

Explaining variation in the role of the EU Council Secretariat in first and second pillar policy-making

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ABSTRACT

This article explains how the EU Council Secretariat exercises political influence in the first and second pillar. It is surprising that the Secretariat adopts quite different strategies in both pillars, given that its formal competences in the Treaties are so alike. The main argument is that the rationale behind the initial delegation of tasks to the Council Secretariat is pivotal. While the Council Secretariat in the first pillar was created to improve the efficiency of the decision-making process, in the second pillar it also constitutes – particularly in the field of security and defence – an expert bureaucracy. In terms of the principal-agent model this difference leads to other goal conflicts, informational asymmetries, and opportunities. Whereas in the first instance process interests and process expertise are central, in the second case the actual substance of policies also comes into play. Due to these different goal conflicts and informational asymmetries the Council Secretariat is forced to adopt other strategies.

KEYWORDS

Council Secretariat, influence, principal-agent model, European Union, Common Foreign and Security Policy

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INTRODUCTION

It took scholars some fifty years before they dedicated a full article to the role of the Council Secretariat in European Union policy-making; and despite some recent attention (e.g. Christiansen 2002; Beach 2004; Christiansen and Vanhoonacker 2008; Dijkstra 2008) the work of its 3000+ civil servants remains under-explored.¹ At times it seemed that this is exactly the purpose of the Council Secretariat, which tries to protect its impartiality by deliberately staying outside the (academic) limelight. Instead of putting itself to the fore, it has preferred to be an *éminence grise* to the Presidency in the first pillar and to leave the talking to the country in the chair. By doing so, it has proven quite influential. Member States, which in the past ignored the Council Secretariat's advice, have often suffered the consequences (e.g. Gray and Stubb 2001).

The Council Secretariat in the second pillar is, in contrast, not gun shy. Since the Amsterdam Treaty (1999), it has been the home of the High Representative for the Common Foreign and Security Policy (CFSP); and Javier Solana and his senior officials have been rather outspoken. One might even argue that with the relatively little resources at his disposal, using the media is his only means. In addition to making a contribution to the public debate, Solana and officials of the Council Secretariat are also actively taking the floor in the Council – at ministerial, ambassador and working group level.

What is so puzzling about the Council Secretariat's behaviour in the first and second pillar is not its apparent Janus-face, but the fact that the formal powers entrusted to the Secretariat in the Treaties in both pillars are actually so alike. The Council Secretariat formally only *assists* the Presidency and the Council in the first *and* second pillar. The question thus arises why there is such variation in the role of the Council Secretariat in the first and second pillar given these limited formal powers.² This article's main argument is that while the functionalist rationale behind the Council Secretariat in the first pillar is to improve the efficiency of the decision-making process, in the second pillar it also constitutes an executive expert bureaucracy. This leads to different goal conflicts with the Member States, to other informational asymmetries, and to involvement in different phases of the policy cycle.

While acknowledging the possible relevance of other theoretical perspectives, this article takes a rational choice institutionalist approach. It draws extensively on the principal-agent model to get a better understanding of the power resources of the EU institutions and the dynamics, which govern the relationship between them and the Member States. As the Council Secretariat presents a 'least-likely' case of political influence due to its limited formal powers (cf. Beach 2004), the effect of informational asymmetries can be identified without too much interference of other possible factors. This article will commence with introducing the principal-agent model. Subsequently it will discuss how officials in the Council Secretariat differently transform their limited formal power base into considerable informal political influence in both pillars. In the conclusion this article will give an overview of the wider implications of these findings.

¹ The Council Secretariat, formally called the General Secretariat of the Council of the European Union, was founded in 1952. A number of handbooks on the Council did discuss the Council Secretariat at an earlier stage (e.g. Westlake 1995; Hayes-Renshaw and Wallace 1997).

² It has been repeatedly suggested to the author that the Council Secretariat in the first and second pillar can be perceived as two separate entities having little internal interaction. Yet even if this was the case, it would not explain the variation under similar formal competences in the Treaties.

POLITICAL INFLUENCE IN THE PRINCIPAL-AGENT MODEL

The principal-agent model has become an important framework for analysis in the study of the relationship between the Member States and the EU institutions (e.g. Pollack 1997; Pierson 1996; Tallberg 2002; Thatcher and Stone Sweet 2002; Franchino 2007). Yet since it has been adopted by such different schools of European integration theory (Kassim and Menon 2003), this article will first identify four relevant steps of the principal-agent model – the rationale for delegation, the goal conflict, the informational asymmetries, and the opportunities to exercise political influence restricted by control mechanisms – before applying it to the case of the Council Secretariat.³ By making the underlying assumptions of the model explicit, it becomes a more useful device for the study of the political influence of the Secretariat.

Rationale for delegation in the European Union

When using the principal-agent model, the first thing is to identify the rationale behind the delegation of responsibilities from principals to agent. Because rational choice institutionalism sees the delegation of tasks to an agent in terms of functional needs based upon a careful cost-benefit analysis (e.g. Keohane 1984; Pollack 1997; Thatcher and Stone Sweet 2002), these reasons are critical as they determine to a large extent the institutional setting, in which the agent operates, and the strategic resources it has at its disposal. Agents are created to carry out particular tasks – because they can do it better or cheaper than the principals – and they are designed to do their job. After identifying the initial rationale for delegation, more precise hypotheses can be formulated concerning the institutional design and potential political influence of the agent (Pollack 1997, 2003).

