

Business as Usual?

Negotiation Dynamics and Legislative Performance
in the Council of the European Union
after the Eastern Enlargement

Doctoral thesis submitted for the degree
of Doctor of Philosophy in Political Science

by

Marzena Kloka-Kohnen

Bremen, 20 November 2013

Dissertation committee:

Prof. Dr. Susanne K. Schmidt, Universität Bremen

Prof. Dr. Philipp Genschel, Jacobs University Bremen

Prof. Dr. Frank Schimmelfennig, Eidgenössische Technische Hochschule Zürich

Bremen International Graduate School of Social Sciences

Thesis defended on 28 February 2014

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Acknowledgements

I would like to thank my teachers, colleagues and friends who contributed to this project and supported me throughout my research journey. My supervisors Susanne K. Schmidt, Philipp Genschel and Frank Schimmelfennig offered me guidance and constructive criticism on all aspects of the project. Thanks to their commitment and rich feedback, I gradually worked my way through the complexity of Council politics. Furthermore, I would like to thank Arndt Wonka, who commented on my work on many occasions. His enthusiasm about (political science) research and his superb competences in my particular field of study provided inspiration and invaluable assistance in numerous moments of doubt. I owe much gratitude to my colleagues from Bremen International Graduate School of Social Sciences (BIGSSS) for their ideas, comments and creating a stimulating atmosphere at work: Björn Fleischer, Sezin Dereci, Henning Deters, Gesche Lange, Christoph Ossege, Alex Schellinger, Björn Schreinermacher, Jonathan Smiles and Natascha Zaun.

BIGSSS proved to be an accommodative institution for fellows with young children and I appreciate the administrative, organizational and financial support on this matter. Reconciling work with parenthood would have been much more difficult for me without my family, in particular my mom, Magdalena Kloka, who has been travelling long distances to assist me in more demanding times. I thank my parents, my sister, my parents-in-law and my friends for the faith in me and the trust that I am doing the right thing. Last but not least, I would like to thank Matthias for his friendship and love. Together with our daughter Hanna, he regularly provided me with incentives to live a life outside the dissertation. This life has kept me well grounded, especially during the last year.

1 Introduction

The opening chapter introduces the two research questions pursued in the thesis: First, why does the Council of Ministers fulfill its legislative tasks so efficiently and smoothly, despite the exogenous shock of membership change? Second, if the Eastern Enlargement has left the Council output unaffected, how did it affect the legislative dynamics within the institution? Subsequently, the chapter states the argument illustrated later in the book, namely that the legislative robustness of the enlarged Council of Ministers results from member states' highly unequal ambitions and abilities to formulate and advocate their own policy interests in the Council arena. This diversity is strategically exploited by the Council Presidency, which employs its procedural prerogatives to boost legislative effectiveness, in line with its institutional interest. Thus, despite the presence of new actors at the bargaining table, the old large member states continue to control the politics within the Council, eventually taking advantage of the numerical strength of the Eastern bloc. The chapter closes with an outline of the book.

1.1 The research question

This study inquires about the impact of the Eastern Enlargement on the Council of Ministers. Both practitioners and academics have argued that this institution, being the core of the EU's legislative system while also providing the forum for national interests, would be most susceptible to disturbing effects of large numbers and diversity (Wallace 2002: 329). The following section provides the background for this reasoning and introduces the puzzle concerning the enduring legislative robustness of the Council. Furthermore, I argue that investigating how such smooth accommodation of Enlargement emerged – and whether there is indeed no change at all – is relevant, as it touches upon fundamental questions about the relationship between the EU and its member states.

1.1.1 Background: EU institutions and the Eastern Enlargement

In his famous book “Europe as Empire”, Jan Zielonka postulated that the Eastern Enlargement would change the nature of the European Union (Zielonka 2006). Zielonka argued that the dramatically increased diversity of economic, political and cultural conditions would have severe implications for European governance. Not only would more flexible forms of integration become necessary, but the hierarchic mode of governance would be threatened and the central policy steering weakened (Zielonka 2007: 198-199). Zielonka found a strong metaphor for his reasoning. The EU would lose its state-like, “Westphalian” characteristics and become a kind of neo-medieval empire: large, but immovable, versatile but internally incoherent. While criticized as too abstract and too far-reaching (Puchala 2006: 1109; Dannreuther 2007), Zielonka’s argument relies on a straightforward logic: *what* an organization does and *how* it works strongly reflects its composition.

The very same logic underlines the vividly debated question concerning whether European integration is accompanied by a tension between widening and deepening. Does including increasingly more members make closer cooperation and more intense integration difficult, if not impossible? On the one hand, several analysts of EU integration have pointed out that the widening-deepening trade-off is a constructed narrative, rather than an evidence-based account “law” of integration (Nugent 2004a: 63-65; Wallace 2005: 24-27; Kelemen et al. 2011; Schimmelfennig 2012). On the other hand, when broken down into analytical segments, the widening-deepening tension remains appealing. The assumptions that it is based upon receive empirical support and the mechanisms it implies are theoretically sound, according to our current understanding.

From a historical perspective, the expectation that newcomers might be risky partners in terms of advancing integration is not necessarily wrong. Countries that had joined the EU in the previous Enlargement rounds often manifested reluctance to pursue further integration, for reasons related to political preferences, like the United Kingdom, or domestic institutional dynamics, such as Denmark and, to a certain extent, Sweden (Wallace 2005: 27). Alternatively, newcomers were ready to accept deepening, but not for free. The emergence and expansion of EU-level regional policy is often interpreted as a side-payment accompanying the great political bargains of the late-1980s

and early-1990s (Pollack 2000: 523)¹. As for the Central and Eastern European countries, prior to accession they were reputed to be particularly sovereignty conscious, owing to their political past, and keen to pursue more liberal policies, because they hoped to exploit their competitiveness on the labor and services markets (Baun 2004: 138-142). Given that both dimensions – harmonization and liberalization – are already present in the EU's conflict structure, the Eastern Enlargement was likely to intensify conflicts or even shift majorities. Arguably, more intense and dynamic conflicts induce higher chances for gridlock and higher barriers to reach agreement.

The theoretical reasoning behind the widening-deepening tension draws upon spatial models of decision-making and theories of collective action. The former claim that heterogeneity of preferences and more veto points within the system, which can multiply when new members join (depending on the decision rule), limit the scope for finding acceptable solutions for the majority (Tsebelis 2002). In turn, the theory of collective action postulates that the larger and the more diverse a group, the lower the individual willingness to contribute to public goods (Olson 1965). If deepening of integration is understood as a surrender of individual sovereignties to create mutually beneficial integrated policies, member states would be less eager to engage in such exchange in a larger setting. The larger the group, the higher the transaction costs of reaching agreement and the higher the uncertainty concerning whether the policies will be properly implemented by all members. Besides, the benefits of integration are no longer exclusive and might be perceived as smaller when compared to the costs of giving up autonomy. In both theoretical scenarios, membership change affects decision-making, introducing a status quo bias. The effect was expected to be the strongest in the Council, where the high procedural threshold for agreement is combined with a system of proportional representation (Hosli 1999). Accordingly, adopting new policies or modernizing the old ones was anticipated to become increasingly difficult in the enlarged EU. Rather, legislative inertia or gridlock had been expected (De Witte 2002: 247; Tsebelis and Yataganas 2002: 304; Baldwin and Widgrén 2004; König and Bräuninger 2004: 430).

¹ Later on, Spain threatened to veto the Northern enlargement, until it was bought-off with the creation of the Cohesion Fund (Nugent 2004b: 29).

While portraying the 8+2+2² accession as a danger to the management of the EU's affairs – both the daily legislative ones and significant historical decisions – was not the only way of looking at the (Eastern) Enlargement's implications, it became the most widespread and powerful one. In particular, it fed nicely into the path-breaking project of EU Constitution (Wallace 2005: 23). This major institutional reform aimed, among other things, at streamlining the decision-making process. It has not only occupied the EU policy-makers but also observers of various academic backgrounds for almost a decade.

1.1.2 Puzzles and open questions

As early as three years after the Eastern Enlargement, first empirical data on the legislative productivity of the Council had been gathered and a new narrative was proclaimed among Council analysts, namely “business as usual” (Hagemann and De Clerck-Sachsse 2007; Wallace 2007; Best and Settembri 2008; Pollack 2009; Wallace et al. 2010). The Council had maintained the level of produced legislation, at least numerically, and there were no explicit signals of increased, destabilizing contestation. Of course, measuring “capacity to act” across time and policy areas remains a challenging task. Comparative inquiry about different dimensions of legislative performance, such as the duration or the legal quality of outcomes, is a research agenda still under development. Nonetheless, we can safely say that the scenario of legislative paralysis failed to materialize and the Council of Ministers has accommodated the Eastern Enlargement surprisingly smoothly.

This observation leads directly to my two research questions. First, why, against all expectations, did a major membership change in the Council of Ministers not affect the legislative productivity of this institution? Second, even if the output remains “the same”, what are the implications of larger numbers and increased diversity for the dynamics of policy-making in the Council?

One could argue that the “mechanic” linkage between membership change and legislative failure was an inaccurate expectation from the outset. In fact, in the late-1990s, Jonathan Golub (1999) and Helen Wallace (1999)

² Poland, Slovakia, the Czech Republic, Hungary, Slovenia, Latvia, Lithuania and Estonia (8) joined the EU on 1 May 2004, together with Malta and Cyprus (2). Romania and Bulgaria (2) followed on 1 January 2007. On 1 July 2013, Croatia joined the EU as the first Western Balkan country. When referring to the new member states, I mean the eight CEE countries, only occasionally referring to Romania and Bulgaria (where applicable).

outlined two alternative ways of looking at Enlargement's implications for EU politics. Having analyzed the output and the duration of Council policy-making during 1974-1995, Golub demonstrated that legislative efficiency does not directly follow from the decision-making rule (Golub 1999: 753-760). His observations suggest that reaching a decision in the Council is only loosely linked to the ways in which power is formally distributed among member states, as well as the formal decision threshold. Showing that the "Thatcher era" had influenced the Council's productivity more than the accessions of Greece, Spain and Portugal, Golub drew attention to member states' preferences and the ways in which they were articulated (Golub 1999: 753). The careful conclusion from his research for the Eastern Enlargement was that there would be more to collective decision-making than "just" numbers and individual voting power.

Helen Wallace adopted a more "organic" perspective on the accession of post-communist countries to the EU, arguing that any form of transnational action strongly reflects the domestic dynamics within the participating countries. In other words, how countries practice their membership in the EU depends on how they manage the interconnections between the domestic and supranational arenas (Wallace 2005: 32). These links are of diverse kinds: functional, territorial and affiliational³ (Wallace 1999: 291-295). Functional interconnections are the most relevant ones for Council politics, because they relate most directly to specific instances of public policy and "national interests" manifest here most often. Wallace argues that post-communist countries have to construct, discover and learn to manage these interconnections from scratch and we do not really know what shape this process will take (Wallace 1999: 296, 303-305; 2005: 32-33). Thus, the impact of Enlargement on the Council will depend on how CEE countries will "domesticate" Europe.

Wallace and Golub's contributions did not offer any specific predictions about what might happen in the Council of Ministers after Enlargement; rather, they served as words of warning that an automatic linkage between

³ The functional dimension of integration reflects member states' cooperation needs resulting from economic exchanges and public policy needs. Territorial dimension refers to member states' (local) territorial concerns, such as the relationship with neighbors, safety interests or geopolitical concerns. Affiliational dimension encompasses shared value sets, both constitutional (democracy, fundamental rights) to socio-economic (Wallace 1999: 291-206).

membership change and efficiency might be too narrowly constructed. Indeed, their judgment was apparently correct, although this is not to say that we should refrain from asking how a “doomsday scenario” became “business as usual”. Accordingly, the following section explains why the inquiry about the mechanisms of Enlargement accommodation is an important one.

1.1.3 Relevance

If Enlargement does not pose any fundamental problem to the Council of Minister’s functioning, why should we care about it at all? There are three answers to this question. Firstly, analyzing the mechanisms of Enlargement accommodation will deepen our knowledge of how the Council of Ministers works. The main question that this thesis is asking is one of a *how possible* type. Next to *whys*, *how possibles* are fundamental questions in social sciences and they refer explicitly to complex systems (Little 1991: 4). A *how possible* inquiry acknowledges that an organization under consideration - here the Council of Ministers - comprises diverse parts and processes that contribute altogether to the performance of the system as a whole. The Council of Ministers seems to possess a high capacity to mitigate exogenous changes, such as the enlargement of membership. Thus, the purpose of this thesis is to demonstrate how this capacity comes about, as well as to explain where it comes from. Chapters 2 (literature review) and 3 (theoretical argument) of the thesis collect what we already know about bits and pieces of post-Enlargement Council politics and discuss how this knowledge can be related to the impressive legislative performance. While Chapter 2 discusses the hypothesis advanced in current research, Chapter 3 develops an alternative account.

Secondly, the question of what impact the Eastern Enlargement has on the Council of Ministers touches upon yet another fundamental topic in EU research: the relationship between the EU and its member states. To what extent does the policy-making in the European Union reflect the membership of this organization? (How) does it matter who sits at the decision-making table? There is a normative and an analytical dimension to these questions. From the normative perspective, one could argue that the Council should be inclusive and responsive and member states should have equal control over the substance of the integration project. From the analytical perspective, the relationship between the EU and its member states touches upon the basic categories of political science, such as interests, power and influence.

Finally, the Eastern Enlargement was the largest and the most spectacular membership change in EU's history, yet it was not the last one; on the contrary, the EU is continuously enlarging. Some accessions, like the Croatian one, passed without great attention, whereas others, like the potential joining of Turkey, have generated great contention. With the Western Balkan, the EU might one day be richer by another regional bloc. In the light of these changes, it is important that we understand how the legislative institutions deal with Enlargements. The intellectual ambition here is to delineate continuity and change, as well as understanding how membership change makes a difference to EU policy-making and under what conditions there is more to Enlargement than simply "business as usual".

1.2 The argument in a nutshell

In this study, I advance a two-component explanation of smooth accommodation of the Eastern Enlargement by the Council of Ministers. I argue that the effects of diversity and large numbers on the Council's productivity are mitigated by the asymmetries among member states, regarding their ability and their ambition to pursue own policy interests during supranational bargaining, combined with the procedural leeway, as the Presidencies enjoy and exploit it. My argument focuses on the legislative process, rather than on the structure of decision situations.

For reasons related to their domestic politics, the new member states from Central Eastern Europe lack the capacity to formulate and effectively advocate policy positions in Council negotiations. This organizational deficit has two broader implications. First, it hinders these countries from influencing the negotiation process and the policy outcome directly. Second, it makes mimicry or fellowship towards old member states the CEEs' default bargaining strategy. Therefore, I argue that the impact of changed membership on the legislative dynamics crucially depends on the interactions and alliances the newcomers engage in. When these alliances are well organized, the numerical strength of the Eastern bloc can be exploited and even contribute to policy change, as one of my case studies shows. Large, old member states are in the best position to provide these organizational resources. Thus, when willing and able to arrange reliable bargaining opportunity structures which the newcomers can use, these states are empowered by the Eastern Enlargement.

This “mobilization-mimicry” mechanism between the old and the new member states, which is the core of my explanation, can only operate when there are overlaps in policy preferences between the two groups⁴. Thus, I do not neglect that the already differentiated policy space within the Council and the fact that newcomers blend into the structure of fluid alignments, plays a stabilizing role in the post-Enlargement Council politics (Thomson 2009; 2011). However, the lack of a permanent, cross-cutting preference structure does not provide a complete explanation for the Enlargement puzzle. One problem is that the hypothesis of diffuse reciprocity, which links the variable preference structure with the legislative performance, faces empirical problems, as Chapter 2 of this dissertation shows. However, beyond this question, even with a variable preference structure, majority shifts can always occur and threaten the pre-Enlargement (policy) equilibrium. Thus, we need to know whether and how majority shifts caused by membership change translate into open conflicts in the Council and under what circumstances they eventually have an impact on the legislative performance.

I claim that whether the “Eastern bloc” makes a difference to Council politics depends on how it fits in the bargaining strategies of older member states, usually the large ones. They remain the pivotal players in post-Enlargement Council politics, as they define the policy conflicts and determine the methods with which these conflicts are debated and dealt with. For these reasons, I argue, *how* individual member states prepare and organize their legislative action is central to further development of the bargaining dynamics under the conditions of enlarged membership. The organizational assets, highlighted by this project, are distinct from factors that have served as prominent explanations for legislative influence, such as size, which is deeply structural, or salience, which has an unclear time horizon and might be situational. I show that asymmetries of abilities and ambitions, relevant for Council politics, are enrooted in the domestic practices and policy-making styles. Clearly, differences in professional preparation of member states for intergovernmental bargaining had been present in the Council for decades. The Eastern Enlargement has deepened these asymmetries and most likely increased their relevance for the inner workings of this institution.

⁴ To put it in Tsebelis’ terms, the newcomers’ preferences are absorbed by the old actors and thus they do not count as veto players and do not contribute to the status quo bias (Tsebelis 2002: 28).

The fragmentation of the enlarged Council and the asymmetries among member states regarding their capabilities to contribute to policy discussions on a supranational level are conducive to a robust legislative performance, thanks to the strategic handling of decision-making procedures by the Council Presidency. I argue that the Presidency is guided by institutional interests and puts its powers to the service of legislative progress and negotiation conclusion. While the Presidency had been a constitutive feature of the Council for a long time, two brokerage strategies appear to work particularly well in the context of larger and more diverse membership: streamlining and exploiting diversity. In the former, the Chair applies time pressure, pushes the delegations to nail down their demands and recourses to surprise effects when handling the voting procedure. A side-effect of this brokerage style is path dependency and first movers' advantage. I show that the first months of Council bargaining not only decisively shape how further process unfolds, but also have substantial implications for the outcome. In the latter strategy, exploiting diversity, the Presidency engages in divide and rule tactics, pitting allies against each other on the grounds of diverging preference orders, domestic constraints or bargaining resources. In fact, the larger and the more diverse the group, the higher the chance for the Presidency to find (or to induce) diversity and to craft majorities out of it. Thus, I argue that the Eastern Enlargement increased the leverage of the Council Chair. Interestingly, factors that effectively counter the Presidency's efforts, such as politicization and constituency mobilization within member states – are not directly related to the formal membership of the Council.

My explanation of the smooth accommodation of the Eastern Enlargement by the Council of Ministers represents an alternative to the “cooperative culture”, often invoked to account for the Council's capacity to overcome contestation (Thomson 2011; Veen 2011). While I agree that hard-nosed bargaining is rather an exception, than a rule, my results cast doubt whether it is the equalizing and accommodative nature of the Council processes which make member states use their formal powers only sparsely and refrain from proclaiming their interests too manifestly. Rather, my study draws a picture of a decision-making body driven by asymmetric participation of its members, these asymmetries going back to differential capabilities to contribute to cross-border policies. This fragmentation is not only gently

streamed by the Council Presidency, but it also triggers specific collective dynamics, such as mobilization-mimicry among member states or the path dependency of policy discussions. On the one hand, these dynamics reduce the complexity of the decision situation. Nonetheless, on the other hand, they do so at the expense of the process' inclusiveness, since some governments find themselves in a better position than others to make the policy process respond to their needs. Member states governments value the manageability of the enlarged Council, irrespectively of their position as "leaders" or "followers" of collective dynamics. In contrast, the consequences of individual countries' interests being less well reflected in EU-level policies are diffuse and delayed in time. In fact, they are no longer part of Council politics.

1.3 Plan of the thesis

The structure of the thesis is as follows. The subsequent Chapter 2 discusses what we have learned thus far about the impact of the Eastern Enlargement on different dimensions of the Council's work. An analytical synthesis of existing findings is of great importance for the thesis, given the richness as well as the methodological and theoretical diversity of recent empirical research on the Council of Ministers. Unsurprisingly, the literature provides evidence for both continuity ("business as usual") and change of Council politics after the Eastern Enlargement. The Chapter makes two claims. First, it questions the argument that traces the continuity of the Council's legislative performance back to flexible coalitions among member states. This argument has been advanced in large-n research and postulates that the Council's variable political space induces cooperative culture, which absorbs membership change in turn. I show that this reasoning, while plausible, can be challenged on empirical grounds. Secondly, the chapter identifies two missing pieces in existing Council research: member states legislative behavior and institutional adaptation to large numbers. Exploring these two notions in the specific context of the recent Enlargement will help to answer the research questions and enhance our understanding of continuity and change in Council politics.

In Chapter 3, I develop "educated guesses" about the nature of Central Eastern European member states' contributions to the supranational bargaining. Subsequently, I hypothesize about the Council's existing

procedural instruments of dealing with large numbers. I argue that, according to what we know about the domestic determinants of supranational agency, CEE countries have structural predispositions to passivity, rather than to strategic and assertive legislative action. Thus, they constitute a perfect target group for the efficiency-promoting procedures, and particularly the voting system that encourages majority-compliant behavior. Instead of shaping the policy-making process autonomously and directly, CEEs can be expected to mimic the old member states or, possibly, to shift the policy conflict upward the Council hierarchy, according to the assumption that ministers act more confidently than civil servants or diplomats. While these two compensation strategies might *ceteris paribus* increase the conflict within the Council, I argue that the Presidency retains several tools to counter these conflictive dynamics and catalyze the process towards formal agreement.

Chapter 4 outlines the research strategy employed to support the argument empirically and develop it further. The type of explanation pursued in this project can be characterized as causal or mechanism-based. Thus, I briefly introduce “process tracing”, a technique to analyze sequential interactions in complex systems. Subsequently, I design the link between micro-level processes and the macro-level social phenomenon to be explained, namely the legislative robustness of the enlarged Council, whereby I recourse to the least likely case selection procedure. This procedure suggests that choosing hard cases for a given argument increases the confidence that the latter might hold across a population or a specific part of it. Before explaining what constitutes hard cases for my argument, I narrow down the scope of inquiry to regulatory policy-making and justify that choice. After the two legislative cases have been introduced, the chapter briefly discusses the kind of empirical data collected for the project.

Chapters 5 and 6 present the case studies: the negotiations on the revision of the Working Time Directive and the negotiations on the Directive on Patients’ Rights in Cross-Border Healthcare, short the Patient Mobility Directive. The cases highlight different aspects of post-Enlargement Council politics, although they both represent instances of legislative success despite contestation and regionally organized antagonistic preferences.

The Working Time case demonstrates how the new member states from CEE, without realizing or intending it, became part of an old conflict

between the proponents of “liberal” and “social” Europe. The case reveals how membership change has led to a policy shift and stresses the crucial role of individual strategies and negotiation sequences in that context. Finally, the case supports the claim that Presidencies enjoy considerable leverage when operating in a larger and more diverse environment. However, contingency also shapes the success chances of the Chair’s strategic brokerage.

The Patient Mobility Directive shows how CEE countries together with their Southern colleagues failed to shape and, later on, prevent a piece of legislation that they opposed, despite their numerical strength as a coalition. In particular, the case exemplifies two consequential differences in member states’ legislative preparations and behavior. The domestic engagement with the policy in question has an impact on the quality of bargaining positions and on the chances of these positions being heard and dealt with by the Presidency. Furthermore, the type of power resource member states capitalize upon when engaging in alliances matters for their sustainability and prospects. In the Patient Mobility case, mobilized alliances based upon expertise and argumentative strength of their leaders were more successful than compounded coalitions, which were large, vote-rich but weakly organized and thus fragile. Confronted with asymmetrically distributed abilities to argue for own policy concerns and mobilize on these grounds, the Presidency strategically navigated towards formal agreement.

Chapter 7 summarizes and discusses the results of case analyses. I argue that my argument has passed the plausibility test, as both cases provided similar insights on the core elements of the theoretical framework, from the new member states’ bargaining performance to the role of the Presidency in efficiency promotion. Even if we take the differences between cases into account, and particularly the different levels of politicization and the different degrees of conflict, the overall result of the study is that the CEE countries have only a secondary impact on the Council’s internal dynamics. The formal composition of the decision-making body is but one of several factors that shape the way towards agreement. However, the chapter makes clear that my explanation remains ambiguous on one fundamental point, namely the ultimate reason for CEEs’ poor legislative performance. Is it lacking ability or lacking ambition? This analytical differentiation is tempting, as the two explanations yield different predictions on CEEs’ future bargaining behavior.

While abilities can be enhanced by learning, ambitions are unlikely to change. I argue that further research on interconnections between domestic and European politics in the realm of interest intermediation or within the (national) public space(s) could enhance our understanding of these two notions and their relationship.

The final Chapter 8 restates the argument and highlights the theoretical contributions of the project. The results nuance the consensual image of Council politics. Not only do the case studies provide insights into the organization-related aspects of member states' power (such as domestic preparations or the management of alliances), but they show that legislative influence is exercised subtly: on the preparatory stage, through informal contacts with the institutional players or during intergovernmental interactions which escape a clear classification as adversarial ("hard") or cooperative ("soft"). Furthermore, the project speaks to the literature on Presidency effects, suggesting that the Chairs switch their management logics throughout the decision-making process, depending on how the negotiation goes and on what stage the Presidency takes over. Both insights encourage abandoning the assumption of uniformity, which often accompanies the analyses of Council politics. Instead, researchers should focus on sequences and scope conditions for specific types of interactions and strategies. I argue that despite limitations inherent to small-n research, the mechanisms and the dynamics I have outlined here are likely to reappear in a particular subset of Council politics: cases of high conflict, of general concern, with cross-sectorial implications, which touch upon the fundamentals and structures of member states' regulatory regimes and in which democratic governments can be expected to become involved. The chapter closes with recommendations for future research.

2 Literature review

This chapter discusses the empirical findings pertinent to the impact of the Eastern Enlargement on the work of the Council of Ministers. It starts with a reconstruction of the widespread “business as usual” narrative. I show how the continuity of legislative output and the continuity of the basic characteristics of the political space have led Council researchers to the claim that cooperative culture constitutes the reason for the smooth accommodation of Eastern Enlargement by the Council. Subsequently, I challenge this explanation on empirical grounds, demonstrating that the data on Council processes do not entirely match the predictions of the cooperative culture-hypothesis. Finally, I argue that in the light of contradictory empirical insights into the impact of Enlargement on the Council, two “blind spots” of the hitherto literature merit attention: agency and adaptation. Defining what the new member states’ legislative behavior can actually contribute to Council processes (agency) and understanding the means at Council’s disposal to deal with conflictive pressures (adaptation) will pave the way for an alternative explanation of why the disruptive effects of large numbers and diversity failed to appear.

2.1 Introduction

The literature about the Council of Ministers has been developing rapidly over the last few years. In early days, research on this core institution of the EU’s legislative system was descriptive and relied strongly on practitioners’ and observers’ relations (Westlake 1995). Meanwhile, we are able to analytically disaggregate Council politics in smaller chunks and explore different aspects of the complex Council machinery with elaborately assorted data sets and modern political science methodology (Naurin and Wallace 2008b). Models of decision-making processes have been formulated and tested (Thomson et al. 2006). The literature has advanced from “rags to riches” (Naurin and Wallace 2008a: 1).

Reflecting a dramatic change in membership and one of the greatest transformations the Council of Ministers ever experienced, the Eastern Enlargement provided a fresh incentive to study the Council, simultaneously

representing a test and a window of opportunity for Council researchers. It was a test because analytical instruments and theories are only as good as they can help us to define and understand real-world puzzles. Indeed, the enlarged Council holds strong puzzling qualities. Seldom, in politics, were a priori expectations and a posteriori assessment by both practitioners and researchers so divergent as in the case of the historical accession of (mostly) post-communist countries to structures made for established capitalist democracies (see Chapter 1). Besides, the Eastern Enlargement constitutes a window of opportunity because change always stimulates new perspectives on the object of study and thus is conducive to new insights.

The literature about the post-2004 Council politics has generated rich and diverse observations, which do not always lend themselves to a coherent interpretation. The present chapter systematizes available findings, exposes flaws in current theoretical reasoning about the Eastern Enlargement's impact on the Council and identifies research gaps. I argue that the current narrative of smooth accommodation of Enlargement by the cooperative culture within the Council lacks empirical support. Consequently, an alternative explanation of the puzzling continuity of the legislative performance should be developed. Furthermore, research has hitherto neglected the notions of member states' agency and adaptation to large numbers, both of which are prominent avenues for research on Enlargements' effects.

The chapter proceeds as follows. The next section reconstructs the argument on continuity of legislative politics in the Council. This argument links the findings on legislative performance (2.2.1) with those on the political space (2.2.2) postulating that the culture of cooperation represents the mechanism that links the two (2.2.3). The subsequent section challenges this explanation on empirical grounds. Section four introduces the notions of agency and adaptation, which constitute blind spots in current Council literature but might contribute to our better understanding of Enlargement's impact on the Council. The final section concludes.

2.2 Continuity of Council politics after the Eastern Enlargement

What is actually meant by "continuity" of Council politics after the Eastern Enlargement and why do so many observers of EU politics claim that nothing has changed after the Eastern Enlargement? In this section, I show that not much change has been found since 2004 in two important aspects of

Council politics, namely the legislative performance and the political space. These observations yield more than simply a descriptive value. Legislative performance conceptualized as “output” and the political space as “input” of decision-making, these two lend themselves to a model of Council politics. The model hypothesizes that variable structure of member state’s preferences leads to cooperative culture among them, which in turn enabled the group to remain productive despite the change of membership.

2.2.1 Legislative performance

The Council of Ministers is above all a legislative institution. As such, it can be empirically evaluated, with the quantity of the legislative output, the duration of the decision-making process and the quality of the passed legislation serving as indicators of performance. All three dimensions of the Council’s work have been empirically examined with a comparative focus on pre- and post-Enlargement period. By and large, researchers have found a high degree of performance stability. This particularly applies to the numerical output, where several studies have convincingly demonstrated how robust the Council’s legislative achievements remained after 2004. Admittedly, small differences between the EU15 and EU25 have been found in the one study dealing with the quality of the passed legislation. However, for methodological reasons, these results need to be approached with caution.

The numerical output – the number of legislative acts passed by the Council every year – was and remains high⁵. Wallace calculated that between 1999 and 2003 the EU adopted around 195 legislative acts every year. This number had been followed by 230 in 2004, with a peak in April 2004, just before the Eastern Enlargement. The EU25 came up with 130 acts in 2005, but 197 in 2006 (Wallace 2007: 5). While the drop in 2005 could potentially be interpreted as a sign of legislative inertia. given the performance in the following year (2006), it is more likely that the lower number of acts adopted (2005) resulted from the legislative fervor in 2004. Indeed, very similar findings have been obtained elsewhere (Hagemann and De Clerck-Sachsse 2007: 13).

Hertz and Leuffen examined the level of monthly adoption rates between 1976 and May 2007 and obtained similar findings regarding the

⁵ Despite differences in the methods of counting (Hertz and Leuffen 2010: 71; Leuffen and Hertz 2010).

Eastern Enlargement. In the past 30 years, the monthly average of Council acts was 33 (Leuffen and Hertz 2010: 58), whereas EU15 has adopted 35,8 legislative acts on average per month and the EU25 32.6. Nonetheless, the reduction of approximately 9% is not statistically significant (Hertz and Leuffen 2008: 16). The Enlargement only produced a short run effect – if any – in that the legislative output considerably increased in the months directly proceeding the accession of new members and temporarily dropped in the months following accession (Leuffen and Hertz 2010).

Indirectly, the legislative proposals made by the European Commission might also serve as an indicator of performance. The reasoning relies on the assumption that the Commission proposes (legislative) action only when it sees realistic chances for those proposals to become adopted. Häge, who counted the proposals for decisions, Directives and regulations, noted a modest drop between 2003 and 2004, yet a subsequent increase in 2005 and 2006 (Häge 2012b). In the long-term perspective (1976-2011), there is a small but a non-significant decrease in these numbers: between 1976 and 2004, the Council received 235 proposals every year on average (STD 46), compared with “only” 190 from 2005 until 2011. However, we have to bear in mind that the Commission has aimed for “less but better” legislation in recent decades, which might also explain the lower number of proposals (Wallace 2007: 2-3).

The numerical output is not the only indicator of legislative effectiveness. The time needed to pass a decision is also important. Here, all Enlargement rounds in the EU’s history slowed-down Council decision-making. This effect is clearly observable despite Treaty changes designed to make decision-making quicker (Hertz and Leuffen 2011: 212). However, the Eastern Enlargement differs from the previous accession rounds in one respect. In the past, the slow-down effect of larger numbers disappeared for those acts that already needed more time to pass the Council (more than 450 days⁶). This particularly applied to the Southern and Northern Enlargements. By contrast, the Eastern Enlargement affected the duration of law-making on all stages, i.e. the effect is observable for those acts that spend around 200 days on the Council negotiation table as well as for those that take 600 or more days to be agreed upon.

⁶ The mean decision-making time for a directive is 938 days (Hertz and Leuffen 2011: 211).

This finding lends itself to ambiguous interpretations. Slow-down effects in instances of (otherwise) rapid law-making could be attributed to the increase of transaction costs, as in all previous Enlargement rounds. However, additional slow-down of already cumbersome pieces of legislation might suggest a higher level of policy conflict. Problematically, the same effects have been observed in the case of Greek accession and it is highly unlikely that the same slow-down mechanism would operate in the 1981 and 2004 Enlargements. The authors admit that the link between group size and the decision-making speed is underspecified (Hertz and Leuffen 2011: 212).

What about the policy ambition and the quality of legislative acts passed by the Council after the Eastern Enlargement? Arguably, defining the criteria of high-quality legislation is conceptually challenging and such a debate had not yet taken place in the Council literature (Voermans 2009). Consequently, empirical research offers only a few clues about how the Eastern Enlargement affected this dimension of Council output. First and foremost, it did not have any impact on the “novelty” or innovation of legislative proposals. Similar to before 2004, slightly more than half of proposed Community laws are new regulations, whereas almost half represent either an amendment or an implementation of existing legislation (Settembri 2007: 21, 27).

However, according to Settembri, the Eastern Enlargement changed the proportions of “important” legislative acts dealt with by the Council. He classified the examined acts on a five-point scale as “major”, “ordinary” and “minor” and concluded that the share of the first two decreased by approximately one-third, whereas marginal acts increased by almost one-fifth (Settembri 2007: 27). This decline in policy ambition, as the increased duration of decision-making, could mean that the Eastern Enlargement has intensified the policy conflict among member states.

Unfortunately, Settembri’s descriptive study does not elaborate upon possible mechanisms that changed the nature of Council decisions while keeping the numbers constant. Despite being thought provoking, Settembri’s results necessitate caution, since he conducts the before-after comparison using data collected for January-December 2003 and July 2005-June 2006 only. Thus, he covers a very limited period and only considers decisions finalized in those two time units. Moreover, Settembri includes in his sample decisions from the realm of justice and home affairs, as well as foreign policy, i.e. the

former second and third pillar (Settembri 2007: Appendix I). However, the institutional decision-making mode and dynamics in those two domains differ from the policy-making in the Community mode. Accordingly, the diversity of decision processes included in the study as well as the limited period of investigation limit the validity of Settembri's analysis.

Finally, the Eastern Enlargement could potentially have a negative effect on the quality of EU legislation. The increased duration and the decline in policy ambition might suggest that the Council struggles with more intense conflicts, which - as we know - are often overcome by "editorial means" (Falkner 2011: 12-13, 247-248). Extended preambles, vague formulations or the increased usage of flexible governance mechanisms enable the negotiation parties to save face when confronted with the domestic publics, although they also make the legislation less clear and can trigger implementation problems. If the Eastern Enlargement indeed increased the conflict within the Council, the high level of output could come at the cost of increased reliance on "editorial" conflict management strategies. Unfortunately, empirical research in this area is scarce. A study by Depoorter inquired about the quality of six selected pieces of transport legislation between 2003 and 2011, including quantifiable information on the length and usage of non-legal statements (recitals) and the clarity of the transposition requirements. She found that the Eastern Enlargement had no detrimental impact on any of those categories (Depoorter 2012: 15-17). Here again, one could question the validity of the conclusions on methodological grounds, given that the mere counting of words, recitals or transposition modalities without any reference to the policy context or development over time appears to be a rather rudimentary strategy to grasp the "quality of legislation".

Overall, the legislative performance of the Council does not seem to have suffered too much from the Eastern Enlargement.

2.2.2 Political space

The previous section reported that the Eastern Enlargement generally did not have major detrimental effects on the Council's legislative performance. After having dealt with the output, this chapter now moves to the input to the Council's policy process. Researchers rely on the concept of "political space" when approaching this aspect of legislative politics.

The political space schematically represents how the demands voiced by collective decision-makers, here the member states, are structured. First, it informs whether there are systematic cleavages that divide actors: How many are there, and what might they mean? Second, it tells us about the alignment patterns: Who groups with, and against, whom? Accordingly, the concept allows grasping and explaining systematic conflicts that characterize a given decision-making system. Informing the concept of political space empirically necessitates a large amount of data, as information is needed on any single actor and a sample of decision issues. Moreover, it requires a spatial representation of policy-making, thus making it a rather abstract analytical tool (see discussion in Benoit and Laver 2012).

Before the Eastern Enlargement, the policy space of the EU was characterized by multidimensionality and, in the special case of the Council, by the North-South dualism. “Multidimensionality” means that the policy conflicts – understood as the variation of positions or preferences among actors – could have been depicted with more than one line⁷. Existing research points towards two conflict lines that structured the political space of EU15, whereby authors only cautiously interpret them substantially as an “economic” and “integration dimension” (Thomson et al. 2004: 253; Veen 2012: 67).

The North-South dualism means that countries from the respective regions exhibited spatial proximity in their policy positions or preferences⁸. Northern and Southern member states systematically differed regarding their views on EU-level policies. This result had been obtained in studies using a variety of methods and data, such as expert interviews on policy positions and party manifestos (Kaeding and Selck 2005; Zimmer et al. 2005; Veen 2012).

Given that the geographic location was clearly not what caused these patterns, the substantial underpinning of the North-South divide was subject to debate. Some authors suggested that what systematically distinguishes Northern and Southern member states is their status in the EU budget (Zimmer et al. 2005: 411). Others claimed that the conflict is too pronounced to be explained exclusively in terms of financial flows and suggested that differences in socio-economic structures between the European North and the South brought about distinct regulatory preferences: Northern European

⁷ The dimensions are lines that follow from an empirical representation of actors' position-taking and define the structure of the political space.

⁸ Ireland was a non-geographic member of the Southern cluster (Veen 2012: 83).

countries would favor market-based solutions, whereas Southern countries would support state intervention (Thomson et al. 2004: 255). Both interpretations make clear that policy positions in the Council are motivated by diverging economic interests of the European North and South, whereby “economic interest” can be interpreted in narrow or broader terms, as fiscal or regulatory. Accordingly, such findings contrast with the few studies that claim to have found evidence for party-political cleavages in the Council (Mattila 2004; Hagemann and Hoyland 2008)⁹.

The interpretation of the North-South cleavage before the Eastern Enlargement is all the more complicated given that the bonds within the respective regional clusters have been shown to extend beyond the preferences and positions that these countries represented in the Council and include systematic, long-term cooperation among civil servants and diplomats (Beyers and Dierickx 1998: 314; Elgström et al. 2001: 126). The consistency of these cooperation patterns across policy-sectors and over time suggests that they might be motivated by something other than “interests”, given that the latter are assumed to shift on an issue-by-issue basis. Elgström and colleagues provide questionnaire-based evidence for a cultural explanation, which includes language and history of cooperation (Elgström et al. 2001: 123-125). Culture and interests are clearly not mutually exclusive, since “joint culture and shared history, combined with similar geographic position, have been translated into common interests” (Elgström et al. 2001: 126). Such diversity of explanations for the regional clustering of policy preferences in EU15 makes it challenging to delineate the changes that the Eastern Enlargement eventually brought about.

What have we learned about the policy space in the enlarged EU? Having explicitly researched the distribution of policy positions, deriving the latter from expert interviews and government party manifestos respectively, the empirical observations by Thomson and Veen are only partly consistent. They both agree that the number of dimensions that the political space of the Council comprises did not change after Enlargement (Thomson 2009: 765; Veen 2012: 82)¹⁰.

⁹ These two studies are informed by an analysis of voting behavior within the Council.

¹⁰ Veen has analyzed the political space year-by-year using the government manifestos. He concluded that there were three dimensions of conflict in the first

The fact that the basic architecture of the post-2004 Council conflict has been found stable - as indicated by the number of dimensions - is important, given that it tells us that the Eastern Enlargement did not introduce any additional division among policy positions of EU decision-makers. New member states do not produce distinct substantial conflicts; rather, they position themselves along the existing lines, whatever these are defined or interpreted.

Whether and how CEE countries shift the regional groupings of countries along these lines is no longer uniformly backed by data. Veen claims that West-East has replaced the North-South division in the enlarged EU (Veen 2012: 79). The cleavage becomes more intense over time. Compared with 2005 data, in 2007, CEE countries group without exception and accompanied only by three old member states at the bottom of the data plot (Veen 2012: 81). Looking back at the type of empirical data that Veen uses, we can conclude that Eastern governments proclaim policy preferences in their electoral manifestos that are systematically distinct from those of their Western counterparts. Veen's analysis extends to the question of which policies are concerned by this development. Prior to Enlargement, the North-South Council cleavage was systematically found in policies such as Common Agricultural Policy, Structural Funds and Market Regulation, whereas after Enlargement, significance has only been given to Environmental Protection and Strong European Governance (Veen 2012: 77). This means that Enlargement has affected both the "economic dimension" (albeit to a limited extent) and the "integration dimension" (Veen 2012: 78-81). Here, Veen sees empirical support for the hypothesis voiced in earlier literature, namely that poor countries exchange support for further integration against redistributive side-payments (Veen 2012: 79). However, it is surprising that West-East conflict patterns were not as pronounced in the typical redistributive areas, such as agricultural or regional policy.

Thomson's research based upon interview-derived individual country positions on single policy issues questions the stability of the positional structures in the Council's political space. Most fundamentally, Thomson inquired about the frequency of the regional groupings and concluded that the distribution of policy position typically did not exhibit any single structure at

year after accession, although this number was soon reduced to two, as before accession (Veen 2012: 78).

all - both before and after Enlargement - as the patterns were only observable in a quarter to a third of all controversies (Thomson 2011: 76). New and old member states only disagree in some 30% of controversies.

Among these 30%, all types of policy issues, which have been shown to generate EU-level conflict, are represented¹¹: harmonization, regulation and subsidies (Thomson 2011: 69). "Subsidies" generate the most frequent old-against-new contention (8 out of 18 cases, 44%), although the share is only slightly higher than in the "level of harmonization" (21 out of 56, 38%), yet clearly higher than the strength of regulation (15 out of 55, 28%). When conflicts with the older members arise, the new member states are consistent in the policy options that they support. When the levels of integration is at stake, the newcomers favor more state competencies; in issues related to regulation, CEEs support less regulatory intervention; finally, in controversies involving redistribution, the new member states prefer higher subsidies (Thomson 2011: 77). This means that the new member states systematically share EU-level policy preferences and can offer a collective input, at least in some part of the Council's legislative business.

Before Enlargement, the diverging positioning of the Northern and Southern countries represented the dominant pattern of controversy, even if it occurred only in 36% of all controversies. After 2004, the conflict structure flattened out and has become more variable. The North-South conflict persisted in 30% of cases, but has been complemented by several new configurations, such as old-new (30%), North vs. South-East (22%) and North-East vs. South (15%)¹². Thomson interprets these findings as signs of continuity - there had been no single, stable and dominant structure of Council conflict before and there is none after Enlargement.

Admittedly, the accession of ten new countries did not lead to a major change of the conflict architecture, although this does not mean that the Eastern Enlargement left the Council's political space entirely unaffected. Thomson's data suggests that the pre-Enlargement North-South conflict, to the extent that it existed, has been complemented by a regional cluster (East) that

¹¹ From the 158 controversial issues (i.e. particular questions of legislative contention), 52 have been classified as "no issue type". Otherwise, there have been 56 issues of harmonization, 55 issues of regulation and 18 issues of subsidies (Thomson 2011: 69).

¹² In (only) 4% of cases (6 out of 158), no regional alignment within the Council could have been found (Thomson 2011: 66).

positions itself variably and flexibly alongside these two potential coalitions. In the 37% of controversial cases in which the new member countries take policy positions close to either their Northern or Southern counterparts, they potentially shift the usual Council majorities, which might have implications for the politics within the Council. Despite being negligible when considering the big picture, Enlargement effects might selectively affect those parts of the Council's legislative business in which intergovernmental conflict already existed.

2.2.3 The mechanism behind legislative robustness

Explaining the output by the input, while hypothesizing about the mechanism that links the two, is probably the most natural thing an analyst or a researcher would do. After it became clear that the scenario of the Enlargement-induced legislative blockage did not materialize – and this data was available as early as in 2008 - Council scholars, such as Thomson or Veen, transformed the knowledge they gathered about the political space into a theoretical account of the smooth accommodation of the Eastern Enlargement by the Council.

According to these authors, the fact that delegations find themselves in different positional configurations on different issues of contestation combined with repetitive interactions that characterize EU policy negotiations, foster a cooperative attitude among Council members (Thomson 2011: 280; Veen 2011: 7). National representatives are willing to accommodate and accept policy solutions different to those they themselves advocate, well knowing that one day they may also find themselves in a minority position. This image of Council politics finds confirmation in statistical analysis, in which the cooperative bargaining model outperforms the procedural model (Thomson 2011: Ch.7). This means that there is no need to resort to institutional means of conflict management, such as voting, because member states have understood the long-term benefits of cooperation. Mutual accommodation has replaced hard-nosed bargaining.

Council members do not need long-term experience in this institution to adopt the cooperative attitude. Through seminars and observations of the Council work before formally joining the EU, newcomers have had a chance to internalize this behavioral norm (Hayes-Renshaw and Wallace 2006: 248-249; Lempp and Altenschmidt 2008: 519-520; Thomson 2011: 280). Moreover, the

new member states made very soon after accession the experience of being alternately in the majority and in the minority. Thus, they understood that to be heard on their essential interests, they have to accommodate the interests of others (Thomson 2011: 281). Apparently, the prediction voiced by Field three years before accession fully materialized: “The new member states are likely to at least partly adopt the norm that they should allow the smooth functioning of the EU’s business to be impeded by their desires to further national concerns” (Field 2001: 67-68)

To put it bluntly, Thomson and Veen claim that it was the cooperative culture – or “diffuse reciprocity” as the phenomenon is called elsewhere in the literature (Keohane 1986: 4, 19-24) – which prevented the shock of membership change from damaging the legislative output. In fact, the explanation is only a theoretical presumption. The empirical information it is based upon relates to the legislative output and on (positional- and preference) input by the member states only and there is no direct information on the processes. Nonetheless, Thomson and Veen offer a plausible explanation of the Council’s impressive legislative performance despite enlarged membership. In addition to the input and output analysis performed with reliable empirical methods on large datasets, the argument has the traditional claim of Council research on its side, namely that consensus is an important ingredient of EU-level intergovernmental decision-making (Heisenberg 2005; Hayes-Renshaw and Wallace 2006: 330). Furthermore, the argument is elegant. As it stands, it does not take stakes in the ontological debate surrounding the Council research and is compatible with different, highly debated, assumptions on individual behavior within the Council (Hörl et al. 2005; Heisenberg 2008; Schneider 2008; Princen 2012). It is interesting to observe that in terms of the “culture of consensus”, researchers from different methodological and ontological traditions meet.

Plausibility and elegance of an argument do not automatically make it persuasive and satisfactory. The remaining sections of this Chapter show that the (fragmental) empirical evidence we have on Council processes before and after Enlargement speaks against diffuse reciprocity as the main and only mechanism of accommodation of enlarged membership. The identified incompatibilities between the argument summarized above and the empirical picture of the Council’s inner workings pave the way towards alternative

explanations of the non-effects of the Eastern Enlargement on legislative performance.

2.3 Challenging the “business as usual” narrative

Previous section of this chapter summarized the most widespread narrative about the impact of the Eastern Enlargement on the Council of Ministers, the “business as usual” narrative. The reported argument claimed that the change in membership had been absorbed by the cooperative culture – or diffuse reciprocity – within the Council and thus did not disrupt the Council’s legislative performance.

The following section challenges this reasoning on empirical grounds. As it stands, the argument advanced by Thomson and Veen implies three characteristics of the processes within the (enlarged) Council: diffuse reciprocity as the dominant logic of action, balanced rates of bargaining success across Council members and equivalent bargaining behavior among old and new member states. It is highly debatable, whether these claims hold empirically. I show that in the light of the available evidence, all three claims can be questioned. Accordingly, the current explanation for the Council’s legislative robustness after the Eastern Enlargement does not fully convince.

2.3.1 How much “diffuse reciprocity” is there in the Council?

Explaining the non-effect of Enlargement on Council legislative performance by cooperative culture implies making a general statement on how the Council arrives at its decisions, namely by means of mutual accommodation and self-restraint. These two make up for a cobweb of concessions, benefits and reparations (Veen 2011: 5).

Per definition, diffuse reciprocity can hardly be observed empirically, precisely because it involves exchanges that are spread out over time and across policy areas. However, we do not know what the time horizon of Council members is. In particular, it is uncertain whether three to five years, which is the normal range of permanent representatives’ appointments (Blair 2001: 140), allow sufficient time for national delegates to the Council to gain an experience of reciprocal benefits and thus develop a sense of obligation – one which would be stronger towards other member states than the domestic government.

One may also cast doubts about the willingness of Council officials to develop responsibility for potential policy decisions beyond their own portfolios. Note that the IR scholarship, where the notion of reciprocity has been developed, only described exchanges within one policy regime, such as international trade (Keohane 1986: 23-24). In the case of the Council, both its sectorial structure, as well as the fact that the bulk of legislative work is completed in highly specialized working parties, make exchanges across policy areas highly unlikely¹³.

Therefore, we cannot tell whether sequences of executed debts and credits do indeed exist in Council politics. An analysis of bargaining outcomes over time – and how they relate to member states interests’ – is a possibility to approach this problem. However, we also do not have compelling empirical results on this point, as the next section (3.2) argues.

There is yet another argument which speaks against the diffuse reciprocity as a universal account of how the Council arrives at its decisions and how it deals with membership change. Council researchers identified different logics of action within this institution and they agree that no one provides an exhaustive account of how Council members act (Lewis 2008a: 181-182; Warntjen 2010: 675). Representatives of the two (rival) theoretical traditions, the constructivist and the rationalist, agree that no theory captures the full story. Norm-guided behavior, associated with a strong orientation towards consensus seems to co-exist alongside power politics. As Lewis has put it: “being successful in the Council [...] involves a mix of egoism and adherence to community standards” (Lewis 2008a: 181). Thus, there is no single and universal scheme of conduct that Council actors uniformly follow.

Whereas the existence of two types of legislative behavior in the Council – a norm-oriented (cooperative) and utility-oriented (competitive) – has been confirmed in the broader literature, research on the scope conditions for the two main logics to operate remains in its infancy (Warntjen 2010: 675). Analyzing the GMO policy-making Pollack and Shaeffer enumerate the

¹³ The growing complexity of EU policies and the expanding nature of EU law exacerbate this trend. Indeed, country studies on EU policy-coordination find that “sectoralization” intensifies as Permanent Representations grow to adapt to expanding tasks and national ministerial officials commonly support Brussels-based representatives in Working Party or COREPER meetings (Menon 2001: 88-89). Besides, “sectoralization” tends to be strong in member states with high ministerial autonomy, such as Germany (Maurer and Wessels 2001: 123).

conditions, under which the Council cannot afford consensual decision-making. These include the time pressure (especially when a rule needs to be implemented quickly), high politicization and visibility (Pollack and Shaffer 2008: 160-162). Moreover, they argue that the complexity of the legislative matter, which is generally supposed to strengthen the accommodative attitude of decision-makers and their consensual orientation, might lead to empowerment of highly organized and resourceful interest groups who subsequently overtake the influence over the policy content (Pollack and Shaffer 2008: 161). Furthermore, the propensity to pursue more competitive bargaining tactics vary across countries and across governments (Dür and Mateo 2010a; 2010b). For instance, countries such as the UK or Spain have been reported to be systematically prone to power politics (Lewis 2008a: 182, 184). The observation that Council logics of action are variable not only benefits from case study evidence and selective information by Council members, but also from quantified and systematically analyzed interview data (Naurin 2010: 32).

Certainly, there are compelling indices that make the notion of diffuse reciprocity plausible. However, at a closer look and when confronted with empirical evidence, it seems that the notion covers only a part of the Council business. As such, it cannot offer an exhaustive answer to the question, how the Council has accommodated larger and more diverse membership.

2.3.2 The distribution of bargaining success

Diffuse reciprocity can only work, if, in the long term, the negotiations' results equally satisfy the participants' interests. The mechanism of "cooperative exchange" (Thomson 2011: 281) – or the "cobweb of agreements" as Veen has framed it (Veen 2011: 5) – assumes that Council members would refrain from competitive strategies in policy negotiations and relax their demands on some issues, knowing that they will gain their preferred deal in policies that are salient to them. The practice of self-restraint is expected to pay-off for everybody. Equal rates of bargaining success, to the same extent as the positional diversity, make the members cooperative and increase the productivity of the group as a whole.

The empirical assessment of bargaining success across time and member states is methodologically and empirically challenging. The DEU project, which has collected interview information about the structure of

decision situations in a large number of issues (including the status quo, proposal, member states' positions, outcome) as well as quantified this information, represents a milestone here (Thomson et al. 2006). Researchers who used that data to explore bargaining success of member states defined the latter as the absolute distance between decision outcomes and member states' positions (Bailer 2004: 109; Arregui and Thomson 2009: 655). They concluded that there are no winners and losers of Council negotiations over time (Bailer 2004: 112; Arregui and Thomson 2009: 671; Thomson 2011: 280). Moreover, Thomson and Arregui's research suggests that the new member states systematically get a good deal. In spatial analysis of the controversial Council issues in the 2004-2005 period, policy outcomes are located very closely to new member states' preferred policy options (Arregui and Thomson 2009: 670).

Interestingly, the claim that bargaining success is evenly distributed among all member states had recently been challenged on methodological grounds. Using the same data as the previous studies, Golub had shown that once salience is included in the measure of negotiation gain or loss, member states exhibit considerable differences in their bargaining success (Golub 2012: 1302). This becomes particularly clear, if one compares member states' performances in a dyadic way (Golub 2012: 1302). The pattern that emerges from his analysis seems to be that some large states lose disproportionately to some smaller member states, although the standard explanations such as the preference extremity, proximity to an institutional player or the network capital fail to account for this surprising finding (Golub 2012: 1306). Including issue salience in the dependent variable as Golub did, Cross confirmed that member states indeed achieve different rates of bargaining success (Cross 2013: 14). Unfortunately, salience-enriched measures of bargaining success only exist for the pre-Enlargement period.

Are there other means of measuring bargaining success? Some Council researchers interpret the cast of negative votes an admission of negotiation failure (VoteWatch Europe 2012: 11). From this perspective, the rejection rates per country might serve indirectly as a measure of bargaining success. Negative votes are not equally distributed among member states. In the past, large member states such as Germany or the UK (but not France) were those to cast most negative votes, followed by Sweden, Denmark and the Netherlands

(Hayes-Renshaw et al. 2006: 169). In the first years after the Eastern Enlargement, the latter were those most prone to voting “no”, with the UK ranked fourth and Germany fifth (Hosli et al. 2011: 1256). According to latest calculations, the negative vote rates among large and smaller Northern member states has evened out, although the Northern European countries still lead the ranks of naysayers (VoteWatch Europe 2012: 12-13).

Whether the voting behavior is a viable measure of bargaining success is highly debatable. Strangely, several countries most likely to vote “no” are also those attributed with quite rich power resources, especially when negotiation skills and information are taken into account. Bailer explored how member states’ bargaining power is perceived by the participants of Council negotiations and concluded that many Northern member states over-perform in relation to their voting power (Bailer 2006: 366-369).

The fact that the countries thought about as powerful are those that most often reject the bargaining outcome is a paradox of Council politics. Potentially, the act of opposing the majority serves as a symbolic expression of determinacy in the usage of own resources, rather than as an admission of bargaining failure. As the German Chancellor Konrad Adenauer once put it, “one has to become unpopular to be taken seriously”. Accordingly, the ability to manifest one’s discontent and the ability to advance convincingly one’s interests might be related and both lead to respect by negotiation partners.

