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How external interests enter the European Commission: Mechanisms at play in legislative position formation

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How external interests enter the European Commission: Mechanisms at play in legislative position formation

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discussion paper

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Abstract

The European Commission, Europe's central supranational bureaucracy, is often depicted as a playground for external interests. The scholarly literature offers a range of sensible explanations how the Commission position is bound by national, organised societal, or party political interests. Despite substantial contributions, the empirical approach supporting such arguments often focuses on the mere comparison between a particular external interest and the legislative outcome.

In this paper, we aim to add a more process-based, mechanistic perspective by empirically focussing the question *how* certain external interest found their way into a Commission position as captured by a legislative proposal. Against the background of a larger research project which analyses 48 position formation processes in the Commission on the basis of 133 in-depth interviews with participating officials, this paper presents mechanisms linking external interest to the final Commission position and that are transferable across specific drafting processes and across different policy fields.

Zusammenfassung

Die europäische Kommission, zentraler bürokratischer Akteur der Europäischen Union, wird oft als Spielwiese externer Interessen dargestellt. Die politikwissenschaftliche Literatur bietet vor diesem Hintergrund eine Reihe sinnvoller Erklärungen an, wie die Kommission bei ihrer Positionsbildung durch nationale, gesellschaftlich-organisierte oder parteipolitische Interessen beeinflusst ist. Trotz beachtlicher Forschungsbeiträge, beschränken sich empirische Arbeiten, die dieses Argument untermauern allerdings häufig auf den bloßen Vergleich eines bestimmten externen Interesses und dem Inhalt des letztlich von der Kommission vorgeschlagenen Gesetzes.

Mit diesem Papier zielen wir darauf ab, diese Literatur um einen eher prozess- und mechanismus-orientierten Ansatz zu ergänzen indem wir empirisch der Frage nachgehen, *wie* externe Interessen ihren Weg in einen legislativen Kommissionsvorschlag gefunden haben. Wir greifen dabei auf ein breiteres Forschungsprojekts zurück, das 48 Politikformulierungsprozesse innerhalb der Kommission auf der Basis von 133 Interviews mit beteiligten Kommissionsbeamten analysiert. Auf dieser Grundlage lassen sich eine Reihe von Mechanismen identifizieren, die aufklären, wie externe Interessen mit der finalen Kommissionsposition verbunden sind, und die gleichzeitig über einzelne Prozesse und Politikfelder transferierbar sind.

1. Introduction¹

The European Commission, Europe's central supranational bureaucracy, is often depicted as a playground for external interests. Prominent literature strands provide valuable and sophisticated theoretical arguments on how certain external interest influence EU decision making and particularly the European Commission. In practice though, empirical examinations often focus on *whether* a respective interest is taken up by the Commission without paying attention to the exact mechanism at play. We know little about the exact micro-level causalities, processes and conditions allowing certain interests to enter into the decision-making process. *How* do external interests actually influence European legislation? What exactly triggers this exertion of influence on the Commission's position? And last but not least, why and under what circumstances does the Commission take certain external interests into consideration as opposed to others?

In this paper, we take such a 'mechanismic' perspective (Gerring, 2008) by empirically uncovering the causal pathway of how external interests enter the European Commission in legislative position formation. Rather than merely comparing positions of external interests to legislative outcomes, our ongoing research project adds an explicitly process-based perspective. Tracing position formation processes of the Commission from the initial idea to the final Commission proposal opens up the possibility of focusing empirically on *how* a particular external interest translated into the position the Commission finally proposed to Council and Parliament.

This paper refers to insights gained inductively from 48 such cases and compares them in order to distil empirical pathways along which three prominent categories of influential external interests enter the Commission's position: national, societal, or party political interests. The dominance of *national interests* in European decision making has been subject to scholarly debates from the early grand-theories of European integration onwards (Hoffmann, 1966; Moravcsik, 1998; Tsebelis and Garrett, 2000). The developing understanding of the EU as a more complex multi-level system increased the interest in a number of actors beyond national governments. *Organised societal interests* have prominently gained attention

¹ We gratefully acknowledge funding from a Volkswagen Foundation Schumpeter Fellowship. More information on the project can be found at <http://www.wzb.eu/zkd/peu/>

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by scholars analysing the influence of corporate lobbying and civil society forces on a rising output of individual EU decisions particularly in the context of the single market (e.g. Mazey and Richardson, 1993; Broscheid and Coen, 2003; Eising, 2007). The impact of *party political interests* on decision making, one of the core assumptions of political science, has recently been claimed to matter also for the EU system (e.g. Hix et al., 2005). These interest are considered to be increasingly important in the process of decision making at European level, due to its rising politicisation and the fact that scholars draw more and more often on classical concepts of political science when analysing the EU (e.g. Hooghe, 2001; Hix et al., 2006; Döring, 2007).

From an analytical perspective, these three interest types can be separated while they arguably overlap in empirical terms. A national government, for example, may at times present party political interests. Likewise, a national position can result from the demands of domestic organised interest groups. Keeping such potential overlaps in mind, we analytically distinguish national, organised, and party political interests by focussing on the Commission level. Analytically speaking, an interest is considered national if it arrives via national representatives or national law at the supranational level. Likewise, party political or organised interests must arrive as such at the Commission to fall in our respective analytical category. Where we find that interests overlap we will provide the empirical evidence for the specific case.

By uncovering the causal pathways linking particular national, societal and party political interests to the substance of a Commission proposal our approach does not claim universal generalisation. However, with our empirical approach we uncover mechanisms that are indeed transferable across different drafting processes and policy fields. This way, our results can contribute to refine theories, hypotheses and implications of position formation *within* the European Commission.

The paper is structured as follows: the next section lays out the empirical approach in greater detail. Sections three to five are organised along the three types of interests and present the detected mechanisms that emerged out of the inductive analysis. Each mechanism is complemented with typical empirical examples that rework the proposed causal chain for the empirical cases. Section six provides a systematizing overview across the mechanisms while the concluding section summarizes the insights and discusses their future value.

2. Zooming in: Mechanisms influencing the position of the Commission

The paper aims to generate insights on the empirical patterns by which the European Commission forms its positions on legislative initiatives. We have stressed before the need to look at individual DGs instead of treating the Commission as a monolithic bloc and have discussed the independent effects of internal Commission coordination structures on position formation (Hartlapp et al., 2010). In turn, this paper concentrates more closely on agency effects. Our main interest is not to determine *whether* and with what relative weight external interests find their way into a DG's position, but *how* this actually takes place. The research design laid out in this section is geared towards this aim.

2.1 Conceptual framework: Context, factors, and mechanisms

As noted, this paper focuses on causal processes whereby we differentiate between context, factors and mechanisms. Understanding mechanisms as causality capturing concepts their implications may become visible in correlations, but they are ultimately different. "The notion of mechanisms as intervening between I = the explanans and O= the explanandum takes correlational analysis visibly as point of departure and critically develops an alternative to it by adding the causal link M" (Mayntz, 2004: 244). In applying this approach to our research question, our analytical starting point is output O, the final position of a DG showing a bias towards a specific external interest. Input I is the position of an external interest (national, organised or party political) and M is the causal link that allows an external interest to enter the DG's position.

