

Webappendix to Gerald Schneider/Daniel Finke/Konstantin Baltz 2007. „With a Little Help from the State“. *Journal of European Public Policy* 14/2

1) Illustrative Case Study: A proposal on jurisdiction in e-commerce as an illustration

The legislative proposal COM (99) 348 illustrates how we analyze interest intermediation in domestic pre-negotiations. The Commission pursued with this internal market project the goal to regulate judicial cooperation in civil and commercial matters.¹ Formally, the envisioned regulation tried to update and replace the so-called Brussels convention which came into force in the early 1970s and which was, as a part of the Community *acquis*, always extended to new member states. The similar Lugano convention which was signed in 1988 had created a European judicial area in civil matters by extending rules of the Brussels convention to the member states of the European Free Trade Association.

One goal of the new legislative project was to broaden the scope of the existing legislation to deal with issues like e-commerce. The main dispute that the Commission proposal created referred to the different possibilities of jurisdiction. As important economic interests were at stake, these conflicts were not purely legalistic, and producer and consumer organizations became active besides the lead ministry and other state actors.

The following analysis visualizes the domestic pre-negotiations and the predictions of the different bargaining models for all member states under examination. In the event that the Commission proposal opened up a multi-dimensional policy space, we restrain our exposition to the most important issue of the proposal.² All figures list the power of the activated stakeholders; the “initial position” stands for the original proposal that the lead ministry made, and “national position” is the compromise that is finally reached.

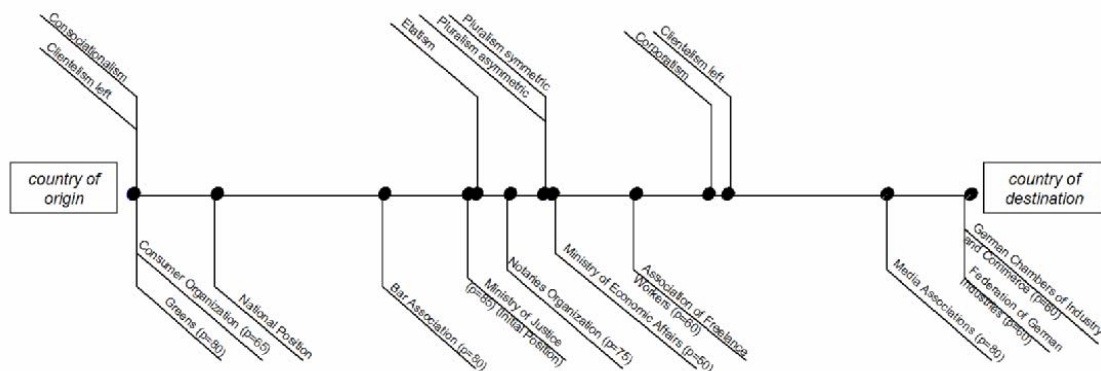
Germany: The proposal led to a peculiar institutional response in Germany since the Ministry of Justice and the Ministry of Economy and Technology shared the duty of being the “lead ministry”. This creates no further difficulty since both ministries coordinated and issued relatively similar initial positions.

The expert identified nine other stakeholders that became active during the pre-negotiations on this piece of legislation; they disagreed on three issues. The most important bone of contention related to the question which law should be applied. The “producer” camp (DIHT, BDI) supported the country of destination principle. The consumers (AGV) and the Greens, by contrast, favoured the country of origin principle. The Ministries took a middle position. Figure 1 shows the relative positions of the active stakeholders on this issue as well as the forecasts of each model.

¹ The legislative proposal of the Commission can be found here: [http://ec.europa.eu/justice_home/pdf/com1999-348-en.pdf#search=%22Com%20\(99\)%20348%20Lugano%20Convention%22](http://ec.europa.eu/justice_home/pdf/com1999-348-en.pdf#search=%22Com%20(99)%20348%20Lugano%20Convention%22) (last consulted, August 29, 2006)

² The following description of the domestic negotiation processes in the four member states is based upon the interviews with the experts and the summaries of our interviewees.

