www.jcer.net

Journal of Contemporary European Research

Volume 13, Issue 1 (2017)

ISSN 1815-347X

Contents

Contributors

Marco Cellini *Libera Università Internazionale degli Studi Sociali Guido Carli, Roma*

Quincy Cloet *University of Aberystwyth*

Maxine David *Leiden University*

Simona Guerra *University of Leicester*

Karen Heard-Laureote *University of Portsmouth*

Anna-Lena Hoh *Maastricht University*

Ingi Iusmen *University of Southampton*

Taylan Özgür Kaya *Necmettin Erbakan University*

Simon Lightfoot *University of Leeds*

Kathryn Simpson *University of Birmingham*

Andreas Warntjen *University of Twente*

Journal of Contemporary European Research

Volume 13, Issue 1 (2017)

Research Article

Filling the Gap of the Dublin System: A Soft Cosmopolitan Approach

Marco Cellini, *Libera Università Internazionale degli Studi Sociali Guido Carli, Roma*

Citation

Cellini, M. (2017). 'Filling the Gap of the Dublin System: A Soft Cosmopolitan Approach'*, Journal of Contemporary European Research*. 13 (1), 944 - 962.

First published at: www.jcer.net

Abstract

Immigration and asylum issues are currently central in the European political debate. In this paper, I first analyse the European legislation on asylum, the so-called 'Dublin System', finding three main gaps affecting it: a) the allocation of refugees between member states; b) the differences between member states in the treatment of asylum seekers and asylum applications; and c) the differences in the rights granted to the refugee status across member states. Secondly, I examine the European proposals drawn up by the EC in order to fill these gaps. I argue that these proposals, while potentially promising in filling gaps b) and c), seem to be less effective in filling gap a), since they do not consider the question from the refugees' perspective. In the last sections, following a moderated cosmopolitan approach, I propose the establishment of a limited citizenship for refugees that might be thought of as a temporary citizenship conditioned on the possession of the refugee status. To this particular citizenship, one may apply different rights, but to face the issue highlighted, it may be sufficient to connect it only to the freedom of movement and residence throughout the EU. I argue that such a policy would have a number of advantages and could at least partially fill the identified gaps.

Keywords

European Policies; European Refugee Crisis; Dublin System; Cosmopolitanism

INTRODUCTION. CITIZENS BEYOND NATIONAL STATE

The idea that a person, as a human being, is a member of a community that extends beyond the state of which he is a citizen goes back in time. Originated from western philosophy in classical Greece and Rome, it has evolved over the centuries thanks to the efforts made by Renaissance and Enlightenment thinkers. However, it is only after the Second World War, and even more after the end of the Cold War, that the concept of global citizenship (or world citizenship) has grown in importance (Heater 1996: 213; Carter 2001: 1). Related to the concept of global democracy, in recent times, the concept of global citizenship has been further elaborated and refined by cosmopolitan thinkers and, in some cases, associated with the idea of world government. Nevertheless, as highlighted by Heater (1996: 170), the political content of the concept of global citizenship has not been coherently defined nor the term has been used with a consistent meaning.[1] However, it is worthwhile to highlight that the concept of global citizenship implies at least: (a) the existence of an emerging world community to which people identify themselves; and (b) that such a community has a nascent set of values and practices (Israel 2013).

The cosmopolitan project of a democratic world government, relying on these assumptions, represents a valuable exercise in trying to imagine a practical way in which the concept of global citizenship can be transposed from theory to practice. According to Archibugi (2008: 116), global citizenship can be imagined as a legal instrument that, together with the principal citizenship of the state to which individuals belong, would allow them to benefit from a minimal list of rights and duties vis-à-vis constituting cosmopolitan institutions. Without entering here into the debate about the different meanings attached to the concept of global citizenship, it is important to note how this theoretical exercise provides a basis for the conceptualization of a citizenship overcoming the boundaries of national states. A limited example of the application of such a form of citizenship is

the EU citizenship, established in 1992 by the Maastricht Treaty. As stated by Art. 9 of TEU 'it is added to national citizenship without replacing it'. Therefore, European citizenship emerges as partially opposed to the statist vision that considers citizenship as the exclusive emanation of a sovereign state. It 'partially' opposes because it is still up to the sovereign member states to establish the methods and procedures for the acquisition of national citizenship, which is a prerequisite to obtaining European citizenship.

The concept of citizenship is historically linked to that of nationality, but it is useful to distinguish the two concepts. Citizenship is defined as the legal relationship linking a particular individual to a particular jurisdiction (state), which recognizes to the individual a set of rights. In other words, citizenship is a legal instrument by which a state recognizes, for those classified as citizens, the entitlement to civil and political rights. The concept of nationality, instead, refers to the belonging to a certain nation, where belonging is defined on the basis of historical, cultural, linguistic, and religious characteristics. The concept of nationality indicates a bond that goes beyond mere legal recognition, and it is characterized by a certain community of people who feel somehow linked by common characteristics.

According to some authors, '[the] great migration and the increasingly globalized human activity are gradually changing, in some cases making it obsolete, the definitions of belonging and citizenship. The latter concept is evolving and becoming progressively [more] International, making inconsistent, so anachronistic, the correspondence between nationality and citizenship.' (Triggiani 2009: 438). One of the reasons behind this process comes from the 'progressive achievement of acts and international instruments relating to fundamental human rights, which limit the absolute power of states to determine their own regulations on the assignment and denial or deprivation of nationality; acts and instruments that also recognize to the foreigner an increasingly significant corpus of rights' (Triggiani 2009: 438). In other words, the development of international instruments that somehow would limit the sovereign power of the states, along with the process of globalization, is changing the classic link between the concepts of nationality and citizenship, marking a disjunction and widening the scope of citizenship beyond national borders.

The case of the EU is perhaps the most emblematic representation of this kind of development. In the words of Urbinati (2015), 'Europe has tried to become a new model of citizenship. This is one of the noblest ambitions of the EU project. Theorists and lawyers have talked about a new paradigm of political freedom capable of decoupling citizenship from national belonging'. However, at the European level, the immigration crisis and the unfavourable economic climate slowed down this phenomenon. Urbinati (2015) nicely summarises this problem when she writes that 'probing by the flow of migrants and the economic crisis, the European myth tarnishes. Nation states returning main players, the intergovernmental policy gains priority and with it the bilateral diplomacy; borders return to close […] the countries that are located on the borders of 'Fortress Europe' become outposts in the rejection of the army of desperate people. Faced with landings of refugees in the world, Europe no longer seems certain to want to be the laboratory of a new nationality and addresses the issue of refugees as a national security issue and even as a war'. If so, what kind of citizenship is possible outside of the state? What are the possible subjects of this 'extra-national' citizenship?

On this issue, the cosmopolitan literature offers a certain amount of writings and insights. Archibugi and other cosmopolitans argue that 'The implication of the disconnection of citizenship from state nationality can become a starting point for a general policy that guarantees fundamental rights to individuals regardless of their nationality', (Archibugi et al. 1998: 149). The idea, essentially, is that of a cosmopolitan citizenship that 'unify all human beings, which allows them to travel, visit and live in any corner of the world [...]' (Archibugi 2008: 114), and the refugees seem like the perfect category

for this model of citizenship because being citizens of nowhere, they are potentially world's citizens. (Archibugi 2008: 181). Following the cosmopolitan line of thought, the partial disjunction between citizenship and nationality that occurred with the introduction of European citizenship could become a starting point to imagine the implementation of a system granting certain rights regardless of the individual nationality so that it could be applied to refugees.

The cosmopolitan vision, perhaps too ambitious when it postulates the creation of a world government, and a world citizenship totally divorced from the individual's nationality, could be partly applied in the case of the EU at least to a specific category, namely, the refugees. Besides, such an approach could be considered consistent with the process that the EU has already started, which is that to establish a *sui generis* transnational citizenship that brings with it certain rights. The idea of an innovative European citizenship to be conferred on humanitarian grounds would make Europe an entity at the forefront of the protection of fundamental human rights by subverting part of the cardinal principle of the concept of citizenship, namely the exclusivity.

THE EUROPEAN LEGISLATION ON ASYLUM: THE DUBLIN SYSTEM, AND THE COMMON EUROPEAN SYSTEM

The legal institution of asylum is rooted in a long Western tradition. However, until the 1950s, when two important documents were signed —the Geneva Convention on Refugees (1951) and the European Convention of Human Rights (1950)— the right to asylum was still inextricably linked to the authority exercising its power on the places of asylum (the gods, the Church, or the State), therefore it was simply the consequence of the 'sovereignty' exercised on those sites. Successively, instead, another more revolutionary significance of asylum, as an institution capable of responding to the necessity to protect individual human rights, has been developed (Cherubini 2014: 7).

The changes that occurred in the second half of the twentieth century, in which the traditional conflicts between states have been almost completely replaced by internal conflicts and civil wars for political control, have made the institution of asylum an instrument for urgent actions.
At the European level, in addition to the international obligations imposed on member states, the right to asylum is reinforced both by primary and secondary legislation adopted by the European institutions. According to Article 18 of the European Charter of Fundamental Rights 'the right of asylum is guaranteed in compliance with the Geneva Convention of 1951 and the Protocol of 1967', while the principle of non-refoulement —potential refugees cannot be deported if there is a possibility that they would suffer persecution— is guaranteed by Article 19 of the Charter.

However, the cornerstone of the EU asylum legislation is represented by the so-called Dublin system that is enforced in all 28 member states as well as in Norway, Iceland, Switzerland, and Liechtenstein. The Dublin Convention, signed in 1990 and entered into force in 1997, established the principle that a single member state be responsible for processing an asylum application, and outlines the criteria for determining which state should have this responsibility. Dublin II, introduced in 2003, defines the hierarchical criteria to determine which state is responsible for processing the application, while Dublin III expands the guarantees for asylum seekers, and clarifies the rules and obligations up to them. A summary of the key components of the 'Dublin system' is shown in Table 1.

In essence, the Dublin Convention aims to establish a set of rules that allow better management of asylum applications by a regulation that establishes clearly and unequivocally which state is competent for examining any single application. In principle, the Convention provides that the member state competent for examining the asylum application is that of 'first arrival' of the

applicant, introducing some exceptions, mainly but not limited to family reunion, which derogate from this rule.

Table 1. The Dublin System Regulations

The 'Dublin system'		
Regulation	**Entry into force**	**Principal content**
Dublin Convention (97/C 254/01)	1997	Establishes the criteria to determine which member state should be responsible for the examination of the asylum application.
Dublin II (No. 343/2003)	2003	Replaces the Dublin Convention, re-establishing the principle that only a member state is responsible for examining an asylum application. It defines the hierarchical criteria to establish the member state responsible for each asylum application.
Dublin III (No. 694/2013)	2013	It extends the safeguards for asylum seekers and clarifies rules and responsibilities of member states, including which state should bear the cost of the application. With Dublin III, there is a possibility of appealing a transfer decision.

Source: *Author's elaboration*

In essence, the Dublin Convention aims to establish a set of rules that allow better management of asylum applications by a regulation that establishes clearly and unequivocally which state is competent for examining any single application. In principle, the Convention provides that the member state competent for examining the asylum application is that of 'first arrival' of the applicant, introducing some exceptions, mainly but not limited to family reunion, which derogate from this rule.

The need to ensure asylum seekers a uniform protection across the EU and offer fair and reasonable application procedures led, starting in 1999, to the development of the Common European Asylum System (CEAS). The Dublin system integrates into this most complex system (Table 2). Article 78 of the Treaty on the Functioning of the EU (TFEU) provides for the establishment of the CEAS with the main objective to reduce the disparities between member states in the procedures for examining the applications.

In order to ensure a greater level of harmonization and a greater degree of clarity on the issues related to asylum, the legal framework needs to be constantly reviewed. This resulted in updating the directives and regulations mentioned above with a new directive on asylum procedures, the Reception Conditions Directive and the Qualification Directive, entered into force in 2015.

Table 2. Common European Asylum System (CEAS)

Common European Asylum System (CEAS)	
EU Legislation	**Objective**
Asylum Procedures Directive 2005/85/EC	Establishes common standards of safeguards in order to reduce disparities between national examining procedures amongst member states. It sets out the rules of the whole process of claiming asylum.
Reception Conditions Directive 2003/9/EC	Establishes the minimum common reception conditions such as housing, food, and employment, which member states are required to grant to asylum seekers whilst processing applications. The Directive limits asylum applicants' secondary movements.
Qualification Directive 2011/95/EU	Clarifies the grounds for granting international protection. It also establishes the content of the protection granted to these persons from *refoulement* to access to education, accommodation, and medical care.
Dublin Regulation No. 604/2013	Establishes which member state is responsible for examining the application, and clarifies the rules governing the relations between states.
EURODAC Regulation No. 2725/2000	Establishes an EU asylum fingerprint database, making it easier to determine which member state is responsible for examining individual applications.

Source: Author's elaboration

THE GAPS IN THE EUROPEAN LEGISLATION

Created to introduce common rules allowing the objective determination of which state should be responsible for every single application for asylum, in order to contrast phenomena such as 'asylum shopping'[2] and 'asylum seekers in orbit',[3] the Dublin System, in recent years, entered into crisis as a result of the asylum seekers' flows increase. Remaining quite stable from 1990s to 2010s, the flows started to grow following the Arab Springs and the consequent destabilization of the Northern-African region. Further increases have been registered following the Libyan civil war and the Western military intervention, and ended with the death of Muammar Qaddafi, which left the country highly divided and without a central government able to control the entire territory and its borders. Yet only with the onset of the Syrian civil war, between the end of 2011 and the beginning of 2012, and the advance of radical fighting groups (such as al-Nursa and Daesh) between 2013 and 2014, have the flows of asylum seekers begun to increase dramatically (UNHCR 2014).

This situation has shown the limits and the gaps of the European asylum system, and the idea that the Dublin system has failed because it was unable to carry out its task of efficiently managing the refugees' crisis has become a common opinion (Guild et al. 2015: 34). Due to the lack of political unity and cooperation among member states, and to the partial inadequacy of the legal framework, the system has failed, on the one side, in providing effective instruments capable of avoiding a disproportionate pressure between member states, and on the other side, in complying with human rights obligations concerning asylum seekers and refugees.

The current European asylum system suffers indeed from a number of issues that, despite the changes made over the decades, continue to affect the member states, the EU as a whole, and asylum seekers and refugees. The problems regarding the Dublin system can be divided into those affecting the legal framework and those affecting its implementation. From the legal perspective,

although fairly comprehensive in its legislation, which in theory rules all aspects of the process of seeking asylum, the Dublin system has a significant gap, namely:

- The *asylum seekers' allocation in EU member states*: making it mandatory to submit the application for international protection, and consequently the compulsory permanence, in case the application is accepted, in the first country of arrival, on the one hand generates unbearable disparities in asylum flows across member states, and on the other hand prevents the possibility for refugees to choose the member state in which they resettle themselves.

With respect to the implementation, the Dublin system presents two important gaps, namely:

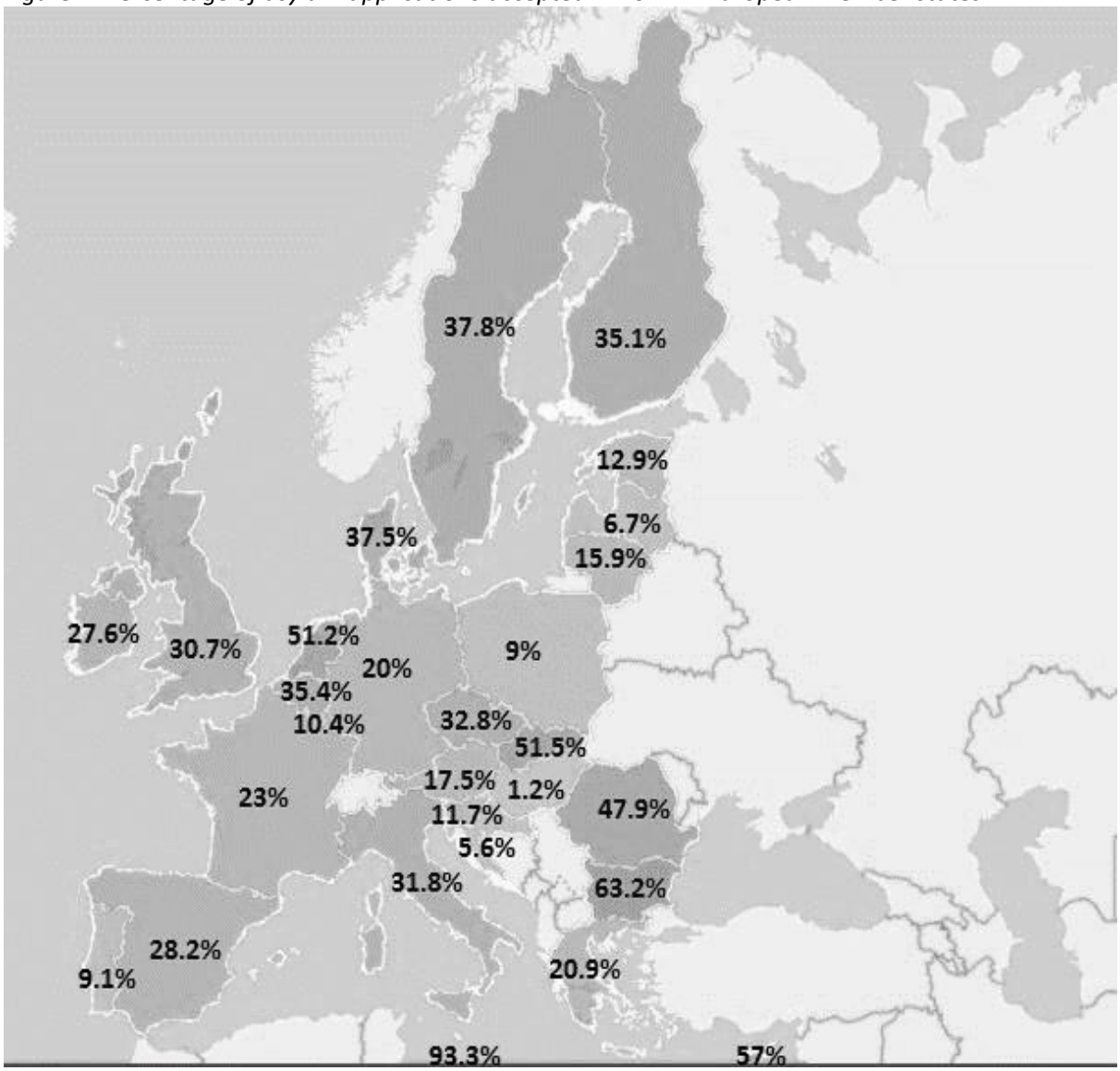
- *The differences between the member states in the treatment of refugees and asylum seekers*: member states show huge disparities in managing asylum applications and in the treatment of applicants. The disparities are reflected in the request procedures, timing, application procedures, and outcome;
- *The differences between the member states with respect to the rights granted to the refugee status*: member states have a strong autonomy in choosing which rights are granted to the refugee status and thus, again, this causes disparities between member states.

ASYLUM SEEKERS AND REFUGEES' ALLOCATION

By introducing the rule providing that only the state of first arrival should be responsible for examining an asylum application, the Dublin System has put greater pressure, both financial and social, on the member states sharing the EU's external borders. Being most exposed to the arrival of migrants, especially illegal ones, they have experienced a dramatic increase in the number of asylum applications submitted in their territory, the number of migrants who died trying to reach their coasts, and in the cost of patrolling borders. These disparities have resulted in a substantial different approach among member states, to the high number of applications, and the countries most affected by illegal arrivals showed frustration on the part of both public opinion and governments, which in some cases led to the adoption of no virtuous and questionable behaviours. For instance, according to The Spiegel Online (2013), Italian authorities have provided provisional documents to the potential asylum seekers facilitating them to reach other European countries, and in some cases, even providing the money needed to reach these places. Italy, however, is not the only country that has adopted questionable measures. The Hungarian government has approved and completed the construction of two walls, on its Serbian and Croatian borders, attempting to prevent asylum seekers arrivals. It is worthy to note that the construction of the second wall represents a much more serious fact, because it is the first time in EU history that a member country built a barrier on another member country border.

