

**Multi-level Governance Revisited.**  
**Comparing the Strategies of Interest Representation**  
**of Legislative Regions in EU Environmental Policy-**  
**Making.**

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## **Declaration**

I herewith declare that this thesis was written by me, that the work is my own work and that the work has not been submitted for any other degree or professional qualification.



## **Abstract**

Since the 1980s, regions have taken a strong interest in EU policy-making and increasingly demanded representation in the process. This has given rise to the concept of multi-level governance (MLG) in EU policy-making, which stipulates that subnational and supranational actors will interact and thus to some extent erode the authority of central governments. However, due to the scarcity of case study research looking at concrete instances of policy-making, a number of questions remain about the extent and the effectiveness of the interaction between regional governments and European actors. In addition, the extent and origins of differences in regional activity across regions and member states remain unclear.

This thesis aims to contribute to the MLG debate by developing a theoretical framework with a set of hypotheses about regional activism in EU policy-making on the basis of rational choice institutionalist assumptions. It then investigates how seven legislative regions from four member states (the UK, Germany, Belgium and Austria) represent their interests in two concrete instances of EU policy-making and tests the core hypotheses against these fourteen cases.

The thesis contributes to the MLG debate in three ways. Firstly, the principal objective of the thesis is to analyse the impact of different types of domestic intergovernmental relations on the strategies of regions at the European level. It is argued that the level and nature of a region's activity on the European level depends on the opportunities for influence in the domestic European policy-making process and the constraints that domestic rules place on European level activity. Secondly, a number of factors that could account for different levels of regional activity both within and between states are analysed. Domestic conflict and the capacity of a region are found to be particularly relevant for regional mobilisation. Finally, the thesis discusses the relative importance of domestic channels compared to European channels of regional interest representation, thus addressing one of the fundamental questions in the MLG literature. It is argued that unmediated interaction between European actors and regional governments is less common than predicted by the

MLG literature, but that it can be effective, especially in cases where regions devise a comprehensive strategy of interest representation.

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## List of Abbreviations

ACK	Amtscheftkonferenz (Conference of Heads of Departments)
BL	Basic Law
BLAK	Bund-Länder Arbeitskreis
BMU	Federal Ministry of the Environment
CCIM	Cooperation Committee for International Environmental Policies
CIS	Common Implementation Strategy
CIW	Coördinatiecommissie Integraal Waterbeleid
COM	European Commission
CoR	Committee of the Regions
COREPER	Committee of Permanent Representatives
CSU	Christlich-Soziale Union
DEA	Directorate for European
DEFRA	Department for Environment, Food and Rural Affairs
DGARNE	Direction générale opérationnelle Agriculture, ressources naturelles et Environnement
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EP	European Parliament
EPRO	The Environment Platform for Regional Offices
EU	European Union
EUREAU	The European Federation of National Associations of Water and Waste Water Services
FFH-Directive	Directive 92/43/CEE concerning the protection of natural and semi-natural habitats and wild fauna and flora
JMC	Joint Ministerial Committee

LAWA	Länder Arbeitsgemeinschaft Wasser
LC	Law on Cooperation between the Bund and the Länder Concerning European Matters, 12 March 1993.
MEP	Member of the European Parliament
MLG	Multi-level governance
MoU	Memorandum of Understanding
OJ	Official Journal
PR	Permanent Representation
REGLEG	Conference of European Regions with Legislative Powers
SEPA	Scottish Environment Protection Agency
SGEUO	Scottish Government EU Office
SNA	Subnational Authorities
SNP	Scottish National Party
TEU	Treaty of European Union
ToL	Treaty of Lisbon
UK	United Kingdom
UKREP	Permanent Representation of the UK to the European Union
UMK	Umweltministerkonferenz
VMM	Vlaamse Milieu Maatschappij
WIFO	Austrian Institute for Economic Research
WGF	Working Group Floods

# Introduction

Since the 1980s, the level of activism of regions in EU policy-making has greatly increased. This is reflected in the exponential rise in the number of regional offices in Brussels, calls for formal regional representation through institutions such as the Committee of the Regions and – especially in the 1990s - demands for a ‘Europe of the Regions’.<sup>1</sup> In the early 1990s, these developments inspired Gary Marks’ concept of multi-level governance (MLG) in EU policy-making as a challenge to the state-centrism of existing integration theories, especially liberal intergovernmentalism. Marks defined multi-level governance as “a system of continuous negotiation among nested governments at several territorial tiers” (Marks 1993: 392). However, nearly two decades after the emergence of the concept, the debate about the ability of regions to engage successfully in this process of continuous negotiation and to represent their interests on the European stage is still ongoing.

Despite the undeniable increase in regional activity on the European level, some authors argue that domestic channels of interest representation are still more *effective* than European ones (Jeffery 2000). However, due to the scarcity of research looking at regional interest representation in concrete cases of policy-making, it has been difficult to establish to what extent regions do rely on domestic or European channels and even more difficult to analyse the influence they could exercise through them.

Strong legislative regions are a particularly interesting case.<sup>2</sup> As European integration has led to a partial transfer of their legislative competences to the European level,

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<sup>1</sup> Demands for a ‘Europe of the Regions’ declined from the late 1990s onwards. See Ruge (Ruge 2003: 286-231) for a discussion of the rise and decline of the concept. In addition, the European Commission appears to have lost interest in the concept since the late 1990s. Thus, in its *White Paper on European Governance* (Commission of the European Communities 2001: 4, 12) it attributes the responsibility for regional involvement in EU policy-making to the member states. Hooghe and Marks (1996) argue that the idea of the ‘Europe of the Regions’ has failed as the outcome of European integration is not captured by the notion of ‘Europe of the Regions’. Not only is there no “overarching model of governance across the EU” (90), but in addition “there are few grounds for supposing territorial convergence in the EU” (91).

<sup>2</sup> The term ‘region’ can refer to a variety of territorial entities ranging from relatively small sub-state units via cross-border regions to ‘global’ regions such as West Europe or North America (Loughlin 1997: 154-5). In this study, the term ‘region’ refers to political regions, i.e. territories with regional governments. ‘Legislative regions’ are regions that have primary or secondary legislative

these regions have a strong incentive to influence European legislation in order to balance this loss.<sup>3</sup> In addition, in the light of the negotiations of the Constitutional Treaty and the Treaty of Lisbon, it seems that strong legislative regions have started to concentrate on preserving national competences and on opposing a deepening of European integration as they struggle to gain a satisfactory level of influence over EU policy-making (Jeffery 2007a). Nevertheless, with greater resources and political legitimacy than regions in other member states, they can be expected to have the greatest impact on the European level. At the same time, the constitutionally guaranteed possibilities of influencing the position of their national governments provide these regions with several channels of interest representation and a certain choice as to where and how they wish to invest their resources. Thus, while strong legislative regions have the greatest chances of establishing a system of MLG in EU policy-making compared to other European regions, to what extent do they rely on unmediated action on the European level?

The focus of this thesis lies on the extent to which strong legislative regions choose to represent their interests through channels on the European level in addition to domestic channels. It lies in particular on the extent to which and the circumstances under which regions choose “unmediated” channels of interest representation, i.e. channels that allow regions access to the European level but do not require prior consent from the member state’s central government or coordination with the central government.<sup>4</sup> In essence, it is the use of those “unmediated” channels that distinguishes a multi-level negotiation (between different actors from multiple levels) from a state-centric negotiation, where sub-state actors voice their positions at the

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competences. In particular, they include the ‘states’ of federal states (the *Länder* in the case of Austria and Germany and the Belgian *régions*), but also regions that have obtained extensive powers through devolution (e.g. Scotland).

<sup>3</sup> Stephen Weatherill (Weatherill 2005) argues that the EU disempowers the regions – and particularly strong regions - by obliging them to implement legislation that they could not influence in the first place, absorbing regional competences, generally disregarding domestic constitutional arrangements and encouraging trends towards centralisation. See also Angela Bourne’s 2003 case study of the Basque Country suggesting that European integration can lead to a disempowerment of certain regions (Bourne 2003).

<sup>4</sup> Unmediated channels include, for example, participation in the Committee of the Regions, the mobilisation of regional MEPs, direct contacts with the Commission etc. While the use of unmediated channels may be part of a strategy of bypassing the central government, it is not necessarily linked to a situation of conflict between the central government and the region. In principle, it would be possible for these channels to be used as part of a concerted action by regions and their member states to reinforce a joint position.

national level and where the central government then filters them and takes them to the supranational level.

Focusing on the three federal member states of the European Union, Germany, Belgium and Austria, and a quasi-federal region, Scotland, this dissertation aims to contribute to the understanding of the mobilisation of regional executives both in domestic European policy-making and on the European level. Through case study research that reconstructs how Scotland, Bavaria, Mecklenburg-West Pomerania, Vorarlberg, Carinthia, Flanders and Wallonia represented their interests in two concrete instances of EU policy-making, it aims to make five contributions to the literature on MLG. First of all, it will create one of the largest collections of case studies of regional strategies of interest representation in European policy-making to date, thus creating an important empirical basis for work on a concept that has largely relied on case studies from one single policy area, regional policy. Secondly, the dissertation will analyse the impact of different types of domestic intergovernmental relations on the strategies of regions at the European level. So far, few authors have attempted to establish if there are differences in the strategies of interest representation of regions from different countries, what these are and why they occur (an exception is Börzel 1999, 2002). Thirdly, the data serves to test factors that could explain differences in the strategies of interest representation between regions more generally, something that has been attempted by a few authors but either on a small empirical scale or with reference to one specific aspect of interest representation only (Bauer 2006; Marks et al. 1996; Nielsen and Salk 1998; Marks, Haesly, Mbaye 2002; Jeffery 2000; Tatham 2010). Fourthly, the dissertation will discuss the relative importance of domestic channels compared to European channels, thus addressing one of the fundamental questions in the MLG literature. In doing so, it will also assess the differences in the popularity of various European channels. Finally, to provide a complete picture of the interrelatedness of different options of interest representation, the extent of regional cooperation through informal channels in *domestic* European policy-making will be analysed.

Based on the existing literature and the rational choice institutionalist assumption that regional governments are rational actors that will seek to maximise their

influence while minimising their costs within the institutional constraints of European policy-making, the core hypotheses investigated in this thesis are the following (cf. Chapter 1 for a detailed discussion):

A region is more likely to seek unmediated access to the European level if...

- there is domestic conflict (either between regions or between the central government and the regions)
- there is party incongruence between the regional and the central government or ethno-regional parties are in power.
- the domestic influence of a region is low.

A region's *capacity* to develop a multi-level strategy depends on its administrative capacity, as influenced by...

- its economic strength.
- its size (in population).

## Structure of the Dissertation

The first of the seven chapters that form the dissertation concentrates on placing this work within the context of the literature on regional interest representation in European policy-making. It reviews in particular the literatures on multi-level governance in the European Union and on Europeanisation in order to identify their achievements and to identify gaps in the current understanding of regional mobilisation. While the MLG literature has emphasised the presence of subnational actors<sup>5</sup> in European policy-making, authors have focused too much either on the constitutional – i.e. formal – distribution of powers, *structures* of regional engagement (e.g. regional offices, the Committee of the Regions), specific policy areas, such as regional policy, or particular aspects of everyday policy-making, such as the implementation phase. It is thus argued that there is a great need for comparative case studies of regional engagement in everyday EU policy-making in regulatory policy areas both as a means to (I) explore further the importance, role and

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<sup>5</sup> The literature on the European Union commonly uses the term 'supranational' to refer to the actors/level above the state. Conversely, the term 'subnational' is widely used to refer to the actors/level below the state. However, the latter term is problematic in that it unnecessarily conflates the state and the nation and overlooks the existence of sub-state nations (e.g. Scotland in the UK). Due to its wide-spread use in the literature, the term 'subnational' will nevertheless be used here when the thesis makes reference to existing debates.

interaction of formal and informal channels of interest representation for regions and as a way to (II) explain inter- and intrastate differences in regional engagement in EU policy-making. In the absence of studies of regional interest representation that look at the *process* of interest representation, the abstract discussion of formal powers and available channels can only establish the framework for regional action, but fails to explore how this framework is actually being used. Both the Europeanisation and the MLG literatures have so far developed only limited explanatory potential for different levels of regional mobilisation on the European level within and across-states.

The second half of the chapter explores how other theories can complement the multi-level governance literature with a view to developing its explanatory power. In particular, it is argued that rational choice institutionalism, which is compatible with existing accounts of the emergence of the EU as a multi-level system, can provide further insights into actors' behaviour in policy-making and testable hypotheses. On this basis, a theoretical framework for the analysis of regional engagement in European policy-making is presented and a wider set of potential explanatory factors for interregional differences identified.

The second chapter presents the design of the comparative research project with an emphasis on the process of interest representation. It focuses on the operationalisation of key variables and how their impact can be analysed in a qualitative comparative design with a medium number of cases. In addition, the methodology and the selection of the seven case study regions and two Directives (the Flood Risk Management Directive and the Bathing Water Directive) are discussed.

With formal domestic processes of and provisions for the coordination of the national position being part of the independent variable and the use of European channels and domestic informal processes being dependent ones, the analysis requires a firm understanding of what these different processes are. Chapter 3 will therefore discuss the involvement of regions in European domestic policy-making in general and the strengths and weaknesses of various European channels. It will analyse to what degree the various channels confer "hard" power onto the regions

and flesh out the hypothesis on the impact of domestic provisions on the extent to which regions seek unmediated access to the European level.<sup>6</sup> The chapter will also take into account recent constitutional reforms in Germany and review the changes introduced by the Treaty of Lisbon, arguing that it is unlikely to change the fundamental dynamics of regional interest representation in the European Union.

Chapters 4 and 5 present the empirical findings of the research project. After discussing the participation of the regions in the formulation of the national positions on the two case study Directives, Directive 2006/7 EC *concerning the management of bathing water quality* (hereafter referred to as “Bathing Water Directive”) and Directive 2007/60/EC *on the assessment and management of flood risks* (hereafter referred to as “Floods Directive” or “Flood Risk Management Directive”), Chapter 4 argues that formal provisions on the coordination of the national position influence the degree to which regions voluntarily engage in horizontal cooperation at home. Chapter 5 reviews both the mediated and unmediated European level activities of the regions and concludes with a reflection on the *impact* of regional interest representation on the *outcome* of the negotiations. It argues that regional mobilisation is not just symbolic but does indeed leave a trace in the final Directive.

On the basis of the two preceding chapters and the theoretical framework developed in Chapter 1, Chapter 6 concentrates on the analysis and explanation of differences in regional interest representation in European policy-making. In particular, it confirms the usefulness of the rational choice institutionalist approach and the impact of conflict and domestic provisions on the regions’ willingness to mobilise through unmediated channels on the European level. It also confirms the enabling effect of the size of a region on regional activism both at home and in Brussels.

Chapter 7 then draws together the empirical evidence to review the relative importance of unmediated channels of interest representation on the European level. It argues that some of the channels that are routinely mentioned as key instruments or access points for regions were used much less than expected. In addition, it

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<sup>6</sup> In this context, ‘hard’ powers refers to the formal right to have the regional position reflected in the member state position, whereas ‘soft’ powers would, for example, just be the right to be consulted, without any guarantee as to the actual impact of that consultation.

highlights the extent to which unmediated strategies of interest representation were in fact merely used to complement the mediated involvement through the member state. While regions can in some instances bypass the central government, they only do so in the most pressing cases. Not only is their capacity to do so limited, but they often simply have no reason to stray beyond domestic European policy-making.

Finally, the concluding chapter discusses the wider relevance of the study and its capacity to generate hypotheses for other settings. Looking ahead, it also uses its findings to assess the likely impact of the Treaty of Lisbon on the strategies of interest representation of strong legislative regions in the long term. It then concludes by identifying the questions and hypotheses raised by this project for future research.



# Chapter 1 – Understanding Regional Engagement in European Policy-Making: Breakthroughs and Gaps

## 1.1 Introduction

The objective of this chapter is to review the state of the art of research into regional strategies of interest representation in the European Union, to identify gaps in the current understanding of regional mobilisation and to develop a theoretical framework for the analysis of regional engagement in European policy-making.

The first section of the chapter focuses on the multi-level governance (MLG) literature as the dominant approach to regional interest representation in European policy-making. The concept of MLG was developed and applied to European integration in the 1990s by Gary Marks. The MLG approach reflects a shift away from grand theories about the nature of European integration in favour of middle-range theories about policy-making *within* the framework of the treaties (Sloat 2002: 34-35). In doing so, it represented the EU as a political system rather than an intergovernmental system of negotiation (Knodt and Große Huettmann 2006: 225), thereby encompassing both treaty negotiations and everyday policy-making. In addition, unlike the traditional integration theories, it introduced new actors into the analysis such as regional governments and later also subnational actors more generally. Especially in the early stages, the approach was optimistic about the role and influence of regions. Thus, according to Hooghe (1995: 178), MLG ‘is the only model where regions would be a governmental level of importance next to national, European and local arenas. This Europe cannot be one of the national states, nor of regions, but only a *Europe with the Regions*’ (emphasis original).

After the first section fleshed out the evolution of the MLG literature, its main hypotheses on the position of regions in the European Union and about the factors that lead to interregional differences in interest representation, the second section focuses on the remaining gaps in and weaknesses of the approach. It highlights most notably its narrow empirical basis, inconclusive findings on the strengths of regions

and the relative importance of European and domestic channels of interest representation and the underdeveloped nature of the hypotheses about interregional differences.

The third section explores the extent to which other approaches and theories can complement the multi-level governance literature with a view to bridging the gaps. In particular, the empirical and theoretical contribution of the Europeanisation literature will be reviewed, followed by a discussion of the insights that rational choice institutionalism provides into actors' behaviour in policy-making more generally and how it has been used so far in debates about regional engagement in European policy-making.

The final section combines the insights of the preceding sections to identify ways in which this project can further the MLG debate. A theoretical framework inspired by rational choice institutionalism is developed to boost the explanatory potential of the concept of MLG. It argues that the rational choice institutionalist assumptions that have so far inspired both liberal intergovernmentalism and Mark's explanation of the development of multi-level governance can be exploited further to develop more detailed hypotheses about regional engagement in European policy-making, most notably about the impact of domestic intergovernmental relations on regional strategies of interest representation. It proposes to test old MLG hypotheses about the extent to which regions seek unmediated access and about interregional differences against new empirical backdrops.

## ***1.2 The Multi-Level Governance Literature***

### **1.2.1 The Emergence of Multi-Level Governance as a Model of European Policy-Making**

Gary Marks developed the concept of MLG inductively from the study of European structural policy. While the concept is not yet explicitly used in his 1992 chapter on structural policy in the European Community, Marks already addresses the 'distribution of authority, and decision-making powers across the Community,

member states, and regional governments’, thereby referring to several levels of government (Marks 1992: 192). In addition, Marks distinguishes between the formal competencies of different levels of government and the de facto involvement of these levels in policy-making pointing, for example, to the existence of extensive informal networks. In his 1993 chapter on ‘Structural Policy and Multilevel Governance in the EC’, Marks takes the distinction between formal powers and everyday politics further and defines the concept of MLG as ‘a system of continuous negotiation among nested governments at several territorial tiers – supranational, national, regional and local - as the result of a broad process of institutional creation and decisional reallocation that has pulled some previously centralised functions of the state up to the supranational level and some down to the local/regional level’ (Marks 1993: 392). Thus, different levels of government negotiate on several levels in a process that goes beyond formal relationships to include informal interaction.

In later work, political arenas were described as interconnected rather than nested, highlighting the fact that actors seek unmediated involvement at multiple levels (Marks, Hooghe and Blank 1996). In particular, “subnational interests mobilize beyond the reach of national governments directly in the European arena” (Hooghe and Marks 2001: 12). In addition, Marks and Hooghe started to develop a typology of MLG based on two different types (Marks and Hooghe 2004: 29). Type 1 analyses how power is shared among governmental actors at different levels (for example in federal states) and type 2 focuses on “special-purpose jurisdictions that tailor membership, rules of operation, and functions to a particular policy problem.” As a result, MLG could incorporate a larger and more varied number of stakeholders and settings into its analysis under the second type of MLG (e.g. public-private partnerships, such as the Transatlantic Business Dialogue or the Committee for European Normalization). As this project is dealing with general purpose jurisdictions, the focus here will be on Type 1 MLG and governmental actors.

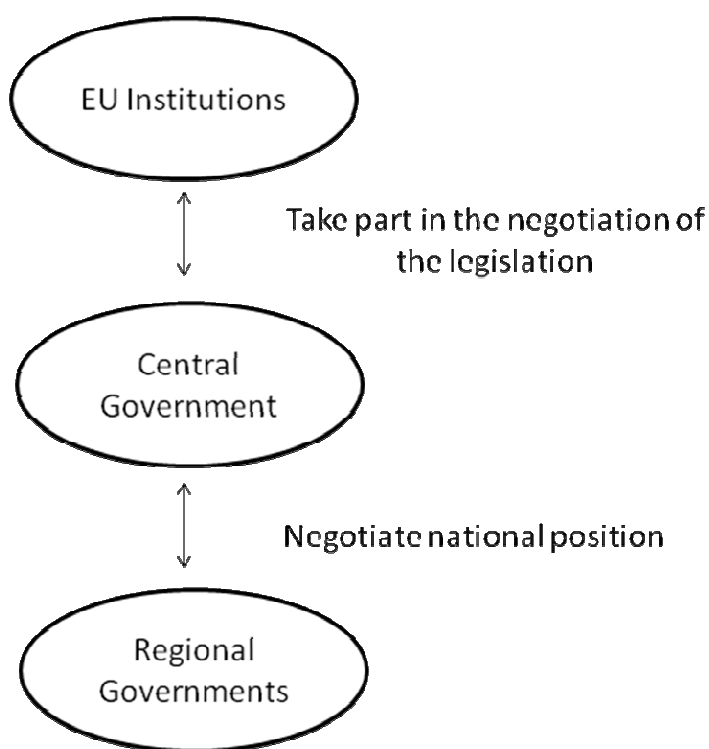
The MLG approach was fuelled by the introduction of structural funding to limit regional disparity in the Single European Act (1986) that created a demand for regional participation in the implementation of this policy. Only a few years later, the Treaty of Maastricht (1992) laid the basis for formal regional involvement in the

European decision-making process. The Committee of Regions (CoR) created an official consultative role for elected regional and local representatives and certain strong legislative regions could send ministers to the Council of Ministers under Art. 146 subject to domestic provisions. In addition, the shift to more qualified-majority voting and the introduction and extension of the co-decision procedure was seen to undermine the power of individual member states and strengthen European institutions – such as the Commission and European Parliament – that were no longer seen as the agents of member states but as actors with their own agendas (see for example Hooghe and Marks 2001). Thus, it is suggested that the Commission sometimes actively tries to mobilise and strengthen the subnational level as part of a strategy whereby a European-subnational alliance would strengthen both types of actors in their dealings with the member state governments (Benz and Eberlein 1999: 331; McCarthy 1997: 443, Tömmel 1998: 72; Marks and McAdam 1996: 267). These changes also led to the initial emergence of a strand of literature that described Europe as being or moving towards a Europe of the regions or with the regions (e.g. Hooghe 1995; Hooghe 1996; Hooghe and Marks 1996). However, the enthusiasm of the mid-1990s ebbed soon and was replaced by the recognition that central governments were still the strongest actors and the precise level of influence of regions in European policy-making became something of an open question (cf. Hooghe and Marks 2001; Jeffery 2000).

The relationship between MLG and the two major theories of European integration, (liberal) intergovernmentalism (e.g. Moravcsik 1993 and 1994; Milward 1992) and neo-functionalism (Sandholtz and Zysman 1989), has been a subject of debate. Stephen George argues that MLG is a new type of neo-functionalism that is more specific about the type of subnational actor that supranational institutions can mobilise (George 2004: 111-13). Indeed both MLG and neo-functionalism define European institutions as more than just agents and Marks and Hooghe seem far more concerned about refuting the state-centric stance of liberal intergovernmentalism than neo-functionalism (Cf. Figure 1). Thus, several articles focus on the debate between the MLG view that subnational and supranational institutions can circumvent the central governments and undermine their influence and the state-centrist view that central governments can act as a gatekeeper between the sub- and supranational level

and that supranational institutions are mere agents of central governments (Marks et al. 1996; Marks, Hooghe and Blank 1996; Hooghe and Marks 2001; 2-4). The emphasis on ‘governance’ implies that states are seen as coordinating interaction among various actors in an environment where ‘policy users seek to influence the drafting, implementation and outcome of legislation’ (Sloat 2002: 40; cf. Knodt and Große Hüttmann 2006: 223). And even though Hooghe and Marks have acknowledged that member states remain in the foreseeable future ‘the most important pieces of the European puzzle’, MLG still argues that subnational and supranational actors increasingly undermine the authority of central governments (Marks, Hooghe and Blank 1996: 4; Hooghe and Marks 2001: 45; Jeffery 1997a: 184).

**Figure 1: The State-Centric View of European Policy-Making**



While MLG thus seems relatively close to neo-functionalism and opposed to liberal intergovernmentalism, it has been questioned whether it can be regarded as a theory at all. Jordan criticises MLG – amongst other things – for being a description of the European Union rather than a theory with testable hypotheses (Jordan 2001: 201). This perception may be partially due to the fact that contrary to intergovernmentalist

and neo-functionalist approaches, MLG has been developed as a theory of policy-making in the EU as a political system, not of European integration and the formation of that system (Bache and Flinders 2001a: 2; George 2001: 113). In its early form it was therefore not well suited to explain European integration. However, in the course of the 1990s, MLG has moved further towards a theory that addresses both European integration and the functioning of the EU and generates testable hypotheses.

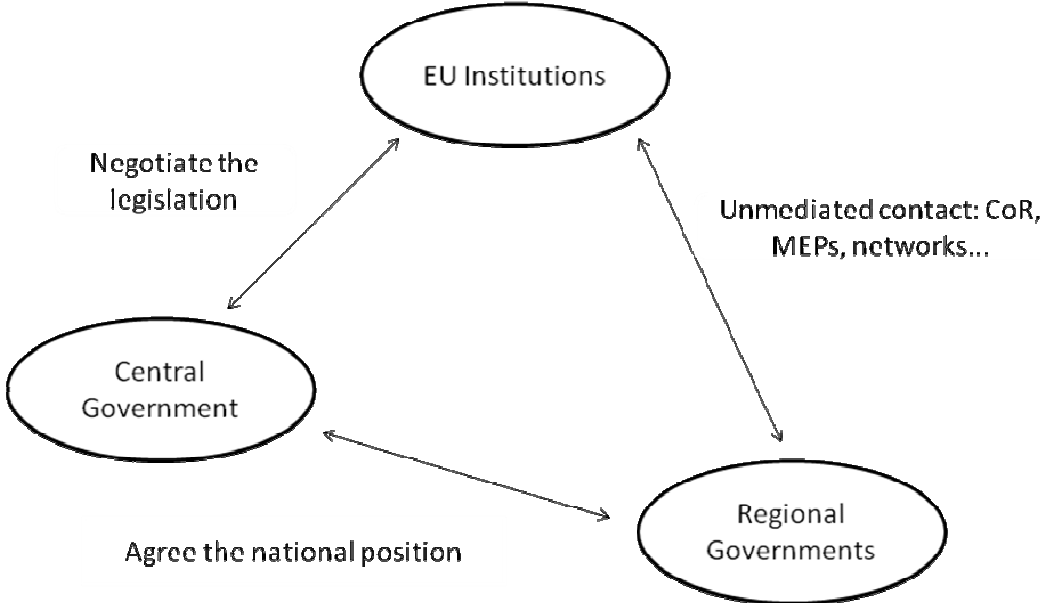
Interestingly, just like liberal intergovernmentalism, Marks, Hooghe and Blank (1996) employed a rationalist and actor-centred approach in their endeavour. However, while intergovernmentalists focus on how central governments as collective actors guided by the national interest and a concern with the long-term preservation of national sovereignty shape European integration in such a way that they stay in control as 'principals', MLG identifies situations where individual government leaders may agree to disperse authority in the process of European integration. According to the MLG literature, government leaders may wish to disperse authorities in instances where they do not wish to assume responsibility for unpopular decisions. They may also wish to tie their successors' hands by regulating an issue at the European rather than the national level or they may want to tie their own hands so that they have a reason to refuse making concessions in subsequent negotiations at the supranational or regional level. Finally, Government leaders may agree to transfer competences away from the central government if they regard it as necessary in order to achieve a highly desired policy outcome (Marks, Hooghe, Blank 1996; Marks 1997; Hooghe and Marks 2001). Thus, contrary to liberal intergovernmentalism, the MLG literature attributes a much wider range of short, medium and long-term goals to central governments than just the preservation of national sovereignty, because it focuses on governments as bodies made up of politicians who pursue their own interests. On the one hand, central government leaders may be interested in maintaining or maximising the power of the member state, but on the other, they are also interested in maintaining their personal power.

In addition, MLG takes into account the fact that moves by one actor have often repercussions on and provoke reactions from other actors. In that sense, rationality is

seen as 'bounded', as the decisions of central governments have unintended consequences to the extent that the reactions from other actors modify the institutions negotiated by central governments and the constraints and opportunities they create for policy-making at the European level. For example, central governments may be unable to prevent a further transfer of authority due to ambiguities in treaties exploited by supranational agents. Reining the agents in may be prevented by voting rules that require large majorities. This then sets the scene for the emergence of MLG, as subnational actors will feel the need to adapt to the changing circumstances by establishing contact with the new supranational actors. The increasing European competencies can lead subnational actors to demand a modification of domestic rules on involvement in EU decision-making to compensate for shifts in the domestic balance of power. In addition, the supranational actors, in particular the Commission may engage in alliances with the subnational level that allow both levels to circumvent central governments and strengthens their position in the decision-making process (Marks, Hooghe, Blank 1996; Marks 1997; Hooghe and Marks 2001).

On the whole, the different assumptions about interests and the wider focus of MLG on the actions of subnational and supranational actors lead the two approaches to different conclusions. For the MLG literature, these conclusions also provide a first, rudimentary set of hypotheses: Firstly, there will be direct interaction between subnational and the supranational actors unmediated by central governments. Secondly, this interaction will to some extent undermine the authority of central governments (cf. Sloat 2002: 37-8).

**Figure 2: The Multi-Level Governance View of European Policy-Making**



**1.2.2 The Refinement of the Model**

Over time, MLG research has not just broadened its applicability by providing an account of European integration and stretching the concept to include non-governmental sub-state actors. It has also developed a more precise set of hypotheses with regard to regional mobilization and influence in EU policy-making. This was an important step; the EU’s regions vary on a wide variety of factors and – as a consequence – do not all act in the same way (Hooghe and Marks 2001: 82, 92; Jeffery 2000). Thus, the regions’ domestic powers vary considerably as EU member states range from federal to centralised. In terms of population, the regions of the larger member states can by far outrank smaller member states in size. There are, of course, economic disparities between regions both across and within member states and while some regions are historically and culturally rooted, others have been created more recently and serve a mostly functional purpose. This disparity not only hampered attempts to create an effective formal regional representation on the European level, such as the Committee of the Regions, but is also reflected in different levels of regional *mobilisation* (i.e. levels of activity) and different levels of regional *influence* (i.e. impact on the outcome) in European policy-making.

The impact of the national context on regional mobilisation and influence in the EU policy-making process has been pointed out by several authors, most notably by identifying “regional domestic competences” as an independent variable (e.g. Marks, Haesly and Mbaye 2002; Marks et al. 1996; Jeffery 1997a; Jeffery 2000; Nielsen and Salk 1998; Moore 2006). Early studies by Marks et al. (1996) and Nielsen and Salk (1998) argue that regions with a greater number of competences are more likely to *establish* a regional office in Brussels. Marks, Haesly and Mbaye’s study of regional offices in Brussels (2002) again shows that an office’s lobbying activity increases with the funds available, which are in turn linked to the constitutional competences of a region. However, Tatham (2010) suggests that regions with a greater number of competences are *less likely* to engage in *conflictual* strategies in Brussels and more likely to cooperate with their central governments. This is somewhat in contradiction to the argument of Marks et al. (1996: 168) that domestic *conflict* between regional and central governments is one of the key reasons why regions seek representation in Brussels. Carolyn Moore’s comparison of German and UK regional offices and many articles on Scottish devolution also point towards the impact of very country-specific elements on regional mobilisation at the European level, such as the power of the UK executive to largely prevent devolved executives from publicly challenging the UK line in Brussels (Rowe 2009; Moore 2004; Moore 2006). However, the identification of such specific provisions on a country-by-country basis does not provide hypotheses that could inform the study of regional engagement more generally. And even the use of “domestic competences” as a more general variable only explains differences across countries, but fails to account for differences in mobilisation for regions from the same country and constitutional context.

The study of factors that could be used to explain *intra-* and *interstate* differences is less advanced and provides more contradictory results. Marks et al. (1996: 181) argue that the level of *resources* available to regions does not influence whether they establish an office in Brussels, but that it is reflected in the size of the Brussels office (and hence presumably its level of activity). However, Nielsen and Salk (1998) find that the share of structural funds per capita of a region is negatively associated with the existence of an office in Brussels. In other words, economically strong regions

were more likely to have a Brussels presence. They also find that the size of the region is positively associated with the existence of a Brussels-office. Then again, Tatham (2010) argues that neither the size of a region nor the economic strength of a region influence whether a region cooperates with its central government in Brussels or adopts a conflictual strategy.

In addition to these resource-related variables, Tatham (2010) identifies party politics as an explanatory factor for inter-regional differences in the style of interest representation. Thus, when the parties in government at the regional level are in opposition at the national level, regions are found to be more likely to engage in conflictual strategies in Brussels. This finding is supported by a similar argument by Bauer (2006). Bauer also challenges what he calls the ‘homogeneity assumption’, i.e. the assumption that regional actors from the same member state have identical *preferences* (Bauer 2006: 21). Based on the analysis of the preferences of the German Länder in the European constitutional debate, Bauer argues that party politics “appear to bear great potential to explain regional action relating to European integration” (21). Most conflicts about a common position of the Länder “appear to be along the line of the traditional left-right division”. Länder can benefit from attacking the central government of a different party on its policy-decisions, while Länder with the same party in government cannot criticise the national government that openly (34). However, as the three most active players – Bavaria, Hesse and Baden-Württemberg – were all governed by conservative parties (in opposition at the federal level) and, at the same time, belonged to the wealthier Länder, the study was inconclusive as differences in wealth could have explained the findings as well.

“The more resources the particular Land has at its disposal, the greater seems the likelihood that it opts for the autonomy-orientated position. A ‘weak’ Land with few resources simply cannot afford to push for ‘autonomy’ when this would mean replacing European funds with regional funds, or investing in regional regulation instead of adopting European solutions” (34).

Thus, the economic performance of a Land affects its infrastructural capacity for autonomy, but arguably also its capacity to *push* in general, i.e. its ability to plan and

execute strategies of interest representation. One of Bauer's concluding hypotheses is that "[a] subnational government is expected to favour a more autonomy-orientated relationship with the European Union, the more its actual political room for manoeuvre is affected by further European integration (35). The 'actual' political room for manoeuvre are constitutional competences and economic resources, as they determine to what extent a region can make full use of those constitutional competences. Bauer also points out that if a perception of regional identity/distinctiveness or even a regional party is involved, this makes the autonomy option more likely (34).

Jeffery's study of the *influence* of subnational authorities in EU policy-making also identifies the distribution of domestic competences as having an impact on the level of influence of regions in European policy-making. In addition, he provides three more variables that he expects to have an impact on the level of influence of subnational authorities (SNAs) both *within and across* member states. Firstly, formal structures of intergovernmental relations are seen as leading to more influence on the member state's position than informal structures. Secondly, administrative adaptation, leadership and coalition-building have an impact on the level of influence and, finally, legitimacy and social capital (historic background of a SNA, sense of identity, a well developed civil society, etc.) give greater credibility to subnational demands (Jeffery 2000: 14-7).

While some of these factors have been developed as a means to explain differences in *influence* or *preferences*, some of them can also be seen as relevant for the level and type of regional *mobilisation* and thus for the extent to which a region will indeed engage in a continuous system of negotiation among different levels. Whether or not a region has competences in a certain policy area may change how affected it is by a given European policy and will thus create greater or lesser incentives to mobilise. Similarly, if a region has an extensive say over the formulation of the member state's position, it may feel less of a need to mobilise at the European level, while being marginalised domestically might push it towards mobilisation. As for social capital, the more rooted a region is, the more it may wish to shape policies that affect its territory and to use channels of interest representation that allow it to

express an individual stance. The economic resources of a region may allow it to invest in certain actions or prevent it from doing so and party political constellations between a regional government and a central government may encourage more confrontational or consensual strategies (mostly for federal and strongly regionalised states).

Overall, the MLG literature has thus identified at least six variables that could potentially influence the *choice of channel* of regional engagement: competencies, intergovernmental relations within the member state, legitimacy and social capital, the socio-economic situation of a region, its size in terms of population and party constellations between the regional and central government. However, with the exception of the impact of the constitutional strength of regions on their mobilisation in EU policy-making and – to a lesser degree – the impact of party politics and a region’s socio-economic situation, these factors are still largely hypotheses that have experienced limited empirical testing. The stagnation of the explanatory capacity of the MLG literature is due to a number of interrelated theoretical and empirical problems that will be the focus of the next section.

### ***1.3 Theoretical and Empirical Limits of the Multi-Level Governance Literature***

While the concept of MLG may have contributed to a shift in the research focus from EU integration to policy-making and drawn a larger variety of actors into the analysis, it suffers from several weaknesses as a model or theory of EU policy-making. At the heart of the problem appears to be the fact that the MLG literature soon broke in to three distinct strands that tended to be relatively narrow in their empirical focus. They concentrated either on the involvement of regions in and the consequences for regions of constitutional policy-making, or on the subnational-supranational dynamics in the area of regional policy and the structural funds, or on structures, i.e. the strengths and weaknesses, forms and functions of channels of regional interest representation. This has resulted in a number of interrelated problems, most notably a lack of certain types of empirical data that may be

necessary for a better understanding of dynamics of regional engagement in EU policy-making.

### **1.3.1 A Narrow Empirical Basis**

The main weakness and source of several related weaknesses of MLG is its very narrow and quite specific empirical basis – or rather bias. As mentioned above, MLG as a model or theory of European policy-making was developed inductively from the study of the EU structural funds (Marks 1992; Marks 1993). It thus reflected policy-making in one particular policy area that was arguably not very representative of EU policy-making. In addition, much of the later empirical research was – again – in the field of regional and structural policy (Marks 1996; Hooghe 1996; Ansell, Parsons and Darden 1997; Benz and Eberlein 1999; Conzelmann 1995; Tömmel 1998; Anderson 1996; Ficzkowski 2001; Bache 2004; Hooghe and Marks 2001; Bache 2008; Bache and Conzelmann 2008). In fact, structural policy is one of the rare distributive policies of the European Union. Firstly, distributive policies differ from regulatory policies in that they have an inherent potential for an enabling impact on regions – they provide resources (Moravcsik 1994: 53). Even proponents of the MLG approach admit that regional mobilisation on the European depends on whether the expected gains are greater than the cost of lobbying (Marks et al. 1996). Secondly, *regional* policy probably makes some form of involvement of regions as the implementing level nearly inevitable, so that the policy area represents an ideal case for MLG (Sloat 2002: 50). Thirdly, the policy is based explicitly on a partnership principle and thus requires the mobilisation and inclusion of sub-state actors – which is not the case for other EU policies (cf. Sturm 2009: 17). Thus, the specific combination of partnership and funds may lead to a strengthening of the regional level in relatively centralised states where the regions hitherto lacked the administrative resources and powers to manage regional projects and of poorer regions more generally (Conzelmann 1995), but this dynamic may not exist in other policy areas.

By contrast, the general effect of regulatory policies (the bulk of EU policies, cf. Hix and Götz 2000: 4-5; David Levi-Faur 2007: 102) can be seen as rather constraining.

Regulatory policies rarely provide new resources to regions but lay down rules for a certain policy sector that may create implementation and adaptation costs. In sectors where regions had formerly co-decision powers at the national level or even exclusive powers, this restricts their political margin of manoeuvre in future policy-making at the regional and national level. Where European and regional policy goals are conflicting, European legislation may effectively force regions to change their course. Thus, unless European legislation fits particularly well into an already existing regional strategy or enhances regional competitiveness in comparison to other regions, it is likely that regions will tend to find European regulation intrusive. As a consequence, tensions between the regional and European levels are a likely by-product of regulatory policy-making. To what extent the central government sides with the region or the EU will depend on the general expected impact of the legislation on the country as a whole and the general goals of the central government in the policy sector.

In addition, many of the empirical studies focus on implementation rather than policy-making in the usual sense (Elias 2008a: 486; Elias 2008b). If one is interested in legislative regions this distinction matters and is problematic, as, domestically, regions would often have a say in the earlier stages of policy-making and could thus be expected to mobilize during the earlier stages of EU policy-making as well. Yet, the extent to which regions can and do mobilize during the decision-making stage has rarely been studied.

The number of case studies of regional engagement in other EU policy-making areas is very limited and they provide only a patchy picture. The results of these studies do not always confirm MLG assumptions, though. Thus, Thielemann's study of German state aid showed that Länder-Commission relations can be strained (Thielemann 1999). His analysis of the dispute about state aid given to Volkswagen by the government of Saxony reveals a bitter confrontation between the Land and the Commission in which the federal government was unable to defend the Land. Weatherill provides a further example of the Commission's occasional disregard for domestic structures citing the proceedings against Germany for the incorrect implementation of harmonising Directive 89/686 on protective equipment for fire-

fighters (Weatherill 2005). Again, the breach was actually caused by the Länder. Carter and Smith's (2008) study of EU fisheries policy in the UK shows that the relationship between Scotland, the UK government and the Commission is not stable but shifts from case to case depending on the constellation of interests. Sometimes the region regards the Commission as an ally; sometimes it champions the central government. Jeffery's comparison of the interests and strategies of Saxony-Anhalt and Bavaria also show a mixed picture, with Saxony-Anhalt benefiting from EU Structural Policy and agreeing to the EU's role in it and with Bavaria – a much wealthier region - preferring a renationalisation of several EU policy-making competences (Jeffery 1998). This is also one of the rare studies that look at how regions actually use the channels available to them. Jeffery comes to the conclusion that the two regions pursue very different strategies in terms of channels and assertiveness, despite the fact that they are from the same member state. Streb's study of how the Commission's state aid policy, the Wild Birds Directive and the FFH-Directive affect Bavaria, Upper Austria and Flanders shows how European policy-making imposes strong restrictions on legislative regions even at the implementation stage (Streb 2007: 222-3). Finally, Bursens and Geeraerts' study of Belgium in European environmental policy-making shows that neither multi-level governance nor liberal intergovernmentalism fully captures the power balance between the regions and the federal government. While the regions worked through the domestic cooperation mechanisms and established no unmediated access (unlike predicted by the MLG approach), they were so powerful domestically that the central government could not be said to be "gate-keeping" in terms of preference formation (unlike predicted by liberal intergovernmentalism) Bursens and Geeraerts 2006).

Apart from those case studies, the literature concentrates on the strengths and weaknesses either of specific institutions or of structures in general. Thus, a large part of the German and Austrian literature on federal regions in European policy-making adopts a legal view and/or involves a detailed discussion of the impact of European integration on the formal structures of federalism or the concept of subsidiarity (e.g. Lübke 2005; Bretz 2005; Halfmann 2000; Grotz 2007; Heinemann 2001; Gamper 2004; Pahl 2004). But even studies emanating from the political and social sciences, such as Tatham's or Marks and Hooghe's analyses of European

channels (Tatham 2008; Hooghe and Marks 1996) and Jeffery's (1997b) or Weatherill and Bernitz's (2005) edited books tend to focus nearly exclusively on the structures in which regions are operating. Specific institutions or structures such as the Committee of Regions or regional offices in Brussels are the target of a large number of studies (e.g. Föhn 2003; Heichlinger 1999; Marks, Haesly and Mbaye 2002; Moore 2006; Eppler 2003). On the whole, this literature tells us little about how these institutions actually figure in regional strategies of interest representation.

The scarcity of case studies in areas other than regional policy on the one hand and the focus on structures on the other creates important problems for the further development of the MLG literature. Most importantly, it is still questionable to what extent policy areas other than regional policy actually witness multi-level governance, especially at the policy-making stage. After all, even Hooghe and Marks (2001: xiii, 83, 85) suggest that regional policy may be the case where MLG is most pronounced, in particular when it comes to its implementation. How much unmediated subnational-supranational interaction happens in regulatory policy-making?

### **1.3.2 Ambiguous Findings on the Strength of the Regional Level and the Importance of Domestic Channels**

This ties of course into the question of whether MLG overestimates the ability of regions to by-pass the nation-state (e.g. in Keating and Hooghe 1996) due to its focus on regional policy and to what extent the by-passing translates into actual influence. Tömmel's (1998), Anderson's (1996), Bache's (1998) and Conzelmann's (1995) studies of the structural funds clash in their findings on whether or not the Commission strengthened the regional level. Influence in particular has proven difficult to measure in processes where so many different actors and interests are involved. But even MLG authors on regional policy have come to question the extent of regional influence, with Bache arguing that central governments can still act as flexible gate-keepers (Bache 1998: 155; Piattoni 2008: 90; Jeffery 2000: 3; Sloat 2002: 42). Conzelmann (2008: 15) also argues that even in the structural funds regions

“never managed to play a role beyond that task-specific and basically temporary function and in principle acted in par with the other “social actors” that were mentioned in the implementation regulations for the structural funds from 1993 onwards. In that sense, the multi-level governing structures set up in the context of the implementation of the structural funds more closely resemble ‘Type 2’ multi-level governance.”

The question is particularly salient in the light of Jeffery’s argument that strong legislative regions – and the German Länder in particular – have recently come to endorse a strategy whereby they try to protect the nation-state and its competences and even attempt to roll-back European integration as a strong nation-state is seen as the best guarantor of regional authority (Jeffery 2005b; Jeffery 2007a; Große Hüttmann and Knodt 2006: 596-7). According to this view, the Länder want ‘to be left alone’ and would prefer separate competences – in contrast to the Commission’s emphasis in its White Paper on European Governance on *sharing* competences (European Commission Communication 2001: 35).<sup>7</sup>

### **1.3.3 The Embryonic Explanations for the Differences in Regional Interest Representation**

On the whole, the greatest challenge for MLG is to explain patterns and variations in regional mobilisation. The problem is that the MLG literature has in certain respects run into a methodological dead end. On the one hand, there are a large number of studies on structures, which can tell us a lot about the strengths, weaknesses and functions of different channels of interest representation, but not very much about the frequency with which they are used, their relative importance compared to each other and the type of situations in which they are most used. In other words, these studies tell us little about the comparative role and importance of these channels in regional

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<sup>7</sup> “[I]n a multilevel system, the real challenge is establishing clear rules for how competence is shared – not separated; only that non-exclusive vision can secure the best interest of all the Member States and all the Union’s citizens” (Commission Communication 2001: 35).

strategies of interest representation. That question can be answered more fully through case studies of regional interest representation on specific policies – but those exist mostly for regional policy only. For the majority of policy areas, we do not know to what extent regions can establish unmediated access to the European level, how frequently they perceive the Commission as an ally or enemy or how much (or little) influence they can have. In other words, due to a lack of case studies beyond regional policy, it is unclear to what extent European policy-making really is multi-level rather than state-centric.

This empirical bias not only makes MLG vulnerable to criticism as a model of European policy-making, but it also limits the explanatory potential that the literature can develop. Jeffery (2000) argues, for example, that domestic channels of European policy-making allow for greater regional influence than unmediated action, and even Hooghe and Marks (2001: 89) admit that domestic channels are the most important for regional influence. Given that the domestic channels are the most promising and probably least costly channels, under which conditions and to what extent do regions make the effort to by-pass the central government? While authors have identified at least six factors that could potentially influence regional mobilisation and/or influence, with the exception of the impact of the constitutional strength of a region, the factors have been subject to only limited empirical testing. Bauer's findings were inconclusive and Jeffery's factors were never subject to systematic empirical verification (Bauer 2006; Jeffery 2000). Out of the four quantitative analyses, two have a very narrow scope and focus on the *existence* of an office in Brussels (Marks et al. 1996; Nielsen and Salk 1998). Marks, Haesly and Mbaye's article (2002) only serves to confirm the importance of domestic competences. Tatham's study is the most sophisticated one, focusing on the *style* of interest representation, but still provides little insight into the impact of these factors on the frequency and extent of regional mobilisation in Brussels (2010). The challenge for the MLG literature is thus to move beyond the question why central governments disperse power and seriously address the question why, when, how and which regional governments try to establish unmediated access to the European level. One of the tasks of this research project will thus be to move into a different policy area, investigate to what

extent regions sought unmediated access to the European level and, in the process, test some of the hypotheses about factors influencing regional mobilisation.

## ***1.4 Complementary Approaches and Theories of Policy-Making***

While MLG is the dominant approach for the study of regional involvement in EU policy-making, it thus still lacks a deeper understanding of how different forms of regional interest representation come about. The objective of this section is to review two related literatures for their usefulness and limits in developing a theoretical framework of regional involvement in EU policy-making.

### **1.4.1 The Europeanisation Literature – A Broader Empirical Basis?**

Europeanisation is a both a popular and broad concept in the current literature on European integration. In the past, it has been applied to a wide variety of aspects of European integration, such as the construction of European institutions (Risse, Green Cowel and Caporaso 2001; Radaelli 2003), the capacity of member states to shape European policies and adapt to European policies (Börzel 2003; Vink and Graziano 2007: 3-4), the impact and effectiveness of European policies at the national level (Sverdrup 2007; Börzel and Risse 2003) and how European opportunities and constraints affect national politics. In addition, several different mechanisms of Europeanisation have been identified on the basis of different theoretical approaches. Thus, Europeanisation can cause domestic change by modifying opportunities and constraints for domestic actors (rational choice institutionalism) or by slowly modifying the preferences and political cultures of actors through socialization and learning processes (sociological institutionalism).

While this popularity can be seen as a sign of success, it also means that Europeanisation can be both a dependent and an independent variable (depending on the focus of the study) and while it can be used to analyse nearly any type of change in the field of European studies, no model of Europeanisation can explain more than a few of the changes that the concept of Europeanisation supposedly explains. As a

result, the Europeanisation literature is itself highly fragmented into strands that explain implementation and policy adaptation, changing intergovernmental power balances, the strategies of domestic actors in EU policy-making and European integration at the supranational level. One of the effects of this breadth is a partial overlap with the MLG literature where the Europeanisation of federal structures, regional actors or policies with regional input is concerned (e.g. Conzelmann 1998; Benz and Eberlein 1999; Bache 2007; Beyers and Bursens 2006a, 2006b).

Depending on the precise research questions, “Europeanisation” has been defined in different terms by different authors, sometimes stressing the adaptation of member states, policies and/or actors to European pressures and sometimes stressing the active attempts by domestic actors to influence European level outcomes institutional or policy outcomes. This project will follow Bomberg and Peterson’s definition of Europeanisation as “a shorthand term for a complex process whereby national and subnational institutions, political actors, and citizens adapt to and seek to shape, the trajectory of European integration in general and EU policies in particular” (Bomberg and Peterson 2000: 7). This definition acknowledges that European policy-making is a circular process where domestic actors try to upload<sup>8</sup> their preferences and where European policies create adaptational pressures for domestic actors (cf. Börzel and Risse 2000: 1 on “feedback loops”; Radaelli and Pasquier 2007; Bache and Jordan 2006).

In practice, most Europeanisation studies focus on the domestic impact of European integration, and within this group most studies focus on policy adaptation, implementation and the impact on national policy formulation rather than politics and politics (e.g. intergovernmental relations) (Vink and Graziano 2007: 4-5; Bursens 2007: 116; Haverland 2003; Knill and Lenschow 2000). As far as ‘uploading’ is concerned, the focus seems to be more on the creation of offices and institutions (narrowly defined) than on how these channels are used in practice (cf. Kassim 2003; Bulmer, Jeffery and Paterson 2000: 40-3; Bulmer: 1997: 74; Jeffery 2003). While the conceptual and analytical contributions of the Europeanisation

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<sup>8</sup> ‘Uploading’ refers to the process of trying to bring a policy at a higher governmental level (here: EU) more into line with one’s own preferences.

literature to the question of regional interest representation in the EU are thus limited, it has generated some insights and raised some issues that should be incorporated more into the MLG literature.

In particular, the MLG literature has simply focused on the impact of the constitutional strengths of a region (as defined by competences) and acknowledged the existence of domestic processes of coordination as a means of regional interest representation. By contrast, some authors within the Europeanisation literature have shown a stronger concern with domestic coordination processes and the *dynamic* between how domestic actors coordinate and their involvement in European policy-making. Bursens, Beyers, Kerremans and Deforche and their studies of the transformation of the Belgian federal state and Flemish strategies in EU policy-making provide one example for this (Bursens and Deforche 2008; Beyers and Bursens 2006a; Beyers and Bursens 2006b; Deforche and Bursens 2006; Kerremans and Beyers 1997). Their studies suggest that the influence of the Belgian regions over the Belgian national position grew in line with their domestic competences. As European integration expanded, the need to find a common Belgian position in European negotiations put the dual structure of the Belgian state under pressure and gave rise to increasingly cooperative practices amongst domestic actors. Thus, the Belgian regions have become strongly involved in domestic European policy-making and rely on working through the Belgian delegation to a large extent (cf. Beyers and Bursens 2006b). In the German case, Knodt makes an important contribution when she includes into the discussion of the Europeanisation of the Länder the need to interact in the multi-level system of the European Union, thus straddling both the Europeanisation and the MLG literatures (Knodt 2000: 238). Unlike in Belgium, the German Länder increasingly adopt individualistic strategies of interest representation in European policy-making rather than working through the Bundesrat and the CoR (Knodt 2000: 239-40; cf. Jeffery 1999). She also argues that the degree to which Länder can engage in unmediated strategies of interest representation depends on a region's capacity, especially in economic and administrative terms (Knodt 2000: 258).

