

EU Council – the arena of intergovernmental debates

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Abstract

The uniqueness and the complexity of the Council of the European Union present an incredible force of attraction for researchers dedicated to deciphering the European Union's mysteries. This study aims to analyse the intergovernmental negotiations in the EU and to identify their main characteristics while answering questions about the manner in which negotiations are held and decisions are made in the Council of the European Union. Also, this paper deals with issues such as patterns of interaction between states and types of strategies adopted in negotiations, coalition formation and the reasoning behind them.

Keywords: decision-making, levels of negotiation, negotiation patterns, the Council of the European Union, the Treaty of Lisbon

1. The institutional framework of the Council post-Lisbon

THE EUROPEAN UNION is a unique entity of the international system through both its institutional membership, and the complexity of its decision-making process. From its very creation, and so far, the EU has been systematically subjected to a process of rethinking and reform as a result of the development and progressive extension of this organization. Thus, the increase in number of Member States and the amplification of diversity at the Union level, but also the increase in importance of Community policies, respectively, their multiplication, have imposed further changes at both the institutional and decision-making levels.

“In recent years the European Union has been confronted with increasing acid criticism about the slowness of decision-making, reduced contact between EU elites and European citizens and the influence of the large Member States, especially the older ones, in the decision-making process compared with EU institutions” (Gherghina 2010: 19).

The Lisbon Treaty, which entered into force on 1 December 2009, was aimed at regulating these matters. Whether it succeeded or not, this remains a controversial subject.

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While some voices argue that major changes were undertaken, Piotr Tosiak affirmed, before the entry into force, that despite the reforms brought by the Treaty, the European Union will remain a political and legal hybrid system, characterized by the dominance of Member States and by a democratic deficit (Tosiak 2008: 15). A recent study aimed at identifying the impact of changes introduced by the Lisbon Treaty stresses that the key objectives behind the reforms were achieved only partially, sometimes being observed even a step backward (Christiansen and Dobbels 2013: 1159).

With regard to the Council of the European Union, the main changes were the derogation of some increased powers for the European Parliament, but above all, changes in the system of voting, the review of the presidency system and the attempt to increase transparency with regard to the deliberations of the Council.

One of the most visible instruments of the Lisbon Treaty is the extension of legislative powers conferred to the European Parliament (EP), thus limiting the influence of the European Union Council upon the European legislative process, the European Union having de-facto a bicameral legislative system. According to Article 289 of TFEU, the ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission, but in exceptional cases established by the Treaties, these legal acts can be also adopted by means of a special legislative procedure. As a result of the Lisbon Treaty, the ordinary legislative procedure applies in 85 domains, 47 of these areas being included by this Treaty (Parlement Européen 2008). The EP has gained legislative powers in areas such as agriculture, energy, immigration, justice and home affairs, health, structural funds, etc. The European Parliament also gained powers in terms of budgetary architecture and political control through its role in the election of the President of the European Council (Czimbalmos 2011: 162).

Another salient change introduced by the Treaty of Lisbon is the change of the voting system within the Council. First, we are witnessing the “replacing of unanimity with a super qualified majority” (Alexandrescu 2010: 119), the latter winning an undeniable role in intergovernmental decision-making. However, in areas of importance for the internal politics of the member states – taxation, harmonization of security measures and social welfare, the revision of treaties, immigration, and most foreign and security policy – decisions are still taken by unanimity (Comisión Europea 2007: 19).

Moreover, the Treaty of Lisbon introduced a “passerelle clause” by means of which the European Council may authorize the EU Council to decide by qualified majority for cases in areas normally covered by unanimity, outside decisions having military or defense implications (Luzarraga and Llorente 2011: 183).

Secondly, the controversial system of the triple majority established by the Treaty of

Nice is replaced by the double majority system. According to the voting system provided by the Treaty of Nice, a qualified majority was achieved if the following conditions were met: majority of countries – 50% + one, majority of voting weights – 74%, majority of population – 62%. This system requires that each state's voting weight is directly proportional to its population.^{1*}

The double majority, instead, allows decision-making by 55% of the member states representing at least 65% of the EU population and a minimum of four member states, which shall represent at least 35% of the population, may be a minority blocking decision when the Council acts on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy. If the Council does not act on a proposal from the Commission or from the High Representative qualified majority is considered if at least 72% of the votes of the EU Council members are favorable and they represent at least 65% of the EU population (TEU art. 238).

The advantages of this model are effectiveness, transparency of decision-making – as European citizens may find out at any time under what conditions a decision has been taken and which were the States and populations that have supported that decision, and, last but not least, adaptability – a review of the rules is no longer required with the enlargement of the EU if it renounces to the sharing of votes. However, due to the Polish renegotiation at the Intergovernmental Conference in 2007, the double majority only entered into force on 1 November 2014, and, moreover, until 31 March 2017, any EU member state may request that the current decision-making system be maintained (Luzarraga and Llorente 2011: 165).

The opposition recorded on the double majority system has also brought to the foreground an ancient mechanism cancelled by the Treaty of Nice, namely the Ioannina compromise. According to the Declaration no. 7 of the Treaty of Lisbon, a group of Member States may express their opposition to the text, even if it is not large enough to constitute a blocking minority. Following the notification of the objection to the Council, the latter must do everything possible to find a satisfactory solution for as many Member States within a reasonable period of time without prejudice to the time-limits laid down by Union law.

Also, the presidential system of the Council has undergone notable changes. Since 1957, the Council Presidency used to rotate between the member states every six months, this institution playing an important role in setting the agenda, brokerage and represen-

1 The distribution of the number of votes each state has is as follows: Germany, France, Italy, United Kingdom- 29; Spain, Poland- 27; Romania -14; The Netherlands- 13; Belgium, Czech Republic, Greece, Hungary, Portugal- 12; Austria, Finland, Sweden- 10; Croatia, Denmark, Ireland, Lithuania, Slovakia, Finland-7; Cyprus, Estonia, Latvia, Luxembourg, Slovenia - 4 ; Malta -3 (<http://www.consilium.europa.eu/council/voting-system-at-the-council?tab=In-detail&subTab=Qualified-majority&lang=en>)

tation. The rotation system has been designed to ensure decentralization and preventing the emergence of a single center of power. However, numerous studies have shown that the state holding office as President, has the opportunity to push the results of intergovernmental negotiations closer to its national objectives.

Since the 1970s, especially in the Laeken Declaration of 2001, the presidency system began to be questioned in terms of efficiency and continuity. Discussions about reforming the Council Presidency have turned around several proposals. On the one hand, British and Spanish prime ministers have proposed to create a continuous function of Presidency of the European Council to be elected by qualified majority for a period of up to five years, but this proposal was opposed by small states. On the other hand, Germany and France wanted to establish several presidencies of the various formations of the Council and the General Secretary of the EU Council was to be appointed as Chairman of the General Affairs Council (Warntjen 2011: 12-13).

Finally, in order to enhance democracy and transparency, especially to ensure efficiency, the Lisbon Treaty established two presidencies. Thus, the European Council is chaired by a president elected by a qualified majority for two and half years but it has no legislative functions, while for the Ministerial Presidency the current system, of rotating presidency every six months, is maintained. There are however two exceptions: first, in the case of the Foreign Affairs Council a permanent presidency was created, assured by the High Representative for Foreign Affairs and Security Policy, and second, the Eurogroup, the formation of the Economic and Financial Affairs Council which meets only Eurozone members, will have a permanent president appointed from among its members. Also, similar to the previous troika system, the business continuity of the Council is supported by teams of three Presidencies which assume a common programme for 18 months (Luzarraga and Llorente 2011: 164).

