

Is the Sum More than its Parts ?

A Comparative Case Study on the Relationship between EU Unity and its Effectiveness in Multilateral Negotiations

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Samenvatting

Zowel academici als beleidsmakers stellen vaak dat een meer eensgezind optreden van de EU de basisvoorwaarde is voor een meer effectieve EU in internationale onderhandelingen, dat de EU meer kan zijn dan de som van haar delen. Dit proefschrift onderzoekt deze stelling en analyseert de EU's effectiviteit in multilaterale onderhandelingen over voedselstandaarden, klimaat en volksgezondheid. Voor deze onderwerpen is de externe vertegenwoordiging van de EU verschillend georganiseerd. Uit het onderzoek blijkt dat inhoudelijke overeenstemming tussen de lidstaten een belangrijke voorwaarde is voor effectief optreden en dat dit niet per definitie gewaarborgd is als lidstaten in juridisch opzicht verplicht zijn met één stem te spreken. Eensgezindheid kan worden gestimuleerd doordat de betrokkenen het gepast vinden om als EU op te treden. Echter, in de praktijk vinden lidstaten het vaak moeilijk om het woordvoederschap over te dragen aan de Europese Commissie, omdat zij deze niet volledig vertrouwen en bang zijn om nationale bevoegdheden voorgoed kwijt te raken. Zij kiezen het roterend voorzitterschap als woordvoerder, alhoewel deze niet altijd het meest gekwalificeerd is en elk half jaar wisselt.

Er zijn veel interne discussies over wie er bevoegd is om namens de EU op te treden en daarnaast besteedt de EU de nodige tijd aan interne coördinatie over haar positie, hetgeen de effectiviteit niet ten goede komt. In de multilaterale onderhandelingen kan een eensgezind optreden van de EU weerstand opleveren, omdat de EU door anderen als ingewikkelde entiteit wordt ervaren en lidstaten doorgaans niet bereid zijn om, als gevolg van de EU stem, hun eigen stem op te geven. Het is nog niet duidelijk of de nieuwe EU buitenlandcoördinator (de Hoge Vertegenwoordiger voor Buitenlandse Zaken en Veiligheidsbeleid, i.e. Catherine Ashton) en haar Europese Dienst voor het Externe Optreden taken zullen overnemen waar het de externe vertegenwoordiging op beleidsterreinen als voedsel, milieu en volksgezondheid betreft. Als dit zou gebeuren, dan blijft een voorwaarde voor onderhandelingseffectiviteit om de steun en expertise van de EU lidstaten in de onderhandelingen te blijven benutten. De EU is alleen meer dan de som der delen als deze delen ook aan boord blijven.

Executive Summary

According to several EU politicians and researchers, the EU would operate more effectively in multilateral negotiations if it were more united in its external representation, often summarised as it being able to speak with a single voice. This study analyses this claim by means of a comparative case study of the EU's effectiveness in three different policy fields: food standards, as discussed in the Codex Alimentarius Commission; greenhouse gas emission reductions, as discussed in the United Nations Framework Convention on Climate Change; and the relationship between health, intellectual property rights and innovation, as discussed in the World Health Organisation. These are all external policies on issues covered by the Treaty on the Functioning of the European Union and thus not governed by the intergovernmental procedures of the Common Foreign and Security Policy. Nevertheless, the cases differ to a considerable extent with regard to the model for decision-making on the EU's position and external representation.

The study assesses the relationship between EU unity and effectiveness in these cases of multilateral negotiations. By means of process tracing, it is described how the negotiations evolved, what the main objectives of the EU were and whether they were achieved. A brief analysis of the negotiating environment is made as well. Interviews, participatory observation and written expert sources were used to gather information in a relatively systematic way.

Effectiveness is defined as the extent to which the EU reaches the main goals of its common position in the results of international negotiations. The concept and the way it is analysed draws on insights from other research on the performance, influence or impact of political entities on social phenomena. Relevant insights considered are that measuring effectiveness will always be subject to a certain degree of subjectivity; that power and influence are not always identical and are therefore best analysed separately; and that effectiveness is to be analysed within the given negotiating context.

Thus far, few studies have systematically analysed the EU's effectiveness in multilateral negotiations. Findings of more general research on the EU's external relations are inconclusive as to whether an obligation to coordinate benefits the EU, whether adoption of the mandate by QMV strengthens its position, and whether the Commission or the rotating Presidency is the ideal lead negotiator. It is often argued, though, that more EU unity increases its international visibility and is beneficial for its performance. In this study, an interesting finding is that more EU unity can also invoke a negative reaction from negotiating partners. The EU acting as a bloc may cause irritation, since outsiders often do not understand how the EU operates in negotiations and does not fully replace the Member States, but merely increases the number of EU actors being involved.

EU unity is assumed and found to be influenced by the degree of EU competence with regard to the issue that is discussed internationally, the preference homogeneity among EU Member States on

the issue, and the EU socialisation of their representatives. These are the factors that, together with effectiveness, are analysed in each case.

EU competence defines the legal competence of the EU to conduct policies in any given policy area. The division of EU competence as applicable regarding the adoption of 'internal' legislation is mirrored externally. EU competence influences whether the EU is obliged to act on the basis of a common position, whether QMV can be used to adopt this position, and whether the Commission is entitled to represent the EU's position in the negotiations. A higher degree of EU competence can contribute positively to EU unity as well as increase the EU's effectiveness. However, the cases illustrate that Member States sometimes consider EU competence to be a legal straightjacket that forces them to coordinate and suspect it is merely used by the Commission to expand its powers. This undermines EU unity and effectiveness and it is therefore relevant to analyse whether Member States are actually willing to cooperate and why they would do so. This is why this study, in order to analyse EU unity, also looks at preference homogeneity and EU socialisation.

