

New Frontiers in European Studies

Guildford, 30 June - 1 July 2011

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Susan Fuchs
University College London

Negotiations in the European Union: Who Wins When, and Why?

Introduction

The aim of this paper is to demonstrate why EU negotiations under different circumstances, and the resultant policies, can be expected to reflect the positions of some parties more than others. Specifically, this paper will consider the distinction between negotiations that take place in the presence of EU-level policy and those that do not. In other words, whether the purpose of negotiations is to establish a EU-level policy or to reform it, and the impact this has on the outcome of negotiations vis-à-vis participants' negotiating positions. The original, policy-making phase of negotiations will be referred to as the 'uploading'¹ phase, and the reform phase will be referred to as the 'reuploading'² phase. While negotiations over EU policy tend to take place both within and across institutions, this paper will focus on intra-institutional negotiations between member states in the Council of Ministers and the European Council. The research question is:

Do differences between the 'uploading' and 'reuploading' phases of the EU policy process affect member state negotiation performance in each phase?

In the following sections, this paper will describe the 'uploading' and 'reuploading' phases, highlighting important differences between the two contexts. After introducing key conceptual distinctions between the 'uploading' and 'reuploading' phases, some theoretical approaches to the study of international negotiations are introduced, and the particular approach is outlined that this project will take. Following the theoretical framework is a discussion of the methodology that will be used to analyse 'uploading' and 'reuploading' negotiations, as well as brief justification for selecting the Stability and Growth Pact (SGP), the policy area of focus. Finally, some preliminary hypotheses and a brief conclusion are presented.

Literature Review

Until recently, EU studies have tended to focus on the supranational level, the policies and institutions in Brussels. In contrast to this, Europeanization focuses on the effects of the EU on its member states.³ Europeanization aims to explain the varying effects of EU regulations on different member states, as well as the ways in which

¹ Tanja Borzel (2005) 'EU Member Relations', *The Member States of the European Union* (Oxford: Oxford University Press), 63.

² Jani Kaarlejarvi (2007) *Fiscal Policy Without a State in EMU: Germany, the Stability and Growth Pact and Policy Coordination* (Basingstoke: Palgrave), 127.

³ Tanja Borzel (2005) 'EU Member Relations', *The Member States of the European Union* (Oxford: Oxford University Press).

member states participate in the EU policy process to maximise the benefits and minimise the costs of EU policies at domestic level.⁴ Specifically, national actors attempt to shape EU policy through negotiations both across member states and between member states and Brussels, resulting in a EU policy ‘menu’ from which states ‘download’ policy for implementation at domestic level.⁵ The process whereby member states attempt to shape EU policy to reflect national policy preferences is called ‘uploading’. Tanja Borzel cites three main reasons why states attempt to ‘upload’ policy preferences to EU-level:

- 1.) To reduce the need for legal and administrative adaptation in ‘downloading’ (incorporating European policies into national policy structures).
- 2.) To prevent competitive disadvantages for domestic industry.
- 3.) To enable national governments to address problems that preoccupy their constituencies but cannot be effectively dealt with at domestic level.⁶

‘Uploading’ and Goodness-of-fit

Europeanization literature tends to deal with the first two of these motivations for ‘uploading’, particularly with regard to the ‘goodness-of-fit’ hypothesis.⁷ The ‘goodness-of-fit’ hypothesis has been used to explain varying levels of adaptation across member states in response to Europeanization, as well as varying compliance records with EU policy. For example, Maria Green Cowles et al. (2001) define the process of Europeanization as the “emergence and development at the European level of distinct structures of governance” (policy structures and system-wide structures), and argue that where these structures do not fit domestic structures, Europeanization will exert adaptational pressure at domestic level.⁸ The prevailing argument in the Europeanization literature is that member states attempt to ‘upload’ national preferences to European level, in order to achieve a good fit between European and domestic institutions and/or policies, so reducing adaptational pressure at domestic level.⁹

According to the ‘goodness-of-fit’ hypothesis, varying levels of change in response to European pressures can be understood largely by the varying degree of fit or misfit between the emerging institutions and policies at European level, and those at domestic level, where member states with institutions and policies that fit well with European ones are not expected to change in response to Europeanization. However, the adaptation of domestic structures does not automatically result from a misfit with European structures.

⁴ Tanja Borzel (2005) ‘EU Member Relations’, *The Member States of the European Union* (Oxford: Oxford University Press).

⁵ Claudio Radaelli (2003) ‘The Europeanization of Public Policy’, *The Politics of Europeanization* (Oxford: Oxford University Press), 34.

⁶ Tanja Borzel (2005) ‘EU Member Relations’, *The Member States of the European Union* (Oxford: Oxford University Press), 65.

⁷ See Green Cowles et. al eds. (2001) *Transforming Europe: Europeanization and Domestic Change* (Cornell: Cornell University Press); Tanja Borzel & Thomas Risse (2003) ‘Conceptualizing the Domestic Impact of Europe’, *The Politics of Europeanization* (Oxford: Oxford University Press).

⁸ Maria Green Cowles et. al eds. (2001) *Transforming Europe: Europeanization and Domestic Change* (Cornell: Cornell University Press), 1.

⁹ Tanja Borzel & Thomas Risse (2003) ‘Conceptualizing the Domestic Impact of Europe’, *The Politics of Europeanization* (Oxford: Oxford University Press).

