Behavioural Effects of Domestic Constraints in EU Council Negotiations

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Abstract
Member state agents are more or less constrained when they act on behalf of their principal in the EU Council. Constraints stemming from the setting in which the negotiators find themselves and that are based on the principal’s desires, institutional rules and public opinions. It is widely acknowledged that the room for negotiators to act during negotiations has an impact on their ability to influence outcomes but the direction of that impact is issue for controversy. Some argue that domestic constraints are a disadvantage and point to the risk of actors getting isolated when they are not able to act with some flexibility. Others, mainly basing their argument on Thomas Schelling’s ‘paradox of weakness’, instead point to the potential benefit of having domestic constraints in reaching desired outcomes. This claim is based on the tacit assumption that domestic constraints affect behaviour and credibility, which in turn leads to outcomes that are favourable to the constrained actor. Empirical studies of the paradox of weakness in the EU Council have found some support for the theory in what can be labelled grand bargains but not in legislative decision-making. However, the behavioural component of Schelling’s claim is largely neglected in previous research, which the paper addresses by suggesting an attention shift to this intermediate variable. In particular, the paper describes domestic constraints usage as a signalling game where actors’ signalling behaviour is of primary concern. Empirically, the paper relies on responses from a small number of explorative vignette interviews with working party representatives from different EU member states. The interviews have been conducted in a pilot round and the results are foremost methodological but some preliminary substantial findings are also presented.

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Introduction

State governments interact and negotiate with each other internationally over a wide variety of issues and in a wide variety of fora. As the so far most deeply integrated organisation of state cooperation, the European Union now gathers representatives from 27 member states. The Council of the European Union is the main intergovernmental body where at different levels member state representatives meet to discuss and negotiate legislation over a variety of issues. At the very top, government ministers have meetings over legislation and they formally adopt all legislation and below them are numerous bodies to prepare the issues containing national experts, diplomats and permanent ambassadors. These are all national representatives that are negotiating on behalf of their governments and they have limitations regarding how they should and can act that are based on national level preferences.

Domestic constraints, as these kind of limitations will henceforth be called, have stirred some academic attention primarily as an explanatory factor for negotiation outcomes in the EU and elsewhere, relying much on the theory of the paradox of weakness formulated by Thomas Schelling (1960). Schelling’s theory suggests that constrained negotiators fare better in negotiations, as they cannot be forced by negotiation counterparts to change their position, a reasoning that also influenced the two-level game theory by Robert Putnam (1988). Others, not least studying the EU, claim that instead domestic constraints and the lack of flexibility that it infers are detrimental for achieving one’s goals and flexibility is supposed to be key in negotiating successfully in the moving target of EU Council negotiations\(^1\) (Auel 2007; Benz 2003; van Keulen 2004, 46-47).

In previous studies domestic constraints have mostly been treated as an input factor that accounts for some effect on negotiated outcomes and this in effect means that the intermediate step of negotiation behaviour that is logically prior to negotiated outcomes has been neglected. If it should be possible to conclude any effects of domestic constraints on negotiated outcomes, an attention shift to negotiation behaviour that follows the chronological order of negotiations is necessary (cf. Hopmann 1996, 30). In the paper, negotiation behaviour is modelled as a signalling

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\(^{1}\) Schelling himself points out this controversy and that the notion that negotiators should be left with as much flexibility as possible as an argument that is not least voiced by negotiators themselves (Schelling 1960, 19). See also Hammond and Prins (2006, 23) for further references.
game where state negotiators have the option of signalling domestic constraints to negotiation counterparts. If the paradox of weakness should hold, domestic constraints need to be signalled to negotiating counterparts and when signalled must lead to some accommodation by negotiating counterparts. In the paper, these premises are up for empirical testing.

The empirical data was gathered in a small number of vignette interviews with EU member state negotiators at the working party level of the EU Council. The interviews are explorative and part of a pilot phase in preparation for a larger sample of respondents and the results should therefore be regarded as somewhat preliminary. In the vignettes the respondents were given a certain amount of information about a negotiation situation, including information about the own domestic constraints and they were then asked to answer a number of questions about what actions that would be taken given the circumstances. The results indicate that signalling of domestic constraints is not a first option for member state negotiators when having domestic constraints although it can occasionally be used. When facing negotiating counterparts signalling domestic constraints, negotiators would for the most part not state that they are particularly accommodating to such constrained positions.

Effects of Domestic Constraints in Negotiations

Thomas Schelling’s paradox of weakness (1960) is simple in its logic and still somewhat counterintuitive. It states that a constrained and therefore also ‘weaker’ negotiator has a bargaining advantage against the less constrained because what is essentially decisive for the bargaining power is the ability to credibly commit to a position. If a negotiator is forced to take a position without the ability to defect from it, others will have to meet the demands to not risk negotiation breakdown. A negotiator that on the other hand knows that the own position is less firm risks to be ‘pushed around’ in negotiations (Putnam 1988, 440) and would rather concede with the aim of at all reaching agreement. This ultimately results in less bargaining power to the less constrained negotiator. Being constrained is, by the Schelling definition, the same as being forced to stick to a certain position, voluntarily or not, without being able to deviate from it. The position taken must be based on something or some
actor that either is not within the negotiator’s control or that is believed to not be within the negotiator’s control.

