The Services Directive Strife:
A Turning Point in EU Decision-making?

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1. Introduction

In January 2004 the European Commission launched a Directive on Services in the Internal Market. The intention was to break up what the Commission saw as the frozen internal market for services in the EU. The Bolkestein Directive, as it was called after the Dutch Commissioner for Internal Market affairs, soon became subject to political controversy and mass protests across Europe. Associated with the infamous ‘Polish Plumber’ entering the EU after the Eastward enlargement 1 of May 2004, the Services Directive has even been blamed for the defeat of the Constitutional Treaty in the French and Dutch referenda in 2005. After a long-drawn process of political haggling, negotiations, and mobilization among trade unions and social movements in the EU, the European Parliament (EP) voted for an amended version of the Directive on 16 February 2006, which was swiftly accepted by the Commission and adopted by the Council on 12 December 2006.

By many observers the compromise struck in the EP was hailed as a path-breaking step towards democratization of decision-making in the EU. The European Parliament, in interaction with NGOs and social movements, established itself as a key lawmaking European institution. In addition, the European trade union movement won through with substantial changes in a directive of fundamental importance for one of the four freedoms of the internal market and hence for the economic development of the enlarged EU.

The outcome of the strife over the Service Directive apparently challenges conventional wisdom about the character and power relations of the EU decision-making system. Over the past decades it has, first, been widely held that the decisive power centre in EU decision-making is the Council, in which national economic interests (in accordance with the intergovernmentalist logic characterising Council proceedings) are assumed to prevail over social and ideological concerns (Moravcsik 1993). Second, the European Parliament has in spite of its supportive role in the EU social policy coalition been regarded as a junior partner with limited influence on issues of central economic importance to the Member States. Third, the Commission has normally been viewed as the key inter-institutional power-broker at the EU level, not least in contentious cases where agreement between the Council and the European Parliament has been required to achieve a winning majority. A significant weapon in the Commission pursuit of this role is its privilege to withdraw proposals. Moreover, reflecting the former characteristics of the EU decision-making and the market building logic flowing from the EU structure and purpose, organized business and product market interest groups have, fourth, been portrayed as by far the most influential and successful lobby groups at the EU-level (Greenwood 1997, Traxler and Schmitter 1994). Organized labour has been viewed as structurally disadvantaged both by the particularities of the decision-making machinery of the EU (the opportunity structure) and by the specific challenges of internal interest intermediation (the logic of membership) facing the highly diverse associations of European trade unionism (Visser and Ebbinghaus 1992).

The Services Directive case apparently fits badly with standard assumptions on all these counts. The outcome of the strife was puzzling. How come that the European Parliament achieved one of its greatest victories on an issue of fundamental importance for completion of the internal market? How could the Socialist minority in the EP and ETUC gain such a strong influence on an issue where they were at collision course with
organized business, a substantial share of the Member States, and, not least, the Commission? And why was the Conservative/Liberal majority in the Parliament so willing to compromise?

The aim of this article is not to discuss the content of the compromise Directive (see Barnard 2008) but to account for the decision-making processes that led to the unexpected outcome. How and why did it come about, who were the key actors, and what can it tell us about the conditions for influencing legislative processes in the EU? How typical was the process shaping the Service Directive? In view of the decisive influence of the European Parliament, we will focus on the specific conditions that enabled the Parliament to determine an issue with so high stakes, and pay special attention to the role of the European Trade Union Confederation (ETUC) in this respect.

This case-study forms part of a broader comparative project on multilevel governance of service mobility and labour market regulation in the EU. A core issue in the strife over the Services Directive was the relationship between the freedom to provide services (Article 49 of the Treaty) and regulation of workers’ rights in the Single Market (e.g. the Posting of Workers Directive 96/71EC), placing the conflict between free movement, regime competition, and protection of national labour and social regimes at the centre stage of EU politics.

The paper starts, in section 2, with a brief review of the background for the Services Directive and the main contested issues in the area of labour market regulation. Section 3 provides a descriptive account of the decision-making process, focussing on the compromise-building in the Parliament. Section 4 discusses the specific conditions and constellation of actors, institutions and events that enabled the outcome. In the concluding section 5, we discuss whether or not the process represents a turning point of EU decision-making.

2. Background: Context, issues, and frameworks

When the European Council in 2000 launched the Lisbon agenda to become «the most competitive and dynamic knowledge-based economy in the world», the free movement of services had in principle been one of the four constituting economic freedoms of the Community since the Treaty of Rome (articles 59-65). A true opening of the market for services was still far away, although the transitional arrangements for services had been lifted from 1 January 1970 and the 1986 Single Act had pointed out removal of obstacles to free movement of services as a central element of the internal market programme (De Witte 2007). The Commission had long complained that administrative and regulatory barriers hampered the free flow of services and soon presented its Internal Market Strategy for Services, in which services and the information society were highlighted as key drivers of the new economy. In this report, the Member States, other community institu-

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1 We are grateful to the Formula-project on “Free movement, labour market regulation and multilevel governance in the enlarged EU/EEA - a Nordic and comparative perspective”, which is funded by the Research Council of Norway program “Europe in Transition”, for granting the opportunity to work on this article. Thanks also to all the interviewees who generously shared their time and experience with us and to colleagues in the Formula project for useful comments on an earlier draft.

2 COM (2000) 888
tions and interested parties, were asked for their views. The next step from the Commis-

sion was a report on the state of the internal market for services, which was presented
during the summer 2002. Here the complexity and severity of legal barriers were seen
far more wide-ranging than was expected when the strategy was launched two years
earlier. Both the strategy from 2000 and the report from 2002 were based on a horizon-
tal rather than a sectoral approach because of the interdependence of different service
activities. About half a year later, in May 2003, the Commission announced that it would
make a proposal for a Directive on services in the internal market before the end of
2003. It should be based on a mix of mutual recognition, administrative cooperation and
harmonization.

There was consensus among all the EU-institutions about the need for eliminat-
ing existing barriers to freedom of establishment of service providers and the free
movement of services between member states. The European Parliament greeted the
Commission’s report in 2003 by: «[welcoming] the proposal for a horizontal instru-
ment to ensure free movement of services in the form of mutual recognition, with auto-
matic recognition being encouraged as far as possible, administrative cooperation and,
where strictly necessary, harmonization.» In October 2003, the Council called on the
Commission to «[…] present any further proposals necessary to complete the internal
market […] and to create a true internal market in services […]»

The draft Directive launched by Commissioner Bolkenstein was on this back-
ground extremely complex and broad in scope, making it hard to comprehend even for
legal specialists. In terms of temporary service provision, the most controversial ele-
ment was the so-called country of origin principle (CoOP), according to which service
providers would be subject only to the law of the country in which they were established
(Barnard 2008a). Hence Member States would not be able to restrict services from pro-
viders established in another Member State, implying a strong notion of the mutual rec-
ognition (ibid.). As regards labour rights, the second issue of controversy was the impli-
cations for the regulation, control and monitoring of conditions for posting of workers.
Although the proposal assured that the (hard nucleus of the) Posting of Workers Direc-
tive (96/71EC) should still apply and contained a derogation from the CoOP in respect
of posted workers (see Fischinger and Schlachter 2009), the main responsibility for
monitoring and control of posting of workers was shifted from the host Member State to
the country of origin. Several administrative requirements pertaining to control of post-
ing were rendered unlawful, e.g. requirements of notification and registration, of a repre-
sentative on the territory, and of original employment documents.