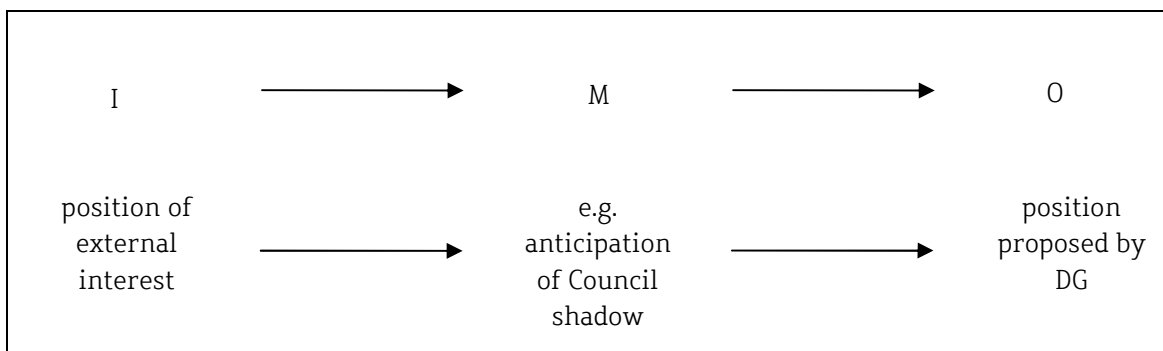


Figure 1: Focus on mechanisms

We *define* a ‘mechanism’ as the causal pathway or process that explains how an input I is linked to an output O. This definition is consensual among the broad variety of conceptions and definitions of what a ‘mechanism’ may be (e.g. Hedström and Swedberg, 1998; Elster, 1998; George and Bennett, 2005; Gerring, 2008; Falleti and Lynch, 2009; Mayntz, 2004)² Understood as concepts which uncover the underlying social process between factors or sets of factors, mechanisms are by nature relational concepts. “Mechanisms tell us how things happen: how actors relate, how individuals come to believe what they do or what they draw from past experiences, how policies and institutions endure or change, how outcomes that are inefficient become hard to reverse” (Falleti and Lynch, 2009: 1147).³

What renders mechanisms distinct from causal descriptions and justifies the claim of more general relevance is their portability across cases. In other words, a mechanism is a relatively abstract concept that “can travel from one specific instance [...] of causation to another and that explains how a hypothesized cause creates a particular outcome in a given context” (Falleti and Lynch, 2009: 1145). With this view comes the understanding that a mechanism by itself cannot explain an outcome. Thus, the comprehensive causal chain linking the position of an external interest to the particular position proposed by a DG may include not only the mechanism at play, but also context and additional factors.⁴ We approach these categories, using what bears most empirical leverage for explanation. In doing so we apply a ladder of abstraction: where we have sufficient information to trace causality, we refer to mechanisms. If this is not the case we operate at the level of factors, e.g. portfolio allocation, or context, such as a changing political climate. It is difficult to draw a strict dividing line where the factor ends and the mechanism starts. Yet, we differentiate between factors and

² Mayntz (2004: 246) gives an example of how the level of abstraction may vary: “Path dependent technological innovation,’ ‘increasing returns,’ and ‘positive feedback’ are increasingly general concepts that can be applied to the same case, for instance, the frequently cited QWERTY case of the typewriter keyboard”.

³ Technically speaking: “Whereas variables are observable attributes of the units of analysis – with values (nominal, ordinal, or numerical) and with sample and population distributions – mechanisms are relational concepts. They reside above and outside the units in question, and they explain the link between inputs and outputs. Mechanisms describe the relationships or the actions among the units of analysis or in the cases of study.” (Falleti and Lynch, 2009: 1147)

⁴ This is also the reason why ultimately concluding assessments of influence are difficult to reach under this perspective. However, we substantially go beyond the notion of access by showing how an interest enters the final Commission position.

mechanisms by showing how the same factor may matter through a number of mechanisms each time impacting on the outcome. Linking a factor to the outcome, different mechanisms may even produce the same outcome – however along different causal pathways.

Mechanism and context are different concepts and their interplay can explain the specific outcome. For example, how the mechanism ‘anticipation of Council shadow’ (M) connects the factor ‘external interest’ (I) to the ‘policy position of the Commission’ (O) may depend on the context specificities of the relevant policy field.

2.2 Analytical framework: A y-centred perspective on Commission positions

The paper offers a y-centred (Ganghof, 2005) and partially inductive approach to provide a cornerstone for the under-researched field of position formation *within* the European Commission. It is y-centred as we work backwards from DG positions as codified in the formal Commission proposal. We concentrate on issues of specific proposals where differences were visible between the lead DG and one or a number of external interests.⁵ Knowing to which side of the interest spectrum a proposal leaned to in the end served as the starting point to re-work the process by which the preferred interest entered the position of the drafting DG.

We consciously refrain from focusing on deductively generated mechanisms as this would risk missing other (yet unknown) explanations of perhaps equal (or even higher) significance. Instead, we take individual case studies as starting points and compare them in order to find the most *typical* pathways that link an external interest and the position of the Commission. In other words, the approach aims at distilling the abstract mechanisms by means of inductive comparison. The endeavour is only partially inductive as we impose one restriction that helps us to come to grips with causal complexity while it ensures the ability to adapt and add to prominent strands of the literature. Our search for mechanisms is categorized along three groups of external interests that theoretically and empirically appear most relevant for European legislation: national interests, party interests, and other organised societal interests.

⁵ Note that we focus on mechanisms at play at the DG-level in the Commission. Empirically, this will often be the department holding the lead for a proposal, but some of the examples may also be for an involved or opposing DG; this does not make a difference for our argument and for the individual mechanisms at play.

Consequently, this entails leaving out some other factors we already know to be relevant for overall position formation in the Commission (see e.g. on the relevance of coordination structure and portfolio allocation: Hartlapp et al., 2010). Here, we do not attempt to logically or empirically weigh these factors against other factors at play in position formation in the Commission. Instead, we aim at showing that a specific factor (here: external interests) matters in a specific case and particularly how – i.e. through which mechanisms – it becomes relevant.

2.3 Empirical framework: Project background and data sources

The empirical basis for this paper is a multiannual, collaborative research project on “Position Formation in the EU Commission” conducted at the Social Science Research Center Berlin (WZB). This project systematically selected 49 binding secondary EU acts with universal entitlement within all member states of the EU. The selection procedure was guided by a focus on three policy fields – research and innovation, consumer policy, as well as market and social policy –, on the coverage of two Commission terms – Prodi and Barroso I – and on different decision-making procedures in the Commission (oral and written, cf. Hartlapp et al., 2010).

We conducted 133 semi-structured expert interviews with involved Commission officials at different hierarchical levels (May to December 2009).⁶ Interviews have been transcribed and coded with Atlas.ti and were complemented with the analysis of legal texts, press documentation and information from position papers. This material served as sources for drafting structured case studies covering a description of key issues, context conditions, the drafting process, and – in summary – the explanations for the positions a DG had taken. They are the primary input for this paper along which we distilled those mechanisms which have most explanatory power. They are presented in the following section.

⁶ As we have assured anonymity to the participating officials, we will refer to interview sources only by interview and paragraph numbering, such as COM88:99, for example.

