

Stefan Seidendorf (University of Mannheim):

EU-ropean practices in second pillar institutions: not so different after all?

In political and institutional terms, the “first” and the “second” pillar of the European Union’s (EU) decision-making machinery seem strictly different. They concern different policies, and they represent different institutional frameworks. This apparent difference is reflected in integration theory: most of the attempts to explain the European model of ‘politics beyond the nation-state’ either tackle the first or the second pillar – and more often do we find explanations why a particular theory or model cannot be applied to both pillars, than attempts to compare findings in the two pillars.

This paper proposes a shift of perspective. Instead of assuming from the outset that there are two distinctive and different experiences, it proposes to compare EU-ropean practices over different policy-fields. How do EU-ropeans act as EU-ropeans, in EU-ropean institutional settings? To assess potentially different institutional and political phenomena, I propose to look at the form that some of the alleged effects of the ‘new institutionalisms’ (socialization, principles, rules and practices) take in the second pillar.

How does ‘socialization’ work, and what does it mean in CFSP? What is ‘norm-building’ in institutions, and how does it work in CFSP? What fosters institutional change and what are the ‘feedback loops’ that lead to path-dependency in CFSP?

Finally, I advance that neo-functionalism is not at all restricted to ‘first-pillar’ experiences and that – in a modified way – it may well account for events and evolutions in CFSP.

Contact:

Dr. Stefan Seidendorf
University of Mannheim, Faculty of Social Sciences
Chair of Political Science and Contemporary History
D-68131 Mannheim
Germany

Phone: +49-6 21 – 1 81 20 86
seidendorf@uni-mannheim.de

Introduction*

What is going on in the European Union's (EU) 'second pillar', the Common Foreign and Security Policy (CFSP)? Do the underlying 'social practices' that govern the different institutional bodies within the Council of ministers (CoM) really allow for an analytical differentiation in 'first pillar' and 'second pillar' policies, important enough to establish a main theoretical dividing line between 'intergovernmental' and 'supranational' approaches? Alternatively, do these differences really allow to treat one part of the European puzzle, CFSP, within the realm of International Relations (IR), whereas the other part of the puzzle, the 'community policies' is treated in Comparative Politics (CP)? This paper tries to ask this question from an empirical point of view, based on a 'pragmatist' analysis of different practices. If we find reasons that account for the development of these practices, we may be able to better answer the above-mentioned questions.

The abolishment of analytical and theoretical dichotomies implicit in this approach corresponds to the fact that CFSP occupies a sort of 'blind spot' with regard to established integration theories. As a *sui-generis* pillar in the *sui-generis* EU (Øhrgaard 2004), only few scholars linked the study of CFSP to its role in the overall integration process and the empirically and analytically rich scholarship around CFSP mainly refrains from theorizing the consequences of a 'second model' of European cooperation for the integration process (de Schoutheete, Regelsberger, Wessels 1997)¹.

Instead of building up theoretical ('supranational vs. intergovernmental') or analytical ('first pillar' vs. 'second pillar') incommensurability that may oversee existing empirical phenomena, this paper starts from a 'pragmatist' approach (Bauer/Brighi 2008, Rytövuori-Apunen 2005). Understood as an analytical frame, it is used here to analyze institutional

* These are first reflections for a larger research project. Please handle with care...

¹ Already twenty years ago, Weiler/Wessels (1988:229-232) made this claim. Since then, little has changed and we barely possess more than case-studies and organizational description, with the notable exception of Smith 1998, 2004. His study, however, ends in 1997. It thus cannot account for the perhaps 'most interesting' evolution in the second pillar, towards ESDP.

practices in CFSP. Pragmatism, in the first place a philosophy of knowledge that recently experienced some popularity in IR-studies (Bauer/Brighi 2008), is thus linked to organization analysis and the study of international institutions (see especially Haas/Haas 2008). This allows to analyze without theoretical preconditions the consequences of different institutional settings in different policy sectors for the integration process². In the remainder of this paper, a first section (1) will discuss the relationship between CFSP and integration theory. A next section (2) defines a ‘pragmatist’ framework and establishes the link to different institutionalisms. This leads (3) to the operationalization of a research design that assesses institutional settings and social practices and their role in the integration process. (4) Based on this operationalization, different empirical observations are compared and (5) discussed in a last concluding part.

(1) CFSP and integration theory

Literature concerned with explaining the European integration process traditionally differentiates between political sectors and their aptitude for integration. Supranational approaches, mainly weak copies of Ernst Haas’ ‘neo-functionalism’ (1958), introduced ‘supranational agents’ and ‘spillover-processes’ to explain integration first in the *economic* field, and then towards other fields (‘political’ spillover). Very soon, though, it became clear that progress towards ‘more’ integration depended as much – if not more – on the will of member-states to follow the path indicated by supranational agents and functional reasoning (Haas himself claimed the ‘obsolescence’ of his theory in 1975, before coming back on this judgment in 2004: *xxi, *liii).

Scholars skeptical towards the ‘transformative potential’ of the integration process advanced that to the contrary, ‘economic integration’ in Western Europe turned out as the ‘Rescue of the nation-state’ (Milward 1992). In this perspective, member-states engaged in economic

² This links the study to the larger debate on ‘socialization’ in international institutions. Overviews and contributions in Checkel 2007. Good starting points are Checkel 2001, Egeberg 1999, Johnston 2001. Their framework is however different from pragmatism as applied here.

integration because the utility of economic integration was part of their national interest. Yet in other policy fields, the calculation of ‘national interest’ followed different rationales and member states were more skeptical towards integration. This was notably the case in foreign and security policy, as the failed attempts to create a ‘European Defense Community’ (1954) and a ‘Political Union’ (1961) show.

In further developing and enlarging this ‘intergovernmental’ approach, Andrew Moravcsik’s ‘Liberal Intergovernmentalism’ (1993, 1998) confirmed some of its fundamental lessons. Member states govern the integration process, and they accept institutional delegation and pooling of competencies if this leads to utility maximation. This is the case especially in the economic sector, where liberalization leads to ‘absolute gains’ for all participants. In foreign and security policy, the existence of ‘relative gains’ (always to the detriment of some member) and the need for ‘fast coordination games’ (Wagner 2003) turned out as obstacles on the way to supranational institutionalization. Accordingly, Moravcsik denied the relevance of his theory for the evolution in the second pillar (1993:494).

In short, established theories of European integration neglect either the empirical importance of cooperation in the second pillar for the overall integration process, or their theoretical argument does not cover the foreign and security sector (Reynolds 2007 is an exception). The reason for this might be found in the ‘sui generis’ character of CFSP (Øhrgard 2004). Within the already particular case of European integration, CFSP – not governed by supranational decision-making, with only limited roles for the European Commission and the European Parliament – is again a case apart, a case ‘sui generis’ within the ‘sui generis’ EU³.