As we see, the mechanisms of winning and losing EU-level policy negotiations are not yet well understood. Neither the distances between positions and outcomes (coded a posteriori), nor the recorded behavior, nor the indices of subjectively perceived power provide convincing answers to the question whether all EU member states “get what they want” to a similar extent and in similar frequency. The problem might be methodological, as the abovementioned variables measure bargaining success only punctually, without taking into account the negotiation dynamics and context. At best, we can say that the proxies we currently have cast doubts in equal distribution of success.

2.3.3 Are the new member states like the old ones?

The final critique towards the existing explanation of the Council’s impressive legislative performance after the Eastern Enlargement is that it neglects the question of systematic differences in the legislative behavior

between the new and the old member states. The argument put forward by Thomson explicitly claims that the new member states had been perfectly prepared to participate in the Council's legislative work thanks to the training, which the future EU officials received, and the observatory status these countries have enjoyed (Thomson 2011: 280). Having realized the consequences of positional diversity, the new member states soon started investing in long-term relationships with a broad range of allies (Thomson 2011: 280).

That CEE countries mastered the "rules of the game" from day one of their EU membership, is highly unlikely. Country studies show that newcomers experience a period of apprenticeship, which culminates in the assumption of the first Council Presidency by the given country (Laffan and O'Mahony 2008: 35-42). Note that CEE countries are in a disadvantaged position here since, due to the larger membership, they have to wait for this function much longer and experience this privilege less often in comparison to EU15.

In fact, if we consider the available data on legislative behavior of Council members, we discover that the new member states differ from the old ones on several dimensions, such as recorded behavior, the usage of arguments, interventions and networks.

The new member states are less prone to cast negative votes than their old counterparts. For the 2004-2006 period, Hosli and colleagues calculated the average of 9.8 for EU25, 11.2 for the old and 7.7 for the new member states (Hosli et al. 2011: 1256)¹⁴. The new member states less often express their concerns in Council minutes, attached to the voting results (VoteWatch Europe 2012: 12). Avoiding negative votes, or other forms of manifest disagreement, might be "typical" for new countries. However, empirical evidence does not support this reasoning. For instance, Sweden often opposed EU legislation after it joined the EU in 1995 and only few years later slightly moderated its behavior (Mattila and Lane 2001: 44; Lewis 2008a: 176-177). These findings suggest that there are indeed two logics of behavior in the Council – advance of own interests and consensus-seeking – and both have to be learned. The new

¹⁴ Hagemann calculated these rates on a six-month basis and showed that the rates for the new member states are changing rapidly (falling in 2005, rising in 2006). Unfortunately, she counts Hungary as a "Central" member state (together with Germany and the Netherlands) and Slovenia as a "Southern" member state (Hagemann and De Clerck-Sachsse 2007: 19).

member states have perhaps been very good in adapting to the latter and only slowly learn how to practice the former.

If the new member states have been so good in adopting the “cooperative culture”, as many authors claim, it is surprising to note that they make only very limited use of arguing, which is often associated with cooperative, norm-oriented behavior (Warntjen 2010: 670-671). Naurin has explored the practice of giving reasons for one’s position in the Council, finding that the new member states explain their positions less frequently than their old counterparts (Naurin 2010: 47-48). Furthermore, newcomers rarely intervene in the legislative process. Cross’s data on member states interventions clearly shows that the new member states lag behind the old ones in how often they deploy the formal means of expressing their position (Cross 2012: 58).

What the new member states certainly do, similarly to the older ones, is networking, understood as the maintenance of regular contacts with officials from other member states (Beyers and Dierickx 1998; Naurin and Lindahl 2008; Naurin 2009; Naurin and Lindahl 2010). They are connected among each other, whereby the Baltics and the Visegrad countries form two distinct groups (Naurin and Lindahl 2008: 74). However, there is one interesting difference between old and new. Each regional group in the Council has its “network hub”. Germany and the UK hold the Northern countries together (Scandinavians, the Netherlands), France and Spain are the favorite contact partner for the Southern countries and Poland for the CEEs. Nonetheless, there are considerable differences in the network capital among these five players, which are all large-sized and centrally located in their respective regions.

As the figure below shows, Poland scores tenth, with the network capital¹⁵ index disproportionately low to its size and voting weight (Naurin and Lindahl 2008: 71-72). This means that the intergovernmental contacts of CEE countries are less focused on the main player in the region. Poland’s relatively low network capital might not only imply that Poland has more modest negotiation resources at its disposal, but might also indicate distinct (if any?) leadership dynamics in the region.

¹⁵ Network capital is defined as the frequency of being mentioned as a cooperation partners by others (Naurin 2007: 8)

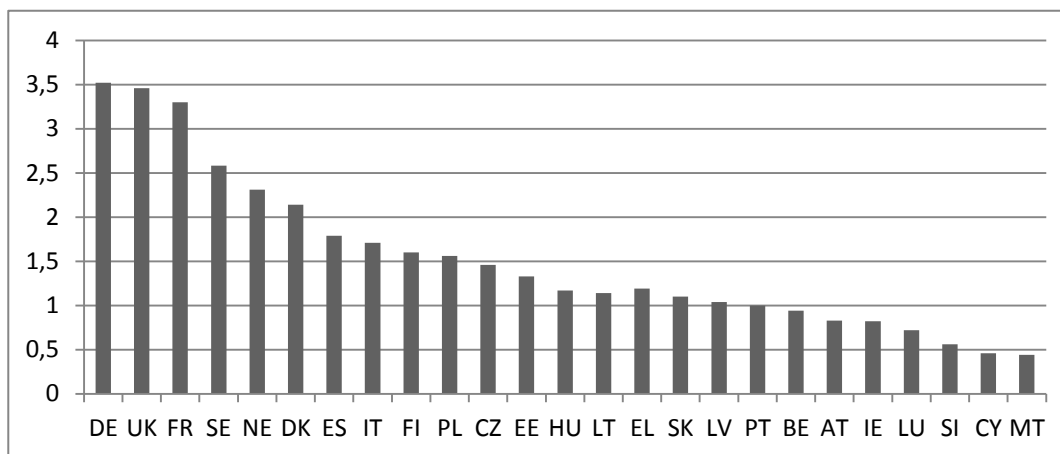


Figure 1 Network capital of EU member states

Source: Naurin and Lindahl 2008

In sum, there are systematic differences in legislative behavior of old and new member states. These should not have occurred in the current account of post-Enlargement Council politics. In the “cooperative culture” argument, all member states were supposed to practice the Council’s legislative negotiations in a very similar way, at least in the long term. The picture that emerges from the data is one of the newcomers’ excessive self-restraint when approaching the decision-making process. Nonetheless, there is no compelling (theoretical) reason why some countries would outperform others in the absorption of the cooperative norm. Rather, one would presume that Council politics is much more diverse and that systematic differences in legislative action between old and new member states might be relevant in approaching the question of legislative robustness. This observation will be further developed in the following parts of this thesis.

2.4 Missing pieces: agency and adaptation

The chapter has argued thus far that the current explanation of the Council’s stable legislative performance after the Eastern Enlargement is not sufficiently convincing. There are empirical problems with the cooperative culture – or diffuse reciprocity – being the main mechanism of absorption of large numbers. Evidence pertinent to the question which logic of action dominates the Council is highly inconclusive; Equivalence of bargaining success among member states – the condition of rational cooperation to work – is questioned. Finally, new and old member states differ in their legislative

behavior – a phenomenon that should not have occurred if the newcomers, as the argument goes, have had a good command of Council practices already before their membership. Plausible theoretical reasoning and data do not speak the same language, which opens up the necessity to develop an alternative account of how the Council has accommodated the Eastern Enlargement and why the changed membership does not show any effects on the institutional performance.

The literature discussed not only demonstrated the weaknesses of the current explanation of Enlargements' (non-)effects, but also exposed a blind spot in Council research in general, namely member states' legislative behavior, or agency. Note that the research reviewed deliver counterintuitive and even competing insights precisely on this point. Consider what we have learned about the eight new member states from Central and Eastern Europe: they constitute a group, systematically sharing preferences and maintaining contacts among each other. Nonetheless, they practice excessive self-restraint when entering the legislative arena. Interestingly, the apparent passivity of these countries does not inhibit their negotiation performance – as far as we can tell anything meaningful about the latter. Bargaining outcomes seem close to their preferences and they only cast few negative votes. As they stand, these isolated observations fail to provide a coherent picture of what the new member states actually contribute to Council politics. Their quality as a group contrasts with their passivity.

Our knowledge about the relationship between membership change and legislative dynamics within the Council after the Eastern Enlargement is based upon selective snapshots, rather than on causal mechanisms. The reason for this deficit is of methodological nature. Instruments of quantitative research are ill-equipped to grasp a complex phenomenon such as legislative agency. Individual government's behavior in a decision situation is based upon three sources – domestic preferences, material constraints and the choices made by others (Scharpf 1997: 38-43; Stein 1999: 198). Thus, legislative agency extends across political arenas (domestic and supranational), evolves over time, is dynamic and reflexive. These features make it very difficult to explore with standardized, large data sets.

In fact, there have been few attempts to integrate agency-related variables in quantitative, statistics-based Council research (Bailer 2004; Cross 2013).

Their common conclusion is that individual agency explains the Council outcomes to a much lesser extent than factors beyond member states' control (Bailer 2004: 116; Cross 2013: 21). However, both pieces of research considered only one small part of what the notion of agency encompasses, namely the number of formal interventions and attributed negotiation skills. The domestic preparation of negotiation positions or the reactive components of legislative agency have been entirely ignored in Council research to date (Golub 2012: 1308).

Our hitherto rather rudimentary understanding of agency in the Council of Ministers opens up several questions related to the Enlargement's impact on this institution: How, and to what extent, do the newly joined member states contribute to policy processes and affect Council outcomes? What does the presence of new member states imply for the rest of the group? Can the dynamics that emerge between the old and the new member states explain the robust legislative performance? Answering these questions would not only allow making sense of the seemingly contradictory findings on the newcomers' action in the Council, but would also contribute to an alternative explanation of the Council's legislative stability.

The new member states' apparently inconspicuous legislative behavior, despite their group qualities, is puzzling for yet another reason. While the Council's numerical legislative output remained constant, there are subtle signs that the level of conflict within that institution might have increased. Two findings suggest such conclusion: first, the increased duration of the legislative process, which, for the first time in the history of accessions, meets both the "quick" and the more "cumbersome" legislation (Hertz and Leuffen 2011: 211); and second, the increased usage of Council minutes, in which member states express their dissatisfaction with the policy outcome, instead of rejecting a legislation in a formal vote (Hagemann and De Clerck-Sachsse 2007: 14). Whereas the first could alternatively be interpreted as a manifestation of increased transaction costs, the second is a convincing indicator of more intense conflict.

Council minutes do not have authoritative, binding power and they do not change the substance of the policy formally agreed. However, they might be used in Court "as part of the argument upholding a particular interpretation" (Nicoll 1995: 122). Council minutes are not simply submitted by the member

states, but rather they are subject to lengthy negotiations with the respective Council bodies (such as the Presidency) and have to be formally approved by the group. The content and the expected impact of the minutes might be very diverse, but they all have in common the basic function, namely assuring that national interests play the key role in Council politics, even if they are not reflected in the policy outcome to the delegations' satisfaction (Nicoll 1995: 122).

That the enlarged Council experiences more intense policy conflicts, understood as situations in which reconciling antagonistic parties is particularly challenging, appears plausible. The policy space research discussed earlier in the chapter (2.2.2) has shown that the new member states position themselves on already established conflict lines. They do so while aligning variably with both Northern and Southern member states, which themselves regularly differ in their positions. This means that, in cases of structured position-taking, the newcomers have the potential of changing majorities on the established conflict dimensions. Minority positions might benefit from new support and balanced actors constellations might experience power shifts. *Ceteris paribus*, this should lead to policy change and the accompanying conflict would subsequently manifest itself in longer decision-making duration or higher rates of expressed disappointment.

The high level of legislative output and constantly low level of negative votes suggest that Council conflicts continue to be successfully managed. For the areas in which, as hypothesized above, increased numbers brought about increased conflict, it would be obviously worth knowing how the Council of Ministers adapted. Given the EU's impressive repertoire of conflict-minimizing techniques (Falkner 2011: 250), it is unlikely that the enlarged Council will reveal new modes of conflict accommodation. Rather the Eastern Enlargement might have highlighted the importance of the existing mechanisms, such as the institutions that organize Council processes. In statistical research, procedural factors, such as the majority voting system, did not exhibit very large explanatory potential on Council outcomes. Nonetheless, similarly to the notion of "agency", "procedures" might be conceptually misrepresented in large-n studies. However, their relevance might be better understood if an empirical analysis not only takes into account their formal existence, but also

the ways in which they restrict or enable specific legislative action (Scharpf 1997: 38-43).

2.5 Conclusion

This chapter has made two arguments. First, the notion of “cooperative culture” as the explanation of the Council’s impressive legislative performance after the Eastern Enlargement does not fully convince. Second, despite being diverse and informative, the current literature on post-Enlargement Council politics leaves us with two open questions: How does the membership change affect the legislative agency within the Council? Moreover, with what means did the Council adapt to increased numbers, especially in cases of intense policy conflict? This thesis aims to inform these questions, as well as exploring whether the notions of agency and adaptation might provide an alternative explanation of why the dramatic change in membership has left the Council’s legislative performance undisrupted.

The literature review has demonstrated that, when taken together, current findings on post-Enlargement Council politics cannot easily be interpreted into a coherent account of what enlarged membership implies for this institution and how it is coped with. The difficulty results from the fact that information about different stages of the policy process has been collected separately and in a synchronic way, i.e. across member states and negotiation issues. However, causal relations, which are an important component of a political science explanation, can be better explored when sequences and the context are taken into account. Therefore, informing the questions of agency and adaptation to large numbers requires an empirical approach, which would allow examining how Council negotiations unfold in time. Qualitative inquiry, and particularly the process tracing approach discussed in Chapter 4, are best suited for this purpose.

What kind of account of Council politics will emerge when we take agency and adaptation as the analytical concepts of reference and study them qualitatively to retain conceptual validity? Being a small-n inquiry, the present research will certainly not be able to provide a universal formula of how the Council works. Rather, it will advance our knowledge of mechanisms, understood as sequences of legislative behavior that are likely to repeatedly occur under given conditions (Mayntz 2004: 240). The explanation of the Council’s legislative robustness that this dissertation aims to advance stresses

the relevance of processes and puts the “politics” within the Council forward. In this respect, it differs from the “cooperative culture” hypothesis, which empirically draws upon the structure of the Council’s input, namely the political space.

To gain a sense of what these mechanisms could be, the next section outlines a loose set of theoretical expectations about the legislative dynamics in the enlarged Council of Ministers. In particular, it speculates about the new member states’ agency, while applying existing knowledge about the domestic underpinnings of supranational bargaining to these countries. Subsequently, it presents a few conjectures on how formal decision-making procedures enable the Council to deal with large numbers and what adaptation scenarios one can expect.

3 Theoretical framework

Following the conclusions of the literature review, the present chapter formulates theoretical presumptions about the quality of the new member states' contributions to the bargaining processes and about the institutional means at the Council's disposal to cope with large numbers and diversity. I propose a two-step theoretical argument to account for the legislative robustness of the enlarged Council. I claim that the new member states from Central Eastern Europe are unlikely to become influential participants of legislative negotiations, as they are less well endowed with domestic resources relevant for supranational action than their older counterparts. Having structural predispositions to legislative passivity, rather than to assertiveness about own policy interests, the newcomers constitute a perfect target group for the efficiency-promoting Council procedures. Although CEE countries can compensate for their bargaining deficiencies in at least two ways, I argue that the voting procedures and the Presidency's management strategies retain their catalytic effects. Thus, the likelihood of the Council's institutional advantages to induce agreement remains high even in a larger and more diverse Council.

3.1 New member states' legislative behavior

The previous chapter revealed that there are instances of both similarity and contrast between the old and the new member states. The new member states from Central Eastern Europe take positions on established conflict lines, which have been structuring the EU's political space for years, such as redistribution, harmonization and regulation. As the old member states, the newcomers sometimes position themselves as a regional bloc, but often their views do not correspond to their geographical proximity. In cases in which the Council tends to divide over regional lines, the newcomers have the potential to shift established majorities.

While the newcomers largely blend rather well into the Council's variable political space, they exhibit some differences in behavior, which, as I argued, are difficult to interpret coherently. The literature review drew a

picture of shy and reserved decision-makers, whose passivity contrasted with their group qualities and their apparently high level of bargaining success.

In this chapter, I propose a conceptual framework to assess CEE countries' contributions to the legislative process. I make two assumptions. Firstly, I subscribe to the view advanced in the earlier, more descriptive Council literature that being a Council member puts on member states significant demands. In order to exploit their position as decision-makers fully, governments need to be well informed and well organized, yet this criterion is not always and not uniformly fulfilled (Wright 1996; Wallace 2002: 335; Richardson 2006). Secondly, I assume that resources and incentives for governments to become active on EU policy arenas are largely located on the domestic level (Bulmer 1983; Putnam 1988; Börzel 2005). In other words, there are strong domestic drivers of EU-level legislative action.

Adopting these two assumptions enables me to make "guesses" about the new member states' bargaining behavior, based upon a brief analysis of these countries' endowment with relevant administrative and political resources. I show that CEE countries differ systematically from their Northern and Southern counterparts regarding four domestic features, which as far as we can tell, are conducive to effective supranational bargaining strategies: the professionalism of the public administration, the density of economic interest groups as well as the EU-related opinions within the broad public and within the party systems.

I argue that CEE countries will experience difficulties when positioning themselves in Council negotiations and crafting bargaining strategies with which they would see their eventual preferences accommodated. Relying on public administrations still undergoing organizational and quality reforms as well as having historically weak systems of interest intermediation, CEE countries might be poorly endowed to cope effectively with the complexity of the EU policy-making system. Furthermore, what appears as a largely uncritical public and lukewarm partisan opinion on EU affairs provides a rather discouraging context for top CEE policy-makers to become involved in the supranational legislative process. For these reasons, persuasive and distinct positions, which would make a difference to how Council negotiations develop, should not be expected from CEE countries. These countries seem to

have structural predispositions to legislative passivity, rather than to assertiveness about own policy interests.

Clearly, legislative behavior is a complex phenomenon. To trace assertiveness and effectiveness back to just four simple domestic factors, two of which are merely contextual (public opinion and party systems), might be a simplistic way of approaching this notion. Nonetheless, my framework does not pretend to provide a deterministic scenario of how the newcomers will perform in Council negotiations. It merely employs the available knowledge about domestic determinants of supranational negotiation behavior to make educated guesses about these countries' contributions to Council processes, as well as whether these contributions could make a difference to the legislative dynamics. While the public opinion and the party systems provide a rather loose context to supranational agency, the domestic deficiencies in public administrations and interest intermediation are likely to cause delays in position formation and prevent CEE governments from active lobbying for their own cause. I also argue that there are at least two compensation strategies that CEE countries might employ to shape Council negotiations and make them more conflictive, despite their underlying resource problem.

3.1.1 Domestic resources for intergovernmental bargaining

What is needed to make oneself heard when co-deciding policies in the European Union? To formulate a bargaining position, governments need to carefully screen the domestic environment to estimate costs and benefits the EU policies will bring (Laffan 2006: 688). This information comes from an interplay between the public administration and interest groups (Haverland and Liefferink 2011: 179). Interest groups possess specialized knowledge on how a given policy operates on the ground. They can best assess the needs and costs of different policy solutions. Moreover, interests groups tend to be highly "Europeanized". They monitor policy developments in Brussels and have access to important fora of policy formulation. Thanks to this asset, they can make their governments attentive towards upcoming initiatives and alleviate the selection problems that overburdened governments face. In turn, public administration is important for supranational agency, because it brings in the relevant legal and procedural expertise. On both dimensions, Central and Eastern European countries lag behind their Western European counterparts.

3.1.1.1 Public administration

In comparative research on the quality of administration, CEE countries make up the rear in Europe. Dahlström and colleagues have measured how “professional” bureaucracies are, i.e. to what extent recruitment and promotion are merit-based instead of politicized (Dimitrova 2002: 180; Dahlström et al. 2010: 22). The scores of EU countries form a continuum (Figure 2), whereby the Northern member states, and especially the Scandinavians, can be found at the top, Southern member states form the middle of the group and the Central Eastern European countries bring up the rear.

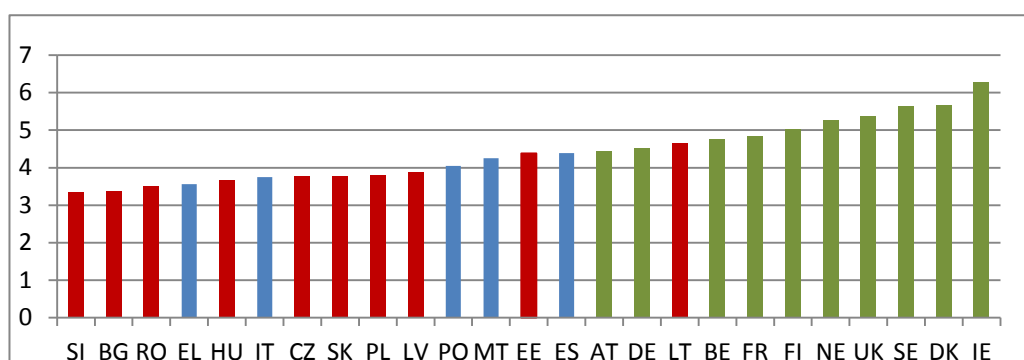


Figure 2 Bureaucratic professionalism in EU countries

Source: Dahlström et. al. 2010

Qualitative research dealing with public administration in CEE countries argues that the reform of this area after the fall of communism had been disappointing. Modernization of bureaucracy failed to live up with expectations (Goetz 2001: 1035). The main direction of administrative reforms in the region is towards the Weberian public bureaucracy, rather than towards the new public management, which dominates in Western European countries (Goetz 2001: 1034). Coordination of EU affairs in CEEs might be inhibited by the fact that their administrations suffer from weak linkages between internationally oriented bureaucratic “enclaves” and those focused on the domestic scene (Goetz 2001: 1038).

Domestic coordination systems for EU policy undergo many shifts and fall often victim to power politics (Dimitrova and Toshkov 2007: 982). As they stand today, CEE coordination systems exhibit rather comprehensive, in contrast to selective, coordination ambitions (Gärtner et al. 2011: 96). This clearly sets them apart from countries such as Spain, Portugal or Ireland, which might serve as models for CEEs given parallels in wealth, peripheral

location or size. Most CEE countries opted for strongly decentralized coordination structures, following the German-Austrian, rather than the British-French path (Gärtner et al. 2011: 96). However, there is no clear assessment how decentralized coordination impacts on legislative effectiveness. In the mid-1990s it was argued that decentralized structures have adverse effects on legislative action, centralization being conducive to credibility, coherence and consistency across national representatives participating in EU-level processes (Metcalf 1994: 285-287; Spence 1995a: 363). These views have been questioned in early-2000s as decentralized systems were praised for their flexibility and consensus culture, more fitting the alleged style of EU bargaining (Kassim et al. 2001: 330).

In sum, while there is no institutional divide between public administrations in the CEE region as compared to the rest of the continent, the newcomers still grapple with the quality and stability of their administrative apparatus. Executive institutions are not very well shielded from personal and partisan power struggles and there is coordination improvement to be made.

3.1.1.2 Interest intermediation

The division between old and new member states is also clear if we consider the fabric of the interest intermediation systems. The density of both interest groups as well as business associations is visibly lower in CEE countries than in the rest of EU members (Figure 3). While there are numerous historical explanations for the weakness of trade unions in CEE countries (Avdagic 2003; 2006), it is also interesting to note that employers' organizations are equally weak. This is surprising, given that CEEs often position themselves as liberal and business-friendly (Bohle and Greskovits 2006: 3). On the other hand, given the foreign ownership of companies, a weak political representation of business is less surprising (Nölke and Vliegthart 2009: 676). Small and medium enterprises with domestic capital face severe organizational problems (McMenamin 2002: 301).

Given the loose structure of the interest intermediation system, it is no surprise that the involvement of interest groups in the policy process in CEE is weak (Fink-Hafner 2011: 216). Indeed, transition and EU accession have only aggravated this weakness.

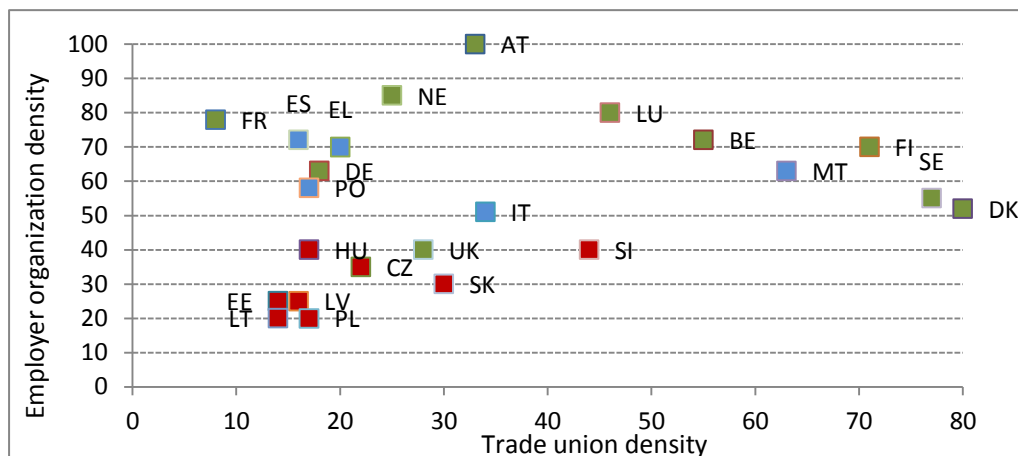


Figure 3 Density of trade unions and employers' organizations

Source: *eurofond.europa.eu*

The domestic weakness of interest intermediation systems in the region is mirrored by a sparse representation of CEE interests groups on the European level, as evident from Figure 4. Poland, the largest and the wealthiest CEE country has less registered lobby organizations than Denmark or Austria, both considerably smaller states (Wonka et al. 2010: 468).

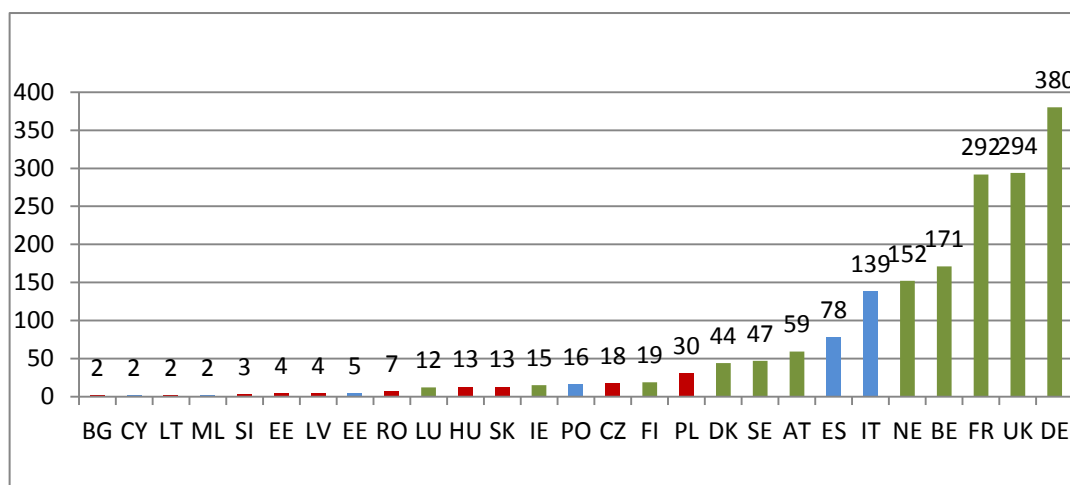


Figure 4 Number of registered lobby groups

Source: *Wonka, Baumgartner et al. 2010*

Several researchers have argued that limited financial resources constitute the most significant challenge faced by CEE interest groups (Borragán 2006: 149; Pleines 2011: 516). Other observers claim that there are much deeper reasons for the weakness. Similarly to public administrations, interest groups seem to suffer from problems with multiple-level coordination. European organizations often do not receive quality input from their domestic

entities, which often fail to deliver solid background analysis that could be used as supporting material for lobby activities (Charrad 2010: 158; Cianciara 2012). Furthermore, a negative attitude towards lobbying prevails in CEE, as the contacts between business and politics are associated with corruption, rather than with pluralistic interest representation (Charrad 2010: 165). Indeed, personal relations and informality seem to play an important role in lobbying activities of CEE firms (Sallai 2013: 948). This type of “culture” might have negative implications on specific interests being openly pronounced and discussed as part of a country’s policy strategy or economic interest in the European Union. In addition, organizational deficits, such as low representativeness as well as superficial interest in EU issues prevent CEE interests groups from becoming natural partners of governments in determining the rights policy choices.

3.1.1.3 Public opinion

When negotiating EU policies, governments can increase their bargaining power while pointing at the skepticism of the domestic public and projecting future ratification and implementation problems (Schelling 1963; Putnam 1988). Finke has shown that the Schelling-conjecture applies to Treaty negotiations, where governments’ positions do correspond to the median voter’s preferences mediated by the strength of national scrutiny and the choice of ratification instruments (Finke 2009: 499-501). Dür and Mateo postulate that the more Eurosceptic the population the higher the likelihood of a government to recourse to hard bargaining associated with a firm commitment to the “national interest” (Dür and Mateo 2010a: 566).

In order to serve as an asset in EU legislative bargaining and provide an incentive for the government to become involved in policy formulation on the EU level, the domestic public should be critically attentive towards EU politics. Critical attention comes from high salience of EU issues for a given society, differentiated knowledge on EU issues and some degree of contention on this dimension. There is certainly a path dependent component in terms of how a society relates to EU issues (e.g. a history of referenda).

Accordingly, it seems that “critical attention” is not what characterizes the attitude of the CEE public towards the EU. Not only is the level of support for the EU consistently higher in CEEs (see Figure 5), but citizens in the new

member states also have a much stronger preference for centralized EU-level decisions than their counterparts in the old countries (Ahrens et al. 2007: 463). They would like to see EU involvement even in those policy fields where decentralized administration is clearly more efficient, such as health and social welfare, education, as well as juvenile crime (Ahrens et al. 2007: 465). A possible explanation for this finding is a combination of high level of trust in EU institutions accompanied by a critical assessment of domestic administrations. Garry and Tilley find that the positive retrospective evaluation of the EU's economic contribution to citizens' welfare accounts for stronger EU support in the East compared to the West (Garry and Tilley 2009: 537).

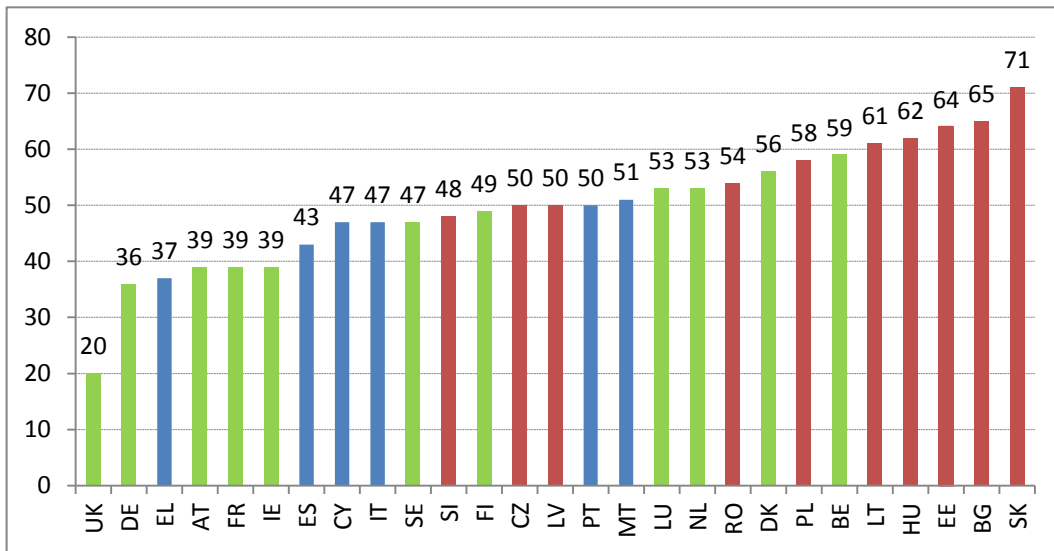


Figure 5 Populations' trust towards the EU in %

Source: Eurobarometer 74, 2010

The accession process certainly neither offered sufficiently time and opportunity for a critical debate about the EU, nor was its nature open to a deeper collective reflection about the type of policies the EU actually produces. Referenda related to EU accession were held in all these countries, but they were dominated by positive campaigns and overwhelming majorities have indeed been reached (average over 80% in favor of membership). Two countries, Poland and the Czech Republic, planned but never conducted referenda on the Lisbon Treaty. Thus, CEE countries only have a very limited experience with popular mobilization on EU issues. The turnout of EP elections is significantly lower among the new member states compared with old ones,

even if the gap is shrinking (Trechsler 2009: 5). This suggests that the enthusiasm about the EU among CEE populations might be rather superficial.

3.1.1.4 Party politics

Does the lukewarm and uncritical attitude of the CEE public lead to a moderately Europeanized party system? Do CEE parties care less about the EU than their Western counterparts? Indeed, country studies and qualitative research argue that EU issues do not play a major role in the partisan competition in the region (Innes 2002; Grzymalala-Busse and Innes 2003; Hloušek and Pšejka 2009). The presence of the EU in public communications of the parties has significantly declined after accession and, although the EU is regularly mentioned in party programs, there is no sign that its role might extend beyond a referential framework (Hloušek and Pšejka 2009: 518, 533).

After accession, CEE parties have become slightly more critical of the EU than previously, although parties with explicit nationalist or cultural conservative aims have only made moderate political gains (Vachudova 2008: 861; Rohrschneider and Whitefield 2010: 68)¹⁶. CEE parties have integrated smoothly into the EU-level party system, with their “post-communist newness” having no predictive power on their left-right or pro-anti-EU stances (Schmitt and Thomassen 2009: 579). On the other hand, the fit could also be superficial. With specific reference to Euroscepticism, Taggart and Szczerbiak argue that strong rhetoric does not necessarily imply specific and clear policy ideas in CEE countries (Szczerbiak and Taggart 2008: 358-361).

Quantitative evidence on the Europeanization of party systems is much less clear on this point compared to previous categories reviewed in this chapter. A Chapter Hill Expert Survey has collected data on parties’ positions towards the EU (on a scale from 0 to 7), concerning the salience of the EU for the parties (0-4) and the dissent about the EU within the party system (0-11). Parties in the CEE region are more optimistic on the EU and attach more salience to it (!) but disagree less (see Table 1). Although the first and third parameters confirm my presumptions of CEE policy-makers being supportive yet uninvolved about the EU, the numerical differences between CEE and EU14 are very small. It is rather difficult to tell from the mere numbers whether CEE

¹⁶ Jackson and colleagues found that the EU found its way into the Polish 2007 parliamentary elections, albeit only in that the public support for the EU brought about a government with a more cooperative attitude towards Brussels (Jackson et al. 2011: 151-152).

parties indeed lag behind their Western colleagues in terms of embracing EU topics.

Table 1 Political parties and EU integration: CEEs vs. EU14

		Position	Saliency	Dissent
CEEs	Min	4,81 (SK)	2,47 (LT)	1,85 (SK)
	Mean	5,13	2,76	2,27
	Median	5,40	2,83	2,47
	Max	5,93 (EE)	3,24 (PL)	3,79 (LT)
EU14	Min	3,6 (EL)	2,42 (BE)	1,55 (ES)
	Mean	4,53	2,80	2,31
	Median	4,78	2,91	2,61
	Max	5,44 (ES)	3,40 (EL)	3,31 (DE)

Source: Chapel Hill Expert Survey

Although numbers are ambiguous, one can still argue that the structural features of CEE party systems - their volatility, the tradition of consensus on EU membership and a superficial engagement with specific policy issues – are hindering rather than conducive to a close scrutiny of EU-level day-to-day legislative negotiations. This might lead to a lower saliency attached by governments to those negotiations, as there will be little domestic political pay-off from engaging in a policy conflict on EU level¹⁷. Such a government will not be willing to mobilize and invest its resources into sophisticated bargaining strategies. It will either easily compromise or entirely refrain from engaging in policy discussion and rubber-stamp what others have agreed upon.

3.1.2 Scenarios of CEEs' contributions to the negotiation processes

The chapter has demonstrated thus far that there are structural differences between old and new member states on several dimensions of domestic politics. I presume that underperforming public administrations, weak systems of interest intermediation and largely EU-ignorant domestic constituencies will inhibit CEE countries from formulating and prosecuting their policy interests on the EU arena. Admittedly, we lack systematic knowledge about how exactly domestic characteristics translate into supranational behavior and I acknowledge that postulating deterministic relations here would be inappropriate. However, one can still claim that if

¹⁷ Domestic political system is only one source of saliency, whereby the other relates to the material costs that a given policy may bring (Warntjen 2012: 169).

these domestic characteristics matter for EU-level agency, they hinder rather than promote effective action. What kind of behavior can we actually expect from CEE countries and what benchmarks are there to assess effectiveness?

3.1.2.1 Direct implications: late timing and passivity

When the scanning of the domestic environment in the light of upcoming EU policy initiatives underperforms, governments are likely to need more time to formulate their bargaining positions. Indeed, there is empirical evidence on small member states which shows that the timing of instructions is a serious problem of CEE countries (Panke 2010a: 780). Late position formation is problematic for two reasons. Firstly, there is an intense exchange of policy ideas between the Commission and the member states already on the agenda-setting stage. The Commission is interested in member states' input for the mere sake of policy expertise, as well as to anticipate the political chances of adoption (Princen 2011: 935). The benefit from these early contacts for the member states is that their particular needs might be already written down in the project (Bunse et al. 2005: 37). If a delegation does not know what it wants at this early stage, it will miss this opportunity to shape future policy according to its needs. Secondly, member states that need more time to determine their positions might be inhibited when reacting to new bargaining developments. For instance, it is well known that the Council Presidency strategically times the release of new proposals. It waits with spreading them until the very last minute to achieve the "surprise effect" and prevent the consolidation of potential opponents (Tallberg 2004: 1004). Clearly, such a strategy does not solve the policy controversy, but it enables the Presidency to apply "entrapment" strategies, such as exposing inconsistencies in the opponents' negotiation behavior (Schimmelfennig 2001: 70-76).

Passivity is another negative consequence of a low administrative competence or poor input from interest groups for a country's bargaining behavior. In order to make specific wording proposals and support them with compelling examples, reasons and explanations, delegations need solid legal and policy expertise. We know from the literature that active lobbying and argumentation are important components of member states' bargaining

strategies (Lewis 1998: 491; Naurin 2010: 32; Panke 2012: 144)¹⁸. We also know that CEE countries recourse to these forms of behavior significantly less often than their older counterparts. They refrain from approaching the Commission, the Presidencies or the EP with their concerns and they shy away from explaining the rationale behind their positions and outlining the merits of their policy ideas (Horvath 2008: 553; Naurin 2010: 47; Panke 2012: 132).

Of course, one reason for this limited recourse to the informal networks might be that the new member states still learn how to act in legislative negotiations. Thus, their situation might be a different one in the future. Nonetheless, the process of catching up could become challenging for them. Precisely due to the Eastern Enlargement, the role of informal contacts in Council politics has increased. One of the formal adaptations to the larger membership involves keeping the time of meetings constant. Consequently, delegations have less time to present their opinions to the board¹⁹. In some Council formations, the *tour de table* has been entirely abolished. Delegations are invited to submit their written interventions or contact the Chair in the informal way (Lempp 2007: 41; Lempp and Altenschmidt 2008: 515).

The general shift of consultation activities from the formal to the informal realm render the attention of the concerned institutional players, such as the Presidency, a scarce resource. In this situation, it might be even more difficult for the newcomers to establish an intense working relationship with them. Moreover, one additional source of difficulty for the CEE countries might be due to their staff in Brussels frequently changing (Puetter 2008: 487). This observation links well with Goetz's finding that CEE administrations have not yet established a *modus operandi* for their new international activities (Goetz 2001: 1038). However, established personal relationships matter in negotiations and might indeed facilitate information exchanges.

3.1.2.2 Compensation strategies

I demonstrated that there is not much legislative activity to be expected from the new member states at early stages of the legislative process and in

¹⁸ Strangely enough, Cross found that formal interventions in the legislative process are not conducive to bargaining success (Cross 2013: 89). However, he only examined the number of interventions (not their substance or quality) and omitted informal approaches of member states towards the Commission or the Presidency.

¹⁹ This not only concerns the ministerial meetings, but also the COREPER and the working group level.

the informal part of thereof. If the claim is right, CEE countries miss important opportunities to put their mark on both the legislative process and its outcome. However, there are at least two other options of how they can introduce their requests on the negotiation agenda and thus shape the legislative dynamics.

First, the new member states might become more active on upper levels of the Council hierarchy. Once the negotiation reaches the ministerial level, the new member states have simply had a little more time to clarify their own stance on an issue. Besides, ministers are usually more assertive than civil servants, and more likely to see a negotiation as a “game” in which something needs to be “won” (Spence 1995b: 388). Council officials asked by researchers about the impact of Enlargement on the different Council layers, reported that, indeed, it is the ministerial negotiation that has become more difficult, not the working group discussions (Hagemann and De Clerck-Sachsse 2007: 13). Thus, it appears that the Eastern Enlargement might have pushed the intergovernmental conflict upwards, to the top Council level. I argue in the next section that the Council is quite well equipped to prevent conflict dynamics of this shape from jeopardizing legislative productivity.

Second, to compensate for the modesty of their direct involvement in the negotiation process, the new member states might be interested in exploiting bargaining opportunity structures other actors provide. In other words, CEE countries might be not very skilled in crafting their own bargaining strategies, but rather they join member states with similar concerns. The likelihood that new member states’ policy concerns are in some loose form already represented in the Council, is high given the already differentiated political space (see section 2.2.2). The “fellowship” mechanism that one would expect to operate here strongly resembles jumping on the bandwagons, i.e. shortcutting one’s own position formation while subscribing to claims made by others (Daviter 2009: 1130-1136; Halpin 2011: 218-224). A similar mechanism forms the core of the directional theory of voting. In elections, most people have a rather confuse preference about a certain direction of policy-making (Rabinowitz and Macdonald 1989). In the decision situation, they follow the policy-maker (candidate) who provides an intense, but still reasonable, stimulation on the issue (Rabinowitz and Macdonald 1989: 109).

Transferred to the Council of Ministers, this mechanism would comprise the new member states creating a demand for leadership and

organization of collective legislative action and some of the old member states satisfying it. Such a situation clearly empowers those who are willing and able to mobilize their fellow delegations, either by offering policy knowledge or through their strategic skills. The quantitative evidence lends some support to the hypothesis that some of the large old member states have benefited from the Eastern Enlargement, given that their network capital has increased and their negative voting rates have dropped (see sections 2.3.2 and 2.3.3).

It remains to be seen whether this type of coalition dynamics can indeed be found in the enlarged Council and how it relates to achieving legislative outcomes. Some Council observers have argued that coalition building has become more cumbersome and uncertain due to the increased fragmentation of the Council (Lempp 2007: 41). In turn, my perspective suggests that the Eastern Enlargement might have reinforced the functional need of Council members to align. The strength and internal dynamics of these alignments between old and new member states might be decisive for the impact of Enlargement on the horizontal dimension of the Council conflict, in contrast to the vertical dimension referred to above. In other words, although the new member states might not be particularly influential on their own - owing to resource reasons, compensation strategies at their disposal could not only shift Council conflicts but also make them more intense.

3.2 Coping with large numbers: procedural advantages

Before individual and collective contributions of member states become legislative outcomes, an important factor intervenes: the decision-making procedures. They channel the bargaining process, providing arenas and opportunities on which individual positions can be expressed. Furthermore, they structure the expectations of the participants, as parties are all aware of the method with which individual interests will be aggregated (Scharpf 1997: 38-43). The procedures that govern the work of the Council of Ministers are designed to help this institution to fulfill its legislative tasks efficiently (Council 2004a). The question is, thus, whether they can still effectively promote this goal under the conditions of larger and more diverse membership. In particular, will they retain their catalytic effects, when confronted with the type of contributions and dynamics that I outlined above?

The legislative work of the Council is organized as follows (Hayes-Renshaw and Wallace 2006: 7-26; Nugent 2010: 147-159; Hix and Høyland 2011: 61-68). When the Commission publishes the legislative proposal, civil servants and policy specialists from the member states' Brussels offices, equipped with their ministries' instructions, discuss it article-by-article. Contentious issues are forwarded to the COREPER, the assembly of higher-ranked national diplomats and eventually to the ministers. Usually, a dossier travels the hierarchy several times back and forth before it is formally agreed (Häge 2008: 535-538).

The Council Presidency orchestrates this process. Having in-depth knowledge about member states' positions, it re-drafts the legislative dossier in a way to address member states' concerns. While editing the proposal, the Presidency can use the legal and policy resources of the Commission, the Council Secretariat and the Council Legal Service. Subsequent Presidency proposals, and the reactions, which those proposals receive from the member states, mark the "progress" of a legislative negotiation. This process formally ends by a vote of Ministers, the vote being called by the Presidency. In practice, the Council rarely takes a vote. Most dossiers are agreed implicitly by unanimity. The predominance of this decision-making mode is one of the notable features of Council politics (Heisenberg 2005; Hayes-Renshaw et al. 2006). Thus, Council procedures comprise two key elements: the Presidency, which controls the sequences of the negotiation, and the vote (explicit or implicit), towards which the process heads.

Claiming that procedures can explain Council politics and outcomes is by no means a truism. For instance, quantitative researchers claim that procedural models receive much less empirical support than cooperative bargaining models, which assume that actors strive for consensus (Thomson 2011: 185). An institutional argument clearly does not fundamentally contradict the cooperation-narrative, as one can claim that Council institutions formally embed the culture of consensus (Thomson 2011: 281). Indeed, institutions facilitate cooperative bargaining strategies, albeit only under certain conditions (such as isolation from domestic politics), which are not always fulfilled in Council politics (Lewis 2010: 648).

I argue that procedures play an important role in the accommodation of the Eastern Enlargement. In particular, the new member states from CEE

constitute a perfect target group for efficiency-promoting Council procedures. While, arguably, passivity is easily transformed into agreement, I also advance the claim that Council procedures will retain their catalytic effects when the newcomers apply the aforementioned compensation strategies and indirectly contribute to more intense policy conflicts. I show that the Council's voting system is designed and practiced in such a way that the more advanced the negotiations, the higher the risks and costs associated with manifested discontent. This mechanism could discourage the newcomers from overly disturbing interventions on the ministerial level. Moreover, the Council Presidency's repertoire of actions enables it to expose and strategically exploit the weaknesses of intergovernmental alliances. In a larger and more diverse Council, these are likely to become more fragile and less cohesive.

3.2.1 Voting

As one diplomat put it, "a lack of official voting does not mean that the system of qualified majority is absent" (L.J.Bal cited by Novak 2010: 86). Indeed, the extremely rare recourse to the vote does not deprive this institutional device its enormous relevance for Council politics. In general, voting serves as a discipline device in complex systems of collective decision-making. Being outvoted and being in the minority represent a situation most decision-makers would prefer to avoid. This might be all the more true in the Council of Ministers, where votes are taken so rarely and where the vote is one of few elements of the bargaining process disclosed to broader public. In fact, Kahler observed that an implicit pressure to join the majority exists in international organizations much younger and of much looser institutional fabric than the EU (Kahler 1992: 704-705).

There are several explanations of member states' reluctance towards the voting situation. One of them is the fear of marginalization (Novak 2010: 92; Häge 2012a: 2). Opposing a measure, even without formal consequences for its adoption, might be deemed offensive by the Presidency and the Commission, who put significant effort into making a dossier as acceptable as possible. Consequently, one loses credibility and becomes less attractive as a cooperation partner for the future. While this explanation is plausible, it is not so tenable empirically. The data suggests that the Scandinavian countries are quite prone to vote "no" (Hosli et al. 2011: 1256; Beach and Pedersen 2012: 168). At the same time, these countries are very well connected in the Council

and very effective negotiators (Naurin and Lindahl 2010: 494; Panke 2011: 115). The same argument applies to the UK or Germany – both quite obstructive, but also highly influential and well connected.

Another explanation points at the fact that voting is the part of the Council negotiations that is most visible in the domestic arena. A negative vote might be interpreted as a failure to defend the national interest and be used strategically by the domestic opponents (Novak 2010: 92). Moreover, the responsible minister could be weakened and the implementation of this measure inhibited (Novak 2010: 92). This explanation is also plausible. Again, one could question whether it applies equally to all member states across all policies; for instance, it could work the other way round, whereby a government might issue a negative vote or an abstention as a signal of commitment for the domestic audience and use it to blame the EU for unpopular policies later on.

The two explanations have one element in common. Issuing a negative vote in the Council is a risky strategy, due to the eventual costs associated with it, both on the domestic and on the supranational arena. Moreover, voting “no” necessitates a good preparation, because member states are expected to justify such a vote (Novak 2010: 92). In turn, justification puts the act of voting in the context of the given governments’ previous actions. While consistency of arguments is highly valued in the Council, “surprise effects” considerably damage the naysayers’ reputation (Novak 2013: 1101). After all, there are at least two strategies, coalition building and individual lobbying, which negotiators can employ to ensure that there are demands accommodated (Häge 2012a; Panke 2012).

The way the voting system is practiced in the Council can be expected to put strong disciplining effects on less assertive and less well prepared negotiators, which I expect the new member states from CEE to be. Arguably, under the conditions I described, passivity can be easily transformed into agreement. Clearly, there is a difference between one single country deviating from the majority and a blocking minority comprising more than two countries or consisting of a regional bloc. Both domestic and reputational costs of opposition appear smaller when they are shared by a group. However, there is always uncertainty how the coalition partners will behave once the voting situation approaches. Blocking minorities face pressure from the Commission,

the Presidency or from other member states to allow “moving forward”. It costs significant organizational and argumentative effort to maintain them (Nedegaard 2007: 707, 713). Council insiders claim that once a minority no longer has a blocking capacity, the constituting countries give up easily (Novak 2010: 96). Arguably, the increased size of the Council will make the reliance on a blocking minority rather risky, because fragmented coalitions necessitate more organizational efforts and are harder to maintain. Thus, the deterring effects of majority voting are likely to hold in the enlarged Council.

3.2.2 The Council Presidency

The Presidency is responsible for the management of Council affairs. She is the one who can “dose” the disciplinary effects of the vote, as it determines the timing of the ballot and signals this to the delegations. As the Presidencies are evaluated according to the number of successfully concluded, or advanced, dossiers (Hayes-Renshaw and Wallace 2006: 149; Warntjen 2008; Niemann and Mak 2010), we can assume that legislative progress is of utmost importance for them. This institutional perspective on the Presidency’s interests contrasts with the rationalist claim which stresses the power of the Chair to advance the holding governments’ policy preferences (Thomson 2008; Warntjen 2008).

The Presidency holds two assets that enable it to make Council negotiations more efficient and channel them towards agreement. First, it benefits from exclusive information, as it consults the delegations bilaterally to ascertain their “bottom lines” (Hayes-Renshaw and Wallace 2006: 150). Based upon this information, the Presidency can strategically shape the bargaining agenda, i.e. make proposals that are likely to gain broader support. In this exercise, the Chair is supported by the Council Secretariat and the Commission (Hayes-Renshaw and Wallace 2006: 141-145). Consequently, the number of demands that it has to process is not necessarily problematic, given the institutional support to manage the increased transaction costs.

Furthermore, the Presidency obeys two logics of action: that of an honest broker and a majority crafter. The Chair is free to apply them according to its own assessment of how the negotiation is going, which constitutes its second asset in efficiency promotion. As an “honest broker”, the Presidency invests significant effort in resolving all the problems that the delegations might have with a legislative proposal, putting all its powers into the service of

consensus-seeking (Niemann and Mak 2010: 730-731). On the other hand, it permanently assesses whether there is a qualified majority or a blocking minority (Novak 2010: 86). For instance, the Presidency declares that it sees a possibility of obtaining a majority, whether this is true or close to being true (Novak 2010: 87). Those who still oppose or are not yet part of the majority have the last chance to obtain concessions, given that they will be soon confronted with a choice between “take it” and “leave it”. The Presidency injects the costly perspective of becoming a minority into the delegations’ legislative choices. In this situation, there is a reasonable chance that small concessions, including the face-saving ones, will suddenly become quite attractive to some member states. Accordingly, the Presidency can target the (undecided) opposition with a strategy that resembles a soft version of “divide and conquer” (in analogy to the Commission, see: Schmidt 2000: 46-50).

The combination of informational and procedural assets might greatly help the Presidency managing the enlarged membership. Coalitions with the new member states’ participation will have quite good chances to be heard by the Presidencies, as long as they will serve as a reliable basis for a future qualitative majority. However, the Presidency might equally choose to expose the weaknesses of such coalitions and aim to dissolve them. With larger and more diverse alliances, the Presidency has certainly more choice when targeting countries willing to engage in individual search for concessions.

Clearly, the more salient and the more visible the dossiers, the harder it would be for the Presidency to put pressure on the delegations. In a most extreme hypothetical scenario, the Presidency will be confronted with a complex choice with several arguments to consider: the legislative progress of a given policy, the will of the majority and the “red lines” of the minority. As I argued before, the new member states from CEE are unlikely to be those that contour these lines in a particularly clear and compelling way.

3.3 Summary

The aim of this Chapter was to develop a theoretical framework that would help to understand the smooth absorption of recent membership changes by the Council of Ministers. I purposefully chose to search for a mid-range explanation – one that would come very close to actual bargaining processes in the enlarged Council. To achieve this purpose, I first explored the ways of assessing and predicting CEE countries’ legislative contributions and

subsequently evaluated whether efficiency-enhancing Council procedures will deliver when confronted with a more diverse and larger environment. I argued that the newly joined countries have neither the resources nor the domestic incentives to decisively shape the decision-making processes in the Council. That said, their involvement could nonetheless shift the dynamics of conflict both vertically, i.e. push it up in the Council hierarchy and horizontally, i.e. empower those old member states that would make CEE countries part of their own bargaining strategies.

I argued that even if the Eastern Enlargement intensifies the conflict within the Council, the procedures will continue to exercise their counterbalancing effects. In particular, the Council Presidency has both the incentives and the abilities to model the negotiation process in a way that it leads, more or less explicitly, to majority voting. The way in which majority voting is practiced in the Council confronts countries that have not managed to have their demands accommodated earlier in the process, with high risks deterring them from jeopardizing a (positive) collective decision. In addition, the Presidency can strategically exploit the internal fragmentation of alliances. The latter might have become even easier with a larger and more diverse membership.

Clearly, there are no guarantees that the procedures will deliver, since situational factors can always feed into these effects. As I have argued above, the theoretical framework does not provide a deterministic scenario of how Council negotiations will exactly unfold. Rather, it offers educated guesses about sequences of Council politics, such as coalition formation or the interactions between member states and the Presidency, hypothesizing that these sequences have causal effects on the Council's ability to make legislative decisions. In contrast to previous research, which dealt with the performance of the enlarged Council and which stressed the role of the input structure (political space) and the "cooperative culture" (see section 2.2), I offer a mechanism-based explanation that targets the inner workings of Council, eventually at the expense of a wider theoretical range.

4 Research design

The methodological chapter defines and explains the research strategy employed in this project. I argue that the different solutions proposed to the Enlargement puzzle, discussed in the previous two chapters of the dissertation, represent different types of political science explanations: co-variational and causal. Solving the Enlargement puzzle with an explanation centered on causal mechanisms, as this project attempts, implies two methodological choices: the employment of process tracing and a selection of least likely cases. The former allows coming very close to actual bargaining processes in the enlarged Council, whereas the latter is a design tool for conducting plausibility tests with small number of cases. Before outlining what constitutes least likely cases in the context of this project and introducing the two legislative cases selected, I explain yet another research choice: the focus on regulatory policy-making. I argue that regulatory policy represents the largest category among EU's highly diverse legislative activity. At the end of the chapter, I briefly discuss the different kind of data collected for this project.

