García Avello* the emphasis of the Court of Justice was upon the *different situation* of dual Spanish-Belgians compared to solely Belgian nationals,[24] who would not face two different legal systems to determine their name, and therefore ought not to be treated alike. The Court essentially took a different starting point- in *García Avello* the children were 'from' another Member State, whereas Mrs McCarthy was not seen as having moved from Ireland, so was not protected by free movement law. The lack of actual movement in both cases is striking, as is the inconsistency in reasoning the relevance of citizenship vs. movement to a logical and acceptable end-point.

If Mrs McCarthy had worked for five years, or would otherwise have qualified for the right of permanent residence under Articles 16 or 17 of Directive 2004/38, then her case would have been much stronger, as she would have been able to show that she could have resided as a Union citizen, and the Court of Justice would have had to fully address whether it is the (traditional) operation of free movement rights or the (newer) concept of link to Union law which is key to reliance upon Union law as a Union citizen. *García Avello* does not argue that the free movement rights of the children concerned were at risk if their names were recorded in the Belgian form, (unlike in *Grunkin Paul),*[25] and it is reliance upon the situation "being different" and hence causing "inconvenience"- which invoked protection from the Treaty.[26] The inconvenience of living in a different country from one's spouse is unmentioned in *McCarthy,* where emphasis was wholly on the lack of movement.[27]

Citizenship as the fundamental status of Member State nationals

Union citizenship has been heralded as the 'fundamental status' of Member State nationals,[28] but this is not in situations lacking a link to Union law; the status aims to "enable[e] those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to exceptions as are expressly provided for".[29] As AG Léger suggested in his Opinion for *Boukhalfa*, if citizenship were always the fundamental status of Member State nationals,

> every citizen of the Union must, whatever his nationality, enjoy exactly the same rights and be subject to the same obligations. Taken to its ultimate conclusion, the concept should lead to citizens of the Union being treated absolutely equally, irrespective of their nationality [...].[30]

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[22] Opinion of AG Kokott for *McCarthy,* n 1 above, delivered on 25 November 2010, paras 32-33; Case C-369/90, *Micheletti and others,* [1992] ECR I-4239, para 10

[23] See Opinion for *McCarthy,* n22 above, para 33; *García Avello,* n 17 above, paras 32 to 37. *Micheletti, ibid.,* explains the relevance of dual nationality in EU law, but vis-à-vis a Member State of which the Union citizen concerned is not a national.

[24] *García Avello,* n 17 above, para 35

[25] Where 'future' free movement rights were threatened- Case C-353/06, *Grunkin and Paul,* [2008] ECR I-7639, paras 22; 29

[26] *García Avello,* n 17 above, para 36

[27] *McCarthy,* n 1 above, paras 39 and 45

[28] *Ibid.*, para 47; Case C-34/09, *Ruiz Zambrano,* Judgment of the Court, 8 March 2011, nyr, para 41; see, *inter alia,* Case C-184/99, *Grzelczyk,* [2001] ECR I-06193, para 31; Case C-413/99, *Baumbast,* [2002] ECR I-07091, para 82; *García Avello*, n 17 above, para 22; Case C-200/02, *Chen,* [2004] ECR 1-09925, para 25; and Case C-135/08, *Rottmann,* Judgment of the Court, 2 March 2010, para 43.

[29] *Grzelczyk,* n 28 above, para 31

[30] AG Léger in Opinion for Case C-214/94, *Boukhalfa,* [1996] ECR I-02253, delivered on 14 November 1995, para 63

The extent to which Union law is relevant to persons living within their home state varies on a case-by-case basis. *Carpenter* is an example of no movement but where a threat to a fundamental freedom brought the situation within the scope of EU law.[31]

In *Carpenter,* like *García Avello,* the Union citizen resided within their home state,[32] yet the Treaty provided a right of residence for Mr Carpenter's TCN spouse, where this was not found under national law. Instead of relying upon Union citizenship and the right to free movement of persons like *McCarthy, Carpenter*'s case was based upon the freedom to provide services- Article 56 TFEU. The Court of Justice found that if Mr Carpenter's spouse was unable to remain within the UK, his right to provide services to other Member States may be impeded. That the potential disturbance of this economic-right brought Mr Carpenter under the protection of the Treaty, yet Mr and Mrs McCarthy were unable to argue a corresponding right for Article 21 TFEU shows the limitations of Articles 20-21 TFEU, and that economic freedoms are still at the foundation of many personal and family rights within the EU.[33] If Mrs McCarthy had been a worker, there would have been the potential to argue that deporting Mr McCarthy would oblige her to cease work in order to care for her children, although on the facts of *McCarthy,* this was not possible. Nonetheless, the differing levels of protection afforded to economically active and inactive Union citizens underlines the economic foundations of the fundamental freedoms.

Is there any benefit to dual Member State nationality?