Schelling mentions two sources of constraints, the legislative authority and public opinion. Constraints by legislative authority apply if a national parliament is able to steer the negotiating executive into taking a certain position and have some accountability mechanism to put in place if the executive deviates. Putnam (1988) mentions the importance of ratification of international agreements as one such mechanism. Schelling (1960, 28) refers to it as a negotiation position constrained by law. The other variant of constraints is based on public opinion where Schelling (1960, 28) states that: “[w]hen national representatives go to international negotiations […] they seem often to create a bargaining position by public statements, statements calculated to arose a public opinion that permits no concessions to be made”. The public opinion, in a democratic state, is powerful and something that the executive wants to please; it lies in the very foundation of the democratic political system. The latter variant is, in interpreting Schelling, more clearly a case of self-commitment whereas it is not equally clear that the former is. However, in reality both types could be self-committed or not. The legislature could put constraints on the executive against the executives will if there are diverging opinions between them but they could also do it for strategic purposes, in order to lock up the executive in a certain position. Likewise, public opinion could got aroused on purpose by the executive but it could also be that the executive is constrained by strong interests in the public opinion, or the constituency in more general terms, that it does not share.

The theory of two-level games that links domestic politics to international negotiations, formulated by Putnam (1988), is clearly influenced by Schelling’s theory. Putnam points out that negotiations take place at two tables simultaneously, at the international level with other negotiators but also at the domestic level with the constituency. The point is that because international agreements have to be ratified domestically, the domestic level is affecting what the negotiator at the international level can do. Putnam looks at constraints somewhat different than Schelling does and instead describes it as a set of agreeable positions. Putnam describes the set of agreeable positions as a win-set while others have described it as acceptance set (Pahre 1997, 150) or zone of possible agreement (Nicolaïdis 1999, 111). Schelling’s definition is not necessarily excluding the possibility of having a set of agreeable
positions and it may in fact be more realistic to think of it as a set rather than as one position. At the same time, the supposition of Schelling’s theory is that it is one inflexible position that is used strategically in the negotiations. Having a set of positions would imply that the one position taken is potentially possible to deviate from, and therefore it would not be equally constraining.

Schelling’s theory is widely cited but there are no unambiguous results that support or reject it. Often, when support for the theory is found, it builds on anecdotal evidence why some attention have been directed to find out if there are structural factors or circumstances that give it explanatory power on some occasions while not on other (Pahre 2006, 3). Refinements of Schelling’s theory has focused on theoretical development of structural factors such as the case when both sides in a negotiation have domestic constraints (Tarar 2001), the impact of information shortages about the domestic constraints (Iida 1993; Milner and Rosendorff 1997), the effect of the power balance between negotiators and domestic constituency (Mo 1994) and the effects of different locations of a status quo (Hammond and Prins 2006). The theoretical models have not least proved the difficulties in producing a general theory about the effects of domestic constraints and in the words of Thomas H. Hammond and Brandon C. Prins about the outcome predictions based on domestic constraints; “almost anything can happen” (2006, 82).

Domestic constraints have, as mentioned, when considered in empirical analysis often been used as an explanatory factor when discussing negotiated outcomes. It is done by Madeleine Hosli (2000) with the case of the negotiations of the European economic and monetary union (EMU). The outcome of the EMU negotiations is compared to member state preferences where the role of Germany is particularly emphasised. Pointing to the cleavage between the German government and both the Bundesbank and the public opinion established visible domestic constraints for the negotiators who are assumed to have benefitted from this in striking a comparatively good agreement. Similarly, in two studies by Thomas König and Simon Hug (2000; Hug and König 2002) domestic ratification constraints proved beneficial in being influential in the Maastricht and Amsterdam treaty negotiations. In the Maastricht treaty negotiations, König and Hug use ratification rules to determine the domestically pivotal ratifying parties and by using their preferences on the different issues in the negotiations, a win-set is defined. Holding a position close to the status quo on a one dimensional policy space implies a small win-set. The member
states with the smallest win-sets were Denmark and the United Kingdom who also managed to negotiate opt-outs in the treaty negotiations. In the Amsterdam Treaty negotiations, Hug and König (2002) similarly investigates how ratification constraints consisting of ratification rules and preferences of pivotal parties, affected the outcome of the negotiations. Commencing the negotiations with a maximalist draft proposal comprising 79 issues, the negotiations led to issue subtraction where status quo was preferred to the draft treaty and negotiation success for an actor having a preference for the status quo hence meant that the issue should be dropped. The authors find that when the preferences of the ratifying pivot and the government coincides closer to the status quo than to the draft treaty, the influence is higher. Jonathan Slapin (2006) provides further results about the influence effects of domestic constraints in the Amsterdam treaty negotiations utilizing a partly different research design and finds that domestic constraints in fact makes actors more influential.