Rather, as Green Cowles et al. (2001) argue, in the case of a misfit between European level and domestic structures, domestic change should only be expected in the presence of facilitating factors. However, as Ellen Mastenbroek (2005) points out, the ‘goodness-of-fit’ hypothesis has proved to be of limited value in explaining member state change in response to Europeanization pressures, and in particular member state compliance with European policy.¹⁰ She argues further that researchers have added ‘facilitating factors’ variables in response to the disappointing empirical results of the original ‘goodness-of-fit’ hypothesis and that, rather than adding variables to the equation, researchers should abandon the ‘goodness-of-fit’ hypothesis and focus instead on domestic politics to explain member state responses to Europeanization.¹¹

Mastenbroek and Kaeding (2006) argue that the ‘goodness-of-fit’ hypothesis assumes that policy-makers want to maintain the status quo at domestic level, while in reality they often seek to change the status quo. This point is relevant not only as a criticism of the ‘goodness-of-fit’ hypothesis, but also in terms of the relationship between ‘uploading’ and ‘goodness-of-fit’. As previously mentioned, the prevailing argument in the Europeanization literature is that member states attempt to ‘upload’ national policy preferences to European level, in order to reduce the costs of ‘downloading’ EU policy for implementation at domestic level. Based on this argument, it would be logical to assume that the success of a member state in ‘uploading’ domestic policy preferences to EU-level would lead to a good fit between EU policy and domestic policy. This is sometimes, but certainly not always the case. For example, when a government seeks to change domestic policy, but faces opposition at domestic level or lacks the political will to push through an unpopular policy reform, ‘uploading’ provides an opportunity for the member state government to include their preferences for domestic policy in EU-level policy, so shifting responsibility for change from the national to supranational level.¹² In this case, a government may succeed at ‘uploading’ policy preferences to EU-level, though this will not result in a good fit between EU and domestic policy.

To return to Mastenbroek and Kaeding’s point, even in the event that success at ‘uploading’ does result in a good fit between EU policy and domestic policy, this ‘goodness-of-fit’ will hold only as long as domestic policy preferences remain constant.¹³ In reality, domestic policy preferences tend to change quite frequently. For example, when a new majority is voted into government, or when an economic downturn leads the government to cut taxes at the expense of complying with deficit limits. Thus, as demonstrated by previous empirical studies, the ‘goodness-of-fit’ hypothesis is of limited use in explaining member state responses to Europeanization, and member state

¹⁰ ‘EU Compliance: Still a ‘black hole’?’, *Journal of European Public Policy* 12(6): 1103-1120.

¹¹ Ellen Mastenbroek and Michael Kaeding (2006) ‘Europeanization Beyond the Goodness of Fit: Domestic Politics in the Forefront’, *Comparative European Politics* 4: 331-354.

¹² Robert D. Putnam (1988) ‘Diplomacy and Domestic Politics: The Logic of Two-Level Games’, *International Organization* 42(3): 427-460.

¹³ Ellen Mastenbroek and Michael Kaeding (2006) ‘Europeanization Beyond the Goodness of Fit: Domestic Politics in the Forefront’, *Comparative European Politics* 4: 331-354.

compliance records, in the real-world context of shifting circumstances and domestic policy preferences.¹⁴

‘Reuploading’

Taking into account the arguments of Mastebroek & Kaeding (2006), there is a need to consider the Europeanization process beyond the static relationship between ‘uploading’ and ‘goodness-of-fit’ or ‘goodness-of-fit’ and compliance, because it is crucial to understand what happens next – what happens when a head of government ‘uploads’ his or her preferences for policy change at domestic level, but the domestic opposition blocks this change and so that member state does not comply with EU policy? What happens when a member state votes a new party into government and their first initiative is to roll back reforms that have been induced by EU policy? It is possible that these compliance problems are isolated and can be addressed with the mechanisms provided for at supranational level, but it might also be the case that policy non-compliance becomes widespread, or some shift in external circumstances precipitates a preference change amongst member states, and ultimately the EU policy in question must be reformed.

Along those lines, Jan Kaarlejarvi (2007) argues that the traditional Europeanization literature is incomplete, as it focuses on the ‘uploading’ and ‘downloading’ phases, but fails to account for what happens in the instance of significant implementation problems at the national level. While there is the aforementioned body of literature that seeks to explain compliance problems from the Europeanization perspective, this literature does not consider what happens when non-compliance is so problematic as to necessitate policy reform. Kaarlejarvi suggests a phase of ‘reuploading’ in the EU policy process, wherein member states attempt to renegotiate and reform original policy, in order to better suit their current policy preferences, after the failed implementation phase. Kaarlejarvi treats the process of ‘reuploading’ as largely similar to the process of ‘uploading’, though noting basic differences between the two, such as timing and changes in member state preferences. He uses an in-depth case study of Germany and the German relationship with EU rules for fiscal policy coordination, to show the progression from ‘uploading’ to ‘downloading’ and failed implementation to ‘reuploading’.¹⁵

Kaarlejarvi does not attempt to explain how or why Germany succeeded in ‘uploading’ national policy preferences for inclusion in the EU-level rules on fiscal policy coordination, namely the SGP, but rather takes this success as a starting point to consider why Germany met with such difficulty in implementing these rules, as well as how they responded to the unanticipated problems caused by the SGP. Nor does Kaarlejarvi attempt to explain why Germany succeeded at ‘reuploading’ policy preferences. Though he cites Germany’s economic and political power as the reason for success in both ‘uploading’ and ‘reuploading’, he offers no explanation as to how this power was effectively translated into securing the desired outcome in either case.¹⁶

¹⁴ Ellen Mastebroek (2005) ‘EU Compliance: Still a ‘black hole’?’, *Journal of European Public Policy* 12(6): 1103-1120.

¹⁵ Jani Kaarlejarvi (2007) *Fiscal Policy Without a State in EMU: Germany, the Stability and Growth Pact and Policy Coordination* (Basingstoke: Palgrave).

