Success Through Process Competence
Paradigm Shift in the Representation of Interests after the Treaty of Lisbon

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Published in:
Doris Dialer, Margarethe Richter (eds.):
Lobbying in der Europäischen Union: Zwischen Professionalisierung und Regulierung.
Springer VS 2014, pp. 29-45.
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1 Introduction

Patent protection in the EU is a complicated and expensive matter: In order to be protected in all of the 28 member states, a “bundle” of just as many patents in accordance with the legislation of the member states is necessary. Initially, this requires the translation of the patent specification into numerous languages and, partly, the passing of different procedures. Additionally, up to 28 different legal systems have to be taken into account in case of disputes and the patent holder runs the risk of facing a lawsuit in just as many member states. The consequences are significant legal uncertainties and the so-called “forum shopping”, i.e. the exploitation of the differences concerning the interpretation of the European patent law by national courts, in the national procedural law, and in the speed of the respective procedures. Thus, it is hardly surprising that there has been a great need of a “unified patent” throughout the EU for a long time. However, as first discussions about such a “unified patent” as an alternative to the “bundled patent” arose in Brussels in the seventies, no one would have expected the debate to take nearly forty years. Only in 2011 a solution was found, so that unified European patents can be applied for in the near future, presumably.

There are various reasons for this delay. Most recently, it was a dispute about the language of the official version which hampered a solution. Under the currently found agreement, EU patents only have to be written in English, French and German; Spain and Italy always insisted on a translation into their national language. The problem: Article 118 (2) TFEU requires unanimity of the Council concerning the language question – therefore, the veto of a single member state is sufficient to hamper an agreement. The final breakthrough was not enabled because the two member states gave in but due to the instrument of the so called enhanced cooperation, referred to in Article 20 TEU in conjunction with the articles 326-334 TFEU: If a consensus on a legal act among the member states cannot be found within a reasonable period of time, a “Coalition of the Willing Member States” – at least nine – can introduce this legal act in their circle as a last resort. Only with the Treaty of Lisbon, which entered into force on December 1st in 2009, this was also possible in the area of the internal market – and therefore for the patent law. Although the authority necessary for this needs to be decided unanimously by the Council, only the member states that participate in the enhanced cooperation are entitled to vote so that the vetoes of Italy and Spain can be bypassed.

1 The current European patent is a patent based on the European Patent Convention. Although, besides additional 10 states, all 28 member states of the EU have joined by now, there is no legal connection to the European Union since it is a separate international treaty. After the granting through the European Patent Office in Munich, the European Patent “resolves” into patents related to national law (therefore “bundled patent”).
2 Cf. the agreement on the European Patent for the Common Market (Community Patent Convention) from the year 1975, but which ratification failed (about this and about the history of the uniform patent Luginbühl 2013, pp. 305 f.)
3 Vgl. Europäisches Patentamt.
4 Vertrag über die Arbeitsweise der Europäischen Union (Treaty on the Functioning of the European Union), ABl. EG Nr. C 115 of May 9, 2008, p. 47.
6 Cf. Article 330 TFEU – with this as a rule of the enhanced cooperation, decisions with a qualified majority are possible for which unanimity would be needed in regular procedures.
7 Spain’s and Italy’s claim against the enhanced cooperation or the underlying authorization of the Council at the ECJ was denied on April 16, 2013, cf. EuGH, Urt. of April 16, 2013, Az. C-274/11 und C-295/11; see Jaeger 2013, p. 1998.
The de facto bypassing of the unanimity rule within the enhanced cooperation is an illustrative example for the continuing loss of importance of the political level of the member states in the European Union in contrast to the supranational one. Especially the Treaty of Lisbon has strongly diminished the influence of single member states on European decision processes. Therefore, all political areas of importance to citizens and companies are de facto “mutualized”. As will be shown in the following, this has far-reaching practical consequences for the representation of interests: Contact persons, necessary networks, applicable procedures and instruments have changed fundamentally. The demand for a systematic and successful representation of interests has strongly increased in the EU.