These changes, although not very sharp, had a substantial impact on the leadership exercised by the EU Council Presidency in the European negotiations. The permanent President of the Council took over the functions of EU summits, of setting the agenda, of conducting meetings and representing the Council vis-à-vis the other institutions of the European Union, intergovernmental organisations and non-member countries. Practically, the Presidency of the European Council was limited to constitute a resource for the European Council to ensure the realization of legislative details at ministerial and working group level (Klein 2012).

Regarding continuity in the EU Council, a study conducted by Andreas Warntjen highlights that although the permanent presidency of the European Council can be up to five years and regarding the ministerial Presidency there were created joint programmes for each 18 months, the hybrid solution proposed by the Treaty of Lisbon presents defi-

ciencies in providing business continuity in the Council because its presidency changes every six months, involving discontinuity of priorities and leadership that automatically lead to delays and low efficiency (Warntjen 2013: 1239).

Another significant change brought by the Lisbon Treaty is the increase of transparency through the requirement to publish the work and deliberations of the institution where the Council acts as the legislative body. This issue was raised on countless occasions, critics arguing about the fact that the Council “is the sole legislative body, except those in North Korea and Cuba, where laws are enacted with the doors closed” (Warntjen 2011: 12-13).

Despite increased public access to deliberations, in fact most decisions are still made behind doors because deliberations away from the eyes of citizens allow representatives of different states to make concessions so as to obtain an agreement as beneficial to all.

2. Levels of negotiation in the Council

The Council of the European Union represents the dominant decision-making arm of the European Union, this institution being the exponent of the national interests of member states. Here the proposals are being negotiated and the legislative agreements are adopted. But what must be taken into account is that representatives of the Governments of the Member States may adopt arrangements “only as members of the Council” and “not as members of governments”, as the Institution of the Council of the European Union can-not be considered simply a forum of representatives of the Member States (Bărbulescu 2008: 231).

The main powers of the Council are coordination, decision-making, execution and budgetary powers, but this institution has other rights such as to request to the European Commission studies and legislative proposals, to fix the financial status of the institution's members and to open foreign negotiations, giving to the European Commission the negotiating mandate, the Council being the one to eventually conclude the final external agreement (Council of the European Union (TEU art. 16)).

2.1 Vertical negotiations

Due to the complexity of the issues addressed in the Council of the European Union, the institution presents a highly complex organization incorporating different configurations and levels of negotiation and different voting systems.

This institution may take the form of a general council when it is composed of the Foreign Ministers of the Member States or special or sectoral councils, composed of ministers specialised in one area or another. As of 2009 there are 10 specialised councils: the General Affairs Council (GAC), the Foreign Affairs Council (FAC), the Economic and Financial Affairs Council (ECOFIN), the Justice and Home Affairs Council (JHA), the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO), the Competitiveness Council (COMPET), the Transport, Telecommunications and Energy Council (TTE), the Agriculture and Fisheries Council (AGRIFISH), the Environment Council (EN) and the Education, Youth, Culture and Sport Council (EYCS). ([Council Decision 2009](#)).

The General Affairs Council and the Foreign Affairs Council shall meet monthly to ensure business continuity necessary to enable the Union working in good conditions. The other councils meet when it is necessary to discuss specific aspects of the activity in question ([Dragoș 2007: 68](#)).

Considering the absence of continuous meetings of the Council and its diversity formations, Permanent Representations of the Member States were created in Brussels to ensure continuity and consistency in the work of the Council. These permanent representatives meet weekly under the COREPER formula, the main group that prepares the Council's works. The Permanent Representatives Committee of the Council of the EU is also divided on two levels: COREPER II (at the level of ambassadors or heads of representations) to discuss the political and institutional matters of principle and COREPER I (Assistant level) whose task is to examine the technical issues. COREPER II prepares the work of the four configurations of the Council: ECOFIN, CAE, CAG and JAI, while COREPER I prepares the work for EPSCO, TTE, ENV, COMPET, EYCS and AGRIFISH. In the case of the latter Council, COREPER I just treats financial issues or technical measures regarding veterinary, phytosanitary and food legislation, other matters falling within the competence of the Special Committee on Agriculture ([Council Decision 2009](#)).

Also, COREPER is supported by more than 150 working groups and expert committees. They are composed of delegates of each Member State and experts in a particular field, but the scope of topics can span over several working groups. The group performs a thorough analysis of the file in question, article by article, and does not submit the matter to other bodies of the Council until it has not been studied enough and the points on which agreement is looming have not been identified and political issues to be presented to COREPER have been raised. In terms of results, although the working group allows confronting positions of national delegations, they are not able to decide definitively, having no opportunity to vote ([Sauron 2010: 227](#)).

The institution that manages and coordinates all meetings of the various configura-

tions is the Presidency which rotates every six months by each state. This is assisted by the General Secretariat of the EU Council which assists the Council's bodies in legal matters and provides administrative infrastructure.

As mentioned before, the voting procedures also vary in the Council, the Treaties providing three voting systems: simple majority, qualified majority and unanimity. The vote by simple majority requires at least 15 members of the Council who vote in favour of making a decision. The voting system is used in a very limited area, in the adoption of the Council's internal rules for procedural matters or to request the Commission to conduct studies considered appropriate to achieve common goals (Voicu 2009: 182). With regard to the qualified majority I will only mention that, at this moment, this voting system is the main way in which decisions are taken at the European level, this system being already detailed in the previous section. Unanimity requires the consent of all parties in order to pass a decision and the possibility of exercising the right of veto in case of dissatisfaction. This is the voting system claimed in some sensitive areas and interests to the Member States.

The way of expressing votes depends on the type of power that the EU has. Thus, the Foreign Affairs Council, in matters concerning the Common Security and Defense Policy (CSDP) and the European Security and Defense Policy (ESDP), adopts common positions by consensus as a general rule. However, concerning trade qualified majority shall prevail, as for development cooperation decisions are taken by qualified majority and in co-decision with the European Parliament. In the ECOFIN, the voting system is qualified majority in co-decision with the EP, but the taxation claims unanimity. In the JHA the voting rules state unanimity and consulting the European Parliament, but on visas and judicial cooperation in civil matters decisions are taken by qualified majority and after consultation or in co-decision with the EP. In the case of EPSCO the decision-making requires a qualified majority and EP co-decision, excluding social security, which works by unanimity. With regard to the decisions of the COMPET, TTE, and ENV, they will be taken by qualified majority and in co-decision with the European Parliament. Also, in the EYCS the decisions are made on the basis of a qualified majority and co-decision, but culture requests the unanimity and the co-decision of the European Parliament (Bărbulescu 2008: 238).

The internal decision-making process of the Council of the European Union is based on a complex mechanism, hierarchically structured on three levels, as illustrated in the following image.