(2) Defining a pragmatist framework for analyzing institutional situations

The late writings of Ernst Haas (Haas 2001, 2004 and Haas/Haas 2008), the scholar who established neo-functionalism in the 1950s, situate this theory (initially developed to account for European integration in the Coal and Steel Community in the 1950s) in a broader context.

³ This applies also for IR-studies of CFSP, see the recent critique of Mérand 2008.

Drawing on these writings, it is possible to reconstruct neo-functionalism in a way that allows comparing practices in the first and second pillar with regard to their role within the integration process. In several contributions on constructivism and ‘pragmatism in IR’, Haas established the notion of ‘constructivist pragmatism’ (Haas 2001, Haas 2004, Haas/Haas 2008). It interlinks IR constructivism and the pragmatist tradition in the philosophy of sciences (Haas/Haas 2008:103). This approach searches for ‘truth’ in the sense of ‘collective understandings’ that are valid in certain settings and under certain conditions. This notion of truth is thus not as absolute as positivists would expect it from a ‘scientific analysis’, yet it is not as flat as postmodern relativist would claim (Rytövuori-Apunen 2005). The focus of such a pragmatist analysis shifts to analyzing ‘social practice’. The aim is to find out *what* constitutes a practice, and *why* (under which conditions) it is perceived as legitimate. We are thus not looking for *causal* relationships between variables, but for *constitutive* reasons that ‘make’ an actor, a situation or a practice.

Yet the focus of this research still lies with international institutionalization. Pragmatists conceive of institutions “partly as arenas for designing change, and partly as arrangements that bring about change as they alter the perceptions of their members” (Haas/Haas 2008:109). Thus institutions “may be willful actors on their own, at times, but are also the location in which reflexive new practices and policies develop”. The authors go on: “We believe that pragmatic constructivism provides the explanatory lens through which this may be understood, as well as the methodological guidelines by which such a process may be pursued” (ibid. 104).

With regard to this paper’s interest, the introduced paradigm has several advantages. It does not posit from the outset a theoretical view that would overlook or ignore empirical phenomena outside its focus. Instead of predefining theoretically actors’ dispositions, we can subsume several theoretically induced, yet empirically barely researched effects that are alleged to ‘actors in institutions’. Furthermore, a constitutive (instead of causal) logic will be

interested in the *processes* that link actors to institutions and vice versa. Thus we do not have to decide between an approach that favors ‘structure over agency’ or the contrary (agency primes structure), but can establish a dialectic link between both, agency and social structure. The analysis then concentrates on *processes* that may explain how institutions can become “arenas for designing change” and how they can act “as arrangements that bring about change as they alter the perceptions of their members” (Haas/Haas 2008:109). Amongst such processes, we may find socialization, persuasion, education, and norm inculcation, (institutions -> actors) but also discursive action, (Schmidt 2007, 2008) or ‘battles of ideas’ (Parsons 2002, 2003) that *define* institutional orders (actors -> institutions). The next section is concerned with operationalizing these ideas into a systematic framework that allows to analyze practices.

(3) Operationalizing ‘social practices’ and institutional processes

The ‘unit of analysis’ are social practices in different European institutional contexts. They are made up of shared policy knowledge (by politicians, bureaucrats), intuitive understandings, causal beliefs, accepted principles and norms (derived from these general principles). We may find them in oral or written statements, via interviews or – as in the present case – in the ‘rules of procedure’ of different organizations and in ‘national’ documents that ‘explain’ these rules of procedure. Starting from these practices, we ask what constitutes a legitimate actor, and what behavior is seen as ‘legitimate’ and ‘appropriate’. These presuppositions can be turned into a first hypothesis:

H1: Becoming a ‘legitimate’ actor in CFSP, one has to know and share [policy knowledge, intuitive understandings, causal beliefs, principles, norms] that establish social practice.

Furthermore, we can observe how the processes that establish these social practices shape actors’ preferences and interests. Here, the processes of socialization, persuasion, education and norm inculcation are of importance. Instead of theoretically restricting our field of

observation, a pragmatist framework can look for evidence of all of them⁴. The corresponding hypothesis would be:

H2: The processes of [socialization, persuasion, education, norm inculcation] that establish social practices influence actors' perception of interests and preferences.

Finally, turning to the influence of actors via institutions, we may ask if and how the different European *institutional order* of CFSP leads to practices different from the first pillar. As the 'standard' analytical claim with respect to CFSP is that absent a 'supranational' actor, the outcome of negotiations will resemble the lowest common denominator (LCD), we can formulate a third hypothesis. To guarantee for the alleged positive influence on the integration process, 'supranational actor' is going to designate an independent actor that possesses sanction powers over defecting member-states *and* can bring integration ahead through its (monopoly of) initiative. This designates the European Commission in the community model.

H3a: In the absence of a 'true' supranational agent, actors' social practices do not allow for more than 'lowest denominator bargaining', what cannot bring ahead the process of integration.

Alternatively, and in concurrence to this hypothesis, we may ask if the two other 'modes of conflict resolution' that were introduced by neo-functionalism, namely 'splitting the difference' and 'upgrading of common interests' (Haas 1961:367-369, Lindberg 1963:11-12) can be found *in the absence* of the supranational agent's strong role.

H3b. In the absence of a 'true' supranational agent, 'splitting the difference' and 'upgrading of common interests' are nevertheless legitimate and prevalent social practices.

In the preliminary state of this paper, the empirical analysis has to rely on several documents that contain 'rules of procedure' and thus settled and accepted social practices, as well as on results of other studies (secondary sources). To allow for some cross-check, I will not only

⁴ At least in a first time – this may not exclude later refinements along the lines proposed by the different 'new institutionalisms'.

draw on the ‘common’ ‘rules of procedure’, as established by the community institutions and notably by the Council of Ministers and its General Secretariat. If these ‘rules’ are giving the ground for ‘social practices’, than they must also be taken up and turned into concrete prescriptions of behavior in documents of national member-states. At this state, I can draw on a manual of CFSP-practices established by the German foreign ministry for ‘internal use’ in the run-up of the German council presidency (January – June 2007). The document contains on 87 pages the principles, norms, rules and practical hints for German diplomats concerned with CFSP during the German presidency. An annex with further 19 pages contains organizational schemes and the respective treaty provisions for GASP and ESDP⁵.