The Dublin regulation showed itself to be dysfunctional also from the refugees' point of view. The system according to which the first member state of arrival is responsible for examining asylum applications is based on the strong assumption that EU member states provide equal protection and equal criteria regarding the granting of asylum status, but data shows us that this assumption is not empirically satisfied. Looking, for instance, at data relating to the applications presented in EU member states and the rate of acceptance of applications (Figure 3), we can see that there are indeed substantial differences

Figure 1. Percentage of asylum applications accepted in 2014 in European member states



Source: Authors' elaboration on Eurostat data. Available at: <http://ec.europa.eu/eurostat/statisticsexplained/index.php/File:First_instance_decisions_on_%28nonEU%29_asylum_applications,_2014_%28number,_rounded_figures%29_YB15_IV.png [Accessed 3 February 2016].

As shown by Figure 1, the application acceptance rate in 2014 considerably varied from 1.2 per cent in the case of Hungary to 93 per cent in that of Malta. Of course, this is just a partial analysis, because the variance in the acceptance rates could depend also on differences in the composition of asylum seekers' citizenship, which can vary among member states. However, data[4] shows that there are some cases in which, in spite of a homogeneous composition of asylum seekers' citizenship, the acceptance rate varies considerably. For instance, in 2014, in Slovenia and Slovakia, about 50 per cent of asylum seekers came from Syria, Afghanistan, and Somalia, however, the acceptance rates were respectively 11.7 and 51.5 per cent, and this seems to confirm the hypothesis that part of the variance can depend on the differences between member states in the management of the applications.

For these and for other reasons, such as greater employment opportunities, a more generous welfare system, or the presence of community networks, asylum seekers often do not wish to present their applications in the first member state of arrival. This implies that in many cases refugees attempt to escape the registration of fingerprints and their personal data, and when they

succeed often rely on criminal networks trying to reach the chosen country where they present their asylum applications. This behaviour can be better understood considering that the rule of the first country of arrival has the aim of reducing secondary movements not only for asylum seekers but also for refugees. In fact, when an asylum seeker obtains the refugee status, he does not acquire the right of free movement throughout the EU. The refugees' right to travel is regulated by member states that, in this context, maintain a certain degree of autonomy. An ad hoc query[5] concerning the requirements for recognized refugees in order to travel within the EU, issued by Cyprus in 2014, shows that secondary movement for refugees is hardly limited. In fact, at the question 'Would Member states allow a recognised refugee who holds a temporary residence permit, and who has in his/her procession a refugee travel document according to the Geneva Convention, to travel to their territories for the purpose of residence/employment?', the majority of respondent countries claimed that refugees are entitled to stay in a member country, different from that of first arrival, for up to 90 days, requiring a long term resident permit in order to be able to legally work in that country. In other words, the refugee status does not automatically provide the right of free movement throughout the EU. Therefore, with the current European legislation on asylum, the easiest way for asylum seekers to set up themselves in a country different from the one of first arrival, when they gain the refugee status, remains trying to escape from fingerprint registration and reaching another member country in which to present their applications.

On this point, since its implementation, the Dublin system has been criticized and contested. Focused on the incoherence of the legal system, critics concentrated on the lack of mutual recognition of positive decisions between member states. Currently, in fact, while negative decisions (such as the one of not granting the protection, and the decision to return an asylum seeker in his country of origin) are mutually recognized, so that a decision made by a member state is valid for all the others, positive decisions are not.

As pointed out by Chetail et al. (2016: 87), 'A uniform status valid throughout the Union [would require] that the protection status obtained in one EU member state is transferred to another member state in case a beneficiary of international protection takes up residence in that other Member State. This is currently explicitly excluded from the scope of the amended long term residence directive and is not covered elsewhere in the EU asylum acquis. Moreover, the amended long term residence Directive only applies once a person has obtained long term residence status, which is only possible after a period of at least five years.' The 'mutual recognition' discourse, based on legal and human rights concerns, suggests the need to create and implement a legal instrument capable of overcoming such a gap, claiming that the current EU legislation would already provide the legal presuppositions.[6]

TREATMENT OF ASYLUM SEEKERS AND REFUGEES

The problem of the differences between member states in the treatment of asylum seekers and asylum applications, and the differences in the rights granted to the refugee status can be analysed together. Both in fact arise from the unrestrained autonomy left to the member states in the application of European rules and, as we shall see, they share the same consequences. Therefore, a similar argument can be claimed regarding the treatment of asylum seekers and those who are granted refugee status.

Despite the EU attempts to make the rules more consistent through the Dublin System, substantial differences remain across member states with respect to the procedures for the recognition of the status as well as with respect to the living conditions of refugees after the recognition of the

international protection. These differences, as shown briefly by The Spiegel Online (2013), are reflected in several aspects including the time required to examine applications, housing conditions, health assistance, and the possibility of integration following the recognition of the status. The Spiegel's article shows how applying for asylum in a member state rather than another can make great difference for asylum seekers.

As for what concerns the timing, a survey carried out by Euractive (2015) shows the significant differences in the examination of asylum applications, pointing out how they vary widely from a few months for Sweden to one or two years in the cases of Italy and France. From the standpoint of reception conditions, the differences are even deeper. On the one hand, some Northern-European countries such as UK, Sweden, and Norway offer relatively high hosting standards; on the other hand, some Southern-European countries such as Italy have relatively poor standards. Once the refugee status is recognized, in Norway the state provides a well-structured assistance program, lasting two years, granting access to housing, salary, language and professional courses, and a wide range of social and welfare services. In Italy, on the contrary, the lack of sufficient accommodation and investment, and the disorganization of the international protection system ensures that refugees are often forced to live in conditions of hardship and marginalization, in occupied structures, or in tent camps (Povoledo 2012).

THE EUROPEAN RESPONSES TO THE CRISIS

While member states have tried to respond to the crisis in very different ways the European institutions have undertaken several actions. In May 2015, the EU Commission approved the so-called European Agenda on Migration, proposing a number of short- and long-term solutions to be implemented along the next years, through the approval of individual law packages.[7] The Agenda is important because with this act the Commission begun to recognize the need to adopt a broader and decisive approach, with respect to the common management of immigration, and the need for reforming the Dublin System. Based on the Agenda, other proposals have been approved and some concrete actions have been implemented. With respect to short-term measures, the most important are undoubtedly the adoption of an emergency scheme relocating 160,000 people, from the most affected to other member states, according to parameters such as GDP, unemployment rate, and number of refugees accepted in previous years. This solution, according to the statements made by the Commission itself, will only be a forerunner to a permanent scheme aimed to share the burden and costs of the reception more fairly between the member states.

In this regard, we can note that the approval of the first reallocation package, mainly forced by Germany, primarily represented a signal to the European public opinions and to the member states, in fact, at the current rates, the number of refugees reallocated was lower than the number of people arriving in Europe in a single month (Cerretelli 2015). Moreover, once relocated in different EU member states, applicants will still be obligated to submit their request for asylum in the country in which they were relocated. With respect to long-term actions, the European Commission has recently presented a series of proposals aimed at reforming both the Dublin system and the CEAS.

Concerning the Dublin system, the Commission proposed two reforming options:[8]

i. *A corrective fairness mechanism*: this option provides the preservation of the current first country rule, but it would be supplemented with a permanent relocation and redistribution mechanism which would be activated in emergency circumstances, when a member state would face disproportionate pressure.

ii. (*A new system for refugees' allocation*: this option provides a new allocation system based on a permanent redistribution scheme reflecting the relative size, wealth, and absorption capacity of each member state.

Concerning the reform of the CEAS, the Commission proposed a five-point strategy:

i. *Reforming the Dublin system*: establishing a sustainable and fair system for determining the member state responsible for dealing with an asylum claim;
ii. *Reinforcing the EURODAC system*: extending the scope of the rules and allowing the system to be used to facilitate the return of irregular migrants;
iii. *Achieving greater convergence in the EU asylum system*: transforming the current Asylum Procedures Directive and Qualification Directive into Regulations to ensure a harmonised treatment of asylum applications across the EU;
iv. *Preventing secondary movements*: attaching proportionate sanctions to failure by an applicant to remain in the member state responsible for his claim;
v. *A new mandate for the EU's asylum agency*: to enable it to monitor the compliance by member states with the asylum standards and quality of asylum decisions.

The reform of the Dublin system proposed by the Commission, despite promising to resolve the problems from the states' point of view, does not face them from the potential refugees' perspective. Both proposals could probably reduce the pressure of the accommodation costs imposed on the more exposed states, but they do not address the applicants' inability to present their requests in a member state of their choice with the consequence that, even when the refugee status is acquired, they cannot easily set up their new lives in the desired member state. Consequently, the proposals probably will leave unchanged the practice according to which asylum seekers try to escape the registration upon arrival on European territory, trying to illegally reach, risking their lives, different countries where they present their asylum application.

Therefore, the strategy outlined by the Commission seems to address only in part the identified gaps. With respect to the allocation of asylum seekers and refugees, the proposals, as mentioned above, does not consider in any way the issue of the asylum seekers' inability to decide in which European country they present their asylum application. On the contrary, the Commission intends to strengthen the instruments such as Eurodac, ensuring that the rule of the first state of arrival or the permanent allocation mechanism will be respected in a more effective way, therefore, it does not seem to question the policies on secondary movement, denying the possibility, for a person who has obtained refugee status, to move freely within Europe.

This last point seems in my opinion particularly contrasting with the desire to establish a 'fair' common European asylum policy to enhance the protection of asylum seekers and refugees. A common European asylum system should imply that the decision of a member state to grant refugee status to a subject is mutually recognized and automatically accepted by all member states, and therefore that a person who has been recognized as a refugee should have the opportunity to decide in which member state to settle their new home. Allowing refugees to choose where to stay once they get the status would partially eliminate the reasons why a number of asylum seekers attempt to evade the controls arriving on European territory, thus avoiding that they might be pushed toward the criminal networks trying to reach a European country different from that of first arrival or that in which he is assigned. The authorization to move and to stay within all EU countries could facilitate employment and the social integration of refugees. Being able to move freely, they could move to a member state where there is less unemployment and more job offers or simply to a member state in which some acquaintances may reside who could help them to socially and

economically integrate. Finally, such a choice would greatly facilitate family reunification, avoiding bureaucratic delays that currently can span across several months.

With respect to the issues of the differences between the member states in the treatment of asylum seekers and refugees, the Commission seems to address them more effectively. The Commission assumes that, if applied, the rules concerning the treatment of asylum seekers and refugees, contained in the three procedures, reception, and qualification directives, are in principle sufficient to ensure a harmonized approach between member states. Consequently, the proposals aim to strengthen the monitoring and evaluation system regarding the rules on reception conditions implemented by member states to transpose European legislation. In addition, if implemented, the proposal of transforming the current Asylum Procedures Directive and Qualification Directive into Regulations would surely improve the harmonization of national practices and doing so dealing effectively with the gaps of the differences between the member states in the treatment of refugees and asylum seekers. However, in order to determine the effectiveness of such an approach, we should wait until it will be enforced, and check how the Commission and the Council will decide to implement it. Moreover, in order to be implemented, the Commission proposals must be approved by the Council, which is the ultimate decision-making body of the EU.

FILLING THE GAP: A EUROPEAN CITIZENSHIP FOR REFUGEES

The European Agenda on Migration and the successive Commission's proposals are undoubtedly a good starting point, not only to address the immediate emergency, but also in the effort to create a rational and efficient European system, eliminating the gaps currently present in both the legislation and its implementation. However, to eliminate the gaps highlighted above, further steps without doubt could and should be undertaken, and the efforts should move in the direction of trying to fill the gaps, paying attention to both national needs and the needs of asylum seekers and refugees.

Concerning the implementation gaps, namely the differences between member states in the treatment of refugees and asylum seekers, and in the rights granted to the refugee status, the Commission's proposal of transforming the current Asylum Procedures and Qualification Directives into Regulations, the strengthening of the control on the application of EU law, and the decision to appeal more broadly to the tool of the infringement procedure are a good starting point, but are not enough. Regardless of these measures, member states will maintain a high degree of autonomy, so that some of them will continue to provide more opportunities and guarantees through the implementation of well-structured programs of proven effectiveness, as in the case of Norway, and this will provide an incentive to asylum seekers to try to reach these countries.

A viable solution would be a partial reform of the directives, aimed at reducing the national autonomy, adopting in all member states a common program built on the good practices put in place by the best performing countries including policies to support both economic and social integration. Such an approach, in conjunction with a better monitoring of the compliance with European standards, could be able to solve the above mentioned gaps. With respect to the allocation gap, instead, the Commission's proposals seem to be less effective. Despite the need to begin to consider the problem not only from the point of view of the states but also from the point of view of the refugees it is becoming increasingly clear, the EC does not seem to make much progress in this direction. While both the corrective fairness mechanism and the permanent allocation scheme options probably would fill the gap affecting member states, they would not fill that affecting refugees.

From the member states' perspective, implementing a corrective mechanism that, preserving the first country rule, would be activated in emergency circumstances would reduce the pressure currently faced by the countries sharing European external borders. And the same result would be achieved through the implementation of a permanent redistribution scheme. The second option, however, would probably be more effective than the first since it would not leave room for interpretation issues (How do we define an emergency? How do we quantify a disproportionate pressure?). From the refugees' perspective, however, in both cases, the issue of the impossibility to freely and easily settle themselves in a country of their choice would remain, and this impossibility could continue to push asylum seekers to try to escape the registration on arrival. Rates of applications acceptance, timing for procedures completion, reception conditions during the application process, and economic and social assistance conditions once achieved the refugee's status are not the only considerations pushing an asylum seeker to evade the system.

An asylum seeker could aspire to settle himself in a country different from that assigned to him in order to meet his family (reunifications currently required up to several months, varying from a member state to another) or to meet a relative currently excluded from the definition of family, or even to settle in a country of which he knows the language, or in which job opportunities for his profession are grater. The motivation and the incentives explaining such behaviour may be various, but all of them may contribute to encouraging asylum seekers to escape the Dublin system and trying to reach other countries different than that of first arrival, often doing so relying on human traffickers.

To solve this gap, the solution I propose is the establishment of a European citizenship for refugees. Once resolved or greatly mitigated, the problem of differences of treatment, the establishment of such an instrument would reduce considerably the incentives for refugees to escape the Dublin system. In other words, while maintaining the rule of the first country of arrival or applying a permanent allocation scheme, when an applicant expects to find similar conditions among member states— with respect to rates of applications acceptance, timing for procedures completion, reception conditions during the application process and, economic and social assistance conditions once achieved the status— much of the incentives to evade the system would vanish.

Therefore, once the implementation gaps are filled, introducing the opportunity for an individual to move into the European territory once refugee status is acquired, would leave no more incentives for an asylum seeker to escape the system. In such a context indeed, if granted refugee status, he could move to his family, easily reach any friends or relatives, to move himself to a country of which he knows the language or, to a country where the job market is more favourable.

EUROPEAN CITIZENSHIP FOR REFUGEES: IMPLEMENTATION

As provided by the Treaties, European citizenship adds a number of additional rights to those already conferred by the possession of the nationality of a member state. These rights are: freedom of movement and residence throughout the EU; the active and passive right to vote in local elections and European elections in the member state of residence; the protection by the diplomatic and consular bodies of any member state in a third country in which the state of which the person concerned is a national is not represented; the right to petition to the European Parliament and to complain to the Ombudsman.[9]

A similar framework could be applied to the case of refugees. European citizenship for refugees might be thought as a temporary citizenship conditioned to the possession of the refugee status. In

other words, in this case, European citizenship would not be linked to the nationality of the subject but to the refugee status, which currently entitles the person who possess it to stay in the territory of the member state that has granted the status. It would also be temporary, in the sense that the refugee would lose it when he would no longer be in possession of the refugee status for one of the grounds specified in the European standards.

Which rights to associate with this form of citizenship is a matter of debate among policymakers. Rush and Martin (2008, 2010), analysing economic migration, developed a theory suggesting the existence of a trade-off between the number and rights of migrants, in high-level countries. In other words, they claim that when increasing the number of migrants and the economic costs associated with them, the rights recognized to them tend to decrease. Applied to the context of refugees, the theory should provide a similar outcome, but economic concerns do not seem to be the only variable taken into account by policymakers. Especially in the EU context, non-majoritarian institutions such as the EC and European Court of Justice, less dictated by budgets constraints and more isolated from populist majoritarian demands to impose ever greater restrictions on access to protection, seem to be more incisive in conditioning the policymaking process (Thielemann and Hobolth 2016).

Therefore, in order to decide which rights to associate with this form of citizenship economic, political, and social concerns have to be jointly considered. One might decide to guarantee the same rights as those granted by European citizenship to nationals of member states; or one may instead decide to cover only certain rights deemed to be essential. For example, this form of citizenship may exclude the recognition of the right to vote, but recognize education related rights. However, for what concerns the above mentioned gaps, since basic rights are currently provided by the Dublin system and the EU seems willing to harmonize and to enforce them throughout its territory, the minimum fundamental right linked to this form of European citizenship should include temporary freedom of movement and residence throughout the EU.

From a political point of views, for member states, such an instrument could probably represent a political cost, especially for populist parties and for those countries where immigration is a very politicized topic. However, the fact that such a decision should be taken in the framework of European institutions that in some sense are less sensible to the political cost issue,[10] would greatly mitigate such a cost for member states. From the economic point of view, granting freedom of movement to refugees would not represent a costly right, neither for member states nor for the EU. Of course, if refugees were able to move through the EU, some member states would probably accommodate more of them, affording higher costs. However, since the major cost for member states remains the management of asylum seekers (accommodation costs, welfare costs), this new system could be implemented jointly with a compensation mechanism —added to the emergence or the permanent quota schemes depending on which of the two options would be implemented by the EU— which allocates a smaller share of asylum seekers to countries that have welcomed a greater number of refugees.

Finally, from the social perspective, for member states and the EU, allowing refugees to settle in a country of their choice would probably represent a profit rather than a cost or at least it would not create major costs. On the one side, the possibility for a refugee to settle in a country of which he knows the language, in which other friends or relative reside, or in which there are more job opportunities for his profession, could improve the possibility for the refugee to integrate himself in the social and economic context of that country, therefore representing a benefit rather than a cost. On the other side, once registered in the Eurodac database, which includes a set of biometric parameters aimed to register asylum seekers and refugees, the ability to move within the EU would not create any particular public security problem. A system reformed in this way would represent a

huge step forward in improving the common European management of asylum and would probably be more consistent with the principles of democracy, rule of law, and human rights that underpin the EU itself.

CONCLUSION

The immigration and asylum issues are currently central in the European political debate, and this extremely fluid situation makes it quite complicated to make a precise analysis of the policies proposed and implemented at the national and European levels. However, an analysis of the European legislation and practices related to the Dublin system allowed us to identify and isolate some major problems inherent in the current Common European Asylum System: (a) the allocation problem; (b) the problem of the conditions of asylum seekers and refugees; and (c) the differences in the rights granted to the status of refugee among member states.

Analysing the most recent European proposals, developed in the effort to reform the system and to create the conditions for the implementation of a migration policy more effective and efficient in the long run, I have shown how these proposals addresses the identified gaps only in part. In particular, while promising to solve the allocation problem from the states' point of view, the proposals fail to address it from the potential refugees' perspective. With respect to the issue of the differences between member states in the treatment of asylum seekers and refugees, the EU seems to address the issue effectively. The Commission assumes that if the rules concerning the treatment of asylum seekers and refugees were to be applied, this would be sufficient to ensure a harmonized approach among member states. For this reason, the solution presented by the EC is to transform the current Asylum Procedures Directive and Qualification Directive into Regulations and strengthen the monitoring and evaluation system of the EU rules implemented by states. This scenario, if implemented, could actually homogenise the practice on asylum seeking and the rights associated with the refugee status among member states.

Concerning the allocation gap, instead, the EC proposals seemed to be less convincing. The quota system proposed —either the compensation scheme with the maintenance of the first country rule, or the permanent one abolishing the first country rule— can reduce the economic and social pressure imposed on the more exposed states, but cannot solve the problem of the applicant's inability to present his request in a member state of his choice. Doing so, the proposals probably will leave unchanged the practice whereby asylum seekers are trying to escape the controls upon arrival on European territory to try to reach, in a clandestine way and risking their lives, a different country where they may present their application. For these reasons, the allocation gap could be filled only in part. In any case, the implementation of these proposals is subjected to the approval of the legislative and operational measures required to implement them. From this point of view, in order to assess the effectiveness of the EC proposals, we will need to wait for the approval of legislative packages essential to its implementation.

