The struggle over the Services Directive – a turning point for EU-decision-making?

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Case study of the decision-making process – key issues:

- Who were the key actors, institutions, and coalitions in different phases?
- What were their main interests, concerns, and strategies?
- How were their approaches influenced by
  - The legal ramifications of the decision-making process?
  - The constellations of views and power in the other EU institutions?
  - Member State actors?
  - Pressure policies by the social partners and social movements?
Puzzles:

- How could the European Parliament (EP) determine the outcome?
- And how come that the Socialist minority in the EP and the ETUC could gain such decisive influence on a key Single Market directive .... ....when they were at collision course with organized business, the Commission, and the majorities in the Council and the EP?

→ A leap towards a new and more democratic pattern of EU decision-making – or a unique, deviating case?
Research approach and data

- Descriptive analytical account with emphasis on the role of the EP
- Semi-structured interviews with key actors in
  - the EP,
  - the Commission,
  - the main European Social Partners,
  - (and working group representatives in the Council)
  - And with major Swedish actors and a few German and Polish representatives
- Secondary material
Time line

- **Background: From Lisbon 2000 to Bolkestein draft January 2004**
  - Institutional consensus about the need for opening of the EU services markets

- **Phases of decision-shaping - and making:**
  1) *The preparatory, positioning phase* (January 2004-November 2005)
  2) *The decisive ”hot phase” of negotiations in the EP* (Nov 2005-Feb 2006)
     - EP First reading ’compromise’
  3) **Adoption phase**
     - Commission amendments, passing the Council ’needle’s eye’ (Spring 2006)
     - Adoption by the Council 12 December 2006

- **National implementation by 12 December 2009**
Background: From Lisbon to Bolkenstein

- Free movement of services anchored in the Treaty of Rome, but service mobility remained low and barriers high

- The Lisbon Agenda: opening of the service markets key to completion of the Internal Market
  - May 2003 Commission announced it would forward a Directive

- The Parliament and the Council «welcomed the announcement »

- The Prodi Commission was in a hurry and no proper consultations were undertaken before the launch of the Bolkestein draft
Legal framing of the decision-making process

- Co-decision procedure (legal basis art 47(2) & 55)
- Grants EP legislative partnership with the Council, which acts on the basis of qualified majority voting
  - One, two, or three readings, and, if necessary, final reconciliation
  - The Commission can withdraw its proposal, and, if major Commission objections, unanimity can be required in the Council (= "veto" power)

→ **Actors in either institution must take the views and balance of power in the other into account if they want an act to pass** (i.e. avoid a blocking minority in the Council)
The positioning phase (from January 2004…)

- Initially little attention, the draft Directive well received in the Council
  - Focus on the accession of EU10, where the draft was hailed
  - The EP and the Council initiated their standard work

- But gradually questions and opposition arose …
  - Swedish unions got the draft autumn 2003 and alarmed the government and the ETUC…
  - Belgian and French unions & NGOs took to the streets…
  - and a kindling grassfire of public opposition started spreading

- Fuelled by enlargement, the Polish Plumber, EP elections, and the rising campaign on Treaty ratification in France
- EP public hearing October 2004

→ Political drama in the making

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Late 2004-2005: Mounting protest, shift of actors, and political re-positioning

- National mobilization brought the issue into the public space
- Shift of Commission: Bolkestein replaced by the misty McCreevy
- Employment Summit 19 March – ETUC manifestation gathers 75,000
  - Chirac declares the Directive "unacceptable to France"
  - The Council calls on the EP to fundamentally rework the Directive "to preserve the European Social Model"

- French and Dutch NO to the Constitutional Treaty -> paralysis in the EU establishment, the Council fearing East-West deadlock

⇒ All look to the EP to find a way out of the conundrum
The final "hot" phase of negotiations in the EP
Inside the European Parliament

- Main actors: IMCO and Employment Committee, the Conservative party (EPP-ED) and the Socialist party (PES) – despite liberal-conservative EP majority

- Antagonistic views both within and across the main party groups
  - But they wanted a Directive and to prove ability to deliver on issue that mattered

- How to find a solution that could be acceptable for the Commission and not blocked by a minority to the left or the right in the Council of 27?

