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How intergovernmental are Intergovernmental Conferences? An example from the Maastricht Treaty reform

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ABSTRACT In the 1991 Intergovernmental Conference (IGC), conflicts over social policy endangered the whole treaty reform package. The path-breaking innovations that finally occurred (although initially for eleven members only) regarding both competence and procedures made the Maastricht Treaty a turning point for European social policy. For these reasons, the Maastricht Social Agreement represents an important case for testing the proposition that dynamics beyond power and intergovernmental bargaining can play a decisive role in EU reform. The insight that both a Euro-level process of preference formation and Euro-level actors mattered here indicates that state-of-the-art research must pay attention to such dynamics as potentially relevant factors in all instances of EU treaty reform. EU reform, even at the constitutional level of treaty change and even in formal IGCs, can be much less ‘intergovernmental’ than the name ‘Intergovernmental Conference’ suggests.

KEY WORDS EU decision-making; Intergovernmental Conferences; Maastricht Treaty; social policy; treaty reform.

1. INTRODUCTION

The Maastricht Treaty was based on two almost completely separate Intergovernmental Conferences (IGCs), one on economic and monetary union (EMU) and the other on political union. This reform of the European Communities (and their incorporation into a ‘European Union’) was conducted in a situation of economic downturn, political crises (Iraq/Kuwait, the Soviet Union, Yugoslavia), and other rather difficult framework conditions (e.g. German reunification, the eve of the British elections). While the IGC on EMU was well prepared by the Delors Committee (established in June 1988) and part of a long-term design, it was only agreed in June 1990 to convene a second IGC on institutional and procedural treaty changes. Against this background, it is hardly a surprise that the IGC on political union ‘was not then the product of a controlled and orderly process’ (Forster 1999: 6). At least, it could follow the procedural patterns established by the Single European Act IGC (see Budden, in this issue), with three levels of negotiations. The
personal representatives of the governments had weekly working sessions, the foreign ministers met monthly, and the heads of state and government had two regular and two extraordinary European Council sessions (Forster 1999: 11). This pattern of workload distribution would later be used again at the Amsterdam and Nice IGCs (see Sverdrup, in this issue).

Although many other issues within the Maastricht Treaty reform deserve scholarly attention (see e.g. Moravcsik 1998), this text focuses on one theoretically fascinating facet. The Social Agreement presents a case that directly challenges scholarly assumptions on IGCs for a number of reasons outlined below. As argued at length by Christiansen et al., in this issue, only a process-tracing approach that includes the valleys between the IGC summits can fully capture the dynamic of this treaty reform, which includes, for instance, spillovers from day-to-day policy-making into formal treaty change. It should be mentioned here that the Social Agreement was not the only example (but clearly the most important one) for such a spillover during the Maastricht IGC. Another one was the so-called Barber protocol, which limited the financial impact on the member states of a gender equality judgement by the European Court of Justice (ECJ) (e.g. Hervey 1994).

Within the Maastricht IGC, social policy was the crucial and, for many, a symbolic issue: ‘the whole IGC negotiations would, in fact, stand or fall because of it’ (Forster 1999: 79). Although social affairs had been negotiated throughout the IGC just like many other issues, a compromise was only found after a major crisis at the very end of the Maastricht summit, and after the much wider package had already been agreed upon. In terms of policy content, the 1991 Maastricht Social Agreement was also of crucial importance since it marked a ‘fundamental change’ (Bercusson 1992). The innovations concerning competence and procedures continue to be important, even after the Treaty of Amsterdam (signed 1997) transferred the provisions of the Social Agreement into the EC (European Community) Treaty, making these binding for all member states, and after the Nice Treaty (signed 2000) introduced additional minor changes.

This article will proceed as follows: first, the Maastricht Social Agreement and its importance will be outlined. Second, efforts to explain the case through economic interests and bargaining will be discussed. Third, evidence on the national positions in the IGC is unveiled that profoundly challenges basic intergovernmentalist assumptions. Fourth, the preceding Euro-level process of joint preference formation, which in fact explains the Maastricht innovations, is specified, and the role of Euro-level actors is analysed. The conclusions put the findings in a broader perspective.

2. THE MAASTRICHT SOCIAL AGREEMENT: CONTENTS AND SIGNIFICANCE

The IGC preceding the Maastricht Treaty negotiated a reform of the EEC Treaty’s social provisions. However, owing to the requirement of unanimous
approval by all member states, the social chapter could not be significantly altered in the face of harsh opposition from Britain’s Conservative government. After a deadlock in these extremely difficult negotiations at the final IGC summit had even endangered all other compromises, the UK was granted an opt-out from the social policy measures agreed upon by the rest of the member states. In the Protocol on Social Policy annexed to the EC Treaty, the eleven other member states were authorized to have recourse to the institutions, procedures, and mechanisms of the Treaty for the purposes of implementing their ‘Agreement on Social Policy’.

This innovative treaty basis expanded ‘Community’ competence in a wide range of social policy issues. These include working conditions, the information and consultation of workers, equality between men and women with regard to labour market opportunities and treatment at work (as opposed to the previous focus on equal pay only), and the integration of persons excluded from the labour market (Article 2.1 Social Agreement, now Article 137.1 EC Treaty). The probability of an active use of the new competence under the Social Agreement was crucially enhanced by the extension of majority voting to many more issues than before, including notably general working conditions and worker consultation. Unanimity requirements, by contrast, were restricted to a selected range of matters (Article 2.3 Social Agreement, now Article 137.3 TEC; for details, see Falkner 1998).