Figure 1: Plot of relative actor positions & model forecasts for the most important issue in Germany on Com99/348



The plot shows that the consociationalist and one of the clientelist models are closest to the outcome, which we measure through the national position of the lead ministry, followed by the étatiste model. Hence the consumer organizations and the Green party could successfully change the Ministry of Justice’s initial position towards their own. In this example the corporatist and the other clientelist model fare worst in predicting the outcome.

Netherlands: The Ministry of Justice was the sole agenda setter on this proposal. As our expert indicated, business associations rather underestimated the significance of the envisioned piece of legislation. Seven stakeholders became active on at least one of three issues under contestation.

One of these conflicts, which we visualize in Figure 2, revolved around the problem of whether or not the Netherlands should change from *siège statutair* to *siège réel*. The Dutch tradition concerning the seat of a company is the *siège statutair* (domicile of the company) whereas Germany, Great Britain and Belgium for example know the *siège réel* which considers where the business effectively takes place. Only the Dutch Parliament preferred to move to the other legal doctrine; all other stakeholders, including the bar association, the state commission for International Private Law and the Ministries of Economic Affairs and Justice, opposed such a change.

Figure 2: Plot of relative actor positions & model forecasts for the most important issue in the Netherlands on Com 99/348

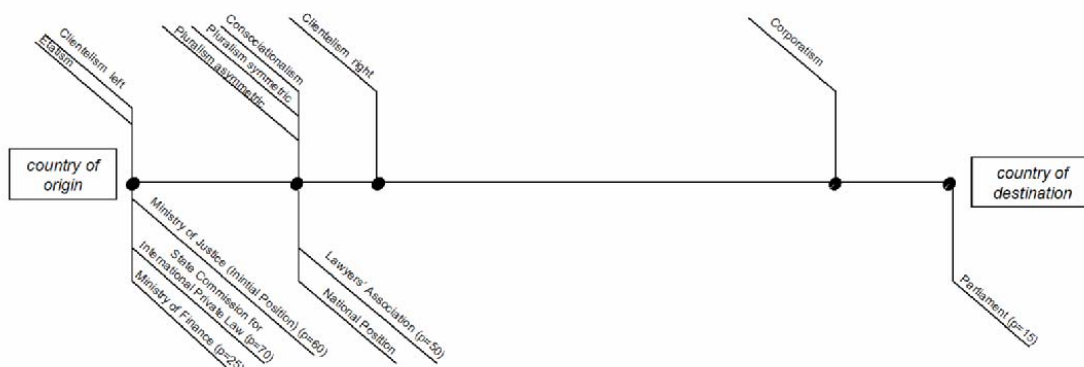
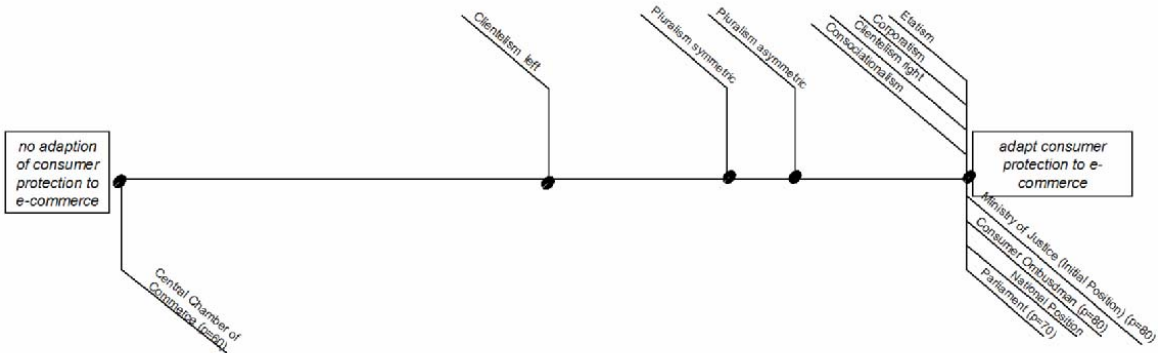


