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Overcoming Gridlock: The Council Presidency, Legislative Activity and Issue De-Coupling in the Area of Occupational Health and Safety Regulation

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Abstract

A member state of the European Union can use its term as the Council president to make progress on pending but stalled proposals which it would like to see adopted. This case study of the directive on the risk arising from physical agents shows how a Council presidency can use issue subtraction, additional meetings and compromise proposals to overcome gridlock in the Council. There is a notable difference in terms of legislative activity between the presidencies of high regulation and low regulation countries. High regulation countries put forward compromise proposals and scheduled additional meetings to resolve outstanding issues. The case study also demonstrates the importance of issue subtraction. The original proposal was gridlocked in the Council for five years. Only after the original proposal was split up into several dossiers (issue de-coupling) was it possible to reach agreement.

Keywords

Council of the European Union, Council Presidency, issue subtraction, negotiation, health and safety regulation

As European legislation impinges to an increasing degree on European citizens and companies, member state governments strive to influence EU legislation to minimise adoption costs in respect of different regulatory styles, to benefit their domestic industries or to address the concerns of their constituencies which can only be resolved transnationally. Countries with a high level of regulation in particular will try to extend their regulatory regime to the European level to shield their domestic industry from competition due to lower regulatory costs and/or to increase the market size for their products in line with their own regulatory standards (Scharpf 1999; Heritier, Knill, & Mingers 1996). A member state can use the opportunity of its term as the Council president to make progress on pending but stalled proposals. Member states with high levels of national regulation in an area benefit from leveling the playing field by establishing European-wide regulation. In contrast, member states that benefit from unequal levels of regulation because of their lower domestic standards do not have an incentive to push for legislation by the EU. The Council presidency acts as the 'agenda manager' in the Council (Tallberg 2006: 82-112) and can use its procedural prerogatives to push for legislation according to its own national priorities (Warntjen 2007). Thus, we would expect to see more legislative activity on a dossier during a presidency that has higher regulatory standards. By scheduling more meetings the presidency can provide the necessary time to find a solution acceptable to all member states or increase the pressure on recalcitrant member states to give up their opposition. If a presidency has an interest in overcoming gridlock on a certain dossier it will also make an extra effort to resolve this issue by formulating compromise proposals and/or by arranging issue linkages or de-coupling issues.

The office of the Council presidency offers a member state a number of tools to advance a gridlocked piece of legislation. For example, it can arrange bilateral meetings to identify the concerns of individual member states and use indicative votes to put pressure on some member states. Package deals, which compensate losses on one issue by providing gains on another, are frequently mentioned as a tool to overcome gridlock (Heisenberg 2005; Mattila & Lane 2001). Issue subtraction provides another possibility for unlocking stalled proposals (Hug & König 2002; Sebenius 1983). It reduces the complexity of a proposal, which might make it easier to reach agreement. Furthermore, issue subtraction in the form of sequential bargaining can help to build momentum. Thus, issue subtraction might help to unlock a previously gridlocked dossier.

This case study of the directive on the risk arising from physical agents shows how a Council presidency uses issue subtraction, additional meetings and compromise proposals to facilitate progress. In 1994, the Commission put forward a proposal that covered four physical agents (electromagnetic radiation, noise, optical radiation, vibrations). This proposal, however, languished in the Council for five years without being actively considered. In 1999, the German presidency proposed to split up the directive into four, each of which covered one physical agent. After this de-coupling of issues, a common position was agreed upon in the Council for all four directives in the space of five years. In this time period, a presidency which had an interest in seeing European legislation adopted in the area of occupational health and safety was more active in trying to ensure agreement than a country at the helm that had no particular interest in that area. With only one exception, all new proposals were put forward by high regulation countries (Denmark, Germany and Sweden). In addition, the presidencies of high regulation countries generally scheduled more meetings to resolve outstanding issues. For example, the working group discussing the noise directive met four times during both the German and Finnish presidencies, but only once during the Portuguese presidency.

This study adds to the existing literature on legislative decision-making in the Council and the Council presidency in several respects. First, in a detailed case study it empirically elucidates the causal mechanisms (issue subtraction, compromise proposals, and additional meetings) that link the interest a Council presidency has in reaching agreement on a given dossier and legislative activity in the Council. An earlier statistical analysis provided evidence for the existence of a link between salience and the number of adopted acts (or adopted common positions) for environmental policy in the time period 1984-2001 (Warntjen 2007); it could not, however, show how the presidency pushes for legislation. This case study shows that a presidency which has a higher interest in a dossier schedules more meetings of the working group and prepares compromise proposals to find agreement. Second, it highlights the so far largely neglected role of issue subtraction (or issue de-coupling) in overcoming legislative gridlock in the Council. The next section describes the theoretical effect of issue subtraction (removing political obstacles, reducing complexity, building momentum) in detail, which is also a prominent feature of the case study. Issue subtraction is a well-established concept in the literature on international negotiations; bringing it into the study of EU legislative decision-making facilitates cross-fertilisation of these two fields of study. The case study shows that issue subtraction can be an important factor in overcoming gridlock in the European Union. Third, the study uses a comprehensive measure of the main independent variable for all member states based on the qualitative literature which is cross-validated using several quantitative indicators (ratification of international conventions, transposition of social policy directives, and exposure of workers to physical agents). Fourth, this study raises the question of whether the sequence of presidencies matters. A number of member states with a high level of interest in European-wide regulation succeeded each other in a relatively short time period, with only a few intermediate presidencies with little or no interest in the topic. Does such a sequence of presidencies help to maintain the necessary momentum which makes it more likely that gridlock is overcome?