The hitherto presented studies using the paradox of weakness have in common that they focus on what by Andrew Moravcsik (1998) is labelled ‘grand bargains’ with the particularities that brings. This however only account for a minor, although arguably very important, part of the negotiations taking place within the EU but it does not include the everyday practice that will be in focus here. Stefanie Bailer and Gerald Schneider (2006) provides a study of the paradox of weakness on legislative decision-making in the EU. They use the Decision-making in the European Union (DEU) dataset that consists of information on the initial positions of all EU member states on 162 issue dimensions in a total number of 66 commission proposals during 1999 and 2000. They test how member states’ influence, measured by how close the negotiated outcomes are to the member states’ negotiation positions, co-varies with different variants of domestic constraints. They examine which definitions that give most effect on influence and they find that – although the effect is not strong – member states with what they label as institutional and ideological constraints are more influential, i.e. where parliamentary power is strong and the ideological differences between government and parliamentary EU committee are large (Bailer and Schneider 2006). In a subsequent article using the same data, it is concluded that “domestic constraints are rarely important in EU legislative decision-making” (Schneider, Finke, and Bailer 2010, 98).

Bailer and Schneider (2006) have also included, as a measure of domestic constraints, information from the DEU dataset on the presence of threats in
negotiations which are regarded as a signalling of domestic constraints. The logic is that if constrained, negotiators are more likely to utter threats to signal their commitment. Such threats are found to not be important for the negotiated outcomes. As the authors themselves acknowledge, threats are rare in the EU Council and the answers of the respondents that form the basis of the dataset seem not to have given an unambiguous image of the prevalence of threats. Threats should also be regarded as stronger than the signalling type that is considered here, as will become evident and whether domestic constraints are signalled in the Council working parties is part of the empirics here. Furthermore, a latent threat of non-agreement must be assumed to always be present in negotiations and the need to make it explicit might vary and at the same time be unrelated to the signalling of domestic constraints.

What previous studies have done is to treat domestic constraints as something that is assumed to affect negotiation outcomes. The next step is to explore in what way domestic constraints are used in a negotiation situation in order to also see whether the premise of Schelling’s theory holds. What is needed is some attention to how negotiators behave in the negotiation process when having different types of domestic constraints. This behavioural component is partly present in Bailer and Schneider (2006) when looking at the prevalence of threats but it deserves to be made more thoroughly including other behavioural indicators. In the following this argument will be continued and the usage of domestic constraints as a sort of negotiation behaviour will be modelled in a signalling game.

Shifting Attention to Domestic Constraints usage

Research on negotiation behaviour provides further input to understand actions taken in the EU Council. Negotiation behaviour can be variously described as either hard or soft but with variations in terminology (cf. Fisher, Ury, and Patton 1999). David A. Lax and James K. Sebenius (1986) describe negotiators’ choice of behaviour as a choice between either to claim or to create value. Negotiators that claim value would be concerned with the own gains from the negotiations and use any opportunities to get as much benefit as possible. This demandeur behaviour is contrasted with a creating value behaviour that is more cooperative and where negotiators look for mutual gains and to increase the pie rather than to just divide it. The paradox of
weakness would imply that the main concern for negotiators is to gain as much value as possible by claiming concessions from counterparts using the domestic constraints. Schelling also limits his claims to be valid for distributive bargaining only which can be regarded as associated with the claiming value behaviour (cf. Elgström and Jönsson 2000, 685). Previous empirical analyses of the paradox of weakness have focused on co-variation between the approximation of positions to outcomes and some objective criteria for domestic constraints but they have omitted the intermediate step of how and if domestic constraints are used by negotiators in the EU Council. This is in line with the general upheld limitation that game theory has in that it focuses statically on input and outcomes with less consideration of the negotiation process and the causality between variables (Hopmann 1996, 51). If it should be possible to state that an outcome is affected by the domestic constraints that a given negotiator has, it is necessary to trace the outcome to some aspect of the negotiation that would not have been present if not the negotiator was constrained. This is obviously a counterfactual issue in the individual case and a matter of causality that needs further study. Not least because of this, the kind of behaviour that domestic constraints trigger deserves to be explored as it can function as a link between the input factors and the outcome.

There is reason to believe that domestic constraints do affect negotiations in the EU Council not only in ‘grand bargains’ but also in legislative decision-making, not least when shifting focus to negotiation behaviour. Even if there, in various respects, are differences between negotiations about changing the treaties or launching the EMU and legislative negotiations that take place at an everyday basis, there might also be things that unite. Negotiations still take place in the same union, with the same administrations in the same member states and perhaps even with the same negotiators. Some institutional rules and procedures might vary and there might be differences in how salient issues are when it comes to – at least some types of – legislation as compared to e.g. changing the EU treaties but nonetheless is there aspects that unite and that makes it worth to explore more in depth. One difference is that the grand bargains could be argued to in a formal sense have the ratification component that Putnam emphasises while ordinary legislation from the EU need not to be ratified. Yet at the same time, new legislation need to be implemented and accepted domestically and that should be a concern for all governments. It is even possible to talk about informal ratification when the formal type is absent (Tarar
that should then be performed by those who let the government stay in office.

The commonly alleged consensus norm and culture of compromise (Heisenberg 2005; Lewis 2005) in the EU Council is in this matter double-edged. If behaviour in the EU Council is norm-based it could be assumed to affect the level of conflict excluding the possibility of claiming value behaviour as norm breaking and by that it would also challenge Schelling’s theory. To signal domestic constraints and at the same time claim value for oneself would then violate these norms and negotiators pursuing the strategy would not succeed. On the other hand, assuming that negotiators also behave to gain as much influence as possible, this compromise and consensus culture would be worth to exploit, at least short-sightedly. It essentially boils down to a matter of loyalty, with the state as well as with the collective in the working party. In the Council working parties, negotiators appear to primarily take the role as state representatives even though quite some EU-level loyalty is also present. The loyalties also seem to vary somewhat between representatives from different member states and issue areas that might trigger different types of behaviour for different member state officials (Egeberg, Schaefer, and Trondal 2003; Beyers 2005).