In order to understand the ‘meaning’ and ‘influence’ of these social practices, and to assess the eventually transformative potential of CFSP practices, a ‘micro-mechanism’ is needed that allows tracing continuity and change over time (outside ‘history-making decisions’ and ‘critical junctures’). Discourse analysis can provide such a micro-mechanism (Seidendorf 2007, 2009; Fairclough/Wodak 1997, Krzyzanowski/Oberhuber 2007, Larsen 1997). Because of its nature, discourse can account for ‘continuity’ (discourse as structure) and ‘change’ (through discursive action). Both evolutions, continuity and change, are dependent on conditions, yet leave space for agency (Schimmelfennig 2003).

In the case of CFSP, a discourse analysis seems particularly appropriate: in the absence of supranational authority and with member states maintaining a potential veto power, foreign policy coordination traditionally proceeded by ‘talking incessantly’ (Nuttall 1992:314). On all levels and over different thematic fields, relevant actors are in contact. The absence of supranationalism means that every actor shares his part of responsibility for the ‘whole’, for the achievement of a common position as well as for overall CFSP success. Turned analytically, every actor is bound by the structure of agreed discourse.

⁵ Auswärtiges Amt (ed. 2006): *Vademecum* für die Gemeinsame Außen- und Sicherheitspolitik – Berlin, internal document.

(4) Empirical observations of different situations

This section will first outline some basic features of CFSP with respect to this paper's argument (4.1). It will then establish how 'social practice' is 'learnt' in the case of a member state that takes the presidency (4.2.). Based on these insights, the following sub-sections aim to evaluate the hypotheses (4.3.-4.5.).

4.1. Organizational features of CFSP

CFSP was first institutionalized with the Treaty of Maastricht (1992). It took up some of the older provisions that were developed in European Political Cooperation (EPC) since the 1970s (Nutall 1992; Pijpers, Regelsberger, Wessels 1989). ESDP developed after 1998 (Petrov/Dijkstra 2007) in a complex process that brought together legally non-binding decisions of the European Council of Heads of States and Governments (EU Council, summits in Cologne and Helsinki 1999), new treaty-provisions (Treaty of Nice 2000) that came with the force of internationally binding law, and 'incremental' and 'functional' processes that developed within the existing institutional framework (Trondal 2007) in order to adapt it to functional needs or to built it in coherency with existing structures. While it is not the aim of this paper to account for the institutionalization of ESDP, we still have to bear in mind that the 'newly created' institutions had to be filled with actors and practices. This situation did not represent an institutional 'void' that was filled with practices and actors from outside, but rather has to be understood as a situation where existing actors that were used to work together drew on established principles, norms, and social practices at the same time that they were developing a new institutional framework. An account of this kind of institutionalization is given by M. Smith (2003) and Øhrgaard (1997): They advance transgovernmentalism (socialization in European institutions), codification of rules and inter-institutional dynamics between Commission and CS (Smith) and a process of "socialization, cooperation and formalization" (Øhrgaard) to explain this evolution.

Thus negotiations in CFSP/ESDP take place in a temporarily and spatially defined social environment (Lucarelli/Manners 2006, Johnston 2001). This does not boil down to game theory’s ‘shadow of the future’ that may change actors’ behavior in bargaining situations. Instead, social practices, principles, norms and rules that developed throughout nearly forty years of common foreign policy practice *structure* this social environment. Fig. 1 gives an impression of how the ‘incessant talk’ of CFSP is structured. As underlying ‘central actors’ we find the EU presidencies of six months. At the end of each presidency, a formal report on CFSP and ESDP activities is required. Furthermore, the draft report includes a draft mandate for the incoming presidency which is prepared by the incoming presidency in consultation with the current presidency.

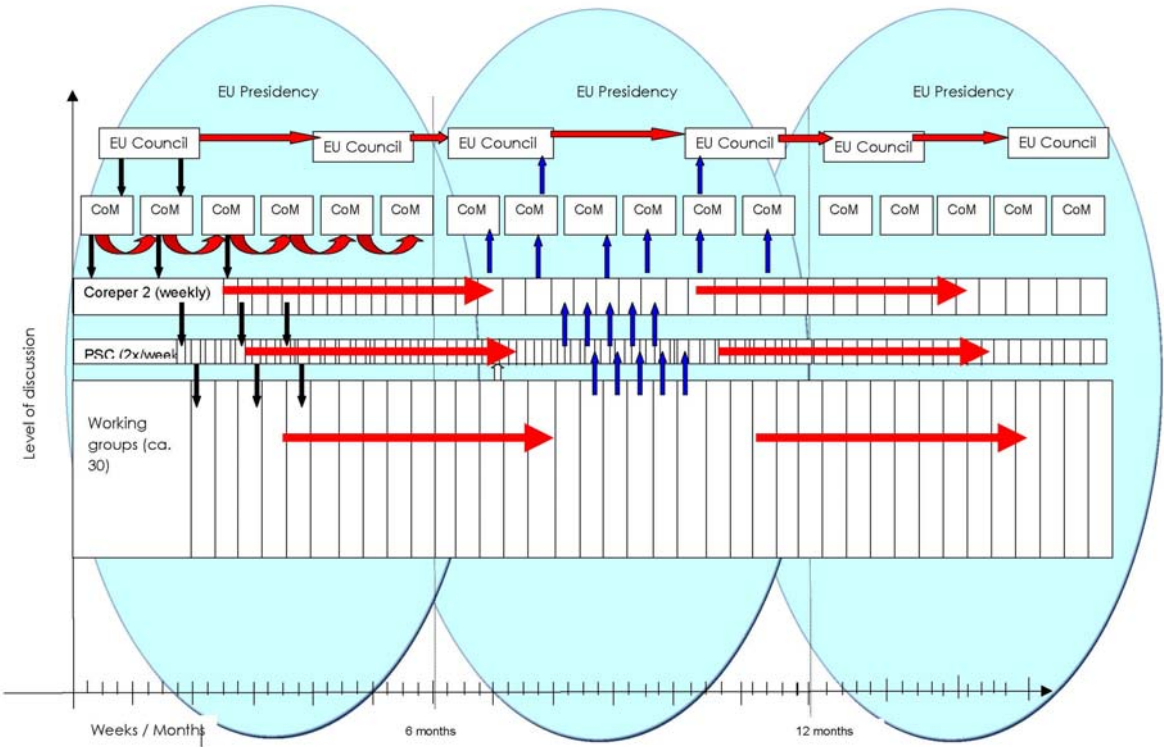


Fig. 1: Temporal and spatial structuration of discussions in CFSP

Within the six months of each presidency, (at least) two meetings of the European Council (heads of states and governments, EU-C) take place. In the conclusions of these meetings, a section on external relations / CFSP contains ‘principles and general guidelines’ for CFSP.