This study uses a number of indicators to deliver a detailed assessment of the interest of the various presidencies in pushing for legislation in a certain area and shows how the presidency uses its prerogatives to achieve agreement on regulation in line with its national priorities. Tallberg (2006: 82-112) provides one example where the presidency successfully pushed for an initiative in external relations (the Finnish presidency and the Northern Dimension) and one where the presidency stalled legislation (the German presidency and the end-of-life vehicles directive), but not an example of overcoming gridlock in the legislative domain. Sherrington (2000: 125, 150-1 and 108-9) reports three examples of legislative dossiers in which presidencies tried to fast-track items which may have been due to national priorities, but does not offer a detailed

examination of the mechanisms used by the presidency to reach agreement. In contrast to Warntjen's (2007) positive finding, Wurzel's (2004) comparative case study of four British and German presidencies concludes that there is little evidence for a relationship between salience and legislative activity in the field of environmental policy. Extending the analysis to a different policy field (occupational health and safety) can help us to resolve this controversy.

THE COUNCIL PRESIDENCY, LEGISLATIVE ACTIVITY AND ISSUE SUBTRACTION IN THE COUNCIL

A member state can use its presidency to focus attention on a gridlocked proposal that is of particular interest to it. Besides devoting more time to an issue, the presidency can push for agreement on a legislative dossier by tabling compromise proposals and using issue subtraction or addition. The interest a member state government takes in an area of European regulation is affected in two ways (Warntjen 2007: 1138). Firstly, electoral and ideological considerations (Tallberg 2003: 9) are significant: the higher the issue rates among the core constituency of a government, the dearer the topic will be to it; secondly, the economic ramifications of having a European-wide regulation imply that a member state whose industry will be significantly affected by changes in the regulatory environment will attach more importance to the topic. Regulations affecting the production process – like environmental regulations or regulation on occupational health and safety - potentially add to the production costs. As the principle of mutual recognition guarantees access to the markets of the other member states, high level regulation states cannot force their higher standards upon member states with lower levels through unilateral action (i.e. non-tariff trade barriers). Thus, states find themselves in a competition of regulatory standards (Sun & Pelkmans 1995). In this situation, member states with high levels of regulation have an incentive to strive for European-wide regulations (Heritier et al. 1996: 11-15; Scharpf 1996: 23-25; Reh binder & Stewart 1985: 10-13;). Any form of European-wide regulation would benefit them as it implies (progress towards) a level playing field. For example, the Maastricht Treaty refers to establishing 'minimum requirements' regarding the health and safety of workers (Article 118a Paragraph 2 TEC); member states can still adopt (or maintain) higher national standards (Fairhurst 2009: 266). In addition, member states with a large economic sector producing machinery, which effectively has to comply with process regulations, benefit from European-wide regulations (Scharpf 1999: 110; Heritier et al. 1996: 24). Such countries could use their time at the helm in the Council to push for European regulations in areas like occupational health and safety policy.

The Council presidency gives a member state a unique opportunity to push for legislation to which it attaches high salience (Warntjen 2007; Hayes-Renshaw & Wallace 2006: 148; Tallberg 2003). It is the presidency that decides on the legislative work programme in the Council. It drafts the agendas and chairs meetings at all levels of the Council (Tallberg 2006: 86-7; Westlake & Galloway 2004: 35; Kirchner 1992: 76, 90-1, 104). Using its prerogatives as the chair in individual meetings, the presidency can put pressure on member states to make concessions (de Bassompierre 1988: 25-6) and use 'confessionals' with individual member states to push for an agreement (Hayes-Renshaw & Wallace 1997: 147). Furthermore, the presidency can hold indicative votes to isolate individual delegations (Westlake & Galloway 2004: 41). The powers of the presidency are not unlimited and its influence on the legislative agenda is constrained by the existing agenda, events that require attention, as well as the need to get sufficient support for a proposal and to stay within acceptable boundaries of (self-interested) behaviour (Niemann & Mak 2010; Warntjen 2008; Tallberg 2006: 87- 90). Nevertheless, the procedural prerogatives of the presidency do allow a member state to promote certain initiatives and thus to prioritise some proposals in line with its interests (Warntjen 2007; Hayes-Renshaw & Wallace 2006: 148-9; Tallberg 2006: 11). In

particular, it can schedule extra meetings, put forward compromise proposals and set up issue linkages or de-couple issues to facilitate decision-making.

The Council presidency is in charge of agenda management in the Council (Tallberg 2006: 82-112). Thus, it can focus the attention of the Council on certain topics by scheduling extra meetings. At any given moment, there are a number of pending proposals but only a limited amount of resources (in terms of staff and time) to address them. Finding agreement on an issue, however, takes time. When discussing a legislative proposal, legislators have to deal with the uncertainty regarding the link between a proposed policy and its effects. Legislative actors are primarily interested in the outcome of a given policy, but cannot be sure which policy will produce the outcome closest to their most preferred outcome (Krehbiel 1991: 61-68). Besides these technical aspects, bargaining partners have to understand the positions and possible reservations of the other actors in order to reach agreement. In other words, the necessary transaction costs of decision-making have to be met before a negotiation can be concluded successfully. This includes the allocation of sufficient time, allowing a group to exchange viewpoints and conduct negotiations (Furubotn and Richter 2000: 45). Having a meeting on an issue can also signal the intention of an actor to make progress. This can help to build momentum (see below), particularly if the actor, like the presidency, can influence the course of decision-making.

