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978-0-521-86405-3 - Explaining Decisions in the European Union

Arne Niemann

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## Introduction

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This book seeks to explain outcomes of EU decision-making. It aims at identifying the factors most relevant for such explanation. For this purpose, the study analyses the interplay of the various supranational, governmental and non-governmental actors involved in decision-making along with supranational, domestic and international structures influencing the process. In the last decade many researchers have shifted their attention to questions such as the nature of the EU political system, the social and political consequences of the integration process and the normative dimension of European integration. However, the issue of explaining outcomes of EU decision-making, which has occupied scholars since the 1950s, is still a very important one. The ongoing salience of this question partly stems from the continuing disagreement among analysts as regards the most relevant factors accounting for the dynamics and standstills of the European integration process and certain segments of it. In addition, this question is of particular interest since the integration process is moving into areas which are commonly referred to as 'high politics', spheres that some researchers had factored out of their theories.

Political processes cannot be viewed in a theoretical vacuum since our analysis is always based on certain assumptions and concerns. Hence, empirical findings are always inspired by some theoretical perspective, perhaps without the researcher being aware of it. Theoretical frameworks structure our observations and are useful in terms of choosing variables and collecting data for conducting empirical research.<sup>1</sup> In the past decade European integration theory has become a growth industry among scholars focusing on the European Union. Yet, the object of investigation and the research question considerably limit the choice of theory. Most approaches devised for the study of the European Union or regional integration more generally are not applicable for my purpose.<sup>2</sup>

<sup>1</sup> See e.g. King *et al.* (1994: ch. 1).

<sup>2</sup> The next paragraph draws on Wiener and Diez (2004: 241). I largely share the authors' categorisation. However, a clear-cut classification along the functions of 'explanatory/understanding', 'analytical/descriptive' and 'critical/normative' and along the areas of

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For example, some of the more recent theorising does not share my focus on seeking to *explain* outcomes. Instead, they aim at *describing* or at *providing a normative or critical perspective*, like federalist, gender/critical perspectives or part of legal theorising and discourse analysis.<sup>3</sup> In addition, along the triad of *polity*, *politics* and *policy*, my analysis primarily focuses on the former two, polity and politics. The area of *polity* mainly involves the explication of certain institutional changes. The *politics* dimension deals with the impact of certain (groups of) actors on outcomes and the style of how decisions are reached. The *policy* (i.e. content of a policy) dimension of my study is relevant only in so far as policy changes influence the strength and scope of the EU polity and certain political actors and processes. My focus on polity and politics renders policy network analysis and the explanatory variants of discourse analysis, which are more geared towards the policy dimension, less plausible as a theoretical choice. New institutionalism (in its rational choice, historical and sociological variants) does share an interest in the politics dimension, but less so as regards polity, and thus does not seem an ideal choice either. Governance theory, which is sometimes viewed as a catch-all theory, arguably also does not have its core competencies at explaining outcomes along the polity/politics dimension. Only few theories, such as neofunctionalism, (liberal) intergovernmentalism and, to a lesser extent, fusion theory, operate at the nexus of explaining, on the one hand, and the interface of polity and politics, on the other hand.<sup>4</sup>

In this study, neofunctionalism has been chosen as a point of departure. This is only partly due to the restricted choice of theoretical endeavours that tend to have their core competencies in my research problem area. My prior research has indicated the general usefulness of neofunctionalist insights concerning this type of inquiry.<sup>5</sup> Moreover, it suggests that several of the criticisms that were levelled against the theory were either exaggerated or unjustified, that the theory has been misread by a number of authors, and that it is possible to draw on a wider neofunctionalist theoretical repertoire than the one commonly

'polity', 'policy' and 'politics' is not always possible. These categorisations are thus merely meant to reflect tendencies.

<sup>3</sup> On federalist theory see e.g. Pinder (1986); on gender perspectives see e.g. Mazey (2000); on 'critical' discourse analysis see e.g. Derrida (1992).

<sup>4</sup> On policy network analysis see e.g. Peterson and Bomberg (1999); on the explanatory variant of discourse analysis see e.g. Diez (1999); on new institutionalism of the various types see e.g. Aspinwall and Schneider (2001a, 2001b); on governance theory see e.g. Jachtenfuchs (2001); on the fusion approach see e.g. Wessels (1997); on liberal intergovernmentalism see e.g. Moravcsik (1993, 1998). Various important neofunctionalist works will be introduced below.