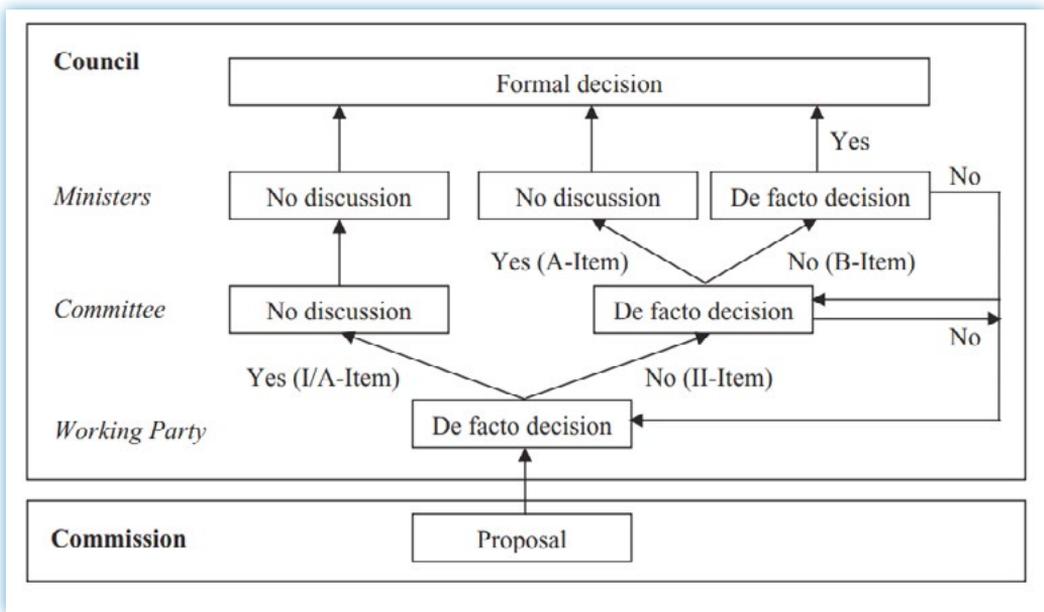


Figure 1: The Internal Decision-Making Process of the Council (Häge, 2008: 536)

After a proposal is submitted by the European Commission, the responsible working group will take over and discuss the file. If the working group reaches an agreement on the file, it will not be discussed at the next level, but it will enter on the first point of the Higher Committees' agenda, then on the point A of the Council's agenda, not being discussed by the ministers, but voted in block with other cases in the early ministers meeting. If the working group cannot reach a full agreement on the contents of the file, the working group chairman shall refer the issue on the agenda of one of the two COREPER as belonging to the Point II (Häge 2008: 535-537).

After the evaluation and negotiation of the files, COREPER share the issues discussed on the agenda of the Council in three points. Points A are the type that does not raise political and technical problems, meeting the required majority for adopting the text. They are adopted in block at the beginning of the session of the Council without debate and without a vote, and if a delegation disputes the classification of a point, it is returned to the COREPER to be discussed again. Points B type are those that raise technical or political problems that can only be resolved at ministerial level. If discussions are finalized it is proceeded to the voting stage, otherwise the case is referred to a group of experts for review. False Points B are texts in which the permanent representatives meet the majority needed for adoption, but a delegation or the Commission wishes to make a statement in front of the Council regarding the adopted text. The statement does not take effect as

engaging in debate or call for vote because the majority was reached while only the “reporting” delegation opposes (Sauron 2010: 228).

As shown in the above image, the files can be discussed several times in different Council formations before being adopted.

2.2 Horizontal Negotiations

For a comprehensive analysis of the decision-making process, the horizontal negotiations in the EU Council “should be viewed through multiple pairs of glasses” (Wallace, 2004: 8) because they present a particular complexity. On the one hand, the diversity of actors, respectively their preferences and formal and informal rules of the Council should not be neglected because they have a major impact on the negotiation process. On the other hand, the actual interaction of the actors in decision-making raises our attention. Numerous studies in the field of European negotiations offer a wide range of models of interaction of states in the Council, of strategies to streamline decision-making and maximize the interests of Member States and theories of influence in choosing the style of negotiation, which allow a comprehensive and practical analysis of the intergovernmental negotiation processes.

The EU Council negotiation dynamics is provided by actors such as Member States, the Presidency, the Council Secretariat, the European Commission and the European Parliament. The weight of the first three actors listed above in the decision-making process is unquestionable, being “suspected” that they would exercise leadership in the Council. Jonas Tallberg argues that the rotating Presidency has developed a platform for real power in the Council, enabling the Member State that holds the chair for six months to influence negotiations between members and the decision making process through the three functions that have been delegated to it: Management Agenda, brokerage and representation. Derek Beach, on the other hand, believes that Tallberg’s arguments are exaggerated and claims that the Council Secretariat, although small and with few formal powers, can be a provider of leadership necessary to prevent negotiation failures and blockages. Robert Thompson instead, considers that a key source of leadership is the dominance of the big states. Regarding the other two institutional actors, although they are not directly involved in the negotiations of the Council, they exert influence on intergovernmental negotiations due to the fact that they have a significant role in the European legislative process. The European Commission is seen as a facilitating negotiations and agreements factor (Hagemann and De Clerck-Sachsse 2007:2), with representatives in all levels of work in the Council, although they do not vote.

James P. Cross demonstrates that a factor which determines the Member States' behavior is the intersection of the negotiating positions of the Commission or the Parliament with the interests of Member States. Thus, the states that do not like the position of the European Commission as expressed in the legislative proposal, will make frequent interventions in the Council negotiations to modify the proposal. In the case of the EP, the situation is opposite. Members with positions close to the position of Parliament will intervene more often in negotiations to send signals of support for Parliament (Cross 2012: 49-51).

Another essential element to be considered in the analysis of negotiations in the Council of the European Union is the dual identity of the representatives of the Member States as this organism is both a creation of member governments and an institution with collective functions. This dual condition involves a number of influences or constraints on the actors involved in intergovernmental negotiations. If on the one hand, Member States shall act naturally in the interests of national citizens, on the other hand, the Board must also ensure the pursuing of the interests of the community of European citizens. According to Maarten Hillebrandt, the legitimacy of the Council is both national and European, implying that the legitimate aim of the Council is to realize interests that are shared by all citizens of the participating Member States (Hillebrandt 2013:7). However, the convergence of all interests in a common interest is quite difficult, there being often pressure on negotiators to support nationally endorsed decisions.

Also, regular contacts, institutional memory and future planning involve – especially in specialized formations – the cultivation of friendly relations. Thus, “some permanent representatives claim to have a double set of instructions – specific instructions to the problem at hand and a permanent worldwide training to maintain the progress of work of the Council” (Lewis 2008: 167). Another element likely to transform the behavior of negotiators in certain circumstances would be that officials in Brussels tend to go native. Due to repeated interaction, the way that actors perceive themselves is changing, and their behavior is adjusting under the new identity (Warntjen 2009: 6).

Regarding the influence of rules upon the negotiators in the Council, inevitably we see the predisposition of the members of this institution for compromise, or the so-called culture of consensus. A number of researchers in the EU Council decision-making have found that approximately 78-90 % of acts are adopted annually by consensus (Jensen 2010: 5).

Consensus-seeking skills were settled in the Luxembourg Compromise of 1966 which codified the idea that the practice of isolation and pushing individual governments into minority should be avoided in all circumstances, unilateral attempts to push for a vote being considered an inadequate behavior. Afterwards, the Council Guidelines prepared

by the General Secretariat of the institution stated that it is the duty of the Presidency to “postpone the vote, if it finds that conditions have not been met” (Aus 2008:102) and to resend the folder to COREPER in order to be discussed again. Also, as a former member of the COREPER I testifies, this rule of consensus is rooted in the Permanent Representatives Committee, the major aim of this organism being to “maximize the agreement at its levels and maximizing the chances of reaching agreement at meetings of the Council” (Aus 2008: 102).

According to Florence Deloche-Gaudez, the behavior of Member States seems to be influenced by this rule by the time decisions are made and when the votes are cast, the consensus culture encouraging the avoidance, of the vote in the first case, and of the public expression of Member States’ position, in the second case (Deloche-Gaudez and Beaudonnet, 2010: 4). Researchers Helen Wallace and William Wallace argue that “in the case of qualified majority voting, the fact that governments know that the vote may be requested often causes reluctant governments to focus on introducing amendments that correspond to their interests rather than blocking the full progress. When voting unanimously, reluctant governments are generally inclined to delay or prevent the agreements” (Wallace 2004:21). This explains the rarity of actual votes even when this is possible in terms of technical support. Since 1999, when the voting procedure was qualified majority, the number of legislative acts actually subjected to vote never exceeded the threshold of 30%.