Where *McCarthy* failed to show interference with free movement, *Ruiz Zambrano* succeeded with only host state nationality- so the Union citizens were domestic citizens, rather than Union citizens having moved from elsewhere. *Ruiz Zambrano* involved the same situation as *McCarthy* on a basic level—a Union citizen within their home state wanted a TCN family member to be granted residence rights under EU law, as national law failed to provide these. However, unlike *McCarthy,* the Union citizens in *Ruiz Zambrano* were children,[34] and the family members were their parents. The result of this difference in age meant that the Belgian children faced having to leave Belgium if their parents did, while Mrs McCarthy would not have to leave the UK if her husband were unable to stay. On one hand, EU law appears to have little to do with the position of two Belgians residing in Belgium, who arguably required human rights protection, rather than posing a free movement issue for the Court of Justice. On the other hand, the Court recognised that if the children had to leave Belgium, they may have to leave the EU in its entirety, which would prevent the use of their free movement rights.

In *Ruiz Zambrano* there was no need for reliance upon dual nationality,[35] or movement—Article 20 TFEU was interpreted as precluding the refusal of a right of residence and a work permit for a TCN upon whom minor children Union citizens are dependent, "in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen."[36] Thus Belgian children were able to rely upon the protection of Union citizenship to enable their TCN parents and brother to stay within Belgium. The Court's approach was different from that in *McCarthy*—that the children were within their home state was irrelevant; that their parents

[31] Case C-60/00, *Carpenter,* [2002] ECR I-06279, para 39
[32] *Ibid.,* para 14- Mr Carpenter regularly travelled to other Member States but resided in the UK.
[33] See Everson, 'The legacy of the market citizen' in Shaw and More (eds.), *New Legal Dynamics of European Union,* (Clarendon Press, Oxford, 1995), 73-90; Nic Shuibhne, 'The Resilience of EU Market Citizenship,' *CMLRev,* 2010, 47(6), 1597-1628
[34] The application was made by their father, a Columbian national
[35] The second and third children were Belgian nationals only, the first child and parents were Columbian nationals.
[36] *Ruiz Zambrano,* n 28 above, para 46

did not have sufficient means to support them without working was irrelevant;[37] and ineligibility for beneficiary status under Directive 2004/38 was irrelevant.[38] The Court gave the children protection due to the negative impact upon free movement rights which an alternate finding could have.

There are no provisions for free movement rights of children specifically; Article 20 TFEU merely states that all Member State nationals shall be Union citizens.[39] *Ruiz Zambrano* suggests that children have protection for their rights of free movement within the home state. Children are likely to be dependent upon relatives, and they need the most Treaty protection in situations where they are the only Union citizens in a family, as rights for ascending-line relatives under Directive 2004/38 only exist when the ascending-line relative is dependent upon the Union citizen,[40] which is unlikely. Free movement rights may well be at stake if TCN parents were unable to accompany the children to another Member State, though the threatened rights here seemed to be more the right to stay in Belgium than to move within the EU.

The right to stay *within the EU* as a whole is not normally considered in residence cases, as the Court has not previously taken such a holistic view of the Union. Gone were requirements of cross-border activity, and in place were statements about depriving the effect of citizenship and Article 20 TFEU.[41] *Ruiz Zambrano* is a very brief decision,[42] and the Court did not ground its arguments in case-law. It was quick to distinguish it in *McCarthy,* however, as "the national measure at issue... does not have the effect of obliging Mrs McCarthy to leave the territory of the European Union... Mrs McCarthy enjoys, under a principle of international law, an unconditional right of residence in the United Kingdom since she is a national of the United Kingdom".[43] While the measure may not force Mrs McCarthy to leave, it could weaken her desire to stay, as she would be unable to enjoy a normal family life if her husband were in Jamaica and she remained in the UK. Furthermore, this argument is weakened by the last sentence- in *Ruiz Zambrano* the Union citizens also enjoyed an unconditional right of residence in Belgium, and it would be practical matters- finance, age, etc., which would compel them to leave- not technically a decision that their parents were unable to reside.

Has the Court in McCarthy restricted the application of Directive 2004/38 in relation to previous legislation?

In *Surinder Singh,* a returning UK national wife and her TCN husband relied upon Directive 73/148 EC to give a right of residence to the spouse within the UK:

> "A spouse must enjoy at least the same rights as would be granted to him or her under Community law if his or her spouse entered and resided in another Member State".[44]

Directive 2004/38 repealed and replaced Directive 73/148,[45] in its bid to strengthen and codify pre-existing rights,[46] which suggests that no right should be lost. In *McCarthy,* and

[37] So this was not a *Chen,* n 28 above, situation
[38] *Ruiz Zambrano,* n 28 above, para 39
[39] Art 20 (1) TFEU
[40] Article 2(2)(d) of Directive 2004/38
[41] *Ruiz Zambrano,* n 28 above, para 42
[42] *Ibid.*, paras 39-45
[43] *McCarthy,* n 1 above, para 50
[44] Case C-370/90, *Surinder Singh,* [1992] ECR I-04265, para 26
[45] Article 38(2) of Directive 2004/38
[46] Whereas (3) of Directive 2004/38