The two sides of the consensus norm and culture of compromise are illustrated well about coreper by David Bostock (2002, 220) stating that “there is a powerful preference for accommodating the difficulties of Member States rather than voting dissidents down. At the same time the possibility that, in the last resort, a vote can be called acts as an incentive for any Member State in a minority position to display some flexibility”. If one should be accommodating to the interests of all parties, then domestic constraints could be used to tie the hands of a negotiator and by that force concessions from others. Yet at the same time, negotiators are supposed to also show some flexibility and not be too obstructing. It is essentially about balancing between acting within the norm and at the same time to take advantage of it.

The usage of claiming value tactics could also be determined by other factors. Ole Elgström and Christer Jönsson (2000) suggest that one such contextual factor affecting the mode of negotiations is the stage of the negotiations. Instead of naming it claiming and creating value, Elgström and Jönsson names it bargaining or problem-solving where at later stages of the negotiations in the EU Council, the bargaining mode would be the more accurate description. At early stages of decision-making,
instead the problem-solving mode would more accurately describe negotiators’
behaviour. The focus of this paper is on the EU Council working party level, which is
the earliest stage of negotiations, and it could thus be assumed to be less of the
bargaining mode of negotiations present. In a sense, this also makes the EU Council
working parties a somewhat critical case for the paradox of weakness.

The Model of Domestic Constraints usage
Domestic constraints need to be communicated to negotiating counterparts in order
for them to have any outcome effects. Schelling acknowledges that domestic
constraints need to be communicated persuasively and credibly (1960, 28). In
negotiations, or in any strategic situation that is dependent on verbal communication,
the credibility of one’s claims is key in being successful (Dixit and Nalebuff 1991,
142). The threat of non-agreement is always present in a negotiation and this must be
taken into account when deciding on how hard to push for a certain position. When
communicating domestic constraints to other negotiators, the threat is of course to
terminate negotiations if the position taken cannot be met and it must be accompanied
with a readiness to also pursue this threat in order for others to regard it as credible. If
the negotiating counterparts do not believe that the claims made are true and/or the
threat is real, then they have no incentive to be accommodating to the other player’s
desires. This is obviously a theoretical construction, as in most negotiations in the EU
Council no one single negotiator have the power to completely terminate the
negotiations due to the absence of veto. However, given the consensus norm in the
EU Council (cf. Heisenberg 2005), all players can be argued to have at least a weak
veto position that could be taken advantage of. The threat of non-agreement is
nevertheless weaker than if the possibility of veto would have been absolute and the
potential threat is obviously less credible as an effect. Such threat would also, not
least considering the Bostock quote, be expected to not be as strong if uttered one-
sidedly, i.e. when in a minority position. Leaving the potential power of the weak veto
position out, what remains is an evaluation of the credibility of the signalled domestic
constraint in itself, regardless of whether the response is to be accommodating to it or
not.
The game that has been described can be modelled as a rather simple signalling game with incomplete information (cf. Gibbons 1992, 183-190). The game involves two players, a sender (S) and a receiver (R). The sender in this case is the individual negotiator potentially signalling domestic constraints to a receiver, which in this case is formed by the other member state negotiators. The sender is by nature given a type (T) that is unknown to the receiver and from that, the sender decides what message (M) to signal to the receiver. The receiver in turn decides on an action (A) informed by the message. Payoffs (U) are decided as a function of the type, message and action. Player S’s type t is drawn from the set of types T and gives information about the player’s domestic constraints. For reasons of parsimony, the type, the message and the action are presented in the model as dichotomous variables, which mean that there are only two options possible at each node when modelled in extensive form (figure 1). In reality, the number of possible types, messages and actions are almost indefinite and therefore this dichotomous presentation will be relaxed when going from model to empirics. Player S is by nature given a type t of a set of types T that can either be to have domestic constraints or not to have domestic constraints. Based on this, the sender can choose a message m, from a set of messages M and the decision is to either signal domestic constraints to the receiver or not to signal domestic constraints. After receiving the message, the receiver has the choice of action a, from a set of actions A. As the sender must be assumed to always present a position as part of the message, the action taken by the receiver will be to either be accommodating to that position or not, informed by the message from the sender potentially containing information about domestic constraints. Schelling’s theory builds on the assumptions that given that the sender’s type contains domestic constraints, the sender is signalling them through a message and the receiver is accommodating to the positions that the message contain. If the receiver choses not to be accommodating to the position and given that domestic constraints are signalled sincerely, the receiver risks negotiation breakdown. The assumptions in the model are here up for empirical testing.
In the model, signalling serves the purpose of sharing the private information that the sender has about its own type. To convince the receiver that the signal is indicating the sender’s type, the message sent should be of a character that a message from another actor type would not be. This is where the issue of credibility becomes important, especially when there is a possibility that two different types of actors would send the same message. One way to improve the credibility is by making the signals incur costs for the sender of a certain type that another type of player would not be ready to take. To take an example, the type of constraints that were described above as voluntary public opinion based domestic constraints incurs what is called audience costs where outside actors induce costs if in this case the sender is not able to carry out a threat (Morrow 1999, 88-89). Negotiating by agent is another commonly suggested way to improve the credibility of a commitment, as an agent cannot be assumed to be in control of the position that is communicated. The usage of instructions for such agents would further limit the agent’s ability to make changes to a position and this is hence supposed to increase credibility (Schelling 1960, 29; Dixit and Nalebuff 1991, 160-161). In the context of the EU Council and especially its preparatory bodies, this factor should stay quite constant between the different member state representatives as member states are always represented by appointed experts, ambassadors or other officials and not the principal itself. The issuing of
instructions is under these circumstances important in providing the constraints that
the negotiator has to base its actions on. They have a central role in communicating
national positions to negotiating agents although the detailing might vary between
different member state traditions (Kassim and Peters 2001, 317-318).