Being presented just before the Eastward enlargement 1 May 2004, the proposal
was hailed in the new Member States, relieving some of the humiliation they felt by the
simultaneous erection of transitional restrictions on free movement of workers in most
old Member States. Among the sceptics in the old Member States, however, the intro-

3 COM (2002) 441, final
4 European Parliament Resolution on 13 February 2003 on the Communication from the Commission
to the Council, the European Parliament, the Economic and Social Committee and the Committee of
5 Presidency Conclusions, Brussels European Council, 16-17.10.2003
6 COM (2004) 002 final
duction of the CoOP and the weakening of control opportunities, were perceived as levers for a profound liberalization that would encourage regime shopping, unequal treatment, and social dumping of posted workers (Hendrix 2008, Kowalski 2006). Combined with the prospect of rising inflows of service providers from countries with low wages, poor labour standards, and high unemployment, it did not last long before the proposal was portrayed as the core of an explosive deregulatory cocktail that could undermine worker protection and labour regimes in the old Member States.

Framing of the decision-making process and the analytical issues
After the Directive was launched by the Commission in January 2004, the proposal was subject to initial discussions in the Council while at the same time going to the European Parliament for a first reading. The legal basis for the Directive provided for the co-decision procedure. This procedure, introduced by the Maastricht Treaty, concedes to the European Parliament the right of legislative partnership with the Council. The final agreement of the two institutions is essential if the text is to be adopted as a law. Two thirds of European laws are adopted jointly by the European Parliament and the Council. The Commission shall submit the proposal to the Parliament and the Council. After obtaining the opinion of the Parliament, the Council can – if the Commission accepts the amendments – act by qualified majority and adopt a common position and communicate it to the Parliament. If the Commission have major objections, unanimity may be required. The procedure comprises one, two or three readings. This means, for example, that if the Council agrees after the first reading, the text is adopted. If it is impossible to reach an agreement, the legislation cannot be enacted (Duff et al 1994).

The contingent interaction between the European Parliament, the Commission and the Council in this mode of decision-making means that if the Members of Parliament want a dossier to pass in their first reading, they will have to take into account the positions and power relations in the Council. That means that they must judge the likelihood that their amendments to a proposal will be accepted by the Commission and avoid becoming subject to unanimous decision-making and the risk of blockage in the Council. The options of the various interests in the Parliament, which are central to our study, thus depend on the views and constellations in the Council as well as of the stance of the Commission, shaping the room of manoeuvre, possible coalitions, and the power relations in the negotiations within the EP. Thus central questions to be addressed in the empirical analysis of the EP role in this case are:

7 Articles 47(2) and 55 of the Treaty
8 Article 251 of the Treaty
10 If a majority of Member States approves (in some cases a two-thirds majority), a minimum of 255 votes have to be cast in favour of the proposal, out of a total of 345 votes to achieve a qualified majority (http://www.consilium.europa.eu/showPage.aspx?id=242&lang=en)
11 As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act (Article 252).
1) Who were the key actors and institutions in the different phases of the decision-making process? What were their main interests and concerns, and what kind of coalitions did they enter in order to achieve their aims?
2) What kind of strategies did they pursue to strengthen their case?
3) How were their approaches influenced by the legal ramifications of the process and by the constellations of views in the other European institutions involved?
4) How come that the diverse European trade union movement, against conventional wisdom, managed to act in unity and play such a prominent role in brokering the EP compromise?

To answer these questions we have concentrated on the compromise-building in the EP and have pursued semi-structured interviews with central MEPs involved in these processes as well as with representatives of the Commission and the main social partners at the EU level.12 Besides, we have drawn on former studies and available literature and secondary material. In order to shed some light on the role of national actors in the two-level game of EU decision-making, we have also undertaken a few interviews with informants from Germany, Poland, and Sweden. While Poland and Germany represent the largest of the ‘New’ and ‘Old’ Member States, Sweden was the Nordic country that was most actively engaged in the strife, probably because of the Laval case which brought the issue of service mobility and labour rights to the forefront of national as well as European debates (Ahlberg et al. 2006). Focusing on the processes that brought about the compromise in the EP, and the particular role of the ETUC in that respect, we have not looked much into the internal processes and documents of the Council and the Commission, or interviewed representatives of the groups that belonged to the loosing minority in the EP. Our aim is hence not to present a complete story of the evolution of the Services Directive, but to contribute to a better understanding of how and why the EP (and the ETUC) conquered such a key role in this particular case.

3. From the Bolkestein proposal to compromise in the Parliament

During the preparatory phase there was a broad consensus in the EU institutions about the need for eliminating existing barriers to cross-border establishment and free movement of services. As this was at the end of the Prodi-Commission’s period, the Commission was in a hurry to follow the European timetable and had scarce time for consultation. The preparation had already taken several years, and the Commission was on overtime. The Council and the Parliament demanded swift action.

The presentation of the Bolkestein draft 14 January 2004 did not spark any immediate reactions. At the EU level, attention was focused on the accession of ten new Member States from the 1st of May the same year and most of the Member-States welcomed the draft Services Directive as a necessary tool to improve the inner market (Miklin 2008). The main parties in the European Parliament also appeared unaware that the Services Directive could become a subject of controversy. No-one seemed to grasp the dimensions of the proposal, which had been subject to little discussion in the Commis-

12 A list of the interviewees, except a few respondents who preferred anonymity, can be obtained by the authors.
sion. As formulated by one of our informants: «Even the socialists in the Commission were sleeping». The temperature should soon rise, however, when the calm eventually was replaced by political protest throughout Europe.

While working group level discussions on the Services Directive had began in the Council and continued during 2004 and 2005, most of the disagreements should be settled inside the Parliament, with only minor amendments after the Parliament’s first reading. The parliamentarians were eager to avoid a blocking minority in the Council. To succeed, the Parliament needed to show a broad majority. Despite political disagreements, most of the representatives saw the need for a Directive that could open up the service markets. This became the key motivation for trying to find a compromise. Another shared objective among the MEPs was to show that the European Parliament was able to deliver on a political issue that really mattered.

Even though the main acts of the drama were played out inside the European Parliament – in close concert with mobilization in the streets – the parliamentarians interacted with a range of EU stakeholders during the process leading to the settlement 16 February 2006. This two years decision-shaping process can be divided in two stages: 1) the period from the launching in January 2004 until the first reading in the Parliamentarian Committee responsible in November 2005, and 2) the period from November 2005 until the compromise was struck in the EP in February 2006. The first part can be seen as a preparatory, positioning phase, until the drama culminated in the final «hot» phase of negotiations when a solution had to be found. While positions, coalitions and bargaining dynamics in the EP shifted from the first to the second stage, the Council, the Commission, and the European social partners, especially the ETUC, played important facilitating roles throughout the process.