The Europeanisation literature thus addresses a gap in the MLG literature. As Jeffery pointed out in his 2000 article on subnational authorities, the MLG literature focuses on direct interaction between subnational and supranational actors and in the process tends to overlook the importance of domestic European policy-making. The study of subnational-national interactions is not normally the primary concern of the MLG authors. By contrast, the Europeanisation literature on federal states focuses on the adaptation of states and thus provides information on different processes of domestic European policy-making and the extent to which regions gain *mediated* access to the European level through the national delegations. There are, however, few authors who, like Kovziridze, attempt cross-country studies and who compare different processes of domestic European policy-making on the formality of processes, degrees of hierarchy or regional influence (Kovziridze 2002). Furthermore, with studies of domestic European policy-making on the one hand and studies of channels for subnational-supranational contact on the other, it is still not known how different processes for domestic European policy-making affect the extent to which actors use channels of unmediated interest representation. The principal objective of this research project will be to tackle this question and analyse the impact of domestic intergovernmental relations on regional strategies of interest representation.

While an important link between the MLG and the Europeanisation literatures is thus missing, the Europeanisation literature offers some contributions to the understanding of regional *mobilisation* through the concepts of “fit” and “misfit”. These are interesting in two ways, policy and structure (cf. Bache 2008). Firstly, the Europeanisation literature develops the idea that a misfit between an existing domestic policy and a new European policy creates high adaptation costs and thus provides incentives for member states to develop strategies to export their own policy models to the European level (cf. Heritier 1996). The same can be said about regions, in particular in cases where the burden of implementation lies on them. The Europeanisation literature can thus provide a bottom-up explanation for why regions would mobilise in the first place by pointing towards rational motives – the fear of being negatively affected, especially in the form of costs, and the desire to bring the policy in line with its own policy preferences.

Secondly, the Europeanisation literature analyses the misfit of structures. Radaelli (2003) points out the necessity of distinguishing between the process of Europeanisation and the effect of this process, namely the convergence or divergence of national political systems. Several studies show that Europeanisation does not automatically lead to convergence, as a number of domestic factors shape the impact of EU pressures (Ladrech 1994; Risse, Cowles and Caporaso 2001). This has led to a creation of typologies of member states. According to Caporaso (2007, 29) the institutional 'fit' between federal states and the EU is greater than for unitary states, as the EU reflects the territorial structures of federalism better than the centralised policy-making systems of unitary states. As a result, there is less adaptation pressure on federal states in terms of institutional reforms than on unitary states. Bache uses a similar typology informed by Schmidt's distinction of compound systems (proportional representation system, corporatist policy-making processes and regionalized or federalized structures) and simple polities (majoritarian representation, statist policy-making, unitary state structure) (Schmidt 2006: 227). He argues that European cohesion policy will fit compound polities better than simple ones, but admits that some states do not conform to the typology (Germany) and that there are also variations between different regions within member states (Bache 2008: 63-5, 70, 154). However, Börzel (1999, 577-8) argues that the regions of federal/regionalised states lose powers due to European integration, which suggests that there *is* a misfit between federal systems and the pressures of European integration. She analyses the effect of this on the 'uploading' phase and finds that due to the 'misfit' the regions have to devise strategies to compensate for the loss of power. This provides a further rationale for bottom-up mobilisation.

Börzel also breaks down the apparently homogeneous group of federal and regionalized states into two subgroups attributing to the cooperative/competitive political cultures an impact on the choice of strategy of regional interest representation. While it is subject to debate how cooperative the relationship between the German government and the Länder really is (see Jeffery 2005a on the increasing competitiveness of the Länder), in conjunction with Jeffery's hypothesis that the formal or informal nature of intergovernmental relations can have an impact on the *influence* of a region (Jeffery 2000), it highlights the need to study the impact of

domestic intergovernmental relations on regional strategies. However, the empirical basis of Börzel's study (Germany and Spain) is still too limited to provide more than another hypothesis.

#### **1.4.2 Explaining Divergence – The New Institutionalisms**

Neither the Europeanisation nor the MLG literature can provide a cohesive explanatory framework for why and how regions mobilise. What both have in common is that their explanatory elements are usually based explicitly or implicitly on the new institutionalisms. The most prominent authors of the MLG literature have explained the emergence of MLG drawing implicitly on a rational choice institutionalist logic (Marks 1997; Marks et al. 1996). The Europeanisation literature derives relevant factors for the extent and nature of domestic change from the whole spectrum of new institutionalisms, leaving it quite diverse (cf. Auel 2006: 294; Risse, Cowles and Caporaso 2001: 9-12). Börzel's conclusions on the impact of the cooperative/competitive nature of domestic intergovernmental relations, for example, were inspired by a sociological institutionalist perspective (Börzel 1999).

Like MLG, the new institutionalisms are middle-range theories that focus on the EU as a political system rather than an integration process and approach the subject from a political science and especially comparative politics rather than an IR perspective (Nugent 2003: 488). Three strands are commonly distinguished – historical, rational choice and sociological institutionalism – which share the assumption that institutions “are collections of structures, rules, and standard operating procedures that have a partly unmediated role in political life” (March and Olsen 2006: 4). The key concern is with the questions to what extent, why and under what conditions institutions matter.

Historical institutionalism focuses on the distribution of power produced and permeated by institutional arrangements. It highlights how existing arrangements inhibit change by creating path dependency and how over time institutional choices have effects that were unanticipated by the actors that made those choices (unintended consequences). It also investigates the relationship between institutions

and other factors shaping political activities and outcomes, such as economic developments and ideological beliefs (Hall and Taylor 1996: 939). In doing so, it has developed two variants that borrow to some extent from rational choice or sociological assumptions (Bulmer 1994, 1998; Pierson 1996).

For sociological institutionalists, institutional forms and practices can often be culturally explained. Thus, institutions are broadly defined as formal rules, procedures and norms and symbol systems, cognitive scripts, moral templates guide action (Hall and Taylor 1996: 947). In addition, there is often an emphasis on the 'cognitive dimension of institutional impact' (Hall and Taylor 1996: 948). In other words, the preferences and even identity of actors are no longer exogenous but shaped by institutions (Hall and Taylor 1996: 949; Jupille and Caporaso 1999: 432). This does not mean that actors are necessarily irrational, but that the foundations of the rational action are socially constructed. This clashes with the sometimes very restrictive rational choice institutionalist definition of interests as self-interested (usually economic gain, increased/sustained power). Also, when actors embark on a certain course of action, it may not always be about efficiency and 'instrumentality but about 'appropriateness' (DiMaggio and Powell 1991: 22-24; March and Olson 1984, 1996). As a consequence, the choice of action itself can be explained by normative standards rather than utility-maximisation (Peters 2000: 2). What is or is not appropriate will be defined through involvement with one or more institutions and their customary ways of doing things (Morisse-Schilbach 2006: 273).

The approach of interest here is rational choice institutionalism, as its emphasis on the rational choices and strategic actions of actors resonates both with intergovernmentalist assumptions and with Marks' MLG challenge to intergovernmentalism. However, whereas both strands focused on central governments - either to demonstrate that central governments would ensure that European policy-making is state-centric or to explain why central governments would agree to relinquish control – the analysis of regional mobilisation would require a focus on regional governments.

In rational choice institutionalism institutions are usually defined as formal and informal rules and procedures but would not include cultural or ideational elements.

Hall and Taylor (1996: 944-6) distinguish four common features of rational choice institutionalist research. Firstly, researchers share a set of behavioural assumptions, namely that ‘actors have a fixed set of preferences or tastes (...) behave entirely instrumentally so as to maximise the attainment of these preferences, and do so in a highly strategic manner that presumes extensive calculation’ (see also Peters 2000: 3). In other words, an actor’s preferences for policy outcomes are not influenced by an actor’s involvement in certain institutions. Even when it is assumed that actors have only bounded rationality in contexts where limited information is available, the assumption is that new information will not radically affect basic preferences (Peters 2000: 5). Secondly, politics is seen as being dominated by collective action dilemmas. Thus, when complementary behaviour by others cannot be guaranteed, the struggle of individual actors to maximise the attainment of their preferences leads to sub-optimal outcomes (i.e. there is at least one alternative outcome where one actor would be better off without the others being worse off). The main function of institutions is to solve such dilemmas. Thirdly, as far as strategic behaviour in decision-making within existing institutional contexts is concerned, institutions structure the flow of information and impose opportunities and constraints on an actor’s choices. Finally, rational choice institutionalists assume – often in a deductive process – that actors create institutions to realize gains (Hall and Taylor 1996).

Rational choice institutionalism can thus be used to investigate a variety of questions and hypotheses depending on whether institutional creation or action within existing institutions is analysed (Jupille and Caporaso 1999: 431-2; Fiorina 1995: 113). In the first case, institutions are the dependent variable. In the second case, they can be the independent variable, but it also depends on whether they are treated as exogenously given (and thus fixed) or as flexible and changeable by the actors in the course of the process (Shepsle 2006: 25; Calvert 1995: 73-4). If one assumes that institutions are in principle changeable, what determines whether institutions can in fact be changed or not is the power balance between actors supporting and opposing change and the degree to which an institution is “structured”. Highly structured institutions tend to be formal institutions that have persisted in a similar format over long periods of time and are thus more resistant to change. Unstructured institutions tend to be more informal and amorphous practices and patterns of behaviour (Shepsle 2006: 27).

Overall, rational choice institutionalism allows us to make certain assumption about the strategic behaviour of actors in policy-making processes. Thus, within the field of European politics, research has often concentrated on the extent to which and ways in which institutions shape, channel and constrain the rational actions of political actors. ‘Institutions’ are then used as an independent variable. Garrett and Tsebelis, for example, have studied the consequences of different EU decisional rules for actors’ behaviour and influence. Different restrictions placed on policy actors under different decision-making procedures are seen to create varying inter-actor relations and policy impacts (Garrett and Tsebelis 1996; Tsebelis and Garrett 1997).

From a rational choice institutionalist perspective, a region would be a rational actor trying to achieve its goals through a strategy of interest representation that would give it the greatest possible influence in the most efficient way. In the process, it would be enabled and constrained by its resources and in accordance with the institutional frameworks of the member state and the European Union. In cross-regional and cross-country comparisons, variation in regional resources and levels of regional influence over the negotiation of the national positions would then create different levels of incentive to mobilise at the European level. The aim of the final section is to integrate these perspectives into a theoretical framework of regional engagement of in European decision-making with a number of coherent hypotheses that can inform future research. The focus will lie on legislative regions, in line with the objectives of the research project at hand.

### ***1.5 Towards a Theoretical Framework for Regional Strategies of Interest Representation in European Policy-Making***

The aim of this section is to develop a theoretical framework for research on the strategies of interest representation of legislative regions in European decision-making. The goal is to address the gap between the claim of the MLG literature that regions play a shaping role (or at least try to play one) on the one hand (Hooghe and

Marks 2001: 5; Kohler-Koch and Rittberger, 2006: 28) and its lack of a more profound understanding of patterns of regional engagement in European policy-making on the other (cf. Moore 2008: 531 for a critical stance). For this purpose, it will bring together existing explanations for differences in inter-regional strategies of interest representation in the MLG and Europeanisation literature and link them with new hypothesis on the impact of intergovernmental relations through a rational choice institutionalist framework.

The main dependent variable is the existence and extent of unmediated interaction between a region and European actors. Thus, according to Hooghe and Marks, the MLG model 'rejects the view that subnational actors are nested exclusively within [national arenas]. Indeed, subnational actors operate in both national and supranational arenas, creating transnational associations in the process. National governments do not monopolize links between domestic and European actors' (Hooghe and Marks 2001: 4).

The definition of 'unmediated access' or 'unmediated interaction' is that a region acts in an unmediated way that does not require prior coordination with the central government. Thus, for example, asking MEPs to defend a certain stance is an instance of unmediated access. Similarly, taking part in Commission consultations, attending the Committee of the Regions, the use of regional offices to approach Commission officials or organise lobbying events and participation in conferences and workshops that are designed to inform and influence European decision-making qualify as 'unmediated' access. Participation in the Council of Ministers, the COREPER, Council working groups, Commission committees or stakeholder meetings does not, as it requires prior negotiations with the central government (often permission of the central government) and – most notably – the prior agreement of a common national position.

Unmediated access is not seen to necessarily imply a conscious strategy to undermine the central government. In principle, it could happen when a region feels strongly affected by an instance of European policy-making and feels a need to voice its concerns. Also, the fact that unmediated access does not require prior coordination with the central government does not mean that such coordination

cannot take place on a voluntary basis, for example as part of a concerted regional-central strategy.

In developing a bottom-up explanatory framework for the strategies of interest representation of legislative regions in European policy-making, we will focus on regional governments as rational collective actors. The first question is why regions would *mobilise* at all, irrespective of the precise channels of interest representation they choose. The assumption is that regions are essentially utilitarian and mobilise in response to self-interest.<sup>9</sup> In everyday policy-making, this essentially means that they are affected by the policy problem.

However, the extent of a region's competences in a given policy area will affect its propensity to mobilise in EU policy-making in two ways. Regions that have implementation competences in that policy area are more affected by the European legislation than other regions as they either have to carry the cost of implementation and policy adaptation or – in the case of distributive policies – receive the benefits. They have a particular interest in influencing the European policy to create a better “fit” with existing policies, increase the amount of money a region is allocated or improve the conditions under which the region can access its share. In addition, regions with policy-making competences in the area will find their margin of manoeuvre restricted by new European rules. They may feel threatened in their powers and status and become active to avoid the erosion of their competences (Knodt 2000: 238; Bußjäger and Djanani 2009: 58). Especially in policy areas where the EU has not previously legislated, new legislation may be perceived as intrusion. Thus, the more strongly a region is affected by a policy, the more likely it is that the potential costs (financial or in terms of a decrease in autonomy) or benefits justify the cost of mobilisation.

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<sup>9</sup> This study will rely on a subjective definition of a region's preferences concerning a given policy (derived through interviews and documents). However, it is assumed that regions will want to maximise the extent to which these preferences are reflected in the final policy while simultaneously trying to minimise the costs of interest representation.

### **I. Potential Motivational Factors**

A region will mobilise if...

- it is affected by the policy problem,
- its competences are affected and/or the expected implementation costs or benefits are high.

The second step is to identify the factors that would entice a regional government to engage in a *multi-level* rather than a two-level strategy of interest representation. As strategic actor, the regional government will try to maximise its influence in a given legislative process while limiting the costs of involvement. The assumption is that it is generally less costly and more effective for legislative regions to work through their member states. While the process of formulating the national position varies between member states, legislative regions generally have at least the right to be informed and consulted. In some cases, such as in the case of the Belgian regions, they can have the right to codetermine the national position. In addition, regions usually gain some form of inclusion into the national delegation either collectively or individually at least at the drafting stage of the policy and at the implementation stage. Cooperation at home thus brings with it privileged access to information and the ability to monitor the member state's actions at the European level. Also, as the member state as a whole gains voting rights at the European level through the national position, the right to influence it is an important asset. Finally, provided that the region is pleased with the national position, it can effectively "free-ride" and leave the task of defending that position to the central government (which most of the time has the core competence in representing the member state abroad).

By contrast, regions have only one automatic access point to the European level, the Committee of the Regions. As action through this channel requires the support of hundreds of regions and local authorities just to reach a consultative position, this is not a very effective channel. All other forms of unmediated access are informal and require prior investment into the establishment of access, the formalisation and translation of the regional position and, due to the large number of lobbyists in Brussels, have to be heavy on expertise and/or command strong political support domestically. Also, while national governments are under "moral" pressure to

adequately represent territorial interests, European actors are much less likely to feel obliged to take the point of view of one particular region on board. Finally, unmediated strategies of interest representation can come with long term costs attached. If the central government comes to think that the regional governments are consistently eroding its authority, it may be less willing to cooperate with them at home. As a result, if the mutual relationship of trust is lost, a region's domestic channels of interest representation are likely to become less effective. Therefore, the assumption is that regional governments will automatically participate in domestic European policy-making, but require specific incentives to develop a multi-level strategy.

The factor 'policy salience' spills of course over into this section, as regions that are highly affected will be willing to invest more into the policy outcome. In addition, three other factors could potentially influence the choices of legislative regions by diminishing the effectiveness of the domestic approach (cf. Jeffery 2003). Thus, strong conflict over the policy issue between regions or between the central government and regions could either prevent a strong national position from emerging or (depending on the precise processes) result in a region being outvoted. Secondly, competition between different parties in power at the national and the regional level or the existence of regionalist governments could jeopardize the willingness to compromise at home and provide an incentive to regional governments to openly pursue conflicting goals at the European level (cf. Knodt 2000: 241). Thirdly, the degree to which domestic processes confer power on regions may influence their willingness to rely exclusively on these processes. What could influence domestic regional influence is the number of actors involved at that stage, the formal or informal nature of regional involvement and whether formal involvement takes the form of co-decision or consultation. It depends thus heavily on domestic institutions. The hypothesis is that regions that have little influence domestically will be more inclined to focus their resources on European channels of interest representation. In a sense, such action can be seen as "modifying" the institutions within which the actors operate. While it is of course not possible in everyday policy-making to revise formal processes of coordination, consultation or co-decision, regions can enhance or undermine the role that these formal structures

were meant to play by engaging in an array of complementary or conflicting informal processes.

## **II. Factors Influencing the Choice of Strategy**

A region is more likely to seek unmediated access to the European level if...

- there is domestic conflict.
- there is party incongruence between the regional and the central government or ethno-regional parties are in power.
- the domestic influence of a region is low.

However, a third consideration is that there are enabling and constraining factors that influence whether a region can adopt a multi-level strategy and to what extent it can become active. These factors have already been described in the literature, even if this has been in part to analyse regional *influence* (e.g. Jeffery 2000) or regional demands for *more autonomy* in policy-making (Bauer 2006) rather than regional *mobilisation* (but see Knodt 2000). They can be expected to have an impact across the board. As a European level strategy requires a higher investment in terms of money and personnel, larger regions and economically stronger regions can be expected to find it easier to establish unmediated access to the European level than small and economically weaker regions as their capacity to plan and execute such a strategy is greater. It is also in this respect that the choice of policy area under investigation may be relevant, as economically weaker regions can be expected to focus their resources on financially enabling distributive policies.

Thus, an economically stronger regions can be expected to have a larger income and thus to find it easier to invest into administrative capacity. This investment can take three forms. Firstly, investments into the number of staff working in a specific policy area will produce payoffs in the form of greater expertise and specialisation (i.e. a better technical understanding of the subject matter and thus better arguments). As a result, the region will have a greater capacity to react to information about the European negotiations and to write position papers for the purpose of lobbying. Investment into staff working on European affairs (either in a Brussels office or a European division at home) will facilitate the establishment of contact to other actors

on the European level and the gathering of information. Finally, certain acts of interest representation require direct investment, such as the hosting of a discussion round with key MEPs or Commission officials or the sending of politicians to Brussels.

Differences in the size of regions in terms of population can be expected to have similar effect, in that a greater population generally translates into a greater overall budget. Thus, the costs of a Brussels office with ten members of staff will be easier to meet for a region with 5 million inhabitants than for a region with a similar GDP per head but only half a million inhabitants, as they represent a smaller proportion of the overall budget of the region.

### **III. Enabling or Constraining Factors**

A region's capacity to develop a multi-level strategy depends on...

- its economic strength.
- its size (in population).

On the whole, there are thus seven factors in three different categories that can be expected to influence whether a region mobilises, whether it does so through domestic channels only or also through European channels and how active it can become. The objective of the next chapter will be to develop a research design for the testing of the second and third categories of factors with a special emphasis on the study of the impact of domestic processes.



## Chapter 2 – Research Design

### **2.1 Introduction**

The previous chapter argued that the concept of multi-level governance has become well-established in the literature and has even been used by practitioners to describe policy-making in the European Union (European Commission Communication 2001: 34). At the same time, the concept has become increasingly flexible as Marks and Hooghe themselves have identified two very different types of MLG, to the point where any instance of governance that spans several levels is an instance of multi-level governance (Marks and Hooghe 2004: 29). The result is that MLG is now commonly used as a label to describe a state of affairs, while critical questioning of the *degree* of MLG and the search for a better understanding of when and why actors adopt multi-level strategies of interest representation has moved into the background.

The objective of this project is to return to Mark's early definition of MLG as a process during which actors seek unmediated involvement at various levels and to extend the explanatory potential of the MLG literature through new empirical work (Marks 1993: 392; Marks et al. 1996). In the process, a particular emphasis will be placed on the analysis of the impact of different processes of domestic European policy-making on regional strategies, a variable that has received little attention so far. The principal tool will be the study and comparison of regional strategies of interest representation in concrete instances of European policy-making.

The following two sections will set out the general research design and approach (number of cases, the countries studied) as well as the methodology used for data collection. Sections four and five will be dedicated to the description of the key variables and their operationalisation and a further discussion of how these variables can be integrated into a qualitative comparative design with a medium number of cases. Sections six and seven explain the selection of regions and policies to complete the design, while a concluding section reflects upon the robustness, relevance and generalisability of the findings.

## **2.2 General Design and Methodology**

So far, much of the research that applies a narrowly-defined concept of MLG and that argues that regions interact autonomously with European institutions (without the mediation of the central state) has an empirical focus on distributive policies, most notably regional and cohesion policy. As argued in the preceding chapter, these policy areas are very much “ideal” cases for MLG in terms of incentive structures for regional mobilisation. Thus, the first goal of this project is to widen the empirical basis of MLG and to analyse to *what extent* regions seek unmediated access to European institutions in a regulatory rather than distributive policy area. The aim is to find a “good” case for MLG that affects the regions under investigation and that provides some incentives to mobilise (e.g. salience of the problem for the region, desire to avoid adaptation costs etc.), but without the massive financial incentives for mobilisation that regional policy generally offers.

Another part of this design is the choice of regions that are likely to take a proactive approach to European policy-making. Thus, the study will focus on regions from three federal states, Germany, Austria and Belgium, and on Scotland as part of a quasi-federal devolution arrangement. All of these regions are legislative regions and the study of some of them (e.g. the German Länder) has contributed much to the development of the concept of MLG in the first place. In addition, as all of these regions have some input into the formulation of their respective member state positions (ranging from consultation to co-decision), they also have a *choice* between state-centric and EU-focused strategies of interest representation or, of course, a combination of both.<sup>10</sup>

The decision to include the UK into a group of otherwise federal states was not only based on the fact that – domestically – Scotland can easily compete with the Belgian, German and Austrian regions in terms of its level of competences in everyday policy-making. It also stems from desire to increase the number of cases across

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<sup>10</sup> There are, of course, other member states with powerful regions, such as Spain. The number of member states under investigation was limited to four to keep the project manageable. Originally, the project was to focus only on the three federal member states, but it was decided to include Scotland for the UK as this would provide symmetry of more cooperative federal systems with dual-type systems. Spain was also excluded due to a language barrier.

which the hypotheses about the impact of domestic processes on the strategies of regions can be tested. The fact that with the UK the project spans two cooperative federal states and two dual political systems (the UK and Belgium) creates both variety and balance in the types of domestic processes under investigation. It also allows the testing of hypotheses about the impact of cooperative or dual systems that are already present in the Europeanisation literature (e.g. Börzel's hypothesis, see section 2.5.1, Börzel 1999).

It is important to note that the focus on the study lies on "decision-making", which is defined as the *process leading to the adoption* of the legislation. While the transposition and implementation phase will also be referred to, it is not the central part of the analysis. Thus, in some cases, the transposition laws had not yet been adopted at the time of the interviews.

The various case-study regions are expected to seek unmediated access to *varying degrees*. Thus, the research process contains two steps – to establish to what extent regions seek unmediated access, and to test whether the hypotheses explain when regions seek unmediated access. Thus, the comparative analysis of regional strategies of interest representation highlights the degree to which regional engagement in EU policy-making does (or does not) conform to the concept of MLG, but it also provides a dependent variable that allows for further investigation of factors that influence why regions engage in European policy-making in a particular way.

The project adopts mainly a deductive approach, which uses comparison to confirm a number of hypotheses about the MLG or state-centric nature of European policy-making and about the factors that influence regional strategies. It is grounded in the existing literature and contributes to it empirically and theoretically through its theoretical framework (cf. Chapter 1) (Blaikie 2000: 142-3). While quantitative methods are usually seen as better suited for deductive research and the testing of hypotheses, this project will use qualitative methods to facilitate the integration of the perspectives of different levels (regional, national and European), the assessment of strategic choices and the probing into the context of the cases (e.g. the level of regional interest, what interests regions defended, the level of domestic conflict etc.) (Bryman 2004: 23; Lijphart 1971: 683-5). The use of qualitative methods also allows

new hypotheses to emerge during the research process and thus adds an inductive element to the project that may enrich its conclusions (Bryman 2004: 8, 266; Snape and Spencer 2003: 14). It represents a more ‘holist’ approach that sees cases as complex combinations of variables (Berg-Schlusser et al. 2009: 6; Hopkin 2002: 261). As a result, the data may not only point to relevant factors, but to relevant *configurations* of factors (Berg-Schlusser et al. 2009: 2-3). For example, the presentation of the theoretical framework and the hypotheses in Chapter 1 assumed that the factors that influence *in what ways* regions represent their interests become relevant once the conditions for *mobilisation* are fulfilled. Finally, it can be argued that good analysis requires a historical/descriptive foundation that allows the researcher to make sense of the data and relationships between variables (Calvert 1994: 11). This foundation can be taken from the prior work of other authors or gained through new research, but it is ultimately necessary to understand why certain types of patterns emerge in the data.

The qualitative comparative approach – and especially the use of interviews for data collection – had of course an important effect on case selection, which had to be non-probabilistic and tailored towards the hypotheses (Hopkin 2002: 254; Seawright and Gerring 2008; Landman 2003: 29). Interviews are time-consuming due to transcription and travelling (Denscombe 1998: 136-7). For a cross-country comparison, more case studies mean not only more interviews, but also higher costs due to longer periods of fieldwork. At the same time, while a smaller number of cases allows the researcher to go more into depth, a greater number of cases makes conclusions on causal mechanism more robust and allows for a greater number of hypotheses to be taken into account (van Biezen and Caramani 2006: 31; Berg-Schlusser et al. 2009: 5; Benentt and Elman 2006: 458). While deliberate selection always contains a risk of bias, great attention is paid in this study to discussing what the case selection *means* in terms of the generalisability of findings (Burnham et al. 2004: 162). In addition, the theoretical framework of the project is used to identify where the cases are located on a scale from “ideal case” to “worst case” (e.g. at the start of this section) (Landman 2003: 50).

Qualitative comparative research can generally be designed along two lines – a most similar or a most different design. Here, the selection of cases was modelled to suit the specific characteristics of the project. A most-different design would have required the dependent variable (the use of unmediated access) to be constant for all cases, so that some key features common to all cases could be identified as relevant explanatory factors (Landman 2003: 29). However, with a four-country comparison, it was clear that the number of cases (i.e. regional strategies on a particular policy) would be relatively high for a qualitative project (a small intermediate-n study rather than a small-n study). As it would only become apparent whether a region sought unmediated access to the European level *during* the fieldwork, it was unlikely that all cases would have the same outcome. This likely variation was in fact welcome, as variation on the dependent variable generally leads to more robust inferences on the relevance of explanatory factors (Landman 2003: 50) Thus, it was more pragmatic to assume that the outcome would vary across regions and to select the regions in such a way that at least some of the potential independent variables could be held constant. At the same time, while the focus lies on the impact of domestic intergovernmental relations as an explanatory variable, other region-specific factors could not be held constant across countries. However, as will be shown below, it was possible to create near-most-similar designs for *subsets* of cases that would allow for a targeted analysis of the impact of specific factors.

Thus, one of the challenges for the design of the project in terms of size was that a number of potential variables had been identified in the literature. While the focus of the project was to be on the explanation of the impact of different domestic coordination mechanisms on regional strategies, these other factors had to be taken into account as well (cf. Chapter 1). These factors represent possible intervening variables for the design of the cross-country comparison, especially since some variables could not be held constant across member states (e.g. population size, party congruence). As a result, it was felt that a four-case-study design with one region from each member state would not allow for good comparability across states and that the regions might not be very representative of the parent population. As a consequence, two regions were chosen per member state. The two regions from each state would have different values on a certain number of independent variables, so

that some of the causes of intra-state variation could be further explored and their effect on differences between member states better understood. This reduces the risk of “overdetermined” outcomes (which exists when only one factor is considered) and of overestimating the impact of certain factors through the selection of “outliers” (Collier 1991: 7; Burnham et al. 2004: 62). Overall, the selection of two regions per state also increased the relevance of the study, as the findings on the factors for intra-state variation can be expected to be relevant for non-legislative regions as well. The only state for which only one region was retained is the United Kingdom, which is the most asymmetrically organised member state under consideration.<sup>11</sup> Only Scotland was included in the study as the most comparable to the regions of federal states.

The project also had to overcome an important information gap at the design stage. The presence or absence of conflict within the member states can be expected to have an important impact on the choice of strategy of a region. It would be much easier for a region to work through its member state when all the actors in that member state broadly agree than when it pursues interests that are different from either the interests of the central government or the other regions. At the same time, there were few documents, so that information on conflict or consensus was generally not available prior to the interview stage. In order to address this problem, two instances of decision-making were to be studied, to increase the chances of each region experiencing conflict at least once. On the whole, there are thus fourteen case studies, as the activities of seven regions on two policy-making processes were analysed. This also increased the chances that “most similar” subsets of cases could be formed at the analysis stage. For this project, for example, the impact of domestic processes will later be analysed across a set of cases that all experienced conflict (i.e.

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<sup>11</sup> The UK has devolved power to Scotland, Northern Ireland and Wales through three separate and individually tailored devolution agreements. As a result, there are substantial differences in the legislative and administrative competences of the devolved executives and parliaments. In addition, Northern Irish devolution has been suspended at times due to unrest. Some authors also regard Belgium as an asymmetrical federal state (e.g. Lambertz and Förster 2009: 21). This is due to the complicated make-up of the Belgian state with two sub-state levels, “regions” and “communities” (language groups). As the region Flanders and the Flemish community have merged, this means that the different sub-state government have different powers. However, as we are focusing on a policy area where the regions have exclusive competences (cf. section on policy selection), the merger makes no difference in this case.

the variable “conflict” is turned into a constant and does not interfere with the analysis).

Overall, the project thus examined 14 cases (seven regions and two policies) that could provide context, complexity and a basis for systematic comparison. The hypotheses, their operationalisation, the policies and the regions that have been chosen for the project are discussed in the subsequent sections, along with the criteria that drove the selection process.

### ***2.3 Methods of Data Collection***

The principal method of data collection were semi-structured interviews. A topic guide was used to cater for the deductive elements of the study and provide the necessary consistency and comparability across cases (Bryman 2004: 321, 324). The precise wording and sequence of questions varied from interview to interview depending on the flow of the conversation. In addition, sufficient time was set aside to probe into the points that interviewees felt were most relevant to the case and to provide sufficient flexibility to capitalise on the expertise of the interviewees (Arthur and Nazroo 2003: 122-3). The interviews were generally conducted in the language of the interviewee to create a more comfortable and less stressful atmosphere. Dutch-speakers were the exception and were offered a choice of English, French or German. Interviews were generally conducted as face-to-face interviews wherever possible to establish higher levels of trust, but were replaced by telephone interviews in the case of follow-up interviews, if interviews fell outside the period of the corresponding field trip and if interviewees experienced time constraints. While most interviews were recorded with the permission of the interviewee, notes were taken at the request of some interviewees and during certain telephone interviews, when recording was not possible.

The target group were the policy officers in charge of the dossier at the time, as those were deemed the group most likely to recall the detail of the negotiations. In order to counterbalance the subjectivity of the interview data and to minimise the risk of over-reliance on distorted accounts of events, interviewees at different levels were

targeted to get both internal and external views on regional strategies. In general, the planning of interviews followed a bottom-up strategy in line with the research question, starting with regional officials and moving on to national level and then European level interviews. Requests for interviews were made by telephone or email, and all potential interviewees were informed at that stage that their responses would be used in an anonymised form.

In order to further increase the robustness of the data, interview data was corroborated and complemented with documentary analysis wherever possible (official documents or media reports).<sup>12</sup> The extent to which data could be confirmed through triangulation was, however, limited. Regional interest representation in European policy-making does, unfortunately, produce relatively few documents and little media coverage. This is a common problem that has already been experienced by other researchers pursuing related work (e.g. Tatham 2008: 495). The reason for this is twofold. On the one hand, negotiations between the regional governments and the central governments tend to be dominated by processes that do not require official documentary output. The notable exception is the highly formalised side of intra-German negotiations that requires the adoption of a Bundesrat position, i.e. a collective position of the Länder (but not individual ones). The Austrian procedure does rely on the written submission of Länder positions, but as these are not formally endorsed through a public procedure, they are difficult to track down. In some cases a region may post a position paper on the internet or publish a press release, but for the majority of the regions under investigation this was not the case.

It is even more difficult to trace *informal* negotiations between regional and national actors through documents. On the other hand, only some actions on the European level would leave traces. High profile acts by major regional politicians are likely to have been reported in the press, whereas a briefing of the region's MEPs is less likely to be publicly documented. Even regional involvement in Commission committees or Council working groups is difficult to assess, as the minutes of such meetings usually refer to member states only. Documents can nevertheless serve to

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<sup>12</sup> Cf. Golafshani (2003) for a discussion of triangulation as a means to increase reliability and validity in qualitative research.

confirm a certain number of actions on the European level. Also, if one takes into account that most points can be corroborated by interviewees from other regions, the national level and/or the European level, the data is fairly reliable.

## ***2.4 The Dependent Variable – Unmediated Access***

The objective of the project is to assess to what extent the case study regions established access to European actors that was unmediated by the central state, which channels they used for this purpose and what explains variation in the degree to which such access was established. The concept “unmediated access” as a dependent variable will be operationalised in a number of steps to allow for different levels of analysis.

The first step involves a simple yes/no question: Has the region established unmediated access to the European level? There are a vast number of ways in which a region could establish such access, but the most common of them are through contact with the region’s (or leading) MEPs, contact with the Commission, the organisation of activities through the regional office in Brussels, participation in activities on the EU level, direct contact with other member states or regions on the issue in question or active participation in the discussions in the Committee of Regions. Participation in Council meetings or Commission working group meetings will not be counted as unmediated access, as this is normally done as part of a national delegation and thus subject to prior negotiation with the central government.

The second step introduces a distinction between the regions that have been active at the European level. The first element is frequency: Has a region used just one of the channels above or several? Has it been active over a period of time? The second element is the level of engagement: Did the region present its interests under a technical “problem-solving” approach where it tried to persuade other actors of its position, or did it use an overtly political approach, where politicians rather than civil servants were at the front line?

Finally, as we are dealing with regions from federal or strongly devolved states, all of the regions will be involved in domestic co-ordination procedures. It is therefore necessary to understand the importance of each region's European-level strategy relative to the domestic strategy. Three broad categories can be distinguished: exclusively domestic strategies, domestic strategies with minor complementary action at the European level or European-level action as an essential element in the region's strategy.

## **2.5 Independent Variables**

Chapter 1 identified seven factors that can be expected to influence whether regions mobilise and how. This project focuses on the five factors that influence the strategy of interest representation of a region, but where appropriate also takes existing alternative hypotheses in the literature into account. In order to reduce the chances of interference from the two factors that influence whether a region will feel the need to mobilise, policy salience and the level of the regions' competences, these factors will be held as constant as possible through careful case selection. How this was done and the extent to which it was possible will be discussed in greater depth in sections 6 and 7 on the selection of regions and policies.

### **Hypotheses to Be Investigated:**

- **Factors Influencing the Choice of Strategy**

A region is more likely to seek unmediated access to the European level if...

- there is domestic conflict.
- there is party incongruence between the regional and the central government or ethno-regional parties are in government.
- the domestic influence of a region is low. OR: Regions from dual systems are more likely to seek unmediated access to the European level than regions from cooperative systems.

- **Enabling or Constraining Factors**

A region's capacity to develop an extensive (and multi-level) strategy depends on...

- its economic strength.
- its size (in population).

### 2.5.1 Formal Domestic Processes

The literature has identified a number of different variables that could be expected to influence regional mobilisation, for instance the wealth of a region, the constitutional strength of a region or whether the same party is in government at the federal and the regional level or not. All of these variables have been identified as factors that influence either the level of mobilisation or the level of influence of regions (cf. Chapter 1). They can account for differences between regions both within the same state and across states. One factor that has been largely ignored is the impact of domestic intergovernmental relations on regional mobilisation.<sup>13</sup> The objective of this study is to specifically focus on this factor and to assess to what extent and in what ways it influences the degree to which regions seek unmediated access to the European level.

“Intergovernmental relations” can be broken down into two dimensions, both of which will be taken into account in the analysis. The first dimension is the one derived from a rational choice institutionalist perspective and focuses on the level of influence that a region can exert over domestic European policy-making (cf. Chapter 1). It is thus primarily about formal procedures for involving regions in the formulation of a member state’s position, but it also has to take into account the extent to which informal practices may shift the balance of power. The hypothesis is that regions with a high level of influence over their member state’s position will feel less of a need to seek unmediated access to the European level than regions with a relatively low level of influence.

An alternative hypothesis that will be explored is not based on rational choice institutionalist assumptions but derived from Börzel’s German-Spanish comparison (Börzel 1999). Thus, an alternative hypothesis is that regions from dual systems (Belgium, Scotland-UK) are more likely to become active at the European level than regions from more cooperative systems (Germany, Austria). This can be based either on the assumption that regions from cooperative systems have been socialised into cooperation and consensual decision-making or on the assumption that the already

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<sup>13</sup> One of the rare studies on this topic has been undertaken by Börzel for Germany and Spain (1999, 2002).

existing structures for cooperation make a collective approach easier to realise for cooperative federal states. Conversely, regions from dual systems may be less used to compromises and more assertive in “their” policy areas and may also have less developed contacts to other actors in their member state. It is important to note, though, that the difference between cooperative and dual systems may not be as clear cut. On the one hand, several authors have argued that the German Länder have become more competitive over time, especially after reunification (Jeffery 2005a; Knodt 2000). On the other hand, Belgian intergovernmental relations are sometimes being described as becoming more cooperative as a result of the pressures of European decision-making (Beyers and Bursens 2006a).

In addition, Chapter 4 will examine the related hypothesis that formal domestic processes that make regional influence conditional on the existence of a common regional position will also encourage interregional cooperation through informal mechanisms more than formal domestic processes that involve bilateral communication between regional and central governments. While this hypothesis does not directly address the debate surrounding the concept of MLG as it does not involve multi-level interaction, an understanding of the relationship between formal and informal domestic processes of coordination is an important step towards a better understanding of regional strategies of interest representation as a whole. It is an integral part of an approach that argues that a region’s actions on one level or through one channel should be seen in the context of the whole strategy.

**Additional hypothesis:**

In domestic European policy-making, regions are less likely to have recourse to informal processes of regional horizontal cooperation when formal processes rely on bilateral communication between the central government and regional governments (than when they also involve horizontal cooperation).

## **2.5.2 Conflict**

The presence or absence of domestic conflict is expected to be one of the most powerful explanatory factors for interregional variation in strategies of interest

representation that could potentially cancel out the effects of other factors, most notably the impact of domestic processes: When all relevant actors within a member state broadly agree on a policy line, it may not matter much whether a region has formal co-decision rights or just consultation rights. Its position will inevitably be reflected in the member state's position. By contrast, an intense conflict of interests between the regions of a member state or a region and the central government may affect the extent to which the region's position is taken into account under a consultation procedure. Even in a case where regions have co-decision rights, these rights would probably at best lead to a watered down compromise. The regions will therefore find the results of the domestic cooperation less satisfactory and will thus experience greater incentives to mobilise at the European level in a context of domestic disagreement than in a context of domestic agreement. It is therefore difficult to establish the impact of procedures of domestic European policy-making when there is conflict in the case of one member state and consensus in the case of the other.

As a result, the variable "conflict" should ideally inform the case selection. As two instances of policy-making are investigated for this project, a perfect research design would be one where each member state experienced internal conflict for one of the policies but not for the other. That way the impact of conflict could be directly examined for the regions of each member state without interference from the "domestic processes" variable. At the same time, the impact of the core variable of this project, the impact of domestic processes on regional interest representation, could be examined in a cross-country comparison within two sets of relatively comparable cases: those where internal conflict occurred and those where it did not.

Unfortunately, conflict is one of the more elusive variables at the design stage. The problem is that the negotiations between the central government and the regions (or between regions) often take place in informal meeting or through emails and phone calls and that there are usually no official documents that reflect this process (Tatham 2008: 495). In the absence of documentation of the negotiation *process*, a researcher could still try to compare one region's *position* to the central government's position and to the positions of other regions within the member state to estimate the degree

of conflict. But, yet again, few regions set out their positions in an official document. A third way to get information about conflict would be through newspaper articles, but few EU Directives receive media coverage and a discussion of regional-central disputes on EU Directives is even rarer. As a result of the scarcity of information, the extent of conflict has to be determined through interviews with officials from the relevant member states and regions – *after* the selection stage.

It was especially due to this problem that the decision was taken to include two Directives into the project, even though this move increased the number of cases from seven to fourteen. With only one Directive, the risk of incomparable data across member states was too great. It was hoped that two case studies for each region (one for each Directive) would yield more comparable results, either within or across Directives. The strategy worked well, in that there was some internal conflict in one of the two cases for the UK, Belgium and Germany. There was thus a case for each of the three countries where it was difficult for the regions to have their interests satisfactorily reflected in the member state's position. Austria is the only country where there was no comparable level of conflict for any of the Directives and where the analysis of the impact of its domestic coordination mechanisms is problematic (although qualitative data provides some hints). This is also due to the fact that with four member states, the distorting effects of Council presidencies were difficult to avoid entirely, and one of the policies fell into the Austrian presidency.

In terms of operationalisation, cases will be divided into two categories, “conflict” and “no conflict” on the basis of the subjective perception of interviewees. “No conflict” does not mean that there are no differences between the positions of regional and central governments whatsoever, but that interviewees do not perceive these differences as problematic. Conversely, “conflict” means that interviewees felt that internal disagreements proved to be a “real” challenge for the internal coordination process. The reason why a black-and-white typology rather than a greyscale was chosen is that the narratives are expected to be too subjective to provide a basis for a distinction of “more” or “less conflict, especially across countries.

### 2.5.3 Party Congruence

Tatham suggests that party incongruence between the regional and central government increases the likelihood that regions engage in strategies of confrontation rather than cooperation with their central governments on the European level (2010). Thus, party incongruence can be seen as an incentive for the region to seek unmediated access to the European level as the result of party political rivalry. Similarly, one can expect the governments of regionalist parties to be more likely to develop unmediated strategies to underline the power and status as well as distinctive needs of the region (Bauer 2006).

Of course, the party congruence variable overlaps to some extent with the variable “conflict”, as party rivalry is a form of conflict. However, as the hypothesis has already been thrown up by the literature, it is worth examining this specific type of conflict separately. Also, the data from the qualitative interview should make a distinction between party political conflict and other forms of internal conflict relatively straightforward.

However, like “conflict”, this factor is problematic, albeit for different reasons. Party political congruence or incongruence can only be designed into a project to a limited extent as each state has a different party system. The value of the factor is thus at least partially predetermined. Austria and Germany have mostly state-wide parties and only few regions have regional parties. However, while the German party system usually allows for a situation where some regional governments are “in opposition” to the central government, the Austrian three-party system means that regional governments and the federal government usually experience some form of partial congruence.<sup>14</sup> The UK has state-wide parties and a few regional parties in Scotland, Wales and Northern Ireland. At the time of the case studies, Labour was in government both in Scotland and the UK, which led to party congruence. Belgium, by contrast, has a regionalised party system and even the federal government is a coalition of regional parties, which can complicate the formation of federal governments. As a result, even if most or all parties in government in a region are

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<sup>14</sup> A similar typology of party congruence, incongruence and partial congruence in regional and national coalitions is used by Deschouwer (2009: 16).

also part of the federal government, the federal government will also be made up by parties from the other regions. The result is another type of partial party congruence between the regional and federal governments. An overview over the various party constellations during the case study period will be presented as part of the analysis in Chapter 6.

As it was difficult to manipulate this factor by means of case selection, questions on the relevance of party politics were instead included into the topic guide. In particular, interviewees were asked if they ever felt that party politics played a role in the definition of the region's interests or the interaction between their region and other regions or the central governments. In the case of changes in regional government during the period under consideration, officials were asked if they felt that this had an impact on their region's strategy. Thus, the relevance of party political dynamics in domestic European policy-making is to be gauged through subjective perceptions.

#### **2.5.4 Economic Strength and Size of the Population**

While the three preceding variables influence the *incentives* for a region to pursue an unmediated strategy at the European level, the next two factors, economic strength and size in terms of population, determine the *capacity* of a region to pursue an unmediated strategy of interest representation. The capacity of a region to develop an active strategy of interest representation at the European level depends on the resources that a region invests into either interest representation in general or the specific policy area at hand. Yet, the investments themselves are difficult to measure. The administrative capacity of a region can be established relatively easily for its Brussels office (i.e. the number of policy officers and support staff), but otherwise it is difficult to assess the administrative capacity in one region in comparison to another. Firstly, some regions have ministries for European affairs, while others have European divisions within affected ministries. The range of responsibilities of these varies. Secondly, some regional policy experts perform a mix of technical tasks and policy supervision/coordination tasks. Other regions have policy officers responsible

for technical tasks and policy officers responsible for monitoring only. Thirdly, some experts look after only a handful of policies, while others have to monitor a variety of policies. As a result, it is not possible to simply count policy officers.

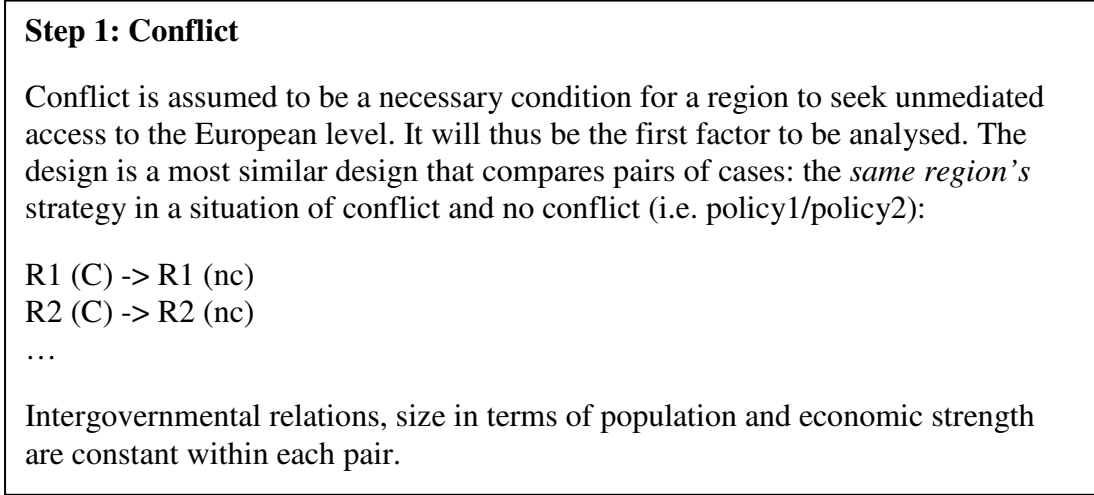
However, the economic strength of a region can be used as a proxy variable, the assumption being that economically strong regions have a greater income and can afford to invest more resources than economically weak regions. The GDP/head of a region was used as a measure for economic strength, as this is the basis for the assessment of regions for a number of EU policies (especially regional and cohesion policies) (cf. European Commission, Communication 2007). The points of reference are two years that correspond to the early phases of the negotiations for the two policies respectively – 2002 and 2006.

The case study regions were selected in such a way that for each of the countries there is one region with a relatively high GDP/head and one with a relatively low GDP/head. Scotland occupies the middle ground for the UK. Thus, while the main hypothesis focuses on inter-state comparison (the regions of one member state in comparison to the regions of another member state), this secondary hypothesis focuses on inter-regional comparison (economically strong regions compared to economically weak regions). In order to neutralise the impact of different domestic processes, the comparison will take place within the pairs of regions from the same member state. Thus, if it emerges that the economically stronger region within each state tends to be more active than the poorer region, this would suggest that economic strength does increase a regions ability to mobilise on the European stage. The project can thus contribute to the understanding of the differences in regional activism both across states and within states.

As the Austrian case study regions would naturally be considerably smaller than Scotland or the Belgian regions in terms of population and as there was a clear difference in the size of the population of Flanders and Wallonia, the factor

“population size” was included into the research design as well.<sup>15</sup> The size of the population (in absolute terms) can also have an impact on the capacity of a region to develop and execute complex strategies of interest representation, as it also affects the overall budget of a region and thus the amount of resources from which the costs of interest representation get deducted. For the project, an attempt was made to select all regions in such a way that there would be a clear difference in the size of the two regions from each member state. As with economic strength, if it emerges that the regions with larger populations are more active compared to the other region within their member state, this would suggest that population size matters. Of course, this also means that the differences in size and in economic performance should not overlap perfectly. If the three economically strong regions are also the three larger regions, any difference in their strategy could be attributed to either of these factors. Thus, while there is an overlap between size and economic performance for the German and Belgian regions, the Austrian regions were chosen in such a way that the more populous region is also the economically weaker region.

**Figure 3: The Comparative Analysis of Key Factors in a Nutshell\***



<sup>15</sup> While Nielsen and Salk (1998) and Tatham (2010) conflate size and economic performance (i.e. size = population size, geographic size and GDP of the region etc.), “size” only refers to population size in this study. The intention is to keep population, GDP per head and GDP – which is a combination of the first two – conceptually apart.

## Step 2: Domestic Intergovernmental Relations

A perfect most similar design is not possible as cross-country differences between regions mean that not only intergovernmental relations but also size and economic strength vary. Scotland, Flanders and Wallonia, for example, have a far bigger population than even the largest Austrian region. But the variable “conflict” can be held constant by comparing within two sets of cases: one with conflict, one without conflict.

German Rs (C) -> Belgian Rs (C) -> Scotland (C)

German Rs (nc) -> Belgian Rs (nc) ...

## Step 3: Population Size and Economic Strength

The comparison focuses on regions of *the same member state, within the same Directive*. As a result, “conflict” is held constant (if there is conflict, both regions are affected, if there is none, neither one is). Due to the ratio between the number of cases and number of variables, the analysis of the two factors overlaps:

- a) German R1 (C, E, S) -> German R2 (C, e, s)  
German R1 (nc, E, S) -> German R2 (nc, e, s)  
Belgian R1 (C, E, S) -> Belgian R2 (C, e, s)  
Belgian R1 (nc, E, S) -> Belgian R2 (nc, e, s)

These four comparisons of pairs of cases show the combined impact of a higher population and greater economic strength (most similar design).

- b) Austrian R1 (nc, E, s) -> Austrian R2 (nc, e, S)

The comparison of this pair of regions provides an indication of whether economic strength or size in terms of population is more relevant for regional activity.

\*Abbreviations: R=region, C=conflict/nc=absence of conflict, E=economically stronger/e=economically weaker, S=larger population/s=smaller population.

## 2.6 The Regions

### 2.6.1 Selection process

The seven regions that were retained for the case studies are Bavaria and Mecklenburg-West Pomerania for Germany, Vorarlberg and Carinthia for Austria, Flanders and Wallonia for Belgium and Scotland for the UK. The selection process took place in several steps – especially for Germany and Austria, where a larger pool

of regions was available. The first region to be chosen was Scotland, as, in terms of constitutional strength, it is the UK region best suited for a comparison with regions of federal states. As a result of that, the decision to exclude city states (e.g. Berlin, Hamburg, Vienna, Brussels) was taken, to make the regions more comparable. In light of the two policies that were retained, that step would have been necessary at any rate. This in turn meant that Flanders and Wallonia would be the Belgian case studies. As a result, only Germany and Austria allowed for a genuine margin of manoeuvre in the selection of regions.

Four factors had to be taken into account in the selection of the German and Austrian Länder. The salience of the policy for a region, the economic strength of the region, its size and regional-federal party constellations can all affect regional mobilisation. As discussed in section 4.3, party constellations can be analysed through qualitative interview data alone. However, German and Austrian Länder had to be selected in such a way that policies could be found that affected all seven case study regions.

In the end, Bavaria, Mecklenburg-West Pomerania, Carinthia and Vorarlberg were chosen on the basis of policy salience, but also because the pattern of economic performance and population size allowed the analysis of these two factors. As discussed in section 2.5.4, economic strength and population size overlap in the German and Belgian cases whereas greater economic strength coincides with a smaller population in the Austrian case, so that a comparison of the activity within the three pairs of regions (Belgian, German and Austrian) should provide an indication of the relevance of the two factors. An analysis of the impact of the size of the region's populations is also important as the population size inevitably varies across countries and cannot be held constant in the analysis of the impact of domestic processes. The largest Austrian region has roughly half the population of Wallonia, the smaller Belgian region. Thus, if the impact of the size of the population could be confirmed, this could be taken into consideration in the analysis of the impact of domestic processes on the degree to which regions seek unmediated access to European actors.