- EPP-DE realized that a broad compromise across the center was needed
The final stage:

- A small, high-level negotiating group was set-up, working until the last hours before the EP decision
  - Key areas of conflict: Scope, labour law, and the Country of Origin Principle (CoOP)

- The employers were split, ETUC was floating texts in all channels *

- EPP actors with cross-cutting (union) ties played bridge-building roles

- Finally, the EPP let go and grabbed the floated "Freedom to provide services" formula replacing the CoOP

- Uncertain whether the settlement could be sold → intense lobbying from national parties & governments to ensure majority
While employers were split, the ETUC pursued a "dual strategy" – working from within and without

- Saw early the dimensions of the issue, set up a top-level Task-Force, and initiated its largest transnational campaign ever
  - Avoid protectionist stamp, accept the need for a Directive but opt for radical recast
  - Trying to kill two birds in one stone – fight Bolkestein and win the French referendum
  - Create Unity - get CEE-members on board by in 2005 demanding free movement of workers (i.e. repealing the Transitional Arrangements)

- Multi-level approach –based on seven point list of demands:
  - Coordinated mobilisation – targeting central Member-States and governments
  - Informal contacts with high-level actors in the Council, Commission and the EP
  - Provided expertise on labour law for EP actors – despite populist rhetoric in the public

- Served as broker within the EP and vs the Council, the Presidency, and the Commission top... while mobilizing in the streets outside
  - ”... the final demonstration was like walking on eggs....”
The adoption process:

- Swift Commission clearing and adjustment of legal text (April 2006)
  - Amended art 1.6-1.7 and launched strict guidelines for Posting control (May-06)

- Passed the ’needle’s eye’ of the Council (31 May 2006) with clear message to the EP that the compromise was untouchable

- EP Second reading ”virtually cancelled” (15 November 2006)
  - PES attempt to clarify text on labour law resolutely rejected
  - McCreevy, summoned to the EP, asserted ”unambiguously” that national labour law and collective are not affected. ”However, Community law and in particular the Treaty continue to apply in this field” – as soon witnessed in Laval case...

- Adoption by the Council (12 December 2006)
Review: How can the puzzling outcome be explained?

- Unanimous Council and the EP had called for a Directive
- Reinforced by East-West conflict, Treaty failure, credibility crisis
- Poor preparation, actor structure in flux, 'orphan directive'
- Legal framing – co-decision
- The unforeseen, multi-level public mobilisation

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- The power-relations in the Council required broad compromise to prevent minority blockage – either from the left or the right

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- The employer split and the ETUC’s dual role with control over the public reception of the outcome

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- The EP controlled a legislative good the Council & Commission urgently needed, and the outcome depended on PES consent

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- Contextual factors created an instance of extraordinary exchange power enjoyed by the actors least interested in the directive (Coleman 1966)

- Facilitating conditions in the EP – transnational party structure and key actors with cross-cutting allegiances

- Engagement of forceful national coalitions - e.g. the ”Swedish mafia” - and transnational public and organizational mobilization
Conclusions:

- Not a turning point towards new pattern of EU decision-making and power relations – but Council of 27 can strengthen the EP.

- Illustrated how the contingent character of decision-making in the multi-institutional EU system can sometimes enable unexpected events.

- The case was special: context, timing, scope, and public mobilisation.
  - The EU crisis: the key to resolve the Gordian knot was in the hands of EP.

- The procedural interdependency boosted the exchange power of the least interested actors.

- The decisive role of the European Parliament (and the ETUC) was distinct and atypical, but not exceptional – can reoccur again.