<sup>5</sup> See Niemann (1996, 1998, 2000) for earlier stages of my research on this question.

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perceived. In addition, my previous work indicates that neofunctionalism is best understood as a dynamic theory<sup>6</sup> – due to its inherent propensity for self-reflection as well as the time sensitivity of several neofunctionalist assumptions made almost five decades ago – and that many of the more recent micro-level concepts can sensibly be accommodated within the larger neofunctionalist framework<sup>7</sup>. The apparent possibility of developing and modifying neofunctionalism in a meaningful way was in stark contrast to the general lack of enthusiasm in the scholarly community to use, revive or revise neofunctionalist theory.<sup>8</sup> This discrepancy puzzled and encouraged me to undertake a more comprehensive investigation into the state and validity of neofunctionalism and the possibility of revising it. Apart from specifying and modifying neofunctionalist theory, this book also aims at testing the revised neofunctionalist hypotheses set out in Chapter 1.

The revised neofunctionalist framework has been tested on three case studies: first, the Poland and Hungary: Aid for Restructuring of the Economies (PHARE) programme which originated from the G7 summit in July 1989, when heads of government decided to give the mandate for the Western aid effort to the Commission. This task has subsequently led to the development of the Community's own aid initiative, the PHARE programme, which subsequently turned into an important part of the EU's pre-accession strategy for integrating the Central and Eastern European Countries (CEEC) into the Union. The second case study is concerned with Treaty revision in the area of the Common Commercial Policy (CCP). The main focus lies at the 1996/97 IGC negotiations on the reform of the external trade policy and is complemented by an analysis of negotiations concerning the IGC 2000 as well as the Convention and IGC 2003/04. The final case study traces the negotiations concerning the communitarisation of visa, asylum and immigration policy at the Intergovernmental Conferences leading to the Treaties of Amsterdam and Nice and the Constitutional Treaty. This case again primarily concentrates on the IGC 1996/97 but also takes the last two Treaty revisions duly into account.

My case studies have been chosen on empirical, theoretical and methodological grounds. Empirically, the above make for interesting cases.

<sup>6</sup> On this point, see also Rosamond (2005: esp. 247ff).

<sup>7</sup> See Niemann (1998).

<sup>8</sup> Only recently has there been renewed interest in neofunctionalist theorising. See e.g. JEPP Special Issue (2005), which paid tribute to Ernst Haas, who had passed away in 2003. Towards the end of his career Haas (2001, 2004) himself again reflected upon neofunctionalist theory. Only few authors today seem to work in the neofunctionalist tradition (see Stone Sweet and Sandholtz 1997; Caporaso and Stone Sweet 2001), and apart from Schmitter (2004) there are no recent explicit attempts to revise the theory.

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We will look at: first, one of the highest foreign policy responsibilities ever granted to the Community; second, temporary stagnation – if not regression – in one of the oldest and most integrated areas of Community policy which eventually led to progress in the last Treaty revision exercise; and finally, the field which has been described as the decisive battlefield in the struggle between the pre-eminence of the nation-state and supranational integration in Europe and which has arguably become the most dynamic area of European integration.<sup>9</sup> In theoretical (and methodological) terms, the above cases provide a variance between routine policy-making and history-making decisions as well as between external relations and the internal dimension of the Community. This is valuable because the theoretical scope of models is more thoroughly challenged and ascertained on diverse settings.<sup>10</sup> The most important consideration for my case selection was methodological. From a methodological perspective, my cases have been selected in order to ensure variation on the dependent variable. As will be further elaborated in Chapter 1, this is important in order to avoid selection bias and to establish some degree of positive causality between hypothesised pressures and decision-making outcomes.

### Outline of the Book

The book is structured as follows: Chapter 1 specifies my theoretical framework and research design and thus provides the basis for subsequent empirical analysis. Chapters 2, 3 and 4 contain my case studies on the PHARE programme, the reform of the Common Commercial Policy and the communitarisation of visa, asylum and immigration policy, respectively. In Chapter 5, I draw some conclusions from my findings in the preceding chapters.

Chapter 1 starts by stating the core assumptions and main concepts of the original neofunctionalist approach before dealing with the criticisms levelled against it. Taking early neofunctionalism as a starting point, the second part of this chapter specifies the revised neofunctionalist framework which departs from the original approach in several ways: a more explicitly ‘soft’ constructivist ontology is formulated (and combined with the ‘soft’ rational-choice ontology of Haas’s neofunctionalism) along with a more equal ontological status between structure and agents. Integration is no longer viewed as an automatic and exclusively dynamic process, but rather occurs under certain conditions and is

<sup>9</sup> See e.g. Monar (1998a: 137ff).