Figure 2 clearly shows that both pluralist models and one of the consociationalist model are very close to the actual outcome which equals the lawyer’s association’s position.³ We would expect the national position to be further to right if we were to consider the high power of the Ministry of Justice, the State Commission, and the Ministry of Finance. However, it appears that our operationalization of the disagreement value and the Pareto constraint ($U_i \geq 0$ for all i) correctly capture the impact of the parliament. As it was the case in Germany, the corporatist model offers the worst prediction on this issue.

Finland: This Commission proposal constituted nothing more than a transformation of already existing Conventions into a Council Directive. As a consequence, the Ministry of Justice as the competent body did not organise any hearings, as it was not considered to be necessary to consult any interest groups. Therefore, the main stakeholders involved were only the Ministry of Justice, Parliament, the Chamber of Commerce and the Consumer Ombudsman. The only issue on which some sort of conflict among the different stakeholders arose was the aspect of consumer protection regarding e-commerce (Figure 3). Here, the original national jurisdiction would have had to be changed. The Ministry of Justice had the opinion that the existing formulation (‘0’) should be adapted to the aspect of e-commerce (‘100’), as this aspect was in its view not satisfactorily covered. The Parliament and the Consumer Ombudsman shared this position. The Chamber of Commerce, by contrast, refused to acknowledge such a need.

Figure 3: Relative stakeholder positions and model forecasts for Finland on Com 99/348



The majority of the bargaining models predict the outcome correctly or are at least close to it. This is rather unsurprising since most actors share the initial position formulated by the Ministry of Justice except for the rather weak Central Chamber of Commerce. The model with the highest prediction error is accordingly the clientelist one with actor positions on the left side of the lead ministry.

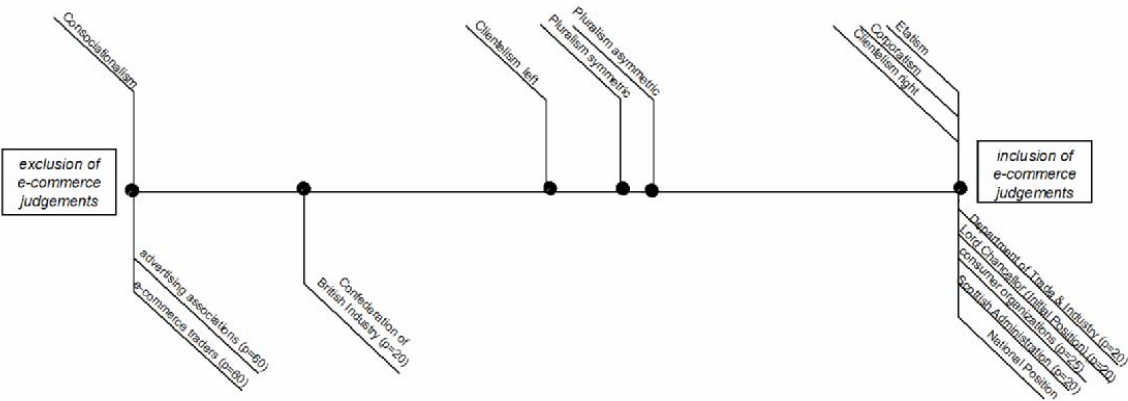
United Kingdom: This case differs from the other three since the Lord Chancellor’s Department was the domestic agenda setter and not the Ministry of Justice. The British government thus viewed this legislative proposal much more as a commercial than a purely legalistic matter.