On the other hand, the uniform patent is a good example for the importance of political procedures and processes in order to enforce a political goal, which leads to the second topic of this article. In addition to content issues, i.e. factual arguments and contents (“content competence”), knowledge of the relevant European decision-making processes and the mastery of the formal and informal decision-making mechanisms of European politics (“process competence”) have already played a part in determining the success of the representation of interests since the early days of the European Integration. However, with the Treaty of Lisbon at the latest, the importance of the process competence in the EU as a highly complex multi-leveled governance system is on equal footing with content competence: Long-term successful representation of interests in Europe necessarily requires process competence.

However, in this case “representation of interests” does not only mean - as the synonymous-ly used term “lobbying” could suggest considering its economic connotations - the political representation of interests for companies and associations. Ultimately, all stakeholders of political decision-making procedures within the EU are representatives of their own interests - whether they are NGOs discussing about e.g. social issues, religious communities on matters related to freedom of religion and how people in a community live together, member states e.g. on agriculture, transportation or environmental matters, or companies in regards to industry specific legislative procedures. The need for process competence is completely independent of specific participants and the backgrounds of representation of interests.

### 2 The Treaty of Lisbon: Serious changes to the framework conditions of politics - and therefore of representation of interests - in Europe

Representation of interests with respects to executive and legislative matters can only take place within the boundaries that politics set. This relates less to legal determinants like registration requirements or compliance requirements for the lobbyists but more to the conditions and relations of politics itself. What kinds of institutions a political system has in mind, especially with regards to legislative and executive; how their personnel - the decision makers - are recruited; how the individual decision processes are structured formally and infor-

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10 Cf. e.g. Joos/Waldenberger 2004, pp. 45 ff.
mally etc... - Every political system defines the possibilities and starting points of representation of interests simultaneously using its organization chart and its conditionality. So, in which way has the Treaty of Lisbon changed the organization chart of the EU, and what results from this for the actual representation of interests on the European level as well as on the level of the member states?

One main goal of the Treaty was a fundamental reform of the political system of the EU.\textsuperscript{11} For the content of this article, three aspects are of special interest:

- First, the external reinforcement of the EU by strengthening its foreign policy profile.
- Second, its internal reinforcement by reducing the possibilities for individual member states to block decisions in order to sustain the EU's ability to act in an environment which is faced with rapid changes due to global crisis and challenges.
- And third, the increase of democratic legitimation of the EU by upgrading the role of the European Parliament in the legislative procedure.

### 2.1 External reinforcement of the EU - the EU as a global player

For the Treaty of Lisbon, it was of particular importance to represent the EU in foreign policy and to provide it with actual opportunities for action, which do its role as a political “global player” justice\textsuperscript{12}. The EU - which so far has been perceived more as a chorus of many voices than as one voice of the member states - should be able to make a coherent and visible appearance towards outside.\textsuperscript{13} The community of states participates in a hard economic competition with old and new economic centers, like the USA, China, Japan, Brazil, India and Russia, which also make extensive demands due to their economic strength. Europe will only be able to take equal part in this global context - whether it is in the International Monetary Fund, in the Security Council of the United Nations, or in other international control and coordination committees - if it speaks - as EU - with one voice.\textsuperscript{14}

The Treaty of Lisbon addresses this matter at its center using three measures:

- The EU now has an own legal personality (Article 47 TEU). Therefore it can conclude international agreements or join international organizations and, thus, becomes more tangible as a partner for third countries and international organizations.\textsuperscript{15}
- Furthermore, the Reform Treaty has established the office of the High Representative for Foreign Affairs and Security Policy - a kind of foreign minister for the EU - as a representative of foreign policy and as a contact person for international partners, which is appointed by the Council (Article 27 (2, 3) TEU). The High Representative is chairman of the