Since both the gaps of the differences between member states in the treatment of asylum seekers and asylum applications, and the differences in the rights granted to the refugee status appear to be satisfactorily addressed by the EC, I presented a proposal focused on filling the allocation gap, which currently seem to be addressed only in part, considering the perspective of refugees. Even if one of the two EC proposals about the reform of the Dublin system would be implemented, in fact, it will remain an impossibility for a refugee to freely and easily settle itself in a country of his choice, and this impossibility could continue to push asylum seekers to try to escape the registration on arrival.

The solution I propose, relying on the insights offered by the cosmopolitan literature, is the establishment of a European citizenship for refugees. Following the cosmopolitan line of thought, the partial disjunction between citizenship and nationality that occurred with the introduction of European citizenship could become a starting point to imagine the implementation of a system granting certain rights regardless of the individual nationality so that it could be applied to refugees. Once the problems of differences of treatment are solved, the establishment of such an instrument would reduce to a minimum the incentives for refugees to escape the Dublin system. While maintaining the rule of the first country of arrival or applying a permanent allocation scheme, when an applicant is expected to find similar conditions among member states —with respect to rates of applications acceptance, timing for procedures completion, reception conditions during the application process and, economic and social assistance conditions once achieved the status— much of the incentives to evade the system would vanish.

When the implementation gap is filled, the introduction of the possibility for refugees to move into the European territory once refugee status is acquired would not leave much incentive for an asylum seeker to escape the system. In a similar context, he could move to his family, easily reach any friends or relatives (currently not included in the definition of family, and so excluded from the reunification procedure), to move himself to a country of which he knows the language or, to a country where job market is more favourable. Such a European citizenship for refugees might be thought of as a temporary citizenship conditioned on the possession of the refugee status. It would also be temporary in the sense that the refugees would lose it in case they were no longer in possession of the refugee status. To this particular type of citizenship, one may apply different rights, for instance the same rights as guaranteed by European citizenship to nationals of member states, or just a subset of those rights deemed essential. With regard to the problems considered here, however, it may be sufficient to connect to European citizenship for refugees only the freedom of movement, residence, and work throughout the EU.

Such a policy would have a number of advantages. Allowing refugees to choose where to stay once they got the status would partially eliminate the reasons why a number of refugees attempting to evade the registration once arrived on European territory, thus avoiding their being pushed toward criminal networks in the attempt to reach a different country. The authorization to move and to stay within the entire European territory could facilitate employment and social integration, and in doing so reduce the costs related to the accommodation of refugees. Being able to move freely, they could move to a member state where there is less unemployment and more job offers, or simply to a member state in which there may reside any acquaintances who could help them to socially and economically integrate in a given country. In addition, such a choice would greatly facilitate family reunification, avoiding delays that often span several months. A system so reformed would represent a huge step forward in the achievement of a genuine common European asylum management that would be more consistent with the principles of democracy, rule of law, and human rights underpinning the EU itself.

***

CORRESPONDENCE ADDRESS

Marco Cellini, Libera Università Internazionale degli Studi Sociali Guido Carli, Viale Romania 32, 00197 Roma, Italy [mcellini@luiss.it]

ACKNOWLEDGEMENTS

The author gratefully acknowledges Professor Daniele Archibugi for his guidance, for the time spent in the revision of the manuscript, and for his precious insights. Further thanks to colleagues at the Italian National Research Council, Institute for Research in Population and Social Policies (CNR-IRPPS) and the staff of Euro-Alternatives for their valuable feedback, in particular thanks to Daniele Santoro, Martina Bavastrelli and Alice Pease.

ENDNOTES

[1] For a review of the different understanding of the concept of global citizenship see Heater 1996.

[2] The possibility, by the applicant, to submit their applications in more than one European countries.

[3] The fact that the applicant was sent from a member state to another without anyone being declared competent for the examination of its application.

[4] See data: Eurostat, Five main citizenships of (non-EU) asylum applicants, 2015. Available at: <http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics>.

[5] European Migration Network, 2014. Ad hoc query on right of recognised refugees to travel in EU, requested by CY EMN NCP.

[6] For a thorough analysis of the mutual recognition discourse see: European Council on Refugees and Exiles (2014).

[7] For the complete Agenda's content, see: EC. European Agenda on Migration, COM (2015) 240.

[8] European Union: European Commission, Communication from the Commission to the European Parliament and the Council Toward a Reform of the Common European Asylum system and Enhancing Legal Avenues to Europe, 6 April 2016, COM(2016) 197 final. Available at: <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agendamigration/proposalimplementationpackage/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf> [Accessed 21 May 2016].

[9] TFEU Articles 20-25.

[10] On this point, see the position of the European Commissioner for migration, Dimitris Avramopoulos, in Holehouse (2015).

REFERENCES

Archibugi, D. (2008). *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy*. Princeton, NJ: Princeton University Press.

Archibugi, D., Held, D. and Köhler, M. (1998). *Re-Imagining Political Community: Studies in Cosmopolitan Democracy*. Stanford, CA: Stanford University Press.

Carter, A. (2013). *The political theory of global citizenship*. Abingdon: Routledge..

Cerretelli, A. (2015). Un voto che complica la crisi dei rifugiati. *Il sole24ore online* [online]. Available at: <http://www.ilsole24ore.com/art/commenti-e-idee/2015-09-23/un-voto-che-complica-crisi-rifugiati-081406.shtml?uuid=ACpgDx2> [Accessed 2 February 2016].

Cherubini, F. (2014). *Asylum Law in the European Union*. Abingdon: Routledge.

Commission communication, COM(2015) 240 of 13 May 2015 on the European Agenda on Migration. Brussels.

Commission communication, COM(2016) 197 final of 6 Abril 2016 on a Reform of the Common European Asylum system and Enhancing Legal Avenues to Europe. Brussels.

Chetail, V., De Bruycker, P. and Maiani, F. (2016). *Reforming the Common European Asylum System*. Leiden: Brill Online Books. Available through: Brill Online Books and Journals website <http://www.brill.com/products/book/reforming-common-european-asylum-system> [Accessed 23 May 2016].

Euractive (2015). *Asylum systems in Europe remain disparate*. [online] Euractive.com plc. Available at: <http://www.euractiv.com/sections/justice-home-affairs/asylum-systems-europe-remain-disparate-317822> [Accessed 14 February 2016].

European Council on Refugees and Exiles (2014). Mutual recognition and transfer of status within EU. [pdf] ECRE. Available at: <http://ecre.org/component/downloads/downloads/953.html> [Accessed 23 May 2016].

European Commission and Directorate-General for Home Affairs (2014). *A Common European Asylum System*. Luxembourg: Publications Office.

European Migration Network (2014). Ad hoc query on right of recognised refugees to travel in EU, requested by CY EMN NCP. Available at <https://www.udi.no/globalassets/global/european-migration-network_i/ad-hoc-queries/ad-hoc-query-on-right-of-recognised-regugees-to-travel-in-eu.pdf> [Accessed 20 May 2016].

European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01, available at: http://www.refworld.org/docid/4b17a07e2.html [accessed 15 February 2016].

Guild, E., Costello, C., Garlick, M., and Moreno-Lax, V. (2015). *Enhancing the Common European Asylum System and Alternatives to Dublin*. Study for the European Parliament, Brussels: LIBE Committee. Available at: <http://www.ceps.eu/system/files/CEPS_LSE_83_0.pdf> [Accessed 10 January 2016].

Heater, D. (1996). *World citizenship and government. Cosmopolitan Ideas in the History of Western Political Thought*. Basingstoke: Palgrave Macmillan.

Holehouse, M. (2015). Cost of migration crisis means nothing to us, says top EU official. The Telegraph online [online]. Available at: <http://www.telegraph.co.uk/news/worldnews/europe/eu/11896827/Cost-of-migration-crisis-means-nothing-to-us-says-top-EU-official.html> [Accessed 25 May 2016].

Israel, R. (2013). What does it mean to be a global citizen? *OpenDemocracy* [online] 13 February. Available at: <http://www.opendemocracy.net/ourkingdom/ron-israel/what-does-it-mean-to-be-global-citizen>. [Accessed 15 May 2016].

Povoledo, E. (2012). In Italy, shantytowns of refugees reflect paradox on asylum. The New York Times [online]. Available at: <http://www.nytimes.com/2012/12/27/world/europe/the-italian-paradox-on-refugees.html?_r=0>. [Accessed 25 May 2016].

Ruhs, M. and Martin, P. (2008). Numbers vs. Rights: Trade-Offs and Guest Worker Programs. *International Migration Review* 42, pp. 249-265.

Ruhs, M. and Martin, P. (2010). Numbers versus Rights in Low-Skilled Labour Immigration Policy? A Comment on Cummins and Rodríguez (2010). *Journal of Human Development and Capabilities* 11, pp. 305-309.

Spiegel Online Staff, 2013. Fortress Europe: How the EU Turns Its Back on Refugees. *Spiegel Online* [online] 9 October. Available at: <http://www.spiegel.de/international/europe/asylum-policy-and-treatment-of-refugees-in-the-european-union-a-926939.html> [Accessed 20 December 2015].

Thielemann, E. and Hobolth, M. (2016). Trading numbers vs. rights? Accounting for liberal and restrictive dynamics in the evolution of asylum and refugee policies. *Journal of Ethnic and Migration Studies*, 42(4), pp. 643-664.

Triggiani, E. (2006). La Cittadinanza Europea per "l'Utopia" Sovranazionale. *Studi sull'integrazione Europea,* 1(3), pp. 435–478.

United Nations High Commissioner for Refugees (UNHCR) (2014). *Rapporto sulle Richieste d'Asilo 2014*. [online] Genève: United Nations High Commissioner for Refugees. Available at: <http://www.unhcr.it/news/raggiunto> [Accessed 5 December 2016].

Urbinati, N., 2015. Migranti senza-Stato. *La Rivista il Mulino*. [online] Available at: <http://www.rivistailmulino.it/item/2799> [Accessed 3 january 2016].

Journal of Contemporary European Research

Volume 13, Issue 1 (2017)

Research Article

Why no Gridlock? Coping with Diversity in the Council of the European Union

Andreas Warntjen, *University of Twente*

Citation

Warntjen, A. (2017). 'Why no Gridlock? Coping with Diversity in the Council of the European Union', *Journal of Contemporary European Research*. 13 (1), 963 - 979.

First published at: www.jcer.net

Abstract

The risk of gridlock has been haunting discussions on European legislative decision-making for decades. All European Union legislation has to pass through the Council of the European Union, which has a relatively high voting threshold and whose members hold a diverse set of preferences, particularly after Eastern Enlargement. Nevertheless, the legislative output of the Union is relatively high. Existing explanations focus on process-related mechanisms (vote trading, cooperative problem-solving). In contrast, this study explains how member states can change the content of proposals to accommodate the specific concerns of recalcitrant governments. Several empirical examples show how member states have adapted European legislation to overcome the risk of gridlock. Based on a new data set covering a five year period in one policy field (environmental policy), this study shows that member states frequently put forward requests to limit the scope of European legislation, to extend transitional time periods or to lower standards. Furthermore, these requests are often successful. Besides allowing member states to opt out of European agreements (differentiated integration), EU legislation can accommodate concerns of individual member states, thus increasing the decision-making capacity of the Union.

Key Words

Council of the European Union; Legislative decision-making; Gridlock; Member state requests

INTRODUCTION

The risk of legislative gridlock in the Council due to its high voting threshold has been a concern for decades. The reform of the Council's voting system has been a prominent topic in discussions on the reform of the Union since the 1980s, if not earlier (Hayes-Renshaw and Wallace 2006). The near doubling of the number of members of the Union with Eastern Enlargement in 2004 was expected to raise the risk of gridlock even further due to the difference in socio-economic terms between new and old member states (König and Bräuninger 2000). The discussions on treaty reform which lead to the Nice treaty, the abandoned constitutional treaty and eventually the Lisbon treaty were focused on making the EU "fit for enlargement". The changes of the Nice treaty, however, were widely seen as insufficient and the reform of the Lisbon treaty only came into effect in 2014 (Baldwin et al. 2001; Koczy 2012). The Council, nevertheless, still routinely adopts a high volume of legislation (Toshkov 2014; Settembri 2008).

How do member states reach agreement in the Council despite divergent preferences and a high voting threshold? The existing literature focuses on process-oriented mechanisms. By exchanging votes or adopting a problem-solving orientation member states can reach common ground (Akzoy 2012; Mattila and Lane 2001; Scharpf 1997). This study discusses a complementary explanation that focuses on the content of legislative proposals. Member states can reach a sufficient majority by accommodating the specific interests and domestic situations in some member states through the use of derogations. A member state government might be primarily concerned about the effects of a regulation on a specific sector or setting. Exempting certain situations from a regulation might then

allow a member state government to agree to a European regulation despite having reservations regarding specific aspects. Similarly, longer transitional periods might make a European regulation acceptable to a government that has reservations about it. Finally, lowering standards might make a legislative proposal acceptable to a sufficient majority in the Council. Changing the content of legislation in line with member states requests is an alternative to process-oriented mechanisms (vote trading, problem-solving negotiation style) or restricting the scope of European legislation geographically (opt-outs).

This exploratory study makes several contributions to the literature. First, it advances our understanding of Council decision-making conceptually by distinguishing between different forms of member state requests. Several case studies demonstrate the use of these different tools to overcome gridlock. Second, it adds to our empirical knowledge of Council decision-making. Member state requests have received scant attention in the literature so far, probably because of the secrecy surrounding Council deliberations. While it seems like conventional wisdom that member states change legislation in the Council, empirical studies covering a broader set of proposals are rare. Cross (2013, 2012) looks at member state interventions, including member state requests as they are defined here, but only in the context of the DEU data. The DEU data set (Thomson et al, 2012) covers a large number of policy fields, but is restricted to highly salient and controversial proposals. In contrast, this study looks at all member state requests in one policy field for a five year period. This can give us a better sense of how frequently member states request changes of legislation. In addition, we can see whether there are differences between member state requests for exemptions, lower standards and longer transitional time periods. Finally, it discusses the adoption rate of these requests, differentiating between the various stages of the legislative process and type of requests. According to existing studies (Arregui 2016; Cross 2013) member state involvement in Council negotiations has a negative effect on bargaining success. In contrast, this study shows that the majority of individual member state requests are at least partially incorporated into European legislation.

Using data on all legislative proposals on environmental policy discussed in the Council after Eastern enlargement in 2004 and before the coming into force of the Lisbon treaty in 2009, this study shows that member states routinely request exemptions, longer transitional time periods or lower standards. The time period of the study was chosen because both the formal rules and the overall set-up governing decision-making in the Council did not change in this period. It is also sufficiently long and includes a sufficient number of proposals which are included in this period to be representative. These requests are quite often successful within the Council but also affect the final outcome of the legislative process. The study cannot definitively establish the link between the lack of gridlock we observe and the use of derogations, lower standards and longer transitional periods. Nevertheless, the high success rate is quite suggestive. It also cannot rule out the possibility that gridlock was avoided due to vote trading, a problem-solving attitude or other factors. But it does offer an alternative (arguably simpler) explanation and demonstrates that member state requests do play a frequent role in Council negotiations. The conclusion outlines several areas of further research that could be addressed based on an extended data set or using comparative case studies.

The novel empirical insights of this study contribute not only directly to the literature on Council decision-making, but they are also relevant for the broader discussions on how the European Union can be an effective policy maker as it becomes more diverse. Besides allowing member states to opt out of European agreements (differentiated integration) (Leuffen, Rittberger and Schimmelfennig 2012), EU legislation can accommodate specific concerns of member states, thus increasing the decision-making capacity of the Union. The relatively high success rate also shows that the Union is quite responsive to the interests of member state governments, which is relevant for the discussion on a democratic deficit of the European Union (Warntjen 2011; Hix 2008; Moravcsik 2008).

DECISION-MAKING IN THE COUNCIL OF THE EUROPEAN UNION

The Council of the European Union is characterized by a high voting threshold and a growing number of member states as well as increasing preference heterogeneity in some policy fields (Dobbins 2008; Hosli and Machover 2004). This combination should make it prohibitively difficult to find agreement on changing the current legislative status quo by adopting new European legislation (Tsebelis 2008; König and Bräuninger 2000). The Council, however, routinely adopts a high volume of legislation (Toshkov 2014; Settembri 2008). Existing explanations of Council decision-making focus on the process of negotiations, in particular the style of discussions or the possibility that member state governments strategically vote against their interests on individual dossiers (Falkner 2011; Warntjen 2010). By adopting a problem-solving mode or trading votes, government representatives can find solutions despite divergent preferences. Rather than engaging in 'hard bargaining' - vetoing legislation that is detrimental to their self-interest - member states representatives might be focused on finding a solution to a common problem when deliberating about new legislation (Braun 2014; Lewis 1998, 2010; Scharpf 1997). Shifting deliberations to COREPER, with its high frequency of interactions and wide-ranging discussions, can help to overcome cooperation problems (Parizek, Hosli, and Plechanova 2015). However, the more important an issue, the more likely it is that a (hard) bargaining style dominates the proceedings (Naurin 2010). Even in a bargaining setting high preference heterogeneity and high voting thresholds do not necessarily lead to gridlock if member states do not insist on their ideal positions on every issue (Mattila and Lane 2001). Member states could agree to changes that would make them worse off regarding one aspect of a legislative dossier if they are compensated on other issues (Aksoy 2012; König and Junge 2009; Scharpf 1997, pp. 128-30). This compensation can operate at several levels. At the level of membership, for example, new member states might agree to stricter regulatory measures in some areas, even though they are opposed to them, if they receive side-payments via the EU budget. Similarly, the benefits of being a member of the European Union might outweigh the costs of enacting some unwelcome legislative dossiers (Achen 2006, pp. 101-3). Across legislative dossiers, member states might engage in a system of diffuse reciprocity, acquiescing in a decision, which runs counter to their interests, to the benefit of other member states because of the expectation that they will do the same for them at some later stage (Warntjen 2010; Keohane 1986). A more constrained form of cooperative exchange posits that member states resolve controversies across legislative proposals but within a ministerial portfolio or the same time period. To overcome gridlock, member states acquiesce in passing a legislative dossier, even though they are against it, in return for support from other member states on a legislative dossier that is more important to them (vote trading/log-rolling). Limiting the exchange to proposals in the same domain or in the same time period limits the risks of member states reneging on their part of the deal (König and Junge 2009). Finally, vote trading might take place within the same proposal. States that might veto a legislative dossier due to their opposition to a specific provision might be placated by the benefits they expect from another provision in the same legislative proposal (Aksoy 2012). In general, member state governments might accept legislation that runs counter to their interest if it is of low importance to them (Stratmann 1997). However, preference outliers often do not attach low salience to an issue where they disagree with the majority of member states. One example is the proposal regarding the inclusion of aviation activities in the greenhouse gas emission allowance trade (European Commission 2006). A number of new member states (Poland, Latvia, Lithuania, Romania, and Slovakia) departed from the majority in demanding special provisions for new airlines. According to an expert survey (Thomson 2011), this issue was very important for these preference outliers. Thus, vote trading is not always an option to overcome possible gridlock.

Besides reaching agreement via vote trading or problem-solving, member states can also restrict the scope of European legislation geographically. Allowing certain member states to opt out of European

legislation would allow the Council to side-step disagreements over the level of European integration in a particular policy field (Duttle et al. 2013; Holzinger 2011; Leuffen, Rittberger, and Schimmelfennig 2012; Scharpf 2006). Rather than restricting their applicability geographically, however, the Council could also adapt legislative proposals in line with member state requests. For example, in the proposal on aviation activities mentioned above a special reserve of allowances for new entrants and fast growing airlines was included. This change reflected the wishes of a number of Eastern European countries without geographically restricting the scope of the directive. Finally, the Council might cope with diversity by delegating crucial decisions to later stages (e.g. implementation) and/or other actors while avoiding clear-cut and detailed decisions in the Council (Junge, König and Luig 2015; Tsebelis 2008; Heritier 1999).

COPING WITH DIVERSITY IN THE COUNCIL: DEROGATIONS, TRANSITIONAL TIME PERIODS AND LOWER STANDARDS

Accommodating the specific concerns of recalcitrant governments by including exemptions for specific sectors or situations might allow a government to agree to Europe-wide regulation, possibly even on a high level of regulation. Similarly, longer transitional time periods and lower standards might allow a sufficient majority of member states to accept new European regulations despite some specific reservations.

Governments can disagree on the level of regulation, the level at which the legislation is enacted, the scope of the regulation and the policy instrument used when discussing a new proposal for European regulations (Heritier 1999, 1996). The positions of governments on these issues vary according to economic interests, party political calculations and the fit with current bureaucratic practices. For example, party political or ideological reasons lead left-leaning governments to favor stronger interventions of the state. Furthermore, governments of countries with high standards prefer common European standards to level the playing field because of regulatory competition (Scharpf 1996). And in general, member states would try to avoid facing the costs of adjusting existing bureaucratic practices due to the misfit of new EU legislation and previously used policy instruments (Heritier 1996).