¹⁶ *Ibid.*, 232.

This is not so problematic, given that the focus of his research is more on the conditions that led to ‘reuploading’ than on the process itself, but it does represent a gap in the understanding of ‘reuploading’. In other words, as Kaarlejarvi’s work is the only extensive literature on this concept of ‘reuploading’, there is a need for further analysis of this phase in the policy process, in order to determine how and why it differs from ‘uploading’, as well as whether it is in fact the domain of the most economically and politically powerful member states. It is this gap in the literature that I aim to fill. Specifically, I will conduct a study of member states’ negotiation performance in the ‘uploading’ and ‘reuploading’ phases of the SGP, in order to highlight how differences between these two negotiation contexts make different resources relevant for negotiation success in each.¹⁷

The following table outlines differences between the ‘uploading’ and ‘reuploading’ phases in the EU policy process:

	‘uploading’	‘reuploading’
Phase in the policy process	Policy making	Policy reform
Default Condition	No EU-level policy	Same EU-level policy as that agreed in ‘uploading’ phase
Preference Composition	1.) Whether to establish an EU-level policy 2.) How EU-level policy should look	1.) Whether to reform existing EU-level policy 2.) How reformed policy should look
Interdependence	Asymmetrical – the default condition leaves some member states with better policy options than others	Symmetrical – the default condition leaves all member states with the same EU-level policy
Level of Distributional Conflict	High – some member states have much more to gain than others from agreeing an EU-level policy	Low – while some states, for example those experiencing compliance problems, may have more to gain than others from agreeing a reformed policy, the latter states risk experiencing negative externalities caused by states that cannot comply, in the absence of reform

Taking into consideration these differences between the two phases, it is essential to question Kaarlejarvi’s assumption that negotiations will only differ between them to the extent that member state preferences have changed.¹⁸ This project will take that step, by

¹⁷ This study is currently underway. Preliminary results expected early next year.

¹⁸ Jani Kaarlejarvi (2007), *Fiscal Policy Without a State in EMU: Germany, the Stability and Growth Pact and Policy Coordination* (Basingstoke: Palgrave), 232.

focusing on the distinctness of each negotiation context and the implications this has for member state negotiation performance in each.

Theoretical Framework

Having highlighted some distinctions between the ‘uploading’ and ‘reuploading’ phases in the EU policy process, the focus now turns to international negotiations in general. There is a wide body of literature that seeks to explain instances of international cooperation or coordination and the circumstances under which states agree to enter into cooperative agreements or coordinate their policies with other states.¹⁹ A common approach in this literature is to specify the type of collective action problem with which states are faced, and identify corresponding circumstances under which states are likely to reach negotiated agreements to address this type of problem, as well as determining the general institutional form the agreement is likely to take.²⁰ It is possible, using this approach, to demonstrate whether states have achieved negotiation success, in terms of whether or not an agreement has been reached. In other words, if the negotiating parties have made the decision to coordinate, rather than not coordinate, the negotiations have been successful. However, in order to demonstrate the relative success of one state or another, it is necessary to consider negotiation success beyond this dichotomy of coordination/non-coordination, and focus on the specific form of an agreement.

James Sebenius (1992) argues that an approach which seeks to explain negotiated outcomes in terms of a dichotomy between cooperation and defection is incomplete, and that it is necessary not only to consider whether agreement was reached, but also the distributive implications of an agreement.²¹ For the purpose of this project, it is useful to take both points into account, and combine an approach that analyses cooperative agreements in terms of the type of problem they attempt to solve, highlighting the specific circumstances of a negotiation process and the way these shape the general outcome of negotiations, with an approach that focuses on bargaining dynamics and resource capabilities, to understand the more specific features of an agreement.²²

Analysing international cooperation in terms of the type of problem negotiators try to solve and the corresponding strategies they will use to achieve a set of possible payoffs is broadly the game-theoretic approach to explaining international cooperation.²³ There is a wide body of literature that employs game-theoretic analysis to draw inferences about

¹⁹ See Robert O. Keohane (1984) *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press); Kenneth A. Oye (1985) ‘Explaining Cooperation Under Anarchy: Hypotheses and Strategies’, *World Politics* 38: 1-24.

²⁰ Geoffrey Garrett (1992) ‘International Cooperation and Institutional Choice: The European Community’s Internal Market’, *International Organization* 46(2): 533-560.

²¹ ‘Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities’, *International Organization* 46(1): 323-365.

²² Geoffrey Garrett (1992) ‘International Cooperation and Institutional Choice: The European Community’s Internal Market’, *International Organization* 46(2): 533-560.

²³ James K. Sebenius (1992) ‘Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities’, *International Organization* 46(1): 323-365.

state behaviour, the design of international institutions and other questions central to the study of international relations.²⁴ Koremenos et al. argue that game theoretic logic allows researchers to draw a connection between independent variables of circumstance and dependent variables of institutional design,²⁵ and as Sebenius puts it, game theory is of the 'structure determines outcome' school of thought.²⁶ The game-theoretic approach is useful in drawing a distinction between negotiations that take place in the 'uploading' and 'reuploading' phases of the policy process, because it highlights such factors as the type of problem, the choices and strategies available to players, and the potential payoffs from cooperation.

