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**Informal Capabilities of the Spanish Permanent Representation
in Brussels and the influence of Spain in the European Union
Decision-making**

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Informal Capabilities of the Spanish Permanent Representation in Brussels and the influence of Spain in the European Union Decision-making

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Abstract

To what extent is the Spanish Permanent Representation to the EU comparable to other Member States in terms of capabilities? What are the indications of Spain's strengths and weaknesses in EU legislative processes? Drawing on new qualitative and quantitative data sets, this article investigates the resources and capabilities mobilised by Spain as part of the EU public policymaking that takes place in Brussels. This research compares the human resources of the Spanish Permanent Representation, its internal coordination process, and its external engagement with EU stakeholders, to other member states. Doing so, this article illustrates possible implications of these variations for Spain's bargaining success in the Council of the EU.

Keywords: Permanent representations, decision-making, European Union, EU Council, informal capacities, EU interinstitutional cooperation.

Introduction

This article focuses on the resources and capabilities mobilized by Spain as part of the EU policymaking process, and their influence in shaping decision outcomes. Formulating and advancing national positions and interests at the EU level, member states' Permanent representations in Brussels play a critical role at the centre of the National-European nexus (Chelotti, 2013). These diplomatic representations are indeed in constant contact with their respective capital and EU institutions as the main representative of their member states' interests, both at technical and political levels in EU negotiations. Permanent Representations host national negotiators from all ministerial departments, working in close coordination with their respective home ministry and their counterparts from other member states (MS). They are at the core of member states' coordination processes both at the domestic level to formulate the national strategy and policy positions, and at the European level to lobby and engage with relevant stakeholders in Brussels (Perarnaud & Arregui, 2021). Despite their crucial role, Permanent representations are however known to be characterized by significant differences in their organization, resources, and effectiveness (Kassim et al., 2001).

Looking specifically at the resources, processes and role of the Spanish Permanent Representation (PermRep) to the EU in the advancement of Spanish preferences at the EU level, the article complements previous studies investigating Spain's national decision-making system in relation to EU affairs and its capacity to leverage influence at the European level. Accordingly, this study poses the two following questions: (i) *To what extent is the Spanish permanent representation in Brussels comparable to other MS in terms of capabilities?* (ii) *What are the indications of strength and weakness for Spain in the EU legislative processes?*

The following section reviews the literature on the Spanish decision-making process in relation to EU affairs, and indicates the need for new academic accounts on the Spanish PermRep. Next, the data and methodology are detailed. Then, the analytical section is divided into three sub-sections, looking at the resources and processes of the Spanish REPER, the success of Spain in recent pre- and post-legislative negotiations, which is followed by two comparative case studies. The final section summarizes the findings and discusses the implications.

Literature review

Previous studies have documented the structure and quality of Spain's internal coordination processes for EU affairs. As part of the seminal volumes of Kassim *et al.* on the *National Coordination of EU Policy* (Kassim *et al.*, 2000, 2001), Molina (2001) comprehensively detailed the internal coordination process for EU affairs in Spain. Underlying the significant competencies given to the Secretary of State for the European Union (SEUE) within the Spanish Ministry of foreign affairs (MFA), Molina

(2001) argued that the SEUE is central in the Spanish coordination system and ‘has a formal monopoly, externally, with the Permanent Representation and EU institutions, and, internally, with the ministries and regions’. Similarly, Magone (2004) confirmed that the ‘Spanish national European policy coordination is very much dominated by the central government’.

Looking at the quality of the bureaucracy in formulating and defending Spanish interests at the EU level, several studies on the national EU coordination of Spain have depicted this system as ‘selective’ (Kassim, 2003), slow and weak (Costa, 2006; Greer et al., 2012). This scholarship feeds into a broader body of literature which studied the effectiveness of Spanish PermRep at the European level (Bindi & Cisci, 2005), and its influence on decision outcomes (Tovias, 1995; Closa & Heywood, 2004; Magone, 2004; Molina, 2020).

Other studies have also addressed how the EU has shaped Spanish policy processes and how Spain interacts with the EU level (Quecedo, 1995; Closa & Heywood, 2004; *Author 2a*; Mateo & Morata, 2007; *Author 2b*; Molina 2020). Our work complements previous research on Spanish foreign policy-making (Molina & Rodrigo, 2005) and its process of Europeanization (Barbé, 1995; Torreblanca, 2001) in terms of governance, but also in terms of defining Spanish interests and capacities (Marks, 1997; Molina, 2001; Morata, 2007; *Author 2a*).

The administrative fragmentation of the Spanish decision-making process, as well as the involvement of Spanish regions at the EU level, have been perceived as the main challenges for the Spanish government in shaping and defending political preferences on EU affairs (Molina, 2001). This is emphasized in particular by the literature on the role and representation of Spanish regions at the EU level (Roller, 2004; Rodrigo, 2012; Morata, 2013; Cano, 2015), and more specifically in the Council (Noferini, 2012).

