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Domestication of the Euro Crisis: Legal and Political Manifestations of Euroscepticism in Germany

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Abstract

The euro crisis points towards the limits of the post-war pro-European integration consensus in Germany, a trend that has manifested itself in both the legal and political realms. In the legal arena, the powerful German Constitutional Court (GCC) has heard complaints on several key rescue measures, including the European Stability Mechanism (ESM) and the European Central Bank's (ECB) bond buying programme. The Court's ruminations on these initiatives both reflect and feed German eurosceptics' concerns. They also have implications for the Eurozone as a whole, insofar as they limit the German government's room to manoeuvre. In the political arena, a new eurosceptic party, *Alternative für Deutschland* (AfD), contested the September 2013 federal election and the May 2014 European parliamentary election, winning a handful of seats in the latter. AfD's emergence potentially marks a shift towards a more overtly eurosceptical political discourse in Germany. Thus, both legal and political developments have the potential to constrain the choices for the EU as a whole by reconfiguring the political and policy landscape of Germany, the Union's reluctant hegemon.

Keywords

Euroscepticism; Germany; ESM; ECB; euro crisis

Much has been made of the external consequences of Germany's dominant position in Eurozone decision-making, including the hardship imposed on the currency union's heavily indebted "periphery" by the German government's strict austerity focus. But what of the internal consequences of Germany's 'reluctant hegemony' (Paterson 2011)? Has the euro crisis affected the prevalence and nature of euroscepticism within the country? Does the greater assertiveness with which Merkel's government has acted since the first Greek bailout reflect a hardened attitude towards European integration? And, in turn, is Germany's thankless role as paymaster and dictator of terms causing its citizens and elites to more openly question the value of ever-closer union? These are some of the questions this article addresses.

To be sure, there is no simple causal relationship between Germany's greater prominence in EU policymaking and domestic euroscepticism. The two phenomena are interrelated and both are influenced by the crisis, which has left Germany as the currency union's sole economic superpower. Certainly, under Angela Merkel, the country has become less dependent on European partners (be they other member states or EU institutions) and on the consensus politics of the Community method. Merkel is less of a europhile than her predecessors and this affects her own views of European integration, as well as her ability to sell it to the electorate. However, this article is not about causation as such, but about the legal and political manifestations of euroscepticism and their potential impact on Germany's EU policies and, hence, on the integration project as a whole. It is precisely Germany's unique position in Europe that makes its attitude towards the integration project so important.

The article proceeds as follows: the introductory section discusses briefly how the crisis has changed Germany's role in Europe. The second section then tracks German attitudes towards European integration and considers how the euro crisis may have impacted on the incidence and expression of EU-critical views. The third section analyses the legal articulation of euroscepticism, focusing on the

role of the German Constitutional Court (GCC) in mediating the country's involvement in the euro rescue. The GCC has long felt comfortable articulating German national interests (as derived from the Basic Law) in its judgments; more so than successive governments, which have preferred to couch national preferences in the rhetoric of collective, European goals. The Court has maintained its politically active, interventionist approach since the onset of the crisis, its "yes, but" verdicts shaping government policy both before and after the fact.

The fourth section examines political expressions of euroscepticism in Germany, focusing specifically on a new actor – *Alternative für Deutschland* (AfD, Alternative for Germany), which was founded in 2013 as a result of discontent over the handling of the crisis. The party's core membership is drawn mainly from a conservative, bourgeois milieu that is receptive to the same sort of rule of law and financial prudence based criticisms levelled against EMU by the Constitutional Court (Starbatty 2013). Indeed, prominent AfD figure, and now MEP, Joachim Starbatty was a plaintiff in several anti-integration cases, including those contesting the euro rescue measures (*Frankfurter Allgemeine Zeitung* 2014a). Though it is a relatively small actor, AfD is interesting for a number of reasons, including its potential to shake up the party system by tapping into previously unrepresented popular sentiment, thus influencing the strategic choices of the other German parties, particularly the centre-right Christian Democratic Union (Christlich-Demokratische Union: CDU). Finally, the concluding section situates the German story in its European context, noting the growth in euroscepticism across the continent and discussing its implications for the integration project.

COMING TO GRIPS WITH A CHANGED ROLE: GERMANY IN THE EURO CRISIS

The financial and economic crisis of the Eurozone thrust Germany into the unfamiliar position of political leader – a role it was neither quick nor enthusiastic in embracing. Under the leadership of Chancellor Angela Merkel, Germany has consistently opted for a pragmatic, step-by-step approach to problem solving, rather than articulating and advocating bold new agendas for political and economic union. As well as impacting on the severity of the crisis in the worst affected states, German equivocation also influenced *domestic* attitudes towards EMU and the EU, more broadly. By going about the "alternativlos" ("no alternative") business of putting out euro area spot fires without offering any big picture justification beyond the rather negative 'if the euro collapses, so does the EU', the government depicted EMU as a burden that must be borne, rather than as a collective good. In a similar vein, media emphasis on a narrative of wrongdoing by Southern European states tended to reinforce a mentality of German victimhood and injustice, which was not counterbalanced by a clear explanation of the many benefits that Germans have derived, and continue to derive, from their membership in the currency bloc (Guerot 2012; Habermas 2011).

Therefore, the crisis – particularly as it has involved apparently flagrant violations of the EU's own rules – has tested Germans' appetite for solidarity with the heavily indebted countries of Europe's periphery. For much of the legal and economic establishment, as well as many ordinary Germans, there is concern that the country's European obligations are turning into open-ended liabilities, for which German taxpayers will ultimately be responsible. There are also fears that actions taken in, or by, EU institutions to mitigate the crisis conflict with cherished – and, in some cases, legally entrenched – political and economic values, such as price stability, central bank independence, fiscal prudence, the rule of law, and democratic statehood. These national preoccupations are informed by Germany's historical memory of the hyperinflation of the Weimar Republic, as well as its ordoliberal economic tradition (Guerot and Dullien 2012). They are further compounded by indignation at the thought that euro "cheats", such as Greece, are not being sufficiently punished for their wrongdoing, and are instead free-riding off the system (Guiso et al. 2013).²

All of these factors point to an interesting contradiction between the external and internal dimensions of the euro crisis and Germany's role in managing its consequences. Many of the European-level stabilisation measures were designed to suit German preferences, including, for example, the Treaty amendment to support the ESM (on which the German government insisted in order to preempt an adverse assessment of the fund's legality by Karlsruhe), the focus on austerity in indebted countries, and the ruling out of debt mutualisation. However, this fact has not necessarily assuaged concerns within the country over the direction Europe is taking. Therefore, in this article, I offer a preliminary analysis of the impact of scepticism towards European integration on the German political and constitutional system.

GAUGING GERMAN DISCONTENT WITH EUROPE: IS THE EURO CRISIS A FACTOR?

European integration has not typically been a very salient issue in German electoral politics. However, in the lead up to the federal election of September 2013, surveys indicated that the crisis was weighing on voters' minds despite Germany's continued strong economic performance. Data from the German Longitudinal Election Study (GLES) showed that, in the months prior to the election, slightly fewer than 20 per cent of Germans nominated the euro crisis as the most important problem facing the country and just over 30 per cent nominated it as one of the top two problems. For both indicators, the euro crisis was second only to social welfare/justice as the issue of greatest concern (Schmitt-Beck 2013). Furthermore, on the specific issue of bailouts, whilst the average German position was broadly in line with official government policy (i.e. permitting bailouts to debt-stricken euro states, but only under strict conditions), a considerable minority of Germans opposed them altogether (Schmitt-Beck 2013).

Eurobarometer surveys also captured high levels of discontent with European integration amongst Germans. In Autumn 2013, around the time of the federal election, only 29 per cent of Germans polled tended to trust the EU, while 59 per cent tended to distrust it. In the same survey, only 25 per cent of Germans thought that the EU was heading in the right direction, as compared to 43 per cent who thought it was heading in the wrong direction. Germans were also shown as being fairly pessimistic about the economic outlook in the EU. Only 19 per cent of those surveyed thought that the next 12 months would be better, while 33 per cent believed they would be worse (Standard Eurobarometer 80 2013).

This is not to say that the German electorate has become eurosceptic *en masse*. For one thing, the German figures quoted above are broadly in line with EU averages, as recorded by Eurobarometer. For another, the country's citizens have always had a complicated relationship with the EU, though this has often been obscured by the pro-integration consensus of the political elite. Opinion surveys show that popular support for the integration project has risen and fallen over the years, sometimes dramatically, while, at the same time, a significant undercurrent of euroscepticism has been ever present. The euro crisis did not greatly alter these basic patterns, though there was a spike in some measures of distrust and dissatisfaction with the EU in 2011, when the Greek crisis was at its peak.

The impact of the crisis, then, is not so much on the magnitude of euroscepticism as on its salience and on the opportunities for its aggregation, expression and normalisation (it is in this respect, in particular, that AfD's creation is significant). Data from the Allensbach Institute, for example, shows fluctuations in levels of trust in the EU between 2002 and 2013. In the graph below, the orange line indicates the percentage of respondents who had 'not very high/low/very low' levels of trust in the EU, while the green line indicates respondents who reported 'high/very high' levels of trust (Petersen 2013).

% 68 65 60 49 51 56 60 38 33 26 24 29 33

Figure 1: Trust towards the EU

2002

2005

Basis: Bundesrepublik Deutschland, Bevölkerung ab 16 Jahre Quelle: Allensbacher Archiv, IfD-Umfragen, zuletzt 11010

2007

German perceptions of European integration have certainly improved since 2011, as is evident from the graph. However, one should be cautious in extrapolating too much from these results, which are predicated on the questionable assumption that the euro crisis has been resolved. Should conditions in the Eurozone deteriorate again, one could expect an upswing in critical sentiment, particularly now that there are political elites willing and able to channel and magnify such views. Thus, I now turn to discuss whether and how citizens' concerns over the euro crisis and its handling were articulated in the legal and political spheres, respectively.

2010

2011

2012

2013

ARTICULATING EUROSCEPTICISM THROUGH THE LEGAL SYSTEM: THE ROLE OF THE GERMAN CONSTITUTIONAL COURT

The Court and European integration: A tale of conflicting imperatives

The German Constitutional Court's relationship to the European Court of Justice (ECJ) and to EU law has not always been comfortable. The long-running dialogue between the two powerful judicial authorities reveals one of the paradoxes of Germany's relationship to the European project. Whereas there has been historically a high degree of compatibility between German political interests and the integration project (Wessels 2003: 135), the GCC's attitude towards legal integration has always been much more ambivalent, to the point where it is sometimes described as a eurosceptic actor (Paterson 2011: 66-67).

The GCC's outlook on European integration is chiefly informed by its reading of Germany's constitution, the Basic Law (*Grundgesetz*). Both the Basic Law and the Court, itself, are cornerstones of post-war German democracy. In fact, the GCC has been consistently rated as one of Germany's most popular and trusted federal institutions. A 2012 study by the Allensbach Institute for Public Opinion Research found that 75 per cent of respondents had a high or very high level of trust in the Court. Compared to various other institutions, the Court was second only to the Basic Law (78 per cent), and was much more highly trusted than political institutions such as the Federal Parliament (39 per cent) and the German Federal Government (38 per cent). Furthermore, in the same study, 68 per cent of respondents were in favour of the Court deciding on Germany's participation in the euro rescue efforts, whilst only 17 per cent thought that such matters should be left to politics alone (Köcher 2012).

Thus, various legal, political and historical factors explain the Court's record of judicial activism and its willingness to adjudicate on major political controversies, including those involving the EU. However, reconciling the imperatives of national constitutional integrity and participation in the integration project has not proved a straightforward task. On the one hand, the Basic Law enshrines Germany's sovereign democratic statehood and the right to democratic representation of the German people (Article 20(1) and (2) of the Basic Law). So sacred are these rights that they are rendered inviolable by the so-called "eternity clause" (Ewigkeitsklausel) in Article 79(3), which prohibits their amendment. The GCC has repeatedly warned that the process of European integration cannot be allowed to compromise these constitutional values, meaning that a certain core of sovereignty must be retained by the national parliament.³

On the other hand, the Basic Law also evinces a pro-integration disposition ("Europarechtsfreundlichkeit"), primarily in Article 23(1), which compels German institutions (including the Court) to participate constructively in the development of the EU. Articles 24 and 25 also predispose Germany towards international cooperation and permit the transfer of sovereign powers to international organisations. Those clauses reflect the context of the Basic Law's adoption in 1949. At that time, Chancellor Konrad Adenauer enthusiastically pursued a policy of Westbindung (establishing close links with the West, including through European integration) in order to facilitate West Germany's economic and political rehabilitation after the Second World War.

This conflict between the permissive and restrictive strands of German constitutionalism has grounded a European integration jurisprudence that is confrontational – even hostile – in word, but accommodating in deed. The GCC's verdicts on integration-related matters are, in fact, a series of conditional approvals wherein the Court indicates that the scope for integration *is* limited, but that those limits have not yet been reached. In its *Maastricht*⁴ and *Lisbon*⁵ decisions, the Court went as far as claiming for itself the authority to review EU law (in direct contradiction to ECJ jurisprudence), but it has never exercised this jurisdiction (Doukas 2009: 868-869). The Court's pronouncements on the euro rescue measures have so far continued this pattern, though its preliminary referral of the ECB's Outright Monetary Transactions (OMT) programme to the ECJ hints at a tougher line.⁶

The Court and the euro crisis: Assessing the legality of the European Stability Mechanism and the Fiscal Compact

In 2012, the GCC assessed the constitutionality of the proposed Fiscal Compact (an intergovernmental treaty aimed at tightening fiscal rules and oversight procedures for Eurozone members) and the European Stability Mechanism (ESM, the Eurozone's permanent bailout fund). The plaintiffs; some 37,000 people, including ordinary citizens, academics, and parliamentarians from *Die Linke*, asked the Court to issue a preliminary injunction preventing ratification of the treaties pending the final determination of their claims.

At issue was whether or not the German government's participation in these undertakings was consistent with the constitutional protection of German democratic statehood. More specifically, questions were raised as to whether the provisions of the Fiscal Compact, including its requirement that signatory states pass balanced budget laws (which, as a matter of fact, Germany already has) and its grant of budgetary oversight powers to the European Commission, so infringed the economic competences of the German parliament as to be unconstitutional. This was particularly relevant since the GCC had previously declared fundamental fiscal decisions relating to revenue and expenditure to be part of the hardcore of national competences, without which democratic government would not be possible.⁷

Doubts were also raised about the legality and accountability of the ESM, which was to be established 'among the euro-area Member States as an intergovernmental organisation under public international law', for the purposes of 'mobilis[ing] funding and provid[ing] financial assistance, under strict conditionality, to the benefit of euro-area Member States' (European Council March 2011: 22). Unsurprisingly, the ESM — which, if activated, could create large liabilities for the taxpayers of creditor states — has been much criticised by eurosceptics in Germany, including Bernd Lucke, who later founded AfD (Lucke 2011).

On 12 September 2012, the Court declined the plaintiffs' application for temporary injunctive relief, approving the entry into law of both the ESM Treaty and Fiscal Compact. The final ruling that followed a full 18 months later, in March 2014, largely confirmed the preliminary verdict. The Court's focus in both rulings was on the ESM Treaty (TESM), which it acknowledged as having the potential to undermine the *Bundestag's* budgetary responsibility and, hence, the constitutionally guaranteed precept of democracy. Nevertheless, the Court concluded that the TESM did not involve an impermissible transfer of budgetary sovereignty, because adequate safeguards already existed in EU and German law. EU and German law.

In reaching its decision, the GCC specified two provisos. Firstly, the Court held that Germany could only ratify the TESM if the government ensured that Germany's contribution to the Stability Mechanism's capital stock (currently set at 190 billion euro) could not be increased without the agreement of the German representative to the ESM. He or she, in turn, could not authorise an increase without the prior approval of the *Bundestag*, as is already provided by German law. Secondly, the Court stipulated that the TESM provisions on the inviolability of ESM documents and professional secrecy of staff must be interpreted so as not to infringe on the German Parliament's right to be comprehensively informed about the activities of the Stability Mechanism. Thus, both conditions aimed at securing a constitutionally permissible level of parliamentary oversight over the disposal of German taxpayers' money in the ESM.

The GCC considered and dismissed several other concerns raised by the plaintiffs, employing legal reasoning in a way that suggested a strong desire to endorse government policy. For example, the GCC rejected the plaintiffs' assertion that the ESM could become a vehicle for unconstitutional state financing by the ECB. The Court reasoned that since state financing by the ECB is prohibited by Article 123 TFEU, the TESM could only be interpreted as not permitting the ESM's involvement in such borrowing operations. This reasoning appears almost circular: the TESM cannot be interpreted as contravening a provision of EU Treaty law, because to do so would contravene EU Treaty law. The line taken by the Court is perhaps an admission of lack of jurisdiction over the actions of EU institutions, as well as an indication of its unwillingness to interfere with a hard fought political bargain negotiated by the German government and endorsed by the German Parliament. Yet, there was something of a warning in the Court's words — a foreshadowing of its negative assessment of the legality of ECB interventions in euro area bond markets. This became clearer in February 2014, when the GCC surprised everyone by making its first ever referral to the ECJ under the Article 267 TFEU procedure.

From "yes, but" to "probably not"? Passing judgment on the ECB

Before it was even handed down, the Court's preliminary ruling on the ESM and Fiscal Compact was affected by external events. On 6 September 2012, ECB Chief, Mario Draghi, announced a plan by the Bank to buy unlimited quantities of government bonds of struggling Eurozone members, under strict conditions (the so-called Outright Monetary Transactions (OMT) programme). This development was greeted in Germany almost immediately by another legal challenge, brought by Peter Gauweiler of the Christian Social Union (*Christlich-Soziale Union*: CSU). Gauweiler filed an urgent motion requesting that the GCC delay its verdict in order to consider the ECB's move, which, he argued, 'created a "totally new situation" for assessing the constitutionality of the ESM Treaty' (*Frankfurter Allgemeine Zeitung* 2012).

The Court rejected Gauweiler's motion, opting to hand down its verdict on 12 September, as planned. However, it did reserve to itself the right to consider whether or not the ECB had exceeded its competences in the course of the main proceedings. The issue was explicitly not considered during the preliminary review, though, as noted, the Court's statement that the ESM cannot collaborate with the ECB on state financing operations because to do so would breach EU law, has been interpreted in some quarters as a warning to the Eurozone's political leaders and central bankers that they may already be engaging in illegal practices (Jahn 2012). The Court held oral hearings on the ECB's activities on 11-12 June 2013, during which *Bundesbank* President, Jens Weidmann criticised the OMT programme as a violation of ECB independence and the prohibition on central bank financing of state deficits (Charter 2013). In the reasoning that accompanied its referral to the ECJ, the German Constitutional Court appeared to agree with Weidmann, thus setting up a potentially fascinating showdown with its supranational counterpart.

At first glance, it appeared that the GCC had decided *not* to decide, preferring to pass the buck to the ECJ by referring to it several questions on the compatibility of the Central Bank's OMT decision with EU treaty law. However, the majority judgment that accompanied the referral was clear and sharp in its criticism of OMT. The judges contended that the Bank had exceeded its monetary policy mandate and encroached upon the field of economic policy, which should primarily be a matter for national governments, and that the OMT decision also violated the prohibition on monetary financing of state budgets.¹³ Having transgressed EU law in this way, the GCC suggested that OMT met the highly restrictive criteria for a finding of *ultra vires*. That is, the programme constitutes a "manifest violation" of powers that causes a "structurally significant shift" in the allocation of competences between the national and supranational levels.¹⁴ An *ultra vires* ruling would mean prohibiting German institutional involvement in the impugned programme – dealing a major blow to its economic viability and bringing Germany into direct conflict with the EU's legal system.

Therefore, the Court has ventured deep into political territory with its condemnation of OMT. This fact is reinforced by the two dissenting judges who both argued in separate opinions that the case should have been dismissed as inadmissible and beyond the realm of judicial competence. Nevertheless, despite the GCC's strong words, the legal ramifications of its latest step remain unclear. The case is suspended pending the ECJ's preliminary ruling, which could take quite a while. When it does come, the ruling will have significant implications for the relationship between the two courts, whose conflicting interpretations of the origins, nature and scope of supranational legal authority have so far remained theoretical (de Witte 2009; Kumm and Comella 2005: 475).

In the meantime, the consequences of the GCC's stance will play out in the political realm. According to the majority of the Court, the German government has a responsibility to ensure the European integration process's compliance with the relevant laws. Thus, an *ultra vires* act 'creates an obligation [on] German authorities to refrain from implementing it and a duty to challenge it.' These duties are not merely theoretical – they are owed to individual voters (whose democratic constitutional rights would be imperiled by supranational usurpations of power) and they can be

enforced before the Constitutional Court.¹⁷ Even without taking further legal action, the articulation of these duties is a useful tool that eurosceptics may use in order to argue the illegitimacy of key planks of the euro rescue and build their own credibility with the electorate. In fact, AfD took just such an approach, issuing a press release in response to the judgment, in which it argued that the Court had vindicated the party's views and confirmed the validity of its election slogan "Mut zur Wahrheit" ("courage for the truth") (Alternative für Deutschland 2014).

ARTICULATING EUROSCEPTICISM THROUGH THE POLITICAL SYSTEM: NEW CHANNELS FOR AGGREGATING VOTER DISCONTENT

The German political landscape in the lead up to the 2013 federal election

The German political establishment has strongly supported European integration since the creation of the Federal Republic of Germany in 1949, a disposition that was reinforced by Helmut Kohl and his successors after German reunification in 1990 (Davies 2012: 6; Wessels 2003). This stance is partly based on a historical complementarity between German and European interests. Embedding itself firmly within Europe was imperative to West Germany's post-war recovery. Likewise, ceding governmental competences to international and supranational bodies was not difficult for a divided and occupied state that was not fully sovereign anyway.

Though enduring, the pro-integration consensus is not total. There are strands of euroscepticism in some of the established parties, such as the CSU, the Bavarian sister party to Merkel's CDU. 18 Outside of the mainstream, *Die Linke* is also highly critical of European integration, though its electoral appeal is limited by its far-left ideology and its association with the former East German communist party. Moreover, the euro crisis has cast doubt upon the adage that German interests are European interests (Marsh 2013). Many German political figures reacted indignantly to American criticism of Germany's large trade surplus, and to suggestions from the European Commission that Germany may also have to bear some of the burden of structural adjustments (Inman 2013; Parkin 2014). Thus, there is the potential for greater divergence between the policy preferences and priorities of the German government and those of the EU institutions.

Such tensions notwithstanding, in the lead up to Germany's 2013 election, none of the major parties offered an outlet for citizens opposed to bailouts and other aspects of the euro rescue policies. In fact, despite the salience of the euro crisis for German voters, European issues hardly featured in the major parties' election campaigns. This is not entirely surprising. Merkel, perhaps, made the pragmatic calculation that there was little to gain from discussing unpopular euro rescue policies to which her government had already committed itself. For its part, the centre-left Social Democratic Party (Sozialdemokratische Partei Deutschlands: SPD) had supported economic assistance to struggling Eurozone members whilst in opposition, calling for less austerity and more solidarity. Indeed, the party was even willing to countenance the introduction of eurobonds, something that Merkel had ruled out. Nevertheless, SPD leader Peer Steinbrück decided not to campaign on European issues either, obviously not regarding it as a vote winner for his party.