3. How national interest are linked to the Commission's position

3.1 *Anticipation of Council Shadow*

National interests can influence the Commission position through anticipation of Council decisions.⁷ To the extent that the drafting DG has sufficient information about the applicable decision rules for the respective proposal, individual member state preferences and the resulting heterogeneity or homogeneity of member states positions (Tsebelis and Garrett, 2000), the Commission positions itself according to the likely adoption or failure of an act. The transmission of such particular forms of preference setting into the drafting process can explain why the drafting DG caters specific national interests.⁸

At the same time, the procedural nature of drafting enables the lead DG to partially circumvent such constraints by proactively influencing the member state preference setting in the course of time. If a DG pursues a particular policy agenda there are three counterstrategies which can be implemented to avoid adapting the DG's position (fully or partially), even with the Council shadow looming large. First, the drafting DG may try to make alternatives to its own position less attractive for certain member states for example by threatening or enacting infringement procedures ("divide and conquer" or "lesser evil" strategies, Schmidt, 2000). Secondly, it may single out and isolate individually opposing member states during the drafting process, e.g. by moving intergovernmental confrontation to preparatory working groups ("isolation" strategy). Thirdly, the lead DG may direct the attention of member states to other contentious issues of a proposal or by framing the proposal differently to keep other potentially contentious issues beneath the radar ("red herring strategy", similarly Hartlapp, 2010, forthcoming). In sum, the explanatory power of the shadow mechanism depends first and foremost on the preference setting in the Council, mediated by the amount of information

⁷ At an abstract level national interests can have different sources. Intergovernmentalist reasoning would base them on national, strategic, or economic interests. Others would put governmental self-interests or ideological stance to the fore and still others highlight the interdependence of nation states or international policy developments. As noted in the introduction, for us it is only relevant here whether it arrives at the Commission level as a national interest – independent of the possible explanations.

⁸ In principle we could expect national interests to enter the Commission's position via a similar 'anticipation of EP mechanism'. However, on the basis of our empirical material a shadow of prospective EP decisions primarily emerged as a relevant mechanism for the influence of party politics (see section 5).

about member state preferences the lead DG has, while it may be partially countered by proactive strategies of the DG.

Mechanism example 1: Food Supplements

One example for this anticipation mechanism is the 2000 Commission proposal on food supplements. Food supplements are defined as concentrated sources of vitamins and minerals which are marketed as diet complements in dose form such as pills or drop dispensing bottles.⁹ The agenda of the lead DG SANCO (Health and consumer protection) was to “facilitate trade in these products” (COM88:26). This met different commercial interests in the member states, with the UK – the most liberal regime – supporting liberalisation to become an entry point to the European market (COM88:194). Countries such as France, Germany, Spain and Italy in turn had regulatory entry barriers in place treating food supplements as medicines thereby not only protecting their consumers but also their producers (COM88:112).

The drafting officials had buried an initial policy proposal after facing an opposing Council majority in an 1992 Council meeting (COM88:194 Europe Information Service, 1997; DG III of the European Commission, 1997). As a consequence, they explicitly tried to change the preference setting in the Council in view of reaching a qualified majority. The DG initiated infringement procedures on particular trade barriers for food supplements in Germany and later Austria so as to convince these governments of “a Community solution rather than having to face it case by case” (COM88:98 and 30, cf. “divide and conquer” Schmidt, 2000). The outcome was further influenced by a changing context altering the shadow of a possible Council decision. Consumer demand for food supplements rose and importantly, the 1996 BSE crisis made interdependencies in European food markets a highly salient topic and raised member states demand for European food safety regulation and consumer protection (COM88:134). The drafting officials were well aware of these changes in national preferences because implementation and other food legislation generated “permanent contact” with member state authorities (COM88:30).

Accordingly, policy formulation re-started using the original 1992 draft as a point of reference. However, the resulting proposal underlines how the shadow mechanism constrained position formation. For example, instead of simply prescribing market liberalization through negative integration the

⁹ Commission proposal COM(2000)222, later adopted as Directive 2002/46/EC of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements.

proposal fully harmonised all safety related standards, taking the health concerns of the formerly opposing countries into account. Second, the list of allowed substances was more restrictive than the list that governed the UK regime at the time. Lastly, any future changes to this list will not be subject to a scientific committee – as is customary in other food legislation – but will be transferred to a comitology decision giving the more reluctant countries a greater say in defining which substances are allowed to enter their markets.

Mechanism example 2: European Institute of Technology

Likewise, the explanatory power of the anticipation of the Council vote can be underscored by a drafting process in the field of research and higher education policy. The regulation establishing a European Institute of Technology (EIT)¹⁰ proposes the creation of a European research institution based on the US Massachusetts Institute of Technology (MIT). The Commission proposal was initiated by President Barroso himself who wanted to create a genuine European university connecting the areas of higher education, research and innovation. Whereas the legal proposal presented by the Commission is rather flexible and blurry, one stunning element proposed is the institution's autonomy. Article 7 of the proposal credits the EIT full autonomy and independent management from Community institutions and national authorities. In the light of qualified majority and extreme opposition from member states towards such an institute, this is particularly puzzling. How come the Commission was able to propose the EIT's autonomy?

The drafting of the EIT was dominated by the vehement criticism from many member states, most prominently from big member states like the UK and Germany, who made no secret of their opposition (COM12: 210, COM99: 142). Apart from general criticism, the most contentious issues were the sources of funding, the secondment of research personnel to the institute and the EIT's ability to issue own degrees and diplomas (COM99:39, COM101:67). As the Commission needed the consent of member states in the up-coming inter-institutional process, it had to take their opposition into account. However, in the middle of these discussions, the Commission spotted its chance to introduce an otherwise not minor 'hot potato', a clause crediting the EIT full autonomy. Since "everybody was focused on degrees, the diplomas, budget [...] nobody noticed it" (COM99:77). Thus, the Commission

¹⁰ Commission proposal COM(2006)604, later adopted as Regulation (EC) No 294/2008 of 11 March 2008 establishing the European Institute of Innovation and Technology.

could advance its agenda on the institute's autonomy. Next to direct member state influence on the specific points of budget, secondment, and diplomas, the cast of a shadow also allowed national interests to influence the content of the proposal in an indirect manner: by member states' *neglect* of another issue, the institute's autonomy.

In sum, the examples from consumer and research policy highlight how the shadow of Council majorities linked national interests to the position finally contained in the Commission proposals. Having the necessary information about member state preferences at their disposal while drafting, the responsible officials adapted to these constraints while they also tried to pro-actively change or circumvent them in order to pursue their original agenda.

3.2 Transfer of Templates

A further, distinct mechanism through which particular national interests enter the position of the Commission is the proactively sought transfer of extant national templates. We consider this mechanism to be a specific form of learning (for an overview see Visser and Hemerijck, 2001; Hartlapp, 2009). In the context of legislation, position formation by transferring extant legal templates learning from the experience of others is the most likely case ("lesson drawing" Rose, 1991; cf. also first mover advantage Héritier, 1996), although we can not rule out that learning through the interaction with others takes place, too (Sabel, 1994). In both cases the Commission's position changes in reaction to a modified information pool which is a necessary but not sufficient condition for position change.¹¹

The transfer mechanism unfolds its explanatory power in the interplay with the initial position with which the drafting DG enters the position formation process. Our sample of cases presents different extremes: It ranges from drafting processes in which the lead DG had no own agenda but faced the need to bring forward a proposal, to processes in which a DG already had a particular policy agenda which affected which national templates are considered for a transfer.

¹¹ Note that we do not engage with questions of depths of learning, i.e. whether the learning occurs in contexts of problem solving or whether it entails change in preferences.

Mechanism example 1: Financial Conglomerates

One example for a transfer mechanism in the absence of a particular agenda was the proposed directive on financial conglomerates.¹² Financial conglomerates are large financial groups active in different financial sectors – often across borders – offering a range of financial services in areas such as banking, insurance and securities. The aim of the Commission’s proposal was to stabilise the market by requiring supplementary supervision for homogenous groups and by promoting convergence in national supervisory approaches and between sectors.