Furthermore, the governments encouraged the Euro-level representatives of labour and industry to develop European social standards. At the joint request of their signatories, such collective agreements can be incorporated into a ‘Council decision’ on a proposal from the Commission (Article 4.2 Social Agreement, now Article 139.2 EC Treaty). These are significant innovations that make the so-called ‘social partners’ formal co-actors in a ‘corporatist policy community’ (Falkner 1998). Apart from practical policy considerations (above all, that such standards would differ from those which the Council might have formulated on its own because labour and industry are closer to the matters at stake), the inclusion of interest groups also had symbolic importance and legitimacy for many of the EU member states, since involving the social partners has traditionally been perceived as one of the pillars of a ‘European’ social model (as opposed to, for example, the American model and ‘Manchester liberalism’). In any case, the Maastricht rules have proved to be more than mere words on paper because a number of recent EC social directives (on parental leave, part-time work and fixed-term work) have since originated from such agreements between UNICE, CEEP, and ETUC.

In light of these striking results of the 1991–2 IGC in the field of social policy (Bercusson 1992), the key questions are: Why did the signatory governments actually diminish their national autonomy and sovereignty? What are the forces that drive member states to increase Community competence and to give up veto rights? Who actually pushed for the extension of European Union (EU) powers and of majority voting? Who wanted the social partners
to play a greater role? And last but not least, which theory can account for this major event in the course of European social integration?

3. ECONOMIC INTERESTS AND BARGAINING: A CUL-DE-SAC

Peter Lange’s well-known article on the Maastricht social policy deal (‘Why did they do it?’) sketched the national positions from a viewpoint ‘based on an understanding of the governments’ preferences, which gives priority to economic interest, narrowly understood’ (Lange 1993: 17). Lange predicted that parties of both the left and the right would oppose social policy innovation if the standard expected to be implemented through institutional change on the Community level would, on average, raise costs for national employers. Under these premisses, Portugal, Spain, Greece and Ireland ‘could expect to be consistent losers from the change to qualified majority’ (Lange 1993: 17). Therefore, the puzzle is to explain why the Social Agreement, with its extensions of majority voting and EU competence, was indeed adopted, in a solemn act of formal treaty reform during an IGC. ‘Why did not potential losers threaten, as the British did, to veto, thereby either blocking an agreement or receiving an exclusion similar to that which the British got?’ (Lange 1993: 10).

It is easy to agree with Lange that economic interests are no solution to the puzzle. According to all mainstream approaches, the competitive position of the poorer member states will not be improved if EU regulation increases labour costs. As Table 1 reveals, huge differentials in labour costs persisted in the early 1990s. No less than in 1986 when the Single European Act was negotiated, member states with lower social costs could expect a comparatively better competitive position from non-regulation at the EU level. Furthermore, general public opinion at the time did not back the quest for more EC social policy except in very few member states, and most notably not in the ‘less developed’ countries except Greece.

In theory, some powerful interest groups might have deflected the governments’ attention from the national economic interest as such, or from public opinion (i.e. from the electorate as such), or from both. Following the liberal intergovernmentalist theory of international relations, national interests vary according to ‘shifting pressure from domestic social groups, whose preferences are aggregated through political institutions’ (Moravcsik 1993: 481). In practice, however, industrialists had no interest in opting for increasing labour costs, at least not in the member states with lower productivity which were so crucial in explaining why the Maastricht Social Agreement happened. There is also little indication that labour would have been successful in capturing governments at the expense of industry (see also Lange 1993: 18). For all these reasons, Lange discovers that ‘whether looked at economically, ideologically, or in pluralist pressure terms . . . the poorest member states could estimate that
in terms of their political interests a shift to qualified majority voting was likely to be damaging to their economic self-interests (Lange 1993: 21). Lange then turns to bargaining as another explanatory factor in intergovernmental integration theory. However, he has to discard the possibility that the increase in economic transfers from the richer countries via the structural funds, as indeed agreed at Maastricht, could have constituted a side payment especially for facing increased social and labour costs. They are ‘too large to explain agreement by the poor to the Social Protocol’ (Lange 1993: 24). In addition, we know from insider accounts that the Social Protocol was agreed in a night session at the very end of the IGC. No more policy horse-trading happened at that stage (e.g. Schulz 1996; Ross 1995a, 1995b). All these statements hold true even in the light of more recent evidence. The crucial point in our context is that neither national economic self-interest nor intergovernmental bargaining at the EU level can explain why the Maastricht Social Agreement was adopted.

This puzzle can only be solved in a process-tracing approach. The latter reveals that countries that should actually have vetoed according to their economic interests (i.e. Greece, Portugal, Spain and Ireland) instead advocated strengthening EC social policy from the very beginning of the bargaining process on treaty reform (see below section 4). In order to explain why the Social Agreement was signed by eleven member states, one must therefore extend the time frame beyond the Maastricht IGC (see below section 5).

4. SURPRISING EVIDENCE: THE ‘NATIONAL’ POSITIONS IN THE IGC

A closer look at the negotiating positions for the 1990–1 IGC shows surprising results.
Greece was the first member state to present an official ‘Contribution to the Discussions on Progress Towards Political Union’ that included social policy provisions (Greek Memorandum, 15 May 1990). It asked for an extension of the co-operation procedure, i.e. of qualified majority voting, to all legislative acts (Greek Memorandum: Article 2.2). Under the heading ‘new common policies and action’ (Greek Memorandum: Article 6), Greece asked for an expansion of the plexus of common policies ‘by developing or strengthening policies/action in the . . . “social dimension”, with measures and action both to protect workers and to tackle social problems with an international dimension (drugs, alcoholism, etc.)’ (Greek Memorandum: Article 6.1).