It was under these circumstances that *Alternative für Deutschland* entered the political landscape. The party was formed in February 2013, and its name alludes to Merkel's catch-cry of "alternativlos", which was voted "das Unwort des Jahres" in 2010.¹⁹ The central pillar of AfD's programme for the federal election was its call for 'an orderly dissolution' of the Eurozone, on the grounds that 'Germany doesn't need the euro' and that '[o]ther states are harmed' by it. The party's manifesto argued that either national currencies ought to be reintroduced or a smaller and more stable currency union created (*Alternative für Deutschland* 2013). In the September 2013 election, AfD fell just short of entering the *Bundestag*, securing 4.7 per cent of the vote, a remarkable result

for such a young party, and one it can build on in future election campaigns. It improved on this showing in the EP elections the following May, winning 7 per cent of the vote and gaining seven MEPs. 20

Classifying a new political force

A variety of labels have been applied to AfD in its short existence, reflecting the ongoing difficulty that commentators and scholars have in appropriately classifying and placing on the political spectrum parties that do not support, or have serious reservations about, the EU and its activities. As Simon Usherwood (2013: 280) has noted, the pejorative connotations of the term "Eurosceptic", itself, hint at the tendency to dismiss opponents of European integration as 'an uninformed and undifferentiated group of people'. "Eurosceptic", and the terms that commonly accompany it, often serve to obfuscate, rather than illuminate, debates about the diverse causes and manifestations of anti-EU or EU-critical sentiment. It is worth briefly discussing these labels and their potential application to AfD.

Historically, it has been the case that any party within an EC/EU member state espousing a eurosceptical policy stance would necessarily belong outside of the mainstream. This is particularly so in Germany, where, as David Marsh (2013: 64) noted, 'dissenters from the perennial policy of more Europe are routinely castigated for their lack of political correctness'. Across the EU, governing parties have been the strongest supporters of European integration and, insofar as government tends to alternate between the centre left and centre right, this translates into a broadly pro-EU mainstream. Hence the common description of eurosceptic parties as "fringe" or "niche".

It also follows from this that euroscepticism is closely associated with political extremes – parties of the far left and far right have been the most consistent and vocal opponents of European integration, usually for economic reasons in the case of far left parties (i.e. the project's alleged neoliberal character) and socio-cultural reasons, connected to loss of sovereignty, in the case of far right parties (De Vries and Edwards 2009). However, opposition to further and closer European integration, in and of itself, is not an extremist position and we should be cautious about applying this label without justification. Similar problems surround use of the highly contested and often misunderstood term "populist". Populism may be defined as 'an ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, "the pure people" versus "the corrupt elite", and which argues that politics should be an expression of the *volonté générale* (general will) of the people' (Mudde 2004: 543). Opposition to European integration can be a populist position, but it is not necessarily so.²² Insofar as the term is increasingly used in political debates simply as an accusation or insult against one's opponents, it is often unhelpful as an analytical category.

How, then, to classify AfD? The party's senior membership has an air of "bourgeois respectability" (Schmitt-Beck 2013), led by founders and party speakers Bernd Lucke, an economics professor, Konrad Adam, a former *Frankfurter Allgemeine Zeitung* journalist, and Frauke Petry, a chemist and businesswoman. It is certainly not an extremist party in the mould of Greece's Golden Dawn. Though highly euro-critical, especially by German standards, it is not an anti-EU party in the mould of the UK Independence Party (UKIP). Whereas UKIP's primary political objective is Britain's withdrawal from the EU, AfD is far less hostile to the concept of integration, and instead declares itself in favour of 'a Europe of sovereign states with a common internal market' (*Alternative für Deutschland* 2013). Rather than European integration *per se*, the main focus of the party's criticism is the currency union, which was the driving force behind AfD's creation in the first place. Even before the crisis, opposition to Economic and Monetary Union (EMU) proved a popular eurosceptic cause across the EU, combining as it does the functional and symbolic dimensions of suspicion towards, and

resistance to, supranational integration (Usherwood 2013: 282). Indeed, both dimensions are evident in AfD's rhetoric. The party's statements focus heavily on the economic impact on German taxpayers of sustaining the single currency and associated financial aid, but also appeal to less tangible considerations of sovereign nationhood (*Alternative für Deutschland* 2013).²⁴

Rhetorical references to sovereignty and the nation state aside, AfD is not a far-right party in the mould of Geert Wilders's Dutch Party for Freedom (*Partij voor de Vrijheid*: PVV) or Marine Le Pen's French National Front (*Front National*: FN). There is, however, considerable debate over the question of its political orientation. AfD's leaders have claimed that the party is neither left nor right, but some of its policy positions, such as its defence of the family as the basic unit of society and its criticism of what it views as 'disorderly immigration into the welfare system' (*Alternative für Deutschland* 2013), suggest that it leans right. The party's members and supporters also tend to come from a conservative milieu (*Süddeutsche Zeitung* 2013b). In this respect, AfD appears to be occupying the space to the right of the CDU that was opened up by the latter's move towards the centre on a range of social issues under Merkel. Hence, though founded as a single-issue, anti-euro party, there is scope for AfD to evolve into a broader conservative option.

AfD's significance: Flash in the pan, or something more lasting?

AfD has already had some electoral success, but its significance to the German political system goes beyond its vote share. Robert Rohrschneider and Stephen Whitefield (2013) conducted research into the European integration stances of west European political parties in 2008 and again in 2013, showing that mainstream parties hardly altered their stances in response to the euro crisis. Yet, over the same period of time, public perceptions of the EU deteriorated. One consequence of these divergent trends was that mainstream parties were less able to articulate citizens' preferences, a task that has been increasingly taken up by niche parties on the left and right.

In Germany, AfD aimed to address this representation gap by tapping into a eurosceptical strand of public opinion that previously was most strongly articulated by the extreme left (*Die Linke*) or extreme right (National Democratic Party of Germany, *Nationaldemokratische Partei Deutschlands*: NPD) – neither of which are appealing options for the moderate voter. Thus, its impact may also be measured by the extent to which it is able to make euroscepticism "respectable" in Germany – a moderate, rather than extremist position. This, in turn, will depend on the party's ability to dissociate itself from extremists that may view AfD as a vehicle for the legitimation and dissemination their own far-right agendas (Heine 2013). This is a live and controversial issue for the party. Although Lucke insists that AfD is not a right-wing populist party, it is sometimes portrayed as such in the press (*Süddeutsche Zeitung* 2013b), and it has had problems with infiltration by far right activists, leading it to adopt more stringent membership policies (*Süddeutsche Zeitung* 2013a). Lucke, himself, has been accused of tolerating the presence of right-wing populists within the party, and even of courting the support of voters of such a persuasion (Lobenstein 2013).

Even if AfD does not establish itself as a durable political force, the party's emergence may still have an impact on German politics beyond the short term by broadening the spectrum of party stances on European integration. Finland and the Netherlands may be cited as two cases in which governing parties moved towards more eurosceptical positions, at least partly in response to shifting public opinion and to electoral challenges by factions openly hostile to further integration. In 2013, the Dutch government carried out a review of EU powers, similar to the British balance of competences exercise initiated by David Cameron. It concluded that 'the time of an "ever closer union" in every possible policy area is behind us' and instead advocated a more modest EU based on the principle of 'Europe where necessary, national where possible' (*Ministerie van Buitenlandse Zaken* 2013). Similarly, Finland's coalition government was concerned enough about the popular appeal of the

True Finns (who came third in April 2011 parliamentary elections with 19 per cent of the vote) to take a tougher stance on the euro crisis, with Finland becoming the only country to demand collateral from bailout recipients in return for rescue funds (Milne 2012).²⁵

Germany could follow a similar trajectory, depending on how other political actors react to AfD. As Bonnie Meguid (2008) cogently argued, the behaviour of mainstream parties is a critical factor in determining the success or failure of niche parties within the same political system. Owing to their superior resources, media access and ability to mobilise voters, as well as their greater ideological flexibility, mainstream parties have a greater range of strategic choices open to them than their niche party competitors. AfD fits Meguid's description of a niche party in that it did not emerge from traditional, class-based cleavages, does not fit neatly on the left-right spectrum and was formed largely as a single-issue party. Thus, the strategic behaviour of the CDU/CSU and SPD in relation to position, salience and ownership of euro governance issues can greatly affect AfD's political fortunes.

In a speech to a party congress in January 2014, SPD Chairman Sigmar Gabriel decried rising euroscepticism as "stupid", signalling that the centre-left party would take a pro-active, pro-EU approach to the European elections (Kirschbaum 2014). The Christian Democrats, on the other hand, have so far employed what Meguid (2008) described as a "dismissive strategy" of ignoring their niche party rival. This is a potentially fruitful strategy that seeks to reduce the salience of the issues championed by AfD and to deny the party credibility as a genuine electoral contender. Whether the CDU retains its current approach remains to be seen, however, as AfD's success in the European Parliament has prompted some within the party to call for a shift towards more open contestation (Bannas 2014).

CONCLUSION: FACING THE EUROSCEPTIC CHALLENGE IN GERMANY AND EUROPE

Across the EU, national governments will have to take the eurosceptic challenge seriously. This much is clear from the results of the May 2014 European elections, which swept into the parliament groups hostile to the European Union in a number of member states. The anti-integration sentiment was felt much more acutely elsewhere in Europe – including the traditionally eurosceptic UK, economically stagnant France and still-struggling Greece – than it was in Germany, where the CDU/CSU has benefitted from a robust economy and Merkel's personal popularity. Nevertheless, there are limits to the Chancellor's ability to forestall difficult and contentious debates on the future of European integration and Germany's place within it through a politics of alternativlos. For one thing, Merkel has a new coalition partner, the SPD, to reckon with. Differences between the two parties over European issues emerged during the last government, when the SPD argued against Merkel's austerity-oriented approach to stabilising and strengthening the Eurozone. The Social Democrats could now look to exploit those differences, which are shared by other centre-left European leaders including French President Francois Hollande and Italian Prime Minister Matteo Renzi.

The emergence and relative success of AfD is another challenge. Having gained seven seats in the new European parliament, the party now has a base from which to build momentum and credibility before the next federal election. It was helped in this endeavour by its acceptance, in June 2014, into the group of European Conservatives and Reformists (ECR); the parliamentary bloc founded by the British Conservatives. As well as boosting AfD's legitimacy and countering the accusations against it of political extremism, the party's accession to the ECR bloc was an embarrassing defeat for Merkel, who had specifically asked David Cameron to reject its membership (*Frankfurter Allgemeine Zeitung* 2014b). AfD now has its best chance to establish euroscepticism as a mainstream and reasonable

political opinion, potentially reshaping the policy stances of the other Germany parties in the process.

In the legal realm, an adverse final ruling on the OMT decision by the GCC (pending the ECJ's opinion) would also greatly circumscribe the German government's room to manoeuvre in Europe, as well as strengthening the hand of those who oppose the government's handling of the euro rescue. It is, of course, too early to predict how these events will unfold, but it seems clear that the economic crisis of the Eurozone has opened up new avenues for challenging the pro-integration consensus in Germany, a development that may yet lead to the reconfiguration of the European project.

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¹ See, for example, the critique of the ECB's monetary policy by Paul Kirchhof, a former judge of the German Constitutional Court (Kirchhof 2014).

² Guiso et al. (2013) have suggested that 'conformity constraint' – that is, the limitations placed on political leaders by a need to comply with the electorate's deeply held cultural values – played a role in delaying financial assistance to Greece, thereby precluding a timely and potentially contagion-free resolution of the debt crisis.

³ AfD has picked up on this theme – emphasising the inalienability of national parliaments' budgetary powers and the desirability of repatriating some supranational competences to the national level (*Alternative für Deutschland* 2013).

⁴ Brunner v The European Union Treaty [1994] 1 CMLR 57 (Maastricht decision).

⁵ BVerfG, 2 BvE 2/08 vom 30.6.2009, Absatz-Nr. (1 - 421) available at:

http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html (Lisbon decision). Accessed on 15 April 2014.

⁶ BVerfG, 2 BvR 2728/13 vom 14.1.2014, Absatz-Nr. (1 - 105) available at:

http://www.bverfg.de/entscheidungen/rs20140114_2bvr272813en.html (*OMT referral*). Accessed on 15 April 2014. ⁷ Lisbon decision, paragraph 252, 256.

 $^{^{\}rm 8}$ BVerfG, 2 BvR 1390/12 vom 12.9.2012, Absatz-Nr. (1 - 248), available at:

http://www.bverfg.de/entscheidungen/rs20120912_2bvr139012en.html (*euro-rescue decision*). Accessed on 15 April 2014. ⁹ *Euro-rescue decision*, paragraph 208.

 $^{^{10}}$ Euro-rescue decision, paragraphs 220-222.

¹¹ Euro-rescue decision, paragraphs 223-229.

¹² Euro-rescue decision, paragraphs 245-247.

¹³ OMT referral, paragraphs 55-94.

¹⁴ OMT referral, paragraphs 36-43.

¹⁵ *OMT referral*, Dissenting Opinion of Justice Lübbe-Wolff, Dissenting Opinion of Justice Gerhardt.

¹⁶ OMT referral, paragraph 44.

¹⁷ OMT referral, paragraphs 44-54.

¹⁸ The CSU took a harder line against what it described as the excesses of Brussels bureaucracy as part of its campaign for the 2014 European Parliament elections. In an interview published on the CSU's website, General Secretary Andreas Scheuer stated: 'We say yes to Europe. But we want a better, less bureaucratic, slimmer Europe of the citizens'. Available at: http://www.csu.de/aktuell/meldungen/januar-2014/interview-gs-bayernkurier-fuer-ein-schlankeres-europa/. Accessed on 15 January 2014.

 $^{^{19}}$ This is an annual competition to identify the ugliest and most undesirable word from public language.

²⁰ AfD was aided in its European campaign by the GCC, which struck down the 3 per cent hurdle for German parties in the EP in February 2014 (*Spiegel Online* 2014).

²¹ The UK, as on so many other issues, being an exception.

²² And the opposite is also possible – Slovak Prime Minister Robert Fico may be cited as an example of a pro-EU populist (Auer 2013).

⁽Auer 2013).

²³ AfD's leadership expressly rejected the possibility of allying with UKIP at the European level, joining the British Conservatives instead.

²⁴ The same claim sometimes combines tangible economic considerations with less tangible fears and historical allusions, as when AfD demands an immediate ban on the ECB buying government bonds of indebted states, on the grounds that 'inflation must not erode citizens' savings' (*Alternative für Deutschland* 2013). In another nod to the link between its euroscepticism and its defence of German sovereign nationhood, the party's slogan during the 2013 federal election, "*Mut zur Wahrheit*" ("Courage for the truth") was altered to "*Mut zu Deutschland*" ("Courage for Germany") for the European elections.

²⁵ The True Finns are a right-wing populist group who combine anti-EU rhetoric with racist anti-immigrant sentiment. In an article in the *Financial Times*, a senior Finnish Social Democrat is quoted as saying of the True Finns: 'I wouldn't say we stole their clothing at all. But we did move a little in their direction, and I think that is in line with the mood of the Finnish people' (Milne 2012).

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New EU Governance Modes in Professional Sport: Enhancing Throughput Legitimacy

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Abstract

This article explores the limits and opportunities for enhancing the democratic legitimacy of EU actions in the field of professional sport using new modes of governance. It presents a conceptual toolkit by which the 'throughput legitimacy' of an EU policy can be analysed. Analysing the throughput legitimacy of the European social dialogue, we establish that, by improving the latter, both input and output legitimacy can be increased. The EU could borrow some of the positive elements of the social dialogue approach and incorporate them in the steering of other issues in professional sport. For instance, it may be interesting to pre-establish certain conditions on representativeness and relevance for participation in the policy process. Crucially, working on a clear theme-per-theme-basis instead of organising outsized gatherings such as the EU sport forum would definitely benefit throughput legitimacy.

Keywords

Throughput legitimacy; EU sports policy; meta-governance; social dialogue in professional football; new modes of governance

Since the ratification of the Treaty of Lisbon, the article 165 of the Treaty on the Functioning of the European Union (TFEU) grants the EU a formal role in the field of sport. As such, 'sporting bodies can no longer claim that sport is none of the EU's business' (Weatherill 2011: 12). Since the member states only granted the EU a supporting competence, i.e. the weakest type of the three principal types of EU competence, the EU can only coordinate or supplement the actions of the member states. From a legal point of view, the importance of the new legal provision is thus essentially symbolical, as it merely legitimises EU action already taken in the field of sport and, in addition, will not change the approach of the Court of Justice of the EU (CJEU) in sport cases as established in the 1974 Walrave (CJEU, Case 36/74 Walrave [1974] E.C.R. 1405) and the 2006 Meca-Medina CJEU, Case C-519/04 (Meca-Medina and Majcen v. Commission [2006] E.C.R. II-3291cases) (Van den Bogaert and Vermeersch 2006; Weatherill 2006; Vermeersch 2009; Weatherill 2011). From a practical viewpoint, the concrete policy instruments the EU has at its disposal for interventions in sport also remain unchanged. Given the weak EU sporting competence, these can be classified under the heading of so-called soft-instruments.

That being said, there are a number of reasons why it can be expected that the EU will increasingly play a more prominent role in the governance of professional sport. Currently, it is generally assumed that the EU offers sports bodies a degree of "supervised autonomy", which implies that EU institutions do not have a proactive role in directly regulating sports governance, but that they 'play a supervisory role to ensure sport organisations behave within the limits of EU law' (Foster 2000: 58; García 2007: 218; García 2009: 280). Indeed, it is fair to say that the EU has been rather reactive in its approach towards professional sports (Croci 2009: 150). However, three indications suggest a certain shift towards a more proactive attitude. First of all, article 165 TFEU unquestionably created 'institutional momentum' (Weatherill 2011: 12) since it obliged EU institutions to their approaches to sport. For instance, the Council, which no longer works on a mere informal basis on sport, has been issuing increasingly significant resolutions on sport (Council of the European Union 2010, 2011a, 2011b), and there have been preparatory initiatives and studies on match-fixing, doping, the transfer system in football, players' agents and good governance in sport governing bodies.

Secondly, while EU actions in sport could and still can be linked to other areas of competence, the new budget for sport, intended for sport-specific projects, opens a range of opportunities to the funding of sport-specific initiatives, facilitating a 'coherent pattern of development' (Vermeersch 2009: 6). Finally, the Lisbon Treaty seems to have made the Commission's tone less cautious towards sport governing bodies: if they are not respectful of principals of good governance, they can expect their autonomy to be to be curtailed (European Commission 2011: 10; Interview European Commission Administrator July 2013). Altogether, it is clear that the Lisbon treaty brought in its wake a dynamism which opened a window of opportunities for the development of the role of the EU in professional sport (Interview European Commission Administrator, July 2013).

The shift towards a more proactive approach suggests that the Commission will do more than merely play a supervisory role to ensure sport organizations behave within the limits of EU law. The approach of the EU towards professional sports through soft-instruments will increasingly be in line with the so-called 'new modes of governance', which have gained in salience in EU governance since the 1990s (Kohler-Koch and Eising 1999; Scott and Trubek 2002; Radaelli 2003; Tömmel and Verdun 2009; Héritier and Rhodes 2011). New modes of governance are characterised by their use of soft policy instruments such as incentivisation, bargaining, persuasion and information/monitoring instead of the traditional command and control. As such, they offer both limits and opportunities with regard to the democratic legitimacy of the EU. It is the aim of this contribution to analyse these in the light of EU initiatives in professional sport. Given the importance the EU attaches to promoting democracy, transparency, accountability and inclusiveness in sport (European Commission 2011: 10), it seems logical that its own approach to sport adheres to those very standards.

This article proceeds as follows. First, it briefly discusses the rise and nature of new modes of governance in the EU and the concrete policy instruments that emerge from this new approach. Consequently, the conceptual shortcomings of "supervised autonomy" with regard to characterising the approach of the EU towards sport are highlighted. Next, the limits and opportunities of the new modes of governance with regard to the input and output legitimacy of the EU are discussed. Subsequently, throughput legitimacy is introduced as a concept by which the input and output legitimacy of new modes of governance can be improved and a toolkit is presented by which the concept can be analysed, on the basis of a number of basic criteria that emerge from the literature on democratic governance. Finally, the article analyses the throughput legitimacy of the European social dialogue in professional football and its consequences for input and output legitimacy. Bringing together UEFA and the European representative organizations for football leagues, clubs and players, the European Union Sectoral Social Dialogue Committee in the Professional Football sector was established in 2008 and in April 2012, an agreement on minimum requirements for standard football players' contracts was reached. The European social dialogue in professional football presents the EU's first experience with an established new mode of governance (Smismans 2008) in the field of professional sport and thus constitutes an excellent case for analysis. In the end, lessons with regard to input and output legitimacy are drawn for future EU initiatives in professional sport and it is briefly discussed how throughput legitimacy can also be useful for the search for more democratic legitimacy in the sports world in general.

MOVING BEYOND SUPERVISED AUTONOMY TO THEORIZE THE ROLE OF THE EU IN SPORT GOVERNANCE: NEW MODES OF GOVERNANCE

Elaborating on Foster (2000), García (2009, 2013) argues that the EU current approach towards sports federations corresponds with "supervised autonomy", which implies that EU institutions do not have a proactive role in directly regulating sports governance, but that they play a supervisory role to ensure that sport organizations behave within the limits of EU law. The problem with "supervised autonomy" conceptualised by Foster (2000: 58) as the regulation of sport by the

Commission through competition policy which allows for exemptions to be granted in particular cases, is that it has a strong regulatory bias and, as such, does not take into account the role of the EU in sport beyond its 'regulatory mode' (Wallace 2005: 81). The part the Commission can play in professional sport is limited to its role as public enforcer of EU competition law. In this capacity, the Commission has the competence to investigate whether practices of undertakings comply with the provisions on competition policy. The definition of the concept does not fully cover reality, since the EU has a much broader role to play in professional sport. The EU can use — and has used - softer governance approaches in line with the new modes of EU governance in order to "steer" professional sport instead of regulating it, for which it lacks formal authority. Since the reality of the Lisbon Treaty suggests that the way forward for the EU in professional sport is new modes of governance, a new dimension needs to be added to the three-fold typology to theorize the role of the EU in sport governance presented by Foster (2000) and García (2009). This section takes a closer look at the new modes of governance in the EU in order to set the scene.

The emergence of new modes of governance in the EU dates back to the 1970s. It could initially be regarded as a transitional arrangement between policy making rooted at the national level and a formal competence for action by the EU. There were certain areas where the EU did (and does) not hold a strong mandate, for instance where member states fundamentally disagree about policy approaches or want to retain authority, but where some form of collective action was nevertheless deemed necessary (Wallace 2005: 85; Büchs 2007). New modes of governance have been on the rise in EU governance since new, softer methods of governance gained in salience in the 1990s in a response to questions about the effectiveness of uniform EU legislation and the legitimacy for further delegation of regulatory powers to the EU (Kohler-Koch and Eising 1999; Scott and Trubek 2002; Radaelli 2003; Büchs 2007: 22-27; Tömmel and Verdun 2009; Héritier and Rhodes 2011). Much in line with the increasing literature on governance, traditional forms of command and control through legislation were viewed as exclusive, static, incapable of addressing societal complexity, unable to adapt well to changing circumstances, and limited in their production of the knowledge needed to solve problems. It is presumed that, by moving away from command and control towards a system of "governance", the EU is able to promote flexibility and learning through the use of soft law. The Commission acknowledged these processes and presented its 2001 White Paper on Governance in which it stressed that 'proposals must be prepared on the basis of an effective analysis of whether it is appropriate to intervene at EU level and whether regulatory intervention is needed. If so, the analysis must also assess the potential economic, social and environmental impact, as well as the costs and benefits of that particular approach' (European Commission 2001: 20). In case regulatory interventions are not deemed necessary, recourse should be found with new modes of governance, which do not produce legislation, but EU decisions of a different kind: recommendations, advice on best practices, information and guidelines (European Commission 2009).