Negotiators often have an incentive to misrepresent their preferences, which can lead to protracted exchanges of proposals and counter-proposals. Negotiations, however, imply opportunity costs. The presidency can help to overcome the negotiators' dilemma by putting forward a compromise proposal based on private information about the positions of the bargaining partners that it receives in its role as an 'honest broker' (Warntjen 2008: 205; Tallberg 2006: 112-141).

Besides allocating more time to an issue and providing compromise proposals, the presidency can arrange issue linkage or issue subtraction to facilitate decision-making in the Council. Despite high voting thresholds and high preference heterogeneity in the Council, member states manage to agree on a substantial amount of legislation every year. In fact, there is a tendency to reach agreement by consensus even if the necessary majority exists to adopt a legislative proposal. A prominent explanation for this pattern is issue linkage (or vote trading): an actor votes for a proposal that s/he is opposed to but which is of little consequence for him/her in exchange for a vote by another actor on an issue that is more important to him/her (König and Junge 2009; Heisenberg 2005; Mattila and Lane 2001). Another tool for overcoming gridlock that has received less attention so far is issue subtraction. Due to its central role in the negotiations as the agenda manager and its prerogative of making compromise proposals, the presidency can use issue linkage or issue subtraction to overcome gridlock in the Council. Under certain circumstances, issue subtraction (also referred to as issue decomposition, issue disaggregation, issue separation or fractionation) can allow bargaining parties to conclude successful negotiations on complex and gridlocked issues (Fisher 1969: 90-95; Hampson 1999: 45-7; Hopmann 1998: 80-1; Sebenius 1983). Issue subtraction implies that an issue is now considered on its own merit, independent of other issues. A clear example of issue subtraction is a situation where issues are considered by different groups or organisations. However, even within a single negotiation issue subtraction can take place if issues are considered at different moments in time or if issues are considered simultaneously but without the possibility of linkage (Sebenius 1983: 288). Sequential bargaining, for example, decouples issues by dealing with issues one after another (Sebenius 1991: 134-5). The presidency chairs all meetings in the Council and can de-couple issues, for example by restricting the debate to certain issues or holding an (indicative) vote on one issue before moving on to the next. Similarly, it can propose to split a proposal and to discuss the separate proposals sequentially. Decoupling issues increases the chances for successful negotiations for three reasons. First, issue subtraction can remove political obstacles to the conclusion of negotiations. Second,

issue decomposition reduces the complexity of negotiations. Third, issue decoupling can create momentum towards an agreement. The first aspect focuses on a primarily static analysis of the preference configuration whereas the latter two stress the character of negotiations as a dynamic process.

The higher the number of issues that are touched upon in a proposal, the higher are the chances that one of them raises political conflict. This is particularly relevant for a decision-making body which, like the Council of the European Union, has a high voting threshold and values consensus (Hayes-Renshaw & Wallace 2006: 259-295). The governments have to consider in turn the interests of their domestic constituency, including the producers in the economic sectors affected by the proposed legislation, and parliamentary majorities. Comprehensive pieces of legislation are more likely to fail because they potentially mobilise a larger number of opposing groups. When structuring the negotiation agenda, one can increase the likelihood of success via the 'preemption of potential blocking coalitions' (Sebenius 1991: 134). Even if all issues under discussion are contended, it might be easier for the recalcitrant side to give in on one issue rather than making concessions across the board (Fisher 1969: 93-95). The presidency holds bilateral meetings with member states to get a more detailed understanding of the various concerns of member states. When putting forward a compromise proposal in the Council it can accommodate those concerns by adding exemptions for specific sectors (e.g. suggesting that regulation on noise at the workplace would not apply to engine rooms on ships, which is a major concern for member states with a large maritime sector such as Greece). Reducing the scope of a directive effectively reduces the number of potentially contentious issues. Similarly, longer transitional periods can remove political obstacles to agreement. Furthermore, reaching a partial agreement quickly rather than holding out for a comprehensive settlement reduces the risk of the positions of bargaining partners shifting (e.g. due to elections) which might complicate matters even more.

Negotiations are complex affairs: the concerns that hold back governments from giving their approval to a given proposal need to be understood, potential solutions have to be discovered, other member states have to be sounded out on a new proposal, etc. Issue decoupling, that is focusing on fewer issues simultaneously can increase the chances of finding common ground. In the regulatory realm particularly, legislative proposals can involve a number of technical issues: how can default values be measured? What are the effects of certain threshold values? What are the effects of exemptions or transitional periods vis-à-vis the stated goal of the proposal? The more issues a proposal addresses, the higher the complexity of the negotiations due to the multi-faceted technical aspects of the discussions. At a certain stage, the complexity of these discussions can become overwhelming, leading to negotiation failure. A high number of issues, and hence a high degree of complexity, might simply overtax the cognitive abilities of the negotiators (Watkins 2003: 153-4). Thus, the technical complexity of a proposal might obscure the fact that sufficient support for a compromise proposal exists. Finally, issue decoupling (or incremental or sequential bargaining) can increase the chances of reaching agreement because it helps to build momentum (Watkins 1998: 252). Investigating possible compromises (e.g. in the form of exemptions or transitional periods) requires resources. Bargaining parties might not be willing to expend those resources if an agreement seems to be out of reach anyhow (Kingdon 1984: 175-6). However, reaching agreement on one aspect of a legislative dossier can rekindle discussions on other aspects as an overall solution now seems more feasible than before (Fisher 1969: 94). Reaching (partial) agreements (on sub-issues) early in negotiations can lead to an 'escalating commitment to agreement' (Pendergast 1990: 139) as the time spent on negotiations becomes a sunk cost. The presidency can structure the agenda of Council meetings to focus on some issues initially and subsequently lock in the benefits of partial agreement while using the momentum generated to reach agreement on so far unresolved issues. Furthermore, there can be a technical spill-over effect. Agreeing on European legislation on one issue can increase the substantive need for (or the benefits

of) regulation on a related issue. A partial agreement can thus mobilise (domestic) interests and result in more pressure to find agreement on other issues as well (Nugent 2006: 562-3). Finally, as a decision becomes more likely, participants might abandon maximalist bargaining positions and engage in a more compromising manner in the negotiations to shape the eventual outcome (Kingdon 1984: 169-70, 176), which in turn increases the chances of reaching agreement.