Financial conglomerates were among the issues the Commission had argued to be in need of EU regulation in its flagship Financial Services Action Plan in 1999. Thus, there was commitment at the political level. Yet, when it came to substance and concrete standards in the envisaged act, the Internal Market and Services Directorate General (DG MARKT) resembled a blank sheet – drafting officials had no clear policy vision despite being free to come up with such (COM76:36). What is more, financial conglomerates were a hitherto unregulated area at EU level but also in most member states (COM76:32, COM95:31). Only the Scandinavian and Benelux countries could be described as precursors. In the 1990s, they had consolidated regulation of financial conglomerates with regard to avoiding double gearing of equity capital and assuring equity capitalisation, which often included institutionalisation of supervision by a new authority (Deutsche Bundesbank, 2005: 48).

DG MARKT actively approached a national expert known for his expertise to come to work on the issue in the Commission and to draft the proposal. It is crucial for our argument that this expert came from a member state which had especially high concentration of financial conglomerates as well as advanced regulation in the area. Once recruited, the national expert was able to work very freely and to advance the Commission proposal along the lines of what he had known in his country before. Note however, that the national patterns were in turn partly influenced by international policy developments. “I did not have to start from scratch, I could use some, I would say domestic and international information and again at least at our national level approaches which we had discussed with our groups and we were already implementing” (COM76:36). Conditional to this was the lack of an

¹² Commission proposal COM(2001)213 later adopted as Directive 2002/87/ of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC.

agenda in the Commission against the background of the official political commitment that had been voiced the year before in the context of the Financial Service Action Plan.

Mechanism example 2: Consumer Credit

In contrast to the example of financial conglomerates, a transfer of national templates as a specific form of learning also occurs in conjunction with a particular policy agenda of the drafting DG. An example is the proposal on consumer credit¹³ that focuses on credit agreements offered to consumers and thereby defines rights for consumers and obligations for lenders.

It was drafted by the freshly established Directorate General for Health and Consumer Protection (DG SANCO) whereas financial services had fallen under the responsibility of DG MARKT before. This required the drafting SANCO officials to justify their legislative initiative beyond a purely market-making purpose (COM89:90 and 94). Indeed, the unit set out with the “ambition [...] to create a very comprehensive, very exhaustive consumer credit regulation which would be burdensome for industry” (COM89:46), aimed at protecting the “weak consumer” (COM89:46 and 82).

This agenda met with the technical complexity of the subject matter (COM111:194) while the drafting process was impaired by a lack of necessary resources (COM89:33). Against this background the drafting officials developed a strategic pick-and-choose of those national rules that provided the greatest benefits of an enhanced consumer protection (COM119:35). Indeed, the affected industry perceived the proposal as “selecting the most stringent provisions on consumer credit in force in each member state and summarizing them in the new EU rules for consumer credit” (European Savings Bank Group, 2003: 2-3)

Especially for two exemplary provisions this transfer mechanism can be highlighted. First, the rules on cost elements creditors use in calculating the annual percentage rate of charge (APR) define the major indicator of the overall price a consumer has to pay to the lender for granting credit to the consumer. The drafting officials required lenders to also include third party costs, such as notary fees, for example (COM89:30). These rules in the proposal were “basically modelled [...] on the Belgian consumer credit

¹³ Commission proposal COM(2002)443, later adopted as Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers.

procedure [...] because the Belgian law was a very comprehensive one” (COM89:46).

Secondly, the so-called ‘joint and several liability’, which basically makes creditors co-responsible for insufficiencies of goods the consumer has bought with the credit, even if creditor and seller are not the same legal person (COM89:37). The drafted text was quite literally adopted from the famous Section 75 of the UK Consumer Credit Act. In other European member states though, this rule was considered “totally outlandish” and thus the banking industry “strongly opposed” (European Savings Bank Group, 2003: 12). Despite its contradiction to most other national regimes this section was arguably the most consumer-friendly solution to a regulation of creditor liability the drafting officials could find (COM89:50 and 37-44, COM119:62).

Taken together, the financial conglomerates and the consumer credit directive are two examples which highlight how the *transfer mechanism* influences the Commission position as a specific form of learning from the experience of member states. Advanced national regulation was allowed to function as template either where no own agenda existed or where they met the agenda of the lead DG. In both cases the mechanism of transferring existing policy solutions from member states explains important provisions in the proposed policy.

4. How organised interests enter the Commission’s position

The synopsis of our individual case studies with regard to a mechanism linking organised societal interests to the final position of the Commission can be termed Exchange of Resources. External societal interests are viewed as to a large extent dependent on the Commission’s quasi monopoly of initiative in order to influence European policies effectively (Mazey and Richardson, 2006). The Commission’s DGs’ dependence on societal actors providing critical resources for effective policy-making – be it political support or legitimacy, as well as expertise and knowledge – may vary to a larger extent (Bouwen, 2004). Our case studies have revealed that the influence of an organised interest on a DG’s position is particularly high in cases where the DG’s dependence on the respective interest is high. Thus, the exchange of resources works in conjunction with a context that provides for varying degrees of mutual dependencies between the DG and the organised interest (Pfeffer and Salancik, [1978] 2003). These dependencies may either have grown over time or be of a more ad-hoc nature, owing to changes in the broader political context. Different developments may make specific

stakeholders to crucial external actors possessing resources that are critical for a DG's proposal. In the following we distinguish between two mechanisms of Exchange of Resources according to the resources that are provided: legitimacy and expertise.¹⁴

4.1 Exchange of Resources: Legitimacy

Organised societal interests can provide the Commission with legitimacy; that is they can underscore the rightfulness of the DG's powers by indicating the support of those governed. Accordingly, the Commission may adapt its position to increase the broad political support expected to be necessary for a policy decision. Legitimacy cannot be produced or provided by any organised interests at will. Rather, the specific political and policy context determines which organised societal interests can provide legitimacy by signalling the support of their constituencies. Consequently, here the Commission is dependent on those actors able to provide legitimacy and thus we face a situation of limited Commission discretion.

To give an example, a DG may have responsibilities that have developed over time in such a way that they primarily address one specific stakeholder group and DG activity in this field is primarily legitimized by the very existence of this specific stakeholder group. Therefore, this group is endowed with the critical resource of legitimacy the DG needs in this area. Alternatively, the political climate may change in such a way that public or political attention is directed towards a specific societal interest in the policy area at stake. This increases the weight of the position of this group and makes the support of this very group crucial for a policy of a DG.

Mechanism example 1: Competitiveness and Innovation Framework Programme

A case where the supply of political legitimacy granted external interest access to the position formation process is the Competitiveness and Innovation Framework Programme (CIP), a Community funding programme running from 2007 to 2013.¹⁵ The CIP arose from the Commission's wish for a

¹⁴ In our understanding, the mechanisms differ along other dimensions than only the type of resource exchange – a crucial dimension seems to be the degree of dependency altering the nature of the relationship. However, by lack of more specific labels we opt – for the time being – for the two mechanisms 'exchange of resources: legitimacy' and 'exchange of resources: expertise'.

¹⁵ Proposal COM(2005)121, later adopted as Decision No 1639/2006/EC of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013).

comprehensive, visible and important European funding programme for competitiveness and innovation (COM49:234, COM5:34). All the EU's various small funding activities in the field of innovation should be integrated into one large programme.¹⁶ What is puzzling about the CIP is that the Commission did not present a coherent programme in its final proposal but a chapeau called 'CIP' containing several sub-programmes. The result of the drafting process was not the introduction of the completely new competitiveness and innovation programme initially envisaged (COM51), but rather a continuation of several different smaller innovation funding programmes framed as one single big program. What had happened?