If the representation of regions at the EU level has generated a vast body of research, the actual representation of Spanish interests towards the EU level, and more specifically the resources and processes mobilized by Spanish negotiators to influence decision outcomes, remains under-studied. The PermRep is however a key actor in the Spanish National-European nexus to understand its success at the EU level, and particularly in the Council of the EU. Magone indeed argued that the distant position of the Spanish PermRep from the decision-making Madrid gives a uniquely strong position to the civil servants involved in the negotiations, who are in general terms experienced negotiators (Magone, 2004). Whereas we know that ‘Madrid’s capacity to influence decisions in Brussels is not negligible’ (Molina, 2020), there is a need to better understand who the negotiators posted by Spain to the PermRep are, the processes and the amount of resources available to them, and their actual success in the context of legislative negotiations.

Twenty years ago, Kassim (2001) had argued that Spain was part of the group of ‘spectator’ member states, which have ‘smaller missions that take a special interest in particular areas of EU policy-making and which are not tightly integrated into the domestic policymaking system’. Based on novel data sets, this article intends to compare the resources and processes mobilized by national negotiators in Brussels to assess whether Spain remains a “spectator” in the EU policymaking process, and how it compares to other MS.

Data and methodology

To answer our two main research questions, this article relies on two qualitative and quantitative comparative datasets developed as part of a broad research program on the influence of Spain in the EU policymaking system.

The success of Spain as part of EU legislative processes is assessed using the DEU III dataset (*Author 2 and 1*)— an extension of the previous DEU I and DEU II data sets (Stokman and Thomson, 2006; Thomson et al., 2012). This new dataset contains full information on policy positions and levels of salience that actors attach to 363 controversial issues, based on 494 in-depth interviews conducted with national and EU officials. More specifically, this article draws on a subset of the DEU III Dataset, looking at EU legislative negotiations adopted between 2004 and 2019. In addition, our analysis on member states’ influence capabilities draws on a dataset focusing on the informal capabilities that MS have developed to become successful in the EU legislative process (*Author 1, Forthcoming*).

This article builds on nine qualitative interviews conducted between 2016 and 2018 in Brussels with negotiators of the Spanish permanent representation to the EU, both at the technical and ambassadorial levels. Interviewees represented various policy sectors. Three negotiators were in charge of Justice and home affairs (JHA), and one for each of the following: environmental affairs, economic and financial affairs, social employment affairs, and internal market. Three interviews were also conducted with one of the three PermRep’s ambassadors (and his assistant). Finally, our analysis also draws on documents provided by the Spanish PermRep as well as interviews conducted with other delegations as part of this research program, when Spanish negotiators and influence were considered by respondents.

The following section analyses Spain’s influence capabilities at the EU level, in terms of the Spanish PermRep’s resources, its internal coordination process and its engagement with other actors at the EU level. Then, drawing on the DEU III dataset, the bargaining success of Spain in recent negotiations is analysed, as well the level of salience of its preferences, and the average distance of its preferences in comparison to other MS. Furthermore, two case studies are presented in order to underline the

strengths and weaknesses of the Spanish PermRep in influencing the EU policymaking system and its decision outcomes.

The Spanish REPER: A strong national actor with sub-optimal EU connections

The following section documents and compares the resources and processes mobilised by the Spanish REPER as part of the EU decision-making process. It covers the human resources mobilised by the diplomatic representation, as well as its internal coordination process and external engagement with EU stakeholders.

Human resources

The results of our survey and analysis of data indicate that the Spanish PermRep is well-resourced in comparison to other MS. It hosts approximately 70 negotiators, and is thus among the largest permanent representations of all EU MS. For all policy sectors studied, Spain has more negotiators than the average member state.

Figure 1: Number of Coreper I and II negotiators by member states in 2019 (Source: *Author 1, forthcoming*).