2.2.1 Patterns of states’ interaction in the Council of EU

How Member States interact in the Council is a subject of wide debate, the literature in this area being surrounded by numerous analyses of decision-making and multiple views on the behavior of governments in intergovernmental negotiations. While some researchers have focused on analysing the reasoning underlying actors’ actions, others were dedicated to interpreting the trend of not seeking a formal vote by comparing either the constructivist theory, or the rational choice. On the other hand, some scientists were oriented towards negotiation techniques, making a clear distinction between distributive and integrative negotiation and, not in the least, other researchers combined the two major theories in the problem solving model.

The main approach distinguishes between rational choice theory and constructivism. If realism followers argue that Member States are trying to push the results in their favor through the bargaining power of trade unions and votes, constructivists insist that the dominant mode of interaction is based on normative behavior and deliberation, citing

consensus culture as an argument.

James March and Olsen Johan distinguish between the logic of consequentiality and the logic of appropriateness. The logic of consequentiality derived from rational choice theories assume that actors have specific interests and act systematically in physical and social constraints in order to maximize their benefits. To this theory opposes the logic of appropriateness derived from constructivist and sociological institutionalist theories which argue that institutions include not only formal rules but also informal ones and are shaping the identity and preferences of these actors. According to these theories “actors’ preferences are not exogenously given and fixed, as in rationalist models, but endogenous to institutions and individuals’ identities shaped and re-shaped by their social environment” (Pollack and Shaffer, 2008: 147). Institutions do not simply provide a set of constraints under which actors seek to maximize their individual benefits but also “teach’ norms to states and their representatives, who behave in a manner ‘appropriate’ to their socially learned rules and roles” (Pollack and Shaffer, 2008:147).

Thomas Risse argues that the logic of appropriateness does not cover the entire spectrum of decision-making models because it doesn’t relate to the argument of the applicability of rules (Warntjen 2009: 6). Based on the theory of communicative action of Habermas², Risse develops a third logic of social action, the logic of arguing. This launches the idea that political actors negotiate not just based on fixed preferences and relative power, but they can negotiate by questioning their own opinions and preferences. Where the logic of arguing prevails, actors do not seek to maximize profits or to achieve their interests, but seek to discover the truth and justify the validity of their claims, through processes of deliberation, argument and persuasion, being prepared to change their views or interests due to a better argument (Pollack and Shaffer, 2008: 147).

Terrence Hopmann maintains that negotiations involve bargaining focusing on expanding space, introducing the concept of solving problems to “describe the cooperative nature inherent to any negotiation process even among actors with strong individual interests” (Șter 2012: 47). This model of problem solving can be employed both in the constructivist theory and in the framework of realism as problem solving involves “looking for better solutions, mutually beneficial, which shall satisfy the needs, identities and

2 Jürgen Habermas’ concept of communicative action implies that “participants are not primarily oriented towards achieving their own individual success; they pursue their individual objectives insofar as they can coordinate or harmonize their plans of action on the basis of shared definitions of the situation. Thus, behavior is not coordinated via egocentric calculations of success, but rather through acts of reaching mutual understanding about valid behavior. In order to achieve this type of understanding, certain ‘validity claims’ need to be fulfilled. Habermas distinguishes three types of validity claim or criteria: first, that a statement is true, that is, it conforms to the facts; second, that a speech act is right with respect to the existing normative context; and third, that the manifest intention of the speaker is truthful, that is, that s/he means what s/he says”. (Niemann 2008: 122)

interests of all parties” (Hopmann 1995: 24).

As already mentioned, research in this area is very extensive. Thus, we can still identify a wide number of models concerning the interaction between member states of the EU Council such as the compromise model, the national constraints pattern, the exchanging positions model, the challenges model, etc.

Based on existing research, Andreas Warntjen attempts to create a systematization of decision-making patterns at the level of the EU Council. He proposes five models: Distributive Bargaining and Cooperative Exchange patterns (within the rational choice theory), the Norm-guided Behavior model and Deliberation model (belonging to constructivism) and Problem Solving model (based on both theories).

Distributive bargaining model involves actors who seek to maximize their own interests. A key feature of this model of interaction is obtaining as many concessions as possible, while offering them must be minimal. These actors behave in a cooperative manner just as long as negotiations correspond to their calculation and individual interests and they accept an agreement only if that increases their utility compared to the best alternative they have (Niemman 2008: 121). This type of bargaining has at its core the power at actors’ disposal, which often dictates the outcome of negotiations given that “claims are supported by credible promises, threats, or exit opportunities” (Kotzian 2007: 81).

The cooperative exchanges model (or compromise model) not only considers the preferences of the actors, but also the importance of certain aspects of the problem for the actors. So, the actors prefer to maximize the agreement itself and engage in a full advantage joint action.

According to the Dutch political scientist, the players can switch votes (direct reciprocity), may establish a mechanism for the exchange of control exercised in certain areas (institutionalized reciprocity) or conceive an informal rule of mutual concessions in order to achieve long-term mutual benefits. Regarding the reasoning behind these actions, the author argues that it is more beneficial to think of an exchange of influence than to think about the acceptance or rejection of a proposal (Warntjen 2009: 4-5).

The Norm-guided Behavior implies that the identity of the actors determines their behavior during negotiations. Identity is defined as a combination of rules, ideas and preferences, focusing on compliance of norms. Identity is usually evoked by symbols. Thus the identity of a member of the European Union, created during continuous negotiations for the integration project will include some rules (such as not to be exposed to a risk of loss of the EU because of selfishness), values (such as the Union is good) and occasional beliefs (such as European integration promotes welfare) (Kotzian 2007: 81). Basically, European identity involves trying to reconcile divergent positions and integration of all Member States’ interests in a common European interest, this may be an explanation for

the lack of formal negative votes in the Council.

The pattern implies that actors debate not only the discussed subject, but also on the applicability of rules and measures foreseen for a given situation and they are prepared to accept the arguments of others if they prove to be better, sacrificing individual interests for the collective ones. Basically, the deliberation represents the attempt to reach an agreement by the force of better argument, in other words, it refers to convincing others of the right thing to do (Naurin and Wallace 2008: 142). It is expected that this model can be identified during pre-negotiations, often characterized by the confronting of negotiators with uncertainty and the emergence of new problems, thereby, being born opportunities to lengthy discussions, facilitated by lower time pressures and by the lower level of politicization. Also, a higher degree of debate and deliberation is expected at the official (working group) than at the political level (the Council), due to the complex problems that require the expertise of negotiators and facilitate broader discussion (Niemann 2008: 142).

The problem solving requires looking for mutually beneficial solutions, and may refer either to the political problems of finding arrangements that are acceptable to all parties, or to the technical problems of discovering the optimal policy from the perspective of all. This model can be based on both the individual actors' desire to maximize benefits through cooperation and the deliberative norms. The problem solving is probably glimpsed when the interests or consequences are either uncertain or already established and the parties are engaged in a long-term relationship and have a similar perception of the problem (Warntjen 2009: 7-8).

The complexity of interactions in the Council of the European Union does not allow the proposal of a universal model for intergovernmental negotiations, negotiating at each stage can be characterized by different patterns of interaction. Thus, if at the working groups or COREPER levels negotiators can focus on problem solving or discussion, at ministerial level negotiations could be conducted on the distributive negotiations model or on cooperative exchanges. All depends on the context.

2.2.2 Influence in choosing the style of negotiation

Another imperative aspect to be taken into consideration when we analyse the negotiations in the Council of the European Union is the identification of the influence sources of Member States in choosing the style of negotiation, respectively of the way of behavior.

A first source of influence on the behavior of negotiators is the political culture of states. James Cross says that in explaining the behaviour of a Government in the

Council, two political dimensions must be taken into account: the States positioning on the left-right axis and the degree to which the Government supports or opposes further European integration.