Obviously, there are a number of ways for a negotiator to become credible in
signalling domestic constraints that will not be addressed here. Among the most
important however is that of reputation or the history of play that also might incur
differences between member states. It is generally held that the reputation of an actor
is important in getting credibility (e.g. Dixit and Nalebuff 1991, 145-149). If an actor
signals domestic constraints it is, as mentioned, also a soft form of threat of
negotiation breakdown if the position that is held with domestic constraints cannot be
met. To be credible in that type of situation would simply mean that the other
negotiators believe that this threat will be carried out if the position is not met and the
chance that they will hold this belief is obviously larger if there is a reputation for this
negotiator to actually carry out the threat. The same can be said for the information
that the signal carries, if domestic constraints are claimed from a negotiator who acts
in a political system where that type of domestic constraints would be very rare or
even non-existent, the domestic constraint might be harder to believe for negotiating
counterparts. It is not least important for EU member states that for instance have
varying degrees of parliamentary involvement in their government’s EU policy. A
member state signalling parliamentary constraints and it is known to other negotiators
that this in effect is very unlikely due to the structure of their political system might
have a harder time getting credible. So there is of course a possibility that, in the
Council working parties, different member states as well as different types of issues
and different types of fora for negotiations would produce different grounds for
credibility concerns. This will however be left as primarily an empirical question.

Credibility is arguably important but it alone does not make an actor
influential. Just because a sender is having credible domestic constraints, it does not
automatically translate into influence. At the same time, it can be assumed that
domestic constraints have to be credible if the receiver should at all consider being
accommodating to the sender’s position. Credibility of the domestic constraints is
thus a prerequisite for, but not sufficient to be influential according to the logic of the
paradox of weakness.
Design and Interview Scenarios

As mentioned, finding out the complete causal link between domestic constraints, negotiation behaviour and negotiated outcomes would require a counterfactual analysis. Experimental design provides the best estimation of such counterfactual analysis and serves as inspiration for the design of interviews that are providing the empirical base in this paper. The empirical data was gathered in six semi-structured interviews with member state negotiators at the working party level of the EU Council that are part of a pilot round of interviews in preparation for a larger sample and they are therefore explorative in character.

In the interviews, a number of questions were posed about the signalling of domestic constraints and how domestic constraints are perceived when someone uses them. The interview guides were inspired by experimental design insofar as the respondents were given a scenario describing a situation they could be facing in a working party. The scenario should be considered the equivalent to the full experiment’s stimuli or treatment. This type of method where a fictive scenario is used has a number of advantages that are both practically and empirically motivated. It is practically motivated for the lack of access to the real negotiating arena of the EU Council working parties and where a scenario instead can be a simulation of the same situation and a way to bypass this inaccessibility. It is empirically motivated as it eliminates the risk that the respondents would be uncomfortable to talk about a certain course of events that could be politically sensitive or for other reasons difficult to talk freely about (cf. Naurin 2004, 50-51). It also allows the constructor to be in full control of the situation that is described and to ensure that answers from the interviews are not inflicted by information imbalances between interviewer and interviewee. Of course, this can never be completely avoided as the respondents very well could have a certain issue in mind when picturing the situation described in the scenario, but the risk that undesired factors is included and affecting the responses is decreased. This results in a better comparability of the responses. Finally, it can be noted that the type of method using scenarios to evaluate game theoretic models empirically is suggested also by Schelling as a way to overcome the difficulties of deconstructing the complete decision-making process (Schelling 1960, 163).

The respondents are all representatives for their respective member state on agricultural issues where three of them are national experts (with primary
responsibility for one particular working party) based in the capitals and three of them have positions based on the permanent representations (having positions with involvement in the same working parties as the interviewed national experts). The respondents are from the Czech republic, Estonia, France, Netherlands, Sweden and United Kingdom and hence there are variation in the size of the member states and their EU entrance dates. The interviews with the PR officials were done face to face in Brussels and the interviews with national experts were made by telephone. All interviews were conducted during May 2011.