While academic literature offers little differentiation between new modes of governance - they are often grouped together by scholars - there exists no generally accepted single method of classification (e.g. Best 2008; Héritier and Lehmkuhl 2011: 51-53). In addition, the EU has not had much (positive) experience in the steering of private actors and therefore such governance modes need to further crystallise (Best 2008: 14-16: Verbruggen 2009: 430). It seems therefore advisable to present a classification of the concrete policy instruments that emerge from new modes of governance in order to interpret the concept. In this regard, Héritier and Lehmkuhl (2011: 57-58) distinguish between incentivisation, bargaining, persuasion, information/monitoring and model function (see Table 1).

Table 1: Policy instruments that emerge from the new modes of governance in the EU

Instruments used to attain a stated policy goal	Definition	
Incentivisation	Positive and negative inducements to produce a desired behaviour	
Bargaining	Exchange of resources and positions between actors to reach a defined policy goal	
Persuasion	Actors' behaviour is influenced by arguments and reasoning	
Information/monitoring	Desired behaviour is prompted by the spread of information and possible monitoring of the desired performance and the publication of results ('naming' and 'shaming')	
Model function	Relies on the positive influence that a successful behaviour, the model, may have on other actors	

Source: adapted from Héritier and Lehmkuhl 2011: 57-58

DEMOCRATIC LEGITIMACY

This section discusses the limits and opportunities of new modes of governance for contributing to the democratic legitimacy of the EU. It starts from the classic distinction by Scharpf (1970, 1999), who divided democratic legitimation into *output* and *input*. In short, the *output legitimacy* of the EU can be assessed in terms of the effectiveness of the EU's policy outcomes *for* the people. Policies are *input legitimate* when they are in line with the popular will expressed by the political majority of the elected assemblies and thus, the focus here is on policy *by* the people. Importantly, recent work on the democratic legitimacy of the EU has added another dimension to this debate: interest intermediation *with* the people, which Vivien Schmidt (2013) has recently labelled 'throughput legitimacy'. Schmidt demonstrates how enhancing throughput legitimacy may lead to improved input and output legitimacy, but she did not operationalize the concept. Hence, the subsequent section presents a conceptual toolkit by which the throughput legitimacy of an EU policy can be analysed.

Input legitimacy

Policies are input legitimate when they are in line with the popular will expressed by the political majority of the elected assemblies. That so-called "participatory rhetoric" is however problematic in EU policy-making, as the distance between the directly affected citizens and their representatives is quite large(Sharpf 1999: 9); the European Parliament elections fail to attract citizen interest and they have low turnout rates, and EU citizens cannot express their approval or disapproval of EU policies since there is no EU government to vote in or out (Scharpf 1999; Mair 2006; Hix 2008; Schmidt 2013: 12), although the Lisbon Treaty introduces the requirement by the European Council to take account of the results of the European Parliament elections when nominating the candidate as President of the Commission. In addition, from a more constructivist point of view, the majority rule will only be accepted in polities with a "thick" collective identity - that is, in polities based on pre-existing commonalities of history, language, culture, and ethnicity (Sharpf 1999: 9-10). As the notion of EU citizenship, as introduced by the Treaty of Amsterdam, currently primarily is a legal concept rather

than a political reality, this is currently not (yet) the case. Consequently, almost no scholars think the EU has sufficient input legitimacy (but see Lenaerts 2013).

However, the rise of new modes of governance is said to contribute to the input legitimacy of the EU (Zeitlin and Pochet 2005; Kohler-Koch 2007; Sabel and Seitlin 2010). For instance, in their seminal article, Joanne Scott and David Trubek (2001) contend that in new modes of governance, a broad range of actors are expected to be involved, thus developing a new form of input legitimacy. This view is increasingly being adjusted or even refuted by those who claim that new modes of governance have a negative impact on input legitimacy since the European Parliament remains seriously marginalised or totally outside of the consultation processes of the new governance modes, and the latter have a negative impact on input legitimacy of EU policy processes (Raunio 2006; Borrás and Conzelmann 2007: 541; Büchs 2007: 150). Such arguments are in line with the constructivist stance that citizens' interests are not pre-existing and public and parliamentary discussions are crucial for establishing these (Büchs 2007: 150). In addition, the danger exists that policy processes in new modes of governance suffer from a lack of accountability with regard to the European Parliament (Lord 2004; Bovens, Curtin and 't Hart 2010; Menon and Peet 2010). Finally, strong and resourceful elites may be privileged, and, in this regard, direct participation of private actors may even constitute an impediment for increasing input legitimacy of policy processes (Sørensen and Torfing 2005; Borrás and Conzelmann 2007; Büchs 2007: 148; Greenwood 2007; Skelcher 2007; Sørensen and Torfing 2009: 234; Schmidt 2013: 16).

Output legitimacy

Since the EU cannot be regarded as democratic in the input sense, according to Sharpf (1999), a more modest form of legitimisation must uphold the Union. Sharpf therefore introduces the concept of 'output-oriented legitimacy', where political choices are legitimate if and because they effectively promote the common welfare of the constituency in question: 'government *for* the people' (Scharpf 1999: 6-10). According to Scharpf (1999: 11-12), output-oriented legitimacy requires no more than the perception of a range of common interests that is sufficiently broad and stable to justify institutional arrangements for collective action. Thus, he restricts his argument to "consensual" policy areas (Sharpf 1999: 22). New modes of governance in the EU are said to contribute to the output legitimacy of the EU since horizontal, networked forms of governance are deemed more effective than traditional forms of command and control (Klijn and Koppenjan 2004). However, this view has been criticised later on, as empirical results for the new modes of governance remained rather limited (Hodson 2004; Zeitlin and Pochet 2005; Idema and Kelemen 2006; Büchs 2007; Haztopoulos 2007; de la Porte and Pochet 2012).

INCREASING INPUT AND OUTPUT LEGITIMACY VIA THROUGHPUT LEGITIMACY

Although often discussed in literature in input or output terms, Schmidt (2013) demonstrates how throughput mechanisms can be brought under a more general rubric for the purpose of analytic reasons, constituting a third and distinct criterion in the normative analysis of democratic legitimacy. Throughput encompasses the numerous ways in which the policy processes work in order to ensure 'the accountability of those engaged in making the decisions, the transparency of the information and the inclusiveness and openness to civil society' (Schmidt 2013: 7). Throughput legitimacy moves beyond the traditional input-output dichotomy by focusing on the quality of interactions among actors engaged in EU decision-making process (Schmidt 2013: 7-8).

By enhancing the throughput legitimacy of new modes of governance, issues with regard to their input and output legitimacy can be remedied (Sørensen and Torfing 2005; Sørensen and Torfing 2009). Throughput legitimacy can lead to increased output legitimacy since particular governance processes are seen as preconditions for better output performance, and to improved input legitimacy since certain institutional processes or deliberative interactions are preconditions for better input participation (Schmidt 2013: 14).

Introducing a toolkit for analysing throughput legitimacy

This section presents a toolkit for analysing the four dimensions of throughput legitimacy, emerging from the literature on democratic governance, based on Schmidt's analysis (2013), and efficacy, accountability, transparency and inclusiveness and openness to civil society.

Efficacy

According to Eva Sørensen and Jacob Torfing (2009), new modes of governance can contribute to effective governance only provided that the network of actors involved in the governance, i.e. the *governance network*, is carefully meta-governed by politicians, public manager and other relevant actors. Meta-governance holds that the most appropriate way of controlling governance networks is by "steering", which entails that, via a series of more or less subtle and indirect forms of governance, meta-governors should seek to shape the free actions of the network actors in accordance with a number of pre-defined general procedural standards and substantial goals. Thus, 'the conditions for interaction of relatively free and self-responsible actors within governance networks are structured in order to ensure conformity with some generally defined objectives' (Sørensen and Torfing 2005: 202).

In order to meta-govern effectively, meta-governors must combine 'hands-off' and 'hands-on' forms of meta-governance (Sørensen and Torfing 2009: 247). Hands-off forms of meta-governance - meaning at a distance from the self-regulating governance networks - are adequate in the initial phase of the steering of the governance network. The term comprises network design and network framing as meta-governance methods. Network design involves the shaping and structuring of governance networks, either by encouraging the formation of particular forms of networks, or by relying on pre-established networks. During this process, meta-governors influence inclusion and exclusion of certain actors and the empowerment of weaker actors and determine the scope of the network (Sørensen and Torfing 2005: 204). Network framing involves the formulation of the political goals and objectives, which can be broadly defined, to be pursued by the network and the allocation of resources. Sometimes, a legal framework that facilitates and constraints the network, may even be drawn. Network framing must always be backed by the continuous monitoring and critical evaluation of the output of the network (Sørensen and Torfing 2005: 204).

Hands-on forms of meta-governance are recommended when the governance network shows signs of failure and close interaction between the meta-governors, and the governance network is needed. This is for instance the case when conflicts arise between network actors, when deadlocks occur, when key actors are excluded from the policy deliberations, or, when policy output stays too far from what is deemed acceptable by the meta-governors (Sørensen and Torfing 2009: 247). The first hands-on form of meta-governance is network management, which includes attempts by meta-governors to reduce tensions through conflict management, promoting favourable conditions and providing inputs and resources for joint action, and empowering certain actors (Kickert and Koppenjan 1997: 47-51; Sørensen and Torfing 2009: 247). The second hands-on form of meta-

governance is network participation, which requires the participation of the democratically elected politicians in the networks. This way, it is possible to get first-hand knowledge of the policy processes and exert political authority in order to influence the network (Sørensen and Torfing 2005: 204-205, 2009: 247). Hands-on forms of meta-governance are not only appropriate in the case of governance network failures, as it is also quite common in policy areas closely related to the core functions of the state (Sørensen and Torfing 2009: 247). However, if the relative autonomy of the network is a key political goal, as is the case with sport at the EU level, hands-on forms of meta-governance may be avoided by elected politicians and public administrators. The efficacy of the policy processes of course also depends on democratic quality. For instance, deliberations between actors need to be governed by a 'democratic ethos', ensuring openness, relative transparency, respect and a commitment to reach a rough consensus (Sørensen and Torfing 2005: 211-214; Torfing, Sørensen and Fotel: 2009: 291-294).

Accountability and transparency

As mentioned earlier, the danger exists that policy processes in new modes of governance suffer from a lack of accountability with regard to the European Parliament (Lord 2004; Bovens, Curtin and 't Hart 2010; Menon and Peet 2010). It is therefore important that the Parliament has the possibility to scrutinise the policy processes of these modes. In addition, whereas accountability within an EU context in general implies that EU actors are responsive to participatory input demands and can be held responsible for their output decisions, it is essential that the network of actors engaged in the policy processes of the new methods of governance are responsive to public contestation, meaning that they should respond positively to constructive proposals raised in public debate (Harlow and Rawlings 2007; Torfing, Sørensen and Fotel 2009: 291).

The members of the civil society organizations that are involved in the policy processes of the new modes of governance constitute 'a demos of directly affected people' (Sørensen and Torfing 2003: 617). In order to have a positive effect on input legitimacy, those whose interests are being represented therefore must have access to information about the policy processes and the capacity and opportunity to critically evaluate the pursuit and construction of their interests and preferences. Furthermore, the representatives must of course be responsive to criticism from the represented and they must represent who they claim to represent (Sørensen and Torfing 2005: 206; Torfing, Sørensen and Fotel 2009: 288-289).

Conceptually, transparency is closely related and even connected to accountability. In the narrow sense of the term, accountability 'requires institutions to inform their members of decisions and of the grounds on which decisions are taken' (Woods 1999: 44). In a similar vein, public accountability is crucial to prevent new modes of governance from 'operating in the dark' (Fox and Miller 1995; Dryzek 2000; Newman 2005). It is therefore paramount that narrative accounts are produced that seek 'to justify decisions, actions and results in the eyes of the broader citizenry' (Torfing, Sørensen and Fotel 2009: 291).

Inclusiveness and openness to civil society

Although democratic procedures are subject to endless contestations, there are certain general rules and norms that are generally accepted as inherent to a democratic grammar of conduct, such as the participation in policy processes by those who are affected by the policy (Arnstein 1969; Pateman 1970). Interest group participation in policy making or 'functional representation' through interest groups therefore has been identified as a form of democracy in its own right as well as a corrective

to representative democracy (Cohen and Rogers 1992, Kohler-Koch 2007; Kröger 2008). However, none of the affected stakeholders must be marginalised in a way that systematically prevents them from influencing policy (Young 2000). It is mentioned above that the danger exists in new governance modes that strong and resourceful elites are privileged, diminishing the input-legitimacy of policy processes. Therefore, the degree of inclusion in new modes of governance should be 'a function of the intensity of the actors' affectedness, and the included actors should be able to influence the decisions' (Torfing, Sørensen and Fotel 2009: 294). Since the relevance of the respective actors included in the policy processes may decline and the presence of other actors may indeed become more pertinent, the inclusion and exclusion of actors must be subject to on-going consideration and negotiation.

THE CASE OF THE EUROPEAN SOCIAL DIALOGUE IN PROFESSIONAL FOOTBALL

This final section analyses the European social dialogue in professional football. In particular, conclusions are drawn on the positive and negative effects of the relevant policy processes on input and output legitimacy. Using the toolkit presented in the previous section for assessing the elements of throughput legitimacy suggested by Schmidt (2013), key points for attention with regard to the democratic legitimacy of a more proactive EU approach in professional sport are uncovered. Although the European social dialogue in professional football constitutes a special case as the EU can rely on pre-established practices and even a legal framework (Colucci and Geeraert 2012), this does not mean that the conclusions of this paper cannot be translated to sport-specific EU actions.

The data for the analysis was gathered firstly through documentary analysis, which included official press releases from various actors, the memoranda of understanding concluded between UEFA and the involved stakeholders, official EU policy documents and relevant academic literature. Secondly, since many internal processes remain informal and are thus not accessible in written form, seven semi-structured qualitative interviews were conducted and used as the primary source of information about internal processes, assessments and viewpoints. The focus was on the (assumed) diverse viewpoints of the actors (see Bogason and Zølner 2007: 13); the interviews were conducted in person (5) and over the phone (2) in August and September 2012 and in July 2013 with representatives from Union of European Football Associations (UEFA) (2), European Club Assiciation (ECA), Fédération Internationale des Associations de Footballeurs Professionnels (FIFPro), the European Commission (2) and the European Parliament. European Professional Football Leagues (EPFL) declined to cooperate.

Background

On the conclusion of the agreement on new FIFA rules on international transfers of football players between the main football associations FIFA and UEFA on the one side, and the EU Commissioners in charge of competition, sport and social affairs on the other side, the Commission invited FIFA and UEFA to encourage clubs to start or pursue social dialogue with the representative bodies of football players and for this purpose, and offered the Commission's assistance. In July 2008, following the signing of the Rules of Procedure by the participating parties, the European Union Sectoral Social Dialogue Committee in the Professional Football sector (SDCPF) was established. The committee brings together UEFA and the European representative organizations for football leagues (EPFL), clubs (ECA) and players (FIFPro). In April 2012, the relevant internal bodies of the involved organizations ratified an agreement on minimum requirements for standard football players' contracts.

Efficacy

The European Commission was quite successful as meta-governor (see Table 2). First of all, since it had been encouraging the formation of a social dialogue committee in professional football since 2001, it has been very involved in the network design of the SDCPF. The Commission also provided important resources to the SDCPF actors and supported projects and studies. This resonates with the Commission's role under article 154 (1) TFEU, which limits its task to taking 'any relevant measure to facilitate social dialogue by ensuring balancing support for the parties'. In terms of network framing, the Commission provided important resources to the SDCPF actors. According to all interviewees, indirect financial support through, for instance, the reimbursement of travel expenses by the Commission is particularly important to FIFPro, whose budget is far more limited than those of the other participating organizations. The Commission made sure that actors are brought together in a room, where they are obliged to dialogue. The legal framework of the EU social dialogue is helpful and 'provides an interesting platform for the conclusion of agreements' (Interview: Stakeholder official, August 2012). However, there are also serious limitations (Colucci and Geeraert 2012). The objectives of the Committee are clear: to deliver opinions on labour matters to the Commission; to reach agreements in accordance with the Treaty provisions on social dialogue; and, to encourage and develop social dialogue at sectoral level (European Commission 2008: Article 1).

Table 2: The meta-governance of the European social dialogue in football by the European Commission

Type of meta- governance	Distinction of the types	Definition	European social dialogue in football
Hands-off	Network design	The shaping and structuring of governance networks, either by encouraging the formation of particular forms of networks, or by relying on pre-established networks	 Encouraged the formation of the committee since 2001 Support to a number of projects
	Network framing	The formulation of the political goals and objectives, which can be broadly defined, to be pursued by the network and the allocation of resources	 Broad formulation of objectives Support to a number of projects Reimbursement of travel expenses
Network management Hands-on		Attempts by meta-governors to reduce tensions through conflict management, promoting favourable conditions and providing inputs and resources for joint action, and empowering certain actors	Drafting of compromise agreement Bi-lateral talks with actors during impasse Empowering of FIFPro
Tiunus Sii	Network participation	The participation of democratically elected politicians in the networks in order to get first-hand knowledge of the policy processes and to exert their political authority in order to influence the network	Avoided due to the autonomy of sport, the political sensitiveness of the issue and a lack of interest

Source: adapted from Kickert and Koppenjan 1997: 47-51; Sørensen and Torfing 2005: 204; Sørensen and Torfing 2009: 247; own analysis

The Commission also succeeded in managing the network. When the SDCPF reached an impasse in early 2011, the Commission tried to reconcile differences, for instance by organising bilateral negotiations with the individual parties (Interview: Stakeholder official, September 2012) and eventually drafted a compromise agreement 'which would eventually serve as the basis for the final agreement' (Interview: Stakeholder official, August 2012). The Commission has also exercised some form of indirect pressure to come to a solution. In case the impasse had not been resolved, the Commission would have refused to renew the committee's budget, which would have resulted in the death of the committee (Interview: Stakeholder official, September 2012). This would entail high political costs for the participating parties, since 'it is very important to have good relations with the EU' (Interview: Stakeholder official, August 2012). There is no network participation by democratically elected politicians in the social dialogue in professional football. This is of course due to the political sensitiveness of interventions in professional sport, but the *sui generis* nature of the EU, i.e. the lack of a traditional government, also plays an important part. Instead, meta-governance was conducted by public administrators, which is in fact customary (Kingdon 1984; Kickert, Klijn and Koppenjan 1997; Skelcher, Mathur and Smith 2005).

The deliberations between actors were generally governed by a 'democratic ethos'. The interviewees all agree that negotiations happened in a relatively good atmosphere. One described the relation between the actors as 'cordial' (Interview: Stakeholder official, August 2012). Another contended that, while there were some disagreements from time to time, after the negotiations, the negotiators were 'happy to enjoy a beer together' (Interview: Stakeholder official, August 2012). One stakeholder official was slightly less positive and held that 'of course there was some hostility from time to time, but I would rather call it passion' (Interview: Stakeholder official, September 2012). Furthermore, the negotiations reportedly were relatively transparent, although ECA and EPFL often tuned their proposals and measured them with UEFA before introducing them to FIFPro (Interview: Stakeholder official, August 2012). One interviewee argued that the latter was 'necessary in order to reach a solution' (Interview: Stakeholder official, August 2012). Finally, despite some worrying reports on FIFPro's website (FIFPro 2011), the stakeholder interviews reveal that there certainly was a commitment to reach a consensus agreement.

Accountability and transparency

A general issue in new modes of EU governance, the European Parliament only plays an extremely marginal role in the European social dialogue in football. It has expressed its support for social dialogue in sport in general and football in particular in its 2008 Resolution on the White Paper on Sport (European Parliament 2008, points 105-106). In its 2012 Resolution on the European dimension in sport, the Parliament reiterates its support for social dialogue in sport in general (European Parliament 2012, recital AB; point 49). One interviewee stated that the Parliament does not offer much solid support to the SDCPF (Interview: Stakeholder official, September 2012). Two other interviewees frame this in the general lack of interest of EU-level politicians in the social dialogue in football (Interview: Stakeholder official, August 2012, September 2012).

The stakeholder interviews reveal that, in general, ECA and FIFPro had a sufficiently broad mandate to conclude an agreement on behalf of the represented organizations, despite there being some issues in the past with regard to the latter organization (see Irving 2002: 713; Dabscheck 2003: 97-102). The ECA official did admit that ECA administrators sometimes had to make some efforts to have certain elements sold to the ECA member base. All interviewees pointed to the fact that there were some serious doubts as regards EPFL's mandate. At a certain point, its CEO was not even sure about the scope of EPFL's mandate (Interview:Stakeholder official, August 2012). Reportedly, especially the Spanish and Italian leagues are very reluctant to give away their bargaining powers to EPFL (Colucci and Geeraert 2012: 221-222; Interview: Stakeholder official, August 2012). Such

reluctance is in fact a familiar issue in EU level social dialogue (see De Boer, Benedictus and van der Meer 2005; European Commission 2010: 17) and the ratification process following the signing of the agreement on MRSPC in the SDCPF underlined these issues. Certain stronger leagues did not want to ratify any agreement and eventually, those countries where the standard of contractual protection is above the standards provided in the SDCPF agreement on MRSPC - 16 in total- were excluded from the agreement by means of a side-letter agreement (ECA, EPFL, FIFPro and UEFA 2012). Since the agreement on MRSPC had to be ratified by the relevant internal bodies of the signatory parties, the represented organizations definitely had the opportunity to critically evaluate how their interests and preferences were pursued by the representative organizations.

Narrative accounts published by the network are very scarce. Apart from FIFPro, which regularly produced (rather cynical) news articles on the SDCPF on its website, the actors and the Commission limited themselves to the reporting of key-events such as the installation of the Committee and the signing and ratification of the agreement. The Commission in particular could do a better job in providing objective information on the actions and decision in the Committee. For instance, the side-letter agreement which excludes 16 countries from the scope of the MRSPC agreement is nowhere mentioned or explained. On the contrary, the Commission mistakenly reports that 'the Agreement covers not only the 27 EU Member States but all 53 national federations which are members of UEFA' (European Commission 2012).

Inclusiveness and openness to civil society

Decisions with regard to labour issues in football above all affect players and clubs. In the SDCPF, European football players are represented by FIFPro Europe, and clubs are represented by ECA and – indirectly- EPFL. One could argue that ECA is more relevant than EPFL, but the top European leagues represented by EPFL are equally affected since they have an important role to play in the implementation of the agreement because the agreement will have to be implemented in the national bargaining agreements in order for it to have any direct legal effect (Colucci and Geeraert 2012). The stakeholder interviews revealed that all the included actors were able to influence decisions in the network. This is also evident from an analysis of the negotiations in the Committee (Colucci and Geeraert 2012: 223-229). All interviewees share the same unambiguously clear view that, perhaps apart from the occasional reporting on the instalment of the committee, there was and still is no interest from the press in the SDCPF. Consequently, there was no opportunity for the actors to display any responsiveness towards external criticism.