While there are all sorts of good reasons for principals to delegate tasks to their agents, in the study of the EU institutions the emphasis has been on the Member States trying to reduce their transaction costs of cooperation (Williamson 1979, 1985). Credible commitments have proved important. Reaching an agreement, after all, does not guarantee proper implementation or compliance – *ex post* transaction costs (ibid.). Supranational institutions can help to reduce the risk of non-compliance by being a neutral monitor of Member States' behaviour. The European Commission exercising its role as 'guardian of the treaties' is a case in point. In a bounded-rational world, every complex agreement furthermore suffers from incomplete contracting (ibid.). To avoid that others will block the process at a later stage the Member States can delegate sovereignty (e.g. "the right to propose, legislate, implement, [and] interpret", Moravcsik 1998: 73) to supranational institutions to guarantee credible commitments as well.

Credible commitments are particularly important when a number of Member States are expected not to comply or to obstruct the process (ibid.). Locking in other/future governments through the use of supranational institutions thus takes place in a divisive environment. In other words, the Member States have 'tied their own hands' to promote cooperation in the long-term by means of subjecting to a third party (cf. Schelling 1956). As these supranational institutions have to uphold the initial agreement in a situation of diverging preferences, they require significant formal autonomy of the Member States (Majone 1996; Tallberg 2000, 2002). It is therefore a logical consequence that their autonomy and powers are guaranteed by the Treaties. Due to the traditional emphasis of

³ The principal-agent model traditionally consists of three steps (delegation, autonomy of agents, and control mechanisms). Following the tendency of rational choice institutionalism to generate a series of more precise hypotheses (e.g. Pollack 1997), this article specifies the autonomy of agents by looking at goal conflicts, informational asymmetries. See also: Waterman and Meier (1998).

rational choice institutionalism on formal rules and competences (Aspinwall and Schneider 2000), it is not surprising that these particular supranational institutions, dealing with credible commitments, have received most academic attention (e.g. Moravcsik 1998; Pollack 1997, 2003).

Yet the delegation of sovereignty to supranational institutions is not the only way of dealing with incomplete contracting and non-compliance; and these are not the only transaction costs. Member States can also decide to take care of the problem themselves. Through the use secondary legislation (sometimes facilitated by qualified majority voting) they can fill in the details at a later stage. Negotiating secondary legislation based on a framework Treaty is, however, costly. It requires coordination between various bodies and the capitals, the input of information and expertise, the translation and distribution of documents, successful leadership, and the creation of package deals, issue-linkages, side-payments. The Member States thus have a strong incentive when faced with secondary legislation to reduce such *ex ante* transaction costs (Williamson 1985). Supranational institutions can play an important supportive role here as well. Such institutions, however, do not necessarily require significant autonomy or discretion (Majone 1996, 2001). They, after all, only facilitate the Member States in their daily work and as such provide efficiency gains for all.

The remainder of this article will focus on these supportive institutions, because the services in the Council Secretariat, as will also be shown below, were not created to guarantee their credible commitments. As regards supportive institutions, this article distinguishes for analytical purposes between two sorts. *International secretariats* are established to reduce the bargaining costs. They can fulfil a number of organizational functions (e.g. translation, minutes, booking of rooms); provide some continuity and coherence as well as procedural input (Tallberg 2006). By delegating such tasks, the principals can focus on the substance. Supportive institutions can also constitute the so-called *expert bureaucracies*. As Member States require technical expertise during their secondary negotiations, they can decide to ‘outsource’ their national expert bureaucracies to the supranational level. With twenty-seven national bureaucracies this quickly leads to cost reductions, synergies and efficiency. They also have an added value in that they can provide relatively impartial information. In addition, they can constitute an executive branch supporting the day-to-day implementation of legislation.

While this dichotomy is analytical and in many cases overlap exists between the two, it is useful to understand the role of the Council Secretariat in the first and second pillar – the Council Secretariat in the first pillar will be conceptualized as an international secretariat; in the second pillar is constitutes both a secretariat and an expert bureaucracy. Before however going into their respective institutional designs, it is important to say a word on political influence. The bureaucratic services in the Council Secretariat were initially created by the Member States, because of their positive political influence (efficiency gains). This article is, however, mainly interested in the *negative* political influence of the Council Secretariat, which can be defined as the agent acting on its own preferences “rather than implementing strictly and faithfully the preferences of the member states that created and empowered them” (Pollack 2003: 39).