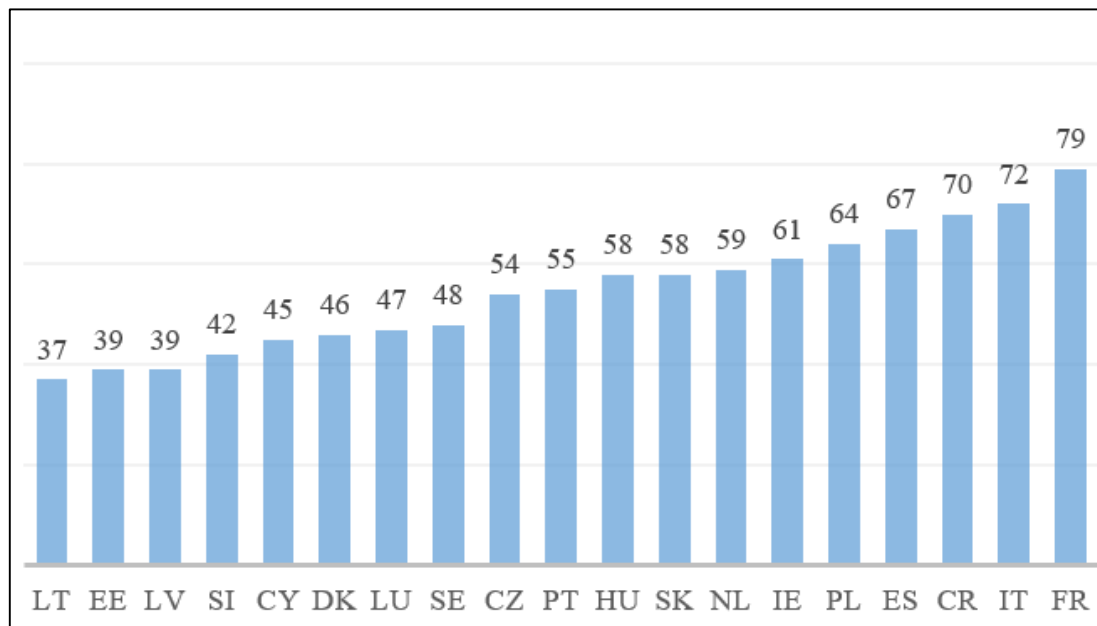
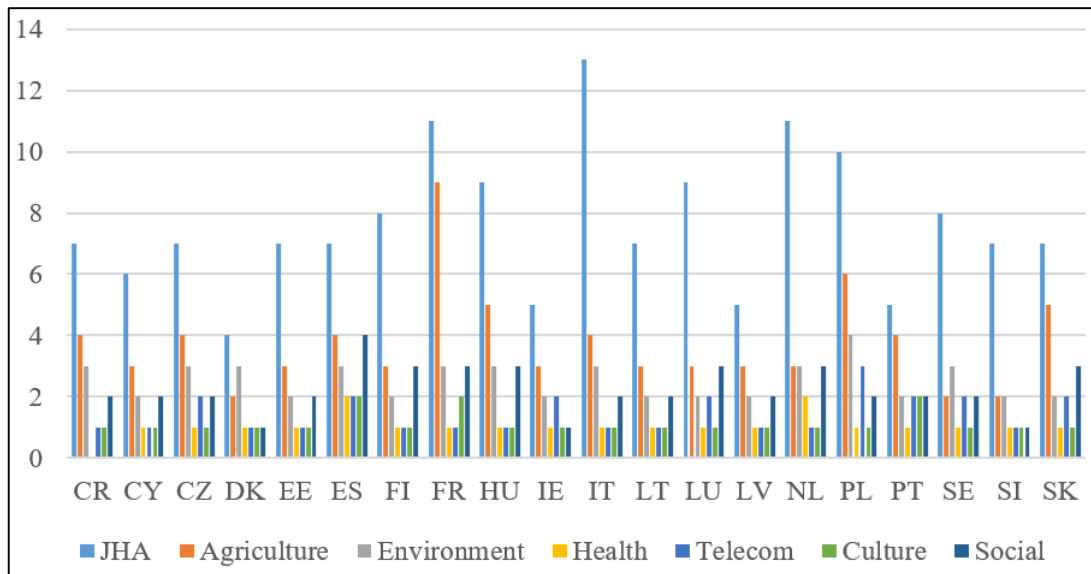


Figure 2: Number of negotiators by policy sectors in 2019 (Source: Author 1, forthcoming).



Interviewees emphasised that the Spanish PermRep is not only well-resourced in comparison to other member states, but also in relation to the national administration in Madrid. A Spanish ambassador argued for instance that *“in perspective, we are much better here, especially in relationship to the average situation in Madrid, inside the average ministry, such as energy, fishery or even foreign affairs [...]. If we compare to the central administration, we are clearly much better here.”*

The Spanish PermRep is perceived as an appealing posting for most Spanish civil servants working on EU affairs. This contrasts strongly with other member states, where postings in Brussels appear less desirable (Kassim *et al.*, 2001). Indeed, it was argued that *“working conditions in Brussels and Spain are impossible to compare. [...] There are very interesting advantages for families, and even European schools’ tuition fees are covered. We are close to Spain. Nowadays, there is high demand for jobs in the Spanish Permanent Representation, you can acquire highly skilled resources”*.

In certain sectors however, the posting of additional negotiators was considered as needed to allow negotiators to follow EU developments more comprehensively. These gaps appear to relate to the structure of the recruitment process of negotiators, which remains a competency of each ministry, and is thus at times characterized by delays. The deputy permanent representative argued that *“the reason the adjustments are not made is that each ministries have their own budget, and spend it according to their overall resources”*.

The recruitment of negotiators at the Spanish PermRep is indeed carried out by the competent ministries, though an inter-ministerial commission is notified and can signal issues. Negotiators generally stay for a maximum of five years, and then return to their respective administration in

Madrid. This system allows for negotiators to enrich their network in Brussels, increase their expertise on EU affairs, and then share this knowledge with their services back in Madrid.

In terms of training, there is no structured mechanism for new negotiators at the level of the Spanish PermRep. Systems of knowledge-transfer vary in function of ministries, but negotiators generally “learn by doing”. Only diplomats from the ministry of foreign affairs benefit from specialized trainings. However, diplomats represent less than 25% of the counsellors of the Spanish PermRep. As explained by a Spanish diplomat, *“in terms of training, the Spanish Permanent Representation does not provide particular training to the negotiators. Most of the negotiators have extensive experience in negotiations, since they were posted before in the ministries and already followed the negotiations, so they learn by doing. For diplomats from the Ministry of Foreign Affairs, there is a training program when entering the ministry”*.