<sup>10</sup> Caporaso (1995: 457–60) emphasises this point in his discussion of falsification and delimitation of theory.

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better characterised as a dialectic process, i.e. the product of both dynamics and countervailing forces. In addition, instead of a grand theory, the revised approach is understood as a wide-ranging, but partial, theory. Moreover, the ‘end of ideology’ and ‘unabated economic growth’ assumptions, which were particularly time sensitive, are buried. And while elites are still attributed a primary role for decision outcomes, the wider publics are assumed to impact on the evolution of the European integration process, too.

In addition, I hold that the explanatory variables need to be further developed and specified: perhaps most obviously, countervailing forces, mainly in the form of domestic constraints and diversities as well as sovereignty-consciousness, are hypothesised for. Also, exogenous spillover is included in order to account for the tensions and contradictions originating outside the European integration process itself. Furthermore, other more established neofunctionalist concepts are further extended and refined. Functional spillover is broadened in scope to go beyond merely economic linkages and is freed from its deterministic ontology. Functional ‘pressure from within’ – which captures pressures for increased co-operation within the same, rather than another, sector – is made more explicit and upgraded as an explanatory tool. So is cultivated spillover – the concept that originally denoted the role of the Commission/High Authority – which is also widened to include the integrative roles played by the Council Presidency, the European Parliament, the European Court of Justice and epistemic communities. The concept of political spillover, which broadly speaking conceptualises the role of non-governmental elites, is also stretched. Interest groups are taken to be influenced not only by endogenous-functional, but also by exogenous and domestic structures, and advocacy coalitions are incorporated within political spillover. The concept of social spillover is split off from political spillover, in order to better explain (reflexive) learning and socialisation processes. The concepts of communicative and norm-regulated action are incorporated into social spillover to describe and explain socialisation more adequately. It is suggested that learning and socialisation should no longer be seen as constant but as being subject to conditions.

The final part of Chapter 1 details my research design and methodology. As a basis for subsequent discussion, I first state my epistemological position which can be located somewhere between the positivist and post-positivist extremes, acknowledging the importance of interpretative and contextual features in establishing causal inferences and middle-range generalisations. My dependent variable is the outcome of instances of decision-making/negotiations, and my key causal

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(independent) variables are the various pressures mentioned in the previous paragraph. I start off from a multiple causality assumption, arguing that the same outcome can be caused by different combinations of factors. My analysis can be described as qualitative. In order to arrive at valid causal inferences, allowing for some degree of positive causality, a number of methods are employed, including comparative analysis, tracing of causal mechanisms and processes, as well as triangulation across multiple data sources. I argue that the danger of case selection bias has been minimised by choosing cases according to a range of values concerning the dependent variable, without paying attention to the values of the key causal variables (the identification of which was subject to my inquiry). The operationalisation of key causal variables is advanced by specifying indicators on which hypotheses are observed and measured.

Chapter 2 traces the most important aspects regarding the emergence and development of the PHARE programme. The question underlying this chapter (and the two following ones) is how my theoretical assumptions and hypotheses square with empirical ‘reality’. Hence, the hypothesised pressures are tested against my empirical findings concerning the PHARE programme. I argue that exogenous and cultivated (i.e. formal supranational institutional) spillover pressures based on virtually non-existent countervailing forces can convincingly explain the origins of PHARE. Functional and cultivated spillover pressures account for the development of the programme into an important instrument within the Community’s pre-accession strategy. Cultivated spillover also largely explains the expansion of PHARE funds for co-financing infrastructures, which was possible even in face of more moderate to substantial countervailing forces. The concept also provides an important conceptual linkage for the accommodation of epistemic communities which have been very influential in establishing nuclear safety as an important part within the PHARE programme. Moreover, I suggest that social spillover (i.e. socialisation and learning processes) provided an important lubricant for the development of PHARE.