4.1 Different types of explanation of the Enlargement puzzle

The methodological choices of this thesis reflect the nature of explanation advanced here as well as how this explanation is situated in broader literature on Council politics. The thesis deals with the question “How did the Council of Ministers accommodate the membership change that came along with the Eastern Enlargement?” (Chapter 1). The previous chapter argued that the reasons for the legislative robustness of the enlarged Council should be sought in two areas: the new member states’ agency and in the procedural endowment of the Council of Ministers. Why did the argument focus on these two? The underlying intention of the theoretical reasoning was to come as close as possible to the actual dynamics among member states within the Council. In other words, the purpose was to learn what the accession of the specific countries, the Central Eastern European member states, might imply for collective decision-making and what might be going on

in the Council to produce an (apparently) smooth integration of these countries into legislative negotiations.

This is not to say that we do not (or did not) have any idea at all about the processes within the enlarged Council and how they can be made responsible for the accommodation of large numbers. Chapter 2 summarized how previous Council research went about this question. Researchers such as Thomson or Veen, relying on their throughout analyses of the political space in the enlarged Council, i.e. the aggregated structures of policy positions and governments' preferences, developed the "cooperative culture conjecture" (Thomson 2011: 279-284; Veen 2011: 4-8). This conjecture relates explicitly to the way member states interact, as it postulates self-restraint and diffuse exchanges of concessions between delegations in the Council. In Chapter 2, I argued that the cooperative culture-hypothesis, although plausible, is at odds with the empirical insights we have on member states' logics of action, the equivalence of bargaining success and uniformity of bargaining behavior of new and old member states. Therefore, we should strive for alternative explanations of the legislative robustness of the Council after the Eastern Enlargement.

Thomson and Veen made an important contribution to the EU literature, as they convincingly demonstrated the variability of the alignment patterns among member states. Thanks to the richness of the data sets used in their research, we can surely say that flexibility of coalitions is a constitutive feature of Council politics. However, these authors might not have been right about how fluid coalitions cause member states to be more accommodative and that this mechanism evens out increased transaction costs of large numbers and conflicts that arise, when majorities shift or existing antagonisms intensify – both being likely effects of membership change on collective decision-making. When highlighting the political space as the very reason for the Council's legislative robustness after the Eastern Enlargement, Thomson and Veen focused on the "big picture". They pointed at overarching characteristics of decision situations in the Council. This factor is quite distant from the effect in question, legislative performance. Arguably, on the way from individual preferences to collective decisions many variables may intervene, such as power, strategies, coalition dynamics, conflict management strategies or contingencies.

If we were to stylize the two different approaches to the Enlargement puzzle, the one which focuses on the political space and the one concerned with member states' agency and how it is channeled by Council procedures, a contrast between a "co-variational" and a "causal" explanation emerges (Gerring 2010: 1500). Whereas the former demonstrates that variable alignments and robust outcomes co-exist across a wide range of policies in a certain period after Enlargement, the latter is attentive to the causal pathway, which links the new member states' legislative contributions, the interactions between old and new countries and the procedures in a sequential way.

Both ways of arriving at knowledge about social phenomena have their value in social science theorizing (Little 1991; della Porta and Keating 2008: Ch. 2). Gerring argues that co-variations should ideally be transformed into mechanisms and mechanisms into co-variations; however, he admits that this is not always feasible (Gerring 2010: 1517). Since co-variations can be demonstrated with a considerable degree of assurance and mechanisms offer specific close-to-real-world knowledge, but are uncertain about the scope, "researchers invariably face a choice between knowing more about less, or less about more" (Gerring 2007a: 49). One way to stand one's ground in this dilemma when working on a mechanism-centered explanation is to specify the scope conditions under which mechanisms in question are most likely to operate. Indeed, this will be undertaken in the concluding chapter of the dissertation.

The remainder of this chapter is organized as follows. In the next section, I outline two methodological implications of the ambition to explain post-Enlargement Council robustness with mechanisms: the recourse to process tracing and the strategy of choosing least likely cases. Subsequently, I proceed to case selection, in that I narrow down the policy-scope of the thesis to regulatory policy-making, explain what least likely cases entail in the project context and show how the two legislative cases meet the criteria. Finally, I briefly discuss the different kind of data collected for this project.

4.1.1 Exploiting the strengths of qualitative methodology

While suggesting that smooth accommodation of the Eastern Enlargement might relate to *what* the new member states actually *do* in the Council and *how* the Council procedures impact upon member states' negotiating activities, this thesis advocates a particular theoretical interests. It

aims to explore the impact of individual action of the member states (old and new) and of the Council Chair on the collective dynamics in this legislative body. Such an interest advises a recourse to qualitative methods, given that they are best suited to provide nuanced, fine-grained explanations and deal with complex concepts. In particular, qualitative methods allow exploring causal mechanisms (Sekhon 2004: 288; Collier 2011: 824). Indeed, this is a type of explanation that I aim to achieve in this project.

4.1.2 Causal mechanisms and process tracing

Mechanisms are processes in complex systems, likely to appear regularly, under given conditions (Bunge 2003: 183; George and Bennett 2005: 8). They specify the pathways between causes and effects, as the sequences of action are their central component. Mechanisms are essential to causal explanation. Uncovering “how things work”, they complement other types of inference, such as the correlational inference, which gives us confidence concerning whether and how much a given parameter matters for the outcome (Hall 2008: 305-306). Gaining a solid understanding of social macro-phenomena requires a specification of causal mechanisms that underline it (Mayntz 2004: 241; Sekhon 2004: 288; Collier 2011: 824).

Nonetheless, there is no uniform recipe how to get at causal mechanisms in political science research. In fact, as Gerring noted, “mechanism-centered explanations are often ambiguous and mean different things to different people” (Gerring 2010: 1500). Recommendations diverge regarding the theoretical pre-specification needed for the analysis of mechanisms as well as the precise function of empirical observations. There are different opinions as for the question, whether (and how much) causality at work can actually be observed.

In the present project, the analytical strategy of providing a mechanism-centered account of post-Enlargement Council politics is as follows. Theoretical priors are present. In the previous chapter, I not only identified factors that are supposed to produce effects, namely new member states agency and Council procedures, but also speculated how we can expect these factors to work. I hypothesized about late preference formation in CEE countries, as well as their passivity. I outlined two possible compensation strategies. Finally, I argued that while passivity of the newcomers would rather not obstruct agreement, they might shift the conflict dynamics in the Council

through either pushing up contestation towards the ministerial level or further entrenching existing policy conflicts. Council procedures are well armed to deal with both instances.

The level of specification represented by the theoretical argument is arguably rather modest. I do not provide a deterministic scenario of legislative negotiations and discount potential intervening variables. Consequently, there will be no search for a smoking gun observation in the empirical work (Mahoney 2010: 128). Instead of pretending a definite “test” of any of the Council theories, this project rather engages in a plausibility assessment of one particular account of how the impact of the Eastern Enlargement has been mediated by legislative processes within the Council.

It should be stated at this point that in terms of collective dynamics within this legislative body, existing theories are not sufficiently specified either. Council scholarship has produced robust and convincing meta-theories, such as the famous claim that the Council does not need to vote because informality prevails (Heisenberg 2005). Nonetheless, we lack mid-level accounts of how national interests aggregate below the diplomatic level or how the implicit majority formation in the shadow of the vote operated (Naurin and Wallace 2008a: 4-5). Recent work has demonstrated that, while consensus is indeed a powerful explanatory notion, it covers quite diverse types of mechanisms within the Council, such as adherence to norms or blame avoidance (Novak 2013). Furthermore, there is no agreement as to the operation of apparently key concepts of the inner workings of the Council, such as power, rules, norms or even preferences (Heisenberg 2008: 263; Princen 2012).

I argue that the analytical strategy applied in this project - the process tracing - turns the theoretical under-specification into an asset that allows employing inductive reasoning in a most fruitful way. Process tracing is a within-case analysis that concentrates on the temporary unfolding of events (Collier 2011: 823). Discerning the relevant sequences necessitates in-depth knowledge of the case and the context. Process tracing analysis, thus, employs a large number of (within-case) observations of different kinds. The multitude of observations make process tracing the tool of choice when the analysis is concerned with complex phenomena as well as with parameters which are otherwise hard to measure and hard to build a prediction upon (George and

Bennett 2005: 13; Hall 2008: 314). Arguably, the key notions of this thesis, such as “influential agency” or “procedural effectiveness” belong to that category.

Two features of process tracing provide for its value in theory development (George and Bennett 2005: 209; Beach and Pedersen 2012: Chapter 4). Firstly, a process tracing analysis usually leaves ample room for new variables and sub-variables, yet to be discovered in the course of fieldwork. It can identify (new) elements that matter for the outcome, assess their role in the pathway and gauge whether there might be regularities in the causal chains responsible for certain outcomes (Hall 2008: 306). Thus, the method is sufficiently open to allow fresh insights into *what (else)* matters for the outcome or *what aspects* of the concepts in question are out there and deserve further specification. The latter merit of the approach might be quite important in research concerned with the Council of Ministers, where concepts such as power or consensus can have quite different empirical implications. Clearly, the empirical openness of the process tracing also means that it can bring about observations of situational, idiosyncratic nature. It will be a matter of interpretation and case-by-case judgment whether observed developments are due to systematic characteristics of the negotiation venue and negotiating actors or the specific configuration of circumstances, such as policy characteristics, timing or exogenous political conditions. Secondly, the ability of process tracing to go beyond “data set observations”, i.e. assessing scores of a case on a given variable, and collect “causal process observations”, i.e. unique insights on sequences or interactions, is how it provides empirical illustration to mechanisms (Brady and Collier 2004: 227-228).

Pointing out the potentials of process tracing is important, because it provides guidance how legislative cases should be “told”. The theoretical framework provides an orientation concerning what to look at and what to expect. In turn, the analysis shall remain rather open regarding the different activities that make up collective interactions as well as timing and sequence within legislative negotiations. This is where a theory development could potentially be made.

4.1.3 Performing plausibility tests with case studies

The previous section explained the technique of process tracing to clarify how the qualitative methodology fits the theoretical interest of the

thesis, namely developing a mechanism-centered account of the Enlargement puzzle. Now, the research design has to perform a balancing act and show how the micro-level empirical work, inherent to a within-case analysis, can keep up with the project's ambition to provide an explanation for a macro-phenomenon, namely the Council's legislative robustness after the Eastern Enlargement. I follow Gerring's argument here, namely that a plausibility test can be performed with case studies, when the selection logic of "confirmatory crucial cases" is adhered to.

Gerring outlines nine strategies for choosing cases in a qualitative inquiry (Gerring 2007a: 86-150). The choice of a strategy shall reflect how an inquiry is situated in a research area and what intention it pursues. In this project, I want to explain the puzzling non-effect of membership change on the Council of Ministers with factors related to member states agency and the Council's legislative procedures. My mechanisms-based account of Enlargement accommodation differs from explanations advanced in the literature and thus it can be considered as an alternative explanation. Consequently, my aim is to find the strongest possible evidence to support this explanation (Gerring 2007a: 115). From the different logics outlined by Gerring, the logic of "confirmatory crucial case" appears best suited for a plausibility test. The objective of the crucial case is to provide a (most) difficult test for an argument (Gerring 2007a: 115).

Ideally, a theoretical argument to be tested allows for an exact prediction of a given outcome under given circumstances. Subsequently, the prediction is matched with empirical observations. In the practice of political research, such decisive tests are hardly possible. Theories are seldom specific enough to control for context or intervening factors and thus allow for an exact prediction. However, one can approximate a theory confirmation (or rejection) while concentrating on "least" (or "most") likely cases (Odell 2001: 165-166). "Least likely cases" are characterized by conditions under which a given argument cannot be expected to work, and yet it does find empirical backing and can explain the outcome. "Such a least-likely case study would provide strong, albeit not unqualified, support for the inference that the theory is even more likely to be valid in most other cases where contrary winds do not blow as strongly" (Odell 2001: 165). Confirmatory crucial cases, or least likely cases,

are sometimes referred to as “Sinatra inference”: if it can make it here, it can make it anywhere (Gerring 2007a: 119).

Before elaborating on what conditions would constitute a hard test for my argument, one general limitation of the “crucial case” selection strategy should be clarified. Crucial case methodology is one of the most controversial case selection techniques and the idea that crucial cases do exist is not widely accepted (Gerring 2007b: 231; 2007a: 115). Crucial case selection strategy involves a high dose of deductive thinking. To be clear, the success in the application of this method rests upon the quality of the theory under investigation. The more law-like the theory and the more specific (and risky) the predictions it makes, the more accurate the choice of crucial cases.

As the previous section argued, this type of theorizing is rare in social sciences and EU scholarship is no exception here (George and Bennett 2005: 209). Strictly speaking, the explanation that this project aims to advance is no theory either, given that it does not supply a rigorous explanatory model. Rather, a conceptual framework is offered here, understood as a type of knowledge that identifies and links topics seen as relevant for the given question (Christoph 1993: 824). These topics are agency and organization and the project will show that they are very relevant to the puzzling macro-phenomenon of the legislative robustness. The value added of a qualitative inquiry is that these two concepts can be further developed and specified. Even if the plausibility test confirms the value of my reasoning, confidence about how much of the Council’s legislative business can be covered by it will be limited. However, the good news is that the criteria according to which I select my crucial cases point at a particular subset of Council legislation, namely contentious, salient dossiers that generate divisions among member states with strong regional components. While we do not know exactly how these cases relate to the entire population of negotiated dossiers in terms of numbers or frequency, we know that they are out there and that they matter for broader audience.

4.2 Case selection

How can one find the right crucial cases in the universe of Council decision-making? Two challenges lie ahead. First, the diversity of policies decided by the Council has to be dealt with. If we apply the policy typology

based upon the question of which EP Committee deals with a given dossier, we notice that the Council takes decisions in 17 policy areas. Such a high number is a challenge for a case study inquiry, because it implies a diversity of context factors and problems to be solved by EU secondary law. As Lowi has predicted some 40 years ago, the type of policy in question might influence the conflict dynamics which develops among actors (Lowi 1972). Second, the logic of “crucial case” must be tailored to the theoretical argument pursued in the project. These challenges are dealt with one after another, which makes up for a two-step case selection procedure. First, I narrow down the population of Council legislative negotiations to cases of regulatory policy-making and justify this choice by the prominent share this area takes in the EU’s overall legislative business. Second, I argue that cases of high conflict and high salience, in which CEE countries hold bloc-preferences, are those in which my theoretical reasoning is unlikely to hold, thus representing crucial cases for this inquiry.

4.2.1 Choice of the policy area

This project concentrates on regulatory policy-making. In other words, it focuses on this part of the Council’s legislative activity that is concerned with rules governing the economic activity across the EU. Two main reasons justify this choice. First, regulatory policy is the most representative for what the EU does²⁰. Here, I follow the famous “regulatory state” argument by Majone (Majone 1994; 1996), but more importantly, I show that the highest number of decisions the Council takes is located in this area. Second, the redistributive policy, as the most important competitor of regulatory policy (regarding the share of decisions in the Council), is only shaped through the legislative procedure of the Council of Ministers to a limited extent. The level of EU budget and its structure is determined in high-level head-of-state negotiations, which take place every seven years. The Council does not decide about the allocation of financial resources, but merely fine-tunes the predetermined budgetary structures. For this reason, redistributive policies might not be very insightful to study, when individual strategies, interactions and collective dynamics are at the core of the theoretical interest.

²⁰ As Nugent framed it: “The reason that EU regulatory policy is so wide-ranging and has displayed little sign of slowing down in its advance is that there is both a demand and a supply for it. The demand comes [...] from large business which wants as integrated market as possible [...] the supply comes largely from the Commission [...] which plays a crucial role in setting the regulatory framework” (Nugent 2010: 285).

How is it possible to map the universe of policy activities pursued by the Council of Ministers? One such way is to consider the policy characteristics of the recorded votes. I relied on a new database Votwatch.eu²¹, which has collected all votes published by the Council since July 2009. The policy affiliation of a dossier is defined according to the responsible EP Committee. The data from January 2010 to December 2012 demonstrates that the Council took votes in 17 areas (see graph).

The policy typology by Lowi offers a conceptual tool that might help to reduce the complexity of this picture (Lowi 1972). Lowi divided policies into distributive (where the “state” allocates own resources to specific purposes), redistributive (where the “state” shifts resources among groups within the population), regulatory (where the “state” makes rules) and constituent (where the “state” is concern with its own governance and maintenance). For mapping purposes, the typology can be applied to Council decisions (but see the discussion about the ambiguity of categories in Heinelt 2007).

Indeed, most Council decisions seem to fall under the regulatory category: environment and public health, economic and monetary affairs (i.a. freedom of capital and taxation)²², transport and tourism, legal affairs (i.a. company law), industry, research and energy, internal market and consumer protection, employment and social affairs, culture and education. In sum, 154 votes were taken in the two years. Redistributive policies are agriculture, regional development, fisheries and budget with 44 decisions. International trade could eventually be classified as distributive policy, because through external tariffs the EU accumulates its “own” financial resource. All policies which target the relationships between the EU and the “outer world”, such as justice and home affairs, development and foreign and security policy, as well as constitutional and inter-institutional affairs can be seen as constituent policies (44 votes). Lowi himself argued that, on the one hand, foreign policies serve the “system maintenance” purposes, yet, on the other hand, can also be covered by the remaining three categories (Lowi 1972: 310). Acknowledging

²¹ www.VoteWatch.eu [26.03.2013]

²² The explanations in parentheses are based upon information obtained from the homepages of the relevant EP Committees.

that the boundaries between Lowi's policy categories can be blurry²³, one can nonetheless safely argue, in line with Majone, that the EU is a regulatory state and that the lion's share of the Council's legislative business belongs to regulatory policy-making.

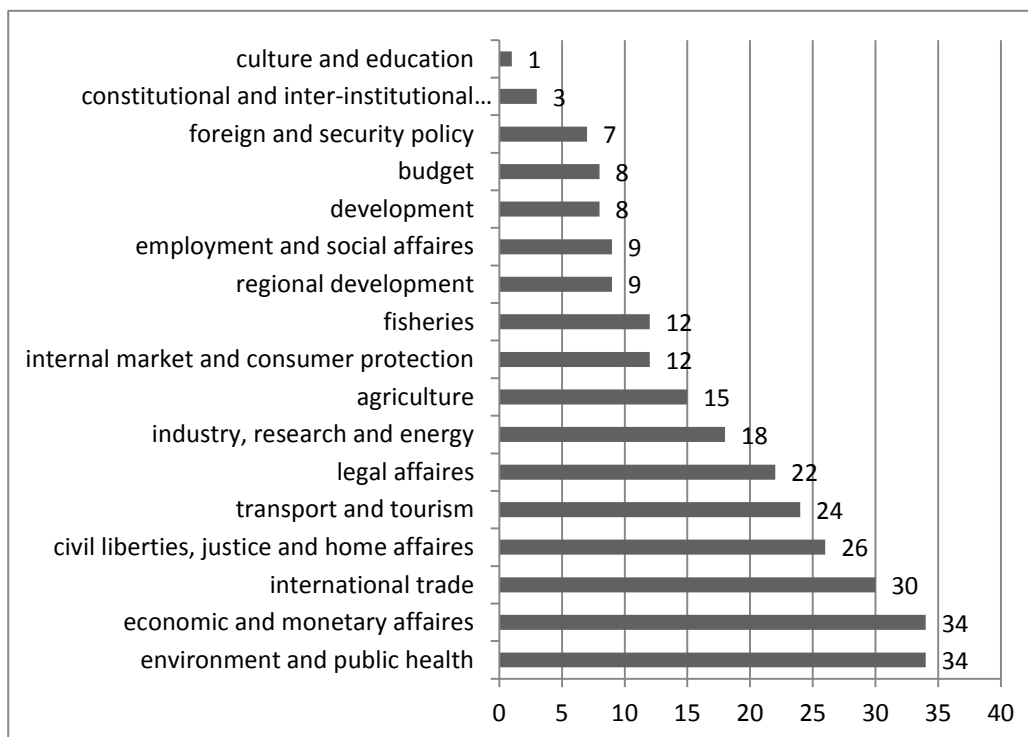


Figure 6 Council votes per policy area Jan 2010-Dec 2012

Source: Author's own complication with data form VoteWatch.eu [26.03.2013]

Although redistributive policies are almost three times less frequent in the Council, they generated significant concern before the Eastern Enlargement (Kandogan 2000; Daugbjerg and Swinbank 2004; Grant 2005; Kauppi and Widgren 2007). Central Eastern European countries have relatively low GDPs and most of them qualify for extensive financial support from both regional policy as well as agricultural policy. Thus, the worry was that they would put policy-making in redistributive areas such as cohesion or agriculture under stress with excessive demands for financial support. In a way, this worry came true as Thomson found that disagreements between "old" and "new" member states are disproportionately concentrated in areas, where subsidies are at stake (Thomson 2011: 69). Although these

²³ Schmidt illustrated this critique in her analysis of the Services Directive, where she demonstrated that a regulatory piece of legislation might have severe redistributive implications (Schmidt 2009).

controversies might appear as an important feature of EU policy-making after 2004, I argue that the leverage they provide for a study of how the Council has retained its productive capacity despite membership change is limited. This has to do with the specificity of EU budget, which is set in multiannual financial frameworks decided in high-level negotiations (Laffan and Lindner 2010; Nugent 2010: 402-415). On the Council of Ministers level, only fine-tuning, or filling the predetermined limits takes place. Contestation is present, opening some room for strategic action or coalition politics, but these are heavily constrained by the financial requirements imposed by the multiannual frameworks.

4.2.2 What constitutes “least likely cases” in the context of the project?

What would a hard test of my argument look like? Roughly formulated, the argument claims that it is politics within in the Council - rather than the structure of the decision situations of Council decision-making - that explains the ease at which the membership change has been accommodated. The robustness of the Council is the macro-phenomenon to be explained. Therefore, we need cases in which the Council has found an agreement.

Furthermore, we need cases with a puzzling outcome, i.e. cases in which according to our knowledge an agreement was rather unlikely. The basic assumptions of the rational-choice bargaining theory, as embodied in the major part of Council literature, are helpful in deducing the relevant characteristics of such decision situation: high level of salience and a positional divide among the member states provide unfavorable conditions for reaching legislative agreement (Moravcsik 1993; Tsebelis 2002).

The second step of picking “least likely cases” involves an examination of micro-conditions under which my argument operates. The argument is twofold. First, it claims that the new member states are unlikely to be influential players during legislative negotiations in the Council. Secondly, it suggests that the voting rule and the Council Presidency effectively lead the Council to positive outcomes and that these effects do not come under pressure after a membership change. To test the plausibility of this argument, we would have to examine, first, cases in which assertive agency of the new member states can be expected and, second, those in which the organizational advantages of Council politics are unlikely to be effective.

4.2.2.1 Assertive agency of the new member states

The condition that would encourage the new member states to act more assertively in the Council is a common, shared policy preference. Countries that have the same policy objective can, first and foremost, pull their resources together. Even if the new member states lack the soft resources, such as information, organization or skills, in cases of shared preference they can draw upon their formal voting power, which is significant given the number of the Central and Eastern European countries in the EU. In the current voting system, the cumulative number of votes of the ten CEE countries is 101, the four Visegrad countries come at 58 and with Slovenia at 62 votes. This is considerable when one takes the blocking minority as the reference (91 votes). Arguably, the network capital the new member states have can be transformed into real influence once it is put to the service of the common objective. Furthermore, knowing that others have similar demands or objections towards a given dossier considerably limits the danger of becoming marginalized – a Council norm that seems to drive conciliatory and self-restraining negotiation behavior (Novak 2013: 8).

Finding areas of commonly held preferences of CEE countries is not without difficulties in an institution, in which variability of policy positions is a constitutive feature. However, thanks to Thomson's research, we know that bloc or regional preferences exist in the EU. While not being a rule of Council politics, they manifest themselves systematically in policies related to redistribution, regulation or harmonization. When CEEs side together, they favor higher redistribution in EU budget, they exhibit a weak tendency for lower levels of harmonization and support higher levels of regulation (Thomson 2009: 777).

These last two results support the pre-Enlargement predictions that market integration will be, next to the Eastern neighborhood, energy security or the EU budget, one of the areas in which CEE countries could make a difference to the EU-level policy process. In particular, CEE countries were associated with the promotion of free market and a general pro-liberalization stance (Copsey and Haughton 2009: 275-277; Lessenski 2009: 13). The reason was partly because access to the internal market of labor or services would allow them to exploit their competitive advantage of cheaper labor. For the same reason, these countries were expected to reject costly environmental or

social regulation that would harm the (foreign) business that settled down in the region. Moreover, the “liberal paradigm” that involves limitation of state interventions or protectionism, stands for the successful transformation from socialist to capitalist economy. It has a symbolic value, to which the elites of these countries are deeply committed (Copsey and Haughton 2009: 276; Tavits and Letki 2009).

It is uncertain, whether the adoption of the extensive body of regulatory *acquis*, another historical common feature of CEE countries, would have any implications for these countries regulatory preferences. On the one hand, there might be rejection of further regulation motivated by “revenge” for strong compliance pressure before accession (Falkner and Treib 2008: 307). On the other hand, the achieved legal convergence might also encourage positive stances towards further regulation, precisely because no implementation difficulties are anticipated.

Regardless the conflicting expectations and the different potential sources for policy preferences, it seems that economic policies – policies related to market integration – are those where collective position-taking and assertive agency of CEE countries can be expected. The deductive expectations and the empirical findings, taken together, suggest that the new member states have the potential to influence EU policy-making with their attitudes supportive to market values, business, regulation, but reluctant to harmonization²⁴.

4.2.2.2 Weakness of efficiency-enhancing legislative procedures

Techniques of agreement-promotion do not work, or work less efficiently, in salient conflicts (Eberlein and Radaelli 2010: 787). Saliency represents a harmful condition for both consensus-enhancing symbolic compensations as well as institutional mechanisms enhancing legislative output. Saliency can be defined as the importance member states attach to

²⁴ Clearly, caution is needed when making such bold predictions about “bloc preferences” and their manifestation in Community policy-making. The reality is likely to offer a nuanced picture. This has been the case in the environmental policy, whose ambitions were expected to suffer from the accession of countries that cannot afford environmental regulation, do not have green-minded populations or are not home to environmental technologies. Nonetheless, there was no Enlargement-induced setback, as CEE countries either represented a more neutral views than expected or failed to come up with one position, despite some effort by the alleged leader Poland or even eco-values promoted in the GMO-policy (Skjærseth and Wettstad 2007: 276).

their policy preferences (Warntjen 2012). It is associated with the visibility of a given policy for the domestic public or simply with the costs it causes for the government or important domestic actors, such as the relevant industries.

Salient, conflictive issues pose several challenges for the catalytic effects of the Council procedures. When dealing with issues salient for the domestic publics, governments are attentive towards potential domestic costs of their supranational negotiation behavior and compare those with potential losses in reputation on EU level. Arguably, the domestic costs carry more weight in this calculation, since reelection is the governments' primary objective. One could assume that governments might fear domestic reactions more than being outvoted or being stamped as a blocker on the EU arena. The QMV no longer works effectively. When a dossier is marked by entrenched policy conflict or when the conflict is of zero-sum nature, the Presidency will have hard time formulating a proposal that can satisfy both sides.

Despite "salience" and "conflict" being crucial concepts in the Council research, it is very difficult to operationalize them and tell *a priori* which dossiers will turn salient and conflictive. The DEU project, which is empirically the most encompassing and methodologically the most sophisticated research endeavor on the Council, assesses salience *a posteriori*, while asking experts to assign values to how strongly individual governments felt about the dossier (Thomson and Stokman 2006: 41-43). In turn, the general level of conflict is associated with newspaper coverage (Thomson and Stokman 2006: 28). These strategies offer only a little help with the question concerning which legislative dossiers to pick when looking for contestation and governments' involvement.

One way to deal with this problem is to focus on dossiers with wide societal impact. The lion's share of EU's regulatory activity involves highly technical, specialized product regulations. Despite being important for the respective branches of the economies, these dossiers only concern very narrow groups of policy recipients (at least concern them directly). By contrast, with market logic expanding to services and labor, the EU is increasingly likely to deal with questions that concern broad societal groups (consumers and citizens), independently from their positions on the product markets. For instance, EU legislation of a cross-sectorial nature is likely to be

found in the areas of labor regulation and anti-discrimination²⁵. Moreover, the increasing importance of EU law in public services and public procurement offers another example²⁶. These type of policies are usually highly visible and likely to concern not just one but rather several organized interests. Moreover, cross-sectorial nature might involve high costs because the regulated economic goods are either widely consumed or involved in wealth generation on a larger scale.

4.2.3 Cases chosen

The last section elaborated upon several criteria that would constitute “least likely cases” for my theoretical argument. It was argued that the new member states are likely to overcome their bargaining disadvantages when they exhibit similar preferences. For instance, this could be found in policies related to market integration or labor policies. Furthermore, it was argued that salient and conflictive policies provide hard conditions for the procedural mechanisms to operate. Policies of wide societal concern are likely to generate high level of public visibility and high costs – both conducive to salience and conflict. This section introduces two legislative dossiers that have been chosen as the empirical core of the present research project and explains how they fulfill the selection criteria.

The main part of the project involves an analysis of two Council negotiations:

- The Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organization of working time; 2004/0209/COD. Short: The Working Time Directive (WTD)²⁷.

²⁵ See Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation;
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=197196#4148
27 [23.12.2013].

²⁶ See Proposal for a Directive of the European Parliament and of the Council the award of concession contracts;
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=201237
[12.02.2013].

²⁷ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=191740
[12.02.2013]

- The Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare; 2008/0142/COD, Short: The Patient Mobility Directive (PMD)²⁸.

The WTD regulates the weekly working time across the EU. The Directive contains various definitions of working time, framework rules for resting periods and provisions on the reference periods. The EU is concerned with these issues because it is mandated by the Treaty to improve and approximate the working conditions. While the WTD is actually an older piece of legislation, originating from 1993, it had to be revised in the mid-2000s due to the temporary nature of an exception that it contained (“opt-out”, introduced for ten years) and because member states wished to clarify the institution of on-call time in the light of recent contentious European Court of Justice (ECJ) rulings. The Commission proposed this dossier in September 2004 and the Council found the political agreement in June 2008. However, the Directive failed in Trilogues between the Council and the EP.

The ideas underlying the PMD were originally included in the Services Directive, as the circulation of medical services in the EU is the main concern of the project. Specifically, the Directive enables patients to assume medical treatment abroad and become reimbursed by their home insurance systems, setting the legal and procedural conditions to this end. The motivation for this first binding legal instrument in the area of healthcare came from the ECJ that claimed in several judgments that the freedom of service shall apply to public healthcare. Member states wished to see a legislative instrument, instead of the case law, to govern this area. The Commission proposed a Directive in July 2008 and the Council found the political agreement in June 2010.

The outcome (“dependent variable”), an agreement in the enlarged Council, is present in both cases. Arguably, the WTD represents a fragile agreement, as the dossier ultimately failed in the negotiations between the Council and the EP. Such a negotiation failure happens very rarely. However, at this point, it is impossible to tell the extent to which this failure is related to the negotiations within the Council, since only an in-depth empirical analysis can answer this question.

²⁸ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=197193
[12.02.2013]

Regarding the difficult conditions for my “independent variables” to operate, both cases represent them rather well. Both dossiers were highly visible, generated much attention and were judged important by both EU and national policy-makers. Most certainly, they have a wide societal impact. The WTD applies to all standards work contracts in the EU; it is of interest for any employers and employee, conversely for business associations and trade unions. In turn, the PMD has legal and financial implications for any relationship between a patient and his public insurer; therefore, it can be expected to matter for the broad public, as well as medical associations and, for financial reasons, the public administration.

Wide societal impact alone does not guarantee high conflict and salience. Fortunately, several process-indicators speak for the presence of these characteristics in the two dossiers. First, the proposals were extensively dealt with by ministers and not only by diplomats or civil servants. Because national ministers have very little time for EU affairs, it is the consequential and important dossiers they focus on (Häge 2007: 322). Both dossiers were dealt with on the ministerial level several times. In both cases, there had been two or more attempts to vote. Second, it took the Council a relatively long time to reach an agreement on both Directives: 23 months (690 days) for the PMD and 45 months (1350 days) for the WTD. Against the background of all we know about decision-making speed in the EU, this is a significant amount of time. Klüver and Sagarzazu show that 92% of legislative dossiers are agreed within the time period of 1-2 years (Klüver and Sagarzazu 2013: 7). Thus, our dossiers belong to the exceptional 8%. Moreover, our cases exceed the average number of days needed to pass a Directive. Golub estimated between 200-300 days for the mid-1990s (Golub 1997: 36); in turn, König claimed that the mean for “B points” Directives is 690 days, with the median at 539 (Golub 2008: 173). Our cases are placed in the upper field of legislative duration.

What about the involvement of the new member states and their collective preferences? We expect high interests of CEE countries in both cases. The WTD is one of the most important labor regulations in the EU. In turn, labor is one of the new member states’ priority topics as they see their competitive advantage in a cheaper yet well-educated workforce. The PMD was initially part of the Services Directive, which attracted intense attention of the newly joined states in 2005. Back then, the newcomers all supported more

flexible rules to govern the transnational services trade. However, they had to accept a less liberal compromise brought forward by the European Parliament. Interest of CEE countries for supranational governance of health affairs can be expected because those countries attract patients from old Europe and thus, can benefit from patient inflows (Martinsen 2009: 800). Health systems of these countries are being intensely modernized, which, again, speaks for increased attention towards emerging regulatory framework.

The voting records support the hypothesis that the new member states had collective stakes in these two dossiers. The PMD had been, until the very end of the negotiation process, opposed by Poland, Slovakia and Romania, while Hungary, Lithuania and Slovenia were part of the blocking minority earlier in the process. Apart from the Czech Republic, which performed as a Presidency during these negotiations, almost all new member states adopted skeptical positions towards the new Directive on the ground that the “market” should not interfere with public health insurance.

In the WTD, which very quickly became politicized, all the new member states except Hungary favored a more flexible governance of working time and supported the contentious provision of the “opt-out”. However, the reason for doing so is puzzling, given that none of these countries applied the opt-out domestically when the Commission presented the revised Directive proposal.

In sum, both the WTD and the PMD exhibit characteristics that provide for a hard probe of my argument. In salient, conflictive negotiations, in which the member states easily group into entrenched alliances and in which the new member states take a common position it is unlikely that the agreement can be traced back to the interplay of two conditions: weak supranational agency of the newly joined states and the effectiveness-enhancing Council procedures. Both factors are unlikely to develop the anticipated effects under the given conditions. If the analysis of the cases reveals that the expected mechanisms still worked and were conducive to the Council agreement, my argument passes the test and thus provides a plausible explanation for the successful accommodation of the Eastern Enlargement by the Council.

4.3 Data

This section makes a few remarks on the data collection. Qualitative research in general, as well as process tracing in particular, strongly rely on

numerous and diverse observations to measure the concepts used. In a research project concerned with individual agency and its impact on legislative dynamics, information will be needed concerning how actors prepared their positions (and what they were) as well as in what form were the positions articulated? Moreover, how did actors proceed and how did they interact? Finally, as the argument postulates an interaction of agency and procedural conditions, precise knowledge about the timing and sequence in the legislative dynamics will be required.

A solid empirical reconstruction of a legislative process within the Council of Ministers is challenging. Although Council negotiations are carefully documented in reports, minutes and policy notes, public access to these documents is highly restricted. Decision-making in the Council is a diplomatic negotiation and as such, it had been subjected to secrecy ever since the Council existed (Curtin 2011: 12). Over time, the Council relaxed the access restrictions (Naurin and Wallace 2008a: 2). However, there remains much debate between the Council members and civil society organizations about the appropriate balance between transparency and protection of information vital for national interests (EU Observer 2012).

To portray the dynamics of Council negotiations, this project relied on the following sources: The PreLex was used to reconstruct the basic inter-institutional game, whereas the Council registry provided valuable information about the dates and agendas of the Council meetings. The registry contains progress reports, issued regularly by the Presidencies. These reports document what the contentious points in a given negotiation were, what hindered the Council from resolving them and how the policy conflicts have eventually been overcome. Progress reports are often accompanied by new proposal drafts that allow tracing the changes. Here, one can see the extent to which the interventions of member states have found their way into the dossier under consideration.

The project has furthermore extracted empirical information from video-records of ministerial meetings. These are available for Council meetings from 2009 onwards and can be found on the Council's homepage²⁹. In the recorded Council meetings, each ministerial delegation has about two minutes to make a statement or answer the questions pre-formulated by the Chair.

²⁹ <http://video.consilium.europa.eu/> [24.07.2013].

While not necessarily insightful about the specific negotiation strategies pursued by the delegations, these statements transmit the positions and attitudes of the delegations, such as the salience they attach to a specific dossier. They also allow assessing which concerns are shared by which countries and whether there is mutual support or critique among delegations.

Besides sources provided by the Council itself, for most contentious dossiers newspaper information can be found. Journalists established in Brussels often dispose of insider information from EU diplomats and are familiar with the policy context. Unlike the Council documents, newspaper articles are more likely to provide country-specific information, such as about policy preferences, positions held or specific negotiation strategies, such as alliances, lobbying activities or voting intentions. Since my analysis has a strong domestic component, national press had been consulted where needed and possible. Clearly, national press coverage of EU affairs varies across countries and issues. Including national press coverage within research focusing on EU-level interactions is demanding and time consuming, which is why this type of in-depth inquiry has only selectively been practiced.

Finally, an empirical research on the Council can draw on the practitioners' recollection. This study has drawn upon some 20 interviews with national diplomats established in Brussels or in home administrations. The value and the confidence of the information gained in this way varied considerably. Interviews with the respective Presidency officials proved the most informative regarding member states' behavior and interactions. In turn, diplomats working for the Permanent Representations were often ambiguous while reconstructing the national strategies and positions. The interviews were conducted according to a pre-defined scenario based upon the theoretical priors. In several cases, the interviewees did not agree to being recorded. Here, an interview protocol served as the source for the subsequent analysis (Gläser and Laudel 2010: 192-193).

The different observations and empirical information collected have been subjected to triangulation. Following the advice of Leuffen and colleagues, I used various triangulation strategies depending on the availability and the trustworthiness of the data (Leuffen et al. 2013: 49). One has to bear in mind that Council research concerned with legislative processes faces a dilemma involving the information content and the quality of data sources. Council

reports are trustworthy, yet they contain only superficial information on what actually happened behind closed doors. In turn, interviewees who possess this information might be biased, particularly in terms of the effectiveness of their own bargaining strategies and *ex post* evaluation of behavior (Berry 2002). Thus, as context-careful and time-sensitive as it might be, an analysis of intergovernmental bargaining has to settle for only approximating the real-world negotiation process.

5 The Revision of the Working Time Directive (2004-2009)

The revision of the Working Time Directive is a legislative case in which the new EU members took almost uniformly a stance in an old policy conflict - namely the question, how strict should the EU-wide working time regulations be. Central Eastern European countries affected the structure of the Council conflict, shifting the balance of power towards more liberal positions. These were in minority when the original Directive was agreed in the early-1990s. I argue that the negotiations on the revision, which took place between 2004 and 2009, contain a paradox. On the one hand, the enlarged Council carried out policy change, although coming dangerously close to a legislative failure. On the other hand, the contribution of the new member states to this development was solely an indirect one and highly conditional upon other players' actions. The case exemplifies the relevance of mobilization and mimicry in intergovernmental interactions as well as the leverage of the Presidencies' strategic brokerage. Both mechanisms are helpful in understanding how membership change has affected legislative policy-making.

5.1 Analytical leverage of the case

The revision of the Working Time Directive (WTD) has been one of the most contentious legislative processes in the European Union since the Eastern Enlargement. The Council intended to revise a piece of legislation from the early 1990s to adapt it to recent ECJ case law. However, a debate whether an exception from the weekly working hours limit would be acceptable prevented the member states from moving forward. The so-called "opt-out" was introduced as a temporary provision in 1993, although its definite removal from the Directive proved impossible after the Eastern Enlargement. The new member states aligned with the supporters of the derogation, adding fuel to an old conflict between the advocates of "social Europe", such as France, Spain, Portugal, Greece and Belgium, and the supporters of flexible regulatory arrangements in EU-level labor market policy, such as the UK, Germany,

Austria and Ireland (Copeland 2010). The Council managed to conclude the negotiations, albeit with a fragile agreement and one that lacked the support of seven member states and was subsequently rejected by the EP.

The new member states' collective position in an EU-level controversy, combined with a successful conclusion of Council negotiations, make the WTD a suitable case to study the accommodation of the enlarged membership. Two aspects of the case are particularly puzzling. The first one relates directly to the positioning of the new member states vis-à-vis other countries and their role in the conflict between "the social" and "the liberal" Europe. Why did member states, which implemented the old WTD in its more rigorous version, i.e. without making use of the exceptions, directly after accession supported a more flexible regulation and contributed to a "liberal" coalition within the Council? Second, what were the drivers behind conflict escalation and conflict smoothing, the two counteractive dynamics that defined the negotiations on the WTD? What role, if any, did the large numbers play in each of these dynamics?

On the first question, the insights from the analysis allow a clear argument. The liberalism of the new member states was of exogenous, rather than of endogenous origin. From their domestic policies, especially at the outset of the Council negotiations, it was anything but evident that they would need a generalized opt-out. Their position formation was marked by uncertainty about suitable regulatory tools for reestablishing compliance with the contentious ECJ case law on the on-call time in medical emergency services. Despite being uncertain on the domestic level, CEE ministers vocally defended the opt-out on the European level, because the UK, which lobbied for the exception and mobilized all its power resources, provided legislative leadership and thereby a convenient and reliable bargaining opportunity structure for less assertive countries. While mimicking the UK, the newcomers opted for a safe bet. On this point, the WTD clearly supports the theoretical argument predicting that CEE countries would not provide a distinct and autonomous contribution to the negotiations but rather their interaction with older countries would define their impact on the legislative dynamics.

Concerning the question of contradictory directions in the conflict development, as well as the extent to which they were shaped by large numbers, the results speak with a forked tongue. At the beginning of the

legislative process, the positioning of the new member states exacerbated the existing conflict. The newcomers became embedded in the UK-led liberal coalition and the Dutch Presidency, hoping for a majority to emerge, amended the proposal in favor of this coalition's preferences. Socially-minded delegations reacted with heavy contestation and the dossier became stuck in the Council for months. However, at a later stage, it was the position (a more "social" one) of CEEs on another Directive that encouraged a package deal. Nonetheless, here too the (Portuguese) Presidency and another old, large member state, France, played a decisive role. When assuming the Chair, Portugal abandoned its earlier radical position on the WTD and, with the Commission's assistance, proposed a package solution with the Temporary Work Directive. With France accepting it, the opposing minority lost its blocking quality and the path was paved for formal Council agreement.

These observations demonstrate that the Eastern Enlargement might have an amplifying impact on both directions of conflict dynamics: Where there had been policy conflicts before, they might become heavier after Enlargement. Nonetheless, crafting a (thin) qualified majority remains possible, if not easier, with a larger and a more diverse Council. The Presidency appears to be central in this context and the case reveals that it proceeds highly strategically, once it assesses that unanimity is unrealistic to reach. At the same time, the Presidency's managerial success might depend on situational or conjunctural factors – here, France (unlike other members of the social coalition) being sufficiently flexible to accept the package deal.

As the case contains an explicit package deal, it obviously highlights the relevance of flexible coalitions for the enlarged Council's capacity to decide (Thomson 2011: 279-284). However, it also demonstrates that the location of newcomers' preferences vis-à-vis the old member states is only one element next to several others that contribute to a successful policy decision. On this way, the case backs my initial claim that the accommodation of the Eastern Enlargement took place on the process-level, rather than simply on the input level. In fact, what we observe as policy space – the distribution of positions among member states – might already be a result of intergovernmental processes, such as mobilization and mimicry.

The chapter is structured as follows. The first section provides an extensive description of the case. It specifies the policy problems,

demonstrates how the Commission's proposal aimed at solving them, describes the negotiations in the Council, Presidency after Presidency, and briefly discusses the outcome. Subsequently, the chapter moves to the analysis of the negotiation process. Following the theoretical argument laid down in Chapter 3, the analysis is divided in three blocks: the new member states' position-taking, coalition dynamics within the Council and the process-management by the Council Presidencies. The final section summarizes the findings and concludes.

5.2 Case information

The Directive concerning certain aspects of the organization of working time (93/104/EC), short the WTD, is a piece of EC social policy legislation from 1993³⁰. It lays down minimum safety and health requirements for the organization of working time across the EU (Article 1)³¹. It contains provisions on daily, weekly and annual rest periods and breaks, sets the maximum weekly working time, as well as clarifying certain aspects of night, shift work and work patterns (Article 2). The Directive is based upon the Community's competence to support and complement the activities of the member states in the area of working conditions and the protection of workers (Article 137 Par 2 TEC³²). The underlying purpose of the Directive is to achieve an internal market that is undistorted by social competition and one that does not come at the cost of workers' health (Hardy 2006: 563-565). This motivation was not universally accepted as the Directive was proposed in the late-1980s³³. Since the early-1980s, the working time on European labor markets had been experiencing contrary trends. In France, the Grenelle agreements set the purpose of reducing working time gradually to 35-hours per week. In turn, the UK headed

³⁰ The Directive applies to all sectors of activity, both public and private. Air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training were excluded from the scope of the 1993 Directive. However, the European Parliament and the Council adopted, on 22 June 2000, Directive 2000/34/EC which extended the working time Directive to all the previously excluded sectors. These two Directives were codified into a consolidated text (Directive 2003/88/EC) in November 2003.
<http://www.eurofound.europa.eu/eiro/2004/03/feature/tn0403108f.htm>

³¹ As Barnard notes, the Working Time Directive occupies the "grey area between traditional health and safety measures and the rights of employed persons" (Barnard 2012: 533).

³² Now Article 153 TFEU.

³³ For instance, the Commission relied on studies that showed harmful health effects of long working hours. However, the evidence was disputed by both politicians and academics (Barnard 2012: 534).

towards the longest working hours in Europe since the seminal reforms of the conservative Thatcher government (Avilés and Vina Garcia 2009: 97-98). These two trends contributed to antagonistic preferences of the policy-making elites.

The WTD had been agreed in a “diluted form”, as it allowed an abstention from the maximum weekly working hours (Szyszczak 1995: 20). The conservative UK government, on whose request the opt-out had been introduced, abstained from the formal adoption in the Council on 23 November 1993³⁴. The British government sought a judicial review of the measure (C-84/94), although it lost in the ECJ (Barnard 1997: 45).

5.2.1 The policy problem

The WTD came back on the EU’s legislative agenda, because it needed a revision, for two reasons. Firstly, the original Directive obliged the Commission and the Council to re-examine the provision that allows member states not to apply the maximum weekly working limit of 48 hours (the “opt-out”) within a period of ten years, by November 2003. Secondly, doubts were raised about the meaning of the core concept of the Directive, namely the notion of “work” itself. Specifically, members of the medical profession questioned whether the time they spend on-call in hospitals could indeed be qualified as rest periods, as widely practiced in most European countries. In the *SIMAP* judgment (C-303/98) from 2000, the ECJ ruled that being present at the workplace and being physically on-call constitutes “work” according to Community law³⁵. In the *Jaeger* judgment (C-151/02) three years later the Court went on to argue that on-call and stand-by time, during which doctors are allowed to sleep in specially prepared rest rooms cannot be regarded as “rest” (as it was the case in the German law in that time), even if the actual professional activity is not

³⁴ The reason for the UK questioning the Community (or the EU’s) involvement in social policy and working conditions is that these matters had been traditionally decided in Britain by management on the company level (Barnard 1997: 43). Unlike many continental European countries, the UK lacks a tradition of centralized social regulation. Community labour law as well as the Social Charta that preceded it had been severely criticized by the British Conservatives, declaring these measures as infringing on individual freedom and as being an insult to the free market (The Guardian 2011).

³⁵ The Court classified the physical presence at the workplace as the determinant of “work” or “rest”. It argued that when the employee is only requested to be contactable at all times when on call, only the actual provision of health care must be regarded as working time.

performed. From the Directive's perspective, this time must fully be regarded as working time and compensatory rest has to follow. National working time regulations that had been treating on-call duties as rest periods were thus found to be in breach of the WTD.

The interpretation of "working time" and "rest" pursued by the ECJ in the judgments went beyond the original intent of the WTD. Some observers even claimed that the Court went "too far" and was not "sensible to the needs of the healthcare systems" (House of Lords 2004: 36). It became evident that the Directive omitted to account for the specificities of certain professions³⁶. Full compliance with the Directive in the light of the recent rulings became very difficult, as it would require hospitals to employ more staff.

From the member states' perspectives, the situation was characterized by high dose of uncertainty. On the one hand, they all had the legal possibility to apply the opt-out for the healthcare sector only. In that way, they would not be bound by the 48h working week in this one sector. On the other hand, the opt-out was only a temporary solution and all policy-makers knew that a revision of the Directive was coming up. On this occasion, the Commission was invited to suggest a solution to the contentious interpretation of on-call time as work. In fact, the Dutch Presidency in the second half of 2004, urged the Commission to take legislative action, pointing at vivid interests of many member states to find a solution (EUobserver, 09.07.04).

Member states were uncertain, as they were oscillating between a domestic solution, i.e. the sectorial application of the opt-out, and a supranational one; for instance, a redefinition of the term "work" in the Directive³⁷. Apparently, many governments had a preference for the supranational solution. Depending on the labor market governance, such as the degree of social partners' involvement, the usage of the opt-out might be very

³⁶ Derogations from the rules on breaks, rest, night work or reference period were granted to several professions, such as managers, family workers, religious celebrants, doctors in training, as well as those employed in activities that necessitate the continuity of production (Article 17).

³⁷ For instance, Germany adapted its labor code to ECJ ruling while suggesting that the relevant social partners at company (hospital) level will find an appropriate, derogatory solution. This was achieved "formally, to give social partners the opportunity, in fact, however, only as a mid-solution in hope for the EU legislator to re-consider the EU law" (Schliemann 2006: 1011) .

problematic or even impossible. For political reasons, many governments preferred not to recourse to that contentious regulatory tool³⁸.

In sum, the policy-making process was driven by two main problems. First, there was the “old” contention whether a Directive that promotes health and safety at the workplace should allow derogating from the 48-hours cap on the working week. Second, a solution was needed that would integrate on-call duties in the regulatory system of the WTD, whereby the opt-out was clearly relevant in this context. However, experiences of practical opt-out usage were very limited during the time when the agenda for the amended legislation was set, with only the UK making use of the generalized opt-out provision.

5.2.2 The initiative by the European Commission

The Commission adopted a proposal for a revised WTD on 22 September 2004 (Commission 2004b). The launch of this amendment had been carefully prepared. In January 2004, the Commission issued a report examining the operation of the Directive in EU member states and in candidate countries (Commission 2004a). The Council and the EP discussed the initiative informally few weeks later and some 20 business and employees’ organizations voiced their opinions (Commission 2004c: 7). These consultations confirmed that the old contention about the derogation from the 48 hours working week, the “opt-out”, remains vivid and not only divides businesses and trade unions, but also EU institutions, as the European Parliament signaled its preference for a phase-out of the derogation as soon as possible.

The proposal of the Commission contained following changes to the existing legislation:

- New categories of “on-call time” and “inactive part of the on-call time” have been introduced in addition to “work” and “rest”. During the on-call period a worker is at the workplace and for the employers’ disposal, the inactive part is when he is not required to carry out his duties. This part of the on-call time shall not be regarded as working time.

³⁸ Interview, Member of the Dutch Permanent Representation and the Presidency Team, 26.10.2011.

- The reference period for the calculation of weekly working hours has been extended to 12 months, provided that social partners agree.
- Derogation from the daily and weekly periods of compensatory rest has been introduced (previously: 11 consecutive hours of rest in each 24 hours plus 24 hours per week). According to the new provision, compensatory rest has to be granted “within a reasonable time” and at latest within 72 hours.
- The opt-out from the 48 working week would remain in place only for the next five years. Within that time, the Commission shall monitor the application of this provision and consider a phase-out. Moreover, the application of the opt-out has been made more difficult: a collective agreement is needed; where collective agreements are absent, the worker written consent is the condition. Furthermore, the Directive introduced several additional conditions for the opt-out application: the ultimate limit of 65 weekly working hours, the obligation to keep record of the hours worked when opted-out, the obligation to report these records to authorities, no detriment to workers refusing to be opted-out, the workers’ written consent to the opt-out must be granted after the probation period.

The Commission itself called the proposal a “balanced package”³⁹. Indeed, the Commission increased the flexibility of working time calculation allowing an extension of the reference period from four to twelve months and introducing greater flexibility in the compensatory rest. On the other hand, it considerably tightened the conditions for the opt-out. Moreover, it stressed the temporary nature of this provision – granting it only a five-year long duration – and considered phasing it out within that period. Finally, the Commission proposed a way out of the inconvenient ECJ rulings suggesting that the inactive part of the on-call time should not be regarded as work.

The balance between flexibility and the social protection, combined with the pressure to comply with the WTD in the light of recent ECJ rulings, was supposed to increase the chances of this proposal to gain acceptance⁴⁰. However, this was a risky endeavor given that several policy-makers held quite

³⁹ Press release: http://europa.eu/rapid/press-release_IP-04-1129_en.htm?locale=en [20.02.2013].

⁴⁰ Interview, Member of the Dutch Permanent Representation and the Presidency Team, 26.10.2011.

strong views on the issue of working time. While the UK was not expected to accept the limitations of its hard-fought derogation, the EP emerged as a new guardian of workers' welfare.

5.2.3 Legislative negotiations in the Council: an overview

The Council held first exchanges of views on its EPSCO meeting on 4 October 2004 during the Dutch Presidency. After 45 months, in June 2008 it reached political agreement under the Slovene Presidency. Under eight Presidencies, the Council had carried out turbulent negotiations with uneven progress⁴¹. Only in the first one and a half years was the Working Party involved. In the remaining two and a half years, Council debates took place on the highest, ministerial, level, very often only in the form of bilateral talks. One of the Presidencies, the German one, refused to deal with the Directive at all, as it claimed to see no chances for adoption. The subsequent Presidency, the Portuguese one, merged the WTD with the Directive on Temporary Agency Work to facilitate log-rolling and create more room for member states' individual bargaining success. Only with this procedural innovation – a legislative package – was it possible to get the stalemated proposal on track again.

Stalemate around the opt-out

Already during the initial, rather technical debates in the Working Party, it became clear that the question of “opt-out” continues to generate considerable contention among delegations. During a Working Party in October 2004, France, Spain, Hungary, Portugal and Italy demanded an immediate abolishment of the opt-out, pointing at the additional flexibility in the working time calculation which the Commission's proposal has granted (Council 2004c: 6). During the very same meeting, opposition was raised against the tightened conditions for the opt-out usage. For instance, the maximum limit of 65 hours worked weekly was rejected by a group of countries. The British delegation expressed its “position of principle” that the opt-out should remain in the current form (Council 2004c: 7). Once isolated in the Council, this time the UK gained the support of Germany, Austria, Ireland and the new member states.

⁴¹ Council Presidencies that have dealt with the Working Time Directive are the Netherlands, Luxemburg, the UK, Austria, Finland, (Germany refused to deal with the dossier during its Presidency in early 2007) Portugal and Slovenia.

Delegations soon found an agreement on the definition of “on-call time” and on the compensatory rest (Council 2004b: 5-7). However, on the opt-out issue, nine delegations preferred to keep the provision as it stands in the current Directive, while seven delegations could not accept the Commission’s proposal for the opposite reasons: they wanted to abolish the opt-out straightaway or, as a compromise, phase-it out gradually (“within x years”). The third group consisting of nine delegations was rather flexible and open to any compromise (Council 2004b: 8-9). At each end of the political spectrum, there was a blocking minority.