Goal conflicts and informational asymmetries in EU bureaucracy

To analyse whether the Council Secretariat tries to exercise (negative) political influence, it is thus necessary to show a difference in interest. While Kiewiet and McCubbins (1991: 5) confidently assume that “there is almost always some conflict between the interests of those who delegation authority (principals) and the agent to whom they delegation”, it

seems nonetheless a good idea to identify what the Council Secretariat really wants. Although there has actually been little systematic empirical research on the actual preferences of the EU institutions, it is possible analytically to differentiate between competence-related and substantive interests.⁴ The European Commission, for example, has been generally described as a ‘competence-maximizer’ (Majone 1996; Pollack 2003) pursuing a more important role in the process. Substantive interests, on the other hand, have to do with the actual content of the policy. These competence and substantive interests very often overlap, but this is not necessarily the case. The European Commission, for example, has often been said to have a liberal market-based ideology; yet deregulation does not necessarily coincide with ‘more Commission’.

When taking into account the rationale for delegation, it is questionable whether international secretariats and expert bureaucracies attach the same value to competence-related and substantial preference. While both are likely to be competence-maximizers, the importance of substantive preferences presumably varies. International secretariats, which support the Member States, in their decision-making formally do not actively engage with the policy content (i.e. they do not propose certain substantive choices). They are facilitators of cooperation rather than content experts, as a result of which they might attach less importance to substantive preferences. From a number of case studies, on the other hand, it can be derived that expert bureaucracies do attach importance to such interests – for example: the American Environmental Protection Agency (Wood 1988), the European Commission’s DG Consumer Protection (Meier 1993). This hypothesized difference will be empirically analyzed below.

While the rationale for delegation seems to play a role in categorizing possible goal conflicts, it is pivotal when examining *informational asymmetries*. Because international secretariats were created to facilitate the decision-making process they are ever present and at the core of the machinery. Through their interaction with the Presidency and the (confidential) bilateral contacts with key Member States they are in an advantageous position with regard to the state-of-play of the negotiations (Beach 2005). The civil servants in the international secretariats are thus in a strategic position to acquire ‘hidden information’ (Arrow 1985), which can subsequently be used. Civil servants in the expert bureaucracies, on the contrary, do not support the whole negotiations process. They rather post their policy recommendations at particular moments in time when asked. They thus have limited information with regard to the state-of-play.

International secretariats furthermore typically accumulate ‘process expertise’ (Metcalf 1998; Beach 2005; Tallberg 2006) (e.g. political, legal, negotiation, procedural), often as a by-product of their delegated activities. This can become a source of hidden information as well. Because supranational officials have been around for a longer time than the ever-rotating diplomats, they are in a privileged position to point the Member States at how to make best use of the ‘rules of the game’. So even if the civil servants in the international secretariats do not have an information surplus on the state-of-play over, for example, the Presidency, they might have better information processing capabilities due to their experience. Importantly, international secretariats do not have a monopoly on process expertise – most diplomats also know how to negotiate – but the continuity and ‘institutional memory’ are in their favour. In Kenneth Arrow’s (1985: 39) words: they can sometimes make observations, which the principals do not make.

Expert bureaucracies, in contrast to the secretariats, possess ‘content expertise’ (e.g. policy, technical). Since outsourcing implies that one no longer performs the tasks ‘in-house’, the principal typically loses such expertise, when delegating tasks to an expert

⁴ Hooghe (2001) and Beach (2005) are notable exceptions.

bureaucracy. Content expertise as a source of hidden information thus also constitutes an informational asymmetry. While content expertise is useful during the decision-making phase, it can in addition be a source for ‘hidden action’ when implementing policy on behalf of the principal. Whereas international secretariats hardly ever have a monopoly over information, such situations can furthermore arise for expert bureaucracy. In assessing the informational asymmetries of the principal-agent model, it is thus important to specify which type of information the agent possesses and to which extent they have a monopoly on this expertise.

Opportunities for political influence

The next question is how an agent translates its informational advantage into political influence. In case of hidden action, this process is straightforward. If the principal formally asks the agent to carry out a particular task on its behalf, the agent’s influence correlates with the information asymmetries and the availability of control mechanisms (see below). It implies that “the agent’s action is not directly observable by the principal” (Arrow 1985: 37), but that it does partially affect the principal’s payoffs. Reputation furthermore is important in a repeated delegation game. If the agent does not deliver expected results, it might not be asked again.

The process, in which hidden information transforms into political influence, is different. As stated above, hidden information in the case of international secretariats often results as a by-product of the agent carrying out formally delegated tasks. The agent thus actively has to use this information through, for example, advising the principal before it leads to political influence. The principal in turn has to accept the advice. For the agent to exercise political influence on the basis of hidden information, it is crucial to have access to the principal. Reputation plays an important role as well. Whether the political principals take the advice of international secretariats and expert bureaucracies, after all, very much depends on whether the principal can trust the agent. Hidden action and hidden information furthermore differ in that they are relevant in different phases of the policy cycle. Political influence based on hidden action typically takes place in the implementation phase, while hidden information is most relevant in the agenda-setting and decision-making phase.