However, two weaknesses of a game-theoretic approach, with regard to this project, are a focus on general outcomes rather than specific distributive consequences, and a set of assumptions involved with formal game-theoretic analysis that do not often hold in real-world situations, including the EU negotiations I will analyse.²⁷ In his critique of game theory, Sebenius (1992) argues that these assumptions represent a crucial weakness in the literature that employs a game-theoretic analysis,²⁸ and Garrett (1992) emphasises the need to focus on the dynamics of bargaining in a real-world situation, in order to understand international agreements.²⁹ Along the same lines, rational choice theorists have examined institutional design with the aid of game-theoretic concepts, though without adopting wholly the game-theoretic approach to analysing international cooperation.³⁰ As the purpose of this study is to consider the relative influence of different states on the specific outcomes of negotiations, mediated by negotiation context, there is a great deal of relevance in the rational choice institutionalist literature, as well as in literature on bargaining dynamics and resource capabilities.³¹

Alternative to Negotiated Agreement

In terms of resource capabilities, many authors have argued that a party's preference intensity, which derives from their unilateral alternative, is the key determinant of their

²⁴ See Duncan Snidal (1985) 'The Game Theory of International Politics', *World Politics* 38(1): 25-57; Barbara Koremenos et al. (2001) 'The Rational Design of International Institutions', *International Organization* 55(4): 761-799; Lisa L. Martin (1992) 'Interests, Power and Multilateralism', *International Organization* 46(4): 765-792.

²⁵ 'The Rational Design of International Institutions', *International Organization* 55(4), 774-775.

²⁶ 'Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities', *International Organization* 46(1), 347.

²⁷ Oran R. Young (1989) 'The Politics of International Regime Formation: Managing Natural Resources and the Environment', *International Organization* 43(3), 357-358.

²⁸ 'Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities', *International Organization* 46(1): 323-365.

²⁹ 'International Cooperation and Institutional Choice: The European Community's Internal Market', *International Organization* 46(2): 533-560.

³⁰ Gerald Schneider & Mark Aspinwall eds. (2001) *The Rules of Integration: Institutional Approaches to the Study of Europe* (Manchester: Manchester University Press).

³¹ See Geoffrey Garrett (1992) 'International Cooperation and Institutional Choice: The European Community's Internal Market', *International Organization* 46(2): 533-560; Stephen D. Krasner (1991) 'Global Communication and National Power: Life on the Pareto Frontier', *World Politics* 43(3): 336-366.

bargaining performance.³² Andrew Moravcsik has written extensively on patterns of asymmetrical interdependence (the relationship between states' preference intensities) and their role in shaping treaty decisions throughout the history of European integration. Specifically, Moravcsik argues that the distributive results of interstate bargaining can be predicted to a first approximation using Nash bargaining theory, which holds that the states with most to gain from the core agreement, relative to unilateral alternatives, tend to offer greater compromises to secure agreement.³³

With regard to intergovernmental negotiations in the EU, this means that those member states most satisfied with their domestic policy options, relative to formal EU-level cooperation, will be most able to shape any EU policy that is agreed. On the other hand, those member states least satisfied with their alternatives to agreement will be limited in their potential to shape EU-level policy. With this in mind, I define alternative to negotiated agreement as the default condition for a member state in case of no agreement. Therefore, the quality of a member state's alternative to negotiated agreement is directly related to their satisfaction with the status quo.³⁴

While there has been no systematic attempt to measure member state alternatives to agreement in the 'uploading' and 'reuploading' phases of the SGP negotiations, Moravcsik (1998), in an investigation into the Maastricht Treaty negotiations, provides useful indicators for the quality of member states' alternatives, which can be adapted for the purposes of this study. Specifically, Moravcsik highlights such factors as currency stability, trade relationships and domestic opinion as determinants of member state bargaining power over the EMU arrangement, which he argues derives from the quality of their alternative to agreement.³⁵

In a study of four competing theoretical explanations for the establishment of the SGP, which includes an intergovernmental approach, Martin Heipertz and Amy Verdun cite similar indicators to Moravcsik's as determinants of the strength of member state bargaining positions during the original SGP negotiations. Heipertz and Verdun add importance to the completion of EMU and the legitimacy, or otherwise, of walking away from EMU as further factors. The same authors, in an analysis of the SGP reform negotiations, consider member state debt and deficit levels, as well as past experience with the Excessive Deficit Procedure (EDP) as indicators of preference intensity for reform.³⁶

³² See David A. Lax & James K. Sebenius (1985) 'The Power of Alternatives or the Limits to Negotiation', *Negotiation Journal* 1(2): 163-179; Andrew Moravcsik (1998) *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press).

³³ Andrew Moravcsik (1998) *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press).

³⁴ David A. Lax & James K. Sebenius (1985) 'The Power of Alternatives or the Limits to Negotiation', *Negotiation Journal* 1(2): 163-179; Andrew Moravcsik (1998) *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press).

³⁵ *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press).

³⁶ Martin Heipertz & Amy Verdun (2010) *Ruling Europe: The Politics of the Stability and Growth Pact* (Cambridge: Cambridge University Press).

Thus, in the ‘uploading’ phase of negotiations, the quality of a member state’s alternative to agreement is understood to derive from their satisfaction with existing domestic policy options, while in the ‘reuploading’ phase of negotiations, it relates to their satisfaction with existing supranational policy. In other words, where unilateral alternative is not a feasible option, because states are locked into cooperation, the quality of a state’s alternative to agreement depends on their willingness or otherwise to maintain the common EU policy they have set out to reform. It seems unlikely, then, that a good alternative to agreement is as relevant for influencing negotiation outcomes when the status quo is existing supranational policy, rather than domestic policies.

This question recalls the rational choice institutionalist approach that emphasises strategic action mediated by institutional design in explaining the outcome of negotiations. That is, where the institution, or context, in ‘reuploading’ is different from that in ‘uploading’, the choices and strategies available to players, as well as the potential payoffs, differ accordingly. It is necessary to consider the impact of this changing context between ‘uploading’ and ‘reuploading’, in terms of which bargaining resources are essential to influence negotiations in each phase.