Luxemburg Presidency and the EP’s opinion

The subsequent Luxemburg Presidency tried to figure out which delegations use the opt-out, which are planning to use it and for what reasons. It received more ambiguous than clear answers to those questions, as many member states were undecided about what to do⁴².

In May 2005, the European Parliament provided a new impetus to the legislative process by issuing its first legislative resolution (European Parliament 2005). The Employment and Social Committee led by a Portuguese socialist Antonio Cercas changed the Commission’s proposal considerably in that it rejected many “flexible” arrangements introduced by the Commission and went much further in strengthening the protection of workers⁴³. Among others, the EP demanded:

- An inclusion of the totality of on-call time (active or inactive) to the working time, allowing only for a differentiated calculation of pay, upon social partners’ agreement.
- Abolishing the opt-out within three years from entry into force of the Directive.

Reacting to the EP’s opinion, the Commission amended its proposal in June 2005 (Commission 2005). It incorporated only some of EP’s suggestions and rejected the most radical ones. In particular, it tightened even more the conditions of opt-out application: the derogation was limited to three years (from five years) and the maximum weekly working hours limit lowered to 55 hours (from 65). As the amended proposal came out two days before the

⁴² Internal note of the Secretariat General of the Council, obtained in the Interview 19.10.2010

⁴³ EPs text was supported by 345 members, 264 voted against and 43 abstained (AFP, 11.05.2004).

EPSCO Council closing the Luxemburg Presidency, the Council did not have time to examine it in detail. Ministers' discussions on 2-3 June 2003 only confirmed the entrenched fronts. Paradoxically, the delegations also stressed the "urgency of finding a Community solution to the question of how to treat inactive periods of on-call time, following the Court of Justice judgments in the *SIMAP* and *JAEGER* Cases" (Press Release 8980/05). The Council was thus trapped between a political conflict and a necessity to act.

British Presidency: consolidation of conflict in the Council

The next Presidency that dealt with the proposal was the British one. This time, the opt-out was not dealt with on the Working Party level, but was rather discussed on a bilateral basis instead (Council 2005e). The Presidency noted that 11 countries supported its approach to maintain the opt-out⁴⁴. In turn, France and Sweden drafted a proposal to phase-out the opt-out within five years, albeit granting ten years to countries that use it at the point of transposition. Moreover, their proposal provided for a special regulation for the hospital sector, which would be allowed to use the opt-out for three additional years renewably (Council 2005c). Franco-Swedish proposal gained lukewarm support from Spain, Belgium, Greece and Finland (Agence Europe, 09.12.2005). Reacting to this development, the British Presidency introduced several deadlines for reporting, monitoring and "further proposals" concerning the opt-out, but omitted the question of a potential phase-out (Council 2005a). However, this was not acceptable to the "social" camp and thus the proposal could not move forward.

Austrian and Finnish Presidencies: search for a compromise

The subsequent, Austrian presidency, no longer organized meetings at Working Party level; rather, it consulted the delegations on a very high level. Austria decided to keep the opt-out without providing for a date of a potential phase-out. As a compensation to the "social camp", it sought formulations that would constrain the opt-out usage and assure that it will not harm workers' health⁴⁵. Nonetheless, the Austrian delegation knew well before the Council meeting that the blocking minority by France, Spain and others would stand united and that there would be no chance for a vote to pass.

⁴⁴ CZ, DE, EE, IE, IT, LV, MT, AT, PL, SI, SK (Council 2005a: 12) .

⁴⁵ In its re-drafted proposal, Austria introduced few recitals and an obligation for employers to first check whether the extended reference period would not satisfy their needs before turning to the opt-out (Council of the European Union 2006c).

Finland, the next Presidency, did not appear to be discouraged by the apparent stagnation of negotiations. With the intention to “balance” the Austrian proposal (Europolitics, 24.10.2006), it put forward two innovative ideas: First, an exclusive choice between two flexible arrangements provided by the redrafted Directive – the opt-out and the extended reference period for working time calculation; Second, a revision clause - obligation to at least consider a phase-out on the national level after two years, under the auspices of the Commission’s monitoring. Furthermore, Finland returned to the idea of an upper working time limit when the opt-out from the 48hours is used, raising it to 60 hours. The Presidency acknowledged that the opt-out might currently be needed in some European countries, but it aimed to encourage these member states to stop using it in the long term. The Commission signaled that it would go along with any compromise; however, if no agreement were found, it would withdraw the proposal from the agenda and proceed with action against the member states who failed to implement the ECJ rulings (Europolitics, 02.11.2006). This threat, combined with the “softly-softly approach” by the Presidency (Europolitics, 26.10.2006) raised hopes that the proposal might pass the Council.

The Presidency counted very much on support from France that informally led the “anti-opt-out” camp⁴⁶. The Presidency was convinced that, thanks to France, a vote would be successful⁴⁷. Only one day before the Council did the Finnish minister learn from the French delegation on the phone that French position to be presented on the Council meeting would not be supportive, as previously intended. This has seemingly been a short-term decision, influenced by the involvement of the Prime Minister de Villepin and the President Chirac⁴⁸ (Agence Europe, 07.11.2006). Germany, which was about to assume the next Council Presidency, declared at that time that it would not deal with the WTD at all (Agence Europe, 10.11.2006).

Portuguese Presidency: the failure of the package deal strategy

The Portuguese Presidency resumed the negotiations, motivated by the pressure from the member states. It followed the suggestion from the

⁴⁶ Comprising France, Spain, Italy, Luxembourg, Belgium, Cyprus and Greece (Europolitics, 08.11.2006).

⁴⁷ Interview, Ministry of Employment and Economy of Finland, 25.11.2011.

⁴⁸ <http://www.euractiv.com/fr/europe-sociale/temps-de-travail-lepreuve-de-for-news-234080> [27.02.2013].

Commission to merge two labor market dossiers into one negotiation package: the WTD and the Directive on Temporary Agency Work. The Temporary Agency Work Directive provides for equal treatment between temporary and employed workers, following the principle that equal work demands equal conditions. The Directive was stuck in the Council, opposed by the UK which several years back managed to build up a blocking minority consisting of Germany, Ireland, Denmark and the new member states (Nedegaard 2007: 707).

The idea of the package deal was to make one of these two dossiers more “liberal” and the other one more “social”. On this way, the political needs of different camps in the Council would be satisfied. All member states, also the CEE countries, except the UK and Germany, supported this strategy.

The Portuguese Presidency disregarded this opposition, at first. It worked out a compromise that, for the WTD, strongly resembled the Finnish proposal⁴⁹. In turn, substantial compromises had been made to France, Spain and Italy in the Temporary Agency Work Directive, enabling those states to support the package (Europolitics, 04.12.2007). United Kingdom and Germany signaled their opposition (Europolitics, 26.11.2007). The vote has not been taken at all, although qualified majority could have been reached (Europolitics, 07.12.2007). A vote would expose the UK and Germany’s isolation in the Council. This was politically not desired due to the uncertain ratification prospects of the Lisbon Treaty. British Prime Minister Gordon Brown contacted the Presidency personally several times, presumably threatening with ratification interruptions in the House of Commons (Europolitics, 07.12.2007)⁵⁰.

5.2.4 The outcome

The prospect of reaching an agreement in the Council on the package of dossiers emerged five months later, in May 2008, after the social partners in the United Kingdom reached agreement about equal treatment of agency workers. This agreement allowed the British government to agree to

⁴⁹ One of the changes pertains to the weekly cap of working hours (60 in the Finish presidency). Here, Portugal allowed for 65 hours for certain sectors (health), at the request of Poland, supported by Slovenia and the UK.

⁵⁰ A member of the Portuguese delegation refused to comment on the interaction between the British Prime Minister and the Presidency in an interview for this project, although he suggested searching for the explanation in the media.

provisions in the Temporary Agency Directive and consequently to accept the negotiation merge of the Temporary Work Directive and the WTD. Reacting to this development, the Slovene Presidency put the package on the agenda of the Council meeting in June 2008 (Agence Europe, 23.05.2008). The danger that the opt-out opponents would block a decision diminished with the return to power of the conservative Italian Prime Minister Berlusconi in May 2008, as Italy withdrew its participation in the “social” camp (Europolitics, 29.05.2008). France was satisfied by the Temporary Agency Work compromise. A qualified majority in the Council has been reached. Spanish and Greek delegations voted against and the Belgian, Cypriot, Hungarian, Maltese and Portuguese delegations abstained (Press Release, 13028/08).

The European Parliament held the second reading of the Directive on 17 December 2012. As previously announced on informal arenas, the Rapporteur Cercas maintained his very critical stance towards the direction taken by the Council on the opt-out provision and on the inactive on-call time. Consequently, the legislative resolution of the Parliament in the second reading resembled very much the one in the first (European Parliament 2008). The Parliament maintained that, by default, all on-call time should be regarded as working time⁵¹ and that the opt-out should be phased out three years from the entry into force of the Directive⁵². On the way to the Conciliation committee, the Parliament was determined to keep its position, as was the Council⁵³. The two sides were too far apart and an agreement was impossible to achieve. The legislative process has failed. Currently, the Commission is preparing a second attempt at the Directive’s revision. It released a report on the application of the Directive in the member states and is now consulting social partners on the issue⁵⁴.

5.3 Analysis

I start my analysis of the negotiation dynamics in the Working Time case with the position-taking by CEE countries. I show that the new member states

⁵¹ Only by collective agreement might the inactive part be excluded.

⁵² The reading passed with an absolute majority of 421 votes to 273; <http://www.euractiv.com/socialeurope/parliament-gives-working-time-op-news-220922> [28.02.2013].

⁵³ <http://www.euractiv.com/socialeurope/parliament-gives-working-time-op-news-220922> [28.02.2013].

⁵⁴ <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205> [14.11.2013].

only very loosely engaged domestically with this dossier. Instead of domestic input, it was the bargaining agency of other member states, and particularly the UK, which provided CEEs orientation when they entered the Council arena. Drawing on counterfactual reasoning, I show that CEEs' policy needs could have been realized with other tactics and alliances as well.

Without intending or realizing it, CEEs contributed to an early and well-organized liberal coalition under UKs lead. The group gained an open ear from the Dutch Presidency, who was willing to streamline the negotiations. In accommodating the liberals' demands, the Chair saw a possibility to achieve quickly at a successful, albeit thin, majority vote. Showing that subsequent Presidencies stuck to the policy direction taken by the predecessor, I argue that Council negotiations are path dependent. Thus, the very first months are crucial for further development of the bargaining dynamics and for the outcome. The concluding section argues that large size and diversity of the group is conducive to agreement, since the Chair can exploit the different preference orders and motivations of the group members.

5.3.1 CEEs position-taking in comparative perspective

When acceding to the EU, the new member states were obliged to implement the "old" WTD from 1993. The Directive required only few legal adaptations in CEE countries (Falkner and Treib 2008: 300). The transposition has been timely and correct, despite political contestation. Political parties, trade unions and employers' associations disagreed about the level of flexibility to be utilized. Nonetheless, no CEE country implemented the generalized opt-out, although this option has been part of the political debate (Schulze 2008: 105; Wiedermann 2008: 39).

5.3.1.1 Position formation and negotiation behavior

CEE countries, like some of their Western counterparts, initially ignored ECJ's *SIMAP* and *Jaeger* rulings. The Czech government refused to go beyond the wording of the Directive itself when implementing it; The Slovak government claimed to work on the rulings' implementation, but no specific legislative amendment was ever suggested, In Hungary, the Supreme Court dealt with the question of remuneration of on-call work and referred to ECJ's rulings, albeit with no effect on legislation (Causse 2008: 74; Schulze 2008: 105; Wiedermann 2008: 39)

Only Slovenia had dealt with the problem of on-call time in the light of *SIMAP* and *Jaeger* rulings at the time EU-level negotiations on the revision of the WTD started. Slovenia decided to include the on-duty services in the calculation of working time. In order to maintain the emergency services in the hospitals, it introduced an opt-out in the healthcare sector exclusively. In accordance with Slovenian neo-corporatist traditions (Guardiancich 2011), these decisions had been taken after extensive consultations between the Health Ministry and the medical trade unions (STA, 22.09.2004). Thus, in the Slovenian case, the support of the opt-out clause in the revised Directive was a direct result of a domestic arrangement. Slovene administration had been calculating whether an end of the opt-out would be possible in five, ten or twenty years but concluded that it would be too uncertain to agree on fixed limits⁵⁵.

Slovenia had made it clear that, being a small country with only one medical university, it faces the risk of staff shortages in hospitals (Furtlehner 2008: 139). Slovene arguments have been included in the documentation of the negotiations, such as minutes and progress reports (Council 2005b: 4-5). This formal act is meaningful, because it suggests that both the Chair and other member states acknowledged Slovenia's contribution as legitimate and well-founded. Slovenia's practice of giving reasons appears exceptional among other CEEs. Negotiation participants reported that the new member states had a difficulty explaining the domestic reasons of their voiced preference for the opt-out and remained quiet during the Working Party meetings⁵⁶.

In other CEE countries, such a clear link between the domestic situation and the negotiation position presented at the outset of the Council negotiations was lacking. When the Commission made its proposal in late 2004, Poland, Slovakia, the Czech Republic and the Baltics did not yet know how they would deal with the necessity to comply with the ECJ's interpretation of the on-call duties. They were all very supportive to the Commission's proposal to distinguish between the active and inactive on-call time and exclude the latter from the working time count. In fact, all the member states had the same position in relation to this question. According to experts interviewed for the

⁵⁵ Interview, Permanent Representation of Slovenia, 25.11.2010.

⁵⁶ Interview, Council General Secretariat, 19.10.2010; Interview, Member of the Dutch Permanent Representation and the Presidency Team, 26.10.2011.

DEU project, all new member states attached higher salience to the exclusion of on-call time compared to the opt-out issue (Thomson et al. 2012)⁵⁷⁵⁸. However, there was uncertainty concerning the extent to which this solution – or perhaps a sectorial opt-out like in the Slovenian case – would be used domestically.

This uncertainty became apparent when the Luxemburg Presidency conducted a “technical” inquiry about the actual opt-out usage among the member states and the compromise solutions they would be able to accept. Only Slovakia took a clear position in favor of the opt-out, alongside the UK and Malta. Poland, Latvia, Lithuania and Slovenia signaled that they would accept the phase-out if there were a majority for it. Poland and Slovenia demanded a transition period as long as possible, and a cap on weekly working hours not lower than 65 hours⁵⁹.

In the case of the Czech Republic, the difficulty of formulating a clear position on this dossier was very outspoken. On the domestic level, the Czech government was for a long time refraining from taking a position at all, pointing at the necessity of consultation with the social partners (Hospodarske Noviny 12.05.2005, Lidove Noviny, 22.09.2004). Reporting to the Czech Senate, the responsible ministry admitted that there is no uniform view on the Directive in the Czech Republic and that the formal position of the government aims to respect the interests of both employers and unions⁶⁰.

During EU-level negotiations and specifically on the contentious opt-out provision, the Czech government has been manifestly changing its stance. On the one hand, it did not object the end of the provision (as envisaged originally by the Commission)⁶¹. On the other hand, it also accepted the proposal by the British Presidency, which kept the opt-out for infinite duration (Council 2005d). Parliamentary debates on the Directive confirm the “evolving”

⁵⁷ Since mid-2013, the dataset has been available for download under robertthomson.info.

⁵⁸ Interview, Permanent Representation of Poland to the European Union, 16.12.2010.

⁵⁹ Internal note of the Secretariat General of the Council, obtained in the Interview 19.10.2010

⁶⁰ Senate of the Czech Republic, Minutes of the 54th Meeting of the Committee on EU Affairs of the Senate held on 24 November 2004.

⁶¹ <http://www.euractiv.cz/socialni-politika/clanek/pracovn-doba-v-eu--svoboda-nebo-regulace> [15.10.2011].

character of the governments' policy⁶². Czech Republic, which had both social-democratic and conservative government throughout the negotiations, maintained its lukewarm and conciliatory attitude until the end of the decision-making process⁶³. After failed EU-level negotiations, the Czech Republic introduced a limited, sectorial opt-out in late 2008.

The Czech case illustrates how domestic pondering has led to vague negotiation positions and unclear behavior. The Polish case, described in detail in the following section, shows that national authorities and policy-makers did not invest much effort in finding legal and regulatory solutions to the problem of the working time of doctors, until a scenario of individuals claiming their rights in Courts materialized in late 2006. In both these cases, the legal status quo – the domestic regulatory arrangement – could not have offered much guidance for the process of position formation on the relevant provisions of the revised WTD. Rather, uncertainty what to do and awaiting future developments on EU-level characterized this part of position-taking. In EU-level negotiations, almost all CEE countries supported the opt-out and ultimately introduced it in their national legislations⁶⁴. However, the timing of this step is telling, given that Poland, Czech Republic, Slovakia, Hungary and Latvia did so in 2007 and later, whereas approximately around that time, the Finnish EU Council Presidency unexpectedly failed to reach compromise on the Directive and the German Presidency refused to deal with this dossier. The domestic re-regulation in the member states might appear as a sign of giving up the original hope that an amendment of the Directive would alleviate domestic non-compliance problems. Seen from this perspective, the stalemate of Council negotiations served as a motor that motivated CEE health policy-makers to deal with the problem domestically.

Regarding the timing of domestic reaction, CEE countries clearly differed from their older counterparts. In Germany, France, Spain and the

⁶² Senate of the Czech Republic, Minutes of the 22nd Meeting of the Committee on EU Affairs of the Senate held on 20 July 2005.

⁶³ Interview, Ministry of Employment and Economy of Finland, 25.11.2011.

⁶⁴ 2010 Commission report on the opt-out usage. Five countries allowed the generalized opt-out in their legislations irrespectively of sectors: Bulgaria, Cyprus, Estonia, Malta, and the UK; 11 countries allowed a limited use of the opt-out in some sectors (Belgium, the Czech Republic, France, Germany, Hungary, Latvia, the Netherlands, Poland, Slovakia, Slovenia, and Spain; and 11 countries did not allow the usage of the opt-out in their legislations: Austria, Denmark, Finland, Greece, Ireland, Italy, Lithuania, Luxembourg, Portugal, Romania and Sweden (Commission 2010b: 7).

Netherlands legislative adaptation to contentious ECJ rulings has been performed as early as in 2003⁶⁵. These countries had experimented with sectorial, conditional and provisional forms of opt-out. This does not mean that they fully complied with the old Directive or with the ECJ rulings and thus did not value a revision of the Directive. For instance, in the Dutch and Spanish cases, the legislation explicitly referred to the ongoing legislative process on the EU level (Commission 2010a: 91-96). However, the comparison clarifies that CEEs had much less domestic legislative activity or policy experience to draw on when formulating negotiation positions at the outset of Council negotiations.

5.3.1.2 Domestic engagement with the Directive: the case of Poland

The Polish case provides a more detailed example of late domestic engagement with the working time *problématique* and its impact on both the position formation and the bargaining behavior.

The Polish ministerial administration dealing with the dossier admitted that it was, at first, quite reluctant to use the opt-out as a tool to resolve the on-call working time problem⁶⁶. Although the opt-out has been discussed by politicians during the implementation of the (old) Directive, it was an unfamiliar and uncertain institution of working time governance in the eyes of legal and policy experts.

However, while lacking experience spoke against the opt-out, the distinction between active and inactive on-call time, another possible solution to the contentious ECJ rulings, also raised doubts. In particular, practical implications of this distinction were unclear: How would the two parts of the on-call time be calculated? Who would control if there were no abuses? In the course of EU-level negotiations, it became uncertain whether the distinction would indeed be introduced at all, since the EP opposed it and argued in favor of counting all on-call time as working time. Observing these developments on EU level, Polish civil servants working on this issue were more and more convinced that the opt-out should be kept: “*Why should we use a tool that is*

⁶⁵ In the Netherlands in 2005.

⁶⁶ Interview, Ministry of Social Affairs, Warsaw, 26.04.2012; Interview, Permanent Representation of Poland to the European Union, 16.12.2010.

cumbersome and uncertain [the distinction between active and inactive on-call time], *if there is a clear and simple solution available* [the opt-out]"⁶⁷.

It was clear for Polish policy-makers that complying with ECJ case law would be very costly and challenging from an organizational perspective. The Ministry of Health, which supported the Ministry for Labor and Social Affairs in coordinating the position, estimated early on that staff deficits would amount to approximately 15 000 positions and cost up to 170 million Euro (Gazeta Wyborcza, 02.06.2005). Against this alarming background, it is surprising to note that public administration and relevant policy-makers lacked a more clear preference for one or another regulatory solution. The ministry claimed in public statements that legislative work to establish compliance has been stopped awaiting EU-level proposals, yet there is no evidence that such work has ever been started (Gazeta Wyborcza, 07.11.2006).

Pressure to take action emerged in late 2006, when an individual doctor, Czeslaw Mis, went to court demanding days off as a compensation for on-call duties he had carried out in the past. The Polish Medical Association (OZZL) took up this idea and complaint at the European Commission about excessive working times in Polish hospitals (Rynek Zdrowia, 10(15)-2006). The association published online a sample complaint for doctors willing to seek individual legal action (ibid).

In December 2006, Czeslaw Mis won his case against a public hospital (Jonczyk 2008: 8-9). The ruling represented a new development in the Polish jurisprudence, since, few years back, the Constitutional Court ruled that excessive on-call duties and overtime in hospitals are justified, as they serve a higher good, namely the welfare of patients (Jonczyk 2008: 7). In the *Mis* case, the regional Court in Cracow referred to the ECJ case *Marshall* (C-152/84) arguing that a public hospital can be regarded as an "emanation of the state". Thus, the provisions of the WTD would apply directly to Polish doctors. It was this line of argument, although contested among legal scholars in Poland, which motivated health policy-makers to amend the Polish medical law as a matter of urgency.

In summer 2007, a new hospital law has been adopted, which provided that the on-call time shall be regarded as working time, in line

⁶⁷ Interview, Ministry of Social Affairs, Warsaw, 26.04.2012.

with the ECJ's rulings. The amendment also introduced an individual opt-out upon doctor's consent. However, with the opt-out being voluntary, the new law endangered the continuity of emergency services in Polish hospitals. Doctors unions' called their members to agree to work more only in exchange for higher wages (*Gazeta Wyborcza*, 28.11.2007). Reacting to this, the government suggested postponing the entry into force of the new law, albeit exposing itself to the Commission's threat of infringement procedures. An agreement on a revised Directive would delay Commission's action. Moreover, it would grant Poland some more time and, with the distinction between active and inactive on-call time, more choice between different regulatory tools to reorganize the working time in hospitals.

In that time, Poland realized that the stalemate in the Council is not in its interest. Not only did Poland relax its position several times, but it also - together with other CEE countries - pushed the Portuguese Presidency to continue the efforts to reach agreement (*Europolitics*, 26.11.2007). It seems that CEE countries shifted their previously rather "liberal" rhetoric towards more specific problems of hospitals' struggle to manage medical staff's discontent about uncertain regulatory situation. Needless to say, Poland manifestly distanced itself from the UK, of whom it had been a faithful ally at the beginning of the negotiation process (*Gazeta Wyborcza*, 22, 23, 30.11.2007).

5.3.1.3 Summary

At the time the Council negotiations started, most CEE countries did not have specific ideas about the policy options they would prefer, when approaching the pressing problem of on-call duties. The process of position formation was characterized by uncertainty about what to do. The approach taken by CEE countries can be described as "wait and see". In contrast to some old member states, the new member states did not exhibit extensive legislative ambition to respond to the on-call time problem domestically. The late re-regulation of the hospitals' working time regimes suggests that there had been little preparatory work in this regard at the outset of EU-level negotiations. Of course, this might relate to the timing, since the WTD's revision coincided with the formal beginning of CEEs EU membership.

The case of Poland shows how policy focus, i.e. a more specific idea of what the domestic problem is, what kind of solutions might be needed and how pressing an EU-level agreement actually is, has been achieved late in the process – too late, in fact, to ease the politicization in the Council and eventually prevent stalemate. The insight into the Polish domestic dynamics revealed a reactive rather than a proactive policy style. The legislature responded to the compliance problem in the healthcare not only with significant delays, but also in a provisional way, as the law amendment even aggravated the conflicts between doctors and public hospitals. The intermediation system underperformed as well, as medical associations failed to transform a legal debate about working time compliance, which has been going on for several years in the Polish legal milieu (Jonczyk 2008), into policy messages, early lobby activities and into assistance towards its members⁶⁸. In fact, it seems that the medical associations were equally surprised by the course of events, as was the government.

In that respect, this part of the analysis provides empirical support for the theoretical expectations outlined in Chapter 3. The argument claimed that poor domestic resources and rather limited salience of EU issues to political constituencies in CEE would inhibit the new member states from finding out their interests, voicing their concerns and shaping the Council's negotiation agenda. The reviewed evidence has shown that while most CEE governments had a position on the opt-out issue, the position did not result from a thorough scanning of the domestic regime and identifying the best applicable solutions, as one would otherwise expect. Moreover, a coherent explanatory strategy for the position was lacking in most new member states.

Besides lending plausibility to the theoretical argument of the thesis, this observation is interesting in broader theoretical context. It sheds a nuanced light on the assumption that policy preferences are pre-existing and stable, as they reflect the underlying domestic conditions (Hörl et al. 2005: 596-598; Thomson 2011: ch. 6; Princen 2012: 625, 628). Our case rather subscribes to the Council scholarship which acknowledges differences in professional preparation of negotiating delegations (Wallace 2002: 334-335).

⁶⁸ These are key activities of interest groups in developed capitalist democracies (Schmitter and Streeck 1999: 88; Lang 2008).

The following section shows how the newcomers' deficit in position formation mattered for their coalition behavior.

5.3.2 CEEs vis-à-vis the “liberals” in the Council

It might appear puzzling that CEE countries became important protagonists in the EU-level opt-out-conflict, while lacking both policy input and domestic motivations to become involved. The following section shows how this became possible. It is argued that CEE countries oriented themselves towards the anticipated bargaining dynamics. Furthermore, they went along with the British strategy of mobilizing allies, as they keenly responded to British lobbying efforts. Following a powerful and skillful member state, when uncertain about own position, can be seen as a rational usage of emerging opportunity structures. The alliance with the UK seems to have released the new member states from the effort of crafting own bargaining strategies. The counterfactual reasoning goes even further and argues that the new member states have missed other opportunities to see their policy needs satisfied.

5.3.2.1 Anticipating future bargaining dynamics

While facing domestic uncertainty about how to deal with the working time regulation, CEE countries anticipated what the positions in the Council would be. The history of the working time dossier was well known in Brussels. Moreover, actors such as the EP or the largest member states started communicating their positions already before the negotiations formally started. In particular, the United Kingdom was determined to defend the opt-out, for the sake of economic competitiveness and the individual freedom. It engaged in a strategic vote exchange with Germany, gaining an important ally on its side. Moreover, the UK Presidency of the Council was coming up in the second half of 2005, followed by the German Presidency one year after that. Thus, the negotiation participants had good reasons to anticipate that the British government will use this opportunity to shape the proposal according to own views.

The core of the “liberal camp” in the Council was the British-German alliance, which dated back to mid-2004, at the latest. Back then, the UK supported the German request to grant trade unions more influence in corporate takeovers; In turn, the German government agreed to side with London on the opt-out question (FTD, 26.04.2004). Both Germany and the

UK had social-democratic governments at that time: The Schröder government with SPD and the Greens in Germany and Tony Blair's Labor government in the UK. Both governments experienced domestic tensions in their relations with trade unions. In both cases, EU Directives played an important role in the governments' strategy to manage the relations with economic interest groups, trade unions and business associations.

The British-German alliance was struck at a high political level and the German stance on the WTD was authorized by Chancellor Schröder. Observers report that the position was a "difficult one to defend" for the German negotiation team, and especially for the Minister for Social Affairs, Müntefering⁶⁹. In the past, Germany had shown more support for EU-level social norms and advocated a high level of workers' protection⁷⁰. This time, Germany was open to improving the level of workers' protection in several provisions of the Directive, with the exception of the opt-out. Germany stood firm on this issue, defending the maintenance of the indefinite opt-out as preferred by the UK.

The British-German alliance also encompassed the Temporary Agency Work Directive, the dossier that has been compounded with the WTD into one negotiation package in late 2007⁷¹. Ever since the Temporary Work Directive had been present on the Council negotiation table, Germany contributed to the blocking minority, again led by the British government which demanded extended waiting periods before granting temporary workers equal rights vis-à-vis statute workers. The UK criticized the procedure of pooling the two dossiers, as it did not want to be pushed to compromise on any of them. Germany adhered to this strategy⁷².

⁶⁹ Interview, Member of the Portuguese Presidency Team, 09.12.2010.

⁷⁰ Interview, Council General Secretariat, 19.10.2010.

⁷¹ The Directive 2008/104 EC grants temporary agency workers non-discrimination vis-à-vis contracted employees who undertake the same work. It is only possible to grant equal treatment after a certain period ("Qualifying period") and provided an adequate level of protection. The Directive was proposed in 2002, but was blocked by the UK, Germany, Ireland and Denmark until 2008 – these states wanted a waiting period longer than six weeks (Nedegaard 2007: 702). Nedegaard reports after Financial Times that the Temporary Agency Work Directive was also part of the British-German deal on the Takeover Directive (Nedegaard 2007: 711)

⁷² Arithmetically, the two countries could have been outvoted at the end of the Portuguese Presidency. However, a vote had not been called. Germany moved

In sum, the strategic alliance with Germany, as well as the British and German Presidencies coming up, made it plausible that the UK's opinion will hold strong relevance in the Working Time negotiations.

5.3.2.2 British lobbying and CEEs reactions

Before the Council negotiations started, the British delegation mobilized its embassies throughout the EU and particularly in the new member states to contact the relevant ministries and lobby for the UK's stance⁷³. The embassies' involvement in EU lobbying is one of the key elements of the British negotiation strategy in European legislative negotiations, and unique for this country (Wall 2008: 192). Shortly before the Council meeting that concluded the first Presidency working on the revision, the British Minister for European Affairs gathered in London the ambassadors of EU countries and lobbied for the British position. He claimed that policy-makers in Brussels intend to punish Britain for its flexible and successful labor market and urged the ambassadors to convey to their governments the need to "say goodbye to out-of-date thinking from the 1980s about how work time should be organized" (FT, 29.11.2004; Agence Europe, 02.12.2004).

The UK was outspoken about its power resources. Prime Minister Blair was involved in the debate and regularly commented on the course of the negotiations. For instance, he reacted immediately and very critically after the contentious first vote of the EP (Market News, 12.05.2005). Furthermore, the British Prime Minister did not shy away from discussing the power balance in the Council in public, declaring that the UK has a reliable blocking minority on the opt-out issue (Market News, 12.05.2005)⁷⁴. Finally, in parallel to the Council negotiations on the WTD, discussions about the ratification of the Constitutional Treaty took place across Europe. Given the involvement of the British Prime Minister in both debates, it was plausible to expect that a link between the two will be made sooner or later. In fact, such a linkage happened later in the negotiation process. The Portuguese Presidency, while certain

once the UK had been able to accept the modified Temporary Agency Work Directive.

⁷³ Interview Council General Secretariat, 19.10.2010; Interview Permanent Representation of Austria, 28.10.2010; Interview, Ministry of Social Affairs, Warsaw, 26.04.2012; Interview, Permanent Representation of Slovenia, 25.11.2010.

⁷⁴ Speculating in public about possible vote outcomes is very uncommon in Council politics (Novak 2013: 1099).

about a qualified majority being achieved, did not call a vote confronted with Gordon Brown's threat to inhibit the parliamentary ratification of the Treaty.

The success of the British lobbying strategy can be traced in the reactions of the political elites in CEE. For instance, in Poland, the deputy Minister for Economy announced that Polish negotiation position would resemble the British one⁷⁵. This declaration has been made before the Polish government has issued the formal negotiation instruction (*Gazeta Wyborcza*, 22.09.2004). Strong references to the British rhetoric of economic competitiveness and individual freedom can be found in the statements of Slovak representatives (*TASR*, 05.10.2004; *HNonline*, 05.10.2004). Indeed, Poland and Slovakia were portrayed as the most faithful allies of the UK in the first half of the negotiation process. At the ministerial level, even the Czech Republic, otherwise lukewarm towards the Directive, vague in its positions and conciliatory in its attitudes, manifestly took the British side.

Contrary to the administrative level, comprising civil servants and experts, on the ministerial level, the "liberal" positions of CEE countries were rather outspoken. This does not surprise, since ministers tend to portray Council negotiations as zero-sum-bargaining (Spence 1995b: 388). Taking sides is an integral part of this process, especially when it involves an alliance with an established and powerful member state. In fact, there are also theoretical reasons to expect that ministers will take more extreme positions in international bargaining. As Stasavage has argued, when negotiating in public, policy-makers might use the decision-making process to signal to their constituencies that they are fulfilling the mandate (Stasavage 2004: 672-683; 2007: 59). However, this mechanism cannot fully account for the behavior of CEE ministers in the Working Time negotiations, since the opt-out was rather unknown to the general public in CEEs.

Why, then, were CEE policy-makers so attracted by the British position? Admittedly, the new member states and the UK had a "special" diplomatic and political relationship in the early years of membership (Smith 2006: 2). The UK was one of the biggest advocates of the Eastern Enlargement. Moreover, in 2004, it was one of just three EU countries that

⁷⁵ Strangely enough, this was not even the coordinating ministry: the Ministry for Labour and Social Affairs took the lead on the Working Time Directive. Interview, Permanent Representation of Poland to the European Union, 16.12.2010.

opened their labor markets for Central Eastern Europeans. The UK supported the famous “country of origin” principle of the Services Directive, which was regarded as favorable for CEE service providers but contested by countries such as Germany or France (Crespy and Gajewska 2010: 1194). Therefore, it is plausible to assume that the political elites from the new member states were attracted to positions voiced by the UK on labor market issues and eager to follow them.

The “diplomatic”, high-level political component in the new member states’ position-taking was by no means only a symbolic add-on to the negotiations on the lower, technical level. The WTD was submitted to the ministers very early on, whereby member states were pushed to voice unambiguous positions and establish clear alliances. In this respect, CEEs’ bargaining behavior proved consequential, as it entrenched established conflict fronts in the Council.

5.3.2.3 CEEs without Britain – a counterfactual argument

The chapter has argued thus far that the new member states’ positioning in the opt-out controversy was closely related to the bargaining strategy pursued by the UK. There were several reasons to expect the British voice to count in the Working Time negotiations. Besides the strategic alliance with Germany, the UK was about to benefit from situational, contingent factors, such as the timing of its Presidency. The assumption of the Council Chair strengthened the British government’s potential to shape the negotiations, enabling it to determine what is negotiable and in what form. Here, the British negotiation team decided to exclude the issue of opt-out from Working Party meetings and raised it explicitly to a status of a political question. Consequently, the “loyalty” dynamics between the UK and the CEEs described above consolidated.

One could thus conclude that the negotiation behavior of the new member states in the Working Time case - both their positioning in the intergovernmental conflict and their coalition behavior – was strongly responsive towards, and thus conditioned by, the actions of other negotiation participants. This claim necessitates a counterfactual argument. How would the negotiation behavior of the new member states look like, if we “think the UK away”? The new member states would perhaps still prefer to keep some form of the opt-out, since one of them, Slovenia, already used it. As the Polish

case study showed, a sectorial opt-out, albeit unfamiliar to policy-makers, had some advantages over the differentiation between the active and inactive on-call time, which encountered practical difficulties. On the other hand, standardized salience data suggests that CEE policy-makers were still quite interested in this policy option. One could speculate that, with the opt-out being less dominant in the Council debate, more energy would have been invested in clarifying how the distinction between active and inactive on-call time could be handled in practice. Thus, the absence of the UK's assertive claims might have increased the diversity of the policy options taken into account during the negotiations.

It appears also plausible that the UK's absence would have changed CEEs' reactions to other participants' inputs. In particular, the new member states would have agreed to the Franco-Swedish compromise proposal from May 2005. The proposal differentiated between a generalized opt-out, which would be phased out in ten years, and one specifically designed for the needs of the healthcare sector, which would be renewable in three-year periods (Council 2005c; 2005d). The advantage of the WTD, agreed in this shape, was that the opt-out would still be available for healthcare, while member states would also have other revised provisions at their disposal, such as the distinction between active and inactive on-call time and the extended reference period for the working time calculation. In such version, the WTD would offer an even greater choice of regulatory tools.

This proposal has been made while the UK held the Presidency. It has been submitted to ministers, and not to the working groups. No CEE country reacted to it. The lack of interest from the new member states is puzzling, because the Franco-Swedish proposal corresponded precisely with their perspective on the opt-out, namely as a tool to reconstitute compliance in the healthcare sector. The proposal differed from new member states' expressed preferences only in one respect – it posed a cap on weekly working hours (under the opt-out) at 55, whereas the final agreement reached by the Council provided for 60 or 65 hours in the healthcare sector. However, remarkably there was no discussion between the new member states and France on that stage. Newcomers sided with the British Presidency (Europolitics, 10.12.2005). Their “conspicuous silence” reported

from this ministerial meeting suggests that they were loyal to their ally and Council President.

Without the UK, it appears unlikely that the CEE's openness to the opt-out as a means of resolving the working time problems in the hospital sector would have contributed to a stalemate of the dimension the Council had seen it in the Working Time negotiations. This leads to the conclusion that what became a powerful collective position with new member states' participation, can ultimately be ascribed to power resources and negotiation strategy of one member state, the United Kingdom. Domestic uncertainty in CEEs and the prompt recourse to the ministerial arena served as enabling conditions for this dynamics.

5.3.2.4 Summary

The insight in preference formation and position-taking of the new member states at early stages of the negotiation process sheds a nuanced light on these countries' contribution to the opt-out conflict. The analysis has shown that the "liberal" position that these countries took concerning the opt-out issue was as much an expression of uncertainty about how to comply with contentious ECJ rulings on the doctors' working time as a reaction to how other countries, especially the UK, intended to negotiate this dossier. Early ministerial involvement and the Presidency's calls for a quick vote strengthened the reactive component in CEE position-taking, given that the member states had been compelled to take a position.

From the new member states' perspective, the UK's negotiation strategy provided an element of certainty in an otherwise rather unpredictable policy process. For these countries, supporting the British position meant that the opt-out would remain a viable regulatory tool to manage working time in the healthcare sector. Thus, CEEs' position-taking can be considered as a rational usage of the bargaining opportunity structures provided by another member state. CEEs' influence on the policy conflict was indirect, because they relied on the UK's bargaining agency rather than crafting their own contribution.

These observations support the hypothesized mechanism whereby the new member states would compensate the difficulty of becoming involved in a negotiation process through pragmatic and opportunistic alliances with old member states. However, in our case, the leadership-fellowship dynamics that

materialized between the UK and the new member states extended beyond a mere compensation and brought about a powerful coalition that was not only able to shape the outcome of the negotiations, but also represented a historical shift of Council majorities. Nonetheless, nothing in the position-taking process of the new member states suggests that they intended such major implications.

A leadership-fellowship dynamics between an old and a handful of new member states having such an impact on the legislative dynamics is exceptional in several ways. The necessary conditions for such a coalition to emerge are all linked to the UK's power resources and their usage. Some of these resources were structural and related to the UK's quality as a large member state, such as a viable log-roll with another large member state or top politicians' involvement in the legislative negotiations. However, other resources were contingent, such as the upcoming Presidency or the constitutional debate, which was used here as a blackmail. Finally, the fact that the British government was willing to bundle all these resources and mobilize them was also of situational nature, since few EU-level legislative issues generate such interests and emotions in the United Kingdom as the WTD. In this sense, the WTD serves as an extreme and exceptional case rather than a usual one.

The findings of this qualitative study of new member states' position-taking in the Working Time negotiations correspond to and complement the quantitative finding whereby the Eastern Enlargement did not bring about new conflicts but was rather absorbed by the existing conflict lines (Thomson 2011; Veen 2011; ; Chapter 2). In fact, the WTD is a case in which the new member states almost bloc-wise blended in an old intergovernmental conflict. Nonetheless, the case has shown that this absorption is not an automatic process driven solely by similar, domestically-derived preferences; rather, it resembles a sequence of moves – stimuli and responses - in which timing (being first), anticipation (having the information on other participants) and resources differentials greatly matter. The domestic deficits of the new member states in preparing own positions and strategies make them prototypical “followers”. In turn, old, large member states are prone and well able to mobilize resources necessary for effective interventions in the Council. They are those that orchestrate the leadership-fellowship dynamics and thus are in a better position to control the alliances within the enlarged Council.

5.3.3 Presidency's conduct, collective dynamics and bargaining success

The former sections discussed the domestic processes of preference formation as well as the mechanisms of introducing member states' interests on the negotiation agenda. The following section moves on to the interactions within the Council and their development from the formal beginning of the process. It argues that the Council Chair, when confronted with an emerging conflict on the opt-out, took a risky decision to accommodate quickly the interests of the better organized group and proceeded directly to the vote. Although the strategy failed in the short-term, it had a strong impact on further course of negotiations. Subsequent Presidencies stuck to the policy direction taken by the predecessors. The mechanism granted the first movers, in our case the liberal coalition led by the UK, a power advantage. The analysis concludes that Council negotiations are path dependent in that the very first months disproportionately affect future dynamics, whether the protagonists intend it (the UK) or not (CEEs).

5.3.3.1 The mechanism of first movers' advantage

The revision of the WTD by the Council of Ministers had been started after the Netherlands assumed the Council Presidency in late 2004. The Netherlands attached to the WTD high salience. On the one hand, the country urgently needed a supranational solution to the regulation of on-call work. While the Dutch government did not want to use the opt-out domestically, it also did not feel particularly strongly about the presence of this provision in the Directive⁷⁶. Besides this particular interest, the Dutch government felt that the current legal situation whereby most EU countries breach the Directive owing to an over-interpretation by the ECJ requires urgent correction⁷⁷. In fact, the Netherlands had been pushing the Commission to put forward a legislative proposal (EUobserver, 09.07.04).

The preparatory work started some two years before the Presidency⁷⁸. The Netherlands consulted the member states and, anticipating their future positions, prepared a range of proposals to put forward. The Presidency was

⁷⁶ The salience scores collected by Thomson and colleagues confirm this. The Netherlands valued the opt-out issue with 30/100 and the active-inactive on-call distinction at 90/100 (Thomson et al. 2012).

⁷⁷ Interview, Member of the Dutch Permanent Representation and the Presidency Team, 26.10.2011.

⁷⁸ Interview, Member of the Dutch Permanent Representation and the Presidency Team, 26.10.2011.

determined to use all procedural means at its disposal to secure an agreement before December 2004. It chose to involve the ministers very early on, without the lengthy gradual way through the Working Party and COREPER. Usually, a dossier circulates between the Working Party and the COREPER for quite some time before it gets on the ministerial level (Häge 2007: 303). In this case, the ministers were confronted with the revised WTD already in October 2004, after it had been proposed in September 2004, and the Presidency announced that it is determined to finish it off before December 2004.

Besides putting time pressure on the Council, the Presidency invited the delegations to put forward wording proposals on the contentious articles, in addition to the proposals it made itself. On this way, it was able to anticipate how assertive the delegations would be in supporting certain positions and assess possible majorities and minorities. The Presidency concluded that a majority would support the opt-out for an infinite duration at that point⁷⁹. This majority comprised the UK and the allies it mobilized, namely Germany, Poland, Slovakia, Slovenia, Malta and the Baltic countries. In addition, the delegations that did not have a strong preference about the opt-out, such as Denmark, Finland, Austria or Czech Republic, would have also gone along with the opt-out. Finally, it seems that the opponents of the opt-out had not yet fully organized at this point. They were in minority and “only one small member state needed to be convinced” to avoid blockage⁸⁰. Indeed, this was achieved, as only five countries stuck to the Commission’s original proposal (Council 2004d: 7): France, Spain, Belgium, Greece and Sweden⁸¹ (Agence Europe, 09.12.2004). Luxemburg, Portugal, Italy, Hungary or Cyprus – countries that later on advocated the abolition of the opt-out – did not participate in the “social” coalition at that stage, at least not actively enough to contribute to a blocking minority.

The Dutch Presidency made a compromise proposal that did not mention any abolishment of the opt-out (Council 2004d: 8). By doing so, the Presidency not only accommodated the interests of the “liberal” majority, but

⁷⁹ The progress report states that nine delegations advocated a more flexible opt-out than in the Commission’s proposal, seven (later five) did not see a need for the opt-out at all and nine (later eleven) were “open or flexible” (Council 2004d: 7-8)

⁸⁰ Interview, Member of the Dutch Permanent Representation and the Presidency Team, 26.10.2011.

⁸¹ These countries disposed of 90 votes of 99 needed for a blocking minority.

also suggested an amendment of the Commission's draft, which foresaw a phase-out after five years. However, unanimity in the Council is needed to bypass the Commission, unless the Commission goes along with the Council's amendments. In December 2004, the Commission refused to do so⁸² (Council 2004d: 10). A member of the Presidency team suggested that the newly appointed Commission (November 2004) and the Commissioner for Social Affairs Commissioner Spidla anticipated the EP's preference for a stricter regulation in the working time field⁸³ and feared inter-institutional conflict. However, the Dutch Presidency did not share this assessment and insisted on a formal agreement in the Council. The Dutch team hoped that the enlarged EP would soften its preference for a more worker-friendly labor regulation (Agence Europe, 09.12.2004). The Dutch intention was presumably to confront the EP with a *fait accompli*. In any case, the EP's opinion was scheduled for mid-2005, thus for the next Chair.

Due to the Commission's resistance, the vote in the Council would have been fruitless. The dossier had to be transmitted to the next Presidency. However, it was established in these first months that the opt-out supporters together with the neutral countries can provide for a majority of votes. This is an interesting move when we consider that the Council was divided in three groups: opt-out supporters, opt-out opponents and neutral countries and that the three groups were of approximately the same size. As the next section shows, no subsequent Presidency has explored another option.

The pragmatism of the Dutch Presidency advantaged those countries that were able to offer both substantial input and support it with well-organized, bundled voting power. The UK and its allies took initiative and demonstrated their capability to structure the collective decision-making process, as well as making it more predictable. If the Presidency is strongly guided by its institutional interests, as in our case, the first movers are its natural partners and allies. If accommodated by the Presidency, first movers are in a particularly strong position because, as the next section shows, subsequent Presidencies are "conservative" in that they stick to the policy

⁸² "For her part, the Commission representative maintained her Institution's original proposal as she considered that the Presidency's proposal did not represent an appropriate balance between flexibility and security." (Council 2004d: 10)

⁸³ Indeed, the EP gave such an opinion in May 2005 (European Parliament 2005).

direction taken by the predecessor and rather avoid experimenting with reverse policy ideas.

5.3.3.2 Path dependency of Presidency's choices?

During the Dutch Presidency, it was established that the opt-out supporters together with the neutral countries can provide for a majority of votes needed to pass the revision. This section argues that Council Presidencies that followed maintained this direction of the legislative work. In fact, no Council Presidency has explored another policy orientation. The laborious search for a compromise was a search for conditions under which the "social" group in the Council would be able to accept some form of the infinite opt-out. Legislative negotiations in the Council can be described as "path dependent", because decisions taken at the very beginning of the process last upon further bargaining stages.

Only Luxemburg, which assumed the Presidency after the Netherlands, undertook the effort of loosening up the apparently strong liberal coalition, while conducting a "technical" inquiry on the (intended) opt-out usage. The purpose of this inquiry was to show that the opt-out was a "political" question. Luxemburg, itself a critic of the exception⁸⁴, intended to expose the limited experiences with the derogation and thus the speculative nature of most "liberals" preferences. Unfortunately, the Luxemburg Presidency did not put forward any proposal, claiming that the Council is awaiting the EP's opinion (May 2005) and there will be no time to react to it before the mandate ends in June 2005 (Agence Europe, 02.06.2005; Europe Information Service, 04.06.2005).

With the EP's involvement in the decision-making process, the social coalition consolidated, having not been very well organized thus far (see above). In particular, Spain and Portugal became more assertive, as they closely collaborated with the (Spanish) socialist EP Rapporteur Cercas⁸⁵. Their negotiation position was identical with that of Cercas (abolishment of the opt-out, no concessions). The Presidencies reported that the bilateral talks with those countries were doomed to fail. Party-political bonds possibly

⁸⁴ Luxemburg never allowed any kind of opt-out in its domestic legislation (Commission 2010b: 7).

⁸⁵ Interview Ministry of Employment, Social Affairs and Consumers of Austria, 11.11.2011; Interview, Member of the Portuguese Presidency Team, 09.12.2010.

played a role here, since both Spain and Portugal had social-democratic governments throughout the negotiations⁸⁶. As long as Cercas regularly intervened in the negotiation process, recalling EP's position and the readiness to defend it (Europolitics, 26.10.2006; 07.11.2007), the "social" member states were able to refer to this powerful institutional ally, located outside the Council, but at the core of the legislative process. Cercas' activity mobilized these countries and held them together.

The consolidation of the social coalition did not have any impact on the Presidencies' conduct. Unsurprisingly, the UK, which assumed the Council Chair in late 2005 (after Luxemburg), defended the change of the Commissions' proposal, i.e. the maintenance of the opt-out, as suggested by the Dutch Presidency. The British Presidency excluded the opt-out from the Working Party negotiations and directed its attention towards the question, whether working time shall be calculated per worker or per contract (Europolitics, 10.12.2005). According to a member of the Council Secretariat, the "worker versus contract" debate was simply a strategic maneuver to distract the delegations from the contentious opt-out issue and create an impression that there remains much to clarify before the Council can move on⁸⁷.

The coup seems to have worked, with the debate occupying the Council for several months. The debate on multiple contracts attracted interest of CEE countries, where many workers have more than one job (Der Standard, 26.12.2005). However, CEEs could not count on the UK's leadership concerning this question, as the WTD is applied to individual workers in this county, while the individual opt-out is only used when necessary (Europolitics, 10.12.2005). Supported by the Commission, Germany even submitted a wording proposal to define "working time" as the sum of all working hours carried out for one or several employers (Council of the European Union 2005d: 6, 14).

⁸⁶ So did Hungary. Belgian and Luxemburg governments were led by liberal and Christian-democratic Prime Ministers, respectively; however both were coalitions with social-democrats. Party politics explain Italy's changing sides, whereby the government changes (Berlusconi, Prodi, Berlusconi) led to very different approaches to the Directive each time. Greece was the only coalition member with a conservative government. Overview: Spain: government Zapatero (2004-2011); Portugal: government Socrates (2005-2011); Belgium: government Verhofstadt (1999-2008); Hungary: government Guyrecsany (2004-2008); Luxemburg: government Junker (2001 - present); Greece: government Karamanlis (2004-2009); Italy government Berlusconi (2001-2006) government Prodi (2006-2008) government Berlusconi (2006-2011).
Source: www.parlgov.org.

⁸⁷ Interview, Council General Secretariat, 19.10.2010.

Denmark proved to be CEEs' ally in this matter, providing legal arguments for the view that the Directive should be applicable to contract and not to the worker. Indeed, Poland, Czech Republic, Slovakia, Latvia and Lithuania subscribed to this view⁸⁸ (Council 2005d: 7). The "multiple contract incident" provides yet another support for the claim that CEE countries lack the ability, in this case the legal expertise, to defend their standpoint on the bargaining arena.

Having found a replacement topic, the British Presidency easily downplayed the proposal made by France and Sweden on the opt-out issue. The two delegations, independently from the remaining members of the "social coalition" proposed to establish renewable three-year opt-outs for healthcare and abolish the generalized provision within ten years (Council 2005d: 9). Although the proposal found support of the neutral states, such as Finland or Denmark, the new member states, whose interests were served here, did not react to it. Neither did the Presidency (Europolitics, 10.12.2005).

The efforts of the British Presidency to maintain the Dutch proposals on the opt-out as the status quo on the negotiation table can clearly be explained by strong preferences the British delegation held in favor of the opt-out. However, this explanation does not account for the subsequent Presidencies' decisions. Both Austria and Finland, although rather neutral on the opt-out question⁸⁹, have built their compromise finding strategies on the assumption that the generalized and indefinite opt-out will be kept in the Directive⁹⁰. The search for agreement encompassed small concessions towards the "social" group. The Austrian strategy relied on recitals (such as declaration that the opt-out shall not harm the workers' health) and the employers' obligation to check whether the need for working time flexibility cannot be satisfied by other means, before turning to the opt-out. Finland went much further and returned to

⁸⁸ Only Slovenia, again deviating from other CEEs, supported the German proposal (Council 2005d: 6, 14)

⁸⁹ None of them introduced opt-out in their legislation after the revision of the WTD failed in the Council (Commission 2010b: 7); According to DEU data, Austria supported an opt-out with strictly specified conditions and Finland demanded an abolishment of this option. There were medium salience levels in both cases, with 50 out of 100 points (Thomson et al. 2012).

⁹⁰ Interview Ministry of Employment, Social Affairs and Consumers of Austria, 11.11.2011.

the original idea of an upper cap of hours worked in case the opt-out is applied. It furthermore drew on the Franco-Swedish idea of introducing special conditions of opt-out application for the healthcare system (Council 2006b).

During the Finnish Presidency, the Commission declared that, in contrast to its original position on the opt-out (phasing it out within three years), it will now accept any compromise that the Council can achieve (Europolitics, 02.11.2006). Clearly, such a stance further cemented the Presidencies' assumption that the exception will remain in the Directive. Another positive feedback the Presidencies received for their efforts was the readiness of many opt-out supporters to make concessions regarding the conditions of opt-out application (Europolitics, 24-26.10.2006).

The new member states played an important role here. Although they originally declared their support for the UK's claim to keep the opt-out as it stands in the current Directive, i.e. with only minor constraining conditions, they now showed more openness to the different ways of assuring that the opt-out is not abused or otherwise harmful for workers. In fact, on this advanced negotiation stage, when the removal of the opt-out from the Directive became unlikely, the differences in labor market approaches between CEEs and the UK became apparent. By and large, the former were much more favorable to regulatory constraints and worker-friendly provisions than the latter⁹¹, having adopted "coordinated" rather than "liberal" economic and labor market regimes upon accession (Hall and Soskice 2001; Bohle and Greskovits 2007). Furthermore, in the area of labor market regulation, most governments in the region are constrained by strong consultative rights of trade unions. Thus, agreeing to more strict regulation on the EU level may pay-off in the domestic processes of the Directive's implementation.

Although the contention on the opt-out was far from solved (there was a blocking minority on each end of the conflict spectrum), the Austrian and Finnish Presidencies suggestions have kept the Council negotiating. It created at least an impression that the Directive will be revised in the near

⁹¹ In fact, Council officials do not agree with the "liberal" image of CEE countries in social policy affairs. They admit that the domestic social policies pursued in these countries strongly contrast with those of the UK, although the Council-level positions are "not clear". Interview, Council General Secretariat, 19.10.2010.

future and the member states will not be left on their own with the uncomfortable question of compliance with ECJ rulings. Such a development was in the interest of both the Presidencies and the member states.

In sum, although the Council was divided in three groups, opt-out supporters, opt-out opponents and the neutrals, all the proposals put forward for discussion by the Council Presidencies assumed the maintenance of the derogation. The Presidencies moved the debate past the question whether to keep the exception or scrap it down, rather focusing on the details and conditions of the opt-out application.

One possible explanation for such a development could be the “bias” of Presidency holders, which means that countries use the Chair to promote own policy preferences (Warntjen 2008: 317). The explanation appears plausible in the British case. While expanding the range of discussion (“replacement topic”) and ignoring alternative proposals, the UK preserved the policy direction taken by the Dutch Presidency, namely the one it favored itself. While subsequent Chairs did not have stakes in the opt-out debate, they nonetheless chose to do the same. One can suspect that elaborating on new, more nuanced proposals would be costly, given that it would demand significant legal effort and policy knowledge across different labor systems. Furthermore, it would probably be risky to predict support for new proposals, given that some countries had a more pragmatic attitude towards the opt-out whereas for others keeping or abolishing the opt-out was a question of principle. When choices made in the past are difficult to reverse due to the costs of change and the positive feedback which keeps occurring, political scientists refer to “path dependence” (Pierson 2000: 252-253).