Ruiz Zambrano,[47] emphasis was placed upon the Directive being applicable where the host state was 'other than' that of which the Union citizen was a national, and that the Directive's conditions could not be applied to domestic citizens, who reside without the possibility of deportation, so that rights under the Directive were outside of such a person's reach. This potentially means that the rights of Union citizens have been restricted by the Court's approach to interpreting the text strictly in not allowing citizens of the host state to rely upon rights under the Directive, thus not acknowledging *Surinder Singh* type situations.[48] More careful phrasing of the judgment would have been advantageous, as it is doubtful that the Court intended to restrict the possibility for a Union citizen who had worked elsewhere to rely upon rights under the Directive.

Travelling and working abroad 'tactically' can, if *Surinder Singh* situations remain covered by the Directive, be conducive to rights of residence under EU law for TCN spouses without leave to remain. This could be seen as contrary to the integrationist aims of the Directive, and an 'abuse of rights,' but the Court of Justice held in *Akrich*[49] that there was no such abuse "where a couple moved on a temporary basis to work in another Member State in order to avoid the 'internal situation' problem and to acquire rights for a non-EU national in the spouse's Member State of origin."[50] While Mrs McCarthy may have tactically acquired Irish nationality, hypothetically she made it more difficult for herself to come under the remit of the Directive by utilising her right of free movement to work. This is because Ireland is the only other Member State with English as a first language, and this is now Mrs McCarthy's home-from-home, so even if she did move to Ireland and work, she may be unable to claim equal rights with those she would have had living in Ireland as a UK citizen, or be able to maintain such rights upon her return to the UK, as in *Surinder Singh,* due to there being no need for her to go to Ireland 'as a European,' as she could enter and reside as a domestic citizen.

Conclusion

The fundamental status of Union citizenship upon which *McCarthy* relied showed some of its limitations in this judgment. Merely becoming a citizen of another Member State did not bring Mrs McCarthy within the remit of free movement law- her rights to move and reside freely within the territory of the European Union were unrestricted, so the UK did not have to extend residence rights to Mr McCarthy. When compared to *Carpenter,* the importance of an economic link to another Member State is easily apparent as a reason to invoke Treaty protection. Where an economic link to other Member States prohibited the deportation of a TCN spouse, merely being a national of another Member State did not. However, Mrs McCarthy's position is also juxtaposed with that of the children in *Ruiz Zambrano,* where the strength of Union citizenship as a protector of free movement rights is highlighted- where there is a genuine threat to the free movement of a citizen of the Union, wherever they may be- abroad or at home- the Treaty may protect them.

The Court's approach to whether a situation comes within the remit of Union law in citizenship cases seems to veer between protecting certain 'links' to Union law[51] and requiring the operation of free movement rights to trigger Treaty protection. Directive

[47] *Ruiz Zambrano*, n 28 above, para 39
[48] *McCarthy,* n 1 above,, paras 32, 34, and 37. In para 38 the Court said one who has 'always' resided in their home state is not a beneficiary, and, para 43 said persons who never exercised their right of free movement cannot be beneficiaries. Though the latter two paragraphs suggest the potential for reliance by a Member State national within their home state, the arguments put forward by the Court as to why this should *never* be allowed to happen (i.e. text of Directive, lack of conditions under it) suggest that the applicability is unclear.
[49] Case C-109/01, *Akrich,* [2003] ECR I-09607, which has not been repealed on this point
[50] Craig and de Bùrca, *EU Law,* Fourth Edition, (Oxford University Press, Oxford, 2008), 783
[51] I.e. identity/dual nationality in *García Avello* and *Grunkin and Paul;* For discussion of the potential breadth of identity see Horváth, *Mandating Identity,* (Kluwer Law International, The Netherlands, 2007)

2004/38 states that Union citizenship is the fundamental status of Member State nationals "when they exercise their right of free movement"[52] yet this status has brought cases such as *García Avello* within the remit of Union law where the exercise of free movement rights is only distant (if foreseeable), while leaving Mr and Mrs McCarthy with only domestic law solutions with which to contend. A truly fundamental status it may not yet be, but Union citizenship is definitely testing the Court's adherence to its fundamental principles.