Thus, issue subtraction can potentially be used to overcome gridlock because it might remove obstacles to reaching agreement, reduce complexity and – in the form of sequential bargaining – build up momentum. The Council presidency can use this tool to advance issues that are of particular importance to it. In addition, it can use its procedural prerogatives regarding agenda management and make compromise proposals to facilitate agreement on legislative dossiers.

OCCUPATIONAL HEALTH AND SAFETY: IDENTIFYING LEADERS AND LAGGARDS

The governments of the member states of the European Union have a long tradition of regulation of health and safety in the work place and different systems and levels of regulations have emerged in the EU member states (Vogel 1994). By estimating which member states adopted stringent regulations at a high level we can identify lead nations who are likely to be willing to use their time in the presidential seat to push for European-wide legislation. After discussing qualitative assessments of the comparative level of regulations in the (EU-15) member states, I will cross-validate this ranking using a number of quantitative indicators. Besides countries with high levels of regulations (e.g. the Nordic countries), countries that have a large economic sector which exports machinery (e.g. Germany) which has to comply with occupational health and safety regulations, would be particularly interested in legislation in this area. Having to comply with European-wide regulations only rather than with different national regulations makes it easier for them to cater to a larger market. At the end of the section, I present the relevant figures from EUROSTAT on the relevance of domestic industry exporting machinery in the member states.

Based on a comprehensive review of several indicators and the existing descriptive literature, a comparative qualitative assessment of the regulatory level of occupational health and safety in EC member states differentiated between three groups of countries with low, medium, and high standards (Eichener 2000: 59-64). The first group is characterised by rudimentary protection in the working place and high risk. This group includes Greece, Portugal, and Spain. In Italy, occupational health and safety is decided upon on a regional basis. Southern Italy also belongs to the group of low standards, whereas the standards are generally higher in the North. Ireland has adopted higher standards, notably in the Safety, Health, and Welfare at Work Act of 1989, but lags behind in implementation; hence, Eichener (2000) locates it between the low and medium group. A second group of countries exhibits notable levels of regulation with respect to risks to health in the work place due to the physical environment. This group includes Belgium, France, Great Britain, (northern) Italy, and Luxembourg. West Germany is located at the higher end of this group due to its traditionally high technical levels of regulation, whereas Eastern Germany would be part of the lower group. It should be noted in this respect that after re-unification West German standards and legislation commonly applied in East Germany. High levels of workplace health action in Germany are also attested by another comparative study, which contrasts this to low values for the United Kingdom and Ireland (Wynne & Clarkin 1992: 154). The top group not only has high levels of regulations concerning traditional perceptions of risks, but in addition – unlike Germany - employs a holistic approach towards health risk due to work. This includes health risks due to the organisation of work. Denmark, the Netherlands and Sweden form this group of member states with high levels of regulation of occupational health and safety and an innovative and comprehensive approach to

combating risk in this area. Another comparative study of thirteen EU member states (Piotet 1996: 81) concludes that besides the Scandinavian countries, Germany and the Netherlands feature occupational health and safety systems that go beyond mere prevention of accidents and disease, but stimulate actions taken against ill-health in its wider meaning.

To cross-validate this categorisation of leaders and laggards in occupational health and safety policy, we can turn to a range of quantitative indicators. Unfortunately, national regulations on the risk of physical agents in the work place are subject to different legal cultures. In the absence of a comprehensive study that would allow direct comparison of national standards, only rough estimates based on indirect measurements can be provided (Rantanen et al. 2001).

The first set of quantitative indicators concerns the general level of occupational health and safety standards as measured by ratification of international conventions on this issue and the transposition of European directives on social policy. Table 1 gives an overview of the average delay in (correct) transposition for six European directives on social policy (e.g. on parental leave, working time, young workers) (Falkner et al. 2005). Three caveats have to be noted. First, a delay in transposing a directive might be due to factors other than a low level of regulation (e.g. a federal decision-making structure, political conflict, etc.). Second, the regulatory standards on social policy in general might not reflect those in occupational health and safety. Third, the data that was used is truncated; some of the directives were not fully implemented in the time period covered by the study.

Table 1: Transposition of European Directives in the Area of Social Policy

	AT	BE	DE	DK	ES	FI	FR	GR	IE	IT	LU	NL	PT	SE	UK
Delay	34.7	41.4	40.8	10.1	32.6	33.7	53.1	44.5	17.9	48.8	41.1	14.9	50.3	28.3	20.8
Rank	8	11	9	3	6	7	15	12	2	13	10	1	14	5	4

Source: Falkner et al. (2005: Table 13.6), delay is given as an average for six directives in months; own calculations.

The data broadly supports the distinction made in the qualitative literature. The Netherlands occupies the first place. The Scandinavian countries are all in the top half of member states. Germany is part of the middle group. In contrast, countries like Greece, Italy and Portugal show a low performance in transposing European directives. The position of Ireland (second place) is surprisingly high.

Member states that voluntarily sign up to international conventions to protect workers in the work place are more likely to have strict regulations on occupational health and safety in place, either as a consequence of committing to international standards or because they support the convention on the basis that they have already adopted strict national measures.