Preference homogeneity during negotiations exists when EU Member States have preferences similar to each other (and in comparison to other actors in the negotiations). As a result, they will relatively easily manage to agree upon a common position and be willing to speak with a single voice. Member States often prefer to operate on the basis of a common European position, but their interests may diverge and they usually oppose the Commission taking over the external representation (they prefer to keep it in their own hands, through the Presidency). When their initial preferences are heterogeneous, Member States are likely to weigh the potential benefit of a common policy against the potential cost of a policy not to their liking. The existence of EU competence often does not allow them to make this choice, since it renders EU coordination obligatory. Nevertheless, divergence of opinions may still undermine EU unity and effectiveness, in particular when Member States conceal differences to negotiating partners. In the research, preference homogeneity was found to be an important precondition for EU unity. It can help the EU to negotiate effectively, but may also lead to the EU becoming too much convinced of the correctness of its own position. When 27 EU Member States share a similar position, this does not guarantee that EU objectives will be shared by the negotiating partners as well.

EU socialisation means that EU Member States' representatives involved in deciding on and negotiating the EU position in international negotiations first and foremost adopt a European orientation. They no longer wish to make national statements and support the EU position during informal encounters with negotiating partners or third states. Unity in external representation results from representatives considering it appropriate to speak with a single European voice. In all three cases, processes of EU socialisation were identified, figuring most prominently in the food standards and climate change cases. In these fields 'epistemic communities' existed at civil servant negotiator

level, with them having similar expert knowledge and sharing objectives. In the climate change case, 'groupthink' could even be observed. The EU's own position was considered a very good one and its ability to wield influence during the negotiations was overestimated. At the highest level of heads of state and government (European Council), the degree of socialisation was lower, which was illustrated by the leadership of the rotating Presidency not being respected in the final days of the Copenhagen Climate Summit. In the health case, differences existed between health, trade and development experts, not only with regard to the content of the issue but also in terms of the need for EU coordination and acceptance of the Commission speaking on issues of EU competence.

These findings have the character of plausibility probes which provide interesting avenues for future research. This certainly applies to the finding that when comparing the EU's effectiveness in the three cases, the food standards one, where the degree of EU competence, preference homogeneity and EU socialisation was found to be highest, comes out slightly more favourable. However, the difference is not very significant and each model clearly has its own shortcomings; in the food standards case, this was the rather passive stance of the Member States' representatives throughout the negotiations.

It can therefore be argued that the EU uniting its external representation in multilateral negotiations to a larger degree does not automatically increase its effectiveness. It may lead to a more hostile negotiating environment and is subject to Member States' willingness to agree on a common position and to actively support it in formal and informal encounters with non-EU actors. This depends on the degree of preference homogeneity and EU socialisation. Prudence is therefore called for where it concerns statements about EU unity, and particularly about EU competence expansion automatically leading to a better performance of the EU in international negotiations.

A number of insights from this study may be relevant in the light of the currently ongoing reform of the EU's external relations. First of all, one of the questions is to what extent and regarding which issues the High Representative of the Union for Foreign Affairs and Security Policy (HR/VP) and the European External Action Service (EEAS) should take over the external representation from the rotating Presidency on matters of shared EU competence. In legal terms, this does not appear to be obligatory as long as these policy issues are neither defined as foreign policy nor as exclusive EU competence issues. Secondly, support of the Member States is indispensable, since common positions and mandates are still adopted by them. Preference homogeneity can be stimulated when those participating are socialised into operating through the EU, but sometimes interests may simply be too far apart. Thirdly, it could prove to be a challenge to secure the continuation of the Member States' resources, expertise and active contribution to the negotiations. In the Codex case, the representatives of the EU Member States were the most passive, in the climate case they could actively contribute by providing lead negotiators and issue leaders, and in the health case they felt committed to supporting the EU Presidency and Commission. Establishing a division of labour among the EU Member States

was found useful. Fourthly, the Commission's role is unlikely to become much larger, since Member States suspect it either of competence snatching or of promoting its own policy objectives (e.g., defending economic instead of health interests in the case of negotiations taking place in the World Health Organisation). For this reason, they may prefer the involvement of the HR/VP and EEAS, since they are more closely linked to the EU Member States. The HR/VP chairs the Foreign Affairs Council, is directly appointed by the European Council, and one third of the EEAS is likely to become staffed by diplomats from the EU Member States. Finally, it is important to bear in mind that since most negotiating mandates will still be decided by unanimity or QMV, EU coordination is likely to remain a time-consuming affair.

Since the EU is a rather unique entity in the system of international relations, we can expect it to keep drawing attention from politicians and academics. An issue that could be considered to a larger extent is how its development towards becoming a more unified actor in international negotiations influences its position towards its negotiating environment. Clarity is needed as to whether the EU should be considered as one actor or a coalition of states, and what this means for voting rights, who its main negotiator is in international negotiations, and whether we can expect possible claims of EU membership of a larger number of international organisations. Internally, the confusion and debates over the division of competences are not constructive either. If the EU unites, it can be more than the sum of its parts, but only if these parts accept and support this.