In order to understand the broad engagement in the process it is important to bear in mind the horizontal approach the draft was based on, which meant that it would establish a general legal framework applicable to all economic activities involving services. This approach was revolutionary in the sense that it broke with the tradition of sector-specific internal market instruments that had been applied to a number of services in the past (Van Lancker 2004). The work with the Directive became therefore very complex, with a wide range of actors taking part in the negotiations. Even though the Conservatives and the Liberals had the majority in the Parliament, it was the two largest party groups at each side of the political spectrum – the Socialist Party (PES) and the Conservative Party (EPP-ED) that finally came to play the key roles in the game.

The preparatory and positioning phase
When the EP started to work on the Commission draft, in parallel with initial discussions in the Council, ten parliamentarian committees were involved in scrutinizing different aspects of the proposal. Eventually two of these EP committees came to play the dominant roles; the Internal Market and Consumer Protection Committee (IMCO) was responsible for preparing the EP proposal on the Services Directive, but the work proceeded in close cooperation with the Committee for Employment and Social affairs. Two of the most central persons in this case were the rapporteurs Evelyn Gebhardt in

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IMCO and Anne Van Lancker in the Employment Committee, who were both from the Socialist Group.

The majority of the actors inside the Parliament had two things in common: They wanted to see a new regulation in this field and they wanted to shape the Directive in the Parliament. As noted by one of our respondents, it was considered «very important to get an opening of the markets. This was the basis when I started to work on the directive. But it didn’t go long before I had a number of questions.» Similarly, the supporters of the Commission draft were totally unprepared for the unrest that burst out: «The opposition came as a complete surprise to me. I didn’t see anything controversial about the Directive» (MEP interviewee). The main parliamentarian groups soon realized that if they should be able to shape the outcome, win accept from the Commission, and avoid a blocking of the Directive in the Council, they would need a solid majority in the Parliament. But as the division of views among the MEPs gradually came to the fore, a shared concern was indeed whether it would at all be possible to arrive at a solution that could gain the necessary support inside the different political groups. Besides the dominant division of views between the EPP-ED and the PES – e.g. concerning the CoOP, the scope, and the protection of labour law – both groups contained a range of interests spawning divergences between Eastern and Western MEPs, liberally and conservatively minded MEPs, and between MEPs with close ties to trade unions and federations for small and medium-sized enterprises and more market-oriented modernizers, cutting across the party lines.

It is not entirely clear where the opposition to the Bolkestein draft originated, but it seems that it was spreading like a ‘grass-fire’ from different directions. While some point to the Belgian trade unions and the Belgian Socialist Party who early on singled out resistance and demonstrations against the Services Directive as a central issue in the upcoming Belgian election campaign in the autumn 2004, others point to French unions and transnational NGOs like ATTAC. Clear is however, that during the autumn of 2003, several months before the launching of the Directive, the Swedish trade unions had got hold of the draft. When the proposal came out in January, they were therefore already well prepared and immediately informed the Swedish government about their worries (Miklin 2008). When the alarm-bell was pushed in LO in Sweden, a warning message was also sent to the European Trade Union Confederation (ETUC). Even though there are different opinions on where the opposition started, most of them refer to the ETUC, indirectly pointing back to actors in Swedish LO who came to play a central role in the ETUC brokering of a compromise.

The ETUC and its national affiliates quickly identified the CoOP and the restrictions on host country control as a major challenge to the national posting regimes, opening unforeseen opportunities for regime-shopping and social dumping at work-sites across Europe.14 An internal Task-Force was swiftly set up, anchored at the top of the organization, and the most intensive mobilizing campaign in ETUC history was set in motion in close contact with national headquarters. Well aware of the danger of being accused of protectionism, which on the eve of Eastward enlargement was an issue of extraordinary sensitivity, also among ETUC member associations, the ETUC soon agreed not to go against the need for a Service Directive but opt for a radical recast of

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the proposal (Arnold 2008). The focus was on erasing any links to national labour law, preserving the Posting of Workers Directive untouched, narrowing the scope of the Directive, and eliminating the CoOP (Kowalski 2006, Jönsson 2006). If that failed, the fallback position of the ETUC was to achieve a blocking minority in the Council, meaning that the ETUC from the beginning worked closely with key Member States in parallel with the European Parliament. After the first demonstration in Brussels 5 June 2004, a number of manifestations were subsequently organized in association with important meetings in the Council and the EP as well as in Berlin, Paris and other capitals.

A growing mobilization was thus seen at national level throughout Western Europe during 2004. Trade unions, NGOs and parliamentarians organized hearings and demonstrations, gradually alerting the public, governments and politicians. Pulling the discussion out of the closed circles of Ministers responsible for internal market and industrial affairs, the compartmentalized structure of the Council was thus overcome at the national level. As pointed out by Swedish and German sources, it was first when the Services Directive became a Governmental issue involving ministers and parliamentarians across a broader specter that awareness about the potential implications for social and labour issues came to the fore. In Sweden this happened quite early as a result of the institutionally tight governmental coordination of EU issues (Miklin 2008), whereas it took much longer in Germany where the responsible red-green Minister for industrial and economic affairs saw no problems at all with the proposal (German interviewee). It was first when public mobilization made the Directive an issue for the whole Government and eventually after considerable prodding by President Chirac in France, that the Schröder Government started adjusting its view.

As things evolved during 2004, it became clear that the launching of the Bolkestein draft was badly timed by the Commission. With the growing influx of low cost service providers from the new Central and Eastern European Member States after 1 May 2004, and the debate about ratification of the new Constitutional Treaty arising, the Services Directive soon became part of a much wider and more heated political struggle. In the mounting referendum campaign in France the Directive became a burning issue, eventually forcing the conservative French government to distance itself from Bolkestein proposal. As for the French employers, which opposed the proposal, the linking of these issues posed a dilemma for the ETUC; on the one hand the ETUC could take advantage of the opposition to the Treaty to reinforce pressures for change of the Services Directive, on the other hand the ETUC – strongly in favour of the new Treaty15 – could risk strengthening the resistance against Treaty ratification. The choice ETUC made was to apply a dual strategy, trying to kill two birds with one stone. By taking a leading role in the fight against the Bolkestein draft, it hoped to prove its credentials as a genuinely popular vanguard for Social Europe, independent of the Commission, thereby strengthening its credibility in the defense of the new Treaty. This was indeed a difficult, if not impossible, balancing act. At the same time the ETUC had to overcome another conflict of aims. The member organizations from the new Member States saw the opening of the service markets as crucial to their membership in the EU, and were basically positive to the Bolkestein proposal. Besides hard work to convince these member associations about the need for a more balanced Directive, where the Polish Solidarnocs played a key role, part of the deal eventually made was that the ETUC should argue for lifting of the transi-

tional restrictions on the free movement of workers. In return, the main organizations from the new Member States, except the Romanians, complied with the ETUC strategy when it came to the conclusive phase. Unlike BUSINESSEUROPE, the ETUC thus managed to keep its disagreements ‘in-house’ and could pursue its active pressure strategy in apparent unity. In the view of Commission and employer sources, however, the ETUC approach was not un-affected by self-interest. According to a Commission source, «The trade unions were losing members and got an opportunity to prove themselves as a fighting force. They got a common enemy on a golden plate, and could say that a danger is looming and we are your saviors». Sources in BUSINESSEUROPE accused the ETUC of demonizing the Directive, at several occasions portrayed as the «Frankenstein Directive», and knowingly spreading misconceptions about its content.