The Portuguese delegation also should have had no interest in the Social Protocol’s innovations, according to Lange’s considerations. In fact, the Portuguese Memorandum of 30 November 1990 stated that

‘[i]t will have to be possible to extend Community action to areas of special importance to citizens, transcending the purely economic context . . . Subjects such as the environment, civil protection, energy, major trans-European networks, social questions, health, education, young people, tourism and even the arts, with regard to their European dimension, ought to be the subject of a gradual development of Community responsibilities . . . The procedures to be used in these new areas should be subject to the general rule of a qualified majority and of the co-operation procedure.’

(Portuguese Memorandum: Article 1.2; emphasis added)

The Spanish government also asked for social policy reform in a paper to the IGC on European citizenship dated 21 February 1991. The Spanish delegation urged for a ‘transfer to the Community of new policies on, for example, social relations, health, education’ (Spanish Memorandum: II.b). A detailed Spanish proposal within the social policy negotiations suggested a minimum harmonization to take place in steps, with social action programmes to be adopted unanimously, but to be implemented by qualified majority with only a few exceptions (Schulz 1996: 78).

Ireland did not present a formal proposal on how to reform EC social policy (Schulz 1996: 74–82 passim), and it seems that this was not a central national concern (Aust 1999: 112). However, statements by the head of government, Charles Haughey, to Parliament during 1990 stressed that the maintenance of a balance between political integration and integration in the economic and social fields was among its priorities, and the government announced domestically in early 1991 that it would ‘promote community action directed at the progressive convergence of social policy in an upward direction’ (Programme for Economic and Social Progress). After the European Council of Maastricht on 12 December 1991, Haughey praised the outcomes of the IGC and mentioned that ‘our economic and social interests have been specially favoured and protected’ (Haughey 1991: 495). In his remarks on social policy during this speech, the Irish Prime Minister addressed the issue in political terms
rather than in terms of economic costs: ‘I cannot understand how anyone who claims the interests of workers at heart should advocate forcing a complete breakdown bringing progress on the social charter to a halt throughout the Community’ (Haughey 1991: 502). There was no criticism in principle concerning the extension of Community competence and of qualified majority voting, only majority voting on general working conditions went too far for Haughey.\textsuperscript{15} Nevertheless, social policy was eventually named among those ‘fundamental changes’ where ‘we had from the point of view of the Irish interest successful conclusions’ in Maastricht (Haughey 1991: 504).

Regarding the positions of the other governments on social policy reform in the IGC, only a brief overview can be presented here. It is crucial that all delegations which actually presented reform proposals (i.e. Belgium, Greece, Portugal, Luxembourg, the Netherlands, Italy, Spain, Denmark and France) suggested strengthening both EC competence and qualified majority voting. Despite disagreements on details,\textsuperscript{16} not one among them was ready to uphold unanimity (Schulz 1996: 82). Therefore, it was clear at a still early point of the IGC’s negotiations that only the UK was opposed to an extension of Community competence and majority voting.

In short: all four of the less prosperous member states did not express (albeit to differing extents) the social policy preferences that they should have according to their own economic self-interests. Furthermore, they did not change their views under pressure during the bargaining process on treaty reform with the governments of high-labour-cost countries, for example as a strategy for reaching any potentially higher valued goals in the IGC. Nor did (as already mentioned above) the expressed social policy preferences conform with developments in domestic politics in the less prosperous countries; nor did they correspond with the wishes of the relevant national interest groups to have more EC social regulation. This indicates that it is inappropriate to study this treaty change as an instance of, first, the importing of economically determined interests from the national level, and second, the bargaining process between governments at the EU level.

5. WHY THEY DID IT: A LONG-TERM EURO-LEVEL PROCESS OF PREFERENCE FORMATION

At this point, widening the frame of analysis is crucial. First, a more longitudinal perspective is needed to account for what was a long-term development. The moment of formal treaty reform, i.e. the IGC itself, was not really decisive at least in important aspects because a spillover occurred from day-to-day policy-making into the IGC. Second, changes of actor orientation during and because of the process of European integration itself must be taken into consideration as potentially explanatory factors on the way to the Social Agreement. This brings processes such as learning and arguing centre stage. Third, Euro-level actors played a crucial role in all of this.
Only detailed process-tracing reveals that the overwhelming majority of EC member states changed their position on joint social policy back in the late 1980s. In 1986, unanimity had been the undisputed procedural option (outside of what was perceived as the rather technical field of workplace health and safety). By the time of the Single European Act, proposals to give the EC more social competence were few, and they were not even seriously taken into consideration (Schulz 1996: 39). However, less than five years later, the situation had changed completely.

This process of change was based on realizing the potentially negative impact of the internal market on social regulation in Europe (‘learning’) and on the constant communicative action at the levels of the working groups, the Social Council and the European Council initiated mainly by the EC Commission and the European Parliament (EP) (‘arguing’). In this way, joint preference formation at the European level took place between the Single European Act and the Maastricht Treaty. Incrementally, a new policy paradigm (‘the social dimension of the internal market’) was institutionalized.

5.1 Euro-level learning and arguing

The Single Market had clearly attributable social effects that were discussed at the EU level even before they were actually felt ‘at home’ (European Parliament 1988). These side effects of economic integration on social policy belonged in two categories.