Regarding the first ideological dimension, the author argues that leftist governments generally seem to prefer extensive legislative solutions, while the right are adept of minimalist legislative solutions. Thus, given that the interventions in the Council are made only for disagreeable proposals, it is expected that leftist governments have fewer interventions to advance the negotiations, while right-wing governments are likely to make frequent interventions in order to block the progress of negotiations. As for the second dimension, it is not uncommon to be assumed that Member States that oppose European integration will interfere more often in the Council to reject the Commission's proposals as generally these proposals aim to deepen EU integration (Cross 2012: 52-53).

The behavior of states into intergovernmental negotiations can be governed also by the voting system. In the case of the unanimity rule, each national representative has the power to prevent an agreement and thus has more freedom to seek competitive tactics and may be less willing to adopt integrative strategies. However, if the qualified majority rule applies, not all the decision makers should be favorable to adoption, therefore, the integrative strategies are dominant. The thinking behind this choice is the impact of reputation in the formation of a coalition on which depends the adoption or rejection of a decision, an uncooperative behavior meaning self-isolation (McKibben 2007: 23-24).

Another element affecting the behaviour of States is the bargaining power that could lead to competitive strategies which are known for targeting the maximization of interests. The power in the Council is transacted in many forms: votes, decision rules, the guarantee of defense interests, discursive resources, sympathy, etc. (Lewis 2008: 165). According to the rational choice approach, actors relate to relative power, political positions and size of the stake when choosing their negotiation strategies, power being directly proportional to the size of the winning chances. This statement leads to the assumption that the small states would be likely to choose competitive strategies to ensure maximization of interests.

Also, the level of politicization has an impact on Member States when they interact. Generally, problems with a high degree of politicization imply reluctance to compromise on some issues due to the submission to the public consultation and advertising enjoyed by this type of policy, there existing concerns about the reputation of actors as a result of offering concessions. Thus, in the case of subjects with a high level of politicization, competitive strategies are expected, while, in the subjects with low

levels of politicization integrative strategies and reaching an agreement are foreseen.

When choosing a negotiation strategy the field on which it is negotiated is highly important. Generally, the more sensitive areas, of political importance for Member States, require competitive techniques, while technical or economic issues involve cooperation. Since the latest enlargement waves, competitive strategies and negative votes were recorded mainly in the areas of Transport, Telecommunications and Energy, Competitiveness, Agriculture and Fisheries, General Business, Economics and Finance, and Justice and Home Affairs ([Mattila 2008: 28](#)).

2.2.3 Strategies for effective decision-making and maximizing the power of the Member States

Multilateral negotiations involve a higher degree of complexity than the bilateral ones, and when we relate to the negotiations within the European Union, we find that they are surrounded by many actors and preferences and various norms and rules, written or unwritten, which complicates the negotiation, leading sometimes to impasse or registration of some diminished gains.

In order to streamline decision-making and maximize the gains, Member States often use informal negotiations. Within COREPER such negotiations are essential in reaching agreements. Sharing information is the key to success in EU Council negotiations. However, disclosure of certain information about their interests or weakness before all parties involved in the negotiations would lead to a weakening of the bargaining position of the State. To bypass this barrier, representatives of states resort to informal bilateral negotiations, where there are no strict rules of procedure and specifications. During these negotiations, the parties can openly discuss issues of interest because they do not have such an increased significance, the revelation of the true position, problems and priorities being possible ([McKibben 2007: 35-36](#)).

Complementary to the informal bilateral negotiations are also the exchanges. States tend to prioritize their interests and the less striking aspects are offered in exchange for increased importance. According to Heather McKibben, “the Union is a place to receive and give, and you can’t take all the time” ([McKibben 2007: 35-36](#)). Thus, given the fact that European Union member states are engaged in a long-term relationship, in the EU Council they are guided by reciprocity. A state is more flexible in some aspects of great importance to another state, hoping the respective state will show in turn the same treatment when issues of importance to the former will be discussed and decided.

Another form of streamlining the decision-making process in the Council of the European Union, especially a strategy to increase the bargaining power of the Member States, is the formation of coalitions. States tend to coordinate their behavior and negotiating positions with other states with similar preferences, and to form large enough coalitions that can block the formal decision and ensure that the member state's views cannot be ignored in the decision-making process, and at the same time, the concessions that must be done being limited (Häge 2010: 3). The existing research shows that coalition formation increase the bargaining power of states by: “(1) pooling voting power; (2) exchanging information, which improves members’ ability to choose the best strategy of negotiations; (3) increasing members’ expertise, which allows them to offer solutions that also others may find attractive; (4) giving more strength to normative justifications that members may use to push their preferences that may lead to a situation in which other member states are normatively entrapped (Ruse 2010: 3).

So, coalitions are deliberately built networks of actors that could generally have different interests, values and political priorities, but at some point, for a shorter or longer time, come to share common goals (Blavoukos 2009: 3).

The secret nature of Council's deliberations prevents the discovering of evidence regarding coalition formation and their stability. Thus, while some researchers argue that the preferences of actors in decision-making are not structured, others say the opposite. Some of them are convinced that in the Council of the European Union there appear ad-hoc alliances in order to deal with the issues on the agenda, while the rest argue that on the basis of cultural and geographical proximity, but also because of personal relationships and interpersonal trust, they have formed permanent alliances or institutional coalitions involving continuous interactions despite the fact that political preferences of actors do not converge on all subjects. Good examples of this are Benelux, Visegrad, Nordic and Franco -German Alliances, where the cooperation between them can cover many policy areas, coordination of positions in the Council being only one element in the process of collaboration (Ruse 2010: 3).

Ad-hoc alliances involve like-minded actors that unite depending on the interests concerning the subjects at hand. According to Ilze Ruse, this alliance has the greatest potential power because it is based on rational action of actors, who will take all necessary measures to maximize the favorable outcome for all alliance members (selecting peers, exchanging information, and pooling power by joint action). Permanent alliances instead, can increase the joint bargaining power only when players' preferences are close because, unless the preferences are suitable, membership of a permanent coalition does not necessarily lead to a common action. In addition, their

voting weights do not always reach the threshold needed to block a decision. However, these alliances have the ability to create strong normative justifications that sometimes come to coerce other states (Ruse 2010: 6).

With regard to the reasoning behind coalitions and their stability, Michael Kaeding and Torsten J. Selck identify four explanations for the actors' choices in forming coalitions: power, interests, ideology and culture.

The first explanation is grounded in rational choice theory. States are acting under the logic of composing a minimum winning coalition, or a large enough one, that can formally block a decision. As a natural consequence, coalitions between the strongest actors in terms of voting power are foreseen as states with more votes are more likely to be the winners. The second explanation, similarity of interests, means that states will seek to unite with countries with close targets and it involves the tendency of states to change their allies depending on the interests of each area under discussion. However, in such areas as environment, social policy, foreign aid, it is distinguished a Nordic bloc that shares the same values and ideals (Kaeding 2005: 273-274).

The third explanation for the formation of alliances, the one based on ideology to be more specific, is based on the idea that, unlike interest-based approach, the left-right dimension reconciles economic and socio-political issues such as regulation, redistribution, employment, individual freedom, religion and ecology. When ideology is behind the formation of a coalition, it is expected a repetition of coalition models in various fields, while there is still the possibility that they change due to changes in the political regimes of the Member States. The last explanation identified by Michael Kaeding and Torsten J. Selck is culture. Geographical proximity is often associated with similar cultural traits. Also, coalitions with historical importance such as the one between France and Germany are expected to continue in the future. Since culture is a ubiquitous phenomenon, coalition models based on it should be the same in different areas, being expected rather fixed coalitions models (Kaeding 2005: 274).