In November 2004 the two parliamentarian committees involved (IMCO and the Employment Committee) organized a joint hearing with experts and representatives of the social partners. This hearing is by several of our sources considered to be the turning point as far as public attention about the directive was concerned. Laying out the intricacies and the widely diverging understandings of the proposed Directive, the event underscored how difficult it would be to reach a viable majority in the EP. On the one hand, the MEPs from the new Member States, regardless of party affiliation, showed strong support of the Bolkestein draft, as did the Liberals. A majority of the spokesmen from the Conservative groups (EPP) but also quite a few Socialists (PES) were basically positive to the proposal, whereas the main spokespersons from the Socialists and the Left were fundamentally critical. The rapporteur, Mrs Gebhardt, seemed to favour a radical overhaul of the entire draft, while the Conservative shadow-rapporteur, Mr. Malcolm Harbour, saw no need for changes at all. In addition to the cleavages cutting across party lines, the views in the Internal Market Committee and the Employment Committee diverged strongly. Hence, it was hardly an exaggeration when key actors conceded that the struggle to find common ground in the EP was extremely demanding. «In the beginning, a compromise seemed impossible.» (MEP interviewee).

Towards the end of 2004 and the beginning of 2005, the opposition grew steadily. Also among a plethora of NGO’s the Services Directive was cast as a common European enemy. «The directive was seen as the evil of Europe and as an instrument for crude liberalism», as stated by one frustrated MEP interviewee. It was not easy for groups that were in favour of the Directive, like the employer organization BUSINESSEUROPE. «Most of the time, we had to explain misunderstandings and reject lies» (BUSINESSEUROPE interviewee). Besides, BUSINESS-EUROPE was split on the issue. Some member organizations, especially from the building sector, in addition to the French employers, were critical of the draft from the Commission. BUSINESS-EUROPE therefore had problems in coming up with a coherent position and also had difficulties in coming to grips with the processes inside the EP. «We were mainly in line with the Commission’s proposal, but we also had internal disagreements. In the beginning we had some meetings in the Parliament, but they ended with some terrible discussions» (Interviewee BUSINESSEUROPE).


17 From January 2007 the employer organization UNICE changed its name to BUSINESSEUROPE
their lobbying of the EP by the fact that the association for small and mediums sized enterprises, UEAPME, was skeptical of the Bolkestein draft and openly rejected the CoOP (Arnold 2008), which was seen as a threat to host country subcontractors (MEP interviewee).

During the early stage after the launch, the Commission acted as if it was business as usual. There were ordinary meetings with the political groups in the Parliament, the Council, employers and the trade union movement. But as the temperature rose, it became more and more difficult for the Commission to defend the ‘hot political potato’ publicly. The architects of the draft from DG Internal Market continued to defend part and parcel of the draft, but were clearly out of sync with the dynamics in the EP and in the public. MEPs were frustrated over the Commission approach: «Our job was to convince the Council that a majority vote from the Parliament would be a good solution. But still the Commission representatives were against us. They refused to take the opposition into account» (MEP interviewee). At the end of 2004 the Prodi Commission was replaced by the incoming Barosso regime. The ‘father’ of the proposal, Fritz Bolkestein, left office and was replaced by Charlie McCrevy. During the crucial stages of the decision-making process there was thus a new Commissioner in charge of the Directive who felt no personal fatherhood for the proposition, which by some of our sources was labeled the «orphan»-directive. Our sources suggest that the change of Commission also paved the way for a shift of Commission approach. A low public profile was adopted, reflecting that «The temperature was so high that the European Parliament had become the only possible arena to find a solution». «We were told to adopt a low key approach, and leave the Directive to the politicians. Actually, the instruction was to keep our hands off, and let the Parliament to the job. This is unusual » (Commission interviewee).

During his first months in office, McCreevy also held meetings with General Secretary of ETUC, John Monks, a contact which was held alive until the very last days of the process. In this period Monks also had conversations with the Council President, Jean-Claude Juncker, and with the French President Jaques Chirac, while ETUC representatives had special meetings with the Socialist faction in the EP (Kowalski 2005: 10-12). These contacts reflect that in parallel with the protracted negotiations in the EP, the Council continued its work on the Directive, clearly influenced by the change in public opinion. When the new Council President Juncker met with the EP to present his work program early January 2005, he expressed skepticism of the Commission proposal and assured that he wanted a services directive but not social dumping. In response to misgivings about the proposal from the French and German governments, cracks in the Commission defense of the Directive were also displayed when Commissioner McCreevy publicly acknowledged that the directive «was not going to fly» in its current form and called for changes in the CoOP and exclusion of healthcare and public services. He was also openly dismissive of the approach chosen by his predecessor

18 There are also rumors that the lack of anchoring and debate within the Commission before the Bolkestein draft was presented caused turmoil in the Commission, where some other DGs according to our sources almost saw it as a ‘coup’.

19 www.brysselkontoret.se, 13 January 2005, «EU närmar seg fackets syn med Juncker ved roret»

20 Financial Times, 3 March 2005
Bolkestein. Soon after, an informal meeting between the French President Chirac and the German Chancellor Schröder prodded the latter to suggest that he preferred the Directive to be replaced by a new one.\footnote{Financial Times, 8 March 2005.}

Hence, the external pressures on the EP to find a way out were building up, further magnified by the Employment Summit in Brussels 19 March in the front of which the ETUC staged a large demonstration with 75,000 participants under the banner «More and Better Jobs – Defend Social Europe – Stop Bolkestein». With the referendum on the Constitutional Treaty to be held in France two months later, President Chirac stated during this meeting that the proposal was ‘unacceptable’ for France, and enjoyed broad backing from amongst others Germany, Sweden, Belgium, Denmark and Luxemburg (Flower 2007). The Summit sent a strong signal to the Parliament that the Directive needed to be fundamentally reworked «to preserve the European Social model» (ibid.).

When the EP gathered after the summer 2005, the political context of its work with the Services Directive had thus changed dramatically since the launch one and half year earlier. The unison support for the Bolkestein proposal had withered both in the Council and in the Commission, and with the defeats of the Constitutional Treaty in the French and the Dutch referenda the Community had run into an acute legitimacy crisis where the entire political establishment in Europe was desperately looking towards the EP, hoping it could find a way out of the conundrum.