The first group concerned developments directly related to EC liberalization. Under the free movement of services, for example, the question arose as to which national labour regulation should apply to workers sent to other member states (‘posted workers’). Should Portuguese construction workers on German sites be paid according to their home standards only? If German firms and workers were not to suffer from significant competitive disadvantages (50 per cent of costs in the building industry stem from wages (Däubler 1996: 155)), and workers at the same site were not to be treated differently on grounds of nationality, the internal market had to be complemented by a directive on posted workers. Another example is that, in practice, the national laws on worker consultation became void of substance owing to increased Europeanization of firm activities. Transnational enterprises escaped national jurisdiction by taking major decisions outside the national realm. Euro-level Works Councils represented the only chance to uphold some level of employee consultation.

The second group of labour law issues was only indirectly related to the internal market. They concerned, for example, labour law standards applicable to young or pregnant workers and rules on working time. In principle, these matters concern enterprises whose activities do not stretch beyond the nation state as much as those of transnational companies. Nevertheless, such standards are affected by economic integration. If competitive pressures increase, and
employers are free to move elsewhere in the internal market, national differences become more significant.

To counter these effects, a ‘pro-harmonization coalition’ in EC social policy campaigned for creating a more level playing field for economic operators. The Commission’s Directorate-General V, the EP, the ETUC and some national trade unions from the member states with comparatively higher standards continuously urged that the European market should be accompanied by social regulation. In its work programme of 1986, the Commission created what would later be the standard formula that only minimal harmonization of certain working conditions could prevent distortions of competition that might otherwise harm the functioning of the enlarged market (EC Bulletin 1986/1: 10ff.).

The governments learned not only in theory but also in practice that multinationals were increasing the pressure on them. One famous early example was General Motors. The company pitched its subsidiaries in three European countries against each other regarding working time, thereby gaining additional night shifts in Spain, Sunday work in the Netherlands, night and Saturday work in Kaiserslautern, Germany, and a prolongation of weekly work time to 136 hours in Bochum, Germany (Vogler-Ludwig 1989: 70; Struwe 1991: 124; Beckmann et al. 1991: 120). Important later cases include that of Renault closing a plant in Vilvoorde, Belgium, in order to profit from cheaper labour and higher subsidies in Spain (Agence Europe, 3 March 1997: 34) and that of the Hoover vacuum cleaner company transferring production from France to Scotland, a move that made French Minister Dumas consider social Europe to be ‘more necessary than ever as foreign investors seek to play on rivalries between Member States’ (quoted in Agence Europe, 3 February 1993: 14).

All the governments shared the basic diagnosis of increased dumping pressures in the internal market (even the British, as the quote below indicates), yet only one did not draw the same conclusions as the others. As so often in social policy, the UK was an ‘awkward partner’ (George 1990):

France can complain as much as it likes. If investors and companies choose to come to Britain rather than pay the costs of socialism in France, let them [the French] call it social dumping, I call it dumping socialism . . . Let Jacques Delors accuse us of creating a paradise for foreign investors: I am happy to plead guilty.

(John Major, quoted in Agence Europe, 3 March 1993: 13f.)

However, even the UK executive was split internally on the issue of EU social policy reform during the Maastricht IGC.

The perception of the other members in the EC Council, in any case, shifted incrementally in favour of setting up some EC social regulation. During an intensive process of discussion and mutual persuasion (Risse 2000), supported with much determination by a number of Euro-level actors, one
government after the other joined the camp of those favouring a proper ‘social dimension of the internal market’.

At the European Council of Hanover in June 1988, the Commission President still failed to convince enough heads of state and government that ‘the social dimension is an integral part, even a precondition for the successful construction of Europe’ (Delors 1988: 17). At the following summit in Rhodes in December 1988, however, these discussions were resumed (EC Bulletin 1988/12: 9f.). The Presidency conclusions stated that progress in implementing the Single European Act should parallel progress in implementing the social policy provisions. The Presidency conclusions of the June 1989 Madrid European Council (which were even adopted unanimously; EC Bulletin 1989/6: 8) proclaimed that social matters should be attributed the same importance as economic questions in the realization of the internal market (see also Schulz 1996: 21).

The ‘EC Social Charter’ adopted during the December 1989 Strasbourg European Council constituted a political touchstone even though it failed to establish binding rights. The governments (except the UK) explicitly confirmed the need for a social dimension of European integration. The eleven heads of state and government declared:

The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an approximation of these conditions while the improvement is being maintained, as regards in particular the duration and organization of working time and forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work. Every worker in the European Community shall have a right to a weekly rest period and to annual paid leave, the duration of which must be progressively harmonized in accordance with national practices.

(EC Social Charter, points 7, 8)

Thus, the Commission’s view that selective EC action was necessary for preserving the ‘European social model’ was confirmed by all governments except the British, well before the Maastricht IGC. EC-level action was intended not to overstretch economically weaker member states or prevent richer states from implementing higher standards, but to provide a bulwark against using low social standards as an instrument of unfair competition. To this end, the Commission proposed common minimum standards and social dialogue as the main pillars of ‘social Europe’. There clearly were structural limits (see Christiansen et al., in this issue) as to how far-reaching the change could be. Not all aspects of the governments’ social policy preferences were reshaped. However, the compromise between the pro-regulation coalition and the initially more reluctant member states contained the main features of the EC’s future social dimension. It included the basic distribution of competence
between the European and the national levels (in which the EC supports and complements the member states’ activities in basically all fields of social policy), the style of EC intervention (selective minimum harmonization), the EC decision mode (qualified majority voting for crucial issues such as working conditions, but not for others such as, for example, social security), and finally the inclusion of management and labour as responsible co-actors in public policy-making.