5.3.3.3 Summary

The main finding of this section is that the very first months of the Council negotiations are decisive for how the process unfolds. The dynamics illustrated by the Working Time case builds upon two mechanisms – the first movers’ advantage and the path dependency of the Presidencies’ procedural choices. Making an early and well-organized appearance on the legislative arena pays off, because this is precisely the input the Presidency needs for

making corrections to the proposal and advancing the project. The more coherent and solid the first movers' input, the more can the Presidency actually do at that stage. The size and diversity of the group further enhance this mechanism, because negotiations tend to be more cumbersome in such groups and thus the Presidencies might be more prone to take risky decisions. In our case, the (Dutch) Presidency anticipated difficulties and responded to this risk by pushing the process very far – almost to the vote – before the conflict fully unfolded. The new member states were part of this dynamics, since they lend their support to the UK. Ironically, nothing in their bargaining preparations suggests that they intended to generate such impact.

Although the Council was divided in three groups (pro-opt-out, anti-opt-out, neutral), with blocking minorities at both ends of the conflict spectrum, subsequent Presidencies maintained the policy direction chosen by the Dutch delegation. Interviewees for this project admitted that it is normal for the Presidency to proceed incrementally and never invent something fully new⁹². In fact, the mechanism resembles the famous “path dependency”, where the costs of change and the benefits of positive feedback encourage actors to stick to past policy choices.

These insights teach us two things about the enlarged Council of Ministers. First, the Presidency matters. It is determined to deploy the means it has to streamline the legislative process and it is ready to push through thin majorities, when it sees consensus as impossible to reach. As in larger and more diverse groups decisions are *ceteris paribus* more difficult to reach, the style of chairing might move from brokerage to steering (Warntjen 2008). The latter involves pragmatic and clear-cut decisions that increase the likelihood of formal agreements, eventually at the cost of deliberative consensus-finding. Second, power resources need to be mobilized early to be fully effective. The most apparent difference in power resources between the “liberal” and “social” bloc in the Council is that the latter has built strongly on EP's position, which came in after the first Presidency already made decisions how to proceed. Thus, beyond the mere possession of power resources, such as numerical strength or support from outside the Council, how these powers are deployed matters greatly for bargaining process.

⁹² Interview, Member of the Portuguese Presidency Team, 09.12.2010.

5.3.4 Exploiting diversity and overcoming conflict

This final section of the analysis describes how the conflict in the Council has ultimately been overcome. The package deal of two labor market dossiers helped to reshuffle the conflict between the “social” and the “liberal” member states, as the CEE countries were now able to make concessions and leave the UK-led coalition. Therefore, I argue that enlarged membership is conducive to positive outcomes, because diversity of preference orders and motivations makes issue linkages easier to apply. At the same time, the Working Time case demonstrates the limits of this strategy: first, it has to remain an exception, as it can be heavily contested; and second, the ultimate negotiation success might depend on contingent factors.

5.3.4.1 Generating diversity and reshuffling the conflict structure

In October 2007, a breakthrough in the stalemated negotiations entered the horizon. The Portuguese Presidency suggested a merge of the WTD and the Directive on Temporary Agency Work into one negotiation package. The obvious idea behind this strategy was to enable an exchange of concessions among governments, thus providing everyone with an opportunity to save face towards the domestic constituencies.

Portugal, governed by a left party, had thus far positioned itself as a critic of the liberalization of the European working time regime. It, thus, represented the socially-minded coalition, whose demands to abolish the opt-out remained ineffective, but which successfully managed to block a vote. The Portuguese delegation hoped to capitalize on the trust it enjoyed among its former negotiation companions.

However, the idea of the merge was not a genuine Portuguese one; rather, it came from the Commission⁹³. Despite being proposed two years before the revision of the WTD, the Temporary Agency Work dossier became stuck in 2003 (Europolitics, 14.11.2007). Member states were unable to find agreement about the transition period that has to pass before temporary workers benefit from equal rights as their contracted counterparts. After having mobilized Germany, Ireland and Denmark, the UK demanded as long transition periods as possible, whereas all the other member states and the EP

⁹³ Interview, Member of the Portuguese Presidency Team, 09.12.2010.

were either satisfied with the six weeks proposed by the Commission or demanded an even shorter waiting period (Nedegaard 2007: 702).

Although the Temporary Agency Work Directive was a pre-Enlargement negotiation, the Commission must have known that the dossier was a largely neutral one to the CEE countries. Temporary work was a new phenomenon in these countries, and still rather rare. Besides, all CEE countries introduced equal (or comparable) treatment between temporary agency workers and contracted employees upon accession (Trade Union Congress 2005: 14-20). From the institutional and regulatory perspective, CEEs must have been able to support a Directive that introduced such an obligation across the EU, as no adaptation costs were expected.

The Commission furthermore knew how to make the merge attractive for the new member states: it threatened with infringement procedures, if the (new) member states do not adapt their working time regulations to the case law (Gazeta Wyborcza, 28.11.2007). It is plausible to assume that the Commission was informed about the tensions between the medical associations and the governments that accompanied the process of reorganizing working time in hospitals (Europolitics, 26.11.2007). That was the case in Poland, for instance. An adoption of the revised Directive would at least grant more time to establish compliance.

From the strategic perspective, the purpose of the merge was to isolate the new member states from the UK and create a common interest between them and the social group. The plan worked and the CEE countries behaved in line with what the Portuguese Presidency and the Commission hoped for (Europolitics, 26.11.2007). Interestingly, few years back the new member states were reported to support the UK in its obstruction of the equal treatment provision for temporary workers (Nedegaard 2007: 702).

The UK tried to regain control over its former allies. British Prime Minister Gordon Brown made a phone call to his Polish counterpart Donald Tusk and tried to convince him to block the merge of the Directives (Europolitics, 26.11.2007; Gazeta Wyborcza, 05.12.2007). Poland refused, arguing that it urgently needs an agreement on the WTD (Europolitics, 07.12.2007). The Commission has been threatening Poland (as well as other countries) with infringement procedures (Agence Europe, 07.12.2007). In fact, in summer 2007, Poland introduced a new hospital

law providing that the on-call time shall be regarded as working time, in line with the ECJ's rulings. The amendment also introduced an individual opt-out upon doctor's consent. However, with the opt-out being voluntary, the new law endangered the continuity of emergency services in Polish hospitals. Doctors unions' called their members to agree only in exchange for higher wages (*Gazeta Wyborcza*, 28.11.2007). Reacting to this, the government suggested postponing the entry into force of the new law, albeit exposing itself to the Commission's threat. An agreement on a revised Directive on European level would postpone Commission's action. Moreover, it would grant Poland some more time and, with the distinction between active and inactive on-call time, more choice between different regulatory tools to reorganize the working time in hospitals.

Poland not only abandoned the "destructive" coalition with the British, but also engaged in bilateral consultations with France, which had hitherto led the opposite coalition, the socially-minded Council group. Poland aimed at pursuing France to accept the opt-out provisions of the Portuguese Presidency in exchange for Poland's and other CEEs support for the equal treatment provision in the Temporary Agency Work. Poland signaled that it would be willing to make concessions on the last open question regarding the opt-out application: the weekly working hours cap of 60 or 65 hours (*Europolitics*, 07.12.2007; *Agence Europe*, 07.12.2007). With this gesture, it manifestly softened its negotiation position. In fact, on the question of conditions of opt-out application, Poland has been softening its formal negotiation stance several times since late 2006⁹⁴.

A representative of the Portuguese negotiation team recalls two sources of motivation to continue the search for compromise – the feeling of tiredness that spread across the Council members and the pressure from CEE countries, and particularly Poland, to finally adopt the legislation⁹⁵. While proposing the package deal, the Presidency indeed set centripetal forces in motion – most member states gathered at the center of the political spectrum, showing acceptance to a more "liberal" WTD and a more "social" Temporary Agency Work (*Agence Europe*, 07.12.2007). However, supported by Germany,

⁹⁴ Sejm RP, Biuletyn Komisji do Spraw Unii Europejskiej [Parliament of Poland, Minutes of the EU Committee], No. 49, 26.10.2006.

⁹⁵ Interview, Member of the Portuguese Presidency Team, 09.12.2010.

the UK insisted on a separate consideration of the two dossiers and did not accept the compromise (Europolitics, 07.12.2007). The Portuguese Presidency did not dare to put the dossier to vote, as it feared that this step would have negative consequences on the British ratification of the Lisbon Treaty (Financial Time, 06.12.2007; Europolitics, 07.12.2007).

The case shows that both the higher number of member states and the increased diversity can be conducive to positive bargaining outcomes. The more actors and the more diverse their positions, the higher the possibility of finding some configuration of concessions that is acceptable to the majority required.

This observation corresponds to Thomson's account of Council robustness after the Eastern Enlargement. In his large-n study he was able to prove the positional diversity and the lack of structures in member states' policy preferences both before and after Enlargement (Thomson et al. 2004; Thomson 2009). He hypothesized that this diversity leads to cooperative behavior of member states and mutual accommodation of policy concerns that goes beyond the procedural requirements. My case study exposes a different mechanism, one in which supranational actors – the Presidency and the Commission – use their informational advantage and the agenda power and arrange the bargaining situation in such a way that an agreement can be reached, if only at the lowest majority requirement.

5.3.4.2 The conditions and limits of conflict management techniques

The package deal suggested by the Portuguese Presidency paved the way for Council agreement. Before the analysis moves to the conditions and limits of this conflict management strategy, let us recall that the entrenchment of conflict in the Working Time negotiations generally made the work of the Presidency very difficult. It is fair to say that the WTD is a case, in which nearly all means and negotiation techniques at the Presidency's disposal were applied and most of them failed.

For instance, the shifting of bargaining areas did not work at all (Falkner 2011: 192-195). The Luxemburg Presidency tried to reduce the political complexity of the opt-out question and frame it as a technical issue – asking member states to provide reasons and specify (expected) applications. For that procedure to work, the uncertainty about best regulatory solutions across different sectors was too dominant. This was particularly the case of the

new member states, as discussed in the first part of the analysis. In turn, the Austrian Presidency relied on the “confessional procedure” and mini-lateral negotiations with high-level representatives of the large member states. This did not work either because the member states, which composed this mini-lateral forum, all pursued hidden agendas. Germany “owed” Britain its support, as agreed between the two in a log-roll, whereas Spain and France pursued partisan and electoral interests respectively.

Therefore, the case makes clear that the procedural imagination of the Presidency has its limits. Once the vote-richest countries are not ready to move for reasons that are exogenous to the policy negotiations in question, there is not much that a Presidency can do. It cannot force agreement at any price. In that point, the Eastern Enlargement did not change much. Partisan, electoral or strategic politics can influence the Council, irrespectively of the fact that it is composed of 12, 15 or 25 members.

The package deal worked quite well, enhanced by the diversity of labor market policy positions in the enlarged EU. However, granting this conflict management strategy a “mechanic” or “default” character would not be appropriate. Several arguments speak against a more frequent recourse to explicit package deals. It is telling that a Presidency decided to employ this technique after several other strategies, such as streamlining, “confessional” or arena shifting, failed. Arguably, if used too often, package dealing could damage the Presidency’s image as “honest broker”, because it involves pressing the member states, the sovereigns of the EU, into compromise acceptance. The British example shows that member states know how to protect their voice being bypassed by the Presidency. Thus, the interest in formal agreement must outweigh potential legitimacy losses. In our case, the interest for agreement stemmed from regulatory considerations of member states: no member state denied the need to adjust the Directive to contentious ECJ rulings. The fear of lawsuits by doctors’ and the Commission’s threats to examine compliance with the Directive in each member state and eventually launch infringement procedures placed additional pressure upon the member states. The combination of these factors provides already a contingent condition for this package deal as a conflict management strategy to work in highly salient dossiers.

Another contingent factor that enabled the package deal strategy to work was the negotiation behavior of France. France was the pivotal member of the “social camp” – without French support, Spain, Portugal, Greece, Belgium or Hungary would have had no blocking minority. At the same time, the French negotiation strategy was driven by a peculiar mix of electoral and regulatory considerations. France was willing to accept far-reaching compromises and exceptions allowing the opt-out usage. In fact, it experimented with the opt-out in its own health sector legislation since 2003. Nonetheless, the French delegation was unable to accept an unlimited, generalized opt-out as practiced and called for by the UK. This stance can be explained by the domestic political context – the debate on “social Europe” as well as other EU-related topics, such as the Services Directive or the Constitutional Treaty (Crespy 2010). France went along with the package deal, because its policy-makers were willing and able to convince the French public that the idea of social protection has been preserved in EU-level social policy legislation. Recall that during the Finnish Presidency one year earlier, it was a short-term intervention of French President Chirac, in the context of the debate on EU Constitutional Treaty, which prevented political agreement in the Council. The impact of the domestic political context in France on EU-level legislative negotiations shows that contingent factors matter in Council politics and can be decisive for the very fact of reaching agreement and for the timing of that step.

5.3.4.3 Summary

The final section of the analysis examined the strategies of conflict management in the enlarged Council. Enlarged membership enabled the Council to close a package deal, since the new member states could have afforded more “social” policy preferences on the Temporary Agency Work Directive after they have initially supported a more “liberal” orientation of the Working Time dossier. It is interesting to note that the new member states enabled the conciliatory course of events, after they contributed to the intergovernmental conflict at the negotiation outset. A compromise, built on a more “liberal” WTD and a more “social” Temporary Agency Work Directive, has been achieved, which convinced France, the vote-richest member of the blocking social coalition to move.

While enlarged membership can be seen as beneficial for issue-linkage, the case has also demonstrated several limitations of the conflict management

strategies in general. As expected, politicization – high salience and constituencies' attention – limits the prospects of these strategies. Once the vote-richest member states value domestic constituency considerations more than the EU-level agreement, there is not much a Presidency can do. Council literature argues that “agreement” is a value in itself from member states' perspective (Thomson 2011: 282). However, our case shows that, under given conditions, this is not the case. Member states preferred to disagree even though a revised Directive would have helped them to establish legal and regulatory compliance.

The relevance of domestic politics in salient EU-level matters, especially within large member states, introduces an element of contingency into Council politics. Another contingent factor that intervened during the final stage of the analyzed negotiations was the timing and availability of another “unfinished” labor market dossier. Despite the substantial proximity between the two Directives, the procedure of package dealing has been contested in the Council. The fact that most member states welcomed it relates to the Commission's threat to withdraw the dossier and launch infringement procedures against member states. Once these conflict dynamics are under way, the number of member states involved appears to occupy secondary importance.

5.4 Conclusion

The analysis of the intergovernmental negotiations on the revision of the WTD revealed four insights into the bargaining dynamics within the enlarged Council of Ministers. First, CEE countries have little domestic (policy) input to draw upon when forming negotiation positions for EU legislative negotiations. For that reason, they are easy “followers” – as they use bargaining opportunity structures created by more powerful and more skilled negotiators instead of crafting own strategies. This makes mobilization and mimicry important mechanisms of Enlargement accommodation. Third, first movers enjoy a bargaining advantage, especially when being numerous and coherent. Thus, when part of the avant-garde, the new member states can contribute to policy change. While the first movers' advantage is nothing new *per se*, it seems that when confronted with a large, diverse and divided Council, Presidencies are determined to streamline the negotiations and do not shy away from contentious proposals once they promise (only thin) majorities.

Subsequent Presidencies stick to the policy direction chosen by the predecessor, which makes Council negotiations path dependent. Finally, the larger the group, the higher the chances to exploit the differences in underlying motivations and preference orders to overcome blockage and engineer agreement. Likewise, the case demonstrated that contingency is involved in making these strategies work (the pivotal country of the blocking minority must go along with the strategy, suitable “material” for the package deal must be available). Moreover, the contestation of the package deal in our case suggests that this can only be a strategy of last resort.

In addition to these four process-related observations, the Working Time case nuances the diagnosis that there is “business as usual” in the Council after Enlargement. The continuity of output in numerical terms might involve shifts in the policy substance. The policy shift in the WTD consisted in the maintenance of an unlimited opt-out provision. The Eastern Enlargement encouraged this shift, because the new member states increased the bargaining leverage of the opt-out supporters, namely the UK and Germany. Evidently, the fact alone that CEE countries faced similar policy challenges and presumably shared the preference for more flexible solutions on the EU level was insufficient to bring about policy change. The analysis demonstrated that the reasons why the Commission’s proposal on the opt-out has been changed and why the Council finally agreed on a dossier that kept the contentious provision went beyond the structure of the decision situation and the distribution of formal power resources. The process-based explanation I offered was based upon interactions among member states, the timing and sequences of actors’ involvement and on the Presidency’s management strategies. All these three aspects had their role to play in the absorption of larger and more diverse membership.

How generalizable are the insights from the WTD? Admittedly, several features of this legislation make it extremely conflictive: The history of the working time regulation in the EU, the zero-sum nature of the opt-out-issue, the symbolic value of this dossier for actors such as political parties, trade unions or the EP. The politicization that resulted from all these characteristics put some (old) member states’ governments in the necessity to respond to diverse needs: regulatory and political. This might be the reason why agency became so central in the case, as well as the bargaining resources, the timing

and sequences of the process and the context, i.e. conditions located outside the Council. The findings will be relevant for similar cases, namely highly conflictive and divisive cases, whose relevance extends beyond the very subject of the dossier. While these cases are arguably rare in EU politics, when they emerge, they attract great interest among researchers, practitioners and the general public.

6 The Adoption of the Patient Mobility Directive (2008-2010)

The Patient Mobility Directive is another case of highly contested Council legislation. This time, the new member states together with the Southern countries worked against the codification of ECJ case law on free movement of patients. While Northern European member states saw codification as a “necessary evil”, Southern and CEE countries questioned this rationale, as they anticipated destabilizing impact of such legislation on their highly regulated, state-centered healthcare systems. Despite being numerically strong, the coalition failed and the opposing countries either gave up or were outvoted. I argue that this surprising dynamic exemplifies two consequential differences in member states’ legislative preparations and behavior. While the domestic engagement with the policy in question has an impact on the quality of bargaining positions, the type of power resource used when engaging in alliances matters for their sustainability and prospects. Confronted with asymmetrically distributed abilities of member states to argue for their own policy concerns, make them known and mobilize on these grounds, the Presidency strategically navigates towards a qualitative majority.

6.1 Analytical leverage of the case

The Directive on the application of patients’ rights in cross-border healthcare, also known as Patient Mobility Directive (PMD), is the first legally binding supranational intervention in the area of healthcare. Healthcare had hitherto been one of the policy domains reserved exclusively for member states, with the EU only equipped with supporting competences. Legislation in this area has been triggered by the growing body of ECJ case law, which has established the right of EU patients to transfer the entitlements from their public health insurance abroad and receive treatment in another country. Once the member states “have recovered from the case law-shock”⁹⁶, they expressed

⁹⁶ Interview, Permanent Representation of Germany to the European Union, 02.12.2010.

the wish to clarify how far these rights actually go and how national healthcare systems can protect themselves against destabilizing organizational and financial consequences of increasing mobility of patients (Council 2006a).

As the contentious case law was based upon the freedom of services, EU policy-makers addressed the delineation between individual rights and national healthcare institutions with the standard regulatory instrument of the internal market: the approximation of laws in the form of a binding Directive. However, the idea of intervening in healthcare systems when using internal market provisions met with vehement opposition of two large groups of countries: the Southern and the Central Eastern European member states. An arithmetically large opposition emerged, which managed to block a vote 15 months after the negotiations started, yet dissolved soon after this success. The Directive was agreed with five member states, including Poland as the largest CEE country, refusing their support.

The negotiations on the PMD are interesting to study in the context of post-Enlargement Council politics, because they represent one of the cases in which the conflict structure in the Council has been clearly affected by the Eastern Enlargement. The new member states did not share the case law codification-enthusiasm of their old, Northern colleagues. They anticipated that the principle of non-discrimination between different forms of supplying healthcare, which a Directive would necessarily embody in line with the Treaty, might threaten those healthcare systems, where the state controls both the financing and the organization of medical services. Having a limited experience with the ECJ, the new member states were critical about making potentially far-reaching legislative decisions based “only” on individual Court rulings. This hostility aligned them with the Southern member states.

The contention represented in the Patient Mobility case comes close to two conflict dimensions often found and discussed in quantitative Council research: Integration versus independence as well as regulation versus market-based solutions (Thomson et al. 2004; Thomson 2009). On both dimensions, the new member states took clear positions alongside the Southern countries: Against policy-integration and in favor of stronger regulation by the state. Thus, the PMD is a case, in which the Eastern Enlargement has altered the hitherto Council majorities.

Interestingly, the majority shift had only a moderate impact on the bargaining dynamics and barely any impact on the legislative outcome. The bargaining dynamics reflected the conflict structure to the extent that the Southern and Central Eastern member states pooled their voting resources and blocked the proposal in December 2009. Nonetheless, the blockage was not sufficient to prevent the Directive. The opposing coalition already started to erode at the voting stage and subsequently lost its vote-richest member, Spain, which has become Presidency and switched sides. The remaining opponents have been outvoted.

The PMD is puzzling due to the contrast between the clearly Enlargement-affected structure of the policy conflict and the very modest legislative impact of the Directive's opponents from the South and the East of the continent. Why did they not manage to prevent the Directive? Why did members of such a large opposing coalition become either outvoted or finally complied with the majority, despite holding strong critical views on the Directive as a whole?

This chapter argues that arithmetical strength and commonly held salient preferences can only transform into legislative influence if they are supported by a proper organization of the legislative behavior. Organizing legislative influence starts with position formation in individual member states and proceeds with coordination and leadership provision at the level where collective action is concerned. I show that the Southern and the Central Eastern member states evidently failed to put forward specific, well-founded negotiation positions – despite holding strong views on the Directive as a whole. Furthermore, they lacked coherence in their collective appearance and the largest members of this coalition – Poland, Italy and Spain – missed the opportunities to provide credible leadership.

The case confirms that effective performance in EU-level legislative negotiations is driven by state administration and stakeholders' involvement. Both not only represent a valuable negotiation resource, but they are also crucial for the early discovery of salience (Chapter 3). At the same time, the comparison between the “policy laggards” Poland and Spain and the “policy leaders” Germany and the UK marks the incompleteness of this account, showing that domestic engagement with EU policies is shaped by more broad

factors than simply the presence of relevant interest groups and a capable administration.

Finally, the case stresses the Council Presidency's ability to craft agreement out of diversity. In particular, the Presidency can exploit coalitions' incoherence and strategically pull single countries out, which might help to establish a trend towards agreement. Admittedly, the Patient Mobility dossier is a relatively "easy" case for this mechanism to work given that abilities and preferences were not equally distributed across member states. The Directive's proponents happened to be those with the highest organizational capabilities. Moreover, the negotiation did not involve manifest zero-sum issues, which can facilitate brokerage.

The chapter is structured as follows. The first section provides a detailed description of the case, including the policy background, the Commission's proposal, a brief overview of the Council negotiations and an assessment of the outcome. A three-step analysis follows. Section 2.1 argues that Southern and Central Eastern member states lagged behind their Northern counterparts already at the position-taking stage, as their lacking (domestic) engagement with the case law led to late, unspecific and poorly founded negotiation positions. The following sub-chapter unveils the organizational deficiencies of the Directive's opponents and contrasts their poor coordination with bandwagon effects, from which the well-organized and proactive Directive's supporters benefited (2.2). The final part of the analysis shows how the Swedish Presidency, relying on selective targeting of member states, was able to set a tipping point dynamics in motion, in which many members of the opposition have switched sides and agreed to the Directive (2.3). The final section summarizes the findings and concludes.

6.2 Case information

The Directive on the application of patients' rights in cross-border healthcare, short the PMD, is the first binding EU legal act in the area of healthcare. The Directive clarifies the situation of patients who go abroad to receive medical treatment that is otherwise covered by their national health insurance. Previously, assuming healthcare abroad was only possible when relying on Regulation 883/2004, which provides for the coordination of social security systems. This regulation assured that EU citizens receive urgent in-

kind medical care in another EU member states. In contrast, patients travelling purposefully to receive a specific treatment in another country were obliged to seek prior approval from their home insurance institution (de la Rosa 2012: 17). Insurance institutions had to grant such an authorization when the treatment was included in the local healthcare benefits but could not be provided in the member state of insurance within a reasonable time limit⁹⁷.

6.2.1 The policy problem

The European Court of Justice (ECJ) called these authorization procedures into question. In the famous *Kohll* (C-158/96) and *Decker* (C-120/95) cases, the Court interpreted medical treatment received abroad not exclusively as a matter of social security coordination, but rather it considered it through the lens of the internal market and individual rights. From this perspective, going abroad for medical treatment was a trade of services and the national authorization procedures represented a restriction of free movement. In several cases that followed *Kohll* and *Decker* the Court has developed a “parallel regime” of reimbursement of medical treatment assumed abroad (Hatzopoulos 2002; Hervey 2007: 261; Sauter 2009: 111-113). For instance, the Court ruled that the authorization requirement for non-hospital care distorts the freedom of services, although the procedure may be justified for hospital care when financial planning is involved. If in place, the authorization procedure should be transparent, timely, non-discriminatory and take into account international medical standards (Martinsen 2005: 1042). The ECJ also commented on the extent of reimbursement: If treatment abroad is sought actively by patients, national insurers only reimburse the amount that they would allocate for a domestic treatment (Sauter 2009: 112).

Member states had been observing these developments with concern. The case law relaxed their control over the migration of patients. The outflow of resources posed a potential risk for financial stability of healthcare systems. Clarification was needed about what exactly Treaty-derived patients’ rights entail and how they should be exercised. As a result, member states had been sluggish in implementing the case law (Commission 2003: 8). Rather, demands for clarification of the legal framework at the European level had been voiced. Member states were united in their opinion that matters of healthcare should

⁹⁷ Article 20 Par. 2 of the Regulation 883/2004.

not be left to Courts, but rather regulated in legislative procedures (Council 2006a).

6.2.2 The proposal by the Commission

In the first attempt to codify contentious ECJ cases in a secondary law, a healthcare article was included in the famous framework Directive on services in the internal market. This radical step resulted from regulatory ambitions of the Commissioner Bolkestein and the DG Internal Market (Vollaard 2009: 532). However, the European Parliament and the member states preferred to exclude healthcare services from the framework Directive and deal with them in a separate legislative act. A high-level consultation process served as a preparation for this project. Health Ministers had a chance for an informal exchange of views on preliminary proposals presented by the Commission on the meeting in Aachen, organized by the German Presidency in April 2007 (Vollaard 2009: 357).

The Commission put the proposal forward in July 2008 (Commission 2008). As expected, the proposal had been based upon the internal market Treaty Article (Art. 95 TEC) and not on the Article providing for EU's support for the national healthcare policies (Art. 152 TEC). With 24 Articles organized in five chapters, the proposal proved rather extensive. The length reflected the fact that healthcare provision is characterized by considerable institutional diversity among member states and regulating it supranationally requires many clarifications.

Content of the Proposal

The proposal defined healthcare very broadly and denied any distinction among different organizational and financial characteristics of healthcare systems (Article 4). The rights of EU patients, which are at the core of the relevant case law, had been translated into (extensive) obligations of member states. Here, the proposal differentiated between member states of treatment (Chapter 2) and member states of affiliation (Chapter 3).

Member state of treatment had to meet a range of criteria, such as quality and safety standards of healthcare (in accordance with international medical science), monitoring of thereof, patient information policies, complaints mechanisms, systems of professional liability insurance, privacy and data protection policies; There should be equal treatment and non-

discrimination between foreign and domestic patients (Article 5). Member state of affiliation, meaning the member state where the patient is insured, would be obliged to reimburse the costs of the cross-border treatment up to the costs of the same or similar treatment at home (Article 6). Relevant administrative and financial mechanisms have to be set up, whereby domestic and outgoing patients should be subjected to the same criteria or conditions. Prior authorization of non-hospital care was prohibited (Article 7). In turn, for hospital care or specialized care defined on a special list (updated by the Commission), prior authorization might be required, but only under pre-specified conditions (such as the financial balance or planning) and subjected to procedural constraints. Member states were obliged to establish a system of national contact points that would provide patients with information about their rights and assist them in case of harm.

The proposal went beyond providing for a patient-friendly system of cross-border healthcare and established a duty for member states to cooperate in healthcare matters (Chapter IV). This cooperation should encompass medicine prescriptions, reference networks for healthcare providers, e-health, technology management as well as data collection for statistical and monitoring purposes. For several of these provisions, as well as obligations imposed on member states in previous chapters, the proposal envisaged an extensive assistance by the Commission and prescribed the Comitology procedure (Article 19).

This case confirms that the legislative behavior of the Commission is largely driven by a strong preference for harmonization. The proposal followed a “familiar sequence whereby negative integration [...] breeds the need for positive integration” (Sauter 2009: 131). The second part of the proposal established a basis for a common healthcare policy, since it provided for a Commission-assisted cooperation in procedures and standards. In the part that codifies the Courts’ case law, the Commission did not shy away from putting additional organizational obligations on the member states, such as the national contact points. This is notable, since the Treaty grants the EU only limited competences in public health. Furthermore, the Commission interpreted the Court rulings in an excessively patient-friendly way. For instance, the case law does not definitely prohibit prior authorization for non-

hospital care and it is not as restrictive with the prior authorization for hospital care as the proposal proved to be (Krajewski 2010: 178-179).

Evaluation

The Commission responded to the need of case law codification with a far-reaching proposal. In a way, it was a progressive one, since it surrounded the Treaty-derived freedom of patients to choose the country of treatment with flanking provisions that make the execution of this right possible. On the other hand, the proposal imposed an impression that the Commission expands integration into a new area, one that had hitherto been sheltered from supranational influence. Such a strategy compelled a conflict between the Commission and the member states, which indeed materialized, with the proposal leaving the Council with considerable changes.

What was less expected was that the Council would itself be divided over the core of this initiative, namely reconciling national healthcare systems with the imperative of the internal market. Already when the Court was debating the cases, Advocate General Ruiz-Jarabo Colomer voiced that healthcare should not be treated as a “service” because it does not fall into the category of “economic activity”, especially when provided in kind (as opposed to in-cash)⁹⁸. The Court did not follow this reasoning. However, this debate re-emerged in the Council of Ministers and shaped the legislative dynamics.

6.2.3 Legislative negotiations in the Council: an overview

The Council started the work on the PMD in October 2008. It reached agreement in June 2010, after 23 months of work conducted under four Presidencies: France, Czech Republic, Sweden and Spain. While the first two Presidencies were primarily concerned with detailed article-by-article work, the latter two dealt with the remaining conflictive issues and focused on paving the way for a successful vote. Sweden undertook the first attempt to reach the qualified majority, but it failed in December 2009. The blocking minority comprised Spain, Portugal, Poland, Slovakia and Romania, supported by

⁹⁸ Opinion of the AG Ruiz-Jarabo in *Smits-Peerbooms* (C-157/99) <http://curia.europa.eu/en/actu/communiqués/cp00/aff/cp0038en.htm> [19.03.2013]; Opinion of the AG Ruiz-Jarabo in *Müller-Fauré* (C-385/99) <http://curia.europa.eu/en/actu/communiqués/cp02/aff/cp0285en.htm> [19.03.2013].

several new member states⁹⁹. However, the coalition collapsed after its most vote-rich member Spain assumed the Council Presidency and diametrically changed its handling of the dossier.

What did the member states in the Council disagree about? The Directive did not contain specific zero-sum issues that would generate manifestly antagonistic preferences. Delegations were largely in agreement that the Commission went too far with the ambition to establish a general framework for an EU-wide health policy. However, opinions diverged concerning the question of how best to achieve the overrating purpose of this legislation, namely to reduce the uncertain implications stemming from the growing body of ECJ case law on patient mobility.

Many delegations argued that a Directive on patient mobility is a “necessary evil”. Consequently, the totality of the relevant case law should be taken into account to prevent the Court from further advances. Indeed, this position was adopted by Germany, the UK, the Netherlands, Belgium, France and the Scandinavian countries.

The other group, comprising Spain, Portugal and Greece, openly mistrusted the idea of legislating on healthcare while relying on the legal framework of the internal market. This group was joined by Poland, Slovakia and Hungary and supported by almost all the other new member states, except the Czech Republic, which served as a Presidency. The group never openly admitted that it would prefer an unregulated status quo over a binding law, nor did it explicitly criticize the rationale that the member states should leave policy-making to the Court. Rather, as I will argue in my analysis, the content and style of those countries’ interventions in the legislative process indicate that they vehemently resisted embracing the issue of patients’ rights in cross-border medical treatment.

Domestic institutional and historical determinants

What explains the geographic pattern of contention over the Directive? Institutional features of healthcare systems or past experiences with ECJ case law on patient mobility appear as potential explanations. Admittedly, state-owned healthcare systems that provide in-kind benefits face more severe

⁹⁹ With these five countries, a blocking minority was reached and the Presidency did not conduct a formal vote. In early December, Latvia, Lithuania, Slovenia and Hungary supported the critique voiced by the blocking minority (Agence Europe, 02.12.2009).

challenges when exposed to cross-border movement of patients (Hatzopoulos 2002: 684). Therefore, we would expect countries with such systems to oppose an EU binding law. Furthermore, countries that experienced charges from Court rulings would be more open towards a binding legislation. In fact, the most prominent ECJ rulings on healthcare concerned Luxemburg (*Kohll and Decker*), the Netherlands or the UK (*Watts*).

However, none of these explanations accounts fully for the North versus South-East divide that materialized in the negotiations. Firstly, among those who supported the idea of encompassing case law codification we find several state-run healthcare systems, such as the UK or the Scandinavian countries (Wendt et al. 2009: 75, 86). Secondly, both Southern and Eastern European countries had their experiences with ECJ case law on patient mobility. While cases involving Spain (*Keller, Herrera*) and Greece (*Stamatelaki, Ioannidis*) were treated by the ECJ between 2005 and 2007 (Sauter 2008: 23-28), the new member states they were obliged to implement the case law as *acquis communautaires*. Some of them, formally, did so (Földes 2009: Chapter 4). It seems that the new member states opposed the formal codification of case law that they had already accepted as part of their policies.

Technical work: French and Czech Presidencies

It took some time until the abovementioned conflict decisively shaped the work of the Council. The initial Presidencies avoided engaging in discussions about legitimacy of this project and, as I will show in the analysis, the concerned countries failed to propose specific amendments to the proposed text right from the outset.

The French Presidency only dealt with the first 14 Articles and held ten Working Party meetings (Council 2008b: 2). It responded to the widely voiced preference for a weaker language of member states' obligations vis-à-vis incoming or outgoing patients. In the compromise proposal from November 2008, the Presidency introduced major changes to the Commission's proposal: the respect of member states' competences in healthcare has been stressed several times, monitoring of standards of treatment as well as procedural guarantees for patients' complaints removed and the member state of affiliation's scope for prior authorization broadened (Council 2008a). Already in that time, reservations towards the Directive as a whole have been voiced by the Southern and Central Eastern European member states. However, these

were of general nature, and besides being noted in progress reports, they had not been dealt with in greater detail (Council 2008b: 3).

The Czech Presidency worked equally intensely with eight Working Party meetings (Council 2009c: 3). It continued the approach of the French for the second part of the proposal: the Commission's role in the development of common health initiatives has been reduced and the range of member states' cooperation narrowed. Furthermore, the Czech Presidency worked on the wording of the crucial provisions in the first part of the Directive: the definition of healthcare, the assumption of costs for cross-border healthcare and the procedures for prior authorization.

Meanwhile, the general reservations towards the Directive as a whole took a more specific shape. More than a half of member states expressed a preference to exclude healthcare providers that do not have a contract with the public insurance institution from the Directive's regulatory regime. The rationale behind this exclusion was that some member states differentiate domestically between "contracted" and "non-contracted" providers. Only the former are reimbursed by the insurer, who can control the prices and the quantity of assumed healthcare services through contracts. In EU law, discrimination between different forms of service organization is prohibited. The worry of the concerned member states was that the Directive, which in theory only applies to cross-border transactions, would be employed by domestic actors and will destabilize the national practices of contracting in the long term.

The Czech Presidency classified this debate as one of "political nature" on which not many results could have been achieved (Council 2009d: 3). The Presidency itself was of the opinion that an exclusion of non-contracted providers, as demanded by Poland, Spain, Portugal, Slovakia and others is not possible because the ECJ itself never differentiated between different organizational types of healthcare provision (Council 2009d: 4). Thus, the case law codification would be incomplete and the objective of limiting the ECJ-induced uncertainty not achieved. The Czech Presidency referred this question to COREPER and the ministerial forum, where the debate proved to be even more charged with emotions.

Majority voting politics: Swedish and Spanish Presidencies

The strategy of the Swedish Presidency was focused on securing the necessary arithmetical support for the Directive. The Presidency did not wait too long with presenting first draft proposals, which were put forward as soon as in July 2009 (Council 2009b). This proposal contained a very explicit accommodation of the German preference for exclusion of the long-term care (Council 2009b: Article 2), in line with the wording proposed by the German delegation before and a sharpened wording of provisions important for the UK, namely the gate-keeping role of the General Practitioner in granting prior authorization (Article 8). On this way, the Presidency secured that the three largest member states, Germany, France and the UK, were on the supportive side.

The Presidency also provided for the exclusion of non-contracted providers. However, this would be possible only if quality and safety issues were at stake (Council 2009b: Article 8.7). Such phrasing would not entirely meet the concerns of the countries demanding such exclusion, but the Presidency wanted to send an accommodative signal and wait for reactions. The opposition softened, but it managed to organize a blocking minority on the EPSCO Council in December 2009.

Spain who led this opposition was about to become the next Council Presidency. Negotiation participants and observers did not believe that the dossier could be brought forward, since Spain was the most outspoken opponent of the project from the very beginning of the negotiations¹⁰⁰. Spanish position towards the Directive was one of “general reservation”. Spain’s health minister argued in public that the Directive “treats health as a commodity”, “goes against the exclusive right of each State to organize their health services” and on this way “undermines the principles of social solidarity” (El Pais and Reuters, 01.12.2009, 02.12.2009).

Nonetheless, Spain also had two more specific concerns. The first one, shared with many other member states, was the inclusion of non-contracted providers in the Directive’s scope. Patient’s insured in Spain are not allowed to use private clinics at tax payers’ costs. However, the Directive would afford them this right in cross-border transactions, which the government found

¹⁰⁰ Interview, Council General Secretariat, 26.10.2010.

problematic for several reasons, ranging from fairness to control over quality and safety. The second problem concerned the situation of foreign pensioners residing in Spain, accounting for almost three million citizens. According to the Regulation 883/2004, their home-country insurance covers their medical treatment in Spain, transferring a lump sum of about 300 Euros per person every month (El Pais, 09.06.2010). With the new Directive, it was sufficiently unclear which country is the “member state of affiliation” obliged to grant prior authorization and, most importantly, to reimburse the treatment when these pensioners go abroad to receive treatment. Spain was afraid of a legal loophole that would cause it to bear some 2 billion Euro in additional costs when German pensioners residing in Spain returned to Germany for treatment¹⁰¹.

This was what Spain decided to focus on during its Presidency¹⁰². It introduced a new article clarifying the relationship between the Regulation 883/2004 and the Directive in the specific situation of pensioners returning to their insurance countries for medical treatment. There was no objection to this amendment¹⁰³, so Spain proceeded to vote. It knew that the problems of its former allies remain unresolved, but with Spain voting in favor, there was no longer a blocking minority. In public, Spain defended its change of stance with the argument that it will now “avoid paying 2 billion Euros for pensioners” and that it “restricted medical tourism” (El Pais, 09.06.2010). Poland, Slovakia, Romania and Portugal were unable to support the Spanish compromise proposal and voted against or abstained.

6.2.4 The outcome

After the Council had given its political approval to the amended text in June 2010, the Directive on Patients’ Rights in Cross-Border Healthcare was officially agreed upon in early 2011. Compared to the Commission’s proposal,

¹⁰¹ Such a phenomenon was strongly anticipated on the grounds that people prefer to be treated where their families live, which is typically in the places from which they originate.

¹⁰² Interview, Permanent Representation of Spain to the European Union, 28.10.2010.

¹⁰³ The pensioners issue has been raised in the Council before, but for some reason, Spain did not manage to get it sorted out in line with its preferences. According to the Spanish representative interviewed for this project, “only as a Presidency was Spain able to adjust this provision”, Interview, Permanent Representation of Spain to the European Union, 28.10.2010.

the most important changes were an inclusion of Article 168 TFEU¹⁰⁴ (public health) as a second legal base - additional to the internal market article, an exclusion of long-term care from the Directive's scope and more leeway for member states regarding prior authorization. The Council largely managed to shift the balance between member states' obligations and rights towards the latter. The text repeats several times the need to preserve the member states' competence. The extension of the legal base is "rich in meaning" here, since the Article 168 TFEU provides that the EU shall respect the responsibilities of member states in the organization and delivery of healthcare (de la Rosa 2012: 27).

The evaluation of this outcome is not without difficulties. The Directive has not yet been implemented¹⁰⁵, so it is impossible to ascertain the extent to which the amendments introduced by the Council enabled member states to protect their structures and procedures from the imperative of Treaty-derived individual rights. It remains to be seen whether the new legislation will perhaps provide an opportunity for further complaints by patients in Court. Greer predicts such a development, pointing at the Directive's lacking clarity (Greer 2013: 2-4). Interestingly, the Court itself seems to have reacted to the legislative intervention, as it "tempered" some of its arguments in most recent healthcare cases (Hatzopoulos and Hervey 2013: 3-4).

Arguably, EU law - primary or secondary - will continue to pose challenges to healthcare systems in which the state bears the primary organizational or financial burden of delivering healthcare. The debate about exclusion of non-contracted providers illustrates that concern. Several member states vehemently opposed the scenario of public insurance institutions being pushed to settle their accounts with providers operating outside of the system of price and quantity regulation, namely the system in which the state or the public insurer is the dominant player. An explicit exclusion of non-contracted providers, as demanded by those states, has been deemed discriminatory and would go against the Treaty. There was not much debate how this problem could be dealt with. In the end, the Directive remained highly ambiguous regarding the reasons and conditions under which member states might restrict the right of a patient to choose where (s)he is

¹⁰⁴ Ex-Article 152 TEC.

¹⁰⁵ Member states shall transpose the Directive until October 2013.

treated. The high number of outvotes suggests that this problem has rather been postponed than fully resolved.

6.3 Analysis

The description of the PMD, provided in the previous part of the Chapter, raises two puzzles. Firstly, why did a dossier that has been announced and prepared for several years, meet with such a general hostility by a considerable part of the Council? An opposition against the very fundamentals of this legislative project only later on boiled down to very specific issues, such as the non-contracted providers. Second, how did the Council manage to overcome a quantitatively large coalition against transforming ECJ case law on individual patients' rights into binding legislation?

These are important questions highlighting that the structure of the decision situation in the Council, i.e. the distribution of policy preferences and the voting power that the conflictive parties dispose of, provides an incomplete account of how this body works and how it reaches its decisions. The puzzle(s) of the PMD are thus relevant for the broader debate concerning what features of the Council enabled it to cope efficiently with enlarged membership.

The analysis reveals that inequalities among member states regarding their capacity to place their interests on the negotiation agenda and their ability to organize collective action have great influence on how a dossier passes the way from proposal to agreement. The first part of the analysis stresses the importance of country-level preparation and policy engagement for effective bargaining on the Council level. Council politics starts long before the formal agenda is set. The analysis continues with coalition politics within the Council. It shows that poorly coordinated and weakly organized groups of like-minded countries face high risks of becoming dissolved by the Presidencies, whereas early, well-founded and structured interventions of individual member states trigger mobilization processes and lead *de facto* to coalition building and collective influence. Finally, the section shows the Chair was able to set in motion a tipping point dynamics towards agreement, exposing the incoherence of the opposition and isolating the member states with decisive voting power.

6.3.1 Advancing own cause: North-East-South

The PMD was a long awaited piece of legislation. The clarification for patients seeking healthcare abroad was welcome by both stakeholders and the member states, whose participation in the high-level group and whose responses to consultations served as a consent to proceed with the initiative. At first, no major conflicts were in sight. Stakeholders voiced the need for further specification of key terms or urged a stronger orientation of the proposal towards common values in healthcare, agreed by the member states in 2006 (Council 2006a). Hospitals' associations and patients' organizations differed in their views on the strictness of prior authorization (EurActiv, 03.07.2008). As for the political parties, only some of them took a pronounced critical position: Those on the far-left side of the political spectrum criticized the "re-introduction of Bolkestein through the back door", while the Liberals welcomed the first step towards a "free European patient area" (EurActiv, 03.07.2008).

All the more surprising was the discovery by the French Presidency that not all the member states were as enthusiastic about the project as previous announcements or actions at the high-level Council configuration would allow one to expect. Criticism of the specific content of the proposal was nothing unusual, given that the Commission was rather radical in its interpretation of the case law. However, as it proved, Spain, Portugal, Hungary, Slovakia, Poland and others questioned the project as a whole. In particular, the ministerial meeting of the EPSCO Council¹⁰⁶ in December 2008 reaffirmed that fears about the loss of national sovereignty were vivid among these countries (EurActiv, 17.12.2008). These fears manifested themselves in an open criticism of the Directive as de-regulatory and violating member states competences, as well as the demand to replace internal market as the legal base by the Article 152 of the Treaty (public health)¹⁰⁷. Indeed, this demand was rather symbolic, because Article 152 does not provide for binding legislation, but rather only for supplementary measures¹⁰⁸.

¹⁰⁶ Employment, Social Policy, Health and Consumer Affairs Council.

¹⁰⁷ EPSCO Council on 16.12.2008. <http://www.consilium.europa.eu/videostreaming>

¹⁰⁸ Interview, Permanent Representation of Sweden to the European Union, 20.10.2010.

“Positions of principle” as such are nothing unusual on the ministerial level of the Council. However, interestingly, the interventions of Southern and CEE member states on the Working Party level were equally general and dismissive¹⁰⁹. This attitude stood out because both the Presidency and other member states were determined to proceed with detailed article-by-article work and focus on key institutions of the proposal such as prior authorization, hospital care or the mechanisms of intergovernmental cooperation in healthcare.

6.3.1.1 Position articulation: Cross-country comparison

Germany and the UK serve as examples of this very specific, substantial and focused legislative work. Both countries started the negotiations with a list of amendments they wish to see in the proposal. The lists contained a top priority – the most salient issue from the domestic perspective. In the German case, this was the exclusion of the long-term care (*Pflegedienste*) from the Directive’s scope. The reason was the specific, encompassing character of long-term care in Germany, which is not a medical service, but rather a “solidary support of the society for families who care for their members” (Ulla Schmidt, minister of health, quoted by TAZ, 30.12.2008; see also (Schulte 2009)).

In turn, the UK wanted to ensure that general practitioners (GPs) retain their gate-keeping role in the British healthcare system and that regional health systems determine the scope of covered services - both being characteristic features of the British NHS (National Health Service). In a state funded health system, such as the British one, the individual doctor (GP) decides who should receive what treatment. This is distinct from healthcare systems, in which entitlements are decided by national legislation. As the British Minister for Health put it: “We want to ensure that [...] the NHS retains the ability to decide what care it will fund”¹¹⁰. In practice, this meant that the Directive would take into account the decisive role of GPs and the fact that entitlements may vary across the NHS. Both Germany and the UK had a very specific idea about how the proposal should be changed to minimize the disruptive implications on their existing healthcare arrangements.

¹⁰⁹ Interview, former employee of the Permanent Representation of France to the European Union, 15.12.2010 (phone).

¹¹⁰ <http://www.ehealthnews.eu/research/1351-uks-consultation-on-patient-mobility-in-the-eu> [24.05.2012].

The negotiation positions of Spain and Poland illustrate how the negotiation behavior of Southern and CEE countries differed from the Northern ones. Spain was primarily surprised and disappointed to discover the central role of jurisprudence in the proposal, having itself argued in the consultation responses that the regulation of healthcare services on European level should go beyond the narrow question of mobility and include issues such as health information systems, coordination or common accreditation framework for medical establishments¹¹¹. In other words, Spain took a pronounced position concerning what the project should be about, with little reference to the actual dossier¹¹².

In turn, Poland did not take any pronounced position at all, given the very general and rather uncritical nature of the negotiation instruction prepared by the government (Budzynska 2008: 16). In the formal negotiation position, the Polish government mentioned three substantial concerns, two of which were widely shared by other countries in the Council: the competence of the Commission to co-determine the range of medical services covered by the Directive (Article 8) and the division of labor between the Commission and the member states regarding the standards of quality and safety in healthcare (Article 5). In these two areas, the mainstream position in the Council was that the Commission's competence creep should be contained. As a third point, the Polish negotiation instruction mentioned the principle of cost reimbursement to healthcare providers who do not have a contract with the public insurer. The Polish government considered the possibility that the Directive might be applied within the country, forcing the Polish national insurer to reimburse those providers on the domestic arena. In fact, this later became Poland's main negotiation issue, as Poland demanded the exclusion of these providers from the Directive's scope. Moreover, Poland voted against the Directive, because it did not see this interest being accommodated. However, in contrast to Germany or the UK, Poland was not particularly offensive about its top-issue at the negotiation outset. Why was this the case?

¹¹¹ Response from the Spanish Ministry of Health and Consumer Affairs to the European Commission's consultation on Community action on health services, 31.01.2007; http://ec.europa.eu/health/consultations/index_en.htm?Page=9 [10.08.2012].

¹¹² Interview, Permanent Representation of Spain to the European Union, 28.10.2010.

A possible reason for this rather lukewarm stance was that Polish government was itself unsure about the relationship between the Directive's provision and the domestic system of contracted healthcare. The question was whether the reimbursement rights codified in the Directive can also be enforced on the domestic arena. In that event, Polish patients using "private" non-contracted healthcare in Poland could claim reimbursement from the public insurer, pointing at the combination of the Directive's content and the Polish constitution that provides for equal access to healthcare. Legal experts – the Polish government relied on four different pieces of expertise – had different opinions on the likelihood of such scenario to materialize. Consequently, the negotiation instruction left open how risky the inclusion of non-contracted providers in the Directive really is. Presumably, this uncertainty explains why Poland was initially reluctant to take a clear position on this issue and only later on became more assertive – when it saw that other countries also have this problem.

Countries such as Spain and Poland did not contribute to the article-by-article discussions in the Working Party. The discussions in the EPSCO Council in December 2008 leave no doubt that their positions were shared by other countries in the respective regions. Spain in particular became a very outspoken and assertive player and served as a leader of the Directive's opponents. Referring to the negotiation behavior of these countries compared to other Council members, a Presidency representative admitted that they "were active, but active in blocking and not in making constructive proposals", which was not considered helpful on the Working Party level¹¹³.

Confronted with the prospect of achieving progress in at least the first few chapters, the French Presidency did not have any incentive to unpack the general, normative issues such as the EU's mandate to intervene in healthcare markets. At this early stage of the legislative work, the Presidency preferred to deal with specific concerns and proposals advanced by determined and informed negotiators than to engage with member states still uncertain what their positions and their concerns actually are. For instance, a representative of the Presidency admitted that she never understood Poland's problem with the

¹¹³ Interview, former employee of the Permanent Representation of France to the European Union, 15.12.2010 (phone).

non-contracted providers and the role played by the Polish constitution in this context¹¹⁴.

Besides the institutional interest to advance the negotiations, France was also interested in the substance of the dossier and motivated to work on it. France itself reacted to ECJ rulings as early as in 2005 with an abolishment of prior authorization for non-hospital care. It claimed to understand the legal rationale behind the project and know the case law very well. Finally, it stressed several times that member states should legislate and not the Court. This was a very compelling communication strategy, since nobody in the Council objected this rationale. Both the French and the later Presidencies used it to motivate the Council to move forward.

The positions of Southern and Central Eastern European member states did not have much impact on the negotiation process on that stage. These member states were not engaged with, whereas the UK, Germany and others were able to have at least some of their concerns accommodated. In the following section, I will explore why member states differed so much in the way they articulated their interest on the Council arena in greater detail. Why were some countries able to produce highly specific, informed and structured negotiation positions while others remained rather general and seemed to engage with the specific content of the proposal only very loosely?

6.3.1.2 What explains the leader- and laggard positioning?

The previous section has shown that the Council was largely divided in two groups of member states. Northern European countries, such as the Netherlands, the UK, Germany, France or the Scandinavians welcomed the initiative and invested utmost legislative efforts to tailor the proposal to the needs of their specific healthcare systems. On the other hand, Southern and Central Eastern European member states saw the Directive as major threat to their public healthcare, although they did not make specific suggestions how potential problems could be addressed. This conflict, in a way, corresponds to two substantial cleavage identified in the Council literature: The level of harmonization and the strength of regulation. In the first case, member states disagree about the need to adopt uniform regulations across the EU – while

¹¹⁴ Interview, former employee of the Permanent Representation of France to the European Union, 15.12.2010 (phone).

some argue that EU action is desirable, others prefer to keep the matter under the domestic sovereignty. In the second case, the balance between the market on the one side and the collective societal interests on the other side is the object of contention.

However, this substantial dimension does not describe the conflict fully. Beyond their general views or attitudes, member states differed in the way they engaged with the dossier, producing negotiation positions of varying quality. I have argued above that the way preferences were articulated mattered for the legislative dynamics, since those countries that were able to put forward specific legislative demands had better chances of being accommodated by the Council Presidency. The obvious question is why did some countries engage with this dossier so intensely while others remained critical but also ignorant about it? I show that static domestic variables such as healthcare institutions or citizens' attitudes only partly explain the variance and have to be complemented by insights from the dynamics of the domestic policy process. This "variable" encompasses policy activity before the formal beginning of the negotiations, engagement with the case law and the timing of stakeholder inclusion.

The two main institutional types of healthcare systems in the EU, national health systems and social insurance systems, do not account for the North versus South-East cleavage, as observed at the outset of the Council negotiations (European Parliament 2007: 1). The National Health System in which healthcare is funded by taxation operates in the UK, the Scandinavian countries, as well as in Spain and Italy. While the UK, Sweden and Denmark supported the Directive, Italy and Spain vehemently opposed it. Social insurance systems financed by payment of premiums and administered by (independent) bodies can be found in continental Europe; for instance, in Germany, France, the Netherlands, Belgium, Poland, Czech Republic and Slovenia. Again, these countries differed regarding their general attitudes towards the PMD.

A recent, more specific typology provides a more nuanced insight, albeit still far from a perfect match when compared to the conflict pattern in the Council negotiations. Böhm and colleagues classified healthcare systems according to financing, regulation and service provision, whereas all three tasks can be performed by the state, by societal or private actors (Wendt et al.

2009: 82; Böhm et al. 2012: 8). The UK, Scandinavian and Southern European healthcare systems remain in one group, although there is a differentiation within the insurance-based systems among the continental member states (Böhm et al. 2012: 18). Whereas societal actors take care of regulation and financing of healthcare (delivered by private actors) there is a division of labor between the state that regulates societal actors that administer and private actors that deliver healthcare in Germany, Austria, Slovenia, Luxemburg and Switzerland, in CEE, as well as France, Belgium and the Netherlands,¹¹⁵. On CEE healthcare systems, authors note that the role of societal actors is minor. The dominant role of the state in the healthcare system might be the reason why Eastern and Southern member states reacted with similar hostility and reservation to the EU project of patients' rights Directive, despite organizational differences between their healthcare systems. Both regions experienced welfare state transitions in the (more or less recent) past. Today, they exhibit complex, incoherent and instable institutional systems which struggled with fiscal austerity from the very beginning (Moran 2000: 154; Toth 2010). It is plausible to assume that governing such regimes and adapting them to legal developments at the EU level is demanding. On the other hand, regulatory adaptation is always a challenge for EU member states. Other state-led healthcare systems, such as the British one, initially also ignored ECJ case law but changed their strategy over time.

Might citizens' attitudes offer an explanation? There is indeed a difference of awareness about the possibility to go abroad for treatment and be reimbursed. This awareness is around 71% among EU15 and 63% among NMS12. Nonetheless, there are also prominent exception, such as Germany and the UK, both of whom have low awareness rates (67%). Several Central Eastern or Southern member states score above average, such as Slovenia, Greece, Lithuania and Italy (Eurobarometer 2007: 6). There are no differences among member states regarding the percentage of citizens that actually received treatment, whereby the average of 4% covers both the EU15 and NMS12 (Eurobarometer 2007: 7)¹¹⁶. The average is again very similar regarding the willingness to travel abroad for treatment: 53% for EU15 and

¹¹⁵ This group is therefore called "Etatist Social Healthcare Insurance".