The final «hot phase» of negotiations in the EP

When entering the final phase in the Parliament, the issue was pending in IMCO, but the Employment Committee was involved in all questions regarding labour law, including the country of origin-principle (CoOP). The first decision from the IMCO was ready November 2005. Here the scope of the directive was reduced, but still the controversial country of origin principle was intact. Rapporteur Evelyne Gebhardt unsuccessfully tried to change the CoOP with a phrase of «mutual recognition», building on existing case law on free provision of services. The eventual vote from the committee had neither sufficiently broad support, implying that the negotiations had to continue until the plenary vote. Still, although the CoOP was retained, the adopted IMCO-version was much less far-reaching than the proposal from the Commission.

In the «hot period», from the IMCO-vote in November 2005 until the plenary vote 16 February 2006, there were intense negotiations inside the Parliament. About two weeks before the vote, a small group consisting of MEPs from the two largest parties, the Socialist Party (PES) and the Conservatives (EPP-ED), was set up. This was a high-level group, including the vice-chairmen and chair-women of the two political groups, the rapporteur and the shadow-rapporteurs (Holsaae et al. 2006). Most of the controversial issues were still unsolved and there was a long way to go when the group begun working with different texts and wording. There were disagreements both within and across the party-boundaries. But they shared the motivation for doing this: The parliamentarians had a golden opportunity to prove themselves as proper lawmakers and they were convinced that a new regulation of the services markets was needed. The alternative to an agreement about the text was most likely status quo, i.e. no Directive at all. «Our joint responsibility was to develop a compromise that could convince the
Council that our majority would be the best solution. European politics is, at the end of the day, a matter of consensus». (MEP interviewee).

Slowly, through many and late meetings, one after the other of the central actors gave up their absolutes. The final hurdles were related to article 16, where the CoOP was the key issue. In the EEP-ED, especially among the members of IMCO, the majority was strongly in favor of maintaining the CoOP, which for most of the PES was a no go. Given the reluctance of the parties to concede, a third way had to be found. For the socialists it was essential to avoid the CoOP and for the conservatives no connotations to the opposite Country of destination-principle were acceptable. This was the background for the phrasing «freedom to provide services», that became the core of the compromise. EPP-ED didn’t let the CoOP go until there was no other way. During this decisive phase PES had ‘secret’ contacts with people in the EPP-ED negotiating group, where central participants, especially from Germany and France, had close ties with parts of the trade unions and the federations of small-and medium sized businesses in their home countries. Actors with such cross-cutting allegiances played important bridge-building roles, facilitating the give-and-take negotiations that were unfolding.

Officially, the matter was now solely in the hands of the MEPs. But there were still dialogue with representatives of the Commission and the Council. National governments and parties were also following the Parliament’s work closely and held direct contact with their MEPs, not least the French, the German, and the so-called Swedish «mafia», where the Brussels office of the trade unions played a central coordinating role. Although the grand coalition of CDU and SPD that had taken office in Germany late 2005 never took a clear position (Miklin 2008), forces inside both parties actively prompted their groups to find a compromise. In fact, both the leaders of the PPE-ED and the PES in the EP were Germans – Mr Pöttering and Mr Schulz. This eventually brought the chairman of the liberal group to accuse the grand coalition in Berlin of dictating terms in the EP and playing a pivotal role in watering down the Services Directive.22

During the last hectic search for a way out of the quandary, the ETUC played an active role behind the curtains. ETUC had long worked closely with MEPs at both sides, and especially with Gebhardt and Van Lancker, the chairs of IMCO and the Employment Committee. By contrast, there were, as noted by a Conservative MEP, virtually no contact between the parliamentarians and BUSINESSEUROPE at this stage; «They tried to defend the draft, but their powers were limited, because they were unwilling to discuss any change of the CoOP» (MEP interviewee). During the final negotiations, the ETUC, by contrast, served key actors in the negotiating teams with alternative texts. Having worked on the basis of a ranked list of seven key demands, only the final issue then remained – ultimately to get rid of CoOP. When the magic formula «freedom to provide services» was pulled out of the hat, allegedly by the PPE-ED group, it was not clear where the idea originally came from. Yet, as one of the key EP players put it, «We were desperately looking for a way out, and there ETUC was working actively, offering text pieces and ideas to the very end of the game». The «freedom to provide services» proposal was also informally floated to the team of McCreevy, who immediately indicated that such a formula would be accepted by the Commission. No wonder, when the final text was agreed upon in the EP negotiating group just a few days before the plenary vote, the ETUC team almost saw it as having won set, game and match – but was careful

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22 Financial Times, 28 February 2006
to downplay this in their public reactions. Besides the CoOP, eight additional sectors, among them Temporary Work Agencies, and cross-cutting areas including criminal law and private international law had been removed, and labour law was carved out completely (Flower 2006-7: 225). But, it remained still uncertain whether the necessary majority could be mobilized in the upcoming vote.

Some hectic days followed with intense work to convince doubtful MEPs both in the Conservative and the Socialist group that the complicated and unclear compromise text represented a viable solution. Therefore, the ETUC continued to mobilize public pressure. On the day of the debate in the Parliament, the streets in Strasbourg were filled with 30 000 - 50,000 demonstrators including unionists from Poland, the Czech Republic, Slovenia and Cyprus (Arnold 2008). The dual approach of the ETUC, lobbying pragmatically for a compromise inside the EP and mobilizing pressure in the streets outside reached a critical moment: «We wanted to exert public pressure, demonstrate independence from the politicians, and simultaneously work closely with them to find a solution. The final manifestation was like walking on eggs» (ETUC official interviewee). In the vote 16 February a majority of 394 MEPs from respectively the Socialist group (136), the Conservative group (187), and most of the Liberal group (62) supported the compromise text, while a minority of 215, comprising the green and leftist groups as well as the rightist nationalist groups, cast their votes against.

**Back to the Commission and the Council**

After the EP compromise was adopted 16 February 2006, the proposal went back to the Commission, which quickly presented an amended text based on the EP compromise. According to MEP interviewees, the representatives from the McCreevy Cabinet and the Directorate General for Internal Markets initially had different views on the EP compromise. The DG did not want to accept the compromise, while the Cabinet of McCrevy saw no other option than going along with the EP compromise. Acknowledging that the EP would reject any significant amendments in the compromise in its second reading, the revised Commission proposal followed the EP text very closely, precluding many of the concessions that Member States during initial negotiations in the Council (Flowers 2007: 226). Moreover, by accepting most of the EP changes, the Commission ensured that the decision in the Council would not require unanimity but could be taken on the basis of qualified majority. Still, according to key Conservative players, they had in order to ensure support in the EPP group lobbied the Commission to prepare a Communication on guidelines for control of posting (COM xx/2006xx) that was launched in May 2006, containing most of the controversial content of the deleted articles 24 and 25 of the original draft.

In the Council, there had been great uncertainty whether the Parliament really would manage to reach a compromise. The Council had therefore worked in parallel

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23 ALDE – Alliance of Liberals and Democrats for Europe.