Whether political influence can be exercised also depends on the availability of *control mechanisms*. If effective monitoring prevents the agent from shirking, its political influence in the end is minimal. While the academic literature is full of examples of control mechanisms to limit hidden action (e.g. McCubbins and Schwartz 1984; McCubbins, Noll and Weingast 1987), it is more complicated when the agent takes on an advisory role. Obviously, the principal can disregard the advice in case of lack of trust, but objectively evaluating the information is difficult. Within EU bureaucracy punishing the agent *ex post* is furthermore often hardly possible, because the principals tend to disagree. If control mechanisms are identified there are likely to be *ex ante* and deal with incentives to prevent goal conflicts in the first place.

THE COUNCIL SECRETARIAT IN THE FIRST PILLAR

Whereas the previous section has pointed at some important theoretical issues in the principal-agent model, the remainder of this article will discuss the political influence of the Council Secretariat from an empirical perspective. Using the above-presented model, it will provide a number of observations, which are relevant in explaining the variation in the role of the Council Secretariat in the first and second pillar. Before, however, going to

the differences of the institutional structures in these pillars, it is necessary first to reiterate the starting point of this article, namely that the formal competences in the Treaties are very similar. Table 1 gives an overview of the relevant Treaty articles on the Council Secretariat and shows that while they are not exactly alike, the pattern is the same: the Council Secretariat ‘assists’ the Presidency and the Council.

<i>Table 1</i> The Council Secretariat based on the Treaties (adjusted by the author)
<i>Formal first pillar roles based on article 207(2) TEC</i>
<ul style="list-style-type: none"> ○ The Council shall be <u>assisted</u> by a General Secretariat ... The Council shall decide on the organisation of the General Secretariat.
<i>Formal second pillar roles based on articles 18(3), 26, 27(d) TEU</i>
<ul style="list-style-type: none"> ○ The Presidency shall be <u>assisted</u> by the ... High Representative. ○ The High Representative ... shall <u>assist</u> the Council ... within the scope of the [CFSP], in particular through: <ul style="list-style-type: none"> - Contributing to the formulation, preparation and implementation of policy decisions; - Acting on behalf of the Council at the request of the Presidency. ○ The High Representative ... shall ... ensure that the European Parliament and all members of the Council are kept fully informed of the implementation of enhanced cooperation [which has to this date not been used].

Delegation: international secretariat

The Member States established the Council Secretariat in September 1952 “to assist the Council” (Rules of Procedure 1952, article 11). They stated “that initial staffing levels should be kept to the minimum number strictly necessary” (Minutes September 1952, article V), which points in the direction of a careful cost-benefit analysis. By furthermore remaining in charge of the organisation of the Secretariat (Rules of Procedure 1952, article 12), the Council had strict control over any future bureaucratic expansion. In contrast to the High Authority and the Court of Justice (see Pollack 2003: 78-81), the Secretariat was clearly not created to ensure credible commitments. It was supportive. Lastly, as regards the organisation of the Secretariat, the structures similar to the Benelux and League of Nations secretariats were considered (Memorandum to the Secretary, September 1952), but the Member States decided to create something new. The sociological institutionalist argument of ‘structural isomorphism’ (Powell and DiMaggio 1991) thus does not hold.

The Council Secretariat has come a long way since the early days of European integration. Its staff has increased from the initial thirty to over three-thousand officials (Hayes-Renshaw and Wallace 2006). Despite this growth, Christiansen and Vanhoonacker (2008: 756) rightly point at the “‘thinness’ of the formal rules on which this institutional development was based”. The Council Secretariat was only mentioned in the Treaties after Maastricht. This as such, however, does not imply that the Secretariat had substantial discretion to write its own job-description, but rather that the position of the Secretariat was not a divisive issue among the Member States. Its main responsibility in the first pillar over the decades remained “to create the conditions for a smooth running of the Council machinery” (ibid.: 756, see also: Hayes-Renshaw and Wallace 2006; Westlake 2004). This was beneficial for all Member States.

In trying to reduce the decision-making costs, the Council Secretariat took on a number of new roles. It became a “source of coordination, coherence and continuity” (Christiansen and Vanhoonacker 2008: 757), which was duly recognized and even codified. The Council Secretariat also started to play a role as an ‘honest broker’ after the

‘empty chair’ crisis (1966) had compromised the Commission’s neutrality. The Council Secretariat furthermore became responsible for the organisation of the European Councils. Despite all these new roles, it is surprising that while the latest Rules of Procedures (2006) has become much more detailed on many issues than fifty years ago, the articles relating to the Council Secretariat have remained more or less similar. The initial rationale for delegation is thus still relevant. Rather than these new roles and the increase in personnel being the result of path dependency, unintended consequences, or bureaucratic ‘stickiness’ (Pierson 1996), they reflect the increasing complexity of the European Union and the need for efficient decision-making (cf. Tallberg 2006 on the Presidency).

Goals conflicts: competence-maximizer

At the surface the Council Secretariat presents itself as an impartial actor, especially regarding its substantive preferences. As a senior official once put it, “I don’t mind whether [the Member States] decide to paint the room black or white, as long as the decision is taken in the correct way” (quoted in Schout and Vanhoonacker 2006: 1054). While staying neutral might not be the Council Secretariat’s default value, it is clear from its behaviour that it attaches less importance to its substantive preferences than to competence-maximizing. Maintaining an impartial reputation is its strategy to acquire the ‘more important’ roles it cherishes (i.e. being an ‘honest broker’; providing political advice; a ‘good offices’ mediator). In discussing the Council Secretariat’s preferences, Christiansen (2006) and Beach (2004, 2007) furthermore empirically describe it as pro-integration. This fits the profile of a competence-maximizer.