Before constructing the scenarios and interview guides, a number of preparatory interviews were conducted with civil servants in the Swedish administration working with the coordination of EU issues in the government and who also write instructions and have experience from working party meetings. These interviews served the purpose of making informed choices when preparing for the following interviews with other member state negotiators and the scenario construction for those interviews. Three different, fairly short, scenarios were developed for the latter interviews with variation on the negotiators’ type, i.e. their domestic constraints. A number of types of domestic constraints have been used in previous studies using Schelling’s theory and most of them have looked at internal division as the definition of domestic constraints and have used pivotal domestic actors to determine the win-sets. As pointed out above, Schelling is not describing constraints in terms of small win-sets as does Putnam but rather as one single position impossible to deviate from. This is also the crucial part in linking domestic constraints to a certain type of behaviour, as one position is more constraining than a set of positions. When making an operational definition of domestic constraints it is however necessary to also take into account what is realistic. It can be assumed (and this was also confirmed in the interviews done) that positions often are of the type that is described as win-sets rather than of the type that Schelling is depicting. The domestic constraints were in the scenarios accordingly defined by identifying two positions; the preferred outcome and the red line.

If the width of agreeable positions is the first component of domestic constraints, the second component is the source of the domestic constraints. Again returning to Schelling, in particular two sources of constraints are mentioned. Firstly, the position that is constrained by legislative authority and secondly, the position that is constrained by public opinion. When researchers have sought to determine the win-
set based on domestic pivotal actors, occasionally in a ratification situation, in particular the composition of the national parliament have been in focus. The exception being the referred study by Hosli (2000) including public opinion and other stakeholders. This type of domestic constraints will in the following be named in more general terms as constituency constraints or the like and is particularly focused on interest groups as the source of constraints. In the interview scenarios, national parliament and constituency were the two sources of constraints that were used in addition to one scenario where the domestic constraints were just based on the instruction coming from the line ministry formulating it. The latter scenario forms what in experimental parlance would be the control group. This sums up to three scenarios that the interviews centred around. Even if only one of the three scenarios that were developed was used at each interview, questions about each source of domestic constraints were posed to all respondents. In the simplified model that was presented above, this means that instead of the two options of constraints or not constraints, in the interviews, it was rather one of these three types that nature assigned to the sender.

Domestic constraints are commonly defined as having divided government, that the government is held to a position against its will, most often by its national parliament (e.g. Hammond and Prins 2006; Milner 1997, 68). It relies on a relaxation of the otherwise common assumption that states are unified actors and instead emphasises that states consist of a plethora of interests from domestic interest parties and veto players and this is something that a government has to take into account (Pahre 2006). Having divided government and that this should lead to influence is built on the premise that the parliament has a position that is located further away from the status quo than is the preferred government position. This condition is further dependent on that the parliament’s position is not located too far away from the government’s because the risk would then be that the government, using the parliament’s position, end up in a situation where the outcome is actually worse than the status quo. There has to be some amount of coincidence of preferences between the government and parliament so that the parliament is not too hawkish (Milner and Rosendorff 1997). This further implies that if the national parliament’s position should be possible to strategically use to pull the outcome closer to the government’s preferred position when negotiating, it can neither be located anywhere closer to the status quo than is the government’s position. The divided government assumption
therefore has to be qualified to allow for quite some degree of coinciding preferences. This must however not violate the divided government hypothesis, as its key is that there are domestic veto players that the government cannot disregard. Therefore, even a negotiation position that appears to be unified and that a sufficient number of domestic veto players stand behind is an effect of divided government. Some evidence has also pointed to the importance of unified government as a strengthening factor for the negotiator and that it would open the possibility to voluntarily put constraints on oneself for negotiation purposes (Holzhacker 2002, 467-468).

In the scenarios, the positions specified in the instruction were described as coinciding, that it were joint positions or coordinated positions by the government. No specification was made on whether the position taken by the government was voluntary or not. The reason for this was that it was judged to be of subordinate importance for the individual negotiator acting in the working party since the negotiator is assumed to act as an agent of the government according to an instruction without any political agenda of its own. Obviously, negotiator’s behaviour can be affected by socialisation logics in the working parties but this should not be expected to vary between member states or to be of particular importance unless negotiating instructions are unclear (Beyers 2005, 933). Whether the government is voluntarily or involuntarily constrained would furthermore not be a concern for the agent, as it concerns a relation that the agent is not assumed to have any stakes in. Of course, would the government voluntarily put constraints on itself or its agents, it can be assumed to have a purpose that is strategic and hence the likelihood of it to be used might increase. However, that question is not addressed here.

When the national parliament was used as the source of domestic constraints, it was just stated in the scenario that the position had been discussed and was enforced also there. In the scenario where constituency was the source of constraints, particular emphasis was put on interest groups. The reason for this was solely to make it realistic. Legislative proposals and particular aspects of them up for discussion in a EU Council working party were believed to not attract very much interest in the public but it was more likely that interest groups could have stakes in the issues. Thus, interest groups were the main source of constraints in that scenario. The scenarios moreover contained information about that substantial arguments had been used on previous occasions toward the other member state negotiators without success. The reason for this was to make it realistic both in that there should be demonstrated a
certain amount of controversy over the issue and that the constraints should not be completely unfounded but have some substance behind.

In sum, the interviews provide information about the message that a given type of player is sending to a receiver given its type and the receiver’s action based on the information given in the message. The scenarios revealed no information about any potential payoffs or strategies available. In addition, questions about the credibility of signalling of domestic constraints were posed.