An important reason for this outcome was attributed to mutual resource dependencies between organisational units in the Commission and well established stakeholder groups:¹⁷ When the Commission first proposed the idea of having a single integrated innovation programme the different stakeholder groups of already existing small innovation programmes were immediately alarmed. They feared that a new, broader programme would entail substantial changes in funding mechanisms they had adapted to over the last few years or decades (COM51:150). These concerns were primarily expressed towards their 'home DGs', the individual DGs having previously been responsible for the different small innovation programmes. For example, micro-enterprises and SME support networks expressed their concerns towards the DG for Enterprise and Industry (DG ENTR). The electronic publishing and content industry in turn articulated their concerns towards the Information Society and Media Directorate General (DG INFSO). In turn, the responsible units in the DGs vehemently articulated these concerns in the internal drafting process (COM49:89, COM51:124, COM68:33).

Because these programmes had been running for such a long time, close relationships between the responsible Commission officials and the respective stakeholder groups had developed (COM5:70, COM51:135). This led to mutual dependencies: while stakeholders depended and relied on the

¹⁶ E.g. DG Enterprise's (ENTR) 'Multiannual programme for enterprise and entrepreneurship, and in particular for SMEs' (MAP), DG Information Society's (INFSO) 'Multiannual Community programme to stimulate the development and use of European digital content on the global networks and to promote linguistic diversity in the information society' (eContent) and the programme on 'series of guidelines for trans-European telecommunications networks' (eTEN) or DG Transport and Energy's (TREN) 'Intelligent Energy – Europe' programme (IEE)

¹⁷ This does not imply that national interests, for example, did not play a role at all in designing this funding programme. However, our interview partners put explicit emphasis on the role of the type of interest we classify as 'organised interests'.

individual innovation programmes, their existence also provided these EU funding streams with additional legitimacy. Thus, by demonstrating the support of established stakeholder communities the responsible Commission units could argue for a continuation of their small funding streams and could prevent them of being replaced by a single comprehensive programme.

Mechanism example 2: Insurance Mediation

The proposal for a directive on insurance mediation or intermediaries is another case in the field of the common market, exemplifying how the Commission's need for legitimacy allowed organised societal interests to enter the Commission's position.¹⁸ Like the Directive on Financial Conglomerates mentioned above, this act was envisaged in the Financial Services Action Plan in 1999. To meet this promise, lead DG MARKT initially had wanted to simply update a forerunner directive 77/92/EEC on the activities of insurance agents and brokers and combine it with an existing recommendation 92/48/EEC establishing certain criteria for intermediaries on a non-binding basis (AE, 1997a). Yet, the proposal adopted in 2000 goes substantially beyond these earlier instruments. The most interesting aspect for this paper is that it guarantees a high level of protection for customers.

During the 1970s and 1980s the Commission had valued industry interests when it came to financial intermediaries but now understood this measure to fall short of the desired outcome to boost the financial market. This sluggish performance of financial services seems to have triggered new policy dynamics, shifting the EU policy-making focus from mainly commercial activity to including retailing for private customers. In turn, strengthening the position of consumers was seen as functional to furthering market integration: "It will increase the choice of insurance products available to customers and help ensure they can trust the advice they are getting from intermediaries" (Commissioner Bolkestein cited in: AE, 2002; AE, 1997c; AE, 1997a; AE, 1997b). The changed political climate required DG MARKT to listen to different organised interests when in search for a functionally optimal policy on insurance mediation – an important

¹⁸ Intermediaries are institutions distributing financial products of a financial institution in their own name and account. This includes organisations and businesses where the main scope is not insurance, e.g. travel agencies, car dealers, insurance brokers and banks.

Commission proposal COM(2000)511, later adopted as Directive 2002/92/EC of 9 December 2002 on insurance mediation.

move in the financial services area where corporate capture still seems to be the dominant pattern (ALTER-EU, 2009).

Looking at the outcome, the influence of consumer interests is traceable in two specific aspects of the directive. First, consumer oriented organised interests are at the core to explain why DG MARKT went beyond merely updating existing legislation. The European Consumers' Organisation BEUC is reported to have particularly insisted "that the new legislation must introduce compulsory requirements based on the 1991 recommendation" (AE, 1997a, also COM109:80; AE, 1997b). DG MARKT followed this request in search of increasing market efficiency. Secondly, the influence of consumer interest is clearly visible in specific key provisions of the act. Concerning the scope, the initial exclusion of 'small' intermediaries with a limited annual volume of premiums collected was recalled due to the effective influence of organised interests arguing that especially these intermediaries could pose problems for the protection of consumers. Similar influence can be traced for information requirements vis-à-vis customers, but also professional requirements for intermediaries when registering in a country (COM109:98).

These research and market policy cases show how one and the same mechanism allowed organised interests to enter the Commission's position. In both cases context factors – for the CIP long-developed relationships, for the financial conglomerates a changed political climate – manoeuvred the Commission into a situation of dependency on specific organised societal interests for legitimacy. These constraints required the Commission to take the positions of these interests into account.

4.2 Exchange of Resources: Knowledge

Next to offering legitimacy, organised interests can also influence the Commission's position by offering knowledge and expertise. The Commission may act in accordance with lessons drawn from the experience or the information offered by organised interests and change its position accordingly. In contrast to the mechanism described above, here, the Commission often has more leeway in deciding which sources of information it selects, i.e. to which organised interest (or a number of them) it listens.

Much like in the case of Transfer of Templates, this mechanism unfolds additional explanatory power in the interplay with specific context conditions. The Commission may either pursue a policy agenda of its own, allowing those organised interests to influence the Commission that can

actually provide information which in turn helps to reach objectives more effectively. Or, where the Commission lacks the necessary expertise and does not follow a specific agenda, the influence of organised interests should be much more open. The extent to which the drafting DG pursues an agenda of its own or rather acts as a “sponge” (COM33:362) absorbing existing information affects which of the organised interests manage to enter the Commission.

Mechanism example 1: Consumer Rights

The 2008 proposal on consumer rights¹⁹ regulates contractual rules governing business-to-consumer relations such as commercial guarantees, information duties of traders, or unfair contract terms. Those contractual rules lead to a strong opposition between business and consumer associations (e.g. BEUC, 2007; EuroCommerce, 2007).

The need for drafting emerged out of the Commission’s regulatory simplification strategy, which identified the extant consumer rights directives as one priority, based on the observation that cross-border business-to-consumer trade was hardly developing (COM28:22, Commission of the European Communities, 2005: esp.: 36). An initial review of the extant legislation came to the conclusion that both business and consumers were reluctant to trade cross-border which resulted in the “twinned objectives” of the responsible SANCO officials: already at the set-off it was planned to both remove trade barriers for business while at the same time increasing consumer confidence in cross-border protection (COM93:46, COM120:37, cf. Commission of the European Communities, 2008), a middle road that was termed “targeted maximum harmonisation” (COM93:58).

Beyond this basic commitment, the drafting officials faced strong political and informational demands but lacked the necessary capacities. While it was politically “a major legislative issue” (COM93:48) with a “very general nature” (COM80:57), the initiative was “extremely technical” and “legally a very complex thing” (COM93:208, COM120:171). This was contrasted by a limited number of personnel resources and resulted in a high workload of the involved officials (COM93:164-8). In order to counter their lacks of expertise, the drafting officials broadly allowed industry and consumer associations to provide information while they structured these along their twinned objectives. They started “structured conversations” with the affected

¹⁹ Commission proposal COM(2008)614 for a Directive of the European Parliament and of the Council on consumer rights; not yet adopted by Council and Parliament.

organised societal interests (COM80:79), which began with four consultation papers on individual issues of the proposal which asked for responses of affected interest groups and was followed by a public consultation (Green Paper). Further, a range of systematic contacts with outside interests were organised such as a conference, business and stakeholder questionnaires (COM28:5), as well as a series of workshops discussing legislative changes with different options. Lastly, the drafting officials held an “extremely huge number of bilateral meetings” with interest representatives (COM120:49).