Table 2: Ratification of International Conventions

	AT	DE	DK	ES	FI	FR	IE	IT	LU	PT	SE	UK
Ratifications (%)	14	68	41	64	82	50	23	45	18	41	82	18
Rank	9	2	6	3	1	4	7	5	8	6	1	8

Source: Rantanen et al. (2002: Table 6); own calculations

Table 2 lists the percentage of conventions of the International Labour Organization (ILO) ratified by 12 EU member states. Countries which adopted a high number of ILO conventions tend to have the highest legal coverage in the area of occupational health and safety (Rantanen et al. 2001: 32). Unfortunately, the ranking only includes 12 of the (then) 15 member states. The top three countries are Finland, Sweden (joint first rank), and Germany. Finland and Sweden both ratified 82 per cent of the ILO conventions, for Germany the value is 68 per cent. Spain occupies the third place with 64 per cent. Eichener (2000: 60), however, notes Spain's notoriously weak national laws on occupational health and safety, characterised by a lack of clear definitions of key terms and a binding nature. Thus, the overall pattern – with the exception of a relatively low value for Denmark – confirms the categorisation of the qualitative studies.

The second set of quantitative indicators concerns the conditions in the work place. Countries with high levels of regulation (and enforcement) should exhibit lower exposure of workers to risks from physical agents. The European Foundation for the Improvement of Living and Working Conditions carried out a number of surveys on working conditions which allow us indirectly to gauge the relative level of regulation in EC/EU member states (Paoli 1992, 1997). An important caveat is that the surveys report on the subjective impression of working conditions, not the level of regulations directly. Thus, what constitutes 'appropriate' machinery or what 'loud' means might be understood in different ways in the countries included in the study. The surveys were carried out as a part of the Eurobarometer with an oversampling of persons in active employment.

Table 3 provides the ranking of the surveys for 1991 and 1996 with regard to exposure to physical agents (noise, vibrations, radiation). In 1991, interviewees were also asked whether they had 'appropriate machines and tools' to carry out their work (Paoli 1992). Regarding noise, the Netherlands, Belgium and Germany feature the lowest exposure to noise (in the category 'at least 25% of the time'). With regard to appropriate machines, the leading countries with the highest percentage of workers reporting having appropriate machinery are Ireland, Spain and Germany (joint second place), and Denmark and Great Britain (joint third place). The good standards in Ireland can be explained by the high level of investment in new machinery at that time (Eichener 2000: 57). In the 1996 survey, the member states that joined the Union in 1995 were included. Furthermore, questions on the exposure to vibrations from hand tools and machinery and radiation by sources such as x-rays, radioactivity, laser beams, or welding lights were added (Paoli 1997). Italy, Belgium, and the Netherlands exhibit the lowest exposure to noise (i.e. they have the highest values in the category 'almost never or never'). The survey reports the responses for West and East Germany separately, in the table the values for West Germany are used which only ranks fifth (East Germany would rank second). The Scandinavian countries report relatively high levels of exposure, contrary to our expectations based on the qualitative literature. Regarding the exposure to vibrations, the Netherlands, Sweden and Denmark (joint second place), and

Belgium and United Kingdom (joint third place) exhibited the lowest levels of exposure. Finally, respondents from Italy and Portugal (joint first place), France and Belgium (joint second) and Ireland and The Netherlands (joint third) reported the lowest exposure to electromagnetic radiation. The differences here are less pronounced than for the other physical agents, presumably because electromagnetic radiation is less common than, say, noise or vibrations. In line with the qualitative literature, the Netherlands as well as countries like Belgium, France and – to a lesser degree – (West) Germany performs well in the rankings. In contrast, Sweden and Finland have lower and Ireland and Italy unexpectedly high rankings in light of the qualitative literature. This could be due to different expectations in these countries as to what constitutes a safe work place.

Table 3: *Exposure to Physical Agents in the Workplace*

	AT	BE	DE	DK	ES	FI	FR	GR	IE	IT	LU	NL	PT	SE	UK
1991															
Machines	--	77	87	84	87	--	72	81	88	75	81	81	76	--	84
Noise	--	23	24	26	32	--	31	32	31	25	28	20	28	--	28
1996															
Noise	73	77	72	71	71	61	70	62	70	79	72	76	72	69	69
Vibratis	73	82	71	85	70	74	77	63	76	80	75	87	70	85	82
Radiation	91	96	94	93	94	92	96	93	95	97	94	95	97	92	94

Source: Paoli (1992: pp. 17 and 45), Paoli (1997: Tables 4.2, 4.7, 4.12), rounded values for 1991. Note: For machines, the values are the percentages of respondents reporting appropriate machinery. Otherwise the percentages are for the answer category indicating the least amount of exposure (e.g. 'almost never or never'). The surveys reports responses for East and West Germany separately, the West German values were used in the table.

The descriptive literature distinguishes between leaders in occupational health and safety (the Scandinavian countries plus the Netherlands), a group of high technical (but not necessarily innovative) regulatory standards comprised of countries such as Germany, France or Belgium, and mainly Southern laggards. This picture is largely confirmed by the ratification of international agreements as well as the transposition record and, albeit

to a lower extent, by surveys of the working conditions. Italy and Ireland have unexpectedly high rankings.