The relationship with the Presidency also needs to be mentioned in terms of preferences. While this is often its *de facto* principal (Beach 2007), the formal principals according to the Treaties are the Member States. This situation can lead to tensions in the daily Presidency-Council Secretariat relationship, particularly because the Presidency’s interests do not equal the sum of the other principals’ preferences. Former Secretary-General Ersbøll (1992), in this respect, stated that “our master is the Council – not the individual presidencies. We have ways of acting as a brake on national Presidency initiatives if ever they should take on an excessive national colouring” (quoted in Westlake and Galloway 2004: 350). Discouraging or even frustrating the use of national hobby horses obviously helps the Council Secretariat in its reputation and its position as an honest broker.

Informational asymmetry: mostly process expertise

The Council Secretariat’s role in the first pillar can probably be best put in numbers. One of its formal tasks according to the Rules of Procedure is the organisation of the Council’s work. This includes the “producing, translating, distributing and archiving” annually of almost 100.000 documents and 100 million copies (Hayes-Renshaw and Wallace 2006: 113). To guarantee an effective organisation of work, the Rules of Procedure makes explicitly clear when and how Member States have to inform the Council Secretariat on issues such as items for the agenda, the circulation of documents, the input for the silence procedure, and etcetera. The vertical and horizontal coordination in the Council gives the Secretariat furthermore a key position in the decision-making web. Only its minutes are official and based on these minutes the Council Secretariat writes the cover notes, outlining the major discussions, which accompany draft legislation across the Council and European institutions (see below).

To provide more evidence of what this task means in terms of the Council Secretariat's power resources, it is interesting to point at the Report of the 'Three Wise Men' on the European Institutions. Already in 1979 they concluded that the Council Secretariat "possesses a knowledge of procedures, an overall view of the machinery, and an opportunity for neutral assessment of the other States' attitudes which even the largest national administration cannot match" (p. 34). Given the earlier mentioned significant increase in personnel, this statement is even more relevant today than it was thirty years ago. Over time the Council Secretariat has accumulated process expertise due to its continuity *vis-à-vis* the rotating diplomats and as a result of its institutional memory. Due to its central position in the coordination of EU decision-making, it furthermore has an excellent overview of the state-of-play.

Since the Council Secretariat possesses such process expertise, it seems a natural ally for the Presidency. But this has come with a price. In addition to its traditional roles (logistics provider, record keeper, and purveyor of legal advice), the Secretariat has furthered its bureaucratic interests – often at the expense of the Presidency – by taking on the earlier-mentioned new roles (e.g. Westlake and Galloway 2004; Hayes-Renshaw and Wallace 2006; Christiansen 2002; Christiansen and Vanhoonacker 2008). It is exactly these roles, carried out by officials at diplomatic level, which have recently provided the Council Secretariat with more process expertise, knowledge about the state-of-play and possible informational asymmetries. The dependency of Member States has thus increased and the Council Secretariat can use this to further its influence.

While a number of these new tasks are important and while the process expertise is significant, it must also be emphasised that the Council Secretariat's expertise in the first pillar is not exclusive. Diplomats know how to run negotiations and to coordinate between different levels as well. Much furthermore depends on the preparation of the Presidency. That having been said it is safe to conclude that the officials of the Council Secretariat do make a number of procedural observations, which certainly not all the principals make and this gives them political leverage. Lastly, some observers (e.g. Tallberg 2006) have noted that officials from Council Secretariat also gain content expertise while working on a dossier. While this is certainly true, such content expertise does not even come close in the first pillar to the expertise of the European Commission. Leadership based on content expertise is thus highly unlikely to come from the Council Secretariat.

Opportunities and control-mechanisms: decision-making phase

The windows of opportunities for the Council Secretariat to make use of its process expertise are generally restricted in the first pillar to the decision-making phase of the policy cycle. Only after the European Commission – having the exclusive right of initiative – has tabled a proposal, the Secretariat gets involved. Its absence during the agenda-setting phase limits its political influence. The same goes for the implementation phase. After legislation has been adopted, it is up to the Commission and the Member States to implement it. Only when cases are referred to the European Court of Justice, the Council Secretariat's legal service has an important presence in terms of representing the Council. Given its general pro-Council preferences, no agency costs are involved for the principals during this stage.

During the decision-making phase, however, the Council Secretariat is involved from the beginning to the very end. Shortly after the Commission has tabled its draft – and before the Council Secretariat distributes it to the diplomats in the working groups using its own document templates – the Secretariat provides the Presidency with political advice on which strategies to take. After the deliberations of the working groups, the Council

Secretariat sends a ‘note to working party members’ accompanying the redrafted text (Hayes-Renshaw and Wallace 2006). This note includes the major positions of the Member States on the outstanding paragraphs. When the draft moves up to COREPER, the Council Secretariat writes a similar cover note ‘to COREPER from the working party’ and a strategic confidential document ‘to the chair of COREPER from the Secretariat’, which may include speaking notes (ibid.). These documents contain phrases such as “‘the Poles are isolated’ ... ‘a possible vote has been signalled’” (Nugent 2006: 203). The same procedure applies when the draft moves up to Council. All these notes provide the Council Secretariat with ample opportunities and access to emphasise issues it deems important.