These processes resulted in a proposal which takes up both the demands of business and consumers, both in its overall approach of harmonising beyond the lowest common denominator, and between and within the individual issues of the proposal. An example would be the rules on commercial guarantees: On the one hand, the proposal prescribes that the trader is generally liable for two years while consumers had preferred longer periods that existed in some countries (e.g. BEUC, 2009: 6). On the other hand, this minor net decrease in protection is balanced by an obligation to renew guarantees for replaced goods, a rule that existed in only one national regime before and can be traced to consumer associations’ demands (DG Health and Consumer Protection, 2007: 18).

Mechanism example 2: Public Procurement

EU public procurement directives²⁰ aim at ensuring that government and state owned bodies offer contracts not only to bidders from their member state but to all other EU countries. They have to select tenders competitively – i.e. best value for money – and not according to other political criteria. Given the complexity of these acts, the bad application of existing legislation as well as evolutions in information technology and modern administration, DG MARKT saw itself under “pressure to modify certain things” (COM69:94) in a search for perfecting the internal market. Apart from the technical challenges, DG MARKT also had to convince other actors of the necessity of having a new act and to circumvent specific sectoral or member state

²⁰ Commission proposal COM(2000)276, later adopted as Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors; and Commission proposal COM(2000)275, later adopted as Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

interests. Organised interests proved helpful to tackle these different challenges: they provided data and could hint at technical deficits.

Advisory committees on public procurement²¹ are permanently established bodies. They were involved in the drafting process alongside interest groups since the beginning in April 1998. “They did come up with information on special legal problems in the member states as for economic data or statistics” (COM16:188). The Commission was happy to use this information. An example how this mechanism mattered is the introduction of member state requirements to collect statistical data on public procurement and report these to the Commission annually. Here, expert groups were used to assist in the development of indicators independently of member state interests: “How can we develop indicators, in order to have some statistics? How can we deal with it[?]” (COM22:140).

It is important to note that by this procedure not all information was valued equally by DG MARKT. The value rather depended on what best served their own agenda with respect to public procurement: “Certain comments were useful because they were going more or less in the same direction that we were, others could be useful in showing where the problems were, how perhaps to take into account to the extent possible, others could be useful in nothing else in showing us which differences in points have to be prepared for the discussions” (COM16:176, also COM22:127). Thus, although there was a quest from the Commission for data on experience with public procurement, this was coupled to an interest in support for the Commission’s own solutions developed on the basis of the so increased knowledge base.

For the cases on consumer rights and public procurement stakeholders could influence the Commission’s proposal by offering expertise. In both cases the need to prepare a legislative initiative combined with a lack of resources to achieve these rather comprehensive tasks made Commission officials turn to affected organised societal interests. Consequently, in providing knowledge these interests influenced the final position of the Commission.

²¹ These committees differ in their composition, e.g. the ‘advisory committee on public contracts’ is mainly composed of Member State representatives while the ‘advisory committee on the opening of public procurement’ is constituted of academics and professional associations representing themselves.

5. How party interests are linked to the Commission's position

5.1 Anticipation of EP Shadow

Whereas our cases revealed a shadow of the Council vote to primarily allow national interests to influence the Commission's position, a shadow of the EP's vote allows party political interests to enter the Commission's position.²² The logic is similar to the Council shadow mechanism described above. As the majority of EU legislation is adopted in co-decision procedure, the EP's vote is as important. When drafting legislative proposals the Commission therefore also has to anticipate EP majorities along party political lines. In forming a position the Commission acts in accordance with signals from parties.

Mechanism example 1: Cross-border Healthcare

The proposal for the directive on cross-border healthcare²³ allows Europeans to seek healthcare anywhere in the EU and be reimbursed at home. Non-hospital care, such as dental treatment and medical consultations, can be sought without prior authorisation. In turn, for hospital treatment, such as surgery, prior authorisation is required. Although many of the standards had in principle been established by ECJ rulings since the late 1980s, legal uncertainty prevailed without more specific legislation. Initial attempts to cover health services in the liberalization of services directive were rejected – it was especially the EP which had called for legislation respecting the nature of the healthcare sector.

Commission's first internal draft the proposed act features consumer interests more prominently. Further, DG Consumer and Health Affairs was now assigned chef de file instead of DG MARKT, originally in charge of service liberalization. This is said to result from Barroso's aim to be re-elected in 2009 and the necessary support this re-election entailed from the

²² Note that in principle both types of interests may be represented in both institutions. The literature argues that depending on the issue at stake votes in the EP are likely to reflect national or ideological dividing lines (Höpner, 2005; Hix et al., 2005). Similarly at times the Council has been said to act according to ideological positions (Tallberg and Johansson, 2008). However, in our empirical cases clear patterns emerged with the Council reflecting national interests and the EP providing an entry point for party political interests.

²³ Commission proposal COM(2008)414 for a directive on the application of patients' rights in cross-border healthcare has gained a de facto majority in the Council only very recently (June 2010) and has not yet been adopted in the Council.

left wing in the EP (COM35).²⁴ Thus, the shift towards a consumer friendly position can be partly seen as reaction to the sceptical inclination of the Socialists in the EP. The Commission anticipated the ideologically necessary position to gain support from a specific fraction in the EP. Barroso was “basically saying ‘well present it in a way which looks like it is very good from a citizens point of view and get us under a sort of citizens’ Europe” (COM73:72). The parallel re-election rather than the adoption of the proposal at hand was the decision for which support from the Socialists in the EP was sought.

This case shows how the political power of the EP casts its shadow on the Commission’s position in an important directive in the area of transnational healthcare regulation. Here, the mechanism worked indirectly, since the shadow loomed from a different decision. As the Commission needed the EP’s approval in a different matter taking place at the same time, it had to avoid potential party political opposition and take the respective interests in a specific position into account.

5.2 Ideological Advocacy

Party interests can influence the Commission’s position through the personal affiliation or commitment of a Commission official to a party political position. The mechanism emphasizes the role of the individuals in the Commission that adhere to and advocate the respective party political position in the Commission. The ideological value or assumed necessity this person assigns to an act influences the Commission’s position. Our empirical analyses over 48 cases have revealed that party interests are most likely to influence the Commission position if they are represented at a high hierarchical level, i.e. by a Director General or Commissioner.²⁵ In the latter case, successful ideological advocacy appears to be conditional upon the consensual decision taking mode in the College. Although formally qualified majority voting is the rule, the overwhelming number of decisions in the Prodi and Barroso Commissions are said to have been taken by unanimity (COM113, Egeberg, 2006; Barroso, 2007).

²⁴Besides other factors were also at play to explain the shifting of arenas here, e.g. the change of responsible Commissioner.

²⁵ Access to important players at the Commission’s political level can be seen an important factor for all external interests aiming at influencing the Commission’s position. However, our cases this was found to be especially important in the case of party politics.

For this mechanism the underlying reasons for a Commissioner to hold a party political position are secondary. However, we observed that the advocates of party political interest had long-standing party careers before entering the Commission and that the issues where advocacy happened touched upon the core ideologies of the respective parties. This conforms more to a socialization logic (cf Hooghe, 2001) rather than a delegation chain unfolding on the basis of rationalist office seeking for which the basic conditions have not been validated empirically (Wonka, 2007, Döring, 2007 #3532).