**Table 1: Average Population of the Case Study Regions, 2002 and 2006**

	<u>Average population</u>	
	<b>2002</b>	<b>2006</b>
<b>Bavaria</b>	12,358,533	12,480,692
<b>Flanders</b>	5,984,167	6,098,020
<b>Scotland</b>	5,057,800	5,118,200
<b>Wallonia</b>	3,363,405	3,424,928.5
<b>Mecklenburg-West Pomerania</b>	1,752,250.5	1,700,510
<b>Carinthia</b>	560,460.5	560,353.5
<b>Vorarlberg</b>	354,415	364,233

data extracted on 02 Feb 2010 13:13 UTC (GMT) from OECD.Stat  
Demographic Statistics, Average Population, ©OECD, www.oecd.org

**Table 2: Per Capita GDP in US Dollars PPP of the Case Study Regions**

	<b>Per capita GDP in US Dollars PPP</b>	
	<b>2002</b>	<b>2006</b>
<b>Bavaria</b>	32,562.68	38,705.54
<b>Vorarlberg</b>	31,624.12	36,739.07
<b>Flanders</b>	29,544.40	33,440.67
<b>Scotland</b>	27,179.36	32,868.34
<b>Carinthia</b>	25,049.63	30,054.01
<b>Wallonia</b>	21,550.31	24,117.86
<b>Mecklenburg-West Pomerania</b>	18,709.06	22,364.25

data extracted on 02 Feb 2010 12:51 UTC (GMT) from OECD.Stat  
Regional Accounts, GDP per head in US Dollars PPP for 2002 and 2006, ©OECD, www.oecd.org

**Table 3: Summary of the Cases and Variables**

	Germany				Belgium				Austria				UK*	
	Bavaria		Meck.-VP		Flanders		Wallonia		Carinthia		Vorarlberg		Scotland	
	Floods	Bathing W.	Floods	Bathing W.	Floods	Bathing W.	Floods	Bathing W.	Floods	Bathing W.	Floods	Bathing W.	Floods	Bathing W.
Larger Pop.	1	1	0	0	1	1	0	0	1	1	0	0	1	1
Higher GDP/head	1	1	0	0	1	1	0	0	0	0	1	1	1	1
Internal Conflict	1	0	1	0	1	0	1	0	0	0	0	0	0	1

1=yes, 0=no

\*Each region is compared to the other case study region from that member state. For Scotland, Northern Ireland is used as a comparator as it is the region most comparable to Scotland in terms of legislative powers.

## **2.7 Policy Selection**

The selection of policies and regions was strongly interrelated, as only policies could be chosen that affected all case study regions and only regions that were affected by all policies. As some regions were a “given” due to the small number of eligible regions in those member states (i.e. Scotland, Flanders and Wallonia), the policies had to be selected to suite these regions. Ultimately, the Flood Risk Management Directive and the Bathing Water Directive were retained.

### **2.7.1 Selection criteria**

The selection of the two instances of policy-making was guided by five criteria to increase the comparability of cases within the study and so that the project would be able to complement and contribute to the state of the art.

Firstly, as much of the existing research focuses on regional or cohesion policy, the study would focus on regulatory rather than redistributive policy-making. This is an important decision, as the policy area itself can be expected to have an impact on the intensity of regional lobbying strategies and the degree of multi-level interaction. In that regard, regional policy is in a sense an “ideal” case for MLG. It provides substantial financial support for regional projects and thus creates important financial incentives for regions, and especially poor regions, to mobilise on the European level and try and secure a maximum of funds. As it involves positive financial incentives and has an enabling effect on the region, it is also more likely to produce cordial relationships between regional governments and the Commission. Thus, several studies that focus on regional policy describe the Commission as an ally of the regions (Marks, Hooghe and Blank 1996; Tömmel 1998: 60).

Regulatory policies can be expected to create different dynamics, as their focus on rules is at least as likely to have a constraining effect and produce negative incentives through misfit as it is to give the region a competitive edge. If the proposed policy would cause high adaptation costs, there would be great negative incentives to mobilise on the European level to stop or amend the policy, but it is unlikely that the Commission (who proposed the policy) would be seen as an ally. However, there is also the possibility that a region will see EU policy-making as an opportunity to make another actor take a particular course of action (e.g. the central government or another region). This may be the case for policy areas where one region’s policies can have positive or negative externalities that affect other regions (flood risk management being a case in point). Depending on how strongly a region would be affected by the proposed policy, the regulatory policy could still be a “very good” case for MLG that presents important incentives for multi-level interaction, but it would create different incentives and dynamics than distributive policies. Thus, the objective is to analyse to what extent regions mobilise on the European level in

policy areas where there are no (or few) immediate financial benefits but immediate costs.

Secondly, within the large group of regulatory policies, only “hard”, binding law will be considered. Directives and Regulations have to be implemented and thus create formal obligations. Recommendations, communications and action plans may touch upon important issues, but as their constraining effect is low, they create few incentives for regions to invest into interest representation.

Thirdly, the policies selected have to affect all four member states. A region will not develop a strategy of interest representation in the absence of an interest to represent. In particular, due to the small number of eligible regions in two of the member states, the policies would have to affect Scotland, Flanders and Wallonia. Ideally, they would also affect large parts of Germany and Austria, so as to allow for more flexibility in the choice of regions for these two countries. The precise ways in which the case study regions are affected by the two policies will be discussed in section 2.7.3.

Fourthly, how affected a region is by a given policy not only depends on the subject matter, but also on the legislative or administrative competences of the region. In particular, a region will be affected if it has to bear the administrative and financial costs of implementation. A complicating factor is that Scotland, Flanders and Wallonia benefit from a wider range of exclusive competences than the German or Austrian Länder. The Austrian Länder in particular have a very limited range of legislative and administrative competences.

Finally, only policies that had been adopted relatively recently were considered, to minimize the memory effect that the lapse of time would have on interviewees (Ritchie, Lewis and Elam 2003: 78-9, 100-4). Interviews are the predominant source of information for the project, and it is therefore important that the interviewees remember the case studies as accurately and in as much detail as possible. In addition, European decision-making often takes a number of years, so that some of the events will lie several years in the past even in the case of legislation that was adopted very recently.

After consideration of these criteria, the two policies that were retained were Directive 2006/7 EC *concerning the management of bathing water quality* (hereafter referred to as “Bathing Water Directive”) and Directive 2007/60/EC *on the assessment and management of flood risks* (hereafter referred to as “Floods Directive” or “Flood Risk Management Directive”). Both Directives fulfil the selection criteria. They are regulatory in nature, create binding obligations and affect a number of regions in the four case study member states. They are also relatively recent instances of decision-making relative to the start of the research project in mid-2007. At the same time, they do not cover the exact same period of time. This is important, as it means that a situation is avoided where the same member state held the Council Presidency during crucial periods of both Directives. Council Presidencies are exceptional periods of time, when the visibility of the member state is increased, when the member state is expected to adopt the role of an “honest broker” and when – as a result – dynamics of internal coordination change. As all four member states have held the Council Presidency since 2001, it was not possible to avoid those periods completely.<sup>16</sup> Finally, the regions of all four member state are affected in their legislative and/or administrative competences, even though there are still considerable differences between regions.

The Belgian regions benefit from a large number of exclusive competences, due to the dual federal makeup of the state. Most water legislation falls under the exclusive competences of the regions, as do bathing water and flood risk management. As a result, both the transposition and the implementation of the Directives take place at the regional level (Sénat de Belgique, 2006).

Scotland also holds a large number of exclusive competences. Under the 1998 Scotland Act, all powers that are not reserved matters are automatically devolved (Scotland Act 1998, Schedule 5). As a result, both environmental matters and a large number of health matters fall into the remit of the Scottish parliament and executive. Thus, Scotland is responsible for transposing both the Flood Risk Management

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<sup>16</sup> Belgium - July-December 2001, UK – July-December 2005, Austria – January-June 2006, Germany January-June 2007.

Directive and the Bathing Water Directive, which straddles environmental and health issues.

The German and Austrian Länder have generally more limited exclusive legislative powers. The German Basic Law provides that all powers that have not been explicitly allocated to the federal level are by default regional powers. The list of exclusive federal or shared powers is, however, extensive. Prior to the 2006 federalism reform, the management of water resources and nature conservation would have fallen under federal framework competences (BL of 1993, Art. 75(1)). The federal level had only adopted framework legislation for flood risk management, though, thus leaving the Länder with a wide margin of manoeuvre (Gesetz zur Verbesserung des vorbeugenden Hochwasserschutzes, 2005). In the absence of federal legislation, bathing water was and is in practice regulated and monitored by the Länder within the framework of EU legislation ([www.bmu.de/gewaesserschutz/fb/badegewaesser/doc/2435.php](http://www.bmu.de/gewaesserschutz/fb/badegewaesser/doc/2435.php)).

The German federalism reform then abolished framework competences. Both environmental protection and water management are now concurrent powers, so that the Länder can legislate in the absence of federal legislation (BL of 2009, Art. 75(1)). In practice, just as in the case of Scotland and the Belgian regions, the German Länder were responsible for both the transposition and the implementation of the Bathing Water Directive. As the Flood Risk Management Directive is more recent, it coincided with the federalism reform and was therefore transposed through the new federal Water Management Law, which also expanded the provisions of the previous framework legislation on flood risk management (Gesetz zur Neuregelung des Wasserrechts, 2009; [www.bmu.bund.de/gewaesserschutz/downloads/doc/6900.php](http://www.bmu.bund.de/gewaesserschutz/downloads/doc/6900.php)). It will nevertheless be implemented by the Länder.

In Austria, all powers are also by default regional powers (Austrian Bundes-Verfassungsgesetz of 2004, Art. 15(1)). In practice, however, the Austrian constitution delegates a vast number of competences to the federal level. As a result, the Länder have very few legislative competences, which made it difficult to find a policy where the Austrian Länder would have had a level of power comparable to Scotland, the Belgian regions or the German Länder (Bussjäger and Djanani 2009:

58). The federal level is also responsible for legislation and implementation in most areas of water management and for the health related aspects of the Bathing Water Directive (Austrian Bundes-Verfassungsgesetz of 2004, 10(10), 10(12)). As a result, both Directives are transposed by federal law. The federal level can, however, delegate certain administrative tasks to the Länder. It is through those delegated tasks that the Länder are affected by the Directives.

### **2.7.2 The Policies - Background**

The two legislative proposals both fell under the co-decision procedure and were subject to qualified majority voting in the Council, but arose in different contexts and developed their own dynamics at the European level. As the background of the policies also provides the backdrop for the regions' strategies of interest representation, it shall be briefly reviewed in this section.

The aim of the Bathing Water Directive was not to regulate a new issue, but to repeal existing legislation with a view to modernisation as part of the Sixth Community Environment Action Programme (Decision No 1600/2002 of the European Parliament and of the Council). In fact, the EEC started regulating the quality of bathing water in the mid-1970s, with Council Directive 76/160/EEC. The policy area is strongly Europeanised, as member states and their regions have been monitoring their bathing water according to European standards and reporting to the European Commission for decades. This also means that it is more likely that a culture of cooperation within member states and across member states had already developed before the negotiations for the current Directive started compared to policy areas that have never been touched by European legislation before. In addition, it also made it highly unlikely that any regional or national actor would perceive the new Directive as an inroad on their competences. All of our case study regions had to work under the old Directive either transposing and implementing it or – at the lower end of competences – monitoring the quality of bathing water and reporting to the national level.

The old Bathing Water Directive also appears to have been a success. On the one hand, the Commission describes the old Directive as “a common European success story” in improving bathing waters ([ec.europa.eu/environment/water/water-bathing/index\\_en.html](http://ec.europa.eu/environment/water/water-bathing/index_en.html)). On the other hand, the Directive resulted in “unprecedented public awareness” (European Commission, Proposal, COM/2002/0581 final: Explanatory Memorandum). An online search showed that newspapers from every case study member state used the old Directive to assess the quality of their member state’s water, sometimes in comparison to other member states. In addition, regional governments occasionally used the Directive to highlight the attractiveness of their region.

For the purpose of both the old and the new Directive, bathing waters are coastal waters and inland waters, where bathing is either authorised or not prohibited and where bathing is traditionally practiced by a large number of people (Council Directive 76/160/EEC, Art. 1; Directive 2006/7/EC, Art. 1). This means that swimming pools do not fall under the scope of the Directive and that bathing sites where only a few people bathe can be excluded. Both Directives aim to both protect human health and the environment. The initial legislative proposal for the new Directive suggested a number of changes, though. Most importantly, in the light of scientific progress, the Commission suggested replacing the existing 19 microbiological parameters by two, complemented by visual inspection (e.g. oil and algae bloom) and pH measurement in fresh waters. The microbiological standards were to become tighter, a new system of classification was proposed and the question of how to allow other recreational activities (e.g. surfing, kayaking) to benefit from the Directive was raised (European Commission, Proposal, COM/2002/0581 final: Explanatory Memorandum, art. 8, 9). In addition, as part of the more managerial approach of the proposal, the level of information provided to the public was to be increased and bathing water profiles on the sources of pollution were to be established (art. 6, 16).

The move to replace the old Directive came as no surprise and met with widespread agreement. There had been a failed attempt to repeal the old Directive in the 1990s, and the Commission had announced its intention to launch a new Directive in a

Communication in 2000 (European Commission, Communication 2000; European Commission, Proposal, COM (1994) 36)). The Council's position on the Communication shows support for a review (Council Conclusions, 8 March 2011). Also, all interviews showed support for a reassessment of the microbiological standards, as some of the 19 old standards were now considered obsolete. But the question of the precise contents of the Directive was a source of disagreement. In the end, the proposal had to go through the Conciliation Committee and a third reading before the Directive was finally adopted in February 2006, more than three years after the Commission had presented its proposal. The main points of contention were whether the Directive should cover recreational activities other than bathing, how strict the new standards should be (especially compared to the old standards), when the new classification scheme should set in and how much information should be provided to the public and in which form. There was also debate about a distinction between coastal and inland waters and the need to make emergency plans mandatory (Council, Common Position No. 14/2005; European Parliament, Position, 10 May 2005)). In general, the European Parliament wanted to go further than the Council, and the Council insisted on considerations of proportionality. The Commission took a middle line (European Commission, Opinion, 27/06/2005). However, some of the discussions – such as which values should lead to which classification – also fuelled disagreement in the Council (Interview 29).

The Flood Risk Management Directive, by contrast, was a genuinely new Directive. After a number of damaging floods between 1998 and 2004 – including devastating floods along the Danube and Elbe rivers in 2002 – the European Commission perceived the need for concerted action at the European level ([ec.europa.eu/environment/water/flood\\_risk/index.htm](http://ec.europa.eu/environment/water/flood_risk/index.htm)). Initially, in 2004, the plan was to create a European Flood Action Programme rather than a Directive. The objective was to improve “co-operation and coordination through the development and implementation of flood risk management plans for each river basin and coastal zone where human health, the environment, economic activities or the quality of life can be negatively affected by floods” (European Commission, Communication, 2004). In addition, flood risk maps were to be developed as a tool for planning. Best practices were to be promoted and stronger linkages between the research

community and the relevant authorities forged (Ibid.). On the whole, these tasks were meant to improve both prevention and protection through a better understanding of the flooding processes and a long-term management approach. However, by early 2005, the Commission started to explore the possibility of a Directive (European Commission, Stakeholder Meeting, Minutes 11 April 2005). Unlike the Bathing Water Directive, the Flood Risk Management Directive was adopted relatively speedily. The Commission held a consultation from July to September 2005, adopted the proposal in January 2006, and in April 2007 the European Parliament arrived at an agreement with the Council at the second reading. In October 2007 the Directive was officially adopted.<sup>17</sup>

The rapid agreement appears to be due to the European Parliament's more moderate stance, compared to the Bathing Water Directive, and a greater willingness to take legitimate member state concerns on board (European Parliament, Position, 13 June 2006; European Parliament, Resolution, 25 April 2007). At the same time, the Flood Risk Management Directive did trigger substantial discussions. While the member states had generally been in favour of a revision of the Bathing Water Directive, several member states seriously questioned the need for European flood risk management legislation and favoured a non-binding action plan. Among our case study regions and member states, the UK and the German Länder were particularly outspoken in their opposition to the principle of a Directive. They argued that International Commissions coordinated international cooperation for major European rivers and that European legislation was therefore unnecessary and in breach of the principle of subsidiarity (Interview 1). More generally, the arguments focused on whether the Directive should cover international river basins only or all river basins and coastlines, on the costs of certain measures and on the extent to which the Directive would allow existing flood risk plans and maps to persist (Interview 27). There were thus two types of issues at stake. On the one hand, some regions were concerned about their competences in an area where the EU had not yet legislated. On the other hand, there were substantive issues related to levels of protection, compatibility with existing action plans and implementation costs.

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<sup>17</sup> Cf. [www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2006/0005](http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2006/0005), viewed 16/02/2010.

### 2.7.3 The Policy Salience for the Regions

Estimating the level of interest of a region in a given policy is nearly as complicated as trying to estimate the level of conflict within a member state. The same problem of a lack of position papers applies. To some extent, predictions about the policy salience can be made by looking at geographic data and rare media reports. However, it is difficult to predict precisely how salient a policy is for a region in advance of the interviews with regional officials. Each policy has various elements (standards, reporting requirements, signalling requirements, methods etc.) that could affect a region in a number of positive and/or negative ways depending also on the existing policy within the region and geographical features. Ultimately, how strongly a region feels affected and whether it feels affected in a positive or negative way depends on the subjective definition of a region's interests by regional politicians and officials. It should therefore be noted that the analysis below sets out the reasoning on which the selection of case studies (both in terms of regions and policies) was based. While the interviews confirmed that all regions did feel affected, the level of interest in the policies could vary markedly between regions or policies as did assessments of whether a policy was welcome or intrusive. After the interview stage it turned out, for example, that for very different reasons the downstream region Flanders generally welcomed the Flood Risk Management Directive while the downstream region Mecklenburg-West Pomerania was sceptical.

#### 2.7.3.1 Bathing Water Directive

In order to assess whether a region was likely to have felt affected by the proposal for a new Bathing Water Directive, an attempt was made to find out whether the region contained bathing water and whether the old Directive had attracted media attention. The country reports of bathing water results 2007 – still under the old Directive – provide an overview over the member state's performance over the last decades.<sup>18</sup> The old Directive specified a mandatory value and a stricter, recommended guide value. In its legislative proposal for a new Directive, the

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<sup>18</sup> The country reports were obtained from [ec.europa.eu/environment/water/water-bathing/report\\_2008.html](http://ec.europa.eu/environment/water/water-bathing/report_2008.html), accessed 17/02/2010.

Commission estimated that the new “good” category would correspond to the guide value (European Commission, Proposal, COM/2002/0581 final: Introduction 4(6)). As a result, Bathing Waters that had previously just achieved the mandatory standards risked falling short of new, stricter guidelines, requiring higher investments or attracting negative media coverage.

In 2002, the year the Commission officially initiated the legislative procedure, the United Kingdom had 11 inland bathing waters and 573 coastal bathing waters. However, while 97.8 percent of coastal waters complied with the old Directive’s mandatory standards, only 74.9 percent complied with the stricter guide standards. All of the inland waters complied with the mandatory standards, but only 27.3 with the guide standards (UK country report 2007). Scotland had a total of 60 bathing waters, the vast majority of which were coastal waters, a compliance rate of only 92 percent (5 failed) and only 40 percent of waters met the guide standards (SEPA, 2002; [www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer](http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer)).

The quality of Scottish bathing water has also received a fair amount of public attention. While a cursory overview of internet resources makes it difficult to assess how much attention was paid to an issue five or six years in the past, *The Scotsman* discussed Scottish bathing water quality in relation to EU legislation at least once in 2002 (*The Scotsman*, 14 March 2002). An online search of the newspaper’s archive shows that the issue has been touched upon by at least four articles in the newspaper in 2009 ([www.scotsman.com](http://www.scotsman.com)). The BBC’s website also features two news stories about Scottish bathing water in 2001 and 2002 (*BBC News*, 7 October 2001, 4 October 2002). In addition, tourism websites and environmental groups have been following the issue.<sup>19</sup>

Belgium had about 90 bathing waters in 2002. 39 of these were coastal waters. About 95 percent of both inland and coastal bathing waters complied with the mandatory standards, but less than 20 percent of coastal waters and only about 55 percent of

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<sup>19</sup> Cf. [coastal.keepsotlandbeautiful.org/](http://coastal.keepsotlandbeautiful.org/), accessed 17/02/2010; [www.greentourism.org.uk/Default.aspx.LocID-008new155.RefLocID-008015003.htm?sksearchtext=bathing%20water](http://www.greentourism.org.uk/Default.aspx.LocID-008new155.RefLocID-008015003.htm?sksearchtext=bathing%20water), accessed 17/02/2010.

inland waters complied with the guide standards (Belgium country report 2007). All of Wallonia's bathing waters met the required standard that year, but only about 36 percent met the guide standards. However, compliance rates fell to about 75 percent in 2003 ([www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer](http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer); Prevedello and Thunus 2007: 662). In addition Belgium had been faced with an adverse ruling by the ECJ in 2000 in an infringement procedure. The Commission criticised specifically Wallonia's policy of dropping bathing waters off the official list of monitored bathing waters since 1991. The ruling confirmed that the Walloon region had failed to meet the standards of the old Bathing Water Directive and established that bathing waters should not be taken of the list as a response to poor water quality (ECJ C-307/98, *Commission v. Belgium*, 25 May 2000). 93 percent of Flanders' inland bathing waters complied with the mandatory standards and about 62 percent fulfilled the guide standards ([www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer](http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer)). As all of Belgium's coastal waters are in the Flemish region, the Flemish compliance rates for coastal bathing waters are the same as those for Belgium.

In terms of media coverage, an online search showed that the old Bathing Water Directive was covered in several articles in 2002. *Het Nieuwsblad* reported three times on it, *De Standaard* twice, *Le Soir* once and *LaLibre.be* twice.<sup>20</sup> The articles confirm that EU bathing water legislation generally sets the standard against which

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<sup>20</sup> Cf. *Nieuwsblad.be*, "Vijverhof betwist Europese "onvoldoende"", 31/05/2002, [www.nieuwsblad.be/article/detail.aspx?articleid=NBRA03062002\\_049](http://www.nieuwsblad.be/article/detail.aspx?articleid=NBRA03062002_049), accessed 20/02/2010; *Nieuwsblad.be*, "Plassen scoren goed", 3/06/2002, [www.nieuwsblad.be/article/detail.aspx?articleid=NBRA03062002\\_049](http://www.nieuwsblad.be/article/detail.aspx?articleid=NBRA03062002_049), accessed 20/02/2010; *Nieuwsblad.be*, "Afleren waterkwaliteit uniek in Europa", 28/06/2002, [www.nieuwsblad.be/article/detail.aspx?articleid=NBRA28062002\\_031](http://www.nieuwsblad.be/article/detail.aspx?articleid=NBRA28062002_031), accessed 20/02/2010; *De Standaard*, "België leeft normen waterkwaliteit niet na", 2/07/2002, [www.standaard.be/artikel/detail.aspx?artikelid=NFLF02072002\\_001&word=zwemwater+richtlijn](http://www.standaard.be/artikel/detail.aspx?artikelid=NFLF02072002_001&word=zwemwater+richtlijn), accessed 20/02/2010; *De Standaard*, "Belgische kust is volledig veilig voor zwemmers", 29/05/2002, [www.standaard.be/artikel/detail.aspx?artikelid=NFLE29052002\\_001&word=zwemwater+richtlijn](http://www.standaard.be/artikel/detail.aspx?artikelid=NFLE29052002_001&word=zwemwater+richtlijn), accessed 20/02/2010; *Le Soir*.be, "La Commission européenne décerne la cote maximale aux eaux de baignade du littoral belge", 30/05/2002, [archives.lesoir.be/la-commission-europeenne-decerne-la-cote-maximale-aux\\_t-20020530-Z0LWK6.html](http://archives.lesoir.be/la-commission-europeenne-decerne-la-cote-maximale-aux_t-20020530-Z0LWK6.html), accessed 20/02/2010; *LaLibre.be*, "La Belgique seul état à respecter les normes à 100%", 29/05/2002, [www.lalibre.be/societe/sciences-sante/article/63435/la-belgique-seul-etat-a-respecter-les-normes-a-100.html](http://www.lalibre.be/societe/sciences-sante/article/63435/la-belgique-seul-etat-a-respecter-les-normes-a-100.html), accessed 20/02/2010; *LaLibre.be*, "La côte belge, première de classe", 29/05/2002, [www.lalibre.be/societe/sciences-sante/article/63458/la-cote-belge-premiere-de-classe.html](http://www.lalibre.be/societe/sciences-sante/article/63458/la-cote-belge-premiere-de-classe.html), accessed 20/02/2010.

the country's or region's performance is assessed. The regions would therefore have to take into account how new standards would affect their performance.

Germany had approximately 2000 bathing waters in 2002. More than 95 percent of coastal waters and about 95 percent of inland waters complied with the mandatory standards. About 83 percent of coastal waters and about 80 percent on inland waters complied with the stricter guide standards (Germany country report 2007). Bavaria has only inland bathing waters. Of those, approximately 97-98 percent complied with the mandatory standards, and nearly all of those also complied with the guide standards ([www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer](http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer)). Mecklenburg-West Pomerania also performed well, with about 98 percent of its coastal and inland bathing waters meeting the mandatory standard and about 92 percent of both meeting the guide standard (Ibid.).

Both the governments of Mecklenburg-West Pomerania and Bavaria used the old Bathing Water Directive to promote their bathing waters in press statements (Landesamt für Gesundheit und Soziales, Mecklenburg-West Pomerania, 29/06/2007; Bayerisches Staatsministerium für Umwelt, Gesundheit und Verbraucherschutz, 24/03/2003). In addition, just as in the other member states, the Directive is frequently used by the media to assess the quality of bathing water. The newspaper *WeltOnline*, for example, published four articles on the Directive in 2002 (*WeltOnline*, 30/05/2002, 12/07/2002a; 12/07/2002b, 5/09/2002). *Sueddeutsche.de* featured two articles that year (*Sueddeutsche.de*, 21/08/2002, 13/07/2002).

Austria has a stable number of bathing waters since 1997 with between 265 and 270 bathing waters each year. All of the bathing waters are inland bathing waters. In 2002, about 97 percent of them complied with the mandatory standards and about 65 percent with the guide standards (Austria country report 2007). While all of Vorarlberg's inland bathing waters complied with the Directive, only about 69 percent reached the guide standards. By contrast, all of Carinthia's bathing waters fulfilled the guide standards ([www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer](http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water-1/bathing-water-data-viewer)).

A systematic online search of reporting on the old Bathing Water Directive in a specific year proved difficult, as several newspapers have no search function and archives or make those subject to subscription. A more general internet search brought traces of at least occasional reporting to light, though. Thus, *DiePresse.com* has explicitly reported on the Quality of Austrian lakes under the Bathing Water Directive in 2005 and 2008, for example, and *ORF.at* featured an online article on the plans for a new Directive and Austria's performance so far in 2004 (*Orf.at*, 28/06/2004; *DiePresse.com*, 2/06/2008, 25/05/2005).

Overall, all of the regions have bathing waters and would therefore be affected by new reporting requirements (such as bathing water profiles) and information requirements (signs, internet sites etc.). Also, all of them would be affected by moves to extend the current protection to other recreational activities such as surfing or kayaking, which take place in zones that are much larger than bathing zones and outside the bathing seasons. The regions with weaker bathing waters would, in addition, be faced with a need for greater investment to meet stricter standards.

### 2.7.3.2 Flood Risk Management Directive

The criteria that were used for the preliminary assessment of the eligibility of a region as a case study were the occurrence of floods during or before 2006 and/or the flood risk in that region. There are, of course, other factors that influence what is at stake. During the interviews and the analysis of documents, for example, one very important factor was the level of compatibility of existing national and regional policies with the proposed European approach. Such an assessment would, however, require a certain technical understanding of flood risk management. The preliminary assessment of policy salience was therefore based on the basic assumption that any region at risk from floods will a) be covered or potentially covered by the Directive (the scope itself was up for debate) and b) have a policy that will either be at odds with the proposal and trigger attempts to adjust the European legislation or be in accordance with the proposal so that the region will have an interest in defending the latter.

Scotland is at risk from both river and coastal floods. The Scottish Environment Protection Agency (SEPA) estimates that 26,000 homes and businesses are at risk from coastal flooding, while Werritty *et al* suggests that about 77,000 homes are at risk from fluvial flooding. In addition, the number of properties at risk from coastal flooding is predicted to increase as a result of climate change ([www.sepa.org.uk/flooding/flood\\_warning\\_-\\_what\\_we\\_do/coastal\\_flooding.aspx](http://www.sepa.org.uk/flooding/flood_warning_-_what_we_do/coastal_flooding.aspx); Werritty *et al.* 2002). A report by the Scottish Executive Central Research Unit in 2002 states that “the current average annual financial damage attributable to inland flooding is conservatively estimated at £20 million” and predicts damages to rise in the future (Werritty *et al.* 2002: iii). Past floods prior or during the negotiations of the Directive include, are, for example, the flood of the Water of Leith in Edinburgh in 2000, the 2002 flooding of Glasgow, which cost £100 million in damages, or the 2006 flood of Lock Tay (Scottish Government, News Release, 13/05/2009).

Both the Walloon and the Flemish region are affected by river floods. Risk Management Solutions estimates insured losses in the 1990s due to river flooding alone at approximately €1 billion. It is also expecting a future increase in losses (Risk Management Solutions, Inc. 2004). In addition, Flanders is at risk from coastal floods. Despite a coastline of only 98km, the level of population density in the 50km zone (3,8 million) and the high proportion of the Belgian GDP created in that zone (34%, €95,7 billion) in combination with the low elevation of the coast (more than 85% of the 10km zone are below 5m elevation) makes Flanders vulnerable. In addition, climate change effects are expected to lead to sea level rise and to increase the likelihood of severe storm surges (Policy Research Corporation, Belgium Country Overview and Assessment, 2009).

The two German Länder are both at risk from major European rivers, the Elbe and the Danube. Mecklenburg-West Pomerania suffered from Elbe-flooding in 2002 and 2006. In addition, Mecklenburg-West Pomerania has 1240km of coastline threatened by coastal flooding which occurs, on average, every eight years. A total flooding of the coastal area would cost damages of up to 1.6 billion euro ([www.katastrophenschutz-mv.de/pages/sturmflut.htm](http://www.katastrophenschutz-mv.de/pages/sturmflut.htm)). Bavaria experienced several Danube floods in 2002 and 2006 and serious flooding in 2005 with a probability of

reoccurrence of one in more than one hundred years in numerous areas (cf. reports by the Hochwasserdienst, [www.hnd.bayern.de/](http://www.hnd.bayern.de/)).

Austria is an atypical case as the Directive was in fact one of the priorities of the Austrian Council Presidency (DG Environment, Informationsblatt Nr. 22, 2006). While this makes the Austrian case markedly less comparable, such a situation was difficult to avoid in a comparison of four member states. Flood risk management is an important topic for Austria, as poor spatial planning has led to a situation where 12 percent of all buildings are potentially threatened by floods and nearly 9 percent are estimated to be highly threatened, according to a study by WIFO (Sinabell and Url 2007). Damages in flood events in 2002 and 2005 were high, with 2.9 and 0.6 billion euro respectively. Both case study regions are strongly affected. Carinthia is faring slightly better than the national average with 10.3 percent of buildings potentially at risk and 8.8 percent of buildings at high risk, but Vorarlberg has 17.6 percent of buildings potentially at risk and 15.5 percent of buildings at high risk (Ibid.). Vorarlberg and Carinthia were also amongst the Austrian regions that were most affected by the 2005 floods (Godina et al. 2006).

Overall, each of the regions is at risk of flooding. The European initiative would thus have a direct impact on their management of floods, as a Directive would replace existing national or regional legislation. As many of the measures involved in effective flood risk management (e.g. flood risk maps) are costly, each of them should have an incentive to try and bring the Directive more in line with its own approach.

## **2.8 Conclusion**

Qualitative research is sometimes seen as subjective, difficult to replicate, lacking transparency and producing a low potential for generalisation (Bryman 2004: 284-5; Lewis 2003: 50-1; Hopkin 2002: 621). In this study, a number of steps have been taken to avoid some of the criticisms of qualitative work. In the first instance, the choices entailed in the research design were made explicit and contained a description of the criteria underlying the selection of cases to make the project more

transparent and – as far as this is possible in qualitative research – replicable. Secondly, while the flexibility of semi-structured interviews necessarily introduces an interviewer effect into the data, the data should nevertheless be consistent across cases as all the interviews were conducted by the same interviewer. In addition, interview data was corroborated and complemented by documentary analysis wherever possible and the inclusion of interviewees from different levels means that each case contains different perspectives. Finally, interviewees were asked to review descriptive summaries of the various case studies to guard against major omissions or misunderstandings in the reconstruction of events.

Overall, while quantitative research is generally deemed to be more generalisable, the objective of the study is to contribute to the understanding of the factors that influence regional strategies in general, beyond the fourteen cases. Despite the importance of context in qualitative research, Gerring describes a case study as “an intensive study of a single unit for the purpose of understanding a larger class of (similar) units”, implying that even the study of a single case can and should make a contribution to the understanding of a wider group of cases (Gerring 2004: 342).<sup>21</sup> This may not take the form of fully generalisable conclusions, but it can be done through a contribution to theory building or the development, refinement, strengthening or infirming of hypotheses for further research.

The various hypotheses of this project should generate insights of relevance in two ways. Firstly, the conclusions on the effect of intergovernmental relations on regional strategies could be tested in the case of other legislative regions (i.e. the Spanish or Italian regions) in the future. The number of regions studied was increased to make these findings more robust and more representative of the parent population. Secondly, the findings on factors of intra-state variation are likely to be applicable not just to legislative regions, but to regions of all EU member states.

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<sup>21</sup> See also Lijphart (1971) on the importance of theoretical inference in single case study research.

## **Chapter 3 – Channels of Regional Interest Representation: What Regions Can or Cannot Do**

### ***3.1 Introduction***

The research project not only involves the comparison of the strategies of interest representation of regions from four different member states, it also specifically focuses on the impact of domestic processes of coordination on the European level strategies of regions. Both the discussion of the empirical findings of the fourteen case studies and the hypothesis that the level of influence a region can exert over the national position of its member state affects its willingness to develop a European level strategy require an understanding of the options available to regions. Thus, this chapter will focus on the analysis of the structures and processes of regional interest representation in the member states and on the European level.

In this vein, the first section of the chapter will review the literature on the ways in which regions can influence European policy-making directly on the European level with a view to identifying the strengths and weaknesses of the various options. It argues that European channels of interest representation fail to offer regions ‘hard’ power. Finally, it will also discuss the impact of the Lisbon Treaty, bearing in mind that the negotiation of the case study Directives fell into the pre-Lisbon era.

The second section will look at the specific arrangements for domestic EU policy-making in Belgium, Germany, Austria and the United Kingdom (especially with regard to Scotland). It will focus on the extent to which domestic channels require horizontal coordination between regions, the level of influence they attribute to regions and their level of formality.

The concluding section will draw together the findings of the preceding analysis, highlighting the degree of variation between different national systems and fleshing out the hypothesis about the impact of domestic coordination processes on the extent to which regions seek unmediated access to the European level. It illustrates further the extent to which regions that have extensive co-decision powers at home are likely

to voluntarily conform to a liberal intergovernmentalist model of decision-making and work through the member state.

### **3.2 *European Channels***

The main channels of regional interest representation at the European level are the Council of Ministers, the Committee of the Regions (CoR), MEPs, European networks and associations and regional offices in Brussels. Under the co-decision procedure, one can distinguish three main targets in their own right: the European Commission as the initiator of policies and mediator during negotiations and the Council of Ministers and the European Parliament as legislators. The European networks or associations and the Committee of the Regions can of course be targets as well, albeit usually as a means to influence a third actor through their position. The regional offices in Brussels are an instrument of interest representation, in that they serve to prepare interaction with all other European level actors.

#### **3.2.1 The Council of Ministers**

The involvement of regional representatives in the Council of Ministers theoretically provides regions with the most formal and substantial means to influence EU policy-making. At first glance, it may seem to greatly empower regions as they become part of the key legislator at the EU level and – in some cases – can cast a vote. Thus, Bullmann argued in the late 1990s that strong regions might come to regard this channel as more important than a full-blown regional “Third Chamber” at the European level (Bullmann 1997: 16).

However, this important channel is subject to several qualifications and its effectiveness is disputed. While article 203 of the Treaty of Maastricht allowed member states to include regional representatives into their national delegations to the Council, the decision on whether or not and how to do so lies with the individual member states. As a result of inclusion being subject to national provisions, only strong legislative regions tend to benefit from this arrangement and even then there

are differences between member states depending on whether regional officials can be present as observers, as speakers or even as chairs of Council working groups, the COREPER or the Council of Ministers (see also Keating and Hooghe 2006: 274-5; Jeffery 1997b, 1997c).

A look at the arrangements of the case study member states illustrates the diversity amongst even the strongest of regions. The Belgian regions have the most extensive representation rights in the Council of Ministers, in line with the Belgian constitutional principle (art. 167) that each part of the state (the central state, the regions and the communities) has foreign policy competences in the policy areas that fall under its domestic competences (Hogwood et al. 2003: 3).

The detail of the involvement of the regions in the Council of Ministers is regulated by the Cooperation Agreement Act of 8 March 1994.<sup>22</sup> There are essentially four possible cases for representation: when an issue falls under the sole federal responsibility, federal ministers sit in the Council. In case of exclusive regional competences, regional ministers sit in the Council. When predominantly central competences are concerned, a national minister is being assisted by a regional representative and finally, for predominantly regional matters, a regional minister is assisted by a representative of the national level (Kerremans and Beyers 1997).<sup>23</sup> Equality between regions is ensured through a rotation system, where regional representatives replace each other every six months (with the exception of fisheries and agriculture). In practice, though, ministers of all levels are reluctant to attend in the role of assessors and there are often several regional officials present at all levels of Council meetings to facilitate coordination (Kovziridze 2002: 149). In 2001, after the devolution of fisheries and agriculture to the regions in the Lambertmont Agreements, the Cooperation Agreement was updated to include two new cases of

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<sup>22</sup> Cooperation Agreement of 8 March 1994, OJ of 17 November 1994. Belgium is a dual federal state where competences belong exclusively to either the regions or the communities or the federal level. In practice, however, EU policies often affect more than one level. Thus, in order to allow for the coordination of a coherent Belgian foreign policy, a number of cooperation agreements lay down how the internal powers are to be exercised in the European Union and the international arena. In particular, these agreements set out rights of representation and domestic coordination mechanisms. The Belgian Constitution confers upon the agreements the status of 'special laws', which means that they can only be amended with special majorities.

<sup>23</sup> If the competences of the communities rather than the regions are affected, the ministers of the communities will sit on the Council instead of regional ministers.

representation.<sup>24</sup> The federal minister leads negotiations on agricultural issues assisted by the Flemish and Walloon regional ministers. The Flemish government represents Belgium on fisheries. Thus, depending on the distribution of competences in a given area, the Belgian regions can lead the delegation and even chair the Council.

Länder involvement in the German case was in the past not as automatic. The federal government was and is in a superior position (Kovziridze 2002: 150). Until 2006, in areas where Länder participated in the domestic legislative process via the Bundesrat, a Länder representative was included in the German delegation if the Länder made a request and if it was possible for the central government to do so (BLArt. 23(6); LC §6(1)). When the exclusive competences of the Länder were concerned, a Länder representative was nominated by the Bundesrat and the Länder could send a minister to the Council and even represent Germany but were not obliged to do so. In practice, the Länder rarely claimed the right to represent Germany in the Council (Jeffery 2007b).

In 2006, the “Federalism I” reform introduced minor changes to the German coordination process. While the initial objective of the reform had been to “disentangle” the German policy-making process, conflicting interests between the federal and the regional level meant that the status quo was ultimately confirmed (Jeffery 2008; Moore and Eppler 2008). One of the few changes affecting domestic European policy-making was an amendment of article 23(6)BL, which now limits the policy areas in which Länder ministers can represent Germany in the Council to education, culture and broadcasting, the traditional competences of the German Länder. However, the wording of the article was changed as well, to the effect that a Länder lead is no longer optional but mandatory in these three areas (Jeffery 2007b; Chardon and Eppler 2009: 29-30).

For Austria, a Länder-nominated representative can participate in the Council if the domestic legislative competences of the Länder are concerned and the national

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<sup>24</sup> The Lambermont Agreements of July 2001 are another example of a ‘special law’.

government agrees (Art. 23d Federal Constitution).<sup>25</sup> Thus, the Länder depend on empowerment from the national government even in areas where they are affected (Kovziridze 2002: 151-2). However, as far as ministerial participation in the Council under article 23d is concerned, it has never happened that a Land Minister was given the right to vote for Austria in the Council. A representative of the Länder was however allowed to chair an informal meeting of the Council of Ministers once (Bußjäger and Rosner 2005: 52). By contrast, the option to include a representative of the Länder in the Austrian delegation to Council working groups under article 8 of the Federal-Regional Agreement has been frequently used (Bußjäger and Djanani 2009: 64). In addition, the Liaison Office of the Länder, an administrative structure for the purpose of horizontal and vertical coordination, has one representative in the Austrian Permanent Representation with privileged access to information and Council meetings. The role of the representative is to monitor Council proceedings and ensure that the Länder are being kept informed on topics of interest, but it is questionable whether one person is enough to pursue the common interests of the Länder effectively (Pahl 2004: 113).

The situation in the UK is somewhat similar to the Austrian case, in that the decision on whether or not to include a Scottish minister or expert in the UK delegation rests with the UK lead. Once they are part of the delegation Scottish ministers and officials require the permission of the UK lead before they can take the floor (Jeffery, Scott and Tierney (forthcoming); Swenden 2009).

The second major limitation to the effectiveness of direct regional representation in the Council is that whoever sits in the Council has to be able 'to commit the government of that member state' (Art. 203 TEC, Kovziridze 2002: 131, 136). The position presented consequently has to be the national, not the regional one, and a regional minister cannot vote for or against a certain proposition simply based on the preferences of his or her region or split the national votes into regional votes. As a result, a common, national position has to be agreed prior to the Council meeting within the context of the member state. Thus, due to the need to coordinate a position

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<sup>25</sup> See also: Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG ueber die Mitwirkungsrechte der Länder und Gemeinden in Angelegenheiten der europäischen Integration, in: BGBl. 775/1992, 09/12/1992, p. 4473, art. 8.

internally before presenting it externally and – in many cases – to agree upon the composition of the national delegation internally, participation in the Council is de facto heavily reliant upon intra-state mechanisms and underlines the crucial importance of coordination within the member state (Morass 1997: 84, Jeffery 1997c; Kovziridze 2002: 136).

Tatham nevertheless emphasises the impact of the inclusion of regional ministers in the negotiations. At the same time, it is not clear from his analysis whether the inclusion really benefits *the region*, or just the central government, or both and whether the advantages outweigh the disadvantages for the member state in general. On the one hand, he argues that the line of the member state is strengthened when the regional minister shows signs of supporting an even more extreme view in the Council, as the national minister can then point towards domestic constraints (Tatham 2008: 500). However, this raises the question whether the inclusion of a more extreme regional minister does not primarily benefit the central government, as it can use the extremism of the region to obtain an outcome closer to its preferred position. The region appears to benefit from the strengthened national position in an indirect way at best.

On the other hand, Tatham emphasises how the unity or disunity of the regional and national minister can both either strengthen or discredit the national position depending on the precise circumstances (501). Yet, it is again unclear whether and under what conditions the region can really benefit from a weakened national position. Similarly, the case of strong national unity is arguably also the case where regional representation in the Council is least relevant for the region and where regional ministers are least likely to tag along. Thus, the Belgian experience shows that both national and regional ministers tend not to attend Council meetings when they are only assessors rather than delegation leaders (Interviews 23, 24). Tatham is however right in highlighting how regular attendance has symbolic importance in that it can improve the prestige of a minister and the region he or she represents and contribute to conveying the national importance of that region to other actors (Tatham 2008: 501).

### **3.2.2 The Committee of Regions**

According to Sloat, the most approachable ‘institutionalised’ channel for subnational authorities is the Committee of Regions (CoR) (Sloat 2002: 46). Established by the Treaty of Maastricht, this advisory organ consists of representatives of the regional and local level. After an extension of its powers in the Treaty of Amsterdam, the CoR has now its own resources instead of having to share with the Economic and Social Committee and can establish its own rules of procedure. Its greatest strength is that the Commission is obliged to consult it on issues concerning employment, social policy, environment, transport, public health, structural funds, education and training (Art. 265 EC). It may also be consulted by the European Parliament or the Council and has the right to issue opinions of its own motion (Sloat 2002; McCarthy 1997; Bomberg and Peterson 1998; Loughlin 1997; Nergelius 2005). The CoR is also seen as having great symbolic value, as it is the first time that subnational authorities are included in the principles of representation at the European level (Loughlin 1997: 163-4), and as providing a setting for coalition-building and the debate of subnational issues at the European level (Müller-Graff 2005: 109; Bomberg and Peterson, 1998).

When it comes to the CoR’s role and influence in practice, Loughlin regards it as having become more important than the (extremely weak) Economic and Social Committee (Loughlin 1997: 163.4). Schausberger argues that it has received growing recognition as a result of its constructive work during the European Convention and the phase of reflection on the European Constitution. He also points out the activism of Peter Straub, its second president during the mandate for 2002-6, who played an important role in inviting members of the Commission and European Parliament to the plenary sessions of the Committee (Schausberger 2006: 592-4).

However, most academics are sceptical about the influence of the CoR. After all, the CoR only confers collective influence upon its members, and a region therefore needs to engineer a strong majority position before the CoR becomes an effective tool. Its diverse membership, though, is seen as leading to a lack of cohesion. Especially from the point of view of strong legislative regions, the large number of representatives from local authorities or weak regions limits the extent to which the

CoR can be used as a political tool (McCarthy 1997; Nergelius 2005: 126; Müller-Graff 2005: 110; Jeffery 1997c: 206-7). A further challenge is that the Council lacks real interest in the CoR while the European Parliament as a directly elected body views it slightly with contempt (Nergelius 2005: 125). Thus, it is often attributed only “peripheral importance” (Sturm 2009: 17).

That said, the changes introduced by the Treaty of Lisbon to the role of the CoR may well strengthen it in the long term and make it a more attractive partner even for strong legislative regions (see below, section 2.6). The recent refocusing of its political strategy on policy areas where consultation is mandatory and on the defence of the principles of subsidiarity and proportionality is also seen to have increased its effectiveness (Domorenok 2009: 160).

### **3.2.3 MEPs**

In certain cases regions may be able to convince their MEPs to take up their cause. The advantage of this channel is its relatively low cost. MEPs can be contacted either through the regional office or directly by the regional executive. There is no need for extensive cooperation with other regions for this channel to be effective. Ideally, if a region has access to the chair or rapporteur of a relevant committee, it can influence the direction of debates in the European Parliament. Even if the MEPs are not directly involved in the workings of a key committee, they may be able to introduce amendments that reflect the region’s concerns. At the lowest level, the region may just get its own MEPs to cast the “right” vote (cf. Knodt, Grosse Hüttmann, Kotzian 2009: 128; Tatham 2008: 504-6).

Nevertheless, there are certain limits. On the one hand, regions – and especially smaller regions - may only have a small number of MEPs (Tatham 2008: 504), and there are only a limited number of relevant committees and hence chairmen and rapporteurs for each Directive. A region may not have ties to any of those key personalities. As a matter of fact, it may not even have ties to committee members. In addition, politicians are subject to a variety of pressures, especially rapporteurs, shadow rapporteurs and Committee chairmen, who can receive conflicting position

papers from hundreds of actors. More generally, the regional interests may run counter to the line of the European party group or the national party line. Tatham is of course correct in pointing towards the lower level of party discipline in the European Parliament (505), but the problem remains that regional officials often do not know whether or not their advice will be considered or filed away with all the lobbying attempts from other actors (Interviews 7, 24).

### **3.2.4 Regional Offices**

Regional information offices are the main informal channel of regional representation on the European level (Jeffery 1997c). In the past, the regions of federal states have been eager to establish their own base in Brussels, and particularly the German regions were among the first to do so in the 1980s (Grosse Hüttmann and Knodt 2006: 595). In terms of structure, the offices of regions of federal states are usually single regional offices (Moore 2008: 519). However, smaller regions can opt for a joint office (e.g. the Hanse Office of Schleswig-Holstein and Bremen) and in some cases cross-border regional offices exist, such as the Austrian-Italian EU Liaison Bureau of Tyrol, Alto Adige and Trentino or the Euroregion Secretariat of Kent, Nord-Pas de Calais and Wallonia.

The literature distinguishes several functions of these offices including information gathering for the regional government at home, networking, assisting private actors at home (e.g. in applications for funding), active attempts at influencing policies and the general improvement of relations with other tiers of governments (Moore 2006; Jeffery 1997a; Benz and Eberlein 1999: 331). Heichlinger and Moore furthermore distinguish a ‘promotional’ role, where regions serve as showcases for economic and cultural elements of the region (Heichlinger 1999: 17; Moore 2006).

Information gathering and networking are seen as the ‘bread-and-butter’ activities of subnational offices, but there is variation in the importance that different types of regions attach to assisting private local and regional actors and, in particular, in the importance attached to influencing policies (Heichlinger 1999: 9-10). Marks, Haesly and Mbaye find a weak negative association that suggest that offices “that emphasise

political influence as a goal are *less* likely to report that finding funding opportunities is important to them, *less* likely to report that building ties with other regional or local representations is important for them, and *less* likely to report that responding to requests from people in their region is important to them” (Marks, Haesly and Mbaye 2002: 8). Whether or not a regional offices seeks political influence depends on its constitutional strength and its resources (which depend – again – on the constitutional strength of the region) (15). The level of funding is important in that it translates into more staff and thus increased specialisation of officers on certain policy areas and the coverage of a broader spectrum of policy areas (Heichlinger 1999: 13). In that respect, Moore argues that the German Länder, and most notably Bavaria, intend to further increase their already impressive staff and reduce their non-policy related activities in the future (i.e. funding, showcase function etc.) (Moore 2006), and confirms that constitutional regions generally tend to emphasise political activity to at least some degree (Moore 2008: 525-6). However, it has also been pointed out that variations exist in the size of different regional offices from the same country. Thus, the bigger German Länder have better staffed offices than the smaller ones and engage more in policy-shaping activities (Jeffery 1997a: 190-3).

The work of regional offices is also designed to serve policy-shaping through domestic channels, by functioning as an early-warning system and providing the necessary information for the effective use of domestic processes of European policy-making (Heichlinger 1999: 1; Knodt, Grosse Hüttmann, Kotzian 2009: 129). In addition, the offices provide an important basis of operation for regional officials and ministers who are attending Council or Commission meetings.

Another factor that distinguishes regional offices from different member states is their relationship with the Permanent Representation of their member state. In some cases, like the UK, the staff of regional offices has diplomatic status (Swenden 2009). In the Belgian case, the regional attachés have been physically integrated into the Belgian Permanent Representation – albeit with their own separate budgets and, unlike in the UK, they are not part of the diplomatic corps. Thus, the Belgian Permanent Representation reflects the federal character of the country and the great formal powers of the Belgian regions in EU policy-making. By contrast, the German

and Austrian Regional Offices were established separately from – and to some extent in defiance of – the Permanent Representations. In that sense, they resemble lobbying structures much more closely than in the British or Belgian case.

Yet, as Tatham points out, “increased involvement [in the Permanent Representation] equates to a decrease in freedom” (Tatham 2008: 507). Especially in the British case, the degree of official cooperation between the Scottish Government EU Office in Brussels (at the time Scottish Executive EU Office) and the UK Permanent Representation reflects a strategy to subordinate the office to the UK line in exchange for privileged access to information (Bulmer et al. 2006; Hazell 2000: 273). Thus, Rowe states that “the incentives framework offering insider information in return for “no surprises” by the offices of the Devolved Administrations in Brussels has largely prevented them from pursuing an independent policy line in Brussels, even on major policy questions with differing territorial implications across the UK, including EU agricultural and environmental issues” (Rowe 2009). Similarly, while the level of secondments between the Permanent Representation and the European Office of the Scottish Government help to avoid some of the conflict between the more neatly separated staff of the German regional offices and the German Permanent Representation (Moore 2006: 202), it arguably also conveniently prevents a regional office from becoming too “regional” in its approach.

The physical proximity of regional and federal officials in the Belgian Permanent Representation also comes with the expectation that regions cooperate and stick to a common line (Interview 23). However, unlike the in the case of the UK, where this is the result of a hierarchical relationship, there is actual necessity at the basis of Belgian expectations. As the Belgian regions have co-decision powers over the national position in a number of areas, unchecked individualist lobbying at the European level could jeopardize agreement on a common Belgian position and force Belgium to abstain in the Council. Thus, while Rowe’s paper suggests that the UK’s arrangements reflect the desire to affirm UK supremacy in EU affairs by taming regional offices, the Belgian arrangement appears to be much more a reflection of the great formal power of the Belgian regions in EU affairs and of the desire to have

European-level arrangements mirror domestic arrangements for the coordination of EU-policy.

However, it should be noted that in addition to its official representation through the Belgian Permanent Representation, the Flemish government established another separate office in Brussels in 2006, the Liaison Agency Flanders-Europe. Its core areas of interest are regional, research and education and enterprise policies and it serves as a means to inform Flemish non-governmental stakeholders about European dossiers and financing opportunities. While it also aspires to promote Flanders' interests in the European policy-making process, its broad member base (including civil society and economic actors) means that it does not serve any one specific Flemish actor, but affected Flemish stakeholders more generally (<http://en.vleva.eu/>). As such, in theory, it does not replicate the activities of the Flemish Representation. It still too early to judge to what extent this office will serve as a means for the Flemish government to officially stick to the Belgian position while advancing its own priorities under the guise of civil society interests.