Since very few first pillar draft legislation is concluded under the leadership of one Presidency, the Council Secretariat also has a role to play through briefing the incoming Presidency (ibid.). As the officials of the Secretariat has been so closely involved in the process, incoming Presidencies often rely on its information regarding the state-of-play of the negotiations. The Council Secretariat has been active as well, as stated above, in slowing down the pet projects of Presidencies, by pointing them at the long agenda of unfinished and ongoing work (interview Council Secretariat official, 2006). Fully stopping ambitious Presidencies is obviously not in its power. The Council Secretariat’s influence will always be limited to the extent that the Presidency allows it to play a role.

Apart from providing strategic advice to the country in the chair, the Council Secretariat also takes a pro-active, though behind-the-scene approach in the negotiations. The Council Secretariat is particularly important when negotiations get very difficult. Together with the Presidency it often plays the role of an ‘honest broker’ due to its perceived neutrality. In most cases it is the Secretariat rather than the Presidency, which comes up with the compromise (Sherrington 2000: 166). Beach (2005) and Tallberg (2006) have illustrated how proposing an efficient compromise can give the leadership the opportunity to exploit the resulting distribution of pay-offs for private gain.

Through intense involvement in the decision-making phase, the Council Secretariat is in a position to gather strategic information, which it can use to pursue its own agendas when goal conflicts arise, while applying its process expertise. It is nonetheless still up to the Presidency and the individual Member States to decide to what extent they rely on the Council Secretariat. This seems to be the major control mechanism the Member States have at their disposal. Some Presidencies have been more reluctant than others to use the Secretariat’s services (e.g. Christiansen 2002; Elgström 2003; Schout van Vanhoonacker 2006). Its opportunity to exercise influence thus varies depending on its access to the formal power holders. While many national representatives in COREPER are aware of the added value of the Secretariat, national ministers sometimes prefer to rely on their close capital-based advisers (Nugent 2006).

THE COUNCIL SECRETARIAT IN THE SECOND PILLAR

While in the first pillar the emphasis is on competence-maximizing and process expertise during the decision-making phase, in the second pillar the scope is larger. Not only does the Council Secretariat play a role during all phases of the policy cycle, it also tries to promote its substantive interests via its content expertise. These differences help to explain the strategies the Secretariat pursues in the second pillar.

Delegation: international secretariat and expert bureaucracy

When discussing the delegation of sovereignty in the second pillar, the sensitivities of this *domaine réservé* can hardly be overstated. Not only have the Member States kept the

European Commission at arms length since foreign policy cooperation was initiated with the Luxembourg Report (1970), they also originally preferred to keep the supportive tasks ‘in-house’ by delegating them to the Presidency rather than to a permanent international secretariat (Nuttall 1992). Already three years after the start of foreign policy cooperation, the Member States noted that “experience has also shown that the Presidency’s task presents a particularly heavy administrative burden” (Copenhagen Report 1973, article 8); yet they did little to reduce it. The anticipated agency costs of an international secretariat were apparently higher. Only with the Single European Act (1987), a small-scale Brussels-based EPC Secretariat was finally established to “assist the Presidency” (article 30(10)(g)).

With the Maastricht Treaty, this Secretariat was strengthened and integrated in the Council Secretariat. It became known as the ‘CFSP unit’. When during the 1990s, the European Commission was not forthcoming with policy proposals under its newly-gained shared right of initiative, the Presidency increasingly started to look at the Council Secretariat for input (interviews national and Council Secretariat officials, 2008). In a reaction to the Bosnian and Kosovo wars, the Member States strengthened the Council Secretariat further under the Amsterdam Treaty (1999) with the High Representative and the Policy Unit. This was meant to make the CFSP ‘more effective, coherent, and visible’ (Vanhoonacker 1997). With one of the Policy Unit’s tasks to produce “argued policy options papers” (Declaration annexed to Amsterdam Treaty), the Member States were effectively filling the informational gap left by the relative absence of the Commission in the CFSP (Dijkstra 2008). As a result of the Helsinki and Nice European Councils (1999, 2000), the Council Secretariat also became the European Union’s source of military expertise through the establishment of the EU Military Staff (EUMS). The Council Secretariat in the second pillar – particularly in the field of security and defence – thus goes beyond a mere secretariat and also plays a role as an expert bureaucracy.