When social partners make a joint request to take part in social dialogue at European level, organizations representing both sides of industry must fulfil certain criteria, which are assessed by the Commission (European Commission 1998: Article 1). In the White Paper on Sport, the European Commission acknowledged that 'relevant third bodies' could be invited to take part in the social dialogue 'as observers' (European Commission 2007, para. 5.3). Moreover, as the Commission acknowledged the difficulty to predetermine the form of a social dialogue in the sports sector and, therefore, it declared to be ready to 'examine any request to set up a sectoral social dialogue committee in a pragmatic manner' (European Commission 2007: para. 5.3). The most suitable representative organizations for workers and employers in European football are currently involved in the SDCPF, although the Commission applied its predetermined criteria rather loosely, which indicates that mutual recognition by the involved parties is more important than actually meeting those criteria. At this point, the only excluded organization that could possibly be interested in participating in the SDCPF is FIFA. FIFA very much is a 'relevant third body' with regard to labour issues in football and therefore would certainly be accepted by the Commission 'as an observer' in the Committee.

The danger that strong and resourceful elites are privileged is extremely pertinent in European football governance. UEFA formally has as an objective that it ensures the needs of the different stakeholders in European football are properly taken into account. However, clubs have considerably more control over UEFA than players. At the end of the 1990s, UEFA realised that clubs, as opposed to players, have - and considered - the "exit" option (Hirschmann 1970), when a group of elite European clubs threatened to establish a European Super League outside of its structures. In addition, UEFA's statutes stipulate that every Executive Committee member, except the UEFA president, has to hold office in a national federation (UEFA 2012: Article 21.3) and the latter are highly receptive to clubs' concerns (Interview UEFA official, 11 July 2013). Moreover, while the more regular contact between FIFPro officials and UEFA is a relatively recent phenomenon, UEFA has a tradition of dealing with clubs and never directly with players. Clubs consequently have managed to obtain important concessions from UEFA. For instance, they take a majority of the seats in UEFA's Club Competitions Committee, which among others draws up recommendations and exchanges views regarding possible modifications to the existing UEFA club competitions and to the regulations governing these competitions (UEFA 2012: Article 22). Furthermore, the recently renewed memorandum of understanding between ECA and UEFA includes arrangements on an increase of the agreed amount to be distributed to clubs for giving their players away to national teams; an insurance covering the risk of injury while on international team duty; and the international match calendar (UEFA and ECA 2012).

FIFPro's participation in the social dialogue has unquestionably improved its representativeness and legitimacy, and has thus enhanced its position in the governance of European football. By providing expertise and indirect financial support through, for instance, the reimbursement of travel expenses, the Commission further contributed to the empowerment of FIFPro. Finally, by making sure that actors are brought together in a room, where they are obliged to dialogue, the Commission made sure that FIFPro was able to influence the decisions made by the governance network (Interview: Stakeholder official, September 2012). This is in line with other active EU policies that help to address potential asymmetries of power between different constituencies of groups, for instance through EU funding (Greenwood 2007: 344).

CONCLUSION

This article looked into the limits and opportunities for enhancing the democratic legitimacy of EU actions in the field of professional sport, given the legal context in which these necessarily take place. By analysing the throughput legitimacy of the European social dialogue in professional football, it was shown that by improving the latter, input and output legitimacy can be increased (see Table 3 for detailed conclusions of the analysis). In general, careful meta-governance by the European Commission contributed the most to output legitimacy since it facilitated and accelerated the conclusion of an agreement. In addition, the degree of inclusion in the policy processes was clearly a function of the intensity of the actors' affectedness and the affected demos, constituted by the represented organizations, and could influence policy, increasing input legitimacy. Crucially, however, the European Parliament was not involved, few narrative accounts were made available, and incorrect information was published, impeding public contestation and thus decreasing input legitimacy.

It is important to stress that many of the positive points with regard to throughput legitimacy result directly from the pre-existing structures, uses, experience, processes, the legal framework, and other peculiarities connected to the specific EU governance mode that is the European social dialogue. The EU can fall back on 15 years of experience and established practices in this field, while it lacks an established (and successful) approach in the steering of private actors in other fields.

Table 3: General conclusions of the study

Throughput Legitimacy Dimensions	Suggested Criteria	Impact on Legitimacy	General Conclusions
Efficacy	 Meta-governance Deliberations between actors are governed by a democratic ethos 		Commission did a very good job as meta-governor ons between actors were generally governed by a cethos
		Input	
		Output	Meta-governance and democratic ethos in deliberations contribute to output legitimacy of the EU since they hastened the conclusion of the agreement.
Accountability and Transparency	 European Parliament scrutinises policy process Responsiveness to public contestation Represented demos has access to information about policy processes Represented demos can critically evaluate pursuit and construction of their interests and preferences Responsiveness from representatives to concerns raised by represented Narrative accounts are produced that seek to justify policy in the eyes of the broader citizenry 	 No public of the case aware of the Agreement the parties therefore the representation 	of EPFL, the represented organisations were not the policy processes that to be ratified by relevant internal organs of the policy processes that to be ratified by relevant internal organs of the policy processes from the policy prosesses from tive organisations towards represented the policy processes and the policy processes and the policy processes and this has repercussions for the
			effectiveness of the policy outcome since certain members refused to ratify and thus implement the agreement.
Inclusiveness and Openness to Civil Society	Openness affectedness		rected organisations are represented being marginalised in football governance but, neta-governance by the European Commission, wered ors were able to influence policy tially relevant actor currently not included is FIFA
 Inclusion and exclusion are subject to on-going consideration and negotiation 	 Inclusion and exclusion are subject to on-going consideration 	Input	The affected demos could influence the policy process.
	Output	The inclusion of relevant and representative organisations facilitates the multi-level implementation of policy.	

It may be worthwhile to borrow some of the positive elements of the social dialogue approach and incorporate them in the steering of other issues in professional sport, for instance match-fixing or doping. For example, it can be interesting to pre-establish both certain objectives that have to be attained and conditions on representativeness and relevance for participation in the policy process.

Crucially, working on a theme-per-theme-basis instead of organising outsized gatherings such as the EU sport forum would definitely benefit throughput legitimacy.

Finally, our conclusions are also valuable for analysing the democratic legitimacy of the governance of professional sport when the EU does not take up a steering role. Since international sport organizations govern substantial areas of social life through their administrative decisions and public derogations, states have implicitly delegated certain tasks (related to the regulation of a public good, namely sport) to them (Cutler, Haufler and Porter 1999; Hirst 2000: 20). In a similar vein, Héritier and Lehmkuhl (2008: 5) speak of 'a tacit or explicit tolerance of governance actors' policymaking on the part of governments'. Accordingly, it seems logical that these organizations adhere to high degrees of throughput legitimacy. In addition, while focusing exclusively on the *input legitimacy* of these organizations is not very useful, putting the focus purely on their effectiveness, or *output legitimacy*, also does not tell us anything about the democratic quality of their internal processes. By improving their throughput legitimacy, however, they can improve both their input and output legitimacy.

Further research could focus on the underlying mechanisms that ensure effective steering of the sports world. It has been established that the effectiveness of new modes of governance depends largely on whether they operate 'in the shadow of hierarchy', that is, a credible threat of regulatory intervention (Sharpf 1994; Héritier and Lehmkuhl 2008; Héritier and Rhodes 2011). In the case of sport, the shadow of hierarchy seems rather pale due to the EU's limited competence. Sport bodies however seem to be willing to engage with the EU due to a latent fear of EU law, which may explain why an agreement was reached in the SDCPF, while extremely few agreements are reached in other European sectoral social dialogue committees exactly because of the lack of a shadow of hierarchy (Best 2008: 14; Smismans 2008; Geeraert 2013). Against this background, it could also be useful to focus on the effects of conflicting meta-governance messages (or a lack of support from the Council) on the effectiveness of EU steering. Finally, since the reality of the Lisbon Treaty suggests that the way forward for the EU in professional sport are new modes of governance, a new dimension should be added to the typology that was introduced by Foster (2000) and García (2009) to theorise the role of the EU in sport governance. Further research could explore the benefits of this new dimension by comparing them with the traditional trinity of self-regulation without the intervention of the EU law, enforcement of private rights through the CJEU, and supervised autonomy.

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¹ On this note, with regard to EU involvement in professional sport, it is true that EU citizens tend to allocate the responsibility to the EU for those policy domains which are characterised by an endogenous internationalisation (Niedermayer and Sinnott 1995; De Winter and Swyngedouw 1999). Moreover, according to a Eurobarometer Survey from 2004, a majority of EU citizens are in favour of a greater EU intervention in sport (European Commission 2004).

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National Linkages and Ambiguous EU Approaches among European Civil Society Organizations

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Abstract

During the last decade, the EU has had an explicit strategy to include civil society organizations (CSOs) in European public policy. However, the extent to which domestic CSOs are oriented towards the EU in their policy interests and strategies is influenced by various factors. This article examines to what extent and in what ways CSOs acknowledge the impact of the EU on their substantive policy agenda and under what conditions they would prioritise EU-level contacts and/or lobbying in their strategies. We are particularly interested in finding out which institutional linkages - if any determine the extent to which domestic CSOs direct their policy activity towards the EU level. The article is based on a survey of 880 Swedish CSO's as well as qualitative interviews with 17 CSOs within the policy areas of anti-discrimination, immigration and asylum in Sweden, United Kingdom and the Netherlands. The results show that although CSOs recognise the importance of the EU-level and also try to influence EU policy, their priorities and orientation are primarily directed towards the domestic level. From our empirical findings, we argue that in order to understand the limited Europeanization of CSOs, national dependency on financial support and to some extent formal embedding in national welfare systems are key factors. The findings indicate some differences between the organizations' approaches, which to some extent can be attributed to policy area and organizational character. Policy areas with strong EU legislation implemented at national levels such as anti-discrimination seemingly underpins stronger linkages to local and national governments and thus less EU orientation.

Keywords

Civil society; Civil Society Organizations; EU; Europeanization; Institutions; Linkages

During the last decade, the European Union (EU) has had an explicit strategy to include civil society organizations (CSOs) in several aspects of European public policy. The White Paper on European Governance (European Commission 2001) serves as the most comprehensive attempt to define the overall principles, rules and norms on how to include civil society participation in the European decision-making process. Since launching this strategy in 2001, the ambition to intensify this work has been developed further in order to include a wide range of CSOs in the policy process (Kohler-Koch and Finke 2007). While the White Paper on European governance stressed the role of CSOs on the input side of the policy process, there has recently been a slight change in the discourse towards increasing attention on the role of CSOs in implementing European policies (Borragán and Smismans 2010; Freise 2008).

Comprehensive policy efforts at the EU level, however, do not necessarily translate into rapid implementation at the national and local levels. Researchers analysing the Europeanization of civil society have argued that the immediate environment in general, and the relationship to local and national governments in particular, set the overall conditions for CSO approaches towards the EU (Krasner 1995; Della Porta and Kriesi 1999; Risse-Kappen 1995; Della Porta and Caiani 2009; Cram 2001; Beyers 2002). The restructuring of the European welfare states is often acknowledged as one of the most profound factors influencing the role of civil society (Amnå 2006; Kendall and Anheier 2001; Lewis 2004; Wijkström 2004). Faced by significant challenges from a variety of sources such as fiscal competition, growing ethnic diversity, aging populations and decreasing trust in public officials and institutions, local and national governments have turned to civil society to inject effectiveness,

resources and trust in the social welfare delivery. Partnerships between CSOs and local and national governments have been established. One example is the "compact culture", introduced in Britain in the late 1990s, that found its way into state—civil society relations e.g. in Sweden, recognising the role of civil society as a public service provider (Kendall 2000). In addition, scholars have argued that financial support from local and national governments have made parts of civil society financially dependent on the state (Kendall 2003; Johansson 2005).

Why then would domestic CSOs at all direct themselves toward the EU-level? Considering that leading European policy organizations and lobbying networks — already embedded in the EU institutional structure — dominate on the EU-level this is indeed a relevant question. Still, the expanding scope and deepening role of EU and its institutions provide a powerful incentive for domestic CSOs to take EU dimensions into account in their strategies and activities. There is not only the possibility of policy influence at stake but also new channels for resources, such as access to EU funding and expertise. The aim of this article is to analyse to what extent and in what ways CSOs acknowledge the impact of EU on their substantive policy agenda and under what conditions they would prioritise EU-level contacts and/or lobbying in their strategies. We are particularly interested in finding out which institutional linkages — if any — determine the extent to which domestic CSOs in Sweden, United Kingdom and the Netherlands, direct their policy activity towards the EU level. The article is structured into five parts. The second part, following this introduction, presents the theoretical framework and explains some of the institutional linkages at play. The third part outlines the research design, which is followed by a report of the empirical results in the subsequent fourth part. The conclusions are finally presented in the fifth part.

INSTITUTIONAL LINKAGES AND RESOURCE DEPENDENCY

The concept of Europeanization has been used by scholars to denote the process under which political actors, such as political parties, governments and CSOs adapt to the impact of European integration. Claudio Radaelli (2000) has defined Europeanization as the 'Processes of (a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies.' (2000: 4). Similarly, Robert Ladrech (1994) emphasises the adaptive processes of organizations due to a changing environment. As such, Europeanization can be considered as the process where the impact of the EU becomes incorporated into the "organizational logic" or political activity of individual organizations (Beyers and Kerremans 2007; Coen 1997; Ladrech 2002). In this paper, we are particularly interested in factors that influence the extent to which national CSOs have "Europeanized" in response to European integration (see Beyers and Kerremans 2007).

A basic incentive for a CSO to turn to EU is that it is perceived as a relevant actor in relation to the policy area under which the organization operate. From a rational perspective, organizations will turn to the political level where the greatest influence can be attained. Emily Gray and Paul Statham (2005), who studied CSOs operating in the immigration area, found that they remained relatively inactive at the EU level. The main reason was that domestic institutions were perceived as more important in terms of influence and resources. However, researchers studying the relationship between CSOs and local and national governments, have emphasised the importance of different kinds of institutional linkages. Following new institutional theory, organizations are embedded in an environment highly regulated by institutionalised rules, norms and taken-for-granted ideas (Granovetter 1985; Meyer and Rowan 1977). As a result, individual organizations are under constant influence by other organizations, which may enable and restrict their behaviour and orientation (March and Olsen 1989).

Legal rules and regulation

The existence of a common legal environment affects many aspects of organizational behaviour and have a tendency to constrain and regularise behaviour and thereby shape the actions and behaviour of organizations (Scott 2008). Paul DiMaggio and Walter Powel (1983) have referred to the institutional pressure exerted on organizations as coercive isomorphism. They argue that external actors can exert pressure that influence organizations both formally and informally. Influence often occurs in situations in which organizations are 'dependent on other organisations by cultural expectations in society within which the organisation operates' (DiMaggio and Powell 1983: 151) These pressures may be perceived as force, persuasions or as an invitation to join in agreement or as a direct response to a government mandate. Sebastiaan Princen and Bart Kerremans (2008) have pointed out that regulation and legal aspects on the national level influence the extent to which CSOs turn to the EU. They refer to national labour policies and wage negotiations, which have made labour unions predominantly active on the domestic arena because rules and regulation in these sectors are lacking at the EU level.

Resource dependency

Moreover, scholars have stressed the importance of financial resources since acting towards the EU is a demanding task (Beyers and Kerremans 2007; Trenz 2007). Organizations are not self-sufficient but depend on resources from its environment for their continuance and for accomplishing their goals (see Pfeffer and Salanick 1978). In order to acquire resources, organizations need to interact with their environment. Jan Beyers and Bart Kerremans (2007) have demonstrated that dependency on government subsidies determine the extent to which CSOs are integrated in the decision-making process at the EU-level. Hence, receiving or applying for funds require an interaction with the actors controlling the resources. The resource dependency theory therefore implies that the actions of organizations are due to responses to their environment where resources occupy a key role. However, the assumption inherited in the resource dependency theory can also be criticised for underestimating the ability of individual organizations to be independent and act strategically, by for example receiving resources from different actors (see Brown and Kalegaonkar 2002). Still, the dependency theory remains powerful in explaining how organizations act and behave in relation to their environment (Fraussen 2013).

Different organizations, different institutional linkages

Unfortunately, the literature provides little guidance on the extent to which differences between organizations in terms of policy area and organizational character, affect their approaches toward the EU. Clearly, organizations differ in the extent to which external factors influence their actions and behaviour (Scott 2008). For instance, organizations with clear and critical ideologies, active members, and strong internal ideology, are generally more resistant to pressure from other actors than are organizations demonstrating reverse characteristics (Johansson 2003). Moreover, civil society organizations are embedded in the national political context in which they have emerged. Culture, policy and traditions thus have implications on the behaviour of civil societies.

RESEARCH DESIGN

Our empirical analysis is based on both quantitative and qualitative data. In order to analyse to what extent and in what ways CSOs acknowledge the impact of EU on their substantive policy agenda, we

use a quantitative dataset including 880 Swedish interest organizations measuring the extent to which Swedish CSOs use various arenas for political participation. These data are part of a larger survey conducted within the research project EUROCIV¹ and collected between December 2012 and March 2013. The survey includes a random sample of 12 per cent of all active Swedish interest organizations recorded by the government agency Statistics Sweden (SNI 94). In this case, "active" means that the organizations have been subject to tax in recent years. The overall rate of return of the survey was 50 per cent. The qualitative data are collected from semi-structured telephone interviews with 17² CSOs active in Sweden, Great Britain and the Netherlands. These interviews captured the orientation of CSOs and provided illustrations and insight into which institutional linkages determine the extent to which domestic CSOs in Sweden, United Kingdom and the Netherlands, direct their policy activity towards the EU level. Representatives from the CSOs – both men and women with leading positions within their respective organizations - were gathered according to a snowball strategy. They were selected on the basis of their insights on the practices and orientation of their respective organization. The interviews covered issues related to general programmatic orientation, practices, and activities of the organization. We further explored their current relations to other actors, in particular to local and national governments and to the EU institutions. The interviews were conducted in January and February 2008, and each interview lasted for approximately one hour.

The CSOs included in the interview study are active in two policy areas prioritized by the EU and in which CSOs are considered to play an important role: the anti-discrimination and the immigration and asylum sector. Racism and discrimination are often considered among the most fundamental barriers to integration in European societies and immigration brings challenges of integration, occupation, physical and psychological health care. Measures by the EU to prevent discrimination and to adopt a common European policy on immigration and asylum have been substantial. The Racial Equality Directive (Directive 2000/43/EC) and the Employment Equality Directive (Directive 2000/78/EC), adopted in 2001 – now implemented in the member states – represent the most comprehensive EU efforts to prevent racism and discrimination. Similarly, but less advanced, the European Commission reached an important step towards a coherent asylum policy at the Tampere European Council in 1999, identifying the harmonisation of the asylum policy as one of the most prioritised political issues of the EU.

CSOs within these policy fields have been officially acknowledged by the EU to have a key role in the formation, implementation and evaluation of the European policies (European Commission 2003a; Directive 2000/43/EC; Directive 2000/78/EC; Guiraudon 2001). The implementation of the two anti-discrimination directives were preceded by a range of action plans, projects and a vigorous consultation process in order to include the viewpoints of civil society organizations (Greenwood 2007: 145). Further, the European Commission has in its communication set out principles for a more "accessible, equitable and managed" asylum system and encouraged CSOs to take part in this policy-formation (European Commission 2003a; European Commission 2007), such as identifying and analysing challenges in integration immigration and asylum policies, and to spread best practices and achieve better convergence (European Commission 2003b).

The CSOs interviewed are active in Sweden (6) Great Britain (5) and the Netherlands (6): three EU countries with similar welfare states challenges such as fiscal competition, growing ethnic diversity and an aging population. However, they differ with respect to the state-civil society relation. Sweden is often recognized as the archetypical example of a social-democratic welfare state regime (Esping-Andersen 1990). The relationship between civil society and the state has been described as one of "trust-based mutual dependency" promoting a shared and consensus oriented political culture. Significant for the Swedish civil society is a high degree of formal membership and engagement (Olson et al. 2005). CSOs in Sweden have had an important impact on the Swedish democracy and welfare in general but do not traditionally stand as providers of social and welfare services. Rather

they have functioned as mediators of interests between citizens and the state, and as caters for the arrangements of leisure or recreational activities for and through the population (Pestoff 2000; Wijkström 2004). This characterisation of Swedish civil society is about to become somewhat obsolete in relation to recent decades, however. Some scholars argue that there are several indications of a shift where CSOs are changing focus from "voice to service", while others are acting on a more international level (Amnå 2006; Wijkström 2004).

Great Britain has a long tradition of an active civil society with overlapping historical traditions of welfare and policies directed towards the civil society. The latter half of the 20th century witnessed a move towards more liberal values and towards the use of market mechanisms in welfare. An important change in the relationship between the British central government and the civil society was the "Compact", declared between the government and the civil society in 1998. Key elements in this agreement were a commitment to partnership in order to establish a proactive and "horizontal" policy position towards civil society (Kendall 2003; Kendall 2004; Taylor 2004). The British civil society is a major part of the economy and has - in a comparative European perspective - grown significantly. A driving force in this development is financial support from the central and local governments. From the 1990s and onward, the voluntary sector is considered to be financially dependent on the state in most areas where voluntary organisations operate - most notably in social care and social housing (Kendall 2003). The often cited shift "from government to governance" gives the civil society a somewhat different role putting emphasis on the policy making and implementation side of the political system. (Deakin 2001; Taylor 2004).

In the Netherlands, the "private non-profit organization" has a strong economic and cultural position and represents the typical Dutch tradition of private responsibility for common interest, religious pluralism and a partnership-seeking state. Subsidiary and "The pillars" are important features for understanding the Dutch civil society: a small role for the government and strong public responsibilities for private actors. During the 2000s, regulation and public funding have made public organisations and different CSOs to look and function in very similar ways. They often have similar targets, legal framework and financial structures and the differences between private actors and non-profit organizations are often small. The Dutch civil society is large in comparison to other European countries. The non-profit organizations stand for approximately 13 per cent of all paid non-agriculture employment in the Netherlands (Dekker 2004). The selected CSOs differ in size, professionalization, methods and specific domains of specialisation. They share a common interest in preventing social exclusion and several of the organizations have close connections to a number of other organizations in these fields. A few of the organizations originate from more peripheral organizations committing themselves to anti-racism or immigration and asylum in order to promote other related interests.

Table 1: Number of organizations from each policy field and type represented in the interview study

	Advocacy-oriented	Service-oriented	Protest-oriented
Anti-discrimination field	7	2	0
Immigration and asylum field	3	3	2

Note: The distinction between different types of organizations is based upon the respondents' description of the organizations they represents and the official web pages of the organizations.

Ten of the 17 organizations are described predominantly as *advocacy-oriented* with a general aim of lobbying or by different means influencing the policy agenda. Five of the organizations represent *service-oriented* organizations and have the provision of different services to target groups as their main objective. The remaining two organizations are *protest-oriented* striving to influence public policy by means of protest activities (see Table 1). Thus, from the interview study, we have a limited but varied sample of organizations from three different countries enabling us to elucidate the linkages among different types of organisations in different country contexts and analyse their approaches towards the EU.