Information

I define information as knowledge about participants’ policy positions, the reasons behind those positions, and the level of salience attached to them.³⁷ The more information a member state has, the more able that state is to locate common ground and propose a compromise that is nearest to their own preferences within that range of common ground.³⁸ In other words, if a negotiator only knows the positions stated at formal negotiation rounds, and is unaware of the favoured policy alternatives behind those positions, then there is little opportunity for that negotiator to locate room for manoeuvre and potential concessions that would move the parties closer to a common position, let alone a position favoured by that negotiator.³⁹

Having found a lack of useful measurements in the literature on state information levels in international negotiations, I have surveyed the literature on international negotiations, and EU negotiations in particular, to identify objective and reliable measurements. This process led to the following indicators of member state information levels: frequency of participation in informal meetings outside the direct negotiating sphere, frequency of bilateral meetings with other member state representatives, number of other member states with which bilateral meetings are held, frequency of contact with Commission representatives and frequency of contact with representatives from the Council Secretariat.

With regard to the fourth and fifth indicators, it is argued widely in the literature on EU negotiations that the Commission and Council Secretariat have an informational advantage over member states in the Council, both because of institutional resources and,

³⁷ Daniel Naurin (2009) ‘Most Common When Least Important: Deliberation in the European Union Council of Ministers’, *British Journal of Political Science* 40: 31-50.

³⁸ David A. Lax & James K. Sebenius (1986) ‘Interests: The Measure of Negotiation’, *Negotiation Journal* 2(1): 73-92.

³⁹ Jonas Tallberg (2008) ‘Bargaining Power in the European Council’, *Journal of Common Market Studies* 46(3): 685-708.

particularly in the case of the latter, their roles as relative neutrals.⁴⁰ Thus, frequent contact with representatives from these institutions would be an important source of information for member state representatives.

Regarding the first indicator, in a study by Paul Meerts of the perceptions of small member states negotiating in the EU, all participants (numbering 50) indicated in a survey that informal contacts outside of official meetings are an important source of information for negotiators in the EU.⁴¹ Along the same lines, Jonas Tallberg cites bilateral meetings and informal communications with government representatives as crucial to increasing preference information for the Council Presidency.⁴² Also on the subject of the Council Presidency, Alain Guggenbuhl highlights the need for national representatives of the Presidency state to approach other delegations or participate with them in informal meetings to increase information.⁴³

It is possible that these tactics apply only to the state holding the Council Presidency, though neither author indicates this. One point to consider, in this regard, is whether the member state holding the Presidency would be able to gain information through the aforementioned strategies, because the holder is seen as a neutral mediator, while a state that was not holding the Presidency would be unable to do so, failing to inspire the same trust. Considering Tallberg's own argument that member states are aware of the tendency for the Presidency state to use this role to further important national aims or construct compromises closer to their preferred position,⁴⁴ it seems that any other member state would be able to gain information through the same channels as those pursued by the state holding the Presidency.

In addition to this, I do not conceptualise information level as the extent to which some member states have been more or less deceived about the true preferences of others, but rather the differential extent to which member states are aware of the policy positions behind the stated negotiation positions taken by others, and thus the potential to locate common ground and ultimately a compromise. According to an experienced prime minister quoted in Tallberg (2008), “ ‘The real problem of the European Council is that the majority of the members [...] do not have the time or do not take the time to be totally informed’ ”.⁴⁵ The indicators described here should demonstrate the extent to which

⁴⁰ See Paul W. Meerts & Franz Cede eds. (2004) *Negotiating European Union* (Basingstoke: Palgrave); Derek Beach (2005) *The Dynamics of European Integration: Why and When EU Institutions Matter* (Basingstoke: Palgrave).

⁴¹ Paul Meerts (1997) ‘Negotiating in the European Union: Comparing Perceptions of EU Negotiators in Small Member States’, *Group Decision and Negotiation* 6: 463-482. This study focused on small member states because the response rate from large member states was deemed too low to be representative. There is nothing in the study to suggest that this source of information is particular to small states.

⁴² Jonas Tallberg (2006) *Leadership and Negotiation in the European Union* (Cambridge: Cambridge University Press); Jonas Tallberg (2008) ‘The Power of the Chair: Formal Leadership by the Council Presidency’, *Unveiling the Council of the European Union: Games Governments Play in Brussels* (Basingstoke: Palgrave).

⁴³ Alain Guggenbuhl (2004) ‘Cookbook of the Presidency of the European Union’, *Negotiating European Union* (Basingstoke: Palgrave).

⁴⁴ Jonas Tallberg (2006) *Leadership and Negotiation in the European Union* (Cambridge: Cambridge University Press), 2, 11.

⁴⁵ ‘Bargaining Power in the European Council’, *Journal of Common Market Studies* 46(3), 702.

member states have taken the time to be informed and, hence, the level of information they hold.

Expertise

While it is common in the literature to differentiate between content expertise, process expertise and preference information,⁴⁶ I will consider only content expertise (henceforth referred to as expertise), defined as technical knowledge of the issues under negotiation.⁴⁷ International negotiations often involve complex technical issues, a thorough understanding of which is difficult to accomplish across all levels of a state's delegation. Those states with superior technical knowledge are better positioned to identify potential agreements, which provides for greater opportunity to shape the final compromise in their own favour.⁴⁸ Hence expertise is an important determinant of negotiation performance.