My analysis in Chapter 2 challenges the empirical and theoretical findings of Haggard and Moravcsik, who asserted that the Commission had played a marginal role in initiating and shaping EC aid for the CEEC. Moreover, I claim that the PHARE programme has proven to be far broader and much more viable than they anticipated. It developed into the single largest source of know-how transfer to the CEEC, showed considerable flexibility in adapting to the changing phases of economic and political transition in the East and obtained a central position in the Union’s reinforced pre-accession strategy. In that sense it could be argued that the Community managed to minimise what

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Christopher Hill – in his conceptualisation of Europe's international role – coined the capability–expectations gap. Although the demands and expectations in the Community to co-ordinate and provide effective aid were substantial, the Community took on this role, acted swiftly and proactively, provided significant funds, repeatedly adjusted the programme in face of changing circumstances and tied it to its wider objective by incorporating PHARE into its strategy of accession.

Chapter 3 examines the attempts to reform the Union's external trade policy to bring services, intellectual property and investment within the scope of this policy. Whereas the IGC 1996–97 largely failed to realise this undertaking, the last two Treaty revisions were gradually more successful in that respect. I argue that the failure to modernise Article 113 at the Amsterdam IGC can be explained here as the result of overall weak dynamics combined with strong countervailing pressures. Exogenous pressures, especially stemming from the changing trade agenda that increasingly included the newer trade issues, constituted the strongest dynamics. However, these were not convincing enough to a minority of reluctant Member States. Functional arguments stemming from the internal market were less pressing and had been rejected by the Court in its opinion 1/94. In addition, I discuss the role of organised interests and suggest that they never really caught on to the idea of widening the scope of external trade policy. As for the socialisation of governmental elites, I propose several factors which offset such processes. Moreover, the central institutions (and the Council Presidency), traditional agents of integration, barely fostered the issue, and at times even hindered an extension of the CCP. On the side of countervailing factors, there was above all the issue of sovereignty-consciousness, complemented by domestic constraints due to increasing politicisation of the new trade issues and a diffuse anti-integrationist climate.

Thereafter, I consider the IGC 2000 negotiations on the Common Commercial Policy. I propose that these were characterised by stronger overall dynamics. Exogenous pressures were as strong as at Amsterdam, if not stronger. Functional pressures stemming from the internal market, and particularly from enlargement, had also become quite substantial. Some aspects of cultivated spillover (e.g. assertion on the part of the Commission and the EP) had grown slightly, too. On the other hand, social and political spillover pressures remained at about the same modest level as during the IGC 1996–97. I argue that, in combination, these dynamics can explain the furtherance of Community competence and an extension of qualified majority voting. These pressures were countered by a number of countervailing forces that were of similar



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strength as during the Amsterdam IGC. While suspicion in the Commission – an important factor at the IGC 1996–97 – had decreased, the politicisation of some issues in the domestic context had grown.

In the final part of Chapter 3 I examine the last Treaty revision, the outcome of which was more progressive resulting in a clear-cut exclusive Community competence (with only minor exceptions) on the issues of services, intellectual property and investment. I argue that spillover pressures had gathered further strength at the Convention, after the partial reform of the CCP during the Intergovernmental Conference 2000. Exogenous spillover, creating pressure from a changing world economy and an evolving world trade agenda, as well as functional spillover pressures, particularly through enlargement, provided important structural pressures. One of the central claims of this sub-chapter is that these two structural pressures could unfold their strengths much more easily because of social spillover. Convincing arguments built on the exogenous and functional spillover rationales could register with actors due to important processes of socialisation, deliberation and arguing. Social spillover can also largely explain the bonding strength of the Convention text, which came about due to learning processes and participants' (including Member States' representatives') concurrence with the results. I maintain that these dynamics were further reinforced by (limited) political and, more importantly, considerable cultivated spillover. In contrast to the past two CCP Treaty revisions, cultivated spillover pressures played an enhanced role. These were important in terms of activating and initiating functional and exogenous spillover arguments, supporting and pushing the Convention idea in the first place and by asserting, more generally, their institutional (integrative) interests. On the whole, countervailing forces were (substantially) weaker than at the Amsterdam and Nice Intergovernmental Conferences. This facilitated the stronger ignition and dissemination of integrational dynamics.