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[52] Whereas (3) of Directive 2004/38

Book Review

Alex Balch (2010)

Managing Labour Migration in Europe: Ideas, Knowledge and Policy Change

Manchester: Manchester University Press

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How do ideas and knowledge affect labour migration policy-making? What are the roles they play in the policy process? In *Managing Labour Migration in Europe*, Balch argues for taking ideas and knowledge seriously in analyses of policy change, stability and framing. 'We know that knowledge and ideas can be buried or exploited and twisted in the service of interests, to legitimise decisions already made or de-legitimise those not made' (p.2). The heuristic device of *Who? What? Where? How?* is used to begin this investigation and four distinct approaches – Epistemic Communities (Haas), the Advocacy Coalition Framework (Sabatier and Jenkins-Smith), Discourse Coalitions (Hajer) and modes of immigration politics in liberal democratic states (Freeman) – are called into service in the development of twelve hypotheses. The main conclusion is that the different frameworks offer varying explanatory power at different times; the 'whole picture' is rarely captured by a single approach (p.200).

The book is structured into eight chapters. Chapter 1 succinctly introduces the subject themes, shows how studying the roles of ideas and knowledge in the policy process allows us to move beyond declaratory/evaluative statements about labour migration policies (e.g. 'illiberal'), and gives an overview of the remaining chapters. Here, Balch also explains briefly why Spain and the UK were chosen as case studies (i.e. they are both labour importing countries, albeit a new and an old one, respectively, whose policies are converging despite having followed different trajectories). In Chapter 2, we learn about the state of the art of labour migration policy theory. Balch offers a critique of seven different schools: political economy; institutionalism; rights-based/'embedded liberalism'; 'varieties of nationhood'; international relations; cognitive; and frames and paradigms. He finds that, although these approaches assist in identifying the actors involved, interests put forth, constraints and a range of intervening variables, they all fall short of fully conceptualising the roles of ideas and knowledge in the policy process.

To remedy this under-conceptualisation, Chapter 3 develops the analytical approach based on existing theories. What is particularly refreshing is that instead of trying to assemble the most compelling 'components' of the potential theories into one single analytical framework, Balch has decided to test their explanatory potential against one another. Three theories were chosen based on these four criteria: aim to account for policy developments; have certain 'robustness' through earlier applications; are concerned with the role of ideas and knowledge in the policy-making process; and are applicable to

national case studies. Amongst the theories singled out, Balch holds the three propositions derived from Freeman's model as the null hypotheses since in that approach idea and knowledge are merely vehicles for advancing interests. The methods are content analysis (of speeches, official documents, and newspaper articles…etc.) and semi-structured interviews of forty policy-makers and members of the policy communities.

Chapters 4 (Spain) and 5 (the UK) are the core empirical chapters. The data presented are rich and the synopses given here do not reflect the efforts involved. Both chapters are organised in the same way: they begin with a discussion of four intervening variables (political system, the demographics, economic and social policy, and the labour market structure) before continuing with immigration trends and the key policy developments (1995-2008). The second half of the chapters considers the hypotheses in light of each case study. In the case of Spain, Balch finds that membership to the European Union (EU) marked the start of national policy development and formation of an epistemic community followed. The main reforms can be attributed to the change in government (from the People's Party to the Socialists) and the shifting of migration policy competence from the interior ministry to work and social affairs. He notes that the idea and knowledge involved in the Spanish labour migration policy change are information about legal/irregular migratory flows and broader discourses instead of 'consensual knowledge'.

By contrast, Balch finds that British labour migration policy is shaped by its colonial history. The policy change observed, he argues, can be attributed to two competing story lines: First, the Treasury's expanding role in domestic politics and Labour's courting of business interests are manifested in more liberal reforms of work permits. Second, the argument for 'evidence-based policy-making' in the UK paved the way for experts and knowledge to play key roles in the change-process by including labour market effects in policy discussions. In comparison to Spain, 'consensual knowledge' had a greater role in the UK.

Chapter 6 turns to the EU-level to explore the effects of 'Europeanisation'. Balch reveals that EU's framing of migration policies is 'global' in nature/structure and, thus, its very ambiguity allowed Aznar and Blair to select specific elements and present them in turn as 'European'. In Chapter 7, we return to the four theoretical approaches and Balch offers a thorough discussion of both case studies and the importance of the intervening variables in setting the stage for policy change. The conclusions in Chapter 8 call for more comparative research in the future that takes ideas and knowledge into studies of labour migration policies in Europe.

Overall, Balch offers a perspective on European labour migration policy-making that is often, due to the difficulties in operationalising ideational variables, neglected. For this reason alone, it would be a welcome contribution for students and scholars of public policy, EU integration and migration. Practitioners would find the complex interweaving of actors, knowledge, ideas and organisational settings reflective of their daily work. The main critics could include those who prefer parsimony in the analytical construct (e.g. reduction in the numbers of hypotheses) and conclusive empirical support for one specific framework. Yet to do so would miss the aim entirely. This contribution is a strong attempt in bridging academia and policy practice and the evidence put forth confirms its success.