While any attempt to measure states' expertise in policy negotiations must be fairly context-specific, there are some indicators from the wider literature on EU negotiations that can be applied to measure state expertise in the SGP negotiations. For example, in his research into the role of expertise in European Council negotiations, Jonas Tallberg (2008) finds that differences between heads of state and government, in terms of expertise, are especially pronounced in the European Council due to the deliberate separation of the former from national civil servants in that forum. Tallberg suggests that where heads of state and government have served previously as portfolio ministers for the policy area under negotiation, they bring a significant advantage in expertise to negotiations in the European Council.⁴⁹ Experience in the economics/finance ministry should afford heads of state and government the advantage in expertise that Tallberg refers to here, in the SGP negotiations that I will analyse.

A common argument in the literature on EU negotiations is that there is a need to balance between expertise and skill, with the former provided by civil servant negotiators from national ministries, and the latter by diplomatic negotiators from the Permanent Representation.⁵⁰ Thus, in the SGP negotiations that I will consider, civil servant negotiators from the national economics/finance ministry indicate a higher level of expertise for their delegation than do Permanent Representative negotiators. However, following from the aforementioned findings of Tallberg, where the Permanent Representative in a delegation has a background in the economics/finance ministry, this would compensate for any loss of expertise compared with a civil servant negotiator.

Bargaining Skill

Where states favour sending Permanent Representatives rather than civil servants to negotiations, regardless of expertise potentially afforded by the background of the Permanent Representative, this can be understood to result from the aforementioned need

⁴⁶ Jonas Tallberg (2008) 'Bargaining Power in the European Council', *Journal of Common Market Studies* 46(3), 700.

⁴⁷ Ibid., 701.

⁴⁸ Ibid.

⁴⁹ Ibid., 701-702.

⁵⁰ Paul W. Meerts & Franz Cede eds. (2004) *Negotiating European Union* (Basingstoke: Palgrave).

to incorporate skill in EU negotiations.⁵¹ It is a constant challenge for member state delegations to coordinate a clear negotiating position and to present that position in the form of compromise proposals that others will be willing to accept.⁵² It is similarly difficult to respond to proposals in a timely manner, especially as negotiations gain pace nearer to reaching an agreement.⁵³ Skilful bargaining is essential to meeting these challenges in complex, multilateral negotiations, and member states that lack the skills to do so will be less able to influence the final negotiated agreement. With these points in mind, I define skill as a party's virtuosity in the bargaining process.⁵⁴

While definitions of bargaining skill range widely, both across the literature on EU negotiations and on international negotiations in general,⁵⁵ there emerges consistent reference to a few indicators of bargaining skill. In a study into the skill of different EU member states, across a range of policy areas, Stefanie Bailer asked expert interviewees to estimate the skill levels of their negotiation counterparts on a scale of 0-100, and respondents also provided qualitative explanations to support the scores they assigned.⁵⁶ Bailer reports some of these responses, from which I was able to identify consistency of position across different levels of the delegation as a most often cited indication of bargaining skill. In addition to the findings reported by Bailer, it is common in the broader negotiation literature to highlight consistency of position as a key element of bargaining skill.⁵⁷

There is an argument in the literature on international negotiations that bargaining skill is essential to carrying out the complex task of composing compromise proposals, and that delegations lacking this skill will be in the position of having to respond to the proposals put forward by others.⁵⁸ Hence, outward consistency of position across different levels of the delegation and number of proposals put forward over the course of negotiations should prove useful indicators of member state bargaining skill in the SGP negotiations. Related to the aforementioned argument, that there is a need to balance between expertise and skill in EU negotiations,⁵⁹ the presence of Permanent Representative negotiators, as opposed to economics/finance ministry officials, should offer further indication of member state bargaining skill.

⁵¹ Paul W. Meerts & Franz Cede eds. (2004) *Negotiating European Union* (Basingstoke: Palgrave).

⁵² I. William Zartman & Jeffrey Z. Rubin eds. (2000) *Power and Negotiation* (Ann Arbor: Michigan University Press).

⁵³ Paul W. Meerts & Franz Cede eds. (2004) *Negotiating European Union* (Basingstoke: Palgrave).

⁵⁴ Stefanie Bailer (2006) 'The Dimensions of Power in the European Union', *Comparative European Politics* 4, 360.

⁵⁵ Ibid.

⁵⁶ Stefanie Bailer (2004) 'Bargaining Success in the European Union: The Impact of Exogenous and Endogenous Power Resources', *European Union Politics* 5(1): 99-123.

⁵⁷ See I. William Zartman & Maureen R. Berman (1982) *The Practical Negotiator* (New Haven: Yale University Press).

⁵⁸ I. William Zartman & Jeffrey Z. Rubin eds. (2000) *Power and Negotiation* (Ann Arbor: Michigan University Press).

⁵⁹ Paul W. Meerts & Franz Cede eds. (2004) *Negotiating European Union* (Basingstoke: Palgrave).

While the four bargaining resources outlined above do not represent an exhaustive list of resources that member states can utilise to influence negotiations, they are cited widely in the literature on international negotiations, as well as literature on EU negotiations in particular,⁶⁰ and so an exploration into their differential importance in distinct negotiation contexts represents a fruitful contribution to both bodies of literature.

Research Design

I will employ a qualitative comparative approach in this study. My unit of analysis is EU member state negotiations, and I have selected the SGP as the policy area of focus. I will cover the original ('uploading') and reform ('reuploading') negotiations over the SGP, which took place from December 1995–June 1997 and September 2004–March 2005, respectively. I will study the negotiation performance of four member states—Belgium, France, Germany, the Netherlands—in the 'uploading' and 'reuploading' phases of the SGP negotiations.⁶¹

My dependent variable is member state negotiation performance, and I have identified different levels of key bargaining resources, interacting with negotiation context, as the main explanatory factor for member state negotiation performance. I will consider the impact of different levels of these resources – the independent variables – on member state negotiation performance in each phase.