The Council of Ministers, in its form of General Affairs and External Relations Council (CoM) is charged with putting into practice these general guidelines. It meets (at least) every month, mostly in Brussels. In the meantime, it is represented via Coreper, the Committee of Permanent Representatives and, in CFSP, via PSC, the Political and Security Committee. PSC meets (at least) twice a week, on Tuesday and Friday. It asks different CFSP working groups (WG) to prepare decisions on different issues that arise from the tasks raised by EU-C and CoM. Working groups are based in Brussels and in the capitals that exert the presidency. The Brussels working groups meet frequently, up to two or three times a week (depending on need). This is the process told in a ‘top-down’ perspective⁶.

The same process takes place, of course, in a ‘bottom-up’-perspective: the tasks that were resolved in a working-group are moved upward to PSC, and further on to Coreper. If there are difficulties finding a common position, they may go even further up to the CoM and to the EU-C. The whole procedure is coordinated in principle by the presidency. For reasons of effectiveness and continuity, the presidency relies on the General Secretariat of the Council of Ministers (CS) and its different Directorate Generals (DG). Fig. 2 shows the co-ordination and continuity that is assured via the CS.

⁶ The relationship Coreper-PSC is difficult to assess. In practice, there is a division of work between both. PSC is dealing with CFSP and ESDP-issues, yet Coreper has the last word before things move up to the CoM. (Juncos/Reynolds 2007)

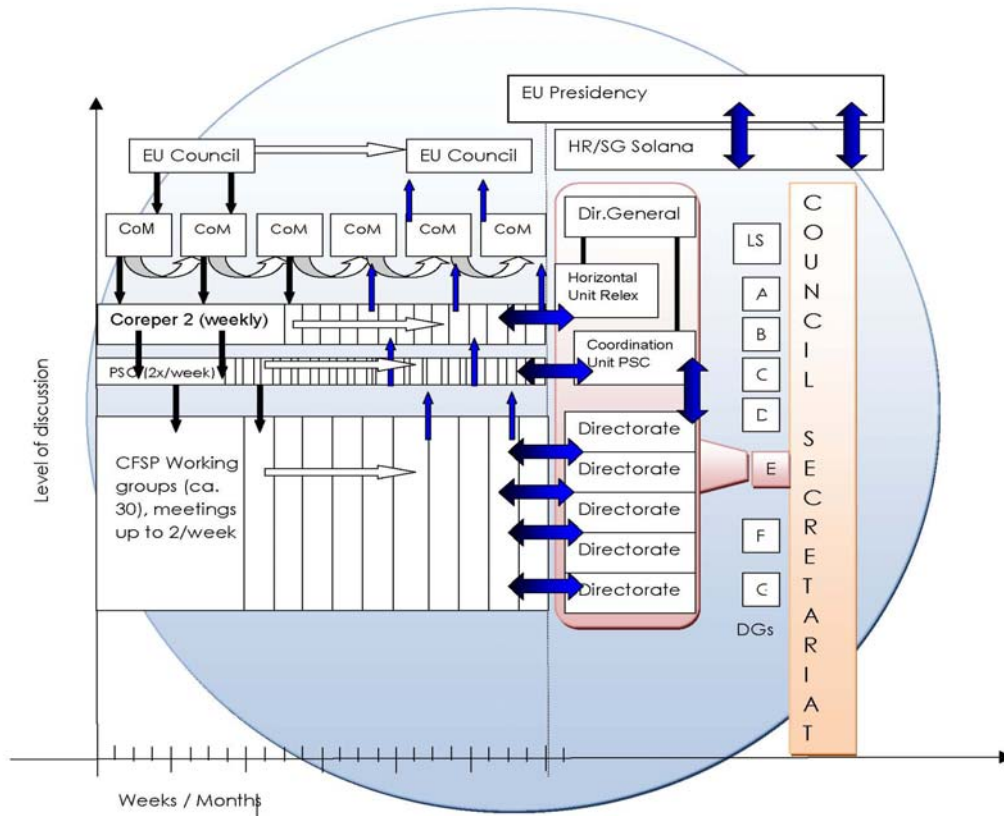


Fig. 2: Structuration in time and space, co-ordination and continuity via Council Secretariat

To sustain the presidency’s task, the CS participates in all the different meetings, next to the presidency. It takes notes and drafts – following the presidency’s demand – the appropriate working documents for meetings at different levels. In this, it relies on (a) the tasks as assigned through the ‘superior’ level (CoM, EU-C, PSC, WG – ‘top-down’), (b) previously adopted documents (WG->PSC->CoM) and the ‘rules of procedure’, as agreed in the ‘CFSP Handbook’ (the internal working-document of all bodies concerned with CFSP) and in the ‘Rules of Procedure of the Council’, a document adopted by the CoM and published in the Official Journal. As ‘information’ and ‘discourse’ are so central to this system, a permanent machinery within the CS is occupied with translating the different documents into different languages of member states⁷. The ‘continuity-task’ of the CS is further fulfilled through its Legal Service (LS) and its Relex-Counselors. Those two groups have ‘horizontal’ tasks,

⁷ Within CFSP, there is a ‘regime’ of English and French as languages of conduct.

insofar that they intervene for the drafting of legally binding acts (LS) and to ensure compatibility with community affairs (Relex). This is particularly important as CFSP (other than military operations) is financed through the EU budget, what brings the European Commission and the European Parliament into the CFSP-game. Regularly updated ‘inter-institutional agreements’ define the relationship between the different institutions⁸.

So far for the description of the ‘spatially and temporarily defined social environment’ of CFSP. We can now turn to the principles and rules that govern this environment and to the ensuing social practices that developed within it. Two points seem important before asking the question if mastering the adequate social practice is a prerequisite for successfully acting in CFSP: (a) The system, as described, only represents the ‘formal’ part of the social environment of CFSP. It totally neglects ‘events’, the unexpected and not foreseen things that happen ‘outside’ the institutional framework and that CFSP has to react towards. They often must be dealt with under tight time pressure or outside the ‘general principles’ adopted in the EU-C. This happens (usually) on the level of PSC and in the working groups, as they are permanently based in Brussels and can meet on an ad-hoc basis. This means that the system is far less hierarchical than the description given above: the EU-C’s ‘general principles and guidelines’ only concern overall statements (“the EU pursues a multi-polar world order”). The ‘policy content’ of concrete decisions is elaborated on the level of the Brussels based working groups, under the supervision of Coreper. Under the Treaty of Nice (European Council 2002) the Council “may authorize the [PSC], for the purpose and for the duration of a crisis management operation, as determined by the Council, to take relevant decisions concerning the political control and strategic direction of the operation”. (Treaty of European Union, TEU Art. 25). In the latter case, the High Representative / General Secretary (HR/GS) Javier

⁸ The set-up is even more complicated than this, yet for reasons of clarity I reduce it to the principal features of importance for my argument; a recent overview on evolutions in the CS gives Dijkstra 2008.