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Book Review

Georg Menz (2010)

The Political Economy of Managed Migration: Nonstate Actors, Europeanization, and the Politics of Designing Migration Policies

Oxford: Oxford University Press

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In *The Political Economy of Managed Migration*, Georg Menz provides a comprehensive, nuanced, and compelling account of the complex relationship between political economy and migration policy in the European Union (EU). He argues that the political economy of each Member State affects the migration policy preferences of domestic interest groups such as employer organisations and trade unions. Menz contends that many interest groups have leveraged the neoliberal and neocorporatist paradigms that permeate European politics to lobby for more responsive national labour migration policies to fill labour market gaps in the secondary and tertiary sectors. Finally, he postulates that Member States seek to exploit the multiple arenas of asylum and migration policymaking in order to minimise the adjustment costs of top-down Europeanisation or achieve policy gains at home.

To support these assertions, Menz draws on more than three dozen detailed elite interviews that he conducted among policymakers and interest groups and references the work of other prominent scholars including George Borjas, Gary Freeman, Virginie Guiraudon, and Ole Waever, among many others. Menz treats these issues in a detailed and rigorous manner, but he expands his analysis to include an examination of how the renewed interest in labour migration among Member States has affected the regulation of other streams such as asylum and family reunification. In doing so, he shows how the competition state rhetoric has prompted Member States to privilege the migration of highly skilled workers above asylum seekers and dependents, who are frequently characterised as "unwanted, unsolicited, and undesirable (Menz 2011: 2)".

Menz structures his book thematically into six chapters. In chapter one, he considers how national production sectors, strategies, and labour market regulations compel domestic interest groups to advocate for a "quality and quantity of labour migration" that complements their respective national economies (Menz 2011: 8). Interest groups based in coordinated market economies like Germany generally favour the recruitment of foreign professionals to enhance innovation and research and development, while interest groups that operate in liberal market economies such as Ireland and the United Kingdom normally support labour migration policies that enable them to fill gaps in growth industries and in sectors where retention is difficult. Employer organisations and trade unions are more

effective in moulding national labour migration policies because they tend to be centralised, cohesive, organised, and representative. Conversely, humanitarian organisations are less successful because they are typically fragmented and lack the coherent policy strategy and resources necessary to effectively sway policymakers.

For their part, Member States have assumed a more active role in managing migration in response to public concerns about the impact of migration on security and socio-economic stability. They endeavour to manage these pressures and to minimise the adjustment costs of top-down Europeanisation through agenda setting and venue shopping. Member States are now in a period of punctured equilibrium fuelled by "the tertiarization of European economies and the transnationalization of production processes and strategies (Menz 2011: 28)". Thus, more responsive and supranational labour migration policies are needed for the EU to achieve its Lisbon Strategy objectives.

In chapter two, Menz examines how national institutional legacies and regulatory frameworks have shaped current asylum and migration policy. On the one hand, Member States have faced pressure from the public related to impact of migration on security and socio-economic stability. At the same time, rapid changes have forced Member States to look outside their borders in order to fill vacancies in key growth sectors. France, Germany, and the UK share similar histories and patterns of migration linked to their colonial histories and guest worker programmes. However, following decolonisation, there is a distinct trend among these established countries towards more restrictive conditions for entry and citizenship. Among new immigrant receiving states, neither Italy nor Ireland have developed much of a distinct legacy when it comes to asylum and migration policy, though there are signs that on a national level other Member States may be interested in adopting a model similar to Italy's pursuit of temporary migration agreements with third countries in exchange for cooperation in deportations and interceptions. In Poland, the impact of top-down Europeanisation has been so pronounced that it is unlikely to play a major role in shaping EU asylum and migration policy at the current time. Nevertheless, while recent developments in EU asylum and migration policy indicate that Member States find themselves in a period of punctured equilibrium, "past regulatory legacies, concepts, ideas, norms, and values continue to shape contemporary regulatory efforts both at the EU and at the national level (Menz 2011: 73)".

In chapter three, Menz explores three notable directives on asylum and migration policy to demonstrate how interest groups and Member States attempt to shape the "messy" and "interactive" nature of EU policymaking, using multiple venues to achieve their objectives (Menz 2011: 83). For example, he shows how Germany, supported by Austria and the Netherlands, advocated for a more conservative EU approach to family reunification only to scapegoat Brussels and pursue more permissive legislation at home. Similarly, Germany endeavoured to limit labour market access rights for individuals granted subsidiary protection during discussions on the qualifications for asylum, and eventually obtained an abrogation. However, Germany later pre-empted the eventual directive by amending its national legislation to recognise persecution by nonstate actors, thus minimising adjustment costs. This followed a coherent, cohesive, and unified campaign by a number of humanitarian organisations, led by Amnesty International. Moreover, France, Germany, and the United Kingdom (UK), supported by national interest groups, have successfully narrowed the scope of EU efforts to develop a common labour migration policy in order to protect their "national room for maneuvre" (Menz 2011: 114 quoting the German Employer Association). This reflects a broader pattern in which interest groups and Member States may support the Europeanisation of asylum and migration policy when it serves their objectives, but they will not hesitate to leverage support from interest groups and their executive authority in the Council to amend more ambitious Commission proposals.