24 In the EPP-DE 16 abstained and 32 voted against, while in PES 9 abstained and 35 voted against (Arnold 2008).

with the text of the Directive, moving in a similar direction as the EP. «The Council was in continuous contact with the parliamentarians, but at the same time we wanted to respect the Parliament’s work» (Member of working group under Coreper\textsuperscript{26} in interview). The negotiations in the Council were concentrated on the country of origin-principle and the scope of the Directive. The coalitions were not stable, but depended on the question in matter. While negotiations in the Council usually take place behind closed doors, the case of the Service Directive was exceptional. Not only were huge discussions going on in most of the Member States, which the Council had to take into account but, representatives of both the EP and the Social Partners were invited to present and discuss issues in Council working groups, something that is very unusual. When the Council finally, after eight hours of indebt negotiations, then adopted a Common Position 31 May 2006,\textsuperscript{27} it only implied minor adjustments in the text, e.g. extending the deadline for implementation to three years. The Directive was then sent back to the EP for its second reading 24 October 2006, with an unambiguous message that the compromise was ‘untouchable’.

The inter-institutional compromise was in other words considered so fragile that the second reading in the EP in practice was abandoned. As the Commission had slightly amended the wording of article 1.6 and 1.7 which, together with recital 14, should assure that labour law and the right to industrial action would not be affected by the Directive, forces in the EP and the ETUC suggested clarification of these passages. It is disputed whether the Commission amendments – emphasizing that the Services Directive will not affect labour law and industrial action which respect Community law – imply any difference in substance (see Barnard 2008a,b; Novitz 2008, Alsos 2009), but the attempt to erase the references to Community law was resolutely rejected. Instead, Commissioner McCreevy was summoned to the EP on the day of voting, 15 November 2006, to explain the meaning of the labour law exemption. He reluctantly assured that

«The Commission want to state unambiguously that the Services Directive does indeed not affect labour law laid down in the Member States and that it does not affect collective rights which the social partners enjoy according to national industrial relations and practices. […] However, Community law and in particular the Treaty continue to apply in this field.»

This message apparently calmed the EP, making clear that e.g. the right to industrial action in cross-border contexts was not meant to be affected by the Directive as such, but was – as should eventually be seen in the Laval case then pending in the ECJ – not exempted from the Treaty and the Court’s doctrine regarding proportionality of restrictions on the freedom to provide services (see Novitz 2008, Evju 2009).

After the second reading vote in the EP, the adoption saga of Services Directive was then finally brought to an end by the Council 16 December 2006. With the huge complexity and many unclear issues of the text, however, the controversies are surely not over.

\textsuperscript{26} The working parties report to the Committee of Permanent Representatives (Coreper, Part I or II), which prepares every Council decision taken at Ministerial level

\textsuperscript{27} Com 2006)160 final
4. Discussion

A pivot point in any judgment of why and how the compromise in the European Parliament could come about is indeed the substance of the resulting Services Directive. As a real compromise, the outcome has been contested and the battle of interpretation is still not over. While forces in the most liberal camp opposed the outcome for being bereft of any substance and teeth (Holsaae et al 2006), the far left has claimed that the principal amendments the EP made were merely about form and not of substantial importance. The parents of the compromise, on their part, did of course present the outcome as a victory, highlighting what they achieved and downplaying the concessions and uncertainties in the final text. Striking, though, was the extent to which key actors on both sides of the EP compromise in interviews agreed on the significance of the changes the EP had achieved as well as on the importance of the compromise for the standing and reputation of the EP and the EU.

Our analysis is premised on the judgment that the compromise, in spite of its messy, unclear and ambiguous texting, implied significant amendments of the original Bolkestein proposal. The meaning of the «freedom to provide services» -formula is far from clear-cut, but building on Court jurisprudence and a strong notion of «mutual recognition» it has certainly less radical implications than the country of origin principle it replaced. The amendments with respect to limiting the scope of the Directive, excluding labour law, and the conditions under which host states can restrict, monitor and control foreign service providers with the purpose of protecting workers were also significant (Barnard 2008 a,b; Fischinger and Schlachter 2009). In this respect, organized labour and the socialist camp in the EP won through with major parts of their demands for changes in the Bolkestein proposal (Kowalski 2006). Conversely, the conservative camp in the EP had to offer significant concessions, most prominently the CoOP, in order to achieve their aim of a horizontal Directive enabling effective implementation of free movement of services in a broad range of branches. Hence, the process of coalition- and compromise-building in the EP was a classical horse-trading game, where the puzzle indeed is why the minority socialist-labour camp obtained such strong influence and the Conservatives went along with that.

The answer to that question can as shown above only partly be found within the Parliament itself and must to a large extent be sought in the particular context of the process and in the interplay and power-relations among the institutions involved in the decision-making process. On the basis of our empirical study, we will highlight eight interconnected factors that decisively influenced the process and outcome:

First, an essential precondition was that a unanimous Council had called for liberalization of the service markets as one of the key targets in its Lisbon agenda. With the prestige vested in the Lisbon process and in this issue in particular, the stakes of the Council were high, implying that failure was hardly an option. The EP, including the socialist camp, had from early on also embraced the aim of a Directive freeing up the service markets, implying that the credibility of the EP as a co-legislating institution was also at stake.

Second, the stakes were further heightened by the changes in the context associated with the ratification process of the new Constitution and the Eastward enlargement 1 May 2004. The latter point implied substantial shifts in the structure of interests and composition of the Council. The promise of free movement of services was an issue of
key symbolic importance for the new Member States, especially in view of the erection of transitional arrangements for free movement of workers. Being strongly in favour of the Bolkstein draft and the CoOP, the new Member States had signaled that they would not accept dilution of the Directive, which could be seen as yet another sign that they were not full and equal members. Among the ‘old’ Member States, the growing public resistance against the Services Directive, emerging as a centre-piece for the opposition against the Constitutional Treaty in the French referendum, fuelled doubts about the viability of the Bolkstein proposal. When the rejection of the Constitution in the French and Dutch referenda then threw the Community into an acute legitimacy crisis, the Directive became a symbolic test case for the Community’s ability to deliver on key priorities and prove its democratic credentials. With the risk of a clash between new and old Member States, this created a highly delicate situation in the Council, which was desperately looking for opportunities to get around the issue and avoid an East-West confrontation.

Third, the new Barroso Commission was installed in November 2004, alongside a new Parliament after the 2004 election. Hence, in a situation of potential political paralysis, the entire actor and power structure of the EU was in flux. Apart from an even more unpredictable context of interest intermediation, this also implied that former stakeholders had left, opening for shifts in positions and coalitions. As shown above, this was probably most important for the role of the Commission. While the new Commissioner, McCreevy, was reluctant to stand up for the Directive, the Commission was searching for a way out that could rescue it from humiliation and the Council from deadlock. This provided a seldom opportunity for the newly elected Parliament to boast its position as legislator and guarantor of the democratic accountability of the Community.