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\textsuperscript{11} Woods/Watson 2012, S. 17; Seeger 2008, p. 63.
\textsuperscript{12} Cf. Pollak/Slominski 2006, S. 214; on the previous setup in the sector of foreign relations see Sabathi/Joos/Keßler 2008, p. 185 ff.
\textsuperscript{13} Maurer 2008, p. 13.
\textsuperscript{14} Cf. Giegerich/Wallace 2010, pp. 451 ff.
\textsuperscript{15} Europäisches Parlament; cf. also Bieber/Epiney/Haag 2013, § 3 Rn 49 ff.; Murswiek 2008, p. 66.
Council of Foreign Ministers as well as Vice-President of the Commission (Article 18 (4) TEU).

- The newly established European External Action Service (Article 27 (3) TEU), consisting of officials of the Commission, the Council Secretariat and the diplomatic service of all of the member states, is under the control of the High Representative.

Even though the EU has not managed its uniform appearance very well so far - e.g. when thinking of the controversy in foreign policy concerning Libya and Syria, or the to-ing and fro-ing about the measures of the EU in the euro crisis, which was difficult to comprehend for many international partners - the emancipation in part of foreign policy of the EU from its member states has set an important course: The EU takes up responsibility in foreign policy and creates the possibility for an independent strategy in foreign policy, which is at least partly detached from the member states.\(^{16}\) Ultimately, this is an important step towards more “statehood” of the EU\(^ {17}\) and towards a - at least for the long term - loss of importance of the member states in foreign policy.\(^ {18}\)

### 2.2 Internal reinforcement of the EU - From unanimity to majority rule or the de facto communization of further policy sectors

The reform measures in the sector of political decision-making procedures have a much greater impact on the actual representation of interests than the strengthening of the EU’s profile concerning foreign policy. One focus of these measures lies on the transition from a unanimity to a majority rule in the Council of the European Union (“Council of Ministers” or “Council”) in 48 additional applications. Beyond the hitherto applications such as the internal market, there are now included policy sectors such as internal market, home affairs, agriculture, energy, intellectual property, public services, justice, immigration and much more.\(^ {19}\) Therefore, majority decisions become the rule (Article 16 (3) TEU) and by now include virtually all relevant policy sectors concerning citizens and companies; only as an exception does the Council still need unanimity. This results in a considerable loss of influence for the individual member states: Under the unanimity rule, the veto of a single member state was enough to block a decision in the Council or to steer it in the desired direction. Now, under the majority rule, a blocking minority\(^ {20}\) is needed for this, which has to consist of (at least) four member states and accounts for more than 35% of the population of the EU.\(^ {21}\) In conclusion, e.g. Germany, France and Great Britain cannot block a majority rule of the Council alone any more. Of course the “no”-votes of merely four states would only be enough if these are the four largest member states Germany, France, Great Britain and Italy. A blocking minority consisting of smaller member states can need up to 13 members.

\(^{16}\) Mix 2013, p. 2.

\(^{17}\) Cf. Muriwiek 2008, S. 66 f.; cf. on the consequences also Hauser 2011, p. 706.

\(^{18}\) Skeptical Giegenich/Wallace 2010, p. 454.

\(^{19}\) Cf. Tabular listing in Bundestag document no. 16/8300, Table 1: „Übergang in die qualifizierte Mehrheit“, pp. 142 ff.

\(^{20}\) As of November 1, 2014, cf. Article 16 (4) TEU.

\(^{21}\) As of November 1, 2014, cf. Article 238 (3) TFEU.
How far the "communization" of policy sectors has already progressed since the Treaty of Lisbon becomes clear when looking at sectors which still are subject to the unanimity rule. Here one can distinguish between policy sectors that focus outwards (regarding to the relations between the EU and third countries or international organizations) and policy sectors that focus inwards (regarding to the relations between the EU and its member states).