Another reason to place an item high on the legislative agenda would be the importance of a domestic industry which is affected by a given dossier. Regulation of the exposure of workers to noise and vibrations affects the building of machinery. The machinery building industry would prefer a uniform European-wide regulation as this allows it to reap the benefits from economies of scale as it can build for a larger market, rather than having to accommodate different national regulations. Denmark and Germany have the highest percentage of employees (14 per cent) in machinery building of the national industrial labour force in the EU. Germany also has the densest concentration of industrial workers in the machine building industry. The top seven regions most specialised in the manufacture of machinery are all in Germany. Machinery also plays an important part in German exports and thus in the German economy. Indeed, in 2003 German production comprised 37.7 per cent of value added by the manufacture of machinery and equipment of the EU-27 (Eurostat 2006). Thus, we would expect a German government in particular to rate dossiers which affect the manufacture of machinery very highly.

In sum, we should expect a push for legislation on occupational health and safety when the Council presidency is occupied by a North European country. Besides the Scandinavian countries, the Netherlands and Germany and to some degree France and Belgium stand out in the different indicators as member states with innovative and/or comprehensive national regulations of occupational health and safety. Germany and Denmark have a further interest in directives concerning machinery due to their large industry producing machinery.

OVERCOMING GRIDLOCK: THE IMPACT OF THE COUNCIL PRESIDENCY ON THE GRIDLOCKED REGULATION OF OCCUPATIONAL HEALTH AND SAFETY

Member states with high levels of regulations and/or a large industry exporting machinery have the greatest interest in establishing European-wide regulations in the area of occupational health and safety. The Scandinavian countries, the Netherlands and Germany have high standards and, in the case of Germany and Denmark, an additional economic incentive to push for European levels. The case study shows how these countries used the presidency to push for legislation in this area. The focus of the case study will be on reaching political agreement in the Council in first reading. Later readings are subject to strict deadlines which largely determine the timing of events. Thus, the presidency largely has to react to external events in that phase. In contrast, a bill can potentially stay in first reading indefinitely, which allows the presidency to prioritise some items in line with its national preferences. The formal adoption of a common position in the Council is sometimes delayed to allow for linguistic and legal work on the final proposal.

Large differences in the legislation on workplace safety still existed in the member states of the EC at the beginning of the 1990s (Vogel 1994; Wynne & Clarkin 1992: 56-69). The completion of the Single Market as well as the new provisions of the Maastricht Treaty and the Social Charter gave an impetus to development of a comprehensive European regulation in the area of occupational health and safety (Wynne & Clarkin 1992: 51-55). The Commission made a proposal for a new directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields, noise, optical radiation, vibrations) in July 1994 (COM 94/284). Within the group of the (then twelve) member states, only Germany and the Netherlands already had specific national regulations with strict thresholds in place regarding all of the physical agents covered by the proposal. Subsequently, the proposal was stalled in the Council for five years until successive

presidencies of member states with high levels of regulation in occupational health and safety pushed for new European-wide regulations (interviews Commission official, 13 June 2005; Council official, 6 June 2005; Council official, 27 June 2005).¹ After the German presidency suggested dividing the comprehensive proposal on all four physical agents into several dossiers (issue de-doubling), political agreement in the Council was reached on all of them within five years. Nearly all of the new proposals were put forward by the presidency of high regulation countries, which also scheduled additional meetings and put together compromises to reach agreement during their term in office (Table 4).

Two weeks into its term of office, the German presidency gave new impetus to the physical agents directive in January 1999. It suggested splitting up the original proposal and having separate directives on the different physical agents, noting the difficulty of the member states to reach agreement addressing all of the different sources of risk simultaneously (Agence Europe, No. 7470, 22 May 1999). Furthermore, it submitted a proposal covering vibrations (Council Document 1320/98). The argument for starting with vibrations was that there currently was no European regulation on vibrations, that there was a clear link between vibrations and occupational diseases and that scientific knowledge was most advanced in this area (PRES/00/454). In addition, in the view of the German presidency this was the area where agreement could be reached relatively quickly (Council Document 5825/99). However, it stressed that the other physical agents should be addressed in due course as well. Thus, the German presidency tried to create momentum by focusing on an area where agreement was likely, which would revitalise discussion on the other issues as well. The Council's Social Questions Working Party met twice in February 1999 and again in March and June of the same year to discuss the German proposal for a directive on vibrations. The general approach of the presidency was explicitly supported by eleven member states (Council Document 6939/99). During the Finnish presidency in the second half of 1999, the working party met another four times. Under the German and Finnish presidencies, the working party resolved fundamental issues of how to define and assess risks, how to limit exposure, on aspects of worker information and training, and health surveillance (Council Document 12689/99). At the end of the Finnish presidency, the working group put forward an amended proposal (Council Document 5322/00). Reviewing the progress made during the Finnish presidency at their meeting on the 29 November, the ministers were hopeful that a Common Position could be adopted during the upcoming Portuguese presidency (European Report 1999). However, there was only one meeting of the working group during the Portuguese presidency. Issues that were still debated included the scope and possible derogations from the directive, whether or not there should be limit values of exposure in addition to values at which action was required and how detailed the provisions on measurement should be. Some of these issues were resolved in two meetings at the working group level during the French presidency in the second half of 2000 (Council Documents 13071/00). The remaining issues were the inclusion of limit values, transitional periods and derogations. The French presidency presented a new compromise proposal addressing these issues in the Coreper meeting on 24 November 2000. It suggested higher values and a longer transitional period (Council Document 13697/00). Subsequently, political agreement was reached at the meeting of the Employment and Social Policy Council on 27 and 28 November 2000 (Council Document 13875/00).