Mechanism example 1: Cross-border Healthcare

The directive on cross-border healthcare discussed above does not only demonstrate how party political interests enter through anticipation of the EP shadow. It is also exemplary for an alternative mechanism to link party political interests to a specific outcome. In this chapter, we will show how the mechanism of Ideological Advocacy was at work to explain the outcome for one of the key provisions in the directive: prior authorisation.

Many cabinets intervened against the cross-border healthcare directive criticizing its “high costs and the negative impact on national health systems” (EUobserver, 2008). Especially the socialist Commissioners Vladimir Spidla, Margot Wallström and Peter Mandelson expressed their criticism firmly. This corresponds with evidence provided by Martinsen (2009: 802) regarding the active role the PSE, and especially the President of the EP, Poul Nyrup Rasmussen, took in stopping the proposal and changing crucial standards, i.a. by contacting the socialist Commissioners directly. Socialist Swede Margot Wallström is a case in point to confirm that ideological positions mattered rather than national interests since the Swedish government was among the supporters of the proposal (Baeten, 2009: 158).

Changes undertaken cover a broad number of issues and are influenced also by other factors and mechanisms. What is clear, however, is that many of the changes undertaken from the first to the second draft clearly aimed at rendering the proposal less market-liberal. The initial DG SANCO proposal allowed individuals seeking cross-border healthcare, including hospital care, to choose between 1) prior authorisation and complete reimbursement or 2) to choose the place of treatment without prior authorisation and partial reimbursed according to level of the country of origin. Here Wallström had argued that “more thought and reflexion need to be put into the proposal, in particular the reimbursement system, and its consequences” (her spokesmen

J. Hennon, cited in EurActiv, 2008a). The Commission's final position presented in October 2008 shows substantial changes, now offering the choice between 1) no prior authorisation and reimbursement up to the country of origin level, and 2) the installation of a prior authorisation system upon request of member states and permission by the Commission. Moreover, the 2008 proposal clearly addresses the conditions for authorisation that would be allowed in case the consequent outflow would seriously undermine the financial balance of the social security system. These changes can be characterized as turning away from a liberal market principle and a choice for individuals as initially envisaged by DG SANCO (EurActiv, 2008b) – thus, they seem ideologically more appropriate to socialist concerns. Moreover, the College Minutes from 2.7.2008 do not report any discussion or voting on patient's right in cross border health care. This further supports the assumption that the Commission's proposal has been changed in a way allowing for socialist Commissioners to accept it more easily.

Mechanism example 2: Euratom Research Framework Programme

The area of research policy provides for an additional example of the mechanism of ideological advocacy at work. The Community's 6th Euratom Research Framework Programme²⁶ funds research on nuclear energy primarily in the areas of fission and fusion. In the 6th Research Framework Programme (FP6) the Euratom part of the Commission proposal reveals a smaller proposed budget than in the foregoing 5th Framework Programme (FP5), i.e. not only in relative but in absolute terms as well.²⁷ This is puzzling, as EU funding programmes usually follow "the principle of conservation of budget in the Commission" (COM96:73). This means that once a funding stream has been established at Community level, the Commission will try to maintain and expand it. Particularly in the legislative proposals the Commission presents to Council it aims for a higher budget, which is the "negotiation game usually" (COM 98: 65).

²⁶ Proposal COM(2001)94-2, later adopted as 2002/668/Euratom: Council Decision of 3 June 2002 concerning the sixth framework programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities, also contributing to the creation of the European Research Area (2002 to 2006).

²⁷ The FP5 Euratom Programme had a budget of 1.26 Bio. EUR for five years, in the FP6 proposal the Commission only proposes 1.23 Bio. EUR for five years (in contrast the EC part in FP5 had a volume of EUR 14.96 Bio. and the EC FP6 proposed an amount of EUR 16.475 Bio.).

An important factor explaining why the FP6 Euratom proposal did not suggest a higher budget is that at the time the FP6 was drafted and adopted in the Commission, the Commissioner for Budget was a Green party politician who was “adamantly opposed to nuclear energy” (COM102:97, also COM82:38). Next to unanimity de facto being applied in the Barroso I College (Barroso, 2007), the Green Commissioner’s influence was increased through a portfolio logic: being the Commissioner for *Budget* she had a pronounced say in the Commission-internal negotiations. The responsible DG in charge of the Framework Programme, the DG for Research and Technological Development (DG RTD) had little other choice than taking the opposing party political position into account. Consequently, the budget for nuclear energy in the final proposal was reduced.

The cases on cross-boarder healthcare and the Euratom Research Framework Programme both emphasize the role of individual actors at the political level in the Commission for the influence of party political interests. In both cases, party political positions could influence the Commission’s legislative proposal by being strongly defended by individual advocates with quasi-veto power at the Commission’s top-hierarchy.

6. The birds eye perspective: Overview on mechanisms at play

Having plunged deep into the case studies to identify the specific causal pathways of how the theoretically and empirically most relevant types of external interests impact on the Commission policy position, we now zoom out again in an attempt to bring some order into chaos. We showed how national interests influenced the Commission’s position. First, in the Anticipation of Council Shadow mechanism, the Commission positions itself according to the likely adoption or failure of an act in the Council. Secondly, where Transfer of Templates is at work, Commission positions are influenced through a specific form of learning that takes the experience of member states into account. Mechanisms identified for the second type of external interests, organised societal interests, function on the basis of Exchange of Resources. External interests are granted influence because the Commission is dependent on the resources they offer. Be they first, legitimacy or political support as a limited good or may they, secondly, influence through lessons drawn from the experience or the information they offered. Finally, party political interests have been shown to enter the Commission either through Anticipation of EP Shadow, i.e. the position is formed in reaction to signals from ideological splits in another institution, or through Ideological Advocacy, where individuals in the Commission influence the proposed

position on the basis of what is perceived the likely ideological value or necessity of the act.

The analysis of causal pathways shows that each of the three interest categories outlined above enter the Commission's position primarily via two different mechanisms. Presenting a first attempt at systematizing the identified mechanisms, **Table 1** groups them along common dimensions.

Table 1: Overview of mechanisms

	Political constraint mechanisms	Policy implication mechanisms
National interests	Anticipating Council Shadow	Transfer of Templates
Organised societal interests	Exchange of Resources: Legitimacy	Exchange of Resources: Expertise
Party political interests	Anticipating EP Shadow	(Ideological Advocacy)

The mechanisms 'Anticipating Council Shadow', 'Exchange of Resources: Legitimacy' and 'Anticipating EP Shadow' are all characterized by an air of constraint. In all three cases the anticipation of future decision-taking and the Commission's priority or need of external support and acceptance for the proposed policy shadowed on the internal drafting process. This allowed external interests to enter the Commission's position. The encompassing element these three mechanisms have in common is the Commission's prospective view on possible consequences of its position taken – either its proposal is not adopted (shadow of Council, shadow of EP), or it loses legitimacy or support, which is undesirable for the Commission primarily on the long run. Thus, these mechanisms can be grouped along their view on political constraints.

In contrast, where the mechanisms of 'Transfer of Templates' and 'Exchange of Resources: Expertise' played out, the rules of the game were not dominated by the prevalence of perceived political constraints, but by a focus on policy implications of the proposal during the emergence of a policy. This does not imply that actor constellations, their interests or the anticipation of majorities were not important. However, the emphasis lies on the fact that they did not determine the causal pathway leading to their influence. Rather,

it was the external input of (alternative) policy solutions that granted external interests access.