Internal coordination

As emphasised previously by Magone (2004), the role of the PermRep in the national EU coordination system is essential. Negotiators indeed participate directly in the formulation process of the national position, for instance by updating the administration regarding ongoing developments in Council working groups. Though the secretary of state for European affairs is in charge of the coordination of the national position, the shaping process of the position was presented as *“much more a dialogue than a simple instruction, since Brussels based diplomats have a better sense of what is going on in the EU”*.

In terms of the administrative resources available in Madrid and their experience, negotiators in Brussels can enjoy more autonomy, though Madrid always remains the ultimate decision-maker. For instance, in the JHA sector, several negotiators appear highly experienced and recognised by their peers as experts of their respective fields. Their individual status and the Spanish coordination system allow them to play a greater role than negotiators from other MS in their national decision-making system.

Nonetheless, the role of the Spanish PermRep varies across policy sectors. For instance, in relation to security and defence matters, Madrid holds significantly more control of the process of formulation and advancement of national preferences, in comparison to other sectors. It also varies depending on the expertise and interest for EU affairs of the relevant director generals, secretaries of state and ministries in the capital. Also, when the policy sector is more communitarised (i.e. agriculture, fisheries, environment), officials in Madrid are generally more aware of EU-related developments. Indeed, other ministers are less used to dealing with EU-related dossiers, and are thus less proactive, leaving more room for manoeuvre to negotiators in

Brussels. As suggested by a Spanish diplomat: *“it depends a lot on whoever is in Madrid [...]. There are general directors, state secretaries and even ministers that can be more familiarized [with European procedures]. When there is a communitarian competence under discussion, you can notice it. For example, take the CAP, there is no national budget for it. It is entirely communitarian. And there are some [really good negotiators]. Such sectors [agriculture, fishery] have a tradition in working really well as much in Madrid as in Brussels. The Environment is also a highly communitarian topic, those people working with it [in Madrid] know the technicalities. There are ministries really used to communitarian affairs. This does not happen as often in other ministries”*.

According to interviewees, the quality of the internal coordination appeared mostly fluid, following established procedures. For instance, after the publication of a legislative proposal by the European Commission, the services of the PermRep draft a fiche for each dossier, called ‘Fiche COM’. It describes the proposal and identifies the responsible ministries. However, the internal coordination process can be blocked in situations where ministries cannot find a common position on controversial issues. Compared to other MS, Spain remains swift in the adoption of its national positions on EU affairs. Far from MS characterized by slow position-shaping processes such as Germany and Belgium, Spain appears to enjoy a rather efficient mechanism to adopt its initial positions, though not as efficient as Scandinavian and Dutch administrations. Indeed, certain Member States, such as the Netherlands, have developed highly efficient coordination processes between their capital and Permanent representation, allowing for swift feedback loops between Brussels and home ministries during EU negotiations. These systems can ensure, for instance, quick and secure clearance from the highest levels of ministries and approve a national position in ‘one day’ if needed.

Though the main coordination body for EU affairs in Madrid is the secretary of state for EU affairs, interviewees signalled that in recent years, a new structure has emerged and progressively shifted the internal coordination process on EU affairs related to economic matters. Under the first Rajoy government, a structure called the economic office of the president (‘la oficina económica del presidente del gobierno’) became competent for the coordination of the Spanish position for the European Council related to economic affairs. Its scope of action is broad, and covers for instance the negotiations on the directive for the posting of workers, related to social and employment affairs. The advantage of this office is that it brings negotiators in closer contact with the president of the government, and thus gives them more influence. This evolution reflects a more general trend in EU governance, as more and more technical and controversial dossiers are brought before the European Council. This is also well-illustrated with the recent systematization of the meetings of EU leaders’ sherpas before each European Council. Whereas certain controversial files would be usually

addressed by Coreper or the General affairs Council, they are increasingly discussed by sherpas and thus negotiated directly by heads of state. In Spain, the sherpa was also recently the secretary of state for European affairs (Amb. Jorge Toledo Albiñana).

External Coordination

In Brussels, Member States engage with a constellation of actors in order to advance their national interests. In this context, Permanent representations develop and nurture personal relationships with representatives from other MS and EU institutions, build coalitions and develop influence strategies in order to make their preferences heard at the EU level.

In terms of cooperation with other MS in the Council, the coalitions initiated or joined by Spain vary widely depending on the issues and policy sectors. There are no structured and institutionalised relations with large MS such as France and Germany, though there is a will to increase coordination with Germany (seen in a recent meeting of the Spanish secretary of state with his German counterpart). As argued by a Spanish diplomat, *“there is a series of countries whom we share close preferences. It depends a lot on the individual case. Spain is a country in a unique situation. It is a big country with interests in multiple fields and that do not always match the preferences of traditionally large states. We are close to France and Germany, but what really sets your agenda are your own specific interests. We work so that the Franco-German relationship also includes our interest. Outside of that big coalition, it is tough to achieve your own interest”*.

Interviewees emphasised that cooperation with other MS is important and need to occur early in the process. If Spain tends to be politically aligned with large and pro-European countries, such as France and Germany, it also sometimes follows positions closer to the UK, or the Visegrád group. Brexit is, thus, expected to strongly reshape the alliances that Spain has built in the Council, including on environmental and internal market affairs (*“when discussing the environment, our closest partner was the United Kingdom”*). With Portugal, however, Spain tends to find major convergences on most issues.