The issue of coalition and power models within the EU Council was approached by scientists in three main ways: first, a number of studies have calculated the theoretical strength of hypothetical coalitions based on the vote weight of each Member State. An example of these studies is the Shapley–Shubik index which measures the voting power, based on the number of times that a state is “essential” in the sense that the coalition has a sufficient number of votes to turn a losing coalition into a victorious one. Through this index, M.O. Hosli argues that the Benelux countries and the Nordic countries have the capacity to act as “blocks” in the EU Council. However, the great failure of this index is that it cannot identify the existing coalitions (Naurin and Lindahl 2008: 65).

Second, to determine the position of the Member States in the decision-making area of the Council, scientists have studied the voting patterns. Through an analysis of the preferential configuration based on a visual technique called multidimensional scaling it was found that there is a North-South dimension affecting voting patterns in the Council of the European Union.

Figure 2: Multidimensional scaling³⁷ map of Council voting during the EU-25 (Mattila 2008:33):

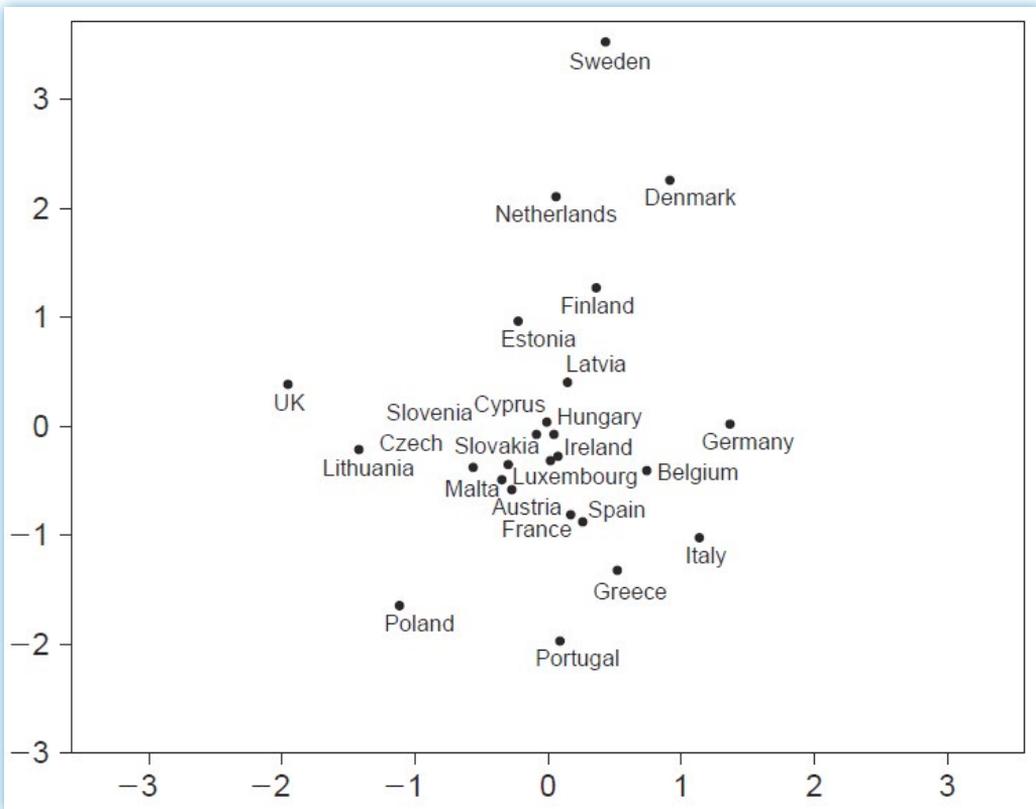


Figure 2 shows the configuration of states' preferences in the EU Council by negative votes cast. Apparently, the votes are geographically structured. Sweden, Denmark, Finland and Netherlands are at the top of the figure, while Greece, Italy and Portugal are in the lower part of the figure. This suggests that the general positions of the two groups are at opposite poles. There are some clear geographical deviations: France, Austria and, in particular, Poland are among the countries of the South. Ire-

³⁷ Multidimensional scaling is a way to represent distances or similarities between the two units of analysis in one or more dimensions. When two member states are located near each other, the chances that they behave similarly are higher.

land also, despite its geographical position toward north, is situated in the middle, the center containing a group of Member States which almost never vote against the majority of the Council. Remoteness of Germany and the UK indicates that these two countries rarely vote together against the majority (Mattila 2008: 34).

The study focused on the negative votes and abstentions expression⁴ reveals that negative voting alliance formation revolves around northern Member States, notably Sweden and Denmark. At the same time, this study highlights the tendency of states to grant negative votes together: in 74 % of cases, when Denmark decided to vote “no” or abstain from voting, Sweden challenged the same proposal, and in 56 % of cases, when a proposal was challenged by Sweden, Denmark joined Sweden. Obviously, other Member States have joined forces to vote against the majority. The most common coalitions among southern states were formed around Portugal, who formed a contesting coalition with Spain and Italy. Greece also has joined forces with Italy and Portugal to vote against the majority of the Council (Mattila 2008: 32).

Besides the geographical dimension, studies show that the negative vote and abstentions depend on the size of states. Dorothee Heisenberg notes that voting trends can be correlated with the number of votes held in the Council, being observed the inclination of large members for negative votes (Heisenberg 2006: 74-76). This observation is supported by Mikko Mattila, which draws attention to the existence of other two dimensions that influence the voting procedures: left-right dimension and pro-against integration dimension. In general, leftist governments tend to vote less against the Council majority than their right counterparts. If a state is a strong supporter of deepening integration, its positioning on the left-right axis is devoid of major importance because these countries seldom contest the majority. But in the case of a more Eurosceptic state, if the Government is right, it will tend to appeal the decision of the majority (Mattila 2004: 29).

A third way to identify patterns of coalition is to analyse the positions expressed by Member States in relation to each other, which makes it possible to detect potential conflict dimensions in the Council. Again, the North-South dimension is the most visible. The Nordic Group is composed, as in the studies of negative votes, by Denmark, Sweden, Netherlands, UK and additionally Germany. Finland is somewhere between North and Center, and France is included in the group of Mediterranean countries. As for the new members from Eastern Europe, they seem to align with southern Europe (Naurin and Lindahl 2008: 66).

According to Robert Thompson, this cleavage is due to the northern states preference for market-based solutions and a low level of subsidies, while the southern

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See Annex I.

states, advocates for regulatory approaches and substantial subsidies. The alignment of Eastern states with Southern Europe members is attributed to the similar preferences especially on high subsidies, but also on aspects of market regulation, consumer protection and environmental policy (Thomson 2009: 756). The latter statement is strengthened by Christina Zimmer, Gerald Schneider and Michael Dobbins which state that enlargement leads to a deepening of the divide between net contributors and net beneficiaries (Zimmer, Schneider and Dobbins 2005: 403).

Unfortunately, these research methods have certain limitations. The most obvious is that the analysis focuses on the views expressed at the time of voting and ministers vote explicitly only in about 20% of cases. Furthermore, the fact that two states vote the same does not mean that they have formed or will form a coalition. According to Tim Veen, when identifying coalitions in the Council of the European Union, it must be taken into account also the coalitions formed at the bargaining stage, not only coalitions observable in the stage of voting because, when it comes to coalition formation, there is no clear evidence that alliances formed at the bargaining stage will generally be continued at the voting stage, nor that coalition determinants have to be the same (Veen 2010: 3).