Domestic Constraints usage in the EU Council Working Parties
The results from the interviews show some diverging experiences about signalling of domestic constraints. Respondents have different ways of reasoning about the issues of their own and others’ domestic constraints and how they are used. There are also different opinions as to what sources of constraints that can be used and how they are perceived when others are using them.

Regardless of what type that the respondents were assigned in the scenario – to be constrained only by instruction, by national parliament or by constituency – no one spontaneously reacted by wanting to use the constraints and signal them to the counterparts in the working party. The two common responses, when faced with an instruction containing a red line and a preferred position, were to either go on arguing with substantial arguments for the preferred position and having the red line as a fall back position and/or to put effort into informal contacts with other delegations on a bilateral basis to seek support for the position taken and try to trade issues. Arguing for the preferred position, as an initial response, proves that there is a fairly high level of sincerity in the rhetorical actions taken in the Council working parties. This is interesting as it partly excludes the claiming value behaviour that is associated with the paradox of weakness. The claiming value strategy would rather formulate a position that went farther than what was preferred, in order to make concessions look more cooperative and get an outcome that was closer to the ideal (Lax and Sebenius 1986, 132). The room for this kind of argumentation in a context with high level of sincerity might be larger if the ideal divided government situation is present; when the position of the constraining actor is located further, but not too far, away from the government’s position in relation to the status quo (cf. Milner and Rosendorff 1997).
Neither in arguing for the preferred position nor in bilateral contacts with other delegations would the first choice be to signal any domestic constraints. However, when followed up by direct questions about whether the three types of sources of domestic constraints could be used in the situation described, the answers revealed that for five out of the six respondents at least one of the sources of domestic constraints could potentially be used. Most common would it be to signal domestic constraints that were enforced by important domestic interest groups where five respondents would be ready to signal it to the other negotiators. Three respondents would also be ready to signal domestic constraints that were based on the national parliament whereas just referring to the negotiation instruction would for the most part not be a viable option.

The respondents that were not as eager to signal domestic constraints argued in quite similar ways; that signalling would be unnecessary since everyone is in the same domestic situation with positions that were based on domestic level interests of for example national parliament and interest groups. It would hence just be mentioning something that everyone already knew. As the two main sources of domestic constraints, signalling of national parliament constraint and interest group constraint differ in one crucial respect; that interest groups would be used more as a substantial argument than would the national parliament. All respondents that were ready to signal interest group constraints would, in almost all circumstances, mention them not by name but as ‘consumers’ or ‘industry’ or the like but more importantly, do it just to prove how harmful any other outcome would be to the particular groups. It would hence not, as the theory suggests, be binding to the extent that it becomes impossible to deviate from. Therefore it would not be the source of constraint as such that were used but rather how an outcome would affect particular groups. The national parliament would instead be a source of domestic constraints that could actually and in a more direct way lock up a position. Two respondents were a bit more willing to signal national parliament constraints but they had different reasons for signalling it. One purpose was said to be to explain the position taken and was described to be quite strong as an explanation and the other purpose was to show that the particular issue is important. In both cases, the signalling was a way to maintain the position even if one of the respondents stressed that s/he would be careful not to become annoying.
When respondents instead were asked to take the view from the other side, that is being confronted by another member state arguing with either type of domestic constraint, the actions based on the signalling would for the most part not be affected. Most respondents acknowledged that the counterparts’ positions were considered but did not attach any particular importance to the domestic constraints of other parties, at least not in situations where it is clashing with the own position or when the sender is in a minority position in the Council. Partly for the same reasons that some respondents would not signal domestic constraints, they would recognise that signalling from others would not matter as they all have domestic situations and interests to deal with.

Nevertheless, two respondents said that when someone is referring to the national parliament it gives certain weight to the argument but maintained that it is other factors that determine what action that is taken. None of the respondents believed that interest group constraints mattered and this can be attributed to that interest groups provide further substantial arguments rather than having binding effects on the government’s position. Neither when just the other negotiators’ instruction was the source of domestic constraints did they matter for the actions taken. Not even negotiators who would be willing to signal domestic constraints in the same situation would be particularly willing to take action accommodating the others’ positions. One interpretation of this is that the signalling of domestic constraints does not serve the purpose of convincing the other negotiators to be accommodating to the own position. The signalling model assumed that signalling has the purpose of sharing the information about one’s type and the paradox of weakness adds to this that the receiver then would be accommodating to the position taken by the sender. But if the purpose of signalling instead just is to mark the importance of the issue or to explain the position taken, as two of the respondents explained, this would have to also translate into effects on the receiver’s action if Schelling’s theory should hold. Such effects on a receiver’s action might not be conscious enough to be acknowledged in an interview situation like this but it could of course materialise for some negotiators. To illustrate this, the same respondent that was willing to use the constraints to demonstrate the importance of an issue would likewise have assessed how important the issue was for the opposing negotiator signalling domestic constraints, regardless of which domestic player that was the source of the constraint. S/he was also willing to go back to the domestic level for further information about
the implications of a particular outcome in case concessions would have to be made to the actor signalling domestic constraints. This is the closest an opening for taking actions that would be accommodating to the domestically constrained actor’s position that was expressed in the interviews.