EMPIRICAL RESULTS

In the following sections, we present the empirical results of the study. Based on the survey data from EUROCIV 2013, we start by addressing the CSOs' perceived relevance in attempting to influence the EU and on what level they mainly address their activity. This is followed by an analysis of our interview data structured according to the presented theoretical propositions regarding key institutional linkages, i.e. national rules and regulations, and resources. To the extent that we have found noteworthy variations between different types of CSOs, this is addressed along the way.

EU approaches

In the survey among CSOs in Sweden, we asked to what extent they have used different channels for influencing policy-making. As reported in Table 2 the CSOs are turning to local and national politicians and civil servants to a much larger extent than to the EU-level. Fifty per cent of the CSOs report that they use direct contacts with politicians and civil servants at the local level whereas the corresponding figure for the national level is 27 per cent for civil servant contacts, and 31 per cent for politician contacts. However, about 82 per cent of the CSOs state that they never turn to the EU. Only 7 per cent of the CSOs declare that they use European institutions to influence policy making "to a large extent", while another 11 per cent use it "to a small extent". The table also shows that the organizations prioritise several of the other channels – e.g. media, and members – more often than the EU. These data only reports on the Swedish context and one should be careful with generalisations to other EU countries. The tradition of strong local self-governments in Sweden may produce a bias towards a strong presence at local level. However, the data indicate that CSOs are first and foremost oriented towards the local level for influencing policy-making.

Our interviews with the British, Dutch and Swedish CSOs confirm to this pattern and their representatives underline that organizations are first and foremost oriented toward the national level. However, EU connections are not ruled out as an option or for that matter totally absent from the action repertoire of the CSOs. About half of the interviewed CSOs are members of European networks such as ENAR (European Network against Racism), ECRE (European Councils of Refugees and Exiles) and PICUM (Platform for International Cooperation on Undocumented Migrants). Nevertheless, their affiliation appears to play a modest role. Most organizations regard themselves as passive members and seldom utilise the channels to act on the EU-level. British and Dutch CSOs generally appear to be more active in European networks than their Swedish counterparts.

CSOs clearly acknowledge the importance of addressing the EU to achieve policy change. Respondents place the impact of decisions made on the EU level to have a similar or even greater effect on their activity than decisions made by local and national governments. CSOs in the field of anti-discrimination unanimously declares that the implementation of the anti-discrimination directives have had a positive impact on their substantive policy agenda. As a result, the significance

of the EU is particularly emphasised by organizations in the anti-discrimination field, while organizations in the immigration and asylum field first and foremost emphasise the impact of local and national governments.

Table 2: Alternative channels for influencing politics among Swedish CSOs, percentages (N=880)

		REGULARLY	RARELY	NEVER	TOTAL
European arena	EU institutions	7 (53)	11 (83)	82 (613)	100 (758)
	International networks	11 (83)	14 (106)	75 (565)	100 (754)
National arena	Politicians at national level	31 (247)	15 (119)	54 (429)	100 (795)
	Civil servants at national	27 (212)	15 (118)	58 (456)	100 (786)
Local arena	Politicians at local level	50 (407)	18 (147)	32 (260)	100 (814)
	Civil servants at local level	50 (405)	18 (146)	32 (259)	100 (810)
Media arena	Traditional media	7 (53)	11 (83)	82 (622)	100 (758)
	Social media	31 (246)	16 (127)	53 (421)	100 (794)
	Consultants	4 (31)	11 (86)	85 (660)	100 (777)
Mobilization arena	Demonstrations	13 (102)	17 (134)	70 (551)	100 (787)
	Petitions	20 (157)	20 (157)	60 (471)	100 (785)

Note: The table reports answers in percentages on the question: How often do you use the following arenas in order to influence Swedish policy making? [Regularly, Rarely, Never]. Absolute numbers are reported in brackets. Source: EUROCIV 2013

Although the relevance and influence of the EU is accentuated by several organizations, their activity (as individual organizations) towards the EU-level is rather limited. The interviews disclose that local and national governments are the most important relational structures. The included advocacy- and service-oriented organizations in Britain, the Netherlands, and Sweden denote themselves as "partners" and stress the importance of "working together" and in "cooperation with", rather than "in opposition to" local and national governments. Local and national governments are regarded as having equal or even greater influence on the strategies and goals of the organizations than partner organisations and professional actors with whom they regularly interact. In contrast, and quite expectedly, the protest-oriented organizations in the immigration and asylum field articulate more of a confrontational attitude and emphasise their role as opponent and watchdog towards local and national governments.

National rules and legislation

Considering that the EU level to some extent is part of the action repertoire of the CSOs, what institutional linkages matter to the Europeanization of CSOs? How do these institutional linkages differ depending on policy field and the character of the organization? Overall, the results of the

qualitative interviews indicate that government legislation on local and national levels have a tendency to downgrade the priority of EU-level contacts (Della Porta and Caiani 2009; Krasner 1995; Beyers and Kerremans 2007). For example, interviews with the anti-discrimination organizations suggest that their activities correspond to a large extent to the national anti-discrimination legislation. Several of these organizations, particularly those operating as anti-discrimination bureaus, are acting in order to assist discriminated persons, by disseminating information, and by advise, education, and mediation between the contending parties. A majority of these functions are announced in the national anti-discrimination law implemented as a result of the European anti-discrimination directives. Swedish national legislation in anti-discrimination, for example, facilitates CSOs support to victims of discrimination and to take legal action on their behalf. From the interviews it appears that national anti-discrimination legislation tends to influence the overall goals and behaviour of the organizations thereby making their activities more tied to the legislation. A respondent representing an advocacy-oriented organization operating as an anti-discrimination bureau states:

Of course, the law is important; it constitutes the basis of our organization. We work preventive with all types of discrimination and cover up for the government. That is the instruction of the government. I can see that there are many other things to do in order to fight discrimination. We are free, have great opportunities to do projects, and do our own investigations and so forth, we are a non-governmental organisation. But, we need to stick to our main tasks, also the resources are limited.³

Furthermore, the national anti-discrimination legislation appears to have moderated the organizations' incentives for turning directly to the EU. One respondent articulates that the anti-discrimination legislation has steered activities toward service functions rather than advocacy strategies directed towards the EU.

Paradoxically the connections to the EU are rather few. Previously, we worked more structured, we were a strong advocator for the need of an anti-discrimination legislation. Today we are running two anti-discrimination bureaus, the work is more operative and practical, and individual oriented than before. [Interviewer: Why is that?] There are different reasons for this. It is due to the national legislation on anti-discrimination that we supported. It benefits our members too. But it's also due to the funds, simply because it is for this type of work we can get government funds.⁴

Yet another organization reveals that its activities has taken a slight turn since the implementation of the anti-discrimination legislation by providing "opportunities to work more operative" in order to prevent discrimination thereby also downgrading other efforts of policy change.

In sum, our interviews with CSO representatives from different country contexts and policy sectors, confirm that CSOs are generally very adaptive to the formal structures of the nation state in which they operate, which also shape and limit the extent to which the organizations make use of available channels to the EU (Krasner 1995). This indicates that European legislation may have a tendency to standardise the activities of civil society organizations. Albeit the respondent refers to its non-governmental status, national legislation along with limited resources appear to determine the "boundaries of the possible" (Cram 2001) and may restrict the opportunities to take actions in other areas. As such, the results confirm an "appropriate behaviour" (March and Olsen 1989) which may have a negative effect on Europeanization of CSOs. Interestingly, formal institutional ties are not found among the organizations in the immigration and asylum field. As indicated above, this policy field lack a comparable European legislation. Several of these organizations note that national governments are the most important actors to improve legislation, which may explain their rather moderate political orientation towards the EU.

Resources

As confirmed by the quotes above, financial resources are important for the political orientation of CSOs. The organizations included in the three-country interview study, have their financial resources from a range of actors such as local and national governments, the EU, donators, charities, members, as well as partner organizations. However, funding from local and national governments are regarded by the organizations as most important as it often constitutes the lion part of total income and often play a key role for long-term organizational stability. With the logical exception of protest-oriented organizations, which normally prefer to operate without government funding, several of the advocacy- and service-oriented organizations in both policy fields acknowledge more or less dependency on government funds. Also quite expectedly, considering country differences in state-civil society relations, charity appears to play a more prominent role for the British organizations than for their Dutch and Swedish counterparts. Overall, the findings point to a resource dependency among organizations that influence Europeanization of CSOs in three diverse ways.

First, insufficient funding is emphasised as a main weakness of many organizations and securing funds occupies considerable time and efforts. Directing strategies and applications towards the EU is indeed demanding and scarce economic resources in that sense countervail Europeanization of CSOs. This is particularly apparent for smaller and less resourceful organizations (Bouwen 2002; McAdam et al. 1996; Trenz 2007). A few respondents state that their organization has applied for EU funds and many are aware of the possibilities of receiving such funding. However, applying for EU funding is often perceived as overly bureaucratic, complicated and protracted (Della Porta and Caiani 2009; Trenz 2007), and it requires skills not always accessible to the organization. It is primarily the larger and resourceful organizations that have the necessary means for EU oriented efforts (Bouwen 2002; McAdam et al. 1996; Trenz 2007).

Second, local and national governments often provide ear marked funding, which direct CSOs to adapt more to the means and needs defined by local and national governments, rather than to their own agenda. One of the respondents representing an advocacy-oriented organization in the anti-discrimination field explains:

Government funds are often oriented towards running projects and that is excellent when you want to try something new or temporarily. But there is rarely any sequel to the projects and that's frustrating in the long run. This opens the potential for the government to steer the organization and we believe that this has been more common lately. Funds are easier to receive for certain specified issues such as honour related violence. Of course, that is important but we rather carry on in another direction but the funding makes that difficult. Improving our contacts to the EU is one area.⁶

As such, ear marked funding tends to tie the organizations closer to local and national governments and make the organizations act on behalf of or as complements to the local and national governments. However, some of the larger organizations in the immigration and asylum field have managed to establish funding from diversified resources thereby also reducing dependence on the government. These organizations also have more incentives and opportunities to turn to the EU. This is due to several factors such as a more sophisticated internal organisation for attracting new funds and often an overall stronger organisational capacity.

Third, local and national government funds is important for legitimizing the organization in the eyes of the public and other organizations in the local and national context (Koopmans 1999). A respondent representing an advocacy-oriented organization states:

Receiving public funds recognizes the organization. It has to do with the authorization of the organization. So if government funds are reduced or ceased, our work is not considered legitimate.⁷

In contrast, the protest-oriented organizations give voice to the opposite attitude arguing that financial grants from local and national government de-legitimizes the organization by putting into question its independence with regard to freedom of choice around its activities. Although they are attached to the EU through European networks, the lack of a "European press" and sparse citizen interest in EU issues makes it difficult to use other channels of influence, such as media and mobilizing support for EU issues.

CONCLUSION

In this study we have analyzed to what extent a number of CSOs in the Netherlands, Sweden and the UK acknowledge the impact of EU on their policy agenda, and under what conditions they would prioritise EU contacts and lobbying in their strategies. We were particularly interested in institutional linkages that determine the extent to which domestic CSOs direct their policy activity toward the EU level. Our findings suggest that although CSOs recognize the importance of the EU-level, their priorities and general orientation are first and foremost directed toward the domestic level. We have reported that diverse institutional linkages to local and national governments are important for understanding the level of Europeanization of CSOs (i.e. the extent to which individual organizations address their activities directly towards the EU). Our results suggest that dependency on national funds and formal linkages to nation states, counteract Europeanization of individual CSOs. Given that the organizations in our study operate within two prioritised issues — anti-discrimination and immigration and asylum — where the EU has been determined on creating new and stronger pathways to civil society, it is somewhat surprising to find that the EU-level is still considerably less prioritised than the institutional linkages at local and national levels.

In addition, our findings indicate that institutional linkages may differ depending on the policy fields in which the organizations operate, as well as on the character of the organizations themselves. Advocacy-oriented organizations active in the anti-discrimination field were more clearly linked to local and national governments than others. These organizations appear to have adapted most closely to the national anti-discrimination legislation - which in turn have limited their activities towards the EU. Considering that this legislation emanate from the two European anti-discrimination directives that are now implemented at national levels, the EU policy may possibly underpin stronger linkages to local and national governments and by these means contribute to moderate Europeanization of CSOs.

With regards to advocacy- and service-oriented organizations in the immigration and asylum field, dependency on national funding appear to be of some importance although they did not emphasise national rules in this respect. However, the protest-oriented organizations stand out in the study demonstrating weak or non-existent institutional linkages to local and national governments. Thereby, protest-oriented organizations appear to have the greatest potential as individual organizations to act directly towards the EU level. Yet, they find other obstacles approaching the EU such as lack of a European press and difficulties of mobilizing support on EU policy issues. Dependency on local and national government funding is acknowledged as an important factor influencing the extent to which CSOs put their efforts towards the EU in both policy fields. Scarce funding and ear-marked funding do hardly foster Europeanization of CSOs. Turning to the EU is often perceived as a demanding task requiring significant financial resources and expertise (Beyers and Kerremans 2007). Local and national government funds are apparently more important for the

Dutch and Swedish organizations than for the British ones. In the latter cases, donations play a more prominent role.

Finally, the results may have implications for the attempts by the EU institutions to include CSOs in the European policy making process. It is reasonable to expect that many of the domestic CSOs are indirectly approaching EU institutions through larger international network organizations. But our study suggests that national institutions and national resources rather than institutional factors at the EU level, are often most crucial factors in relation to Europeanization of CSOs. Thus, more focus is needed on the institutional factors pertaining to the relationship between CSOs and local and national government in general and on the institutionalisation of CSOs in the welfare state arrangements in particular. Moreover, further studies should address more elaborately the relationship between civil society and member states and particularly the institutional linkages that encourage and impede Europeanization of different organizations.

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- 4. Interviewee 3, Sweden
- 5. Interviewee 4, Great Britain
- 6. Interviewee 3, Sweden
- 7. Interviewee 6, Great Britain
- 8. Interviewee 2, The Netherlands

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² Respondents from the following organizations have been interviewed: Amsterdams Solidariteits Komitee Vluchtelingen, Bureau Discriminatiezaken Hollands Midden en Haaglanden, Ethiopian Community Center, Foundation for Refugee Students, Humanitas, Meldpunt Discriminatie Amsterdam, Mira Media, Newham Monitor Project, North of England Refugee Service, Pharos, Race Equality Foundation, Red Cross program for refugees and asylum seekers, Roma support group, Rosengrenska, Simba center, The Cooperation Group for Ethnic Associations in Sweden, Youth against racism.

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Presidency and State Administration in the Czech Republic: Planting a Seed or a Shattered Chance?

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Abstract

The EU Presidency has been so far studied especially in terms of its EU impact and influence while neglecting its potential impact at the domestic level. This article, dealing with the Czech EU Presidency of 2009, focuses on this domestic dimension. Based upon more than 30 elite interviews with civil servants and official documents, it analyses the possible impact of the EU Presidency on state administration and attempts to analyse such influence in the framework of Europeanisation. As a conclusion, the article proposes paying attention to coordination and the institutional structures processing EU affairs as the first possible indicator, and human resources as the second one. Concerning the particular Czech case, the assessed medium impact of the Presidency was affected by political instability in the country and the overall weak stability of the Czech state bureaucracy.

Keywords

Council Presidency; Czech Republic; Bureaucracy and EU affairs; Elite interview; Europeanisation

Research on the EU Council Presidency has become a familiar topic in European studies. During the 1990s, though, scholars were concerned with issues and problems unrelated to the Presidency. In the decades since, this previously neglected topic has gained a more prominent status. This shift can be explained not only by the substantial increase in research on primary EU institutions and policies, but also by institutional reforms where the Council Presidency played a key role. While there have been many descriptive case studies, the Presidency has been analysed theoretically as well (Niemann and Mak 2010; Alexandrova and Timmermans 2013; Bunse 2009; Verhoeff and Niemann 2011). However, despite increased research in this area (in recent years research on the 'Presidency Trio' should be noted, see Batory and Puetter 2013), there are still areas where questions persist. One such question is that of the domestic influence of the Presidency and its potential internal effects on the country holding office. In this regard, existing literature only intimates that the Presidency can be used by the Presidential government as a tool for communicating EU topics to its citizens (see Miles 2005: 201; Hayes-Renshaw and Galloway 2006: 155; Bunse 2009: 213) or that the Presidency can socialise both the political elite and state bureaucracy (Westlake and Galloway 2004: 335; Klemenčič, 2008: 17). While some research on Presidential communication potential already exists (Kaniok 2012), there are no specific studies that attempt to analyse its effect on state administration.

This article tries to fill this gap, and on the basis of analysis of the Czech EU Presidency of 2009 it takes the first steps toward addressing this topic. Taking into account both the nature of the data we have and the absence of previous research in this particular area, our article does not aspire to draw strong causal conclusions. Through an explanatory approach we focus rather on the categorisation of possible Presidential influence on state administration¹ in order to offer direction for further research. In so doing, we use the concept of Europeanisation as our framework.

First, this analysis outlines the main functions of the Presidency and identifies its position in the current EU decision-making system. Second, it summarises up-to-date research and briefly introduces the concept of Europeanization. In this context, we also build up an analytical framework for our analysis. Third, it presents the data as well as the methods used in the analysis. Fourth, the article briefly describes the Czech domestic political context prior to the EU Presidency. Fifth, we present the results and close on the discussion of the findings.

THE EU COUNCIL PRESIDENCY

The EU Council Presidency is one of the most fluid institutions or functions of the EU decision-making system. The Presidency as such was established at the beginning of European integration as a tool for managing the meetings of the Council of Ministers. In subsequent decades, this symbolic and organizational institution became more influential as the Presidency acquired other functions. By the late 1950s, it took on the role of spokesman for the Council in negotiations with the other European Community (EC) institutions. The Presidency then became responsible for finding and building consensus among the member states. In the 1970s it managed the emerging foreign policy of the EC and chaired European Council meetings. Simultaneously, it became expected for the Presidency to present its political programme and, through this, it started to be seen as a political leader of the Community. However, none of these changes were implemented via revisions of primary EC law – the strengthening of the Presidency, and its constant development, was derived from political practice. Thus, the changes in the nature of the Presidency did not follow any rational logic (that would have made its functioning more coherent), but rather responded to ongoing political needs (Héritier 2007: 121-138).

Hand in hand with the strengthening of the Presidency, it became a major topic for reports calling for institutional reform in the EC. For example, both the Tindemans Report of 1975 and the Three Wise Men Report of 1979 called for a precise and explicit definition of the Presidency's tasks and suggested limitations to its scope (Tallberg 2006: 60, 64). However, in the 1980s, when the first reforms of primary law were prepared, the layered shape of the Presidency was confirmed rather than being simplified. No substantial changes in the Presidency took place in the 1990s even as the EU prepared itself for major enlargement. The Presidency was still responsible for delivering a range of incompatible tasks. Essential reform of the Presidency thus had to wait until the Lisbon Treaty was adopted and implemented. The reforms brought by Lisbon rewrote the whole concept of the Presidency as it established two new permanent and personalised chairs – the President of the European Council and the High Representative of the EU for Common Foreign and Security Policy. The former body took from the Presidency power over the European Council, while the latter took over the chairing of the EU Council of Foreign ministers. The existing Council Presidency remained active in other aspects of the Council of the EU.

The Council Presidency can be seen as the main loser of the Lisbon Treaty as it lost its power in the European Council and in the area of EU foreign policy. These two major losses undoubtedly affected the visibility and media attractiveness of the Presidency. However, the majority of its functions and powers remained unchanged (Warntjen 2012: 121-124). The Presidency is still an important actor in the Council where it exercises its influence (Schalk et al. 2007; Warntjen 2008). It sets the political agenda, controls dossiers or represents the Council when negotiating its position with other EU institutions. From the point of view of small or medium size countries, the limitation of the Presidency's tasks only at the EU Council level could have paradoxically increased the Presidency's overall power. Pre-Lisbon, EU representation and bargaining at the European Council level were tasks that consumed a lot of the energy of small or medium size Presidencies without bringing adequate outcomes. Jettisoning these interesting but difficult duties could thus have enabled such countries to focus on the EU Council level where the size of the country does not matter so much. The role and influence of the state administration of the Presidency country thus has not changed when comparing the pre-Lisbon and post-Lisbon realities. Responsible civil servants exercise the same tasks in both periods as the role of the Presidency in the EU Council did not change. The Lisbon Treaty did not affect the lower levels of the Council (COREPER, working parties) where the role of the Presidency bureaucracy is most important.

RESEARCH TO DATE

It is very difficult to find appropriate theoretical research on the domestic influence of the Council Presidency as it barely represents an independent EU institution. The Presidency is a multi-tasking position primarily serving the EU Council needs but it overlaps with other EU institutions as well as the overall EU decision-making system, making it difficult to restrict the Presidency's operation only to the Council. Moreover, the essence of the Presidency lies on the boundary between the European and domestic arenas of politics. The former is caused by expected norms of impartiality and neutrality as well as by pressure from other member states and EU institutions (Elgström 2003), the latter by the simple fact that each Presidency is run by the national political and administrative apparatus. However, the prior training of the state administration in institutional, language and negotiation skills and techniques precedes many modern Council Presidencies. EU member states differ in the amount and degree of such training - usually, more attention is devoted to the preparatory phase in smaller and inexperienced countries than in older, bigger member states. Skilled and competent bureaucracy is recognised as a key precondition of success for each Presidency as Presidencies are to a large extent judged according to their administrative and negotiation performance (Hayes-Renshaw and Wallace 2006: 140). The preparatory phase is seen as important not only by academic evaluators but also by direct participants in the Presidency (Kajnč and Svetlič 2010).

Existing specific literature on the Council Presidency comments on its domestic potential only briefly and without any strong evidence. Most of such work uses only the descriptive approach, avoiding any theoretical or conceptual framework. When analysing the Slovenian Presidency of 2008, Manja Klemenčič (2008) claims that the Presidency was a powerful tool which affected all three domestic groups – politicians, the public and the administration. She points to the intensive training of a large numbers of officials to handle the substantial and procedural aspects of EU affairs pertaining to the Presidential tasks, leading to increased knowledge of EU affairs (Klemenčič 2008: 21-23). In the period from November 2006 to the end of April 2007, 3472 civil servants involved with the Presidential project participated in 144 seminars conducted centrally by the Government Academy (Klemenčič 2008: 23). For a country in which in June 2006 only approximately 40 governmental employees (Fink-Hafner, Lajh, 2008: 34) dealt with EU affairs it was a dramatic increase of focus and investment to reach the EU level. In accordance with this plan, 310 additional temporary posts were approved. In individual cases experts not working in the state administration were temporarily engaged on a full-time or part-time basis. Following the example of similar smaller member states (Ireland, the Netherlands or Austria), Slovenia decided that a strong team would work at the Permanent Representation (PR) in Brussels, where 170 civil servants were posted (including 121 additional posts for the Presidential term).