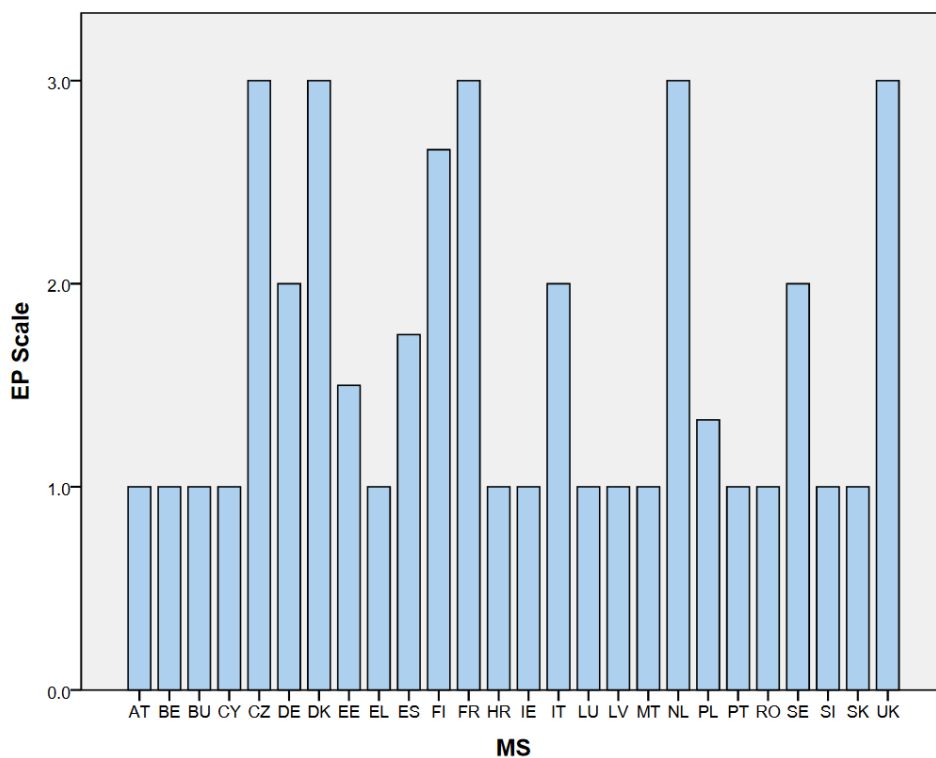
In terms of coordination with the European Parliament, the Spanish PermRep nurtures strong relations with (Spanish) MEPs. This coordination was deemed absolutely necessary in order to exercise influence at the European level. The increasing empowerment of the European Parliament in EU legislative negotiations has indeed led a number of Member States to allocate more resources and time in engaging with MEPs, in order to follow and shape parliamentary debates. Spanish negotiators engage not only with nationals in the EP, but also with relevant MEPs such as the political group coordinators, chairs of commissions, and (shadow-)rapporteurs of particular legislative proposals. A negotiator covering economic and financial matters explained that: *“Obviously we cannot make them*

to buy our proposals, but we can explain them our position. They come to the treasury in Madrid, and they can ask anything they want on this file. One of the shadow rapporteurs is Spanish, and I have contacted every month with them. They are very, very helpful”.

The access to MEPs by the Spanish PermRep appeared satisfactory to convey the preferences of the Spanish government. The Spanish Permanent representative and the deputy Permanent representative usually visit Strasbourg during the EP plenaries, in order to inform MEPs about the position of Spain on key issues. A diplomat argued for instance that *“the European Parliament, for instance, is essential and we are in permanent contact with it, this is evident. We are negotiating in one institution, the Council, but we are always looking at the Parliament, since nowadays it has become a key actor”*.

In the context of several negotiations, the strong connection between the Spanish PermRep and Spanish MEPs acting as EP rapporteurs played a key role in explaining Spain bargaining success, as exemplified later in the case studies.

Figure 3: MS permanent representations’ engagement with the European Parliament (Source: Author 1 and 2)



However, as emphasised by Figure 3, not all MS invest in these channels. Spain is part of the group of MS which regularly engage with the EP as part of legislative processes, though this engagement remains less structured than other MS such as Denmark, Czech Republic, France, Finland and the Netherlands. Indeed, in certain sectors, attachés do not have sufficient time and resources to constructively approach the European Parliament. PermRep negotiators need to attend all Council working groups, report to the capital, study each proposal closely, while engaging with other EU

institutions and stakeholders. This gap is well illustrated by variations in the workforce of MS permanent representations' section dedicated to follow legislative developments in the EP. In Spain, this section is only staffed with one civil servant, whereas other MS have up to three. With sub-optimal resources, this situation may translate into less bargaining success for Spain as part of legislative negotiations.

Regarding the engagement of the PermRep with the European Commission, contacts are regular, and established on an *ad hoc* basis. The Spanish permanent representation also devotes some of its resources to the posting of Spanish nationals into the EU administration. Interviewees argued it had an impact on decision outcomes. A Spanish diplomat explained that *“inside the Commission, we have important people in key positions, and we use them, since they allow us to exert influence. As a consequences, we have a policy for placing Spanish representatives in strategic placements [...] There are no periodical meetings. But there are meetings, and more than that, contacts for sharing key information and exerting informal influence”*.