The actual influence of regional offices is difficult to measure, both in terms of their effect on policy-outcomes and as to the extent to which regional governments take the information provided into account (Jeffery 1997c: 197). Just as the CoR, regional offices depend on the willingness of other actors to take their views into account. As mentioned earlier, especially with regard to the influence of regional offices on the Commission – the central actor at the European level due to its agenda-setting ability (Marks 1993) – there is a debate about the actual relationship between the two types of actors. In that respect, several authors argue that the Commission champions the regional cause, contributes to regional mobilisation when looking for support for policies (Benz and Eberlein 1999: 331; McCarthy 1997: 443; Tömmel 1998: 72) and 'is eager for political allies to moderate state executive domination in the EU' (Marks and McAdam 1996: 267). Tatham's more recent article also reflects the idea that the Commission can undermine the positions of "hostile" member states by liaising separately with the regions (Tatham 2008: 502-3).

While it is true that regions can provide important grass-root information about the feasibility and implementation of policies, these assessments rely too much on the

idea that the Commission will always or at least often find the regions to be in support of its policies. However, as pointed out earlier, this may not be the case, in particular when it is the Commission that is constraining regional action through regulation in areas where the regions have to bear the cost of implementing European law. In fact, regions may well be more radical than their member states and the Commission is likely to be one of the regions' opponents – and even their principal opponent – in a number of instances of regulatory policy-making due to the perceived negative effect of some EU law on subsidiarity.<sup>26</sup> As a result, the Commission may not be willing to take the regional perspective on board.

### **3.2.5 European Networks and Associations**

Since the 1980s, there has not just been a rise in regional offices in Brussels but also the creation of a variety of more or less specialised networks and associations for the representation of regional interests. Their basis can be very broad, as in the case of the Assembly of European Regions or the Congress of Local and Regional Authorities in Europe, defined by competences, as in the case of REGLEG, the Conference of European Regions with Legislative Power, or defined by common features, as in the case of the Conference of Peripheral Maritime Regions. However, these associations only represent the more institutionalised end of regional cooperation. In addition, there are a variety of informal working groups of regions of the same states (such as the thematic working groups of the regional offices of the German Länder) and different states.

Just as in the case of the Committee of Regions, the question is to what extent these networks generate influence (Keating 1998: 178, Greenwood 1997: 231). Undoubtedly, the collective position of several regions holds more weight with the European Commission than the individual position of one single region (Tatham 2008: 508-9). Yet, in the Scottish context, a leaked draft report from Michael Aron, the then Head of the Scottish Executive European Office, to the Scottish First Minister appeared to question the effectiveness of that particular channel. As the

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<sup>26</sup> In fact, Tatham himself mentions the possibility of regions having a more extreme position than their member states in his discussion of negotiations in the Council of Ministers (Tatham 2008: 500).

report was meant to be confidential, it can be quite open and blunt in places. It was particularly critical of irregular informal networking events for the exchange of best practice:

“Whilst the majority of officials who represent the Executive at such events believe it is a useful opportunity to network with their counterparts across Europe, most admit that this is the main benefit and that the information or experiences learned does not lead to a change in Executive policy. Most managers are of the view that resource and time constraints do not seem to justify attendance at such events particularly as a team’s business objectives or policies are not advanced in the wake of attendance at such an event.” (Aron 2006: 7)

However, the report is equally sceptical about the impact of formal partnership agreements with other legislative regions, which are being called “outdated”, with problems stemming from too broad and unrealisable goals, a mismatch between goals and competences of partners and varying degrees of enthusiasm across participants (11-12, 16). Similarly, as far as formal associations are concerned, the report only really views the participation in REGLEG positively. For the Conference of Peripheral and Maritime Regions, it recommends withdrawing Scotland’s formal membership as it has so far only resulted in a limited impact. It advocates remaining an “informal” (and thus cost-free) member instead. In the same vein, the conclusion on the Council of Local and Regional Authorities of Europe, which is associated with the Council of Europe, are that “there is no fee for membership of Congress so maintenance of the status quo seems appropriate” (13). Apart from Regleg, which only becomes active on constitutional issues, the only form of networking or cooperation with regions that was endorsed by the report was “ad hoc” cooperation on specific policy issues. Here, officials who had engaged in discussion with colleagues abroad on specific policies had had a predominantly positive experience (16). However, the report provides no indication for the frequency with which such cooperation comes about.

Thus, more research is needed to establish what the primary functions of these networks are and what regions perceive to be the main benefits of membership. To

what extent is it the role of these networks to facilitate the exchange of information and allow regional officials to reach a fuller understanding of a policy through discussion with peers? To what extent can these networks provide the basis for a collective approach to interest *representation* (i.e. how often do these networks lead to common positions on the policies they monitor)? How much of the activity of these networks is geared towards encouraging the Commission to act on certain issues within the framework of broad guidelines, and how much of their work leads to detailed position papers on those issues? In other words, to what extent are these networks and associations important lobbying machines and to what extent are they forums for information exchange? While “networking” and interregional cooperation are routinely mentioned when authors list the opportunities for regional action at the European level, they are rarely critically discussed and their precise function and effectiveness remains unclear.

### **3.2.6 Summary and Outlook – Anything New under the Treaty of Lisbon?**

Until December 2009, the MLG literature was correct in pointing towards the existence of a wide-variety of channels that regions could use for interest representation on the European level. Yet, with the exception of participation in the Council of Ministers, all of these channels were informal (regional offices, MEPs, regional associations) or consultative (CoR) channels of interest representation. There were no opportunities for regions to exercise hard power *as regions*. Participation in the Council of Ministers did theoretically provide regions that benefited from this privilege with an official channel of influence with a direct impact on policy-outcomes, but there was a continued emphasis on national positions, which questions the relevance of this channel other than as a symbolic means or for the (important) purpose of monitoring national level representatives.

After years of negotiation and several ratification attempts, a new European Treaty, the Treaty of Lisbon, finally entered into force in December 2009. It came of course too late to influence the negotiation of the case study Directives, but the question

remains whether it will make any difference to regional interest representation in the future.<sup>27</sup>

On the whole, the Treaty introduced three changes that could have an impact on the ability of legislative regions to represent their interests on the European level. The first of these is a largely symbolic rewording of the subsidiarity clause, with article 5(3)TEU now referring explicitly to the regional level in the definition of the principle of subsidiarity:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.” (Art. 5(3) TEU)

While the rewording of the subsidiarity principle would be unlikely to make a difference on its own, it also introduces two new procedures for the monitoring of the implementation of the principle. Thus, the Committee of the Regions was given the right to appeal to the European Court of Justice on grounds of a breach of the subsidiarity principle or to defend its consultation rights. In addition, those consultation rights were extended. Consultation of the CoR is now also mandatory for the European Parliament in certain areas. Given that consultation does not oblige the other institutions to take recommendations on board, the right to force these institutions to respect the CoR’s consultation rights might seem like a mere formality. However, by comparison, the European Parliament’s rise to power went

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<sup>27</sup> In Germany, internal conflict surrounding the ratification of the Treaty led to further modifications to the provisions governing domestic European policy-making. In practice, as far as everyday policy-making is concerned much of this focuses on improved information exchange. In the long term, the Länder could, however, benefit from a greater willingness of the German government to take Länder concerns to the ECJ and an increased awareness of the Federal Constitutional Court of the potential negative impact of European integration on federal structures. (cf. Müller-Graff 2010; Gesetz über die Ausweitung und Stärkung der Rechte des Bundestages und des Bundesrates in Angelegenheiten der Europäischen Union, 22/09/2009; Gesetz zur Änderung des Gesetzes über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union, 22/09/2009; Gesetz zur Änderung des Gesetzes über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union, 22/09/2009).

through the same stage (Stahl 2009: 138-9; McCown 2003: 974, 977).<sup>28</sup> As such an action may lead to the annulment of EU legislation, regions have now, for the first time, gained ‘hard’ powers at the European level. A clever use of the threat of an appeal could force the Commission and Council to take subsidiarity seriously and to give it a broad definition and might even serve as a bargaining chip on points of substance. One promising step towards the effective use of the new rights is the Subsidiarity Monitoring Network that the CoR has developed with a variety of regional and local partners ([subsidiarity.cor.europa.eu/objreseau/tabid/81/Default.aspx](http://subsidiarity.cor.europa.eu/objreseau/tabid/81/Default.aspx)). However, the effectiveness of this tool will also depend on the ECJ’s view on the matter (Högenauer 2008: 548-554).

The third change gives national parliaments more influence in European policy-making in two instances. On the one hand, each parliament can veto a decision of the European Council to move from unanimity to qualified majority voting in a policy area (Art. 48(7) TEU). On the other hand, the *Protocol on the Role of National Parliaments in the EU* and the *Protocol on the Application of the Principles of Subsidiarity and Proportionality* assign national parliaments a role in monitoring subsidiarity through an ‘early warning system’. In the case of bicameral systems, this may include a chamber representing regional governments, such as the German Bundesrat. In Belgium the control will be exercised not just through the chambers of the federal parliament but also through the parliaments of the regions and communities (Declaration 51 ToL). Each national legislature receives two votes or, in the case of bicameral parliaments, each chamber one vote.

The basis of the new procedure is that national legislatures now obtain all documents of legislative planning and draft legislation. Then, parliaments have eight weeks during which each national parliament or chamber of a national parliament can submit a reasoned opinion to the Presidents of the European Parliament, the Commission and the Council of Ministers if it finds the draft to be in breach of the principle of subsidiarity. If reasoned opinions amounting to at least one third of the

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<sup>28</sup> For examples of the EP’s use of litigation see Judgment of 29 October 1980 in Case 138/79, *Roquette Frères SA v. Council* [1980] ECR 3333 and Judgment of 22 May 1990 Case 70/88, *Parliament v. Council, ‘Chernobyl’* [1990] ECR 4529.

total number of votes find the legislation in breach of the principle of subsidiarity, the draft must be reviewed (at least a quarter of votes in the case of issues in the area of freedom, security and justice). The initiator of the draft may then decide to confirm, amend or withdraw the draft. If objections amount to at least a simple majority of the votes allocated to national parliaments (28 out of 54), the Commission has to decide whether to confirm, amend or withdraw the draft. If it decides to confirm it, it has to issue a reasoned opinion on the matter. If 55 percent of the members of the Council or a simple majority of votes cast in the EP decide that the proposal is not in line with subsidiarity, it shall not be further considered.

However, while Cooper sees the early warning system as potentially leading to a “virtual third chamber” of national legislatures, the impact is likely to be very limited for regions (Cooper 2006: 283). Most importantly, only few regions will be represented in a national parliament and benefit from the procedure. Secondly, as a result, specifically regional concerns are likely to be in a minority within the procedure. Thirdly, the system is still mainly advisory. Even if enough national parliaments were to submit reasoned opinions, the draft would only be discarded if its authors agreed to withdraw it or if 55 percent of Council members or a majority of votes cast in the European Parliament decided that it was not in line with the principle of subsidiarity. Thus, the national parliaments have obtained at best an ‘advisory veto’ rather than a traditional veto and the decision on subsidiarity lies ultimately with the Commission, Council and European Parliament. Finally, in order for the procedure to work, a large number of parliaments have to follow European affairs actively and invest resources into the monitoring and evaluation of proposed legislation.

On the whole, the Treaty of Lisbon is thus unlikely to have much impact on the regions’ policy-shaping rights on the European level, but it does provide them with a new opportunity to block legislation and challenge the Commission’s interpretation of the principle of subsidiarity (Sturm 2009: 17). As before, the Committee of the Regions is the only formal representation of regions on the European level, a role that has been emphasised by the fact that most changes affected its role and powers (16-17). At the same time, any real improvement in the unmediated influence of

regions is likely to depend on the extent and quality of coordination of parliaments across member states (Chardon and Eppler 2009: 28).

The continued absence of hard powers that regions could wield on a regular basis to influence European policy-making on the European level highlights the need to study domestic processes of cooperation. At least until the next round of Treaty negotiations, regions will mostly have the choice between exercising hard power with the central government or engaging in “soft” lobbying on their own.

### **3.3 Domestic Channels**

In the light of the limited opportunities for formal input of the regions at the European level, the opportunities for regional influence over national positions on EU policies have to be considered. In this section the domestic provisions of Belgium, Germany, Austria and the UK will be analysed in turn. In the process, a particular emphasis will be placed on distinguishing domestic processes according to their formality or informality, the degree of horizontal cooperation they involve and whether they are designed to empower regions individually or collectively. It should be noted that due to the focus of the project, only provisions for “everyday” policy-making are included while national coordination on constitutional policy-making is left aside.

#### **3.3.1 Germany**

In Germany, a set of formal mechanisms of coordination in European matters is laid down in Art. 23 of the Basic Law (BL) and the Law on Cooperation (LC) between the Bund and the Länder Concerning European Matters of 12 March 1993. The coordination takes place between the federal government and the collective position of the Länder as expressed in the Bundesrat through a majority vote. As a result, individual Länder governments do not enjoy equal status to the federal government in the process (Kovziridze 2002: 140), as the Länder are only empowered collectively.

If the European measure predominantly concerns the legislative and administrative competences of the Länder, the position of the Bundesrat has to be decisively taken into account (“massgeblich zu berücksichtigen”) without prejudicing the federal responsibility for the entire Republic. In case of disagreement between federal government and Bundesrat, an arbitration procedure takes place. In the absence of a compromise, the Bundesrat can confirm its original opinion with a two-thirds majority (“Beharrungsbeschluss”) and ultimately appeal to the Federal Constitutional Court, even though it rarely fully exploits these options.<sup>29</sup>

For legislative projects that touch upon predominantly federal competences, the Bundesrat position merely has to be taken into account. The same applies if the project affects concurrent federal-regional competences when the federal government has already previously legislated in the area (see Müller-Graff 2005; Kovziridze 2002; Art.23 BL and §5(2) LC). The federal government is thus not obliged to incorporate the position of the Länder in those areas and can deviate from the Bundesrat position to some extent even when predominantly regional competences are concerned (Kovziridze 2002: 141).

The Bundesrat routinely produces positions on a wide variety of European issues. Thus, the German Bundesrat adopted 1500 positions between 1993 and 2003 (on average 150 a year) (Bundestag Drucksache 15/1961, 2003). In practice, however, there is also an array of non-formalized but institutionalised mechanisms, such as the conference of minister presidents or the conferences of specialized ministers that coordinate Länder positions prior to meetings of the Bundesrat. Bund-Länder working groups try to reach subject-orientated consensus (Palmer 2004: 57; Jeffery 1997b: 72). As the name indicates, Bund-Länder working groups contain officials from both levels and generally try to reach a position that is acceptable to all actors. In case of disagreement, solutions are sought in non-formalized settings and before the official coordination procedure starts. The formal structures thus largely rubber stamp prior informal agreements. Non-formalized coordination between the Länder

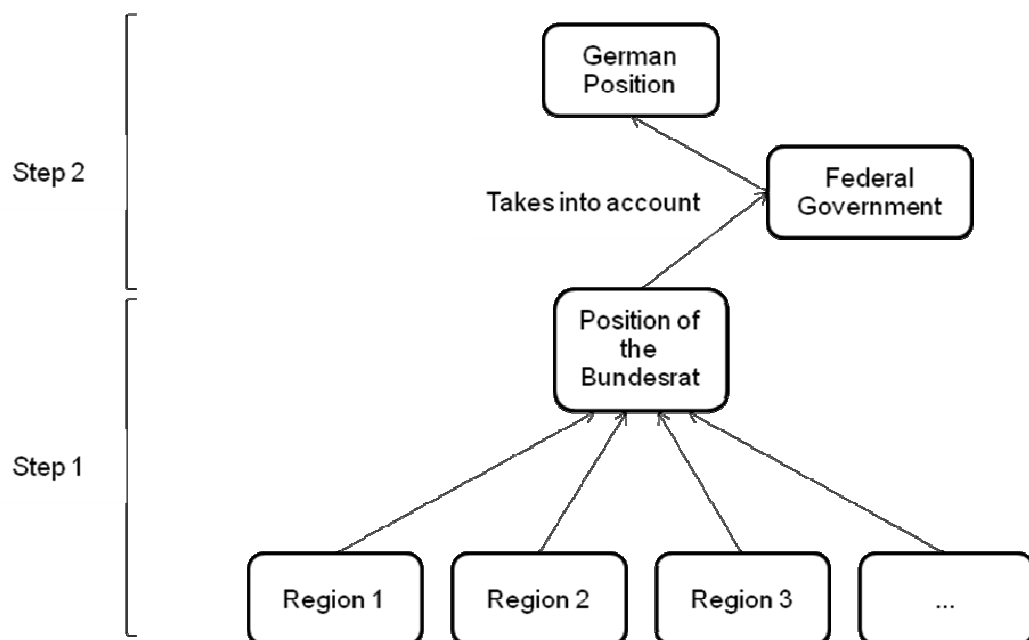
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<sup>29</sup> Bundestag Drucksache 15/1961, 2003: Between 1993 and 2003, the Bundesrat adopted 1500 opinions on European affairs. Between 1998 and 2002, it demanded in 28 cases that its position be taken into account “decisively”. In 17 of these cases the central government refused to accord this status to the position of the Bundesrat. The Bundesrat accepted the refusal in all cases. In any event, the positions of the two institutions were deemed similar on points of substance.

and between the Bund and Länder is seen as strengthening the Länder, but in the case of conflict, the formal structures prevail (Kovziridze 2002: 142-3).

On the whole, Germany has developed a version of co-operative federalism for European policy formulation that takes internal competences into account. This is in line with the definition of European policies as ‘European domestic policies’ instead of classical foreign policies and the demands of the Länder that their domestic competences be reflected in German EU policy-making (Jeffery 2000; Jeffery 1996). However, while the Länder have the means of influencing the German position in areas where their competences are concerned, they have to exercise these powers collectively. The input of each individual region into European policy-making is thus diluted at three stages: twice internally, during the negotiations among regions and during the negotiations with the central government, and again at the European level in negotiations with other member states and European institutions. In fact, the greatest risk for a Land is to become isolated (and outvoted) at an early stage.

**Figure 4: The Formal Process of Coordinating the German National Position**



### 3.3.2 Austria

Unlike in Germany, Länder coordination in Austria takes place outside the Bundesrat (see Art. 23d of the federal constitution and the *Vereinbarung zwischen dem Bund und den Ländern gemäss Art. 15a B-VG über die Mitwirkungsrechte der Länder und Gemeinden in Angelegenheiten der europäischen Integration*, 1992), which is generally weaker than the German Bundesrat.<sup>30</sup> The system is similar to the German system in that the Länder can only exercise influence collectively in a two-step system. In cases of European legislation that affect their exclusive competences, the Länder can adopt a ‘unified position’ that binds the federal government except if there are compelling reasons of integration or foreign policy that require adaptation.<sup>31</sup> As the definition of this exception is rather vague, the federal government has some leeway in practice (Interview 15).

Unified positions have to be adopted by a majority of Länder (at least five) with no opposition from the remaining Länder. According to the *Vereinbarung zwischen den Ländern gemäß Art. 15 a B-VG über die gemeinsame Willensbildung der Länder in Angelegenheiten der europäischen Integration*, the Integration Conference of the Länder, consisting of the Landeshauptmänner and the Presidents of the parliaments of the Länder, is responsible for the horizontal coordination. In reality, there is considerable flexibility in the ways in which the Länder cooperate and the Integration Conference only plays a minor role as the unified position of the Länder tends to be elaborated by the Landeshauptleutekonferenz or the experts of the Länder (Berka 2005: 83; Bußjäger and Djanani 2009: 60; Kovziridze 2002: 144-6). In addition, unified positions can also be compiled by the Liaison Office or by the common representative of the Länder for the specific dossier (Interview 15). In those cases, the Liaison Office or the common representative compile a draft unified position from the individual Länder positions and then present it to the Länder for comments until there are no objections.

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<sup>30</sup> See Bußjäger (2006: 371) for a discussion of the generally weak role of the Bundesrat in Austrian politics. Also: Berka 2005: 83.

<sup>31</sup> In this thesis, the term ‘unified position’ refers exclusively to a binding position of the Länder. When the Länder present a non-binding unanimous position (i.e. in policy areas that do not fall under their exclusive competence), this position will be referred to as ‘common position’.

Unlike in Germany, in Austria, in the absence of mediation mechanisms between the Länder and the federal government, each of the parliaments of the Länder would have to agree to the initiation of a legal procedure against the federal government if the Länder felt that their prerogatives had been violated. As a result, the Länder are in a weak position when negotiating to what extent the central government can reasonably digress from their position.

On the whole, the Länder have only few exclusive competences. As a result, in total only 75 unified positions were adopted between 1993 and 2008, an average of about five a year (Bußjäger and Djanani 2009: 61; Bußjäger, Bär, Ulrich 2006: 42, 75). In all other policy areas, the Länder can adopt ‘simple positions’ individually or coordinate horizontally to achieve a common position. In addition, regardless of the formal coordination process, the central government keeps the Länder informed about the negotiations on the European level and consults regularly with affected Länder through informal interaction (Morass 1997). An Austrian specificity is also the Liaison Office of the Länder, an institution financed jointly by the Länder that acts as a secretariat for the various intergovernmental fora in domestic policy-making. In domestic European policy-making, an important task is to organize the flow of information among the Länder and between the Länder and the federal government. It also facilitates the nomination of a common representative of the Länder vis-à-vis the federal government and for representation in European level meetings. In the absence of a unified position, the common representative provides another loose coordination function by compiling the Länder position.<sup>32</sup>

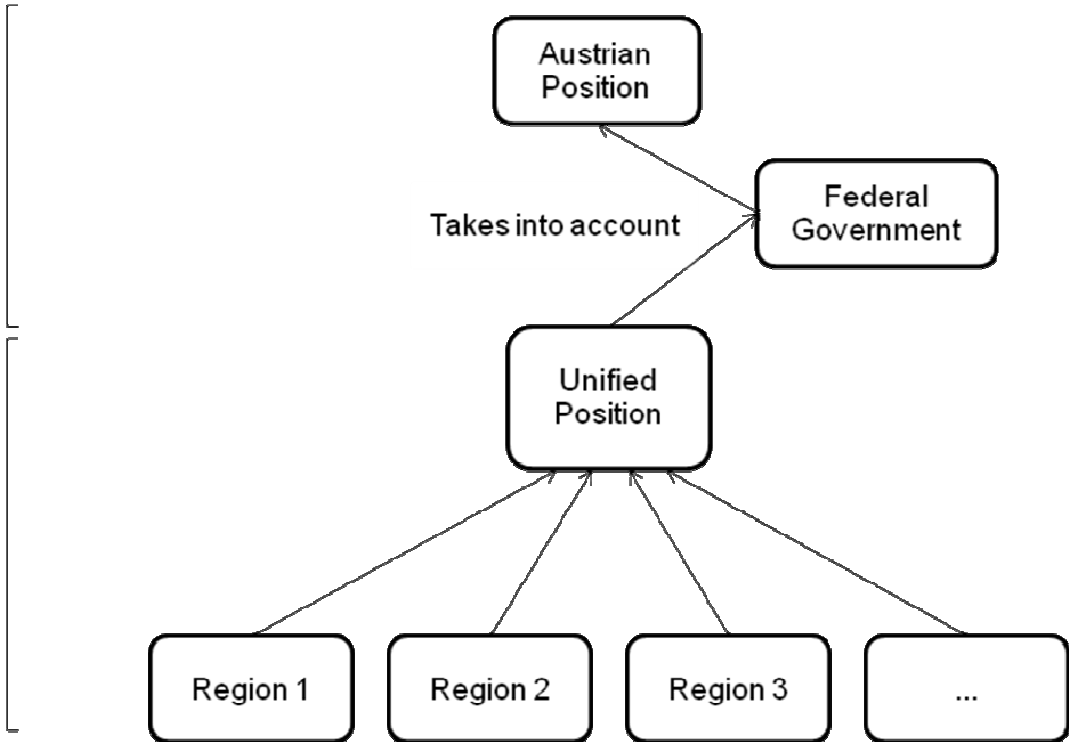
Overall, the Austrian Länder have a weak position in the internal coordination mechanisms for European policy-making. This is largely due to the obligation for consensual agreement (Morass 1997: 81-2) and to the limited number of exclusive regional competences in general. In addition, whether the Länder engage collectively or individually with the federal government depends on the existence of a unified position. Interestingly, the process is quite informal despite the requirement for

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<sup>32</sup> The Liaison Office has its seat with the government of Lower Austria and an office in Vienna. It has 20 members of staff, 10 of which are policy officers (Interview 15).

agreement by consensus, as formal provisions do not specify the institutions or processes through which a unified position could be obtained.

**Figure 5: The Formal Process of Coordinating the Austrian National Position**



**3.3.3 Belgium**

The Belgian regions have obtained by far the highest level of influence over the coordination of the national position and can be regarded as “veto players” (Lambertz and Förster 2009: 24). They have benefited both from generous institutional arrangements and from the small number of regions in the country.

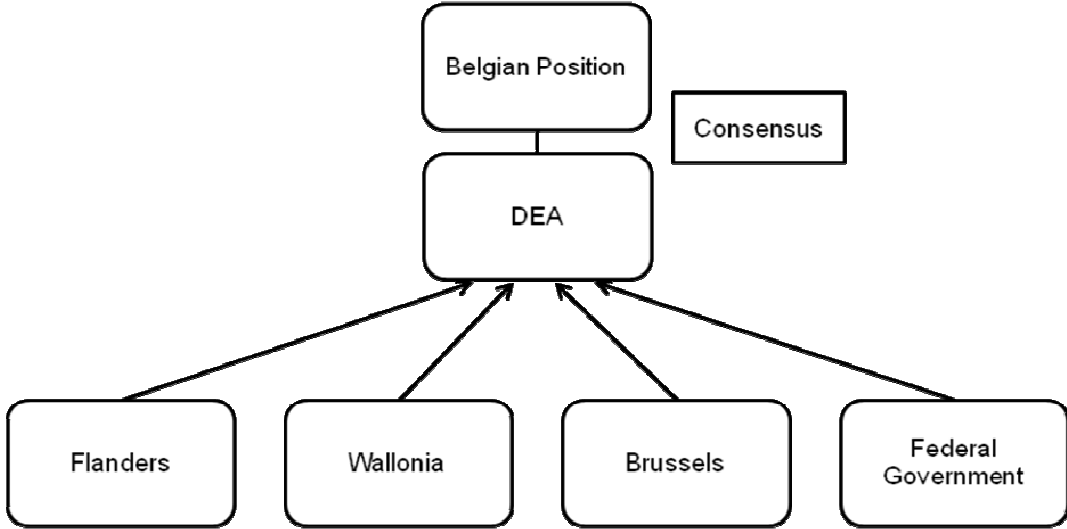
The central coordinating role for Belgium’s official position in the European Union is played by the Directorate for European Affairs of the Federal Public Service of Foreign Affairs (DEA). It is an administrative body composed of representatives of the federal, regional and community ministries and headed by a federal representative. As in Austria, the Senate is not incorporated into the institutional settings of coordination. In the DEA, decisions are taken by consensus, which confers an equal status on the regions, communities and the central government.

Neither entity can act without the consent of the others, and every single one of them can block an agreement (Jeffery 1997c; Kerremans and Beyers 1997: 50). The federal level can at best achieve a slight degree of primacy through the use of its monitoring and coordinating role (Kovziridze 2002: 138).

In the absence of consensus, ministers from the different levels will discuss the issue in the Interministerial Conference for Foreign Policy. If no common position can be found, the Prime Minister and regional and community minister-presidents will meet in the Consultation Committee. However, failure to reach an agreement in the DEA often leads to abstention in the Council (Kovziridze 2002: 137). Nevertheless, the DEA reaches agreement on the vast majority of issues and abstentions are rare (Kovziridze 2002: 138). In practice, the role of DEA varies across policy sectors, though. With regard to exclusive regional competences, decisions are usually de facto taken through non-formalized interaction between the regions and then subsequently formalized by the DEA.

The result of these arrangements is that each Belgian region has de facto a veto right over the national position and all governments are equal. At the same time, the relatively great influence of each actor over the national position only translates into influence in European negotiations if there *is* a national position. In the absence of agreement, Belgium would have to abstain and all Belgian actors would lose nearly all of their influence. As a result of these important incentives and constraints, European integration has led to the development of a greater practice of cooperation and joint decision-making in a state that originally adopted a system of dual federalism and that is often characterised by severe inter-regional competition in domestic matters (Beyers and Bursens 2006a: 1057-9).

**Figure 6: Coordination of the Belgian Position in Areas of Exclusive Regional Competence (formal)**



**3.3.4 The United Kingdom – Scotland**

In spite of a high level of devolution with regard to domestic policy-making, the negotiation of EU legislation is a “reserved matter” under the 1998 Scotland Act. The central government is thus firmly at the heart of the process. Intergovernmental relations for the purpose of defining Britain’s position on EU policies have generally been characterised by a much lower degree of formalisation than in the other three member states (Jeffery 2000; Cairney 2006: 439).

Intergovernmental relations between Scotland and the UK are governed by a Memorandum of Understanding (MoU) and a series of concordats on specific mechanisms or policy areas, such as the Concordat on the Coordination of European Union Policy Issues and the Concordat between the Department of Environment, Transport and the Regions and the Scottish government. These Concordats are non-binding agreements between the UK government and devolved governments and support administrative practices (Lynch 2001: 150). Labour governments both at the centre and in Scotland initially further reduced the need for formal mechanisms, as Labour felt compelled to make the policy of devolution work and as intra-party politics could resolve many issues (Swenden 2009; Laffin, Shaw and Taylor 2007).

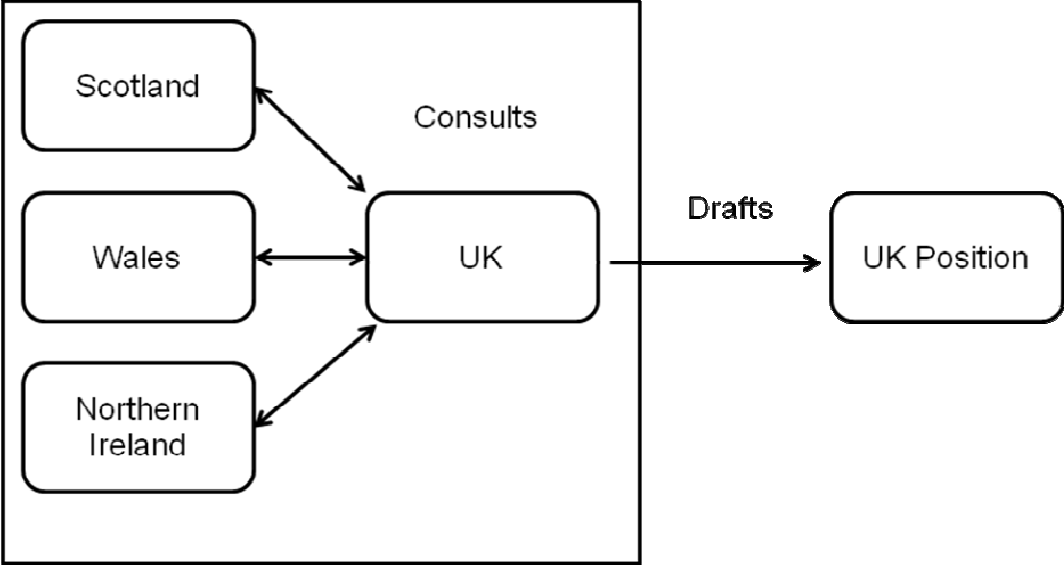
The main mechanism of internal conflict resolution specified in the MoU and the Concordats are Joint Ministerial Committees (JMC), which can be used to coordinate both devolved and non-devolved matters. Meeting about two to four times a year, the JMC on European affairs has played some role in the discussion of the UK's broad strategy on European matters (Jeffery, Scott, Tierney forthcoming; MacPhail 2008: 21). However, the concrete coordination on European legislative projects mainly happens through ministerial write-arounds before major events that provide the relevant ministers with updates and allow the devolved executives to state their views. Even in the case of conflict, coordination via phone or bilateral meetings between ministers are more common (Cairney 2006; Lynch 2001: 151-3; Trench 2007:197).

As in Austria, Germany or Belgium, the bulk of the coordination process takes place at the level of civil servants, though. While meetings and emails generally include all relevant officials, the devolved administrations do not specifically coordinate their positions but negotiate individually with the central departments. The main difference compared to the coordination mechanisms of the other three member states is that, in the UK, the devolved executives have never a guaranteed right to see their positions *incorporated* into the UK position, not even in policy areas that are fully devolved. This is also one of the reasons why the inclusion of officials or ministers of the devolved administrations into the UK delegation is at the discretion of the UK lead.

Reports on how well this informal system of coordination works differ. Bulmer et al argue that the devolved administrations have become relatively powerful players (Bulmer et al. 2006) and Tatham describes the relationship as overwhelmingly harmonious (Tatham 2009). Yet, the leaked Aron report highlights problems such as the flow of information and the level of access to European actors granted to Scottish officials, which highlight the relative powerlessness of Scotland (Aron 2006). Also Reid and Ruiz-Rico Ruiz emphasise the subordination of the Scottish government to the UK government in EU affairs (2003). According to them, the amount of EU legislation in environmental affairs combined with the low level of Scottish influence over the UK position even risks undermining the devolution settlement (2003: 223).

One of the side effects of this soft approach to the definition of intergovernmental relations has been that coordination mechanisms have remained underdeveloped and over-reliant on informal linkages among officials that are interrupted every time there is a change in personnel (Jeffery 2009: 304). The full extent of the reliance on informal mechanisms also makes intergovernmental coordination in the UK ad hoc and intransparent.

**Figure 7: Coordination of the UK Position**



**3.4 Conclusion: Not a Level Playing Field**

Differences in regional participation in European policy-making start at home. This is of course nothing new, as scholars and policy-makers alike are acutely aware of the difficulties of developing theories or European level mechanisms of participation that fit regions of centralized and regions of federal states alike. It is striking, though, just how diverse the formal mechanisms for domestic European policy-making are for even the strongest legislative regions.

In general, one can distinguish three dimensions on which national systems of coordination differ: the level of horizontal coordination between regions they require, the importance of formal processes (compared to informal ones) and the degree to

which they empower regions. An analysis of domestic coordination systems along the lines of these three factors also illustrates to what extent the hypothesis that the level of domestic influence of a region determines its willingness to mobilize through unmediated channels of interest representation produces different expectations from the hypothesis that the cooperative or dual nature of the system matters.

If one distinguishes the formal domestic coordination processes according to the degree of horizontal, inter-regional, cooperation they require, the findings do indeed mirror the divide between dual and cooperative systems. Thus, in the German and Austrian federal states, the formal influence of the regions depends on the existence of a common regional position. The exact processes through which this position is arrived at may vary from majority voting to consensus and from the use of formal institutions (the German Bundesrat) to informal meetings or even written coordination, but in both cases there is a two step process which sees regions coordinate among themselves before they communicate a joint position to the central government. By contrast, the dual systems of Belgium and the UK have no such provisions. Instead, coordination takes place directly between the central governments and the regions.<sup>33</sup>

However, if one looks at the other two dimensions, informality and influence, the distinction along dual/cooperative lines crumbles. The German and Austrian system are still relatively similar in that the Länder have a “decisive” say over the national position in both cases when their exclusive competences are concerned. Yet, the German procedure for arriving at a collective position is much more clearly specified and even in those cases where the Länder position has only to be taken into account, the collective approach through the Bundesrat is clearly laid down. The Belgian and British systems are at opposite ends of the scale, though. The Belgian regions are the most powerful regions, having a formal, guaranteed right to individually veto the Belgian position. By contrast, the UK has virtually no formal coordination mechanisms, seeing that Joint Ministerial Committees as the most formal channel are in practice rarely used to coordinate the UK position on specific pieces of legislation.

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<sup>33</sup> However, in practice, it seems that the Belgian federal government leaves the coordination of the national position largely to the regions when only exclusively regional competences are concerned (cf. Chapter 4 on the Belgian coordination process on flood risk management and bathing water).

Thus, while for all member states informal coordination mechanisms play de facto an important role (see Chapter 4), the informality of the UK system means that the devolved executives have no guaranteed influence in domestic European policy-making, even if it affects policy areas that are fully devolved.

While a hypothesis about the impact of dual or cooperative systems would thus expect Scotland and the Belgian regions to behave in a similar fashion, a hypothesis about the domestic influence of regions would expect Scotland to be much more eager to engage in unmediated interest representation on the European level. The assumption would be that the cost-benefit calculations of Scotland and the Belgian regions would lead them to different conclusions.

Thus, European policy-making can be understood as involving a triangular relationship between member states and EU institutions, member states and their respective regions and regions and the European institutions (cf. Högenauer 2008). For the relationship between regions and European institutions, the Committee of Regions is the formal channel of regional consultation. It is supplemented by participation in Commission consultations, the activities of regional offices and inter-regional networks. As analysed above, all of these channels only provide regions with soft, decision-shaping power. The Belgian regions, however, enjoy 'hard' decision-making in domestic European policy-making and can thus co-determine the Belgian vote in the Council. As a result, we would expect the Belgian regions to be mostly active at the national level and focus on maximising their influence over the national position. Especially in cases where European level lobbying risks jeopardising the national position, the Belgian regions can be expected to prioritise the national position. Scotland, by contrast, has only soft powers on both levels and can thus be expected to try and supplement its weak domestic influence with European level influence. However, when Scottish European level activism is likely to influence negatively the willingness of the UK lead to incorporate Scottish interests into the UK position, Scotland will only choose the European route if the benefit of European level alliances outweighs the risk of domestic tensions. The German and Austrian case are likely to be somewhere in between the Scottish and the Belgian case. While both the German and the Austrian Länder can collectively

exercise 'hard' power in certain circumstances, the greater number of regions can still mean that individual regions may not be satisfied with the national position in some cases.

Finally, the insights into the formal systems of national coordination also provide the backdrop for the first step in analyzing the impact of domestic processes on regional mobilization in European policy-making. In Chapter 4, the coordination of the national position for the two case study Directives will be discussed. At the end of Chapter 4, these empirical findings along with insights from the existing literature will be used to assess the impact of formal domestic coordination processes on the informal coordination between regions on the one hand and between regions and the central government on the other.



## **Chapter 4 – The Domestic Coordination of the National Positions on the Bathing Water and Flood Risk Management Directives**

### ***4.1 Introduction***

Chapter 3 reviewed the channels of interest representation that are generally available to the regions of the four member states under investigation. It distinguished ways of influencing the position of the member state from means of influencing European institutions, ‘hard’ powers from ‘soft’ powers and showed that in each of the four member states the regional-federal coordination of the national position follows a different model.

The objective of Chapter 4 and Chapter 5 is to discuss what the case study regions actually did to influence European decision-making on the Flood Risk Management and Bathing Water Directives. By providing a comprehensive overview over the actions and strategies of the seven regions in the two instances of decision-making, the chapters serve as a basis for the comparative analysis of regional lobbying as well as the critical discussion of MLG in the following chapters. For this purpose, Chapter 4 discusses and compares the involvement of the regions in the formulation of the national position for the two Directives, while Chapter 5 will be concerned with the regional presence at the European level, both mediated and unmediated.

The structure of the chapter will follow a division into sections, each of which discusses the regions of a specific member state. As regions from the same member state can be expected to be part of the same coordination mechanisms and to follow similar practices of liaising with the federal level, this structure is an effective way to avoid repetition. In line with the bottom-up nature of the research, each section will focus on how regional executives were involved in the formulation of the national position. The sections discuss mainly the decision-making phase, but contain information on at least the early stages of the transposition and implementation phase to the extent that information was available. In addition, they will provide an overview of the subjective interests of each region and the central government as

defined by the interviewees and/or documents. In doing so, they will assess the absence or presence of the variable “conflict”. They will also briefly discuss to what extent informal channels of cooperation change the nature of the national coordination system.

The concluding section aims to make a contribution to the understanding of regional mobilisation in *domestic* European policy-making. Thus, combining the insights from Chapter 3 with the empirical findings of Chapter 4, it analyses the impact of formal processes of domestic coordination on the extent of “voluntary” regional cooperation through informal mechanisms.

## **4.2 Germany: A Formal and Informal Emphasis on Collective Bargaining in Intergovernmental Relations**

### **4.2.1 Interests**

#### **4.2.1.1 Bathing Water Directive**

After 25 years of coordination under the old Directive, the interests of the German Länder had largely converged and there were no major conflicts either between the Länder or between the Länder and the federal level. In particular, both the Länder and the federal government welcomed the long overdue overhaul of the parameters monitored under the Directive. In addition, while the Länder felt affected by the legislative proposal, there was no sense of urgency as the Commission proposal was regarded as an acceptable basis for further discussion (Interviews 2, 7, 8, 18).

The main objectives of the Länder were to restrict the scope of the Bathing Water Directive to bathing only, as opposed to the Commission proposal and EP amendments that wanted to expand its application to other recreational activities as well. The rationale behind this was that the inclusion of other activities, such as canoeing and surfing, would increase the costs of implementation by extending the bathing seasons, the area that had to be monitored at bathing sites and the number of bathing waters (Bundesrat, Press Release No. 19/2002, 01/02/2002; Interviews 2, 7). Other proposed measures that met with scepticism due to the costs involved were the

introduction of bathing water profiles for all bathing sites, and the placing of signs near bathing sites to inform about the water quality (Interviews 2, 7). In addition, Mecklenburg-West Pomerania had concerns about the statistical robustness of the new methods for the evaluation of bathing waters (Interview 7).

One of the rare points of contention within Germany was the level at which the standards should be fixed. In that regard, Germany generally pushed for better standards compared to the old Directive. There were some discussions amongst the German Federal Environmental Bureau, the Federal Ministry of the Environment (BMU) and the Länder as to exactly how strict the standards should be, resulting in a common position acceptable to all (Interview 8, 18).

#### 4.2.1.2 Flood Risk Management Directive

In the case of the Flood Risk Management Directive, one of the problems was that Germany had recently adopted stricter framework legislation on flood risk management at the federal level, which the Länder were now in the process of transposing and implementing. They feared that an EU Directive, especially if it were to be detailed, would require them to overhaul a number of flood plans and flood protection measures that had only just been adopted or adapted. As a result, the shift from discussions about a European Flood Action Programme to the drafting of a Directive was met with considerable hostility in Germany even on the part of less affected Länder like Thuringia and represented a strong unifying factor (Oral communication 4).

The basic argument of the Länder was that there was no need for European legislation as German legislation was up-to-date and as International River Commissions already organised cooperation on trans-boundary water courses. If there had to be a Directive, it should respect the principle of subsidiarity. In other words, it ought to apply to trans-boundary water only, give the implementing authorities a wide margin of manoeuvre and allow for existing instruments to remain in place provided they fulfilled certain standards (Bundesrat, Beschluss No 58/06, 10/03/2006).

These general ideas were also shared by the case study regions. Bavaria felt that obligations to report to the EU would not in themselves contribute to the improvement of flood prevention and protection. The regional expert pointed out that Bavaria had already a flood protection programme in place that included both technical measures as well as preventive measures, such as an early warning system. There was also, for example, a flood protection plan for the river Main, and the Danube was covered by an International River Commission (Interview 1). The move to include measures on the flooding of sewages was opposed. It was estimated that the implementation of the original Commission proposal would have cost Bavaria alone an additional 28 million Euro (Ibid.).

The regional expert for Mecklenburg-West Pomerania raised the same concerns, with the addition that they did not want coastal protection to be covered by the Directive (Interviews 1, 6). As a result, the introduction of a transition rule that would allow existing measures to remain in place until the next review of the Directive was welcomed by the Länder and seen as one of the results of German pressure (Interview 1).

On the whole, the federal level represented the substantive concerns of the Länder (Interview 17). However, one point of friction was that the federal government was in favour of a European flood risk management policy as a way to promote cooperation between the Länder. Thus, while the Länder generally voiced their opposition to European legislation on the matter quite explicitly and called for the Directive to be hollowed out or vetoed, the federal government tended to tone down its rhetoric and “welcome” the Directive (Interview 1). One good example of this is the German reply to a consultation by the Austrian presidency. On the one hand, the federal government welcomes the Directive. On the other hand, the document also reflects the concerns of the Länder about the scope of the Directive, its compatibility with existing measures etc. (Council, No. 5540/06 ENV 37 CODEC 58, 14/02/2006: 12). The friction over rhetoric was also picked up by interviewees from outside Germany, who felt that the federal government had a more lenient stance and that the Länder acted more independently in return. At the same time, this friction was not

seen to negatively affect the behaviour of the German delegation in official meetings (Interviews 27, 29, 34).

## **4.2.2 Regional Involvement in the Formulation of the National Position**

### **4.2.2.1 Formal Processes**

The formal instrument of federal-regional coordination is the Bundesrat. Due to the level of competences of the Länder for the policy in question, its position had to be taken into account decisively. For both Directives, the Länder used the Bundesrat repeatedly to formalise their position.

In the case of the Bathing Water Directive, the Bundesrat adopted three Decisions between 2001 and 2003, reflecting the protracted nature of the drafting and early negotiation stages. The second of these Decisions and a related press release voiced frustration over the direction that the Commission's work had taken since the first Bundesrat Decision in March 2001. It was adopted on the initiative of Schleswig-Holstein and Baden-Württemberg and highlighted three main points. Most importantly, it was critical of the Commission's intention to include other recreational activities into the Directive, as this would extend the bathing season, the number of sites that qualify as bathing waters and the area that would have to be monitored for the affected bathing sites. It also expressed the view that the creation of bathing profiles for all bathing waters involved excessive costs and that such profiles should only be drawn up for highly frequented sites or sites that encountered problems. Finally, it called for the standards for the parameters to be fixed only at those levels that scientific research had shown to be necessary for the protection of human health (Bundesrat, Press Release No. 19/2002, 1/02/2002; Bundesrat, Beschluss No. 49/02, 1/02/2002; Bundesrat, Antrag Baden-Württemberg, Schleswig-Holstein, No. 49/03, 22/01/2002). The third Decision on the Commission proposal showed similar concerns about costs and related calls to exclude other recreational activities from the scope of the Directive, limit the obligation to create profiles and lower the information requirements vis-à-vis the public. The Bundesrat also proposed

to leave certain implementation details to the authorities responsible in line with the subsidiarity principle (Bundesrat, Beschluss No. 857/02, 14/02/2003).

Just as with the Bathing Water Directive, the Länder used the Bundesrat to better influence the federal government at an early stage of European policy-making on Flood Risk Management. In 2004, when negotiations on the European level still focused on a Flood Action Programme, the Bundesrat already asked the federal government to ensure that existing instruments would not be threatened by European decision-making. On the initiative of Baden-Württemberg it warned that European action programmes often resulted in binding measures (Bundesrat, Antrag Baden-Württemberg, No. 372/04, 5/05/2004; Bundesrat, Beschluss No. 372/04, 14/05/2004). The Bundesrat also adopted a Decision on the Commission proposal for the Flood Risk Management Directive. It reemphasised the Länder position that further regulation was unnecessary and that the existing achievements of international cooperation and instruments of flood risk management and flood protection should be formally recognised. Most importantly, the Bundesrat demanded that the federal government reject the Directive unless it was limited to transboundary water courses. It points, in particular, to the prohibitive costs of implementation and proposes the exclusion of coastal flooding (Bundesrat, Beschluss No. 58/06, 10/03/2006). The Decision included an amendment by Baden-Württemberg und Lower Saxony that stated that the Bundesrat was of the opinion that the federal government would have to take this Decision into account *decisively*, as the European legislation would strongly affect the legislative competences of the Länder (Ibid. §13; Bundesrat, Antrag Baden-Württemberg, Niedersachsen, No. 58/2/06, 8/03/2006). This explicit insistence on the status of the Decision further highlights its importance to the Länder.

In addition, the Bundesrat also decides whether or not to nominate a representative for the German delegations to Commission working groups and committees and Council working groups and who should be that representative. Internal agreement on this question is generally reached at the level of secretaries of state and ministers, before it is formalised in the Bundesrat (Interview 17). In the case of the Flood Risk Management Directive, Saxony proposed an amendment to promote its candidate,

who was duly accepted and took up the role in early 2006 (Bundesrat, Antrag des Freistaates Sachsen, No. 58/3/06, 8/03/2003; Bundesrat, Beschluss No. 58/06/10/03/2006). Bavaria had also shown interest in the post during the unofficial coordination process (Interview 1). However, it accepted that Saxony was given the role as the latter had been heavily affected by the flooding of 2002, which caused 8 billion Euro damages, 21 deaths and devastated two thirds of the Land (Interview 17). For the Bathing Water Directive, an official from Schleswig-Holstein had acted as representative of the Bundesrat since 1992 or 1993, when he witnessed the failure of the first attempt to revise the old Directive (Interview 18).

However, while the Bundesrat provides an institutionalised forum for horizontal cooperation and plays an important role in formalising the Länder position, it is too unwieldy to ensure day-to-day coordination on European developments. Thus, in the field of water policy, most of the coordination de facto takes place in informal but highly institutionalised arrangements.

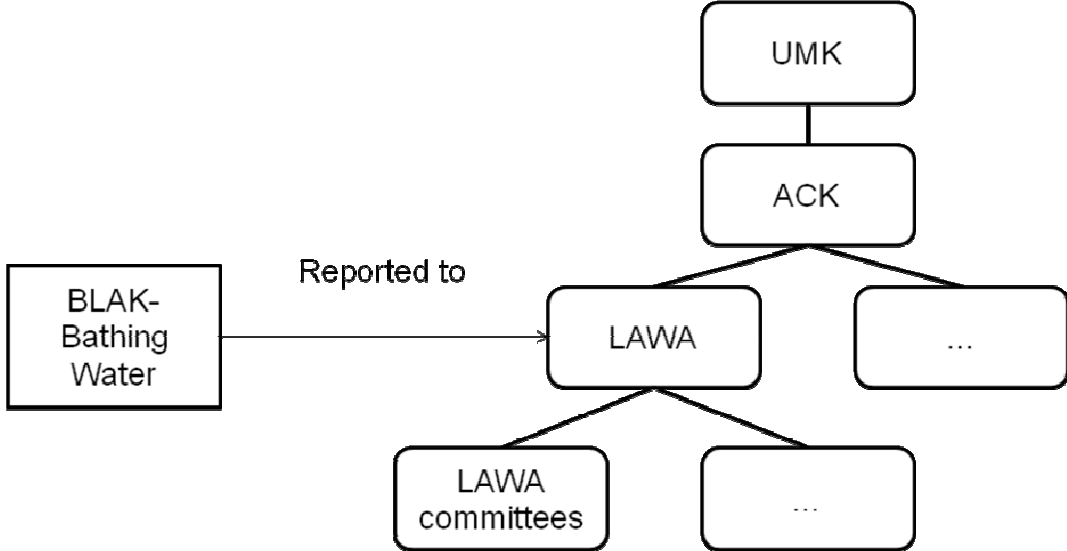
#### 4.2.2.2 Informal Coordination

In addition to the Bundesrat, the *Umweltministerkonferenz* (Conference of the Ministers of the Environment) often reaches or prepares political agreement on the highest political level. Despite its less formal nature (its decisions have no formal weight), it has reached a high degree of institutionalisation and its work in domestic policy-making and domestic European policy-making is prepared and supported by an array of committees at various administrative levels and officially documented in protocols. These committees and their working groups help to prepare agreements before Bundesrat proceedings and provide an up-to-date Länder position in reaction to European developments. They also process the information that the representative of the Bundesrat receives from the federal Ministry of the Environment or Brussels.

Thus, in the case of the Bathing Water Directive, the day-to-day substantive coordination took place within the Bund-Länder working group on bathing water (BLAK-bathing water), which was attended by experts and chaired by the representative of the Bundesrat (Interview 8). It reported to the LAWA (*Länder*

*Arbeitsgemeinschaft Wasser – Länder Working Group on Water*), which has organised the Länder policies in the field of water management since 1956. The LAWA consists of the Heads of Departments of the highest Länder administrations for water management. The federal level is represented in the LAWA since 2005 through the BMU. The LAWA meets twice a year before the meetings of the Conference of Heads of Departments (ACK) and the Conference of Ministers of the Environment (UMK), to which it reports ([www.umweltministerkonferenz.de/Arbeitsgremien.html](http://www.umweltministerkonferenz.de/Arbeitsgremien.html), [www.lawa.de](http://www.lawa.de)).

**Figure 8: The Network of Informal Coordination Mechanisms in Germany. Example: Bathing Water Policy.**



The BLAK-bathing water had really started to become established in the early 1990s, after the Commission first brought an infringement procedure against Germany in the 1980s, and it began to meet regularly twice a year from the mid- to late 1990s (Interview 18). During the negotiations and the transposition phase of the case study Directives, the BLAK would meet up to three or four times a year, as required (Interviews 8, 9). In general, the Länder would send one representative each (Interview 2). Thanks to the long tradition of cooperation, the inner-German coordination went smoothly and there was a high level of satisfaction with the

attitude of the federal level, especially with how promptly they passed on information directly to the Länder instead of making them wait for the information to be officially channelled through the Bundesrat (Interview 18). The BLAK was also the forum where the discussions about the level of the new standards were resolved. For this purpose, special meetings were convened where the standards were thoroughly discussed on the technical level until a compromise was reached. In addition, the representative of the Bundesrat also reported to this group after each meeting in Brussels to obtain a revised Länder position. The adapted position was then compared to the position of the federal government and the compromise taken back to the European level by the federal expert and the representative of the Bundesrat (Ibid.).