Studies focused on the coalition bargaining stage were undertaken from 1998 by Jan Beyers and Guido Dierickx who discovered that at working groups and COREPER levels, negotiations revolve around the United Kingdom, France and Germany (Beyers and Dierickx 1998: 299). Such research was also undertaken by Daniel Naurin with Rutger Lindahl. A series of interviews in the COREPER I and 11 working groups activating in fields such as economic policy, domestic issues, agriculture, foreign policy and security, environment and justice and home affairs have revealed that the UK, France and Germany are the states which cooperate most frequently with other Member States in order to reach a common position. This demonstrates the importance of size, large states are more often found as cooperation partners than small ones. However for the Netherlands and Sweden, size is not everything, as they are found immediately after the first three states (Naurin and Lindahl 2008: 71-75). Also, this research showed that the main collaborators among the southern states are France, Italy, Greece, UK, while in the case of Eastern countries, collaboration occurs most often with partners such as Poland, the Czech Republic, Estonia, Slovakia and Lithuania.^{5*}

The two researchers, based on interviews held before and after the 2004 enlargement had tried to identify the patterns of cooperation. The replies obtained were interpreted via multidimensional scaling, as exemplified in Figures 3 and 4.

5 See Annex 2.

Figure 3: The cooperation space of EU-15 in 2003

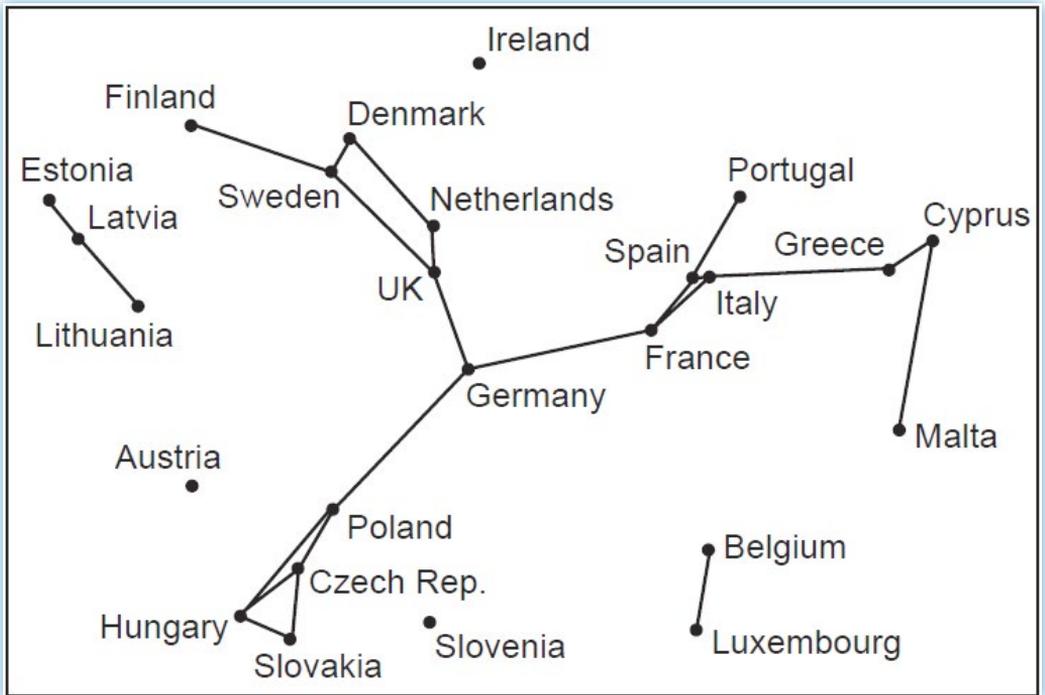
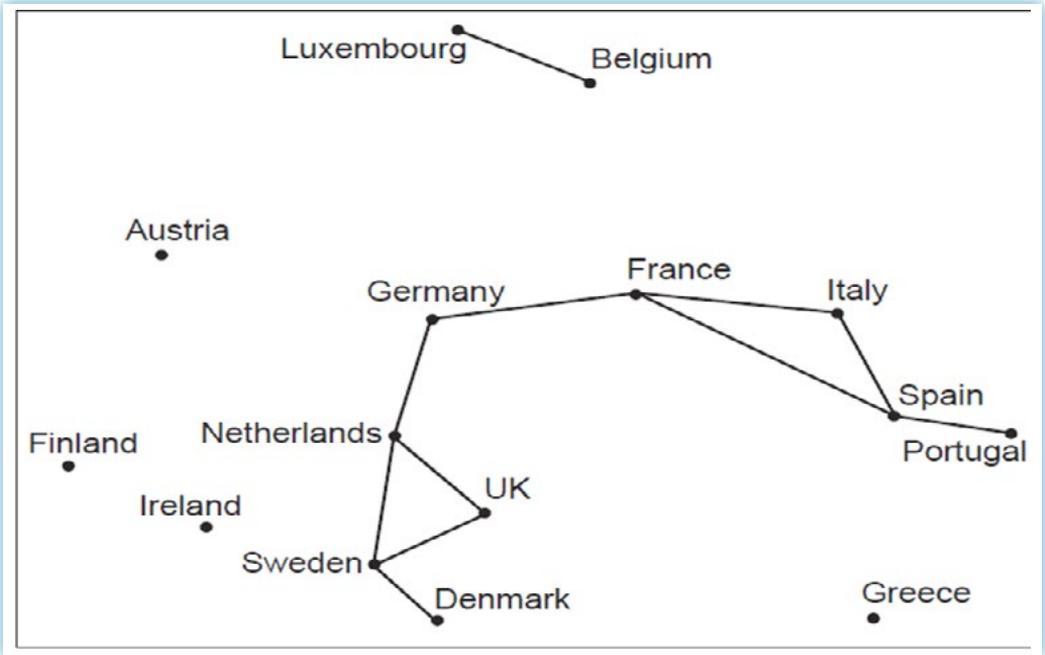


Figure 4: The cooperation space of EU-25 in 2006

As shown in the two figures, before enlargement, the responses for the question who with who cooperates indicated the dominance of the political arena by two triangles connected to each other by Germany. The Nordic triangle is made up of the United Kingdom, the Netherlands and Sweden, and the Southern one is composed by France, Spain and Italy. These groups are joined by Denmark, respectively Portugal, the other states being situated to some extent at the periphery of the political scene. The accession of new Member States since 2004 led to the creation of two new groups – the Baltics and the Visegrads – and to the addition of Cyprus and Malta to the Southern Europe group. This enlargement increased the notoriety of Germany, who also cooperates with the Eastern group due to its links with Poland. Basically, enlargement has not brought significant changes in the relations between states. However, if you draw a line from Hungary to Cyprus, we see that the North-South dimension became a North-South East one (Naurin and Lindahl 2008: 71-75).

Although there have been numerous and complex investigations, no final conclusion has been drawn on the processes of coalition's formation in the Council. However, there are some common trends that reveal the behavior of different groups of the Council of the European Union: largest Member States and most Nordic countries tend to refrain from voting or to vote negative. Also, at certain times we can identify two opposing groups: the supporter of the free market and normative members, and in recent years also the governments' national political positions of center-left and center-right were reflected in the decision-making (Hagemann 2008: 47-56).