¹¹⁶ The only notable exception here is Luxemburg, where 20% of citizens had experiences with cross-border healthcare (Eurobarometer 2007: 7).

52% for NMS12. There are no systematic patterns here, with the exception of the Southern member states (Spain, Italy, Portugal and Greece) whose citizens are particularly willing to assume healthcare abroad. Most new member states, but also Germany, score below average. Citizens' attitudes towards cross-border healthcare do not offer a strong explanation for the differentiated engagement of member states' governments with the legislative project of PMD.

Where the Northern, Southern and Eastern member states differ considerably is the process of domestic engagement with transnational aspects of healthcare provision. Countries from the three regions offered different responses towards the ECJ case law on patients' rights. In general, Northern European member states reacted to ECJ rulings – albeit with different speeds and to varying extents – while Southern and Eastern member states largely ignored the case law, with few a minor exceptions¹¹⁷.

Spain and Poland were aware of the rulings but no legislative changes had been performed (European Parliament 2007: 28, 36-37). As an acceding state, Poland was obliged to implement the rulings during the accession process. However, it changed its legislation only as much as the Regulation 1408/71 later 883/2004) required it. Other new member states proceeded similarly. Hungary formally incorporated the Kohl/Decker procedure of cost reimbursement in the social security system, albeit without mentioning these cases as a source of law and without putting any implementing procedures in place (Földes 2009: 239). The management of the Slovenian public health insurance adopted a “wait and see” approach despite the Commission's critical requests (Földes 2009: 214). In both countries, there was no pressure from patients - presumably, because the differences in costs of treatment in East and West would imply high level of co-payments. Czech Republic stands out among the new member states. Already before accession, the health insurance funds active in the Czech Republic established a Centre for International Reimbursements, which not only executed international payments for medical treatment of Czech patients but also provided information, legal aid and represented the insurance institutions vis-à-vis the government (European

¹¹⁷ Admittedly, there is not much literature on the reactions to ECJ case-law in the Southern and Central Eastern member states. By contrast, several country case studies are available on Belgium, Luxemburg, Sweden, Denmark, the Netherlands, Germany, the UK and France (Obermaier 2008a; Obermaier 2008b; Baeten 2012).

Parliament 2007: 33-34). Czech Republic assumed the Presidency during the Directive negotiations, making it difficult to tell whether its commitment to the Directive, which was exceptional among CEE countries, resulted from domestic adaptation undertaken or the function as Chair. The Czech Republic did not seem to have an open ear for its fellow countries' concerns. While it labeled the demand to exclude non-contracted providers a "political" claim, it preferred to cede the question of exclusion to the Council's Legal Service rather than working on specific proposals to remedy the problems that countries such as Poland, Hungary or Slovakia anticipated (Council 2009d: 3).

If ignorance was an option, what motivated the Northern member states to react to ECJ rulings by means of legislative or administrative change? The Belgian example, where early response (1998) was due to the "fit" between the healthcare system and the rulings, serves as an exception rather than a rule. So do Luxemburg and the Netherlands, which were directly involved in the ECJ procedures and thus directly exposed to compliance pressure. All other member states initially rejected the case law, claiming that it does not apply to their specific healthcare arrangements. This changed in the mid-2000s at the latest. There were different domestic drivers of change.

While the German government initially denied that ECJ rulings might be applicable to the German healthcare system, the associations of the statutory health insurance explored potential benefits from purchasing services abroad and thus pleaded for a strategic handling of *Kohll* and *Decker* cases (Obermaier 2008a). Consultations with stakeholders as well as further ECJ judgments ultimately convinced the German government to take legislative action. The first SPD/Greens draft bill was still rather restrictive, but the conservative opposition demanded a more patient-friendly legislation. Consequently, the Social Security Code was amended in 2003, providing for the reimbursement of ambulatory care abroad, the choice of in-kind or in-cash benefits for insured members and the possibility of contracting foreign providers by funds (*Krankenkassen*); meanwhile, the prior authorization of hospital care has been maintained, albeit in a restricted manner (Obermaier 2008a: 5-6).

When Germany assumed Council Presidency in 2007, stakeholders, such as the association of statutory health insurance, were involved in political debates about the future EU-level regulation of healthcare matters. They called for EU-wide compliance with ECJ rulings, stressing the complementary nature

of the new reimbursement regime – they saw no necessity for a new legislation in this area (GKV Spitzenverband 2007). Associations of statutory health insurance formed a working group “Europe” which remained involved in the preparation of national position on the Directive proposal (GKV Spitzenverband 2008).

In France, the dominant driver of legislative change came from the domestic jurisprudence. Between 2000 and 2004, French courts of all instances made strong references to relevant ECJ judgments (Obermaier 2008b: 743-744). In parallel, the healthcare administrator DSS (*Direction de la Sécurité Sociale*) issued an implementation note 2001 that provided for reimbursement of selected medical products purchased in another EU member state. The government softened its stance and in 2003, the Social Security Code has been complemented by four articles covering the usage of healthcare abroad: reimbursement of ambulatory care, limited prior authorization for hospital care and contracts between the French insurer and foreign providers (Obermaier 2008a: 7-8).

The UK’s reaction to early ECJ rulings was characterized by a dichotomy: manifest political rejection was accompanied by gradual, limited but systematic relaxation of the restrictive territorial principles that had bound the NHS before. For instance, the NHS had been given some autonomy in purchasing healthcare abroad and a pilot scheme had been launched offering patients on waiting lists a choice between a treatment in England or in one of the NHS-contracted centers in another member state (Obermaier 2008b). It seems that the British government acted strategically, anticipating further pressure and lawsuits from patients. Furthermore, NHS reform – “modernization and marketization” was on the agenda of the Labour government regardless (ibid). Finally, the *Watts* case (-372/04), debated first by the British Administrative Court and later on by the ECJ generated considerable media attention and increased the pressure on the government regarding management of the (long) waiting lists in the context of the possibility to opt for the treatment abroad. In fact, the government issued new instructions to local NHS managers on how patients’ requests should be dealt with. At the time the Directive was proposed, outgoing patients were reimbursed on case-by-case basis. In 2007, NHS established a European Office to become involved in EU-level policy developments (Zanon 2010).

In all these examples, case law on patient mobility made it on the domestic political agenda through an interplay between judiciary, stakeholders' activism, public attention and government politics. The role of the government appears particularly strong in the case of the UK, where anticipation of future problems as well as the will to tackle the problem of waiting lists led to gradual adaptation to the EU regulatory framework. Also in the Netherlands, adaptation to the case law coincided with a project of major healthcare reform (Baeten 2012: 36-39). Which one of these factors failed in the case of the "ignorant" countries?

The Polish case is insightful. Two aspects of cross-border healthcare have been discussed in the media since accession: first, the case of Polish women giving "emergency" births in German border hospitals at the cost of the Polish public health insurance (Gazeta Wyborcza, 04.04.2008); and second, the economic potential of Polish clinics in attracting foreign patients, whereby the Association for Economic Tourism applied to the Ministry of Economy to put healthcare services on the list of "strategic" sectors (Gazeta Wyborcza, 07.05.2010). Both phenomena generated considerable media attention, although no references to the case law or the emerging regulatory framework on the EU-level have been made, neither by stakeholders nor by state organs. Stakeholders such as the Polish Chamber of Physicians, Public Sector Medical Trade Union, Federation of Polish Patients, National Association of Non-Public Hospitals and the Institute of Patient Rights all supported the Directive on patients' rights. In a joint letter to Polish MEPs, they urged a negotiation strategy that will make the adoption of the Directive possible and criticized the restrictions to free movement of patients that the Council has already imposed, such as prior authorization for hospital care (Rynek Zdrowia, 30.09.2010). However, this intervention came as late as in September 2009, when the legislative work on the Directive was very advanced and the Polish government had already positioned itself as one of the most skeptical players within the Council.

Due to its short membership in the EU, Poland clearly did not have an equal chance to pass through such a rich domestic reflection process on cross-border healthcare as the countries referred to above. On the other hand, there had been several occasions to start the preference formation process before the formal decision-making was launched. Poland participated in the ECJ

hearing in the *Watts* case in 2006, it responded to Commission's consultation regarding Community action on health services (2006) and was part of the Council High-Level Reflection Group on Cross-Border Healthcare (2006-2007). Nevertheless, the Polish government only started examining EU-level framework once the Commission had presented the proposal in July 2008. During the position formation stage, the Polish government did not seek stakeholder consultation, nor public or parliamentary debate. A Polish representative admitted that the responsible ministerial unit had to learn whom in the Commission to contact about a certain issue¹¹⁸. Admittedly, making binding legislation in the domain of healthcare was new and thus challenging for many health attaches in Brussels. A factor facilitating early information here was the continuity of staff in national health ministries and Permanent Representations. However, with health being a "newly Europeanized" policy area, this continuity was not always given.

This late timing might explain why Poland's official negotiation position was so general, with little reference to specific articles, with no exact demands to be accommodated by the intergovernmental deliberation. The comparison with the UK and Germany is telling. Both countries signaled already in their responses to Commission's consultations what aspects they would like to see dealt with. When the Commission drafted the proposal, both delegations used their networks within this institution to receive a copy of the draft. The UK even lobbied the Commission to insert rather general article stating the same conditions for staying and migrating patients. Subsequently, during the actual Council negotiations, the UK pushed to further specification of this provision to fit its interest. Clearly, an in-depth knowledge about the content of the proposal was a good base to prepare specific negotiation instructions. This type of intensive engagement was also lacking in the case of Spain, whose interaction with the Commission was limited to comments on the Commission's impact assessment or the response to consultation¹¹⁹.

6.3.1.3 Summary

The section has examined the policy positions advocated by the member states at the outset of the Council negotiations. It has argued that member states not only took different positions in EU negotiations, but also

¹¹⁸ Interview, Ministry of Health, Warsaw, 26.04.2012.

¹¹⁹ Interview, Permanent Representation of Spain to the European Union, 28.10.2010.

took their positions differently. First, while Northern EU member states acknowledged the necessity to codify ECJ case law, Southern and Eastern member states denied the EU the mandate to intervene in national healthcare systems when relying on the internal market provisions. The observation speaks to earlier findings whereby the level of harmonization and the strength of regulation form important cleavages in EU politics (Thomson et al. 2004; Thomson 2009). In our case, the Eastern Enlargement has strengthened the opponents of harmonization, since most CEE countries were not convinced by the need to transform case law into a binding legislation, despite declaring their sympathies for the idea of codification, and thus criticized the Directive as a whole.

The critique of codification also suggests that the respective member states preferred to safeguard domestic collective institutions instead of promoting individual rights through EU policies. In the context of the Eastern Enlargement, it might appear puzzling that CEE countries, despite their “liberal” sympathies, advocate this option. On the other hand, CEE’s “liberalism” referred to the relationship between business and collective societal interests, whereas in our case, public institutions were at stake. Therefore, the case suggests that CEEs might struggle with reconciling state policies such as health with the imperatives of EU integration.

Second, member states formed their positions differently. Quality of negotiation instructions varied from specific to general and so did the legislative interventions. The case has revealed that countries that had a good understanding of the dossier and specifically pre-formulated demands were more successful in placing their interests on the negotiation agenda. CEE countries did not belong to that group. The example of Poland has shown that the new member states struggled with uncertainty about the Directive’s implications for their domestic policies, they engaged with the dossier late and lagged behind other countries regarding the information about the proposal. The insight in the process of domestic preference formation revealed the national administration’s late reaction to the emerging EU-level legislative project and missing involvement of national stakeholders. Consequently, the case confirms the theoretical argument whereby the new member states would lack domestic resources and incentives to become intensely involved in EU-level legislative work (Chapter 3).

At the same time, providing a comparison between “leaders” and “laggards” and the respective histories of engagement with patient mobility on EU level, the case sheds doubts whether the negotiation capacity – observed in the case of Northern and clearly lacking in the case of Southern and CEE member states – is adequately grasped with the presence or absence of effective state administration and established stakeholders only. The cases of France, Germany and the UK demonstrate that engagement with EU policies and accommodation of new legal developments is a long and complex process. In this process, actors such as the public or the judiciary also matter, as they establish collective awareness of individual occurrences and thus exercise pressure on the government to take action. Engagement with EU policies resembles an interactive push-and-pull process between different domestic actors. The process intensifies as time passes and is “progressive” in the sense that it starts from policy-makers’ denial or ignorance and leads gradually towards engagement and adaptation.

Still, the relationship between institutional aspects of negotiation capacity, such as the quality of administration or stakeholders’ activism and the time-span of engagement with EU issues is an unclear one. In particular, the example of the Southern member states shows that even a 20-year-long EC membership does not automatically make a country a forward-thinking, well-informed policy negotiator. Other context factors come to mind, such as culture or economic development. For instance Marlene Wind has shown that a country’s relationship towards supranational judicial review is related to its judicial customs, as well as the type of democracy practiced (Wind 2010: 1039). Tanja Börzel, who has researched member states’ responses to Europeanization and has established a typology of *pace-setters* (active pushing for policies), *foot-draggers* (preventing or delaying costly policies) and *fence-sitters* (indifferent attitude), argued that the level of economic development is crucial in determining both the policy advancement and action capacity of member states (Börzel 2002: 208)¹²⁰.

To sum up, the case of the PMD demonstrates that CEE countries lag behind old member states – at least old-Northern member states in the quality of their legislative contributions. In our case, the new member states did not

¹²⁰ Admittedly, she has based her theoretical argument on empirical observations in the field of environment, where the link between material wealth and policy ambition is strong.

engage with EU policy and legal developments intensely and early enough to effectively formulate their concerns and place them on the legislative agenda. While state administration and stakeholders clearly underperformed in the domestic process of preference formation, it remains an open question whether they remain the sole reason for lacking engagement with the emerging health policy on the EU level. The literature suggests that accommodating and responding to EU policies not only requires time and experience, but might also be influenced by meta-factors such as culture or wealth. For these reasons, it remains open whether the new member states' capacity to shape the policy process will improve in the future.

6.3.2 Coalition strategies: Compounding versus mobilizing

The previous section concentrated on the preparation and articulation of bargaining positions in the Patient Mobility negotiations. Drawing on specific examples of Poland, Spain, Germany and the UK, the section has argued that member states strongly differed in their ability to place their interests on the negotiation agenda and that these differences can be traced back to the domestic interplay between the judiciary, the stakeholders, the public and government policies. The following section asks how the two Council camps – the opponents and the supporters of the Directive – organized their legislative behavior in the course of negotiation. It finds a discrepancy between the arithmetical strength and inefficacy of collective action within the opponents' camp. Furthermore, it argues that despite not aiming for one coordinated coalition, the supporters of the Directive were able to attract supporters for their claims and ultimately exercise collective influence.

6.3.2.1 Pitfalls of numerical strength

At the beginning of the legislative process, the opposition towards the Directive and its very purpose – codification of ECJ case law on patient mobility – was rather diffuse. Hesitant member states broadly criticized the project without making specific suggestions concerning how to improve it, while the French Presidency did not invest much effort in ascertaining what the actual problems were. However, the situation changed during the course of the legislative negotiation. In December 2009, Poland, Spain and their collaborators manifested their collective power and blocked the Directive in

the Council's attempt to take a formal decision. However, shortly thereafter, the coalition collapsed, whereby Spain assumed the Council Presidency and dissociated itself from its former allies. While Spanish behavior put an immediate end to the blockage, I argue that the opposition started dissolving much earlier. I show that there was a discrepancy between the arithmetical strength of the opposition camp and an apparent organizational and coordination failure of this group.

Besides sharing the caution and the hostility towards the project of the PMD as a whole, Southern and Central Eastern member states had one specific concern in common, namely the worry about the non-contracted providers being included in the Directive's scope (see section 6.2.3). The first country to voice this problem on the Council level was Ireland. Other countries, including Poland, subscribed to this concern¹²¹. At the beginning, the group faced a difficulty in defining what kind of healthcare professionals are actually meant, whereby the term "private providers"¹²² was in operation. This confusion was more than simply a brief situational misunderstanding. Apparently, the concerned countries failed to explain to the French Presidency why exactly "private" providers would be a problem. Rather than engaging with this difficulty, the French Presidency preferred to send a formal inquiry to the Council's Legal Service whether an exclusion of "private" providers from the Directive's scope was possible: the answer was negative (Council 2008c).

After the non-contracted providers had been properly defined, the issue finally managed to enter the main Council agenda under the Czech Presidency. It had been discussed several times on the Working Party level. The Presidency noted that many countries had doubts about including non-contracted providers in the Directive's scope and thus wished for an exclusion of these providers. However, the Chair warned the concerned countries that "exclusion" would be difficult since it represents a form of discrimination, which is prohibited by the Treaty. In fact, the language of the Treaty does not differentiate between organizational forms of medical treatment: healthcare provided for remuneration is a service and as such is subjected to one of the four freedoms (Council 2009d: 4). It seems that the group ignored the warning, given that it continued the demand for exclusion. Only Hungary proposed a

¹²¹ Interview, Ministry of Health, Poland, 26.04.2012.

¹²² Private care, healthcare provided in private establishments.

sub-article few weeks later that abandoned the language of “exclusion” and instead suggested to limit the reimbursement obligation to publically financed providers when the national legislation imposes such a condition on domestic patients. Strikingly, this proposal only received reluctant and selective support from potential allies and passed largely unnoticed (Council 2009a: 52).

Similar to the French Chair, the Czech Presidency was not ready to move on this point, opting for a Janus-faced strategy of evasion. On the one hand, it pointed at the Treaty and at the earlier opinion of the Council’s Legal Service on private care (sic!). On the other hand, it called the problem “political” and formulated a direct question to be answered by the COREPER and eventually the ministers: “Should all healthcare be incorporated into the scope of Directive?” (Council 2009e: 5). The ministerial debate confirmed that the worry about the non-contracted providers was widely shared. The Presidency noted that “more than a half of the member states expressed their preference for limitation to providers contracted to the local public health insurance or otherwise defined public system only” (Council 2009c: 3). Problematically, the concerned member states offered very different reasons why including non-contracted providers in the new regulatory regime would be risky. For instance, Poland stressed the state’s dwindling control over the quality and safety of healthcare services, while Portugal claimed that healthcare contracting is laid down in the Constitution, which the Directive would now violate. Slovenia and Slovakia pointed towards the financial crisis and the necessity to keep the public money in the public system, whereas Hungary and Lithuania suggested that reimbursing non-contracted providers offer cross-border patients more choice, thus generating inequality between outgoing and domestic patients¹²³.

Ministerial debate is, of course, only a tiny part of the legislative process and one could argue that the statements – delivered in short time-slots by politicians who lack detailed dossier knowledge – provide only a superficial explanation of member states’ preferences (“cheap talk”). Nonetheless, the Council’s debate on non-contracted providers is insightful from the perspective of collective legislative action. It suggests that concerned member states missed an opportunity to position themselves as a coherent coalition. The

¹²³ EPSCO meeting on 09.06.2009. Council videostream.

arguments they provided were too diverse to establish a coherent story line. Compelling and consistent story line has been shown essential for effective coalition building (Nedegaard 2007). In our case, the issue of non-contracted providers has been framed as a problem of finance, of social justice, of safety and quality or of compatibility of EU law with national constitutional principles. As I will show later in the chapter, the Council Presidency exploited this diversity strategically, as it responded selectively to the different implications of the non-contracted provider issue and thus was able to pull member states out of the hesitant group.

Finally, member states that wished to exclude non-contracted providers from the Directive's scope lacked a clear leader. While Spain and Poland could have performed this role, given that both are large member states, neither of them assumed leadership. Poland evidently struggled with the uncertainty concerning how problematic the inclusion of non-contracted providers actually was for the country's healthcare system. The pieces of expertise – with different conclusions – were at the government's disposal already at the position formation stage. However, it seems that Polish policy-makers only at later stage of negotiations decided to attach high salience to this issue. Only in December 2009, after the first attempt to vote, which was blocked by Poland, did the Polish Health Minister Ewa Kopacz first publicly admit that the government's greater worry is that domestic non-contracted providers will use the Directive's provision to obtain reimbursement from the public healthcare fund (*Dziennik Gazeta Prawna*, 26.11.2009). Such a development would generate huge additional costs (estimated 7% of the national insurance's budget), given the number of patients who use "private" healthcare and nowadays pay for it out of pocket. The problem of non-contracted providers had been discussed in the Polish Parliament, albeit only in June 2010, after the political agreement in the Council, although the parliamentary Committee for European Affairs had dealt with the Patient Mobility proposal four times since the European Commission launched the negotiation process¹²⁴.

Why did Poland "discover" the salience of non-contracted providers so late? Two types of explanation come to mind. The first is related to the

¹²⁴ Sejm RP, Komisja do Spraw Unii Europejskiej [Parliament of the Republic of Poland, EU Affairs Committee], Protocols from meetings on 12.09.2008, 12.12.2008, 03.06.2009, 27.11.2009. *Biuletyn* [public note] nr 56, 80, 122 and 154. Retrieved from <http://orka.sejm.gov.pl/SUE6.nsf/GlownyWWW?OpenFrameSet> [18.4.2012]

domestic coordination of preference formation and postulates disconnectedness between the administrative and the political level within the relevant ministries. According to this explanation, attaching salience is a matter of political judgment and thus is performed by high-level policy-makers, such as the minister herself¹²⁵. If the minister does not become involved sufficiently early to proclaim an issue as salient, the negotiating team does not have the necessary incentive to mobilize all the resources it has. In fact, Council policy-makers often mentioned in the interviews for this project the “disconnectedness between Brussels and the capital” as a general feature of CEE countries in EU-level negotiations¹²⁶. This observation finds confirmation in the literature on public administrations in the region (Goetz 2001: 1038). The second, complementary, explanation is that Poland gradually focused on the issue as it discovered that other countries have the same problem – so it is a legitimate concern. This account assumes that bargaining positions are not fixed before the negotiation, but develop through interactions with other countries. However, also in this explanation, late timing would be the main component of organizational deficiency.

The opponents of the Directive – Spain, Poland as well as other countries of the region (Portugal, Slovakia) – started organizing more effectively when it became evident that the Swedish Presidency would like to hold a vote. They met regularly to anticipate Presidency’s compromise proposals and prepare a common reaction to them¹²⁷. With the two large countries on board, it was not problematic to commit a blocking minority. However, the blocking minority was thin, with several former members of the “coalition” either compromising (Ireland) or seeking concessions on their own (Hungary) at that stage. Subsequent section shows how the Swedish

¹²⁵ This is how it worked in Germany in the present case. The relevant EU unit from the Ministry of Health prepared a list of policy issues within the Directive and suggested what the German position might be. The Minister Ulla Schmidt accepted all the suggestions except one, namely the inclusion of long-term care in the regime, stressing that this is important for her. This is how “long-term care” became the German negotiation priority. Interview, Permanent Representation of Germany to the European Union, 02.12.2010.

¹²⁶ Interview, Permanent Representation of Sweden to the European Union, 20.10.2010; Interview, Permanent Representation of Germany to the European Union, 02.12.2010.

¹²⁷ Interview, Permanent Representation of Sweden to the European Union, 20.10.2010.

Presidency exploited the looseness and lacking coherence of this coalition to break the opposition.

Certainly, the opponents of the Directive are a case of a failed coalition. They had a common interest – to prevent the Directive as a whole or at least to make sure that it will not pose any risk to the national systems of contracting - which would have lent itself to collective legislative action. Nonetheless, lacking coordination, organizational deficiencies and missing leadership by large countries prevented the group from seeing the interest accommodated.

6.3.2.2 Mobilizing for individual and collective interests

How did the supporters of the Directive organize their legislative behavior? Unlike the case of Directive's opponents, we would not necessarily expect one large consistent coalition here. The general purpose of the Directive – stopping uncontrollable case law development – did not need much collective lobbying, given that the Commission, the Presidencies as well as the EP stood behind it. Widely shared among member states, even those criticizing the Directive as a whole, was the postulate to limit the Commission's competence creep in coordinating national healthcare systems. The interests – having the Directive agreed with as much state autonomy preserved as possible – can be characterized as diffuse. Usually, diffuse interests do not yield incentives for actors to invest resources in organizing collective action (Olson 1965).

The second reason not to expect coordination of Directive's supporters would be a high specificity of member states' individual demands. As shown by the example of the UK and Germany, member states tried to make the Directive respect the “special features” of their healthcare systems. The UK wanted to see the gate-keeping role of general practitioners preserved and the regional differences in healthcare entitlements respected. Germany's aim was to keep its encompassing social system of long-term care out of the Directive's scope. Such demands might be too country-specific to recruit allies. Therefore, concerned member states could opt for highly individual and more targeted strategies – such as purposeful lobbying with the institutional players, such as the Commission or the Presidency (Panke 2012).

Such a strategy can indeed be found in the UK, albeit only before the Council formally started negotiating. Britain insisted that the Commission writes down a paragraph saying that “the same conditions and criteria of eligibility and regulatory and administrative formalities” apply to outgoing and

staying patients. The objective was to start with a general, cursory sentence in the Commission's draft before specifying it further later on in the Council, adding elements that would make the provision compatible with the NHS' *modus operandi*, such as "regional level" (where the entitlements in the UK are determined) or "assessment by a healthcare professional" (which is necessary to pursue further treatment). The UK managed to accommodate its interests with various strategies. At the Commission, the British delegation targeted various levels (both officials and the cabinet) as well as various DGs involved in the drafting process. As a British representative admitted, the Commission is generally interested in member states' opinion¹²⁸. However, the work has been carried out in the Council with the help of various other member states, whose support the UK managed to win.

The Commission was also well aware of the German position on long-term care¹²⁹. However, it ignored it and did not explicitly exclude the long-term care from the Directive. The reason might be that the Commission received a complaint of a German citizen who wished to transfer the entitlement to care services to Austria where his wife resided. The Commission might have wanted not to take such a radical position as an exclusion of long-term care from the Directive, before this case had been closed.

Both the UK and Germany communicated openly and intensely about their wishes and priorities concerning the Directive¹³⁰. Germany stressed that if long-term care remains in the Directive, it will vote against it. At the same time, the delegation invested significant effort in explaining the particularities of the German system of long-term care and why it should not fall within the scope of the Directive. The UK also invested in explanatory work, yet it refrained from threats. Within a few months, both countries managed to assemble a firm circle of supporters. Germany gained support from Austria, Slovenia, the Netherlands and Luxemburg, all of whom subscribed to German wording proposals of long-term care exclusion (Council 2009a: 39). The UK convinced Ireland, Portugal, Spain, Denmark and others to back the provisions

¹²⁸ Interview, Permanent Representation of the UK to the European Union, 01.12.2010.

¹²⁹ Interview, Permanent Representation of Germany to the European Union, 02.12.2010.

¹³⁰ The whole paragraph is based on interview evidence, see above.

on gate-keeping¹³¹. This alliance is particularly puzzling because Portugal and Spain (as well as Ireland, initially) rejected the project as a whole and actually belonged to the opposite camp.

Two mechanisms are responsible for the emergence of these very issue-specific coalitions. Firstly, both the UK and Germany were the first ones to raise the issues of gate-keeping or long-term care on the Council forum. Representatives of both delegations claimed in the interviews that delegations report to their capitals what other member states criticize in a project and national ministries examine these issues more closely. When the protagonist member states, besides raising awareness, also submit specific wording proposals, the chance is high that at least few member states will realize that the suggested amendments are good for them.

The second mechanism responsible for the British and German success in mobilizing allies is that both countries gained “respect and trust”¹³² for their numerous interventions on those parts of the Directive which were not directly related to these specific demands. Besides lobbying for their “special wishes”, the UK and Germany were very determined to weaken those provisions of the Directive provisions that would lead to further supranationalization of healthcare policy, such as the Comitology procedure, the Commission’s say on quality and safety standards or national contact points for patients seeking cross-border treatment. Both countries, together with others, lobbied for a stronger procedure of prior authorization in hospital care¹³³. Legal expertise and knowledge of the case law was needed here, because the ECJ has not been clear concerning whether and when prior authorization of hospital care is permitted and the Commission prohibited it all along in its draft¹³⁴. Not all member states had the necessary understanding

¹³¹ Interview, Permanent Representation of the UK to the European Union, 01.12.2010.

¹³² Interview, Council General Secretariat, 26.10.2010.

¹³³ Another example of individual member states dedication to shared concerns was the British-Irish-Danish recital proposal, according to which patients cannot derive from the Directive any rights of entrance, stay or residency in the country of treatment (Council 2009a: 33).

¹³⁴ The UK already offered an alternative legal interpretation of the status quo to the Commission’s view in the consultation responses. See: UK consultation response to Commission Communication on Health Services; http://ec.europa.eu/health/healthcare/consultations/results_open_consultation_en.htm [16.08.2012].

and command of the legal matter for this type of interventions¹³⁵. The Patient Mobility proposal was a large and complicated piece of legislation and thus challenging for policy-officers working on it. For this reason, Council members highly valued those member states that were ready to advocate shared concerns.

One possibility to empirically grasp member states' activism is to sum up their interventions: corrections, amendments, wording proposals or reservations (Table 1). The data is only available for one period of Council work, right in the middle of the negotiation process, from March to May 2009 during the Czech Presidency (Council 2009a).

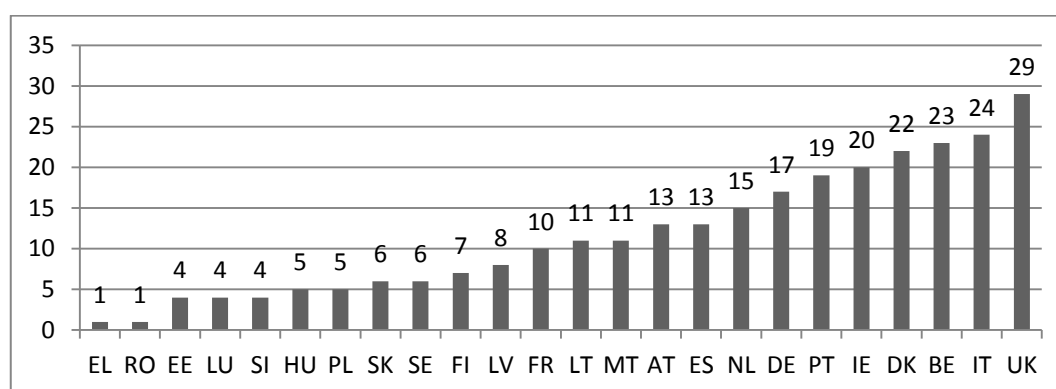


Figure 7 MS interventions in the Working Party on Public Health Mar-May 2009

Source: Author's compilation based upon the note from the General Secretariat to the Working Party on Public Health, 11.05.2009, Annex II (Council 2009a).

As the table shows, the UK was the most active member state during this period, followed by Italy and smaller old member states, such as Belgium, Denmark and Ireland, while Germany ranked seventh. The table shows an apparent contrast between old and new member states, as the latter made only four interventions on average. Southern member states perform better, except Greece¹³⁶. Spain's 13 interventions appear modest given its political weight and positioning as the leader of the opposition.

Despite the first mover advantages and the "respect" from which both the UK and Germany benefited, it took several months until the two countries

¹³⁵ Interview, former employee of the Permanent Representation of France to the European Union, 15.12.2010 (phone); Interview, Permanent Representation of Sweden to the European Union, 20.10.2010.

¹³⁶ Greece made only one intervention in the period of investigation. A member of the British delegation that Greece "did not say anything in the working party. Only at the end, it said it was against" Interview at the British Permanent Representation, 01.12.2010.

saw their interests accommodated. In the German case, the early Presidencies (France and Czech Republic) were hesitant to respond to the demand of long-term care exclusion. In the past, the Court already interpreted care services as medical services (AOK Bundesverband 2008: 6). Moreover, there were cases pending during the negotiations (Chamier-Glisczinski, C-208/07). The Czech Presidency argued that, sooner or later, the Court will subject long-term care to the same legal regime as medical services (Council 2009c: 6). Despite its own resistance, Czech Presidency formulated an open question to the COREPER and the ministers, whether they think the Directive should exclude long-term care. In the ministerial debate, Germany was able to win even more support than it previously had, securing Estonia, Latvia and Portugal on its side¹³⁷. No minister explicitly objected the idea of long-term care exclusion (Agence Europe, 06.06.2009). The German position was fully accommodated by the following Swedish Presidency.

The Directive's supporters, exemplified here by the UK and Germany, did not aim for explicit coalitions, as their demands were highly specific. They did not engage in coordination with other countries. Moreover, they were able to attract numerous supporters and ultimately, exercise collective influence. Thanks to early position formation and open and systematic communication of their preferences, both countries benefited from "bandwagon effects" – a mechanism whereby other delegation recognize the interests as their own and subscribe to the claims made by others.

6.3.2.3 Summary

We have seen here two strategies of collective action in the Council. Southern and Central Eastern European member states opted for what can be called compounding. Having similar fears about EU-level legislation in healthcare, these countries "naturally" came together, implicitly encouraging each other to work against the Directive. The primary strength of this coalition was its sheer size and the fact that it represented two important regional clusters of member states. The other strategy consisted in active seeking of allies. Countries applying it advocated highly specific individual interests, but were also active on issues that all member states considered important, like limiting the Commission's new powers in shaping healthcare cooperation. The

¹³⁷ EPSCO Council Meeting on 09.06.2009. Council videostream.

core of British and German coalition-activities was mobilization. The countries exploited the first movers' advantage, making other delegations aware of important corrections to be implemented to the proposal. Furthermore, they supplied legal expertise in areas of common interest, which brought them trust and respect, perhaps even inducing "loyalty" relations?

Our analysis suggests that mobilizing allies has some advantages over compounding into large numerical coalitions. The latter's most pronounced action takes place on the voting stage, as large coalitions can easily bloc a decision. However, capitalizing on only one resource, the numerical strength, makes these alliances fragile. Precisely in the vote situation, large coalitions are difficult to maintain, because they are subject to pressure by the Presidency, as the following section explains in more detail. The repertoire and the time-span of actions are broader for mobilized alliances, as they can approach the Presidency throughout the process, several times, and ask for accommodation of their specific demands. Both coalitions require some coordination effort if they are to persist. Compounded coalitions have to see that there is sufficient discipline when voting. In turn, mobilized coalitions need a very specific "input", such as wording proposals, expertise or legal arguments to support these proposals. Nonetheless, the risk of losing members is higher in the former case. The pitfall of regional alliances – the kind of collective action that the Eastern Enlargement made more likely – is that the countries might bet too much on their numerical strength, while underestimating the risks involved and ignoring the alternative tactics.

6.3.3 Dealing with fragmentation: The Presidencies' brokerage tactics

Previous sections have revealed that CEE countries as well as Southern member states failed to attract the Presidency's attention and managerial commitment. Possibly, the broad critiques and far-reaching, unrealistic demands discouraged the Presidencies from working more intensely on their problems. Confronted with this type of position articulation, the Presidencies opted for a strategy of evasion. For instance, the French Presidency forwarded the question of "exclusion of private care" to the Council's Legal Service and did not deal at all with the underlying reasons and worries that accompany this

demand¹³⁸. In turn, the Czech Presidency framed the exclusion of non-contracted providers as a “political question”, given that such a move would openly ignore what the Treaty says. Such question should be answered by COREPER or the ministers.

It is surprising that an obviously important question – whether the Directive will have an impact on the national systems of contracting healthcare – was dealt with in such a “superficial” way, at least by these first two Presidencies. Focusing on smaller issues that can more easily be edited and make the concerned delegations satisfied is arguably more in line with the Presidencies’ institutional interests than opening “black boxes” of domestic implications of the EU law. In the case of the PMD, the initial Presidencies were confronted with these two types of concerns and it seems that they chose to attend to those demands which were critical of the proposal, but supportive about the whole project, and ignore those positions, which in their radical version, would perhaps question the Directive’s rationale, namely codifying the ECJ’s case law. The assumption, which this reasoning is based upon, is that the Presidency wants to be an effective manager and achieve visible legislative progress, because this is what makes up for a “good” Presidency.

The evasion, applied by the French and the Czech Presidencies towards the Directive’s opponents, did not discourage them from taking more determined action. When the Swedish Presidency proceeded to vote, the opposition blocked the proposal. However, this turned out to be a sporadic success. As I will argue here, the Swedish Presidency had a major share in dissolving the opposition. Although Sweden itself did not achieve the political agreement in the Council – this has been possible six months later – it succeeded with winning a solid majority in favor of the proposal and exposed the weakness of the opposition. The dynamics that Sweden set in motion can be characterized as a “tipping point”. This mechanism comprises a large-scale change – in our case from criticism to support – occurring within a short period, as if a critical threshold has been reached.

When the Czech Presidency, the second Chair working on the dossier, finished its work in June 2009, it noted all but agreement in Council discussions (Press release 9721/2/09). The Council struggled with many open

¹³⁸ Interview, former employee of the Permanent Representation of France to the European Union, 15.12.2010 (phone); Interview, Ministry of Health, Poland, 26.04.2012.

issues, such as the legal base, the long-term care, the non-contracted providers, the possibility to refuse prior authorization and the cooperation on healthcare (ibid). When Sweden assumed the Presidency, it provided the delegations with a redrafted proposal already in the first month of its Presidency, in July 2009. With this gesture, it signaled that it is determined to work hard and finalize the legislative process during its mandate. Thus far, Sweden has been one of the most favorable countries towards the Directive's project.

The Swedish Presidency made a proposal that contained many concessions on issues previously debated in the Council. These concessions were designed as direct responses to the demands voiced earlier by various actors. For instance, the proposal contained an explicit exclusion of the long-term care, as wished by Germany (Council 2009b: 12); A new recital and paragraph allowed for exclusion of non-contracted and/or non-accredited providers, yet only in case of legitimate concerns about quality and safety (Council 2009b: 22); A new paragraph facilitated the refusal of prior authorization, providing examples of reasons for which this could occur (Council 2009b: 23)¹³⁹. Furthermore, the Swedish Presidency has rewritten Chapter IV of the Draft (cooperation on healthcare), stressing the voluntary character of cooperation, reducing the Commission's contribution from "guidance" to "assistance" in cooperation and introducing precautionary paragraphs preserving member states' responsibilities in healthcare despite emerging supranational cooperation.

The Presidency's strategy was twofold. First, Sweden wanted to make sure that the supporters of the project do not have any outstanding concerns¹⁴⁰. Having some large member states on the positive side was the first step towards winning a potential vote. Once a majority becomes visible, the remaining member states mobilize and aim at sorting out their issues before they got outvoted. While subjecting the Council to this soft time pressure, the Swedish Presidency also signaled the willingness to work on the contentious issue of non-contracted providers. This was the second part of the Swedish strategy.

¹³⁹ This was what the UK requested under the Czech Presidency (Council 2009a: 55)

¹⁴⁰ Interview, Permanent Representation of Sweden to the European Union, 20.10.2010.

The Czech Presidency noted in the protocol that more than half of member states had a preference for exclusion. Sweden rejected such a radical solution, arguing that it would mean an open discrimination between different forms of healthcare organization, thus violating fundamental principles of EU law. The Presidency pointed at the Commission and Legal Services' strong views on that point. However, Sweden was not discouraged by the dimension of the opposition and it decided to explore how the concerned countries would react to compromise proposals.

The Presidency proceeded gradually. First, it suggested recitals that said that member states could refuse reimbursing the non-contracted providers when they violate safety and quality standards. Subsequently, it proposed a recital saying that the Directive will have no impact on the organization of healthcare and social security systems in the member states. At this point, the opposition still comprised nine delegations¹⁴¹. The provision has been purposefully framed as a recital. However, the Presidency was prepared to shift it in the operative part of the Directive and present this move as a compromise¹⁴².

In parallel, the Swedish Presidency approached Hungary – the only country which has been previously trying to work on some solutions to the non-contracted providers problem, beyond exclusion of thereof. Hungary drafted own paragraph specifying conditions, under which providers might be excluded from reimbursement. Sweden and the UK helped with the specific wording¹⁴³. Consequently, a long, unclear and blurry paragraph emerged, whose legal significance and practical implications were assessed as low¹⁴⁴. However, after this paragraph was included in the Directive, several smaller member states cancelled their opposition, namely Latvia, Slovenia and Ireland.

¹⁴¹ HU, SK, IE, PL, LV, SI, RO, ES and PR (Council 2009f: 1)

¹⁴² Interview, Permanent Representation of Sweden to the European Union, 20.10.2010.

¹⁴³ Interview, Permanent Representation of Sweden to the European Union, 20.10.2010. Interview, Permanent Representation of the UK to the European Union, 01.12.2010.

¹⁴⁴ [reimbursement might be limited to providers that] “meet at least the same of equivalent standards and guidelines on quality and safety, including provision on supervision, as defined for providers that are part of the statutory social security system or national health system in the Member States of treatment, whether these standards and guidelines are given by laws and regulations or through accreditation systems or other systems of equivalent effect in the statutory social security system or national health system in the Member State of treatment” (Council 2009f: 31).

Next to Hungary, the Swedish Presidency also targeted Italy for bilateral work. Italy was previously quite vocal in its opposition and it had several more specific problems (see the number of interventions in section 2.2.2). During the Czech Presidency, it subscribed to wording proposals that would limit the definition of a “health professional” to contracted providers (Council 2009a: 43). However, it was no longer found in this camp a few months later.

One of Italy’s concerns was the notion of the patient’s “informed choice”. Italy wanted the Directive to make sure that patients who go abroad understand the risks and the potential differences in safety and quality compared to those they are used to. During the course of negotiations, Italy drafted paragraphs that would allow member states to establish procedures to ensure that all migrating patients have the knowledge about their provider of choice. These suggestions have been ignored by the Czech Presidency (Council 2009a: 51). In turn, Sweden was more accommodative and suggested developing the notion of “informed choice” in the recitals (Council 2009f: 13). Italy still had reservations, although it agreed to refrain from blocking.

The bilateral work with Hungary and Italy were important carriers of change within the Council and of high symbolic value. The case of Hungary suggested that what had hitherto been debated as a fundamental contradiction in Treaty law and national healthcare systems could be overcome in detailed phrasing of paragraphs, if only there was a readiness to negotiate. As for Italy, the Presidency was proud to have a former vocal opponent on its side. Of course, it remains an open and a provocative question whether it was indeed Sweden’s legislative work - these few corrections performed in a hurry and under pressure - that caused Hungary and Italy’s changes of strategy. An alternative interpretation would be that those countries simply wanted to get on board and searched for a good pretext. If we assume that there had been no relevant domestic change in these countries during the last 17 months (the course of the negotiations so far), according to the logic of a two-level game, it must have been a Council-level factor that was responsible for these countries’ switching sides: lacking hope that the opposition would stand united and achieve its aims or a political bandwagon effect, understood as a move alongside the majority.

The pressure for agreement not only came from the Presidency's side. As a great enthusiast of having a Directive rather than Court rulings, the UK became proactive after having all of its own concerns satisfied, and approached the opposing countries informally. There was a dinner between the British and Polish delegation, during which the UK explained to Poland that it had the same problem with non-contracted providers¹⁴⁵: they are not reimbursed domestically, but this discrimination cannot hold in cross-border transactions. Poland's wish to exclude these providers from the regulatory regime of the Directive would contradict what the Court has been arguing for years. While this circumstance is politically uncomfortable, it has to be accepted. Poland replied with a power-argument: all large member states had their interests accommodated and given that Poland is a large member state, it should also enjoy this privilege. At this point, it became clear that Poland and its close supporter Slovakia would be available for compromise. Poland's demands were no longer dealt with, neither by the Swedish nor the upcoming Spanish Presidency.

6.4 Conclusion

The PMD provides an example of Council decision-making in which the very fundamentals of the given policy have been heavily contested. The main legislative contention touched upon the question whether ECJ case law on the rights of individual patients' should be transformed into rules that would bind all health systems across the EU.

The Eastern Enlargement affected the structure of this conflict. The new member states reacted to the project, the origins of which dated back to the time before accession, with hostility and they refused to support EU legislation that could potentially have disturbing implications for their state-centered healthcare systems. The fact that member states with similar healthcare systems have already dealt with the challenge of the case law, did not alleviate CEEs' opposition. The Southern member states held similar views on the project, although due to their longer membership, one could expect a closer familiarity both with the case law and with the idea of codification.

The analysis demonstrated that lacking domestic engagement with the emerging health policy at EU level prevented both the Southern and the CEE

¹⁴⁵ Interview, Permanent Representation of the UK to the European Union, 01.12.2010; Interview, Ministry of Health, Poland, 26.04.2012.

member states from forming viable negotiation positions on the new Directive. The countries were unsure about what they actually wanted, they made unrealistic and poorly founded demands or discovered the issue salience too late (the case of Poland). Despite their arithmetical strength, they did not manage to have their substantial concerns accommodated – such as the exclusion of non-contracted providers - and they opted for the ultimate influence strategy, namely blocking. Nonetheless, the group was not sufficiently coordinated and organized to sustain this strategy. Subjected to “divide and rule” tactics of the Chair, the group has been gradually losing members, until the vote-richest and most vocal opponent, Spain, after assuming Presidency, applied the “small compromise” method to itself and switched sides. Organizational deficiencies of Southerners and Central Eastern Europeans were manifest on the level of single countries, but also in the way in which these countries coordinated their legislative behavior among themselves. Clearly, the organizational deficits of the Directive’s opponents are relative, i.e. they became apparent when compared with the proponents’ bargaining strategies.

The PMD provides strong empirical support to the argument that *agency matters* in Council politics. The distribution of policy preferences and the voting power, which the conflictive parties dispose of, are important, but what ultimately happens in the Council and how agreement is reached depends on the means and methods with which member states place their interests on the negotiation agenda, as well as on how they organize their legislative behavior. The case shows that policy expertise, anticipation (of how other delegations will approach the dossier) as well as the strategic ordering of negotiation priorities serve as important negotiation resources. The observation that delegations vary in how (if at all) they order their preferences suggests that the process of determining salience works differently in different member states.

Conceiving and implementing effective negotiation strategies remains a major challenge for Central Eastern European member states, even five years after their EU accession. Direct causes for their lacking impact on EU-level negotiations lie within the poorly coordinated administrations and inertial civil society, which lends plausibility to the theoretical argument developed in Chapter 3 of this thesis. However, the comparison with selected Northern and

Southern member states sheds doubts whether the static factors such as “administration” or “civil society” provide the full explanation for lacking domestic engagement with EU policies in CEE countries. The advancement of regulatory policy might also be driven by more general factors, such as wealth, culture or simply time and experience.

Moreover, the domestic preparation of EU-level positions is not the only challenge that the new member states confront. The faith of the Patient Mobility-opposition shows how fragile large, but fragmented coalitions are. They are particularly prone to domino-kind dissolution, which the Presidency can easily initiate. When acting together, the new member states will necessarily form fragmented coalitions, because they are numerous yet (mostly) small.

Despite being appealing, the findings warrant a healthy dose of caution. There are two policy characteristics of the PMD that might have influenced the negotiation dynamics, thus making this dossier distinguishable among other Council businesses. First, the dossier is a case of strong pressure for agreement. The purpose of the Directive was to prevent the ECJ from further advances on individual patients’ rights. The normative argument that “legislation by the Council is always better than the legislation by the Court” was constantly brought up by the Commission, the EP and the Presidencies¹⁴⁶ (Agence Europe, 30.09.2008). The maintenance of own authority demands that member states go along with this argument. In fact, the Directive’s opponents never openly admitted that they would prefer an unregulated *status quo*, although their behavior provides strong support to this presumption.

Second, healthcare policy-making on the EU level is accompanied by very high degree of uncertainty. The future magnitude of patient mobility cannot be accurately predicted, because individual behavior in this sensitive area depends on numerous factors ranging from social status to values. For the time being, it is not apparent what the material costs and benefits of facilitated patient mobility will be for EU member states, since both inflow and outflow of patients might pose problems and all EU countries are potentially confronted

¹⁴⁶ The Presidencies additionally argued that the omission of healthcare services from the Services Directive has left a grey area to be filled. MEPs stressed that through Directives like this one, Europe is “doing something” for EU citizens (Agence Europe, 30.09.2008). Interview, Permanent Representation of Sweden to the European Union, 20.10.2010; Interview, former employee of the Permanent Representation of France to the European Union.

with both dynamics. In the PMD, *typical* zero-sum conflicts, such as redistribution or regulatory competition, were not apparent. The situation was aggravated by the fact that health remains a new topic for national EU-politicians and the EU a new topic for national health policy-makers. In general, these policy characteristics favor “integration by stealth” (Majone 2005). In our specific case, they might have skewed the bargaining process towards achieving a legislative decision.

7 Drawing Lessons – Refining the Explanation

This chapter reflects upon the case study findings, tying them up to the process-centered explanation of the Council's post-Enlargement legislative robustness as developed earlier in the book. The cases provide similar insights on the core elements of the theoretical framework, from the new member states' bargaining performance to the role of the Presidency in efficiency promotion. In contrast, the cases differ with regard to politicization and the preference constellations among the largest member states. I argue that these two differences do not contradict my claim about the secondary role of enlarged membership and of CEE countries for the legislative dynamics within the Council. While both cases demonstrate that the Council is an internally differentiated institution, driven by asymmetries and fragmentation, it remains unclear what the crucial difference among member states is: their ability to get their policy interests across or their ambition to shape EU-level policies. The distinction between ability and ambition is relevant for the enlarged Council, because these two explanations yield different predictions on CEEs' future bargaining behavior. While abilities can be enhanced by learning, ambitions are unlikely to change. The last section argues that more research on the domestic processes of preference and salience formation is needed to advance our understanding of these two notions and their relationship.

7.1 Synthesis of the case study findings

What are the major lessons to be drawn from the case studies about the negotiation dynamics in the enlarged Council? In both analyzed dossiers, the Eastern Enlargement visibly affected the structure of the Council conflict. The new member states from Central Eastern Europe proclaimed shared "bloc" policy preferences. Furthermore, they positioned themselves alongside the familiar conflict lines, harmonization and regulation, known from pre-Enlargement analyses of the Council's political space. These lines have been

traditionally occupied by alliances of Northern and Southern member states. Our cases confirm that this dualism persists and is now supplemented by a variable Eastern bloc.

Both the Working Time Directive (WTD) as well as the Patient Mobility Directive (PMD) revealed a contrast between the conflict structure, which was clearly affected by the Eastern Enlargement, and the dynamics of Council negotiations, where the impact of enlarged membership and of the new member states was much less discernible and ambiguous, at best. The detailed, sequence- and interaction sensitive analysis of the legislative process revealed that, although CEE governments took bloc-like positions, signaled salience, participated in relevant coalitions and did not shy away from casting votes, they were not the drivers of the legislative dynamics. Rather, they went with the negotiation flows initiated and controlled by other players, such as the large member states or the Presidency. If anything, the Eastern Enlargement only aggravated bargaining dynamics, which would have most likely been set in motion anyway. It appears that enlarged membership is reflected in Council politics to a much lesser extent than it is in the positional structure of the decision situations. This observation – common for both cases – lends plausibility to the analytical reasoning outlined at the very beginning of the book. In the first three chapters, I argued that the absorption of the Eastern Enlargement should not be reduced to the question where the new member states are positioned in the (aggregate) conflict structure relatively to the old members, but that it is the process within the Council – the interactions between the countries and how these are channeled by the procedures – where the effects of large numbers and diversity are cushioned.

7.1.1 The key observations

The case studies offered four main insights on what happened with the enlarged membership on the long way from the formal opening of the Council negotiations until member states achieved political agreement through the vote. Firstly, the new member states from Central Eastern Europe faced severe problems defining their policy interests, explaining them coherently and putting them across the legislative arena. The late timing of position formation, uncertainty about the domestic implications of EU policies, lacking policy knowledge or late discovery of salience prevented these countries from

autonomous and persuasive interventions in the policy-making process. In the WTD, this led to CEEs' policy positions being exogenously- rather than endogenously-driven. The manifest liberalism of the newcomers was more strongly linked to the mobilization efforts by the UK, than to the domestic process of preference formation, as the latter was characterized by uncertainty what to do. In the PMD, the newcomers had quite distinct domestically-derived policy preferences, characterized by the hostility towards the project and the worry about the non-contracted providers being included in the Directive's scope. However, they failed to translate these preferences into compelling and well-grounded bargaining positions. In both cases, CEEs lacked domestic policy input as well as the domestic engagement with the relevant issues to capitalize upon when entering the EU-level legislative arena.

The new member states' deficiencies in formulating and advancing own policy interests had implications for the collective dynamics within the Council, such as coalition processes or the management of the negotiations by the Council Presidency. CEEs compensated their limited capacity to craft individual bargaining strategies through subscribing to established member states' positions and blending into their negotiation tactics. In both analyzed cases, alignments of considerable size between old and new member states emerged: In the WTD an alliance between the UK, Germany and the CEEs, in the PMD one between Spain, Portugal, Italy and the CEEs. Nonetheless, how these alliances ultimately shaped the negotiations and the extent to which they achieved their negotiation objectives was highly dependent on the resources and strategies that the respective initiators were willing and able to employ. Thus, the second important observation about the post-Enlargement Council is that member states with high mobilization capacities – those that can intervene on behalf of a group – are empowered by enlarged membership, because they benefit from fellowship of CEE countries.

Thirdly, while large member states, such as the UK or Germany, seem to have benefited from the Eastern Enlargement, size appears as a necessary, but not a sufficient condition for member states' control over the legislative process. Early preparation of the bargaining activity and anticipating and including others in own strategic choices, boost member states' chance to transform their numerical voting power into legislative influence.

Finally, the decision-making in the Council has an in-built asymmetry in that the policy decisions taken within the first few months crucially affect further legislative work. The “path dependency” of the legislative dynamics is a by-product of the Council Chairmanship. While early Presidencies do not shy away from amendments of the proposal – if that is what promises to advance the dossier, the subsequent ones proceed incrementally and draw upon the predecessors’ achievements.

The new member states’ constrained ability to produce their own legislative contributions turns these countries into amplifiers of old member states’ bargaining behavior rather than a powerful coalition capable of shifting the decision-making process in their preferred direction. Accordingly, the ultimate drivers of Council politics have remained unaffected by the Eastern Enlargement. In both case studies, old, large member states, such as the UK, Germany, France and Spain provided the most significant input into the legislative process and largely controlled the bargaining dynamics. Consequently, an EU that has managed to secure a legislative decision despite a disagreement among the largest member states has a good chance of overcoming conflicts among 25 members. This is all the more true as the Presidencies’ brokerage techniques have an even greater efficiency leverage when applied in a larger environment.

7.1.2 Differences between cases and what we learn from them

The WTD and the PMD originated from the most encompassing policy area the EU legislates on, the regulatory policy. The dossiers dealt with rules (labor market, health systems) and rights (internal market), as well as with questions related to state’ intervention (as opposed to individual freedom) and national competences (as opposed to EU-level harmonization). The cases represented a certain type of Council politics, namely instances of antagonistic, symmetrically distributed preferences, high conflict and salience, understood *a priori* as a potential for all governments to become interested and involved in the legislative negotiations.

While it is important to stress the similarity of insights the two cases provided on new member states’ agency, the coalition dynamics and the management of conflict, it is also interesting to ask about the differences they reveal. Indeed, the negotiations on the WTD and the PMD differed on three

dimensions: the intensity of the policy conflict, the politicization and the preference constellation among the largest member states. I argue that these differences lend further plausibility to the claim of limited impact of the Eastern Enlargement on the Council's legislative performance and internal dynamics. The intensity of contestation along the left-right dimension does not directly depend on the number or identity of group members. Furthermore, the apparently pivotal status of preference alignment between Germany, France and the UK only supports my presumption that member states exercise highly unequal influence on the bargaining process.

7.1.2.1 Conflict intensity

The WTD generated a more severe conflict among member states than the PMD, although both dossiers match several criteria of “conflictive” policy-making¹⁴⁷. In fact, the former came much closer to legislative paralysis than the latter. While the WTD spent in the Council 45 months (2,7 of the average¹⁴⁸), the PMD needed “only” 23 months to become agreed (1,4 of the average). A package deal was necessary to reach agreement on the Working Time, while no such operation was needed in the Patient Mobility case. Finally, the WTD ultimately failed in the inter-institutional legislative deliberation between the Council and the EP. The disparity of positions between the Council majority and the EP majority, which accounts for this failure, had been also present in the legislative bargaining within the Council, although the latter was ultimately able to deliver the political agreement. Plausibly, the variance of the conflict intensity could relate to one or both remaining differences between the dossiers, politicization and preference configuration among the largest member states.