In the first ("external") sector, unanimity rule still mostly applies, especially for accession agreements, certain trade agreements and for defense policy as well as (in principle) Common Foreign and Security Policy (CFSP). However, the Treaty of Lisbon has implemented some cases of qualified majority here as well (cf. particularly Article 31 TEU). Additionally, the "passerelle" rule of Article 48 (7) TEU makes it possible to skip from the unanimity rule to the majority rule. A tendency towards more supranationality exists anyway, which the establishment of the already described External Action Service shows.

Concerning the internal policy sectors, the unanimity rule is only required for tax harmonization, EU budgetary policy and for the sectors of social security and social policy, as well as operational police cooperation and individual sectors of environmental policy. In contrast, according to the Treaty of Lisbon, the majority rule applies not only to the entire sector of the internal market but also to several key policy sectors - e.g. home policy, justice, agriculture and (to a large extent) foreign trade. Even sectors which still require unanimity can de facto

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22 Trade agreement on cultural and audio-visual services as well as social, education and health services.
become an application of the majority rule - as the introductory example of the uniform patent has shown - by the use of the instrument of enhanced cooperation.

The consequences for the actual European representation of interests are obvious: Under the unanimity rule, it is regularly sufficient to convince the relevant decision makers of an individual member state of the own matter in order to influence their voting choice on European level.\(^\text{23}\) Where this might lead is shown by the example of the negotiations about the Savings Taxation Directive of 2000.\(^\text{24}\) The German Finance Minister at the time, Hans Eichel, reports that the Italians threatened with a veto during the negotiations in case the Italian milk quotas were not increased - a topic which does not even belong to the area of responsibility of the finance ministers. However, the tactic of the Italian agriculture lobby was successful: In immediately placed phone calls, the finance ministers made the agriculture ministers of their member states confirm appropriate measures. Only then Italy was convinced to agree to the “lines of compromise” concerning the Savings Taxation Directive.

On the contrary, under the majority rule, the demands and the complexity of the process of representation of interests have grown strongly: Even if a stakeholder is sufficiently networked in his “home member state”, in EU Europe this usually only suffices for a solitary position. It is not enough anymore to have influence on individual - relevant - decision makers in your home member state or to conduct a campaign in the important media of a member state using Public Affairs. Even if the votes of a member state can be won over for a matter this way, the interests of politics in the other 27 member states can be fundamentally different - they can range from a large indifference to open opposition. In order to influence decision processes under the majority rule, at least a blocking minority of the member states is needed. Therefore, successful representation of interests always requires a European approach: Overall networks of member states and parties, as well as (topic-oriented) coalitions are needed, whose establishment is an enormous effort - if it even works at all.

2.3 Gain in competence for the European Parliament

For the actual representation of interests, the increase of legislative powers of the European Parliament brings such far-reaching changes as the one related to the need for a majority in the Council.\(^\text{25}\) With the Treaty of Lisbon, the Parliament was made equal to the Council in virtually all important policy sectors and, therefore, became a fully adequate partner in legislative procedures.\(^\text{26}\) The co-decision procedure, in which the European Parliament as well as the Council have to agree in order to pass a legislative measure, has now become the rule as the “ordinary legislative procedure” (Article 289, 294 TFEU).\(^\text{27}\) In comparison to after the Treaty of Nice, where only 45 sectors could not bypass Parliament, now, after the Treaty of


\(^{26}\) For more see Selck/Veen 2008, p. 18.