When Poland held the Presidency for the first time (2011) it also lacked experience; moreover, there was high turnover inside the Polish state administration – between August 2009 and August 2010, 27 percent of the "Presidency Corpus" rotated. Hence human resources planning included a wide spectrum of training activities, as well as actions targeted at retaining the public administrators who would serve the Presidency at least until the end of 2011. The "Presidency Corpus" had some 1200 people from all sectorial ministries. In the Foreign Ministry (MFA) there was additional activity to back up selected embassies because of the Presidency. Apart from various trainings, a number of stays and study visits in European institutions were also organized within the EU programmes. Between 2009 and July 2010 there were 14 stays/study visits in the European Commission and five in the General Secretariat of the Council. From the Polish Presidency resources, just one department working on the Presidential preparations organized 36 stays/study visits for its functionaries by June 2010 (Kaczynski 2011: 36-37). Extensive preparatory training for the administration was not the case just for Central and Eastern European (CEE) Presidencies. Sweden also invested time and energy into increasing knowledge and skills of its civil servants before its first Presidency in 2001 – Björn

Beckman mentions 7000 people taking part in general training and 5000 more who were prepared for specific Presidential tasks (2001: 62). In the case of the second Swedish EU Presidency of 2009, staff training began approximately one and half years before and involved 1815 people who took part in seminars, courses or study visits (Johansson et al. 2010).

Apart from the above-mentioned descriptive studies, it is almost impossible to find any study trying to generalise such findings or develop any theoretical concept. Anand Menon (2003) states that holding the Presidency represents by far the most effective way of ensuring the effective Europeanization of national administrations. According to Menon, the question is not of making national bureaucracy pro-European but rather of ensuring that it is adequately prepared for the onerous task of ensuring smooth administrative interaction between the EU and the national levels. Martin Westlake and David Galloway (2004: 335) highlight that a majority of member states perceive the Presidency as a period that provides substantial educational benefits for their administrations. Such an advantage of the Presidency is not limited only to new or inexperienced member states but is relevant also for routine Presidencies, as the EU political system is still evolving. Simone Bunse (2009: 213) also credits these educational benefits to the EU Presidency, building on a general description of the Finnish, Belgian and Greek Presidencies. However, the assumption that the Presidency must have some domestic impact is backed rather by empirical facts (e. g. the impact of Presidency-related informational campaigns on the public, PR activities and propagation events that are organized by Presidency governments, and administrative seminars and trainings) than by any comprehensive research.

Europeanization concerns, at its most basic, a relationship between a cause located at the EU level and change at the domestic level (Radaelli 2012: 3). There are many more precise definitions, but their basic message is always close to Radaelli's standard. Europeanization changes in the state administration are traditionally perceived especially at the level of informal patterns and norms of behaviour, while formal structures remain relatively untouched (Laegreid et al. 2004: 361-362). The Europeanization of the state administration (dealing with EU affairs) has both divergent and convergent tendencies in different countries (Larsson and Trondal 2005; Knill and Lenshow 2005). Despite Danica Fink-Hafner's (2007) descriptions of some similar trends in Europeanization development in several former socialist states, it cannot easily be argued that countries participating in the so-called Eastern enlargement follow one pattern (Dimitrova and Toskov 2007).

On the basis of the above-quoted descriptive studies, we suggest that the possible Europeanization effect of the Presidency can be categorised as stated in Table 1 (next page). As an immediate effect, we understand the organizational and personal changes that were caused by the Presidency before its start. Such effects may be, at the organizational level, represented especially by the creation or modification of an EU affairs coordination institution (e. g. the establishment of a new unit within an existing ministry, the creation of a new ministry or governmental agency) and by substantial adjustment in EU affairs coordinating mechanism(s) (such as databases, registers etc.). At the personal level, an obvious immediate effect should involve the recruitment of new staff and institutional, language and soft-skills training programmes. Simultaneously, the Presidency should increase overall knowledge of EU affairs among civil servants and improve the country's reputation within the EU Council structure.

While immediate Europeanization effects of the Presidency seem to be easy to detect and identify, the medium term consequences are more challenging. As medium term effects we understand those which can be spotted at least one electoral term after the end of the Presidency. Based upon the immediate effects, both the institutional and coordination set-up should prevail after the Presidency, and there should also be perceived, substantial personal changes concerning the deployment of trained staff and an increase in soft-skills, as well as institutional and language competencies.

Table 1: Possible Europeanization effects of the Presidency (immediate and medium term effects)

Level/term	Immediate	Medium
Organizational and Institutional level	 Creation/modification of EU affairs coordination institution Creation/modification of EU affairs coordinating mechanism (databases, registers etc.) 	 Created or modified coordination institution prevails and manages EU affairs at the national level Coordination mechanism (registers, mechanism) prevails
Personal level	 Recruitment of new staff directly involved with the Presidency Training programme(s) in languages, negotiation skills and techniques, EU knowledge Improved knowledge of EU affairs, improved country reputation within the Council 	 Trained staff is used in adequate positions Perceived improvement of negotiation, language and institutional skills

Source: authors

METHODOLOGY AND DATA

Our methodology consists of a combination of two techniques. The first is document analysis (Bowen 2009); we used official documents produced by the Czech governments, especially in parts analysing the possible immediate Europeanization effects of the Presidency. Document analysis reveals which institutions managing the Czech Presidency were established, which training programmes were run and which personal changes in the Czech state administration occurred. As our second tool we use elite interviews in the form of unstandardised interviews. Elite interviews, usually with respondents from the predefined elite, use open questions and expect extensive answers (Pierce 2008). In the case of the semi-structured interview, prepared questions are supplemented with additional questions. Although Dexter (2006: 18-19) emphasises that in the case of elite interviews the investigator is willing to let the respondent teach him what the problem/situation is (which differs from standardised interview techniques), most authors point out the necessity of precise preparation even before the elite interview. However, the semi-structured interview is most used in the case of elite interviews (Pierce 2008: 118-120).

The data that we analysed consist of various official documents (usually accessible from the official web portal of the Czech Governmental Office) and 36 elite interviews held with employees of the Czech state administration or the EU administration between summer 2012 and spring 2013. All respondents were engaged in the Czech Presidency. Table 2 presents the overview of their distribution (between the Czech and European administration). Respondents work either for Czech ministries, for the Permanent Representation of the Czech Republic for the EU or for the EU institutions (European Parliament, European Commission, Council of the EU). Thus, all respondents were in day-to-day contact with the European agenda and they represent a narrow sample of state administration. In this sense they can be regarded as elite – their competence, erudition and usually long term engagement with EU affairs constitute such status. It would not make any sense to focus on broadly defined state administration, meaning overall state administration including also respondents who do not primarily deal with EU affairs. Such respondents concentrate on different

issues or topics and if they were somehow engaged in the Presidency, it was in a time-limited capacity. Another advantage of our data can be seen in the interval since the end of the Presidency. A quite long (but still reasonable) distance from its conclusion enabled respondents to soberly evaluate its influence (whereas if questioned straight after its conclusion they could have either exaggerated or underestimated its impact). Respondents were chosen by a combination of techniques. The first group of respondents was comprised on the basis of expert knowledge, and another wave was put together on the basis of the 'snowball' technique. Each interview usually lasted 45 to 60 minutes, and each respondent received a set of prepared questions focused on the usability of the Presidency experience for the Czech administration, the identification of key successes or failures and the development of Presidency potential. Then additional questions were usually asked.

Table 2: Overview of respondents

Level	Number
State administration (Ministries)	12
State administration (Perm Rep)	14
SUB-TOTAL	26
European institutions	10
TOTAL	36

Source: authors

The prepared questions were consciously constructed as quite open in order to minimise the risk of asking suggestive questions. Moreover, there were not so many previously known concrete findings that could have been verified. Risks connected to the interviewers' subjectivity were minimised by the presence of two investigators who controlled and confronted their perception of the answers and by the respondents' confirmation of those answers.

THE CZECH DOMESTIC CONTEXT

When taking the Presidency responsibility from France on the 1st January of 2009, the Czech Republic was in the fifth year of its EU membership. Both the Czech political and administrative context was not entirely unproblematic, and the political elite in particular could not have been feeling comfortable. Assessing the situation in the country's state administration, the Czech bureaucracy faced almost the same problems as faced by civil services in most CEE countries (Goetz 2001). Despite a democratic country for more than 17 years, Czech politicians were not able to adopt legislation on the state bureaucracy during this period. Due to the absence of such an elementary basis, the whole bureaucratic environment could be characterised in terms of a high degree of uncertainty, politicisation and overall low quality of staff (O'Dwyer 2002). EU accession in 2004 did not help a great deal – even after five years of EU membership the Czech state administration was described as a case of "destructive reform reversal". While civil service institutions were eliminated following EU accession, a new framework was not established. In 2009 the Czech bureaucracy did not have an intermediate degree of compatibility with European standards of administration – and the Czech Republic shared this negative set-up with Poland and Slovakia (Meyer-Sahling 2009).

In addition, the domestic political set up prior to the Presidency could hardly be described as ideal. First, the European debate was being highly influenced by the Euro-sceptic president Václav Klaus. Second, the last parliamentary elections prior to the Presidency (in 2006) resulted in the situation where left-wing parties (the Czech Social Democratic Party - ČSSD and the Communist Party of Bohemia and Moravia - KSČM) won the same number of seats in the Chamber of Deputies as the centre-right formations (the Civic Democratic Party - ODS, the Christian Democratic Union – Czechoslovak People's Party - KDU-ČSL, and the Green Party). In January 2007 a coalition was formed between the ODS, KDU-ČSL, and the Greens, further relying on the support of two defectors from the ČSSD. This non-standard method in forming a government majority resulted in an atmosphere of deep antagonism between the ČSSD and ODS, which continued to dominate Czech politics throughout the period before the country assumed the Presidency. In the spring of 2008, ČSSD chairman Jiří Paroubek made it clear that during the EU Presidency the government would continue to be the target of attacks by the opposition. This was very much unlike the situation in Slovenia, where the government and the opposition made a "ceasefire" agreement for the duration of its Presidency (Kajnč 2009).

ANALYSIS: IMMEDIATE AND MEDIUM EFFECTS

The Council Presidency was mentioned for the first time in the official documentation of the Czech government in November 2004. Resolution No. 2299/2004 tasked the MFA to prepare basic material evaluating the possible costs and needs, as well as the administrative workload connected with the Presidency. The MFA report was approved in May 2005 (Resolution No. 523/2005), which was for a long time the last official government step as the same resolution tasked the MFA to submit additional material by the end of January 2006. Both government resolutions as well as political logic suggested that the main institution responsible for the Presidency would be the MFA (Král et al. 2009: 33; Tomalová 2008: 122). The precise form of the coordination institutional set up was not clear, but it was apparent that the Czech government would gain experience abroad, especially from countries with a similar scale of administrative capacity. Finally, the model combining both centralised and decentralised tendencies² found its inspiration in the Austrian Presidency of 2006. The Czech government initially considered its full implementation. If such had happened, the Presidency would have been coordinated by a government secretary (a political civil servant) with a General secretariat operating within the MFA.

However, the idea of implementing the Austrian model did not survive the consequences of the parliamentary election in June 2006. As already mentioned, the election led to a stalemate between left and right parties, and the ODS minority government, the winner of the election, was appointed in September 2006. Not surprisingly, the cabinet failed in a vote of confidence, but acted until January 2007 when a coalition government consisting of ODS, KDU-ČSL and the Greens was formed. This new cabinet, while not abandoning the idea of the combined model, decided to coordinate and organize the Presidency at the political level, established a new governmental post called Deputy Prime Minister for European Affairs and shifted all of the preparatory work into the Office of Government. Alexandr Vondra (ODS) was appointed as the Deputy Prime Minister for European Affairs. Thus, the Office of the Deputy Prime Minister³, formally a part of the Office of Government, was responsible both for the organizational and political preparatory activities. Within the framework of this office, a coordination mechanism specifically designed for the Presidency was developed. Part of this involved the Database of Presidency agenda (DAP) where all ministries could download all important documents related to the executive and coordination tasks of the Czech Republic in the EU (minutes and reports from meetings, meeting documents, instructions, etc.). Moreover, Departmental Coordination Groups were established by individual ministries. These included the representatives of other ministries, offices and stakeholders in each of them. The

objective of these groups was to discuss and approve national positions reflecting Czech interests. The role of the Committee for the EU, which met both at ministerial and high official levels, was also reformulated.

Concerning training activities, the government consulted previous Presidencies, modelling itself particularly on Austria, Slovenia, Germany and Ireland. The so-called Central Register of Employees (CRZ) was created. This register contained information about all state employees who were involved in the training process. The register divided these civil servants into four categories determining the intensity and quality of training. Category 1 included civil servants allocated for chairing the Council's working groups - at this level the training was most intensive. Category 2 included national representatives in working groups and committees, Category 3 consisted of experts at the national level and Category 4 was devoted to general administrative staff (Ministerstvo vnitra 2008). The total amount of people enrolled into the CRZ increased from 1256 in 2006 to 3641 in 2008. The training programme targeted part of its activities at the ministerial level – specific ministries were responsible for training connected to the activities of concrete departments. General institutional training was conducted by the Institute for State Administration (ISS) whose activity was a two level e-learning course 'Minimum about the EU Presidency', and the subsequent course 'Negotiation Techniques and Skills'. ISS was also responsible for language courses which were primarily focused on skills in English and French. The total number of people who took part in Presidential training (either in person or through distance learning) was 4731. The preparation did not only involve existing personnel but also newly recruited staff. Altogether 338 positions intended only for the Presidency were established all of them designed as temporary. However, 175 civil servants who had been initially recruited only for the period of the Presidency also continued after its immediate conclusion. This means that more than half of the people stayed, which was paradoxically presented by the government as a success (Úřad vlády 2010).

Almost all respondents clearly emphasised that the development of human resources and investments in this area were massively supported. Based on the interviews, this investment can be operationalised as development of contacts across EU member states, strengthening personal relations with the EU institutions, the development of negotiation skills, knowledge of informal rules and practices of the EU Council and the inter-institutional environment, improvement of language skills and knowledge of detailed content of EU policies and individual dossiers. To sum up, the Czech Presidency seemed to be well prepared as it did not underestimate any substantial part of the training activities. The government invested a substantial amount of money and had some expectations concerning both new cadres and trained staff (Švehla 2009)5. The quality and level of preparedness of civil servants was quite highly appreciated even during the first weeks of the Presidency (Král et al. 2009: 68-71) and was also confirmed by our interviews. As the respondents noted, the Czech Republic took on the task with responsibility – nobody in the interviews said that the Czech Republic had somehow underestimated the preparations. The Presidential preparatory teams focused on gaining experience from previous Presidencies and in particular on the preparation of high-quality human resources and the development of adequate coordination mechanisms. Human Resources, which are mentioned in all debates on the activities and negotiations of the Czech Republic in the EU, were one of the key pillars of the preparations. Great attention was paid to chairs of the committees and working group, who had extensive opportunities for attending preparatory courses, support in obtaining informal contacts and experience and also a solid basis of financial resources. A number of respondents⁶ also highlighted that the preparation phase entailed the arrival of dynamic people motivated to meet the challenges associated with the Presidency, and whose approach to work differed from long-serving officials.

I must say that nothing was neglected during the preparations. I travelled to countries that had their Presidency before us, and I saw other Czech colleagues gaining knowledge and information from them. The Presidency was well-prepared. The fact that the government fell

can happen only in a small country such as the Czech Republic... (interview with a Czech representative/employee, EU institution, April 2013).

There was a consensus among our respondents on the question of what the Czech Republic immediately acquired through the Presidency. Many of them mentioned in particular the establishment of contacts with member states and EU institutions, as well as with important stakeholders in the EU. Another positive outcome was obtaining important information and knowledge concerning not only policies and procedures, but also awareness of the means and tools which are used by the member states and the EU institutions. Understanding the informal rules of negotiation was emphasised as another benefit. All of these aspects helped to build better cooperation with the EU institutions – the European Commission and the European Parliament.

The Czech Republic also developed a constructive approach and the ability to find compromise, stemming from the role which the Presidency and the team had to play (to find a way out of various, often contradictory, positions or understand the breadth and complexity of the agenda). A number of respondents confirmed that thanks to the Presidency they began to play a more active role in the negotiations. Finally, the Presidency helped to gain some respect from other member states and/or the EU thanks to a number of successful negotiations and conclusions of different dossiers.

We managed the Presidency and rather pleasantly surprised the others. The fall of the government⁷ was really unfortunate but it did not significantly affect the outcome of the Presidency. To a large extent this is because of the standard practices in the EU. However, within the diplomatic offices and embassies it was obvious that the prestige of the Presidency fell. (Interview with a PR employee, April 2013).

Another positive aspect regarded the training of civil servants who were not responsible for the EU agenda, but had to cooperate with the relevant departments specialising in the agenda of the EU (they had to provide information, answer questions, etc.). Thanks to the Presidency this cooperation was intensified – a majority of employees had to at least understand the basic contours of the EU's role and processes.

The Presidency contributed to the understanding of the EU system at national level. (Interview with a civil servant, November 2012).

Based upon document analysis and interviews, it can be stated that all expected indicators suggesting the immediate Europeanization effect of the Presidency can be found in the Czech case. As a result of the Presidency the government adjusted and changed both the institutional set up as well as the coordination mechanism. The institutional level – a part of the political games before and after the parliamentary election of 2006 – was even changed twice. The same obvious influence of the Presidency is also discernible at the personal level. Due to the Presidency new staff were recruited and trained, and training programmes also applied to already employed civil servants. These training activities were perceived as an effective tool as they helped to increase both the institutional and, for example, the negotiating skills of civil servants during the Presidency.

Concerning the institutional set up, the effect of the Presidency vanished. The European agenda was removed from the ministerial level and just a few weeks after the parliamentary elections of 2010 competence quarrels between the Office of Government and MFA occurred. While the former insisted on not changing the Presidency and post-Presidency status quo where the Office of Government served as the main coordinator of EU affairs, the MFA demanded the return of this agenda within its framework. Debates lasting several months resulted in the parallel existence of two State Secretaries for European affairs — one situated within the Office of Government and subordinate to the prime minister, and the second being formally the Deputy Foreign Minister. As a result, this dual power complicating Czech EU policy⁸ prevailed up to 2013.

Table 3: Immediate Europeanization effects of the EU Presidency

Level	Expected indicator	EU Presidency of 2009	
Organizational and Institutional level	Creation (or modification) of EU affairs coordination institution	Identified	
	Creation (or modification) of EU affairs coordinating mechanism (databases, registers etc.)	Identified	
Personal level	Recruitment of new staff directly involved to the Presidency	Identified	
	Training programme(s) in languages, negotiation skills and techniques, EU knowledge	Identified	
	Improved knowledge of EU affairs, improved country reputation within the Council	Identified	

Source: authors

On the contrary, the development of the coordination mechanisms created for the purpose of the Presidency but that remained beyond it is seen as a positive legacy of the Presidency. We are referring especially to the electronic database DAP, the Departmental Coordination Groups and Committee for the EU⁹. These mechanisms established or developed for the Presidency have continued (with only a few modifications) to be cornerstones of EU coordination at the national level. Moreover, enhanced coordination mechanisms at individual ministries have also remained and have played an important role in developing national interests and opinions after the Presidency.

Thanks to the Presidency we have developed coordination structures which are still used now. A great shift has occurred in this regard. (Interview with a civil servant, June 2012.)

However, it is necessary to add that some respondents also raised a few complaints that the coordination failed, and is failing. They spoke particularly about policy areas with many overlaps, in which a specific topic belongs to the competence of two or more departments and each of them has its specific approach depending on objectives and on the "clients" of the ministry¹⁰. It is in these moments that effective mechanisms are crucial for ensuring the transparent and functional process of defining the national interest and consensus at the national level.

The coordination process has declined in the Czech Republic. It is about personalities. But unfortunately we put too much emphasis on political engagement. (Interview with a civil servant, August 2012.)

During the Presidency we developed necessary mechanisms and at the same time it was also the height of our membership. Afterwards it dropped, but still the level is different than before the Presidency. It has taught us especially the art of compromise. Today, you can feel a certain nostalgia for the period when everyone tried hard to succeed. (Interview with a PR employee, September 2012.)

Moving to the personal level of Europeanization, almost all of the positive effects that could have been identified initially disappeared. First of all, almost all respondents shared the same opinion concerning human resources – this potential was not maintained or further developed after the end

of the Presidency. Civil servants, who were widely supported before and during the Presidency and who were also motivated to work, were not offered an adequate position or were completely released after the next parliamentary election of 2010.

The teams are completely disintegrated at some ministries, and thus the quality of representatives of the Czech Republic has been reduced. (Interview with a PR employee, September 2012.)

People with Presidency experience were removed. We are not able to build high quality teams, which is also related to the question of Czech employees and representatives in the EU institutions. Almost all other countries are doing better. (Interview with a civil servant, June 2012.)

Table 4: Medium term Europeanization effects of the EU Presidency

Level	Expected indicator	Czech Republic after the Presidency
Organizational and Institutional level	Created or modified coordination institution prevails and manages EU affairs at the national level	Not identified, institutional set up changed
	Coordination mechanism (registers, mechanism) prevails	Not identified
Personal level	Trained staff is used in adequate positions	Not identified
	Perceived improvement of negotiation, language and institutional skills	Not identified

Source: authors

This was a bitter disappointment for many people because they were motivated to stay in the state administration; they expected that their experience and high level of commitment during the Presidency would be reflected in their careers. Interestingly, none of our respondents referred to low salaries or the pay gap between the public and private sectors as a reason explaining the outflow of personnel¹¹; the majority wanted to stay as they saw sense in their jobs and found the civil service an interesting career. Instead, however, they left or had to leave. Yet, the withdrawal of these people leads not only to a loss of know-how and contacts but also, according to some, to the instability of Czech goals in the EU agenda.

Where people have stayed after the Presidency, their experience could have been transformed in a new quality – an active approach, influencing things in time, etc. But this is the exception rather than the rule. (Interview with a civil servant, June 2012)

There are a few specific exceptions. These areas are mostly of a technical nature, where people from the Presidency team received opportunities for further careers in the state administration in corresponding positions. Not surprisingly, the same negative tendency can be found in acquired skills and techniques. The answer of most respondents is quite clear in this respect: the upward trend in negotiation style and activities of the Czech Republic in the EU, "crowned" by the Presidency itself, suffered a gradual decline after the end of the Presidency. The respondents differ in terms of how deep and how crucial this decline has been.

The Presidency has gone, we do not know where. In many areas, no one from the Presidency remains. Many people left and the current situation in the state administration, when new people are not hired, still prevents a return of these people from the Presidency period. In this respect we did fail. (Interview with a civil servant, July 2012).

The Czech state administration was not capable of cooperating with people who became familiar with the procedures and overall situation in Brussels. They expected that their experience and commitment from the Presidency would be reflected in their career in the state administration but it did not happen. Therefore they entered other institutions or sectors. But the majority of these people have lost contact with the relevant institutions. (Interview with a Czech representative/employee, EU institution, September 2012).

Overall, it seems that the question of human resources (and their poor use) affects the overall assessment of the impact of the Presidency. Respondents clearly saw the know-how acquired during the Presidency as unique and non-transferable. Similar opportunities (both in terms of the training of civil servants and in terms of the intensity of involvement in the European agenda) will not be repeated. The departure of dozens of employees, who became highly competent actors in the promotion of Czech interests in the EU, largely represents a lost opportunity.

CONCLUSION

The Council Presidency is perceived as a unique opportunity for the office-holding country. Research to date has concentrated particularly on possible political influence and promoting the Presidency's interest at the EU level. Our article focuses instead on the domestic impact of the Presidency and seeks to examine to what extent the Presidency can affect the state bureaucracy. We consider our research to be relevant due to the sketchy commentary on the domestic influence of the Presidency in the existing literature and due to the practical and political relevance of the topic. Almost every modern Presidency invests money and resources into pre-Presidency training of its state administration. In analysing this neglected dimension of the Presidency, we use the concept of Europeanization and on the basis of previous empirical studies offer an analytical model describing both the immediate and medium term possible effects of the Presidency.