In terms of engagement with interest groups in Brussels, the Spanish PermRep is generally open to discuss with interest groups representatives. Such meetings can be interesting for attachés, since they can better understand the position of other MS through these lenses. As emphasised by a Spanish diplomat, *“with interest groups, the Spanish Permanent Representation is quite open. They receive many interest groups to hear their perspectives, both at attaché and ambassadorial levels. The lobbying happening in Brussels is much more technical than that in the national capital. Lobbying material is very interesting for attachés, since they can better understand the position of other MS through these lenses. For instance, in the context of air transport negotiations, hearing from big EU airline companies was useful to better understand the roots of the German or French national positions”*.

Spain' success in EU legislative processes (2012-2019)

This section draws on the new DEU III dataset (Arregui & Perarnaud, 2021). This analysis uses data from thirty-six legislative dossiers (covering 90 controversial issues) adopted under qualified majority voting (QMV) rules between 2004 and 2019. The legislative dossiers under study cover the following policy sectors: environment and energy, telecom and digital, agriculture, justice and home affairs, social and employment, and health.

The following table indicates the average success of MS across the legislative dossiers under study. Using a spatial representation of controversies by means of ordinal scales according to an established methodology (Thomson et al., 2006), success is measured as the absolute distance between the initial preferences of actors with decision outcomes, weighted by salience (Author 2, c). Issue salience is

also measured for all actors using an ordinal scale from 0 to 100 for each controversial issue. Extremity, or the distance of an actor's position with the average preference of all other actors, is also accounted.

Table 1: MS' bargaining success, issue salience and position's extremity in the DEU III Dataset (2004-2019)

MS	<i>Bargaining Success</i>		<i>Salience</i>		<i>Extremity</i>		Obs.
	Avg.	Stand. Dev.	Avg.	Stand. Dev.	Avg.	Stand. Dev.	
Austria	20,43	22,13	53,77	25,68	20,43	22,13	73
Belgium	17,79	20,16	50,12	22,64	17,79	20,15	83
Bulgaria	21,75	22,11	47,20	27,67	21,75	22,11	50
Croatia	16,28	21,24	42,22	25,39	16,28	21,24	9
Cyprus	15,51	21,59	39,20	25,60	15,51	21,59	56
Czech Republic	22,88	25,49	55,06	27,25	22,88	25,49	80
Germany	19,90	22,07	61,55	26,67	19,90	22,07	87
Denmark	20,68	22,51	58,61	24,73	20,68	22,51	83
Estonia	17,50	20,46	46,59	26,38	17,50	20,46	69
Greece	19,52	20,86	48,50	24,35	19,52	20,86	70
Spain	20,79	22,20	60,60	24,16	20,79	22,20	83
Finland	21,44	23,50	55,60	24,87	21,44	23,50	83
France	26,02	24,60	69,15	25,81	26,02	24,60	88
Hungary	19,67	22,93	50,21	28,04	19,67	22,93	72
Ireland	17,79	19,36	54,93	24,75	17,79	19,36	75
Italy	20,26	21,57	54,32	24,29	20,26	21,57	81
Lithuania	19,73	22,30	48,43	26,87	19,73	22,30	70
Luxembourg	16,44	21,45	45,97	24,93	16,44	21,45	67
Latvia	19,96	22,00	48,33	26,55	19,96	22,00	66
Malta	15,95	21,88	40,45	27,04	15,95	21,88	56
Netherlands	20,81	20,99	58,33	23,79	20,81	20,99	87
Poland	24,23	24,94	55,90	28,78	24,23	24,94	83
Portugal	16,39	20,55	50,45	24,77	16,39	20,55	67
Romania	17,79	19,79	45,81	27,49	17,79	19,79	43
Sweden	22,62	22,08	55,35	25,91	22,62	22,08	85
Slovenia	16,17	19,44	42,54	25,02	16,17	19,44	67
Slovakia	16,89	22,18	49,21	26,91	16,89	22,18	70
UK	19,25	21,11	59,86	23,68	19,25	21,11	74
Average	19,78	22,01	52,88	26,39	19,78	22,01	1977

The results underline that Spain's bargaining success is close to the average, for the ninety controversial policy issues under study. The dataset also confirms previous assessments that bargaining success is generally rather evenly distributed in Council negotiations (Lundgren *et al.*, 2019). More broadly, and to underline that decision outcomes are reasonably close to Spanish positions, it is interesting to note that Spain only opposed Council votes four times between 2016 and

2019¹. During this period, Spain generally expressed more issue salience on controversial issues than the average of MS. Along with France and Germany, Spain has the highest level of issue salience between 2004 and 2019. This can be interpreted as an indication that Spain has been active on a wide range of policy sectors, illustrating the breadth of its national interests covered by EU negotiations. In terms of the ‘extremity’ of its positions in relation to other MS, Spain is slightly higher than the average, well below France and Poland which appeared to be the MS taking the most extreme positions on average during this timeframe.