In addition, there were often email exchanges, usually initiated by the federal expert as she was responsible for the German position in the EU. During these exchanges, all Länder were kept in the loop about further developments and had the opportunity to react and raise concerns. If a dead end was reached because of persistent disagreement, an additional BLAK would be convened (Interview 8).

In terms of level of activity, the Länder that had a large water administration and/or a lot of tourism around lakes and coastal bathing sites tended to be the most active. These Länder, including Mecklenburg-West Pomerania, were particularly good at providing the federal expert with detailed feedback on how certain proposals on the European level would play out if they had to be implemented. At the implementation stage, participation became more balanced, though (Interviews 8, 9).

In the case of the Flood Risk Management Directive, the main forum for substantive cooperation was the Committee for Flood Protection within the LAWA. At the beginning of the negotiations, the permanent committee for flood protection was dissolved and replaced by an ad hoc committee, to reflect the new importance of the matter. After the adoption of the Directive, it reverted back into a permanent committee for flood protection and hydrology (Interview 17). The committee worked in the same way as the BLAK-bathing water. It developed the Bundesrat position further and reacted to the reports of the representative of the Bundesrat. As in the case of the Bathing Water Directive, the internal negotiation process in Germany was

collective. No individual Land tried to bypass the representative of the Bundesrat or the committee and negotiate separately with the federal government. It is also questionable whether such an individual position could have been taken into account, given the formal weight of the collective position (Ibid.).

Unlike in the case of the Bathing Water Directive, it was possible to find documents that confirm that the Flood Risk Management Directive was indeed discussed on the level of the ACK and UMK. Thus, in May 2006, the Conference of the Ministers of the Environment of the Länder asked the federal government to ensure that existing plans and instruments for flood protection would be able to remain in place under the Directive. In addition, twelve Länder, including Bavaria, requested that the federal government should try to abandon the Flood Risk Management Directive during the German presidency and press for a non-binding Commission Communication instead. Bavaria was also one of ten Länder to support a protocol statement to the effect that German water courses do not need further European regulation. All of these statements were based on a prior recommendation from the Conference of Heads of Departments (Umweltministerkonferenz, Protocol, 26/06/2006, Top 14, 18; Amtschefkonferenz, Protocol, 26/06/2006, Top 3, 13).

On the whole, the Länder felt that their substantive concerns were well represented by the federal government. However, just as in the case of Austria, they could feel the pressure of the German presidency in early 2007. The federal government did have to hold its position back, but as the Austrian presidency had pushed ahead so quickly, most substantial issues had already been resolved, so that the compromises were less painful (Interview 17).

In terms of activity, all Länder reacted on some points, but Bavaria and Baden-Württemberg, two traditionally strong regions with strong positions, were seen to be particularly active. They also benefited from large water administrations. Rhineland-Palatinate, which chaired the committee, also frequently started initiatives (Interviews 1, 6, 17). In general, there were clear differences in the level of activity, which were also reflected in the attendance of meetings. Thus, only about eight or ten Länder attended the first meeting. The city states, for example, felt less affected (Interview 1).

### **4.2.3 Transposition/Implementation Stage**

At the transposition and implementation stage, the same mechanisms prevailed as at the negotiation stage. Thus, the task of transposing the Bathing Water Directive was addressed collectively in working groups that created, for example, a blueprint document for the transposition, a document on information policy and a recommendation on how to tackle the bathing water profiles. The results were then presented in the BLAK. In the end, after having met at least seven or eight times, nearly all Länder adopted similar versions of the blueprint when they transposed the Directive, but with provisions for specific regional circumstances (Interviews 2, 7).

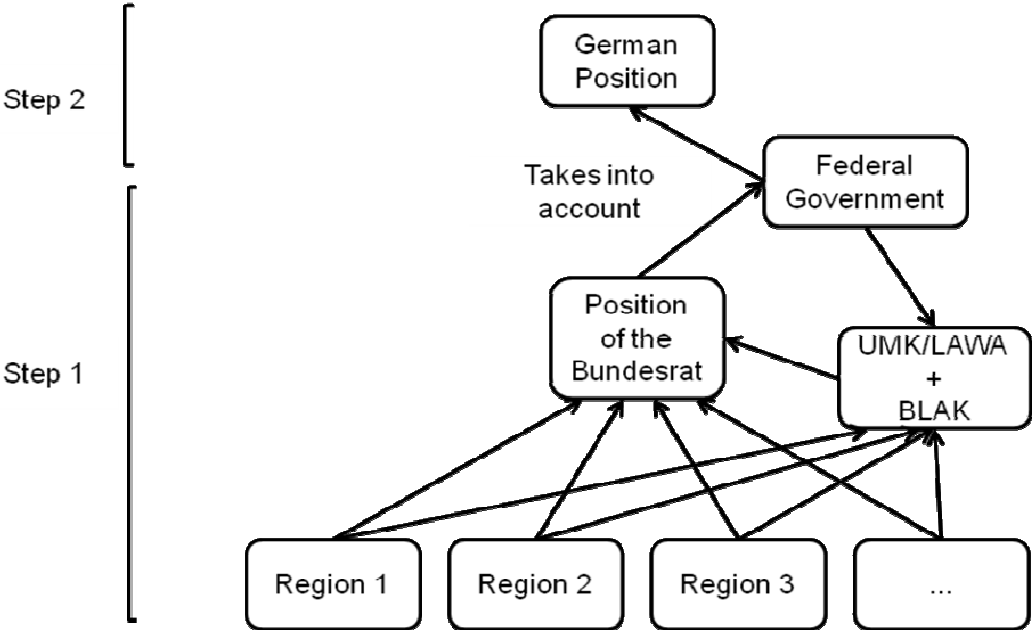
In the case of the Flood Risk Management Directive, the transposition took place at the federal level with Bundesrat participation. However, as the practical implementation is still done by the Länder, there are also still working groups on this Directive. Thus, at the time of writing, the working groups were checking if existing plans needed to be adapted and tried to clarify the precise meaning of terms such as “significant damages” (Interviews 1, 6).

### **4.2.4 Summary – The Collective Reflex**

The internal coordination of the two Directives reflects well the collective approach demanded by the formal coordination processes discussed in Chapter 3. The two-step structure where the Länder agree a common position that the federal government then takes into account does not just exist on the formal level, with the position of the Bundesrat, but is also reflected at the informal level. Thus, with a tradition of decade-long cooperation in the field of water policy, the Länder voluntarily came together on the technical and political level to discuss and coordinate their approaches during all stages of the negotiation of the Directive. The one thing that is changed by the informal processes is that the federal executive is generally represented therein. This effectively merges the two steps of the system (formulation of a regional position and negotiation with the federal government) into one and allows both regional and federal actors to explain their positions at an early stage.

At the same time, the extent of the informal cooperation on the Directives shows that the Bundesrat is in fact not the main coordination mechanism, despite the fact that it is the only formal one. Most of the substantive work is done at the administrative level, and even some of the political coordination is done in alternative institutions, such as the Conference of Ministers of the Environment. At the same time, the Bundesrat plays an important role in formalising the outcome of the substantive negotiations and in making it public. While informal negotiations in many countries lack transparency, the Länder can and do use the Bundesrat to make a public statement about their preferences directed at the government or the Commission.

**Figure 9: The Interaction of Formal and Informal Coordination Processes in Germany**



**4.3 Austria: Collective or Bilateral Coordination?**

As discussed in Chapter 2 (section 2.7.1), the Austrian Länder had only limited competences in the area of water policy. Both the Flood Risk Management Directive and the Bathing Water Directive touched upon policies that fell predominantly into the category of *mittelbare Bundesverwaltung*, or delegated federal administration. As

a result, the Austrian Länder had only executive powers and did not have the option of passing a binding unified position. Instead, they had the right to be kept informed and the option of passing a consultative common position or providing individual, consultative positions. As a result, the federal level was in a dominant position, both during the negotiation and during the implementation phase.

### **4.3.1 Interests**

#### **4.3.1.1 Bathing Water Directive**

The Austrian interviewees from regional administrations felt affected by the proposed Bathing Water Directive. Yet, as in the German case, while they welcomed some and disliked other elements of it, on the whole, the proposal itself was seen as routine or technical business rather than a pressing political problem (Interviews 5, 10, 28). It was rather a question of bringing it more in line with Austrian preferences.

Within Austria, regional and federal interests were on the whole seen as being reasonably close (Interview 16). Thus, the executives of Vorarlberg and Carinthia and the federal Ministry of Health welcomed a reduction in the number of parameters that had to be assessed, the move to assessing quality trends over 3-4 seasons rather than on the basis of one single season and a better online information policy for the general public. All three actors rejected the idea to apply the Bathing Water Directive to other recreational activities like surfing or canoeing which would extend the bathing season (Interviews 5, 10, 11, 16). There were slight disagreements over the new stricter standards. Vorarlberg would have preferred the old standards (Interview 5), but the position that prevailed at the Austrian level was one in favour of standards that would be stricter than the old ones. The latter position was based on the argument that Austria would be better able to highlight its high bathing water quality under strict standards than under generous ones. Thus, stricter standards would benefit Austrian tourism. This ‘race to the top’ was, for example, backed by the federal Ministry of Health and Carinthia, where several lakes have drinking water quality (Interviews 11, 16, 22). Vorarlberg also presented a more critical position on the reduction of the number of measurements and its effect on the reliability of the

statistical evaluation, but, according to the interviewees, at a late point in the negotiations (Interviews 5, 10).

In general, the national expert recalls some special interests, such as a problem that Vienna had with a bathing site that was also used as a means to divert water from the Danube in the case of flood risk, but no real conflicts (Interview 16).

#### 4.3.1.2 Flood Risk Management Directive

The Flood Risk Management Directive is a special case in that its early negotiation stages fell under the Austrian presidency and became one of its priorities. The reason why Austria decided to champion this proposal despite political disagreements between member states is that Austria had suffered considerably from floods in previous years. In particular, heavy flooding in Austria, Germany and the Czech Republic in 2002 that led to the introduction of a European solidarity funds caused serious concerns (Interview 13). As a result of the presidency, the federal level was less interested in achieving specific substantial goals and first and foremost wanted to reach a political agreement in the Council (Ibid.). This also meant that potential demands of the Länder could only be taken into account to a limited extent, as the federal level did not want to pursue a national position as such.

However, in terms of interests, the three main actors appear to be broadly in agreement. Both Vorarlberg and Carinthia welcomed the Directive and felt that they had a high enough level of flood protection to be able to implement it (Interviews 4, 12). In particular, they welcomed the management aspect. In both regions, the feeling was that their level of technical expertise in flood protection was good, but that effective flood risk management was hampered by the need for spatial planning, natural disaster and different branches of water management to cooperate (Ibid.). The interviewees reiterated the concerns raised by a study of the Austrian Institute for Economic Research (WIFO), that the granting of planning permissions for areas at risk undermined flood protection (Sinabell and Url: 2007; Interview 12). The interviewees felt that the new Directive would force administrations to cooperate more effectively and to abide by rules more consistently. Similarly, both regions as

well as the Ministry of the Environment were concerned about the possible duplication effect of the Directive, as the initial proposal appeared to force the member states to revise or replace existing measures. In Carinthia, for example, 75 percent of water courses were already covered by risk maps (Ibid.). In addition, many of these measures require important investments in the collection of data (Interview 4). In that respect, all three actors welcomed the insertion of transition rules into the final Directive that would allow all instruments adopted before 2010 to remain in place provisionally (Interviews 10, 13).

The main point of conflict between the federal and the regional level at the time of writing was inner-Austrian in nature. Thus, the Länder were concerned that the Directive might have an indirect negative effect on regional competences as it was expected to affect spatial planning, which is one of the rare exclusive Länder competences in Austria. The main fear was that the federal level would use its transposition powers for the Directive to encroach upon spatial planning and legislate in an area of regional competence (Interview 12).

### **4.3.2 The Involvement of the Länder in the Formulation of the National Position**

The coordination process for the Austrian national positions on the Flood Risk Management Directive and the Bathing Water Directive centrally involved the two main coordination instruments between regions and between regions and the federal level, the Liaison Office of the Austrian Länder and the common representative of the Länder. It also reflected the juxtaposition of elements of bilateral and collective negotiation in the Austrian domestic European policy-making system.

#### **4.3.2.1 The Role of the Liaison Office of the Austrian Länder**

The Liaison Office of the Austrian Länder, an administrative structure co-financed by the Länder, was involved in the coordination of the Austrian national positions on bathing water and flood risk management through its two main functions, as a hub

for information exchange between regions and between the federal level and regions and as a coordinator of the nomination process for the common representative of the Länder. In addition, on occasion, it also acted as a representative of the Länder.

#### ***4.3.2.1.1 A Hub for Information Exchange***

The central role of the Liaison office as the hub of information exchange meant that it was involved in the coordination of the national position from the start of negotiations. It was particularly active during the early stages of the negotiations, when it fell to it to coordinate the initial flow of information (Interview 15). It acted as a link between the regions and the federal level by forwarding information from the lead federal ministries to the Länder and by collecting the individual Länder positions for the ministries. Carinthia and Vorarlberg sent positions for both Directives. Once negotiations have started on the European level, the Liaison Office is also responsible for forwarding information from its representative in the Austrian Permanent Representation in Brussels and protocols of working group meetings by the federal ministry or common representative (Interviews 12, 16).

In addition, the Liaison Office provides horizontal coordination as it is also its role to circulate the individual positions of the Länder to the other Länder. As the Directives fell under federal competences, the Länder did not have the option of passing a binding unified position. They could, however, have passed a non-binding common position. Yet, no attempt was made to coordinate a common position in either case, so that a more prominent horizontal coordinating role on the part of the Liaison Office was not required. This is not unusual. According to an official from Vorarlberg, when the Länder have serious concerns about an issue, they will try to reach a common position even though it is non-binding, as it puts the federal ministry under greater pressure. But if there are only smaller points, the Länder may not feel that the additional effort is worth it (Interview 10).

In the case of the two Directives, individual Länder would send position papers to the Liaison Office to circulate to the other Länder for comments rather than undergo a formal coordination process (Interview 15). However, when there is no common

position, the other Länder may not necessarily react to individual positions. Thus, Vorarlberg sent in a second position paper on the Bathing Water directive in 2003, criticising the new methods, but the official is unsure about whether the federal level took it up or what the other Länder thought about it (Interview 10). Similarly, the Carinthian common representative for the Flood Risk Management Directive recalls sending around a report over the Directive and the position of the common representatives on it, but never received a reply (Interview 12). Thus, the absence of a unified or common position appears to weaken the collective reflexes of the coordination system more generally.

Another element that can weaken the collective traits of the Austrian system is the possibility that Länder send their positions directly to the lead ministry. In that case, the positions may not get circulated to the other Länder, as this is not the task of the ministry. Thus, the Austrian national expert on bathing water recalled initially receiving positions from all Länder, but the interviewee from Vorarlberg only found a few Länder positions on file (Interview 16). She assumed that this was due to the remaining positions not being sent via the Liaison Office (Interview 10).

On the whole, the Länder that provided common representatives – Carinthia for bathing water and floods, Styria and Lower Austria for floods - were also perceived as being the most active Länder in the domestic coordination process (Interview 15). This was perceived to be linked to the human resources of a region, which in turn were seen to be determined by the size of the region or the presence of specialist networks within the region (Interview 14).

#### ***4.3.2.1.2 The Nomination of the Common Representative***

The second main task of the Liaison Office was to coordinate the nomination process of the Common Representatives of the Länder. There is usually a common representative for every dossier that affects the Länder. The Liaison Office tends to adopt a neutral stance during the coordination process, but it can happen that it sounds out people it knows to be well-suited (Interview 15). Similarly, the federal ministry may make an informal suggestion if they have somebody in mind (Interview

14). The Länder normally agree upon a candidate informally so that there is a common candidate for all Länder (Interview 12). On rare occasions, it can also happen that none of the Länder puts forward a candidate. This usually means that the Länder do not feel affected, neither in their legislative nor in their implementation powers. In that event, the Liaison Office will continue to keep the Länder informed (Interviews 12, 15).

The common representative for bathing water came from Carinthia. She had been nominated in 1997 to manage bathing water issues under the old Directive and stayed on. It was felt that she already had the expertise to bridge health and water concerns (Interview 11). Thus, just as in the German case, the long history of European coordination of bathing water issues meant that certain key coordinating positions were already filled. For the Flood Risk Management Directive, however, there were three candidates showing that several Länder were eager to adopt a more active stance on this new topic. One of them came from the case study region Carinthia. In the end, Lower Austria agreed for its candidate to become second deputy, allowing Styria to provide the main representative and Carinthia the first deputy (Interview 12). The nomination of more than one common representative was also convenient, as they could share the workload that came with the extensive involvement in national coordination meetings and European working groups (Ibid.). Carinthia had decided to put forward a candidate because of its expertise in the field and its networks. It benefits from the proximity of and cooperation with an international research institute on natural disasters, INTERPREVENT. In addition, Carinthia has a tradition of cooperation with Bavaria and Italy. It had thus accumulated personnel with the necessary expertise and willingness to take an active stance internationally. It also felt that an active role would pay off if it allowed Carinthia to shape the results of the negotiations (Ibid.).

#### ***4.3.2.1.3 Representing the Länder***

Normally, once the Länder have agreed upon a common representative, he or she takes over the coordination process during the negotiation, transposition and

implementation of the Directive. There were a number of meetings at the federal level, though, to which only the Liaison Office was invited. One important example are the preparatory meetings for upcoming Council meetings on environmental matters within the ministry of the environment. As those meetings cover a variety of issues, Länder experts with their focus on specific dossiers are not invited. The role of the Liaison Office is then to represent and inform the Länder (Interview 15). Similarly, while Länder representatives rarely attend Council meetings, the Liaison Office has a representative in the Permanent Representation in Brussels with access to COREPER and Council meetings. It is important to note, though, that the Liaison Office itself serves an administrative purpose. Therefore, while it channels information and speaks on behalf of the Länder in certain situations, it does not itself adopt positions on the issues in question (Ibid.).

Thus, overall, thanks to its regulatory role in the flow of information and its privileged access to the federal and European level, the Liaison Office provided one important vertical channel for the regions. At the same time, it also played an important role in facilitating horizontal coordination, especially before the common representatives were determined.

#### 4.3.2.2 The Common Representative

Once the common representatives had been nominated, the Liaison Office followed the coordination process less closely as the representatives took over the organisation of inter-Länder cooperation and the task of representing the Länder at the federal level and in Brussels (Interviews 14, 15). Their most important task domestically is to represent the concerns of the Länder vis-à-vis the federal ministry, as meetings between all Länder experts and the lead ministry are rare during the negotiation stage. The case of the Flood Risk Management Directive illustrates this point. Here, due to the Austrian Presidency, the Ministry of the Environment was very concerned with the good internal coordination of the Austrian position, as it wanted to avoid the emergence of domestic issues at the European level. Yet, prior to the adoption of the Directive, the coordination with the Länder was via the common representatives,

who took part in several coordination meetings before the start of negotiations in late 2005 and in early 2006, during the presidency. It was only after the adoption of the Flood Risk Management Directive that federal-regional working groups were convened and experts from all the Länder included (Interview 14). Thus, during the negotiation process, it was the task of the representatives to keep the Länder informed of new developments and to stay informed about changes in Länder positions. The Carinthian common representative recalls meeting once or twice with the other regional experts for this purpose. During these meetings, his impression was that the level of trust between the Länder and the representatives was good and that the Länder did not feel the need to interfere much with the work of the representatives. The common representatives then also submitted a final report on their work at the end of the presidency in summer 2006 as well as protocols of the council working group meetings to the regions (Interview 12).

#### 4.3.2.3 Initiatives by the Federal Ministry

The third way of influencing the national position was through direct communication with the federal ministry responsible for the Directive, i.e. the Ministry of Health for the Bathing Water Directive and the Ministry of the Environment for the Flood Risk Management Directive. One most basic way of doing that would be to send individual positions directly to the ministry rather than to the Liaison Office. However, as the Liaison Office does not amend or comment on Länder positions, it is questionable whether this makes any difference. Also, neither of the case study regions appears to have availed itself of this means. The Carinthian experts for bathing water and floods did of course benefit from the opportunities for direct contact that their role as common representatives entailed. Apart from being the central interlocutor for the federal ministry, they also had direct contact with relevant federal officials through their participation in European level meetings (mainly at the level of experts) (Interviews 11, 12). Interestingly, the common representative for floods felt very closely incorporated into the proceedings and well consulted, despite the fact that the federal level had only a limited ability to defend a national position due to the Austrian presidency (Interview 12). This suggests that the ministry's

efforts to give the Länder extensive information on and access to the negotiations both on the domestic and European level did indeed pay off. On the other hand, it was felt that despite the absence of conflict, the Bathing Water Directive came still from above and that the Länder could at times have been offered more input or information (Interview 11).

Other forms of direct contact depended on initiatives of the federal ministries. For the Flood Risk Management Directive, as part of the effort to prepare for the presidency, the Ministry of the Environment convened a working group to which the common representatives, representatives of the Association of Local Authorities, the Chamber of Commerce and other stakeholders were invited. The Carinthian common representative recalls participating twice in such working groups in 2005, before the first Commission proposal had even been presented (Interview 12). From the point of view of the Ministry, the objective was to explain that under the presidency the national (and regional) experts were expected to interfere as little as possible in the work of the presidency and to make this acceptable to the regions by offering them a greater presence (Interview 13). There were also three inner-Austrian coordination meetings for the Austrian position on floods during the presidency.

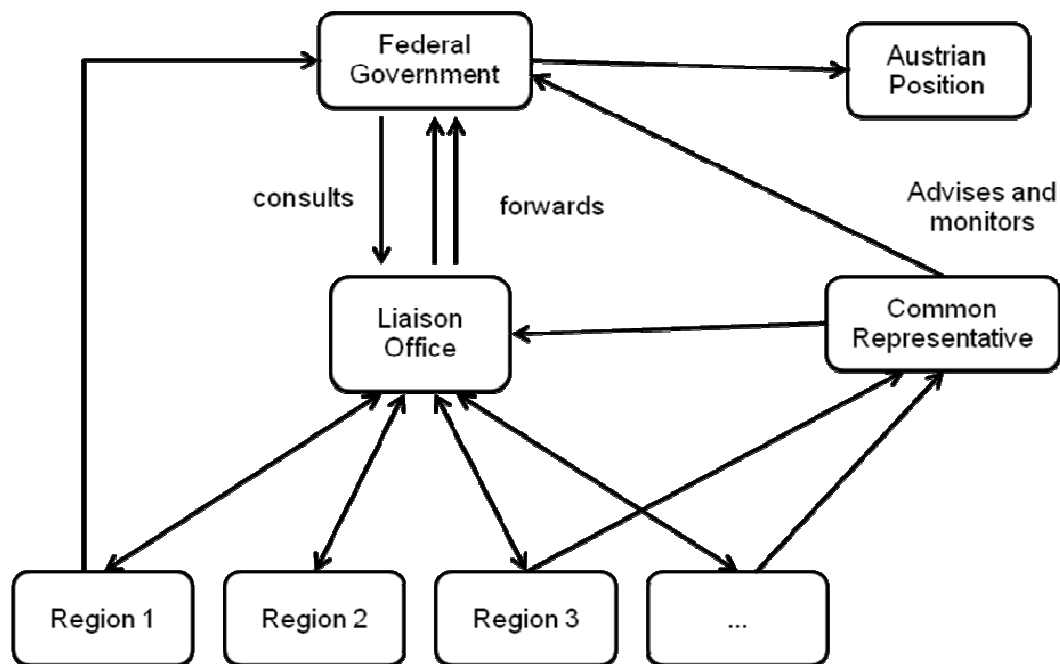
The close federal-regional cooperation continued at the transposition and implementation stage, in the form of two working groups on the administrative level convened by the federal ministry to discuss the legal and technical aspects of the Flood Risk Management Directive. The Working Group on technical implementation met between July 2008 and February 2009, after which the working group on legal matters was established. The Liaison Office participated in the coordination of these, inviting two experts per Land to join. It was not present at the actual meetings, though (Interview 15). Working groups have become a common way of addressing transposition and implementation issues, where they are perceived to work well (Interviews 4, 12). They are less common at the negotiation stage (Interview 15). On a less regular basis, the twice yearly meetings of the Directors of the water administrations of the Länder can also be adapted to address problems of implementation (Ibid.).

Compared to the Flood Risk Management Directive, the Bathing Water Directive relied much more on the coordination through the common representative, the written exchanges with the Länder and, on specific points, telephone or email exchanges with the regional experts that had expressed a concern (Interview 16). The exchanges generally took place on the administrative level (Interview 5). There were no working groups at the negotiation stage. In 2006, at the implementation stage, there were no working groups as such, but an information meeting with the Länder on the results of the Directive. The national expert felt that the Directive did not leave much margin of manoeuvre for implementation as it was so detailed (Interviews 11, 16). Instead, the federal level prepares the transposition and then presents the drafts to the Länder for comments (Interview 16).

#### **4.3.3 Summary – A Mixed Bilateral-Collective System**

When the Austrian Länder adopt a unified or common position, the Austrian logic of coordination is similar to the German one. There are two steps, coordination between Länder and negotiation between the Länder and the federal government and there is a common representative who represents the Länder position vis-à-vis the federal government. However, when the Länder do not have the option of a binding unified position, they often do not agree a common position at all. In that case, especially during the important early stages, the coordination process consists of bilateral consultation. The federal government informs the Länder and the Länder respond individually. The presence of the Liaison Office does not make the process much more collective at this stage, as it is essentially neutral and merely circulates papers among actors. However, once written Länder positions exist and once a common representative has been appointed, both the representative and the Liaison office can provide a limited coordinating function, as they loosely compile a Länder position to defend vis-à-vis the federal government and to compare European developments to. Thus, the result is a complex system that combines bilateral relations and actors representing the entire regional level.

**Figure 10: Coordinating the Austrian National Position in the Absence of a Unified Position**



## 4.4 Belgium

### 4.4.1 Interests

#### 4.4.1.1 Bathing Water Directive

While both regions were in principle in favour of the Commission proposal, there were some differences in the Flemish and Walloon positions on the Bathing Water Directive, which could however be reconciled. The third region, Brussels, was less affected due to its urban nature and played only a minor role even within Belgium (Interview 21).

Flanders had only few bathing sites that experienced problems with water quality. It thus welcomed that the proposal for a Directive emphasised management and included provisions on bathing water profiles, information policies and public consultations, whereas the old Directive had simply been about measuring quality. Belgium had already a system of symbols in place where sad, neutral and happy smilies indicated the quality of the water to the public. It was not even overly

concerned about the prospect of the inclusion of recreational activities in general into the Directive, as it felt that this was feasible, even though it entailed an increase in the workload and higher costs. Flanders had traditionally taken a larger number of samples at the coast and was unique in Europe with 40-41 measurements per season. The main concern for Flanders was thus that the standards might become overly stringent and that it might have a negative public effect if bathing sites that had been presented as “good” for years would suddenly receive a lower rating (Interview 25).

By contrast, Wallonia had experienced greater problems under the old Bathing Water Directive and recently lost an infringement procedure. Thus, it was more cautious in its approach to the new Directive and, like many other member states rejected the inclusion of other recreational activities into the Directive. It also opposed the consultation of the public on the nomination of bathing sites, as it was felt that the nomination of bathing waters should rely on objective criteria such as the number of bathers. At the same time, it appreciated the greater flexibility that the Directive afforded. Thus, under the old Directive, it was difficult to take a bathing water off the list once it had been registered. It was felt that under the new Directive, it would be possible to strike off bathing sites that could not be improved. Wallonia also appreciated the emphasis on management measures, as it meant that poor water quality would not be penalised if efforts were made to remedy the situation. The reduction in the number of parameters was welcomed as well. However, the stricter standards were perceived as worrying, due to the problems under the old Directive. In particular in the case of rivers, Wallonia experienced problems with the sewage systems of some villages and camping sites as well as with diffuse pollution from agricultural activity. In particular, it was perceived as difficult to install fences along rivers in areas that could be affected by flooding and to oblige farmers to provide cattle with water in remote areas, such as in the Ardennes (Interview 21).

Overall, while Flanders was initially more ambitious, the regions agreed to push for less stringent rules, as it was felt that regions could always introduce additional measures if they wanted to (Ibid.).

#### 4.4.1.2 Flood Risk Management Directive

In the case of the Flood Risk Management Directive, the coordination of the Belgian national position was more difficult, as Flanders and Wallonia were affected by the issue in different ways due to Wallonia being an upstream region from the Flemish perspective. As in the case of bathing water, Brussels was not much affected (Interviews 20, 24).

For Flanders, river-flooding is a major issue, as it is a densely populated region with many cities historically located in river valleys. Also, much new housing and industrial activity is located in flood areas. Coastal flooding, by contrast, is relatively rare. The last major coastal flood was in the 1950s. The discussion on climate change also makes planning ahead more relevant (Interview 20).

On the whole, Flanders thus welcomed the initiative. However, the importance of river-flooding meant that Flanders was affected by water coming from other countries and regions, notably France and Wallonia, and depended on flood protection measures in those regions, as Flanders itself has only a few small catchment areas. Catchment areas for the Meuse, for example, would be in Wallonia. Here, the dual nature of Belgian federalism and the exclusively regional nature of the competence caused problems.

“In fact we [Flanders and Wallonia] are the same country but with different competent authorities you get sometimes discussions (...). On the level of water management, Flanders and Wallonia are sometimes two different countries.” (Ibid.)

Thus, it was in the interest of Flanders to get the Flood Risk Management Directive to require upstream measures, while Wallonia was concerned that its choice of flood protection instruments would be limited by obligations to take downstream regions into account and that this would result in additional costs, from which it would not benefit. In particular, these concerns came to the fore in discussions on Art. 9 of the original proposal and placed the Belgian domestic coordination processes under strain (see below) (Interview 24; Written communication 2).

#### 4.4.2 Coordination of the National Position

The coordination of the Belgian position on the two Directives was similar in that it took place mostly on the regional level and in that Flanders and Wallonia were more active than Brussels due to a higher level of policy salience. The main difference was that due to the conflict potential of flood risk management, both Flanders and Wallonia were keen to be actively involved in the negotiations both at the European and national level and thus agreed to have two pilots, one from each region (Interviews 20, 24). This situation is somewhat unusual, and reflects the reluctance of the two regions to relinquish control over this dossier.

For Flanders, the Vlaamse Milieu Maatschappij (VMM) was in charge of coordinating the Flemish position and providing the Flemish pilots for the two Directives. Coordination between different affected services within Flanders was achieved through the CIW, the Coordination Commission of Integrated Water Management. The CIW has different working groups, such as the working group on water quantity, which have in turn sub-working groups, as on the legal transposition of the Flood Risk Management Directive. The working groups would meet about 4-5 times a year, the sub-working groups more often as required (Interview 20). For Wallonia, the service responsible for the coordination of the Walloon position was the DGARNE, the Direction générale opérationnelle Agriculture, ressources naturelles et Environnement.

In general, the level of cooperation between the regions *prior* to the European plans for the Directives was very limited. Coordination meetings with experts from other regions were rare in both policy areas (Interviews 20, 21, 25).

Since its Council presidency in 2001, Belgium has coordinated its position through “pilots”. Each dossier has appointed a regional or federal expert for the purpose of coordinating the Belgian position (De Baere 2004; Interview 23). As the Directives fell into exclusive regional competences, the pilots were regional experts. They were identified in the CCIM, the Cooperation Committee for International Environmental Policies, which is chaired by the national level and was established by the Cooperation Agreement of 5 April 1995 (CCPIE Groupe Directeur Eau, 23/03/2009).

In the case of exclusive regional competences, the CCIM comprises the four ministers (three regional, one federal) and the heads of administration. In addition, the Prime Minister and the Minister for Economic Affairs can attend. The decision on the pilots is reached by consensus (Interview 23). For the Flood Risk Management Directive, the Flemish and Walloon co-pilots were appointed in late 2004/2005, when there was still talk of a Flood Action Programme on the European level (Interview 20). In the case of the Bathing Water Directive, the pilot was a Flemish expert who started to be involved in the coordination in 2000. Flanders was seen to be more affected due to its coastline and the related tourism aspect (Interview 25).

The role of the pilot is to coordinate the Belgian position with the regional experts and, if necessary, the federal officers. However, according to the interviewees, the Belgian positions on the two Directives were virtually exclusively agreed between the regions (Interviews 21, 23, 25). For the Flood Risk Management Directive, the two co-pilots met regularly before Commission committee meetings to prepare the common position. Usually, the coordination would start with emails informing about new developments on the European level. Each region would then internally coordinate its position. The regional positions were then circulated to the other regions. Finally, the day before the Commission or Council working group meeting or on the same day, the regional experts would meet to work out the common position. Sometimes even that was done by email (Interview 20). For the Bathing Water Directive, coordination started as early as 2000. Again, the coordination between regions was mostly done via email and in meetings, with most meetings taking place in Brussels before Council working group or Commission committee meetings (Interviews 21, 25). At the level of the COREPER, though, the pilots still coordinate the Belgian position nationally, but the Permanent Representation drafts the position that is to be represented in the COREPER as the negotiations become more political (Interview 23).

Once the pilot had elaborated a compromise, it was formalised in the DEA (Directorate for European Affairs). DEA meetings comprise the relevant ministers, their advisors and the heads of administration. The deputy prime ministers can also

attend. The DEA's main tasks are to prepare the mandate for the Council of Ministers, to deal with very political files and to solve internal conflicts. Decisions are again taken by consensus as defined as the absence of objections. Failure to reach an agreement leads to abstention in the Council. The Ministry of Foreign Affairs convenes the meetings. For the Flood Risk Management and Bathing Water Directives, there were no specifically dedicated DEA meetings. Instead, they were agreed in general meetings (Ibid.). However, for the Flood Risk Management Directive, the inter-regional compromise on upstream measures required additional internal discussions. Thus, on top of the DEA, an inter-cabinet working group was needed to reach a consensus on the Belgian position on the sharing of costs of upstream measures by downstream regions (Written communication 2; Interview 20).

#### **4.4.3 Implementation**

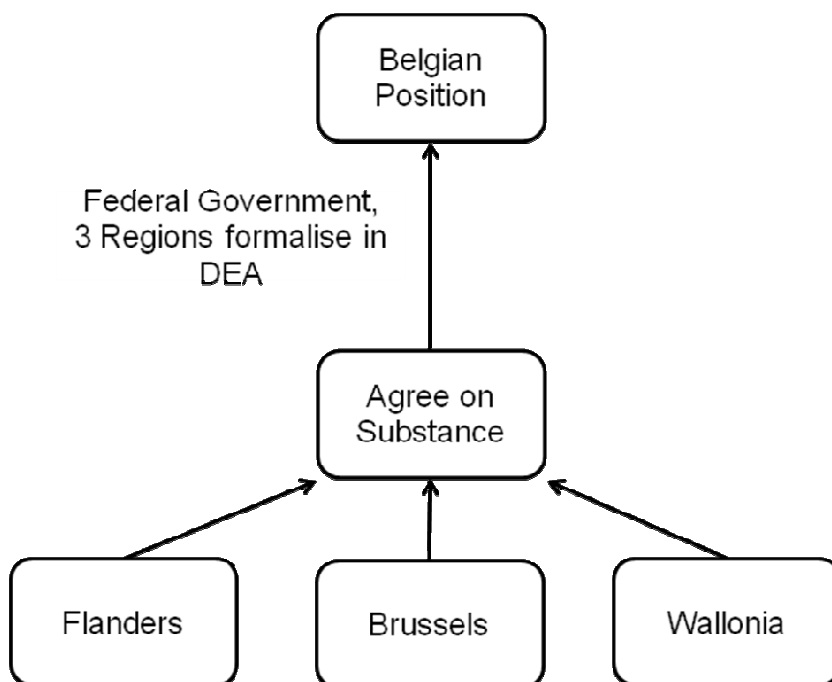
At the implementation stage, cooperation between regions in both cases was nearly exclusively limited to the coordination that takes place at the European level in committees and working groups. Transposition in the regions is virtually independent (Interviews 20, 21, 25). There were at best one or two meetings of the regions, legal experts and the federal ministry on legal matters, but nothing systematic. There was no intention to harmonise transposition and implementation in Belgium, other than for those parts that had to be coordinated due to reporting requirements (e.g. the timing of the transition to the new bathing water standards) (Ibid.).

#### **4.4.4 Summary**

The case studies confirm the strengths of the Belgian regions in domestic European policy-making in policy areas that fall under their exclusive competences. The formal coordination in the DEA confers equal importance upon each government, regional or federal, through the consensus requirement. Arguably, the federal administration has a slight advantage as it chairs those meetings and can thus act

more easily as a broker or influence the agenda. However, just as in the case of the German Bundesrat, the formal mechanisms often only serve to formalise agreements that have already been reached. Thus, since 2001, a pilot is in charge of the substantive coordination of the Belgian position at the level of civil servants and the DEA then confirms this position or resolves conflicts. In the case of the two Directives, the pilots were regional experts and the substantive coordination at that level generally involved regional experts only. As a result, the federal level played a minor role in the formulation of the Belgian position, and the Belgian system is better represented by Figure 11 than Figure 6. The most active federal actor was the Permanent Representation, as it had the lead in Council working groups and in COREPER meetings and was thus involved in the presentation and delivery of the position. One could thus argue that the regions are even more influential in the informal mechanisms than they are in the official ones, as federal representatives play virtually no role in informal coordination on policies that fall under exclusive regional competence.

**Figure 11: The Coordination of the Belgian Position including Informal Processes**



A second interesting finding is that the Belgian regions cooperate closely in the definition of their national position, despite the fact that Belgium is a dual federal state where competences are as far as possible disentangled. This confirms Beyers and Bursens' argument that European integration makes the Belgian system more cooperative (2006a). At the same time, there are limits to the transformative power of European policy-making on the Belgian state. Cooperation is concentrated within specific periods of time and does not have the effect of increasing cooperation in the long term. There was little cooperation between the Belgian regions before the European initiatives or outside international fora such as the UNESCO and the international river basin commissions, even in the case of bathing water, despite 25 years of European regulation in the field. Similarly, a glance at the level of coordination for implementation and transposition purposes confirms that the Belgian regions still very much prefer a dual federal system where coordination happens if and when it is deemed necessary or appropriate.

## ***4.5 The United Kingdom***

### **4.5.1 Interests**

#### **4.5.1.1 Bathing Water Directive**

Scotland had some difficulties meeting the standards under the old Directive. The fact that about 40 percent of its bathing sites only complied with the mandatory standards meant that new, stricter standards could lead to an increase in “failed” bathing sites. In addition, it was felt that it would be difficult to comply with higher standards, even if investments were made. Thus, upgrades to the sewer system were seen to improve the quality of water along the East Coast, but the West Coast was also affected by diffuse pollution. Tackling the problematic combination of agricultural pollution and wet weather is less straightforward than fixing sewers, though (Interview 32). In addition, bathing water does not play as big a role in Scottish tourism as in the Mediterranean, for example, which means that investments do not pay off in the same way (Interview 19).

Working with Professor David Kay, whose studies had been one of the scientific bases for the Directive and who supported stricter standards for health reasons, Scotland developed a system to predict poor water quality based on the weather.<sup>34</sup> The result was an electronic signalling system where updates could be provided in real time. In addition, the Scottish government developed a four point plan that involved keeping the cattle away from water courses and providing water for cattle separately, thinking about how the fields were to be drained and prevent suds from entering the water courses. Scotland then pushed for a balanced approach to proportionality and health concerns, arguing that bathing sites could be open in general and closed when problems occurred. It offered to take samples during rainfall, as long as it was noted that the bathing water was closed at the time. It pushed for the possibility of discarding failed samples when bathing waters were closed at the time and provided that a second sample had been taken once the bathing site reopened (Interview 32).

Within the UK, the positions were generally similar. The UK was generally wary of the standards getting too strict, despite the fact that they were based on research done in the UK. In the past, it had also faced infraction proceedings (Interviews 19, 33). However, as Scotland had more problems meeting the standards of the old Directive than the rest of the UK, it was keener to get the Commission to take into account diffuse pollution and devise ways of how to deal with its specific geographical problems (Ibid.). From the Scottish point of view, there were thus some tensions, as Scotland emphasised from the start the importance of adapting the Directive to the circumstances of rainier member states by allowing, for example, the temporary closure of bathing sites or the discarding of certain samples, whereas DEFRA went into opposition to the Directive. However, over time, the UK as a whole converged towards a strategy of accepting the Directive, albeit subject to certain conditions under which the standards could be met (UK government, Briefing, 8/03/2005; Interview 32).

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<sup>34</sup> Professor David Kay (University of Aberystwyth) was one of a group of scientists who studied the impact of certain concentrations of bacteria on human health and their origin. Their findings influenced both WHO guidelines and the EU Bathing Water Directive (2006) in their stance on bathing water pollution that is not caused by sewage spills. He was thus considered to be one of the most influential scientific experts by interviewees from all four member states and his backing for certain elements of the Scottish position would be seen as an important asset.

#### 4.5.1.2 Flood Risk Management Directive

In the case of the Flood Risk Management Directive, the Scottish interest was seen to be very close to the UK interest in the early stages and representation was left to DEFRA (Oral communication 1; Interview 34). A common concern at the early stage, which failed due to the resistance of the other member states, was an attempt to limit the Directive to cross-border issues. As the UK has nearly no land borders, this would have left the UK unaffected with the exception of Northern Ireland (Ibid.; Council, No. 5540/06 ENV 37 CODEC 58: 98).

In general, the UK questioned the need for further legislation and pointed towards the existence of international commissions for the major cross-border rivers in Europe. However, once the UK accepted that there would be a Directive and that it would apply to the UK, the biggest concern was that the original draft was seen as very prescriptive in terms of measures and thus very expensive to implement. In order to bring the costs down, the UK supported a multi-step approach. First the preliminary assessment would identify which areas were at risk. Then in the second and third steps, flood risk mapping and flood risk management plans would only be applicable to the zones that were actually at risk. It was estimated that preliminary assessments could reduce the costs by 100-120 million pounds for the UK alone (Interview 34).<sup>35</sup> One of the few issues where internal negotiation was necessary was the timeline, where Scotland wanted more time for implementation than the rest of UK (Interview 34).

#### 4.5.2 Coordination of the National Position

The coordination processes of the national positions on the two Directives followed similar patterns, albeit with different levels of internal agreement. Due to the high level of agreement on the Flood Risk Management Directive, the coordination of the UK position required little internal negotiation (Written communication 1). It was only during the negotiation stage, when the devolved government developed an

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<sup>35</sup> Cf. DEFRA Flood Management Division, *UK Response to the EU Consultation on a Floods Directive Proposal*, [ec.europa.eu/environment/water/flood\\_risk/consult.htm#results](http://ec.europa.eu/environment/water/flood_risk/consult.htm#results), accessed 26/04/2010.

active interest in formulating a Scottish policy on floods, that Scotland became more active (Interview 36). There was initially disagreement on how to approach the Bathing Water Directive, though.

In both cases, the Scottish administration received information on EU developments from DEFRA, drafted the Scottish position and sent it on to DEFRA (Oral communication 1; Interview 19). On the formal level, the Memorandum of Understanding specifies that the UK negotiates on behalf of the entire UK, but that it does so on the basis of a position that has been agreed with the devolved executives. This is normally done through ministerial correspondence. In the case of the Flood Risk Management Directive, there were two to three rounds of letters during the negotiations (Interview 34). In the case of the Bathing Water Directive, these write-arounds also happened before every major Council meeting (Interview 33).

For both Directives, most of the internal coordination took place at the administrative level through a mixture of phone calls, emails, meetings and video-conferences. For the day-to-day business on flood risk management, the DEFRA expert formed a virtual team within the UK government system. It involved people from the Environment Agency, from engineering and colleagues from the devolved administrations. This team was copied in at every turn of the negotiations, from Council working groups to the briefing of MEPs (Interview 34). For the Bathing Water Directive, a policy lead group met between once and three times a year, depending on the phase of the negotiations (Interviews 19, 35).

Apart from this, the Flood Risk Management Directive would also have been discussed during meetings of the floods divisions, which take place quarterly and address general business (Interview 34). The coordination of the position on bathing water benefited from the old Directive, which had led to bathing water conferences organised by the environmental agencies about every 18 months. They were partially sponsored by Defra and the devolved governments, who often also sent officials to attend. As a result, the experts knew each other through this network. The 2006 meeting in Northern Ireland even included a Commission desk officer as a speaker on the Directive (Interviews 19, 31).

On flood risk management, the regional input into the UK position was balanced, with a slightly greater engagement from Scotland. Scotland benefited from SEPA's expertise in floods and its close consultation in the coordination process. By comparison, Northern Ireland has a smaller floods team and was less involved (Interview 34). In the case of the Bathing Water Directive, Scotland was generally seen as noticeably more active than the other administrations, probably due to its greater problems under the old Directive and its larger staff (Interviews 31, 32, 33).

### **4.5.3 Implementation**

Both the Bathing Water and the Flood Risk Management Directive were transposed separately by Scotland under its devolved powers. There was no formal coordination between transposition laws in different parts of the UK to the extent that it takes place in Germany or Austria. The administrations did, however, keep in touch as they wanted to achieve similar things (Interview 19). Thus, for the Bathing Water Directive, there were regular meetings between all four administrations, about three to four times a year (Interview 31). These implementation groups had a rotating chair, with each region chairing one meeting (Interview 33). In addition, SEPA played an advisory role through its participation in the Technical Advisory Group, where the environmental agencies exchanged expertise and best practice, and also attended the UK Policy group (Written communication 6).

In the case of the Flood Risk Management Directive, Scotland's activity picked up during the transposition and implementation phase. However, as Scotland transposed the Directive separately, this did not affect contacts within the UK much and manifested itself more in Scottish participation in European working groups. Especially under the new SNP government, it was felt that the Directive was a convenient opportunity to overhaul Scotland's flood protection policy (Written communication 3; Interview 36). The coordination process within the UK was similar to the negotiation stage, involving emails, phone calls, face-to-face meetings and more often video-conferencing. The implementation and transposition group

discussed some cross-border issues, but apart from this there is no real harmonisation of approaches within the UK taking place (Interviews 34, 36).

#### **4.5.4 Summary**

The literature on Scotland's engagement in European policy-making frequently points out the lack of horizontal cooperation between devolved executives. They explain the bilateral nature of intergovernmental relations by pointing towards three factors (Trench 2008: 222; Swenden 2009: 106). First of all, the uneven nature of devolution means that the devolved governments are often affected to different degrees. Secondly, the fact that the UK government still represents England means that even a common position of the three devolved governments would only represent about 15 percent of the population (Hazell 2000: 269-71). Finally, a lack of common borders means that cooperation between Wales, Scotland and Northern Ireland is unlikely to be triggered by cross-border issues.

The case studies confirm this claim and show that Europeanisation has not triggered a substantial increase in the level of cooperation, especially horizontal coordination, in the UK. Thus, there were no separate negotiations amongst the regions or between the central government and regions collectively. Instead, coordination generally took place in meetings that were organised by the UK lead department and in rounds of emails or bilateral phone calls that were also usually initiated by the central government. Thus, the UK department has the advantage of being in charge of the coordination process, of drafting the UK position, of representing the largest part of the country and of facing "isolated" devolved administrations in the internal negotiations.

#### **4.6 Conclusion – The Informal Effect of Formal Arrangements**

The analysis of the processes of domestic European policy-making in the case of the Flood Risk Management Directive and the Bathing Water Directive shows that

regional and central governments avail themselves of informal processes of coordination to an important extent in all four member states. Even where formal arrangements empower regions substantially, they usually serve mainly as a means to formalise agreements that have been reached elsewhere and to solve persistent conflicts. As regional officials – and in some cases politicians – spend so much of their time and effort working through informal channels of cooperation, understanding regional mobilisation in European policy-making also involves understanding these informal arrangements better. Thus, the objective of this section is to discuss how formal provisions shape how regional governments interact informally, especially with regard to the level of inter-regional cooperation.

The discussion of the negotiation of the national positions showed how informal processes of cooperation can either reinforce the logic of the formal cooperation process or change it. This is particularly true for the degree to which inter-regional cooperation takes place. In the case of both Germany and the United Kingdom, the logic of formal provisions was largely maintained or reinforced. Thus, in Germany, informal horizontal cooperation through a variety of committees in preparation of a formal Bundesrat position was extensive and is so regular that it has become highly institutionalised over the years. In the UK, no horizontal cooperation is required and no substantial horizontal cooperation just between devolved executives took place. Instead, the UK government should consult the devolved executives and it consulted them at the level of ministers and officials. Thus, regional officials only met in meetings convened by the centre (Trench 2008: 222). Whereas the purpose of the presence of federal officials at German informal meetings is to give them an idea of the common Länder position at an early stage, in the UK these meetings facilitate directly the coordination of the UK position. The absence of prior coordination between devolved executives thus means that they cannot bring the “moral weight” of a collective position to bear.

In the case of Austria and Belgium, informal cooperation changes the logic of the formal provisions, though in opposite ways. In Belgium, the idea behind formal provisions giving each actor a veto-right is that each actor comes to the table being able to exercise influence *individually in their own right*. Yet, in practice, in areas of

exclusive regional competence the regions do actually hammer out a compromise amongst themselves that is then being rubberstamped in formal committees. Thus, whereas the formal provisions foresee a one-step system where everyone comes to the table, the informal coordination process creates a two-step system where the regions agree a position and then all actors finalise it together – not entirely unlike the German system from this perspective albeit with more influential regions. By contrast, the Austrian system is a two-step system with extensive regional coordination when a binding unified position can be passed, but where that option does not exist, the system often dissolves into bilateral regional-federal communication with only loose inter-regional coordination through the common representative and the Liaison Office. On the whole, both Belgium and Austria to some extent turn the cooperative/dual logic on its head.

Informal processes can thus transform the logic of national coordination processes, but what is the logic behind these informal processes? In fact, while the findings generally suggest that informal mechanisms are more important for the substantive coordination of the national positions than formal ones, the differences between countries do suggest that formal rules matter. What is particularly relevant is the extent to which the collective or individual regional position(s) can influence the national position as a whole.

In line with the cooperative nature of the German federal system, the formal provisions for the coordination of the national position state that the regions agree on a collective position in the Bundesrat which then has to be taken into account by the federal government. When the Länder competences are affected in important ways, the procedure thus means that the Länder position is collective and influential. This procedure is appropriate for a state with sixteen regions, where bilateral negotiations with each region would de facto deprive the regions of their influence by dividing them and where a veto right for each region would make the system unwieldy. Yet, in the absence of further informal arrangements, this procedure would produce relatively rigid outcomes and most likely lead to internal conflict, as it does not foresee a genuine mechanism of negotiation between the federal government and the Länder. Instead, there would be a federal position on the one hand and a Länder

position on the other and the federal government would only learn about the Länder position after it had been formally adopted. It also contains the risk of a minority of Länder simply being outvoted, so that their interest would not be represented in the German position at all. As a result, an array of informal but well-established practices have evolved that include both Länder officials and federal experts and that allow the different levels to take the other's position into account at an early stage. It also facilitates the search for a solution that is viable for all Länder. In addition, the strong formal emphasis on the Bundesrat position as guidance for the federal government regardless of the policy area makes it difficult for the federal government to negotiate with individual Länder.

In spite of similarities at first sight, the formal provisions create different incentives in Austria. In areas of exclusive regional competence, the Austrian system also foresees a collective regional position which has considerable influence over the national position (Kovziridze 2002: 147). Here, the basic dynamics are very similar to the German system. However, there are only few exclusively regional competences and thus in the vast majority of cases even the unified Länder position would only be consultative. Yet, a unified position is difficult to reach, as it has to be taken by unanimity, as defined as a majority of Länder and the absence of dissent from the remaining Länder. In addition, unlike in Germany, where formal provisions define the Bundesrat position as the participation right of the Länder even in areas that do not fall under their exclusive competences, there is no formal requirement to reach a common position in those policy areas in Austria. As a result, the Länder rarely work towards a unified position unless it is in an area where it would be binding (Interviews 10, 15). Instead, they provide the government with their individual positions. While the common representative of the Länder will be aware of all of their concerns and attempt to coordinate them, the process remains nevertheless quite atomized.

Interestingly, despite the fact that Belgium is a dual federal state where interaction between the regions in their areas of exclusive competence is limited in a domestic context, the mechanisms for European policy-making are geared towards cooperation and coordination. The Belgian system gives regions a large amount of influence over

the national position by giving them effectively a veto right in areas of exclusive regional competence. While this may appear to give individual regional positions great influence, it ultimately emphasizes collective decision-making (Beyers, Delreux and Steensens 2004). The Belgian position is not just a compilation created by a federal government paying greater or lesser attention to the regional positions, but it is a decision based on consensus that effectively gives each actor “ownership” of the position. In addition, lack of agreement due to poor coordination would lead to a Belgian abstention in the Council, i.e. a near complete loss of influence on the part of all Belgian actors. Thus, in order to be effective, the formal mechanisms require horizontal coordination through regular meetings, email exchanges and telephone conversations. At the same time, this cooperation does not go much beyond what is necessary to ensure Belgian influence in European policy-making and is taking place only during a limited period of time.