Findings on the basis of document analysis and 36 elite interviews with respondents from the Czech bureaucracy and EU institutions offer several interesting results. First, one hypothesis claimed in the existing literature is that the EU Presidency is an opportunity to educate and refresh the state administration; this seems to be confirmed as most of the respondents perceived training and recruitment of both old and new employees as a positive. Human capital seems to be the most important pre-Presidential training as individuals gain concrete skills, subsequently use them, establish both formal and informal networks and personal connections and increase their overall ability to exercise influence in the Council and the EU decision-making process. As the Presidency can recruit or train hundreds or at least tens of persons, such impact is critical — obviously in the 'immediate' time perspective; it is, however, questionable whether such an effect can last and under which conditions.

The case of the Czech Presidency shows that if the political elite¹² is not interested in retaining these skilled personnel (and, on the contrary, lets them), several months after the Presidency these people inevitably disappear and melt into the private sector or move abroad. This means that if the Presidency is to have any longer lasting effect on the bureaucracy, the political elite must develop a vision of how to utilise such trained staff and place them in an appropriate and predictable environment. The absence of such a structure may be the most important problem in the Czech case. First, the government that prepared and commenced the Presidency was dominated by the 'soft'

Eurosceptic ODS party that was even in those times barely a strongly pro-European party. However, as many of our respondents stated, the situation started to change slowly during February and the beginning of March 2009 when many ODS ministers started to consider the Presidency to be a serious and important mission. However, following this the Topolánek government was voted out at the end of March and replaced by the problematic semi-caretaker government of Jan Fischer. The country and Czech politicians were looking for an early parliamentary election that had been initially scheduled for autumn 2009. Such an uncertain and turbulent atmosphere left no space for systematic work with the Presidency experience and the acquired skills – the political elites simply prioritised other goals, particularly the early election planned for October 2009¹³.

Further, as already mentioned, the Czech Republic has not been able to adopt legislation on state bureaucracy throughout the 20 years of its existence. The civil service as a whole is therefore very sensitive to each political change. At this level, our analysis confirms the findings of the existing literature on state bureaucracy and Europeanization in CEE countries. For example, Jan Meyer-Sahling, in his analysis of civil service development in eight CEE countries after joining the EU, confirms that diverse tendencies among these countries are caused by domestic circumstances (2009b). Concerning the degree of politicisation of the civil service in the region, the Czech Republic is one of the more politicised states compared, for example, to the Baltic countries (Meyer-Sahling and Veen 2012). The EU Presidency thus did not help to bring the Czech state bureaucracy closer to the ideal type that Scherpereel describes as the European administrative space and the civil service still continues to follow different patterns (2004).

In addition to human resources, the Presidency may also affect the handling of domestic infrastructure and the coordinating of European affairs. Preparation for the Presidency (despite not being part of the training) seems to have tested and subsequently adjusted the coordination mechanisms both at the general and department levels. Moreover, new additional mechanisms can be developed and then retained. Compared to the effect of human capital investment, this effect may independently impact political circumstances even after the Presidency has finished, as the coordination mechanism does not seem to be attractive for political quarrels. However, if taking into account the institutional set up, this may be more sensitive – again in accordance with the literature evaluating the politicisation of the civil service – to political changes. It would be very interesting to test our results on data from CEE countries whose civil service is seen as less politicised and thus more stable – typically the three Baltic States. Concerning the overall domestic impact of the Presidency, we suggest operationalising it as a combination of the impact of human resources and the impact of infrastructure processing EU affairs. In these two dimensions the Presidency may be a unique chance because the member state is forced to prepare itself. It seems to us that such an effect may be important especially for less experienced and smaller EU member states. For absolute newcomers, the Presidency offers a unique opportunity to substantially enhance both the quality of their European bureaucracy and their coordination mechanisms. However, as our analysis has shown, such an opportunity need not necessarily lead to "planting a seed" but may also turn into a missed opportunity.

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¹ When talking about state administration, we mean its components that deal with European affairs. We do not attempt to analyse state administration as a whole because the complexity and diversity of modern state bureaucratic apparatus prevents such an approach.

² Centralised and decentralised models of Presidency organisation refer to the degree of autonomy which, for example, the Permanent Representation or governmental departments receive.

³ In May 2009, the post of Deputy Prime Minister for European Affairs was replaced by Minister for European Affairs, responsible for the same agenda.

⁴ This number refers to the end of 2009.

⁵ Czech journalist Marek Švehla refers to then Deputy Minister Jana Hendrichová stating that job calls for Presidency-related positions attracted ten times more applicants than normal.

⁶ Comments on the ineffective institutional setting of Czech EU policy were mentioned by almost every respondent. Most of them supported the idea of EU policy being coordinated by the Office of Government (as it is a domestic and overlapping policy) but at the same time criticised the Office of Government for being too ideological and incompetent. It is worth mentioning that the Office of Government (and the State Secretary for European affairs placed there) was controlled by the ODS.

⁷ The Presidency government of Mirek Topolánek was voted down at the end of March 2009 (serving until the 9th of May) and was replaced by the caretaker government of Jan Fischer.

⁸ Comments on the ineffective institutional setting of Czech EU policy were mentioned by almost every respondent. Most of them supported the idea of EU policy being coordinated by the Office of Government (as it is a domestic and overlapping policy) but at the same time criticised the Office of Government for being too ideological and incompetent. It is worth mentioning that the Office of Government (and the State Secretary for European affairs placed there) was controlled by the ODS.

⁹ The Committee chaired by the Office of Government, which meets every week in order to discuss and approve all important documents concerning the EU (especially instructions for COREPER, mandates for the ministerial Council, etc.). This committee can also meet at the level of ministers.

¹⁰ For example all areas where the EU budget is tackled and thus where the interests of different ministries are at stake. The Ministry of Agriculture, the Ministry of Regional Development (because of structural funds) and the Ministry of Finance have many overlaps when it comes to the EU budget.

¹¹ The civil service ranks slightly above the average paid job categories in the Czech Republic. In mid 2009, the average salary in the civil service was CZK 25266, while the average salary across the whole country reached only CZK 23258. In the same period, the private sector offered slightly more generous wages (CZK 23758) than the non-private sector (CZK 21691). However, one has to bear in mind that, particularly in the private sector, salaries vary substantially across different categories – e. g. the banking sector reached, in the first half of 2009, an average salary of CZK 46831, while in the transport sector it was only CZK 23714 (Český statistický úřad 2009).

¹² By political elite we do not mean only the government, but the Czech political elite as a whole. Traditionally, European integration is not seen as an important issue by Czech politicians, regardless of whether they are from right or left wing political parties.

¹³ Paradoxically, the early election – as a consequence of the fall of Topolanek's Presidency government – was cancelled in September 2009 as the Constitutional Court annulled the dissolution of the House of Deputies. The election eventually took place in spring 2010 as a regular election.

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Commentary

The Successes and Failures of the European Union Integrated Maritime Policy:
Critical Mid-term Review 2007-2013

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Abstract

The European Council adopted the first EU Sustainable Development Strategy in 2001 (Gothenburg strategy), later on ambitiously updated in June 2006. The mainstreaming in the maritime domain is the Integrated Maritime Policy (IMP) launched in 2007. This commentary provides a critical midterm review on the status of IMP implementation, outlining the successes and failures of the implementation process from a governance perspective. The review focuses on the Integrated Maritime Surveillance, one of the pillars of the Integrated Maritime Policy, using this as a case study for evaluating the implementation progress against the stated objectives and the associated governance model. The outcome suggests that while the EU Integrated Maritime Policy has stimulated a lot of interest for a new maritime vision at EU level and has initiated important steps towards its implementation, including new maritime governance paradigm, so far it has failed to promote the necessary changes to boost the cooperative and sustainable environment it has claimed to do. In the particular case of the Integrated Maritime Surveillance, despite the strong political commitment of the European Commission and the considerable budget expenditure, the EU still has not been able to achieve the targeted Common Information Sharing Environment, failing an important milestone towards building sustainability in the maritime domain.

Keywords

Sustainable development; Governance; Integrated Maritime Surveillance; Common Information Sharing Environment; cooperative environment; policy making

THE EU INTEGRATED MARITIME POLICY (IMP)

Inspired by the renewed 2006 EU Sustainable Development Strategy (SDS), the Commission (COM) adopted a Green Paper on a future Maritime Policy for the EU (June 2006), pointing out the strategic importance of the seas and oceans for the European economy. It highlighted the urgency of ensuring that future developments take account of the need to maintain competitiveness while safeguarding the marine environment and protecting the well-being and livelihoods of those who depend on the maritime economy or live on the coast. This was then followed by a one year consultation period on how stakeholders foresee the future, which saw some 230 events and over 490 written submissions. The stakeholders overwhelmingly agreed that the EU could not continue to manage its policy towards the oceans and seas through a series of unconnected sectorial policies (EU Commission 2007a). Data collected on the state of the marine environment, human maritime activities and the health of the coastal economy are fragmented and largely inaccessible, and the different authorities entrusted with protecting our seas against pollution, illegal fishing and traffickers are independently developing similar systems to detect and identify anomalous behaviour.

Taking account of these reactions, in 2007, the Commission proposed the overarching Integrated Maritime Policy (IMP) with the following goals: (1) maximising the sustainable use of the oceans and seas; (2) building a knowledge and innovation base for the Maritime Policy; (3) delivering the highest quality of life in coastal regions; (4) promoting Europe's leadership in international maritime affairs; and (5) raising the visibility of Maritime Europe. The challenges affecting the IMP implementation call for shared and, above all, integrated responses, rooted in improved maritime governance. An integrated approach to maritime affairs should clearly not undermine the tools and objectives that

have been set for moving forward in specific areas of maritime relevance. On the contrary, it seeks to provide the necessary cross-cutting governance perspective and tools so as to be able to minimise impacts and optimise efficiency and outputs. The IMP can be seen as one of the most comprehensive policies ever adopted by the EU as it criss-crosses all possible maritime and marine policy areas. However, an Integrated Maritime Policy requires a governance framework that applies the integrated approach at every level, as well as horizontal and cross-cutting policy tools (see Fig. 1). It will realise its full potential only if analogous arrangements are also adopted by member states (MSs) in line with the subsidiarity principle, to provide for the improved coordination of all maritime-related affairs. It is worth quoting the governance objective of the IMP:

EU Integrated Maritime Policy will change the way we make policy and take decisions – at every level compartmentalised policy development and decision making are no longer adequate. Inter actions must be understood and taken into account; common tools developed; synergies identified and exploited; and conflicts avoided or resolved (EU Commission 2007b: p. 2).

National Integrated Maritime Policy Specific national policy Monitoring Agencies, Observatories. funding, and Indicators, evaluation and International or regional agreements, taxation. surveillance milestones... enforcement, programs and procedures etc. networks conventions and policies **Fundamental** and surveillance Governance Other maritime policies

Figure 1: IMP governance framework model

Source: Atkins International

Three main supporting tools are outlined within the IMP as of major importance: i) Integrated Maritime Surveillance (IMS), critical for the safe and secure use of marine space; ii) Maritime Spatial Planning (MSP), key planning tool for sustainable decision making; iii) and Marine Knowledge (MK), a comprehensive and accessible source of data and information. To promote a more holistic approach towards maritime affairs throughout the entire EU, principles and guidelines were considered helpful. These have been provided through a number of documents released by the COM, such as: the Integrated Maritime Policy adopted via Communication (the so-called Blue Book) in October 2007, its accompanying Action Plan and the 'environmental dimension', the Marine Strategy Framework Directive.

The first progress report on the implementation of new policies was conducted by the European Commission in October 2009 (European Commission 2009a) and revealed a number of positive developments that had taken place in various aspects of EU governance relating to maritime areas, including a good number of MSs that had started to move toward the integration of maritime policies, in line with the flexible guidance provided by the Commission in its Guidelines of June 2008 (European Commission 2008a). The report argued that all of the three IMP tools (IMS, MSP and the building of MK) have been made use of, although the progress in integrated surveillance and building of marine knowledge base could have been better. The European Commission reacted quickly in providing further support for identified shortcomings by publishing the Communication: 'Towards the integration of maritime surveillance in the European Union,' (European Commission 2009b), which sets out guiding principles for the establishment of a Common Information Sharing Environment for the EU maritime domain (EU CISE), based on existing and new surveillance capacities. In addition, it set up the European Marine Observation and Data Network (EMODNET) with the aim of reducing uncertainty in knowledge of the seas as well as operational costs for those who use marine data.

The Commission embraced a sea-basin approach for the implementation of the IMP whose fundamental premise is that each sea region is unique and needs individual attention in balancing its uses in a sustainable manner. According to the progress report, regional approaches had been put forward by the Commission for the Arctic and the Mediterranean Sea, and a strategy was launched for the Baltic Sea. In the end, the progress report took up six strategic directions where priority action should be further targeted:

- 1. Integrated maritime governance must be further enhanced. The registered progress needs to be turned into effective integrated structures at all levels of government further counteracting the prevalence of isolated sectorial policy thinking.
- 2. Cross-cutting policy tools are of utmost importance to enhance economic development, environmental monitoring, safety, security, and law enforcement and the Commission flags here the special importance of MSP and IMS.
- 3. The 'environmental' component will remain a key objective which should develop the necessary cooperation between marine science and environment policy.
- 4. The sea-basin strategies are a key to successful implementation of the IMP, given that here the priorities and the tools of the policy can be adapted to the specific geographic, economic, and political contexts of each large maritime region.
- 5. The international dimension of the IMP will require more attention to improved global maritime governance, as it has done in the matter of piracy or with regard to destructive fishing practices.
- 6. Finally, the Commission raises the challenges created by the present economic downturn, and re-affirms its commitment to a renewed focus on sustainable economic growth, employment and innovation.

Based on the Commission report, 56 actions, out of the total 65 in the initial 2007 action plan, had been launched or completed, strong evidence that in its short life-span from 2007 to 2009, the IMP was able to make a difference in the way the EU manages the maritime domain. Based on the evaluation of progress made and new identified challenges, the European Parliament and the Council decided to support the Commission's stated intention to continue the IMP and allocated a new financial envelope of EUR 50 million for the period of 2011-2013 (European Parliament 2011) in order to build upon previous projects in the areas of policy, governance, sustainability and surveillance. With financial guarantees being put in place to secure the continuation of the IMP, the challenge was to ensure the IMP functions in the real world of institutional politics within the EU, as well in the MSs, with their long traditions of fragmented national maritime policies, laws, and institutions. Will the national IMP be established on the basis of the guidance from the Commission,

even though the MSs are not legally required to create these? This was and continues to be a critical question, which will certainly put the IMP to a difficult test (Koivurova 2009: p. 179).

Past experience indicates that whenever the EU (the Commission, the European Parliament or the Council) has issued guidelines instead of mandatory directives, the implementation process is slow, un-coordinated and follows very different paths between MSs. The IMP paradigm shift toward more holistic ways of perceiving and managing the oceans requires new political solutions to the problems of the seas (Juda 2003: pp. 178–179) and a new generation of politicians and managers to challenge the old legally enshrined sectorial ways of policy implementation. For the first time, the national waters of the MSs have become European waters which are jointly managed as regional sea-basins shared by all littoral states:

Now it is possible to view these European seas as part of the territory of the EU, and with this the IMP has certainly contributed to a vision of a more unitary EU, which will likely promote the process of its further integration (Koivurova 2009: p. 179).

Another new feature and challenge of the IMP is that it does not promote change in ocean governance only via MSs but primarily through encouraging all stake-holders and all levels of governance to become full partners in changing the way European seas are governed. This is a shift toward more holistic ways of perceiving and understanding the oceans and thereby enabling new political solutions to the problems of the sea. In support of this approach, the EU financial contribution to marine related-research and innovation amounted to EUR 1.4 billion through 644 projects over 2007-2010, including improved governance mechanisms (such as the 'MARCOM+' forum, 'EMAR2RES') to contribute to more coherent interaction between researcher, industries and policy-makers (EU Commission 2012).

EU INTEGRATED MARITIME SURVEILLANCE (IMS)

On 13 July 2008, the ministers responsible for maritime affairs acknowledged the necessity of reinforcing maritime governance, in particular through the coordination of European agencies, a regional approach by maritime basins, and an enhanced role for the group of high-level national focal points, for the purpose of supporting the development of a European maritime surveillance network (EU Council 2008). The document enumerates the existing surveillance systems (Vessel Detection System, Vessel Monitoring System, Automatic Identification System, radar system, etc) and outlines the lack of interoperability between these systems. The Commission's communication document, COM/2009/0538 final (European Commission 2009b), supported Integrated Maritime Surveillance (IMS) as a pillar of the IMP. As set out above, the main objective was to lay the foundations for the development of a Common Information Sharing Environment (CISE) for the EU maritime surveillance domain and to launch a process towards its establishment. The document explains the meaning of CISE, provides guidelines on implementation and proposes the establishment of an IMS Technical Advisory Group (TAG) to coordinate the implementation and to test the most optimal solution. The Council recognised and approved the proposed way forward and called upon the Commission to present a roadmap, including a step by step approach, for its development and implementation, before the end of 2010. The requested roadmap, delivered by the Commission as the communication COM(2010) 584 final, provides a good framework for how IMS can be achieved through better cooperation between all authorities involved in the different maritime sectors. The document proposes six main steps in the implementation process: 1) identification of relevant user communities; 2) mapping of data sets and gap analysis for data exchange; 3) establishing common data classification levels; 4) developing the supporting technical framework based on interoperability principles; 5) establishing proper data access rights for each user community; and 6) ensuring compliance with the legal framework. The coordination of the CISE initiative was entrusted to DG MARE and the aim was to complete all steps by 2013, resulting in a new paradigm of integrated and collaborative maritime surveillance services across all EU maritime communities.

Towards the end of 2012, the IMP implementation process was again evaluated through a second IMP Progress Report (EU Commission 2012). This time, the conclusion was not as positive as the first one. The report addressed each of the IMP 2011-2013 actions and the general outcome was that IMP related activities had continued at the theoretical level, with many studies and pilot projects trying to demonstrate how IMP could provide added value to different maritime and marine sectors, but little to no progress was noted of effective implementation of an IMP activity which had really changed (i.e. improved) a particular domain. This negative outcome was also reflected in the Limassol Declaration of October 2012 which stated that 'Europe's seas and oceans offer unexplored areas for innovation, sustainable growth and employment' (EU Council 2012) and called on member states and European institutions to improve their support for a more effective sustainable development of marine and maritime activities in the context of the Multiannual Financial Framework 2014-2020.

Despite all the good initiatives and concepts for a more integrated maritime approach, including the IMS and CISE initiatives, the existing legal and operational maritime framework has not changed much over recent years. Policies are still formulated at the EU level and implemented at the national level, often with little or no EU coordination (van Tatenhove 2011). By the end of 2013, Europe still did not have an EU Integrated Maritime Surveillance system and this domain is still covered at the national or the partially regional level by different sector-based authorities with little cooperation between them. Whilst the political vision of IMS and its supporting Common Information Sharing Environment was quite well prepared and expressed by the EU political leaders, the practical implementation process was less successful. Two particular obstacles are worth mentioning as their combined effect has caused a substantial delay in the proposed roadmap: (i) the voluntary implementation approach lacking the support of an EU legal framework (ideally mandatory, as was the case for existing EU maritime traffic monitoring systems); and (ii) the confusing and uncoordinated implementation campaign of DG MARE which did not manage to create the necessary willingness, cooperation and trust needed to promote the change towards a more cooperative environment. Contrarily, the CISE project produced more resistance rather than support from the user communities supposed to share the information, mainly because of cultural differences, misunderstanding of the concepts and the lack of clear guidance. Multiple small initiatives and pilot projects have been made over the last five years but the big decisions on sweeping reform were avoided due to the fractured nature of the EU system.

At European scale, there should be greater recognition of the importance of marine space within EU activities and greater integration of sectorial policies with maritime dimensions. Close collaboration between DGs Environment, Mare, Move, Energy and Regio (for example) should be encouraged (ESPON 2013).

The first phase of the Common Information Sharing Environment initiative ended on 08.07.2014 with the Communication 451(EU Commission 2014) which provides guidance for the next steps of the implementation process. The Communication foresees a number of future implementation activities until 2018, including:

- launching a project in 2014 under the EU's Seventh Framework Programme for Research (FP7) to test the CISE application on a large scale;
- developing a non-binding CISE Handbook by the end of 2016 with best-practice recommendations for promoting a 'care to share to be aware' culture;

- defining a technical reference architecture by the end of 2017 in line with European Interoperability Reference Architecture developed by the programme on 'Interoperability Solutions for European public administrations' (ISA programme);
- finally, launching a review process by 2018 to assess the implementation status and the need for further action.

The conclusion of the Communication is that at this stage there is no need for a cross-sector legislative initiative and work should continue both at EU and national level based on the guidelines, recommendations and outcome of CISE related projects.

EUROPEAN MARITIME SAFETY AGENCY (EMSA) – A BOTTOM-UP APPROACH

If no big changes were triggered through top-down decisions of the EU policy makers, the IMS bottom-up approach of the European Maritime Safety Agency (EMSA) might provide the answer for effective implementation of CISE-type of services. Set up in 2002 through Regulation (EC) 1406/2002 (EU Parliament 2002), as a technical body to assist the Commission and MSs in improving maritime safety, security and anti-pollution standards, EMSA is widely recognised as the leading EU agency in the maritime domain. Over the last 10 years, the Agency has developed and operates some of the most advanced cooperative maritime systems, such as the following. First, the SafeSeaNet (SSN), which is the EU short range ship traffic monitoring system using over 700 shore-based receiving stations distributed along the entire EU coast-line to track the Very High Frequency (VHF) radio signal from the Automatic Identification System (AIS) of all ships navigating around the EU. Second, the EU Long Range Identification and Tracking Data Centre (EU LRIT DC), the EU's long range ship tracking system using communication satellites to track EU ships all over the world, as well as all ships, irrespective of their flag, within a maximum radius of 1000 nautical miles from the EU coastline. Finally, the CleanSeaNet (CSN) system which uses satellite radar pictures to detect pollution within EU waters. These systems were set up based on a mandatory legislative EU framework (Dir. 2002/59/EC for SSN, Dir. 2005/35/EC for CSN, EU Council Res. of October 2007 for EU LRIT DC) to address the specific needs of maritime safety and pollution control authorities and to provide real-time maritime information to over 3000 end-users from all EU member states.

When the CISE communication was issued (in 2009), EMSA immediately initiated the necessary technical developments to upgrade and interlink its existing systems (SSN, CSN, EU LRIT DC) into an Integrated Maritime Data Environment (IMDatE) platform able to meet and support CISE requirements. At the beginning of 2013, the EMSA IMDatE platform become operational and ready to support CISE services. Using a bottom-up approach, EMSA has openly invited all interested user communities and authorities to start setting up cooperative services based on CISE principles and using IMDatE capabilities. By the end of 2013, the first CISE-type of services had been established and have been running since then, the most representative being: the EU NAVFOR IMS, the service integrating maritime and defence information to support the EU naval forces acting against piracy in the Horn of Africa area; the European Fishery Control Agency (EFCA) IMS, a service integrating maritime and fishery information in support of illegal fishing activities; and the FRONTEX IMS, the service integrating maritime and border control information in support of illegal migration activities at sea. Other user communities are using EMSA services when needed, i.e. the Customs' BlueBelt service which tracks ships registered within the EU internal trading scheme, or EUROPOL which can use EMSA ship tracking services to monitor specific ships for law enforcement purposes.