Even if only one respondent actively would describe a situation such as this, most other respondents were clearly aware that it might become necessary to drop whatever position taken in case the support for the position was low, regardless of whether holding the position as a sender or as a receiver. To some extent, in this respect the negotiators account for the voting power in the Council and the necessity of coalition formation, either in supporting an issue or to form a blocking minority. It was however also stated, in one case, that negotiators do not sit with calculators but seek broader compromises.

When domestic constraints are signalled in the working parties, they are generally considered credible. Negotiators believe in the messages sent by their counterparts without any extra requirements to prove them correct. This is especially true for the source of domestic constraints signalled in the message. No one stated that they would openly question the domestic constraints of others or that they would try to figure out whether they were real. After all, gathering that kind of information would probably be difficult, not least because of language barriers. However, a certain amount of scepticism is present but more on whether the substantial arguments are well founded and commensurable with the content of the substantial argument that is backing the own positions. As the purpose of signalling is to give some information on what type one is and the message should be of a kind that another type of player would not send, the implication is that negotiators are assumed not to signal domestic constraints unless they sincerely have them. The high level of credibility could potentially be an effect of that the negotiators are just agents and not in control of the position that they are presenting and that they are without authority to make changes or deviate.

The results inherit some variation as to how and if domestic constraints are used and perceived. The number of respondents is of course too limited to make any solid general conclusions about prevalence of signalling and about what source of constraints that is most important. However, there appears to be differences between the sources of constraints where the national parliament would single out as the source of domestic constraints that is most difficult to ignore and provide a more
binding commitment. At least that is the case at the working party level of the EU Council where interest groups rather are a source of input and the public has limited involvement. Because of the low number of interviewees no conclusions are made based on which member state the negotiators are representing. It was nevertheless acknowledged in the interviews that there is an awareness, especially from the smaller member states’ negotiators, that they are easier to ignore because of their size and that they therefore cannot push their positions too hard, including committing too much to a certain position. The respondents from the two larger member states were to a lesser extent willing to give up their positions and would instead push them quite hard. Commitment strategies, such as the one advanced by Schelling, could hence be more important for larger member states as they are in formal terms also stronger in the EU Council. More systematic variation between member states on these matters could potentially be observed in a larger sample.

Conclusion

Member state negotiators are not completely unfamiliar with signalling domestic constraints even though it is in many situations not their first choice of action. This is in line with the relative scarcity of threats that was discovered by Bailer and Schneider (2006). The primary purpose of signalling domestic constraints appears to not be to make other member states to shift position but rather to explain a position or to convey further substantial arguments. The claiming value behaviour associated with Schelling’s paradox of weakness seems to not be the prominent mode of operation and it is in several of the interviews expressed that the negotiator’s role is to find common ground and strike compromises where you sometimes win and sometimes lose. It is a matter of picking the fights which confirms Jeffrey Lewis’s account that negotiators want to avoid being a demandeur all too often (2005, 942). Yet, at least one of the respondents stated that the purpose of signalling national parliament constraints was to emphasise the importance of the issue, which in a way is to appeal to the other negotiators to try to be accommodating to the particular position. Whether such variation in willingness to signal domestic constraints is due to member state tradition, individual factors or something else is left for further exploration. It is also relevant as regards the consensus norm of the EU Council. The
willingness to signal and push hard using the domestic constraints could be expected to be higher if other member states would be eager to strike a compromise including all member states. At the same time, such behaviour could be norm breaking and therefore limit the possibilities of being influential. That the willingness to signal domestic constraints is low could imply that there is no strategy to exploit the consensus norm for the benefit of the own state and at the same time, when signalling occur it might be an exploitation attempt. The consensus norm is not absolute and when situations occur where member states do not agree, it happens that the Council explicitly vote without everyone agreeing (e.g. Mattila 2004; Mattila and Lane 2001). It will keep being surrounded with some uncertainty as to how it affects the usage of domestic constraints in the EU Council.

As regards the paradox of weakness, the results seem to not be particularly supportive of its assumptions. If negotiators are not willing to signal domestic constraints when they have them, the likelihood that they deem them effective in getting preferable outcomes must be supposed to be quite low. That they in addition seem to not be particularly willing to accommodate to the positions of other actors having domestic constraints further points in that direction. This conclusion must be further qualified as it is at this point based on just a few negotiators’ testimonies.

As mentioned, the empirical data for this paper have been based on a pilot round of vignette interviews and hence there are reasons to improve and develop the data and research strategy. A number of factors have been found to be in need of further elaboration and specification. One such important factor is how to regard the size of both winning coalitions and forming blocking minorities in constructing the scenarios. The negotiators action proves to depend quite a lot on this particular factor. Another thing that needs further consideration is whether the working party level is a sufficiently strategic environment. Several of the respondents, not least the national experts themselves, were not as used to deal with the type of strategic issues that were asked about and would rather say that in the working parties, it is much more about presenting positions and less about real negotiations. Several of the respondents suggested a focus on a higher level of the Council such as the coreper level or senior committees or attaché level of the working parties of the EU Council in order to detect the type of strategic behaviour. As mentioned above, the working parties of the EU Council form a critical case since more of the bargaining mode of negotiations would be present first at later stages of the negotiation process (Elgström and Jönsson
2000). It might hence be that there are observable differences between the levels of the EU Council that need to be further explored. This in turn could provide further qualifications as to when the paradox of weakness applies and when it does not.
References