Although this compromise had been reached by the time the Social Charter was established, institutional hurdles prevented its immediate implementation. In the presence of the existing treaty’s unanimity requirements, the British blocked practically all legislative proposals. The social dialogue, in turn, was stuck in the ‘corporatist decision gap’ (Streeck 1995a) because industry was not willing to compromise as long as one member state was enough to block EC social directives. This is why, by the 1990–1 IGC, all governments except the UK’s recognized that qualified majority voting was indispensable to make the ‘social dimension’ a reality, and that treaty reform to that effect was indispensable.

That John Major could not be convinced does not reduce the impact of learning and arguing on the other governments and even on certain groups within the British élite. It has already been mentioned that the British government itself was split internally on the social issue. Anthony Forster (1999) has revealed that the Prime Minister took such a hard line at Maastricht for reasons of party management. Major’s own preferred option seems to have been a compromise on EU social policy, but the Party Chairman’s endorsement of the social market economy in February 1991 was perceived by right-wing party members as beginning a fundamental struggle over the direction of the Conservative Party (Forster 1999: 85). Facing an election, Major then gave in to the threat of his Employment Minister Howard to resign if the UK compromised with the other governments on EU social policy. That the EU-level process of preference formation was not without impact in the UK is also visible in the UK Labour Party and the Trades Union Congress (TUC). Both had historically been Euro-sceptic and against UK membership, but had aligned with European mainstream thinking on a ‘social dimension’ by the time Delors gave his famous speech to the TUC in 1988 (Daniels 1998). Both for the TUC (Rosamond 1993) and Labour (George and Haythorne 1996), this was no short-term opportunistic move, but the consequence of a long-term rethinking, based on intensified transnational contacts (mainly within the ETUC and the EU – two main players in the EU debate on the ‘social dimension’).

In the longer run, Major’s choice at Maastricht did not prevent EC social policy from being developed along the lines preferred by the majority, since this early example of ‘reinforced co-operation’ among a group of EU members proved to be ‘two-speed integration' only. When the UK Labour government announced in the week of its election (May 1997) that it would join the Social Agreement, it had to accept, in toto, the social directives that had been
approved by the other member states in the few years since Maastricht. Being the odd one out proved to be a double blow for the UK: the British had no say in the negotiations of directives under the Social Agreement, yet they still had to implement them afterwards.\textsuperscript{18}

The process traced above indicates that at EC Council meetings where politicians talk about a ‘European social model’ and the EC’s ‘social dimension’, it is possible that these are occasions when states are engaging in discursive practices designed to express and/or to change ideas about who “the self” of self-interested collective action is’ (Wendt 1994: 391). If we ignore this level of learning and communicative action, we cannot explain the fact that the EC policy-making capacity was significantly enhanced at Maastricht, despite the adverse economic self-interest of a group of veto players.

5.2 The crucial role of Euro-level actors

Important features of the Social Agreement cannot be understood without paying attention to the activities of EU-level proponents of a more Europeanized social policy. In particular, the European Commission and the EP (which, under a centre-left majority since the 1989 elections, had chosen ‘social Europe’ as a core concern) were creative and restless advocates of extending both EC competence and majority voting. In its opinion in view of the IGC of October 1990,\textsuperscript{19} the EC Commission urged that ‘any increase in the Community’s powers should concentrate on social affairs, major infrastructure networks and the free movement of persons, all three having a bearing on the optimum development of the single market’ (IV.1). For social affairs, the Commission proposed to allow the Council to adopt directives by a qualified majority ‘in areas such as: improvement of living and working conditions, … basic and further professional training, information and consultation for workers’ (IV.1.a).

The input of the Luxembourg Presidency for the IGC indeed followed the Commission proposals (see also Schulz 1996: 83). Subsequent drafts of social chapters by presidencies (a second by the Luxembourg delegation, one informal and one formal by the succeeding Dutch Presidency) changed only details of the first one, mainly adding or deleting individual items to be decided by a majority. Even during the IGC’s summit in late 1991, an occasion traditionally perceived as a genuinely ‘intergovernmental’ event, the Commission played a pivotal role for social policy reform (Ross 1995b, 1995a). The agenda of the Maastricht Council on 9–10 December 1990 covered ‘six major issues’: EMU; cohesion; social policy; foreign and security policy; a ‘package concerning “democratic deficit”, Community competence and solidarity’; and the future development of the Union (Haughey 1991: 496f.). At least three big countries, Germany, France and Italy, would not have agreed to political union at all without social policy reforms (Schulz 1996: 90; Forster 1999: 93). As outlined above, each government that had presented a social policy option for the IGC had indeed opted for enlarging the realm of competence and the
practice of qualified majority voting. On the other side of the negotiation table sat the UK, which had publicly excluded any changes to the European Economic Community social chapter. Lengthy negotiations lasted until the early morning of the last day of the IGC.

The Dutch Presidency was willing to compromise on a text that would have significantly extended the field of unanimity by asking for a general consensus whenever an issue touched an area without explicit majority rule. The British delegation nevertheless rejected this offer, as well as subsequent proposals for individually opting out of single unwanted social policy measures (Schulz 1996: 90ff.).\(^20\) When at midnight the IGC appeared to be on the verge of failure because of the social issue, the construction of the Social Agreement was invented.

When it looked as if things might break down over social issues, Delors produced language and justification for what would become the ‘social protocol’ . . . the product of prior brainstorming and quick action from the support team and smart politics by Delors himself. As had so often been the case for Delors' good ideas, it was the obliging Helmut Kohl, by this point looking for a semi-graceful way to end the talks, who placed the proposal on the table.

