



## The struggle over the Services Directive – a turning point for EU-decision-making?

Formula Conference, 28 May 2009

Jon Erik Dølvik and Anne Mette Ødegård, Fafo

## Case study of the decision-making process – key issues:

- Who were the key actors, institutions, and coalitions in different phases?
- What were their main interests, concerns, and strategies?
- How were their approaches influenced by
  - The legal ramifications of the decision-making process?
  - The constellations of views and power in the other EU institutions?
  - Member State actors?
  - Pressure policies by the social partners and social movements?

## Puzzles:

- *How could the European Parliament (EP) determine the outcome?*
- *And how come that the Socialist minority in the EP and the ETUC could gain such decisive influence on a key Single Market directive ....*  
*....when they were at collision course with organized business, the Commission, and the majorities in the Council and the EP?*

→ **A leap towards a new and more democratic pattern of EU decision-making –or a unique, deviating case?**

## Research approach and data

- Descriptive analytical account with emphasis on the role of the EP
- Semi-structured interviews with key actors in
  - the EP,
  - the Commission,
  - the main European Social Partners,
  - (and working group representatives in the Council)
  - And with major Swedish actors and a few German and Polish representatives
- Secondary material

# Time line

- **Background: From Lisbon 2000 to Bolkestein draft January 2004**
  - Institutional consensus about the need for opening of the EU services markets
  
- **Phases of decision-shaping - and making:**
  - 1) **The preparatory, positioning phase** (January 2004-November 2005)
  - 2) **The decisive "hot phase" of negotiations in the EP** (Nov 2005-Feb 2006)
    - > EP First reading 'compromise'
  - 3) **Adoption phase**
    - > Commission amendments, passing the Council 'needle's eye' (Spring 2006)
    - > EP Second reading – compromise untouchable (November 2006)
    - > Adoption by the Council 12 December 2006
  
- National implementation by 12 December 2009

Focus

## Background: From Lisbon to Bolkenstein

- Free movement of services anchored in the Treaty of Rome, but service mobility remained low and barriers high
- The Lisbon Agenda: opening of the service markets key to completion of the Internal Market
  - 2000 Commission "Internal Market Strategy for Services" and follow up report 2003
  - May 2003 Commission announced it would forward a Directive
- The Parliament and the Council «welcomed the announcement »
- The Prodi Commission was in a hurry and no proper consultations were undertaken before the launch of the Bolkestein draft

# Legal framing of the decision-making process

- Co-decision procedure (legal basis art 47(2) & 55)
  - Grants EP legislative partnership with the Council, which acts on the basis of qualified majority voting
    - One, two, or three readings, and, if necessary, final reconciliation
    - The Commission can withdraw its proposal, and, if major Commission objections, unanimity can be required in the Council (= "veto" power)
- **Actors in either institution must take the views and balance of power in the other into account if they want an act to pass** (i.e. avoid a blocking minority in the Council)

# The positioning phase (from January 2004...)

- Initially little attention, the draft Directive well received in the Council
  - Focus on the accession of EU10, where the draft was hailed
  - The EP and the Council initiated their standard work
- But gradually questions and opposition arose ...
  - Swedish unions got the draft autumn 2003 and alarmed the government and the ETUC...
  - Belgian and French unions & NGOs took to the streets...
  - and a kindling grassfire of public opposition started spreading
- Fuelled by enlargement, the Polish Plumber, EP elections, and the rising campaign on Treaty ratification in France
- EP public hearing October 2004

→ Political drama in the making



# Late 2004-2005: Mounting protest, shift of actors, and political re-positioning

- National mobilization brought the issue into the public space
- Shift of Commission: Bolkestein replaced by the misty McCreevy
- Employment Summit 19 March – ETUC manifestation gathers 75,000
  - Chirac declares the Directive "unacceptable to France"
  - The Council calls on the EP to fundamentally rework the Directive "to preserve the European Social Model"
- French and Dutch NO to the Constitutional Treaty -> paralysis in the EU establishment, the Council fearing East-West deadlock