³ Some stakeholders have not been active on all three issues of this proposal. They are thought to be indifferent between the national status quo and the position of the leading ministry, so we imputed the mean between the reference point and the initial position of the leading ministry as their position on those issues. Issue 3 has no clear reference point, therefore the initial position of the leading ministry was imputed for the actors active on the other issues but not on the third one.

The only issue that created some debate was whether e-commerce judgments should be included in the regulation or not. E-commerce traders, advertising associations and the Confederation of the British Industry fought for the exclusion of such judgments. This liberalist position was fiercely opposed by consumer organizations and all state actors that became active, including the Department of Trade and Industry, the Scottish Administration and the lead ministry. Despite their intense lobbying the e-commerce industry did not succeed in changing the initial position of the Lord Chancellor's Department.

The results depicted in Figure 4 resemble the Dutch example: Only those models that disregard the influence of actors to the left of the lead ministry reveal high predictive accuracy; these are the étatiste, the corporatist and the clientelist (right) model. Hence, neither the Confederation of British Industry, nor the Advertising Association or the E-commerce Traders could convince the government to change its initial position.

Figure 4: Relative stakeholder positions and model forecasts for the UK on Com 99/348



The descriptive evidence of this case study shows that there are significant differences between the four member states with respect to mobilization of stakeholders. We could thus expect that government agents would be largely successful with their proposal in those countries where the conflict intensity was low (United Kingdom and Finland); the étatiste model should accordingly have the highest predictive accuracy among the competing models of interest intermediation. Other explanations, conversely, should be more successful in predicting the outcome in Germany and the Netherlands where the Commission proposal led to more intense discussions.

Our calculations of the distance between the outcome and the predictions confirm these suspicions. Hence, the étatiste model fares best in Finland and the United Kingdom where the models perfectly predicted the outcome. The accuracy of the corporatist and the consociationalist models has to do with the fact that they are largely identical with the étatiste model since the number of non-state actors is relatively small. In the explanation of the German and Dutch decisions, models incorporating the position or power of interest groups fare at least as well as the étatiste model.

Table WA-1: Number of point predictions

NBS model	Divergence (error level)		
	≤0.1%	≤ 1%	≤ 10%
Consociationalism	24 (22.22%)	26 (24.07%)	37 (36.11%)
Corporatism	47 (43.51%)	47 (43.51%)	63 (58.33%)
Symmetric Etatisme	49 (45.37%)	49 (45.37%)	67 (62.04%)
Symmetric Pluralism	2 (1.85%)	4 (3.7%)	30 (27.78%)
Asymmetric Pluralism	13 (12.04%)	15 (13.89%)	45 (41.67%)
Clientelism (right of LM)	19 (17.59%)	19 (17.59%)	39 (36.11%)
Clientelism (left of LM)	4 (3.7%)	4 (3.7%)	25 (23.15%)

The results reported in Table WA-1 also differ partly in comparison to the MAE evaluations. Although the symmetric étatiste model still offers the most precise forecasts, the ranking nevertheless changes slightly. The clientelistic model with groups on the left side of the position of the lead ministry and the symmetric pluralist model augur both badly, with the symmetric pluralist model now at the bottom of the ranking. They have much fewer “perfect hits” – point predictions within the restrictive 0.1% error margin - than all the other models; this tendency holds up to an error level of 10%. This finding reveals that government agents rather tend to give in if they have an important actor to their right rather than to their left. The corporatist model scores second best of all models. The results of the clientelistic model with groups on the right side of the position of the lead ministry are almost equally good. This version of the clientelistic model is beaten by the asymmetric pluralism model only at a 10%-level of error. The frequency with which a model provided point predictions suggests again that the predictions of the consociationalist model remain quite imprecise; government actors are, in other words, necessary for our understanding of EU interest intermediation at the domestic level. The errors of the pluralist and the clientelistic models seem to be more concentrated around an “average” error level. These bargaining games offer fewer perfect hits than the corporatist model but also have a lower maximum error than the consociationalist model.