Table 4: Legislative Activity in the Council on the Physical Agent Directives

Year	Presidency	Activity Vibrations	Noise	Electromagnetic	Optical
1994	Germany	Commission Proposal			
1995-1999	FR, ES, IT, IE, NL, LU, UK, AT	No activity in the Council			
1999	Germany	Proposal to split directive New proposal 4 meetings WG			
	Finland	4 meetings WG.			
2000	Portugal	1 meeting WG			
	France	2 meetings WG Presidency proposal COREPER (pol. agreement) Council (pol. agreement)			
2001	Sweden	Council (common position)	New proposal 9 meetings WG COREPER (pol. agreement) Council (pol. agreement)		
	Belgium		Council (common position)		
2002	Spain	No activity in the Council			
	Denmark			Conference Council discussion Presidency proposal 1 meeting WG	
2003	Greece			5 meetings WG Council discussion	
	Italy			3 meetings WG COREPER (pol. agreement) Council (pol. agreement) Council (common position)	
2004	Ireland				Conference Presidency proposal
	Netherlands				5 meetings WG COREPER (pol. agreement) Council (pol. agreement) Council (common position)

Source: Council of the European Union, protocols of meetings. WG = Council Working Group.

The Swedish presidency presented a proposal for a directive on noise a few weeks into its term in office in January 2001 (Council Document 5474/01). The Social Questions Working Party met a total of nine times during the Swedish presidency to discuss the proposal. Similarly to the directive on vibrations, discussions focused on the scope of the directive, inclusion of limits and the possibility of derogations (Council document 9101/01). The Swedish proposal was discussed in Coreper on 1 June 2001 which noted that a number of issues had to be resolved at the ministerial level (Council document 9484/01). For example, Greece was concerned about the scope of the directive extending to workers on ships and airplanes. A compromise suggested by the presidency was to set an additional transitional period of five years for seagoing vessels, thus removing a political obstacle to reaching agreement on this issue. Another contentious issue concerned the maximum values. Denmark was pushing for lower values and references to international guidelines, whereas Italy, Greece and Spain argued that the values were already too low, putting too much of a burden on companies (European Report 2001). On the basis of a compromise proposal of the Swedish presidency, political agreement on a common position for the noise directive was reached in the Council in June 2001 (Council document 9855/01). The preamble contained a reference to international standards which could provide guidance, but whose implementation was left to the member states. Several member states (Austria, Germany, the Netherlands) had national legislation in place that was stricter than the proposed European legislation regarding the overall exposure levels (Agence Europe, No. 8329, 29 October 2002).

There was no activity in the Council on the remaining physical agents during the Spanish presidency in the first half of 2002. The Danish presidency, however, organised a conference on electromagnetic radiation in September 2002 in Copenhagen and the topic was discussed again in the Council in October 2002. Subsequently, the Danish presidency presented a proposal of a directive on electromagnetic fields and waves in December 2002 (Council Document 15400/02). After being discussed once at the Social Questions Working Party during the remaining weeks of the Danish presidency, the proposal was discussed several times during the Greek and Italian presidencies in 2003. As with the previous directives, discussions at the working group level focused on the scope of the directive and limit values. For example, the working group debated at one of their four meetings in this period whether static electric fields should be subject to the directive. Furthermore, there was a discussion on the length of a transitional period (Council Document 9541/03). An informal gathering of the Employment and Social Policy Council meeting in Varese on 11 July - at the beginning of the Italian presidency - made further progress regarding the directive on electromagnetic fields. The remaining questions were resolved in discussions at three meetings of the Social Questions Working Party and Coreper during the Italian presidency. Political agreement was reached in the Employment, Social Policy, Health and Consumer Affairs Council meeting on 20 October 2003 (Council document 13838/03).

The Irish presidency in 2004 took up the final physical agent (optical radiation). It organised a conference on the topic in February 2004 and presented a proposal in the final month of its term in office (Council document 10678/04). Subsequently, the proposal was discussed five times at the working group level during the Dutch presidency in the second half of 2004. Part of the discussions were devoted to the necessity of having a directive. Several delegations requested an impact assessment with recent cost estimates. Other issues involved questions regarding specific standards, provisions on health surveillance, natural sources of optical radiation and national guidelines on good practice (Council document 14287/04). Political agreement on the Council common position was reached in the Employment, Social Policy, Health and Consumer Affairs Council meeting on 6 and 7 December 2004 during the Dutch presidency (Council document 15686/04).

The timing of legislative activity in the Council largely conforms to our expectations. The directive was stalled in the Council during the reign of presidencies with little interest in

the regulation of occupational health and safety (an exception being the Dutch presidency in 1997). No steps were taken on the directive during the presidencies of Austria, France, Great Britain, Ireland, Italy, Luxembourg, the Netherlands and Spain between 1994 and 1999. The key steps on the directive are all taken in the period after the 1999 German presidency split up the proposal (Table 4), with governments in the chair who have high levels of regulation in this area (Denmark, Germany, Finland, the Netherlands, Sweden), while there was little or no progress during the term of office of low regulation countries (Portugal, Spain).

Germany, with its large number of workers in the manufacturing of machinery and equipment, unlocked the gridlocked directive encompassing all four physical agents and made a proposal on vibrations, which was subsequently discussed several times at the working group level. Sweden, a leading country in terms of its national regulation on occupational health and safety, took up the second physical agent (noise) and led the negotiations to political agreement in the Council, which was based on a Swedish compromise proposal, following nine meetings at the working group level. Denmark made a proposal on the technically more difficult subject of radiation after having organised a conference on the topic early on in its presidency. During the Finnish presidency, several meetings were held to make progress on the vibrations directive, resulting in an amended proposal. Political agreement was eventually reached during the French presidency, which put forward a new compromise proposal. Strikingly, little progress was made on this proposal – contrary to the expectations of the participants – during the intermediate Portuguese presidency. The Dutch presidency initiated five meetings on optical radiation at the working group level and reached political agreement on this directive.