In chapters four and five, Menz further investigates the pressures that three established countries of immigration (France, Germany, and the UK) and three new immigrant receiving states (Italy, Ireland, and Poland) face in developing and directing asylum and migration policy. He analyses the system of political economy in each Member State, the "structure of interest mediation", the evolution of their asylum and migration policies, and the effects of Europeanisation on their respective migration policy preferences (Menz 2011: 139). In France and Germany, interest groups have gradually rediscovered labour migration and support such policies provided that foreign workers are integrated into the primary labour market. In the UK, employer organisations have used the competition state rhetoric to campaign for policies which facilitate the recruitment of foreign professionals in sectors such as engineering, finance, and information technology. In some sectors, employers use low-skilled foreign labourers to keep remuneration low. Their approaches vary from country to country; in Germany, traditional lobbying methods have proven effective whereas in France, mass public demonstrations have generated greater impact. Conversely, the UK government has not actively engaged trade unions and humanitarian organisations in policymaking – perhaps a holdover from the anti-unionist policies popular under Margaret Thatcher. Ireland and Italy have also been receptive to representations from interest groups advocating for labour migration in order to fill recent gaps in the service, technology, and tourism industries, among others. However, consultations with humanitarian organisations have been limited and have had no discernible or meaningful impact on the migration policy preferences of these Member States. In Poland, the situation is particularly complex as it has faced considerable top-down pressure towards Europeanisation and has struggled to develop labour migration policies to address the brain drain of highly skilled workers. These competing pressures have prompted new and old countries of immigration alike to adopt more responsive labour migration policies. However, to enhance public support for these changes, Member States have also sought to deter "unsolicited and undesired forms of migration, principally aimed at asylum seekers and refugees […]" through enhanced border controls (Menz 2011: 188).

Menz concludes by reflecting on two themes found in EU asylum and migration policy today: pragmatism and populism. Member States rationally attempt to retain control over the form and level of inward migration they receive and to minimise the top-down adjustment costs of Europeanisation through agenda setting and venue shopping. However, Member States remain open to representations from interest groups, which generally support recruiting the highly skilled migrants that advanced economies require to remain competitive. This is particularly true in neocorporatist states like Italy. Though Member States have accepted the Europeanisation of labour migration policy in limited areas, they remain far more reserved towards the Europeanisation of asylum and family reunification. The Far Right has capitalised on public concerns related to the socio-economic and security impacts of migration and contributed to the characterisation of asylum seekers and dependents as "a burden, a potential drain on social benefit transfer systems […]" (Menz 2011: 257). Humanitarian organisations play an important role in advocating for these migrants, but their potential for success is often impeded by a lack of resources and internal divisions. The conflict between these paradigms may explain why the Europeanisation of asylum and migration policy has proceeded more slowly than anticipated during this period of punctured equilibrium. Employer organisations and trade unions are likely to continue to enjoy privileged access to policymakers as long as neoliberal policies and neocorporatist structures continue to dominate the political economies of EU Member States.

Overall, Menz provides ample evidence that political economy can provide a useful lens through which to study and understand EU asylum and migration policy and the current trend towards securitisation, and his appeal for greater scholarly attention towards interest

groups and bottom-up Europeanisation will surely generate discussion among students and academics alike.

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Book Review

Gerda Falkner, ed. (2011)

The EU's Decision Traps: Comparing Policies

Oxford: Oxford University Press

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Gerda Falkner and her coauthors deliver an important contribution on different decision traps in the EU and how member states are able to overcome them. They draw on a popular concept first launched by Fritz W. Scharpf two decades ago. The "joint-decision trap" implies a situation by which interdependent government decisions are only possible at the lowest common denominator, as governments that disagree otherwise may opt to veto. The concept has since been widely adapted. Several studies, especially among those addressing the common market, have also aimed at explaining how the EU has been able to resolve collective action problems and make decisions in favor of European reform. However, what makes "The EU's Decision Traps" specific is its unique effort to combine empirical evidence from nine differentiated policy areas, varying with regards to decision rules and negative and positive integration. In so doing, the volume brings together numerous mechanisms. In addition the book impresses with conceptual innovation, asking the questions whether Scharpf's model still catches the empirical developments and if not, what refinements are necessary. This review will give an overview of the contents of the book and discuss its strengths and weaknesses.

There are fourteen chapters in the volume: In its introductory chapter, it sets up a framework for analysis including several interesting hypotheses. The subsequent nine chapters address different policy sectors in the following order: agriculture, services and goods, tax, finance, energy, environment, social, justice and home affairs as well as foreign and security policy. Focus changes in the last part of the book. Different sectors are no longer in focus, but rather coordinative mechanisms that pass over sector lines (chapter 11) and experiences of decision traps in different national federations and the EU (chapter 12). Thereafter, the book culminates with Scharpf himself taking account of whether the manifold of findings in this volume results in a revisal of the original model (chapter 13). Finally, the editor does a good job drawing the findings together. Analysing this book by mechanisms rather than policy sectors, this review breaks with the organisation of the volume. One reason is that scholars, due to generalisability aims, tend to be more interested in mechanisms that may travel across cases than in specific sectors.