\(^{27}\) Bieber/Epiney/Haag 2013, § 7 Rn. 18 ff; Joos 2011, pp. 91 ff.
Lisbon, this number has nearly doubled and amounts to 85 sectors.\textsuperscript{28} Besides the internal market, almost all individual provisions in justice and home affairs, the framework decisions on agriculture and fisheries policy, trade policy, parts of economic coordination and the new policy sectors of civil protection and administrative cooperation have been included in the area of responsibility of Parliament.\textsuperscript{29} Also the budgetary right of Parliament has been significantly increased due to the enlargement on the agriculture sector - approx. 45% of the EU budget so far.\textsuperscript{30} Furthermore, the right of control of the EP towards the Commission was extended; e.g. the EP selects the President of the Commission (Article 17 (7) TEU).\textsuperscript{31}

The main goal of this expansion of competence of the Parliament as the only directly elected body of the European Union was the stronger democratic legitimation of European legislation.\textsuperscript{32} Naturally, the expansion of Parliament’s co-decision power has other considerable effects on the representation of political interests: In the policy sectors which were newly added to the area of responsibility of Parliament, the stakeholders now also have to convince the majority of the representatives of their matter - which is often a huge challenge given the composition of Parliament and its specific decision-making structures. In order to understand this, one has to be aware of the differences between the European Parliament and the national parliaments of the member states:

- The EP knows neither government nor opposition factions. The executive of the European Union - if it is interpreted as the Commission and (partly) also the Council - does not emerge from the legislative. With regards to the Council this is obvious: It consists of the representatives of the governments of the individual member states. Concerning the Commission, the EP can decline the candidate for the office of Commission President suggested by the Council (Article 17 (7) TEU). Moreover, the competence and integrity of potential commissioners is (quite critically\textsuperscript{33}) examined after their nomination by the relevant expert committee of the EP. However, subsequently the EP can only accept or decline the Commission as a whole, not single members. Which parties or political groups constitute the majority in the EP is – with the exception of the election of the President of the Commission - principally irrelevant for the composition of the Commission: In contrast to the parliaments of the member states, there is no connection between the party political affiliations of the “members of the government” (commissioners) and the parties that constitute the majority in Parliament.\textsuperscript{34} Disciplining mechanisms common on the level of

\textsuperscript{28} Maurer 2008, p. 10; Tabular listing in Bundestag document no. 16/8300, Table 1: „Übergang in das ordentliche Gesetzgebungsverfahren“, pp. 146 ff.

\textsuperscript{29} Only the Common Foreign and Security Policy remained as the only competence of the Council, cf. on the entire information Mangiameli 2012, p. 107.

\textsuperscript{30} European Commission; cf. also Hauser 2011, pp. 688 f.

\textsuperscript{31} See more Bieber/Epiney/Haag 2013, § 4 Rn. 27.


\textsuperscript{33} Cf. the personae issue of the Bulgarian commissioner candidate Schelewa in January 2010 (http://www.spiegel.de/politik/ausland/0,1518,672706,30.html), last accessed August 21, 2013.

\textsuperscript{34} NB: Article 17 (7) TEU: “Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission.” However, the President of the Commission does not necessarily have to be a member of the strongest political faction in the European Parliament and the power of the President of the Commission cannot virtually
member states - usually the government line is supported by the parliamentarians of the government faction - is therefore discarded; thus, a stakeholder must always keep an eye on the attitude concerning his/her matter of the EP as well as of the Commission (in regards to agenda-setting and realization).

- Beside the voting choice being influenced by faction affiliation, a cross-party voting choice due to national affiliations of the representatives is very common.\textsuperscript{35}

All of this has effects on the question of the “European coalition building” in the representation of interest,\textsuperscript{36} hence the formation of allegiances among the actors of legislative and executive: In most cases these coalitions only refer to a certain project or issue so that new coalitions have to be formed for every matter. Hereby, unexpected options of cooperation occur: During the debate about the limitation of CO\textsubscript{2} emissions of cars, for example, the German automobile industry and the labor unions formed a purpose-oriented partnership in which the content (climate protection) merely played a minor part. Industry and organized workforce worked together against the, in their eyes, threatening Legislative Proposals of Brussels; some because of considerations concerning location and competition, others because of concern for their employment.\textsuperscript{37} Thus, allies were looked for and found in the European Parliament across factions, groups of interests and member states. The already mentioned issue of a missing formation of government from the ranks of the legislative expresses itself here: It is possible that party or faction affiliation does not say a lot about the decision probabilities of a member of the European Parliament. Therefore, a cross member state and cross party network, as well as trustworthy accesses to parliamentarians, at least of the larger member states, have become obligatory conditions for successful representation of interests in Brussels.\textsuperscript{38}