Case studies

In order to analyse to what extent variations in the resources and processes of the PermRep may matter in the context of EU negotiations (in comparison to other MS), two case studies are presented. The first case study investigates one of the most successful policy issues for Spain documented in the DEU III dataset. A successful policy issue corresponds to a controversial policy issue in which Spain had expressed a high salience regarding its preference, and with a decision outcome similar or very close to the position initially defended by Spain. This issue was chosen due to the role attributed by interviewees to the Spanish PermRep and its negotiators in shaping the decision outcome. Conversely, the second case study looks at a policy issue in which the salience for Spain was high, but with an unfavourable decision outcome, and in which some weaknesses at the level of the Spanish PermRep were identified.

Case Study 1 – European Electronic Communication Code directive (2016-2018)

On September 2016, the European Commission proposed a directive establishing a European electronic communication code, amending four directives related to the field of telecommunications (2016/0288COD). Spectrum policies² was one of main policy issues at stake (*Author 1, forthcoming*). The proposal of the European Commission consisted in granting more authority to the EU regulator in relation to spectrum. More specifically, the proposal consisted in having national regulatory authorities submit national spectrum assignment measures to a peer-review led by the EU telecommunication regulatory body. The pre-existing system was instead driven by an entirely voluntary process led by a MS-led advisory group known as the radio spectrum policy group (RSPG). France, Sweden and Slovenia appeared in favour of such a peer-review led by the EU regulator, whereas Netherlands, Hungary and Spain, as well as a large majority of MS, were strongly opposed

¹ Spain expressed its opposition during votes in the Council in the context of the following negotiations: Telecom affairs (2016/0287COD - 2016/0185COD), Justice and home affairs (2018/0330COD) and fisheries (2012/0179COD).

² The main blocks of the directive were initially addressed separately by negotiators as part of different tracks. Since all issues could not be tackled altogether, this study covers one of the most controversial issue – spectrum policies.

to this possibility³. In the context of these negotiations, Spain was represented by two negotiators, both with extensive experience in the Council. One of them had been a negotiator at the Spanish permanent representation for 17 years. He was thus considered as very knowledgeable by his peers on the Council and in his interactions with EU institutions.

In the formulation of the Council position, the negotiation dynamics appear to favour a number of pro-active MS. After several rounds of discussion in working groups, the discussions derived progressively outside of them, as part of bilateral talks between MS with the highest salience, including Spain⁴. Informally, the presidency was made aware of the development of parallel discussions outside of the working group. After having found an agreement, the two opposing camps came back to the working group with a compromise proposal in line with the position defended by Spain. Since a large majority of MS did not support the proposal of a peer-review, the Council position was to maintain the voluntary process led by the radio spectrum policy group.

On the side of the European Parliament, the IMCO and ITRE committees of the EP were each responsible for different sections of the directive. For one of the two EP rapporteurs, MEP Pilar Del Castillo Vera, as for the rest of the EPP group in the EP, the main priority in this directive was the duration of licenses (and not the peer-review mechanism). The EP had initially supported the mandatory peer review mechanism in its report, but quickly gave up on its position during trilogue negotiations, since it was not one of its major red lines. This choice was justified by respondents by the influence of Spanish negotiators in liaising with one of the two EP rapporteurs, who was in charge of spectrum issues. Preventing the creation of a mandatory peer-review was a top priority for Spain, and led Spanish negotiators to engage repeatedly with the rapporteur in the context of discussions between the Council and the EP⁵. Informal exchanges were partly facilitated by the fact that this EP rapporteur was Spanish, affiliated to the at-a-time governing party (Partido Popular) in Spain and had similar views with Spanish ministries on this directive. In this context, Spanish negotiators were given by the Council presidency the possibility to act as a mediator with the EP in order to draft compromise proposals between the Council and the EP, in close coordination with the Spanish EP rapporteur. As detailed by one of the Spanish negotiators, *“there were of course many informal contacts with the rapporteur and their team, and if the rapporteur shares your own nationality, you can play a key part in the informal mediation in the Council. This is the first time that it happens in the negotiations where I attended. We tried it and it worked to facilitate dialogue. Every now and then, the Council presidency exploits this to approve solutions in a very informal way, out of the official channels. This*

³ Interview 3 with MS representative, 11/06/2018, Brussels.

⁴ Interview 4 with MS representative, 20/06/2018, Brussels.

⁵ Interview 4 with MS representative, 20/06/2018, Brussels.

is exploited by the Presidency to reach an agreement (which is also the main target). If there are informal communication channels, it is always positive”.

This informal channel of discussion was instrumental in allowing Spain to defend its preferences and in securing an agreement within the Council. The possibility of establishing this informal channel partly stems from the experience and trust the two negotiators enjoy at the Council level. The outcome of the negotiations on this issue was the permanence of a voluntary system, led by the RSPG, in line with the preferences of Spain and other likeminded MS.

Case Study 2: ‘Non-cash’ Directive (2017-2019)

On September 13, 2017, the European Commission submitted a proposal for a directive to combat fraud and counterfeiting of means of payment, including bank cards and online payments. The pre-existing legal framework, adopted in 2001 (Council Framework Decision 2001/413/JHA), was considered outdated with the new criminal practices permitted by new technologies. The main controversial issue between MS concerned the level of ambition of this text for the harmonization of offences and penalties.