Finally, in the UK, domestic European policy-making is dominated by vertical bilateral relationships. Both formally and informally the system strongly relies on providing the regional executives with the necessary information and collecting their reactions. Coordination between regional administrations at occasional meetings appears to be a by-product. In the absence of a clear distinction between an English and a UK administration it is unclear to precisely what extent the positions of the devolved administrations should be taken into account.<sup>36</sup> Even a collective position by Scotland, Wales and Northern Ireland could not be binding as it would still represent a minority of the population. As a result, the devolved administrations lack a clear incentive to actively seek horizontal coordination. The problem is exacerbated by the greater administrative capacity and competences of Scotland in many policy areas especially compared to Wales, but also Northern Ireland. There is therefore often no strong partner to cooperate with.<sup>37</sup>

Thus, overall, regions tend to make the effort to coordinate their position with other regions if their influence under formal provisions is to some extent contingent upon

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<sup>36</sup> The lack of distinction also puts UK officials in the difficult position of having to be territorially neutral as UK civil servants while representing England’s interest at the same time. Cf. Sloat 2000: 97.

<sup>37</sup> In the case of the Bathing Water Directive, the internal debates were strongly dominated by DEFRA and Scotland (cf. Interviews 31, 33).

successful inter-regional cooperation or can be substantially enhanced through it. As will be demonstrated in Chapter 6, these calculations apply not only to the member state level, but, also influence the formulation of European level strategies of interest representation.

# Chapter 5 – Regional Activity on the European Level in the Context of the Bathing Water and Flood Risk Management Directives

## 5.1 Introduction

Being legislative regions, the involvement of the case study regions was not limited to the formulation of the national position at home. All of the regions were also present or represented on the European level in some form. At the same time, there were noticeable differences in the extent and form of European level activity between regions.

The objective of the chapter is to analyse the extent of the regional presence on the European level for the fourteen case study regions, to identify the main similarities and differences between regions and to reflect on the impact of such activities. For this purpose, the distinctions made in chapter 3 between mediated and unmediated access will be applied. The chapter provides the empirical foundation for chapters 6 and 7, which investigate the causes of the different strategies and reflect upon the meaning of these findings for the MLG model of the European Union.

The chapter will first outline the decision-making process for the Bathing Water and the Flood Risk Management Directives, identify relevant access points for the national delegations and point out the key European actors. It will then focus on the extent to which the regional governments had *mediated* access to the European level. The discussion will focus on how the regions were involved in the national delegations (directly through a regional expert or indirectly through a common representative of the regions), which part of the negotiations they had access to (Commission working groups, which levels of the Council) and whether they were observers or took the floor. At the end of the section, the cross-country differences in the level of representation of the regions will be summarised. The third step is to analyse the extent to which the regions established *unmediated* access to the European level for the purpose of interest representation, i.e. all forms of access that – unlike Commission or Council meetings – do not require prior coordination with

the central government. It will again identify the main differences between regions. In the light of the inter-regional differences, the concluding section will then discuss to what extent the European level activity can be said to have had an impact on the outcome of the negotiations.

## ***5.2 The Decision-Making Process at the European Level – Access Points***

### **5.2.1 The Bathing Water Directive**

The decision-making process that led to the new Bathing Water Directive started off with the Commission Communication on bathing water quality in late 2000 (European Commission, Communication, COM(2000) 860 final). There was no written consultation of stakeholders. Instead, the Commission organised expert group meetings to obtain input and advice during the drafting stage. In addition, the revision of the 1976 Bathing Water Directive was discussed in its Art. 12 Committee (Interviews 29, 32).

The Commission proposal was published in October 2002. As the co-decision procedure applied under the old article 175(1) TEC, both the European Parliament and the Council of Ministers had to agree to the final text. Also, qualified majority voting applied in the Council. Due to protracted negotiations in the Council, a common position was only reached after two years (December 2004). Additional disagreements with the Parliament meant that the Directive had to go through reconciliation committee after two readings and was only adopted in the third reading, in 2006 ([www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2002/0254](http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2002/0254); Interviews 8, 29).

Prior to the first reading, the Committee of the Regions issued a consultative Opinion on the proposal, in which it welcomed the reduction in the number of parameters and the introduction of a new classification system, but expressed concerns about the cost of implementation. In particular, it demanded that bathing water profiles and

emergency plans would only have to be drawn up for problematic bathing sites and that recreational activities other than bathing be excluded from the scope of the Directive (CoR, Opinion, 29/04/2003). The Economic and Social Committee also adopted a consultative Opinion in 2003 (Economic and Social Committee, Opinion, 19/06/2003).

Once the Directive had been adopted, the Article 16 Committee was created as part of a formal comitology procedure for implementation and transposition purposes. As it is a formal committee, only one representative per member state attends and the results of the procedure are binding. However, in addition, several workshops were organised to facilitate implementation through coordination and exchange of best practice between member states. No regular informal working groups were established, as the Directive did not require such a high and sustained amount of coordination due to the long history of cooperation in the field of bathing water (Interview 29). From a regional perspective, the advantage of these informal working groups and workshops is that the one-voice-per-member-state rule no longer applies. Instead, as there is no formal voting, there is some leeway for regional positions to be expressed and taken into account (Interviews 27, 35).

## **5.2.2 The Flood Risk Management Directive**

The early drafting of the Flood Risk Management Directive started with the Commission consulting a core group of member states, France, the UK, Germany and the Netherlands, when it was yet unclear whether there would be an Action Programme, a Directive or just loose coordination. Then, a best practice document was drafted by an expert group in 2003 (Interview 27). In 2004, the Commission published a Communication, and there was at least one consultation meeting in April 2004 on the scope, aims and coordination approaches to flood risk management (European Commission, Communication, COM/2004/0472 final). It was only from 2005, though, that the Commission started to increasingly push for a Directive, as becomes clear from the minutes of three stakeholder meetings in 2005 (January, April and September 2005) and the online consultation (European Commission,

Stakeholder Meeting, Minutes, 11/04/2005; European Commission; Stakeholder Meeting, Minutes, 25/04/2005; Commission, Stakeholder Meeting, Minutes, 20/09/2005; [ec.europa.eu/environment/water/flood\\_risk/consult.htm#results](http://ec.europa.eu/environment/water/flood_risk/consult.htm#results)). The participants of these meetings were delegations from member states as well as key stakeholders, such as environmental NGOs, the European Water Association and meteorological associations (Interview 27).

The Flood Risk Management Directive was also adopted under the old Art. 175(1), through the co-decision procedure and with qualified majority voting in the Council. Unlike in the case of the Bathing Water Directive, the process was fast, with the legislative proposal being published in early 2006 and the Directive adopted in 2007, at the stage of the second reading ([www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2002/0254](http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2002/0254)).

In this case, the Committee of the Regions issued two Opinions on flood risk management or related topics. The first Opinion was a reaction to the Commission Communication and highly supportive of an Action Programme (CoR, Opinion, 16/03/2005). It was not yet known that there would be a proposal for a Directive. The second Opinion was in response to being consulted by the European Parliament on natural disasters and would have provided the Committee of the Regions with another opportunity to outline its concerns on flood risk management, especially now that the negotiations for the Directive were at a crucial stage, before the first reading of the Parliament and in the run-up to the Council common position. Yet, the document only makes reference to the proposed Directive in passing and had thus little relevance for the debate. This is in striking contrast to the way in which Bavaria, for example, used an EP hearing on natural disasters to make its point (see below) (CoR, Opinion, 8/05/2006). On the whole, the Committee was thus relatively inconsequential in the debate. The Economic and Social Committee also issued an opinion on the Commission Communication (Economic and Social Committee, Opinion, 17/05/2006).

At the transposition and implementation stage, the Flood Risk Management Directive was integrated into the Common Implementation Strategy (CIS) of the Water

Framework Directive. Thus, the Article 21 Committee of the Water Framework Directive would also take the final decisions on flood risk management. The membership was again formal, with only one representative per member state. However, as the Flood Risk Management Directive did not foresee comitology, the decisions are meant as guidance and are non-binding. In addition, informal working groups and workshops were set up. Here one representative per member state was asked to attend, but they could bring colleagues. Debates were again more open and there was less of an emphasis on national positions (Interview 27).

### **5.2.3 Summary**

On the whole, the negotiations of both Directives thus offered numerous access points to regions. On the one hand, the regions could seek mediated access through the national delegations, which were directly involved in the drafting of the Commission proposal, in the decision-making process through the Council and in the transposition process through workshops and committees. On the other hand, the regions could try to influence the position of the Committee of the Regions, seek unmediated access to the European Parliament or Commission or liaise with other regions or member states. To what extent the regions used these opportunities will be the focus of the two following sections.

## ***5.3 Regional Involvement in the National Delegations to European Institutions***

### **5.3.1 Germany**

In the case of Germany, the regional level was officially represented at the European level through the representative of the Bundesrat. For both the Flood Risk Management and the Bathing Water Directives, the representatives of the Bundesrat participated in meetings of the Council working groups during the negotiations and in Commission committees after the adoption of the Directives as part of the German delegation.

In the case of the Bathing Water Directive, the German Länder benefited from the fact that the policy had been coordinated at the European level since 1976. As the representative of the Bundesrat had been nominated in the early 1990s on the occasion of the first failed attempt to revise the old Directive, he was a member of the old Directive's Commission committee for bathing water, the Article 12 Committee. He also attended the expert groups alongside the national expert. As a result, the representative had the opportunity to keep the Länder informed at the drafting stage and to feed their positions back into the process (Interviews 8, 18, 29). This early involvement certainly facilitated the Decisions of the Bundesrat in 2001 and 2002. In the Committees, it would usually be the national expert who would take the floor. However, as the Länder are responsible for the implementation of water policies, the representative of the Bundesrat, who was also a regional expert, was occasionally allowed to speak for Germany on technical questions (Interview 18).

During the negotiation stage, the representative of the Bundesrat could attend the working group meetings of the Council. His role in the Council working groups was only consultative, though, as only the accredited representative – usually the national expert or permanent representative – can take the floor. As he could not attend every meeting in Brussels, where bathing water was sometimes only one of several topics, he would occasionally inform the national expert or the permanent representative in writing of the Länder position. In addition, he was regularly in touch with the national expert by email and phone (Interview 8, 18).

Once the Bathing Water Directive had been adopted, a new committee was set up to coordinate the transposition and implementation and to clarify remaining issues. The representative of the Bundesrat took again part in the new Article 16 Committee on a regular basis. Sometimes, a regional expert from Baden-Württemberg would come along (Interview 18). In addition, there were a number of more specific workshops, in which other regional experts would sometimes participate. Thus, the expert from Mecklenburg-West Pomerania attended a workshop on signs and symbols for the communication of water quality to the public in Pisa. The Bavarian expert took part in a working group on bathing water profiles in Brussels (Interviews 2, 7).

In the case of the Flood Risk Management Directive, the representative of the Bundesrat was only nominated in 2006 and was therefore unable to take part in the stakeholder meetings at the drafting stage (Interview 17). The Commission desk officer does however recall there being German Länder experts in those meetings, alongside the national expert (Interview 27). The representative of the Bundesrat did participate in Council working groups as an observer and, from 2008 onwards, in virtually all meetings of the Working Group Floods (WGF) under the Common Implementation Strategy (Interviews 17, 27). He regarded this involvement as particularly important, as it was felt that the Commission was trying to reintroduce some elements of its original proposal, such as a wider definition of flooding than foreseen in the Directive (Interview 17).<sup>38</sup> He also participated in the workshops on specific topics. In total, this amounted to about two WGF meetings and two workshops a year (Ibid.).

### **5.3.2 Austria**

The Austrian Länder have official access to EU institutions through the representative of the Liaison Office in the Austrian Permanent Representation and through the common representatives when they are included into national delegations.

The representative of the Liaison Office benefits from the privileged access to information that being part of the Austrian representation entails. He has also access to COREPER and Council meetings and can thus monitor the extent to which the Austrian delegation takes the unified or common position of the Länder into account at the political levels of Council negotiations (Interview 26). As only the national position can be presented in the Council and as the national position is agreed in Austria, his function is to observe as well as to ensure that the Länder are kept informed of European developments. In that capacity, he also took part in Council meetings on the two case study directives (Ibid.). As an all-rounder, the

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<sup>38</sup> Note that similar concerns were raised by a Scottish official (see below section on Scotland).

representative of the Liaison Office does not attend the more technically orientated Council working groups or Commission stakeholder meetings (Interview 22).

In addition, for the Flood Risk Management Directive, the common representatives from Styria and Carinthia were in charge of representing the Länder on a technical level in Brussels (Interview 12). As part of the strategy of the Austrian presidency to include the Länder into its work, they took part in about half a dozen meetings of the Council working groups between January and June 2006. As Austria could not defend a strong national position, the aim was to allow the Länder to experience the negotiations on difficult issues first hand, so that they would better understand how specific decisions and compromises came about. It was anticipated that countries with high levels of flood protection (like Austria) would not always be pleased with the compromises (Interview 13). As in the case of Germany, the common representatives acted mostly as observers during the meetings and used their participation to report back to the Länder and point out potentially relevant developments to them, such as the impression that the Directive could affect spatial planning (Interview 12). At the transposition and implementation stage, the common representatives were also involved in the work of Working Group F at the European level and attended various workshops (Interviews 13, 27).

By contrast, in the case of the Bathing Water Directive, the common representative of the Länder was not included in the national delegations to the Council working groups (Interviews 11, 22). She was only part of the delegation to the more technical Commission working group meetings for the old Directive and the implementation of the new Directive. During the transposition and implementation stage, this would amount to one or two meetings in Brussels per year. However, even within this technical forum, the common representative felt that the Länder had not much input into the Directive, as only the national expert had the right to vote (Ibid.).

### **5.3.3 Belgium**

In line with the principle of “in foro interno, in foro externo”, the Belgian regions played a greater role in their national delegation to European level meetings than

other regions of federal states. Thus, the only federal actor involved in the European negotiations was the Belgian Permanent Representation, especially acting as representative and spokesperson on behalf of the Regions in the Council Working Group and at the level of the COREPER.

As with the other member states at the drafting stage and the transposition and implementation stage, only experts were part of the Belgian delegation to stakeholder meetings and working groups, not members of the Permanent Representation (Oral communication 2; Interview 24). Also, as the Belgian position on the two dossiers saw very little federal involvement, the pilots and regional experts represented Belgium at this stage. In the case of the Flood Risk Management Directive, both pilots would attend, while Brussels rarely attended meetings, as it was less affected (Interview 27). In the case of the Bathing Water Directive, both the Flemish pilot and the Walloon expert would participate. The pilots and regional experts would take the floor depending on the policy salience for the region. At the drafting stage, the pilots would present the Belgian position. But it was felt that it was possible to express regional rather than national positions at the transposition and implementation stage (Interviews 20, 21, 25). Wallonia also organised a workshop on bathing water profiles in Namur during the transposition phase (Interview 21).

During Council working group meetings, the Belgian diplomat from the Permanent Representation took the lead with the pilots present as advisors. In addition, the Flemish and Walloon attachés to the Permanent Representation and an expert or representative of Brussels sometimes attended as observers. Thus, for the Flood Risk Management Directive, where there were the two co-pilots and where both regions were keen to be involved, Belgium could send up to five people to attend or watch the meeting, while other member states would send one or two (Interviews 20, 23, 24). For the Bathing Water Directive, there were usually two or three people (Interviews 21, 25).

In the COREPER, the Deputy Permanent Representative speaks on behalf of Belgium, assisted by his adviser (the diplomat/representative who represented Belgium in the Council Working Group). The pilots still contribute to the development of the Belgian position, but are not present in the COREPER. The

regional attachés to the Permanent Representation are, however, entitled to attend and often attend as observers if the negotiations are of interest to the region (Interviews 23, 24, 25).

At the level of the Council of Ministers, the Belgian delegation was always led by a regional minister, subject to six-monthly rotation, as the two dossiers fall into an exclusively regional competence. The federal minister could have attended as assessor, but it is unlikely that this happened, as Belgian national or federal ministers rarely attend in this function (Interviews 23, 24). According to the Flemish attaché, her task was to monitor the political developments, especially during COREPER and Council meetings. Her task grew before a Council of Ministers, as she had to brief her Minister and his cabinet on the state of negotiations and open issues. In general, her role is advisory. Thus, she would generally observe the work of the different levels of the Council and check that the Flemish position was taken into account, but not participate in the meetings themselves. In addition, she would support the Flemish pilots and advise them on how to proceed. This is important, in that pilots, who are generally policy experts, may not always have much experience in Council negotiations. Also, in those cases where a Flemish minister sits on the Council, she would brief him on the state of the negotiations from the Flemish perspective (Ibid.).

#### **5.3.4 The United Kingdom**

In the case of the UK, European decision-making is a reserved matter and thus under a UK lead. However, if negotiations affect devolved matters, officials from the devolved administrations are normally included into the UK delegation.

For the Bathing Water Directive, the UK was generally well represented in Commission stakeholder meetings and expert groups preparing the proposal, as part of the background research on health had been commissioned by the UK. It had thus a lot of expertise to offer. Scottish officials were included in to the UK delegation under a DEFRA lead, attended expert group meetings regularly and gave presentations on their experience (Interviews 29, 33). Also, Scotland was represented

in the Article 12 Committee under the old Directive, where the proposal was discussed as well (Interview 32).

At the level of the Council, no Scottish experts took part in the UK delegation, but occasionally somebody from the Scottish Representation would observe the working group meetings (Interviews 32, 33).

At the implementation stage, the Scottish administration no longer participated in meetings at the European level. However, as the main technical implementing body in Scotland, SEPA did attend technical working groups alongside the Environmental Agency on standards and profiles (Interviews 31, 35).

Scotland's participation in the negotiations of the Flood Risk Management Directive was somewhat different, due to the late surge in interest. Thus, DEFRA did include the devolved administrations in the process of stakeholder and consultation meetings at the drafting stage, but the experts of the devolved administrations did not always attend. Scotland would attend more often than the others, though (Interviews 34, 36). Similarly, the UK was mainly represented by the Permanent Representation in the Council, with the DEFRA expert and an expert on engineering present as advisors. A Scottish expert would only come along once or twice and, occasionally, somebody from the Scottish Representation would observe the proceedings (Interview 34). From the attendance records of Scottish ministers at Council meetings, it is also appears that Scottish ministers attended some of the Council meetings where flood risk management was discussed ([www.scotland.gov.uk/Topics/Government/International-Relations/Europe/Scotland-in-Brussels/Councils/EUCouncilsArchive](http://www.scotland.gov.uk/Topics/Government/International-Relations/Europe/Scotland-in-Brussels/Councils/EUCouncilsArchive)). As the agendas of those meetings comprise a variety of issues, it is impossible to know what the precise level of interest in flood risk management was, though.

However, at the transposition and implementation stage, the Scottish activity in Brussels picked up in line with the increasing interest at home. Thus, the Scottish expert was part of a technical working group in charge of drafting recommendations on, reporting sheets, for example. The group met about five times a year. While he was officially there as part of the UK delegation, he did have the opportunity to

speak as a technical expert for Scotland, as Commission working groups have less stringent rules on national positions and focus on expertise. While this informal influence did not play a role for the Flood Risk Management Directive as the UK and Scottish positions were similar, it did, for example, in the case of the Water Framework Directive (Interview 36).

Once the technical working group had finished a draft, the proposals would then go to the Working Group Floods (WGF) for all member states to approve. At this stage, DEFRA would formally be able to pass or block it. The WGF has four slots for the UK, which normally include two DEFRA officials, somebody from Scotland and somebody from Wales or Northern Ireland. Scotland has also a seat in its own right, but cannot vote. It was indeed always represented at WGF meetings (Interview 27). Also as part of the WGF activities, Scotland organised a workshop on catchments and flood management in October 2009. Thus, at this stage, Scotland had become quite active (European Commission, WGF, 2009) (Interviews 27, 36).

### **5.3.5 Summary**

On the whole, the regional level of each member state was represented quite extensively in Commission expert groups, Commission committees and working groups and to a slightly lesser degree in Council working groups. In fact, variation between member states is limited. It is only in the case of Austria and the Bathing Water Directive that the regional level was not at all represented in the Council. In Belgium, by contrast, the regions had the most extensive access to the Council, especially at the ministerial level. The Belgian regions also stand out with regard to the role that regions play within national delegations. Thus, for most delegations, a national expert or a member of the Permanent Representation led the delegation, but for Belgium, the regional level took the lead in Commission-organised meetings and in the Council at the ministerial level.

The main difference in the mediated accesses of regions to the European level lies in their direct or indirect representation. This is largely influenced by practicalities, especially the number of regions in a member state. Thus, Scotland and the Belgian

regions benefit from direct representation, even though there is a wide gap between their domestic participation rights. The sixteen German and nine Austrian Länder, by contrast, rely on a common representative. Thus, whereas Scottish, Flemish and Walloon officials can sometimes raise their own concerns in transposition workshops and working groups, the German and Austrian Länder have to stick to a collective position. At the same time, Scottish officials felt less secure in their representation rights than the officials of the other three member states, partly because their rights depended on UK consent to such a large extent (Interview 32).

## **5.4 Unmediated Access to the European level**

### **5.4.1 Germany**

#### 5.4.1.1 The Bathing Water Directive

The Bathing Water Directive was seen as routine business in Germany and unmediated access by the Länder was generally limited (Interviews 3, 30). The Directive was not very political notwithstanding the protracted discussions in the Council of Ministers (Interview 8). As a result, not many attempts were made to establish unmediated access at the European level.

The regional expert of Mecklenburg-West Pomerania was aware of the activities of the CoR on the matter and recalls that the Land presented its position there. Its MEPs were provided with information on request. However, she does not recall specific lobbying activities directed at the Commission or the MEPs. Also, while the interviewee recalls discussions with Poland on a specific technical point, she does not recall a sustained effort to use regional networks for the purpose of interest representation (Interview 7).

The Bavarian activities at the European level are comparatively well-documented, both through the online archive of press releases of the Bavarian government and through the archive of the two-weekly *Europaberichte* from the Bavarian office in Brussels. These sources as well as the interview data show that Bavaria's level of activity on the European level was also low for the Bathing Water Directive. Just as

in the case of Mecklenburg-West Pomerania, the interviewees recall neither activity on the part of the Brussels office nor extensive contact with MEPs (Interviews 2, 3). Similarly, a search of *Europaberichte* between 2002 and 2006 shows no trace of lobbying activities in Brussels. Thus, the Brussels office kept the regional experts informed, but in the absence of a reaction from Munich, it would not have taken further action (Interview 3). In that regard, the *Europaberichte* document the extent to which the now 30-employee strong Bavarian office did indeed provide information on the policy. Thus, the *Europaberichte* duly kept Munich up-to-date about the Commission's intention to propose a Directive, the actual proposal, agreement in the Council, the EP positions in the two readings and the compromise between the EP and the Council.<sup>39</sup>

In general, it should be noted that a small number of more strongly affected Länder did inform their MEPs of their positions and that the federal experts also had contact with the MEPs (Interview 8).

#### 5.4.1.2 Flood Risk Management Directive

By comparison, the Flood Risk Management Directive received a much higher level of attention at the European level, reflecting the greater priority accorded to it by the German Länder. Thus, the representative of the Bundesrat was aware of a variety of Länder activities in Brussels, both on the part of the regional offices and on a political level (Interview 17).

Part of this activity was based on a decision in the LAWA to contact the MEPs to influence the EP's position in the second reading. Interestingly, this was done in agreement with the federal level (Interviews 6, 29), which demonstrates that unmediated access to European institutions does not always serve the purpose to circumvent the central government in the case of conflict and that it can also be used as part of a concerted strategy to defend a common interest. In this case, there was a

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<sup>39</sup> Cf. for example, Vertretung des Freistaates Bayern bei der Europäischen Union in Brüssel, *Europaberichte* No. 11/2002 (7/06/2002), 20/2002 (30/10/2002), 20/2003 (31/10/2003), 14/2004 (9/07/2004), 7/2005 (11/04/2005), 10/2005 (20/05/2005), 2/2006 (27/01/2006).

perceived risk that some elements of the Council position would be reversed by the Parliament and that the Directive would again become more bureaucratic. Thus, Mecklenburg-West Pomerania wrote to three MEPs from three parties to inform them of the problems that would arise from certain amendments (Mecklenburg-West Pomerania 2007). According to the interviewee, the EP position did indeed become more favourable to the German concerns, but as there was no feedback from the MEPs, it was impossible to tell whether this was coincidence or triggered by the information provided by the Länder (Interview 6).

Bavaria also contacted its MEPs at this stage and the interview with the representative of the Bundesrat reveals that he, too, in his capacity of regional expert rather than representative of the Bundesrat, prepared an extensive paper for the MEPs for the second reading. The paper, in which he advised the MEPs on individual amendments, was sent to the Saxon regional office in Brussels, which distributed it to the MEPs (Interview 17).

However, while Mecklenburg-West Pomerania did not otherwise become active on the European level, the Flood Risk Management Directive had high priority for Bavaria and was the subject of a flurry of activities (Interviews 1, 3). The attention it received from both administrators and politicians was reflected in Bavaria's strategy which emphasised both technical aspects (costs, duplication risks) and political aspects (subsidiarity, regional competences).

On the administrative level, the Bavarian Ministry of the Environment, Health and Consumer Protection replied to the Commission consultation in mid-2005. While its response to the questionnaire is not available, its additional comments show that it preferred a non-binding Action Programme over a detailed Directive, but also that it felt that neither was necessary in the light of the extent of the existing cross-border coordination. The document also calls for an additional EU support and funding programme to back up the member states and regions. Finally, it advances Bavaria's Flood Control Action Programme 2020 and the Austrian and Swiss approaches as best practice (Bayerisches Staatsministerium für Umwelt, Gesundheit und Verbraucherschutz 2005). Apart from this, Bavaria presented its cost estimate for the original proposal for the Directive to the Commission to support its position with

facts. While this act may not look very remarkable at first sight, it was in fact highly exceptional. The costs of drawing up a detailed cost estimate are so high in terms of human resources, that it was the first time that Bavaria produced such a document and it has so far remained the only time ever (Interview 1).

As in the case of Mecklenburg-West Pomerania, Bavaria also got in touch with its MEPs on the Flood Risk Management Directive. Especially Bavarian and CSU MEPs generally cooperate closely with the Bavarian government. Thus, once the Bavarian expert noticed that there were EP amendments that risked making the Directive more bureaucratic, they provided the MEPs with information and tried to counteract that trend. As mentioned above, the EP position did eventually shift to a less bureaucratic position (Interviews 1, 3; Vertretung des Freistaates Bayern bei der EU, *Europabericht* No. 12/2006).

On the political level, three Bavarian Ministers mobilised to defend Bavaria's position. On 20 March 2006, the Minister of the Environment, Health and Consumer Protection, Dr. Werner Schnappauf, addressed the Committees on the environment, public health and food safety, on regional development and on agriculture and rural development in an open hearing in the European Parliament in Brussels. Within the hearing's topic of Europe's response to natural disasters, he discussed the reactions to floods and planning on the regional level, highlighting the comprehensive nature of Bavaria's flood risk management programme and reiterating Bavaria's rejection of the planned Directive. He also restated Bavaria's position that the EU should indicate goals in a Communication, but leave the decisions on instruments to the member states (Schnappauf, EP hearing, 20/03/2006).

On 21 March 2006, the Bavarian cabinet met, for the first time ever, in the Bavarian office in Brussels to discuss important European topics, including the Flood Risk Management Directive. The Bavarian troika of Minister President Edmund Stoiber, the Minister of Environmental Affairs Dr. Werner Schnappauf and Minister of European Affairs Emilia Müller used this occasion as well as the ensuing meeting between the cabinet and Commission President Barroso to discuss their objections to the Directive and to publicise their opposition at home in a press release which also renews calls for the federal government to vote against it (Bayerische Staatskanzlei

9/03/2006). Dr. Werner Schnappauf also targeted the Commission in a discussion forum on flood risk management organised on 21 June 2006 in the Bavarian office in Brussels. When the Commission policy officer was unavailable, the discussion went ahead with the EP's rapporteur, Dr. Seeber. As before, disagreement persisted on the need for a Directive and on the necessary level of detail (Vertretung des Freistaates Bayern bei der EU, *Europabericht* No. 12/2006; Interview 3).

Finally, Minister President Stoiber used an EU summit on subsidiarity in April 2006 to emphasise once again Bavarian opposition to the Flood Risk Management Directive. He demanded a greater involvement of national parliaments in EU decision-making and pushed for the introduction of the early-warning system for subsidiarity under the Austrian presidency. He further criticised the EU for having been perceived by the German Bundesrat as breaching the subsidiarity principle in 30 cases since 2006. The Flood Risk Management Directive was then used as an example of a field where the EU tried to legislate, despite being perceived as having no competences in the area of flood protection. Unsurprisingly, he demanded that the Commission withdraw the Directive (Bayerische Staatskanzlei 19/04/2006).

Overall, Bavaria thus put great effort into making its position known to the European institutions, both on a political and technical level, and involving two new initiatives, a cabinet meeting in Brussels and a cost estimate. Overall, the interviewees were satisfied with the results, given that they were in the minority in the Council together with the United Kingdom. They felt that the dual strategies of mobilising the MEPs and the ministerial activism at various events had an impact (Interviews 1, 3).

#### **5.4.2 Austria**

Carinthia and Vorarlberg did not engage in unmediated interest representation in Brussels for the Flood Risk Management and the Bathing Water Directive (Interviews 4, 5, 10, 11, 12). They were in line with the other Austrian Länder, which also abstained from direct action. Especially in the case of the Flood Risk Management Directive, this was much welcomed by the federal ministry (Interview 22). The national experts on flood risk management indicated that they would not

have approved of independent actions because they would have undermined the efforts of the Austrian presidency. It was also felt that, as a small country, Austria would have to present itself relatively united to successfully defend its interests in the EU (Interview 13).

In the case of Vorarlberg, the absence of EU level action may not be surprising. As the smallest Austrian region, Vorarlberg does not have an office in Brussels and is thus constrained in its activities on the European level (Interview 10). As a result, it usually focuses on the Committee of the Regions, where it is represented through its *Landeshauptmann* and the President of the Land. As the Austrian Länder have divided up the work of monitoring the various committees of the CoR and try to coordinate their positions, the workload is reasonable. If an issue is very important, the regional expert may contact the Vorarlberger and Austrian MEPs (Ibid.). However, none of the experts of Vorarlberg recall activity related to the CoR for the two Directives (Interviews 4, 5, 10).

Carinthia does have a small office in Brussels, but did not get it involved. With only two policy officers, the office has to focus its lobbying activities on the most important policies and Directives. Those are usually funding related policies, such as agriculture or structural funds, or issues that affect the central interests of Vorarlberg, such as transport policy (Interview 28). Both the Flood Risk Management Directive and the Bathing Water Directive were too specific to be covered. Instead, the Office became briefly active when the solidarity fund was created after the devastating floods of 2002 (Ibid.).

Also, neither of the regions used transnational networks in a systematic way to strengthen its position. The Carinthian common representative for flood risk management and the expert of Vorarlberg on floods both mentioned that the Directive was occasionally discussed at the margin of meetings with other regions, for example as part of projects with Bavaria on climate change or as part of the river basin commissions. However, these discussions were more an informal discussion of the implications of the Directive rather than a genuine coordination effort (Interviews 4, 11).

### **5.4.3 Belgium**

Neither Flanders nor Wallonia established much unmediated access at the European level for the two case study Directives. This is unsurprising, as the Belgian regions have extensive representation rights in the European institutions. Thus, in return, official positions and formal communications are expected to go through the Belgian permanent representation (Interview 23).

Wallonia only had contact with MEPs and especially the Belgian MEPs of the Commission for Environmental Affairs on both Directives. For the Bathing Water Directive in particular, the MEPs were informed about the problems under the old Directive and on how the new Directive would affect that situation (Oral communication 2; Interview 21).

Similarly, Flanders only briefed one Dutch MEP on the Flood Risk Management Directive (Interview 20). For the Bathing Water Directive, the Flemish pilot had one discussion with the Dutch rapporteur, whom he visited once with the permanent representative and the Walloon and Flemish attachés. He also used the Commission committees to establish bilateral contact with the Commission desk officers. In that, he benefited from his long experience as pilot and the fact that he was well-known as he had dealt with Belgian bathing water issues for such a long time (Interview 25).

### **5.4.4 The United Kingdom**

At the negotiation stage of the Flood Risk Management Directive, there was generally no separate lobbying from the Scottish administration (Written communication 3). There were limited activities in support of the UK line. The UK was, for example, in contact with its MEPs for both readings. The MEPs were sent written briefs and there was also oral communication with the heads of the British groups in the Environmental Committee and with the rapporteur. At one point, the UK organised a seminar in the EP before the second reading that was meant to be a concerted UK lobbying effort. There was at least one Scottish speaker (Interview 34). Contact with other countries, such as Ireland and the Netherlands, also happened

only ahead of or during working group meetings, when Scottish officials were part of the delegation (Interview 36).

By contrast, on the Bathing Water Directive, Scotland did try to establish unmediated access to the European level in a number of ways and was more active than the other devolved administrations (Interview 33). It concentrated in particular on the provision of expertise as a means to convince the European actors of the validity of its point of view. Its activities were facilitated by the support of the Deputy First Minister and the chairman of SEPA, a former MEP.

The European Federation of National Associations of Water and Waste Water Services – EUREAU – was a key network, as there was a shared concern to promote a better understanding of the sources of pollution beyond sewage. The involvement in stakeholder networks was important and allowed Scotland to get hold of documents at an early stage and provided it with a platform where it could promote its perspective. Thus, the Scottish expert was invited by EUREAU to a workshop in Barcelona and later by EUREAU and the UK Water industry to speak at a Commission workshop in Vienna (Interview 31). In addition, the Committee of Regions was briefed through the Scottish Representation (Interview 32).

Contact to key MEPs also played an important part in the Scottish strategy. In particular, with the help of the Scottish Representation, the Scottish experts had contact with Catherine Stihler, who helped them to promote the Scottish perspective by briefing other Scottish and UK MEPs and talking to Martin Schulz, the leader of the then Party of European Socialists. As a result, the assistant of Martin Schulz contacted the Scottish expert and gave him the opportunity to discuss Scotland's position (Ibid.). In addition, before the first reading, Catherine Stihler took him to an EP workshop in Strasbourg as an advisor, where he got the chance to talk to the relevant desk officer of the Commission (Interview 31).

Finally, the Commission attended a Scottish bathing water event in Dundee, where Scotland discussed, amongst other things, the problems with diffuse pollution on the West coast. As Scotland felt that it would not be able to avoid bathing water problems due to rainfall and diffuse pollution, it was eager to promote a system

whereby bad bathing water quality would not affect the evaluation of the site provided that the site was closed when the problems occurred. To that effect, it promoted its signalling system for bathing water quality as best practice. The Commission even shot a video of it (Interviews 31, 32, 33).

#### **5.4.5 Summary**

On the whole, the inter-regional differences on unmediated access to the European level are greater than on mediated access (cf. Table 4). Neither of the Austrian case study regions developed any type of strategy of unmediated access. On bathing water, Mecklenburg-West Pomerania and Bavaria also failed to establish unmediated access, and Scotland showed no activity on flood risk management. The Belgian regions were somewhat active in contacting their MEPs as did Mecklenburg-West Pomerania on flood risk management. However, Scotland reached a high level of activity on bathing water at the technical level, while Bavaria displayed by far the highest and most political level of activity, including, amongst other things, interventions from three ministers.

**Table 4: Overview - Regional Activities on the European Level\***

		<b>Participation COM WGs</b>	<b>Participation Council</b>	<b>Contact MEPs</b>	<b>Other activities</b>
<b>Bavaria</b>	<b>BW</b>	Rep. of Bundesrat	Rep. of Bundesrat in WG	No	No
	<b>Floods</b>	Rep. of Bundesrat	Rep. of Bundesrat in WG	Yes	Brussels event; COM consultation; Ministerial involvement.
<b>Meck-VP</b>	<b>BW</b>	Rep. of Bundesrat	Rep. of Bundesrat in WG	No	No
	<b>Floods</b>	Rep. of Bundesrat	Rep. of Bundesrat in WG	Yes	No
<b>Carinthia</b>	<b>BW</b>	Common representative	No	No	No
	<b>Floods</b>	Common representative	common representative	No	No
<b>Vorarlberg</b>	<b>BW</b>	Common representative	No	No	No
	<b>Floods</b>	Common representative	common representative	No	No
<b>Flanders</b>	<b>BW</b>	Yes	Pilot observer WG and COREPER; Reg Minister in Council of Min.	With Dutch rapporteur	Contact with COM desk officers
	<b>Floods</b>	Yes	Pilot observer WG and COREPER; Reg Minister in Council of Min.	Some	No
<b>Wallonia</b>	<b>BW</b>	Yes	Observes WG and COREPER;. Reg Minister in Council of Min.	Yes	No
	<b>Floods</b>	Yes	Pilot observer WG and COREPER; Reg Minister in Council of Min.	Yes	No
<b>Scotland</b>	<b>BW</b>	Yes	Occasionally as observer	Yes	Workshops; direct contact with COM
	<b>Floods</b>	Yes	Regional office occasionally observer	No	No

\*COM = European Commission; BW & Floods= Bathing Water and Flood Risk Management Directive.

## **5.5 Conclusion – Can Regional Activity in Brussels Make A Difference?**

On the whole, every case study region was represented on the European level either through a common representative of the regions of its member state or in its own right. However, beyond that, the amount of energy that the regions chose to invest in unmediated access to the European level differed even more strikingly, ranging from a lot to none, as Table 4 illustrates. Thus, the objective of the following chapters is to understand the reasons for the differences in regional strategies with regard to the establishment of unmediated access. They will also explore the implications of this pattern of inclusion and activism for the concept of multi-level governance in European decision-making.

However, before analysing the factors that might cause these inter-regional differences, it is worth asking to what extent regional activity on the European level makes a difference. When looking at the array of channels of interest representation in EU policy-making, it is important to bear in mind that representation does not necessarily translate into influence (cf. Tatham 2008: 494; Jeffery 2000). Similarly, it is worth remembering that European-level activity – whether mediated or unmediated - is not the only way to make a difference as influencing a member state's position can also be an effective strategy. In fact, one could argue that in certain cases activism can reflect lack of influence at home (cf. Tatham 2009), whereas a focus on national cooperation may indicate the absence of a need to rebel. In addition, Jeffery once argued with regard to the assertive, high profile lobbying activities of Bavaria that such activities could be seen as symbolic actions underlining Bavaria's size and status as a "Free State" and were not necessarily designed to achieve the best outcome on a specific policy (Jeffery 1998).

The precise impact of specific activities is of course difficult to assess (cf. Jeffery 2000), not least because there can be hundreds of actors trying to influence the outcome of European policy-making. In particular, with so many different interests involved, it is impossible to measure the success of a region objectively. Whether an outcome will be close to a region's position or not is likely to depend on how extreme or "mainstream" its position was to begin with. Even whether the outcome is

*closer* to a region's position than the initial Commission proposal depends to at least some extent on the precise constellation of Commission interests, regional interests and majority (of veto players) interest. Thus, we will look for the answer in the subjective impressions of the regional, national and European interviewees instead.

The most extensive strategy of unmediated access to the European level was developed by Bavaria on flood risk management, combining technical expertise with high profile political activities. One aspect of that strategy was certainly symbolic, in that part of the political discourse surrounding the negotiations focused on the "big" political questions of the limits of European competences and subsidiarity. Especially in the context of the negotiations of the Constitutional Treaty and the Treaty of Lisbon, where one of the concerns of legislative regions was that the EU's powers and their limits ought to be more clearly defined, one can interpret Bavaria's rhetoric as being part of a strategy of "leave us alone", inspired by concerns over the extent to which the EU continues to slowly encroach upon national and regional competences (Jeffery 2007a). In practice, there was of course never much hope that the proposal would be withdrawn or the Directive vetoed. It did however have the effect of making a wide variety of actors aware of Bavarian objections to the Directive. Thus, Commission officials and several interviewees from other member states spontaneously referred to the Bavarian position during the interviews (e.g. Interviews 11, 13, 27, 29, 34).

On the other hand, Bavaria's strategy was not all about big statements. It also included important technical arguments backed up by expertise, such as the cost estimate for the original Commission proposal and less high profile actions such as informing Bavarian MEPs about the situation at home. Interestingly, Bavarian officials were quite modest about the impact they thought their actions had. Thus, they estimated that they could influence the position of Bavarian MEPs and contributed in that way to the introduction of transition rules, but they also felt that it was generally much more difficult to produce a knock-on effect and influence other MEPs (Interviews 1, 3). A Commission official, by contrast, mentioned spontaneously during the interview that she felt that the introduction of a transition period was indeed at least in part due to the vocal Bavarian opposition and the cost

estimate (Interview 27). As these transition rules are one of the more important changes to the original proposal, it seems that Bavaria's strategy did indeed pay off.

It should be noted though that another Commission official was more sceptical about the chances of a region or member state of influencing their MEPs. Thus, when looking at the position of the European Parliament on the Bathing Water Directive, one can see that MEPs generally adopted much more radical views than their member states.<sup>40</sup> However, he confirmed that some MEPs do tend to follow regional or national instructions and that this happened, for example, during the Flood Risk Management Directive for German MEPs (Interview 29).

Scottish officials were also very satisfied with the final Bathing Water Directive and felt that their strategy of technical input and talking to MEPs had paid off. The Scottish official who was responsible for the dossier during the negotiations felt that he only obtained the opportunity to talk separately to the Commission desk officer because of the support of the MEP Catherine Stihler, the water industry and David Kay and that Scottish MEPs could only support the Scottish stance because Catherine Stihler convinced the leader of the European Socialists, Martin Schulz, to withdraw the party whip (Interview 32). The final outcome of the Directive does indeed take diffuse pollution into account and is much better suited for the Scottish geographical context. Scotland could also influence the Commission by showing it is electronic signalling system (Interview 31).

The other cases generally involved relatively little unmediated regional access to the European level. However, in several of these cases, regional officials expressed satisfaction with their work through the national delegations and especially in Commission meetings, where they could speak more openly (Interview 36). The Belgian regions felt, for example, that they could promote their bathing water profiles as a template for the European profiles (Interviews 21, 29).

On the whole it thus seems that regions can achieve something if they invest extensively in European level interest representation, especially when they support their arguments with expertise.

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<sup>40</sup> One important example is its stance on recreational activities other than bathing.



## Chapter 6 – Patterns in Interest Representation

### **6.1 Introduction**

When Marks and Hooghe developed the concept of multi-level governance in European policy-making in the 1990s, their objective was to challenge the state-centric assumptions of (liberal) intergovernmentalists and show that subnational actors can and do pursue unmediated strategies of interest representation at the European level (e.g. Marks, Hooghe and Blank 1996; Marks et al. 1996; Hooghe and Marks 2001). Subsequently, the MLG literature focused increasingly on the usefulness of individual channels of interest representation, multi-level interactions in the area of European regional policy and constitutional changes in the position of regions in the European Union. In addition, one strand of the literature applied the concept increasingly to non-governmental actors. A question that was largely neglected by all but a few tentative articles was the question of what makes regions pursue certain types of strategies rather than others. One of the reasons for this was that authors rarely focused on concrete instances of interest representation that could serve as a basis for such an analysis.

From the outset, one of the principal objectives of the project was to improve our understanding of what induces regions to be more or less active and the forms that regional mobilisation takes in order to further develop our understanding of the driving forces of multi-level interactions in the European Union (cf. chapter 1). The two preceding chapters with their concern for the detail of regional interest representation in European decision-making showed that there are indeed differences between the strategies of the various case study regions and thus highlight the need to look for patterns and explanations. Their empirical content provides an ideal starting point for a comparative analysis of patterns of interest representation. In particular, the chapter argues that the rational choice institutionalist assumptions that have inspired defenders of both the intergovernmentalist and the multi-level governance approach also hold the key to a deeper understanding of when and why regions do what they do in European policy-making. This thematic will be pursued in

the first two sections of the chapter, that will focus respectively on contextual influences and the impact of domestic intergovernmental relations on the extent to which regions develop unmediated strategies of interest representation at the European level.

The third section will turn to cross-regional differences more generally. Here, the chapter picks up and adapts Bauer's hypothesis on the impact of the party political (in)congruence of regional and central governments on demands for more regional autonomy in European policy-making and investigates whether party congruence has an impact on how autonomously a region acts on the European level (Bauer 2006). It then focuses on the impact of two resource-related factors – the size of the population of a region and of its economic performance – on regional activism in European policy-making both at home and in Brussels.

The final section of the chapter summarises the implications of these findings for the MLG literature and argues that researchers should apply the rational choice institutionalist assumptions of the concept more ambitiously to develop a framework for understanding the differences in regional strategies within and across member states.

## ***6.2 Preliminary Remarks on Strategies and Why They Happen***

### **6.2.1 Classifying Regional Strategies of Interest Representation on the European level**

The principal hypothesis of the project, that the different intergovernmental relations in the four member states lead regions to seek unmediated access at the European level to different degrees, requires the comparison of “unmediated” activities at the European level. As the number of cases is relatively large for a qualitative study, it is useful to summarise the data and to describe regional strategies in a more concise and comparable manner. Thus, three categories were developed to describe the degree to which the regions sought unmediated access at the European level (“none”, “limited”, “extensive”). These categories were created based on the detailed

description of regional activity (cf. chapter 5) and have in fact emerged naturally from that description. Thus, regions did either not seek unmediated access at all, or they contacted mostly their MEPs or they reached a more sustained level of activity that included a number of different types of actions and channels.

Table 5 shows that in half of the cases, the regions did not establish unmediated access at the European level at all. Of the remaining seven cases, five involved a limited amount of unmediated access – usually contact with MEPs – and only two included the use of several channels or a variety of actions.

**Table 5: Level of Unmediated Access**

		<b>Activity</b>	<b>Category</b>
<b>Bavaria</b>	<b>BW</b>	None	None
	<b>Floods</b>	Contact MEPs, Commission Consultation, Ministers get involved, Brussels event	Extensive
<b>Meck-VP</b>	<b>BW</b>	None	None
	<b>Floods</b>	Contact MEPs	Limited
<b>Carinthia</b>	<b>BW</b>	None	None
	<b>Floods</b>	None	None
<b>Vorarlberg</b>	<b>BW</b>	None	None
	<b>Floods</b>	None	None
<b>Flanders</b>	<b>BW</b>	Contact MEPs	Limited
	<b>Floods</b>	Contact MEPs	Limited
<b>Wallonia</b>	<b>BW</b>	Contact MEPs	Limited
	<b>Floods</b>	Contact MEPs	Limited
<b>Scotland</b>	<b>BW</b>	Contact MEPs, workshop, direct contact with COM, stakeholder networks	Extensive
	<b>Floods</b>	None	None

## **6.2.2 Conflict as a Driving Force**

One of the concerns at the design stage of the project was that contextual variables might hinder comparison between countries. In particular, the assumption was that

conflict between the regions and the central government or between regions of the same member state might impede the effective use of domestic channels and drive regions to use unmediated channels. Thus, the principal fear was that it would not be possible to compare the impact of different types of domestic channels of interest representation on the use of European channels if there was conflict in some of the case study member states but not in others.

Unfortunately, it was impossible to establish the existence of conflict prior to the interview stage. The interview data did, however, provide further insights into constellations of interests, which were presented in Chapter 4. Nevertheless, it is difficult to turn these insights into an exact variable. First of all, interviewees were understandably reluctant to talk in detail about situations of conflict and preferred to give rough indications that there were differences on such and such points. National coordination mechanisms rely to some extent on trust and good working relationships. Thus, regional officials may feel that to discuss difficult negotiations in depth might be disloyal, even if there were good reasons for the existence of divergent interests on both sides. Central government officials or regional officials in coordinating positions may also perceive conflict as a sign of failure. Secondly, the degree of conflict is a matter of subjective perceptions.

While it is possible to distinguish regions where interviewees were very satisfied with the national position from the start from cases where officials felt that some points of disagreement existed, it is thus relatively difficult to classify regions that experienced conflict in terms of “more” or “less” conflict, with few exceptions. For Germany, we know that Bavaria was more strongly opposed to the Flood Risk Management Directive than Mecklenburg-West Pomerania and that it would have found the more compromising stance of the central government less satisfactory. By contrast, it is not possible to rank the diverging views of Flanders and Wallonia on certain points of the Flood Risk Management Directive compared to the German situation on flood risk management or the Scottish position on bathing water. Thus, when classifying the cases, the simplest distinction was chosen: no conflict, and conflict. All cases where regional officials could not recall substantial disagreements and felt that the coordination process had been smooth are labelled “no conflict”,

while cases where officials did recall disagreements that they judged to be “relevant” fall under “conflict”.

**Table 6: Conflict and Unmediated Access**

	Unmediated Access		
	None	Limited	Extensive
Conflict	0	3	2
No Conflict	7	2	0

Cases of conflict: Floods: Bavaria, Mecklenburg-West Pomerania, Flanders, Wallonia. Bathing water: Scotland.

Table 6 shows that the concern with conflict was justified and the hypothesis was confirmed. In all those cases where regional or central government positions on the Directives diverged noticeably, there was at least some recourse to channels that provide unmediated access. In seven out of nine cases where regional officials felt that the position of the central government and the other regions was in line with their region’s interests from the outset, there was exclusive reliance on domestic mechanisms. The two remaining cases were Flanders and Wallonia on bathing water. The Bathing Water Directive had conflict potential for Belgium as Flanders could have afforded to push for stricter standards than Wallonia, but a willingness to defend more moderate standards and address the differences at the transposition stage meant that the conflict never really materialized. Both regions nevertheless contacted select MEPs during the negotiations. This may be due to the importance of the Directive for the two regions. For Flanders, the coastal bathing waters contribute to its tourist industry. Wallonia, by contrast, had previously lost an infringement procedure under the old Directive and may have been concerned about the additional burden of the new Directive. In addition, it is likely that the Flemish activity was part of and a result of its official role in the Belgian national delegation. As Flanders had the pilot on this dossier, it had the lead negotiating position on the Belgian team during the drafting stage of the Directive. Thus, the contacts with the Commission desk officer and the EP rapporteur can be interpreted either as a Flemish strategy of interest representation or as Flemish activity on behalf of Belgium. Most likely, they were a combination of both.

On the whole, domestic conflict is thus indeed a very potent explanatory factor for the presence or absence of unmediated regional activities of interest representation at the European level. It should be noted, though, that while Table 6 appears to indicate that conflict is virtually a necessary condition for strategies that rely on unmediated access, certain types of unmediated action can be taken in agreement with the central government. Thus, in the case of flood risk management and Germany, the decision that the regions should contact their MEPs occurred independently of the disagreement about the degree of German support for the Directive. Instead, it was a concerted action with the objective to bring the content of the Directive more into line with German interests (Interview 6). It does appear unlikely, though, that a region should invest in an extensive European strategy in the absence of domestic conflict as a motivating factor.

The finding that conflict matters is unsurprising, especially when regional governments are seen as rational actors that weigh the costs and benefits of their options. For strong legislative regions, domestic channels are the routine way of participating in EU policy-making, as it is quite effective at a relatively low cost. On the output side, how much influence a region can have on the national position depends on the precise domestic provisions, but all the case study regions were at the very least guaranteed to be consulted. While the national position of a member state is one in many, it will be officially represented at the drafting, negotiating and implementing stages of the process, in Council, Commission stakeholder and comitology meetings. In addition, in Council and comitology meetings, it comes with voting rights and thus gives the member state “hard” participation rights. On the input side, the costs are low, for a number of reasons. Firstly, all of the case study regions have extensive information rights on European matters vis-à-vis their central government. In terms of formulation the national position, their rights range from guaranteed consultation to co-decision. Participation in the formulating of the national position is thus virtually automatic and does not require officials to be particularly proactive. Secondly, thanks to the information rights of the regions, participation in these processes does in principle not require any input from offices or actors in Brussels, even if such activity can enhance the quality and effectiveness of participation. Participation at the most basic level thus requires little investment. The

relevant regional official just has to absorb the information he or she is given and respond to it. Thirdly, in feeding the regional position back into the process, the officials get in touch with colleagues they are likely to know already. For cooperative federal systems, officials will often have cooperated on various matters in the past. For dual systems, officials will usually at least know some colleagues in sister departments by name, even if there has been no regular cooperation (Interviews 20; 21).

On the whole, the fact that participation in domestic coordination processes does not require expertise in European policy-making or a high level of proactiveness on the part of the regional official in charge makes it thus an efficient low-cost option for participation. Indeed, even in case studies where a Directive was perceived as routine business, participation in domestic coordination was widely used.<sup>41</sup> However when conflict occurs between regions or regions and the central governments, the national position becomes less likely to reflect the interests of the region and thus the potential benefits of unmediated strategies become comparatively more attractive and their costs thus more worth incurring. By how much the effectiveness of domestic channels will be reduced depends on the nature of the domestic channels and the region's rights therein, but it can be expected that a specific region will find domestic channels of interest representation more attractive in the case of domestic consensus than in the case of conflict.

However, while conflict thus provides a strong explanatory factor for the absence or presence of a European level strategy of unmediated access, it cannot on its own explain the extent to which regions seek unmediated access or the precise manner in which they state their points. In the case of Germany and the Flood Risk Management Directive, the more extensive Bavarian strategy compared to Mecklenburg-West Pomerania could potentially reflect a more extreme opposition to the Directive. Then again, there was strong conflict on certain points in Belgium especially for the Flood Risk Management Directive, and yet only limited unmediated access was established. In addition, there was a qualitative difference

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<sup>41</sup> An example of this is the coordination of the national positions of Germany and Austria on the Bathing Water Directive.

between extensive Scottish lobbying on bathing water and the extensive Bavarian strategy on flood risk management. In the Bavarian case, three ministers lent their political weight to the strategy, while in the Scottish case, the activity remained technical and low-key and de-emphasised national conflict. Thus, while conflict appears to be an important explanatory factor for European level action, it is not sufficient to explain the full degree to which a region becomes active. Instead, as will be discussed below, it is worth considering other factors, such as domestic structures as additional explanatory factors, especially for the degree to which a region has recourse to unmediated access and the manner in which it presents its arguments.