3 Lacking recognition of the paradigm shift in the public

In regards to the described power shift from the level of the member states to the European level and the considerable gain of influence of the European Parliament, a general public awareness of problems would be expected. However, the contrary is the case: The changes have remained nearly unrecognized so far. In general, there is a lack of interest concerning European issues in large parts of the media as well as of the citizens - and, sadly, this also applies to social elites. On the one hand, this is due to the complexity and the perceived distance to decisions made in Brussels. On the other hand, it results from plain ignorance about the actual balance of power between the EU and the member states. Additionally - as a Euro-barometer Survey published in July 2013 has shown - there is a general distrust towards the EU: Only 31% of the interviewees from the six largest member states stated that they

\textsuperscript{35} Cfr. Wessels 2008, p. 141.
\textsuperscript{36} Joos 2011, p. 83.
\textsuperscript{38} Cfr. Joos 2011, p. 84.
trust the EU; only 30% attribute a positive image to the EU.\textsuperscript{39} Not least against this background the member state politics do not feel much need to put European issues on their agenda - which can be seen in the campaigns of the parties in the German Parliamentary Election Campaign 2013: Data protection scandals, tax policy, equality and much more; Of the European issues, only the euro crisis was mentioned but primarily from a member state perspective (participation in rescue packages etc.) and not from a European one.

With all of this, it is obvious that the realities are misjudged and the remaining options of member state politics are often overestimated. And while the German politics debated the reform of the federal system I and II (meaning the allocation of rights and duties or the legal relations between German Federal and State Governments)\textsuperscript{40} with the active participation of the German public, the shift of focus from member state to the European level apparently passes the citizens and politics (of the member states) almost unnoticed. “European policy has changed from being an application of foreign policy to a part of totally normal domestic policy including all associated procedures.” This sentence comes from no less a figure than the President of the German Bundestag, Norbert Lammert.\textsuperscript{41} It would be desirable if more representatives from politics and public joined in this realization.

4 Re-adjustment of the representation of interests after Lisbon - Shift of focus from the content to the process competence

The development trends of the European Union and especially the reforms of the Treaty of Lisbon create a strong pressure to adapt for the representation of interests - whether it are the interests of member states, social interest groups or single branches and companies. Assuming that the main goal of representation of interests is to achieve a certain goal\textsuperscript{42} within the framework of a decision process by using actual content and factual arguments, then the actual focus was less on process competence and more on content competence.\textsuperscript{43} The main focus of the work of associations and NGOs, as well as of economic stakeholders like company representatives and external service providers (e.g. law firms and Public Affairs agencies) lies on content-related work: Participation in public consultations, creation of detailed argumentation papers and expert reports, implementation of media campaigns. This is striking since the main development trends of EU policy - as described in section 2 (cf. image 2) - concern questions about procedures (“processes”) of European policy: What levels of the EU are included in political decisions? On what level (of EU or member state) are decisions actually made? Which bodies decide about which issues, using which voting arrangements?\textsuperscript{44}