Annexes

Annex 1: Dissenting Coalitions in the Council of the European Union during the EU-25

Table 1: Size distribution of contesting coalitions (Mattila 2008:31):

Number of member states in a contesting coalition	Share	Number of cases
More than 7	5.60%	8
6–7	7.70%	11
4–5	19.60%	28
2–3	32.90%	47
1	34.30%	49
Total	100%	143

Table 2: Most active country pairs dissenting with the majority (Mattila, 2008:32):

Country pair	Share of first state's all contestations	Share of second state's all
Sweden – Denmark (25)	56%	74%
Sweden – Netherlands (20)	44%	67%
Sweden – Finland (17)	38%	74%
Sweden – Estonia (16)	36%	76%
Finland – Denmark (15)	65%	44%
Netherlands – Denmark (15)	44%	44%
Finland – Estonia (13)	56%	62%
Finland – Netherlands (12)	52%	40%
Estonia – Denmark (12)	35%	35%
Sweden – UK (12)	27%	43%

Annex 2: Most frequently mentioned cooperation partners in the Council of the European Union during the EU-25

Diagram 1: Most popular cooperation partners of the Southern states (Naurin, Lindahl, 2008:76):

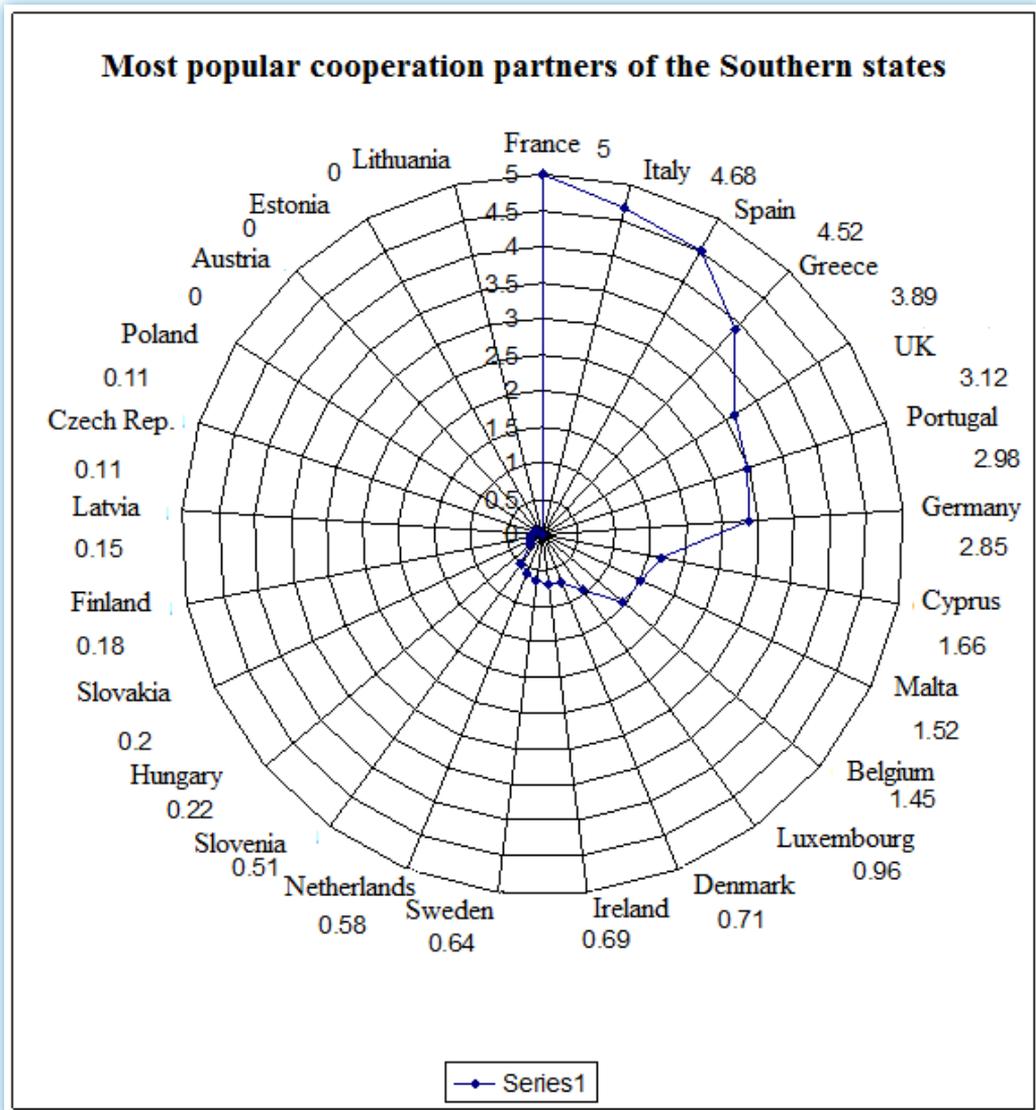
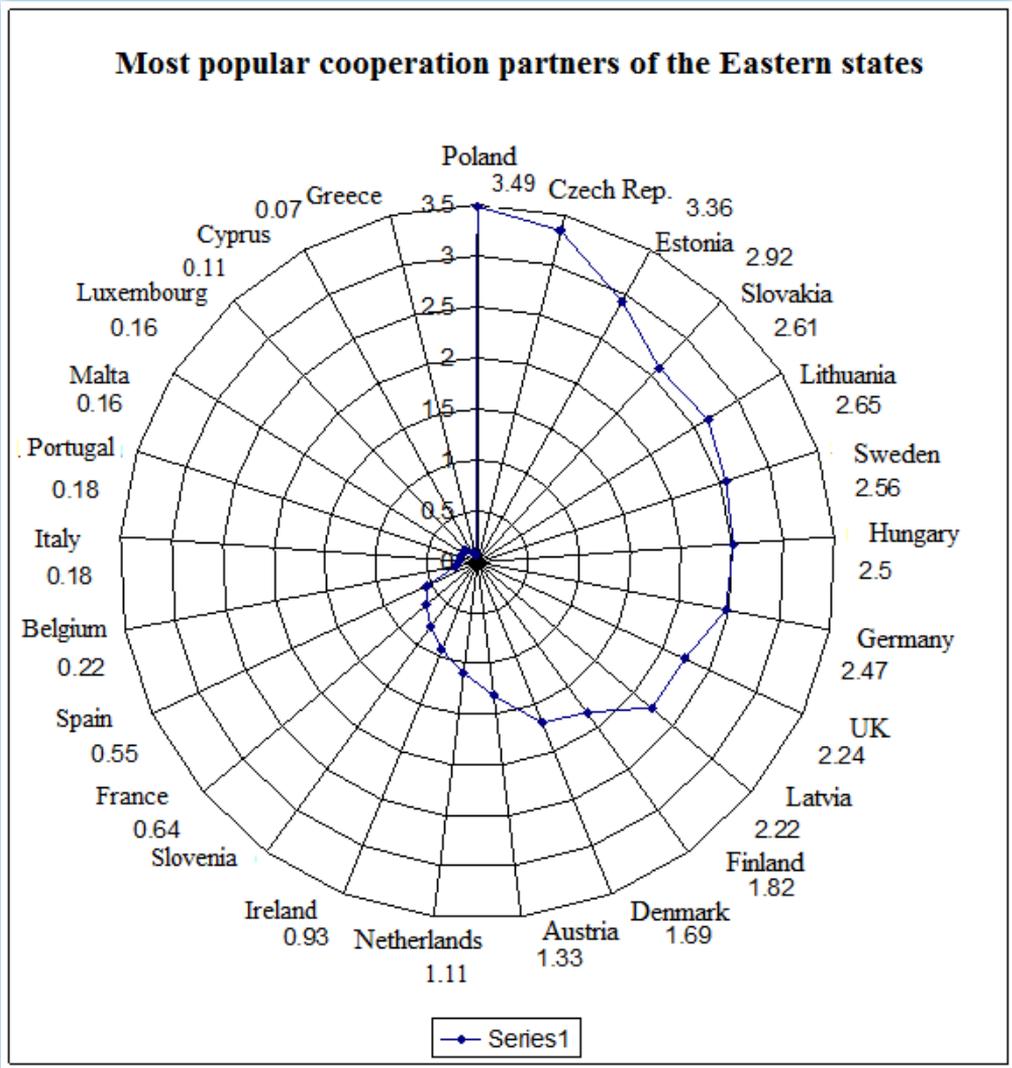


Diagram 2: Most popular cooperation partners of the Eastern states (Naurin, Lindahl, 2008:76):



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