(Ross 1995b: 191)\(^21\)

The details that were finally adopted as a new legal basis for social policy among eleven member states relied essentially on the initial Commission proposal, which had been incorporated into the Luxembourg draft treaty (see also Lange 1993: 10). The opt-out clause represented an ad hoc departure from cherished principles of EC unity. Although such a move had no precedence in this form, it seemed inevitable if social policy integration was to proceed at all. In the general context of the Maastricht IGC, which covered not only the treaty reform negotiations on political union but also on EMU, opt-outs certainly played an important role. In the EMU part of this treaty reform, however, a solution within the proper EC framework was reached. Monetary union was introduced in a new specialized treaty chapter, while the exemptions were granted in protocols annexed to the treaty (initially for the UK and Northern Ireland, after the referendum also for Denmark). In social policy, by contrast, the UK would not accept a reform of the relevant treaty chapter even in combination with an exemption in a protocol, but agreed only to sticking to the old treaty rules and introducing significant innovations in a protocol, which contained an agreement binding eleven members out of twelve.\(^22\)

Regarding the establishment of corporatist patterns of social policy-making at Maastricht, the role of the Commission was even more crucial. It relied not only on submitting its own proposals to the IGC and on being a mediator between the governments at critical moments, but also managed to activate labour and industry. Following an initiative by the European Commission in
February 1991 (Cassina 1992: 13), the three peak associations ETUC, UNICE and CEEP sat down with the Commission (Schulz 1996: 86) to formulate their own reform proposals on EC social policy-making to the IGC. On the basis of many years of informal social dialogue, the Commission President was in a unique position to realize (and promote) the possibility that the EU-level employers might finally agree to bargain with the unions if it appeared that qualified majority voting would be a very probable outcome of the IGC ('in the shadow of law' – Bercusson 1992: 185; Gorges 1996). At their meeting of 31 October 1991, the ETUC, UNICE and CEEP indeed reached an agreement on how to strengthen the role of the social partners in the new treaty. The social partners' text became basically a 'non-negotiable component of the social policy dossier' (Forster 1999: 89) and a part of the Maastricht Treaty.23

A look at the official inputs into the IGC shows that specific proposals regarding the public–private interplay in EC politics were rare, as opposed to the vivid interest in substantive social policy reform. In fact, only the Commission, Belgium and the EP24 actively pledged for more 'social partnership' at the EU level during the early phase of the IGC. In October 1990, the Commission opinion on the draft review of the EEC Treaty with regard to achieving political union (COM [90] 600) urged that '[i]t must not be forgotten that citizens are also involved in economic and social development' (COM [90] 600, III.2) and that the 'social dialogue' at Community level between representatives of employers' organizations and trade unions, which had been promoted by the Delors team since the mid-1980s, should be given greater emphasis and its organization improved. Among the national inputs, only the Belgians proposed to increase the role of organized interests in the EC social policy process. Belgium suggested establishing a Labour Committee of employers' and workers' representatives, which would not only negotiate and sign autonomous collective agreements but would be allowed to 'take over' EC decision-making in social affairs.25

The Commission draft text of March 1991 on reforming the social chapter of the treaty (SEC [91] 500: see 77ff.) was quite similar. It seems that, in fact, strategic coalition-building occurred prior to the Belgian proposal to the IGC. Several interviewees confirmed that there had been excellent contacts between the relevant Commission unit and the Belgian social ministry and pointed to the probability of a 'conspiracy' among Brussels-based personalities interested in prompting Euro-level social partnership. Indeed, it seems skilful tactics to let a government launch the Commission's own master plan. Once disseminated, the idea of a formal participation of labour and industry in social policy decisions took on a life of its own. Supported by the October 1991 agreement between ETUC, UNICE and CEEP (which was also initiated by the Commission), the main features of the Commission's blueprints for a 'social dimension' (as had been promoted since the mid-1980s) became part of the EC's (de facto) constitution at Maastricht.
The European (as opposed to the national) character of the preference formation process on the inclusion of the ‘social partners’ in EC social policy-making is furthermore underlined by the top-down process within ETUC, UNICE and CEEP. Their leadership negotiated a deal which was pre-designed by the Commission. ‘The 31 October 1991 agreement would probably never have been accepted if it had been subject to normal organizational procedures of approval, at least in UNICE. However, signed on the spot and immediately forwarded to the IGC, the agreement constituted a social fact that still happened to bind the signatory parties’ (Dølvik 1997: 36).

6. CONCLUSIONS AND THEORETICAL LESSONS

This article set out to discuss why the Maastricht Social Agreement with its significant substantive and procedural reforms was indeed adopted. Contrary to what is usually expected, power and bargaining cannot adequately resolve this puzzle for the two following reasons.

First, Euro-level actors had a crucial impact. This concerns notably the Commission and the Euro-level social partners ETUC, UNICE and CEEP. As outlined above, the concept of a ‘social dimension to the internal market’ based on minimum harmonization and social dialogue, developed by Jacques Delors and his team, had been institutionalized as a new policy paradigm in an incremental manner, during the late 1980s. The Maastricht Social Agreement, adopted in a crisis, followed a pattern established during a valley of day-to-day politics spanning the two treaty reform summits on the Single European Act and Maastricht. Furthermore, the IGC accepted the corporatist version of social policy-making laid out in a collective agreement between CEEP, ETUC and UNICE. This major step by transnational societal actors (including even British employers!) had been initiated and de facto co-authored by the Commission.