Goal conflicts: competence-maximizer and substantive interests

That the competence-related interests of the Council Secretariat in the second pillar can lead to goal conflicts has become obvious during various conflicts with the Commission and several Member States (e.g. Christiansen 2001; Crowe 2003; Spence 2006; Cameron 2007). In filling the above-mentioned informational gap, the Council Secretariat quite naturally met the Commission on its way. Particularly in discussions over the development of civilian crisis management and the future institutional foreign policy arrangement as foreseen in the Constitutional and Lisbon treaties, the Council Secretariat, the Commission, and the Member States amongst themselves disagreed on an almost permanent basis. Discussions over the competences of the Council Secretariat in the second pillar are thus more salient than in the first pillar. This is partly also due to a number of yet undivided ‘grey areas’ between both pillars (Hoffmeister 2008).

The Council Secretariat’s preferences in the second pillar go, however, beyond competence-maximizing. Two recent EUI working papers, for example, discuss the ‘worldviews’ of Javier Solana and his closer advisor Robert Cooper (Borras-García 2007; Foley 2007) and show that they have taken substantive positions on a whole range of issues. Although both are stressing ‘effective multilateralism’, they do not consider UNSC backing an absolute necessity for intervention, such as in Kosovo (1999). They have furthermore advocated ‘pre-emptive action’ – Cooper even before the 9/11 – and the need for more, and more effective, military resources in the European Union. These personal views came quite clearly to the fore in the discussions on the European Security Strategy, during which they were watered-down before they were adopted by the European Council.

Other anecdotal examples of substantive preference include the Council Secretariat's pro-enlargement attitude towards Ukraine, its insistence on the Aceh Monitoring Mission (2005) against the initial will of 20+ Member States, and the promoting of police-reform as well as the phasing out of the Office of the High Representative in Bosnia.

Quite clearly there is much overlap between these competence and substantive preferences. More emphasis on military resources (rather than civilian power) implies a more central role for the Council Secretariat in foreign policy-making. Yet the fact that Solana and his civil servants express their opinions on the role, the scope and the identity of the European Union in the world, as well as on the future road to be taken, and actively promote these preferences distinguishes the Council Secretariat's foreign policy services from the first pillar ones. It is, for example, hard to imagine civil servants in the first pillar trying to promote a more social or liberal Europe. These are generally not the preferences on which first pillar civil servants are acting. Lastly, it is important to point at the fact that while the expression of these interests has much to do with the inherent dynamism of the High Representative, such interests promotion takes place at all levels and is thus not only confined to the political level.

Informational asymmetries: process and content expertise

In terms of informational asymmetries, the Council Secretariat has accumulated process expertise in the CFSP in a similar fashion as it did in the first pillar. As it initially did not have a long foreign policy tradition and as second pillar dossiers differ substantially from first pillar ones, this has taken some time (Vanhoonacker and Dijkstra 2006). In the field of security and defence, these civil servants have in contrast been at the heart of creating the new operational procedures (interviews national and Council Secretariat officials, 2007). Their process expertise is thus particularly strong. Acquiring strategic information on the state-of-play is for Council Secretariat officials a process similar to the first pillar as well. Yet due to the relatively weak role of the Commission, the Council Secretariat and the Presidency are even more at the helm in the second pillar (Duke and Vanhoonacker 2006). Importantly, the Council Secretariat already gets involved during the agenda-setting phase and has an important role to play in implementation (see below). This gives it an even better overview of the policy-making process.

The relative absence of the Commission in the second pillar also has an effect on the Council Secretariat's content expertise. As described above, the civil servants of the Council Secretariat have become the Presidency's major source of policy expertise in Brussels. On a daily basis it draws on the expertise of the Directorate-General for External Relations (DG E), headed by Robert Cooper. Solana furthermore receives direct input from the Policy Unit – nowadays almost integrated in DG E – consisting of 30+ senior seconded national officials. Particularly in the very political areas, where the presence of the Commission has traditionally been weak or non-existent, the Council Secretariat has strong content expertise (Dijkstra 2008). Relevant regions include Bosnia, Kosovo, the Middle-East, and Afghanistan.

The Council Secretariat's military expertise in the ESDP furthermore deserves special attention. Shortly after the creation of ESDP (2000-2001), the Secretariat became the basis of two substantial directorates, dealing with civilian and military affairs, and of the EU Military Staff (EUMS). As a result it currently employs 250+ officials, who support the Member States during the decision-making and implementation for ESDP operations. With the creation of the independent Operation Centre (2007) within the EUMS, the Council Secretariat might furthermore in the future be in charge of carrying out the complete implementation of ESDP operations (Petrov and Dijkstra 2007). For the

purpose of civilian crisis management, the Council Secretariat has recently established the Civilian Planning and Conduct Capability (CPCC) as an equivalent to the military EUMS (ibid.). These services were explicitly created as expert bureaucracies and they are functioning as such. They provide the Member States with most of the relevant military information.

Opportunities: agenda-setting, decision-making and implementation

In contrast to the first pillar, where the Council Secretariat only comes in during the decision-making phase, in the CFSP it is also involved in setting the agenda and in implementing agreed-policy. The Council Secretariat formally carries out these tasks under the guidance of the Presidency. In the agenda setting phase, the political profile of the High Representative is crucial. By simply visiting countries or regions Solana can turn the eye of world media, and thus also of the Member States, at particular issues he deems important. It was telling, for example, that Solana was the first governmental leader to visit the Middle-East after conflicts broke out in Lebanon (2006). He furthermore ensured that the issue did not leave the European table and persuaded major European countries, such as Italy and France, to make up the backbone of the UN peacekeeping operation. Similarly he played an active role during the Orange Revolution in Ukraine (2004).