Chapter 4 deals with the communitarisation of visa, asylum and immigration policy. Again my hypothesised assumptions and pressures are discussed in the light of empirical findings. The Amsterdam provisions in this issue area brought about considerable progress in the direction of further integration. I argue that during the 1996–97 IGC fairly substantial countervailing pressures, particularly due to domestic constraints and sovereignty-consciousness, were overcome by strong dynamics. Of the two structural pressures, functional and exogenous, the former appears to have been predominant in the considerations of decision-makers. The functional pressure related to the objective of the free movement of persons was assisted by pressures that arose from the



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dissatisfaction with the non-achievement of attaining ‘effective co-operation’ in this field. Exogenous developments, i.e. mainly migration streams, have constituted important complementary, though secondary, pressures for a communitarisation of the subject matters discussed here. In addition, the relevance and impact of social spillover is considered. Somewhat paradoxically, the minimal development of socialisation processes and the parallel occurrence of flawed co-operation among Member States, induced only very few agents to conclude that the new system needed time to develop. Most concluded that the cumbersome, intergovernmental decision-making procedures were responsible for the lack of progress. Political spillover in terms of non-governmental elites had a limited impact on the communitarisation of visa, asylum and immigration policy. As far as cultivated spillover is concerned, this analysis suggests that the roles played by the central institutions, and above all by the Commission and the various Presidencies, substantially promoted the process of communitarisation.

Next, the issue of visa, asylum and immigration policy decision rule reform is discussed with regard to the IGC 2000 negotiations. I assert that the dynamics at work both in the run-up to, and during, the Intergovernmental Conference were less substantial than during the IGC 1996/97. While exogenous spillover provided a similar rationale as three years prior, functional spillover pressures had changed. Particularly, the internal market rationale had diminished. These decreasing functional pressures were, only to some extent, compensated by additional functional pressures stemming from enlargement. More grave, I argue, was the fact that these still substantial structural forces were not adequately acted out by agents in terms of cultivated spillover. The Commission, the French Presidency and also the European Parliament were either unable or unwilling to push for integrative outcomes, to reason out the logics for further communitarisation or to upgrade common Community interests. This was further compounded by the lack of social and political spillover pressures, especially in terms of governmental elites. Their absence removed an important basis for connecting actors with the structural (functional and exogenous) spillover rationales. In addition, the role of countervailing forces is considered. My findings suggest that diminished spillover dynamics were met by strong countervailing forces of sovereignty-consciousness, domestic constraints and diversity.

The final section of Chapter 4 considers the relevance of the revised neofunctionalist framework for explaining the progressive results of the last Treaty revision on visa, asylum and immigration policy. On the one hand, I suggest that the dynamics of integration had gathered further

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strength. Structural (functional and to a extent lesser, exogenous) spillover rationales had grown. Perhaps even more importantly, agents that can typically be expected to act upon these structural pressures, such as the Commission and the European Parliament, were much more able to assert themselves. And perhaps most significantly, social spillover pressures, especially in terms of governmental elites in the Convention provided the much needed lubricant between structures and agents and constituted an important platform for the unfoldment of structural pressures. Convincing arguments built on functional and exogenous spillover rationales could register with actors due to important processes of enmeshment, socialisation, deliberation and arguing. On the other hand, countervailing pressures were diminished in comparison with the Amsterdam and Nice IGCs. As a result, a stronger ignition and dissemination of integrational dynamics was possible. Finally, my analysis considers how the interplay between dynamics and countervailing pressures may also explain the more specific aspects of the final outcome concerning decision rules.

Chapter 5 reflects upon my analysis in the preceding chapters and offers conclusions on a number of empirical, theoretical and methodological aspects. First, my findings on each of the revised neofunctionalist pressures are summarised and assessed in terms of the presumptions of the revised framework. The various pressures are also linked to the wider theoretical context. Moreover, attention is drawn to empirical findings on the different pressures (or related aspects) that can be gathered in the wider literature. In addition, some conditions for delimiting the various pressures that can be extrapolated from my analysis of Chapters 2, 3 and 4 are suggested. These proposed conditions are to be understood as tentative rather than probed or tested. Furthermore, the interrelationship between the various pressures is (re-)considered and the ability of the revised neofunctionalist framework to account for more specific aspects of decision outcomes is discussed.

The second main section of Chapter 5 deepens my analysis on comparison and causality. For this purpose the values attributed to my hypothesised pressures and outcomes across (sub-)cases are summarised in a table. In addition to the tracing of causal mechanisms and processes in the preceding analysis, more systematic use is made of the comparative method. Two variations of comparative analysis are used: (i) the identification and isolation of causal processes that lead to different outcomes (especially examining whether hypothesised pressures co-vary with outcomes); and (ii) examining cases where the dependent variable takes on the same value (in order to identify causal variables of lesser relevance). My analysis particularly confirms the