Limiting the scope of a regulation allows a member state government to agree to a European-wide regulation despite having reservations regarding specific aspects. The scope of a regulation can be limited by exempting certain sectors of the economy, a certain set of companies or group of employees. In addition, the scope of the applicability of a regulation might be limited by defining the situation to which it applies more narrowly or excluding certain situations. For example, several member states requested derogations to exclude flights by small planes, for public services and to remote areas from the scope of the directive on the inclusion of aviation activities in the greenhouse gas emission trading scheme (European Commission 2006), which is discussed in more detail below. These derogation might allow European regulation to be adopted which would otherwise have been vetoed by a group of governments. For instance, a group of member states that constituted a blocking minority successfully requested a restriction of the scope of the directive on the management of waste by extractive industries (European Commission 2003), which limited the type of waste sites to which the directive applied.

The effect of longer transitional periods is similar to restricting the scope of a proposal. A longer transitional period implies that the costs of adjustments are spread out over a longer time period, reducing objections as to the feasibility of enacting necessary changes. Furthermore, the political costs might be lower given that politicians discount the future. Finally, lowering the level of

regulation could ensure a sufficient majority in the Council (Scharpf 1997, 2006). The directive on the quality of ambient air (European Commission 2005), discussed in more detail below, provides another example of how the Council adapts legislative proposals in line with member state requests. Several member states successfully requested a higher limit value for some pollutants and longer transitional time periods. By adding exemptions, delaying the entry into force or lowering regulatory standards member states might reach a sufficient majority to pass legislation even when both preference heterogeneity and voting thresholds are high.

This explanation differs from one focused on a problem-solving mode: there is no transformation of preferences and member states are not engaging in a common search for new value-creating solutions which benefit all of them (Scharpf 1997, pp. 130-2). It also does not rely on a mutually beneficial trade of votes across issues which are valued differently by the actors (Stratmann 1997). A change of the content of legislative proposals along the lines described above might be the result of a problem-solving mode and part of a vote-trading deal. However, these explanations posit a more complex process (new alternatives, exchange of votes) and require certain assumptions (transformation of preferences, differences in salience). In contrast, the approach outlined above focuses solely on changes to the content of the proposal at hand.

States might also prefer higher levels of regulations or suggest a wider scope of European legislation. However, outlier with preferences for more regulation or harmonization would prefer any European legislation to having none (Scharpf 1996), which makes them less of a concern when studying the risk of gridlock in the Council. In addition, the Commission which drafts European legislation prefers more regulation and harmonization than the member states (Thomson 2011). Thus, member states are more likely to disagree with a Commission proposal because it goes too far in their view. Thus, the study only addresses member state requests to restrict European legislation.

ADAPTING TO DIVERSITY: EMPIRICAL EXAMPLES

The proposal on the inclusion of aviation activities in the greenhouse gas trading scheme and the regulation on the quality of ambient air provide examples of how the concern of specific member states were accommodated during the discussion in the Council.

In 2006, the Commission put forward a proposal regarding the inclusion of aviation activities in the greenhouse gas emission allowance trading (European Commission 2006). One contested issue was whether there should be special provisions for new entrants to the aviation market. According to the DEU data (Thomson et al, 2012), all new member states felt that there should be special provisions for new aircraft operators, whereas the old member states generally opposed this idea. One of the questions discussed in the working group was about which non-discriminatory measures could be used to address special situations in the member states. Lithuania argued that basing the allowance on historical levels without making special provisions for new entrants would distort the aviation market, which was a rapidly growing part of the Lithuanian economy. Similarly, Latvia and Bulgaria argued that potential growth rates of operators had to be taken into account in order to not unduly discriminate against new operators with a small market share. In their written contribution, the Czech Republic pointed to the potential negative impact of not making allowance for smaller aircraft operators, which would violate the principle of equal access to air transport for all EU citizens (Council 2007a). This issue was highly salient for a number of new member states (Poland, Latvia, Lithuania, Romania, and Slovakia). A compromise proposal by the presidency (Council 2007b) took up these issues by including a special reserve of allowance for new entrants and fast growing airlines, which was also included in the Council's Common Position (Council 2008) and the final

version of the directive. Thus, the Council included a provision that directly addressed the concerns of several member states on an issue that was of high salience to them.

Another example is directive on the quality of ambient air (COM 2005/447). The proposal mainly merged existing legislation, but it also extended regulation to new pollutants, namely specific fine particles (particulate matter $PM_{2.5}$). It introduced a binding concentration cap for these fine particles of 25 $\mu g/m^3$ to be achieved by 1 January 2010 (European Commission 2005). A group of member states, including Latvia and Poland, preferred introducing non-binding targets for 2010 and postponing binding limit values for $PM_{2.5}$ to a later date. According to the DEU data, nearly all Central and Eastern European countries (CEEs) opposed the introduction of binding targets for a new pollutant. The issue was rated as very important by Poland and as moderately important by the other Eastern European countries opposed to the new regulation. The Czech Republic, Lithuania, Latvia and Poland voiced their concerns regarding binding limits at several meetings of the working group level in 2006. In addition, Eastern European and several other member states asked for a longer time period during which the regulations regarding particulate matter would come into force (Council 2006a). Poland requested an individual derogation which would postpone the entry into force of limit values for $PM_{2.5}$ for an additional 5 years. According to the Polish proposal from April 2007, the limit value for $PM_{2.5}$ would come into force in 2015 in general, but only in 2020 for Poland. In addition, the exemption period of three years for PM_{10} would be six years for Poland. Poland argued that it could not meet the targets in the proposed time frame because of its reliance on coal plants. Adopting the directive would lead to dire social consequences in Poland. The Council adopted a Common Position in first reading in June 2007 (Council 2007b). It stipulated a binding limit value of 25 $\mu g/m^3$ for $PM_{2.5}$ by 1 January 2015. The original time point for a binding limit value of 1 January 2010 was now adopted for a non-binding target value. Similarly, the deadline for reaching the limit values for other pollutants (NOX, PM_{10}) could be postponed by five and three years respectively. Poland (and The Netherlands) voted against the Common Position but accepted the final version, which kept the extended deadline of 2015 for the limit value for $PM_{2.5}$ as well as the possibility of postponing the deadlines for other pollutants (NOX, PM_{10}). Thus, the discussions on the directive in the Council to a large extent focused on the entry of force of the directive. By postponing the initial entry into force and allowing exemptions to the fixed deadlines agreement in the Council was possible. Eleven member states requested a higher limit value for PM_{10} in the directive on ambient air quality (Council 2006b). The pollution limit was subsequently raised during the legislative negotiations and the standards were effectively lower in the final act than the Commission originally proposed.

FACING THE RISK OF GRIDLOCK: ENVIRONMENTAL POLICY AFTER EASTERN ENLARGEMENT

As the previous section has shown, derogations, lower standards and extended transitional periods have been used in the Council to overcome the risk of gridlock. In order to study member state requests in the Council more broadly, this section looks at the use of these tools between the first round of Eastern enlargement (May 2004) and the entry into force of the Lisbon treaty (December 2009) in the field of environmental policy. Environmental policy after enlargement is a regulatory policy domain characterized by a relatively high level of preference heterogeneity (Braun 2014; Dobbins 2008). This makes it a suitable field to establish the use of member state requests to limit the scope or level of European regulation.

The accession of a large number of mainly Eastern European countries was widely expected to lead to greater preference heterogeneity and hence to gridlock in the Council unless the voting threshold was lowered substantially. The Eastern European candidate countries had a larger agricultural sector

and were poorer (in terms of GDP per capita) than the old member state (Baltas 2004). Thus, distributive conflict in agricultural policy was expected to increase and gridlock in social policy should be more likely after enlargement (König and Bräuninger, 2000). Nevertheless, legislative output in the European Union did not decrease substantially after enlargement in 2004 (Toshkov 2014; Settembri 2008). Formal analysis of the new Lisbon voting rules in the Council point to a higher likelihood of proposals being adopted by the Council (Koczy 2012). However, these voting rules only came into effect in 2014. In the process of enlargement, candidate countries had to adopt existing EU legislation (the acquis communitaire) and reform their institutions. This might have prevented an increase in preference heterogeneity of the member states after enlargement. Thus, gridlock might not have materialized after enlargement because the heterogeneity in the Council did not in fact increase due to the addition of new member states. While this was indeed the case for some policy fields, preference heterogeneity did increase in environmental policy after Eastern enlargement.

Dobbins (2008, pp. 42-61) estimates in which policy fields the 2004 Enlargement would lead to a greater risk of gridlock based on 16 expert interviews held in 2002. The Eastern European candidate countries were predicted to be preference outliers regarding distributive questions concerning agricultural and fisheries policy. The new member states (e.g. Poland) should also replace Southern member states (e.g., Spain, Portugal) as the countries with the most extreme positions regarding the level of regulation in environmental and social policy. In these policy fields, preference heterogeneity was expected to increase due after Eastern Enlargement. In an enlarged Union, Poland was supposed to be the country most strictly opposed to further regulation on environmental protection or to improve working conditions. All Eastern European candidate countries were also expected to prefer less regulation than the current status quo. In contrast, Great Britain remains the country with the preference for the lowest levels of regulations in the internal market: The new member states prefer a moderate level of regulation in this policy field, resisting the neo-liberal agenda of de-regulation to protect their public sector while facilitating the transition of their economies. Thus, an increase in preference heterogeneity and the resistance of the new member states to further European legislation, which would impose higher regulatory burdens on their companies, was expected to lead to legislative stagnation in environmental and social policy (Schneider et al. 2007) but not necessarily in other policy fields.

A closer look at the DEU II data set (Thomson et al. 2012) shows that the predictions of the study by Dobbins are largely borne out. A comparison of the minimum and maximum positions of the old and new member states demonstrates that there are several issues, notably in environmental policy, where the new member states have more extreme preferences than the old member states. The range of positions increases in 11 per cent of the proposals on distributive policies in agriculture. In 31 per cent of proposals on regulatory policies in environmental policy new member states have more extreme positions than the old member states. As predicted by Dobbins, the range of position does not increase in internal market policies because the positions of the new member states are included in the set of positions adopted by the old member states. The DEU II data set only includes two proposals in the area of social policy (on working time and the portability of pensions); in both cases the new member states do not hold more extreme positions than the old member states. Thus, preference heterogeneity did increase in environmental policy after enlargement. This makes it a suitable policy field to explore the use of tools to overcome gridlock.

ADAPTING TO DIVERSITY IN ENVIRONMENTAL POLICY AFTER EASTERN ENLARGEMENT

Member states frequently put forward requests to limit the scope of European legislation, extend transitional time periods or lower standards in the field of environmental policy between the first

wave of Eastern enlargement in 2004 and the entry into force of the Lisbon treaty in 2009. There were 790 individual member state request for 23 (out of 43) proposals. All member states made requests to change legislative proposals. These requests were often successful. Overall, nearly 65 per cent of requests are at least partially incorporated into the legislative proposal. About 45 per cent are completely incorporated.

The EUPOL data set (Häge 2011) was used to identify all legislative proposals (regulations or directives) in the field of environmental policy on which the Council had not reached political agreement in first reading before 1 May 2004 and which could have been discussed in the Council before the entry into force of the Lisbon treaty on 1 December 2009. Decisions were excluded because they only apply to a small set of subjects and thus would not necessarily be of interest to all member states. There were 48 Commission proposals for legislative acts that were discussed in the Council in that time period. Five of them were withdrawn by the Commission. Member state requests were identified for 23 out of 43 legislative proposals discussed in the Council. This is not a complete sample as some proposals were censored (Cross 2012).

The data was gathered manually based on Council documents summarizing the results of Council discussions (mainly at the working group level) during first reading. The restriction to first reading is due to the focus of this study on decision-making in the Council. The Council Secretariat prepares summaries of the Council discussions, which often identify specific requests for changes by member states in the first reading. At subsequent readings, the focus of the discussion shifts from internal discussion within the Council to finding agreement with the other legislative actors, without indicating the positions of individual countries. In addition, the public registry of the Council gives access to annotated proposals, which list specific requests by member states in footnotes to the legislative text (Cross 2012). The annotated proposals are sometimes (especially later in the process) reflecting changes not relative to the Commission proposal but to a presidency proposal. Thus, the requests in the data set are effectively a subset of all member state requests for changes to the Commission proposal, some of which are already included in the proposal as amended by a presidency compromise proposal.

The data set consists of all requests by member states that were specific and not just related to procedural issues[i]. The latter restriction excludes discussion on whether comitology would apply, in which format or frequency results would be reported to the Commission and public participation. Member state requests were coded into three separate categories: derogations, extensions and lower standards. *Derogations* are all requests that would reduce the scope of legislation, for example by making specific exemptions or by limiting the scope of activities to which the legislation applies. *Extensions* refer to requests that would extend the time period before the legislation is effective (e.g., requesting a later date for transposition of directives or entry into force, requests for transitional time periods). *Lower standards* refers to requests that would lower standards of the proposal, for example by increasing limit values for pollution or increasing threshold values which would trigger mandatory actions to limit pollution. Before coding the entire data set, a selection of documents was coded to establish the different categories and consistent coding rules.

For each unique request the degree to which member states' requests were successful was coded manually based on a comparison of the requests, the common position of the Council and the final adopted act. We can distinguish between *at least partial* and *full success* and success within the Council and across the whole procedure. A request was fully successful if the outcome completely incorporates the requested change. A request was at least partially successful if there were changes that reflect the request to some degree (e.g., an extension of a transitional time period is included, even if not for the entire amount requested) or if the request was completely successful. *Final* success refers to the outcome of the complete procedure. If the proposal was adopted in first

reading, we cannot distinguish between a position of the Council and the final outcome because there is no separate common position of the Council. This is the case for about one quarter of the unique requests. Thus we can distinguish between success regarding the *Common Position* of the Council, the entire *first reading* (including both Common Positions and procedures that were concluded in first reading), and the *final* outcome (which also includes procedures concluded after the first reading).

Member states routinely request changes to the proposals by the Commission. Member states made 790 individual requests or 216 unique requests (identical requests made by several member states) regarding 43 legislative proposals. About 60 per cent of unique requests were supported by more than one country (mean: 3.7, standard deviation: 3.5). For more than half of the proposals (23) requests were made. The number of individual requests per proposal ranges from 0 to 148, with a mean of 18.4 and a standard deviation of 28.

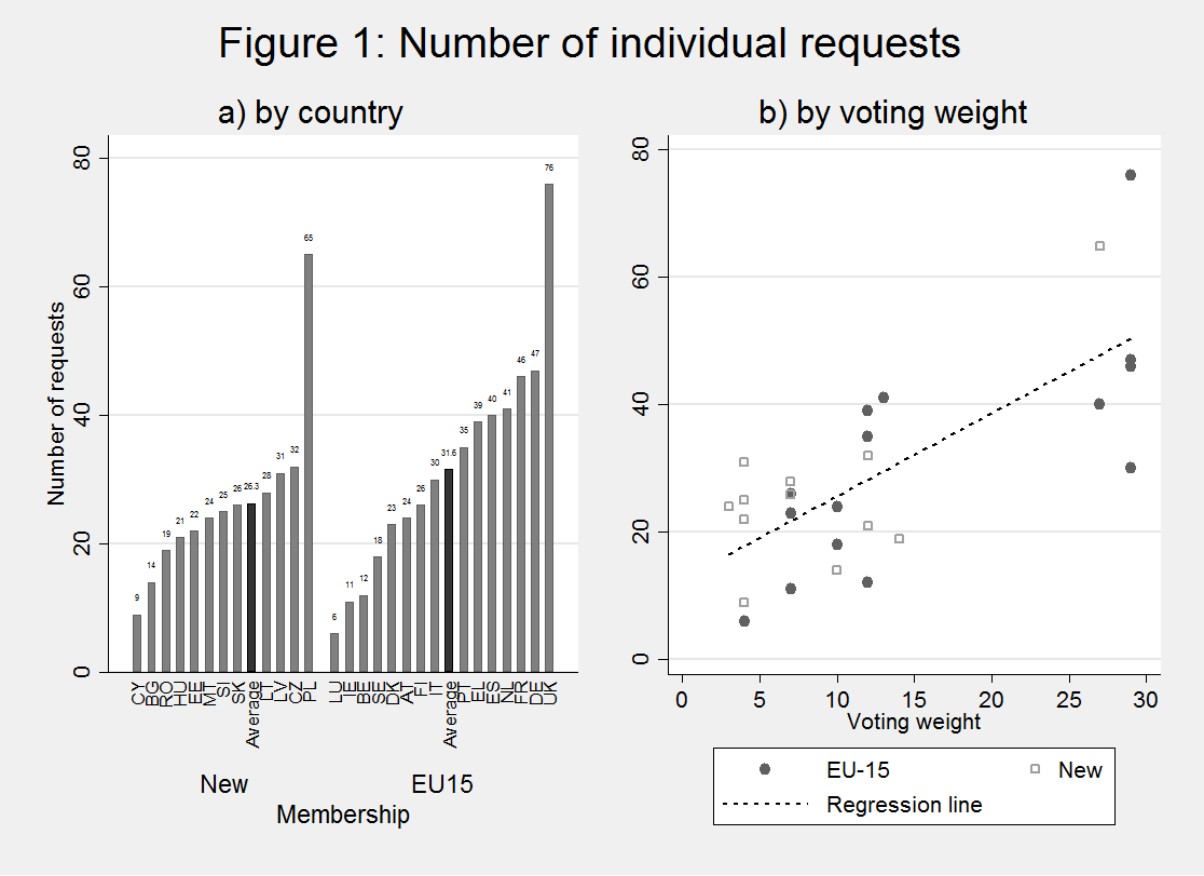
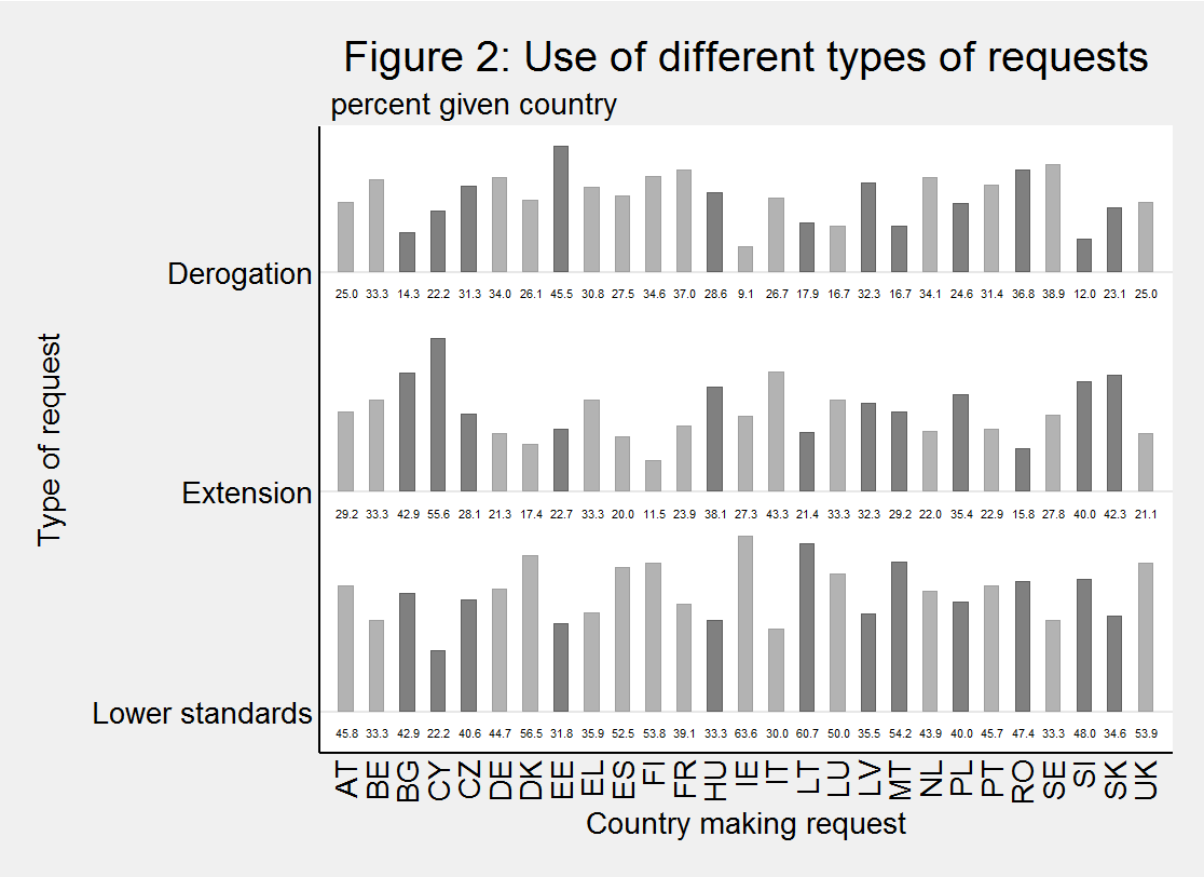


Figure 1 shows the distribution of individual requests across member states. All member states made some requests. The number of requests mainly differs between new and old member states (panel a). The new, mainly smaller member states made on average 26.3 requests while the old (EU-15) member states made 31.6 requests in that period. The United Kingdom (76) and Poland (65) stand out with the highest number of requests. The difference between the number of requests is related to the size (or number of votes) of a country (panel b). Larger member states – both old and new - make more requests. This could be due to a higher level of resources, more widespread interests or the expectation that their requests are more likely to be accepted. Interestingly, the

number of requests does not seem to differ between new (hollow dots) and old (EU-15, solid dots) member states once one controls for the size of the country.