→ All look to the EP to find a way out of the conundrum

# The final "hot" phase of negotiations in the EP



# Inside the European Parliament

- Main actors: IMCO and Employment Committee, the Conservative party (EPP-ED) and the Socialist party (PES) – despite liberal-conservative EP majority
- Antagonistic views both within and across the main party groups
  - But they wanted a Directive and to prove ability to deliver on issue that mattered
- How to find a solution that could be acceptable for the Commission and not blocked by a minority to the left or the right in the Council of 27?
- EPP-DE realized that a broad compromise across the center was needed

## The final stage:

- **A small, high-level negotiating group was set-up, working until the last hours before the EP decision**
  - Key areas of conflict: Scope, labour law, and the Country of Origin Principle (CoOP)
- The employers were split, ETUC was floating texts in all channels \*
- EPP actors with cross-cutting (union) ties played bridge-building roles
- **Finally, the EPP let go and grabbed the floated "Freedom to provide services" formula replacing the CoOP**
- **Uncertain whether the settlement could be sold → intense lobbying from national parties & governments to ensure majority**

# While employers were split, the ETUC pursued a "dual strategy" – working from within and without

- **Saw early the dimensions of the issue, set up a top-level Task-Force, and initiated its largest transnational campaign ever**
  - **Avoid protectionist stamp**, accept the need for a Directive but opt for radical recast
  - **Trying to kill two birds in one stone** – fight Bolkestein and win the French referendum
  - **Create Unity** - get CEE-members on board by in 2005 demanding free movement of workers (i.e. repealing the Transitional Arrangements)
- **Multi-level approach –based on seven point list of demands:**
  - **Coordinated mobilisation** – targeting central Member-States and governments
  - **Informal contacts** with high-level actors in the Council, Commission and the EP
  - **Provided expertise** on labour law for EP actors – despite populist rhetoric in the public
- **Served as broker within the EP and vs the Council, the Presidency, and the Commission top... while mobilizing in the streets outside**
  - **"... the final demonstration was like walking on eggs...."**

# The adoption process:

- Swift Commission clearing and adjustment of legal text (April 2006)
  - Amended art 1.6-1.7 and launched strict guidelines for Posting control (May-06)
- Passed the 'needle's eye' of the Council (31 May 2006) with clear message to the EP that the compromise was untouchable
- EP Second reading "virtually cancelled" (15 November 2006)
  - PES attempt to clarify text on labour law resolutely rejected
  - McCreevy, summoned to the EP, asserted "unambiguously" that national labour law and collective are not affected. "However, Community law and in particular the Treaty continue to apply in this field" – as soon witnessed in Laval case...
- Adoption by the Council (12 December 2006)

# Review: How can the puzzling outcome be explained?

- Unanimous Council and the EP had called for a Directive
  - Reinforced by East-West conflict, Treaty failure, credibility crisis
  - Poor preparation, actor structure in flux, 'orphan directive'
  - Legal framing – co-decision
  - The unforeseen, multi-level public mobilisation
- Decisive scoring opportunity: the MEPs could not afford to fail
- The power-relations in the Council required broad compromise to prevent minority blockage – either from the left or the right
- Constrained the EP majority
- The employer split and the ETUC's dual role with control over the public reception of the outcome
- ETUC consent, became Litmus test for success
- The EP controlled a legislative good the Council & Commission urgently needed, and the outcome depended on PES consent
- Least interested actor gained bargaining power

- Contextual factors created an instance of extraordinary exchange power enjoyed by the actors least interested in the directive (Coleman 1966)
- Facilitating conditions in the EP – transnational party structure and key actors with cross-cutting allegiances
- Engagement of forceful national coalitions - e.g. the "Swedish mafia" - and transnational public and organizational mobilization

## Conclusions:

- Not a turning point towards new pattern of EU decision-making and power relations – but Council of 27 can strengthen the EP
- Illustrated how the contingent character of decision-making in the multi-institutional EU system can sometimes enable unexpected events
- The case was special: context, timing, scope, and public mobilisation
  - The EU crisis: the key to resolve the Gordian knot was in the hands of EP
- The procedural interdependency boosted the exchange power of the least interested actors
- The decisive role of the European Parliament (and the ETUC) was distinct and atypical, but not exceptional – can reoccur again .