Fourth, the legal framing of the decision-making process had a twofold impact on the negotiations in the EP. While the co-decision procedure in itself grants the EP substantial influence as co-legislator, the negotiating power of the EP can be amplified – but also constrained – in cases where EP amendments can unleash either a veto or a blocking minority in the Council. In the SD case this was a double edged sword; if the EP went along with the original draft, a blocking minority of socially minded, labour-friendly governments in ‘Old’ Europe could not be precluded, while too much dilution of the Directive was likely to be blocked by the liberal coalition of ‘New’ Member States, the UK and others. Such deadlocks are not uncommon, and can be long-lasting, implying that a scenario of filibuster-tactics in the Council is an option the EP factions always have to take into account if they want amendments in a dossier to pass. None of the main factions in the EP were prepared to take responsibility for aggravating the EU credibility crisis by letting the Services Directive derail in the midst of the stalled ratification process of the Constitutional Treaty. This provided strong incentives for a robust, broad settlement in the EP and implied that the price for non-collaboration among EP actors from the outset was very high. This was, as indicated above, made quite clear to the main EP factions by representatives of the Council and the Commission. Yet, the challenge remained that with such a complex dossier no one could tell how a proper balance between the conflicting concerns could be struck, and, hence, what a reasonable outcome could be. This boded for an unpredictable game of inter-institutional lobbying, horse-trading, and power-play.

Fifth, a further unknown in this complex political equation was ultimately what would be required to calm the public opposition – which was deemed critical to secure
Member State support and ease the way for ratification of the Constitutional Treaty. Of particular concern was the mainstay of trade unionism in the ‘Old’ Member States that was heading the mobilization against the draft Directive. This gave the ETUC the opportunity to establish itself virtually as a fourth institutional, extra-parliamentary player in the decision-making game. Having proven its ability to shape the response to the Directive in the streets, in media, and among the wider public, the ETUC acceptance of a compromise appeared critical for a successful outcome. This provided the organization with unique negotiating power as broker and joker of the three-way bargaining that was evolving. Considered as a loose umbrella with a highly diverse membership and limited capacity to launch unified action on a transnational scale, the influential role of the ETUC in the process countered all scholarly predictions. European business associations have usually been considered superior when it comes to Community lobbying, especially on issues of central importance to the internal market, whereas the influence of the ETUC have mainly been on social issues and when acting in concert with the Commission. This case didn’t fit with any of these pre-conditions. A key factor behind the ETUC leverage in this case is clearly the special circumstances outlined above. Even under normal conditions the democratic deficit and the lack of a common public space in the EU mean that popular legitimacy and accountability is hard to achieve. This offers the ETUC as one of the few encompassing, quasi-public representatives of lay people at the European level a potentially influential role as provider, or not, of popular legitimacy (Dølvik 1998). In this case the ETUC did not have to warn about a potential legitimacy crisis if its demands were not taken into account, the crisis was already acutely there. Moreover, at the heart of the crisis was a specific issue of conflict to which a viable political outcome would depend heavily on the reactions of core ETUC constituencies. Similarly as the EP was in control of a legislative good the Council and the Commission were acutely dependent on, was the ETUC largely in control of the interpretation and reception of the outcome among central target groups in the public both at national and European levels. In other words, ETUC had maneuvered itself into a gatekeeper position where its acceptance of a compromise in the EP had become the very litmus test of whether the solution could be expected to fly or not. This role did not only equip the ETUC with strong bargaining capital vis-à-vis the different factions in the EP, it provided, as described earlier, the ETUC with access and influence straight to the very top of the Commission and the Council, and positioned it as an independent power-broker.

Sixth, the ETUC leverage was facilitated by the split on the employer side. While the dominant actor, BUSINESSEUROPE, had put all its eggs in the basket of the Bolkestein draft, and was trapped in a futile defensive struggle, also facing internal division, the federations for SMEs, UEAPME, the construction sector, FIEC, and the utilities, CEEP, shared much of the ETUC skepticism of the CoOP. This applied also to a host of national sector associations, especially in the craft and SME sectors. The conservative side in the EP could thus draw on a variety of employer voices in justifying its engagement in compromise-building. In contrast to the employer side, the ETUC managed, against many odds, to bridge the conflicting views between member associations from the new and old Member States. This was achieved, first, by making clear from the outset that the ETUC would not opt for a blockage, but would adopt a constructive approach. The other move that helped getting the members from the new Member States on board was the ETUC decision to call for a repealing of the Transitional Arrangements for free movement of workers, supporting their demand for free and equal access to the
Western labour markets. Overruling some of the largest member confederations, the German DGB and Austrian ÖGB, the ETUC could thereby fend off accusations that its criticism of the draft Services Directive was motivated by protectionism. Through these internal ‘deals’ the ETUC sought to couple strong mobilization against the Bolkestein proposal with active involvement in the French strife over the ratification of the Constitutional Treaty. The successful pursuit of the former may, however, have come at the price of the latter. In retrospect, there can be no doubt that the influence ETUC achieved on the negotiations in the EP could hardly have been obtained without the broad mobilization of unionists and social movements in the streets. Through coordination with the national trade union centers and public mobilization targeted on decisive Member State governments and parliaments, the ETUC benefitted as the only really transnational actor in the process from a comparative advantage in the multilevel decision-making power-play that evolved. The two-pronged strategy of the ETUC – combining work inside the EU institutions with mobilization of pressure from outside – was clearly a necessary precondition for the ETUC achievements, but is not sufficient to explain its strong stamp on the final outcome. A central factor in the final stage of the negotiations was that the ETUC, in contrast to the EP party groups, had instant access to knowledge and expertise on national industrial relations, labour law and European legislation, which gave their representatives a strong hand in shaping and drafting compromise formulas that could be accepted by both sides.28

Seven, the final compromise in the EP was facilitated by the fact that in many European countries there are well-developed ties between the parties and the trade unions cutting across the ideological cleavage between Left and Right. In the continental/catholic European countries, the Christian unions, belonging to the ETUC since the early 1970s, have close ties with Christian Democratic and Conservative parties. In Germany, the CDU/CSU still contains a worker group with roots in the DGB. In the Services Directive process, central actors in the conservative group of the EP, also within the negotiating body, had a background in such networks and played important bridge-building roles – not only within the EP and vis-à-vis the unions, but also in relation to domestic governments and political constituencies. The importance of small entrepreneurs and craft companies in the voter base of many of the conservative parties, clearly also enhanced the compromise-building in the EP.