Solana can take the PSC presidency and this institution becomes a sort of executive body⁹. Thus we should not reduce the CFSP social environment as a hierarchical intergovernmental world, controlled by the Member States.

(b) This caveat is pushed further by the second remark: The CFSP system is not ‘neutral’. It was built up, and actors meet within it, ‘for’ something, to allow for a ‘Common’ foreign and security policy. As long as actors do not boycott it, they are more or less obliged to accept certain behavioral patterns. First and foremost this concerns the pressure to ‘decide something’, to ‘produce something’. This pressure emanates from the treaty provisions (see below), but it is also resented as a ‘social pressure’ (Juncos/Pomorska 2006:8)¹⁰. Very early in the evolution of EPC the ‘engagement’ of all participants for the common goal is mentioned¹¹. This general attitude is a kind of ‘structural’ precondition that influences the dynamics of the larger integration *process*. As such, it was already identified by early neo-functionalism. Haas (1958:58) writes: “The new central institutions depend on the good faith of the old power centers for the realization of their aims, [in part] because of the real powers retained by national governments.” It should be specified that in Haas’ understanding, the CoM was a Community institution and as such part of the ‘new central institutions’ (Haas 1958:489-90). For Lindberg, another early neo-functionalist, “political and economic integration cannot be expected to succeed in the absence of a will to proceed on the part of the Member States” (1963:291). This does not necessary mean that member states are fervent European federalists. Their engagement can more simply result from the unforeseen consequences of earlier decisions (Øhrgaard 2004:40) and the ensuing obligation to ‘keep engaged’ in order to ‘keep working’ the system. If this is the case, than social rules and practices must be

⁹ There are several papers discussing this establishment of a ‘second EU executive’, next to the European Commission. See amongst others Christiansen/Vanhoonacker 2008, Duke/Vanhoonacker 2006.

¹⁰ Authors quote an interview with a diplomat: “there is always a pressure to get an agreement, if you don’t get a result, you have nothing. (...) we have to achieve meaningful results, a result in substance.”

¹¹ Officially in the Copenhagen report on EPC 1973, and in various accounts of practitioners as “coordination reflex”, see von der Gablentz 1979, Nuttall 1992:312, or also as “esprit de corps”, “basic commitment and belief in joint policy-making”, Tonra 2001:261

observable that testify to this spirit of engagement. If we find furthermore evidence that actors feel obliged to comply with these rules and practices in order to be able to act within CFSP, our first hypothesis can be confirmed.

4.2. How to establish and 'learn' social practice

Concerning the 'rules' that express abstract 'principles of engagement', the "Rules of Procedure of the Council" contain an "Annex V" on "Working Methods for an Enlarged Council" (CoM 2006). Points 6-16 concern the "Conduct of meetings". Points 7, 8, 9 and 10¹² show clearly the overall aim – to allow for substantial discussions and to come to decisions. Furthermore, points 14-16 allow understanding the spirit of decision-making that prevails. In following the rules of procedure, the CoM clearly aims at consensus-building in order to include a maximum of delegations, what in turn leads to overall 'engagement': Point 14, 15 and 16 are aiming at a constructive atmosphere that allows for 'decisions' much more than for 'obstruction'¹³. In the preparation of meetings, the presidency's task is to streamline and advance work a maximum. Furthermore, art. 19 of the rules of procedure precisely defines principles that guide the 'decisions to be taken' in Coreper. Coreper shall

"in any case ensure consistency of the European Union's policies and actions and see to it that the following principles and rules are observed:

- (a) The principles of legality, subsidiarity, proportionality and providing reasons for acts;
- (b) Rules establishing the powers of Union institutions and bodies;
- (c) Budgetary provisions
- (d) Rules on procedure, transparency and the quality of drafting."

These provisions link the 'constructive' "businesslike conduct of discussions" (Art. 20) to an overall engagement with the integration process itself. In these principles and rules, we can find the constitutive reason behind the dynamics of the integration process. The question that comes up now is how this 'constitutive reason' drives the integration process. If delegations

¹² "8. [The presidency] shall refrain from making lengthy introductions and avoid repeating information which is already known to delegations", "9. Interventions should not exceed two minutes", "10. Full table rounds shall be proscribed in principle"

¹³ "14. Like-minded delegations shall be encouraged to hold consultations with a view to the presentation by a single spokesperson of a common position on a specific point", "15. When discussing texts, delegations shall make concrete drafting proposals, in writing, rather than merely express their disagreement with a particular proposal", "16. Unless indicated otherwise by the Presidency, delegations shall refrain from taking the floor when in agreement with a particular proposal; in this case silence shall be taken as agreement in principle"

and actors feel obliged to respect these rules, if they translate them into social practice, the ‘reason’ is translated into ‘action’ and becomes a ‘cause’.

4.3. Hypothesis 1: Why should ‘social practice’ be respected?

Yet our first hypothesis can only be confirmed if we find evidence for delegations’ understanding that these rules have to be respected and thus become social practice. In the absence of a sanctioning body that could enforce the respect of these rules, other reasons must prevail that lead delegations to accept them. Quite simply, respecting rules and practice may be a precondition for successful and legitimate action within CFSP¹⁴. In this way, the ‘constitutive reason’ would turn into an underlying ‘cause’ of the dynamics of the integration process. Through their action within the institutional framework, actors decide at the same time on CFSP matters and further develop the integration process.

The authors of the above-mentioned ‘*Vademecum* to CFSP’ of the German foreign ministry start by defining their document. It shall help the German staff (not necessarily CFSP-professionals), “to become familiar with the structures, procedures and instruments of CFSP and to help with the daily practice. It should help CFSP-practitioners to develop a sensibility for potential traps in ‘steering’ CFSP dossiers through the Council bodies towards the General Affairs and Foreign Relations Council” (p. 8) – thus it is explicitly drafted to link institutional structures and their principles and rules to social practices. They are of importance for a successful ‘steering’ of CFSP-dossiers ‘through’ the Council bodies. This makes the document particularly interesting for our purpose. We gain access to the ‘recommended practice’ of one of the bigger member states. And we learn, from the outset, something about the motivation to comply with rules and turn them into practice: This is necessary in order for the system to work (again ‘engagement’ with CFSP). Yet the whole machinery can be used for the sake of one’s own interest – it is possible to steer a dossier through this system and to

¹⁴ Our ‘pragmatist’ framework allows to ignore whether delegations adopt this behavior for strategic (‘successful’) or normative (‘legitimate’) reasons. The question of ‘strategic’ or ‘deep’ socialization thus can be left aside (see Juncos/Pomorska 2006 on this difference, Checkel 2001, Egeberg 1999).

come to a decision. This aspect is further confirmed in the introduction. Whereas overall importance is put on ‘coherent’ EU policy in the world (one condition of this: a ‘successfully working’ CFSP, p. 9), this is not a motivation in itself. Instead, the document points to the ‘European Security Strategy’ (ESS, European Council 2003) and its focus on ‘coherency’ and ‘consistency’ (Meyer 2006). This “shows how the EU can bring to bear its political, economic and military weight – *and that of its member states* – in a more effective and coherent way with better capabilities” (my italics). The German diplomats see a coherent CFSP not only as an aim in itself – they see it as a way to better bear German weight. This means, a working CFSP is not only the idealistic aim of a traditionally Europhile member-state. This member-state clearly sees a working CFSP in its national interest.