There clearly was a ‘Monnet–Delors effect’ of outstanding creativity at work, and the Delors team also performed as a successful network manager, involving the major Euro-level interest groups in the ongoing treaty reform (these are two explanations for successful supranational entrepreneurship according to Moravcsik 1999a). For structural reasons, no other actor was in a comparable position to influence both the IGC negotiations themselves and the EU-level representatives of labour and industry. The Commission did this on the basis of a long-term strategy, profiting from its privileged position at the centre of an intensive and extensive network. It could rely on well-established contacts and institutionalized discourse with the governments (in the regular European Council meetings and later during the IGC itself) as well as with the Euro-groups (in the regular social dialogue summits and working groups).

It is without doubt unacceptable to insinuate, on this basis, that Delors was a systematically more creative politician than other participants in the IGC, or that he had a similar role in all other aspects of this treaty reform. However, the case of the Social Protocol disproves the hypothesis (Moravcsik 1999a:
that supranational actors played an important role in only one IGC, the Single European Act. Scholars should not easily discard supranational actors from their research designs on treaty reform – although looking at more factors is demanding and supranational entrepreneurship is not always easily visible, because EU-level institutions and transnational groups may for tactical reasons hide behind national governments. In the Maastricht IGC, the Commission seems to have had the Belgian delegation break the ice on the issue of introducing corporatist patterns, and Helmut Kohl is reported to have presented Delors’ solution to the final summit blockade.

Second, considerations other than economic ones expressed in nationally pre-set preferences played a role. When the governments came to the negotiating table at Maastricht, a long-term process of joint preference formation on whether and how to strengthen Community social policy had already shaped the views of all governments with the exception of the British. Through participation at the European level in discursive practices, which provided for the ‘social construction of rationality’ (McNamara 1997: 18), the member states’ perception of ‘good practice’ in social policy at Maastricht was not what it had been in 1986. A mutual adaptation of preferences on extending EC social policy competence and majority voting occurred on the way from the Single European Act to the Social Charter and the Maastricht Treaty. This is confirmed, for example, by the position papers for the IGC. The strengthening of EC social policy was advocated even by those member states that Lange (1993) perceived would be the consistent losers if qualified majority voting were introduced (i.e. Portugal, Spain, Greece and Ireland) and that should have vetoed the Social Agreement, according to a state-centric view. This example of an incremental development of European ‘we-feeling’ or sense of community (Olsen 2000) indicates that paying attention to processes of EU-level preference formation can be indispensable in solving European integration puzzles.

All three potential determinants discussed by Christiansen et al. (in this issue) – i.e. ideas, actors’ interests and institutions – interacted in the long-term process described in this article. First, supranational agency, not only by governments but also by the Commission, the EP and EU-level interest groups, played an indispensable role. Second, the degree of consensus on ideas and norms was important since Greece, Portugal, Spain and Ireland followed a logic of appropriateness, as opposed to the calculation of economic utility. The Commission, the EP, a small number of governments (notably the French), and some national trade unions (notably the German DGB) successfully nurtured a process of argumentation and persuasion that incrementally institutionalized a new policy paradigm and, with it, a normative consensus among eleven member states (and even many UK politicians) that this ‘social dimension of European integration’ was needed, despite the economic costs for some. Third, the EC institutional set-up offered an (indispensable) arena for learning, arguing, and joint preference formation at both its regular meetings in informal working groups and formal European Council summits.
The fact that governments diverged from domestic economic interests can only be understood if one considers the growing awareness of cases and the potential of social dumping and the ever more widely shared normative understanding within the EC Council that a ‘social dimension’ of the internal market was needed to prevent a ‘beggar-thy-neighbour’ spiral. The presence of some additional necessary conditions made this choice against their narrow economic interests practically acceptable and feasible for the governments in question. First, the Delors model of EU social policy was a lean one, based only on selective minimum harmonization (Streeck 1995b). Second, the social dialogue could be used as a further sweetener when selling the result at home: domestic groups would be participants in a corporatist EU social policy community (Falkner 1998, 2000b). A third condition has been given too little theoretical consideration to date: under the twin conditions of split preferences of opposing domestic interests and a rather non-transparent European decision-making process, the governments have much leeway in defining both national preferences and tactics. This can even be seen as a structural speciality of the European multi-level system. Since labour and industry in the member states traditionally expressed antagonistic views on EU social policy, the governments that matter here had to disappoint some parts of the constituency anyway (or all to some degree). The non-transparent EU negotiation process furthermore offers useful scapegoats since national interest groups, as opposed to governments, have no first-hand information to rely on when judging potential agency slack (Scharpf 1999: 282). A case which demonstrates how a government clearly did not follow the position of major economic interest groups (as assumed in liberal theory) is that of the UK government at Maastricht. The Confederation of British Industry (CBI), leading British multinationals, and the TUC had supported the EU-level collective agreement on social policy reforms in the Maastricht IGC, but the UK blocked it for party-political considerations (see Forster 1998 for detail on the manifold splits within the UK and even within the British government).

A conceptual approach that examines the slow sedimentation of norms and policy paradigms (as suggested by historical institutionalism in its more recent, inclusive version; see Christiansen et al., in this issue) is without doubt methodologically more demanding than an analysis restricted to a more narrow focus on treaty reform (e.g. based on economic interests imported from the domestic level and successive EU-level bargaining). Indeed, it is not enough to present compelling arguments on EU-level preference formation; hard evidence is needed (Caporaso and Keeler 1995: 46). In the case of majority voting and additional social competence for the EC, there is finally empirical proof that intergovernmental bargaining during the IGC on domestically pre-set preferences based on national economic interests is disqualified as a sufficient explanatory variable. Both the role of EU-level actors and EU-level norms were causally central (i.e. more than transmission belts for national interests, as claimed by Moravcsik 1999b: 675).
This indicates that historical institutionalist reasoning and process-tracing analyses can shed new light on EU treaty reform. It goes without saying that one must not continue to paint a black-and-white picture in regional integration theory, e.g. by claiming that Euro-level actors and joint preference formation must always be a decisive factor. There are good reasons, however, to expect that further empirical analyses based on such inclusive research designs could confirm the main finding of this article: EU reform, even at the constitutional level of treaty change and even in formal IGCs, can be much less ‘intergovernmental’ than the name ‘Intergovernmental Conference’ suggests.