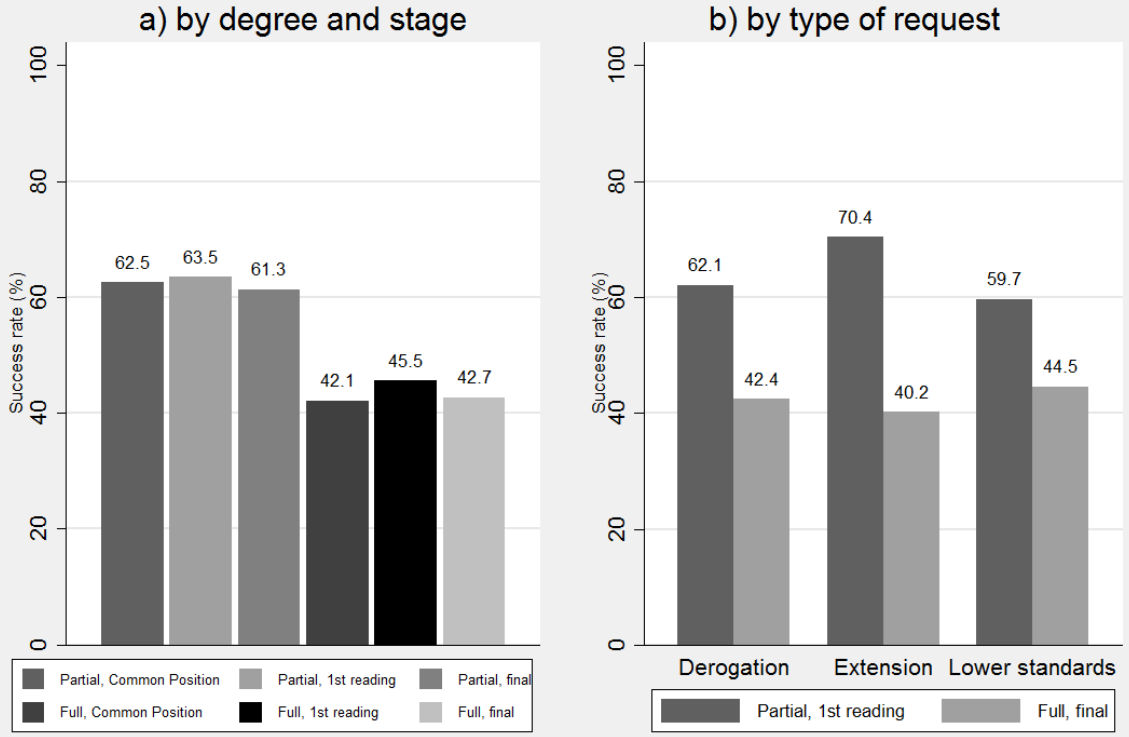


Most of the individual requests by member states are for lower standards (44.1 per cent), requests for derogations (28.2 per cent) and extensions (27.7 per cent) are made less often. There is a lot of variety regarding the type of requests made by different member states. Figure 2 shows the percentages of the different types of requests per country. Ireland only requests derogations 9.1 per cent of the time. In contrast, nearly half (45.5 per cent) of Estonia's requests are for derogations. Similarly, Cyprus asks for extensions more than half of the time (55.6 per cent), about five times more often than Finland (11.5 per cent). Finally, Ireland requests lower standards nearly 2/3 of the time, whereas Cyprus asks for them less than a quarter of the time. The graph distinguishes between old (light bars) and new (dark bars) member states. There does not seem to be a systematic difference in terms of the type of requests made by old (light bars) and new (dark bars) member states.

Member state requests are often successful. Overall, nearly 65 per cent of requests are at least partially incorporated into the legislative proposal. About 45 per cent are completely incorporated. Figure 3 shows the differences in success rate across the type of request and the stage of decision-making. The differences between the legislative stages are negligible. There are also no differences in the success rate, defined as complete success, between the types of proposals. When also taking partial success into account we can see a difference between extensions with a success rate of about 70 per cent on the one hand and lower standards and derogations on the other (about 60 per cent

success rate). Thus, member state frequently and successfully request changes to European legislation.

Figure 3: Success rate of member state requests



CONCLUSION

The European Union grew from a small and relatively homogenous club to an organization with a diverse membership encompassing an entire continent. To cope with this increase in diversity of member states, the decision-making system in the Council was adapted through a series of reform treaties. Nevertheless, the voting threshold remains relatively high. How can member state governments in the Council reach agreement despite high voting thresholds and divergent interests? The existing literature points to the possibility of vote trading and a cooperative style of negotiations. However, preference outliers often attach high salience to a proposal, making log-rolling difficult or impossible and a problem-solving mode is less likely if a proposal is important. This study proposed a complementary explanation, focusing on the changes made to European legislation due to the requests of member states. Member states frequently put forward requests to limit the scope of European legislation, extend transitional time periods or lower standards. The actual number of requests is probably even higher because a) documents for some proposals are censored, possibly due to a high level of political controversy and b) some member state requests are already incorporated in the presidency compromise proposals. Furthermore, the study is restricted to one policy field which is mainly regulatory in nature. The argument would not apply in a (re-)distributive setting (e.g. agricultural policy). Further research is needed to study how wide-spread changes due to member state requests are in other regulatory policy fields (e.g. single market regulation or consumer protection). Environmental policy after Eastern Enlargement is a relatively

heterogeneous policy field, others (e.g. single market regulation) might face a lower risk of gridlock and hence see less member state requests. At the same time, the success rate of member state requests might be higher in policy fields less riven by potential conflict.

In a comparative case study, one could also include process-related mechanisms of reaching agreement in the Council (e.g., vote trading, cooperative negotiation styles). Future research could also incorporate other types of requests (e.g., for higher standards), address the origins of member state requests (e.g., the influence of interest groups and party politics), study the difference in the success rates between member states and link member state requests to voting behavior and the subsequent implementation of European legislation. We saw that Poland and the UK put forward the by far highest number of request. The might be due to differences in preferences regarding the policy field (i.e., both want less environmental protection than most other countries), the level of regulation in general or the role of the European Union. In general, larger member states put forward more requests. Possible reasons for this include greater administrative capacity, more widespread policy interests and the expectation that they will be more successful because of their higher voting power. Interestingly, we do not observe a difference between the new member states from Eastern Europe and the old (EU-15) member states when we take the size of the countries into account. Given the socio-economic differences between these two groups of countries one would have expected more requests coming from the new member states. Administrative capacity, the initial lack of experience with decision-making in Brussels and a different negotiation style might be possible explanations. This merits further research.

It is also tempting to compare the frequency of member state requests before and after major changes in the legislative environment (e.g., due to enlargement or treaty changes). However, a simple comparison might prove to be inconclusive. As this study has shown, the number of requests per proposal varies quite substantially, making direct comparisons across time difficult.

The results of the empirical analysis are not just relevant for the study of decision-making in the Council and the decision-making capacity of the Union. The high success rate of member state requests is also quite interesting for the debate on a disconnect between the concerns voiced at the national level and decisions taken in Brussels and the democratic deficit of the European Union. That member state requests which are included in the Common Positions tend to be adopted in the final legislative act as well is also a quite intriguing fact in terms of the relationship between intra-institutional and inter-institutional negotiations.

***

ENDNOTES

[1] The data set is available at https://dataverse.harvard.edu/dataverse/ENLaEX.

A web appendix with additional figures, tables and more details on data collection is available at http://utwente.academia.edu/AndreasWarntjen/Papers

REFERENCES

Aksoy, D. (2012). 'Institutional Arrangements and Logrolling: Evidence from the European Union'. *American Journal of Political Science*, 56(3), pp. 538-52.

Arregui, J. (2016). 'Determinants of Bargaining Satisfaction Across Policy Domains in the European Union Council of Ministers', *Journal of Common Market Studies*.

Baldwin, R., Berglöf, E., Giavazzi, F. and Widgren, M. (2001). *Nice Try: Should the Treaty of Nice be ratified?* London: Centre for Economic Policy Research.

Baltas, N. (2004). The Economy of the European Union. In Nugent, N. (Ed.) *European Union Enlargement.* Basingstoke, Palgrave.

Braun, M. (2014). *Europeanization of Environmental Policy in the New Europe*, Farnham: Ashgate.

Council of the European Union (2006a) 'Proposal for a Directive of the European Parliament and the Council on ambient air quality and cleaner air for Europe – General Approach', *Council Document No. 10453/1/06*, Brussels: Council of the European Union.

Council of the European Union (2006b) 'Preparation of the Council Meeting', *Council Document No. 7630/06*, Brussels: Council of the European Union.

Council of the European Union (2007a) 'Preparation of the Council Meeting', *Council Document No. 15993/07*, Brussels: Council of the European Union.

Council of the European Union (2007b) 'Common Position No. 13/2007', *Official Journal of the European Union*, 6.11.2007, C263E/1, Brussels: Council of the European Union.

Council of the European Union (2008) 'Common Position No. 13/2008', *Official Journal of the European Union*, 20.5.2008, C122E/19, Brussels: Council of the European Union.

Cross, J. (2012). 'Striking a pose: Transparency and position taking in the Council of the European Union'. *European Journal of Political Research*, 52(3), pp. 291-315.

Cross, J. (2013). 'Everyone's a winner (almost): Bargaining success in the Council of Ministers of the European Union'. *European Union Politics*, 14(1), pp. 70-94.

Dobbins, M. (2008). *After Enlargement: Preference Constellations, Voting Power, and Institutional Change*, Saarbruecken: VDM.

Duttle, T., Holzinger, K., Schäubli, T., Schimmelfennig, F., and Winzen, T. (2013). 'The Dynamics of Secondary-Law Differentiation in the European Union', *3rd Annual General Conference of the European Political Science Association*. Barcelona.

European Commission (2003). 'Proposal for a Directive of the European Parliament and the Council on the management of waste from extractive industries', COM(2003)319, Brussels: European Commission.

European Commission (2005). 'Proposal for a Directive of the European Parliament and the Council on ambient air quality and cleaner air for Europe', COM(2005)447, Brussels: European Commission.

European Commission (2006). 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community', COM(2006)818, Brussels: European Commission.

Falkner, G. (2011). 'The EU's Decision Traps and their Exits', in G. Falkner (ed.), *The EU's Decision Traps: Comparing Policies*, Oxford: Oxford University Press.

Golub, J. (2012). 'How the European Union does not work: national bargaining success in the Council of Ministers'. *Journal of European Public Policy*,19 (9), pp. 1294-315.

Häge, F. (2011). 'The European Union Policy-Making Data Set'. *European Union Politics*, 12(3), pp. 455-77.

Hayes-Renshaw, F. and Wallace, H. (2006). *The Council of Ministers*. London: Palgrave Macmillan.

Heritier, A. (1996). 'The Accommodation of Diversity in European Policy-making and its Outcomes: regulatory policy as a patchwork.' *Journal of European Public Policy*, 3(2), pp. 149-67.

Heritier, A. (1999). *Policy-Making and Diversity in Europe: Escape from Gridlock*. Cambridge: Cambridge University Press.

Hix, S. (2008). *What's wrong with the European Union and how to fix it*. London: Polity.

Holzinger, K. (2011). 'Environmental policy in the joint-decision trap', in G. Falkner (ed.), *The EU's Decision Traps: Comparing Policies*, Oxford: Oxford University Press.

Hosli, M. and Machover, M. (2004). The Nice Treaty and Voting Rules in the Council: A Reply to Moberg (2002). *Journal of Common Market Studies*, 42(3), pp. 497-521.

Keohane, R. O. (1986). 'Reciprocity in International Relations.' *International Organization*, 40(1), pp. 1-27

Koczy, L. (2012). 'Beyond Lisbon: Demographic trends and voting power in the European

Union Council of Ministers', *Mathematical Social Sciences*, 63(2), pp. 152-158.

König, T. and T. Bräuninger (2000). 'Governing the Enlarged European Union: Accession Scenarios and Institutional Reform.' Central European Political Science Review, 1(1), pp. 42-62.

König, T. and Junge, D. (2009). 'Why Don't Veto Players Use Their Power?'. *European Union Politics*, 10(4), pp. 507–34.

Junge, D., König, T. and Luig, B. (2015). 'Legislative Gridlock and Bureaucratic Politics in the European Union'. *British Journal of Political Science*, 45(4), pp. 777-797.

Leuffen, D., Rittberger, B., and Schimmelfennig, F. (2012). *Differentiated Integration: Explaining Variation in the European Union*, London: Palgrave.

Lewis, J. (1998). 'Is the 'hard bargaining' image of the Council misleading? The Committee of Permanent Representatives and the local elections directive'. *Journal of Common Market Studies*, 36(4), pp. 479-504.

Lewis, J. (2010). 'How institutional environments facilitate co-operative negotiations styles in EU decision-making'. *Journal of European Public Policy,* 17(5), pp. 648-64.

Moravcsik, Andrew (2008). 'The myth of Europe's "democratic deficit"', Intereconomics, 43(6), pp. 331-340.

Mattila, M. and Lane, J.-E. (2001). 'Why Unanimity in the Council? A Roll Call Analysis of Council Voting'. *European Union Politics*, 2(1), pp. 31-52.

Naurin, D. (2010). 'Most common when least important. Deliberation in the European Union Council of Ministers'. *British Journal of Political Science,* 40(1), pp.31-50.

Parizek, M., Hosli, M., and Plechanova, B. (2015). 'Avoiding paralysis: The Eastern Enlargement and the Council of the European Union'. *Journal of European Integration*, 37(6), pp. :649-65.

Scharpf, F.W. (1996). 'Negative and Positive Integration in the Political Economy of European Welfare States', in G. Marks, F.W. Scharpf, P.C. Schmitter and W. Streeck (eds.), *Governance in the European Union*. London: Sage.

Scharpf, F.W. (1997). *Games real actors play*. Boulder: Westview.

Scharpf, F.W. (2006). 'The Joint-Decision Trap Revisited. '. *Journal of Common Market Studies*, 44(4), pp. 854-64.

Schneider, G., Dobbins, M. & Drüner, D. (2007). Legislation in an ever-widening European Union: gridlock, chaos, and rent seeking? IN Hoen, H. W. & Selck, T. J. (Eds.) *Europa: Charming Zeus ... and numerous others! International Political Economy of EU Accession.* Leuven, Peeters.

Settembri, P. (2008). 'Legislative output after enlargement: similar number, shifting nature', in E. Best, T. Christiansen and P. Settembri (eds.), *The institutions of the European union: continuity and change*. Cheltenham: Edward Elgar, pp. 183–204.

Stratmann, T. (1997). 'Logrolling', in D. Mueller (ed.), *Perspectives on Public Choice*. Cambridge: Cambridge University Press.

Thomson, R. (2011). *Resolving Controvery in the European Union*, Cambridge: Cambridge University Press.

Toshkov, D. (2014). 'The Effects of the Eastern Enlargement on the Decision-Making Capacity of the European Union', *MAXCAP*, Berlin.

Tsebelis, G. (2008). 'Thinking about the recent past and the future of the EU'. *Journal of Common Market Studies*, 46(2):265-292.

Warntjen, A. (2010). 'Between bargaining and deliberation: decision-making in the Council of the European Union'. *Journal of European Public Policy,* 17(5), pp. 665-79

Warntjen, A. (2011). 'Designing Democratic Institutions: Legitimacy and the Reform of the Council of the European Union in the Lisbon Treaty', in S. Dosenrode: *Europe after Lisbon*, Ashgate, 2012.

Journal of Contemporary European Research

Volume 13, Issue 1 (2017)

Research Article

'When Counting Counts' – Europeanisation of Census-Taking in Croatia, Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia

Anna-Lena Hoh, *Maastricht University*

Citation

Hoh, A-L. (2017). ''When Counting Counts' – Europeanisation of Census-Taking in Croatia, Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia', *Journal of Contemporary European Research*. 13 (1), 980 - 996.

First published at: www.jcer.net

Abstract

In 2000, the European Union (EU) extended the membership perspective to the Western Balkans; however these countries have taken different political paths towards EU accession at different speeds. The population census is one of the conditions for EU accession and part of the eighteenth acquis chapter on statistics. This article seeks to explain the variation in census-taking in the 2010 census round in Croatia, Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia considering two Europeanisation mechanisms: (a) the conditionality and (b) the legitimacy of the EU regulations in the area of census-taking. While conditionality assesses the cost-benefit calculation between the EU rewards/pressure and domestic adoption costs, legitimacy analyses whether the EU census regulations will be accepted based on their perception of appropriateness. Congruence analysis will be used to compare the effectiveness of the Europeanisation mechanisms on the censuses in the countries under investigation. The study concludes that in Croatia legitimacy had the most impact, whereas the cases of Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia can be better explained by conditionality. Therewith this study contributes to the recent findings that conditionality as well as legitimacy matter for research on Europeanisation.

Keywords

Europeanisation; EU enlargement; Census-taking; Conditionality Legitimacy; Western Balkans

More than a decade after the European Union (EU) extended the membership perspective to the Western Balkans in 2000, these countries have taken different political paths towards EU accession at different speeds. The pathway of EU accession is tied to conditions and depends on compliance with EU rules and norms by the candidate countries. The process of alignment with EU rules and norms has been described as a major challenge for the countries in the Balkan region (Prifti 2013; Noutcheva 2012). The population and housing census (hereafter census) is one of the aspects which represents a challenge in some of the enlargement countries.

Within the *acquis communautaire* the census is part of the eighteenth chapter on statistics (Eurostat 2014a). Census-taking is crucial for the production and dissemination of population data and serves as a backbone for official statistics. The census is the tool for a state to gain information about its population and their living standards. Census data are important for the sample designs to conduct statistical surveys. As the EU is very keen on using statistics for evidence-based decision making, a reliable population count is a crucial element in the EU accession process. However, in the Balkan region, the collection of the data for the population and housing census is an exceedingly sensitive issue as important decisions over the distribution of public funds and/or the allocation of institutional quotas for various societal (ethnic/linguistic) groups are based on census data (Everaers 2015). Essentially, census-taking is often highly politicised in multi-ethnic and multi-lingual societies and especially in the Western Balkans (Bieber 2015).

Censuses in the Western Balkan region were conducted long before EU accession. The last census of Yugoslavia was collected shortly before its break-up in 1991. Now within the framework of EU enlargement, accession countries have to comply with EU conditions for census-taking. Except for Bosnia and Herzegovina, whose census took place in 2013, all Western Balkan countries conducted

their censuses in 2011, the reference year of the EU population count (Eurostat 2014b). Although all Western Balkan countries have the same EU conditions to comply with, three cases were chosen based on the different outcomes with regard to census-taking: ranging from aborted (the Former Yugoslav Republic of Macedonia, hereafter FYROM), to delayed (Bosnia and Herzegovina, hereafter BiH) and relatively timely, with minor contestation (Croatia). In addition to the different census outcomes, these are also countries in different stages of EU accession; whereas Croatia became an EU member in 2013, FYROM is a candidate country and BiH a potential candidate.