There are different categories of mechanisms that contribute to "exits" from decision traps. Both rational and social constructivist approaches are accounted for. The strongest and the most efficient category is the *supranational-hierarchical mode* by which the Commission and the European Court of Justice may impose their will on member states. Several chapters include such mechanisms. As an example, in her chapter on the single market (chapter 3), Susanne K. Schmidt argues that the Court may interpret the Treaty

provisions broadly; and Johannes Pollak and Peter Slominski claim that the Commission used its competition competence to aggressively get its will through in the energy sector (chapter 6).

Whilst such mechanisms bypass the roles of the Council and the Parliament in legislation, the Commission may also impose its will on member states by *changing the opportunity structures*. According to Schmidt, the Commission may take advantage of judicial politics to push the Council into agreement, as member states influence future litigation through secondary law. Also, in social policy (chapter 3), Dorte Sindbjerg Martinsen and Falkner argue that "voices of law" and the Commission's right to claim annulment of legislation have been effective (chapter 8). Philipp Genschel adds that the Commission may also nudge member states to compromise through soft law communications (chapter 4). Studying agriculture, Christilla Roederer-Rynning suggests that the Commission may also use strategic partners and public opinion to unsettle the legislators and pressure through certain policies (chapter 2).

Another category of mechanisms includes *changes of decision rules and arenas*. Several contributions are concerned with improvements due to the introduction of qualified majority voting, yet a mere change of decision rules has not been sufficient. Additional mechanisms involve delegation, for example, to technocratic committees. This is crucial in Zdenek Kudrna's chapter on financial markets (chapter 5). He argues that the separation of implementing measures from framework legislation, as introduced through comitology processes, has played an important role in improving further integration. Similarly, Miriam Hartlapp stresses arena shifting, e.g. DG hopping and bypassing of sectoral interests by avoiding coordination of the proposal with others (chapter 11).

Finally, there is a category of *consensus-promoting mechanisms*. This includes differentiation of policies as well as socialisation. Katharina Holzinger's chapter on environmental policy (chapter 7) and Florian Trauner's on justice and home affairs (chapter 9) show how compromise sometimes comes at the cost of clarity and coherence of regulations. Accordingly, slicing and sequencing, watering down and opt-outs to specific member states as well as vague wording have contributed to progress. With regard to socialisation, Nicole Alecu de Flers, Laura Chappell and Patrick Müller call attention to how negotiations on an everyday basis and the "shadow of the future" have contributed to compromise finding in the foreign and security policy (chapter 10). Large member states that want to be taken seriously have to demonstrate commitment in the EU. Hence, member states have been willing to go against their initial preferences.

Arthur Benz's comparison of the EU and four federal states (Belgium, Canada, Germany and Switzerland) includes an interesting analysis on how to achieve constitutional reform, when party politics, redistributive conflicts and subnational identities play a larger role in "intergovernmental" negotiations than in the EU (chapter 12). Despite such differences the exit from decision traps is similar: watering down, involvement at different arenas and sequencing.

Considering the numerous mechanisms, Scharpf concludes that his original model stands firm, only giving in to modifications such as including the Court and the Commission as strategic actors and admitting that the inference of governments' preferences from their underlying economic and institutional interests is deficient (chapter 13). By keeping the perspective purely rational, he simplifies the theoretical framework rather than "covering it all." Based on this point, the editor deftly separates between the original model of the joint-decision trap and other models, thereby creating a broader and more inclusive framework.

Whilst the strength of the volume is its extensive collection of mechanisms, most chapters suffer from a lack of alternative explanations. As it stands, most contributions selectively draw on and support certain mechanisms, thereby failing to address other possible explanations. Moreover, with few exceptions, the accounts only include cases, by which the outcome of interest occurs. Another point to consider is that the authors have not explained their use of methods and research techniques. Therefore, it is impossible for the reader to assess potential biases in the data.

In summary, the volume renews and lifts a popular concept and shows it is still alive. Providing an explorative analysis, Falkner and her coauthors have created an important basis for further research. Testing the hypotheses across more cases, including cases where member states fail to exit from decision traps would be beneficial. The book is a good supplement to the bookshelf of any scholar interested in European integration.