Dependent Variable

I define negotiation performance as the extent to which a member state has influenced negotiations with the result that the negotiated agreement is close to, or similar to, the policy positions of that state over issues negotiated. I will operationalise negotiation performance as the distance between actors' policy positions and the negotiated agreement.⁶² This distance will be considered qualitatively, in terms of the

⁶⁰ See I. William Zartman & Maureen R. Berman (1982) *The Practical Negotiator* (New Haven: Yale University Press); David A. Lax & James K. Sebenius (1985) 'The Power of Alternatives or the Limits to Negotiation', *Negotiation Journal* 1(2): 163-179; Andrew Moravcsik (1998), *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press); Stefanie Bailer (2004) 'Bargaining Success in the European Union: The Impact of Exogenous and Endogenous Power Resources', *European Union Politics* 5(1): 99-123; Jonas Tallberg (2008), 'Bargaining Power in the European Council', *Journal of Common Market Studies* 46(3): 685-708.

⁶¹ Discussion of the criteria for case selection is beyond the scope of this paper. For further information, please contact the author directly.

⁶² As measured in Stefanie Bailer (2004) 'Bargaining Success in the European Union: The Impact of Exogenous and Endogenous Power Resources', *European Union Politics* 5(1): 99-123; Derek Beach (2005), *The Dynamics of European Integration: Why and When EU Institutions Matter* (Basingstoke: Palgrave); Madeleine O. Hosli (2000) 'The Creation of the European Economic and Monetary Union (EMU): Intergovernmental Negotiation and Two-level Games', *Journal of European Public Policy* 7(5): 744-766.

similarities and/or differences between states' original policy positions and issue outcomes in the final agreement.

Researchers that have used this measurement in the past point out the risk of counting accidental successes as real influence. For example, a member state's policy position might match exactly with a particular issue outcome in the negotiated agreement, but this could be due to luck.⁶³ A further risk is that a member state could deliberately choose a moderate policy position going into negotiations, so as to appear successful, while a state with a more extreme position had more work to do in moving the negotiated agreement closer to their favoured outcome.⁶⁴ With regard to the first issue, my methodology will allow me to distinguish between luck and genuine influence, as I will investigate the whole process of negotiations, and the specific resources used to wield influence throughout, rather than simply the start and end points. I will address the second issue also through qualitative investigation of the whole process of negotiations, as well as case selection.

Specifically, the SGP addresses this problem in two ways. First, the saliency of relinquishing any sovereignty in such a politically sensitive realm as fiscal policy would have dissuaded member states from choosing a more moderate position than reflected their true preferences, just to claim negotiation success. This would have been even more pronounced in the 'reuploading' phase, where choosing a position that did not reflect true preferences could have led to such consequences as the initiation of the EDP against the state in question or membership in an unstable currency union, neither of which seem acceptable trade-offs for claiming negotiation success.

Second, both phases of SGP negotiations involved a multitude of issues that had to be agreed for the policy to come into effect, and I will treat each issue within the dossier separately. Rather than considering negotiation performance only in terms of the whole negotiated agreement, I will consider member states' negotiation performance on each individual issue, so minimising the effects of accidental success or apparent success based on a median position. In other words, the likelihood of a state being lucky, rather than influential, and/or of a state choosing the median position over the whole range of issues, is extremely low.

I will measure member state policy positions immediately following the introduction of the Commission proposal in both phases,⁶⁵ and will compare these positions with the actual issue outcomes in the original and reformed SGP. In order to carry out this comparison, I will submit the documents establishing the original and reformed SGP, along with documents I have compiled outlining member state policy positions, to a computerised word scoring program, which identifies similarities and differences between two texts.⁶⁶

⁶³ Brian Barry (1980) 'Is it Better to be Powerful or Lucky? Part 2', *Political Studies* 28(3): 338-352.

⁶⁴ Stefanie Bailer (2010) 'What Factors Determine Bargaining Power and Success in EU Negotiations?', *Journal of European Public Policy* 17(5): 743-757.

⁶⁵ As measured in Robert Thomson et. al eds. (2006) *The European Union Decides* (Cambridge: Cambridge University Press).

⁶⁶ This technique is used by Benoit et. al (2005) in researching delegate positions at the Convention on the Future of Europe.

Independent Variables

Alternative to Negotiated Agreement

The quality of a member state's alternative to agreement is a crucial determinant of their bargaining performance, provided it is a viable resource in the given negotiation context. I set out the following hypotheses regarding alternative to agreement:

H1: The more attractive an alternative to agreement a member state has, the more successful that state will be in negotiations.

H1A: A good alternative to agreement is more important for negotiation success in the absence of EU-level policy, as is the case in the 'uploading' phase, than in the presence of EU-level policy, as is the case in the 'reuploading' phase.

I will consider the following indicators of the attractiveness of a member state's alternative to agreement during the 'uploading' phase of SGP negotiations: currency stability – the more stable a member state's currency, the less urgent the need for enhanced credibility from the common currency; domestic opinion toward EMU membership – the more domestic opinion favoured EMU membership, the more costly for the government if the project did not go forward or the state in question failed to qualify, while the more opposed domestic opinion was, the more legitimate it would have been for the state to withdraw; the likelihood of key trading partners gaining membership – it would be potentially more costly, both politically and economically, for a state to walk away from EMU if their key trading partners adopted the common currency; and whether the state was pivotal to the project going ahead – if a state's exit from negotiations means the termination of the project, than any concern about the costs of non-participation are moot.