Earlier scholars have researched the censuses in the region, but focused foremost on the construction of national identity through the census categories (Bieber 2015) or the aspect of ethnicity (Daskalovski 2013; Visoka & Gjevori 2013). Recently, more attention has been paid to the politics of numbers behind the population count (Keil & Perry 2015; Daskalovski 2013), but, so far, there is little research on the impact of the EU on the censuses in the Western Balkans (Keil 2015).

This article assesses whether the impact of the EU enlargement process can explain the variation in census-taking outcomes in BiH, Croatia and FYROM. This will be done by using congruence analysis to test the impact on census-taking of two mechanisms of Europeanisation: conditionality and legitimacy. Legitimacy focuses on the acceptance and implementation of the EU census regulations, as well as the nature of debates and contestations surrounding the census processes. This will show whether countries comply with the EU rules because they see it as appropriate and legitimate to do so. Conversely, conditionality, which is based on the logic of consequences, assesses the rational cost-benefit incentives behind the differences of countries in EU accession (Schimmelfennig & Sedelmeier 2004, 2005, 2007) and, in particular, whether the benefits of complying with EU conditions (EU rewards) outweigh the domestic adoption costs. Which of the two Europeanisation mechanisms is more likely to explain compliance is explored.

CENSUS-TAKING WITHIN EUROPEANISATION

Europeanisation has many definitions: from broader ones, looking at '[p]rocesses of a) construction, b) diffusion, and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles and 'ways of doing things'' (Radaelli 2006: 59); to more concrete ones, which see Europeanisation as shorthand definition for the domestic influence of the EU (Elbasani 2013: 5). As this research is only looking into a rather small aspect of the *acquis* and how this influences the censuses in the enlargement countries, Europeanisation will be defined as the influence of the EU on the Western Balkan countries (Elbasani 2013: 5). Earlier research on Europeanisation has looked into EU member state building (Keil 2013; Bieber 2011) but also the effectiveness of the *acquis* conditionality in South Eastern Europe (Trauner 2009) and the normative and strategic dimensions of EU external power (Noutcheva 2009, 2012). Recently more attention has been paid to domestic factors which affect Europeanisation in the region, such as the lack of 'stateness' (Elbasani 2013), and human rights and corruption (Glüpker 2013).

Within the framework of Europeanisation, census-taking is under-researched. The EU developed the EU census regulations to harmonise statistical data in all (potential) member states and uses this data for 'evidence based decision making' (Everaers 2015: 185). Thereby, census data becomes crucial for policymaking and the distribution of, for example, subsidies. What differentiates censuses in the Western Balkans from most European countries is that the distribution of rights (such as minority rights) and political power can depend on the population data (Keil 2015). In most Western European countries, census-taking is primarily a technical statistical exercise, however in the Balkan

countries, the census is a tool to know the numbers of the different population groups present (Interview 1: Eurostat official; Interview 2: EU delegation Sarajevo official).

After Yugoslavia dissolved, issues of ethnicity and ethnic group size, as well as geography, were important tools used in the conflicts for bargaining new borders, rights and representation schemes in the newly established states in the Western Balkans (Visoka & Gjevori 2013: 6). Bieber (2015) has shown that the census constitutes a site to negotiate national identities, to represent majority and minority groups. Since rights and the representation of power in the cases under investigation depend on the census results of ethnic groups, the process of census-taking is highly political (Kertzer & Arel 2002: 36). Particularly political are the census questions on ethnicity, language and religion, place of usual residence and whether or not to include the diaspora in the census. These aspects have been identified as the most contested issues in the Western Balkans (Everaers 2015: 192) because these questions can be used and manipulated potentially to increase ethnic numbers.[1] Even though it is important in the Western Balkan countries, the EU does not require collecting data on the sensitive ethno-cultural characteristics (ethnicity, language and religion). Also in the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing (CES recommendations)[2] these aspects are only part of the non-core categories (United Nations Economic Commission for Europe 2006: 162). Nonetheless, in the 2010 census round, all Western Balkan countries included these topics in their census questionnaires (Eurostat 2014b).[3]

The EU has high stakes in the stability of the region and wants to develop reliable statistics in its potential member states (Bieber 2015: 11). Almost all the Western Balkan countries were financially and/or technically supported by Eurostat, the statistical office of the EU. Even though highly recommended to follow the EU census regulations, candidate countries are not legally obliged to comply with these. However, if compliant, countries increase their chances of EU membership.

EUROPEANISATION OF CENSUS-TAKING: CONCEPTUAL FRAMEWORK

Earlier research on the transformative power of the EU has shown that EU conditionality can explain patterns of EU rule transfer to candidate countries in Central and Eastern Europe (Schimmelfennig & Sedelmeier 2004). However, in the Western Balkans, Noutcheva (2009) has shown that the lack of perceived legitimacy of the EU rules leads to different outcomes in compliance with EU conditions. While the aspect of conditionality looks at the (dis-)incentives the EU offers in light of a cost-benefit calculation, the aspect of legitimacy will be analysed by looking at the implementation of the EU census rules in addition to the nature of the debates and contestations surrounding the censuses.

CONDITIONALITY

Schimmelfennig and Sedelmeier (2004: 662) describe conditionality as 'a bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions'. The EU rewards accession countries that comply with its conditions and withholds rewards in the case of noncompliance. Within the literature, a differentiation is made within the democratic and *acquis* conditionality of the EU, stating that the domestic political costs are more important for democratic conditionality, which is connected to compliance with the Copenhagen Criteria (Schimmelfennig & Sedelmeier 2007: 91-92). In the case of census-taking, which is part of the *acquis* conditionality, however, the aspect of domestic adoption costs is also of importance. Since the census data is used to establish numerical thresholds, for example, for minority rights, as well as political representation, it can affect the adoption costs for the domestic

political elite. Therefore, the EU rewards for having a census need to be stronger than the potential losses of the domestic political elite. In order to tip the balance towards compliance, the EU can also pressure candidates by withdrawing pre-accession funds or setting short term conditions within the accession process, through, for example, the Stabilisation and Association Agreements.

Conditionality will be assessed by looking at the cost-benefit calculation of EU rewards/pressure versus domestic adoption costs. The EU rewards will be assessed by looking at the material and social rewards the accession countries receive or lose in case of compliance or non-compliance and the pressure the EU puts on its enlargement countries for them to comply with the EU census regulation. The domestic adoption costs will be assessed by looking at the potential gains/losses of rights for the domestic political elite, such as numerical thresholds connected to the census results. Following the logic of consequences, it is expected that the credibility of threats and promises from the EU, as well as EU pressure, can make a difference with regard to the successful implementation of conditions for the population and housing censuses if they outweigh the domestic adoption costs.

LEGITIMACY

Numerous authors have shown that in the Western Balkan countries compliance with the EU conditions cannot be fully explained when only taking into account the rational choice idea of conditionality (Bieber 2011; Freyburg & Richter 2010; Noutcheva 2009). Therefore, the aspect of the perceived legitimacy of the EU conditions will also be taken into account. This mechanism is based on the acceptance of norms, values and identities and follows the logic of appropriateness, which assumes that actors choose the most appropriate (legitimate) course of action (Schimmelfennig & Sedelmeier 2004: 667; March & Olsen 1989). If external actors accept the authority of the EU and are convinced of the legitimacy and appropriateness of EU rules, they adopt and comply with them (Schimmelfennig 2014: 20). In respect of census-taking, the acceptance of the EU census regulations, as well as the contestation surrounding the census, will be used as indicators for legitimacy. To be perceived as fully legitimate, the EU conditions need not only be accepted by the Statistical National Institute of the accession country but also by its political elite because domestic actors can have a crucial role as, for example, veto players in post-communist countries (Mendelski 2013). Conversely, if there is contestation and opposition against the appropriateness of the EU census regulations, the country is likely not to comply with the EU conditions for census-taking. The contestation of the censuses will be taken into account because this will show whether and to what extent the EU census regulations are accepted by the public/political elite. It is expected that if the EU census regulations are accepted as legitimate, there will be no contestation of the census process and there will be full compliance with the EU census regulations.

To measure the effect of legitimacy on compliance with the EU census regulations, it will be assessed whether the National Statistical Institutes of the case countries, as well as their political elites, accept and implement the EU census regulations and whether or not there is public/political contestation of the census. The latter will be assessed by looking at public/political debates and their outcomes surrounding the censuses. If the census is highly contested (strongly debated) it is expected that compliance with the EU census regulations is not due to the mechanism of legitimacy. If there is no/little debate and the EU census regulations are accepted and implemented, the mechanism of legitimacy is regarded as strong. However, the nature of the debate also matters, for example, if the outcome of the debate is to comply with the EU census regulations and this is implemented and accepted, compliance is also expected to be due to legitimacy.

METHOD, CASE SELECTION AND DATA

To compare the mechanisms of EU conditionality and legitimacy, congruence analysis will be used. This method is a small-N research design which uses case studies to contrast and compare the explanatory relevance of theoretical approaches (Blatter & Haverland 2012: 144). This approach is also known as systematic process analysis (Hall 2006). To compare the mechanisms of Europeanisation, empirical data collected via semi-structured interviews, conducted with people at the National Statistical Institutes, international census experts and EU officials, and the census laws, questionnaires and methodologies of the case countries will be analysed and compared with the EU regulations on census-taking (European Parliament & Council of the European Union 2008). These documents will be complemented with data from the EU progress reports and newspaper articles.

The countries have been chosen because although they have to comply with the same EU conditions, they show a variation with regard to census operations and outcomes. Croatia, by now an EU member, has conducted two censuses since independence from Yugoslavia, in 2001 and in 2011 respectively. The last census in 2011 was conducted after the chapter of statistics was already closed but before the accession date of July 2013. FYROM, an EU candidate country since 2005, however without opening membership negotiations, has also conducted two censuses since independence, one in 1994 and one in 2002. Another was planned for 2011, but aborted after a few days of enumeration due to unequal implementation of the methodology. BiH submitted its application for EU membership in 2016 and is considered a potential candidate country. BiH conducted its first census since 1991 in October 2013 and the results were published, after a long delay, in June 2016.

The article will focus foremost on the 2010 census round, which following the international definition includes all censuses conducted in the time period from 2005 up to 2014 (United Nations Statistics Division 2013). This selection has been made as throughout the census round of 2000 (from 1995 to 2004), there were no EU conditions yet with regard to census-taking. Since then, attention for the collection, harmonisation and dissemination of population data has increased; in the enlargement package of 2015 the chapter of statistics even made it into the list of aspects which are part of strengthened reporting (European Commission 2015a).

WHEN COUNTING COUNTS: CASE ANALYSIS

Bosnia and Herzegovina

In October 2013, BiH conducted its first census since independence from the former Yugoslavia. This census was long expected as the preparations had already started in 2008. As it was the first census since independence from Yugoslavia and the armed conflict (1992-1995), there was an urgent need for reliable population data. The census law was adopted in February 2012. The Agency for Statistics is officially responsible for the census but cooperates with the Statistical Institutes of the Entities: Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (Director of the Agency for Statistics of Bosnia and Herzegovina, nd: 13). Since shortly after the adaptation of the census law, there was an International Monitoring Operation (IMO), led by Eurostat, which started in April 2012 and which has by now conducted more than 20 missions. From the beginning of the census project, there was a strong commitment from the EU towards this census. Without EU help and guidance it would have been very difficult to carry it out (Interview 3: DG NEAR official). Of the approximately 23 million EUR census costs (Eurostat 2014b), more than 13 million was paid for by the EU (Interview 2: EU Delegation Sarajevo official). Next to this, the Swedish International Development Cooperation

contributed about 1.85 million EUR to the census exercise via the Instrument for Pre-Accession Assistance (Eurostat 2014b; AAM Consulting 2013). The enumeration process took place in October 2013 and was in line with international standards (Durr, Bianchini, Demirci, Kostadinova-Daslakovska, & Pieraccini 2013). There were some reports on irregularities (Perry 2013), however, most of them, related to diaspora enumeration, can probably be sorted out during the data processing (Durr et al. 2013: 12). The data processing had been on hold for about a year and a half since February 2015 (Interview 6: Statistical Agency official) due to a missing agreement on the definition of 'place of usual residence' (Interview 4: Statistical Agency official). The EU urged BiH to publish the population data by July 2016 (Toe 2016c). Even though the IMO estimated that BiH was not likely to meet this deadline (Durr & Demirci 2016: 8), the data was finally published on 30 June 2016. However, debates continued after the publication of the data, as RS still does not accept the definition of 'place of usual residence' (Toe 2016b).

Regarding the Europeanisation mechanism of conditionality, the rewards and the pressure for complying with the EU conditions are high. Particularly since BiH submitted its membership application in February 2016, the publication of the census data was made a condition for Bosnia's EU accession process (Anon 2016b). This was emphasised in April 2016, when the European Parliament called 'for the results of the population and housing census to be published without further delay' (European Parliament 2016). The successful completion of the census has been emphasised in the proposed Reform Agenda for 2015 to 2018 by the European Commission (European Commissions 2015c) and the importance of the chapter of statistics has been mentioned in the Stabilisation and Association Agreement (SAA), in force since July 2015 (Official Journal of the European Union 2015). The publication of the census data could furthermore attract international funding and support (interview 5: Eurostat official). The reward of the EU would be acceptance of the Bosnian membership application; this, however, also gave the EU an additional opportunity to press for the publication of the census results. The SAA as well as the Reform Agenda and the membership application can be considered as both rewards as well as instruments to pressure BiH to comply with EU conditions for census-taking.

The domestic adoption costs for complying with EU census regulations are high as well, since the census results can be used to certify the death toll and ethnic cleansing during the war (1992-1995) (Interview 2: EU delegation Sarajevo official). It was expected that the census outcome might affect the political system, which distributes power among the three constituent ethnic groups, Bosniaks, Croats and Serbs (Armakolas & Maksimovic 2014; Bieber 2004). The government and the parliament are constituted of the three ethnic groups and within the parliament there is parity at the state level, based on the 1991 population distribution (Bieber 2004: 6). If the census of 2013 would have strongly diverged from the 1991 population numbers, this could have sparked debate about the current constitutional design based on the constituent ethnic groups. This increased the political and domestic adoption cost for Croatian politicians especially, as it was expected that their numbers would have decreased and they might lose the legitimacy of basing their power on the constituent group structure. In the end, the overall census numbers did not differ much from the 1991 population but still caused debates (Recknagel 2016). In addition to this, there are concerns that the aspect of 'entity citizenship', which was included in the census questionnaire, could pave the way for a referendum of independence in the RS (Perry 2015; Armakolas & Maksimovic 2014; Popis 2013). The RS 'hopes to 'ratify' ethnic cleansing through the census and to confirm that the RS is a proto-nation state [however] a larger share of non-Serbs would challenge this ambition' (Bieber 2013). By now a referendum for a Serb national holiday has taken place, which is seen as a test run for secession of RS from BiH (Anon 2016a). Overall, there are concerns that the new population data will not only be used for socio-economic purposes but misused for political purposes (Interview 2: EU delegation Sarajevo official; Interview 4: Statistical Agency official; Interview 6: Statistical Agency

official). When the Director of the Agency, Velimir Jukic, announced in May 2016 that the Statistical Agency would publish the census results before the deadline on 1 July 2016, following the EU regulations without consensus among the statistical institutes, the President of the RS, Milorad Dodik, declared that he would refuse to accept the results (Toe 2016a). Given that BiH published the data one day before the deadline of July 1, the balance of the cost-benefit calculation tipped in favour of compliance with the EU census regulations, meaning the pressure and rewards of the EU outweighed the domestic adoption costs.

The debate between the RS and the Statistical Agency is also important when looking at the impact of legitimacy. This debate caused the delay of data processing, which is about the definition of 'place of usual residence' (Interview 2: EU delegation Sarajevo official). Although clearly defined in the EU regulations, RS would like to include an additional question, the aspect of place of work/education, to control the question of 'place of usual residence', to check whether people actually reside in Bosnian territory (Interview 2: EU delegation Sarajevo official; Interview 4: Statistical Agency official; Interview 3: DG NEAR official). The adjusted definition shows the intent of the RS to '"legalise the ethnic cleansings from the 1990s" and create conditions for its separation from the Bosnian state' (Armakolas & Maksimovic 2014: 86). Until now, the data processing has been fully in line with the IMO recommendations (Interview 8: International Census Consultant), but was on hold for more than two years as the statistical institute of the RS does not support the definition of the resident population provided by the EU (Interview 4: Statistical Agency official). The debate also shows that the census in Bosnia is contested. Even though in the end the Statistical Agency implemented the EU census regulations, the ongoing contestation of the census definitions (Toe 2016b) suggests that the instrument of legitimacy is not very strong in Bosnia and, as such, cannot be considered an important factor that contributes to the publication of the census data.

The Former Yugoslav Republic of Macedonia

FYROM had already gathered population data in 1994 and in 2002. The 1994 census was 'hotly contested' (Daskalovski 2013: 8) and observers were surprised when they discovered how political the census operation was (Friedman 2002). This was the first census conducted after independence from Yugoslavia in 1991. A year before the second census, an armed ethnic conflict between ethnic Albanian and ethnic Macedonians broke out. This was stopped with the Ohrid Framework Agreement in August 2001. The 2002 census was also disputed by Macedonians, Albanians and other ethnic groups, but assessed as fair and accurate by the international community (Vrgova 2015: 116). The 2011 census was planned for April, then delayed to October (Marusic 2011c). After the EU delegation in Macedonia had warned Eurostat of difficulties with the preparations for the census (Interview 9: EU Delegation Skopje official), Eurostat set up a light International Monitoring Operation (IMO) after an official request from the FYROM (Everaers 2015: 185). The IMO started in October 2010 (Interview 7: International Census Consultant). Following the advice of the IMO, the census enumeration was delayed but a green light was given for the census data collection in October 2011 (Interview 10: Eurostat official). Nonetheless, the census was stopped due to an increase of unreliable census forms, signed by only one of the two enumerators, whereas, according to the census law, both had to sign, and which applied different methodologies (Interview 11: State Statistical Office official). Although the 2011 census in the FYROM was observed by the IMO, there was no guarantee of reliable population data. The census was officially stopped because of the unequal implementation of census methodologies and disagreements about counting the diaspora population (Eurostat 2014b: 21; DG Enlargement 2013: 13).

With regard to conditionality, there are no concrete EU rewards, nor strong EU pressure for complying with the regulations of census-taking and in the overall accession process, FYROM is 'at an impasse' (European Commission 2015b: 2). Even though FYROM is already an EU candidate country, there are currently no significant developments regarding EU accession. The European Commission first recommended opening membership negotiations in 2009 but they still have not been opened. In 2015, this was only extended under the condition that the 'urgent reform priorities' and the political agreement to overcome the current political crisis, following a huge wire-tapping scandal, would be implemented (Marusic 2016; Balkans in Europe Policy Group 2015; European Commission 2015b: 14). Therefore, there are neither reliable EU rewards, nor pressure from the EU to push for a census complying with the EU census regulations.

In addition to the lack of EU rewards/pressure, the domestic adoption costs for having a census are high, since, as in BiH, in FYROM the political system has institutionalised ethnicity. According to the Ohrid Framework Agreement (OFA), if minorities make up more than 20 per cent of the population, language rights as well as the 'equitable representation of persons […] in public bodies at all levels and in other areas of public life' (Anon 2001) depend on the population numbers. Following the 2002 census, the only minority making up more than 20 per cent of the population are ethnic Albanians (Vrgova 2015: 116). Throughout the census process, ethnic Albanians wanted to increase their numbers and ethnic Macedonians wanted to decrease the numbers of the ethnic Albanians (Marusic 2011b). In the end, the enumeration process was problematic, as different methodologies on how to count the resident population circulated and a lot of census questionnaires were signed by only one of the two enumerators (Interview 11: State Statistical Office official). These aspects made it impossible to guarantee reliable data and when the State Census Commission resigned four days before the enumeration was finished, the census operation was cancelled (Jordanovski & Dimevski 2011; Marusic 2011a). The whole census operation was highly politicised and political representation depended on the census outcomes. Therewith, the domestic adoption costs clearly outweighed the non-existent EU rewards/pressure for complying with the EU census regulations. This indicates that conditionality may have had a strong negative impact on compliance with the EU census regulations.