A next section turns from the ‘overall principles’ and the reasons to comply with them to ‘practice’ within CFSP. It develops a precise instruction how to define German national positions and how to make sure that they are respected within CFSP. One should expect that this is where we find the intergovernmental logics of bargaining. Yet they appear in a ‘modified’ way and always include the overall ‘engagement’ with CFSP. P. 24, concerned with “Running of the Council working groups”, mentions: “Principle of consensus: The basic principle within CFSP working groups of the Council is to achieve a consensus. In case of disagreement this is to be reported to the PSC.”

How, then, does one get a consensus? Concerning the instruction for the German delegation (= the German position to be defended), the *Vademecum* establishes the national coordination procedure and states (p. 20): “Contributions to instructions should be as operational as possible, contain fall-back options and mention potential leeway for negotiation.” Of course, a ‘national’ position is not given up. But the CFSP’s ‘social practice’ has to be respected in order to successfully introduce a ‘national position’ and steer it through CFSP.

In the absence of a supranational body, the role of the presidency implies even more responsibility for the ‘overall’ success. As the instruction-sheet further shows, it is the overall

practice of the German presidency to privilege as far as possible the presidency's role as moderator and 'honest broker' over national positions (p. 20): "The procedure is different during own Presidency times, when a framework instruction draws 'red lines' and otherwise leaves the necessary leeway to the PSC-delegation in order to realize its chairmanship."

Finally, the absence of a supranational legal environment (= the *acquis communautaire* of the community framework) does not mean that the presidency and the member-states could neglect the existence of community law. In practice, there are multiple links between policies of the different pillars. The existing community law develops its structuring force even outside its proper area of application. To ensure compliance, the LS of the CS (European civil servants, not delegated national staff) and the Relex-counselors are closely associated with the presidency. Their presence in negotiations is deemed "indispensable" in the German instruction sheet (p. 23).

Again we do not need to claim 'Europhilia' of a member state. In order to guarantee for the 'legitimacy' of one's action, certain conditions have to be respected. They ensue from the structural force of the existing institutional order. The sole alternative would be a boycott of CFSP and of the institutions. Thus this section has shown evidence for the claim that (a) member states are aware of the formal principles and rules *and* of the social practice ensuing from these principles and rules in CFSP. Furthermore, (b) we have seen that in instructing their staff, member states are well aware of the functional necessity to comply with these practices. In the first place this does not happen out of sympathy with the European endeavor, but in order to behave as a 'legitimate' actor in CFSP – what constitutes a pre-condition for successful action. This 'action' of course aims at successful realization of *national* goals. While the first hypothesis is corroborated, we now have to turn to the second hypothesis, asking if the evoked 'national goals' are *themselves* modified through the integration process.

4.4. Hypothesis 2: The relationship between actors' interests and social practice

To answer this hypothesis, I make a twofold argument. Its first part concerns Germany's larger 'national interest' under the existence of CFSP. The second part then looks in detail for evidence that a 'national position' is changed or transforms due to social practice in CFSP.

I am again basing my narrative on the evidence found in the foreign ministry's *Vademecum*. A first claim concerns the modification of German 'national interest' due to the sole existence of CFSP. Not only would the national interest look differently in the absence of CFSP, but Germany had to adapt its national interest in the light of the evolving CFSP framework. The *Vademecum* allows a relatively precise follow-up on one of its features. It makes at several points clear that Germany would have preferred a more federal CFSP, or at least the provisions of the failed Constitutional Treaty (CT, that would have established a European 'Foreign minister' and a European 'External Service', *Vademecum* p. 10). Instead of a foreign minister, Javier Solana's position as High Representative /Secretary General (HR/SG) was created. Germany adopts its position to this evolution in a pragmatic way, as p. 15 details: "The HR/SG has de facto won an utmost influential position within EU, but also on the international floor. We are interested in further strengthening his role." Of course, in the absence of CFSP and Solana, Germany's national interest would have looked different. Furthermore, with CFSP existing in its particular form, Germany's interest for a 'Foreign Minister' evolved towards 'further strengthening' the second best solution of HR/SG. Whereas this means we can obviously see a 'general' influence of CFSP on the German national interest, it will be more difficult to establish the link between 'social practices' in CFSP and a modification of national positions.

We have already seen (above) how the instruction for the German delegation addresses existing particularities in CFSP (p. 20). It does not respond to *structural* or *legal* particularities of CFSP, but takes into account the *social dimension* of the 'consensus principle' that necessitates leeway in negotiations and – if one is in the role of presidency – even the readiness to put one's own preferences to hold. An indirect indication that social

practice is deemed important can be found on p. 35. Concerning ‘official tasks’ of the officers in the German permanent representation, the *Vademecum* states: “Furthermore, the tasks of the officer concern, next to participation in meetings and advise to the ambassador, the permanent exchange with colleagues from Commission, Council secretariat and the other member states.” A first remark concerns the wording: Commission, Council and Member states officials are seen as ‘equals’. They are not ‘strangers’ or ‘others’, but ‘colleagues’. This corresponds to the often heard remarks of practitioners that since EPC’s inception a transformation from ‘foreigner’ to ‘colleague and friend’ has taken place (Nuttall 1992:312). In a second move, we have to ask why ‘permanent exchange’ is deemed so important as to become part of the official ‘mission’ of the German staff? One reason lies in the strategic advantage that ‘more’ information – especially on the positions of the ‘other’ participants – may bring a better position in negotiations. This argument could also be turned round: More and better information allow to adopt one’s position in view of an overall agreement. While both interpretations seem possible, the available documentation does not allow for further confirmation.