The camp in favour of greater harmonization was composed of Italy, France, Spain, Cyprus, Slovenia and Poland, while the camp in favour of a less ambitious level was led by Germany, and supported by Finland and the Czech Republic, and to a lesser extent by Hungary and Austria. Germany in particular was concerned about the consequences of over-ambitious harmonization on its constitutional order, recalling in particular the jurisprudence of its Constitutional Court. The position defended by Spain was that there are offences for which it is not necessary to specify the intention for them to be considered criminal, because the fraud in itself is sufficient. This position was justified in particular by the French, Polish and Spanish negotiators by the fact that counterfeiting is often organized in such a way that one group takes care of the falsification and then resells this information to other groups that exploit it.

Negotiations in the Council started during the Estonian Presidency in the second half of 2017. This period made it possible to identify at the technical level the points of consensus and stumbling blocks between delegations, concretized by the preparation of a first draft of the Council's position in December 2017. A large majority of the MS then seemed to agree on most of the provisions, with the exception of Germany in particular.

The Bulgarian presidency then took over at the beginning of 2018, still at the level of the DROIPEN working group. During these negotiations, Germany did not seem able to form a blocking minority, despite the support of Finland and the Czech Republic in particular. Following several meetings of

this working group and the JHA Counsellors in January and February 2018, as well as a series of compromise proposals presented by the Bulgarian Presidency, a new version of the draft directive was presented to Coreper on 28 February 2018. This version integrated several German requests, and was partly contrary to the French and Spanish requests. During this Coreper meeting, while all delegations had expressed their approval of the version of the directive presented by the Presidency, Germany indicated its categorical refusal, because of the possible consequences of this text for its constitutional order. During the exchanges in Coreper, the German permanent representative thus alluded to the possibility of resorting to the ‘emergency brake’ procedure, referring to the Article 83 of the TFEU.

Following a series of bilateral discussions between Germany and other MS, the Bulgarian Presidency then chose not to adopt this text immediately in Coreper and to send it back to the level of the JHA Counsellors, who then met twice during the following week, with the aim of responding again to German concerns. During these few days, political negotiations between Berlin and the other capitals were very intense, with some governments trying to exchange their approval of the German demands for a compromise on other issues. It was this dynamic that finally explained the French government's turnaround, with Paris negotiating its agreement to German demands in exchange for a change in the German position on another dossier in another sector. A series of MS thus changed their position, with the exception of Spain, which maintained its initial position. This shows one of the challenges faced by Spain in the context of Council negotiations relates to the informal dynamics led by the Franco-German alliance. It was indeed argued by an interviewee that one of the main objectives for Spanish negotiators was to attempt incorporate Spanish interests into the Franco-German relation. This dossier indeed indicates how trade-offs found between France and Germany in the last steps of a negotiation can be significantly detrimental to the interests of Spain.

Once this compromise was agreed in Coreper, the text was finally adopted at the level of the JHA Council. During this ministerial meeting, Spain, along with Cyprus, publicly criticized the way in which the compromise was reached. The report of the LIBE Committee to the European Parliament was then adopted in plenary on September 2018. An interviewee insisted on the fact that Spanish negotiators had not been sufficiently proactive in reaching out with all relevant MEPs when the EP adopted its report, explaining that “other counsellors can go door-by-door to other offices, because they have freedom of action and also hold resources. It is a matter of operating resources”.

The fact that some justice counsellors are also the main experts for their administration means that they cannot allocate an optimal amount of time in liaising with MEPs, especially when the legislative

files in question at not a top political priority. Then, an inter-institutional agreement was finally reached without any major change to the general approach of the Council.

Conclusions

This research has investigated the role, resources and processes of the Spanish Permanent Representation to the EU in the advancement of Spanish positions and interests at the EU level. The PermRep is a crucial instrument in the Spanish administrative and political apparatus designed to leverage influence at the European level. The results of the study indicate that the Spanish PermRep is well-resourced in terms of human resources in comparison to other MS, despite the issue of specialized trainings for experts and diplomats having been perceived as an area for improvement. Even if it varies across policy sectors, the quality of Spain's internal coordination processes appears generally high-quality and fluid, as Spain enjoys a rather efficient mechanism to adopt its initial positions. In other words, although the quality of Spain's internal coordination processes vary across policy sectors; they work well as Spain enjoys and efficient adoption mechanism of its initial positions. Still, Spain is not as efficient as Scandinavian and Dutch administrations. Regarding its coordination with EU institutions, the Spanish permanent representation nurtures strong relations with (Spanish) MEPs and the European Commission, though not as structured as other MS such as the Netherlands.

If the empirical analysis underlines that Spain's bargaining success was close to the average of MS between 2004 and 2019, the two case studies indicate strengths and weaknesses for Spain in EU legislative processes. The second case study indeed reveals the challenges that Spanish negotiators can face defending the large breadth of interests at the EU level. To exert influence in the EU decision-making process, negotiators need to simultaneously follow Council negotiations, brief their national capital, but also engage with and influence other EU institutions and stakeholders. Efficiently implementing this strategic approach requires a set of processes and resources that cannot be systematically mobilised due to limited administrative resources, thus preventing Spain to leave the group of 'spectator' member states in the governance of the EU.

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