Finally, the mechanism of 'Ideological Advocacy' does not fit this categorization as easily. One explanation is that this mechanism was visible much more rarely, giving us less leverage as to commonalities and specific conditions across cases. What was clearly visible is that in our empirical cases party political positions were mediated via opposition. Tentatively, however we add that having revealed socialization being the dominant factor motivating this opposition, and not the anticipation of career perspectives, the idea of party political positions providing alternative policy solutions may not be as far-fetched after all. Nonetheless, for the time being we opt for grouping 'Transfer of Templates' and 'Exchange of Resources: Expertise' together as mechanisms oriented towards policy implications while keeping 'Ideological Advocacy' in brackets.

Moreover, certain context conditions matter in a systematic way influencing the explanatory power or the determinacy of mechanisms. One context condition that showed consistent relevance across cases and mechanisms was the extent to which the Commission officials pursued an own, well defined policy agenda. For the 'Anticipating Council Shadow' mechanism the existence of such an agenda decreases determinacy as it results in pro-active strategies to counter the constraints the mechanism puts on position formation. Here, the proposal for a European Institute of Technology provides an example. For the 'Transfer of Templates' and 'Exchange of Resources' mechanisms, in contrast, the existence of a well defined Commission agenda raises determinacy since the combination of this specific context condition and the mechanism allows us to gain leverage as to which national templates are transferred or which particular resources and thus organised interests are demanded by the drafting parts of the Commission. This is highlighted by the Consumer Credit case.

While the existence of an own policy agenda is a context condition that is situated more towards initiation of a drafting process and thus affects the set-off of the particular mechanism, we also observed context conditions that more directly interacted with the mechanism and thus changed the predicted outcome *during* the drafting process. One example in this regard is the broader political climate which can determine which external interest can offer legitimacy. The conjunction with the 'Exchange of Resources' mechanism then explains the position that is taken by the Commission. Here, the proposal on Financial Conglomerates is a case in point. Another example for the interaction of context and mechanism is offered by the Food

Supplements proposal. A rising market and corresponding lobbying activities changed member state preferences thus altering the outcome produced by the shadow mechanism during the drafting process.

It is to be noted that alternative hypotheses to the three types of interests and detected mechanisms are conceivable for explaining Commission positions. Taking up this issue we stress that, first, in the broader project on position formation we are able to check for a number of other factors (Hartlapp et al., 2009). Yet, for this paper our interest is not to weight relative influence of actors among other factors or among different interests. We are concerned with the functioning and conditions for mechanisms at play. Second, for each type of interest the case studies take up the challenge to show empirically that it is the mechanism that is causal to the outcome. This insight is based on substantial in-depth knowledge of the cases developed in the course of the research project. Further, to enhance reliability we have critically scrutinized each case cross-wise among the authors in this respect.

Finally, reflecting upon the scope of the findings two aspects need to be mentioned. First, our 48 cases showed that the mechanisms matter to different degrees across cases. Of course, an inductive approach has its limits in quantifying the relevance of the presented phenomena at play. And, as we argue in the introduction, the line between the three different types of interests is sometimes blurred empirically. Nevertheless, in most of our cases national interests and organised societal interests were much more often relevant than party political interests. With respect to the two broader categories of 'political constraint' and 'policy implication' mechanisms the picture seems to be more balanced across our 48 cases. Secondly, we consider that some of the mechanisms are more closely linked to specifics of the EU political system than others. For example, the comparatively small size of the EU Commission and the relatively greater distance between decision takers and addressees increase the likeliness of an exchange of influence against expertise or legitimacy. However, in principle there are good grounds to expect them to matter for position formation in other political systems, too. National political systems are equally characterised by the need to gain support from different institutions for a legislative act. Position formation often requires additional external resources. Rather than the mechanisms themselves we think that their relative weight to explain outcomes as well as the type of external interest may vary here – national interests are rather unlikely to matter to the same extent, while party political influence can be expected to be of higher significance. As such our results can contribute to more refined theories, hypotheses and implications

of position formation *within* the European Commission and – said with somewhat more caution – they also provide valuable insight into position formation beyond the Commission.

7. Conclusion

Much of EU studies on policy making are merely attending to the question whether European policy initiation is influenced by external interests or not. This brought us to asking *how* the exact mechanisms look like which allow external interests to enter the European Commission's position. Taking 48 cases studies as empirical basis we distilled a number of mechanisms how different types of external interests enter position formation of the EU's 'bureaucracy'. In this paper we presented the mechanisms that appeared most prominent in our empirical cases across policy fields: national interests typically enter position formation via mechanisms of 'Anticipating Council Shadow' and 'Transfer of Templates', organised societal interests through mechanisms of 'Exchange of Resources' (either Legitimacy or Expertise) and party political interests through mechanisms of 'Anticipating EP Shadow' and 'Ideological Advocacy'.

Another important insight our empirical material indicates is that these causal pathways are largely stable across different legislative processes and portable across policy areas. Especially the mechanisms of 'Anticipating Council Shadow' and 'Transfer of Templates' for national interests as well as an 'Exchange of Resources' (Legitimacy and Expertise) for organised societal interests can be traced throughout almost all cases of our broader sample, while the mechanisms uncovered for party interest are portable in principle but appear to be at work much more rarely.

In sum, the paper indicates that bringing the "mechanismic worldview" (Gerring, 2008) to the study of position formation in the European Commission bears added value, conceptually as well as empirically. Empirically, it is relevant because it takes us a step forward in understanding process and conditions of influence and thus goes beyond the notion of access only. Conceptually, the essential point is that 'external interests' as a factor can be mirrored in the final Commission position while causal pathways through which this happens may differ. This underscores that any comprehensive evaluation of the question *if* particular interests influence the Commission position must take into account that this can involve several answers to the question of *how* these interests exert

influence – no matter whether national, societal, or party interest are of concern.

Our approach does not claim universal generalisation, but we contend that the mechanisms uncovered and analysed in this paper are indeed portable across different drafting processes in the Commission and across different policy fields. The mechanisms presented in this paper were distilled inductively. Thus, strictly speaking, the empirical evidence can not serve as test for their validity. However, it is stressed that the empirical basis consists of a medium number of cases (48) analysed in a multiannual research project on “Position Formation in the EU Commission”. In the project we were able to check what we found across a medium number of cases and to select those that describe the relevant mechanisms best. Thus, we claim that the evidence presented is typical for the mechanisms through which different types of external interests influence a specific outcome put forward by the EU Commission as legislative proposal.

Against this background our results aim to stimulate those strands of literature that deal with EU policy making in the light of differing national, societal or party interest. On the one hand, some of the uncovered mechanisms do indeed support certain extant theories. Examples are the ‘Anticipation of Council Shadow’ mechanism which conforms to a rationalist-institutionalist view of decision-making (Tsebelis and Garrett, 2000) or of the ‘Exchange of Resources’ mechanism which supports the resource dependency view on interest group influence (Bouwen, 2002; Beyers and Kerremans, 2007). On the other hand, our results show that one causal pathway is only part of the story how external interests enter the Commission position. For theoretical development, thus, future research could engage into analysing the pre-conditions that trigger one or the other mechanism that links a specific external interest with the substance of a Commission proposal or the effects that the persistence of specific mechanisms has for the problem-solving capacity or legitimacy of resulting policies. Ultimately, this can result in better answers to the old question in whose interest European bureaucrats from their positions.

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