When it comes to the more detailed decision-making itself, it is the Council Secretariat, which drafts most of the common positions in the CFSP (interviews with national and Council Secretariat officials, 2007, 2008). These documents range from simple statements to complicated joint actions and operational plans for military missions. It is obviously the Member States, which decide, but writing the drafts matters. It is worth noting that the diplomats of the Member States are often short of adequate expertise and information as regards civilian and military missions. That is why they rely heavily on the expertise of the EUMS, which was originally an implementing body (interviews with national and Council Secretariat officials, 2007). The EUMS thus moves up the policy cycle and by having such military expertise on board, the Council Secretariat can apply its informational asymmetry during the decision-making phase. It is furthermore important to note that time pressures in the CFSP are particularly high. The joint action of military operation Artemis was, for example, concluded within two weeks after the formal agenda setting. Such time pressures limit the information processing capabilities of the Member States' diplomats to the advantage of the officials of the Council Secretariat.

During the implementation of agreed policy, the Council Secretariat plays a role along the Presidency and the Member States. Following the Treaties, the High Representative can be asked to represent the European Union. In these cases the Council Secretariat can exercise hidden action. That the Council Secretariat has some autonomy and that control mechanisms are of limited value can be illustrated at the political level by Solana making a joint statement UN Secretary-General and the Secretary-General of the Organisation of the Islamic Conference on the limits to the freedom of speech during the Danish cartoon crisis (2006) without prior consent of the Member States; and at the bureaucratic level by the CPCC starting the Kosovo civilian mission (July 2008) without consultation. During the transition phase from decision-making in Brussels to military operations on the ground, the EUMS is furthermore coordinating the whole preparatory process. Its actions are *ex post* supervised and approved by the Political and Security Committee, a Member States' body in the Council. The Operations Centre only increases the role of the EUMS in the implementation phase.

The Council Secretariat thus has many more opportunities to assert political influence in various phases of the CFSP policy cycle than in the first pillar. Its influence in

the second pillar is, however, not limited to day-to-day policy making. Through the attendance of the High Representative at European Councils and Intergovernmental Conferences, Solana can also make its voice heard at the highest political level, particularly when (future) institutional competences are discussed.

CONCLUSION

This article has compared the role of the Council Secretariat in the first and second pillar using the principal-agent model. It has shown that there is variation in the rationale for delegation, goal conflicts, informational asymmetries and the opportunities in the policy cycle. The Council Secretariat in the second pillar was meant to be more than the international secretariat it represented in the first pillar. It has developed as such. This explains to a large extent the different strategies, which the Council Secretariat pursues, under similar formal competences. Through openly ‘making noise’ in the second pillar, the Council Secretariat tries to persuade and to put pressure on the Member States in order to further its competences and substantive interests. In the first pillar, on the contrary, the most beneficial strategy is to keep quiet in order for the Presidency to take its neutral advice onboard and for the Member States to accept it as an impartial honest broker.

The principal-agent model has over the last decade become an important rationalist framework to analyse the relationship between the Member States and the EU Institutions. Needless to say this is not the only way of approaching the presented empirical puzzle. From a sociological institutionalist perspective, the ‘logic of appropriateness’ (March and Olsen 1989) tells us important things about actor behaviour. There is indeed some explanatory power in this approach. One can argue that first pillar officials take a neutral stance, because they ought to be impartial. In the second pillar their pro-active approach is accepted behaviour due to the relative absence of the Commission and the inherent dynamism of the job description of the High Representative. The answer to these sociological institutionalist challenges has been partially provided by the above. It has been shown that the Member States have been careful in delegating sovereignty, that they have not modelled the Council Secretariat on other organizations, and that the increased complexity of the EU better explains the new roles of the Council Secretariat than the path dependency argument. Apart from pointing at a number of differences, it is however probably more interesting to look at the striking similarity of both theoretical approaches: the rationale for delegation – the role that Member States wanted the Council Secretariat to play and the role it thinks it ought to play – takes centre-stage in both.

To conclude this article, it is necessary to point at the relevance of these findings. The discipline of European studies – and particularly rational choice institutionalism – has so far put its emphasis on formal competences and powers in the Treaties (e.g. Moravcsik 1998; Pollack 2003). While informal processes and rules are acknowledged, they are generally considered secondary, correlating either with the formal rules or simply part of the model’s ‘margin of error’. Yet this article has shown that they do not always correlate with formal rules, nor that they should be considered insignificant. An appreciation of the informal processes and rules, as well as the rules below Treaty level, is thus necessary in the study of the European Union. Importantly, this is not just to attain a higher degree of explanatory power, but particularly because the emphasis on formal rules also determines which institutions scholars study. Formal rules are important for institutions dealing with *ex post* transaction costs. By neglecting informal rules and processes, there is also the risk of paying too little attention to all others.

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