7.1.2.2 Politicization

Politicization means that increasingly polarized opinions, interest or values are publicly advanced towards the process of policy formulation (De

¹⁴⁷ There is no universally accepted measure of conflict in the Council of Ministers. Clearly, both dossiers analyzed here were conflictive. The distribution of policy preferences was antagonistic and regionally structured, as the geographical blocs of member states (North, South and East) advocated different positions. In both cases, the number of outvoted countries exceeded the Council average of three negative votes (Plechanovová 2011: 91), as four delegations denied their support in the Patient Mobility case and five rejected the Council agreement on the Working Time Directive.

¹⁴⁸ Median of 500 days for a directive (Hertz and Leuffen 2011: 199).

Wilde 2011: 572). In the practice of EU politics, this often includes the involvement of competitive party politics in response to the demands of mass public or other constituencies (Magnette and Papadopoulos 2008: 5).

The WTD differed from the PMD in that it became politicized along the left-right dimension¹⁴⁹. Social-democratic parties and trade unions became interested in the WTD, because the EU-wide working time limit of 48 hours per week was seen as a social counterweight to an otherwise business-friendly orientation of the European integration project¹⁵⁰. The revision of the Directive in mid-2000s became for these actors yet another occasion to demonstrate their commitment to the idea of social Europe¹⁵¹.

Without entering into details of this aspect of the policy-making process, the case study revealed that this occasion has been seized: by trade unions, by the socialist group within the European Parliament¹⁵², by social-democratic governments of Spain, Italy and Belgium (Almeida 2012: 131-132) as well as by the French government and Presidency, who ever since 2005 had been challenged domestically by the *Parti Socialiste* about the neo-liberal direction in which the EU integration is heading (Crespy 2010: 1261-1265). The politicization, which also included extensive media coverage on this Directive, can explain why the progress of the negotiations in the Council was hampered by “non-negotiable positions of principle”, such as represented by Spain or the United Kingdom, or occasional hardening or softening of governments’ positions, such as in the French case. The politicization of the opt-out issue effectively countered the main motivation to conclude the

¹⁴⁹ This is quite rare in the Council. Ministers are seen as guided by “national interests” – technical or economic in nature, rather than by political ideas. Only few empirical studies find the influence of the competitive left-right dynamics in the Council of Ministers (Aspinwall 2006; Hagemann and Hoyland 2008).

¹⁵⁰ This is, in fact, the genesis of the 1992 Working Time Directive. In addition, in several EU countries, such as France, Ireland or Italy, the implementation of the Directive was part of the social-democratic labour market reforms in the late-1990s, in line with the idea that diminution of working hours might contribute to unemployment reduction (Falkner 2005: 103-110). The history of the dossier certainly contributed to its symbolic character too. In particular, as the opt-out has been introduced as a temporary exception at UK’s wish, later demands to make it a permanent institution might have appeared unfair to those countries which, back in the 1990s, made this concession.

¹⁵¹ In the mid-2000s, following the Services Directive and the Constitutional Treaty, the Working Time Directive became a representative of wider debates on social versus liberal Europe (Dimitrakopoulos 2013; Statham and Trenz 2013: 970-977).

¹⁵² Almeida notes that the Socialist Group within the EP has voted rather coherently on this issue, British Labour MEPs including. Only Greek PASOK MEPs differed from the majority of their Socialist colleagues (Almeida 2012: 131).

legislative process, namely the wish of all EU governments to “correct” ECJ’s interpretation of on-call time as working time.

Most countries attached higher salience to the redefinition of the on-call time and the introduction of the “inactive on-call time”-notion, than to the opt-out issue. We know this thanks to the recently released DEU data set, for which experts and participants had been *a posteriori* interviewed about their issue positions and the salience (Thomson et al. 2012). Only Spain, Estonia and the UK attached the same salience (80/100, 90/100 and 90/100 respectively) to both issues¹⁵³. The salience distribution would suggest that governments should prefer solving the on-call problem instead of letting the opt-out issue paralyze the negotiations. However, the politicization has pushed the latter in the foreground of the decision-making process and can account for conflict entrenchment and several months of blockage in the Council.

The PMD had also been described as highly salient by the interviewees. The dossier had been anticipated and the long duration of the drafting process within the Commission already suggested that significant regulatory challenges would emerge at the Council’s negotiation table (EUobserver, 19.12.2007). However, politicization along left-right dimension was missing here. After the exclusion of health services from the Services Directive, the EP positioned itself as a supporter of a Healthcare Directive, perceiving an opportunity for patients’ equality and freedom to become strengthened by EU rules (EUobserver, 23.05.07). Subtle signs of a left-right conflict within the EP appeared later on, when Green and far-Left MEPs voted against the proposal on the grounds that it would only benefit wealthy citizens (EUobserver, 23.04.09).

Although the arguments made in the Council by Southern and Eastern delegations sometimes invoked the notion of solidarity with poorer citizens being the fundament of public healthcare systems, it was rather unclear how these calls related to the Directive’s wording. To put it bluntly, Council debates in the Patient Mobility case were about interpreting the case law, rather than about the presence or absence of a “simple” provision, like in the WTD. This might be one reason for missing politicization. The other reason could have been that, according to Eurostat, more than 50% of European citizens would be

¹⁵³ The data is available under <http://www.robertthomson.info/research/resolving-controversy-in-the-eu> [21.08.2013].

willing to travel to another country to receive medical treatment (Eurobarometer 2007: 5). If presented to the broader public, the Directive would have presumably enjoyed popular support.

7.1.2.3 Preference configuration among the largest member states

The remaining significant difference between the two cases refers to the preference configuration among the six largest member states, namely Germany, United Kingdom, France, Italy, Spain and Poland¹⁵⁴. The WTD witnessed an almost symmetric distribution of the large countries on the opposite sides of the policy conflict, whereby Germany, the UK and Poland supported the opt-out and France, Spain and Italy opposed it. In the PMD, there was also a three-against-three division, although this time the European North – Germany, France and the UK – advocated shared preferences for constrained codification, whereas the South-East had quite deep difficulties accepting internal market law being applied to the domestic healthcare systems.

Can it be that the constellation of member states, independently of the power equivalence between the “camps”, shapes the likelihood of a dossier to pass the Council? Indeed, a blunt conclusion to be drawn from our two cases is that once there is preference convergence among the large Northern European countries, there is a good chance for the Council of 25 members to succeed in passing legislation. Clearly, two legislative cases represent an extremely narrow empirical base to make such a bold claim. However, there are further empirical observations that lend plausibility to this conclusion.

In his widely acknowledged book, Moravcsik has argued that the large stations of the EU integration project can be explained by the preference convergence between Germany, France and the UK (Moravcsik 1998). Börzel has shown – albeit with no explicit reference to the countries’ size – that once the Northern EU countries push for an EU-level decision and exercise policy-leadership, the South can hardly prevent law adoption (Börzel 2002)¹⁵⁵. Finally, in her expert interview-based inquiry about the different power dimensions in the Council, Bailer found that the “overall power” of similarly large delegations is assessed strikingly differently: while the scores of UK,

¹⁵⁴ Size is defined here as the number of votes each of these countries hold: 29 votes for DE, UK, FR and IT, 27 votes for ES and PL.

¹⁵⁵ Similar findings provided by Genschel (2002) in his analysis of EU taxation policies.

France and Germany were around 90, Spain scored 75 and Italy only 70 (Bailer 2006: 366).

The French-German-British constellation shows up in Plechanovová's analysis of voting patterns in the enlarged Council. She argues that a core-periphery dynamics operates in the Council, whereby a supportive "core" exercises centripetal effects on those "peripheral" actors who are prone to contest a decision (Plechanovová 2011: 102-104). Before Enlargement, the "core" cluster¹⁵⁶, which included France, Germany and the UK, exceeded the qualitative majority (QM) requirements by ten votes. This means that any of these large countries might not have been needed to approve a proposal (Plechanovová 2011: 103). After Enlargement, the most probable positive coalition no longer includes the UK and lacks 26 votes to reach the QM. The probability of a contested legislative act to pass QMV now depends on more frequent naysayers joining the core cluster. This might be Poland, Spain or the UK or a combination of the smaller countries who find themselves outside of the core, namely Sweden, Finland, Denmark, Czech Republic, the Netherlands and Lithuania (Plechanovová 2011: 95). While agreeing on a dossier without Germany, France and the UK being on the same side is possible, Plechanovová's findings suggest that the position of the UK in relation to France and Germany is now more critical for the chance of a winning coalition to emerge than prior to the Enlargement.

What all these findings subtly point at is the "oligarchization" of the enlarged Council. The "iron law of oligarchy" presumes that, once a group becomes larger, the demand for leadership grows and can only be satisfied by the "few". Consequently, some actors accumulate more influence than others (Michels 1962 quoted after Bailer et al. 2009: 165). From this perspective, the impact of Enlargement on a group is that it deepens and aggravates the functional differentiation among the group members.

The "oligarchization" hypothesis is compatible with the analytical reasoning this project relies on. In the literature review, I expressed strong skepticism about the assumptions of member states' uniformity and equality, as embodied in the "cooperative culture" approach. The argument advanced in Chapter 3 postulated that CEE countries will deliver a distinct bargaining

¹⁵⁶ The core cluster in the analysis of Council voting represents the group of countries which most often agree, i.e. vote in the same way (most probable coalition).

performance when co-deciding EU policies. Pointing at the likelihood of the Central Eastern European member states experiencing shortcomings in defining and advancing their policy interests, I expected a limited (direct) impact of these countries on the negotiation process. I supported this expectation with information we have on executive administration in Central Eastern Europe and interest group coverage, both important pre-requisites of shaping supranational policy-making.

The case studies confirmed that administration as well as stakeholders' involvement matter for how countries negotiate EU law. Evidently, these two constituted a handicap of the new member states. However, the sketchy comparison of domestic engagement with EU affairs among selected Eastern, Northern and Southern member states, which the case studies also included, suggested that EU-level legislative agency comprises more than simply the ability to formulate a position; rather, it is shaped by more complex factors than merely the professionalism of the public service and the presence of relevant interest groups. Going beyond ability leads us to the notion of ambition (Kassim 2000: 243-254). Whereas the theoretical framework of this project explicitly targeted the question of ability, ambition to shape policies pro-actively might also play a role for how (CEE) countries practice their EU membership and their performance in the Council of Ministers. In the following section, I argue that differentiating between the two has implications for the time horizon of the project's findings, particularly concerning the question of whether learning effects inherent to EU membership will increase CEEs' impact on EU-level policy formulation. Furthermore, I examine the empirical evidence pertinent to EU-related ambitions of the new member states.

7.2 Refining the agency-based argument: Ability versus ambition

Is CEEs modest contribution to Council politics a question of lacking ability or lacking ambition? The distinction between ability and ambition was introduced sketchily by Kassim and colleagues, along the way of mapping and explaining the diversity of coordination structures in EU member states (Kassim et al. 2000; Kassim et al. 2001). The authors argued that the sources of national variations in abilities and ambitions for making EU-level policies

include the administrative and political opportunity structures as well as values related to the exercise of public power and domestic perceptions of the EU (Kassim 2000: 250). Arguably, administrative and political opportunity structures come very close to the notion of ability, as they directly concern those parts of the domestic polity that directly prepares negotiation positions for the Council delegations. In turn, national policy styles and attitudes towards the EU dive deep into the world of domestic politics and relate rather to ambitions. The missing ability to put forward a negotiation position might be transitory. Individuals in administration, interest intermediation and government, who are central in the process of position formulation, reflect the successes and failures. They can learn. In contrast, ambitions will only change very slowly, as values and conceptions of public authority or the country's role in a broader political context, are deeply enrooted in culture, history as well as in economic and political structures.

7.2.1 Missing ability? CEEs' prospects to *learn* legislative influence

The notion that civil servants who work in Brussels gradually change both their attitudes and their actions when regularly exposed to collective legislative work with colleagues from other EU countries is a famous argument in EU studies (Lewis 2003; Beyers 2005; Checkel 2005; Zürn and Checkel 2005)¹⁵⁷. Therefore, we can plausibly assume that the individuals responsible for a country's legislative actions learn, which might have a positive impact on the country's ability to maneuver in the EU's legislative system. Consequently, as time passes national delegations might become more effective in advancing their interests and thus have greater impact on Council politics.

What kind of learning effects can the length of EU membership trigger in CEE countries and to what extent can we expect a change in their bargaining agency over time? I argue that three elements of legislative behavior can be directly influenced by individuals, such as Brussels-based staff or top-level civil servants: the information flow about upcoming legislative initiatives, group coherence when aligning with other CEEs and the recourse to recorded discontent.

¹⁵⁷ How far these changes go and whether they cause a shift from national towards European loyalty, is not yet clear (Lewis 2005; Lewis 2008b).

As time passes, CEEs Brussels-based civil servants will expand their networks within EU institutions. On this way, they are likely to be better informed about upcoming policy initiatives and can pass this information on to the domestic arena. With this part of CEEs' bargaining agency becoming more efficient, the domestic administration and stakeholders will have more time to prepare negotiation positions and bargaining strategies.

The reasons to expect more group coherence among CEEs are twofold. First, coherent appearance is a matter of coordination among delegations and this is what Brussels-based staff usually does. The better CEE staff know each other, the higher the chances that network resources will be effectively exploited. Second, interviewees for this project often mentioned that Southern member states were much better at establishing a "collective appearance" than the CEEs¹⁵⁸. Given that cultural and historical similarities to draw upon are present in both regions (Beyers and Dierickx 1998; Naurin and Lindahl 2008), only the duration of EU membership sets these groups apart. Arguably, with the CEE region being more fragmented than the EU South, collective action might be more difficult to achieve.

The final change of behavior, which the enduring EU membership already seems to have triggered, is a more assertive usage of negative votes. While the new member states have casted relatively few negative votes or abstentions in early days of their EU membership, the numbers started to grow slightly some two years after accession (Hagemann and De Clerck-Sachsse 2007: 17-19). Presumably, the new member states understood that casting a negative vote is a perfectly legitimate expression of own standing in the Council, when vital national interests are at stake. One exception to this pattern was Poland, whose behavior has been described by Council practitioners as disturbing the established practices (Novak 2013: 8). Council participants, interviewed by Novak, made clear that Poland differed from other member states in the way it expressed dissatisfaction: It pointed to "vital interests" too often, was too explicit about its intend to vote "no", announced this too late and in wrong moments (Novak 2013: 8, 11). Meanwhile Poland's rates of recorded

¹⁵⁸ Interview, Council General Secretariat, 19.10.2010; Interview, Permanent Representation of Slovenia, 25.11.2010; Interview, Member of the Dutch Permanent Representation and the Presidency Team, 26.10.2011. Interview, former employee of the Permanent Representation of France to the European Union, 15.12.2010.

disagreement have declined, which could be interpreted as a sign of learning¹⁵⁹.

Can these three effects increase the quality and impact of CEEs' legislative contributions? There are good reasons for skepticism, the first of which relates to the likelihood of these learning effects. One condition for learning is a sufficiently long appointment of Brussels officials (Beyers 2005: 921). However, precisely the discontinuity of staff was one of the major problems of CEE countries in the first years of their EU membership¹⁶⁰ (Puetter 2008: 487). Furthermore, for reasons related to group size, CEE countries only gain the opportunity to assume the rotating Council Presidency later in their membership and less frequently than their older counterparts. Yet, country literature suggests that chairing the Council is an important component of a country's "apprenticeship" in the European Union (Laffan and O'Mahony 2008: 60-77).

The second reason for skepticism relates to the question what part of the complex phenomenon of legislative agency do the three elements discussed above actually cover? Arguably, efficient information flows, an ability to create a coherent group appearance and the assertiveness when voting are important tools for exercising more influence in Brussels. Nonetheless, for tools to be used, goal orientation, motivation and conviction are necessary. These are generated within the domestic rather than the Brussels-based national apparatus and seem to involve bottom-up rather than top-down dynamics. In fact, timely, specific, structured and extensively argued negotiation positions represent a *conditio sine qua non* of effective participation in Council decision-making process. For these to be produced, a high level of responsiveness of domestic policy-makers towards EU-related issues is needed, involving an interplay of attention, expertise and coordination.

Finally, the already differentiated landscape of policy positions in the European Union might provide a disincentive for the newcomers to develop their own policy input. This is where my argument meets with Thomson's

¹⁵⁹ In Plechanovova's dataset (2004-2006) Poland ranks fourth, behind Sweden, Denmark and Ireland, just before the UK, Germany and the Netherlands (Plechanovová 2011: 92). VoteWatch has collected more recent data (2009-2012). Here, Poland ranks seventh after UK, Austria, Germany, the Netherlands, Denmark, Portugal (VoteWatch Europe 2012: 12).

¹⁶⁰ Puetter notes that this was partly due to the lack of qualified staff, partly to political appointments by changing governments (Puetter 2008: 487).

observation on the EU's conflict structure. There is already a great deal of policy contestation in the European Union (Thomson et al. 2004; Thomson 2009). Why should the newcomers bother evaluating Commission's proposals thoroughly on their own, when there are diverse policy positions already available? As our case studies have shown, aligning with large, old and resourceful member states can serve as a perfectly rational bargaining strategy, as it not only shortens the process of position formation but also makes negotiations more predictable. Subscribing to the positions of others will remain an attractive bargaining strategy as long as there is no domestic critical feedback about the choices that CEE governments make in Brussels.

7.2.2 Missing ambition? CEEs' policy passivity as a structural problem

In both cases analyzed in this thesis, the lack of domestic engagement with EU-level policies inhibited the CEE countries from making autonomous and effective contributions to the Council's legislative process. Interestingly, this poor domestic engagement did not prevent CEE governments from attaching high salience to the dossiers at stake, i.e. from recognizing them as important. Note that in large-n Council studies and in formal modeling, salience is crucial in understanding member states' bargaining success (Arregui and Thomson 2009; Cross 2013).

For the WTD, expert assessment of issue salience for every EU member state is available from the recently released DEU data set¹⁶¹. According to this data, the issue of on-call time definition was highly salient for new and old member states alike and the opt-out issue enjoyed medium salience levels in all member states with the exception of France, the UK, Spain, Estonia, Italy and Malta. While standardized salience data is not available for the PMD, we can infer the salience from the negotiation behavior of CEE countries. The more advanced the negotiations, the more involvement CEE countries showed in making proposals (Poland, Hungary) and ultimately voting against the Directive (Poland, Slovakia). This type of behavior would suggest that the dossier was salient to those countries, although salience has potentially not been realized from the very beginning of the process. In sum, CEE governments might find EU-level policy issues important, but nonetheless lack domestic

¹⁶¹ The data is available under <http://www.robertthomson.info/research/resolving-controversy-in-the-eu> [21.08.2013].

policy engagement, which subsequently prevents them from contributing to the Council policy process.

Apart from acute bargaining situations in the Council, CEE policy-makers seem to ignore the substance of EU-level regulatory policies and neglect their potential impact. Potentially, what characterizes CEEs as Council participants is a modest policy ambition and not just constrained ability? Drawing on the framework sketched by Kassim and colleagues (Kassim 2000: 250-251), one can see policy ambition as shaped by attitudes towards EU membership (pragmatic or symbolic, offensive or defensive, policy-selective or holistic) as well as by the domestic style of policy-making (active or reactive; positive action or disasters prevention; impositional or consensual). Given the complexity of this topic, I will provide only few empirical observations showing that CEEs EU-related policy ambitions might indeed be distinct for historical and economic reasons.

The way in which member states practice their EU membership depends on how the respective political elites answer the question “what is Europe for?” (Bulmer 1983: 350; Copsey and Haughton 2009: 284). The literature about the origins and drivers of the Eastern Enlargement demonstrates that CEE countries demanded accession because they were committed to liberal democratic values and because they hoped for financial assistance and economic modernization driven by foreign direct investment (Mattli and Plümper 2002: 557-558). This appears quite distinct to the motivations of the EU’s founding fathers, whose primary objective was to retain strong state control over the expanding industrial and agricultural markets (Milward 1992: Ch. 4; Moravcsik 1995: 126). For CEE countries, EU accession served as a *finale* of transition – a historical change of political and economic regime and a “return to Europe” (Schimmelfennig and Sedelmeier 2002: 520). Moreover, there was also a geopolitical dimension to it. EU membership assured that CEE countries are free from political influence by Russia as a successor of the Soviet Union. This factor presumably explains such vivid interests of CEE elites in EU’s Eastern policies.

A recent study examining the activities of Polish MEPs supports the claim that EU-related policy interests of CEE elites are rather selective. The study finds that Poles are overrepresented in EP committees dealing with foreign policy or budget, although these are areas of quite limited impact of the

EP, whereas they are underrepresented in politically more influential committees working on environment, health, international trade, justice and home affairs, economic and monetary affairs, financial crisis and constitutional affairs (Szczepanik and Kucharczyk 2012: 17)¹⁶².

Turning to policy-making and policy style in CEE, we find the famous “dead letter” hypothesis advanced by Falkner and colleagues in research on EU law implementation. Having observed a “gap between the law on the books and the practice on the ground”, they claim that despite correct and timely transposition of EU Directives, the latter are not systematically applied and lack effective enforcement mechanisms (Falkner and Treib 2008: 303). This suggests that CEE policy-makers might pay only limited attention to the societal outcomes produced by public policies.

Some observers of Central Eastern European politics go much further, arguing that it was precisely the process of EU accession that deprived political competition in CEE its substantial significance. Because CEE countries had to swallow the EU’s regulatory model in the form of the *acquis communautaire*, important debates about core issues of public policy, such as the function and form of state action, were pushed aside (Grzymalala-Busse and Innes 2003: 71). Since no political party assumed accountability for the policy outcomes, substantial conflicts, such as those around which Western party systems evolved, have been vanished from the electoral competition (Innes 2002: 102). Today’s consequence is that issues related to market regulation fail to attract and mobilize CEE policy-makers (Rybář 2011: 166).

Finally, scholars of comparative political economy argue that the primary nexus of economic decision-making in CEE is located outside the domestic politics (Orenstein 2010: 1). Following the “varieties of capitalism” framework¹⁶³, CEE countries have been characterized as “dependent market economies”, because foreign ownership dominates the export-oriented branches of the economies, such as automobiles, manufacturing and

¹⁶² Polish MEPs’ priority issues were Eastern Neighbourhood, energy security, EU budget and climate policy, whereas they have pushed for a more extensive EU-level policy in the first three and took a more defensive stance in the latter (Szczepanik and Kucharczyk 2012: 5-7).

¹⁶³ The framework differentiates between liberal and coordinated market economies, whereas in the former the relationships between factors of production are fluid, short-term and competitive, in the latter these relationships are institutionalized, long-term and cooperative (Hall and Soskice 2001).

electronics; the same is true for the banking and insurance sector (Nölke and Vliegenthart 2009: 681). Selective case study evidence suggests that some aspects of economic policies in CEE – such as taxation – are directly negotiated between the governments and the investors (Bohle and Husz 2005: 92-93). Of course, dependency on foreign capital does not have uniform, automatic consequences on the domestic policy-making across the region (Bohle and Greskovits 2012). However, one could infer from the dependency-hypothesis that CEEs might not be fully sovereign in or, at least, lack a tradition of sovereign economic policy-making. Expecting that countries that have been historically constrained in their policy choices will actively shape supranational regulatory regimes would thus involve placing too great demands upon them.

7.3 Suggestions for future research

Is the smooth legislative work of the enlarged Council of Ministers a transitory phenomenon, as the new member states from Central Eastern Europe need yet to build up the ability of advancing their interests more assertively? Alternatively, did a set of countries join the European Union that – for reasons related to political traditions and economic structures – do not attach great ambitions to shaping the supranational regulatory regimes? The distinction is tempting, as it paves the way for different predictions. Compared to abilities, ambitions are less likely, although not impossible, to change over time. Unfortunately, the case studies presented in this book did not offer sufficient empirical information to differentiate between the two explanations. The initial intention of the analysis was to show the pathways of how individual legislative action – whether (in)capacity-, ambition- or indifference-driven – translates into the collective dynamics that make the Council so robust and productive.

The boundary between ability and ambition will possibly turn out rather blurry, as the two might be related. Where there is a will, there is a way, as conventional wisdom says. Furthermore, ability can drive and increase ambitions. This would hold for large, vote-rich countries in the first place, as they already hold one important resource for negotiation impact. Our understanding of EU member states' abilities and ambitions as well as of the relationship between the two concepts could be enhanced in comparative

research on linkages between the domestic policy-making and EU membership.

One research strategy could be to investigate the dynamics of interest intermediation, including the interplay between interest groups, governments and the public. It would be important to go beyond the mere description of the interest intermediation systems, rather considering what type of policy input interest groups generate (how representative is it?) and how this input affects the policy process. Do interest groups go public, do they mobilize and what difference does it make to governments' actions? Conducting this type of cross-country comparative inquiry in highly "Europeanized" policy fields, such as labor market, agriculture of justice and home affairs, would provide us with valuable information about the national policy styles. In turn, national policy styles matter for the notion of ambition, as countries with proactive and responsive policy styles are more likely to be influential on the EU level.

Another possibility to inform the notion of ambition empirically would be to deepen our understanding of values associated with EU membership within the public spheres across Europe. Such inquiry – again preferably of comparative nature – would focus on patterns of political competition and encompass political parties and their communication, mass media and the public opinion. Arguably, linking this part of national polity to a governments' performance in EU-level policy-making is much more challenging here than in the former research suggestion. However, as all EU member states are democracies, the public sphere constitutes an important context condition of government action both domestically and supranationally.

I argued in the literature review that factors of static nature, located on EU-level have played a prominent role in recent Council research, whereas bottom-up dynamic factors which would *bring domestic politics back in* have been neglected. For reasons mostly related to methodology, the "cooperative culture" managed to crowd out a debate about how individual resources and strategies, short the diversity of member states, affects the work of the enlarged Council. Helen Wallace, one of the most devoted observers of EU politics, once warned against looking at the Eastern Enlargement through a narrow institutional lens and instead encouraged taking interconnections of diverse kinds into account (Wallace 1999; 2005). Following her perspective, this project has shown how domestically enrooted asymmetries between

member states and the internal differentiation of the Council they produce – not uniformity and equalization – make Council of Ministers what it is, a productive institution.

8 Conclusions

This chapter restates the argument of the dissertation and discusses the contributions that the empirical findings make to broader debates. The puzzling legislative productivity of the Council of Ministers, despite the external shock of the Eastern Enlargement, has been shown to result from member states' differential abilities and ambitions to channel their interests towards the negotiation arena. Agency effects were complemented by the leverage of the Presidency's brokerage strategies. These findings demonstrate that the cooperative culture of reciprocal relations among member states, stressed in the existing Council literature, is not the only mechanism that moderates the impact of large numbers and diversity on Council decision-making. Despite limitations inherent to any research in the small-n tradition, the empirical findings presented here are relevant, as they contribute to our better understanding of member states' legislative influence and the ways in which institutions shape intergovernmental interactions.

8.1 Project synthesis

How come such a major change in membership as the Eastern Enlargement did not affect the policy-making productivity of the EU Council of Ministers? Continuously high rates of legislative output and the lack of other visible signs of institutional inertia are puzzling for researchers and practitioners alike. Theoretical reasoning suggests that the larger a group, the more difficult it is to perform collective action and effectuate a change of the status quo (Olson 1965; De Witte 2002: 247; Tsebelis 2002; Tsebelis and Yatağan 2002: 304; Baldwin and Widgrén 2004; König and Bräuninger 2004: 430). As for the practitioners of EU politics, they expected more intense policy conflicts as well as occasional demonstration of regional power, as the EU had been experiencing those after the Southern Enlargement (Verdun and Croci 2007: 14-17). In fact, neither did the Council become less effective, nor have any other major problems in the conduct of the policy process been discovered so far.

The purpose of this thesis was to expose the mechanisms of Council politics that enable this institution to cope with large numbers and

heterogeneity of member states, the latter being now exceptional in EU's history. The argument, developed and tested in the present research, drew upon two key notions: member states' capacities to contribute to EU's policy-making and the effects of procedures on member states' interactions. These two factors have been only superficially dealt with in large-n, formal Council research, which has been developing rapidly in recent years. I argued that standardized data makes it very difficult to embrace the context sensitivity as well as the interaction elements inherent to negotiation behavior and institutional "shadows" upon collective dynamics.

My study sought to demonstrate that Council politics is not solely driven by member states' preferences, their distribution and the voting power involved, but that it is strongly shaped by the highly differentiated ways in which member states prepare and organize their legislative action. Because these differences are domestically enrooted and because they not necessarily correspond to salience differentials, the asymmetry of bargaining capacities appears constitutive for how the Council makes its decisions. Presumably, discrepancies of abilities and ambitions have been present in the EU already before the Eastern Enlargement. However, after 2004 they have deepened, as CEE countries exhibit structural predispositions to lower capabilities and their negotiation behavior has confirmed this hypothesis. Furthermore, as it became deeper and more encompassing, internal fragmentation of the Council is now more than ever likely to fuel directly and more explicitly into the legislative dynamics. The case studies demonstrated that asymmetries in position formation – broadly understood as the timing of involvement, the structure of interventions and the factual, argumentative support employed – not only influence individual member states' chances to accommodate their interests, but also decisively shape the coalition dynamics. While representing a rational interaction for both more and less capable negotiators, mobilization-mimicry sequences - which are present in both case studies - provide the former with additional empowerment.

Differentiated capabilities provide a fertile soil for collective dynamics, such as mobilization and mimicry, yet they do not produce robust legislative outcomes by themselves. Thus, I argued that procedures matter. The reputational costs of voting "no" became greater in a larger setting and blocking minorities are likely to be more fragile. Thus, the majority voting

system maintained its disciplining qualities. However, more importantly, the Presidency, guided by institutional interests, puts its powers and impressive strategic abilities to the service of the legislative progress. Since I have not provided a pre- and post-Enlargement comparison, I can only speculate that the Presidency's readiness to play the role of a majority crafter, rather than the one of the honest broker, has increased. The fact that unanimity is less likely to be achieved with 27 or 28 member states only encourages the Presidency to make that shift.

The Presidency's assertiveness in pushing majority politics has an interesting by-product: path dependency of Council negotiations. Because future Chairs tend to stick to brokerage choices made by the predecessor, early months of negotiations are crucial, providing advantages to first movers. The argument makes a circle here, as path dependency is yet another example of asymmetry in post-Enlargement Council decision-making.

8.2 Contributions of the study

Having adopted a process- and politics-centered approach to the Enlargement puzzle, this study dealt with several aspects of Council politics: from country-level action to collective dynamics and conflict management. Consequently, the empirical findings speak to broader debates in EU research. In particular, I offer two theoretical and one methodological contribution. The theoretical contributions relate to the nature of member states interactions, in particular the question of legislative influence as well as to the practice of brokerage by the Council Presidency. The methodological innovation consists in an "instrumental" usage of case studies. Whereas process tracing had been most often used in EU studies to account for particular policy outcome, I have employed this technique to probe and refine my explanation of an institutional macro-phenomenon.

8.2.1 Interactions in the Council

Academic debates about the interactions within the Council of Ministers are, with all their theoretical and methodological diversity, characterized by a surprising degree of agreement. Most observers agree that consensual decision-making captures the inner workings of this legislative body best (Heisenberg 2005; Hayes-Renshaw and Wallace 2006: Ch. 11; Thomson 2011:

Ch. 7). Instead of engaging in rivalry, competition and open, hard-nosed conflict, national governments rather cooperate, make concessions and accommodate each other's needs. The underlying reasons for this counterintuitive legislative behavior are not yet well understood and subject to diverse hypotheses. While some authors attribute consensus to norms and socialization (Checkel 2005; Heisenberg 2005; Lewis 2005), others claim that member states can afford mutual courtesy thanks to the certitude that their interests will be heard and respected when it really matters for them (Arregui and Thomson 2009; Thomson 2011; Veen 2011). Irrespective of the interpretation, consensual decision-making does not leave much room for strategic, resource-based legislative behavior. No Council observer would probably neglect that these exist, but it seems that they do not belong to the constitutive features of the Council's decision-making mode.

The insights provided by this study encourage more skepticism about this "smooth and cozy" image of Council politics. Overly strong confidence about consensual practices within the Council obscures the internal differentiation of this institution, its fragmentation and asymmetries in how strongly both policy processes and the outcomes reflect the formal membership. The case studies analyzed in this book have demonstrated that member states differ strikingly with regard to the ambition, effectiveness and the impact with which they prosecute their interests during the Council's bargaining game. Differences between effective, high impact member states and those less effective and less impact ones do not exclusively manifest themselves in explicit controversies that are won or lost by one side or another. The fragmentation of agency within the Council also shows in alliance formation, where low-impact member states subordinate their bargaining strategies to those of resourceful and more effective negotiators. The case studies drew a picture of an "oligarchic" institution in which bargaining choices of few pivotal players decisively structure the bargaining dynamics and thus reduce the complexity of the decision situation.

What sets these "few" apart from the rest? With only two cases, I am not in the position to answer this question exhaustively. However, my results suggest that two factors leverage member states' potential to make a complex

legislative process predictable: size and bargaining organization¹⁶⁴. Certainly, large countries are natural “pivots” of enlarged Council’s negotiation activity. However, while size is an important, it is by no means a sufficient component of influence. Large countries count more, although they depend on coalitions to shape the policies substantially or eventually prevent decisions. While coalitions can emerge naturally, whereby countries with similar preferences may simply “compound”, they are more effective and more sustainable when organizational efforts such as mobilization and coordination have been invested (Nedegaard 2007). Large member states can transform their voting weight into legislative impact when they are proactive, search allies broadly across the entire Council spectrum and are willing to intervene in the name of the group. Organization matters in that early formed, specific and well-explained preferences considerably boost the chances of bargaining success.

My case studies provided several examples of large member states losing control over the bargaining dynamics or failing to have their positions accommodated. For instance, Spain and Italy punched below their weight in both dossiers. In the WTD, together with France, they underestimated the necessity to organize their “social” coalition early to defend the Commission’s proposal against the Dutch Presidency’s attempts to change it. With France fancying its own, independent bargaining strategy and Italy having changing governments (and policy positions), Spain was only able to continue carrying the social coalition thanks to the EP’s involvement. In the PMD, both countries clearly underestimated the substance of the case law and neglected the codification paradigm strongly favored by other member states, the Presidency and the Commission. With Poland, the assessment is not as easy. It clearly failed to shape the outcome of the PMD, sticking to the radical demand that went against the ECJ case law. In the WTD, Poland was on the winners’ side. However, the impact it had on the bargaining process was fully conditioned by the UK’s bargaining strategy. Besides, I argued that Poland’s domestic regulatory needs would have been satisfied with less radical demands. One

¹⁶⁴ In line with Scharpf’s actor-centered institutionalist framework, an analytical tool often used in EU politics, one could label these two „power resources” and „strategy” (Scharpf 1997). I prefer the terms „size” and „organization” as they are more specific. Size relates to the number of votes member states hold in the Council, i.e. one very specific power resource. Organization relates to one particular aspect of strategy, namely the preparation of the bargaining activity – information gathering, position formation and position articulation.

could speculate that with a bargaining strategy closer to the actual domestic needs, Poland could have prevented an entrenched conflict paralyzing the Council for years. After all, getting the WTD revised was in the interests of all member states, including Poland and other CEE countries.

The variation in member states' approaches to organize their legislative activity revealed that non-negligible part of "Council politics" happens actually outside the Council both in the spatial and in the temporal sense. Member states gain information, develop positions and articulate them long before the formal negotiation process starts. Intensive interactions between the Commission, the member states and the Presidency take place on the agenda-setting stage¹⁶⁵. Anticipation and adaptation matter in Council politics, as they shape policy and strategy choices of member states and institutional players alike. These aspects should be taken into account in future systematic analyses on how the Council works

The contribution of these observations is to raise attention to the subtlety, with which the games of national interests are played within the Council. The rivalry for policy influence does not necessarily take the form of a clash of opposing demands. In Council politics, switches are worked on the preparatory stage, through informal contacts with the institutional players or in intergovernmental interactions that escape a clear classification as adversarial ("hard") or cooperative ("soft"). Member states which turned influential in our case studies often combined in their strategies threats with explanations as well as purposeful lobbying for own cause with more holistic engagement, keeping track of collective, shared interests pertinent to the inter-institutional game. These are, of course, no new discoveries. However, if we acknowledge the subtlety of influence as a systematic feature of Council politics – and it seems systematic given the links between supranational influence and domestic underpinnings of agency - we need to rethink or at least further specify the notion of cooperation.

"Cooperation" serves as an explanation of the Council's ability to overcome conflict. It makes strong, but apparently incorrect assumptions about both member states motivations as well as about Council processes. Voluntary and purposeful accommodation of mutual demands among member

¹⁶⁵ We know from Diana Panke's research that these informal contacts are practiced with different intensity by different member states and our cases studies confirm this (Panke 2012).

states can be challenged in the light of unequally distributed bargaining capacities and very different patterns of engagement with the supranational policy process. When member states realize their interest later in the bargaining process and are thus in a much weaker position to make EU-level policies reflect their preferences, we cannot speak about a fully sovereign choice of a bargaining strategy. The equalizing nature of the bargaining processes, which implies the same level of satisfaction with the overall outcomes across member states and policies, also seems a myth, although it cannot be refuted with only two cases. Observations supporting the skepticism include the determinacy of the Presidency to achieve legislative progress, irrespectively of the nature of counterarguments, as well as the diverse substantial weights of “policy concessions” member states obtain. While some shape a dossier thoroughly and co-edit entire articles, others secure selective or even symbolic provisions, which are just sufficient for them to formally agree and save face. It is difficult to believe that both will be equally satisfied with the negotiation outcomes.

One could argue that my skepticism about equalization and uniformity has a strong methodological component, as I have studied the cases with all their complexity and followed member states’ actions step-by step to evaluate their impact. However, similar views have recently been voiced in Council studies using different methods. Golub ascertained that there are systematic differences in member states’ bargaining success, which cannot be fully explained by “static” factors such as voting power or network capital (Golub 2012: 1296-1298). Furthermore, Novak demonstrated that what looks like consensual behavior and self-restraint might in reality be a strategy of blame avoidance (Novak 2013: 2-4). With non-opposition towards Council legislation, member states might simply express resignation, as opposed to certitude that their interests will be taken into account another time.

Member states practice their EU membership differently and it is perfectly legitimate for them to do so. Nonetheless, it will be very enriching for research concerned with supranational legislative politics to further explore the internal fragmentation of the Council and integrate it in the key analytical concepts.

8.2.2 The practice of brokerage and legislative efficiency

Beyond the question how member states' perform as EU co-legislators, the case studies inquired how the diversity of demands, bargaining styles and strategies is managed by the Council Presidency. The underlying hypothesis was correct when attributing to the Chair a strong capacity to channel intergovernmental interactions with large numbers towards agreement.

My findings speak to two major topics of the Presidency-literature: the Chair's managerial activity (Tallberg 2004: 999) and the type of interest which the Presidency-holding countries pursue. Regarding the latter, there is a debate about the relationship between the presiding member state's policy interests and the conduct of the Presidency. The state of the art in large-n research is that member states holding the Presidency have a chance to push the policy output closer to their preferences¹⁶⁶ (Schalk et al. 2007; Thomson 2008; Warntjen 2008). My study is not in a position to question this claim, but it suggests that a reverse mechanism also is possible, whereby member states holding the Presidency "manipulate" their own policy positions. Spain in the Patient Mobility Directive and Portugal in the Working Time Directive were ready to accept policy decisions they had previously been rejecting, after either minor substantial changes (PMD) or a strategic package deal (WTD). In addition, in both cases analyzed, the policy- and framing-decisions taken in the very beginning of the negotiations were in line with the presiding countries' preferences. Both France (PMD) and the Netherlands (WTD) were very much in favor of EU legislative action in the relevant areas. Of course, this could result from sheer luck; however, it might also be that the timing of the formal release of Commission's proposals was strategically chosen.

However, and most importantly, my cases provide rich empirical backing for the claim that the Presidencies have strong institutional interests in legislative effectiveness and legislative progress. It is this attitude, which motivates the Presidencies to exploit the diversity of preferences and bargaining resources strategically. As this diversity has become greater after the Eastern Enlargement, we can assume that the leverage of the Presidency's brokerage strategies also increased.

¹⁶⁶ In Schalk's and Warntjen's research this effect applies only to Presidency-holders in the final months of the negotiation.

Examples of such leverage include inducing the tipping point dynamics, to which the enlarged Council seems particularly susceptible. We have observed this dynamics operating in the PMD, when several CEE countries withdrew their opposition after the Presidency negotiated one small provision with Hungary. In turn, the Working Time negotiations provided an example of a spectacular package deal, which became possible thanks to distinct labor market conditions in the new member states. In both cases analyzed, the Presidencies invested significant effort in brokerage and were determined to reach agreement. Clearly, as both the WTD and the PMD were important dossiers in their policy areas, countries assuming the Chair might have wanted to show commitment and cultivate their reputation. Nonetheless, there is also another explanation for the Presidencies' determinacy, namely a latent anticipation of more cumbersome decision-making with 27 member states, creating high pressure for the Presidencies to deliver.

The prominence of strategic brokerage in the final phase of the negotiations should not obscure the Presidency's roles earlier in the process. The Chair pursues "majority politics" from day one of the negotiations and this strategy has far-reaching consequences for the subsequent bargaining dynamics. While making first substantive amendments to the Commission's proposal, the Presidency defines the basic direction in which the Council debate will go. In other words, it sets a policy frame around which further efforts to build a majority will concentrate. In the WTD, this was embodied by the pragmatic decision by the Dutch Presidency to keep the opt-out, yet eventually strengthen the constraints that accompany this derogation. In the PMD, the French Presidency established the necessity to codify ECJ case law and framed the dossier as a chance for member states to rescue their sovereignty before the Court further gears into it. In both cases, none of the subsequent Presidencies seriously questioned the basic policy direction chosen by the first Chair, despite contestation among member states. Thus, Council negotiations seem "path dependent", whereby policy decisions made at the beginning determine the further course of the legislative process.

At the middle stage of the legislative negotiations, the Presidencies' conduct appears to be norm guided, in line with constructivists' predictions (Niemann and Mak 2010: 730-731). This is the time when all member states' problems are unpacked and potential solutions explored. Member states are

invited to make proposals and there is no need for the Presidency to take a manifest stance. Instances of collective action provide the current Presidency, as well as future Chairs, with valuable information about member states' determinacy to pursue their policy goals. At this stage, it is in the Presidency's interest to have all national concerns recorded and, when possible, dealt with¹⁶⁷. Impartiality and conciliatory attitude not only represent appropriate behavior of the Chair, but are also "useful" in the sense that they contribute to the Presidency's reputation and are indispensable for effective brokerage.

The Presidency becomes strategic again, when it passes into the vote. The decision is based upon the accumulated knowledge about the delegations' preferences and underlying motivations and it sometimes involves great deal of risk, as the cases of the Finnish Presidency (WTD) or the Swedish Presidency (PMD) have shown. At this point, the Chair re-orientes its strategy towards the cost-benefit calculation, the adoption representing the benefit and substantial changes to the dossier representing the costs. Our cases confirm that the Presidency is only interested in satisfying as many opponents as necessary for the QMV (Novak 2010; 2013). At this point, the Presidency will have very well understood the reasons of member states' reluctance to go along with the majority. The Chair will use this knowledge to strategically exploit the differences among the remaining opponents. In the PMD, the Swedish Presidency managed to pull Hungary, Slovenia, Ireland and Latvia out of the opposing coalition while turning the earlier Hungarian proposal into an additional paragraph, coated by the veil of vagueness. In the WTD, a legislative package deal had satisfied the French constituency's demands for more social Europe. In both cases, the Presidencies did not shy away from letting part of the opposing coalitions outvoted.

These observations show that casting the "shadow of the vote" is a sequential, rather than a linear process. They support Golub's argument that decision-making rules do not have an automatic, deterministic impact on legislative effectiveness but rather interact subtly with member states' preferences (Golub 1999: 752). Apparently, the interactions between the Presidency and the member states take different shapes at different stages of the legislative process, with "majority politics" being most pronounced at the

¹⁶⁷ As the Patient Mobility case shows, the Chair can also refer the policy problem to the Council's Legal Service.

very beginning and the very end of Council negotiations, i.e. when the Presidency makes first corrections to the Commission's proposal and when it envisages a formal closure of the intergovernmental bargaining. In contrast, between those two stages, the Chair can afford more inclusive and consensual leadership style.

8.2.3 Exploring the strengths of qualitative inquiry

The methodological strategy employed in the project can be characterized as a midway between two research approaches towards the Council. One approach is represented by policy studies, in which researchers examine on case-by-case basis the substance of the Council's outcomes and explain how it emerged (see contributions in: Falkner 2011). Alongside this strongly qualitative and largely explorative research tradition, a rapidly growing research branch has developed, primarily interested in formulating and testing theoretical models of Council politics (see contributions in: Thomson et al. 2006).

In this project, I draw upon both approaches by combining a strong interest in key analytical categories of Council politics with the qualitative method. Case studies have been used instrumentally, i.e. theoretical interests preceded the ambition to explain policy outcomes. The primary purpose of process tracing was not to show why the Directives gained the substantial shape that they have, but rather to explore whether there is a causal link between the agency of the member states and that of the Presidency and the Council's ability to make legislative decisions.

An instrumental usage of case studies for theory-related purposes is rather rare in Council research, yet it enjoys growing popularity (Aus 2008; Pollack and Shaffer 2008; Panke 2010b; Warntjen 2013). The present study has highlighted three merits of this approach. Firstly, process tracing allows circumventing static formulas of Council politics – such as the famous “consensus” or “diffuse reciprocity” – and opening-up the inquiry towards more dynamic or sequential scenarios. Our case studies have demonstrated that key drivers of Council politics actually operate differently on different stages. For instance, power resources that the member states explicitly draw upon in their bargaining strategies shift from “soft” ones such as information, expertise and networks at the beginning of the legislative process towards

voting power and external resources at later stages. The Presidency pursues different strategies depending on how a dossier progresses. Of course, these are conclusions drawn from only two case studies, so further research is necessary to confirm and further specify the sequential nature of Council decision-making.

Secondly, process tracing is very well equipped to deal with the reactive components in legislative actors' behavior. These are present in the Council. Anticipation of other member states' preferences matters. Member states can turn it into a power resource, when they strategically incorporate other member states in own bargaining strategies. Less resourceful member states engage in mimicry, as they subscribe to other delegations' claims and bargaining strategies, compensating for the deficits of the domestic processes of position formation. Information, anticipation and response should be taken into account in research dealing with preference formation, one of the basic ingredients of Council politics. Model- and standardized data-based research often assumes that actors' preferences are exogenous to the decision-making process, uniform and stable, yet this assumption seems to rest on shaky foundations (Hörl et al. 2005: 601-602; Richardson 2006; Princen 2012: 625-630). Finally, anticipation matters for the Presidencies, which prepare their brokerage choices based upon the knowledge they have about member states' past negotiation behavior. Tipping point dynamics and path dependency are further examples of complex, reflexive interactions in the Council.

The final merit of process tracing for theory-oriented Council research consists in its capability to include contingency in the analysis of politics. Situational, non-systematic factors pour into the legislative dynamics in the Council. Our cases suggest that situational occurrences relevant for the legislative dynamics can be located both outside and inside the Council. The debate on the European Constitution and the ratification of the Constitutional Treaty, which intervened in the Working Time negotiations, can be seen as situational occurrences exogenous to the Council. They additionally boosted the power of large member states, France and the UK, and enabled them to control the negotiation progress. Endogenous contingencies would include who becomes Council Chair at which point of the legislative process. As the Spanish example in the PMD has shown, becoming a Presidency can change a blocking country's cost-benefit calculation. Situational factors have a role to

play in the conflict dynamics and conflict intensity, in that they can contribute to conflict entrenchment, but also induce *deus ex machina* situations, in which a conflict is suddenly repealed.

The account of Enlargement absorption by the Council, presented in this dissertation, clearly differs from the one provided by large-n researchers. Thomson or Veen, who addressed the Enlargement question in their books, focus on variable coalitions among member states and hypothesize about diffuse reciprocity resulting from this condition (Thomson 2011; Veen 2011). By contrast, the politics- and process-based explanation, developed with qualitative methodology, is more fine-grained, given that it draws upon very specific instances of member states' negotiation agency, such as position formation and articulation, the emergence and development of coalitions and ultimately, the specific behavior in voting situations. By means of a plausibility probe, these micro-observations were obtained and linked to the puzzling macro outcome of Council robustness.

Note that this move did not imply a new theory of how the Council arrives at its decisions; rather, insights in the form of causal mechanisms were offered. These mechanisms do not fundamentally question the established accounts of the Council's activity, several of which have been gained through systematic analysis of large data sets. These "big pictures" comprise variable, issue-based positional alignments, as well as the prevalence of "consensual behavior" over power politics. The mechanisms described in the dissertation reveal how these characteristics of Council politics emerge, as well as what they imply. Thus, the conclusion for the methodology of Council research is that aspirations for complementarity between large-n and small-n insights is a promising path to pursue, and presumably more fruitful than arguments over the "best" ways to study the Council (Heisenberg 2008; Schneider 2008).

8.3 Limitations of the argument

Two case studies represent a microscopic portion of the Council's legislative activity, as the latter counts about 200 legislative acts per year (Häge 2012b). The obvious limitation of qualitative research is that generalization to the entire population is impossible. Thus, this section clarifies how exactly the choice of cases limits the argument and defines the conditions,

under which the conclusions drawn from my findings could be applied to further instances of Council politics.

One part of my research strategy was to narrow down the population of Council cases to the regulatory policy. The reasons for that choice included the share of this policy type in the overall Council activity as well as the limited role of the Council of Ministers in redistributive policies, which are determined outside of the Council. Now when the analysis of the cases is completed, another feature of regulatory policy becomes apparent, which sets this policy (or at least parts of it) apart from other areas, such as redistribution, foreign or home and justice policies. Finding out what the national interest is in the area of regulatory policy represents a major challenge for governments, as they have to take into account the domestic legal and institutional status quo, the interests of stakeholders and finally the EU-level legal status quo. For this purpose, governments have to rely on extensive policy and legal knowledge as well as on optimized executive organization. Defining national position might be easier in the remaining policy areas, where basic data on economic wealth (redistribution) or simply the geographical location (foreign policy) offer already sufficient input.

Position formation representing a major challenge was an assumption that justified my analytical interest in the role of the domestic polity for EU-level bargaining performance. I claimed that the way in which the process of domestic screening of the relevant policy environment is performed can boost or inhibit the negotiation performance of member states. Nonetheless, what if this assumption does not always hold to the same extent, whereby forming national position is easier in some policies than others? Arguably, the latter might be the case when existing EU legislation is revised or updated. Here, governments can draw upon already accumulated information and policy positions from the past. In policy areas in which position formation is trivial, bargaining asymmetries between member states – inequality of information, engagement and timing – are less likely to feed into the collective dynamics. Mechanisms such as mobilization and mimicry are less likely to occur.

Furthermore, coalition politics based upon mobilization and mimicry is likely to operate in dossiers that are salient to the majority of governments, i.e. dossiers, in which member states' governments want to get involved. An opposite to this type of dossier would be a highly specialized, technical

legislation that applies to a branch of economy this is only present in a handful of member states. Arguably, the dynamics of conflict among only a few actors might differ from that involving the whole group. In the former, mechanisms of collegiality including cooperation and (diffuse) reciprocity might indeed be those that determine the legislative dynamics, as quantitative Council researchers claim. In these cases, the demand for conflict management by the Presidency will be smaller and conversely the brokerage strategies will be less prominent.

These two limitations outline the subset of Council politics, for which my argument about the collective implications of individual bargaining capacities and the role of strategic brokerage, might be applicable (Mahoney and Goertz 2006: 238). A transfer of the argument – or parts of it – appears possible in cases, in which EU-level rules have cross-sectorial implications. When legislation penetrates into economies and societies, one can expect from democratic governments to care and invest at least some effort in examining the domestic implications of the supranational rule. These cases will most likely generate conflict, as the diversity of traditions and material conditions in EU countries will produce different responses of member states towards EU-level legislative proposals. Clearly, *a priori* ascribing “importance” or “societal impact” to pieces of EU legislation is not without problems and there will probably never be a standard metric for this procedure (Golub 1999: 754-755). However, the likelihood of legislative cases of broad impact and high concern appears higher in some policy areas than in others. Social policy, employment, environment, health and consumer policies, transport, taxation and company law seem the most likely to bring about this class of cases, as opposed to fisheries or industrial policy, for instance.

8.4 Outlook

The purpose of this project was to show how domestically enrooted differences in member states’ bargaining performance – in addition to the distribution of national policy preferences – provide the Council of Ministers with the ability to cope with enlarged membership. I have shown that fragmentation of negotiation abilities and ambitions leads to asymmetric forms of collective action, in which leaders mobilize, followers mimic, first movers arrange and latecomers adapt. Such dynamics, on the one hand, greatly reduce

the complexity of the decision situation, yet, on the other hand, make Council processes and outcomes only selectively responsive towards the formal membership. I have furthermore argued that Council Presidencies handle the diversity of member states' bargaining modes strategically, employing diverse techniques of negotiation management to achieve formal agreement. Both the "oligarchization" of the Council and the increased leverage of the Presidency's procedural strategies seem to be process-level changes that the Eastern Enlargement has brought about.

At the end of the research process, the satisfaction from advancing and probing the argument is far from unblemished. There is uncertainty concerning the extent to which the argument will hold in other cases and whether the conditions for the aforementioned mechanisms to operate are properly and sufficiently specified. Moreover, the argument unveils how much we still have to learn about the relationship between the member states and EU politics.

Further cross-country comparative research is needed to gain a broader empirical base for the mechanisms described in this report. Is the mobilization-mimicry mechanism, which suggests that member states engage in an exchange of bargaining resources (voting and numerical power against intervention skills, good timing and organization), the core of effective collective action within the Council? Are Council processes indeed path dependent, whereby the managerial, efficiency-oriented choices of the Presidency in the very first months determine further bargaining dynamics? These hypotheses require further probing, preferably in cases both similar and distinct to those analyzed here.

In terms of the complex relationship between the EU and its member states, my study suggests two research directions. As the previous Chapter has argued, member states' performance in the EU-level policy process is closely related to "abilities" and "ambitions". While both result from domestic politics, we only have a vague understanding about the determinants and pathways involved. In previous systematic research on the Council, domestic politics has only been included insofar as the impact of institutional constraints such as strong parliaments on the influence over the bargaining outcomes has been tested with negative results (Bailer and Schneider 2006: 176). However, the paradox of weakness seems too narrow cut. Domestic factors can also play an

enabling role. Admittedly, researching national pre-requisites for influencing Brussels is a demanding task, as it requires extensive insights into domestic political and administrative processes. In particular, the administration's engagement with EU affairs often takes place at the level of routines and daily working practices, as available country studies have shown (Mastenbroek and Princen 2010; Haverland and Liefferink 2011; Braun and Berg 2013). With these challenges in mind, there is much to be learned about the ways in which domestic politics influence supranational legislative agency.

Finally, Council researchers should engage in more systematic analysis of how governments manage the demands, pressures and constraints from the domestic and the supranational arena. Putnam himself stressed that negotiators "reconcile domestic and international imperatives simultaneously" (Putnam 1988: 460). My analysis has demonstrated that input from the supranational arena, such as the positions of other negotiation players (both member states and the institutional actors), is taken into account in domestic processes of position formation, at least in some member states. Furthermore, balancing the arenas is a dynamic exercise: while some governments prefer to soften their preferences when the voting approaches, others do not shy away from being outvoted. Thus, more systematic knowledge is needed about the (domestic) circumstances under which governments enjoy autonomy over the bargaining position. For instance, when can they "manipulate" the latter depending on how the international bargaining is going? To what extent do governments engage actively and deliberately in positionality, i.e. strategically, formulate bargaining position, searching proximity to the European Commission (Bailer 2004: 102, 115)?