Eight, the cross-cutting coalition-building in the EP cannot be understood without taking account of the multilevel character of the EU decision-making process. Albeit the EP is often considered to be the only truly European branch of EU decision-making, the MEPs tend to be in close contact with their domestic constituencies and representatives in other EU institutions. Spurred by the Laval case (see Evju 2009), a good example is, as mentioned above, the active engagement of Swedish social democrats at all stages and levels of the process; acting in close concert with Swedish actors in the Council, the Commission, the EP, and the European Socialist Party, Swedish union actors played prominent roles in the entire ETUC operation (Jönsson 2006). With efficient collection and dissemination of information and tight coordination between the government, the

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28 The ETUC has built up strong networks of European experts and labour lawyers that were extensively consulted on different stages of the process. Many of those experts were also actively participating in the public debates on the national levels, thereby possibly also influencing the perceptions of possible outcomes in national parties and governments.
governing party, and the trade unions (Miklin 2008), Sweden can thus serve as a prototypical example of how even actors from small countries, can make a difference in the multi-level European decision-making when acting in concert. German actors were, as indicated above, less well organized. From the outset, actors with German background were central in developing the Bolkestein proposal, and the Council representatives of the ruling Red-Green coalition were among the most eager proponents of the CoOP. Gradually, however, the Schröder government was pressured to adopt a more critical approach. During the final stage of the process the CDU/SPD coalition of Mrs Merkel had taken over, however, but German MEPs with close contacts in the headquarters of the two ruling parties in Berlin apparently played key roles in the final negotiations in the EP.29

Viewed together, these eight points underscore that legislative decision-making at EU level cannot be understood without taking into account the interplay between – and the power-relations within – the various EU institutions. The Services Directive compromise further illustrates that the multi-institutional interdependencies of EU decision-making can indeed be strongly influenced by political dynamics and public reactions at Member State level. The issue whether the prominent roles of the EP and the ETUC in the settlement over the Services Directive represent an exception or a turning point in the democratization of EU politics we return to next.

6. Tentative conclusion – a turning point of EU decision-making?

What can the adoption saga of the Services Directive teach us about general characteristics of the EU decision-making system? Does it – as has been suggested (Kowalski 2006) – represent a path-breaking, pattern-setting event, signifying a shift towards a more democratically accountable mode of EU decision-making? Or does it rather represent an exceptional, deviant example that indirectly confirms the common rule, namely that the decisive power after all is located in the Council?

The Services Directive case was distinct in several respects: The original draft Directive was unusually broad and far-reaching; the timing was extremely challenging; the Council was facing a damaging East-West conflict and a breakdown in the ratification of the new Treaty, and the broad public protest and mobilization was unprecedented. The interplay between the external factors and the internal pressure in the Parliament to demonstrate its ability to deliver in a politically urgent situation, implied that the stakes for the EP was unusually high. «Normally, we don’t have much public discussion before the decision is made. This time the public attention and pressures were extraordinary. We had to deliver» (MEP in interview). Evidently, the consequences of failure were considered so grave that none of the major groups

29 Besides the rapporteur, Evelyn Gebhardt (SPD), the President of the conservative group in EP (Pöppering, CDU), the President of the socialist group in EP (Manfred Schulz, SPD) and several prominent EP reps of the workers group of CDU (Elmar Bloch and Thomas Mann) were all German, implying that the parties in Berlin had good channels to encourage the negotiators to find a solution. Also in the Cabinet of Commissioner McCreevy and in the SD-action group in the ETUC, there were Germans with close ties to the headquarters in Berlin.
in the EP were prepared to take the responsibility for turning down a possible compromise.

The distinctness of the SD case can hence primarily be sought in the specific contextual factors that in this case made a prolonged deadlock untenable for all the involved actors. The interconnected accession of eight Eastern Member States, for whom opening of the service markets was of uttermost importance, the broad public opposition to the Bolkestein draft in many old Member States, and the legitimacy crisis prompted by the French rejection of the Constitutional Treaty, created a quandary where apparently none of the elements could be resolved without a credible solution to the conflict over the SD. With the irreconcilable positions in the Council, the key to the unbundling of this Gordian knot was in the hands of the EP.

Thereby, first, the EP found itself in a position where it controlled the outcome of something the Council and the Commission urgently needed, primarily the Services Directive, but also the ability of the counterpart institutions to rescue the Community from its credibility crisis and save their faces. With the destiny of the most burning problems of the Community in its hands, the EP was suddenly equipped with exceptional negotiating power vis-à-vis the Commission and the Council. The legislative leverage the EP obtained in this case can in our view thus be attributed to an instance of (inverse) asymmetric exchange power (Coleman 1966, Hernes 1975) that rarely occurs in the relationship between the EP and its counterpart institutions.

Yet essential for the process of compromise-building within the EP was, second, that the procedural interdependence between the involved EU institutions constrained the power of the EP majority. Reliant on finding a solution that was acceptable to the Commission and could pass the needle eye of the Council – that is, not provoking a blocking minority by the Member States that were most critical of the original draft – the Conservative majority in the EP was not in a position to exploit the superior bargaining power of the EP to pursue its own agenda and offer a fait accompli – ‘take it or leave it’. They realized – and were evidently also made well aware of that by Commission and Council actors who knew where the red-line of key stakeholders in these institutions went – that a broad compromise with the Socialists in the EP was required to rescue the Directive.

Third, even though the EP held the upper hand, the contingent relationship between decision-making in the three institutions implied a three-way process of negotiation and accommodation. This, paradoxically, meant that the involved forces that were most critical of the original draft, such as the Socialist group in the EP and the ETUC, ultimately experienced a relative strengthening of their bargaining position. As suggested by the simple theory of exchange power (Coleman 1966), when two or more actors are negotiating over the price of a transaction that is dependent on the consent of all actors to be accomplished, the least interested does indeed control the upper hand. In our view, this kind of mechanism represents the most straightforward answer to the puzzle why the Conservative group in the EP was willing to go as far in accommodating the demands of the PES as they were. This in turn, created the opportunity for the ETUC to influence the legislative process. Combined with the ETUC’s control over the mobilization in the streets, the success of ETUC’s strategy was facilitated by the informal networks that enabled the organization to virtually
serve as broker between key actors in the three EU institutions and, indirectly, even the crowds in the streets.

All together, the above factors gave impetus to coalition-building and development of informal networks across boundaries between the various EU institutions, ideological factions and Member States, that enabled actors with multiple allegiances to intermediate compromise formula that could be viewed as acceptable by all stakeholders and sold as a face-saving win-win outcome. In this view, there are no indications that the SD case represents a turning point towards a new pattern of EU decision-making and power relations between the EU institutions strengthening the power of the EP. The case was special in the sense that the contextual configuration was unique, not least pertaining to the conjunction of events that enabled the unusually broad and persistent mobilization of public forces and extra-institutional pressure. In our view it is therefore more plausible to regard the adoption saga of the SD as an illustration of how the contingent and interdependent character of decision-making in the multi-institutional and multi-level EU system, under certain conditions, can enable unexpected events to occur and unlikely coalitions to gain leverage. In that sense, the case rather made visible features of EU decision-making that have long been there but have seldom come to the fore, and are therefore often overlooked in literature on the nature of governance in the EU. Such an interpretation suggests that the decisive role of the EP (and ETUC) in the Services Directive case was distinct and probably atypical but most likely not exceptional, meaning that similar instances of conjoint parliamentarian and popular mobilization of influence may reoccur again.

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30 Whether the impasse in the Council of 27 states in this case indicates that greater difficulties in reaching common Council positions will grant the EP – with more predictable transnational party groups – more influence on a permanent basis, is yet a hypothesis which requires further empirical probing.
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