Whilst the CISE initiative aims to provide the (legal and technical) framework and guidelines for how IMS can be achieved at EU level, the EMSA IMDatE services provide operational examples of implementation. All seven user communities identified by CISE (border control, fisheries control, defence, maritime safety and security, marine environment, customs, general law enforcement)

have tested and some are using on a permanent basis the EMSA integrated maritime services. Unfortunately, the CISE and IMDatE projects have been more competitive than complementary and the opinions and discussions at both the political (DG MARE vs DG MOVE) and technical (CISE Technical Advisory Group (TAG) vs EMSA IMDatE) levels could not be aligned despite the fact that cooperation and data exchange are the core problems of both projects. A number of CISE pilot projects were funded to demonstrate how a cooperative maritime picture can be achieved, the most notable being MARSUNO, bringing together 24 authorities from ten countries around the North Sea basin; BLUEMASSMED, 37 authorities from six countries around the Mediterranean Sea; and CoopP (EU Commission n/d), 28 partners from 12 countries from all EU sea-basins. EMSA has not participated in these projects and instead has developed its own IMDatE project, using its own ICT platform to develop a system able to process, integrate, and share data within a correlated cooperative maritime picture. Whilst all CISE pilot projects are now closed and a final communication document was issued by DG MARE in June 2014 on the future of CISE, most of the MSs (about 80 authorities from 12 MSs) are now using the EMSA IMDatE platform for achieving their maritime data integration needs, even if the platform is not labelled as CISE compliant by DG MARE. Many MSs were and continue to be confused by the two parallel and un-coordinated initiatives (CISE vs IMDatE) and have asked the Commission to clarify and synchronise the two, as outlined in a number of minutes from the SafeSeaNet High Level Steering Group (HLSG) meetings (EU Commission n/d).

IMP / IMS GOVERNANCE MODEL

The IMP is recognised as one of the most complex and challenging EU policy areas, reflecting the complexity of the institutions and organisations related to the multilevel and multi-sectorial character of most maritime issues. At the EU decision making level, the IMP had a good start as it was powered by an overarching vision (general objectives, basic common principles) supported and implemented by EU organisations, public and private stakeholders. The idea of better cooperation, synergies and coordination between different marine and maritime sectors, the efficient use of resources for multiple common benefits, was well embraced and supported at all levels – EU, MSs, private and non-governmental (not-for-profit) sectors. However, the implementation process has not so far achieved the expected results and certainly not within the planned time-frame, as concluded by the IMP progress reports. A number of the reasons are worth analysing for the purpose of seeking improvement during the next phase of the IMP (2013-2020).

The first specific particularity of the IMP is its complexity, both horizontal and vertical. The marine environment, maritime safety and security, spatial planning, knowledge sharing domains are brought together under a single governance political framework but without any change to the organisational and institutional framework supposed to facilitate the implementation. Initially, an InterServices Group (ISG) involving 28 Directorates-General of the Commission was supposed to support a Steering Group of Commissioners and monitor the day-to-day progress of the EU Integrated Maritime Policy. The ISG was scheduled to meet at six week intervals and provide the core of the integrative work of the IMP within the Commission. Unfortunately, this structure has not worked in practice and the implementation task was mainly performed by DG MARE assisted by a Technical Advisory Group (TAG) consisting of representatives from MSs and EU Agencies. The implementation of the new type of policy (cross-sector) was therefore reliant on the old (sector orientated) structures, mainly based on their good will to cooperate. Very often and in most of the countries, marine and maritime activities are regulated through independent sectorial laws, usually without taking into account, or only in a limited way, possible interferences and conflicts between distinct sectorial legislation. Unless the organisational and structural issues are tackled at a system level, the IMP implementation process will continue to navigate on 'very rough seas', as the existing institutional settings have been optimised for classical, non-integrated policies whilst the IMP demands novel institutional arrangements (van Tatenhove, 2011).

Another governance issue was the representation and the commitment of all parties. The marine environment, resources and space are common goods, whilst maritime zones are associated with many political and geopolitical assets (sovereignty, defence and security, international cooperation). The exploitation, management or protection of these assets must be based on transparent and generally accepted rules which account for the opinion of citizens, either directly (individually or in stakeholder groups) or through democratic processes. It is essential for the countries and communities to be represented in these organisations, at the right level and by the right people. Although the generation of the IMP was based on a wide consultation process, the implementation task was assigned to a sectorial organisation (DG MARE) instead of to a new cross-sector structure. Under time and political pressure to deliver, the implementation soon become a DG MARE project driven and managed by the interests of the Directorate. This has generated questions regarding the legitimacy of the outcomes. Government and national administrations are key organisations for the elaboration and the implementation of maritime policies and regulations; they prepare laws and decrees, propose public budgets, implement policies and are in charge of the enforcement of the legislation. Their participation in the first implementation phase of the IMP was weak and so far the national IMP actions are still at the declarative level rather than operational. Very few MSs (France, Netherlands, Sweden, United Kingdom) have taken steps to establish inter-ministerial or national executive structures for coordinated management of the IMP related issues.

The consistency and completeness of the IMP through all stages (policy making, implementation, monitoring, and evaluation) has to be mentioned as well as a weak point of the implementation process. The result of weak cross-sectorial coordination was the absence of clear objectives associated with schedules and milestones, and based on defined institutional and organisational principles. The undefined framework was used either to avoid any commitment to the IMP principles or to develop its own implementation path (see the EMSA IMDatE project). The voluntary implementation approach chosen for the IMP is inconsistent with the strong political declaration of support. The IMP was endorsed and strongly promoted at the highest political levels: the Parliament and the Council, the Commission, the Ministers of the MSs (EU Commission 2012). However, the approach for implementation is based on a voluntary rather than mandatory implementation through directives. This has proved (once again) impractical and a change of course is already visible with IMP related legislative proposals being initiated by the Commission and approved by the Parliament and Council. Whilst the adoption of the Maritime Spatial Planning Directive (European Commission 2008b) might indicate that other IMP pillars, including IMS, may follow a similar implementation path in the future, the latest CISE Communication of 8th July 2014 concluding that there is no need for a cross-sector legislative initiative further accentuates the inconsistency of the governance model.

CONCLUSION

The EU maritime policy failures have increasingly been pointing to the issue of revised governance arrangements and procedures as a solution (Roe 2013). The Blue Paper featured significant discussion of the concept of governance and the EU Maritime Affairs Commissioner emphasised the need to ensure that the process of governance includes mechanisms for cooperation, coordination and integration. Although recognition of the need for improved governance is a step forward, this is not enough to achieve a better outcome within the maritime domain. The poor implementation stage of the IMP suggests that the underlying framework, which supports and directs policy generation and implementation, has not yet achieved the appropriate level of maturity. The 2000 – 2010 Lisbon Strategy has failed in many of its stated objectives and the reasons for failure were

claimed to be the unforeseen and unexpected global economic crisis. True or not, the results of that decade have not strengthened the EU, rather the contrary. Learning from that experience and this time fully considering the economic crisis, the EU-2020 strategy is setting up the framework for the ongoing decade. Almost half-way through, are we happy with the progress?

Through IMP, the Commission has focused on developing cross-cutting actions supporting the sustainable growth of coastal regions and maritime sectors. It has also given priority attention to implementing a more strategic and integrated approach to sea-related sectorial policy making that is expected to have a lasting positive impact and will continue to be developed further. The proposed multiplication of levels, rules and actors in the practice of governance points to the empirical and theoretical need to find new modes of legitimacy production (Scharpf 2004). The IMP introduces a new governance (integrated) approach which presupposes an integration of different bodies of knowledge, an integration of sectorial activities and policy domains. The building blocks, integration, participation, and sustainable management, are based on innovative initiatives within shipping governance and integrated coastal zone management (Integrated Maritime Surveillance, Marine Spatial Planning, Marine Knowledge). The IMP has been able to identify the relationship between the different maritime activities and the dynamics of the maritime policy domains, how they influence each other and what the enabling and constraining conditions for integration are. Whilst this is a good first step towards an integrated governance model, further challenges have to be tackled to ensure a successful implementation outcome. So far, the IMP design does not fit the existing institutional arrangements and associated rules of the games. The governance objective of the IMP was to change the way the EU makes policy and takes decisions. This has not been achieved yet and the IMP was not able to set up the necessary structural setting to support the institutionalisation of integrated horizontal governance. The proposed voluntary forms of cooperation do not connect to the interests, expectations and values of the participants, and the public and private actors have not demonstrated their commitment for the IMP implementation. In the particular case of the Integrated Maritime Surveillance pillar, the IMP CISE initiative has triggered a number of activities and projects towards data exchange and integration for a more enhanced maritime picture. Questions about the legal framework for data exchange have been answered in a number of studies funded under the CISE framework and the positive outcome is that there are no legal barriers for setting up the IMS. Main user communities have been identified and dialogue between them initiated. Although a number of integrated maritime services have been set up based on bilateral cooperation between EU Agencies (EMSA-EU NAVFOR, EMSA-EFCA, EMSA-FRONTEX), none was classified as a CISE service. Moreover, the framework for the EU Integrated Maritime Surveillance system is not defined and for the time being left to the voluntary will of the member states.

Will the IMP be able to set up the necessary structural setting to support the institutionalisation of IMP governance in the future? Do the proposed forms of cooperation connect to the interests, expectations and values of the participants and are the results in accordance with the desired outcomes of the actors involved? Finally, can the Integrated Maritime Surveillance be achieved at EU level? These are all questions and topics to be addressed by the IMP implementation process in the coming years. A new Commission will take over the IMP implementation responsibility by the beginning of 2015. This might be an opportunity for renewed commitment and enthusiasm or a delaying factor if the new team decides to reassess the situation and adjust the proposed 2020 strategy. This is just another problem to complicate further the already overly complex EU and IMP frameworks. The future of the IMP is certainly a challenging task, from the governance, political and operational management perspectives. The very dynamic evolution of maritime related activities (commercial transport, energy and resources exploration, fishery, cross-border illegal activities) requires similarly fast and pro-active decision making and managerial processes to ensure the expected results. This is clearly missing within the existing EU mechanisms. Being able to change the

governance paradigm and associated implementation tools might be the biggest challenge of the IMP and IMS over the coming years.

Disclaimer

The content of this Commentary does not necessarily reflect the official opinion of the European Maritime Safety Agency. Responsibility for the information and views expressed in the Commentary therein lies entirely with the author.

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Book Review

Andrej Nosko, Think Tank Fund

POLITICS OF ENERGY DEPENDENCY: UKRAINE, BELARUS, AND LITHUANIA BETWEEN DOMESTIC OLIGARCHS AND RUSSIAN PRESSURE

Author: Margarita Balmaceda

Drawing extensively on her previous work (Balmaceda 2008a; Balmaceda 2008b; Balmaceda 2006) covering corruption in the oil and natural gas sectors in Ukraine, Belarus and Lithuania, here Margarita M. Balmaceda sets out ambitious goals. The book examines examines sectors in Ukraine, Belarus and Lithuania, here Margarita M. Balmaceda sets oue, Belarus and Lithuania. Subsequently, building upon that, it analyses how their energy security has been influenced by domestic factors in the management and rents of 'energy dependency', as well as by the role of 'energy groups in these countries' own post-independence political development' (p.4).

The book consists of three parts, the first of which provides a shared background for the three case studies, the setting of the proposed explanation of variations among the countries. The second part offers three detailed empirical case studies covering Ukraine, Belarus, and Lithuania, and the third part offers conclusions drawn from the three cases.

The study investigates two problems: first, the fact that despite achieving their independence from the USSR more than fifteen years previously, it was not until 2007-8 that these countries first took measures to diversify their energy supply in order to reduce their reliance on Russia. The author calls this an 'inability to take actions against their overwhelming dependency on Russia' (p.4). The second problem informing this book is the three states' varying approach to diversification and stability of energy transit policies. In this regard, two hypotheses are discussed; the first positing that 'domestic institutions matter in the management of energy dependency' and the second that 'who the beneficiaries from patterns of energy trade are has long-term political effects'.

The author draws an intricate causal path from the nature of a political system to the style of management of energy dependency through five intermediary aspects: a) the transparency of markets; b) the existence of a transparent and democratically controlled energy policy; c) a leader's negotiating space vis-à-vis foreign partners; d) a system of interest articulation; e) and access to and use of energy rents (p. 16ff). These five elements, according to the author, influence connections between domestic politics and the management of energy dependence. These connections in turn influence the style of the management of energy dependence.

The proposed causal model spirals from relations between the independent variable of the nature of the political system to the influence of energy policy, which in turn feeds back and influences the political system. This explanatory apparatus not only lacks parsimony but at times looks tautological, when the political system in the individual countries is both the phenomenon to be explained and the explanation offered. The relationship between the system of interest representation, party system fragmentation and how these influence management of energy dependence is of real interest. Nonetheless, the reviewed book does not get beyond interesting but at times tedious empirical minutiae to provide clear disentanglement of their mutual causal relations.

While we are told that choices early on in the political transition influenced the f the nature of thereforms, level of state control of the economy, and the nature of political control, governance, and interest representation,' (p.60 and p.274 with small variation) the author does not provide an explanation of how these choices were made and what specifically influenced them and why. Readers are thus left to interpret the wealth of empirical material, and wonder where the causal spiral starts and what influenced how it revolved.

The subject covered by this book is pertinent and highly relevant, but there are two major problems in the way it is handled: first, the positioning of the subject matter (or rather lack thereof) within pertinent academic debates and literature; and second, the research design including the case selection. The literature covering policy processes during transitions in post-communist countries¹ accepts and builds on the notion that domestic politics matters, furthermore it has moved on to discussing how it matters. Balmaceda does not engage with this literature, instead focusing on the very same question, asking how the existence and structure of trans-border rent-seeking arrangements have influenced political systems, specifically through effects on elections, policymaking, and patterns in policymaking (p. 265). This could be a legitimate choice if we were told why the question needs to be asked again and how the existing literature underperforms in respect of providing a satisfactory explanation. Unfortunately, the author does not explain this and decides to draw on the rent-seeking literature that is more pertinent to energy-rich countries (see notes 28-30 on p. 289). She does not engage with the relatively developed state-capture literature that also draws on research from post-communist transitions, which would provide a more parsimonious explanatory model of post-soviet cross-border rent-seeking in the energy sector (see CEIP 2014, Grzymala-Busse 2008). The fact the author does not engage with relevant literature on post-socialist policy making, the political economy of transition, state-capture or energy-security is problematic in respect of the problems under analysis, the hypotheses and the research model itself.

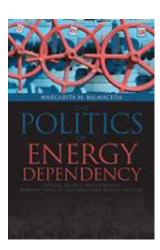
Balmaceda is to be credited for the wealth of empirical detail provided for the three case studies. Nonetheless, the cases themselves do not make for the most useful of comparisons. Variation among the cases is noticeable both in terms of independent variables and dependent variables. As the author rightly says, Ukraine, Belarus and Lithuania share a legacy of being part of the Soviet Union but operate different domestic political systems and experience quite different policy outcomes. This might make for fruitful, wider conclusions except for the fact that the three countries are too different in their independent and dependent variables to serve as a basis for conclusions applicable beyond the three separate cases. The respective dependencies that the countries faced vis-à-vis Russia, not only in terms of energy, were very different throughout the duration of the period covered by the book. Ukraine with a gas transit of 82.5 bcm per year,² and Belarus with 42.2 bcm, are the two most important transit countries for Russia in reaching its West European customers. Lithuania on the other hand transits only 2 bcm of gas, and all of it to its Baltic neighbours (and Kaliningrad) none to energy consumers in Western Europe.³ In terms of the structure of their energy dependency, there are two aspects which are very different in each of these countries and influence energy security: the structure of domestic consumption (most importantly the share of non-interruptible gas consumers) and the structure of the domestic energy mix (Noël 2008). The author also claims that these three countries are energy poor, providing her own definition of what energy poverty and energy dependency is (only in a footnote, p. 294) again, not drawing on a rich conceptual work on understanding energy security. 4 Nonetheless, Ukraine, Belarus and Lithuania are not equally energy poor; if analysis of their energy endowments is not limited to gas (and only partly oil, as the author does), their energy poverty is seen in a different light. In the case of Ukraine at least a new question would emerge of why a country with natural energy endowments ends up looking like an energy-poor one. Consequently, what we are presented with in this book are three different cases with three different starting points (despite all having being part of the Soviet Union) arriving at three different finish-lines, only occasionally stepping into each other's paths along the way.

The authorss, Ukraine, Belarus and Lithuania are not equally energy poor; if analysis of their energy endowments is not limited to gas (and only partly oil, as the author does), the prioritise this kind of energy security. Her explanatory model falls short of explaining why maintaining their positions on Russia's energy value chain in the short-term, in combination with energy prices were more important than diversification for all three of her cases (p. 271). Balmaceda is also rather dismissive of decreasing energy vulnerability through economic restructuring, as done by Lithuania. This is a legitimate means of improving a countryombination with energy prices were more important theconomy, as can be illustrated by a higher GDP per capita for Lithuania over either Belarus or Ukraine throughout the period studied.

The book will be of appeal to those without expertise in the languages of the countries under discussion. Students of modern history, business people and journalists particularly will find the book inspiring for interpreting developments in one of the six post-soviet energy importing countries (Georgia, Latvia and Moldova in addition to the cases covered here) (p. 24). However, readers who are already familiar with Balmacedawi work may be disappointed to recognise similarities to texts they have read before, ranging from similar structures of sections in empirical case-studies, to verbatim similarities to sections in previous works (see p.97ff in the book reviewed and p.37ff in Balmaceda 2008b for example).

The book makes an important contribution to opening an important, yet little studied aspect of cross-border rent-seeking and state capture, and in this regard it illuminates how countries struggled to maintain their position on the Russian energy export value chain at a cost to their citizens and national interest. Specifically, it clarifies how the 'division [...] of energy rents between local and Russia-based elites' (p. 276) happened. Beyond that, it provides insightful explanations of how different sets of interests, state, corporate and personal, within corporations played against each other, and more specifically how these were amalgamated within Gazprom throughout the period discussed.

While the conceptual and theoretical contribution of this book to the wider literature is limited, it does provide empirical evidence for understanding the effects of cross-border rent-seeking, the pace and timing of reforms, the nature of political transition, and national-interest formation in the context of political transition in three different post-Soviet counties. Notwithstanding the limitations, it will remain a useful empirical resource for those studying the role of energy businesses in rent-seeking, corruption, and state capture in transition economies, and those wanting to understand the roots of state capture in Ukraine which fueled the 2013/2014 crisis. These questions will, unfortunately, remain relevant for the time to come and not only in the post-soviet space.



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Politics of Energy Dependency: Ukraine, Belarus, and Lithuania Between Domestic Oligarchs and Russian Pressure

Author: Margarita M Balmaceda

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¹ Such as Katzenstein 2003 and 1985, Putnam 1988, Waltz 1979 and Gourevitch 1978 in the study of International Relations; and Bohle & Greskovits 2012, Fidrmuc 2003, Kitschelt 1999, Blanchard 1997, Kornai 1995, and many others in the study of International Political Economy, which provide pertinent answers even for the study of energy dependence.

² This has been even higher during the period of study r and before alternative transit pipelines were built bypassing Ukraine.

³ All transit data from 2010 according to McClay and Ortmans 2011.

⁴ See Sovacool 2011 for a summary of conceptual literature and definitions of energy security.

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Book Review

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THE POLITICS OF ENERGY AND MEMORY BETWEEN THE BALTIC STATES AND RUSSIA

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The starting point of the volume is the diversity of contemporary relations between the Baltic States and Russia and most specifically the foreign policies of the three states in respect of energy policy and memory. The question of diversity is crucial for this research as the similarities in the structural factors of these relatively small countries facilitate a meaningful comparison of policies and reactions. Namely, Grigas offers a significant contribution to understanding the foreign policies of Estonia, Latvia and Lithuania towards Russia by challenging the structural realist assumption of similarity in foreign policies as a result of similar resources, geopolitical positions, as well as constraints and opportunities. Grigas's overarching aim, which she achieves successfully, is to discover which factors most influence the development of the foreign policy of the three countries towards Russia and, in light of the similar contexts, to consider what makes them so diverse. The main claim of the volume is that the differences between the foreign policies can be explained by a variety of domestic policy factors in each of these states.

The book is composed of eight chapters. It starts with offering a useful overall insight into the domestic and energy policies of the three Baltic States and the state of their relations with Russia, which gives the necessary background knowledge for readers not familiar with the situation in the region. The larger part of the volume is devoted to specific case studies, reflecting the individual situation in each of the countries. On the one hand, the cases are related to energy policy - gas pipeline politics and Gazprom politics. On the other hand, they refer to the role of memory in relations between the Baltic states and Russia - the Soviet Victory Celebration and damages in relation to the Soviet occupation. The informative case studies and analysis are complemented by well-structured background information on the energy sector as well as that historical background information relevant for understanding relations between Russia and the Baltic states. Interestingly, the case studies in the book are placed on two axes characterising the manner of relationshipbuilding that lies between cooperative and adversarial foreign policy, and pragmatic and principled foreign policy. Grigas persuasively points out the complexity of the factors influencing the various foreign policies, and accordingly those factors that tend to be underestimated when analysing these relations. The spectrum includes domestic policies and situations, and external pressures from the EU and NATO, as well as from Russia itself, as well as the often under-estimated role of business interests.

By selecting the often discussed and differently interpreted cases of energy and memory politics, Grigas has the ambitious aim of contradicting a variety of general assumptions about the relationships of the Baltics to Russia. While pointing out that on the one hand the policies of the three countries are un-coordinated, the book is also successful in showing the role of the small Baltic States in regards to Energy policy with Russia, which Grigas refers to as a regional hegemon. Thus this work is a significant contribution to in-depth understanding of the energy politics of Estonia, Latvia and Lithuania. While aiming also at outlining the unique foreign policies of the three countries in the face of historical tensions, the memory policy analysis, although informative, did not receive

as much attention as energy policy in the wider study. A broader examination of this aspect would have been welcome and further strengthened the book in respect of contributing to the understanding of the situation in the region.

Grigas's background as an advisor to the Foreign Ministry of Lithuania and to investors of the EU and USA in the region, as well as her academic background, results in a particularly insightful account of the situation in the Baltics and their relations with Russia. A significant strength of the research is the range of interviews with diplomats, practitioners and representatives of business from the region that underpins the analysis. Thus, overall the volume offers a sound account of the liberal approach to international relations through an in-depth depiction of the domestic aspects of foreign politics. The comparative approach that the author has chosen assures a useful overview of the situation in the Baltic States and their foreign policies.

In summary, this book is a welcome addition to the literature on energy policy and relations between Russia and the Baltic states, as it provides an up—to-date examination of this topic. With its extensive background information and its empirical abundance, the book has much to offer students, as well as those scholars who are particularly interested in the relations between Russia and Estonia, Latvia Lithuania, as well as the energy relations between these states.



THE POLITICS OF ENERGY AND MEMORY BETWEEN THE BALTIC STATES AND RUSSIA

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