When looking at the mechanism of legitimacy, this seems to have only limited influence on compliance with the EU rules. The EU census regulations were only partially accepted and the reasons for having a census are partly due to political rather than socio-economic reasons. As described above, the OFA clearly outlines the threshold of 20 per cent for the official use of other languages, but also proportional representation in the public bodies depends on the population numbers (Vasilev 2013; Brunnbauer 2002: 5; Anon 2001). In 2010, a year before the census enumeration started, politicians proclaimed that they would not accept the census methodology (Interview 12: OSCE official). This debate was also visible when the State Census Commission, which consisted of 25 members 'appointed by the Government of the Republic of Macedonia' (Republic of Macedonia - State Statistical Office 2010: 15), influenced the census operation, to such an extent that they tried to impose different methodologies on how to count the diaspora population. The State Census Commission was responsible for appointing half the regional instructors, the other half would be appointed by public announcement (Republic of Macedonia - State Statistical Office 2010: 17). This arrangement led to difficulties and delays in hiring sufficient enumerators; when the enumeration started, in some areas there was a lack of well-trained enumerators and staff, which delayed the enumeration (Interview 11: State Statistical Office official). Three days before the enumeration started, the representative of the Albanian Party Democratic Union for Integration still wanted to include the diaspora population in the population count. When this request was not accepted, since it is not in line with the Eurostat recommendations, he and another Albanian representative resigned from the State Census Commission (Jordanovski & Dimevski 2011; Marusic

2011b). Despite recurring disputes about the census methodology and difficulties with hiring staff, Eurostat confirmed that the State Statistical Office was technically ready for the census operation (Interview 10: Eurostat official). Overall, the methodology and the questionnaire were described as being in line with the EU census regulations (Interview 11: State Statistical Office official). Nonetheless, the census was captured by political forces trying to influence the population count to increase ethnic numbers (Interview 9: EU Delegation Skopje official; Interview 12: OSCE official). Even though the EU census regulations were accepted by the State Statistical Office, there was a strong contestation of the 2011 census, which shows a level of low legitimacy.

Croatia

Croatia separated from Yugoslavia in 1991, which was followed by violent conflict (1991-1995). As a result of this conflict, the country is ethnically relatively homogeneous, with Serbs as the biggest ethnic group (with 186.633 people, which is about 4 per cent of the population (Hoh 2015: 78). The census in 2011 was Croatia's second census since independence, and was conducted without any major problems (Hoh 2015). The 2001 census, according to the European Commission, was 'in line with the UNECE/Eurostat recommendations for the 2000 censuses of population and housing in the ECE region' (European Commission 2006: 9). The costs for the census were calculated up front and addressed in the census law. The census budget of 21 million EUR was calculated, but in the end the approximate costs were only about 16 million EUR (Eurostat 2014b). Unlike in BiH, the costs were all covered by the Croatian government. Only one small part of the Post Enumeration Survey was covered by the EU through the Instrument for Pre-Accession Assistance (Eurostat 2014b: 10). There was a delay concerning the publication of the census data (Pavelic 2012), which was caused due to difficulties in hiring staff. The government did not allow the Statistical Office to hire the best census enumerators for the data processing phase; instead the Statistical Office had to hire people who had been unemployed for a long period (Interview 13: Croatian Bureau of Statistics official). The census results were finally published on 8 November 2013 (Croatian Bureau of Statistics 2013). Today, the census data of Croatia is part of the Eurostat census hub, which can be considered as a sign of the high quality of the data.

With regard to conditionality, back in 2007, the Croatian population statistics were regarded as being compliant with the *acquis* (DG Enlargement 2007: 5). In the year of the 2011 census, Croatia also concluded its accession negotiations (Elbasani 2013: 5). Actually, the chapter on statistics had already been closed in October 2009, before the census law was finalised. Therefore the 2011 census was not followed as closely by the EU as, for example, the Bosnian census (Interview 14: DG NEAR official). Since Croatia had already demonstrated that they can conduct a census, it was expected that they could do it again (Interview 14: DG NEAR official). In the end, the 2011 census was described as 'harmonised with international standards […] in order to provide the international comparability of data' (Croatian Bureau of Statistics 2011: 8). Bearing in mind that by the time of the census the *acquis* chapter on statistics was already closed, it was expected that Croatia would comply with the EU census regulations. Thus the census did not form a subject of the accession negotiations and because of this EU rewards and pressure are considered low.

As political representation in Croatia depends to a lesser extent on the census outcomes, the domestic adoption costs for complying with the EU census regulations were not as high as in BiH or FYROM. Even though rights for minorities in Croatia also depend on the population numbers, the numerical threshold of 1.5 per cent to guarantee representative seats for minorities (Tatalović 2006: 55; Petričušić 2002) is much lower than the 20 per cent threshold in FYROM. In addition, in between 1991 and 2001, the share of ethnic minorities decreased by 50 per cent (Tatalović, 2006), with the

result that Croatia is ethnically more homogeneous than BiH or FYROM. Therefore, the domestic adoption costs were low and even though the rewards for complying with the EU conditions were low as well, Croatia was compliant. Conditionality therefore does not provide a firm explanation for Croatia's full compliance with the EU census regulations.

The impact of legitimacy was very high: despite the lack of EU rewards, Croatia implemented the EU census regulations before it was a member of the European Union. The EU census regulation (European Parliament & Council of the European Union 2008), together with the CES recommendations, are mentioned as two of the most important documents for international standards on the website of the Croatian Bureau of Statistics (Croatian Bureau of Statistics 2011: 9). The enumeration process was 'carried out successfully and according to international standards in April 2011' (European Commission 2011: 40). Since Croatia had already demonstrated that they could conduct a census, it was expected that they could do it again (Interview 14: DG NEAR official). The CBS was very firm on using the international definitions, for example for the category of 'place of usual residence', in spite of concern by demographers and politicians, who wanted to keep the former definitions in order to compare the data over time or wanted to include the diaspora (Interview 13: Croatian Bureau of Statistics official). There was no public/political debate on the census and thus the Croatian census is regarded as not contested. After the results were published, the potential introduction of the Cyrillic script, used by the Serb minority, in about 20 municipalities sparked protests (Pavelic 2013; 2014). However, the census itself was not contested and there were no big gains or losses for political parties with regard to ethnic proportional representation after the census. The lack of contestation and the acceptance of the CBS of the EU census regulations show that in the case of Croatia the impact of legitimacy is much stronger than the impact of conditionality.

CONCLUSION

This article assessed the effectiveness of the Europeanisation mechanisms of conditionality and legitimacy on the compliance of Croatia, BiH and the FYROM with the EU census regulations. The cases of BiH and FYROM show that the effect of the domestic adoption costs for the mechanism of conditionality should be taken seriously and can even influence the mechanism of legitimacy. High domestic adoption costs in BiH and the FYROM contributed to debates and contestation of the EU census regulations and resulted in low level of legitimacy in these cases. In BiH, EU rewards and pressure were much higher than for FYROM and this tipped the balance of the cost-benefit calculation in the case of BiH in favour of complying with the EU census regulations. Whereas in the case of BiH the empirical findings suggest a strong influence of the mechanism of conditionality on compliance with the EU census regulation, legitimacy can provide a further explanation for the delay of the census operation. In Croatia, the mechanism of conditionality cannot explain compliance with the EU census regulations, as – although the domestic costs were rather limited – Croatia did not benefit from EU rewards. In the case of Croatia, however, the empirical findings show that legitimacy can have a strong positive impact on compliance with the EU regulations. The non-compliance of the FYROM, as evidence shows, can be explained by either conditionality, as domestic adoption costs outweighed EU rewards and pressure, or legitimacy, since there was strong contestation of the EU census regulation. The mechanism of legitimacy can explain the cases of Croatia and the FYROM. It might not provide strong explanations in BiH, but even in this case it provides insights as to why the census process was delayed. Therefore, this research confirms earlier studies which concluded that conditionality alone cannot fully explain compliance with the EU rules. In order to understand fully the influence of the EU on its enlargement countries, both mechanisms need to be considered. Due to the variation these cases show, it is not possible to generalise how these would affect the other

countries in the Western Balkans. This article focuses on the Europeanisation mechanisms, further research into, for example, the role of other domestic factors, such as domestic veto players, and the inclusion of sensitive data on ethnicity, language and religion in the census questionnaire is recommended.

Nonetheless, this analysis does demonstrate that when the political representation and/or rights depend on the population numbers, census-taking is connected to the Copenhagen Criteria, in particular minority rights, and democratic conditionality. This is not only important for the Western Balkans but can be crucial in other countries where aspects of ethnicity/identity are connected to census data (see also Simon 2011), such as Spain (Urla 1993). This research has shown that *acquis* conditionality is not only a technical exercise, but in fact highly political, and, especially with regard to census-taking, this should not be underestimated.

ACKNOWLEDGEMENTS

I would like to thank the Netherlands Organisation for Scientific Research (NWO) for financing my research and Markus Haverland for feedback on an early draft of the article. In addition, I am grateful to Hans Schmeets, Gergana Noutcheva and Petar Petrov, as well as the anonymous reviewers for their constructive feedback.

CORRESPONDENCE ADDRESS

Anna-Lena Hoh, Maastricht University, Faculty of Arts and Social Sciences, Department of Political Science, Grote Gracht 90-92, 6211SZ Maastricht, The Netherlands [anna-lena.hoh@maastrichtuniversity.nl].

ENDNOTES

[1] This is not only important in the case countries but is also an issue in Montenegro (see Vuković 2015), Serbia (see Nikolić & Trimajova 2015), Slovenia (see Josipovič 2015) and Kosovo (see Musaj 2015).

[2] The CES recommendations form the international guidelines for census-taking. These are formulated by the United Nations Economic Commission for Europe in collaboration with Eurostat.

[3] Earlier research has shown that this is also important for cultural politics in Spain (Urla 1993) and used for ethnic exclusion in Israel (Leibler & Breslau 2005).

REFERENCES

AAM Consulting (2013) *Technical Assistance to Population and Housing Census – Phase II - Final Report.*

Anon (2001) Ohrid Framework Agreement. Skopje: Organization for Security and Co-operation in Europe. Available online: www.osce.org/skopje/100622?download=true [last accessed 17 January 2017].

Anon (2016a) 'Bosnian Serbs defy Sarajevo with referendum for a national holiday'. *Deutsche Welle*. Available online: http://dw.com/p/2QZTf [last accessed 17 January 2017].

Anon (2016b) 'EU Urges Bosnia To Publish Census Figures To Gain Membership'. *Radio Free Europe/ Radio Liberty.* Available online: http://www.rferl.org/a/eu-urges-bosnia-publish-census-figures-gaim-membership-ethnic-dispute-/27760330.html[last accessed 17 January 2017].

Armakolas, I. & Maksimovic, M. (2014) 'Memory and the uses of the wartime past in contemporary Bosnia and Herzegovina: The case of the Bosniak campaign for the October 2013 population census'. *Science and Society (Επιστήμη και Κοινωνία),* 32: 59-93.

Balkans in Europe Policy Group (2015) 'Unraveling the Political Crisis in Macedonia: Toward Resolution or Calm Before the Storm?' *Balkans in Europe Policy Blog.* Available online: http://www.suedosteuropa.uni-graz.at/biepag/node/158 [last accessed 17 January 2017].

Bieber, F. (2004) 'Institutionalizing Ethnicity in the Western Balkans. Managing Change in Deeply Divided Societies'. *European Centre for Minority Issues Working Paper,* 19.

Bieber, F. (2011) 'Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans'. *Europe-Asia Studies,* 63(10)**:** 1783-1802.

Bieber, F. (2013) 'Bosnia Census: When counting counts'. *Balkan Insight.* 17 October 2013.

Bieber, F. (2015) 'The Construction of National Identity and its Challenges in Post-Yugoslav Censuses'. *Social Science Quarterly,* 96(3)**:** 873-903.

Blatter, J. & Haverland, M. (2012) *Designing Case Studies: Explanatory Approaches in Small-N Research*. Basingstoke: Palgrave Macmillan.

Brunnbauer, U. (2002) The Implementation of the Ohrid Agreement: Ethnic Macedonian Resentments. *Journal on Ethnopolitics and Minority Issues in Europe,* (1): 1-24.

Croatian Bureau of Statistics (2011) 'Census of Population,Households and Dwellings 2011, First Results by Settlements'. *Statistical Reports.* Zagreb. Available online: www.dzs.hr/Hrv_Eng/publication/2011/SI-1441.pdf [last accessed 17 January 2017].

Croatian Bureau of Statistics (2013) 'Press Release on Releasing the Results of the Census of Population, Households and Dwellings in the Republic of Croatia in 2011'. Zagreb. Available online: www.dzs.hr/Eng/important/PressCorner/PressRelease/census2011_3.pdf [last accessed 17 January 2017].

Daskalovski, Z. (2013) 'Census taking and inter-ethnic relations in Macedonia'. *Southeast European and Black Sea Studies***,** *13*(3): 365-379.

DG Enlargement (2007) *Accession Negotiations - Croatia - Draft Common Position.* European Commission. Brussels.

DG Enlargement (2013) *The former Yugoslav Republic of Macedonia 2013 Progress Report.* European Commission. Brussels.

Director of the Agency for Statistics of Bosnia and Herzegovina (nd) *Methodology for Preparation, Organization and Taking the 2013 Census in BiH.* Sarajevo. Available online: http://www.bhas.ba/Popis%202013/Metodology%20-%20eng.pdf [last accessed 17 January 2017].

Durr, J.-M., Bianchini, R., Demirci, M., Kostadinova- Daslakovska, K. & Pieraccini, G. (2013) Steering Committee of the International Monitoring Operation on the Population and Housing Censuses in Bosnia and Herzegovina- Thirteenth Assessment Report- 27 September – 18 October 2013. Available online: www.bhas.ba/census/3711559_Report_SC_Mission_13%20(3).pdf [last accessed 17 January 2017].

Durr, J.-M. & Demirci, M. (2016) *Steering Committee of the International Monitoring Operation on the Population and Housing Censuses in Bosnia and Herzegovina Twenty-second Assessment Report* - 1 – 4 February 2016. Available online: www.bhas.ba/census/904599_IPA%202014%20-%20ad-hoc%20mission%20IMO%20SC%20BiH%20Census-twenty%20second%20assessm....docx.pdf [last accessed 17 January 2017].

Elbasani, A. (2013) Europeanization travels to the Western Balkans- Enlargement strategy, domestic obstacles and diverging reforms. *In:* Elbasani, A. (ed.) *European Integration and Transformation in the Western Balkans: Europeanization Or Business As Usual?* New York: Routledge Chapman & Hall: 3-21.

European Commission (2006) *Screening report Croatia.* Brussels.

European Commission (2011) *Croatia 2011 Progress Report.* Brussels.

European Commission (2015a) *2015 Enlargement Package.* Available online: http://europa.eu/rapid/press-release_MEMO-15-6040_en.htm [last accessed 17 January 2017].

European Commission (2015b) *EU Enlargement Strategy.* Available online: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_strategy_paper_en.pdf [last accessed 17 January 2017].

European Commission (2015c) *Reform Agenda for Bosnia and Herzegovina 2015 - 2018.* Available online: europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf [last accessed 17 January 2017].

European Parliament (2016) European Parliament Resolution of 14 April 2016 on the 2015 Report on Bosnia and Herzegovina (2015/2897(RSP)).

European Parliament & Council Of The European Union (2008) Regulation (EC) No 763/2008 of the European Parliament and the Council of 9 July 2008 on Population and Housing Censuses. Official Journal of the European Union.

Eurostat (2014a) *Statistical requirements compendium.* European Commission. Luxembourg: Publications Office of the European Union.

Eurostat (2014b) *2011 Population census framework- Factsheet on population censuses in the Enlargement countries*. Available online: https://circabc.europa.eu/sd/a/aa6b9065-45f5-48f7-9262-0a067584b48b/EU_Enlargement_countries_census_Factsheets_upd-Mar2014.pdf [last accessed 17 January 2017].

Everaers, P. (2015) 'The 2011 Round of Population and Housing Censuses in the Western Balkans: A Comparative Analysis with a Focus on Ethnicity and Citizenship'. *Contemporary Southeastern Europe,* 2(2)**:** 184-194.

Freyburg, T. & Richter, S. (2010) 'National Identity Matters: the limited impact of EU political conditionality in the Western Balkans'. *Journal of European Public Policy,* 17(2)**:** 263-281.

Friedman, V. (2002) 'Observing the Observers: Language, Ethnicity, and Power in the 1994 Macedonian Census and Beyond'. *Political Essays,* 3(4). Available online: http://www.newbalkanpolitics.org.mk/item/Observing-the-Observers:-Language,-Ethnicity,-and-Power-in-the-1994-Macedonian-Census-and-Beyond#.WH4m7H3UdB4 [last accessed 17 January 2017].

Glüpker, G. (2013) 'Effectiveness of EU Conditionality in the Western Balkans: Minority Rights and the Fight Against Corruption in Croatia and Macedonia'. *Journal of Contemporary European Research,* 9(2)**:** 223-241.

Hall, P. A. (2006) 'Systematic Process Analysis: When and How to Use it'. *European Management Review,* 3(24)**:** 24-31.

Hoh, A.-L. (2015) 'The 2011 Census in Croatia – A (partial) role model for the Western Balkans?'. *Contemporary Southeastern Europe,* 2(2)**:** 65-83.

Jordanovski, Z. & Dimevski, S. (2011) 'Ethnischer Zwist stoppt Volkszählung in Mazedonien'. *Deutsche Welle*. Available online: http://www.dw.com/de/ethnischer-zwist-stoppt-volksz%C3%A4hlung-in-mazedonien/a-15466103 [last accessed 17 January 2017].

Josipovič, D. (2015) 'Slovenia and the Census: From the 20. Century Yugoslav Counts to the Register-based Census of 2011'. *Contemporary Southeastern Europe,* 2(2)**:** 159-175.

Keil, S. (ed.) (2013) *State-building in the Western Balkans: European approaches to democratization*. New York: Routledge.

Keil, S. (2015) 'Conclusion: The Politics of Numbers – Censuses in the Post-Yugoslav States'. *Contemporary Southeastern Europe,* 2(2)**:** 176-183.

Keil, S. & Perry, V. (2015) 'Introduction: The Politics of Numbers in the Post-Yugoslav States'. *Contemporary Southeastern Europe,* 2(2)**:** 43-49.

Kertzer, D. I. & Arel, D. (eds.) (2002) *Census and Identity: The Politics of Race, Ethnicity, and Language in National Censuses*. Cambridge: Cambridge University Press.

Leibler, A. & Breslau, D. (2005) 'The Uncounted: Citizenship and Exclusion in the Israeli census of 1948'. *Ethnic and Racial Studies,* 28(5)**:** 880-902.

March, J. G. & Olsen, J. P. (1989) 'Rediscovering Institutions: The Organizational Basis of Politics'. New York: Free Press.

Marusic, S. J. (2011a) 'Macedonia Scraps 'Failed' Census'. *Balkan Insight*, 13 October 2011.

Marusic, S. J. (2011b) 'Macedonian Census Commission Resigns'. *Balkan Insight*, 11 October 2011.

Marusic, S. J. (2011c) 'Macedonian Population Census Planned for October'. *Balkan Insight*, 15 August 2011.

Marusic, S. J. (2016) 'Activists' Enthusiasm Powers Macedonia's 'Colourful Revolution''. *Balkan Insight*, 16 May 2016.

Mendelski, M. (2013) 'Where does the European Union make a difference? Rule of law development in the Western Balkans and beyond'. In: Elbasani, A. (ed.) *European Integration and Transformation in the Western Balkans: Europeanization Or Business As Usual?* New York: Routledge Chapman & Hall: 101-118.

Musaj, M. (2015) 'Kosovo 2011 Census: Contested Census within a Contested State'. *Contemporary Southeastern Europe,* 2(2)**:** 84-98.

Nikolić, M. D. & Trimajova, L. (2015) 'A Tale of Two Serbias? Census-taking in 2002 and 2011'. *Contemporary Southeastern Europe,* 2(2)**:** 142-158.

Noutcheva, G. (2009) 'Fake, Partial and Imposed Compliance: the limits of the EU's Normative Power in the Western Balkans'. *Journal of European Public Policy,* 16(7)**:** 1065-1084.

Noutcheva, G. (2012) *European Foreign Policy and the Challenges of Balkan Accession: Conditionality, legitimacy and compliance*. New York: Routledge.

Official Journal Of The European Union (2015) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part. Available online: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A0630(01) [last accessed 17 January 2017].

Pavelic, B. (2012) 'Croatia Sees Population Drop Over Decade'. *Balkan Insight*, 18 December 2012.

Pavelic, B. (2013) 'Croatia to Introduce Cyrillic Script to Vukovar'. *Balkan Transitional Justice*, 03 January 2013.

Pavelic, B. (2014) 'Croatia's Language Dispute Leaves Minorities Nervous'. *Balkan Transitional Justice*, 12 August 2014.