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Book Review

Yves Bertoncini and Thierry Chopin (2010)

Politique européenne. États, pouvoirs et citoyens de l'Union Européenne

Paris: Presses de Sciences Po / Dalloz

Luis Bouza García
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Is the EU becoming a more politicised system? Does it need clearer political cleavages to overcome its legitimacy crisis? This book by Yves Bertoncini and Thierry Chopin, two French EU scholars and practitioners, so far only available in French, is an interesting contribution both to the availability of manuals for in depth courses on EU politics and beyond this to the ongoing reflection on the politicisation of the EU. Despite being conceived as a teaching manual the book is not only an interesting recommendation for students of the EU but a relevant contribution to the debate on the EU's politicisation because it addresses a common weakness of approaches to EU history, law or political science, the tendency to consider the EU as a separate set of institutions without considering the role of Member States and citizens as part of the EU. The approach of the manual is not to analyse and explain the EU institutional system but the political processes happening at EU level. The book examines the constitution of a European political field where contradictory political forces seem to be involved. The lack of a more explicit elaboration of their own theoretical approach, which is probably due to the style requirements of a manual and the authors' will to proceed from the empirical analysis of what the EU is by studying what it does, is probably the most disappointing aspect of the book.

The broad approach to EU politics allows the authors to explore a number of issues usually disregarded in manuals rooted in a specific discipline, making it a very original contribution which approaches the importance of understanding national political cultures and public opinions, the question of the EU's legitimacy crisis, the impact of the EU in national polities, the structure of the EU's executive and legislative power and the importance of symbolic factors in EU politics. In briefly presenting the content of the book these more original aspects will be particularly underlined.

The first part of the book deals with the structural relations between the EU and the member states. The decisive importance of this approach is to consider member states and the national political and administrative field as a part of the functioning of the EU instead of limiting the approach to national government representatives in Brussels. In this sense the book does not oppose this EU political field to Member States but rather seems to include them in a complex emerging transnational political field. The EU appears as a new space of sovereignty exercise as well terrain for inter-state power relations which are not limited to objective dimensions such as voting rights but as well to "soft" dimensions

such as language use, leadership and the success of national policies, in particular economic ones. They also address the way in which the EU impacts at home in particular by offering an accurate account of budgetary and legislative pressures dispelling some prevalent myths.

Although the authors suggest the omnipresence of the Member States in EU politics, from impulsion of new policies to execution of policy details, they do not seem to endorse intergovernmentalism as they emphasise the specifically European political stakes such as legitimacy, the public sphere and controversies about the extension of sovereignty transfers. Unlike intergovernmentalists, they do not conceive the relations between Member States as diplomatic relations but as political ones in that preference formation is not exclusively done at member state level but is shaped by the specific stakes discussed at EU level. In particular the authors use insights from political theory and history to suggest that national governments are far from having a monopoly on their countries role in the EU which is as also shaped by diverging national political cultures regarding EU integration based on very different rationales that have Member States join the EU.

The second part of the book addresses European institutions in a way most manuals seldom do, by departing from the separate analysis of each part of the institutional triangle and concentrating on the concrete powers that the EU exerts. This takes into account the changes introduced by the Lisbon Treaty and is accompanied by a series of invaluable annexes summarising the decision making procedures in force in each policy area. Emphasis is put again on the role of the Member States. Unlike most available manuals, their role is not confined to the exercise of political impulsion in the European Council or co-legislation in the Council, but it is clearly shown that seats in the EP and national quotas in the Commission are, despite the common taboo, considered by member states as a part of their representation in the EU. More importantly, the book presents the role of Member States not only in the exercise of the EU's legislative power, but as well as in its executive and regulatory powers via structures such as comitology. The section includes a chapter on the EU's increasing recurrence to "soft" policy-making tools such as the open method of coordination. Additionally, students are reminded in the chapter on jurisdictional power that national judicatures are the first instance of the EU's jurisdictional power. This makes this manual unsuitable for an introduction to EU politics, but a most advisable reading for more advanced courses.

The third part of the book analyses the role that citizens play in EU politics. Following a similar logic to the previous chapters, the importance of Member States in the EU's political life is emphasised in that citizens are represented in the EU via their national representatives, but as well because it is in the national context where citizens have more chances to influence EU politics by using referenda or voting in elections. By contrast to traditional presentations, the authors do not emphasise the political party dynamics in the Parliament, but rather the blurred political logic in their election, since EP elections are national ones and the configuration of the EP and its affirmation as an institution conducts major parties to cooperate more often than competing. The authors suggest that more recent emphasis on participatory logics including the involvement of civil society and interest groups has not put a substantial remedy to the democratic problems identified with the EP. This gives place to a series of chapters analysing in detail aspects of the EU's legitimacy crisis, with particular emphasis being put on the difficulty that citizens have to understand and thus participate in a political system in which political stakes seem to be completely blurred. The chapter on the EU technocracy is a good example in that the role of unelected officials in the Commission's competition policy or in the ECB could be justified in terms of the needs of independence for providing regulatory goods, although this is blurred by the representative role that Member States attribute to their nationals in these institutions. In this sense the last chapter on the weakness of the European public

sphere shows that despite the formal representation of citizens in different instances, the blurred logic according to which citizens' elect these representatives is a serious threat to a substantial representative link.

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