In the case of reform negotiations over the SGP, the alternative to agreement for all member states would have been to continue with the SGP as it stood. Thus, indicators of the attractiveness of a member state's alternative to agreement during the 'reuploading' phase are: whether the state had been subject to the initiation of the EDP – having already reduced deficit levels in line with the existing EDP, the need for a state to secure a weakening of the rules would be less urgent than for a state that was unsure of how their government and public would cope with initiation of the EDP, and a state that had already been subject to the EDP would be less willing to see other member states escape that process through securing reforms to weaken the SGP; whether the state had a deficit level close to the SGP reference value – a state that was likely to breach the ceiling provided for under the original SGP would have a stronger preference for reforms than a state that did not face the impending threat of sanctions under the original arrangement; and whether the state had a debt level close to the SGP reference value – a state with a high debt level may have preferred an overall weakening of the pact, but

would have preferred the status quo arrangement to a reform deal that shifted the focus of the EDP from deficit to debt levels.

Information

The level of information a member state holds is a crucial determinant of negotiation performance, and a higher level of information should improve performance, though this will be mediated by the presence/absence of a state that will exit negotiations rather than compromise. I set out the following hypotheses regarding information:

H2: The more information a member state has, the more successful that state will be in negotiations.

H2A: Information is more important for negotiation success in the presence of EU-level policy, as is the case in the ‘reuploading’ phase, than in the absence of EU-level policy, as is the case in the ‘uploading’ phase.

I will consider the following indicators of member state information levels: frequency of participation in informal meetings outside the direct negotiating sphere, frequency of bilateral meetings with other member state representatives, number of other member states with which bilateral meetings are held, frequency of contact with Commission representatives and frequency of contact with representatives from the Council Secretariat.

Expertise

A high level of expertise can generally be expected to improve negotiation performance. However, as the usefulness of expertise is in working through the complexity of issues to identify potential agreements, when the range of agreements is fixed by a state that will walk away from negotiations rather than shift its position, no amount of technical knowledge is likely to change that. With this in mind, I set out the following hypotheses regarding expertise:

H3: The more expertise a member state has, the more successful that state will be in negotiations.

H3A: Expertise is more important for member state negotiation success in the presence of EU-level policy, as is the case in the ‘reuploading’ phase, than in the absence of EU-level policy, as is the case in the ‘uploading’ phase.

I will consider the following indicators of expertise: fit between pre-EMU monetary policy and monetary policy of the ECB, whether any of the state’s delegation during the ‘uploading’ phase had been present during the Maastricht negotiations over EMU, whether any of the state’s delegation during the ‘reuploading’ phase had been present during the Maastricht negotiations over EMU and/or the ‘uploading’ phase of negotiations, whether the head of state or government had served as Economics/Finance Minister or in the economics/finance ministry, whether negotiators below Ecofin level

were Permanent Representatives or economics/finance ministry officials, and whether Permanent Representative negotiators had worked in the economics/finance ministry.

As previously stated, any indicators of expertise are fairly context-specific, though I have found some relevant indicators from the literature on EU negotiations and will justify as clearly as possible the other indicators selected.⁶⁷ With regard to the first indicator, a member state with a history of stability-oriented monetary policy similar to the policy mandated for the ECB under the Maastricht Treaty would be able to call upon a wider body of technical knowledge regarding complimentary fiscal policy than would a state with less experience implementing stability-oriented monetary policies.

With regard to the second indicator, much of the original SGP negotiations were dominated by the issue of keeping the SGP within the remit of the Maastricht Treaty, so that Treaty amendments would not be necessary for its passage. Thus, a negotiator that had participated in the Maastricht negotiations would afford their delegation a higher level of technical knowledge of the issues under negotiation than if no such negotiator was present in the delegation. The same point stands, with regard to the third indicator. In addition to this, in the 'reuploading' phase, where a negotiator was present also during the original SGP negotiations, their delegation can be expected to have a higher level of technical knowledge of the issues under negotiation than a delegation with no such negotiator.

Bargaining Skill

A high level of bargaining skill should improve member state negotiation performance, yet, while skilful bargaining enables a member state to manoeuvre more easily within the potential zone of agreement, bargaining skill is not a resource that can shift the agreement outside of a fixed zone. Thus, I set out the following hypotheses regarding bargaining skill:

H4: The more bargaining skill a member state has, the more successful that state will be in negotiations.

H4A: Bargaining skill is more important for member state negotiation success in the presence of EU-level policy, as is the case in the 'reuploading' phase, than in the absence of EU-level policy, as is the case in the 'uploading' phase.

I will consider the following indicators of bargaining skill: outward consistency of position across different levels of the delegation, number of proposals put forward over the course of negotiations and whether negotiators below Ecofin level were Permanent Representatives or officials from the national economics/finance ministry.

Conclusion

This paper has explained how and why the 'uploading' and 'reuploading' phases in EU-level negotiations can be expected to favour different participants, resulting from the differential importance of distinct bargaining resources in each phase. First, key conceptual distinctions between 'uploading' and 'reuploading' were introduced, followed

⁶⁷ Explanation of indicators four, five and six provided in *Expertise* section of the literature review.

by a theoretical framework through which to analyse these negotiation contexts. The link was then drawn between distinct negotiation contexts and the resultant importance of four bargaining resources in each context. After reviewing the effect of each bargaining resource on negotiation performance, a research design was outlined for the purpose of testing several hypotheses put forward, regarding the relative importance of each of these resources in the 'uploading' and 'reuploading' phases of EU-level negotiations.

While this study is still ongoing, it is worth noting that this is a broad topic and there is a wealth of EU policy areas, as well as other international organisations, within which to test the arguments made here. There is also the possibility to undertake a comparative approach, examining the extent to which these claims are applicable across different policy areas and organisations. I hope that by introducing this topic and a framework through which to analyse it, readers will be encouraged to pursue research into the impact of negotiation contexts on states' influence in the EU and other bodies.