However the document allows for another argument. As already stated, Germany traditionally was seen in favor of a more federal CFSP. Several authors point to an evolution that has taken place since the Treaty of Amsterdam (Baumann 2002, Giegerich 2006). Germany has learnt that the ‘intergovernmental’ CFSP allows for a certain domination through the *directoire* (Hill 2006), the three largest Member States France, United Kingdom and Germany. This learning process has resulted in an adaptation of the German position, now favoring a ‘more integrated’ CFSP that does not necessarily have to be a ‘more communitarized’ CFSP. The *Vademecum* gives evidence of this evolution. While ‘coherency’ and ‘common European voice’ are Germany’s lead principles for CFSP, the diplomats are more critical when it comes to enhanced community influence. Influence of community institutions could be enhanced via the financing of CFSP. So far, non-military CFSP operational expenditure is provided through

the EU budget (Treaty of European Union [TEU] Art. 28.3), and the budget procedure applies (bringing in the European Commission and the European Parliament). If the CFSP budget line is exhausted, other parts of the EU budget can be redeployed. This however needs an explicit consent for each financial instrument, meaning that the Commission's and the Parliament's role evolve from general approval of the budget to a sort of 'co-decision' on CFSP-measures. This could give leverage for a rampant communitarization of CFSP. Yet the German diplomats give explicit order to avoid this process. On p. 51, they state: "While generally interested in furthering integration, also in CFSP, it cannot be in our interest to shift to the community the core of national competency in foreign policy, and in particular in crisis management, by ways of 'self-appropriation'". The same is true for the idea of a global fund for financing CFSP that would be managed in the Council secretariat (p. 52). This impression of an evolved German position is further corroborated in the text. Concerning the 'mixed agreements' between European Community, Member States and third parties, Germany wants to maintain this status quo – and advises its diplomats to attach great importance to this. The alternative solution of two separate agreements, favored by euro-skeptical member-states, must be avoided. On p. 80, the manual states that German officials "should generally pay attention that CFSP aspires at mixed agreements, and in particular must avoid that a provision is taken against this legal form of mixed agreements." – While Germany is against euro-skeptical tendencies and wants to further strengthen integration in pillar two, the German preference no longer is necessarily a communitarization of CFSP¹⁵. This is due to a learning-process within the institutional framework of CFSP, and of the broader EU framework. The institutions are functionally in the sense that they allow for the realization of German interest

¹⁵ Another point corroborates this: p. 48 mentions the case of Erwan Fouerre, at the same time Head of the Commission's delegation to Macedonia and EU special representative (EUSR, a position accorded through CFSP, see Ioannides 2006). This is the first example of a sort of 'fusion' (Wessels 2007) towards a 'double-hat' solution on the ground. While generally favorable to this solution – seen as anticipation of the EU foreign ministry – Germany urges its diplomats "to pay attention, in future situations, that the Commission position can also be fulfilled through a EUSR who is not part of the European Commission." This position can again be explained as to prevent an incremental evolution that would lead to 'communitarization' on the ground, without a formal decision of member states. Instead, the current arrangement fits German interest.

– foreign policy through CFSP. This has become possible due to the establishment of common principles and norms and can be successfully applied if the social practices that ensued from these norms are respected. In this sense, a learning process that led to an evolution of national preferences has taken place in the German case, even if I would be careful to advance a direct influence of social practice in CFSP on German preferences. On the basis of the available documents, this can hardly be corroborated.

4.5. Hypothesis 3: Negotiations in the absence of supranationalism

Concerning the third set of hypotheses, the standard game theoretical expectation would be that lacking supranational authority, the results of negotiations in CFSP should represent the lowest common denominator of all positions. This is based on (a) the paradigm of ‘rational’ actors that pursue an immediate interest. They do not (or barely) take into account the ‘shadow of the future’. (b) Furthermore, under the international system’s ‘anarchy’, states would not give more than absolutely necessary for a deal. In our case of a densely institutionalized, highly socially integrated community environment, these expectations must be modified. Again two arguments seem appropriate.

(a) As demonstrated above, actors engagement with CFSP develops a dynamic process. In their interpretation of the presidency-role, they are well aware of the absence of supranationalism. In consequence, together with their awareness of the ‘principle of consensus’, they act even more carefully in order to obtain a deal than under community environment. To the already mentioned role as moderator and broker (see above), one more feature can be added. One CFSP instrument are declarations. There is a difference between ‘Presidency Declaration’ and ‘Presidency Declaration on the behalf of the EU’. In a concern to allow for rapid reactions and at the same time streamlining the laborious decision-making process, ‘Presidency Declarations’ can be released directly through the Member State holding the rotating presidency, without prior coordination with partners. Yet the condition for the acceptance of this instrument is the respect of established social practice.

Vademecum defines on p. 38: “The other Member States will agree with this proceeding if the declaration does not exceed a coordinated EU policy or if the declaration is not controversial. Declarations of the presidency should anyway not be used to circumvent a potentially difficult debate in the Council.” The German staff, not necessarily familiar with CFSP practices, is explicitly advised not to cede to a tempting possibility to advance one’s agenda on the international (European) scene. The reason behind is that such a behavior would quickly endanger the CFSP-process as a whole, because Member States, while ready to accept the instrument of presidency declaration, are at the same time eager to keep a *potential* veto power. P. 39 states: “It can be useful or necessary to inform and involve EU-partners on the occasion of declarations of the presidency. If time constraints allow so, informing the partners is recommended. EU-partners prefer short time limits over a lack of coordination. However the texts should not be amended by the partners (*‘no drafting exercise’*)” (my italics, English in the original text).

This trust of the partners and respect for the rules, the ‘consensus principle’ and the ‘presidency tasks’ show that member states (Germany in this case) are very well aware that the existence of CFSP depends on their social behavior within CFSP. Only this awareness can account for the respect of the CFSP social environment – what does not exclude national interest behind the alleged engagement with the community. However, this longer term aim of supporting the integration process leads to a situation where ‘stronger’ partners – the presidency – do not push their momentary advantage. This feature can explain why the institutional structure of CFSP, and thus the integration process, holds even in the absence of a supranational agent. If the second part of hypothesis 3a seems refuted, we still do not know if negotiations in CFSP can lead to more than LCD compromises and what could be the causes for this rather unexpected result.

(b) The argument, already raised above, that would lead us to believe that ‘more’ than LCD-results are possible, is based on the ‘structural’ force of discourse. Especially the *acquis*

communautaire, the body of EU community law (understood as a form of ‘thick discourse’), structures negotiation outcomes. This happens even outside its direct realm of applicability. In CFSP, this is regularly the case when ‘potentially overlapping’ competencies are treated, when financial provisions of agreements are negotiated or when ‘mixed agreements’ with third parties are concluded. The legal service, and therefore community personnel, are part of the negotiation and play an important role in drafting those acts that depend on their legal validity.