No activity at all took place during the Spanish presidency, even though it could have organised, for example, an informal session on one of the remaining physical agents (like the following Danish presidency). Thus, most of the initiatives were taken during the presidencies of member states with a high interest in this area (Denmark, Germany, and Sweden). Similarly, we observe high levels of legislative activity at the working group, COREPER and ministerial levels during the presidencies of member states that are leading (the Netherlands, Sweden, Finland) or have high standards (Germany, France) in occupational health and safety. In contrast, little or no activity took place during presidencies with low levels of regulation (Spain, Portugal).

Only the activities during the Greek presidency are surprising in light of the previously discussed results on leaders and laggards in occupational health and safety regulation. Whether they simply followed up on the Danish initiative or put an extra effort into pushing for legislation in this field, contrary to expectations, is unclear. As discussed in the previous section, Ireland and Italy cannot be unambiguously identified as leaders or laggards in the field. The qualitative literature characterises them as laggards overall, despite there being regional differences in Italy and movement towards higher levels of regulation as well as state-of-the-art machinery in Ireland. In contrast, the rankings of the quantitative indicators put them in or near the top group. Thus, the Irish initiative for a directive on optical radiation as well as the efforts the Italian presidency put into reaching agreement on the directive on electromagnetic fields are inconclusive.

We can also rule out some alternative explanations. Neither a change of the voting threshold (e.g. from unanimity to qualified majority) nor an overall shift in the party political composition on the left-right dimension can explain the pattern of legislative activity we observed. No activity took place after the proposal was put forward under the Maastricht Treaty. The push towards political agreement in the Council took place after the treaty changes adopted in Amsterdam came into effect. However, the necessary voting threshold did not change with the Amsterdam Treaty. The proposal of the Commission (COM 94/284), which was put forward under the Maastricht Treaty in 1994, was based on Article 118A of the Treaty establishing the European Economic Community, which means that from the very beginning (only) a qualified majority was

necessary to adopt the Council's Common Position (Maastricht: Art. 189c TEC; Amsterdam: Article 251 TEC).

Due to elections and overall changes in the party political landscape, the composition of the Council changed several times in terms of the overall left-right position in the period under discussion. The Council moved to the right in the mid-1990s, when the physical agents directive was gridlocked, and back to the left in 1999 and the early 2000s, when political agreement was reached in the Council (Warntjen, Hix, & Crombez 2008: 1249). Thus, the overall party political orientation of the Council might have facilitated or even inspired the progress made after the German presidency proposed a split in the directive in 1999. This would not, however, explain the differences in the pattern of legislative activity in the Council in the period after 1999.

Although alternative explanations (a change of preferences, an increased sense of urgency, international developments, etc.) cannot be definitely ruled out, the empirical pattern fairly strongly suggests a relationship between the salience the presidency attaches to a dossier and legislative activity in the Council.

CONCLUSION

European regulation needs to pass through the needle's eye of the Council where countries can prevent initiatives from straying too far from the lowest common denominator due to a high voting threshold and diverse preferences on European legislation among the member states. The Council presidency is uniquely positioned to push legislation through the Council despite these obstacles. The revival of the stalled directive on the risk arising from physical agents in 1999 and the subsequent adoption of four separate pieces of legislation reflect the ability of the Council presidency to influence legislative activity. After languishing in the Council for years, the discussion on the directive on occupational health and safety was revived by presidencies which attached high salience to it because of their domestic high standards in this area. The German presidency divided the proposal into four separate directives which unblocked the stalled negotiations. This issue de-coupling resulted in the relatively quick adoption of EU legislation in this field, following proposals by Germany, Sweden, Denmark and Ireland. The key steps in resolving outstanding issues were taken under presidencies that are leaders in the field of occupational health and safety regulation and/or have a special economic interest in this field. They presented compromise proposals and scheduled additional meetings to resolve outstanding issues. Thus, the case study presents evidence for an effect of the presidency on legislative activity in the Council.

The findings relate to the period prior to enlargement in 2004. Enlargement is likely to have had two different effects on the steering capacity of the presidency. On the one hand, it raises the pressure to increase the powers of the presidency so that it can act as an effective coordinator. On the other hand, it makes it more difficult for the member state holding the presidency to push for an agreement. This might be a particular issue for countries with small staff numbers, a fragmented internal decision-making system and/or high stakes in a large number of areas. The rotating presidency has been discussed repeatedly in the context of institutional reform in the Council in the last decades. It was a prominent topic during discussions on the constitutional and subsequently reform treaty. On the one hand, it has been argued that the leadership function of the presidency ensures (more) efficient negotiations. Extending its term in office would thus lead to more efficient decision-making. On the other hand it has been noted that the delegation of special powers raises the spectre of agency drift. Member states have different priorities and their time in the chair allows them to search for European solutions to problems that are highly salient to them. By rotating the presidency, all member states have an equal opportunity to put the spotlight on issues which are particularly important to them. The Lisbon Treaty added a permanent

presidency of the European Council to the rotating presidencies of the sectoral Council formations. In addition, team presidencies were supposed to add more coherence to the legislative agenda. Whether or not these institutional innovations will have the desired effect remains to be seen. Another question for future research is the cumulative effect of several presidencies. Are initiatives from one presidency routinely picked up by subsequent ones or can progress made during one presidency be neutralised or even reversed due to lack of support from the following Council presidencies?

* * *

¹ Interviews were held in June 2005 in Luxembourg and Brussels with the three Commission and Council officials who were most directly involved in the discussions on the physical agents directives.

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