Perry, V. (2013) 'The 2013 Census in Bosnia and Herzegovina'. *DPC,* Policy Note. Available online: www.democratizationpolicy.org/pdf/dpcpolicynotebihnewseries3bihcensus.pdf [last accessed 17 January 2017].

Perry, V. (2015) 'To count or not to count? That is the question'. *Census Blog* Available online: http://www.democratizationpolicy.org/blog/to-count-or-not-to-count/
[last accessed 17 January 2017].

Petričušić, A. (2002) 'Constitutional Law on the Rights of National Minorities in the Republic of Croatia'. *European Yearbook of Minority Issues,* 2(3)**:** 607-629.

Popis 2013 (2013) *Popis stanovništva priprema za referendum u Republici Srpskoj* Available online: http://popis2013.net/index.php?docid=968 [last accessed 17 January 2017].

Prifti, E. (ed.) (2013) *The European future of the Western Balkans: Thessaloniki@10 (2003-2013).* Paris: European Union Institute for Security Studies.

Radaelli, C. M. (2006) 'Europeanization: Solution or Problem?' In: M. Cini & A. Bourne, (eds) *Palgrave Advances in European Union Studies.* Basingstoke, Hants: Palgrave: 56-76.

Recknagel, C. (2016) 'Bosnia Erupts In Feuding Over New Census Data' *Radio Free Europe/Radio Liberty*. Available online: http://www.rferl.org/a/bosnia-census-results-spark-feuding/27831183.html [last accessed 17 January 2017].

Republic of Macedonia- State Statistical Office (2010) Law on Census of Population, Households and Dwellings in the Republic of Macedonia, 2011. 'Official Gazette of the Republic of Macedonia' no. 156/2010 and amendments to this Law published in 'Official Gazette of the Republic of Macedonia' no. 36/2011.

Schimmelfennig, F. (2014) 'Enlargement and Integration Capacity - A Framework of Analysis'. *MAXCAP Working Paper Series.* Available online: userpage.fu-berlin.de/kfgeu/maxcap/system/files/enlargement_and_integration_capacity-a_framework_for_analysis.pdf [last accessed 17 January 2017].

Schimmelfennig, F. & Sedelmeier, U. (2004) 'Governance by Conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe'. *Journal of European Public Policy,* 11(4)**:** 661-679.

Schimmelfennig, F. & Sedelmeier, U. (2005) *The Europeanization of Central and Eastern Europe*. Ithaca and London: Cornell University Press.

Schimmelfennig, F. & Sedelmeier, U. (2007) 'Candidate Countries and Conditionality'. In: Graziano, P. & Vink, M. (eds) *Europeanization: new research agendas.* Basingstoke, Hants and New York: Palgrave Macmillan: 88-101.

Simon, P. (2011) 'Collecting ethnic statistics in Europe: a review'. *Ethnic and Racial Studies,* 35(8)**:** 1366-1391.

Tatalović, S. (2006) 'National Minorities and Croatian Demoracy'. *Politička misao,* 43(5): 45–59.

Toe, R. (2016a) 'Bosnia Statistics Agency Vows to Publish Census'. *BalkanInsight*, 19 May 2016.

Toe, R. (2016b) 'Bosnia to Publish Census Without Serb Agreement'. *Balkan Insight*, 30 June 2016.

Toe, R. (2016c) 'Publish 2013 Census Data, EU Urges Bosnia'. *Balkan Insight*, 12 January 2016.

Trauner, F. (2009) 'From membership conditionality to policy conditionality: EU external governance in South Eastern Europe'. *Journal of European Public Policy,* 16(5)**:** 774-790.

United Nations Economic Commission For Europe (2006) Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing. *Prepared in Cooperation with the Statistical Office of the European Communities (EUROSTAT).* New York and Geneva: United Nations Publication.

United Nations Statistics Division. (2013) *2010 World Population and Housing Census Programme.* Available online: http://unstats.un.org/unsd/demographic/sources/census/censusdates.htm [last accessed 17 January 2017].

Urla, J. (1993) 'Cultural Politics in an Age of Statistics: Numbers, Nations, and the Making of Basque Identity'. *American Ethnologist,* 20(4)**:** 818-843.

Vasilev, G. (2013) 'Multiculturalism in Post-Ohrid Macedonia: Some Philosophical Reflections'. *East European Politics & Societies,* 27(4)**:** 685-708.

Visoka, G. & Gjevori, E. (2013) 'Census politics and ethnicity in the Western Balkans'. *East European Politics***,** 29(4):1-20.

Vrgova, R. (2015) Census, Identity, and the Politics of Numbers: the Case of Macedonia. *Contemporary Southeastern Europe,* 2(2)**:** 107-125.

Vuković, I. (2015) 'Population Censuses in Montenegro – A Century of National Identity "Repacking"'. *Contemporary Southeastern Europe,* 2(2)**:** 126-141.

INTERVIEWS

Interview 1: Eurostat official, March 2014, Luxembourg
Interview 2: EU Delegation Sarajevo official, September 2015, Sarajevo
Interview 3: DG NEAR official, June 2015, Brussels
Interview 4: Statistical Agency official, September 2015, Sarajevo
Interview 5: Eurostat official, March 2014, Luxembourg
Interview 6: State Agency official, September 2015, Sarajevo
Interview 7: International Census Consultant, April 2016, phone interview
Interview 8: International Census Consultant, October 2015, Skopje
Interview 9: EU Delegation Skopje official, November 2015, Brussels
Interview 10: Eurostat official, March 2014, Luxembourg
Interview 11: State Statistical Office official, October 2015, Skopje
Interview 12: OSCE official, October 2015, Skopje
Interview 13: Croatian Bureau of Statistics official, September 2015, Zagreb
Interview 14: DG NEAR official, March 2016, phone interview

Book Review

Taylan Özgür Kaya, *Necmettin Erbakan University, Konya Turkey*

LOBBYING IN EU FOREIGN POLICY-MAKING: THE CASE OF THE ISRAELI-PALESTINIAN CONFLICT

Author: Benedetta Voltolini

Abstract

The book breaks new ground in the literature on lobbying in the European Union by offering a unique analysis of how lobbying works in the context of EU foreign policy-making, with particular focus on the Israeli-Palestinian conflict.

Keywords

European Union, European Union Foreign Policy, Non-state Actors, Lobbying, Israeli-Palestinian Conflict

---

Benedetta Voltolini in her book sets out to shed light on a neglected yet promising topic, the role of non-state actors (NSAs) in EU foreign policy-making. Through empirical research Voltolini provides an insightful analysis of the role of NSAs in EU foreign policy-making from agenda-setting stage to the decision-making stage, using the Israeli-Palestinian conflict as to demonstrate how NSAs influenced the EU's foreign policy output. This is shown with three case studies of the conflict: Israeli-EU contention on the territorial scope of EU-Israel Association Agreement (the issue of the rules of origin), the EU's policy towards the Goldstone Report following the Israeli Operation Cast Lead, and the EU-Israel Agreement on Conformity Assessment and Acceptance of Industrial Products. The book employs an innovative analytical framework characterised by three dimensions: roles, frames and levels. These dimensions enable the identification of NSAs and their interaction with policy-makers (roles), their lobbying tools (frames) and their targets (levels).

The book is structured in eight chapters. Following a brief introduction, the first chapter begins by providing a concise overview of two separately growing literatures: the literature on the EU's foreign policy and the literature on NSAs in the EU or interest representation in the EU, which the author intends to combine with her study. Then it provides a detailed description of analytical framework that is employed for assessing the impact of NSAs on the EU's foreign policy. Voltolini identified three types of roles played by NSAs while lobbying the EU depending on the modes of social interaction between NSAs and the EU: the dialogue-builder, the voice-articulator and the opponent, which help to understand who these NSAs are and how they interact with the EU. The book offers three types of frames: political, technical and mixed, which help to understand which instruments NSAs use for influencing the EU's foreign policy. Considering the multilevel nature of EU foreign

policy system, the book seeks to find out at which level(s) NSAs prefer to carry out lobbying activities and how their choice of level(s) affect the role and frames they employ for lobbying. Moreover, investigating the level of lobbying activity provides a valuable insight about the Europeanization of NSAs. In the final part of the first chapter, the book provides a concise overview of the methodology used to assess NSAs' success in translating their inputs into the EU's foreign policy outputs, which allows to measure their actual influence on the EU's foreign policy. The final part also includes a detailed elucidation of why the Israeli-Palestinian conflict was selected as the case study, whether research findings can be generalised beyond the specific context in which the research was conducted, and how empirical data was collected and analysed.

In order familiarise the reader with the policy context in which NSAs carry out their lobbying activities and which actors they interact while lobbying, the second chapter provides a concise historical overview of the EU's involvement in the conflict by analysing EU Member States' efforts to develop a common position; an analysis of EU policies and instruments for dealing with the conflict, EU actors participating in EU policy-making process towards Israel and Palestine; and discusses the main issues on the EU's agenda and hot topics concerning the conflict.

To find out who are NSAs lobbying on the EU's foreign policy regarding the Israeli-Palestinian conflict and what are their main characteristics, chapter three provides an analysis of the population of NSAs that involved or potentially interested in lobbying on the EU's foreign policy towards the Israeli-Palestinian conflict. Given the lack of clear and precise list of NSAs lobbying the EU, the author builds her own large, new and innovative dataset by relying on the information drawn from wide variety of data sources, including registers of the European Commission and the European Parliament and inter-institutional Transparency Register, NGO studies, newspaper articles and books and academic articles dealing with Israel and Palestine, the websites of some NSAs with linkages to other NSAs or mentioned other actors, interviews carried out by the author with experts, NSAs and officials. On the basis of this analysis the author has built a dataset of 325 NSAs, which are categorised by the author as business groups, NGOs, solidarity movements, think tanks, the media and the individuals based on their field of activity and organizational features. Moreover, the author makes another typology based on the venue of NSAs, including EU/Europe-based, cross-country and Israel/Palestine-based, which helps to understand how their location affect frequency and form of their lobbying activities. The chapter also discusses main features and trends of NSAs.

Chapters four, five and six deal with concrete examples of lobbying activities of NSAs in three empirical case studies, Israeli-EU contention on the territorial scope of EU-Israel Association Agreement (the issue of the rules of origin), the EU's policy towards the Goldstone Report following the Israeli Operation Cast Lead, and the EU-Israel Agreement on Conformity Assessment and Acceptance of Industrial Products, each of which are related with different policy areas (trade policy, human rights policy, regulatory policy), the competences of the different institutions involved. These three chapters provide a profound delineation of who are NSAs actively lobbying to influence EU policies, what type of role(s) they play and which frame(s) they employ while lobbying the EU, to what extent they succeed in translating their inputs into the EU's foreign policy outputs. The empirical section also offers significant insights about how type of role(s) played and frame(s) employed by NSAs affect their ability to influence the EU's foreign policy towards the Israeli-Palestinian conflict.

While previous three empirical chapters seek to analyse lobbying activities carried out by Brussels-based NSAs, chapter seven sets out to analyze the lobbying activities conducted by member state-based NSAs. Given their status as "three big" member states on EU, their weight in policy-making and their crucial role in the definition of foreign policy regarding Israel and Palestine, the book focuses its analysis on the lobbying activities conducted by NSAs based in three member states, namely the United Kingdom, Germany and France on issues related to the Israeli-Palestinian conflict.

Similar to previous chapters, the chapter provides an in-depth analysis of who are NSAs based in these three member states, what type of role(s) they play and which frame(s) they employ while lobbying at national level. It also provides an analysis of to what extent member state-based NSAs' lobbying activities are Europeanised. Based on what issues, how and at which level member state-based NSAs conduct lobbying activities, the book offers four different patterns of Europeanization of interest representation: no interest, internalisation, supranationalisation and externalisation. Because of her analysis, Voltolini found that lobbying at two levels are disentangled and not strongly connected, which means that there exists a limited or partial Europeanization in which majority of member state-based NSAs conduct their lobbying on issues of national foreign policy at state level.

The book has many merits. First, it provides a comprehensive and deeper understanding of EU foreign policy-making by adding input of NSAs in analysing EU foreign policy-making. Secondly, the book offers an innovative analytical framework, which offers useful tool for future research on lobbying in EU's foreign policy. Particularly, set of roles and frames, which are identified by the author, can be generalised beyond the specific context of this study and be utilised in future research investigating NSAs' role in various areas of the EU's foreign policy. As such, it can serve as a highly useful tool for researchers investigating the role of NSAs in EU foreign policy-making process.

Thirdly, original and meticulously constructed dataset of NSAs involved or potentially interested in lobbying on the EU's approach towards the Israeli-Palestinian conflict would be a valuable reference resource for those who have a specific interest on NSAs lobbying the EU on the issue of the Israeli-Palestinian conflict. Moreover, the methodology used for building the dataset of NSAs offers a valuable guide for future researchers aiming to form such a dataset of NSAs lobbying the EU in various issues and cases. Fourthly, it provides a differentiated view of EU lobbying by challenging predominant rationalist interpretation of the literature on lobbying in the EU that NSAs and EU institutions are rational and utility-maximising actors, who are articulating and pursuing their pre-defined interests and lobbying is a uni-directional process in which NSAs impose their predefined frames on policy-makers. Alternatively, it provides a constructivist interpretation of NSA-EU interaction that lobbying is a relational or circular process and social interaction between NSAs and EU policy-makers results in a new frame which reflects their shared understanding of the issue.

To conclude, this analytically innovative, empirically rich and methodologically rigorous book makes an original contribution to existing knowledge of how lobbying works in the context of EU foreign policy-making. The book will appeal to policy-makers, practitioners, scholars and students who are interested in broadening their knowledge of lobbying in EU foreign policy-making. It is a fine piece of research, which demonstrates that NSAs play a significant role in EU foreign policy-making and make noteworthy contribution to the framing process of the foreign policy of the European Union. In many respects, it is intellectually stimulating and can serve as a building block for further research.

BIBLIOGRAPHIC INFORMATION

Lobbying in EU foreign Policy-making: The Case of the Israeli-Palestinian Conflict

Author: Benedetta Voltolini

Routledge, 2016

ISBN: 978-1-138-84814-6 (hbk.), £85.00, 224 pages

Other formats: 978-1-315-72619-9 (ebk.)

Book Review

Ingi Iusmen, *University of Southampton*

SOCIAL POLICY IN THE EUROPEAN UNION

Author: Karen M. Anderson

Social Policy in the European Union by Karen M Anderson provides a comprehensive examination, both analytically and empirically, of a set of policy areas, which make up what is known as the European Union's policy-making responsibilities. Generally, the sphere of social policy at the national level covers policy measures such as income maintenance programmes, which include pensions and employment insurance, as well as social services, such as health care and education. The book examines the evolution of the EU's role in addressing social policy issues – which were initially only the purview of national governments – by expanding both its legal mandate and developing soft law instruments to accompany this role. By analysing the EU's social policy process in light of European integration and welfare state literatures, the book chapters mainly draw on the analytical concepts of historical institutionalism – such as temporality, path dependence, unintended consequences – in the development of EU social policy. The analysis also departs from approaches to EU social policy examination found in the EU literature, namely the focus on the EU's regulatory role – understood as negative integration – whereby the EU establishes boundaries to national distributive policies, and second, the development of a catalogue of EU social rights which could be enforced judicially at the national level.

The central argument of the book is that the EU social policy has variable national effects within the context of multilevel governance. In other words, the book argues that the impact of EU social policy on national welfare systems varies across policy sectors and EU Member States due to the fact that European integration changes national opportunity structures, providing individual and collective actors with new ways to shape policy development (p. 3). There are two key questions that underpin the analysis: the first question focuses on the emergence of EU social policy despite a limited EU Treaty basis; while the second, stresses the differential impact of EU social policy at the national level.

The book's structure consists of seven empirical chapters, with the introductory chapter setting out the background to the topic and the key arguments developed, while the Conclusion chapter aims to draw broader conclusions and policy implications from the analysis. Chapter 2 ('Explaining Social Policy-making in Europe') provides a critical analysis of the key features that distinguish social policy from other policies at the national level (e.g. rules governing benefit access, the high salience of social policy at the domestic level etc.) and how these interact with EU governance structures to influence modes of social policy-making at the EU level as well as Member States' reactions to them. This chapter also covers the main relevant theoretical approaches to EU social policy analysis: the comparative social policy perspective and the impact of European integration, namely the 'Europeanisation' of social policy perspective. In Chapter 3 the social policy-making at the EU level is examined from a historical perspective, starting with the beginnings of the European project in the late 1950s. This chapter also outlines the roles played by various EU institutions, such as the European Court of Justice, in interpreting and developing EU social policies.

The next chapters of the book (Chapters 4-8) examine the EU's role in specific social policy sectors, such as pensions and social insurance, employment policy, vocational training and higher education, health policy and social inclusion. From the perspective of EU studies, these chapters shed a new light on the dynamics of negative and positive integration, as well as the key EU policy instruments that are prevalent for each policy sector under scrutiny. For instance, the EU's competition law has shaped policies such as health care services, while EU labour mobility has had an impact on pensions and social insurance by following the logic of negative integration. On the other hand, the positive integration dimension has been far more limited and less influential in the field of EU social policy. These empirical chapters also discuss the development and deployment of EU soft law instruments (such as the Open Method of Coordination –OMC) in sectors such as employment, social inclusion or pension reform. Chapter 4 focuses on the EU's impact on social security (statutory and collective) and pensions by highlighting the role played by the Court's rulings in these sectors. Chapter 5 scrutinises the emergence of EU law (hard and soft) intended to support high level of employment at the national level and reconciliation of work and family. For instance, the chapter examines the extent to which the European Employment Strategy (a soft law instrument) has been successful in delivering 'more and better jobs', as well as the influence of EU hard law, such as the Parental Leave Directive, aimed at reconciling work and family at the national level. Chapter 6 discusses the EU's role in relation to vocational training and higher education, by focusing on aspects such as the mutual recognition of education and vocational qualifications, the Bologna process as well as specific initiatives developed as part of the Lisbon Strategy and the EU law on free movement. Chapter 7 explores the implications of European integration, particularly the internal market, for the provision of health care at the national level. For instance, the chapter discusses policy aspects such as patient mobility, as well as EU-level actions in the area of occupational health and safety. Chapter 8, the final empirical chapter, examines the enhanced EU involvement in addressing issues such as poverty and social inclusion. The chapter traces the origins of EU role in dealing with poverty-related matters back to the 1970s, and its gradual development over time, and culminated with the inclusion of poverty and social exclusion in EU economic growth strategies, such as the Lisbon Strategy and Europe 2020.

Four key conclusions are reached by the analysis of EU social policy sectors (social security and pensions, employment, vocational training and higher education, health policy, poverty and social inclusion): the first, reinforces the national governments' support of the status quo, namely that EU Member States are the masters of their own welfare systems. Second, there is a wide social policy diversity across Europe, which is also linked to the fact that, third, social policy is different from other European policies due to its role in national politics. Finally, the expansion of EU social policy can primarily be attributed to the supranational activism exerted by the European Court of Justice and the European Commission. Both the Court and the Commission have advanced negative integration which required that national social policies facilitate labour mobility. Particularly the Court's interpretation of EU primary and secondary legislation, as well the effects of negative integration, have facilitated the opening up of national health care institutions to patient mobility or the promotion of equal pay for men and women in the labour market. Additionally, in policy sectors where the EU lacked explicit legal mandate, the EU developed soft law instruments, such as the Open Method of Coordination, for areas such as employment and social inclusion.

There are two aspects that the book could have addressed better. First, a more detailed discussion of how multilevel governance (MLG) is envisaged, how it is operationalised and particularly its connection to historical institutionalism would have been useful. Various meanings are attached to MLG in EU studies, and hence, in the context of EU social policy, it would have been helpful to tease out its specific relevance to the EU policy-making in various social policy matters. Second, a more thorough application of historical institutionalist concepts to explain policy change is unfortunately missing. The analysis mainly draws on historical institutionalist concepts that highlight policy stability

and path-dependence. Yet, these concepts fall short of explaining how and why policy changes. Indeed, by drawing on the policy entrepreneurship and agenda-setting literatures, the analysis could have captured better –both conceptually and empirically - those factors that not only determine policy stability (or status quo bias) but also those that can explain how and why the EU has expanded its role and scope in social policy more generally.

BIBLIOGRAPHIC INFORMATION

Social Policy in the European Union

Author: Karen M. Anderson

Palgrave MacMillan

ISBN 9780230223493 (hardback), £ 75, 264 pages