The same process applies when a presidency aims at fostering the ‘overall coherency and consistency’ of EU foreign policy, as in the case of the German presidency. P 31 of the *Vademecum* informs on Commission competencies in CFSP-matters. It starts out, as usually in EU matters, by quoting the appropriate EU texts. The ‘principles’ can be found in the EU-treaty (Art. 27 TEU). These principles are related to the corresponding rules that were developed. Based on this information – that shows the structuring quality of existing legal discourse – advice on social practice is given:

“Problem of coherency: [...] EU should speak in foreign matters ‘with one voice’, conflicts between and overlapping of CFSP- and Community-activities (for example in the realm of civil crisis prevention) must be avoided. Complying with this rule will in practice often turn out difficult. [...] The ambition of the German EU-presidency is to ameliorate the coherency between CFSP and community activities in external affairs, e.g. through exchange of personnel, strategy papers drafted commonly through CS and COM or so-called ‘double-hats’ for EUSR/head of Com-delegations.”

The consequence of this aim of the German presidency, of course, will be respect for the existing institutional structures and restrictions of own positions due to this. On the other side, taking these rules and advices seriously opens a whole range of new instruments and tools for common foreign policy making (see the examples cited above). The more these instruments and tools are available, the higher the chance to move from LCD-bargaining to ‘splitting the difference’ or ‘upgrading of common interests’.

The material available for this study even allows to draw the argument further. The ‘structuring force of discourse’ not only applies when the *acquis communautaire* is touched upon. A similar practice has developed in the CS. Its services, as already mentioned, provide

ample assistance to the presidency and, due to their legal competence and knowledge of EU affairs, draft preliminary versions of most of the formal documents. In this, they rely on patterns of ‘standard language’ and member-states accept this procedure (p. 68 *Vademecum*). In the “manual of good working practice in CFSP” of the CS, chapter 3 deals with the “Adoption of legal acts”¹⁶. Especially in the fields where the CS has developed into a sort of ‘CFSP-executive’, standard patterns for the drafting of legislation have developed. This applies particularly for ESDP. Under 3.2.5. “Crisis Management Operations” we find an instruction-sheet with elements of a ‘Joint Action’. They are: “*Preamble*”, “*Mission*”, “*Appointment of Commanders and designation of Operational Headquarters*”, “*Planning and launching of the Operation*”, “*Political control and strategic direction*”, “*Military direction*”, “*Participation of third states*”, “*Financial arrangements*”, “*Release of information*”, “*Community action*” and “*Entry into force and termination*”. For all elements in italics (6/11), the document points to “standard language”.

Another example, given under 3.3.1, allows an even deeper insight into the ‘machinery’. Concerning ‘Common Positions’, another legal instrument of CFSP, the example of ‘sanctions against third parties’ is given. The document explains: “The texts of Common Positions are drafted by the CS. Geographic and functional working groups provide the policy contents, i.e. scope of measures to be taken, decisions to extend the measures as well as the list of targeted persons or entities. The RELEX Counsellors carry out the final scrutiny of the text before submitting it through Coreper to Council for adoption.” Whereas the ‘policy input’ is established in working groups (bringing together member-states, commission officials, the presidency and the secretariat that takes notes and drafts texts), the structuring power that resides in the legal scrutiny through Relex-Counselors is clear. Furthermore, the possibility to rely on established procedures and instruments provides the tools to ‘upgrade’ a negotiation, even in the absence of a supranational authority. The presidency, relying on the CS and its

¹⁶ As this is an internal document, no further indication is given on the source.

competencies in CFSP, can very well take on the role of a ‘central actor’ as described by Haas (1958:489-90). It thus has the capacity to build a ‘European interest’ that represents more than the ‘lowest common denominator’ of member states, as long as the different member states accept their engagement in CFSP and the EU.

A last point, finally, deals counterfactually with the ‘limits’ of the integration-processes. This is an empirical question, and it can be answered quite precisely in relying on the presented documents. The German *Vademecum* and the CS’s ‘Manual of Good Working Practice’ both contain features that allow to grasp the ‘limits’ of the engagement with CFSP. They usually appear on institutionally ‘not yet settled’ topics. This is the case, in *Vademecum*, concerning the practice of ‘mixed agreements’ where the document mentions: “The discussion is currently not yet settled”, what in turn necessitates ‘attention’ by German diplomats in order to prevent the incremental setting of precedents (p. 80). The same applies to the CS documents that deal several times with ‘not yet settled’ rules: “This latter practice is not encouraged by the CS”. Here we touch upon the current ‘limits’ of the integration process, behind them we presumably find LCD-bargaining – until a new ‘settlement’ occurs. The precise mechanisms that allow for such a settlement – between incremental evolution, functional pressure and ‘history-making’ decisions – are beyond the scope of this paper. Within its scope, we now have good evidence to suggest that even in ‘intergovernmental’ CFSP, the ‘community modes’ of conflict resolution take place. Furthermore, the structuring force of law (and standard language) and the instruments available to the ‘central actor’ (Presidency and CS) give explanations why hypothesis 3b can be confirmed.

(5) Conclusion

This discussion of the role of practices in the second pillar for the integration process allows for several concluding remarks. (1) Within the established ‘pragmatist framework’ it was possible to identify the different principles, rules and social practices that govern CFSP without artificially restricting our field of observation for theoretical reasons. These ‘social

practices' are not 'objectively given'. They developed within a social environment defined in time and in space and they exist because of the actors' perception and at the same time application of these practices. (2) In their awareness of those social practices, the actors communicate the importance and meaning they attach to their respect: this does not happen for reasons of courtesy or out of ideational Europhile sentiments. Instead, it seems to be a functional condition for successful and legitimate action in CFSP to apply these standards of behavior. In turn, action based on these conditions allows to realize 'national interest'. (3) Of course this is not a one-way relationship. Respecting and applying these behavioral standards in turn modifies the perception of one's national interest. For one, the overall existence of CFSP and its concrete evolution led to a process of national adaptation. Second, the actual action within CFSP influences national instructions, especially during periods of presidency, but also in a more general manner, even if evidence for this claim is feeble, due to the available sources. (4) Existing institutional and social structures, especially a legal framework and the centralization of executive tasks within the CS lead to mechanisms that were first established in integration studies. This concerns notably the availability of instruments and tools for conflict resolution. Next to LCD-bargaining, the trust of the member states into the presidency and the structurally enforced compliance of the latter with its role develop the couple of Presidency and Council Secretariat into a sort of new 'central actor' within the community environment of CFSP. However, while a less controversial style of decision-making prevails due to the structural and institutional particularities of CFSP, these overall tendencies do not lead to 'automatic spillover'. Instead, as in the German case, the 'functional satisfaction' with the status quo might very well impede further communitarization of CFSP (Giegerich 2006). Further research should establish if this concurrence of different models of community institutionalization has also the potential to lead to disintegration, in delegitimizing the established social practices of the first pillar.

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