### **6.2.3 The Impact of Individuals**

Another factor that has to be borne in mind when looking for patterns in the data is that the number of people dealing with these issues in each case is quite small. In general, there was only one person in charge at any given point in time in most of the case study regions. Vorarlberg was an exception, in that one specialist of the *Umweltinstitut* was in charge of the substantive position and one official in the Department for European and Foreign Affairs was in charge of delivering that position to the relevant contacts. The officials in charge could and would of course consult with more technical levels or officials from other departments as appropriate and they would also have to obtain ministerial approval at various points. Nevertheless, they were at the heart of the process in that their eagerness and background would determine how issues were presented to the political level, how vocal the region would be in the domestic coordination process and to what extent action at the European level would be possible.

More precisely, who is in charge can be relevant in three ways. Prior experience with European policy-making and an understanding of how it works can increase the likelihood of officials actively supporting a European strategy. Secondly, the length of time that an official has worked on a specific issue increases his or her ability to formulate positions on the matter and estimate the impact of proposed legislation. Thus, when an interviewee in the German Ministry of the Environment described the level of activity of various German Länder in the coordination process of the national

position, she pointed out that several fluctuations in the levels of activity over time were due to civil servants moving on to new tasks (Interview 8). Finally, sometimes personalities can matter too: “It also always depends on the person in charge how active a Land is – some like to travel, or are more talkative...” (Interview 15).

Overall, interviews at the regional and national level were used to gauge if the officials perceived the strategies of other actors as broadly “typical”. There was only one instance where a region was seen to behave “atypically”. In the case of Bavaria and the Bathing Water Directive, the other German interviewees felt that while the Land would usually be among the most active Länder in the domestic coordination process, it was slightly less active in this instance. This may be due to a restructuring of the Ministry and changes of personnel that took place during the negotiation process. The Bathing Water Directive was already seen as a tricky issue to work on due to the overlap of water and health issues that blurred lines of responsibility between experts. Any change in personnel would most likely require an adaptation period. Nevertheless, this is unlikely to have affected the Bavarian European level strategy much. As an interviewee of the Department for European Politics and International Relations pointed out, it was normal that there was no European level action on the Directive, as it was very much considered to be routine business (Interview 3).

In addition, how busy, responsive or proactive officials at home are defines the margin of manoeuvre of the Brussels office of the region. As the officials in Brussels are usually covering the work of one or several ministries, they lack the time and policy specific expertise to promote a region’s position in the absence of administrative and/or political support from the region. Thus, an interviewee from the Brussels office of Mecklenburg-West Pomerania pointed out that it was nearly always possible to help regional officials who wanted to do something in Brussels. But if, conversely, the officials at home had no time to read draft reports or legislation or to supply position papers and information, then nothing much could be done (Interview 30). Similarly, a former member of the Brussels office of Bavaria stated:

“You [the official in Brussels] inform about the latest developments, and when there is no reaction from the ministry, then you just let the negotiations continue.” (Interview 3)

### **6.3 Inter-State Differences: Domestic Incentives as Disincentives for European Action?**

One of the key objectives of the project was to analyse the impact of domestic intergovernmental relations on the extent to which regions seek unmediated access at the European level, a factor that has been largely overlooked by most authors, with the exception of Börzel (1999). This was broken down into two rivalling hypotheses. The first hypothesis suggested that regions from dual systems (UK, Belgium) would be more active than regions from cooperative systems (Germany, Austria), either due to socialisation effects or pre-existing structures facilitating domestic cooperation in cooperative systems. The second hypothesis, inspired by the rational choice institutionalist assumptions that underlie the project, stipulated that the more influence a region could wield in domestic European policy-making, the less likely it would be to become active at the European level. Here, the assumption was that influence at home reduced the added value of European level action, while a lack of influence at home created incentives for European level action.

**Table 7: Expected Impact of Intergovernmental Relations**

		Hypotheses: Expected Outcome		Outcome (only in cases with conflict)
		H1	H2	
UK	Scotland	E	E	E
Belgium	Flanders	E	L/N	L
	Wallonia	E	L/N	L
Germany	Bavaria	L/N	L/E	E
	Meck.-VP	L/N	L/E	L

H1: Regions from dual systems are more likely to seek unmediated access than regions from cooperative systems.

H2: The more influence a region has in domestic European policy-making, the less likely it is to seek unmediated access to European policy-making.

E= extensive unmediated access; L= limited unmediated access; N= no unmediated access.

The emergence of “conflict” as such an important explanatory factor for regional choices on the use of unmediated access complicates the analysis of the impact of intergovernmental relations. In three out of four case study member states, negotiations on one of the two Directives gave rise to internal disagreements. As a result, the strategies of the German and Belgian regions on flood risk management and of Scotland on bathing water were all situated in a context of domestic conflict and are thus broadly comparable. There was no domestic conflict on either Directive in the case of Austria. Consequently, the Austrian cases are en par with the German and Belgian cases on bathing water and Scotland on flood risk management.

The cross-country analysis of the impact of domestic channels of interest representation on European level strategies is however most fruitful in the context of conflict. In those cases where domestic conflict was absent, the regions generally did not attempt to establish any unmediated access to the European level. There is thus little variation that could be exploited. In the absence of domestic conflict, the national route was deemed sufficient by the German and Austrian Länder and by Scotland. In the case of the Belgian regions, the national route was also clearly the principal means of interest representation and satisfaction with the effectiveness of this channel was high (Interviews 20, 21). The contacting of MEPs was seen as a complementary action that required only a very limited additional effort and that happened once in the course of negotiations that took over four years. Also, as will be shown in chapter 7, the briefing of MEPs has become a very popular option with regions as it is considered relatively cost-efficient. As there is thus only one minor variation in the set of cases with no domestic conflict as the regions generally felt that there a European level strategy was unnecessary, there is nothing to be explained.

Conflict, by contrast, produced European level strategies and variation both in terms of quantity (the number of actions) as well as quality (the nature of actions). This was to be expected. Under the first hypothesis, the cooperative or competitive reflexes of regions are more likely to come to the fore in a situation of initial internal disagreement. Under the rational choice institutionalist hypothesis with its emphasis on opportunities and constraints, costs and benefits the constraining or enabling

qualities of domestic arrangements would be more visible in such a situation and the outcome would be less satisfactory. The question is which of the hypotheses has greater explanatory power for the differences between the regions of the three member states where such conflict occurred. Table 7 (above) summarises the expected outcomes under each hypothesis as well as the actual findings.

If the hypothesis that regions from dual systems were more inclined to seek unmediated access held true, we would expect to see more extensive or assertive European level strategies from Scotland and the Belgian regions than from the German Länder and – if there had been a comparable case - the Austrian Länder. In practice, this is clearly not reflected in the data. Bavaria developed by far the most extensive and assertive strategy of unmediated interest representation of all case study regions during the negotiations of the Flood Risk Management Directive. First of all, its activities were sustained and varied, ranging from argumentation on the technical level through participation in the Commission consultation, the distribution of a cost-estimate of implementation and the organisation of a Brussels event to political protest through ministers at conferences and hearings of the European Parliament. Secondly, the politicising of the question is unparalleled, with three different ministers including the Bavarian prime minister publicly supporting Bavaria's strategy to oppose the Directive at different stages and personally visiting Barroso. While the extent of these activities was unique even among the German Länder and extensive by Bavarian standards, it was not the only German Land with direct ministerial involvement. The Minister of the Environment of Lower Saxony met Commissioner for the Environment Stavros Dimas, for example (Ministerium für Umweltschutz, Niedersachsen, 2006). The Bavarian strategy was also widely picked-up on and mentioned by many foreign interviewees (e.g. Interviews 11, 13, 27, 29, 34). By contrast, Scotland's strategy on bathing water was also quite extensive, but stayed firmly on the technical level and de-emphasised the UK's internal disagreements on these points. The key officials invested time in the negotiations, meeting Commission officials, attending several workshops and briefing key Scottish MEPs regularly also with a view for them to pass the Scottish position on to the leaders of political groups in the European Parliament. Yet, while interviewees from other member states and the Commission were aware of the

Scottish activism and of different Scottish and UK approaches, they did not pick up on any UK-internal conflict (cf. Interviews 27, 29; Oral communication 4). Flanders and Wallonia, by contrast, as well as Mecklenburg-West Pomerania, just briefed MEPs. The Belgian regions are thus at the lower end of the spectrum.

In quantitative terms, the cases do of course not add up to a conclusive statistic, and there are a number of reasons that might explain why the strategies are different from what one would expect them to be. The most obvious ones would be policy relevance or degree of conflict. However, none of these applies. In terms of conflict, it is true that Bavaria took a very strong stance on the need to regulate flood risk management and that the German government did not share this subsidiarity-based opposition. Also, the fact that Mecklenburg-West Pomerania was sceptical but not as passionately opposed certainly explains in part why it did not go to the same lengths. However, the German debate was about principles, not content. In the Belgian case, the fact that both regions insisted on having a pilot on flood risk management, that the regions genuinely struggled to reach a compromise on certain points and that once a compromise was reached Belgian negotiators had to adhere to it closely because of the sensitivity of the situation is a clear indication that the differences were real. The Directive highlighted the problematic question of how to deal with measures the costs and benefits of which were geographically unevenly distributed. Due to the dependence of low-lying Flanders on the cooperation of up-stream regions, the Directive with its potential to force the hand of up-stream regions had high relevance and its wording financial implications. Thus, it cannot be argued that there was a lack of policy salience or a gap in the levels of conflict that would explain the differences in the strategies of interest representation.

Another potential explanation – equally faulty – could be the argument developed by some authors that Belgium has become more cooperative due to European integration, especially in combination with the argument that the German Länder have become increasingly competitive since the 1990s (Jeffery 1999: 330-2; Jeffery 2005a: 81). Thus, the relevance of the dual or cooperative design of the system could have been blurred. However, the data again suggests otherwise. The findings in all four Belgian cases – conflict or no conflict – suggest that cooperation does exist (and

increases during European decision-making), but it is firmly based on necessity. European decision-making requires a Belgian position, therefore a Belgian position is produced. Once the need for a Belgian position falls away – e.g. at the transposition or implementation stage – cooperation drops as well. The fact that not even the old Bathing Water Directive dating from 1976 led to regular cooperation suggests that Belgian actors still very much value the dual set up of their political system. Similarly, increasing competitiveness or not, the water officials of the German Länder have been meeting in the LAWA for decades, and that activity actually picked up since the 1990s (Interview 18). The German Länder also voluntarily created a common blue-print as guidance for the transposition of the Bathing Water Directive, despite the fact that each Land could have transposed the Directive independently of the rest. The explanation for the regional choices in these cases has to come from a different angle.

The second hypothesis accounts better for the quantitative aspects of the regions' European activities. Under this hypothesis, we would expect regions that are in a weak position in domestic European policy-making to be more prone to seek unmediated access to the European level, as they are less able to ensure that their point of view is included in the national position of the member state. Thus, we would expect Scotland to seek unmediated access to the European level, as it has only consultation rights within the UK system and is firmly placed under the UK lead when part of the national delegation.

In the German case, the Länder also have to be consulted. However, unlike in the UK, when their core competences are affected, their position has to be taken into account extensively by the German government in drafting the national position. As a result, the extent to which the Länder are constrained domestically depends on the outcome of this contest of wills. Thus, when comparing the advantages of domestic and European levels of interest representation, one of the interviewees stated:

“On the other side via the Council – via the central government, that is – our constitutional options are very limited. (...) We [the Länder] express our position through the Bundesrat – that is a position that the federal government should become active in a certain way. As far as

Bavarian institutions, i.e. our executive, are concerned, that has to be taken into account by the federal government in the negotiations. But they can always say “oh well, there are 27 member states”. Thus they don’t always push our position through.” (Interview 3)

In the case of flood risk management, the central government took on board the substantive demands, but not the demand that the Directive be vetoed. Thus, while acknowledging that the central government negotiated well on specific details, those Länder that attached great importance to the principle that the Directive breached subsidiarity felt frustrated and felt the need to devise their own activities. More generally, the fact that only the collective position of the Länder can have hard power and that this position is ultimately reached by majority vote in an institution where sixteen Länder are represented means that individual Länder may not prevail even when the national position fully reflects the collective position.

The Belgian regions were in a different position. In areas that fall under their exclusive competences (i.e. both bathing water and flood risk management), they de facto agree the Belgian position among themselves. The coordination process is orchestrated by a regional official and each of the regions can veto the national position if it deems that its interests are not sufficiently reflected. For the Bathing Water and Flood Risk Management Directives, the national position mostly required negotiations between only two regions, as Brussels was less interested. The second hypothesis would thus expect little unmediated activity at the European level, as domestic influence is so extensive.

Interview data shows indeed that, due to the extensive co-decision rights of the regions in the domestic process of coordination, the Belgian regions do not normally feel the need to go beyond that mechanism. In addition, the responsibilities that come with these rights create disincentives to use a highly visible regional strategy of interest representation at the European level. The fact that only three – or in the case of the Flood Risk Management and Bathing Water Directives de facto only two – actors co-determine the Belgian position binds the regions to that position in a way in which one out of sixteen German or one out of nine Austrian Länder are unlikely to feel bound to their national positions. To then publicly defend a different position

would not only risk undermining a position that confers voting-power on Belgium in the Council and that has largely been shaped by the region itself, it would also shed doubts on whether the region is acting in good faith towards other Belgian actors. The interviews with Belgian regional and national officials show that unmediated strategies of interest representation are rare and not well seen, especially when they are extensive and very visible (Interview 24).

Certain actions would not be affected by this. Thus, the interviews suggest that it is common that MEPs are consulted (Ibid.). This is probably acceptable because it does not require the regions to support a rival position to the Belgian position in a very public manner. Otherwise, only two scenarios were identified where the regions might pursue extensive or visible strategies of their own at the European level. The first was when the interests were so different that the compromise was too watered down to make much of an impact (e.g. agriculture is an area where this might happen). The second was when ministers might choose to depart from the Belgian position for electoral purposes (i.e. for a reason that had little to do with the desire to achieve the best possible policy outcome) (Ibid.). While officials feel that the regions should play an important role when their powers are affected, they also feel that in return for these rights the regions should focus on using them loyally.

The second hypothesis is also in line with the literature on the German and Belgian regions in the European Union. Thus, the German Länder are widely acknowledged to be very active actors in the European Union and to pursue their own unmediated activities at the European level. The eagerness of the German Länder to establish offices in Brussels in the 1980s – before many other regions – is often emphasised, as well as their activism in pushing for the creation of the Committee of the Regions or their engagement in the European constitutional debate (Marks et al. 1996; Pahl 2003; Georgen 2004: 136; Hrbek, Weyand 1994: 97). Conversely, the literature on the Belgian regions tends to emphasise their strong position within the Belgian federal state and how they were given a corresponding role in Belgian European domestic policy-making over time as part of the principle *in foro interno in foro externo*. Thus, it is not only the regions that are inward looking and focused on domestic cooperation mechanisms (Bursens and Geeraerts 2006:173), but the

literature itself tends to be inward looking and to emphasise the role of the regions in the domestic processes (e.g. veto rights) and their extensive rights of representation *within* the national delegation.<sup>42</sup> There is also a feeling that this part of policy-making has so far remained relatively unscathed by Belgium's internal conflicts (Lambertz and Förster 2009: 24).

Despite this general fit of the data, a closer look reveals the need for some further refinement. If we were to look at Austria under the second hypothesis, we would expect to see as much or slightly more activism on the part of the Austrian Länder than in the German case. The Austrian Länder also have the right to be consulted, but their common position is only binding if it touches upon their core competences and if none of the Länder opposes it. It thus has to be reached by unanimity, which is more difficult than the majority vote in the German Bundesrat. In the absence of domestic conflict in Austria, there is no case study where the domestic influence of an Austrian Land was put to the test. However, the interview data suggests that even if there had been conflict, it would have been unlikely that the Länder would have developed their own European activities. When asked about what they thought about the use of European channels, some regional interviewees expressed the opinion that such strategies would have been politically contentious and inappropriate in this policy area.

“In terms of competences, the Land has only delegated competences for water legislation. In other terms, the representation abroad falls to the [federal] ministry. We shouldn't really engage in lobbying in Brussels on that matter. And if we did, we should probably coordinate it with the [federal] ministry.” (Interview 4)

Similarly, some of the national interviewees made it clear that they would not have expected the Länder to depart from the Austrian strategy. When asked whether the Austrian Länder had become active in Brussels, an interviewee said: “I think not. And if we had known it, we would not have wanted it” (Interview 13).

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<sup>42</sup> Compared to the study of the German Länder, much attention has been paid to the Europeanisation of the Belgian state (Beyers, Delreux and Steensens 2004; Beyers and Bursens 2006a) with recent studies focusing more on the European strategies of the Belgian regions (Deforche and Bursens 2006).

The reason behind this reluctance to even consider pursuing unmediated regional activities at the European level is thus rooted in the domestic distribution of competences. For both Directives, the Länder had only limited delegated administrative powers, while the central state held the core legislative powers. To challenge the national position would thus mean to challenge a central government that was always meant to decide the direction of the policy. By contrast, Scotland and the Belgian regions had exclusive competences in both policy areas, bathing water policies were regionalised in Germany and the German government had only passed framework legislation on flood risk management. Thus, the domestic distribution of competences also matters.

In a long-term perspective of European policy-making, there is a logic to this caution. If a region were to consistently question the right of the central government to determine the national position in areas that fall predominantly under national competences, it would weaken its own ability to demand that the central government respect the right of the regions to determine the national position in areas that predominantly affect their competences. As the central government usually retains key coordination functions, ultimately drafts the national position (with the exception of Belgium) and leads the national delegation, it is not in the interest of regions to trigger an all-out battle for influence.

In order to incorporate this idea, the second hypothesis is amended in the following way:

H2b: The difference between a regions <i>domestic policy-making</i> competences and its influence in domestic <i>European</i> policy-making in that policy area determines how likely it is to pursue unmediated activities at the European level.
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Thus, the powers of the Belgian regions in domestic European policy-making reflected their domestic strengths, whereas individual German Länder and Scotland were less influential in domestic European policy-making than they would have been in domestic policy-making.

However, there is in fact a *combination* of factors at work that produces conjunctural causation (Cf. Chapter 2; Berg-Schlosser et al. 2009). Thus, the variable H2b only matters in situations with domestic conflict. As demonstrated by the nine cases where the national coordination process was smooth, if there is no conflict, regions have little incentive to mobilise to begin with and H2b can thus produce no effect.

There is a second qualification that also applies to the amended hypothesis. As it is about the specificities of national channels, it cannot be incorporated into the hypothesis itself but is worth bearing in mind. The hypothesis fails to account for levels of political assertiveness. As discussed above, Bavaria engaged in its unmediated strategy openly and at a political level whereas Scotland kept its strategy focused on substantive arguments and low key. This phenomenon is not just the accidental outcome of a small number of case studies but is also documented in the literature. Thus, Jeffery has previously described Bavaria's strategy in the European Union as focused on visibility and symbolism (Jeffery 1998; Hübler 2003). As mentioned earlier, Bavaria is not the only German Land to resort to ministerial action, even if it probably does so more frequently than its peers. The literature on Scotland has, by contrast, highlighted the extent to which Scotland (and the UK) avoid exposing internal conflict at the European level and acknowledges Scotland's low key, detail-focused approach (Cairney 2006: 439). Also, Commission officials picked up on the fact that it was difficult to see what was happening behind the scenes in the UK (Interview 29).

The reason for the different attitudes towards highly visible European level strategies lies in the detail of the domestic coordination processes. In the case of the UK, a number of factors come together to make the devolved executives particularly vulnerable (see chapter 3 for a detailed discussion). Scotland has the right to be consulted in the case of Directives that affect its competences, but it lacks hard powers to influence the UK position and thus depends to some extent on the goodwill of the centre. In addition, the central government has tied privileged access to the permanent representation of the UK and to government information to the condition that internal negotiations are treated with strict confidentiality and that the devolved executives do not undermine the UK position in Brussels. Highly visible

Scottish strategies in Brussels could be interpreted as doing just that and would thus risk jeopardising Scotland's access to information and support from the centre in the long term. In addition, the neglect of horizontal coordination among devolved executives deprives Scotland of another way to put informal pressure on the central government. On the whole, while Scottish officials are usually included in the UK delegation to Commission stakeholder or working group meetings, one Commission official estimated that "the English position tends to prevail in the UK position. Scotland was also present at the committee meetings, but tends to drown in the UK position" (Oral communication 4). At the same time, the Commission officials felt for both Directives that Scotland had a slightly different and generally a more cooperative approach to the questions raised by the Directives (Ibid.; Interview 27).

In practice, the German Länder are probably not much more influential in the coordination of the national position than Scotland. They may have the right to see their collective position reflected in the national position when their competences are affected, but as there are only four parts of the UK but sixteen German Länder, there is a risk that a Land may be outvoted or that the position of the Bundesrat will be watered down. What makes a difference, though, is that their participation rights are constitutionally guaranteed. What is more, because the federal structure of Germany is also a constitutional principle, the Länder have been able to rely to some extent on the Constitutional Court to uphold their rights in the face of European treaty revisions, for example.<sup>43</sup> Unlike in the case of the UK, where hierarchy strongly influences the manner in which interests are voiced, the position of the German Länder is strong enough for them to make their individual positions openly known when they feel the need to do so.

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<sup>43</sup> The German Constitutional Court made the German ratification of the Treaty of Lisbon conditional upon the guarantee of certain rights of the Bundesrat, such as its right to co-determine whether Germany can agree to changes to the European Treaties in the European Council. BVerfG, 2 BvE 2/08 of the 30.6.2009, Absatz-Nr. (1 - 421), [www.bverfg.de/entscheidungen/es20090630\\_2bve000208.html](http://www.bverfg.de/entscheidungen/es20090630_2bve000208.html).

## **6.4 Inter-Regional Differences**

In addition to comparing regions by country, the project aimed to look at a number of factors for a genuine cross-regional comparison. Some of these factors were taken from the existing literature but had been subject to limited empirical testing so far (economic performance); others had been used in the literature to explain different but related phenomena (such as the impact of party constellations on regional preferences) or were included because they could logically be expected to matter (Bauer 2006; Jeffery 2000; Marks et al. 1996; Nielsen and Salk 1998; Tatham 2010; Marks, Haesly and Mbaye 2002). However, the finding of the preceding section – that regional activity in various channels depends on the context of the home country – means that we cannot simply rank the seven regions by size or economic performance and see if a pattern emerges in their level of activity. Instead, it is more appropriate to look at the Belgian, German and Austrian regions as pairs, with each pair containing, for example, a richer and a poorer region. This approach does have certain advantages. If we were to compare all seven regions with no regard to the domestic context, we could only analyse the impact of these factors on unmediated regional activities on the European level. The comparison within the national context allows for an analysis of regional activity at the European level as well as the region's engagement in the national route.

In addition to broadening the focus from the extent to which unmediated access to the European level was established to the level of regional activity on both the domestic and the European level, the analysis will go beyond the fourteen case studies. The interviewees were, of course, familiar with more cases than the two Directives and had had several opportunities to observe their region's strategy and the approaches of other regions from their member state. As a result, during the interviews, the officials often used the concrete case studies as prompts to talk about a region's approach to interest representation in European policy-making more generally, to compare the approaches of different regions and their respective degrees of activism and to reflect on the factors that they felt influenced a region's level of activity. To focus exclusively on the two Directives would result in the waste of that data and would obscure the fact that differences in activity were sometimes

not just specific to these cases but part of wider, much more regular patterns of regional activity.

#### **6.4.1 Party Constellations**

Tatham's quantitative survey of regional offices in Brussels suggested that situations where different parties are in government at the regional and national levels are more likely to result in regions adopting confrontational strategies in Brussels (Tatham 2010). Bauer's findings on the potential impact of party politics on regional preferences seems to further confirm this argument (Bauer 2006). Here, it was also assumed that regions whose governing parties are in opposition at the federal level (incongruence) would *act* more autonomously than regions that share the same governing parties as the federal level (congruence).

Bauer's method of comparing party political constellations to regional demands worked well in the German context, where many cases of clear party congruence or incongruence can be found at all times except during the rare occurrence of a grand coalition at the federal level. However, in the Austrian case, the existence of three similarly strong large parties means that there will usually be congruence or partial congruence between governing coalitions in the regions and at the federal level. In Belgium, the regionalized party system and the large multi-party coalitions at the federal level meant that in the past at least some of the regional governing parties were part of the federal government as well. Here, as the federal government includes Flemish and Walloon parties, party congruence is virtually impossible. As during the time of the case studies Germany also happened to be governed by a grand coalition, the predominant picture in our cases is thus one of partial congruence (cf. Table 8).

**Table 8: Parties in Government at the Regional and National Level (2002-2007)**

	<b>Party Congruence</b>	<b>Partial Congruence</b>	<b>Incongruence</b>
<b>Bavaria</b>		Since 2005: CSU in the region, CDU/CSU/SPD at the centre	Until 2005: CSU in the region, SPD/Greens at the centre
<b>Meck.-VP.</b>	Since 2006: SPD/CDU in government at federal and regional level.	Until 2006, SPD/PDS in the region, SPD/Greens and later CDU/CSU/SPD at the centre.	
<b>Flanders</b>		Parties of the regional government represented in federal government alongside Walloon parties during this period.	
<b>Wallonia</b>		Some parties of the regional government represented in federal government alongside Flemish parties during this period.	
<b>Carinthia</b>		Governments are formed <i>proportionally</i> from parties.  In practice, policy coalition between FPÖ/SPÖ from 2004 until 2009. ÖVP/FPÖ in government at the centre during the whole time.	
<b>Vorarlberg</b>	ÖVP/FPÖ		
<b>Scotland</b>		Until 2007, Labour/Liberal Democrats in Scotland, Labour at the centre.	Since 2007 SNP in Scotland, Labour at the centre

Another problem is that there are only two cases of party congruence or incongruence throughout the entire period of the case studies (Vorarlberg for both

Directives). In all other cases, there were shifts in the constellations due to federal or regional elections. Thus, where Bauer could clearly label regions as having the same parties in government, different parties in government or a partial overlap, here regions either have a partial overlap or the constellations change over time. It is also not possible to map changes in the regions' level of activity over time and changes in party constellations, as changes in activity over time are likely to be conditioned by the different stages of the European decision-making process. For example, MEPs will only be briefed when there is a reading in the European Parliament.

On the other hand, the shifting constellations presented an opportunity. As several of the interviewees would have experienced this shift, they could be asked directly about the impact of changes in federal or regional government on their region's strategy. After all, any major change in direction or approach would invariably affect the official who has to draft the regional position and who would be encouraged to be more or less active and assertive.

The responses from numerous interviewees show that party constellations did not matter in the vast majority of cases. Thus, one Bavarian interviewee said about the change in government at the federal level after the elections in 2005:

“In my opinion, it plays less of a role. [...] Environmental matters are so technical. During this period there were also changes of government in other Länder, and I did not get the impression that something had suddenly changed. [...] We don't want bureaucracy, we want to build flood barriers and not fill folders – everybody gets that. And if you went into detail, then it is so complex, that you could nearly not discuss it with politicians.” (Interview 1)

Similarly, a German interviewee from the BMU said about the Bathing Water Directive that

“it was not a political Directive. I am not even aware of them [politicians] doing anything at home. And neither were there political

contacts within the Federal Republic, between ministers.” (Interview 8)

Many other interviewees agreed with that evaluation and often also mentioned the degree of technical understanding required to formulate a position on the Directives as a reason why party politics made little difference (Interview 7).<sup>44</sup> As the subject matter did not give rise to ideologically informed positions, any disagreements that arose were usually due to different geographic conditions or different evaluations by the experts. Similarly, the compromises were usually sought at the level of the experts.

There is only one case where a change in regional government and ideology was seen to have an impact. In Scotland, officials felt that under the SNP there was an increased interest in developing a Scottish flood risk management policy at the transposition stage (Interview 36). Here, what may have mattered more than party incongruence with the central government is that a government of Scottish nationalists had an interest in pushing for Scotland to use its legislative powers and come up with distinctive policies. This raises questions about the impact of regionalist parties on cooperation with the centre. After all, the position of one other region could be interpreted to have been influenced by regionalist considerations. Bavaria, which has been governed by the CSU, a regional party with a regionalist focus, is also seen as one of the most active German Länder in European policy-making and as one that likes to use symbolic action to highlight Bavaria’s status as a “free state” (Jeffery 1998; Hübler 2003). Much of that activity has to do with a concern with subsidiarity and with maintaining Bavaria’s position as a strong legislative region. That latent concern probably indirectly influenced just how strongly Bavaria felt about the EU venturing into the new area of flood risk management. On the other hand, the rise of regionalism in party ideology does not appear to have affected the attitude of the Belgian regions in European policy-making much. Thus, one task for future research could be to explore the hypothesis

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<sup>44</sup> Similar comments were made by the Austrian interviewees, who felt that the Flood Risk Management Directive might maybe become politicised at the transposition stage, if the federal government encroached upon the exclusive Länder competence planning (Interviews 4, 5, 11, 12).

that regions governed by regionalist parties tend to seek unmediated access to the European level more often or more intensely than their peers.

It should also be noted that the fact that party congruence made no difference in most cases for these two Directives does not mean that it is generally a weak explanatory factor. The findings complement rather than contradict Tatham's quantitative results and highlight the added value of qualitative case studies. As pointed out by many interviewees, flood risk management and bathing water are unlikely candidates for ideological or political strife. It would be difficult to define a typically social-democrat or conservative position on either of these issues. That may not hold true for other legislation, and it is possible that legislation on labour rights or the common market, for example, might give rise to ideologically different positions and mobilise party ties. Thus, just as in the case of "intergovernmental relations", it seems that it is the *combination* of factors that matters. The extent to which regions can influence their member state position only influences regional strategies in Brussels in situations of domestic conflict; and party politics only matter when policies appeal to party politics.

#### **6.4.2 Size or Economic Performance?**

Two other factors for cross-regional variation that can be analysed as part of the project are the impact of the economic performance of a region and its size in terms of population. Economic performance was chosen as one of the hypotheses that had resulted in contradictory results in previous studies (Marks et al. 1996; Nielsen and Salk 1998; Tatham 2010; Bauer 2006). It was assumed that economically stronger regions could be expected to have more financial resources at their disposal that could be invested in bigger offices in Brussels or a higher number of staff at home. Both of these factors would facilitate a proactive approach. GDP per head was chosen as an indicator because it is often used as a measure of economic performance in the EU (e.g. structural funds) and because it does not accidentally measure the size of a region (as the GDP would). The size in terms of population was chosen because it was assumed that the costs of a specialised administration for

European affairs (e.g. a Brussels office) would be easier to bear for a more populous region than a very small region.

Table 9 summarises the main findings. Within the three pairs of regions, Bavaria, Flanders and Carinthia are generally more active in European policy-making. In addition, the interviews showed that Scotland is more active than Wales or Northern Ireland (Interviews 33, 34). It should be noted that the analysis looks at regional activism more generally, not just in the context of the two Directives.

**Table 9: Intra-country Comparison of Pairs of Regions on Size, GDP/head and Level of Activity**

		More Populated	Economically Stronger	More Active
<b>Germany</b>	<b>Bavaria</b>	1	1	1
	<b>Meck.-VP</b>	0	0	0
<b>Belgium</b>	<b>Flanders</b>	1	1	1
	<b>Wallonia</b>	0	0	0
<b>Austria</b>	<b>Carinthia</b>	1	0	1
	<b>Vorarlberg</b>	0	1	0
<b>UK*</b>	<b>Scotland</b>	1	1	1

1=yes, 0=no

\*Each region is compared to the other case study region from that member state. For Scotland, Northern Ireland is used as a comparator as it is the region most comparable to Scotland in terms of legislative powers.

In the German case, Bavaria was considerably more active on the European level on flood risk management than Mecklenburg-West Pomerania. Whereas Bavaria developed an elaborate strategy involving three ministers, the organisation of an event in Brussels and the briefing of MEPs, Mecklenburg just briefed its MEPs once. In addition, Bavaria was very vocal in the domestic coordination process and even expressed interest to provide the representative of the Bundesrat. On bathing water, neither of the regions became active at the European level, but Mecklenburg was seen to be more active within Germany. More generally though, the German interviewees felt that Bavaria tends to be one of the most active German Länder both internally and at the European level. Its less active stance during the coordination of

the German position on bathing water was thus regarded as atypical and linked to restructuring and changes of personnel that may have led to an adaptation period (Interviews 7, 9). Bavaria would also have been less affected by the Bathing Water Directive compared to those Länder that have large bathing-related tourism sectors and hundreds of bathing sites. Bavaria's general activism on European matters has also translated into investments into its Brussels office. Whereas Mecklenburg has seven policy officers in Brussels, the Bavarian representation had at the time in total about 30 members of staff (including support staff) and was expanding (Bavarian State Chancellery 2008: 7). Thus, by mid-2009, it had reached about 40 members of staff (*Sueddeutsche.de* 3/06/2009). The Bavaria representation is also located in an impressive building next to the European Parliament and the Committee of the Regions and in close proximity to Commission and Council buildings, a location designed to express Bavarian aspirations in Europe.

The differences in activism coincide with clear differences in population size and economic performance. Bavaria with its 12.5 million inhabitants dwarfs Mecklenburg with its 1.7 million inhabitants. While Mecklenburg-West Pomerania is still bigger than some of the EU's member states, the interviewees were aware that the region is one of the smaller German Länder, feared that it might be a "light weight" in Brussels, and felt that this influenced negatively its ability to devote staff to interest representation on specific policies and gave it less clout in negotiations with the Commission (Interview 6). In addition, in terms of GDP per head, Mecklenburg is one of the economically weakest German Länder while Bavaria is one of the leaders. The fact that Bavaria tends to be more active than Mecklenburg is thus in line with the hypotheses about size and economic performance.

In the case of Belgium, both regions developed similar strategies of unmediated access to the European level. Internally, however, Flanders provided a pilot for both Directives whereas Wallonia only provided one of the pilots for flood risk management. This is representative of greater Flemish activism in Belgian domestic European policy-making more generally, with one Walloon official estimating that, due to greater administrative resources, Flanders provides pilots more frequently than Wallonia (Interview 21). Flemish activism comes to the fore not only in situations

where it provides the pilot and thus coordinates the formulation of the Belgian position, but also when it does *not* provide the pilot. Since the early 2000s, Flanders has put in place a number of measures designed to give it a competitive edge in domestic European policy-making more generally. Thus, in order to give the Flemish position maximum effectiveness, the region has introduced the role of “Vlaamse trekker”. While the Belgian pilots would normally chair the coordination of their region’s position as well as the coordination of the national position, it is the task of the trekker to make sure that there is a well prepared and coordinated Flemish position even when Flanders does not have the pilot. In addition, Flanders has improved the access of officials to ministerial advisors to ensure that the Flemish position has political support in the case of conflict with other Belgian actors (Interview 24). Thus, in line with the Belgian focus on domestic coordination, the investments of the Belgian regions are into the administrative effectiveness at home. As in the German case, the difference in activism coincides with differences both in population size and economic strength (Flanders being larger and economically stronger).

The same pattern is repeated in the case of the UK. Scotland is economically somewhat stronger than Northern Ireland and Wales and considerably larger in terms of population. As Wales and Northern Ireland were not part of the case studies, their European strategies on the two Directives are unknown. However, the size of the regional offices can be used as an indicator for their investment into European level strategies. Thus, Moore reveals that in 2004 the total number of staff employed by the SGEUO was 12, nearly twice as many as Wales’ seven and more than twice as many as Northern Ireland’s five members of staff (Moore 2004: 146).<sup>45</sup> Within the UK, the Scottish government was more active than the other devolved executives in the coordination of the UK positions on bathing water and floods. It also participated more actively and numerously in the national delegations to Commission and Council meetings. Again, interviewees felt that this was typical for the UK and the literature confirms that Scotland is generally more active in domestic European

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<sup>45</sup> The staffing level for the SGEUO has remained the same ([www.scotland.gov.uk/Topics/Government/International-Relations/Europe/Scotland-in-Brussels/Contacts](http://www.scotland.gov.uk/Topics/Government/International-Relations/Europe/Scotland-in-Brussels/Contacts), accessed 30/08/2010).

policy-making and better staffed than its devolved counterparts. Both the literature and interviewees attribute this directly to Scotland's greater size and – compared to Wales – to its greater competences (Trench 2008: 222; Swenden 2009: 106; Interviews 31, 33, 34).

So far, all cases are in line with the hypotheses that population size and economic performance influence a region's level of activity. However, as greater size and greater economic strength have so far coincided, the data is inconclusive as to whether size or economic strength or both matter. The two Austrian regions were interesting in that regard. Carinthia has the larger population but Vorarlberg has a higher GDP per head. While neither of the regions developed a strategy of unmediated access to the European level, the fact that Carinthia provided the common representative for bathing water and one of the common representatives for flood risk management means that it was much more active within Austria and also participated in national delegations to European meetings. Austrian officials also suggested that larger regions are more likely to provide common representatives, as they can afford more staff. In addition, Carinthia could punch above its weight on water policy due to its close cooperation with Interprevent and the resultant high expertise of its policy officers (Interview 11). More generally, the fact that Carinthia has an office in Brussels with two policy officers whereas Vorarlberg is the only Austrian region not to have an office suggests that Carinthia is also more likely to become active on the European level in general. In the Austrian case, size thus appears to be of greater importance than economic performance.

Across all case study regions, greater population size has consistently emerged as an indicator for greater activism in European policy-making. In addition, interviewees from three different member states advanced population size as an explanatory factor without direct prompting. In the light of these two facts, it is thus very likely that population size is indeed a relevant explanatory factor for inter-regional difference.

By contrast, the Austrian case suggests that economic strength is either a weaker explanatory factor or has no impact. As the GDP per head of a region will influence its income, the assumption is that the former is the case rather than the latter. One way to combine both factors in future research might be to choose an indicator that

combines both the size of the population and the economic performance in one measure, such as the GDP of a region. As Table 10 shows, this measure would be able to explain the differences in all cases, as Carinthia has a larger GDP than Vorarlberg due to its larger population size.

**Table 10: Regional GDP in 2006**

		<b>GDP in 2006 (in million of US Dollars PPP)</b>
<b>Germany</b>	<b>Bavaria</b>	483,072
	<b>Meck.-VP</b>	38,031
<b>Belgium</b>	<b>Flanders</b>	203,922
	<b>Wallonia</b>	82,602
<b>Austria</b>	<b>Carinthia</b>	16,841
	<b>Vorarlberg</b>	13,382
<b>UK</b>	<b>Scotland</b>	168,227

data extracted on 02 Feb 2010 12:52 UTC (GMT) from OECD.Stat

The relevance of the size of the region raises the question of the impact of this factor on the cross-country comparison in section 3, though. Bavaria was indeed the largest region by several million inhabitants, and the larger pool of resources at its disposal probably facilitated its activism. However, Scotland used unmediated access much more than Flanders despite Flanders' population being about 20 percent higher than Scotland's. Also, whereas the size of a region may influence how much it invests into a European level, it is unlikely that, taken on its own, it will stifle completely a region's willingness to mobilise on the European level, especially in the case of the Belgian regions, for which lobbying in Brussels is not much more resource intensive than interest representation at home. Thus, the conclusion that the influence of regions at home matters still holds true.

## **6.5 Conclusion**

The preceding chapters showed that regions do not all pursue the same strategies of interest representation. Some are generally more active than others, and some invest more resources in establishing unmediated access to the European level than others. In addition, a region will vary its strategy of interest representation from case to case. In a sense, this has already been known for years. Thus, a comparison of the strategies of Bavaria and Saxony-Anhalt led Jeffery to the conclusion that Bavaria attaches greater importance to highly visible strategies with symbolic meaning while Saxony-Anhalt focuses more on technical issues (Jeffery 1998). Marks, Haesly and Mbaye have taught us that the Brussels offices of constitutionally strong regions are more likely to count lobbying among their tasks than the offices of non-legislative regions (Marks, Haesly and Mbaye 2002). In addition, Bauer, Nielsen and Salk, Tatham and Jeffery have come up with a number of factors that could determine whether a region seeks more autonomy from the EU or the central state and how successful regional strategies could be (Bauer 2006; Nielsen and Salk 1998; Tatham 2010; Jeffery 2000). Yet, despite these isolated efforts, to date, no coherent empirically tested explanatory framework for intra-regional differences in interest representation has emerged. Nor has such an explanatory framework for regional success surfaced. Nearly twenty years after the first articles on multi-level governance in EU policy-making, our understanding of the dynamics of multi-level strategies is surprisingly limited.

One of the main contributions of this project to the MLG literature was to identify and test a number of factors that could influence levels of regional activity in domestic coordination processes and at the European level. Three key findings have emerged. Two of these can be explained in rational choice institutionalist terms and thus continue on smoothly from the literature on MLG, that was grounded in the assumption that actors are rational (and guided by self-interest).

The first finding is that domestic conflict is an important explanatory factor for the presence of absence of unmediated regional activities at the European level. While some limited regional activities at the European level can occur in accordance with the strategy of the centre, conflict appears to be a key motivational factor for

investments into a European strategy in the vast majority of cases. The main reason for this appears to be that conflict within a member state limits a region's ability to have its priorities included in the national position. Even if the national position is a compromise that includes aspects of the region's position, it is more likely that some of its interests are not incorporated. Conflict thus creates an incentive to supplement the national route with unmediated regional activities.

Secondly, different processes of national coordination create different incentives to pursue a European strategy. Again, the literature on the Belgian regions has already focused implicitly more on domestic channels of interest representation than the literature on the German Länder. The findings of this project suggest that the extent of regional activity at the European level can largely be explained by the gap between the domestic competences of the region in the specific policy-area and its influence in domestic processes of interest representation. Thus, strong legislative regions with a vast amount of influence over the formulation of the national position, like the Belgian regions, are less willing to jeopardise the smooth running of the domestic coordination process through unmediated activities at the European level, even in the face of domestic conflict. Strong legislative regions like the German Länder or Scotland, that have only a limited amount of influence over the formulation of the national position due to limited rights or the large number of actors having to agree are more inclined to develop their own strategies of interest representation at the European level, especially in the face of domestic conflict. Here, the incentive of being able to voice one's interests fully is stronger than the desire to wholly concentrate on a national position that the region can only influence to a small degree.

Finally the pattern of regional activity across the fourteen case studies suggests that the size of the region in terms of population is an important indicator for its level of activity in the domestic coordination processes and at the European level. This finding is in line with the understanding of regional officials of their work and the factors limiting their margins of manoeuvre. It has also emerged that the size of the region has a stronger impact than its economic performance. The precise impact of

economic performance alone could, however, not be identified in the framework of this project.

Thus, overall, a number of factors have been identified as having an impact on regional strategies of interest representation. Several of these can be couched in a language that reflects Marks explanation of why central governments delegate competences to the supranational or subnational level and why supranational and subnational governments would try to interact without the gate-keeping intervention of the national level (Marks, Hooghe and Blank 1996: 347-50). They can thus be used to add complexity to a concept that has sometimes been criticised for being overly descriptive and poor when it comes to generating verifiable hypotheses. On the other hand, the task of investigating the driving forces behind regional strategies is not yet complete. First of all, the project has only been able to investigate a small number of factors. Due to the way the cases were selected, the impact of regional attachment has not been analysed. In addition, the impact of the economic strength of a region requires more empirical verification. Finally, the MLG literature would generally benefit from more empirically grounded work, especially on the impact of party congruence in the case of Directives that are ideologically charged or on regional strategies in the case of soft law and how they compare to regional strategies on hard law.<sup>46</sup>

On the whole, it is only when differences in regional strategies are openly acknowledged and explored that the concept of MLG can be further developed. It is the task of the next chapter to take up the empirical findings of chapters 4 and 5 and the insights of chapter 6 to add more shades of grey, qualifications and complexity to the understanding of multi-level governance in European policy-making.

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<sup>46</sup> Eilidh MacPhail has done some work on Scotland in the Open Method of Coordination (MacPhail 2008).

## **Chapter 7 – Multi-Level Interactions in the European Union**

### ***7.1 Introduction***

The preceding chapters have explored the extent to which regional strategies vary and the reasons for that variation. These insights can now be used to address a related gap in the MLG literature. Thus, those parts of the MLG literature that focus on regions are often concerned with the question of whether there are multi-level interactions in the European Union or not. This black-and-white approach to the question stems from the fact that the initial intention of MLG scholars was to challenge the (liberal) intergovernmentalist view that central governments were gate-keepers who could somehow control the interactions of the subnational level with the supranational level (Marks, Hooghe and Blank 1996; Marks et al. 1996; Hooghe and Marks 2001). Hence, the objective was to show that subnational actors could establish unmediated access to the supranational level and vice-versa. However, the question of how common or frequent multi-level interactions are has been somewhat neglected. Similarly, the question of the purpose and usefulness of individual channels of interest representation has eclipsed the question of how often individual channels are actually used.

The relative neglect of these questions is linked to methodological challenges. Thus, in order to learn about the frequency with which regions seek unmediated access to European actors, a researcher would either have to conduct a survey of the Brussels offices or look at regional strategies across a number of pieces of legislation. The first method faces the challenge that it relies on self-reporting and may not be very reliable; the second faces the problem that the number of cases a researcher can investigate is limited.

As this study brings together fourteen cases, it provides a rare opportunity to think about multi-level governance in terms of frequency. Thus, the first section of the chapter will discuss the prevalence of multi-level interactions in European policy-making, arguing that they are in fact limited. It will move on to explain why multi-

level interactions are not more common, drawing also on the findings of Chapter 6 as to the factors influencing the strategy of a region. The second section will then analyse both the relative importance of individual channels of unmediated access to the European level and the relative frequency with which they are used.

## ***7.2 How European is Regional Lobbying?***

### **7.2.1 The Importance of Mediated Access to the European Level**

In purely quantitative terms, the regions did not establish unmediated access to a European actor in 50 percent of the cases, only engaged to a limited extent in unmediated interest representation in about a third of the cases (5 out of 14) and only established extensive unmediated interaction with European actors in two out of fourteen cases. Given that “limited” unmediated access usually meant one single instance of unmediated contact with a European level actor during the entire duration of the negotiations, the conclusion must be that – with few exceptions – unmediated interaction with European level actors was rare to non-existent across the case studies.

However, these cases do, of course, only represent a small fraction of European policy-making. More precisely, we are looking at strong legislative regions that derive legitimacy at the European level from their strong position at home. The study concentrated on hard law that the regions would be obliged to transpose. All but the Austrian regions would have either exclusive or very extensive legislative powers in a domestic context in the policy area concerned. And all regions were directly affected by the policies proposed by the European Commission. In that sense, the cases are “good” cases where one could expect to observe multi-level interactions. On the other hand, the Directives were technical and did not give rise to ideologically inspired party political strife. Also, while regulatory Directives create adaptation costs and, potentially, indirect benefits due to changes to the playing field in the policy area, they do not provide the direct financial benefits or costs that distributive policies offer. Hence, the cases would not be ideal cases.

With this in mind, one can assume that for strong legislative regions unmediated strategies of interest representation at the European level will be even rarer for soft law, in cases when regions have only limited or no legislative competences at home (as the four Austrian cases suggest) or when the level of salience is low. Conversely, more unmediated interactions between regions and European actors can be expected in the case of Directives with a very ideological content or distributive legislation. The vast majority of the EU's competences are regulatory, though, and the proportion of legislation that receives a high amount of political and public attention is small compared to the total work program of the Commission. Thus, it seems that strong legislative regions prioritise and only establish unmediated access to European actors in the most important of cases.

This conclusion is supported by the views that regional officials expressed about regional engagement in European policy-making. While there were different views on what constitutes effective interest representation, there was almost unanimous agreement on the importance of working through the federal government and the national delegation. In fact, it appears that the national route is the "default" route, in that regions always attach great importance to the negotiation of the national position and their representation in European policy-making through the national delegation. European level strategies, by contrast, are something that is used for specific cases.

On the whole, officials from Austria were the most sceptical about the effectiveness of direct strategies at the European level and placed the greatest emphasis on the national route. Thus, a Carinthian official said about European level strategies:

"I don't think that you can achieve much that way in a legislative process. In principle the [federal] ministry is responsible. If you feel that it [the policy] does not work in practice, then you have to present the arguments to the ministry." (Interview 12)

Similarly, another Carinthian official explained that the European route was only chosen if an issue was extremely important. He felt that the regions could generally achieve greater influence through the regular work of the common representative than through individual actions at the European level, especially at the

implementation stage when expertise becomes an important commodity (Interview 11).

While officials from Vorarlberg did not express the same amount of scepticism vis-à-vis the European strategy, when asked about effective interest representation, the first thing that came to mind was the national route: “In general we try to influence the federal government through a common position of the Länder, that is to cover the Council and Council working groups” (Interview 10).

An interview with the Director of Carinthia’s Brussels office confirmed that unmediated European level activities tend to be chosen in certain conditions, usually when the national route proves to be unsatisfactory: “We only become active when the federal level does not become active or if it goes in another direction” (Interview 28). However, sometimes regional lobbying activities can be devised in cooperation with the federal government:

“It can be good when a region becomes active with a similar position [to the federal position] from time to time. The federal government and the regions have different channels at their disposal and the Commission likes it when – especially federal – regions support a topic, not just the federal government.” (Ibid.)

On the whole, it appears that the Brussels offices of the Austrian Länder, which would be at the heart of unmediated European level strategies, concentrate their activities on a small number of priorities. Thus, a former member of the Austrian Permanent Representation felt that the offices were active especially on funding-related policies and through promotional activities for the purpose of attracting tourism and industrial investments (Interview 22).

The interviewees from Mecklenburg expressed similar views. Thus, one official pointed out that the Land would become active at the European level if necessary, but deemed the collective approach via the Bundesrat and the federal government to be more effective than individual activities by one Land (Interview 6). Another official from Mecklenburg described the route via the representative of the Bundesrat

and the federal government as the “usual way” of interest representation (Interview 7). Interestingly, the representative of the Bundesrat for the Bathing Water Directive did also not make much use of the Brussels office of his region, as he felt that he could get information and contacts much quicker through his participation in European level meetings as representative of the Länder (Interview 18). The fact that somebody who was clearly willing to invest much time into the negotiations did not feel the need to engage in unmediated interest representation echoes the argument made in Chapter 6, that regions that feel influential or a satisfied with their level of influence are less likely to perceive the need to pursue a separate lobbying strategy.

Similarly, a Flemish attaché to the Belgian Permanent Representation explained that “the Belgian attitude is not to bother people too much” (Interview 24). Thus, the regions do not normally send ministers or contact the Commission outside the framework of European level meetings, as going solo requires much effort such as investment into a clear and firm position that is well-argued, as well as attempts to form coalitions with other member states to increase the chances of success (Ibid.). Also, while Scottish officials did not talk about interest representation in European policy-making more generally, the responses on the Flood Risk Management Directive show that officials feel that direct action at the European level is unnecessary as long as the national position reflects the Scottish position (Written communication 3).

The only interviewee who attributed a greater importance to unmediated activities at the European level than national coordination was a former member of the Bavarian office in Brussels.

“I would judge the direct way of interest representation with the Commission or the European Parliament to be the more promising one, though.” (Interview 3)

The official explained that this was because unmediated lobbying allows a region to avoid being dependent on the willingness of the federal government to cooperate. Yet, in terms of quantity, extensive European level lobbying usually happens in very

important cases. Thus, when asked about how typical the Bavarian strategy for the Flood Risk Management Directive was, the official replied:

“Yes. Well, it was the first time that there was a cost estimate. We also have never done that since, and it is certainly something that requires a high investment of staff. But for the rest, participation in the consultation, events, being active in Berlin and Brussels, that is completely normal. When great interests are at stake, then we do make an effort.” (Ibid.)

## **7.2.2 The Limits of Unmediated Actions at the European Level**

The limits of unmediated regional activity at the European level are of course largely defined by the explanatory factors for the variation in regional strategies identified in Chapter 6. Thus, one of the recurring themes in interviews were the costs of direct lobbying strategies at the European level.

Interviewees from smaller regions in particular were aware of the extent to which long-term investments related to the Brussels offices affect a regions general ability to act. On the one hand, some of the small regions feel that they cannot afford a Brussels office with adequate levels of staff and either share an office with another region – as is the case of Schleswig-Holstein and Hamburg sharing the Hanse Office – or decide not to have a Brussels office, like Vorarlberg. In the latter case, regions like Vorarlberg end up with a limited margin of manoeuvre as it is difficult to establish, maintain or expand a Brussels network in the absence of a presence in Brussels. Thus, it is harder for them to interact directly with Commission officials or become integrated in informal networks, which increases their reliance on formal channels (i.e. the CoR) and existing contacts (the region’s MEPs):

“We don’t have Brussels office, and that limits us somewhat. But we are relatively active in the CoR, for example, and when something is important, we try to get in touch with MEPs.” (Interview 10)

However, even if smaller Länder opt for their own Brussels office, the challenges are high. Thus, in the Austrian context, Bussjäger and Djanani argue that “the offices experience further limitations to their “output” due to limited budgetary resources that push them into an insignificant role within the lobbying network of the EU” (Bussjäger and Djanani 2009: 64).<sup>47</sup> The Director of the Carinthian office explained that “the Länder offices [in Brussels] are very small and can concentrate only on the most important topics” (Interview 28).<sup>48</sup> The Carinthian office itself has two policy officers (including the Director). The two members of staff have to do everything from arranging or giving presentations for visitor groups, supervising graduate trainees, running promotional activities, monitoring CoR proceedings to keeping the region at home informed European legislative initiatives to actual lobbying. As a result, the time left of lobbying activities is extremely limited and only high priority issues are followed up. Their number is tiny compared to the Commission work programme and has in recent years included mainly distributive policy areas, the structural funds and agricultural policy, and a handful of topical regulatory policies (e.g. related to energy policy) (Interview 28).