\textsuperscript{39} Cf. Eurobarometer 2013, p. 10.
\textsuperscript{40} Cf. e.g. Frankfurter Allgemeine Zeitung, December 15, 2004, no. 293, p. 1 („Hitzeige Debatte über die Föderalismusreform“).
\textsuperscript{41} Cf. Interview in Frankfurter Allgemeine Sonntagszeitung, September 8, 2013, p. 4.
\textsuperscript{42} For definitions see Joos 2011, p. 40; Lösche 2007, p. 20; van Schendelen 2002, p. 203 f.; McGrath 2005, p. 17.
\textsuperscript{43} On the terms content and process competence cf. also Godwin/Ainsworth/Godwin 2013, pp. 216 ff.
\textsuperscript{44} The importance of such procedural questions in politics was concisely worded by Joschka Fischer, former German Foreign Minister: “In the beginning I had no clue as to how important questions concerning responsibility were in politics. For exam-
Furthermore, there is the constant increase of competence of the European Union: More and more policy sectors become a subject of the complex decision-making procedures of this dynamic multi-leveled system, in which supranational (European), national and regional levels are included. The actors of the respective levels do not act isolated from each other. In fact, cooperation and the willingness to compromise is needed if an actor tries to achieve certain goals which are influenced by his constitutional and political competences, possibilities of influence, and interests.

This results in primarily “manual” questions for the stakeholder - irrespective of whether he works for a member state, a NGO or a company. The search for the right contact person for a matter can often already be a challenge. A uniform executive level - a “government”, according to the understanding of the member states - does not exist in the EU. In fact, European representation of interests needs to address the European level (Commission, Council, COREPER etc.) as well as the member state level (Council Members). The situation concerning the European legislative procedures is similar: Effective representation of interests requires not only the inclusion of all three relevant EU bodies (Commission, Council and Parliament) but also of the member state level, e.g. the individual Council Members or the parties represented in the EP.

Image 2: Change of importance of process and content competence for successful representation of interests during the development of the EC or EU

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In order to be present at all of these interfaces - particularly since there is often a high time pressure - and, thus, being able to successfully participate in decision processes in the EU, a stakeholder needs to have comprehensive process competences - hence, besides knowledge about crucial - formal and informal - decision processes, he also needs the relevant access possibilities (networks) on all of the decision levels. With regards to the “EU construction site” reaching from Portugal to Finland and from Ireland to Cyprus, this is only realizable for very few actors. Moreover, the influence of an actor is relativized when comparing the member state with the European level: Thus, companies, associations and NGOs which regularly gain political attention in a single member state merely because of their size, have to put up with the fact that they are only one among many in Brussels.

The more complex a procedure is structured - and the European procedural law is a prime example for complexity - the higher the relevance of decision-making structures and processes are for a certain decision. Contents and arguments stay relevant; however, their individual importance for the result of a decision process tends to decrease. Especially due to changes in the voting arrangements in the Council and the increased inclusion of Parliament in legislation, the results of European decision processes depend more on procedural aspects; substantive arguments are in danger of being ignored in the decision-making procedure, due to procedural reasons. Depending on the stage of the political process, the significance of the contents changes in the set of arguments because different actors have different preferences in regards to contents and weaken or give up positions on the way of finding a compromise in order to achieve other goals. To some extent, substantive arguments can be dismissed completely by using certain decision processes - e.g. see the enhanced cooperation mentioned at the beginning in the sector of the uniform patent.

5 Summary and outlook

The Treaty of Lisbon has fundamentally changed the demands on representation of interests in the EU. The importance of process competence has significantly increased in comparison to content competence. This results in new challenges for every stakeholder - irrespective of whether at the service of a social interest group, a member state, an association or a company. The more complex the rules of a decision-making procedure are - formal as well as informal - the harder the successful mediation of contents actually becomes. The Treaty of Lisbon has considerably increased the complexity of European decision processes and, thus, has led to a downright paradigm shift in representation of interests: By now, it is as equally important to know the rules of the relevant decision processes by heart and how to use them as having good, substantive arguments. Only this way there is a chance to be listened to and to be taken into consideration. However, this is a sobering observation for many stakeholders since it requires a network which can only be established and kept up with an enormous effort in such a complex multi-leveled system like the EU. For most of them this is not affordable for the long term if only because of capacity and financial reasons.
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