While Council research has rapidly developed in the last few years, much remains to be learned about key mechanisms of intergovernmental EU-level policy-making. Council analysts have an impressive theoretical and methodological diversity at their disposal. Furthermore, they can draw upon a growing body of macro- and micro-level findings when taking up the challenge of refining the basic concepts and advancing our understanding of causal relations across governance levels. We can look forward to engaging findings and theoretical advancement.

References

- Ahrens, Joachim, Martin Meurers and Carsten Renner (2007): Beyond the Big-Bang Enlargement: Citizens' Preferences and the Problem of EU Decision Making. *Journal of European Integration* 29(4): 447 - 479.
- Almeida, Dimitri (2012): *The Impact of European Integration on Political Parties: Beyond the Permissive Consensus*. London: Routledge.
- AOK Bundesverband (2008): Vorschlag der EU-Kommission vom 02.07.2008 für eine Richtlinie des Europäischen Parlaments und des Rates über die Ausübung der Patientenrechte in der grenzüberschreitenden Gesundheitsversorgung. *Stellungnahme des AOK-Bundesverbandes*.
- Arregui, Javier and Robert Thomson (2009): States' Bargaining Success in the European Union. *Journal of European Public Policy* 16(5): 655 - 676.
- Aspinwall, Mark (2006): Government Preferences on European Integration: An Empirical Test of Five Theories. *British Journal of Political Science* 37(1): 89-114.
- Aus, Jonathan P. (2008). The Mechanisms of Consensus: Coming to Agreement on Community Asylum Policy. In: D. Naurin and H. Wallace, Eds: *Unveiling the Council of the European Union. Games Governments Play in Brussels*. Basingstoke: Palgrave Macmillan, 99-120.
- Avdagic, Sabina (2003): Accounting for Variations in Trade Union Effectiveness: State-Labor Relations in East Central Europe. *MPIfG Discussion Paper 03/6*. Cologne.
- Avdagic, Sabina (2006): One Path or Several? Understanding the Varied Development of Tripartism in New European Capitalisms. *MPIfG Discussion Paper 06/5*. Cologne.
- Avilés, Antonio Ojeda and Jordi Vina Garcia (2009). Regulation of the Labour Market. In: B. Hepple and B. Veneziani, Eds: *The transformation of Labour Law in Europe : A Comparative Study of 15 Countries 1945 - 2004* Oxford: Hart, 59-98.
- Baeten, Rita (2012): Europeanization of national health systems. National impact and EU codification of the patient mobility case law. *Report in the context of the EPSU Project "Europeanisation of health policies and health care systems and common challenges for the health care workforce options for trade unions and the role of social dialogue to address them in the next decade"*.
- Bailer, Stefanie (2004): Bargaining Success in the European Union: The Impact of Exogenous and Endogenous Power Resources. *European Union Politics* 5(1): 99-123.
- Bailer, Stefanie (2006): The Dimensions of Power in the European Union. *Comparative European Politics* 4(4): 355-378.
- Bailer, Stefanie, Robin Hertz and Dirk Leuffen (2009): Oligarchization, Socialization, Adaptation. Lining Sociological Theory and EU. *Journal of European Public Policy* 16(1): 162-174.

Bailer, Stefanie and Gerald Schneider (2006). Nash versus Schelling? The Importance of Constraints in Legislative Bargaining. In: R. Thomson, F. Stokman, C. Achen and T. König, Eds: *The European Union Decides*. Cambridge: Cambridge University Press.

Baldwin, Richard and Mika Widgrén (2004): Council Voting in the Constitutional Treaty: Devil in the Details. *CEPS Policy Brief No. 53 July 2004*. Brussels.

Barnard, Catherine (1997): A Hard Day's Work. *The Cambridge Law Journal* 56(1): 43-46.

Barnard, Catherine (2012): *EU Employment Law*. Oxford: Oxford University Press.

Baun, Michael (2004). Intergovernmental Politics. In: N. Nugent, Ed.: *European Union Enlargement*. Basingstoke: Palgrave Macmillan, 132-145.

Beach, Derek and Rasmus Brun Pedersen (2012): *Process-Tracing Methods. Foundations and Guidelines*. Ann Arbor: University of Michigan Press.

Benoit, Kenneth and Michael Laver (2012): The Dimensionality of Political Space: Epistemological and Methodological Considerations. *European Union Politics* 13(2): 194-218.

Berry, Jeffrey M. (2002): Validity and Reliability Issues in Elite Interviewing. *PS: Political Science & Politics* 35(04): 679-682.

Best, Edward and Pierpaolo Settembri (2008). Legislative Output after Enlargement: Similar Number, Shifting Nature. In: E. Best, P. Settembri and T. Christiansen, Eds: *The Institutions of the Enlarged European Union: Change and Continuity*. Cheltenham: Edward Elgar, 183-204.

Beyers, Jan (2005): Multiple Embeddedness and Socialization in Europe: The Case of Council Officials. *International Organization* 59(04): 899-936.

Beyers, Jan and Guido Dierickx (1998): The Working Groups of the Council of the European Union: Supranational or Intergovernmental Negotiations? *Journal of Common Market Studies* 36(3): 289-317.

Blair, Alasdair (2001): Permanent Representations to the European Union. *Diplomacy & Statecraft* 12(3): 139-158.

Bohle, Dorothee and Bela Greskovits (2006): Capitalism without Compromise: Strong Business and Weak Labour in Eastern Europe's New Transnational Industries. *Studies in Comparative International Development* 41(1): 3-25.

Bohle, Dorothee and Bela Greskovits (2007): Neoliberalism, Embedded Neoliberalism and Neocorporatism: Towards Transnational Capitalism in Central-Eastern Europe. *West European Politics* 30(3): 443-466.

Bohle, Dorothee and Bela Greskovits (2012): *Capitalist Diversity on Europe's Periphery*. Ithaca New York: Cornell University Press.

- Bohle, Dorothee and Dóra Husz (2005): Whose Europe Is It? Interest Group Action in Accession Negotiations: The Cases of Competition Policy and Labor Migration. *Politique Européenne* 6(15): 85-112.
- Böhm, Katharina, Achim Schmid, Ralf Götze, et al. (2012): Classifying OECD Healthcare Systems: A Deductive Approach. *TranState Working Papers No. 165, CRC 597*.
- Borragán, Nieves Pérez-Solórzano (2006): Post-Communist Interest Politics: A Research Agenda. *Perspectives on European Politics and Society* 7(2): 134-154.
- Börzel, Tanja (2005). Europeanization: How the European Union Interacts with Its Member States. In: S. Bulmer and C. Lequesne, Eds: *The Member States of the European Union*. Oxford: Oxford University Press, 45-76.
- Börzel, Tanja A. (2002): Member State Responses to Europeanization. *Journal of Common Market Studies* 40(2): 193-214.
- Brady, Henry E. and David Collier, Eds. (2004): *Rethinking Social Inquiry. Diverse Tools, Shared Standards*. Lanham: Rowman and Littlefield.
- Braun, Caelesta and Caspar Van Den Berg (2013): At a Snail's Pace: On the Limited Europeanization of Domestic Consultation Practices. *Public administration: n/a-n/a*.
- Budzynska, Malgorzata (2008): Transgraniczne świadczenie usług zdrowotnych w UE – stan obecny i perspektywy. *Biuletyn Analiz UKIE* 21.
- Bulmer, Simon (1983): Domestic Politics and European Community Policy-Making. *Journal of Common Market Studies* 21(4): 349-364.
- Bunge, Mario (2003): How Does It Work? The Search for Explanatory Mechanisms. *Philosophy of the Social Sciences* 34(2): 182-210.
- Bunse, Simone, Paul Magnette and Kalypso Nicolaidis (2005): Is the Commission the Small Member States' Best Friend? *Swedish Institute for European Policy Studies Report No. 9*.
- Causse, Emmanuelle (2008). Hungary. In: G. Falkner, E. Holzleithner and O. Treib, Eds: *Compliance in the Enlarged European Union. Living Rights or Dead Letters?* Aldershot: Ashgate, 61-92.
- Charrad, Kristina (2010): *Participants or Observers in European Governance? Civil Society Lobbyists from Central and Eastern Europe in Brussels*. Baden-Baden: Nomos.
- Checkel, Jeffrey T. (2005): International Institutions and Socialization in Europe: Introduction and Framework. *International Organization* 59(04): 801-826.
- Christoph, James B. (1993): The Effects of Britons in Brussels: The European Community and the Culture of Whitehall. *Governance* 6(4): 518-537.
- Cianciara, Agnieszka K. (2012): *Polski Lobbying Gospodarczy w Unii Europejskiej 2004-2010*. Warsaw: Instytut Studiów Politycznych Polskiej Akademii Nauk.

Collier, David (2011): Understanding Process Tracing. *PS: Political Science & Politics* 44(04): 823-830.

Commission of the European Communities (2003): Commission Staff Working Paper. Report on the Application of Internal Market Rules to Health Services. Implementation by the Member States of the Court's Jurisprudence, 28.07.2003. *SEC (2003)900*.

Commission of the European Communities (2004a): Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions and the Social Partners at Community level concerning the re-exam of Directive 93/104/EC concerning certain aspects of the organization of working time. *COM(2003) 843 final/2 of 15.01.2004*.

Commission of the European Communities (2004b): Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time. *COM(2004) 607 final of 22.9.2004*.

Commission of the European Communities (2004c): Second Phase of Consultation of the Social Partners at Community Level concerning the revision of Directive 93/104/EC concerning certain aspects of the organization of working time.

Commission of the European Communities (2005): Amended Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time. *COM(2005) 246 final*.

Commission of the European Communities (2008): Proposal for a Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare, 02.07.2008. *COM(2008) 414 final*.

Commission of the European Communities (2010a): Detailed report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time ('The Working Time Directive'), 21.12.2010. *SEC(2919) 1611 final*.

Commission of the European Communities (2010b): Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on implementation by Member States of Directive 2003/88/EC, 21.12.2010. *COM(2010) 802 final*.

Copeland, Paul (2010): EU Enlargement, the European Social Dimension and the Clash of Capitalisms. *CIP Working Paper Series*.

Copsey, Nathaniel and Tim Haughton (2009): The Choices for Europe: National Preferences in New and Old Member States. *Journal of Common Market Studies* 47(2): 263-286.

Council of the European Union (2004a): Council Decision of 22 March 2004 Adopting the Council's Rules of Procedure. *2004/338/EC, Euratom*.

Council of the European Union (2004b): Note from the Presidency to the Permanent Representatives Committee, 09.11.2004. *14078/04*.

Council of the European Union (2004c): Outcome of Proceedings. The Social Question Working Party on 06.10.2004. *13259/04*.

Council of the European Union (2004d): Report from the Permanent Representatives Committee to the EPSCO Council, 01.12.2004. *15525/04*.

Council of the European Union (2005a): Note from the Presidency to the EPSCO Council, 05.12.2005. *15388/05*.

Council of the European Union (2005b): Note from the Presidency to the EPSCO Council, 25.02.2005. *6772/05*.

Council of the European Union (2005c): Report from the General Secretariat to the EPSCO Council, 02.12.2005. *15266/05*.

Council of the European Union (2005d): Report from the General Secretariat to the EPSCO Council, 05.12.2005. *15266/1/05 REV 1*.

Council of the European Union (2005e): Report from the Social Questions Working Party to the Permanent Representatives Committee and the EPSCO Council, 21.11.2005. *14621/05*.

Council of the European Union (2006a): Council Conclusions on common values and principles in European Union Health Systems, 22.06.2006. *2006/C 146/01*.

Council of the European Union (2006b): Cover note from the Presidency to the EPSCO Council. Finnish Presidency Proposal. *14676/06 of 31.10.2006*.

Council of the European Union (2006c): Note from the Presidency to the Permanent Representatives Committee and the EPSCO Council. Proposal by the Austrian Presidency, 22.05.2006. *9672/06*.

Council of the European Union (2008a): Note from the General Secretariat of the Council to the Working Party on Public Health, 13.11.2008. *15655/08*.

Council of the European Union (2008b): Note from the Permanent Representatives Committee to the Council, 11.12.2008. *16514/08*.

Council of the European Union (2008c): Opinion of the Legal Service to the Working Party on Public Health, 17.10.2008. *14451/08*.

Council of the European Union (2009a): Note from the General Secretariat to the Working Party on Public Health, 11.05.2009. *9674/09*.

Council of the European Union (2009b): Note from the General Secretariat to the Working Party on Public Health, 31.07.2009. *12532/09*.

Council of the European Union (2009c): Note from the Permanent Representatives Committee to the Council, 03.06.2009. *10026/09*.

Council of the European Union (2009d): Note from the Presidency to the Permanent Representatives Committee, 04.05.2009. *9144/09*.

Council of the European Union (2009e): Note from the Presidency to the Permanent Representatives Committee, 09.05.2009. 9144/09.

Council of the European Union (2009f): Note from the Presidency to the Permanent Representatives Committee, 11.11.2009. 15560/09.

Crespy, Amandine (2010): When 'Bolkestein' is Trapped by the French Anti-Liberal Discourse: A Discursive-Institutionalist Account of Preference Formation in the Realm of European Union Multi-Level Politics. *Journal of European Public Policy* 17(8): 1253 - 1270.

Crespy, Amandine and Katarzyna Gajewska (2010): New Parliament, New Cleavages after the Eastern Enlargement? The Conflict over the Services Directive as an Opposition between the Liberals and the Regulators. *Journal of Common Market Studies* 48(5): 1185-1208.

Cross, James P (2013): Everyone's a Winner (Almost): Bargaining Success in the Council of Ministers of the European Union. *European Union Politics* 14(1): 70-94.

Cross, James P. (2012): Interventions and Negotiation in the Council of Ministers of the European Union. *European Union Politics* 13(1): 47-69.

Curtin, Deirdre M. (2011): Top Secret Europe. *Inaugural lecture delivered upon appointment to the chair of Professor of European Law at the University of Amsterdam, 20 October 2011.*

Dahlström, Carl, Victor Lapuente and Jan Teorell (2010): Dimensions of Bureaucracy. A Cross-National Dataset on the Structure and Behavior of Public Administration. *QoG Working Paper Series 2010:13*. Göteborg: University of Gothenburg.

Dannreuther, Roland (2007): Book Review. Jan Zielonka, Europe as Empire: The Nature of the Enlarged European Union. *European Foreign Affairs Review* 12(1): 118-120.

Daugbjerg, Carsten and Alan Swinbank (2004): The CAP and EU Enlargement: Prospects for an Alternative Strategy to Avoid the Lock-in of CAP Support. *Journal of Common Market Studies* 42(1): 99-119.

Daviter, Falk (2009): Schattschneider in Brussels: How Policy Conflict Reshaped the Biotechnology Agenda in the European Union. *West European Politics* 32(6): 1118-1139.

de la Rosa, Stephanie (2012): The Directive on Cross-Border Healthcare or the Art of Codifying Complex Case Law. *Common Market Law Review* 49(1): 15-46.

De Wilde, Pieter (2011): No Polity for Old Politics? A Framework for Analyzing the Politicization of European Integration. *Journal of European Integration* 33(5): 559-575.

De Witte, Bruno (2002): Anticipating the Institutional Consequences of Expanded Membership of the European Union. *International Political Science Review* 23(3): 235-248.

- della Porta, Donatella and Michael Keating, Eds. (2008): *Approaches and Methodologies in the Social Sciences. A Pluralist Perspective*. Cambridge: Cambridge University Press.
- Depoorter, Inge (2012): The Impact of 'Widening' on the Substantive Lourdeur of EU Decision-Making. *Paper presented on the UACES conference 'Exchanging ideas on Europe 2012', 3-5 September 2012, Passau.*
- Dimitrakopoulos, Dionyssi G. (2013): Debates over the EU's Working Time Directive Epitomise the Conflict Between Neo-Liberal and Centre-Left Visions of Europe. *Blog European Politics and Policy, 24.04.2013*. London: London School of Economics and Political Science.
- Dimitrova, Antoaneta (2002): Enlargement, Institution-Building and the EU's Administrative Capacity Requirement. *West European Politics* 25(4): 171 - 190.
- Dimitrova, Antoaneta and Dimiter Toshkov (2007): The Dynamics of Domestic Coordination of EU Policy in the New Member States: Impossible to Lock In? *West European Politics* 30(5): 961-986.
- Dür, Andreas and Gemma Mateo (2010a): Bargaining Power and Negotiation Tactics: The Negotiations on the EU's Financial Perspective, 2007–13. *Journal of Common Market Studies* 48(3): 557-578.
- Dür, Andreas and Gemma Mateo (2010b): Choosing a Bargaining Strategy in EU Negotiations: Power, Preferences, and Culture. *Journal of European Public Policy* 17(5): 680 - 693.
- Eberlein, Burkard and Claudio M. Radaelli (2010): Mechanisms of Conflict Management in Regulatory Policy. *Public Administration* 88(3): 782-799.
- Elgström, Ole, Bo Bjurulf, Jonas Johansson, et al. (2001): Coalitions in European Union Negotiations. *Scandinavian Political Studies* 24(2): 111-128.
- EU Observer (2012, 12.04.2012). "Officials, diplomats want even more EU secrecy." Retrieved 25.05.2012, from <http://euobserver.com/18/115866>.
- Eurobarometer (2007): Cross-Border Health Services in the EU. Analytical Report. *Flash EB No 210: The Gallup Organization*.
- European Parliament (2005): Report on the Proposal for a Directive of the European Parliament and of the Council Amending Directive 2003/88/EC concerning certain aspects of the organisation of working time. Rapporteur Alejandro Cercas. *A6-0105/2005*.
- European Parliament (2007): The impact of the European Court of Justice Case law on national systems for cross-border health service provision. Briefing Note. *IPOL/A/IMCO/NT/2006-24*.
- European Parliament (2008): European Parliament legislative resolution of 17 December 2008 on the Council common position for adopting a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time. *P6_TA(2008)0615*.

Falkner, Gerda (2005). Working Time Directive: European Standards Taken Hostage by Domestic Politics. In: G. Falkner, Ed.: *Complying with Europe*. Cambridge: Cambridge University Press, 94-117

Falkner, Gerda (2011): *The EU's Decision Traps: Comparing Policies*. Oxford: Oxford University Press.

Falkner, Gerda and Oliver Treib (2008): Three Worlds of Compliance or Four? The EU-15 Compared to New Member States. *Journal of Common Market Studies* 46(2): 293-313.

Field, Heather (2001): A Cause of Conflict? The Implications of Decision-making Changes for the EU's Eastwards Enlargement. *Journal of International Relations & Development* 4(1): 55.

Fink-Hafner, Danica (2011): Interest Representation and Post-Communist Parliaments over Two Decades. *The Journal of Legislative Studies* 17(2): 215-233.

Finke, Daniel (2009): Domestic Politics and European Treaty Reform: Understanding the Dynamics of Governmental Position-Taking. *European Union Politics* 10(4): 482-506.

Földes, Mária Éva (2009): The Emerging Mandate of EU Law in Health Care: A Legal Analysis of the Influence of Internal Market Implementation on Access to Health Care in Hungary and Slovenia. *Dissertation*. Central European University, Department of Legal Studies and Department of Political Science.

Furtlehner, Petra (2008). Slovenia. In: G. Falkner, O. Treib and E. Holzleithner, Eds: *Compliance in the Enlarged European Union. Living Rights of Dead Letters?* Aldershot: Ashgate, 125-156.

Garry, John and James Tilley (2009): Attitudes to European Integration: Investigating East-West Heterogeneity. *Journal of European Integration* 31(5): 537-549.

Gärtner, Laura, Julian Hörner and Lukas Obholzer (2011): National Coordination of EU Policy: A Comparative Study of the Twelve "New" Member States. *Journal of Contemporary European Research* 7(1): 77-100.

Genschel, Philipp (2002): *Steuerharmonisierung und Steuerwettbewerb in der Europäischen Union*. Frankfurt am Main, New York: Campus.

George, Alexander L. and Andrew Bennett (2005): *Case Studies and Theory Development in the Social Sciences*. Cambridge Massachusetts: MIT Press.

Gerring, John (2007a): *Case Study Research: Principles and Practices*: Cambridge University Press.

Gerring, John (2007b): Is There a (Viable) Crucial-Case Method? *Comparative Political Studies* 40(3): 231-253.

Gerring, John (2010): Causal Mechanisms: Yes, But.... *Comparative Political Studies* 43(11): 1499-1526.

- GKV Spitzenverband (2007): Potsdamer Erklärung. *Erklärung anlässlich der gemeinsamen Konferenz von GKV und BMG "Die soziale Dimension im Binnenmarkt – Zukunftsperspektiven der Krankenversorgung in Europa"*.
- GKV Spitzenverband (2008): Stellungnahme zum Richtlinienvorschlag der EU-Kommission „über die Ausübung der Patientenrechte in der grenzüberschreitenden Gesundheitsversorgung“.
- Gläser, Jochen and Grit Laudel (2010): *Experteninterviews und Qualitative Inhaltsanalyse als Instrumente Rekonstruierender Untersuchungen*: VS, Verl. für Sozialwiss.
- Goetz, Klaus H. (2001): Making Sense of Post-Communist Central Administration: Modernization, Europeanization or Latinization? *Journal of European Public Policy* 8(6): 1032-1051.
- Golub, Jonathan (1997): In the Shadow of the Vote? Decision-Making Efficiency in the European Community 1974-1995 *MPIfG Discussion Paper 97/3* Cologne.
- Golub, Jonathan (1999): In the Shadow of the Vote? Decision Making in the European Community. *International Organization* 53(4): 733-764.
- Golub, Jonathan (2008): The Study of Decision-Making Speed in the European Union. *European Union Politics* 9(1): 167-179.
- Golub, Jonathan (2012): How the European Union Does Not Work: National Bargaining Success in the Council of Ministers. *Journal of European Public Policy* 19(9): 1294-1315.
- Grant, Wyn (2005). The Common Agricultural Policy: Challenges in the Wake of Eastern Enlargement. In: A. Verdun and O. Croci, Eds: *The European Union in the Wake of Eastern Enlargement. Institutional and Policy-Making Challenges*. Manchester and New York: Manchester University Press, 57-71.
- Greer, Scott L. (2013): Avoiding Another Directive: The Unstable Politics of European Union Cross-Border Health Care Law. *Health Economics, Policy and Law* FirstView: 1-7.
- Grzymalala-Busse, Anna and Abby Innes (2003): Great Expectations: The EU and Domestic Political Competition in East Central Europe. *East European Politics and Societies* 17(1): 64-73.
- Guardiancich, Igor (2011): The Uncertain Future of Slovenian Exceptionalism. *East European Politics & Societies*.
- Häge, Frank M. (2007): Committee Decision-Making in the Council of the European Union. *European Union Politics* 8(3): 299-328.
- Häge, Frank M. (2008): Who Decides in the Council of the European Union? *Journal of Common Market Studies* 46(3): 533-558.
- Häge, Frank M. (2012a): Coalition Building and Consensus in the Council of the European Union. *British Journal of Political Science*: 1-24.

Häge, Frank M. (2012b): The European Union Policy-Making Dataset. *European Union Politics* 12(3): 455-477.

Hagemann, Sara and Julia De Clerck-Sachsse (2007): Old Rules, New Game. Decision-Making in the Council of Ministers after the 2004 Enlargement. *Special Report*. Brussels: Centre for European Policy Studies.

Hagemann, Sara and Bjorn Hoyland (2008): Parties in the Council? *Journal of European Public Policy* 15(8): 1205 - 1221.

Hall, Peter A. (2008): Systematic Process Analysis: When and How to Use It? *European Political Science* 7: 304-317.

Hall, Peter A. and David W. Soskice (2001): *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press.

Halpin, Darren (2011): Explaining Policy Bandwagons: Organized Interest Mobilization and Cascades of Attention. *Governance* 24(2): 205-230.

Hardy, Stephen (2006): Harmonising European Working Time in an Enlarged EU: A Case of Failed 'Humanisation'? *International Journal of Comparative Labour Law and Industrial Relations* 22(4): 563-602.

Hatzopoulos, Vassilis (2002): Killing National Health and Insurance Systems but Healing Patients? The European Market for Health Care Services after the Judgments of the ECJ in Vanbraekel and Peerbooms. *Common Market Law Review* 39(4): 683-729.

Hatzopoulos, Vassilis and Tamara Hervey (2013): Coming into Line: The EU's Court Softens on Cross-Border Health Care. *Health Economics, Policy and Law* 8(01): 1-5.

Haverland, Markus and Duncan Liefferink (2011): Member State Interest Articulation in the Commission Phase. Institutional Pre-Conditions for Influencing 'Brussels'. *Journal of European Public Policy* 19(2): 179-197.

Hayes-Renshaw, Fiona, Wim Van Aken and Helen Wallace (2006): When and Why the EU Council of Ministers Votes Explicitly. *Journal of Common Market Studies* 44(1): 161-194.

Hayes-Renshaw, Fiona and Helen Wallace (2006): *The Council of Ministers*. Basingstoke: Palgrave Macmillan.

Heinelt, Hubert (2007). Do Policies Determine Politics? In: F. Fischer, G. J. Miller and M. S. Sidney, Eds: *Handbook of Public Policy Analysis. Theory, Politics and Methods*. Boca Raton: Taylor & Francis, 109-119.

Heisenberg, Dorothee (2005): The Institution of 'Consensus' in the European Union: Formal Versus Informal Decision-Making in the Council. *European Journal of Political Research* 44: 65-90.

Heisenberg, Dorothee (2008). How Should We Best Study the Council of Ministers. In: D. Naurin and H. Wallace, Eds: *Unveiling the Council of the European Union. Games Governments Play in Brussels*. Basingstoke: Palgrave Macmillan, 261-277.

- Hertz, Robin and Dirk Leuffen (2008): Business as Usual? Analyzing the Effects of Enlargement on EU Legislative Output. *CIS Working Paper No. 38*. Zurich.
- Hertz, Robin and Dirk Leuffen (2010): Comparing European Union Decision-Making before and after Eastern Enlargement. *Paper prepared for presentation at the ECPR 5th Pan-European Conference, Porto 24-26/06/2010.*
- Hertz, Robin and Dirk Leuffen (2011): Too Big to Run? Analysing the Impact of Enlargement on the Speed of EU Decision-Making *European Union Politics* 12(2): 193-215.
- Hervey, Tamara K (2007). The Current Legal Framework on the Right to Seek Healthcare Abroad in the European Union. In: C. Barnard, Ed.: *The Cambridge Yearbook of European Legal Studies 2006-2007 Volume 9*. Oxford: Hart Publishing, 261-286.
- Hix, Simon and Bjørn Høyland (2011): *The Political System of the European Union*. Basingstoke: Palgrave Macmillan.
- Hloušek, Vít and Pavel Pšeja (2009): Europeanization of Political Parties and the Party System in the Czech Republic. *Journal of Communist Studies and Transition Politics* 25(4): 513-539.
- Hörl, Björn, Andreas Warntjen and Arndt Wonka (2005): Built on Quicksand? A Decade of Procedural Spatial Models on EU Legislative Decision-Making. *Journal of European Public Policy* 12(3): 592-606.
- Horvath, Anna (2008): From Policy to Politics? Informal Practices within the Social Protection Committee after the Enlargement. *Journal of European Integration* 30(4): 545-561.
- Hosli, Madeleine O. (1999): Power, Connected Coalitions, and Efficiency: Challenges to the Council of the European Union. *International Political Science Review* 20(4): 371-391.
- Hosli, Madeleine O., Mikko Mattila and Marc Uriot (2011): Voting in the Council of the European Union after the 2004 Enlargement: A Comparison of Old and New Member States. *Journal of Common Market Studies* 49(6): 1249-1270.
- House of Lords (2004): The Working Time Directive: A Response to the European Commission's Review. *European Union Committee 9th Report of Session 2003-04, HL Paper 67*.
- Innes, Abby (2002): Party Competition in Postcommunist Europe: The Great Electoral Lottery. *Comparative Politics* 35(1): 85-104.
- Jackson, John E., Bogdan W. Mach and Jennifer L. Miller-Gonzalez (2011): Buying Support and Regime Change: The Evolution of Polish Attitudes towards the EU and Voting between Accession and 2008. *European Union Politics* 12(2): 147-167.
- Jonczyk, Jan (2008): Czas Pracy Lekarza (W Związku z Europejską Dyrektywą o Czasie Pracy). *Europejski Przegląd Sądowy* luty 2008: 4-9.

Kaeding, Michael and Torsten J. Selck (2005): Mapping Out Political Europe: Coalition Patterns in EU Decision-Making. *International Political Science Review* 26(3): 271-290.

Kahler, Miles (1992): Multilateralism with Small and Large Numbers. *International Organization* 46(3): 681-708.

Kandogan, Yener (2000): Political Economy of Eastern Enlargement of the European Union: Budgetary Costs and Reforms in Voting Rules. *European Journal of Political Economy* 16(4): 685-705.

Kassim, Hussein (2000). Conclusion. The National Co-Ordination of EU Policy: Confronting the Challenge. In: H. Kassim, G. B. Peters and V. Wright, Eds: *The National Co-Ordination of EU Policy. The Domestic Level*. Oxford: Oxford University Press, 235-264.

Kassim, Hussein, Anand Menon, Guy B. Peters, et al. (2000): *The National Coordination of EU Policy. The Domestic Level*. Oxford: Oxford University Press.

Kassim, Hussein, Anand Menon, Guy B. Peters, et al., Eds. (2001): *The National Co-Ordination of EU Policy. The European Level*. Oxford: Oxford University Press.

Kauppi, H. and Mika Widgren (2007): Voting Rules and Budget Allocation in the Enlarged EU. *European Journal of Political Economy* 23(3): 693-706.

Kelemen, Daniel R., Anand Menon and Jonathan B. Slapin (2011): Wider and Deeper? Enlargement and Integration in the European Union. *Paper Presented to the Annual Meeting of the American Political Science Association, Seattle, 1-4 September 2011*.

Keohane, Robert O. (1986): Reciprocity in International Relations. *International Organization* 40(01): 1-27.

Klüver, Heike and Iñaki Sagarzazu (2013): Ideological Congruency and Decision-Making Speed: The Effect of Partisanship across European Union Institutions. *European Union Politics* 14(3): 388-407.

König, Thomas and Thomas Bräuninger (2004): Accession and Reform of the European Union. *European Union Politics* 5(4): 419-439.

Krajewski, Markus (2010): Grenzüberschreitende Patientenmobilität in Europe zwischen Negativer und Positiver Integration der Gesundheitssysteme. *Europarecht* 45(2): 165-187.

Laffan, Brigid (2006): Managing Europe from Home in Dublin, Athens and Helsinki: A Comparative Analysis. *West European Politics* 29(4): 687 - 708.

Laffan, Brigid and Johannes Lindner (2010). The Budget: Who Gets What, When, and How. In: H. Wallace, M. A. Pollack and A. R. Young, Eds: *Policy-Making in the European Union*. Oxford: Oxford University Press, 207-228.

Laffan, Brigid and Jane O'Mahony (2008): *Ireland and the European Union*. Basingstoke: Palgrave Macmillan.

- Lang, Achim (2008). Similar Responses to Similar Pressures? Adaptation Processes of British and German Business Associations in the Information and Communications Sector. In: J. Grote, A. Land and V. Schneider, Eds: *Organized Business Interests in Changing Environments. The Complexity of Adaptation*. Basingstoke: Palgrave Macmillan, 108-129.
- Lempp, Jakob (2007): "Coreper Enlarged": How Enlargement Affected the Functioning of the Committee of Permanent Representatives. *European Political Economy Review*(6): 31-52.
- Lempp, Jakob and Janko Altenschmidt (2008): The Prevention of Deadlock through Informal Processes of 'Supranationalization': The Case of Coreper. *Journal of European Integration* 30(4): 511-526.
- Lessenski, Marin (2009): Not Your Grandfather's Eastern Bloc. The EU New Member States as Agenda Setters in the Enlarged European Union. *EuPI - European Policies Initiative Open Society Institute Sofia*.
- Leuffen, Dirk , Susumu Shikano and Stefanie Walter (2013): Thinking Ahead. Measurement and Data Aggregation in Small-n Social Scientific Research. *European Political Science* 12(1): 40-51.
- Leuffen, Dirk and Robin Hertz (2010): If Things Can Only Get Worse: Anticipation of Enlargement in European Union Legislative Politics. *European Journal of Political Research* 49(1): 53-74.
- Lewis, J. (2008a). Strategic Bargaining, Norms and Deliberation. In: H. Wallace and D. Naurin, Eds: *Unveiling the Council of the European Union. Games Governments Play in Brussels*. Basingstoke: Palgrave Macmillan, 165-186.
- Lewis, Jeffrey (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): 479-504.
- Lewis, Jeffrey (2003): Institutional Environments And Everyday EU Decision Making. *Comparative Political Studies* 36(1-2): 97-124.
- Lewis, Jeffrey (2005): The Janus Face of Brussels: Socialization and Everyday Decision Making in the European Union. *International Organization* 59(4): 937-971.
- Lewis, Jeffrey (2010): How Institutional Environments Facilitate Co-operative Negotiation Styles in EU Decision-Making. *Journal of European Public Policy* 17(5): 648 - 664.
- Lewis, Paul G. (2008b): Changes in the Party Politics of the New EU Member States in Central Europe: Patterns of Europeanization and Democratization. *Journal of Southern Europe and the Balkans Online* 10(2): 151-165.
- Little, Daniel (1991): *Varieties of Social Explanation: An Introduction to the Philosophy of Social Science*. Boulder Colorado: Westview Press.
- Lowi, Theodore J. (1972): Four Systems of Policy, Politics, and Choice. *Public Administration Review* 32(4): 298-310.

Magnette, Paul and Yannis Papadopoulos (2008): On the Politicization of the European Consociation. A Middleway between Hix and Bartolini. *European Governance Papers No.C-08-01*.

Mahoney, James (2010): After KKV: The New Methodology of Qualitative Research. *World Politics* 62(01): 120-147.

Mahoney, James and Gary Goertz (2006): A Tale of Two Cultures: Contrasting Quantitative and Qualitative Research. *Political Analysis* 14(3): 227-249.

Majone, Giandomenico (1994): The Rise of the Regulatory State in Europe. *West European Politics* 17(3): 77-101.

Majone, Giandomenico (1996). A European Regulatory State? In: J. J. Richardson, Ed.: *European Union. Power and Policy-Making*. London: Routledge, 263-277.

Majone, Giandomenico (2005): *Dilemmas of European integration: the ambiguities and pitfalls of integration by stealth*: Oxford Univ. Press.

Martinsen, Dorte Sindbjerg (2005): Towards an Internal Health Market with the European Court. *West European Politics* 28(5): 1035-1056.

Martinsen, Dorte Sindbjerg (2009): Conflict and Conflict Management in the Cross-border Provision of Healthcare Services. *West European Politics* 32(4).

Mastenbroek, Ellen and Sebastiaan Princen (2010): Time for EU Matters: The Europanization of the Dutch Central Government. *Public Administration* 88(1): 154-169.

Mattila, Mikko (2004): Contested decisions: Empirical analysis of voting in the European Union Council of Ministers. *European Journal of Political Research* 43(1): 29-50.

Mattila, Mikko and Jan-Erik Lane (2001): Why Unanimity in the Council?: A Roll Call Analysis of Council Voting. *European Union Politics* 2(1): 31-52.

Mattli, Walter and Thomas Plümper (2002): The demand-side politics of EU enlargement: democracy and the application for EU membership. *Journal of European Public Policy* 9(4): 550-574.

Maurer, Andreas and Wolfgang Wessels (2001). The German Case: A Key Moderator in a Competitive Multi-Level Environment. In: H. Kassim, A. Menon, G. B. Peters and V. Wright, Eds: *The National Co-Ordination of EU Policy. The European Level*. Oxford: Oxford University Press, 101-128.

Mayntz, Renate (2004): Mechanisms in the Analysis of Social Macro-Phenomena. *Philosophy of Social Science* 34(2): 237-259.

McMenamin, Iain (2002): Polish Business Associations: Flattened Civil Society or Super Lobbies? *Business and Politics* 4(3): 301-317.

Menon, Anand (2001). French Administration in Brussels. In: H. Kassim, A. Menon, G. B. Peters and V. Wright, Eds: *The National Co-Ordination of EU Policy. The European Level* Oxford: Oxford University Press.

- Metcalf, Les (1994): International Policy Co-Ordination and Public Management Reform. *International Review of Administrative Sciences* 60(2): 271-290.
- Milward, Alan S. (1992): *The European Rescue of the Nation-State*. London: Routledge.
- Moran, Michael (2000): Understanding the Welfare State: The Case of Health Care. *The British Journal of Politics & International Relations* 2(2): 135-160.
- Moravcsik, Andrew (1993): Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach *Journal of Common Market Studies* 31(4): 473-524.
- Moravcsik, Andrew (1995): The European Rescue of the Nation-State by Alan S. Milward. Review by: Andrew Moravcsik. *The Journal of Modern History* 67(1): 126-128.
- Moravcsik, Andrew (1998): *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca New York: Cornell University Press.
- Naurin, Daniel (2007): Network Capital and Cooperation Patterns in the Working Groups of the Council of the EU. *Working Paper RSCAS 2007/14*. European University Institute Florence: Robert Schuman Centre for Advanced Studies.
- Naurin, Daniel (2009): Measuring and Explaining Network Capital in the EU Council of Ministers. *Working Paper presented at a EUI workshop "Legislators of Europe"*.
- Naurin, Daniel (2010): Most Common When Least Important: Deliberation in the European Union Council of Ministers. *British Journal of Political Science* 40(01): 31-50.
- Naurin, Daniel and Rutger Lindahl (2008). East-North-South: Coalition-Building in the Council before and after Enlargement. In: D. Naurin and H. Wallace, Eds: *Unveiling the Council of the European Union. Games Governments Play in Brussels*. Basingstoke: Palgrave Macmillan, 64-80.
- Naurin, Daniel and Rutger Lindahl (2010): Out in the Cold? Flexible Integration and the Political Status of Euro Opt-Outs. *European Union Politics* 11(4): 485-509.
- Naurin, Daniel and Helen Wallace (2008a). Introduction: From Rags to Riches. In: D. Naurin and H. Wallace, Eds: *Unveiling the Council of the European Union. Games Governments Play in Brussels*. Basingstoke: Palgrave Macmillan, 1-20.
- Naurin, Daniel and Helen Wallace, Eds. (2008b): *Unveiling the Council of the European Union. Games Governments Play in Brussels*. Basingstoke: Palgrave Macmillan.
- Nedegaard, Peter (2007): Blocking Minorities: Networks and Meaning in the Opposition Against the Proposal for a Directive on Temporary Work in the Council of Ministers of the European Union. *Journal of Common Market Studies* 45(3): 695-717.

Nicoll, William (1995). The Council's Use of Statements in the Minutes. In: M. Westlake, Ed.: *The Council of the European Union*. London: Cartermill Publishing, 120-124.

Niemann, Arne and Jeannette Mak (2010): (How) do Norms Guide Presidency Behaviour in EU Negotiations? *Journal of European Public Policy* 17(5): 727 - 742.

Nölke, Andreas and Arjan Vliegthart (2009): Enlarging the Varieties of Capitalism: The Emergence of Dependent Market Economies in East Central Europe. *World Politics* 61(4): 670-702.

Novak, Stéphanie (2010): Decision Rules, Social Norms and the Expression of Disagreement: The Case of Qualified-Majority Voting in the Council of the European Union. *Social Science Information* 49(1): 83-97.

Novak, Stéphanie (2013): The Silence of Ministers: Consensus and Blame Avoidance in the Council of the European Union. *Journal of Common Market Studies* 51(6): 1091-1107.

Nugent, Neill (2004a). Distinctive and Recurring Features of Enlargement Rounds. In: N. Nugent, Ed.: *European Union Enlargement*. Basingstoke: Palgrave Macmillan, 56-69.

Nugent, Neill (2004b). Previous Enlargement Rounds. In: N. Nugent, Ed.: *European Union Enlargement*. Basingstoke: Palgrave Macmillan, 22-33.

Nugent, Neill (2010): *The Government and Politics of the European Union*. Basingstoke: Palgrave Macmillan.

Obermaier, Andreas (2008a): De-Territorialization and De-Structuring Dynamics: The Impact of ECJ Patient Mobility rulings on Germany, France and the United Kingdom. *Paper for ECPR Conference, 25-27 September 2008, Riga*.

Obermaier, Andreas J. (2008b): The National Judiciary—Sword of European Court of Justice Rulings: The Example of the Kohll/Decker Jurisprudence. *European Law Journal* 14(6): 735-752.

Odell, John S. (2001): Case Study Methods in International Political Economy. *International Studies Perspectives* 2(2): 161-176.

Olson, Mancur (1965): *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge Massachusetts: Harvard University Press.

Orenstein, Mitchell A. (2010): The Political Economy of Financial Crisis in Central and Eastern Europe: Poland and Hungary Compared. *Draft*.

Panke, Diana (2010a): Good Instructions in No Time? Domestic Coordination of EU Policies in 19 Small States. *West European Politics* 33(4): 770-790.

Panke, Diana (2010b): *Small States in the European Union. Coping with Structural Disadvantages*. Farnham Surrey: Ashgate.

- Panke, Diana (2011): Negotiation Effectiveness: Why Some States Are Better than Others in Making Their Voices Count in EU Negotiations. *Comparative European Politics* 10(1): 111-132.
- Panke, Diana (2012): Lobbying Institutional Key Players: How States Seek to Influence the European Commission, the Council Presidency and the European Parliament. *Journal of Common Market Studies* 50(1): 129-150.
- Pierson, Paul (2000): Increasing Returns, Path Dependence, and the Study of Politics. *The American Political Science Review* 94(2): 251-267.
- Plechanovová, Běla (2011): The EU Council Enlarged: North-South-East or Core-Periphery? *European Union Politics* 12(1): 87-106.
- Pleines, Heiko (2011): Weakness as Precondition of Smooth Integration? Representation Strategies of Functional Interest Groups from New Member States at the EU Level. *Journal of European Integration* 33(4): 507-521.
- Pollack, Mark A. (2000): The End of Creeping Competence? The EU Policy-Making since Maastricht. *Journal of Common Market Studies* 38(3): 519-538.
- Pollack, Mark A. (2009): Europe United? The Impact of the EU's Eastern Enlargement, Five Years On. *European View* 8(2): 239-254.
- Pollack, Mark A. and Gregory C. Shaffer (2008). Risk Regulation, GMOs and the Limits of Deliberation. In: D. Naurin and H. Wallace, Eds: *Unveiling the Council of the European Union. Games Governments Play in Brussels*. Basingstoke: Palgrave Macmillan, 144-164.
- Princen, Sebastiaan (2011): Agenda-setting strategies in EU policy processes. *Journal of European Public Policy* 18(7): 927-943.
- Princen, Sebastiaan (2012): The DEU Approach to EU Decision-Making: A Critical Assessment. *Journal of European Public Policy* 19(4): 623-634.
- Puchala, Donald J. (2006): Book Review. Europe as Empire: The Nature of the Enlarged European Union, by J. Zielonka. *Journal of Common Market Studies* 44(5): 1108-1109.
- Puetter, Uwe (2008): Adapting to Enlargement: The Role of Formal and Informal Processes of Institutional Adjustment in EU Committee Governance. *Journal of European Integration* 30(4): 479-491.
- Putnam, Robert D. (1988): Diplomacy and Domestic Politics. *International Organization* 42(3): 427-461.
- Rabinowitz, George and Stuart Elaine Macdonald (1989): A Directional Theory of Issue Voting. *The American Political Science Review* 83(1): 93-121.
- Richardson, Jeremy J. (2006). Policy-making in the EU: Interests, Ideas and Garbage Cans of Primeval Soup. In: J. J. Richardson, Ed.: *European Union. Power and Policy-Making*. Abingdon: Routledge, 3-30.
- Rohrschneider, Robert and Stephen Whitefield (2010): Consistent Choice Sets? The Stances of Political Parties towards European Integration in Ten Central East

European Democracies, 2003-2007. *Journal of European Public Policy* 17(1): 55 - 75.

Rybář, Marek (2011): National Determinants of International Preferences in Post-Communist Europe: The Case of Slovakia in the European Union. *Communist and Post-Communist Studies* 44(3): 161-171.

Sallai, Dorottya (2013): European Union Lobbying and the Golden Cage of Post-Socialist Network Capitalism in Hungary. *Journal of Common Market Studies* 51(5): 948-964.

Sauter, Wolf (2008): Patient Mobility Directive - discussion paper. Tilburg University.

Sauter, Wolf (2009): The Proposed Patients' Rights Directive and the Reform of (Cross-Border) Healthcare in the European Union. *Legal Issues of Economic Integration* 36(2): 126.

Schalk, Jelmer, Rene Torenvlied, Jeroen Weesie, et al. (2007): The Power of the Presidency in EU Council Decision-Making. *European Union Politics* 8(2): 229-250.

Scharpf, Fritz W. (1997): *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*. Boulder Colorado: Westview Press.

Schelling, Thomas C. (1963): *The Strategy of Conflict*. Cambridge Massachusetts Harvard University Press.

Schimmelfennig, Frank (2001): The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union. *International Organization* 55(1): 47-80.

Schimmelfennig, Frank (2012): Is There a Widening-Loosening Trade-Off in European Integration? *EUSA Review Forum*: EUSA Review 2012: 3.

Schimmelfennig, Frank and Ulrich Sedelmeier (2002): Theorizing EU Enlargement: Research Focus, Hypotheses, and the State of Research. *Journal of European Public Policy* 9(4): 500-528.

Schliemann, H. (2006): Bereitschaftsdienst im EG-Recht. *Neue Zeitschrift für Arbeitsrecht* 18: 1009-1013.

Schmidt, Susanne K. (2000): Only an Agenda Setter? The European Commission's Power over the Council of Ministers. *European Union Politics* 1(1): 37-61.

Schmidt, Susanne K. (2009): When Efficiency Results in Redistribution: The Conflict over the Single Services Market. *West European Politics* 32(4): 847-865.

Schmitt, Hermann and Jacques Thomassen (2009): The EU Party System after Eastern Enlargement. *Journal of European Integration* 31(5): 569-587.

Schmitter, Philippe C. and Wolfgang Streeck (1999): The Organization of Business Interests. Studying the Associative Action of Business in Advanced Industrial Societies. *MPIfG Discussion Paper* 99/1.

- Schneider, Gerald (2008). Neither Goethe, nor Bismarck: On the Link between Theory and Empirics in Council Decision-Making Studies. In: H. Wallace and D. Naurin, Eds: *Unveiling the Council of the European Union. Games Governments Play in Brussels*. Basingstoke: Palgrave Macmillan, 277-289.
- Schulte, Bernd (2009): Pflegepolitik im Wandel: Europäische Perspektiven. *Vortrag auf der Diskussionsveranstaltung "Pflegepolitik im Wandel" der Gesellschaft für Sozialen Fortschritt Köln und des Deutschen Zentrums für Altersfragen Berlin*.
- Schulze, Marianne (2008). Slovakia. In: G. Falkner, E. Holzleithner and O. Treib, Eds: *Compliance in the Enlarged European Union. Living Rights or Dead Letters?* Aldershot: Ashgate, 95-124.
- Sekhon, Jasjeet S. (2004): Quality Meets Quantity: Case Studies, Conditional Probability, and Counterfactuals. *Perspectives on Politics* 2(02): 281-293.
- Settembri, Pierpaolo (2007): The Surgery Succeeded. Has the Patient Died? The Impact of Enlargement on the European Union. *Jean Monnet Working Paper 04/07*. NYU School of Law.
- Skjærseth, Jon Birger and Jørgen Wettestad (2007): Is EU Enlargement Bad for Environmental Policy? Confronting Gloomy Expectations with Evidence. *International Environmental Agreements* 7(3): 263-280.
- Smith, Julie (2006): How to Loose Friends and Influence - the UK and the New Member States. *European Policy Brief 19/2006*: The Federal Trust.
- Spence, David (1995a). The Co-Ordination of European Policy by Member States. In: M. Westlake, Ed.: *The Council of the European Union*. London: Cartermill Publishing, 353-372.
- Spence, David (1995b). Negotiations, Coalitions and the Resolution of Inter-State Conflicts. In: M. Westlake, Ed.: *The Council of the European Union*. London: Cartermill Publishing, 373-389.
- Stasavage, David (2004): Open-Door or Closed-Door? Transparency in Domestic and International Bargaining. *International Organization* 58(04): 667-703.
- Stasavage, David (2007): Polarization and Publicity: Rethinking the Benefits of Deliberative Democracy. *The Journal of Politics* 69(01): 59-72.
- Statham, Paul and Hans-Jörgrenz (2013): How European Union Politicization can Emerge through Contestation: The Constitution Case. *Journal of Common Market Studies* 51(5): 965-980.
- Stein, Arthur A. (1999). The Limits of Strategic Choice: Constrained Rationality and Incomplete Explanation. In: D. A. Lake and G. L. Powell, Eds: *Strategic Choice and International Relations* Princeton: Princeton University Press, 197-228.
- Szczepanik, Melchior and Jacek Kucharczyk (2012): Not only Foreign Policy. Polish Memembers of the Seventh European Parliament: Midterm Report. *Report of the Institute of Public Affaires*. Warsaw: Fundacja Instytut Spraw Publicznych.

Szczerbiak, Aleks and Paul A. Taggart (2008): *Opposing Europe? The Comparative Party Politics of Euroscepticism*. Oxford and New York: Oxford University Press.

Szyszczyk, Erika (1995): Future Directions in European Union Social Policy Law. *International Law Journal* 24(1): 19-32.

Tallberg, Jonas (2004): The Power of the Presidency: Brokerage, Efficiency and Distribution in EU Negotiations. *Journal of Common Market Studies* 42(5): 999-1022.

Tavits, Margit and Natalia Letki (2009): When Left Is Right: Party Ideology and Policy in Post-Communist Europe. *American Political Science Review* 103(04): 555-569.

The Guardian (2011): Why revisit the working time directive? 21 November 2011.

Thomson, Robert (2008): The Council Presidency in the European Union: Responsibility with Power. *Journal of Common Market Studies* 46(3): 593-617.

Thomson, Robert (2009): Actor Alignments in the European Union before and after Enlargement. *European Journal of Political Research* 48: 756-781.

Thomson, Robert (2011): *Resolving Controversy in the European Union: Legislative Decision-Making Before and After Enlargement* Cambridge: Cambridge University Press.

Thomson, Robert, Javier Arregui, Dirk Leuffen, et al. (2012): A New Dataset on Decision-Making in the European Union before and after the 2004 and 2007 Enlargements (DEUII). *Journal of European Public Policy* 19(4): 604-622.

Thomson, Robert, Jovanka Boerefijn and Frans Stokman (2004): Actor Alignments in European Union Decision-Making. *European Journal of Political Research* 43(2): 237-261.

Thomson, Robert and Frans Stokman (2006). Research Design: Measuring Actors' Positions, Salience and Capabilities. In: R. Thomson, F. N. Stokman, C. H. Achen and T. König, Eds: *The European Union Decides*. Cambridge: Cambridge University Press, 25-53.

Thomson, Robert, Frans N. Stokman, Christopher H. Achen, et al., Eds. (2006): *The European Union Decides*. Cambridge: Cambridge University Press.

Toth, Federico (2010): Is there a Southern European Healthcare Model? *West European Politics* 33(2): 325-343.

Trade Union Congress (2005): The EU Temp Trade: Temporary Agency Work across the European Union. *Report, 17.06.2005*.

Tsebelis, George (2002): *Veto Players: How Political Institutions Work*. New York: Russell Sage Foundation.

Tsebelis, George and Xenophon Yataganas (2002): Veto Players and Decision-making in the EU After Nice. *Journal of Common Market Studies* 40(2): 283-307.

- Vachudova, Milada A. (2008): Tempered by the EU? Political Parties and Party Systems before and after Accession. *Journal of European Public Policy* 15(6): 861-879.
- Veen, Tim (2011): *The Political Economy of Collective Decision-Making. Conflicts and Coalitions in the Council of the European Union*. Berlin Heidelberg: Springer.
- Veen, Tim (2012): The Dimensionality and Nature of Conflict in European Union Politics: On the Characteristics of Intergovernmental Decision-Making. *European Union Politics* 12(1): 65-86.
- Verdun, Amy and Osvaldo Croci (2007): *The European Union in the Wake of Eastern Enlargement: Institutional and Policy-Making Challenges*. Manchester: Manchester University Press.
- Voermans, Wim (2009): Concern about the Quality of EU Legislation: What Kind of Problem, by what Kind of Standards? *Erasmus Law Review* 2(1): 59-95.
- Vollaard, Hans (2009): Political Territoriality in the European Union. The changing boundaries of security and health care. *Dissertation*. Leiden University, The Netherlands.
- VoteWatch Europe (2012): Agreeing to Disagree. The Voting Records of EU Member States in the Council since 2009. *VoteWatch Europe Annual Report 2012*.
- Wall, Stephen (2008): *A Stranger in Europe. Britain and the EU from Thatcher to Blair*. Oxford: Oxford University Press.
- Wallace, Helen (1999): Whose Europe is it Anyway? The 1998 Stein Rokkan Lecture. *European Journal of Political Research* 35(3): 287-306.
- Wallace, Helen (2002): The Council: An Institutional Chameleon? *Governance* 15(3): 325-344.
- Wallace, Helen (2005). Can a Reformed European Union Bear the Weight of Enlargement? In: A. Verdun and O. Croci, Eds: *The European Union in the Wake of Eastern Enlargement. Institutional and Policy-Making Challenges*. Manchester and New York: Manchester University Press, 23-34.
- Wallace, Helen (2007): Adapting to Enlargement of the European Union: Institutional Practice since May 2004. *TEPSA Working Paper*.
- Wallace, Helen, Mark A. Pollack and Alasdair R. Young (2010). EU Policy-Making in Challenging Times: Adversity, Adaptability and Resilience. In: H. Wallace, M. A. Pollack and A. R. Young, Eds: *Policy-Making in the European Union*. Oxford: Oxford University Press, 481-502.
- Warntjen, Andreas (2008): The Council Presidency: Power Broker or Burden? An Empirical Analysis. *European Union Politics* 9(3): 315-338.
- Warntjen, Andreas (2010): Between Bargaining and Deliberation: Decision-Making in the Council of the European Union. *Journal of European Public Policy* 17(5): 665 - 679.

Warntjen, Andreas (2012): Measuring Salience in EU Legislative Politics. *European Union Politics* 13(1): 168-182.

Warntjen, Andreas (2013): Overcoming Gridlock: The Council Presidency, Legislative Activity and Issue De-Coupling in the Area of Occupational Health and Safety Regulation. *Journal of Contemporary European Research* 9(1): 39-59.

Wendt, Claus, Lorraine Frisina and Heinz Rothgang (2009): Healthcare System Types: A Conceptual Framework for Comparison. *Social Policy & Administration* 43(1): 70-90.

Westlake, Martin (1995): *The Council of the European Union*. London: Cartermill Publishing.

Wiedermann, Clemens (2008). Czech Republic. In: G. Falkner, E. Holzleithner and O. Treib, Eds: *Compliance in the Enlarged European Union. Living Rights or Dead Letters?* Aldershot: Ashgate, 27-60.

Wind, Marlene (2010): The Nordics, the EU and the Reluctance Towards Supranational Judicial Review. *Journal of Common Market Studies* 48(4): 1039-1063.

Wonka, Arndt, Frank R Baumgartner, Christine Mahoney, et al. (2010): Measuring the size and scope of the EU interest group population. *European Union Politics* 11(3): 463-476.

Wright, Vincent (1996). The National Co-Ordination of European Policy-Making. Negotiating the Quagmire. In: J. Richardson, Ed.: *European Union: Policy and Policy-Making*. London: Routledge, 148-169.

Zanon, Elisabetta (2010): The NHS' Engagement with European Affairs. *Eurohealth* 16(4).

Zielonka, Jan (2006): *Europe as Empire: The Nature of the Enlarged European Union*. Oxford: Oxford University Press.

Zielonka, Jan (2007): Plurilateral Governance in the Enlarged European Union. *Journal of Common Market Studies* 45(1): 187-209.

Zimmer, Christina, Gerald Schneider and Michael Dobbins (2005): The Contested Council: Conflict Dimensions of an Intergovernmental EU Institution. *Political Studies* 53(2): 403-422.

Zürn, Michael and Jeffrey T. Checkel (2005): Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation-State. *International Organization* 59(4): 1045-1079.