However, even regions with seven policy officials in Brussels, like Mecklenburg-West Pomerania, have to be clear on their priorities to be effective, as each member of staff covers issues relating to one and a half to two ministries at home. The Brussels official covering environmental policy also follows agricultural and fishery policy, amongst other things. As Mecklenburg has a long coastline and much agriculture, key initiatives in both of these areas tend to take priority over environmental matters (Interview 30). It is thus only once we move into larger member-state-sized regions that a better ratio of policy areas to staff allows these constraints to diminish.

At the same time, effective lobbying at the European level requires corresponding investments at home. “Active lobbying requires a lot of manpower in the background. [...] You cannot always guarantee that” (Interview 3, 30). Policy officers in Brussels lack the specialization to follow up policies on their own. As a

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<sup>47</sup> Translated by author.

<sup>48</sup> Cf. Greenwood (2003: 231), arguing that in general many of the regional office in Brussels have failed to successfully expand their activities beyond regional policy.

result, a higher level of staff in Brussels will only lead to better interest representation if the Land has a corresponding capacity to produce detailed position papers at home. For example, during the revision of the fisheries policy, Mecklenburg's Brussels office obtained an early draft that was quite long and in English. As the officials at home were otherwise engaged and could not work through this document at short notice, an opportunity to influence the policy was missed (Interview 30).<sup>49</sup>

In addition to these long-term investments, the departments affected have to be able to concentrate in the short and medium term a considerable amount of effort on the Directives on which they are lobbying at the European level. Thus, if we look at those strategies that are deemed to have made an impact, the most obvious examples of time-intensive strategies are the Bavarian strategy on flood risk management and the Scottish strategy on bathing water. In the Bavarian case, the strategy required on the one hand ministers willing to promote the position and, on the other, considerable investments in the production of expertise. With regard to the latter, the strategy included the production for the first time ever of a cost estimate of the implementation of the initial proposal. Commission officials could still recall that document at the time of the interview with no need for prompting and felt it had influenced the outcome of the negotiations (Interview 27). Yet, despite the apparent success of the document and despite the fact that Bavarian officials are proud of their initiative and present it as a shining example of Bavarian interest representation, the compilation of the cost-estimate was deemed so staff-intensive that it has not been attempted again since and is likely to be used sparingly in the future (Interview 3). With regard to bathing water, Scotland had to convince the Commission that diffuse pollution was an important challenge that had to be taken into account by the Directive and – in order not to be seen as a laggard dragging its feet – it had to present ways of dealing with that problem. Thus, the Scottish strategy required the compilation of scientific evidence and cooperation with leading experts and relevant stakeholder networks, but it also required viable solutions to be promoted. For example, the devolved executive invited the Commission to Scotland to study the

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<sup>49</sup> Interview 25 also confirmed from the perspective of a regional expert that civil servants at home can be under much pressure which limits the amount of time they can invest into a given Directive.

electronic signalling system that allowed Scotland to inform bathers about the bathing water quality in real time and that would allow it to open and close beaches temporarily when the quality was affected by bad weather. Fortunately, the Scottish official in charge benefited from the expertise of SEPA and a deputy chairman of SEPA helped him lobby the EP (Interview 32).

Of course, even the narrower successes of regions such as the Belgian regions' promotion of their signage system and bathing water profiles at the implementation stage required the pre-existence of best practice and expertise and officials willing to summarise the information for and present it to the other actors in the process. Thus, the successful work through regional representation in national delegations requires man-power. The only way for a region to reduce those costs is to rely on others to negotiate on its behalf on the European level or to cooperate with others.

As regions naturally look first towards other actors in their member state, free-riding or collective action usually occurs when the positions within a member state are close to begin with. While the interview with the Director of the Carinthian Brussels office indicates that unmediated regional lobbying can also happen when the central government and the regional level pursue similar objectives, the same interview and the discussion of the role of conflict in Chapter 6 show that conflict is indeed an important incentive for regions to invest in interest representation on the European level, as it increases the chances of the national position being perceived as suboptimal and unsatisfactory by the region (Interview 28). Of course, how unsatisfactory the national position is likely to be depends in turn on the precise powers of a region in domestic European policy-making (cf. Chapter 6).

### **7.2.3 The Myth of a Subnational-Supranational Alliance**

The role of conflict is linked to another question in the MLG literature, namely the role of the Commission. In some of his writings, Marks portrays the Commission as playing a mobilising role for regions. It is seen as both a potential ally of the subnational level against the central government and as an actor who actively encourages regions to engage in European policy-making. This theme has also been

taken up by other authors, like Benz, Tömmel or Anderson (Marks 1992: 218; Tömmel 1998: 60; Anderson 1996: 164; Benz 1998: 117; Ansell, Parsons and Darden 1997: 350).<sup>50</sup> One of the side effects of such an alliance would be the erosion of the authority of the central state.<sup>51</sup> However, while the idea of a subnational-supranational alliance presupposes the existence of conflict or power struggle between the regions and the central government, such conflict cannot be taken for granted. In fact, the impression given by recent articles and interviewees alike is that regional-central relations are quite consensual in the overwhelming number of cases.<sup>52</sup> Most of the time regions have thus little incentive to escape the clutches of a central state that is quite willing to argue their point.

In fact, policy-specific dynamics play a role in providing a setting for constellations of conflict and alliances. Policy-making on the Structural Funds, for example, involves the Commission helping to finance regional projects and explicitly cooperation with the regions under the participation principle. The policy thus provides the Commission with a great capacity to act in an enabling function towards regions and potentially strengthen their autonomy vis-à-vis the central state. By contrast, whether regulatory policies do or do not suit a region depends on how well the new policy fits onto the region's existing regulatory framework and its state of affairs on precise policy issues. The constellations of conflict and alliances are thus likely to be much more fluid and case sensitive, which is well reflected in the findings of this project.

In half the case studies, there was no conflict between the regions and the central government. Instead, they were joined either in approval of the Commission's intentions (e.g. Austria and the Bathing Water Directive) or in opposition to the policy (e.g. the UK and the Flood Risk Management Directive). European policy-making was thus unlikely to have any impact on the power balance between regional

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<sup>50</sup> Conzelmann (1995) presents a more nuanced view, arguing that the Commission only empowers the regions of centralised states.

<sup>51</sup> Erosion does not equal disappearance, though. Hooghe and Marks still see the central state as playing an important role in European policy-making (cf. Hooghe and Marks 2001).

<sup>52</sup> Tatham (2009: 11): Based on a number of interviews, Tatham estimates that there is no conflict between the UK and the devolved governments in about 95 percent of cases. Cf. Interview, official, Liaison Office of the Länder, Vienna, 2/04/2009.

and central governments in these cases. In those cases where conflict did arise, it took various shapes and forms. In the case of the Bathing Water Directive, Scotland benefited from its unmediated interaction with the Commission and MEPs and its constructive approach to the policy problem, in that its concerns were incorporated into the Directive. On the other hand, while the UK initially opted for opposition, it did eventually incorporate the Scottish stance on diffuse pollution into its position (Interview 32). Also, the changes proposed by Scotland did not imply a higher burden for the rest of the UK. In the Belgian cases, the regions opted for a common strategy and resolved their disagreements at home. However, even if they had engaged in separate lobbying strategies, it would have been a contest of force between regions. For Flanders, the Commission's proposal presented the opportunity to make Wallonia adopt policies that would benefit Flanders. It would thus have had an empowering effect. On the other hand, for Wallonia, there was a fear of being "coerced" into adopting specific measures. Thus, one region's ally would have been another region's enemy. The German case on flood risk management is also quite interesting in that respect. While neither the central government nor the regional governments wanted a highly detailed and costly Directive, some non-German interviewees felt that the Commission's initiative was perceived by the federal government as a way to increase inter-regional cooperation in Germany (Interviews 27, 29). If that was indeed the case, then it was an opportunity for the federal government to tie the hands of the Länder. But even if not, it would have been a case of two types of actors disagreeing over the degree to which the Commission's initiative ought to be opposed, with the federal government being *more likely* to support the Commission than the regions.

On the whole, the potential empowering and disempowering effects of Commission initiatives on federal or highly decentralised states in regulatory policy areas are thus much more volatile and unpredictable, as they can in principle give any actor leverage over another. There is thus no such thing as a natural subnational-supranational or central state-supranational alliance. The only consistent winner in situations of strong domestic conflict is arguably the Commission, as it is presented with a choice of allies. For the same reason, regional and central state actors usually try to avoid splits. Nevertheless, this does not entirely preclude situations from

emerging where one type of cooperation is more common than another. Thus, Commission officials and Scottish officials were under the impression that Scotland sometimes tended to have a slightly different and more constructive approach to European environmental policy-making than the UK (Interview 36). Especially on those occasions where the UK followed a strategy of opposition, Scottish officials were easier to work with from the Commission's point of view (Interviews 27, 29).<sup>53</sup>

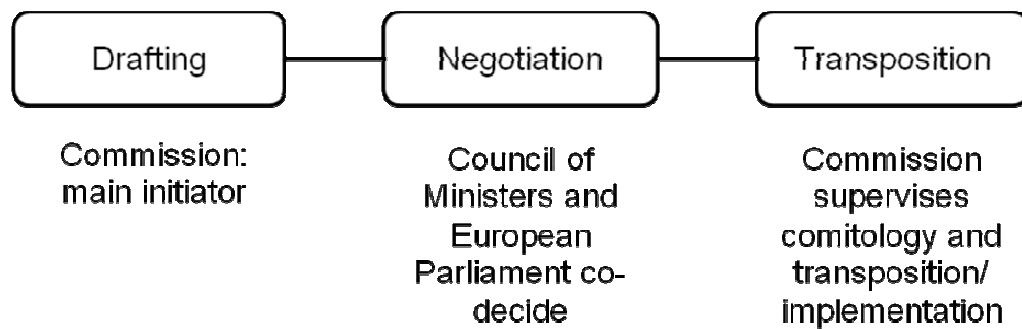
### ***7.3 The Popularity of Unmediated Channels of Interest Representation***

While the primary way of regional interest representation may be through the national position and delegation, regions do sometimes engage in separate, unmediated lobbying strategies at the European level. The strengths and weaknesses of the various channels that can be used for this purpose have already been discussed extensively in the literature and were presented in Chapter 3. The objective of this section is to move beyond the debate about the potential merits of these channels and to use the case studies to evaluate how and how frequently they are actually being used in regional interest representation. The analysis will focus in particular on MEPs, the Commission, the Committee of the Regions and national and transnational networks. The role of the regional offices will not be subject to a separate discussion (cf. Chapter 3). In addition, Chapter 6 and the first section of Chapter 7 have made their contribution to the debate by pointing to the constraints faced by regional offices. Suffice is to say that the vast majority of unmediated regional activities at the European level are facilitated or run by the regional offices, often at the request of officials or politicians at home.

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<sup>53</sup> The Austrian experts on flood risk management who negotiated the common position of the Council during their Presidency also perceived the initial UK position as too rigid to negotiate with (Interviews 13, 14).

**Figure 12: The Relevant Actors at the Three Stages of the Decision-making Process**



### 7.3.1 The Rise of the European Parliament

Having been used in seven out of fourteen cases, the most frequent form of interest representation was to inform the region's MEPs about the position of the region or to discuss the policy with key MEPs such as the rapporteur on the dossier or Committee chairmen and vice-chairmen. Contradicting directly Moore's claim that the European Parliament is one of the institutions of "lesser importance" to regional offices, it is in fact the one form of unmediated interest representation that has been used in all cases where some level of conflict occurred (Moore 2008: 526). This finding is further supported by the claim of Kohler-Koch, Grosse Hüttmann and Kotzian that the cooperation with MEPs regardless of party membership has become so popular in recent years that several Länder offices have a member of staff specifically for the purpose of liaising with "their" MEPs (Knodt, Grosse Hüttmann, Kotzian 2009: 128).

This routine use of the European Parliament is also reflected in qualitative interview data, with the vast majority of officials regarding this channel as a useful option for important issues. In fact it seems that once a region decides that a policy requires European level action, the briefing of MEPs is routinely pursued. Thus, one Bavarian interviewee stated that "We strongly mobilized our Bavarian MEPs, who we *always* closely cooperate with" (Interview 3, emphasis added). Similarly, interviewees from Vorarlberg, Carinthia and Wallonia confirmed that their regions tried to get in touch with their MEPs on important issues, sometimes formulating amendments for them

(Interviews 10, 28). Scottish MEPs also confirmed that they were regularly contacted by their regions (Written communications 4, 5).

The popularity of the EP is linked to the influential role of the Parliament under the co-decision procedure and also affects the interest representation of member states. Thus, an official of the Belgian Permanent Representation argued that

“even for Council members, the co-decision procedure has made the European Parliament much more important. But in general, the Permanent Representation does its best to brief the Belgian MEPs before every plenary vote or Environment Committee vote.”  
(Interview 23)

In addition, the Austrian and the UK central governments targeted the European Parliament in their strategies of interest representation for both case study Directives and Germany contacted its MEPs at least for the Bathing Water Directive.<sup>54</sup> As the co-decision procedure becomes more and more common in European policy-making, we can thus expect the importance of the EP as a focal point of lobbying efforts to rise.

In addition, cooperation with MEPs is usually not just limited to those MEPs who belong to parties that are in government at the regional level (or national level, in the case of central governments). Instead, information on the regional position is often provided to *all* regional MEPs.

However, while the briefing of MEPs enjoys great popularity, the actual impact of this method is more disputed. Bavarian and Scottish officials were obviously pleased with the result of their efforts. Thus, one of the Scottish officials explained that during the negotiation of the Bathing Water Directive the contact with MEP Catherine Stihler had important knock-on effects in the EP, especially within the Party of European Socialists (Interview 32). A Bavarian official felt that the EP position on flood risk management also changed at the second reading due to regional lobbying efforts:

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<sup>54</sup> It is not known whether Germany also contacted its MEPs for the Flood Risk Management Directive.

“But there were initially also suggestions for amendments that would have made everything even more detailed, that we decidedly rejected. And in reaction to that we then contacted our own MEPs – “you can’t agree to that in the plenary”. That way we then managed to get less detail.” (Interview 3)

Similarly, Commission officials felt that certain MEPs could be regularly seen to defend regional positions in the Parliament (Interview 29). Yet, other voices are less certain about the effectiveness of that channel, while still supporting its use. Some officials feel that it is sometimes difficult to know if MEPs do indeed take up the regional positions, and that even if they did the great number of MEPs in the European Parliament would mean that the regional MEPs would in turn need to influence other MEPs to achieve an impact (Interview 1). It should also be noted that the EP only plays an important role during a specific window of opportunity, namely in the run-up to EP readings.

While the effectiveness of the cooperation varies from MEP to MEP and case to case, there are some factors that have a more general relevance. Party ties between the regional government and an MEP certainly increase the regional government’s chances of getting heard (Interview 3). Also, if an MEP has specialised on certain policies for several years, he/she can have developed a certain working relationship with the relevant policy officer in the regional office in Brussels and even with the regional experts at home, regardless of party affiliation (Interview 30). Ultimately, whether or not the regional position is taken on board depends also on the strength of the position of the European party and on how persuasive the regional position is.

Thus, how can we explain the gap between the uncertainty about its effectiveness on the one hand and its wide-spread use on the other? On one side, it is worth bearing in mind that the popularity of MEPs is generally justified with the EP’s importance under the co-decision procedure, which means that the use of MEPs is likely to vary across policy areas. On the other side, briefing MEPs is still one of the less work intensive actions on the European level; a benefit that may well outweigh the disadvantage of uncertainty.

### 7.3.2 The Commission as First and Last Port of Call

The Commission is of course also a crucial actor in European policy-making through its roles as policy initiator and coordinator of the transposition process. It was at the centre of regional attention at certain stages of the decision-making process, but just as in the case of the EP, the attention it received fluctuated over time in line with its influence over the process. As the Saxon representative of the Bundesrat on flood risk management succinctly stated when asked about regional lobbying once the Commission proposal had been officially published:

“The Commission was of no consequence at that point. It was a Directive of the Council and the Parliament. The Commission had already made its points. [...] Instead you had to talk to the Parliament.” (Interview 17)

However, while the Commission was at the centre of regional strategies of interest representation during the earliest stage in the decision-making process and during the follow-up work during the transposition and implementation phase, the regions used mostly what was so far described as mediated access. In terms of unmediated access, we only know of Bavaria’s contact with Commissioners and its participation in the Commission consultation for flood risk management, Scotland’s contact with Commission officials on bathing water and Flanders’ contact with Commission officials on bathing water, though that was probably linked in part to it having the pilot on the dossier. For the most part, the regions concentrated on Commission stakeholder meetings for the drafting and Commission committees and workshops for the implementation stage, where they were either directly represented in their own right (Scotland and the Belgian regions), representing other regions because they held the common representative (Carinthia) or indirectly represented by common representatives from other regions (Bavaria, Mecklenburg-West Pomerania, Vorarlberg). Even in those cases – especially Austria but to also Germany and the UK for stakeholder and Council meetings - where regional representatives were not or rarely allowed to take the floor in European meetings, the regional presence constitutes an insurance that the central government would indeed stick to the agreed

line. Mediated access to the European level thus serves to permeate regional influence at the national level.

On the whole, the regions showed a particular interest in the transposition phase, though, as they felt that there was a certain risk of Directives being “reinterpreted” by the Commission in transposition guidelines, which could lead to stricter or more detailed requirements for transposition and implementation than foreseen by the member states when they agreed to it in the Council (Interview 36; Written communication 3).

“As with all Directives, the input post-enactment is just as important as the negotiation phase, as it is often post-enactment that the Commission try and take forward things that weren’t captured by the Directive, for instance through guidance and reporting mechanisms.”  
(Written communication 3)

At the same time, there are no longer unmediated regional activities taking place at that stage. Despite the perceived risk of new additions or amendments, the regions feel quite influential at that stage due to the emphasis on expertise (Interviews 11, 17, 21, 36).

What is interesting is that the participation of regional experts in Commission meetings and especially Commission working groups and workshops at the transposition stage does in fact challenge the distinction of “mediated” and “unmediated” access. Originally, in Chapter 3, participation in the national delegation was classified as “mediated” access, as participation in that delegation could be subject to domestic negotiations and, most importantly, as it was assumed that regional experts would be bound by the national position. As it turns out, this is an over-generalisation from Council proceedings, where a strict emphasis on member state positions is applied. Commission working groups, by contrast, have been described as more relaxed by interviewees who felt that they could – at least to some extent – depart from the national position (Interviews 20, 21, 25). This would not affect the participation of German and Austrian common representatives being classified as “mediated” access, as they would be bound by a common Länder

position on the basis of their roles regardless of Commission expectations. The Belgian regions, by contrast, are virtually guaranteed access to Commission working groups when their exclusive competences are concerned and as often representatives from all regions can be there due to the small number of Belgian regions, even the pilots feel no longer fully bound by the Belgian position at that stage (Interviews 20, 36). As a result, the Belgian regional participation in Commission working groups does tend toward the “unmediated” end of the spectrum. Scottish participation would be in the limbo between “mediated” and “unmediated”, as Scotland’s dependency on the willingness of the UK leads to include Scottish officials into the national delegation places limits on the extent to which Scottish officials can depart from the UK position.

### **7.3.3 An Invisible Committee of the Regions?**

The Committee of the Regions is the one European institution in which all the governments of the case study regions were directly represented. Also, as the CoR adopted positions on both Directives, most of those governments would ipso facto have used this channel provided that their representatives attended the relevant CoR plenary meetings. Unfortunately, as the CoR meetings are usually not prepared by specialists but more generalist European divisions, there is no interview data on whether the regions were actually represented during those meeting and on how much effort they put into them.

What is known, however, is that the CoR positions on bathing water and flood risk management did not become overly influential. Thus, Commission officials took note of their existence but did not feel that they had much of an impact (Interviews 27, 29). In addition, as discussed in Chapter 5, the CoR’s position on flood risk management was too general to achieve much, and a second position that could have discussed flood risk management barely mentioned the topic.

The reactions of different types of officials to questions about the role and importance of the CoR from their point of view was also quite informative. Officials from the Brussels offices or European divisions had a balanced opinion of the CoR.

The most positive reactions came from Vorarlberg. As Vorarlberg's options at the European level are limited due to the fact that all European business is conducted from Bregenz, the official from the Department of European and International Affairs put considerable emphasis on the region's work through the CoR. Thus, when asked about the region's European strategy in general, the national route was the first thing that came to mind followed by the CoR and then MEPs:

“In general we try to influence the federal government through a common position of the Länder, that is to cover the Council and Council working groups. Then we are represented in the CoR through the Landeshauptmann and the president of the Land. While this is less effective as the CoR can only act in an advisory function, you can try to shape opinions and make sure that the position of the CoR goes into the right direction, the one you want.” (Interview 10)

While the interviewee regarded the CoR's influence as limited, she pointed out that Vorarlberg was generally relatively active in the CoR and that the Austrian Länder cooperated closely for the purpose of monitoring and preparing the various CoR committees (Ibid.). The Director of the Carinthian Brussels office confirmed the existence of a regular coordination between Länder, but she was also aware of the fact that the consultative CoR opinions were less influential than EP position, for example. She felt that among the various tasks that she had to take on, monitoring the CoR fell into the lower third. Nevertheless, she valued the CoR for being the only way for regional politicians to officially participate in the legislative process, saw it as an important tool for networking and the Europeanisation of politicians and estimated that the collective position of so many regions could have some impact on the Commission and the EP when well prepared (Interview 28). However, the Scottish Aron report expresses the view that the quality of the positions as well as their compatibility with the interests of the Scottish government varies and points out that “in any case, the main EU institutions have no formal requirement to take CoR opinions seriously” (Aron 2006: 13).

Similarly, an official of the Brussels office of Mecklenburg-West Pomerania perceived both the relative lack of influence of the CoR's positions and its strength in

tying regional governments into the European policy-making process. Apart from the opportunity to establish contacts with other regions, the CoR was also seen to offer some very tangible cost-cutting benefits, such as rooms and translators for regional events. However, his impression was that as a mechanism of interest representation, it was of limited usefulness. In addition, he felt that regional representatives did not always attend meetings, which suggests that the CoR is not at the top of the political agenda, and that officials and politicians at home had a limited awareness of it. Thus, his verdict was that:

“The CoR is of little consequence in the Land; the awareness of it is low. [...] It is only seen as work when a request for a position of the ministry arrives. [...] Most offices that do know something about it are also aware of how little influential it is. And those [people], who don't know it, find it simply annoying.” (Interview 30)

This view reflects the perspective of regional policy officers well. The general impression across interviews with regional experts was that policy officers had a lower interest in and understanding of the role of the CoR in European policy-making compared to the role of the European Parliament, for example. In line with that, experts were much more likely to mention MEPs as a good way to get a regional position across than the CoR and much more willing to discuss the strengths and weaknesses of that option. Even common representatives or representatives of the Bundesrat did not include the CoR into the description of their strategies (Interviews 11, 12, 17, 18, 20).

On the whole, the overall impression is that the case study regions use the CoR routinely because they have easy access to it, but without this being an important part of strategies of interest representation. The Austrian regions, which do seem to place a conscious emphasis on that channel, are the exception. Given the relative lack of power and resources of the Austrian Länder compared to the other case study regions, this might suggest that the Committee of the Regions is indeed seen as a greater resource by weaker regions.

### 7.3.4 The Role of National and Transnational Networks at the European Level

Articles describing the structures for regional lobbying at the European level usually count transnational networks among them. As lobbying at the European level involves soft rather than hard power, the assumption is that regions would benefit from the increased legitimacy that cooperation with other regions or interest associations would confer upon them. Yet, the findings of the fourteen case studies suggest that the use of such networks for the purpose of interest representation is actually quite rare. In fact, it is important to distinguish ad hoc or regular cooperation with other regions or interest associations for the purpose of *exchanging best practice* or obtaining information from ad hoc or regular cooperation for the purpose of *influencing* a policy outcome.

There was only one case where cooperation with transnational networks for interest representation purposes could be observed. During the negotiation of the new Bathing Water Directive, the Scottish expert used his contacts in the UK water industry to get in touch with EUREAU, the European Federation of National Associations of Water and Wastewater Services. As a result of being invited by EUREAU to speak at various workshops, he gained a platform for the presentation and promotion of the Scottish position (Interview 31). However, as discussed in Chapter 3, for Scotland, the Aaron report generally questioned the usefulness of some policy networks (as opposed to networks focused on Treaty revisions) with a fixed membership and suggested that the Scottish government review the need for formal membership in some networks, as non-membership was seen to have similar benefits without the costs of membership fees (Aron 2006).

There were more instances where contacts with foreign experts were used to better *understand* aspects of the Directives. Bavaria had some contact with Austrian regional officials on the Flood Risk Management Directive, but it was not deemed very fruitful due to the constraints that the Council presidency placed on Austrian actors (Interview 1). Flanders had some exchanges with France, the Netherlands and the UK on bathing water, but generally in order to learn about ways of tackling specific technical points (Interview 25). During the negotiations of the Bathing

Water Directive, Scotland also received a study visit from Bavarian senior civil servants and shared information with the Netherlands, Catalonia and France (Interview 32). Vorarlberg, by contrast, had no contact with foreign actors, and Wallonia and Carinthia had only contact with foreign actors during official meetings in Brussels (Interviews 10, 11, 12, 21; Oral communication 2).

The officials most likely to facilitate or engage in networking are the officials in the Brussels offices. These interviewees could provide further insights into the uses and limits of regional networks. The most critical assessment came again from the Belgian regions, which might suggest that this is another tool that is more attractive for less powerful regions. Thus, a Flemish attaché to the Belgian Permanent Representation said that she did not normally work with other European regions and pointed out a number of obstacles. In the first place, as only national positions are presented in the Council and often the Commission stakeholder meetings, it would be difficult to find out what the regional positions were. There are also only a handful of regional experts in official meetings, and it would be difficult to distinguish them from national experts. Finally, she questioned the benefits of entering a coalition with another actor that was just one part of a federal state and lacked hard power. Flanders does, however, sometimes check the Dutch position on well-defined problems. Here, language is seen as a common element facilitating communication (Interview 24). In fact, by looking at the list of contacts for Scotland and Flanders for the case study Directives, it seems that strong legislative regions are not unlikely to try and use their presence at official meetings to coordinate “upwards” with member states rather than regions when the opportunity presents itself. The interview with an official of the Brussels office of Mecklenburg-West Pomerania also highlighted some of the problems associated with trans-border interregional cooperation. According to him, Mecklenburg has a partnership with France and occasionally tries to cooperate with French regions. The success of these attempts does, however, depend on the similarity of positions and also on the eagerness of the other regions, which makes cooperation difficult (Interview 30).

However, while trans-border interregional cooperation is complicated by the need to first identify regions with an interest in the policy and then find regions with a

similar position, there are instances where common interest representation on specific policy issues occurs (Ibid.). Thus, Mecklenburg-West Pomerania has an interest in the Baltic Sea cooperation, Carinthia coordinates its position on certain energy issues with a group of regions including other Austrian regions but also North West England, West Norway and Spanish, Portuguese and Italian regions. In general, for Carinthia, cooperation with regions occupying the same building in Brussels is easier as the proximity facilitates information exchange on regional positions (Interview 28). Also, prior to the publication of the Commission's State Aid Plan in 2005, for example, the East German Länder were part of a network of "statistical effect" regions that formulated several joint position papers to alleviate the impact of the Eastern enlargement on the new state aid policy (Statistical Effect Regions 2003, 2004).

In quantitative terms, however, it seems that most networking serves the purpose of staying in the loop, receiving information and draft initiatives as early as possible and having a forum for discussing the implications of European initiatives. Thus, the Director of the Carinthian office emphasises the usefulness of EPRO (the Environment Platform for Regional Offices) for information gathering and also points out that these networks stand a better chance of being able to invite Commission officials as speakers (Interview 28).

In general, it appears that one of the most common types of network at the European level is the network between regions of the same member state. At least in the case of the cooperative federal systems Germany and Austria, Brussels officials pointed out the existence of regular meetings between regional offices of the same country. Thus, according to the official from the office of Mecklenburg-West Pomerania, the Brussels officials of the Länder working on the same policy areas meet regularly in all kinds of working groups. The officials working on environmental matters meet about four to five times a year. Again, the advantage cited is that it is easier to get speakers if the information reaches a larger number of actors. Within these working groups, some Länder will then cooperate more closely than others, depending on the precise positions of the Länder and personalities. There is also some cooperation between the northern German offices in the form of working breakfasts every one to

two months (Knodt, Grosse Hüttmann, Kotzian 2009: 132-3; Interview 30). Similarly, Carinthia does not just cooperate with the other Austrian Länder on the monitoring of the CoR and drafting of Austrian positions for the CoR, but also on policy issues more generally. The number of Länder actually attending these working groups depends on the salience of the policy for the various Länder (Interview 28).

### **7.3.5 Conclusion: The Central State as Gatekeeper?**

On the whole, the “default” approach to regional interest representation in European policy-making is to work through the national route. All of the regional officials interviewed meticulously followed the negotiation of their member state’s position and tried to influence it at some point. In general, great importance was also attached to regional representation in the national delegation to various European institutions, be it directly or indirectly through a common representative for all regions. Even though in some cases regional representatives mainly acted as observers, the mediated presence at the European level is seen as the extension of regional influence at the national level. In addition, as rules of procedure are more relaxed at the transposition stage, regional experts can voice regional concerns more freely at that point in the process.

Genuine unmediated interest representation is less common, however, and when it occurs it is limited to infrequent and isolated acts. Regions usually develop a European strategy to complement their actions at home and address possible shortcomings in the national coordination process. Most commonly, regions will contact their MEPs to influence the position of the Parliament. The European Commission is rarely subject to unmediated lobbying, even though it is the target of regional activity through official channels. The influence of the Committee of the Regions is questioned by regional officials and regional networks appear to be predominantly used for information gathering purposes, although it is possible that both channels are more popular with weaker regions. Overall, unmediated regional activities at the European level are very much supplementary in nature.

Part of the reasons for the rareness of extensive European level activity is the investments required. Especially smaller regions struggle with the costs of unmediated interest representation, of having a large Brussels office and sustaining lobbying strategies over a longer period of time. But even larger offices do not have the capacity to actively engage in all negotiations. Instead, regions generally focus their resources on a limited number of high priorities.

In addition, while factors such as the size of a region determine the breadth of policies it can take on, circumstantial factors such as conflict determine whether there are incentives to incur the costs. Thus, as long as the region is satisfied with the national position, it has little reason to invest resources into an unmediated lobbying strategy. Instead, it can be a “free rider” and let the central government defend the member state’s interest. While some authors with a focus on structural funds pointed to the opportunities that an alliance between the regions and the Commission presented for regions, regulatory policy-making tends to produce very diverse and fluid constellations of interests. As it has been shown that conflict between national governments and regions is in fact relatively rare, the idea of the alliance against the central state is something of a myth and it could be argued that a central-regional alliance is much more common (Moore 2009; Tatham 2009).

As a result of all this, the central state is still very much at the heart of every-day representation in European policy-making and in many cases regional-supranational relations are mediated. However, this does not mean that the central government is a gatekeeper who controls the interactions between the subnational and the supranational level. First of all, in the case of the strongest regions, the Belgian regions, the role of the government in domestic coordination has largely receded to that of a mediator in areas of exclusive regional competences. In the light of its limited influence in determining the Belgian position, it would be wrong to call it a gate-keeper (Bursens and Geeraerts 2006: 173-4). Secondly, most of the time, central governments mediate because their regions allow them to mediate. While it is true that this regional choice is to some extent based on constraints and that the regions would not be able to systematically challenge the authority of the central state on a large number of policies simultaneously, they can challenge its authority on some

policies. Thus, Bavarian lobbying on flood risk management and Scottish lobbying on bathing water did produce results.

## Conclusion

The objective of this thesis was to contribute to the understanding of the strategies of interest representation of regional executives through comparative case study research. This concluding chapter will first draw together the main findings of the thesis, before turning to the likely impact of the Treaty of Lisbon on regional interest representation in EU policy-making. The final section will consider ways of taking the research further.

### Summary of Main Findings

One of the key findings of the project was that the multi-level governance literature overestimates the extent to which regions can and do mobilise on the European level. Thus, Chapter 7 showed that Jeffery hit the mark when he criticised the multi-level governance literature for neglecting the domestic dimension of regional interest representation in EU policy-making (Jeffery 2000). No matter how many regional offices are established in Brussels and no matter how many formal and informal European channels are open to regional activism, domestic European policy-making is still the first port of call for legislative regions. For the vast majority of Directives that affect the regions in some way it is likely to be by far the most important one, and for many, it is the only one. As soon as one leaves the area of regional policy with its inclusive partnership principle, the unmediated activity of legislative regions seems to decline.

This absence of elaborate European level strategies appears to stem from two sources – the lack of a “push” and a limited capacity to “bypass” the central government. By and large, the differences between regional strategies can be explained well with reference to the cost-benefit calculations of rational actors.

Thus, the principal reason for the ability of central governments to assume “gate-keeping” functions is that legislative regions often feel *no need* to challenge the authority of the central state. Most importantly – and applicable to all types of regions – there may simply be no clash of interests between regions or between the

regional level and the central state. This can be expected to be the case in over 90 percent of cases.<sup>55</sup> The idea of a regional-supranational alliance against the central state is something of a myth. A region's position would most of the time be adequately represented by the national delegation to various European fora and defended through the member state's voting rights and, as a result, a central-regional alliance is rather common. As such a situation basically offers regions the opportunity to "free ride", relying on the central government's investments in European policy-making and benefiting from its "hard" power, the incentives to invest additional resources into a strategy of unmediated access to obtain "soft" power through informal lobbying are low. Thus, Chapter 6 showed that "domestic conflict" is a powerful explanatory factor for the presence or absence of unmediated regional interest representation on the European level. It was also argued that party incongruence between regional and central governments does not automatically increase a region's tendency to seek autonomous access. Instead, whether or not party politics produce incentives or disincentives to work with the central government depends also on the nature of the policy. Not every policy appeals to ideological divides.

Another important factor in shaping the direction of regional mobilisation is how the powers of a region in domestic European policy-making match its powers in domestic policy making. Thus, it was argued in Chapter 6 that strong legislative regions that are also influential in domestic European policy-making appear to be more willing to work through the member state than regions that loose power in European policy-making. In addition, Chapter 4 argued that empowering regions at home does not only have the effect of preventing them from undermining the national position, it also has a genuine integrative effect on intergovernmental relations at home. Thus, when regions are offered co-decision powers in domestic European policy-making (i.e. a guaranteed measure of influence), they are eager to use them. In practice, domestic actors have to cooperate to realise the potential of the co-decision powers, regardless of whether the system is explicitly cooperative as in

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<sup>55</sup> Tatham (2009) estimates that there is no conflict between the devolved executives and the UK government about 95 percent of the time. An interviewee from the Liaison Office of the Austrian Länder provided the same figure for Austria (Interview 15).

Germany or implicitly as in Belgium. After all, failure to agree always translates into a loss of influence on the European level for all domestic actors.

The different formal domestic provisions produce impressive effects on the behaviour of the key actors, not only when it comes to European lobbying, but also in terms of their approach to informal negotiations at home. Thus, Belgium may be reeling under centrifugal pressures that have impeded the formation of a strong federal government for several years now, but when it comes to European policy-making, the regions cooperate for as long as necessary and usually stick to the common position during the negotiations to a sometimes surprising degree. In Germany, even if the large number of domestic actors dilutes regional influence and increases the willingness to act alone, the formal pressures to agree a common regional position means that the Länder routinely meet and exchange information. In Austria, by contrast, the formal pressure only applies in some situations which can lead to bilateral federal-regional relations, whereas the UK system creates no pressures or incentives to coordinate horizontally. In fact, the UK system can be seen as problematic in two ways. Firstly, while the near absence of guaranteed influence for devolved executives puts the central government firmly in charge and limits the degree to which the devolved governments can politically challenge the UK position in Brussels, it carries in it an inherent risk to cause resentment and fuel nationalism. In addition, compared to the Belgian system, the UK system misses the opportunity to encourage domestic actors to voluntarily work together even in the face of disagreement.

However, even in those cases where regions might want to pursue their own strategies, they may not always be able to do so. Chapter 6 showed that the extent to which a region can invest in European policy-making depends on its administrative capacity, which in turn appears to be determined primarily by the size of the region's population and – to a lesser extent – by its economic performance. The number of projects a region can actively take on at any given point in time depends on its long term investments into experts of European affairs and the affected departments at home as well as on its ability to invest time and political support in the short term. Bavaria's now 40-headed office in Brussels may pride itself with organising over

600 events a year for a variety of purposes, but for most regions each Brussels official has to monitor an array of policy areas spanning several ministries (Bavarian State Chancellery 2008: 7). In addition, the production of expertise through studies costs either money (if they are commissioned) or personal resources at home (if a department compiles them). As a consequence, all regions have to prioritise in their European level activity, but some regions more than others.

When legislative regions *do* develop a strategy of unmediated access to European actors, it consists often of sporadic bouts of activity and is meant to complement the domestic route rather than replace it. It was argued in Chapter 7 that the most common means of unmediated interest representation is for a region to contact its MEPs, committee chairmen or the rapporteur before the readings in the European Parliament. While this act still requires political authorisation, it is relatively easy to implement, consisting essentially in the distribution of a summary of the region's main concerns. While regional officials appear to be satisfied with the effectiveness of the channel, they admit that they often do not know if their points were taken up by MEPs. All other forms of lobbying activity, such as separate direct contact with Commission officials, political activities in Brussels or the organisation of policy oriented events in Brussels are taking place considerably less frequently. Policy networks and regional networks as well as ad hoc interregional cooperation also only play a limit role. In reality, while the vast majority of regions will be part of more or less institutionalised networks or engage in ad hoc cooperation, these activities serve mainly the procurement of information and exchange of best practice and seldom provide a basis for genuine lobbying activities.

Overall, in the light of Marks, Haesly and Mbaye's finding that the Brussels offices of legislative regions tend to be better funded and to attach greater importance to lobbying than those of constitutionally weaker regions, the finding that even strong legislative regions will develop unmediated lobbying activities for only a small number of policies thus seriously questions the extent of multi-level interactions in European policy-making (Marks, Haesly and Mbaye: 2002).

On the other hand, while regions rarely engage in extensive unmediated interest representation on the European level, the multi-level governance literature is right to

argue that the regional level matters. The region's focus on domestic channels of interest representation may to some extent be due to the limited resources of regions, but most of the time, the regions *choose* to let the central government mediate. Even strong legislative regions may not be able to systematically challenge the authority of the central state across a wide spectrum of policies, but they can challenge its authority on *some* policies when they feel the need. Thus, Chapter 5 argued that Bavarian lobbying on flood risk management and Scottish lobbying on bathing water did not just produce "noise" but also concrete results in terms of policy outcomes. Compared to regional governments central governments are still dominant actors, simply due to the scarcity of sustained European level strategies of regional interest representation, but regions are nevertheless to be reckoned with.

### **Looking ahead**

Due to the delays in the ratification of the Constitutional Treaty and its successor, the Treaty of Lisbon, the case studies in this dissertation were all conducted before the new provisions entered into force in December 2009. Up until this point, a number of different channels of interest representation were available to regions on the European level, but all of them were informal, with the exception of the Committee of the Regions. As a result, regions lacked "hard" voting rights on the European level and their only guaranteed right was the right to be collectively consulted through the CoR in certain policy areas. At the same time, due to the varied composition of the Committee and the lack of an obligation to incorporate any element of its positions into the final policies, this channel was never regarded as highly influential. In addition, even where member states allowed their regions to send representatives to the Council of Ministers, the inclusion into the national delegation only provided regions with a means to ensure that the national position of their member state was adequately represented. Their representatives had no right to *act* as regional representatives.

On the whole, the Treaty introduced three main changes that slightly improve the ability of regions to represent their interests on the European level. Neither of them is likely to revolutionize regional interest representation in the short term, though.

The first change is largely symbolic and consists in the rewording of the subsidiarity clause to refer explicitly to the regional level. However, in combination with the other two changes, it could give rise to a stricter application of the principle in the long run. Thus, the Committee of the Regions was also given the right to appeal to the European Court of Justice on grounds of a breach of the subsidiarity principle. As such an appeal could lead to the annulment of a legislative act, the regions now have for the first time a form of “hard” power at their disposal. However, while the Committee has already taken some initiatives to improve the quality of its monitoring of the respect of the principle of subsidiarity and may be tempted in the future to try and use this new power as a bargaining chip to gain concessions on substance from the other institutions, the effectiveness of this tool will ultimately depend on the ECJ’s interpretation of “subsidiarity”.<sup>56</sup>

Finally, some legislative regions will benefit from the new right of national parliaments to veto a decision of the European Council to move from unanimity to qualified majority voting in a policy area (article 48(7)TEU). The ability to prevent such moves was one of the main concerns of legislative regions during the negotiation of the Treaties, as there were already fears of the creeping, gradual extension of European competences through the “generous” interpretation of existing Treaty provisions. In addition, the introduction of the “early warning system” through the *Protocol on the Role of National Parliaments in the EU* and the *Protocol on the Application of the Principles of Subsidiarity and Proportionality* assigns national parliaments a role in monitoring subsidiarity. The procedure has some shortcomings, though. Apart from the fact that few regions benefit from the empowerment of national parliaments, it also requires national parliaments to actively monitor European policies to be effective. Finally, even if enough parliaments object to an act, they ultimately need the support of at least one other

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<sup>56</sup> Cf. Högenauer 2008: 548-554 for a detailed discussion of the potential impact of the Treaty of Lisbon.

European institution (Parliament, Council or Commission) to stop it or have it amended. The procedure thus depends on the willingness of other institutions to change their position in reaction to a complaint.

Overall, while the Treaty offers some interesting new opportunities for certain legislative regions, the vast majority of regions do not benefit from the procedures aimed at national parliaments. As some of these procedures are also quite cumbersome – most notably appeals to the ECJ – the changes are likely to require a number of years before they produce any effects. In the continued absence of hard powers that regions could wield on a regular basis to influence European policy-making on the European level, regions will still mainly have the choice between working with their central governments or engaging in “soft” lobbying on their own.

### **Avenues for Future Research**

The objective of the thesis was to demonstrate that by applying the often implicit rationalist assumptions of authors of multi-level governance to regional governments, a number of verifiable hypotheses about how, when and to what extent regional governments mobilise could be generated and merged with hypotheses from the literature into a coherent analytical framework. When confronted with empirical data, the rational choice institutionalist assumptions contained in the hypotheses about the impact of domestic conflict and channels of domestic European policy-making held true. While the latter was by its very nature specific to legislative regions, it could serve two interesting purposes. On the one hand, it could be tested in the Italian and Spanish context to see if it also conforms to those cases. On the other, it could be used to predict the likely effect of reforms of domestic European policy-making on regional choices. In all four member states under investigation, changes to these domestic provisions had either recently happened (the German federalism reform) were currently being debated (Austria, Germany due to the ruling of the Constitutional Court on the Treaty of Lisbon) or are likely to be tackled at some point in the medium term future (especially in the UK, where devolution is still recent, or Belgium, where the nature of the federal state is always contested). In all

of these instances, it would be wise of central governments to not just think about the impact of potential changes on the regional-national power balance, but also about the positive or negative ways in which they can affect regional adherence to national positions on the European level and the willingness of regions to work through the domestic procedures even in the face of conflict. In particular in the UK, the Scottish National Party's political exploitation of Scottish concerns raised in the Aron report demonstrates that these provisions can have an ugly domestic face and that excessive control on one level can fuel unwelcome trends on another.

However, the impact of domestic provisions is not the only factor that could inspire further research. While party politics were generally not found to be relevant for the cases analysed as part of the project, it was felt that this might be due to the technical nature of the Directives. This factor would benefit from a further study and a case selection specifically designed to test the impact of party congruence or incongruence on regional-central (or inter-regional) relations. Thus, it would be interesting to investigate the policy specific dynamics of legislation touching upon ideological issues such as employment related policies (e.g. Working Time Directive) or the cross-border provision of services (Service Directive). The findings of the project also seem to suggest that parties with a regionalist or separatist agenda may be more assertive in their strategies in order to symbolically emphasise the autonomy of the region. Again, this factor would benefit from a case selection that hones in on this one factor. A longitudinal comparison of the strategies of the same region under governments formed by regionalist/nationalist parties and by state-wide parties (e.g. in the case of Scotland) would probably provide the best "most similar" design.

Finally, the MLG literature would generally benefit from more empirically grounded work, especially on a larger, comparative scale. At the current moment, its level of understanding of inter-regional differences and their causes is limited and the number of factors that have so far received little or insufficient attention is long. Some of these gaps are quite obvious, but difficult to remedy in the absence of systematic qualitative engagement with concrete cases. Thus, it is not just that our understanding of the interplay between opportunities of regional interest

representation at the national and European level is limited. In addition, the impact of different *types* of European policy-making processes on regional participation rights and mobilisation, such as the co-decision procedure and the Open Method of Coordination, is also largely unknown.<sup>57</sup>

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<sup>57</sup> Eilidh MacPhail has done some work on Scotland in the Open Method of Coordination and Deforche and Brusens have addressed the question for Flanders (MacPhail 2008; Deforche and Bursens 2006).



## Sample Topic Guide

As part of the research, a variety of different officials at the regional, national and European level were interviewed. The interviews were semi-structured and informed by a topic guide drawn up in advance. As the type of information that could be provided by different officials varied, the topic guides used for regional, national and European officials, common representatives and policy officers in regional offices were adapted to suit the purpose. The guide was also translated into German and French for the purpose of interviews in Germany, Austria and Wallonia. To illustrate the interviewing strategy, this annex presents variations of the topic guide targeted at regional, national and European officials (the bulk of interviews). In line with semi-structured interviewing, the questions were not necessarily asked in that form or in that order, but served as a reminder of what kind of information had to be collected. Frequently, additional questions would be asked in response to comments by interviewees. The interviews lasted generally about one hour.

### *Topic Guide: Regional Experts*

#### **Brief explanation of research:**

This research is conducted for a PhD thesis at the University of Edinburgh. The aim of the dissertation is to understand regional interest representation in European policy-making. In particular, the thesis analyses to what extent strategies of interest representation vary between regions and why. It takes into account the strategies of regions both within their member state and at the European level.

In line with your expertise, I would like to talk to you today about x-Directive as well as about your experience of regional interest representation in EU policy-making more generally.

## **Interests:**

- When did you/the regional government first become aware of the intention of the Commission to propose a Directive on x?
- What was your initial reaction to the plans?
  - Welcomed/opposed?
  - Routine business/priority?
- Which parts of the Commission's plans did you particularly welcome/oppose?
  - Why?
- Did this evaluation change over time?
- Do you remember the central government's initial position?
  - Was it in line with the regional position? (Which elements were not?)
- What about the positions of other regions within that state?
- Contact with (non)governmental actors from the region about this? (How? Viewed positively/negatively by official; taken on board?)

## **Domestic co-ordination:**

- How was the national position elaborated? How were the regions involved in this process? (General overview of process, formal/informal participation of regions, institutional channels...)
- How important a role did inter-regional coordination play in this process?
- How did they co-ordinate? (Formal/informal channels; how institutionalised; how frequent were contacts; all or some regions of member state; with federal experts present or not?)
- Did this coordination process solve potential disagreements between regions or with the central government?/ Was it affected by disagreements?
- Satisfaction with coordination of national position (outcome, extent of involvement, level of influence (individual region/collective)...)?
- Which other regions were particularly active in this process? Why do you think this was the case?

## **European level:**

- Was the region included in the delegation of the member state and how?
  - Commission (stakeholder/implementation), Council (working groups/COREPER/Ministers)?
  - Frequency; role (observer, right to speak, lead...)
  - Level of satisfaction? Why?
- Did the region become active directly on the European level?
  - Contact with MEPs, Commission, networks, use of regional office, Committee of the Regions
  - At what stage of the process?
- If yes: how satisfied were you with the outcome of these activities?
- If no: try to find out why not.

## **Specific factors (usually asked as points of interest came up):**

- If conflict: Did you feel that the disagreement about x had an impact on your strategy? In what ways?
- There was a change in regional/national government in 200x. Did that lead to a change in position or strategy?
- How important a role did politics, esp. party politics play in defining the region's position and strategy? (How/Why?)
- What were the greatest challenges you faced trying to represent the region's interests?<sup>58</sup>

## **General:**

- How satisfied were you with the final Directive?
- Did you feel that you could influence the outcome? (How? Which parts?)
- Which parts of the strategy were most (least) effective?

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<sup>58</sup> A general question like this would be used to try and get officials to talk about enabling or constraining factors such as size or wealth without suggesting that these might be relevant by including them explicitly in the question. Cf. section on domestic co-ordination and level of activity.

- In general, which channels of interest representation do you find most effective in European policy-making (why)? Which ones do you use most (why)?

### ***Topic Guide: National Level***

#### **Brief explanation:**

This research is conducted for a PhD thesis at the University of Edinburgh. The aim of the dissertation is to understand regional interest representation in European policy-making. In particular, the thesis analyses to what extent strategies of interest representation vary between regions and why they vary. It takes into account the strategies of regions both within their member state and at the European level.

In line with your expertise, I would like to talk to you today about x-Directive as well as about your experience of regional interest representation in EU policy-making more generally.

#### **Interests:**

- When did you/the central government first become aware of the intention of the Commission to propose a Directive on x?
- What was your initial reaction to the plans?
  - Welcomed/opposed?
  - Routine business/priority?
- Which parts of the Commission's plans did you particularly welcome/oppose?
  - Why?
- Did this evaluation change over time?
- Do you remember the regions' initial position?
- Was it in line with the regional position? Where there divides between different regions (which)?

- Contact with (non)governmental actors from the region about this? (How? Viewed positively/negatively by official; taken on board?)

### **Domestic co-ordination:**

- How was the national position elaborated? How were the regions involved in this process? (General overview of process, formal/informal participation of regions, institutional channels...)
- Are you aware of any inter-regional coordination?
- How did they co-ordinate? (Formal/informal channels; how institutionalised; how frequent were contacts; all or some regions of member state)
- Were you (the national level) involved in that process? How?
- Did this coordination process solve potential disagreements within the member state?
- Which regions were particularly active in this process? Why do you think this was the case?

### **European level:**

- What was the composition of the national delegation at the various policy-making stages (esp. with regard to regional representatives)?
  - Commission (stakeholder/implementation), Council (working groups/COREPER/Ministers)?
  - Frequency; role of regional experts/representatives (observer, right to speak, lead...)
- Are you aware of regions becoming active directly on the European level?
  - Contact with MEPs, Commission, networks, use of regional office
  - At what stage of the process?
- If yes, how was this perceived by the national official?

### **Specific factors (usually asked as points of interest came up):**

- If conflict: Did you feel that the disagreement about x had an impact on the domestic co-ordination process and the behaviour of individual regions? In what ways?
- How often do such disagreements occur in EU policy-making in general?
- There was a change in regional/national government in 200x. Did that lead to a change in position or strategy?
- How important a role did politics, esp. party politics play in defining the government's position and strategy? (How/Why?)

### **General:**

- Are there any regions that are persistently active in EU policy-making? Which ones and why?

### ***Topic Guide: European Experts***

#### **Brief explanation:**

This research is conducted for a PhD thesis at the University of Edinburgh. The aim of the dissertation is to understand regional interest representation in European policy-making. In particular, the thesis analyses to what extent strategies of interest representation vary between regions and why they vary. It takes into account the strategies of regions both within their member state and at the European level.

In line with your expertise, I would like to talk to you today about x-Directive, the policy-making process that led to its adoption and the extent to regional interest representation occurred (to your knowledge).

#### **Interests:**

- What were your main objectives with regard to the proposed legislation? What had triggered it?

- In terms of member states, where the negotiations marked by agreement or disagreement?
- What were the main points of contention? Between which groups of states?
- Were you aware of there being any disagreements within member states (esp. for UK, Germany, Austria and Belgium)? Of any dissenting regions?
  - What points?
  - More/less opposed than their member state?
- In how far did the positions of the Parliament and the Council overlap/clash on this Directive?
  - At which stage resolved?

## **Policy-Making Process**

- x-Directive was passed through the co-decision procedure and agreed at point x. Could you briefly talk me through the process of negotiating the Directive, esp. through the drafting stage?
- When did the Commission start to consider proposing a Directive?
- How was the proposal prepared? How were ideas and expertise gathered? (Stakeholder groups, consultation, etc.?)
- Who was represented in this process?
- What about the regions of the UK, Germany, Austria and Belgium? If yes, role of their representatives?
- What about the decision-making stage (mainly Council and EP)? Were you aware of regional input at that stage?
- Implementation stage: How was national transposition/implementation prepared on the European level? Regional presence?
- Regional presence compared to earlier stages?
- Were you aware of any regional activities outside of national delegations (Commission official contacted by them, lobbying events, briefing of MEPs, use of networks...)? (Esp. for the four member states)
- What were the most active regions? Why do you think that was the case?

- How effective did you perceive regional interest representation on the European level to be? (compare delegation/unmediated access)
- Any examples of effectiveness?

**General:**

- How effective is regional interest representation in general?
- Which channels work best (delegation/unmediated)?
- What are the conditions for success?
- How common is unmediated action for the regions of these four states in general? (Why do you think that is?)

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<sup>59</sup> 'Oral communication' refers to shorter conversations with officials, usually on the phone.

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