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NOTES

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2 The deal was struck during the Maastricht summit on 9–10 December 1991; the Treaty on European Union was formally signed on 7 February 1992.

3 The alternative to implementation of Euro-level collective agreements via EC law is implementation via ‘the procedures and practices specific to management and labour and the Member States’ (Article 4.2 Social Agreement, now Article 139.2 TEC). To date, this route is of no practical relevance since labour and management preferred to have their agreements transformed into binding EC law (Falkner 2000a).

4 On aspects of input and output legitimacy, see Scharpf 1997.

5 The Union of Industrial and Employers’ Confederations of Europe.

6 The European Centre of Enterprises with Public Participation.

7 The European Trade Union Confederation.

8 I am grateful to Fritz Scharpf for reminding me that the southern member states may have had an interest in preventing social dumping among themselves, and therefore an interest in the Social Agreement. This solution to the puzzle focuses on a rational choice while still (as advocated below) extending the time frame beyond the IGC itself and building on EU-level learning or even preference formation processes. However, I could not find any proof for such an understanding or even agreement among the less developed member states. Furthermore, the discussions of social dumping, as the main examples of it, were not at all along a ‘south–south’ dimension (see below).

9 Average gross salaries per hour (men and women) in industry, in ecu (Eurostat 1992: 162).

10 Average gross salaries per hour (men and women) in industry, in ecu (Österreichisches Institut für Wirtschaftsforschung, Profil 6 July 1992).


12 Lange also rejects the argument that governments which should have blocked the agreement if they had been acting out of economic self-interest were prompted to support it instead by the prospect of pursuing a developmentalist strategy to achieve long-term economic ends (Lange 1993: 21). It is true that there are no
indicators for this. It is not enough to argue, for instance, that the states with lower social standards and labour costs might have wanted to catch up with their EC partners anyway (Kim 1997). If so, they could have done that independently.

Lange is right to maintain that these are instead side payments to pay off short-term political costs incurred by the governments of the poorer countries which agreed to economic and monetary union (see the ‘Spanish Viewpoint’ on ‘Economic and Social Cohesion in Political, Economic and Monetary Union’, submitted to the IGC on 5 March 1991).


The text agreed by the Eleven contains a definition of working conditions in the list of issues for qualified majority voting which is not as clear as we would have wished . . . However, as Ireland has always been committed to progress by the Community I did not see any scope for seeking, as the UK has been given, what is virtually a permanent derogation from a major common policy. This approach is in line with that which we took in the past with the EMS, with the Social Charter . . . with our refusal to accept a two-tier Community’ (Haughey 1991: 501).

One issue was whether there should be a new form of stronger qualified majority for social policy. But the proposal by the German delegation to raise the number of necessary votes to 66 instead of 54 was finally not adopted (for details, see Schulz 1996: 69ff.).

However, in a so-called treaty base game (Rhodes 1995), the only social policy provision allowing for majority voting (then Article 118a EEC Treaty) was interpreted extensively and creatively in a legally risky attempt to bypass British opposition on specific projects.

This may be one reason why the governments were so reluctant later at Amsterdam to introduce a realistic possibility for enhanced co-operation among a group of members.


That John Major did not accept this Dutch compromise proposal has been depicted from a historical institutionalist viewpoint as a good example of how long-term institutional consequences can be the by-products of a decision made to meet short-term domestic objectives (Pierson 1996: 154ff.).

Insider accounts vary a bit as to the details of how the final deal was struck but agree that Delors’ intervention made a difference (see even Moravcsik 1998: 454).

The absence of specialized lawyers, who had been regularly involved in the long-term preparation of the EMU rules, from the Maastricht summit’s ‘high noon’ situation close to midnight of the last day, may have facilitated this specific solution, which in the aftermath created so much legal dispute (Barnard 1992; O’Keefe and Twomey 1994; Séché 1993; Shaw 1994; Vogel-Polsky 1994; Watson 1993; Whiteford 1993).

Interviews with UNICE, CEEP and ETUC officials reveal that even the social partners themselves were surprised that their 1991 Agreement went straight into the treaty. They estimate that the governments felt obliged to bring the EC somewhat closer to society. Commission experts stressed that the manifold references to social dialogue and the social partners in the years prior to the Maastricht Treaty were a relevant background for what happened at Maastricht. What first seemed to be ‘cheap talk’ about a European social model in the end led to steps in this direction, since arguing against the established consensus (i.e. that strengthening the role of labour and industry was useful) seemed inappropriate.

The Belgian proposal of 25 January 1991 is unpublished but the author has a copy at her disposal (for a summary, see Agence Europe, 7 February 1991).

I prefer the term ‘important’ to Moravcsik’s expression ‘unique role’ (1999a: 270) which can hardly be played in more than one instance.

It does not necessarily go hand in hand with having a supranational actor proposing the final outcome (in this light, Moravcsik 1999a mentions such a chance for slack). Also, it should be taken into consideration that the governments’ detailed proposals to IGCs, in particular once the conference is under way, are often not available and are in any case hardly debated in the wider public.

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